

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. JUAN C. TUVERA,
VICTOR P. TUVERA AND TWIN PEAKS DEVELOPMENT
CORPORATION, RESPONDENTS.**

G.R. NO. 148246. February 16, 2007

Ponente: TINGA, J.

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TINGA, J.:

The long-term campaign for the recovery of ill-gotten wealth of former President Ferdinand E. Marcos, his wife Imelda, and their associates, has been met with many impediments, some of which are featured in this case, that have led to doubts whether there is still promise in that enterprise. Yet even as the prosecution of those cases have drudged on and on, the era of their final reckoning is just beginning before this Court. The heavy hammer of the law is just starting to fall.

The instant action originated from a civil complaint for restitution and damages filed by the Republic of the Philippines against Marcos and his longtime aide Juan Tuvera, as well as Tuvera's son Victor and a corporation the younger Tuvera had controlled. Trial on the case against the Tiveras proceeded separately before the Sandiganbayan. After the Republic had presented its evidence, the Tiveras successfully moved for the dismissal of the case on demurrer to evidence. The demurrer was sustained, and it falls upon this Court to ascertain the absence or existence of sufficient proof to support the relief sought by the Republic against the Tiveras.

I.

We begin with the facts.

Twin Peaks Development Corporation (Twin Peaks) was organized on 5 March 1984 as a corporation with a principal purpose of engaging in the real estate business. There were five incorporating stockholders, including respondent Victor Tuvera (Victor)[1] who owned 48% of the shares of the fledgling corporation. Victor was the son of respondent Juan Tuvera, who was then Presidential Executive Assistant of President Marcos.

Acting on a letter dated 31 May 1984 of Twin Peaks' Vice-President and Treasurer Evelyn Fontanilla in behalf of the corporation, President Marcos granted the award of a Timber License Agreement (TLA), more specifically TLA No. 356, in favor of Twin Peaks to operate on 26,000 hectares of forest land with an annual allowable cut of 60,000 cubic meters of timber and to export 10,000 cubic meters of mahogany of the narra species.[2] As a result, Twin Peaks was able to engage in logging operations.

On 25 February 1986, President Marcos was ousted, and Corazon C. Aquino assumed the presidency. Among her first acts as President was to establish the Philippine Commission on Good Government (PCGG), tasked with tracking down the ill-gotten wealth procured by Marcos, his family, and associates during his 20-year rule. Among the powers granted to the PCGG was the power to issue writs of sequestration.[3] On 13 June 1988, the PCGG issued a Writ of Sequestration on all assets, properties, records, documents, and shares of stock of Twin Peaks on the ground that all the assets of the corporation are ill-gotten wealth for having been acquired directly or

indirectly through fraudulent and illegal means.[4] This was followed two days later by Mission Order No. MER-88 (Mission Order), also issued by the PCGG, implementing the aforementioned Writ of Sequestration.[5]

On 9 December 1988, the PCGG, in behalf of the Republic, filed the Complaint now subject of this Petition.[6] Impleaded as defendants in the Complaint[7] were Juan and Victor Tuvera, as well as the then-exiled President Marcos. Through the Complaint, the Republic sought to recover funds allegedly acquired by said parties in flagrant breach of trust and fiduciary obligations with grave abuse of right and power in violation of the Constitution and the laws of the Republic of the Philippines.[8]

In particular, the Complaint alleged that Juan Tuvera, as Presidential Executive Assistant of President Marcos, took advantage of his relationship to influence upon and connection with the President by engaging in a scheme to unjustly enrich himself at the expense of the Republic and of the Filipino people. This was allegedly accomplished on his part by securing TLA No. 356 on behalf of Twin Peaks despite existing laws expressly prohibiting the exportation of mahogany of the narra species[9] and Twin Peaks' lack of qualification to be a grantee thereof for lack of sufficient logging equipment to engage in the logging business.[10] The Complaint further alleged that Twin Peaks exploited the country's natural resources by engaging in large-scale logging and the export of its produce through its Chinese operators whereby respondents obtained a revenue of approximately P45 million.

The Complaint prayed that (1) TLA No. 356 be reverted to the State or cancelled; (2) respondents be jointly and severally ordered to pay P48 million[11] as actual damages; and (3) respondents pay moral, temperate and exemplary damages, litigation expenses, and treble judicial costs.[12] It cited as grounds for relief, gross abuse of official position and authority, breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, and violation of the Constitution.[13]

In their Answer,[14] respondents Victor Tuvera and Twin Peaks claimed that Twin Peaks was awarded TLA No. 356 only after its articles of incorporation had been amended enabling it to engage in logging operations,[15] that the Republic's reference to Chinese operations and revenue of approximately P45 million were merely imagined,[16] and that the PCGG has no statutory authority to institute the action.[17] By way of counterclaim, respondents asked that the Republic be ordered to pay Victor Tuvera moral damages and to pay both Victor Tuvera and Twin Peaks exemplary damages, and to reimburse their attorney's fees.[18]

Anent the allegation that Twin Peaks sold about P3 million worth of lumber despite the Writ of Sequestration issued by the PCGG, respondents stressed that the Director of Forest Development acted within the scope of his authority and the courts have no supervising power over the actions of the Director of Forest Development and the Secretary of the Department of Environment and Natural Resources (DENR) in the performance of their official duties.[19]

As an affirmative and special defense, respondents Victor Tuvera and Twin Peaks alleged that after Twin Peaks was granted TLA No. 356 in 24 August 1984, Felipe Ysmael, Jr. and Co., Inc. had filed a motion for the cancellation of the same with the DENR Secretary. When respondents submitted their Answer, the denial by the DENR of the Ysmael motion was under review before the Court.[20]

Juan Tuvera, who was abroad when the case was filed on 9 December 1988, later submitted his own Answer on 6 December 1989.[21] He also denied the allegations of the Republic and alleged that as Presidential Executive Assistant of then President Marcos, he acted within the confines of his duties and had perpetrated no unlawful acts. He merely transmitted communications of approval in the course of his duties and had nothing to do with the decisions of then President Marcos.[22] He denied having anything to do with Twin Peaks.

