EDWARD T. MARCELO, MARCELO FIBERGLASS CORPORATION, PHIL-ASIA AGRO INDUSTRIES CORP., PHILIPPINE SPECIAL SERVICES CORP., PROVIDENT INTERNATIONAL RESOURCES CORP., MARCELO CHEMICAL ...

G.R. NO. 156605. August 28, 2007

Ponente: GARCIA, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/g-r-no-156605/

GARCIA, J.:

This joint petition for certiorari under Rule 65 of the Rules of Court seeks the reversal and setting aside of the Resolution[1] dated August 27, 2001 of the Sandiganbayan in its Civil Case No. 21, a suit for recovery of ill-gotten wealth, with damages, initiated by the Republic of the Philippines (Republic or RP, for short), denying herein petitioners' respective motions for summary judgment and its Resolution[2] of November 19, 2002 which likewise denied their separate motions for reconsideration.

At the core of the case is the contract entered into on June 10, 1982 by and between the Republic, though the Philippine Navy (PN), and Marcelo Fiberglass Corporation (MFC), represented by its President, herein petitioner Edward T. Marcelo (Marcelo, hereinafter), for the construction of 55 units of 16.46 fiberglass high-speed boats, at the unit price of P7,200,000.00, subject to adjustment upon the occurrence of certain stated contingencies.[3] The same contract underwent amendments, the first effected sometime in January 1984,[4] and the second, in October 1984.[5]

The facts:

On February 16, 1987, the Presidential Commission on Good Government (PCGG), pursuant to Executive Order (EO) No. 1, series of 1986, issued a writ of sequestration against MFC. The next day, PCGG agents proceeded to occupy MFC premises where four of the herein petitioner corporations were holding office.

On July 27, 1987, the PCGG, on behalf of the Republic, filed a Complaint[6] with the Sandiganbayan against Marcelo, Fabian Ver (Ver), now deceased, and Ferdinand and Imelda Marcos for recovery of ill-gotten or unexplained wealth which they allegedly acquired in unlawful concert with one another. The complaint, which would later undergo amendments[7] and was docketed in the Sandiganbayan as Civil Case No. 21, alleged, in gist, that Marcelo and Ver, taking advantage of their relationship with the Marcoses, (a) obtained from the Republic, thru the PN, a "favored contract" for the construction of high-speed fiberglass boats at the cost of millions of pesos; (b) collected from the Republic advances representing 79% of the contract price; and (c) secured a loan from foreign banks which, upon the behest of then Pres. Marcos, was covered by what amounts to a sovereign guarantee.

On November 20, 1987, the Republic filed its Second Amended Complaint to rectify its error in making reference to the "Philippine Amusement and Gaming Corporation," when it should properly be "Philippine Casino Operators Corporation."

On May 17, 1989, Marcelo filed his Answer[8] to the Second Amended Complaint attaching thereto a copy of the PN-MFC boat-building contract, the alleged "favored contract" adverted to. The Republic filed its Reply[9] on June 30, 1989, followed later by Marcelo's Rejoinder.[10]

Subsequently, the Republic served a Request for Admission[11] dated June 5, 1991 on Marcelo. In his August 15, 1991 Response to PCGG's Request for Admission,[12] Marcelo included his own counter-request for admission on matters stated in his response.

In the meantime, the Republic sought and was later granted leave to file a Third Amended Complaint[13] dated October 30, 1991, therein impleading the herein petitioner corporations and two others[14] as additional defendants. As alleged, the newly impleaded sixteen (16) corporations are beneficially owned and are dummies of the individual defendants.

To the third amended complaint, the other petitioner corporations filed their respective Answers,[15] which contained these common allegations: they are not owned, controlled or were acquired by Marcelo who is merely an officer/stockholder; and that their assets were acquired legally.

Following the filing by the Republic of its Pre-Trial Brief,[16] Marcelo submitted his own Pre-Trial Brief With Written Interrogatories, First Set and Request for Admission[17] (to admit the truth of the matters of fact stated in his August 15, 1991 reply to the Republic's June 5, 1991 request for admission). On October 15, 1996, MFC filed its Pre-Trial Brief With Written Interrogatories, First Set and Request for Admission;[18] the other petitioner corporations, as defendants a quo, filed their Pre-Trial Briefs with Written Interrogatories First Set[19] on the same day.

Of the written interrogatories and request for admission thus submitted, the Republic filed an answer[20] to that of Marcelo's.

