

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONER,  
VS. SANDIGANBAYAN (SECOND DIVISION), TOURIST DUTY FREE  
SHOPS, INC., BANK OF AMERICA AND RIZAL COMMERCIAL  
BANKING CORPORAT...**

*G.R. No. 152500. September 14, 2011*

Ponente: PERALTA, J.

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**PERALTA, J.:**

Assailed in this Petition for Certiorari and Prohibition with Urgent Prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction[1] under Rule 65 of the Rules of Court filed by the Presidential Commission on Good Government (PCGG) are the following Orders of the Sandiganbayan: (1) Resolution[2] dated July 26, 2001 granting Tourist Duty Free Shops, Inc.'s (TDFSI's) motion for the issuance of a writ of preliminary mandatory and prohibitory injunction against the implementation of the Sequestration Order dated March 11, 1986 upon the posting of a bond in the amount of P100,000.00; (2) The Writ of Preliminary Mandatory Injunction and Preliminary Injunction[3] dated August 3, 2001;[4] (3) Resolution[5] dated October 5, 2001 holding in abeyance the resolution of PCGG's motion for reconsideration and suspending the implementation of the writ of preliminary mandatory and prohibitory injunction; (4) Resolution[6] dated January 23, 2002 denying PCGG's motion for reconsideration and omnibus motion and increasing the amount of the injunction bond to P1million; (5) Order[7] dated January 23, 2002 setting the pre-trial and trial of the case; and (6) Order dated January 24, 2002 resetting the trial.[8]

The facts of the case are as follows:

By virtue of Presidential Decree (P.D.) No. 1193,[9] as amended by P.D. No. 1394,[10] then President Ferdinand E. Marcos authorized TDFSI to establish, operate and maintain duty and tax free stores at all international airports and seaports, as well as at selected hotels, tourist resorts, and commercial or trading centers throughout the country.

On March 11, 1986, the PCGG issued to TDFSI a Sequestration Order[11] signed by then Commissioner Mary Concepcion Bautista which reads as follows:

March 11, 1986

The Manager  
Tourist Duty Free Shops, Inc.  
Food Terminal, Inc. Compound  
Taguig, Metro Manila

Sir:

The Presidential Commission on Good Government, by authority of the President of the Philippines, has decided to sequester the facilities, assets and funds of Tourist Duty Free Shops, Inc. in order to prevent any

dispositions thereof to the prejudice of the people. You are hereby ordered to refrain from:

- entering into new contracts or transactions;
- making any disbursements of funds of the corporation, except in the ordinary course of business and for the payment of salaries of legitimate employees which are due; and
- withdrawing funds from the accounts of the corporation, or its branches or subsidiaries.

Please preserve all the records of the corporation, and do not remove or allow the removal of any documents or other records.

Very truly yours,

(SGD.) MARY CONCEPCION BAUTISTA  
Commissioner

On March 11, 1986, the PCGG issued a Freeze Order[12] directing the Manager of Rizal Commercial Banking Corporation (RCBC) to freeze any withdrawals, transfers or remittances from the funds of TDFSI in the said bank.

On May 2, 1986, TDFSI filed before the Court a Petition for Certiorari, Prohibition and Injunction with Preliminary Injunction and/or Restraining Order[13] to annul and stop the enforcement of the Sequestration Order. The case was docketed as G.R. No. 74302.

On May 27, 1986, the Court issued a Resolution[14] in favor of PCGG and against TDFSI, the dispositive portion of which reads:

Accordingly, the Court Resolved as follows:

- (1) The sequestration order of all the assets of petitioner stands and, therefore, no temporary restraining order will issue against the same;
- (2) The respondent Commission's order authorizing the Philippine Tourism Authority to conduct an audit and inventory of petitioner's goods likewise stands and no temporary restraining order will issue against the same, provided that petitioner Company will be entitled to a sufficient number of representatives as it may designate to be present to protect its interest in the taking of such audit and inventory;
- (3) After the completion of such audit and inventory by the Philippine Tourism Authority within the period of five (5) days from notice hereof, petitioner TDFSI shall be permitted to undertake the following activities under the supervision of respondent Commission's authorized representatives: (a) to dispose and sell all its existing stocks in the ordinary course of business at such reasonable number of outlets as may be determined by respondent Commission. All proceeds of such sales shall at the end of the day be turned over to the respondent Commission's duly- authorized representatives. The respondent Commission in turn shall hold the same in trust and deposit such proceeds in special trust account so designated; and (b) to pay by means of checks issued by and countersigned by the respondent Commission's fiscal agent, or comptroller or duly-authorized representatives so designated, ordinary operational expenses such as payrolls, rentals, utilities, etc.

It is understood that no new contracts or transactions may be entered into by petitioner, nor shall any payment for accounts of, suppliers be made, except with the approval of the Commission.

Finally, the Court directs the Clerk of Court to deliver the three (3) keys deposited with the Court to respondent Commission's duly-authorized representative x x x[15]

Upon the issuance of Executive Order No. 14[16] and on petition[17] of TDFSI, the Court issued a Resolution[18] dated October 8, 1991 dismissing the petition in G.R. No. 74302 without prejudice to the filing of a case before the Sandiganbayan. The resolution had become final and executory on October 16, 1991 and was recorded in the Book of Entries of Judgments.[19]

Meanwhile, on July 21, 1987, the Republic of the Philippines, represented by the PCGG, filed a Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages[20] against Bienvenido Tantoco, Bienvenido R. Tantoco, Jr., Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda, Dominador Santiago, Ferdinand E. Marcos and Imelda R. Marcos. The case was docketed as Civil Case No. 0008.

On December 18, 1991, following the dismissal of G.R. No. 74302, TDFSI filed a Complaint for Injunction and Specific Performance with Prayer for Issuance of Restraining Order and/or Preliminary Mandatory and Prohibitory Injunction[21] against the PCGG, Bank of America (BA) and RCBC before the Sandiganbayan. The case was docketed as Civil Case No. 0142.[22]

In its Complaint, TDFSI assailed the Sequestration Order, having been signed by only one of the five PCGG Commissioners and having been issued without the requisite investigation. Considering that no action had been filed for the recovery of TDFSI's assets, funds and properties, and no list of the sequestered assets had been made, TDFSI claimed that the Sequestration Order was deemed automatically lifted.[23] It also questioned PCGG's act of preventing RCBC and BA from allowing TDFSI to withdraw from its accounts without the approval of the PCGG. In support of the prayer for the issuance of a restraining order and/or a writ of preliminary mandatory and prohibitory injunction, TDFSI claimed that the continued refusal of RCBC and BA to allow withdrawal of its funds without PCGG's approval has prevented TDFSI from investing its own funds in money-making ventures and, unless remedied upon, stands to suffer irreparable damage in the form of lost opportunities.[24]

On June 15, 1992, the Sandiganbayan issued a Resolution[25] dismissing Civil Case No. 0142 without prejudice to the re-filing of the proper motions in Civil Case No. 0008. Civil Case No. 0142 was dismissed allegedly because the issues are intimately related with those raised in Civil Case No. 0008 such that the resolution of the issues raised in the former might render inutile or nugatory any future determination and resolution of the merits of the causes of action in the latter case. TDFSI's motion for reconsideration was likewise denied on September 23, 1992.[26]

When elevated to the Court in G.R. No. 107395, we reversed and set aside the above resolutions on January 26, 2000.[27] The Court held that the elements of *litis pendentia* were absent. It explained that there is no identity of parties and causes of action. It also concluded that any decision that may be rendered in any of the two cases cannot constitute *res judicata* on the other.

Consequently, Civil Case No. 0142 was remanded for further proceedings. On July 26, 2001, the Sandiganbayan issued the first assailed Resolution[28] granting TDFSI's motion for the issuance of a writ of preliminary mandatory and prohibitory injunction. The dispositive portion of the resolution is quoted below for easy reference:

ACCORDINGLY, and finding merit, the Motion of plaintiff for the issuance of a writ of preliminary mandatory injunction and preliminary injunction is hereby granted upon posting of a bond in the amount of One Hundred Thousand (P100,000.00), Pesos. Defendant-PCGG is enjoined from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court.