Juan Tuvera filed a compulsory counterclaim on the ground that the instant action had besmirched his reputation and caused serious anxiety and mental anguish thus entitling him to moral and exemplary damages and litigation expenses.[23]

On 3 May 1989, respondents filed an Omnibus Motion to Nullify Writ of Sequestration and/or the Mission Order.[24] The Sandiganbayan issued a Temporary Restraining Order against the PCGG requiring it to cease, refrain and desist from further implementing the Writ of Sequestration and the Mission Order.[25] Subsequently, on motion of respondents, the Sandiganbayan granted a Writ of Preliminary Injunction covering the Mission Order. The Sandiganbayan deferred its resolution on the Motion to Lift the Writ of Sequestration.[26]

From 1988 to 1993, the proceedings before the Sandiganbayan were delayed owing to the difficulty of acquiring jurisdiction over the person of President Marcos, who was by then already in exile. Thus, upon motion by respondents, the Sandiganbayan granted them a separate pre-trial/trial from President Marcos.[27]

Respondents submitted their documentary evidence in the Pre-Trial Conference while the Republic reserved to present the same during trial. After the pre-trial conference, the Sandiganbayan issued a Pre-Trial Order[28] dated 3 November 1993, which presented the issues for litigation as follows:

Whether or not defendant Juan C. Tuvera who was a Presidential Executive Assistant at the time material to this case, by himself and in concert with his co-defendants Ferdinand E. Marcos and Victor Tuvera, took advantage of his relation and connection with the late Marcos, secure (sic) a timber concession for Twin Peaks Development Corporation and, engage (sic) in a scheme to unjustly enrich himself at the expense of the Republic and the Filipino People.[29]

The Pre-Trial Order also indicated that the Republic admitted the exhibits by respondents, subject to the presentation of certified true copies thereof. Respondents' exhibits were as follows:[30]

Exhibit Nos. Description

1 Amended Articles of Incorporation dated 31 July 1984

2

TLA No. 356

3

Order, Minister Ernesto M. Maceda, 22 July 1986

3-A

Order, Minister Ernesto M. Maceda, 10 October 1986

3-B

Order, Minister Ernesto M. Maceda, 26 November 1986, O.P. Case No. 3521

3-C Resolution, Office of the President, 6 July 1987, O.P. Case No. 3521

3-D Order, Office of the President, 14 August 1987, I.S. No. 66

3-E Complaint, PCGG, dated 20 July 1988

3-E-1, I.S. No. 66 Affidavit, PCGG, Almario F.

3-E-2, Mendoza, Ltv. Ramon F. Mendoza and Affidavit, Isidro Santiago

3-E-3

3-F

Counter-Affidavit, Juan C. Tuvera, 17 August 1989

3-F-1 PCGG, Motion to Withdraw, Jose Restituto F. Mendoza, 10 May 1989

3-F-2 Decision, Supreme Court, 18 October 1990

3-G Resolution, Supreme Court, 5 June 1991

4 Complaint, DENR, Almario F. Mendoza, 9 March 1990

4-A Answer/Comment, DENR, Almario F. Mendoza, dated 20 April 1990

4-B Decision, DENR, dated 28 August 1990

5 Complaint, Ombudsman, etc., Case No. 0-90-0708, 9 March 1990

6, 6-A Answer/Counter-Affidavit, etc.

6-B Decision, Ombudsman Case No. 0-90-0708, dated 8 August 1990

The Republic presented three (3) witnesses during the trial. The first witness was Joveniana M. Galicia, Chief of the National Forest Management Division of the Forest Management Bureau. She identified TLA No. 356 of Twin Peaks dated 20 August 1984 and a Memorandum dated 18 July 1984. She testified that TLA No. 356 covers 26,000 hectares of forest land located in the Municipality of Isabela, Province of Quirino.[31] The Memorandum dated 18 July 1984 addressed to Director Edmundo Cortez recited then President Marcos' grant of the timber concession to Twin Peaks. Identified and marked in the same memorandum were the name and signature of Juan Tuvera.[32] Upon cross-examination, Galicia stated that she was not yet the chief of the Division when the documents she identified were submitted to the Bureau. She further stated it was her first time to see the aforementioned documents when she was asked to bring the same before the trial court.[33]

The next witness was Fortunato S. Arcangel, Regional Technical Director III of the DENR. He testified that he is a Technical Director under the Forest Management Services of the DENR.[34] He identified Forestry Administration Order (FAO) No. 11 dated 1 September 1970. He said he was aware of TLA No. 356 of Twin Peaks[35] because at the time it was issued, he was the chief of the Forestry Second Division and his duties included the evaluation and processing of applications for licenses and permits for the disposition and distribution of timber and other forest products.[36] Consequently, he was aware of the process by which TLA No. 356 was issued to Twin Peaks.[37] According to him, they processed the application insofar as they evaluated the location of the area concerned and its present vegetative state, examined the records, and determined the annual allowable land. After the examination, the license agreement was prepared and submitted for approval.[38] He continued that under FAO No. 11, a public bidding is required before any license agreement or permit for the utilization of timber within the forestry land is issued[39] but no public bidding was conducted for TLA No. 356.[40] He explained that no such bidding was conducted because of a Presidential Instruction not to accept any application for timber licensing as a consequence of which bidding procedures were stopped.[41] Upon cross-examination, Arcangel said that at the time TLA No. 356 was issued, the Revised Forestry Code of the Philippines[42] was already in effect but there were still provisions in FAO No. 11 that remained applicable such as the terms and conditions of granting a license. He also stated that the issuance of the license to Twin Peaks emanated from the President of the Philippines.[43]

The Republic's third and last witness was Teresita M. Zuñiga, employee of the Bureau of Internal Revenue. She

identified the 1986 Income Tax Returns of Victor P. Tuvera, Evelyn Fontanilla and Feliciano O. Salvana, stockholders of Twin Peaks.[44]

On 24 June 1994, the Republic rested its case after its formal offer of evidence, as follows:[45]

Exhibits Documents Purpose

A Timber License Agreement No. 356 of Twin Peaks Realty Development Corp. dated 20 August 1984 To prove that the Timber License Agreement was executed prior to the amendment of the Articles of Incorporation of Twin Peaks Realty Development Corp.

B Memorandum dated 18 July 1984 of Juan C. Tuvera, Presidential Executive Secretary To prove the participation of Juan C. Tuvera in the grant of the timber concession of Twin Peaks Realty Development Corp.

C Forestry Administrative Order No. 11 (Revised) To prove that Twin Peaks Realty Development Corp. was granted a timber license agreement without following the procedure outlined in the forestry rules and regulation and in violation of law.

D Income Tax Return of Victor Tuvera To prove that Victor Tuvera was not a legitimate stockholder of Twin Peaks Realty Development Corp.

E Income Tax Return of Evelyn Fontanilla To prove that Evelyn Fontanilla was not a legitimate stockholder of Twin Peaks Realty Development Corp.

F Income Tax Return of Feliciano Salvana To prove that Feliciano Salvana was not a legitimate stockholder of Twin Peaks Realty Development Corp.

G Articles of Incorporation of Twin Peaks Realty Development Corp. (original) To prove that Twin Peaks Realty Development Corp. was organized to engage in the real estate business and not in the logging industry.

H Timber Manifestation Report of [Twin Peaks Realty Development Corp.] consigned to Scala Sawmill[46] To show that Twin Peaks Realty Development Corp. lacks equipment to process logs

I Timber Manifestation Report of Twin Peaks consigned to La Peña Sawmill[47] To show that Twin Peaks Realty Development Corp. lacks equipment to process logs.