On August 15, 1997, the petitioners filed three separate Motion for Summary Judgment.[21] Marcelo's motion was based on two major arguments:

- There is no genuine issue of fact/cause of action against him; and,

- In his Pre-Trial Brief, he (Marcelo) requested the [Republic] to admit the truth of the matter of fact related in his 15 August 1991 'Response (to PCGG Request for Admission) and Request on Plaintiff Republic of the Philippines for Admission' but the Republic did not reply to the request. Thus, pursuant to Sec. 2, Rule 26 of the Rules of Court, "each of the matters of which an admission is requested shall be deemed admitted."

For its part, MFC predicated its motion for summary judgment on two major points:

- Lack of a genuine issue/cause of action against it; and,

- The Republic's failure and continued refusal to answer the written interrogatories and reply to the request for admission of certain facts set forth in its pre-trial brief.

Finally, the other petitioner corporations[22] submit their entitlement to a summary judgment on practically the same grounds invoked by Marcelo and MFC vis-á-vis facts embodied in their own pre-trial brief. Thus, they argue that the matters set forth in their written interrogatories are deemed established, more particularly the following: that they: a) are not parties or signatories to, and were not involved in obtaining the PN-MFC contract in question; b) were not involved in and did not do any act in securing the approval of direct payment for the subject boats, in violation of the stipulation in the contract that payment should be made by Confirmed Irrevocable and Divisible Letter of Credit (L/C); c) did not receive/collect anything from the Republic and there is no document showing they ever received anything; and d) were not involved in the procurement of the alleged

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

aforementioned foreign loan.

The Republic filed separate Opposition[23] only to Marcelo's and MFC's respective motions for summary judgment, alleging in refutation to the former's motion the following:

- MFC's defense of having a personality separate from that of Marcelo and the other corporations was not raised in Marcelo's answer.

- The amended complaint alleges that Marcelo and Ver, taking undue advantage of their influence and relationship, by themselves and/or in unlawful concert with the Marcos spouses, for unjust enrichment, engaged in schemes and strategies, including using the other corporations for the above purposes.

- That MFC has a personality distinct from Marcelo is a legal issue, thus trial should not be dispensed with.

- The other corporations are merely the "fruits of the ill-gotten wealth of the individual defendants";

- The case is based on the theory of conspiracy.

Against MFC's motion for summary judgment, the Republic advanced the following arguments:

- The complaint makes out an allegation that the other corporations were utilized as "fronts" for the perpetration of the illegal schemes, devices and "stratagems";

- There is no allegation in the motion for summary judgment that defendant corporations were not used as a "front" by ... Marcelo. As a matter of fact, Marcelo claims that it was MFC, not himself, which entered into the contract with the [PN] for the construction of high-speed fiberglass boats labeled as "favored" in the Third Amended Complaint.

Marcelo and MFC in turn filed their respective Replies[24] to the opposition entered by the Republic.

Eventually, on August 27, 2001, the Sandiganbayan rendered the herein assailed Resolution[25] denying the separate motions of Marcelo and MFC, as defendants a quo, for summary judgment and the collective motion for such judgment interposed by the other defending corporations. In a subsequent Resolution[26] of November 19, 2002, the Sandiganbayan denied the petitioners' respective motions for reconsideration. Hence, this recourse.

Before discussing the merits of the petition, the Court deems it appropos to delve into Criminal Case No. 20224 which involved the subject PN-MFC boat supply contract.

In a Commission on Audit (COA) Report dated March 12, 1992 (COA Report), the COA alleged that the PN disbursed for the boat supply contract P337,700,000.00. The disbursement, so the report claims, was contrary to pertinent laws and COA rules governing the disbursement of public funds, such as:

(a) There was no certificate of availability of funds;

(b) No performance bond was posted, as required;

(c) No demand for delivery was made despite failure to deliver after payment of 80% of the contract price;

(d) Default provision was not invoked or enforced against MFC; and,

(e) Payments were not made in accordance with the terms of the contract.

On the basis of the COA Report, an Information, docketed as Criminal Case No. 20224, was filed against Marcelo, then Rear Admiral Simeon Alejandro and three other PN officials for violation of Sec. 3(e) of the Anti-Graft Law (R.A. No. 3019, as amended) penalizing as corrupt practice the act of a public officer and/or the

conspiring private individual , inter alia, of causing injury to the government by giving unwarranted benefits to a private party through evident bad faith, manifest partiality or gross inexcusable negligence. As alleged, the giving of unwarranted benefits stems from the disbursement of P337,437,000 to MFC in partial payment of undelivered 55 units of high speed boats.