As regard to the defendant-banks, considering that it has no reason to prevent plaintiff from withdrawing funds with them or transacting business with them and there exist a contract separate and distinct from the issue/s under

consideration, they are likewise enjoined, until further orders from this Court, from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact business with them, and said defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.

**SO ORDERED.[29]**

While recognizing the PCGG's authority to issue the Sequestration Order to carry out its vital task of recovering justly and expeditiously ill-gotten wealth, the Sandiganbayan found that the continued implementation of said Order would greatly cause irreparable damage to TDFSI. The court held that in issuing the Sequestration Order against TDFSI, PCGG did not observe the Rules and Regulations implementing Executive Order Nos. 1[30] and 2.[31] It explained that no investigation was conducted, no notice nor opportunity to adduce evidence was given to TDFSI, and no public hearing was conducted. More importantly, the court observed that the Sequestration Order was signed by only one of the PCGG Commissioners, which is violative of its own Rules and Regulations dated April 11, 1986.

On August 3, 2001, the assailed Writ of Preliminary Mandatory Injunction and Preliminary Injunction[32] was issued, the pertinent portion of which reads:

NOW THEREFORE, you (defendant Presidential Commission on Good Government), your officers, agents, representatives and/or persons acting upon your orders or, in your place or stead, are hereby ENJOINED from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court and as regards the defendant-banks (Bank of America and Rizal Commercial Banking Corp.) your officers, agents, representatives, and/or persons acting upon your orders or, in your place or stead, are likewise ENJOINED until further orders from this Court from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact business with them, and defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.[33] (Emphasis supplied.)

Aggrieved, PCGG filed an Urgent Motion to Recall Writ of Preliminary Mandatory Injunction and Preliminary Injunction,[34] Motion for Reconsideration,[35] and Supplemental Motion for Reconsideration.[36]

On October 5, 2001, the Sandiganbayan issued the third assailed Resolution[37] holding in abeyance the resolution of the three motions named in the preceding paragraph and other related incidents. In the same resolution, the court suspended the implementation of the writ of preliminary mandatory and prohibitory injunction in order to avoid "judicial apostasy."

On January 23, 2002, the Sandiganbayan issued the fourth assailed Resolution[38] denying PCGG's motion for reconsideration. The court held that the Sequestration Order is void for failure to comply with Executive Order No. 1 which requires the PCGG as a body to issue the order. It also explained that in G.R. No. 74302, the Court did not decide with finality the issue of whether or not the assets and funds in question are ill-gotten wealth of the Marcoses.

On even date, the Sandiganbayan issued the fifth assailed Order[39] setting the case for pre-trial. The sixth assailed Order[40] was issued on January 24, 2002, resetting the trial of the case.

For failure to obtain a favorable decision, PCGG comes before the Court in this Petition for Certiorari and Prohibition with Temporary Restraining Order and/or Writ of Preliminary Injunction based on the following grounds:

WHETHER RESPONDENT COURT ACTED ARBITRARILY AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED

ORDERS AND PROCEEDED TO CONDUCT THE PRE-TRIAL/TRIAL OF CIVIL CASE NO. 0142, CONSIDERING THAT:

I.

THE HONORABLE COURT EN BANC HAD ALREADY SUSTAINED IN ITS RESOLUTION DATED JANUARY 26, 1986 IN G.R. NO. 74302 THE VALIDITY OF THE ISSUANCE OF THE SEQUESTRATION ORDER: AND, RELEVANTLY, IN G.R. NO. 107395, THE HONORABLE COURT DENIED A SIMILAR APPLICATION FOR AN INJUNCTIVE WRIT FILED BY TDFSI TO ENJOIN THE ENFORCEMENT OF THE SUBJECT SEQUESTRATION ORDER.

II.