Respondents subsequently submitted certified true copies of the exhibits they had presented during the pre-trial conference.[48]

With leave of court, respondents filed a Demurrer to Evidence. Respondents argued that the Republic failed to present sufficient legal affirmative evidence to prove its claim. In particular, respondents' demurrer contends that the memorandum (Exh. B) and TLA No. 356 are not "legal evidence" because "legal evidence" is not meant to raise a mere suspicion or doubt. Respondents also claim that income tax returns are not sufficient to show one's holding in a corporation. Respondents also cited the factual antecedents culminating with the Court's decision in *Felipe Ysmal, Jr. & Corp., Inc. v. Sec. of Environment and Natural Resources*. [49]

The Republic filed a Manifestation, contending that the demurrer is not based on the insufficiency of its evidence but on the strength of the evidence of respondents as shown by their own exhibits. The Republic claimed that the Revised Forestry Code of the Philippines does not dispense with the requirement of public bidding. The Republic added that Sec. 5 of said law clearly provides that all applications for a timber license agreement must be filed before the Bureau of Forest Development and that respondents still have to prove compliance with the requirements for service contracts.[50]

Respondents opposed the Manifestation, maintaining that since the Republic admitted the exhibits of respondents during the pre-trial, it is bound by its own admission. Further, these same exhibits contain uncontroverted facts and laws that only magnify the conclusion that the Republic has no right to relief.[51]

In its Resolution dated 23 May 2001,[52] the Sandiganbayan sustained the demurrer to evidence and referred to the decision of this Court in *Ysmael* in holding that *res judicata* applies. The Anti-Graft Court also did not give credence to the Republic's allegations concerning respondents' abuse of power and/or public trust and consequent liability for damages in view of its failure to establish any violation of Arts. 19, 20 and 21 of the Civil Code.

In essence, the Sandiganbayan held that the validity of TLA No. 356 was already fully adjudicated in a Resolution/Order issued by the Office of the President on 14 August 1987, which had become final and executory with the failure of the aggrieved party to seek a review thereof. The Sandiganbayan continued that the above pronouncement is supported by this Court in *Ysmael*. Consequently, the Sandiganbayan concluded, the Republic is barred from questioning the validity of TLA No. 356 in consonance with the principle of *res judicata*.

The Republic now questions the correctness of the Sandiganbayan's decision to grant the demurrer to evidence because it was not based solely on the insufficiency of its evidence but also on the evidence of respondent mentioned during the pre-trial conference. The Republic also challenges the applicability of *res judicata*.

II.

Preliminarily, we observe that respondents had filed before the Sandiganbayan a pleading captioned Motion to Dismiss or Demurrer to Evidence, thus evincing that they were seeking the alternative reliefs of either a motion to dismiss or a demurrer to evidence. However, the Sandiganbayan, in resolving this motion, referred to it as Motion to Dismiss on Demurrer to Evidence, a pleading of markedly different character from a Motion to Dismiss or Demurrer to Evidence. Still, a close reading of the Sandiganbayan Resolution reveals clearly that the Sandiganbayan was treating the motion as a demurrer, following Rule 33, Section 1 of the Rules of Court, rather than a motion to dismiss under Rule 16, Section 1.

This notwithstanding, the Sandiganbayan justified the grant of demurrer with *res judicata* as rationale. *Res judicata* is an inappropriate ground for sustaining a demurrer to evidence, even as it stands as a proper ground for a motion to dismiss. A demurrer may be granted if, after the presentation of plaintiff's evidence, it appears upon the facts and the law that the plaintiff has shown no right to relief. In contrast, the grounds for *res judicata* present themselves even before the presentation of evidence, and it should be at that stage that the defense of *res judicata* should be invoked as a ground for dismissal. Properly speaking, the movants for demurral who wish to rely on a controlling value of a settled case as a ground for demurrer should invoke the ground of *stare decisis* in lieu of *res judicata*.

In *Domondon v. Lopez*,[53] we distinguished a motion to dismiss for failure of the complainant to state a cause of action from a motion to dismiss based on lack of cause of action. The first is governed by Rule 16, Section 1(g),[54] while the second by Rule 33[55] of the Rules of Court, to wit:

x x x The first [situation where the complaint does not alleged cause of action] is raised in a motion to dismiss under Rule 16 before a responsive pleading is filed and can be determined only from the allegations in the initiatory pleading and not from evidentiary or other matter aliunde. The second [situation where the evidence does not sustain the cause of action alleged] is raised in a demurrer to evidence under Rule 33 after the plaintiff has rested his case and can be resolved only on the basis of the evidence he has presented in support of his claim. The first does not concern itself with the truth and falsity of the allegations while the second arises precisely because the judge has determined the truth and falsity of the allegations and has found the evidence

wanting.

Hence, a motion to dismiss based on lack of cause of action is filed by the defendant after the plaintiff has presented his evidence on the ground that the latter has shown no right to the relief sought. While a motion to dismiss under Rule 16 is based on preliminary objections which can be ventilated before the beginning of the trial, a motion to dismiss under Rule 33 is in the nature of a demurrer to evidence on the ground of insufficiency of evidence and is presented only after the plaintiff has rested his case.[56] [Emphasis supplied]

III.

We shall first discuss the question of whether or not a demurrer to evidence may be granted based on the evidence presented by the opposing parties.

An examination of the Sandiganbayan's Resolution shows that dismissal of the case on demurrer to evidence was principally anchored on the Republic's failure to show its right to relief because of the existence of a prior judgment which consequently barred the relitigation of the same issue. In other words, the Sandiganbayan did not dismiss the case on the insufficiency of the Republic's evidence nor on the strength of respondents' evidence. Rather, it based its dismissal on the existence of the Ysmael case which, according to it, would render the case barred by res judicata.

Prescinding from this procedural miscue, was the Sandiganbayan correct in applying res judicata to the case at bar? To determine whether or not res judicata indeed applies in the instant case, a review of Ysmael is proper.

In brief, Felipe Ysmael, Jr. & Co., Inc. was a grantee of a timber license agreement, TLA No. 87. Sometime in August 1983, the Bureau of Forest Development cancelled TLA No. 87 despite the company's letter for the reconsideration of the revocation. Barely one year thereafter, one-half (or 26,000 hectares) of the area formerly covered by TLA No. 87 was re-awarded to Twin Peaks under TLA No. 356.

In 1986, Felipe Ysmael, Jr. & Co., Inc. sent separate letters to the Office of the President and the Ministry of Natural Resources primarily seeking the reinstatement of TLA No. 87 and the revocation of TLA No. 356. Both offices denied the relief prayed for. Consequently, Felipe Ysmael, Jr. & Co., Inc. filed a petition for review before this Court.

The Court, through the late Justice Irene Cortes, held that Ysmael's letters to the Office of the President and to the Ministry of Natural Resources in 1986 sought the reconsideration of a memorandum order by the Bureau of Forest Development canceling their timber license agreement in 1983 and the revocation of TLA No. 356 subsequently issued by the Bureau in 1984. Ysmael did not attack the administrative actions until after 1986. Since the decision of the Bureau has become final, it has the force and effect of a final judgment within the purview of the doctrine of res judicata. These decisions and orders, therefore, are conclusive upon the rights of the affected parties as though the same had been rendered by a court of general jurisdiction. The Court also denied the petition of Ysmael because it failed to file the special civil action for certiorari under Rule 65 within a reasonable time, as well as in due regard for public policy considerations and the principle of non-interference by the courts in matters which are addressed to the sound discretion of government agencies entrusted with the regulation of activities coming under the special technical knowledge and training of such agencies.