Following a review, however, on motion of Alejandro et al., the Ombudsman approved an Order[27] of April 14, 1999, for the withdrawal of the Information, on the strength of, inter alia, the ensuing findings of the Special Investigator embodied in the same Order:

> Further, the failure to deliver the boats was for reasons not attributable to MFC. First, in breach of contractual stipulations, the PN incurred delay in making the down payments until the foreign exchange crisis supervened. Second, due to the dollar crisis, the Central Bank (CB) refused to authorize the opening of ... (LCs) to finance the importation of the boat components. The CB finally authorized the opening of the LCs only two years after the first request was made, and it was for restricted LCs. Third, when the shipment of the 55 MTU diesel engines ...arrived in the Philippines between June and December 1986, they were taken to the MFC manufacturing plant in Malabon so that boat manufacture could be commenced. However, before the manufacture ... could start, the PCGG, on February 16, 1987, sequestered not only the imported boat components but also all the properties of MFC and padlocked its manufacturing plant. xxx..
>
> The undisputed facts also show that the down payments made by the PN were used for the importation of boat engines, gearboxes and other components needed for the construction of the boats, and that the PN could not lawfully demand the delivery of the boats from MFC since the latter's obligation to deliver the boats had not yet arisen.
>
> xxx xxx xxx
>
> Moreover, a corporation is a distinct juridical entity .... In this case, the party that entered into the Contract with PN for the construction of speed boats was MFC, which exclusively assumed ...the obligation to put up a performance bond; it was to MFC that down payments were made by PN...; and it was MFC which, ... was solely obligated to build the boats and deliver them to PN. Under the circumstances, if MFC committed any culpable act, it alone bears the responsibility therefor.
>
> xxx xxx xxx
>
> As discussed earlier, there is ... no injury or prejudice to the government. The down payments made by the PN to MFC ...were used to import MTU engines and other boat parts, which ... were seized by the PCGG .... Also, the facts show that no party received any 'unwarranted benefits, advantage or preference' under the contract. It must be emphasized that none of the down payments or money subject of this case inured to the benefit of MFC or Marcelo ....
>
> As no injury or prejudice was caused to the Government and no party received any unwarranted benefit under the Contract, it is baseless to say that undue injury was caused or unwarranted benefits given through 'manifest partiality, evident bad faith or gross inexcusable negligence.' xxx the elements of the crime charged are not present in this case. [28] (Underscoring and words in brackets added)

The main issue tendered in this joint petition turns on whether or not respondent Sandiganbayan committed grave abuse of discretion amounting to lack or excess of jurisdiction in denying the motion for summary judgment of Marcelo, MFC and the other petitioner corporations. According to the petitioners, "the pleadings of the parties, and the admissions and documentary evidence of the [Republic] show that there is no genuine issue as to any material fact and that [they] are entitled to a [summary] judgment as a matter of law."[29] They thus urgently urge the reversal of the assailed Resolutions and the consequent dismissal of Civil Case No. 21.

The petition is impressed with merit.

It needs to stress at the outset that Civil Case No. 21 is one of several suits involving ill-gotten or unexplained wealth that the Republic, through the PCGG, has initiated. The Court has resolved several similar cases, establishing in the process doctrinal teachings. As it were, several sub-issues in the present petition may have already been addressed, if not rendered moot and academic, in those cases. Accordingly, this petition shall be resolved taking into stock and in the light of the relevant holdings and doctrines in those cases, foremost of which is Baseco v. PCGG.[30] There, the Court made it abundantly clear that the right and duty of the Government to recover ill-gotten wealth are undisputed. The Court added the caveat, however, that plain and valid that right may be, a balance must still be sought to the end that "proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise...." Among the things we stressed in BASECO is the need, in ill-gotten wealth cases, to give due regard to the basic rights of the parties, with particular emphasis on the right to property and the requirement of evidentiary substantiation.

It is the petitioners' main posture, positing the propriety of summary judgment in Civil Case No. 21, that there is no more genuine factual issues to be tried by the Sandiganbayan, the Republic, for failing to answer the petitioners' requests for admission, having already admitted certain vital facts in this case. Excepting, the Republic counters that the said requests for admission were sufficiently denied by its allegations in the complaint.