IN VIEW OF THE PRONOUNCEMENT OF THE HONORABLE COURT IN G.R. NO. 74302 AS WELL AS THE JUDICIAL ADMISSIONS IN CIVIL CASE NO. 0008, IT COULD NO LONGER BE DISPUTED THAT THE FUNDS OF TDFSI SUBJECT OF THE ASSAILED WRIT OF SEQUESTRATION CONSTITUTE ILL-GOTTEN WEALTH OF THE MARCOSES.

III.

ASSUMING ARGUENDO THAT THE ISSUE OF THE VALIDITY OF THE SEQUESTRATION ORDER COULD STILL BE RE-LITIGATED, IT IS ALREADY SETTLED IN LIGHT OF G.R. NO. 74302, THAT SEQUESTRATION ORDERS SIGNED BY ONE COMMISSIONER BUT ISSUED PRIOR TO THE ADOPTION OF THE PCGG RULES ARE VALID, AND THAT CORPORATE ENTITIES MERELY CONSTITUTING THE RES IN RECOVERY OF ILL-GOTTEN WEALTH CASES NEED NOT BE IMPEADED AS PARTY DEFENDANTS THEREIN.

IV.

THE ASSAILED ORDERS OF RESPONDENT COURT, PARTICULARLY THE GRANT OF THE INJUNCTIVE WRIT, AMOUNT TO A PREJUDGMENT OF CIVIL CASE NO. 0142 AND RENDERS NUGATORY ANY JUDGMENT THAT MAY EVENTUALLY BE PROMULGATED BY RESPONDENT COURT IN THAT CASE.

V.

THE INJUNCTIVE WRIT WAS ISSUED IN UTTER DISREGARD OF THE BASIC REQUIREMENTS THAT: (A) THE APPLICANT MUST HAVE A CLEAR AND UNMISTAKEABLE LEGAL RIGHT; AND (B) THE APPLICANT WILL SUSTAIN IRREPARABLE DAMAGE OR INJURY UNLESS THE INJUNCTIVE WRIT IS ISSUED.

VI.

THE AMOUNT OF THE BOND FIXED BY RESPONDENT COURT IS DEVOID OF ANY BASIS AND IS NOT SUFFICIENT TO COVER WHATEVER DAMAGES THE PCGG AND THE FILIPINO PEOPLE MAY SUFFER AS A RESULT OF THE ISSUANCE OF THE INJUNCTIVE WRIT.

VII.

THE POSTING OF A COUNTERBOND BY PCGG CANNOT OPERATE TO ESTOP THE LATTER FROM QUESTIONING THE ASSAILED ORDERS CONSIDERING THAT PCGG POSTED IT OUT OF SHEER NECESSITY AND URGENCY UPON RESPONDENT COURT'S ORDER IN ORDER TO IMMEDIATELY EFFECT THE LIFTING OF THE INJUNCTIVE WRIT AND THEREBY PREVENT THE DISSIPATION OF THE SEQUESTERED ASSETS, WITHOUT, HOWEVER, WAIVING THE GROUNDS RAISED IN ITS MOTION FOR RECONSIDERATION AND SUPPLEMENTAL MOTION FOR RECONSIDERATION.

## VIII.

THE ISSUANCE OF THE INJUNCTIVE WRITS CAUSED AND WILL CONTINUE TO CAUSE GRAVE AND IRREPARABLE DAMAGE AND PREJUDICE TO THE REPUBLIC AND THE FILIPINO PEOPLE AT LARGE, CONTRARY TO AND IN EVIDENT DISAVOWAL OF THE PCGG'S CONSTITUTIONALLY AND STATUTORILY ENSHRINED MANDATE OF RECOVERING THE ILL-GOTTEN WEALTH OF THE MARCOSES AND THEIR CRONIES.

