

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN
(SECOND DIVISION), TERNATE DEVELOPMENT CORPORATION,
FANTASIA FILIPINA RESORTS, INC., MONTE SOL DEVELOPMENT
CORPORATION...**

G.R. No. 154560. July 13, 2010

Ponente: ABAD, J.

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ABAD, J.:

This case is about the propriety of amending a complaint for recovery of alleged ill-gotten wealth by impleading corporate entities already listed down in the original complaint as assets and shell corporations of the defendant individuals.

The Facts and the Case

From 1986 to 1988, the Presidential Commission on Good Government (PCGG) issued various sequestration orders against the assets, records, and documents of several corporations owned by Modesto Enriquez, Trinidad Diaz-Enriquez, Rebecca Panlilio, Erlinda Enriquez-Panlilio, Leandro Enriquez, Don M. Ferry, Roman A. Cruz, Jr., and Gregorio R. Castillo (collectively the Enriquez group), all of whom were alleged associates of the spouses Ferdinand and Imelda Marcos. The corporations were:

Corporation

Date of Sequestration

Philippine Village Hotel (Philippine Village)

June 6, 1986[1]

Philroad Construction Corporation (Philroad)

Silahis International Hotel (Silahis)

May 31, 1986[2]

Fantasia Filipina Resorts, Inc. (Fantasia)

Monte Sol Development Corporation (Monte Sol)

Olas del Mar Development Corporation

(Olas del Mar)

Puerto Azul Beach and Country Club, Inc.

(Puerto Azul)

Ternate Development Corporation (Ternate)

March 10, 1986

and April 4, 1988.[3]

On July 23, 1987 petitioner Republic of the Philippines (the Government), through the PCGG, filed a complaint[4] with the Sandiganbayan against former President Marcos, his wife Imelda, and the Enriquez group of individuals for reconveyance, reversion, accounting, restitution, and damages, in Civil Case 0014. Annexed to the complaint was a list of corporations where the individual defendants allegedly owned shares of stock.[5] The list included the above-named respondent corporations and, in addition, respondents Notions and Potions, Inc. (Notions and Potions), Ocean Villas Condominium Corp. (Ocean Villas), Sulo Dobbs Food Services (Sulo Dobbs), and Sun and Shade Merchandise, Inc. (Sun and Shade), among others.

In October 1991 the Government moved for the admission of an amended complaint[6] in Civil Case 0014 to implead respondent corporations, except for Notions and Potions and Sun and Shade, as defendants. It alleged that the corporations were beneficially owned or controlled by the individual defendants and that the latter used them as fronts to defeat public convenience, protect fraudulent schemes, or evade obligations and liabilities under the law.

Meantime, respondents Silahis, Philippine Village, and Ternate separately challenged the sequestration orders that the PCGG earlier issued against them. They filed petitions for prohibition with application for a writ of preliminary injunction before the Sandiganbayan, alleging that no judicial action had been filed against them within six months from the ratification of the Constitution or from the issuance of the sequestration orders as required under Section 26,[7] Article XVIII of the Constitution. The Sandiganbayan issued a writ of preliminary injunction.[8]

The Government elevated the matter to this Court through certiorari in G.R. 104065, 104168, and 105205. Acting on these cases and several others, the Court in *Republic of the Philippines v. Sandiganbayan*[9] set aside the writ of injunction. It held that the corporations need not be formally impleaded to maintain the existing sequestrations. Moreover, a complaint which identified and alleged that the corporations served as repositories of ill-gotten wealth may be considered a judicial action as contemplated in the Constitution. Lastly, the Court said that even assuming the corporations had to be impleaded, the complaints could be amended at any time during the pendency of the actions.[10]

Here, the Sandiganbayan eventually admitted the amended complaint in Civil Case 0014.[11] Respondents Ternate, Monte Sol, and Olas del Mar then filed a motion to dismiss and to lift sequestration.[12] Citing the *Republic* case, they claimed that they did not have to be impleaded as defendants and that the Government had no cause of action against them. They also sought a hearing that would require the Government to present *prima facie* evidence that would justify their sequestration and, in its absence, that the sequestration orders be deemed automatically lifted.

Respondents Fantasia, Silahis, Philippine Village, Philroad, Puerto Azul, Sulo Dobbs, and Ocean Villas later followed suit and filed a similar motion.[13] In addition, respondents Philippine Village, Silahis, Monte Sol, Ternate, Sulo Dobbs, Fantasia, Puerto Azul, Ocean Villas, Notions and Potions, and Sun and Shade filed separate motions for the issuance of temporary restraining orders and preliminary injunctions to prevent the implementation of the sequestration orders against them.