In *Sarabia and Leido v. Secretary of Agriculture and Natural Resources, et al.*,^[57] the Court discussed the underlying principle for res judicata, to wit:

The fundamental principle upon which the doctrine of res judicata rests is that parties ought not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by

a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

For res judicata to serve as an absolute bar to a subsequent action, the following requisites must concur: (1) the former judgment or order must be final; (2) the judgment or order must be on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and parties; and (4) there must be between the first and second actions, identity of parties, of subject matter, and of causes of action.[58] When there is only identity of issues with no identity of causes of action, there exists res judicata in the concept of conclusiveness of judgment.[59]

In Ysmael, the case was between Felipe Ysmael Jr. & Co., Inc. and the Deputy Executive Secretary, the Secretary of Environment and Natural Resources, the Director of the Bureau of Forest Development and Twin Peaks Development and Realty Corporation. The present case, on the other hand, was initiated by the Republic of

the Philippines represented by the Office of the Solicitor General. No amount of imagination could let us believe that there was an identity of parties between this case and the one formerly filed by Felipe Ysmael Jr. & Co., Inc.

The Sandiganbayan held that despite the difference of parties, res judicata nevertheless applies on the basis of the supposed sufficiency of the “substantial identity” between the Republic of the Philippines and Felipe Ysmael, Jr. Co., Inc. We disagree. The Court in a number of cases considered the substantial identity of parties in the application of res judicata in instances where there is privity between the two parties, as between their successors in interest by title[60] or where an additional party was simply included in the subsequent case[61] or where one of the parties to a previous case was not impleaded in the succeeding case.[62]

The Court finds no basis to declare the Republic as having substantial interest as that of Felipe Ysmael, Jr. & Co., Inc. In the first place, the Republic’s cause of action lies in the alleged abuse of power on respondents’ part in violation of R.A. No. 3019[63] and breach of public trust, which in turn warrants its claim for restitution and damages. Ysmael, on the other hand, sought the revocation of TLA No. 356 and the reinstatement of its own timber license agreement. Indeed, there is no identity of parties and no identity of causes of action between the two cases.

IV.

What now is the course of action to take since we cannot affirm the Sandiganbayan’s grant of the demurrer to evidence? Rule 33, Sec. 1 reads:

Sec. 1. Effect of judgment on demurrer to evidence. – After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal the order of dismissal is reversed he shall have be deemed to have waived the right to present evidence.

The general rule is that upon the dismissal of the demurrer in the appellate court, the defendant loses the right to present his evidence and the appellate court shall then proceed to render judgment on the merits on the basis of plaintiff’s evidence. As the Court explained in *Generoso Villanueva Transit Co., Inc. v. Javellana*:[64]

The rationale behind the rule and doctrine is simple and logical. The defendant is permitted, without waiving his right to offer evidence in the event that his motion is not granted, to move for a dismissal (i.e., demur to the plaintiff’s evidence) on the ground that upon the facts as thus established and the applicable law, the plaintiff has shown no right to relief. If the trial court denies the dismissal motion, i.e., finds that plaintiff’s evidence is

sufficient for an award of judgment in the absence of contrary evidence, the case still remains before the trial court which should then proceed to hear and receive the defendant's evidence so that all the facts and evidence of the contending parties may be properly placed before it for adjudication as well as before the appellate courts, in case of appeal. Nothing is lost. The doctrine is but in line with the established procedural precepts in the conduct of trials that the trial court liberally receive all proffered evidence at the trial to enable it to render its decision with all possibly relevant proofs in the record, thus assuring that the appellate courts upon appeal have all the material before them necessary to make a correct judgment, and avoiding the need of remanding the case for retrial or reception of improperly excluded evidence, with the possibility thereafter of still another appeal, with all the concomitant delays. The rule, however, imposes the condition by the same token that if his demurrer is granted by the trial court, and the order of dismissal is reversed on appeal, the movant loses his right to present evidence in his behalf and he shall have been deemed to have elected to stand on the insufficiency of plaintiff's case and evidence. In such event, the appellate court which reverses the order of dismissal shall proceed to render judgment on the merits on the basis of plaintiff's evidence.[65]

It thus becomes the Court's duty to rule on the merits of the complaint, duly taking into account the evidence presented by the Republic, and without need to consider whatever evidence the Tiveras have, they having waived their right to present evidence in their behalf.

V.

Executive Order No. 14-A[66] establishes that the degree of proof required in cases such as this instant case is preponderance of evidence. Section 3 thereof reads:

SEC. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand E. Marcos, Imelda R. Marcos, members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a preponderance of evidence. [Emphasis supplied.]

Thus, the Court recently held in *Yuchengco v. Sandiganbayan*,[67] that in establishing the quantum of evidence required for civil cases involving the Marcos wealth held by their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees filed before the Sandiganbayan, that "the Sandiganbayan, x x x was not to look for proof beyond reasonable doubt, but to determine, based on the evidence presented, in light of common human experience, which of the theories proffered by the parties is more worthy of credence."

In order that restitution may be proper in this case, it must be first established that the grant of the TLA to Twin Peaks was illegal. With the illegality of the grant established as fact, finding Victor Tiveras, the major stockholder of Twin Peaks, liable in this case should be the ineluctable course. In order that Juan Tiveras may be held answerable as well, his own participation in the illegal grant should also be substantiated.

Regarding the first line of inquiry, the Complaint adverted to several provisions of law which ostensibly were violated by the grant of the TLA in favor of Twin Peaks. These include R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and Articles 19, 20 and 21 of the Civil Code.

Still, the most organic laws that determine the validity or invalidity of the TLA are those that governed the issuance of timber license agreements in 1984. In that regard, the Republic argues that the absence of a bidding process is patent proof of the irregularity of the issuance of the TLA in favor of Twin Peaks.

A timber license agreement authorizes a person to utilize forest resources within any forest land with the right of

possession and exclusion of others.[68] The Forestry Reform Code prohibits any person from utilizing, exploiting, occupying, possessing or conducting any activity within any forest land unless he had been authorized to do so under a license agreement, lease, license or permit.[69] The Code also mandates that no timber license agreement shall be issued unless the applicant satisfactorily proves that he has the financial resources and technical capability not only to minimize utilization, but also to practice forest protection, conservation and development measures to insure the perpetuation of said forest in productive condition.[70] However, the Code is silent as to the procedure in the acquisition of such timber license agreement. Such procedure is more particularly defined under FAO No. 11, dated 1 September 1970, which provides for the “revised forestry license regulations.”