## IX.

THE ASSAILED ORDERS OF RESPONDENT COURT, PARTICULARLY THE DENIAL OF PCGG'S MOTION FOR ACCOUNTING OF THE FUNDS AND DEPOSITS SUBJECT OF THE SEQUESTRATION ORDER, AMOUNT TO A CAPRICIOUS, WHIMSICAL AND UTTER ABDICATION OF RESPONDENT COURT'S DUTY AS LEGAL CUSTODIAN OF THOSE FUNDS AND DEPOSITS, TO PRESERVE THEM AS THE WRIT THE DETERMINATION OF RESPONDENT COURT IN CIVIL CASE NO. 0008 AS TO WHETHER THEY ARE ILL-GOTTEN WEALTH OR LAWFULLY ACQUIRED PROPERTIES.[41]

The petition is meritorious.

A perusal of the records of the case and the pleadings submitted before the Court would shows that the PCGG and TDFSI have thoroughly argued for and against the validity of the Sequestration Order in support of their respective positions. However, we would like to stress that we are confronted only with the preliminary issue of the propriety of the issuance by the Sandiganbayan of the writ of preliminary mandatory and prohibitory injunction against the implementation of the March 11, 1986 Sequestration Order of the PCGG directed against TDFSI. The validity of the Sequestration Order is yet to be decided by the Sandiganbayan in Civil Case No. 0142.

PCGG insists that in issuing the injunctive writ, the Sandiganbayan contravened and overturned the Court's resolution in G.R. No. 74302 which denied TDFSI's similar application for an injunctive writ and affirmed the validity of the Sequestration Order.[42] PCGG points out that the reasons cited for the issuance of the injunctive writ were the very same grounds that were already invoked, considered and passed upon in the earlier case. The issuance of the injunctive writ is, therefore, violative of the principles of res judicata, litis pendencia and law of the case.[43] In other words, TDFSI could not assail anew the validity of the Sequestration Order.

We do not agree.

This Court's May 27, 1986 Resolution in G.R. No. 74302 clearly states that it merely disposed of the preliminary issue of whether or not the Court should grant TDFSI's prayer for the issuance of a temporary restraining order against the PCGG's Sequestration and Freeze Orders. It appears that after the issuance of the above resolution and upon the issuance of Executive Order No. 14 vesting the Sandiganbayan with the exclusive and original jurisdiction over ill-gotten wealth cases to be prosecuted by the PCGG with the assistance of the Office of the Solicitor General, TDFSI filed a petition to dismiss the case which the Court granted. Apparently, the case was dismissed by the Court without prejudice to its re-filing with the Sandiganbayan. Clearly, there is no final determination yet of the validity of the assailed Sequestration and Freeze Orders. The May 27, 1986 Resolution relied on by PCGG is only an interlocutory order and an incident of the dismissed case. PCGG cannot therefore rely on the principles of res judicata, litis pendencia or law of the case.

Res judicata exists when the following elements are present: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and cause of action.[44] Obviously, the third requisite is wanting. Res judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been

finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause.[45]

As the dismissal of G.R. No. 74302 was without prejudice, it was not a judgment on the merits. A judgment on the merits is one rendered after a determination of which party is right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point. The dismissal of the case without prejudice indicates the absence of a decision on the merits and leaves the parties free to litigate the matter in a subsequent action as though the dismissed action had not been commenced.[46] In other words, the discontinuance of a case not on the merits does not bar another action on the same subject matter.[47] TDFSI thus re-filed the case to the Sandiganbayan in a petition for injunction docketed as Civil Case No. 0142 assailing anew the validity of the Sequestration and Freeze Orders.

To be sure, the provisional remedy, like any other interlocutory order, cannot survive the main case of which it is but an incident.[48] The findings of fact and opinion of a court when issuing (or denying) the writ of preliminary injunction are interlocutory in nature and made even before the trial on the merits is commenced or terminated.[49] Thus, the May 27, 1986 interlocutory order of the Court died with the dismissal of the main case in G.R. No. 74302. The right of TDFSI to re-file the main case carries with it its right to apply for the provisional remedies available under the Rules of Court.

Although the principles of *res judicata*, *litis pendentia* and law of the case are inapplicable to set aside the assailed resolutions and writ of preliminary mandatory and prohibitory injunction, we hold that the issuance of writ of certiorari and prohibition is proper.