On February 7, 2002 the Sandiganbayan granted the motions to dismiss.[14] Citing the *Republic* case, it held that impleading the corporations as defendants was unnecessary. The Government filed a motion for reconsideration

but the Sandiganbayan denied the same, further pointing out that the amended complaint stated no cause of action against the defendant corporations. It also lifted the orders of sequestration against them.[15] Aggrieved, the Government filed this petition for certiorari under Rule 65 of the Rules of Court.

With the filing of the petition, the Sandiganbayan in Civil Case 0014 allowed the postponement of pre-trial hearings in deference to this Court. But since the Court did not issue a temporary restraining order, the Sandiganbayan resumed hearings in the case on October 1, 2007. But the Government failed to appear despite due notice. Consequently, the Sandiganbayan dismissed the case against the remaining individual defendants without prejudice.[16]

The Issues Presented

The threshold issue presented in this case is whether or not the present petition for certiorari under Rule 65 is the proper remedy in assailing the resolutions of the Sandiganbayan.

The substantive issues are:

1. Whether or not the Sandiganbayan gravely abused its discretion in dismissing the complaint against respondent corporations on the grounds that there was no need for it and that the amendment did not state a cause of action against such corporations; and
2. Whether or not the Sandiganbayan gravely abused its discretion in lifting the sequestration orders against the subject corporations.

The Court's Rulings

One. With respect to the threshold issue, the Government clearly availed itself of the wrong remedy in filing this special civil action of certiorari under Rule 65 of the Rules of Court. An order of dismissal is a final order,[17] which is the proper subject of an appeal through a petition for review. Where appeal is available, the special civil action of certiorari will not be entertained even if it is filed on ground of grave abuse of discretion as in this case. The remedies of appeal and special civil action of certiorari are mutually exclusive. One cannot take the place of the other. [18] And, while there are known exceptions to this rule, none has been shown here.

At any rate, even if the procedural flaw is disregarded, the Court finds that the Sandiganbayan committed no grave abuse of discretion in dismissing the complaint and lifting the sequestration orders against respondent corporations.

Two. For an act to be struck down as having been done with grave abuse of discretion, such abuse must be patent and gross, a screaming aberration, to use a phrase. The Sandiganbayan's dismissal of the complaint as against respondent corporations cannot be regarded as falling in this category. For one thing, the Sandiganbayan merely relied on this Court's ruling in the Republic case that impleading corporations, which are alleged to have been capitalized with ill-gotten wealth, is unnecessary since judgment may be rendered against the individual defendants, divesting them of their shares of stock.[19]

In the more recent case of Universal Broadcasting Corporation v. Sandiganbayan (5th Division),[20] the Court again said that when corporations are organized with ill-gotten wealth but are not themselves guilty of wrongdoing and are merely the res of the actions, there is no need to implead them. Judgment may simply be directed against the shares of stock that were issued in consideration of ill-gotten wealth.[21]

Nor did the Sandiganbayan gravely abuse its discretion when it dismissed the complaint against respondent

corporations on the ground that it stated no cause of action against them. A cause of action has three elements: 1) plaintiff's right under the law; (2) the defendant's obligation to abide by such right; and (3) defendant's subsequent violation of the same that entitles the plaintiff to sue for recompense. [22] The complaint makes no allegations that respondent corporations have done some acts that have violated a right vested by law in the Government.

Indeed, the amended complaint states that it is a civil action against the individual defendants for their alleged misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power.[23] Here, the Government makes no allegations that respondent corporations as such committed these acts.

The Government claims that its Answer to Interrogatories[24] enumerates the documentary evidence it intended to use to prove its case against the corporations. But the Government cannot prove more than it alleged in its complaint. Its Answer to Interrogatories is not part of its complaint. Besides, the evidence described in that document referred to alleged anomalous transfers and sales of shares of stock by the individual defendants. The document does not refer to corporate acts.

Three. The Government argues that, assuming the dismissal of the complaint as to respondent corporations was justified, the Sandiganbayan did not have to lift the sequestration orders against them. But, while it is true that impleading respondent corporations is not necessary for maintaining the sequestration orders already issued against them, such sequestration orders should still be quashed for an altogether another reason. The April 11, 1986 PCGG Rules and Regulations required the signatures of at least two commissioners on a sequestration order.[25] The Court has held that the two signatures are the best evidence of the Commission's approval; otherwise, the order is as in this case null and void.[26]

What is more, sequestration orders may only issue upon a showing of a prima facie case that the properties are ill-gotten wealth. Section 26, Article XVIII of the Constitution mandates this. In *Presidential Commission on Good Government v. Tan*,[27] the Court said that while sequestration orders may issue ex parte, a prima facie factual foundation that the sequestered properties are ill-gotten wealth is required.[28]