In denying the motions for summary judgment, the Sandiganbayan wrote:

> The answers of [the Republic] to the written interrogatories propounded by ... Marcelo indubitably show the existence of genuine factual issues between the parties, such as, whether or not ... Marcelo ... President of [MFC] was the real beneficiary of the amounts collected from the [Republic] by [MFC] through the alleged favored contract mentioned in the complaint; and whether or not [MFC] was used as conduit by ... Marcelo allegedly to amass ill-gotten wealth.
>
> It must be stressed that the crucial factual question that serves as underpinning of the alleged causes of action invoked by the [Republic] in this case is whether or not the subject contract, including the amendments, ... was a "favored contract", unlawfully obtained by the defendants in conspiracy with one another. Corollary thereto, whether or not the other [petitioner] corporations allegedly owned or controlled beneficially by the individual defendants were the fruits of the alleged ill-gotten wealth obtained through the said contract or whether individual defendants ... Marcelo and ... Ver acted as dummies or agents of former President ... Marcos in the defendant corporations.
>
> xxx xxx xxx
>
> Incidentally, the instant motions for summary judgment were filed before the [anti- graft] Court could issue an order under Section 1, Rule 9[31] of the Rules of Court relative to the written interrogatories. Moreover, the factual details alleged and conclusions of fact and law adduced in the said pleadings largely rely on the terms and conditions of the [favored] contract ... and its amendments which are precisely being questioned ... to be a "favored contract". From the allegations of the defendants, it is apparent that the [Republic] extended enormous sums of money .... Even assuming ... that the factual background alleged in the Answer of ... Marcelo which was reiterated in the Answer of [MFC], to be true or to have been established or admitted, still, a genuine factual issue remains to be tried and that is whether or not the subject contract ... was a "favored contract" ... as it appears from the record that the implementation of its terms, as narrated by the defendants, had resulted in the expenditure of hundreds of millions of pesos on the part of the [Republic] without a single delivery having been made or required to be made .... The factual issue of whether or not the subject contract is a favored one, which we take to mean as "disadvantageous" to the government, is not settled by the allegation that the contract was implemented in the midst of a foreign exchange crisis and that the government failed to comply with the staggered payments which the government was required to tender before any delivery could be made by the ... [MFC] under the terms of the contract. For the defendant to invoke the terms of the contract to excuse the non-delivery of the subject matter thereof simply begs the questions because the very stipulations

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> of the contract are in issue in this case.[32] (Words in brackets added)

We examine the records and found that summary judgment is in order. Under Section 3, Rule 35 of the Rules of Court, summary judgment may be allowed where, save for the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense of time involved in a trial. Even if the pleadings appear, on their face, to raise issues, summary judgment may still ensue as a matter of law if the affidavits, depositions and admissions show that such issues are not genuine.[33] The presence or absence of a genuine issue as to any material fact determines, at bottom, the propriety of summary judgment. A genuine issue, as opposed to fictitious or contrived one, is an issue of fact that requires the presentation of evidence. To the moving party rests the onus of demonstrating the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial.[34] In Estrada v. Consolacion,[35] the Court stated that when the moving party is a defending party, his pleadings, depositions or affidavits must show that his defenses or denials are sufficient to defeat the claimant's claim. The affidavits or depositions shall show that there is no defense to the cause of action or the cause of action has no merits, as the case may be. In fine, in proceedings for summary judgment, the burden of proof is upon the plaintiff to prove the cause of action and to show that the defense is interposed solely for the purpose of delay. After the plaintiff discharges its burden, the defendants has the burden to show facts sufficient to entitle him to defend.

With the view we take of the case, there is really no more genuine issues to be tried in this case, the Republic having failed or refused to answer the requests for admission and the written interrogatories of the petitioners. As it were, the Republic only answered petitioner Marcelo's request for admission or interrogatories. But then the Republic's answer serves only to highlight and confirm the fact that petitioner Marcelo's participation in all the transactions subject of this case is as President of MFC, [36] thus:

> 1.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (d), of the Third Amended Complaint which reads:
>
> "(d) illegally securing a loan with a foreign bank with the 'Guarantee of the Government,' upon the personal behest of defendant Ferdinand E. Marcos, which loan remains unpaid to date"

1.1. Was the alleged loan for defendant ... Marcelo personally?

ANSWER: The loan was for the [MFC] of which ... Marcelo is the President, who stands to benefit from the proceeds of the loan.

1.2. In the affirmative, what documents indicate that the loan was for defendant .... Marcelo personally?

ANSWER: The loan was negotiated by ... Marcelo in his capacity as President of [MFC] with the Swiss Bank Corporation. The Monetary Board [in] ... August 12, 1983 approved the loan.
2.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (c), of the Third Amended Complaint which reads:

> "(c) unlawfully received and collected from plaintiff hundreds of millions of pesos by way of advances representing 79% of the contract price for the construction of the aforementioned high-speed fiberglass boats, without, to date, delivering a single boat to the prejudice and damage of Plaintiff and the Filipino people"

2.1 Was the amount allegedly received and collected from plaintiff for the personal account of defendant Edward T. Marcelo?