In support of its prayer for the issuance of a writ of preliminary mandatory and prohibitory injunction, TDFSI presented before the court a quo the following documentary evidence: (1) the Complaint filed by TDFSI with the court below in Civil Case No. 0142;[50] (2) The General Information Sheet of TDFSI;[51] (3) Presidential Decree No. 1193;[52] (4) Presidential Decree No. 1394;[53] (5) The Sequestration Order;[54] (6) Correspondence between TDFSI and Bank of America;[55] (7) Letter of TDFSI addressed to the Sandiganbayan inquiring from the latter whether or not an action for recovery of ill-gotten wealth against TDFSI has been filed by the PCGG;[56] and (8) a Certification from the Sandiganbayan that as of a particular date, no such action has been filed.[57] PCGG, on the other hand, did not present any evidence.

Based on the foregoing evidence, the Sandiganbayan declared the Sequestration and Freeze Orders null and void and used such nullity as a justification for the issuance of the questioned writ of preliminary mandatory and prohibitory injunction. Specifically, it concluded that said Orders are invalid on the following grounds: (1) no investigation was conducted by the PCGG before the issuance of the Sequestration and Freeze Orders; (2) even if there was an investigation, no notice or opportunity to adduce evidence was given to TDFSI; (3) no public hearing was conducted; (4) the Sequestration and Freeze Orders were signed by only one Commissioner; (5) the Sequestration and Freeze Orders contained no explanation as to why they were issued; and (6) the Sequestration and Freeze Orders were automatically lifted, since there was actually no case for recovery of ill-gotten wealth filed because TDFSI was not impleaded as a defendant.

We hold that the Sandiganbayan gravely abused its discretion amounting to lack or excess of jurisdiction in issuing the questioned preliminary injunctive writ. The grounds relied upon by the Sandiganbayan are not sufficient to warrant the issuance of said writ. The documentary evidence listed above merely show that TDFSI is a corporation, that a sequestration order signed by a PCGG Commissioner was issued against it, and that no action for recovery of ill-gotten wealth was filed by PCGG against TDFSI at the time the inquiry was made.

Section 3, Rule 58 of the Rules of Court lays down the requirements for the issuance of a writ of preliminary

injunction, viz:

- (a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in requiring the performance of an act or acts, either for a limited period or perpetually;
- (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or
- (c) That a party, court or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.[58]

From the foregoing, it can be inferred that two (2) requisites must exist to warrant the issuance of an injunctive relief, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[59] Otherwise stated, before a writ of preliminary injunction may be issued, there must be a clear showing that there exists a right to be protected and that the acts against which the writ is to be directed are violative of established right.[60]

Without making a definitive conclusion as to the validity of the Sequestration and Freeze Orders being the main issue in Civil Case No. 0142 which is yet to be decided by the Sandiganbayan, we conclude that the pieces of evidence enumerated above do not, in any way, show that TDFSI has a right to be protected and that the implementation of the Sequestration and Freeze Orders is violative of its rights.

In *Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG*,<sup>[61]</sup> the Court has already described the nature and purpose of Sequestration and Freeze Orders and the extent of the PCGG's power to implement the same, and we quote:

By the clear terms of the law, the power of the PCGG to sequester property claimed to be "ill-gotten" means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including "business enterprises and entities" - for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same - until it can be determined, through appropriate judicial proceedings, whether the property was in truth "ill-gotten," i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State.

x x x

A "freeze order" [on the other hand] prohibits the person having possession or control of property alleged to constitute "ill-gotten wealth" from transferring, conveying, encumbering or otherwise depleting or concealing such property, or from assisting or taking part in its transfer, encumbrance, concealment, or dissipation. In other words, it commands the possessor to hold the property and conserve it subject to the orders and disposition of the authority decreeing such freezing. In this sense, it is akin to a garnishment by which the possessor or ostensible owner of property is enjoined not to deliver, transfer, or otherwise dispose of any effects or credits in his possession or control, and thus becomes in a sense an involuntary depository thereof.[62]

Pending the determination of whether or not the subject properties are "ill-gotten," there is an obvious and imperative need for preliminary, provisional measures to prevent concealment, disappearance, destruction, dissipation, or loss of the assets and properties subject of the suits, or to restrain or foil acts that may render moot and academic, or effectively hamper, delay or negate efforts to recover the same.[63] The implementation of these

orders should, therefore, not be restrained unless there is a clear ground to do so. More so in this case, considering that the Sandiganbayan's conclusions are contrary to established jurisprudence.