FAO No. 11 establishes that it is the Director of Forestry who has the power “to grant timber licenses and permits.”[71] It also provides as a general policy that timber license agreements shall be granted through no other mode than public bidding.[72] However, Section 24 of FAO No. 11 does admit that a timber license agreement may be granted through “negotiation,” as well as through “public bidding.”

26. When license may be issued.—A license under this Regulations may be issued or granted only after an application and an award either through bidding or by negotiation has been made and the Director of Forestry is satisfied that the issuance of such license shall not be inconsistent with existing laws and regulations or prejudicial to public interest, and that the necessary license fee, bond deposit and other requirements of the Bureau of Forestry have been paid and complied with.[73] [Emphasis supplied.]

However, even a person who is granted a TLA through “negotiation” is still required to submit the same requirements and supporting papers as required for public bidding. The pertinent provisions of FAO No. 11 state:

18. Requirements and supporting papers to be submitted.—The following requirements with accompanying supporting papers or documents shall be submitted in addition to the requirements of Section 12:

a. With bid application:

The applicant shall support his bid application with the required application fee duly paid and proofs of the following:

(1) Capitalization.—Cash deposits and established credit line by applicant in domestic bank certified to by the bank President or any of its authorized officials, duly attested by depositor as his own to be used exclusively in logging and wood processing operations if awarded the area. The bank certificate shall be accompanied by a written consent by the applicant-depositor for the Director of Forestry or his authorized representative to verify such cash deposit with bank authorities.

Capitalization and financial statements.— A minimum capitalization of P20.00 per cubic meter in cash and an established credit line of P150.00 per cubic meter based on the allowable annual cut are required. Financial statements certified by the independent and reputable certified public accountants must accompany the application as proof of the necessary capitalization.

Additional capitalization, Real Estate.— In the event that the capitalization of the applicant is less than the minimum or less than that set by the Director of Forestry for the area, the applicant bidder may be asked to submit an affidavit signifying his readiness, should the area be awarded to him, to convert within a specified time any specified unencumbered and titled real estate into cash for use in operating and developing the area. Presentation of real estate should show location by municipality and province, hectarage, title number, latest land tax declaration, assessed value of land and improvements (stating kind of improvements), and encumbrances if any.

(2) Logging machinery and equipment.—Evidence of ownership or capacity to acquire the requisite machinery or equipment shall accompany the bid application. The capacity or ability to acquire machineries and equipments shall be determined by the committee on award. Leased equipment or machineries may be

considered in the determination by the Committee if expressly authorized in writing by the Director of Forestry.

(3) Technical know-how.—To assure efficient operation of the area or concession, the applicant shall submit proof of technical competence and know-how and/or his ability to provide hired services of competent personnel.

(4) Operation or development plan.— An appropriate plan of operation and development of the forest area applied for shall be submitted, including phasing plans and the fund requirements therefor, consistent with selective logging methods and the sustained yield policy of the Bureau of Forestry. This plan must be in general agreement with the working unit plan for the area as contained in Chapter III, Section 6(a) hereinabove.

(5) Processing plant.—The bidder or applicant shall show evidence of ownership of, or negotiation to acquire, a wood processing plant. The kind and type of plant, such as plywood, veneer, bandmill, etc. shall be specified. The plant should be capable of processing at least 60% of the allowable annual cut.

(6) Forestry Department.—The applicant shall submit assurance under oath that he shall put a forestry department composed of trained or experienced foresters to carry out forest management activities such as selective logging, planting of denuded or logged-over areas within the concessions as specified by the Director of Forestry and establish a forest nursery for the purpose.

(7) Statement on sustained yield operations, reforestation, and protection under management plans.— The bidder or applicant shall submit a sworn statement of his agreement and willingness to operate the area under sustained yield to reforest cleared areas and protect the concession or licensed area and under the approved management plan, and to abide with all existing forestry laws, rules and regulations and those that may hereafter be promulgated; and of his agreement that any violation of these conditions shall be sufficient cause for the cancellation of the licenses.

(8) Organization plan.—Other important statement connected with sound management and operation of the area, such as the submission among others, of the organizational plan and employment of concession guards, shall be submitted. In this connection, the applicant shall submit a sworn statement to the effect no alien shall be employed without prior approval of proper authorities.

(9) Unauthorized use of heavy equipment.—The applicant shall give his assurance that he shall not introduce into his area additional heavy equipment and machinery without approval of the Director of Forestry.

(10) Such other inducements or considerations to the award as will serve public interest may also be required from time to time.

x x x x

d) With applications for areas to be negotiated.—All the foregoing requirements and supporting papers required for bidding under Section 18(a) hereinabove and of Section 20(b) hereinbelow shall also apply to all areas that may be granted through negotiation. In no case shall an area exceeding 100,000 hectares be granted through negotiation.[74]

The rationale underlying the very elaborate procedure that entails prior to the grant of a timber license agreement is to avert the haphazard exploitation of the State's forest resources as it provides that only the most qualified applicants will be allowed to engage in timber activities within the strict limitations of the grant and that cleared forest areas will have to be renewed through reforestation. Since timber is not a readily renewable natural resource, it is essential and appropriate that the State serve and act as a jealous and zealous guardian of our forest lands, with the layers of bureaucracy that encumber the grant of timber license agreements effectively serving as a

defensive wall against the thoughtless ravage of our forest resources.

There is no doubt that no public bidding occurred in this case. Certainly, respondents did not raise the defense in their respective answers. The absence of such bidding was testified on by prosecution witness Arcangel. Yet even if we consider that Twin Peaks could have acquired the TLA through “negotiation,” the prescribed requirements for “negotiation” under the law were still not complied with.

It is evident that Twin Peaks was of the frame of mind that it could simply walk up to President Marcos and ask for a timber license agreement without having to comply with the elaborate application procedure under the law. This is indicated by the letter dated 31 May 1984^[75] signed by Twin Peaks’ Vice President and Treasurer Evelyn Fontanilla, addressed directly to then President Marcos, wherein Twin Peaks expressed that “we would like to request a permit to export 20,000 cubic meters of logs and to cut and process 10,000 cubic meters of the narra species in the same area.”^[76] A marginal note therein signed by Marcos indicates an approval thereof. Neither the Forestry Reform Code nor FAO No. 11 provide for the submission of an application directly to the Office of the President as a proper mode for the issuance of a TLA. Without discounting the breadth and scope of the President’s powers as Chief Executive, the authority of the President with respect to timber licenses is, by the express terms of the Revised Forestry Code, limited to the amendment, modification, replacement or rescission of any contract, concession, permit, license or any other form of privilege granted by said Code.^[77]

There are several factors that taint this backdoor application for a timber license agreement by Twin Peaks. The forest area covered by the TLA was already the subject of a pre-existing TLA in favor of Ysmael. The Articles of Incorporation of Twin Peaks does not even stipulate that logging was either a principal or secondary purpose of the corporation. Respondents do allege that the Articles was amended prior to the grant in order to accommodate logging as a corporate purpose, yet since respondents have waived their right to present evidence by reason of their resort to demurrer, we cannot consider such allegation as proven.