Here, the June 6 and May 31, 1986 sequestration orders against Philippine Village, Philroad, and Silahis were signed only by one commissioner. They are, therefore, void. The Court also notes that the March 10, 1986 order was issued solely against Ternate. Two years later, however, the PCGG suddenly issued the April 4, 1988 "Supplemental Writ of Sequestration," this time including Fantasia, Monte Sol, Olas del Mar, and Puerto Azul. The PCGG alleged that these corporations were affiliates and shell companies of Puerto Azul, without stating the basis for these findings. Meanwhile, none of the above orders included respondents Notions and Potions, Ocean Villas, Sulo Dobbs, and Sun and Shade.

With all the sequestration orders, there is no clear showing of a prima facie case that the sequestered properties were ill-gotten wealth. As discussed earlier, the amended complaint stated no cause of action against the respondent corporations while, except for general averments, the orders themselves did not state the reasons behind their issuance. Confronted with this, the Government simply asserts that the PCGG may be presumed to have acted pursuant to law and based on prima facie evidence.

But, the Government cannot simply rely on such a presumption which undermines the basic constitutional principle that public officers and employees must at all times be accountable to the people.[29] Indeed, sequestration is an extraordinary and harsh remedy. As such, it should be confined to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process and justice.[30]

Besides, the lifting of the orders will not necessarily be fatal to the main case since it does not ipso facto mean that the sequestered properties are not ill-gotten. The effect of the lifting of the sequestration simply means that the government may not act as conservator or may not exercise administrative or housekeeping powers over the corporations.[31] Historically, such option has not fared well.

WHEREFORE, the Court DISMISSES the petition for lack of merit and AFFIRMS the challenged resolutions of the Sandiganbayan dated February 7, 2002 and June 14, 2002.

SO ORDERED.

Carpio, Villarama, Jr.,[*] Perez,**] and Mendoza, JJ., concur.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

[1] Rollo, p. 485.

[2] Id. at 486-487.

[3] Id. at 488-490.

[4] Id. at 55-81.

[5] Id. at 78.

[6] Id. at 82-105.

[7] Section 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a prima facie case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action of proceeding is commenced as herein provided.

[8] Rollo, pp. 129-131.

[9] 310 Phil. 401 (1995).

[10] Id. at 516-517.

[11] Rollo, pp. 147-159.

[12] Id. at 106-120.

[13] Id. at 132-137.

[14] Id. at 50-53.

[15] Id. at 54.

[16] Id. at 609.

[17] San Miguel Bukid Homeowners Association, Inc. v. The City of Mandaluyong, G.R. No. 153653, October 2, 2009, 602 SCRA 30, 35.

[18] Madrigal Transport, Inc. v. Lapanday Holdings Corporation, 479 Phil. 768, 782-783 (2004).

[19] Supra note 9, at 509-511.

[20] G.R. No. 160677, August 10, 2007, 529 SCRA 782, 787-788.

[21] In Republic v. Sandiganbayan [supra note 9, at 510-511], the Court held that there is no need to implead firms which are merely the res of the actions in ill-gotten wealth cases and that judgment may simply be directed against the assets, thus:

C. Impleading Unnecessary Re Firms which are the Res of the Actions

And as to corporations organized with ill-gotten wealth, but are not themselves guilty of misappropriation, fraud or other illicit conduct - in other words, the companies themselves are the object or thing involved in the action, the res thereof - there is no need to implead them either. Indeed, their impleading is not proper on the strength alone of their having been formed with ill-gotten funds, absent any other particular wrongdoing on their part. The judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth.

x x x x

x x x In this light, they are simply the res in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions. (Italics adopted, bold supplied)

[22] Camarines Sur IV Electric Cooperative, Inc. v. Aquino, G.R. No. 167691, September 23, 2008, 566 SCRA 263, 268.

[23] Rollo, pp. 83-84.

[24] Id. at 260-289.

[25] Section 3 of the Rules reads: "Sec. 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."

[26] Trans Middle East (Phils.) v. Sandiganbayan, G.R. No. 172556, June 9, 2006, 490 SCRA 455, 483, citing Republic of the Philippines v. Sandiganbayan, 355 Phil. 181, 194 (1998).

[27] G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 479.

[28] Id. at 483-484, citing Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government, 234 Phil. 180, 211 (1987).

[29] Id. at 484.

[30] Concurring Opinion of Justice Ameurfina Melencio-Herrera in the case of Bataan Shipyard & Engineering Co., Inc., supra note 28, at 250.

[31] Presidential Commission on Good Government v. Sandiganbayan, 418 Phil. 8, 20 (2001).

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