It has been settled in a number of cases that Sequestration and Freeze Orders signed by only one Commissioner and issued prior to the adoption of the PCGG Rules and Regulations cannot be invalidated. The PCGG Rules and Regulations were promulgated on April 11, 1986. Section 3[64] thereof requires that the sequestration order be issued upon the authority of at least two Commissioners. The questioned Sequestration Order was, however, issued on March 11, 1986 prior to the promulgation of the PCGG Rules and Regulations. Consequently, we cannot reasonably expect the PCGG to abide by said rules which were nonexistent at the time the subject orders were issued by then Commissioner Mary Concepcion Bautista.[65]

The Court notes that on July 21, 1987, the Republic of the Philippines, represented by the PCGG, filed a Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages against the Marcoses and the alleged stockholders and owners of TDFSI docketed as Civil Case No. 0008. While no case had been commenced against TDFSI itself, it has been a well-established doctrine that as to corporations allegedly organized with ill-gotten wealth but are not themselves guilty of misappropriation, fraud or other illicit conduct, there is no need to implead them. Their impleading is not proper on the strength alone of their being formed with ill-gotten funds, absent any other particular wrongdoing on their part.[66] And even in cases where there is a need to implead the sequestered corporation as indispensable or necessary party, its sequestration is not rendered functus officio, since it is a mere technical defect which can be cured at any stage of the proceedings.[67] The Sandiganbayan cannot, therefore, nullify the Sequestration and Freeze Orders on this basis alone.

Among the rights explicitly acknowledged in *Bataan Shipyard & Engineering Co., Inc. v. PCGG*[68] is that the owners of properties have the "opportunity to contest" actions or orders of sequestration issued by the PCGG.[69] That "opportunity to contest" includes resort to the courts as in Civil Case No. 0142.[70] In that case, which is the main case where the questioned preliminary injunctive writ is an incident, the parties' respective evidence are presented for the final determination of the validity of the questioned Sequestration and Freeze Orders. The Court is yet to determine whether the requisites for the valid issuance of said Orders are present.

In view of the foregoing disquisition and considering that the pre-trial and trial of the case had been completed before the Sandiganbayan, we need not discuss the other issues raised by the PCGG.

WHEREFORE, premises considered, the petition is hereby GRANTED. The Resolution dated July 26, 2001, October 5, 2001, January 23, 2002 and the Writ of Preliminary Mandatory Injunction and Preliminary Injunction dated August 3, 2001 are hereby SET ASIDE. Consequently, the Sequestration Order dated March 11, 1986 directed against Tourist Duty Free Shops, Inc. and the Freeze Order issued subsequent thereto, STAND subject to the final outcome of Civil Case No. 0142.

The Sandiganbayan is DIRECTED to resolve Civil Case No. 0142 with dispatch.

### **SO ORDERED.**

Velasco, Jr., (Chairperson), Abad, Mendoza, and Sereno,[\*] JJ., concur.

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[\*]] Designated as an additional member, per Special Order No. 1028 dated June 21, 2011.

[1] Rollo, pp. 2-140.

[2] Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Edilberto G. Sandoval and Raoul V. Victorino, concurring; rollo, pp. 142-147.