Sec. 18(a)(1) of FAO No. 11 requires that an applicant must have a minimum capitalization of P20.00 per cubic meter in cash and an established credit line of P150.00 per cubic meter based on the allowable annual cut. TLA No. 356 allowed Twin Peaks to operate on 26,000 hectares of forest land with an annual allowable cut of 60,000 cubic meters of timber. With such annual allowable cut, Twin

Peaks, therefore, must have at least P1,200,000.00 in cash as its minimum capitalization, following FAO No. 11. An examination of Twin Peaks’ Articles of Incorporation shows that its paid-up capital was only P312,500.00.^[78] Clearly, Twin Peaks’ paid-up capital is way below the minimum capitalization requirement.

Moreover, Sec. 18(5) provides that the bidder or applicant shall show evidence of ownership of, or negotiation to acquire, a wood processing plant. However, although TLA No. 356 was issued to Twin Peaks in 1984, it continued to engage the services of at least two sawmills^[79] as late as 1988. Four (4) years from the issuance of the license, Twin Peaks remained incapable of processing logs.

What could have made Twin Peaks feel emboldened to directly request President Marcos for the grant of Timber License Agreement despite the obvious problems relating to its capacity to engage in timber activities? The reasonable assumption is that the official and personal proximity of Juan Tuvera to President Marcos was a key factor, considering that he was the father of Twin Peaks’ most substantial stockholder.

The causes of action against respondents allegedly arose from Juan Tuvera’s abuse of his relationship, influence and connection as Presidential Executive Assistant of then President Marcos. Through Juan Tuvera’s position, the Republic claims that Twin Peaks was able to secure a Timber License Agreement despite its lack of qualification and the absence of a public bidding. On account of the unlawful issuance of a timber license agreement, the

natural resources of the country were unlawfully exploited at the expense of the Filipino people. Victor Tuvera, as son of Juan Tuvera and a major stockholder of Twin Peaks, was included as respondent for having substantially benefited from this breach of trust. The circumstance of kinship alone may not be enough to disqualify Victor Tuvera from seeking a timber license agreement. Yet the basic ethical principle of delicadeza should have dissuaded Juan Tuvera from any official or unofficial participation or intervention in behalf of the “request” of Twin Peaks for a timber license.

Did Juan Tuvera do the honorable thing and keep his distance from Twin Peaks' “request”? Apparently not. Instead, he penned a Memorandum dated 18 July 1984 in his capacity as Presidential Executive Assistant, directed at the Director of Forestry, the official who, under the law, possessed the legal authority to decide whether to grant the timber license agreements after deliberating on the application and its supporting documents. The Memorandum reads in full:

Office of the President
of the Philippines
Malacanang

18 July 1984

74-84

MEMORANDUM to

Director Edmundo Cortes
Bureau of Forest Development

I wish to inform you that the President has granted the award to the Twin Peaks Realty Development Corporation, of the concession to manage, operate and develop in accordance with existing policies and regulations half of the timber area in the Province of Quirino covered by TLA No. 87, formerly belonging to the Felipe Ysmael, Jr. & Company and comprising 54,920 hectares, and to export half of the requested 20,000 cubic meters of logs to be gathered from the area.

Herewith is a copy of the letter concerning (sic) this matter of Ms. Evelyn F. Fontanilla, Vice-President and Treasurer of the Twin Peaks Realty Development Corporation, on which the President indicated such approval in his own hand, which I am furnishing you for your information and appropriate action.

(signed)

JUAN C. TUVERA

Presidential Executive Assistant[80]

The Memorandum establishes at the very least that Tuvera knew about the Twin Peaks “request,” and of President Marcos's favorable action on such “request.” The Memorandum also indicates that Tuvera was willing to convey those facts to the Director of Forestry, the ostensible authority in deciding whether the Twin Peaks “request” should have been granted. If Juan Tuvera were truly interested in preventing any misconception that his own position had nothing to do with the favorable action on the “request” lodged by the company controlled by his son, he would not have prepared or signed the Memorandum at all. Certainly, there were other officials in Malacañang who could have performed that role had the intent of the Memorandum been merely to inform the Director of Forestry of such Presidential action.

Delicadeza is not merely a stentorian term evincing a bygone ethic. It is a legal principle as embodied by certain provisions of the Anti-Graft and Corrupt Practices Act. Section 3 of R.A. No. 3019 states in part:

Sec. 3. Corrupt practices of public officers.—In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced or influenced to commit such violation or offense.

x x x x

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The Memorandum signed by Juan Tuvera can be taken as proof that he “persuaded, induced or influenced” the Director of Forestry to accommodate a timber license agreement in favor of Twin Peaks, despite the failure to undergo public bidding, or to comply with the requisites for the grant of such agreement by negotiation, and in favor of a corporation that did not appear legally capacitated to be granted such agreement. The fact that the principal stockholder of Twin Peaks was his own son establishes his indirect pecuniary interest in the transaction he appears to have intervened in. It may have been possible on the part of Juan Tuvera to prove that he did not persuade, induce or influence the Director of Forestry or any other official in behalf of the timber license agreement of Twin Peaks, but then again, he waived his right to present evidence to acquit himself of such suspicion. Certainly, the circumstances presented by the evidence of the prosecution are sufficient to shift the burden of evidence to Tuvera in establishing that he did not violate the provisions of the Anti-Graft and Corrupt Practices Act in relation to the Twin Peaks “request.” Unfortunately, having waived his right to present evidence, Juan Tuvera failed to disprove that he failed to act in consonance with his obligations under the Anti-Graft and Corrupt Practices Act.

In sum, the backdoor recourse for a hugely priced favor from the government by itself, and more in tandem with other brazen relevant damning circumstances, indicates the impudent abuse of power and the detestable misuse of influence that homologously made the acquisition of ill-gotten wealth a reality. Upon the facts borne out by the evidence for the Republic and guideposts supplied by the governing laws, the Republic has a clear right to the reliefs it seeks.

VI.

If only the Court's outrage were quantifiable in sums of money, respondents are due for significant pecuniary hurt. Instead, the Court is forced to explain in the next few paragraphs why respondents could not be forced to recompensate the Filipino people in appropriate financial terms. The fault lies with those engaged by the government to litigate this case in behalf of the State.

It bears to the most primitive of reasons that an action for recovery of sum of money must prove the amount sought to be recovered. In the case at bar, the Republic rested its case without presenting any evidence, documentary or testimonial, to establish the amount that should be restituted to the State by reason of the illegal acts committed by the respondents. There is the bare allegation in the complaint that the State is entitled to P48 million by way of actual damages, but no single proof presented as to why the State is entitled to such amount.

Actual damages must be proven, not presumed.[81] The Republic failed to prove damages. It is not enough for the Republic to have established, as it did, the legal travesty that led to the wrongful obtention by Twin Peaks of the

TLA. It should have established the degree of injury sustained by the State by reason of such wrongful act.