- [3] Also referred to as preliminary mandatory and prohibitory injunction.
- [4] Rollo, pp. 148-149.
- [5] Id. at 150-151.
- [6] Id. at 152-165
- [7] Id. at 166.
- [8] Id. at 167.
- [9] Authorizing the Tourist Duty Free Shops, Inc. to Establish and Operate Duty and Tax Free Stores and Requiring it to Pay Franchise Tax in Lieu of All Other Taxes; records, vol. I, pp. 10-12.
- [10] Amending Presidential Decree No. 1193 by Authorizing the Tourist Duty Free Shops, Inc. to Establish Only the Customs Bonded Warehouse, Exempting it From the Duties and Taxes Imposed by Presidential Decrees Nos. 1352 and 1352-A, and for Other Purposes; id. at 13-14.
- [11] Records, Vol. I, p. 83.
- [12] Rollo, Vol. I, (G.R. No. 74302), p. 37.
- [13] Records, Vol. I, pp. 421-453.
- [14] Id. at 416-420.
- [15] Id. at 516-517.
- [16] Defining the Jurisdiction Over Cases Involving the Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of their Immediate Family, Close Relatives, Subordinates, Close and/or Business associates, Dummies, Agents and Nominees.
- [17] Rollo, Vol. II, (G.R. No. 74302), pp. 794-796.
- [18] Id. at 797.
- [19] Id. at 803.
- [20] Records, Vol. II, pp. 985-1112.
- [21] Records, Vol. I, pp. 1-7.
- [22] Also referred to in the record of the case as SB No. 0142.
- [23] Records, Vol. I, pp. 1-4.
- [24] Id. at 5.
- [25] Penned by Associate Justice Romeo M. Escareal, with Associate Justices Jose S. Balajadia and Nathaniel M. Gorospe, concurring; id. at 223-231.
- [26] Records, Vol. I, pp. 297-311.
- [27] 380 Phil. 328 (2000).
- [28] Supra note 2.
- [29] Rollo, pp. 146-147.

[30] Creating the Presidential Commission on Good Government.

[31] Regarding the Funds, Monies, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees.

[32] Supra note 4.

[33] Rollo, p. 149.

[34] Records, Vol. I, pp. 402-414.

[35] Id. at 454-480.

[36] Id. at 541-548.

[37] Supra note 5.

[38] Supra note 6.

[39] Supra note 7.

[40] Supra note 8.

[41] Rollo, pp. 876-879.

[42] Id. at 881-882.

[43] Id. at 883.

[44] Cruz v. Caraos, G.R. No. 138208, April 23, 2007, 521 SCRA 510, 524-525.

[45] Id. at 524.

[46] Id. at 525.

[47] Heirs of Enrique Diaz, represented by Aurora T. Diaz v. Elinor A. Virata, in her capacity as the Administratrix of the Estate of Antenor Virata, G.R. No. 162037, August 7, 2006, 498 SCRA 141, 166.

[48] G & S Transport Corp. v. CA, 432 Phil. 7, 27 (2002).

[49] Urbanes, Jr. v. Court of Appeals, 407 Phil. 856, 867 (2001).

[50] Records, Vol. I, pp. 1-7.

[51] Id. at 8-9.

[52] Id. at 10-12.

[53] Id. at 13-14.

[54] Id. at 15.

[55] Id. at 16-17.

[56] Id. at 81.

[57] Id. at 82.

[58] Phil Pharmawealth, Inc. v. Pfizer, Inc., G.R. No. 167715, November 17, 2010, 635 SCRA 140, 149-150.

[59] Id. at 150.

[60] G & S Transport Corp. v. CA, supra note 48.

[61] 234 Phil. 180 (1987).

[62] Bataan Shipyard & Engineering Co., Inc. (BASECO) v. PCGG, 234 Phil. 180, 207-208 (1987).

[63] Id.

[64] SECTION 3. Who may issue. - A writ of sequestration or a freeze or hold order may be issued by the Commission upon the authority of at least two Commissioners, based on the affirmation or complaint of an interested party or motu proprio when the Commission has reasonable grounds to believe that the issuance thereof is warranted.

[65] Republic of the Philippines v. Sandiganbayan, 336 Phil. 304, 318 (1997).

[66] Id. at 314.

[67] Id. at 315.

[68] Supra note 61.

[69] Presidential Commission on Good Government v. Tan, G.R. No. 173553-56, December 7, 2007, 539 SCRA 464, 480.

[70] Id. at 483-484.

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