We fail to comprehend why the Republic failed to present any proof of actual damages. Was it the inability to obtain the necessary financial documents that would establish the income earned by Twin Peaks during the period it utilized the TLA, despite the presence of the discovery processes? Was it mere indolence or sheer incompetence? Whatever the reason, the lapse is inexcusable, and the injury ultimately conduces to the pain of the Filipino people. If the litigation of this case is indicative of the mindset in the prosecution of ill-gotten wealth cases, it is guaranteed to ensure that those who stole from the people will be laughing on their way to the bank.

The claim for moral damages deserves short shrift. The claimant in this case is the Republic of the Philippines, a juridical person. We explained in *Filipinas Broadcasting v. Ago Medical & Educational Center-Bicol Christian College of Medicine (AMEC-BCCM)*:^[82]

A juridical person is generally not entitled to moral damages because, unlike a natural person, it cannot experience physical suffering or such sentiments as wounded feelings, serious anxiety, mental anguish or moral shock. The Court of Appeals cites *Mambulao Lumber Co. v. PNB, et al.* to justify the award of moral damages. However, the Court's statement in *Mambulao* that "a corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages" is an obiter dictum.

Nevertheless, AMEC's claim for moral damages falls under item 7 of Article 2219 of the Civil Code. This provision expressly authorizes the recovery of moral damages in cases of libel, slander or any other form of defamation. Article 2219(7) does not qualify whether the plaintiff is a natural or juridical person. Therefore, a juridical person such as a corporation can validly complain for libel or any other form of defamation and claim for moral damages.^[83]

As explained, a juridical person is not entitled to moral damages under Article 2217 of the Civil Code. It may avail of moral damages under the analogous cases listed in Article 2219, such as for libel, slander or any other form of defamation. Suffice it to say that the action at bar does not involve any of the analogous cases under Article 2219, and indeed upon an intelligent reading of Article 2219, it is difficult to see how the Republic could sustain any of the injuries contemplated therein. Any lawyer for the Republic who poses a claim for moral damages in behalf of the State stands in risk of serious ridicule.

However, there is sufficient basis for an award of temperate damages, also sought by the Republic notwithstanding the fact that a claim for both actual and temperate damages is internally inconsistent. Temperate or moderate damages avail when "the court finds that some pecuniary loss has been suffered but its amount can not from the nature of the case, be proved with certainty."^[84] The textual language might betray an intent that temperate damages do not avail when the case, by its nature, is susceptible to proof of pecuniary loss; and certainly the Republic could have proved pecuniary loss herein.^[85] Still, jurisprudence applying Article 2224 is clear that temperate damages may be awarded even in instances where pecuniary loss could theoretically have been proved with certainty.

In a host of criminal cases, the Court has awarded temperate damages to the heirs of the victim in cases where the amount of actual damages was not proven due to the inadequacy of the evidence presented by the prosecution. These cases include *People v. Oliano*,^[86] *People v. Suplito*,^[87] *People v. De la Tongga*,^[88] *People v. Briones*,^[89] and *People v. Plazo*.^[90] In *Viron Transportation Co., Inc. v. Delos Santos*,^[91] a civil action for damages involving a vehicular collision, temperate damages were awarded for the resulting damage sustained by a cargo truck, after the plaintiff had failed to submit competent proof of actual damages.

We cannot discount the heavy influence of common law, and its reliance on judicial precedents, in our law on tort and damages. Notwithstanding the language of Article 2224, a line of jurisprudence has emerged authorizing the

award of temperate damages even in cases where the amount of pecuniary loss could have been proven with certainty, if no such adequate proof was presented. The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury. There is no impediment to apply this doctrine to the case at bar, which involves one of the most daunting and noble undertakings of our young democracy—the recovery of ill-gotten wealth salted away during the Marcos years. If the doctrine can be justified to answer for the unlawful damage to a cargo truck, it is a compounded wrath if it cannot answer for the unlawful exploitation of our forests, to the injury of the Filipino people. The amount of P1,000,000.00 as temperate damages is proper.

The allowance of temperate damages also paves the way for the award of exemplary damages. Under Article 2234 of the Civil Code, a showing that the plaintiff is entitled to temperate damages allows for the award of exemplary damages. Even as exemplary damages cannot be recovered as a matter of right, the courts are empowered to decide whether or not they should be adjudicated. Ill-gotten wealth cases are hornbook demonstrations where damages by way of example or correction for the public good should be awarded. Fewer causes of action deserve the stigma left by exemplary damages, which “serve as a deterrent against or as a negative incentive to curb socially deleterious actions.”[92] The obtention of the timber license agreement by Twin Peaks through fraudulent and illegal means was highlighted by Juan Tuvera’s abuse of his position as Presidential Executive Assistant. The consequent exploitation of 26 hectares of forest land benefiting all respondents is a grave case of unjust enrichment at the expense of the Filipino people and of the environment which should never be countenanced. Considering the expanse of forest land exploited by respondents, the volume of timber that was necessarily cut by virtue of their abuse and the estimated wealth acquired by respondents through grave abuse of trust and public office, it is only reasonable that petitioner be granted the amount of P1,000,000.00 as exemplary damages.

The imposition of exemplary damages is a means by which the State, through its judicial arm, can send the clear and unequivocal signal best expressed in the pithy but immutable phrase, “never again.” It is severely unfortunate that the Republic did not exert its best efforts in the full recovery of the actual damages caused by the illegal grant of the Twin Peaks TLA. To the best of our ability, through the appropriate vehicle of exemplary damages, the Court will try to fill in that deficiency. For if there is a lesson that should be learned from the national trauma of the rule of Marcos, it is that kleptocracy cannot pay. As those dark years fade into the backburner of the collective memory, and a new generation emerges without proximate knowledge of how bad it was then, it is useful that the Court serves a reminder here and now.

WHEREFORE, the petition is GRANTED. The Resolution of the Sandiganbayan dated 23 May 2001 is REVERSED. Respondents Juan C. Tuvera, Victor P. Tuvera and Twin Peaks Development Corporation are hereby ordered to jointly and severally pay to the Republic of the Philippines One Million (P1,000,000.00) Pesos, as and for temperate damages, and One Million (P1,000,000.00) Pesos, as and for exemplary damages, plus costs of suit.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

[1] Rollo, p. 119; Documents formally offered.

[2]Id. at 12.

[3] Executive Order No. 14 (1986).

[4] Rollo, p. 10.

[5] Id.

[6] Id. at 8-38.

[7] Id. at 95-102.

[8] Id. at 11.

[9] Id. at 12.

[10] Id.

[11] According to the Complaint, respondent sold about P3 million worth of lumber despite the service of Writ of Sequestration. Id. at 100.

[12] Id. at 43.

[13] Id.

[14] Id. at 103-109.

[15] Id. at 104.

[16] Id.

[17] Id. at 103.

[18] Id. at 108-109; Answer of Defendants Victor P. Tuvera and Twin Peaks Development Corporation.

[19] Rollo, p. 105.

[20] The case was later resolved by the Court with finality in Felipe Ysmael, Jr. v. Sec. of Environment and Natural Resources, G.R. No. 79538, 18 October 1990, 190 SCRA 673.

[21] Sandiganbayan rollo, Vol. 1, pp. 387-391.

[22] Rollo, p. 45.

[23] Sandiganbayan rollo, pp. 389-391.

[24] Id. at 49-65.

[25] Id. at 119-122.

[26] Rollo, p. 46.

[27] Id.

[28] Sandiganbayan rollo, Vol. 2, pp. 936-939

[29] Id. at 936.

[30] Rollo, p. 47; Sandiganbayan rollo, Vol 2, pp. 938- 938-A.

[31] TSN, 10 February 1994, p. 6.

[32] Id. at 7.

[33] Id. at 9.

[34] TSN, 18 February 1994, p. 5.

[35] Id. at 8.

[36] Id. at 9.

[37] Id.

[38] Id. at 10.

[39] Id. at 12.

[40] Id.

[41] Id. at 14.

[42] Presidential Decree No. 705, as amended, dated 19 May 1975. P.D. 705 does not expressly provide for a public bidding. Section 9 thereof authorizes the Department Head, upon the recommendation of the Director of Forest Development, to promulgate rules and regulations necessary to implement effectively the provisions of P.D. 705. However, no rules were subsequently issued expressly repealing FAO No. 11.

[43] TSN, 18 February 1994, p. 17.

[44] TSN, 13 April 1994, pp. 3-4.

[45] Rollo, pp. 48-49.

[46] This document was not presented by any of the witnesses.

[47] This document was not presented by any of the witnesses.

[48] Rollo, p. 49.

[49] G.R. No. 79538, 18 October 1990, 190 SCRA 673. See note 20.

[50] Rollo, pp. 49-50; Sandiganbayan Resolution dated 18 December 2000.

[51] Sandiganbayan rollo, Vol. 3, p. 1110; Opposition to Manifestation and Motion,.

[52] Id. at 1257-1272. Penned by Justice Anacleto D. Badoy, Jr. and concurred in by now SC Justice Minita V. Chico-Nazario and Justice Ma. Cristina Cortez-Estrada.

[53] A.M. No. RTJ-02-1696, 20 June 2002, 383 SCRA 376.

[54] SECTION 1. Grounds.—Within the time for but before filing the answer to the complaint or pleading asserting a claim, a motion to dismiss may be made on any of the following grounds:

x x x x

(g) That the pleading asserting the claim states no cause of action;

x x x x

[55] SECTION 1. Demurrer to evidence.—After the plaintiff has completed the presentation of his evidence, the defendant may move for dismissal on the ground that upon the facts and the law the plaintiff has shown no right to relief. If his motion is denied, he shall have the right to present evidence. If the motion is granted but on appeal

the order of dismissal is reversed he shall be deemed to have waived the right to present evidence.

[56] Domondon v. Lopez, supra note 53 at 385-386.

[57] 111 Phil. 1081, 1087 (1961) citing Philippine National Bank v. Barretto, 52 Phil. 818, 824; Escudero v. Flores, 97 Phil. 240 (1955); 51 O.G. 3444.

[58] Sta. Lucia Realty and Development, Inc. v. Cabrigas, 411 Phil 369, 386 (2001), citing Cagayan de Oro Coliseum, Inc. v. Court of Appeals, 320 SCRA 731 (1999); Mirpuri v. Court of Appeals, 318 SCRA 516 (1999); and Saura v. Saura, Jr., 313 SCRA 465 (1999).

[59] Sta. Lucia Realty and Development, Inc. v. Cabrigas, supra note 55 citing Calalang v. Register of Deeds of Quezon City, 231 SCRA 88 (1994).

[60] Rules of Court, Rule 39, Sec. 47.

[61] Javier v. Veridiano II, G.R. No. 48050, 10 October 1994, 237 SCRA 565. See also Republic of the Phils. v. Planas, et al., 124 Phil. 689, 698 (1966); Development Bank of the Philippines, National Development Company v. Pundogar, G.R. No. 96921, 29 January 1993, 218 SCRA 118; and Anticamara v. Ong, No. L-29689, 14 April 1978, 82 SCRA 337.

[62] Villa Esperanza Development Corp. v. Honorable Court of Appeals, G.R. No. 97179, 3 February 1993, 218 SCRA 401.

[63] Entitled "Anti-Graft and Corrupt Practices Act," approved on 17 August 1960.

[64] No. L-29467, 30 June 1970, 33 SCRA 755.

[65] Id. at 761-762. See also Radiowealth Finance Company v. Del Rosario, 390 Phil. 601, 610 (2000).

[66] Dated 18 August 1986.

[67] G.R. No. 149802, 20 January 2006. Consolidated with Yuchengco and Y Realty Corporation v. The Sandiganbayan, G.R. No. 150320, 20 January 2006; Republic v. The Sandiganbayan, G.R. No. 150367. 20 January 2006; Yuchengco and Y Realty Corporation v. Republic, G.R. No. 153207, 20 January 2006; Republic v. Estate of Ferdinand Marcos, G.R. No. 153459, 20 January 2006.

[68] Forestry Reform Code, Sec. 3(dd).

[69] Forestry Reform Code, Sec. 20.

[70] Forestry Reform Code, Sec. 60.

[71] Department of Environment and Natural Resources (Forestry) Administrative Order No. 11 (1970), Sec. 4(c).

[72] Department of Environment and Natural Resources (Forestry) Administrative Order No. 11 (1970), Sec. 3(a)(1).

[73] Department of Environment and Natural Resources (Forestry) Administrative Order No. 11 (1970), Sec. 26.

[74] Department of Environment and Natural Resources (Forestry) Administrative Order No. 11 (1970), Sec. 18.

[75] Also marked as part of Exhibit B.

[76] Id.

[77] Revised Forestry Code, Sec. 20.

[78] Rollo, p. 119; Formal Offer of Evidence Records.

[79] Peña Sawmill and Scala Sawmill; see rollo, pp. 124-125; Formal Offer of Evidence Records.

[80] Rollo, p. 143; Formal Offer of Evidence. The Memorandum has marginal notes but these marginal notes were not separately marked nor specifically mentioned in the formal offer of evidence and in the pleadings.

[81] Civil Code, Art. 2199.

[82] G.R. No. 141994, 17 January 2005, 448 SCRA 413.

[83] *Id.* at 435-436.

[84] See Civil Code, Art. 2224.

[85] See e.g., *Necesito v. Paras*, 104 Phil. 75, 85 (1958).

[86] 350 Phil. 604 (1998).

[87] 373 Phil. 269 (1999).

[88] 391 Phil. 582 (2000).

[89] 398 Phil. 31 (2000).

[90] 403 Phil. 347 (2001).

[91] 399 Phil. 243 (2000).

[92] See e.g., *Mecenas v. Court of Appeals*, G.R. No. 88052, 14 December 1989, 180 SCRA 83.

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