ANSWER: The amounts collected from plaintiff were for the account of [MFC] but only as conduit. The real beneficiary of the amount is ... Marcelo. The Contract to Build...and its Amended Contract...provide that payments should be "by CONFIRMED IRREVOCABLE, DIVISIBLE LETTER OF CREDIT established in favor of the BUILDER." However, payments were made directly to [MFC] as shown in Land Bank application for Cashier's Check...;

2.2 In the affirmative, what documents indicate that the amount allegedly received and collected went to the personal account of defendant Edward T. Marcelo?

ANSWER: The defendant, as President of [MFC] stands to benefit from the proceeds of the amount collected. The Amended Article of Incorporation...shows that ... Marcelo is the President of the Corporation, a wholly owned family corporation.

3.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (b), of the Third Amended Complaint which reads:

> "(b) securing the approval of direct payments on the above-mentioned contracts, in violation of the stipulation that payment should be by confirmed, irrevocable and divisible letter of credit"

3.1 Was the direct payment allegedly secured for ... Marcelo personally?

ANSWER: The direct payment was secured by defendant as President of [MFC] as shown in his letter dated November 4, 1982 requesting for release of the first downpayment of P127,710.00.

3.2 In the affirmative, what documents indicate that the direct payments allegedly secured went to the personal account of defendant Edward T. Marcelo?

ANSWER: The defendant, as President of [MFC] stands to benefit from the proceeds of the direct payments made by plaintiff.

4.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub-paragraph (a), of the Third Amended Complaint which reads:

> "(a) unlawfully obtaining a favored contract with the [PN] for the construction of high-speed fiberglass boats at the cost of hundreds of millions of pesos"

4.1 Is ... Marcelo personally a party to the contract referred to by plaintiff?

ANSWER: Yes, defendant is signatory to the contract as President of [MFC]. Defendant Marcelo's letter-request'dated November 4, 1982, to then President Marcos who approved it in his marginal note...dated November 10, 1982. [37] (Words in bracket added.)

It is basic that a corporation is clothed with a personality distinct from that of its officers,[38] its stockholders and from other corporations it may be connected.[39] Under the doctrine of piercing the veil of corporate existence, however, the corporation's separate personality may be disregarded when the separate identity is used to protect a dishonest or fraudulent act, justify a wrong, or defend a crime. In such instance, the wrongdoing must clearly and convincingly be established;[40] it cannot be presumed.[41] Absent malice or bad faith, the officer or shareholder cannot be made personally liable for corporate obligations and cannot be held liable to third persons who have claims against the corporation.

A reading of the Republic's answers to Marcelo's interrogatories leads us to view, like the Ombudsman,[42] that there was nothing irregular with the boat supply contract. Neither were the circumstances leading to the contract award tainted with irregularity. For, the answers yield nothing more than a reiteration of mere conclusions of fact

stated in the underlying complaint. The complaint does not even state how the conclusion was arrived at that Marcelo was the real beneficiary of the amounts collected under the contract, absent factual averments that would support the same. The Republic's argument that since MFC did not allege in its motion for summary judgment that it is not used as a front by Marcelo, then the two should be treated as one and the same,[43] is simply specious. There is no such principle as "presumption of piercing the veil of corporate fiction." Nor could it be simply assumed that by the mere bare allegation or conclusion of law, in an answer to written interrogatories, that Marcelo is a conduit of the Marcoses, a genuine issue has been created. On this score, the Sandiganbayan was certainly in error.

As the Court distinctly notes, the complaint in Civil Case No. 21 imputes an unlawful or at least a highly improper act against petitioner Marcelo in that he obtained a "favored contract" with the PN, collected hundreds of million of pesos by way of advances and illegally secured a foreign loan with sovereign guarantee courtesy of then Pres. Marcos. The complaint, however fails to disclose why the contract characterization "favored" was, a conclusion of law, as it were. The Court will go further. The complaint violates fundamental rules of pleading. For one, it yields a substantial lack of specific averments constituting the Republic's cause or causes of action against the petitioners, particularly Marcelo. In fine, the complaint does not state with definiteness how or in what specific manner the petitioners committed the alleged illegal and fraudulent acts so broadly enumerated therein. For another, it is replete with sweeping generalizations, conclusions of fact and law, and contains inferences derived from facts that are not found in the complaint. In short, the complaint is an embodiment, a concrete example, of how one should not prepare a legal complaint. The Court's disposition in Remitere v. Montinola Vda. De Yulo[44] should be enlightening:

> It is not stated anywhere in the complaint why the sale ... was absolutely void, nor were there stated any particular facts or circumstances upon which the alleged nullity of the sale or transaction is predicated. The averment that "the public sale ... was and still is absolutely a void sale ...." is a conclusion of law or an inference from facts not stated in the pleading. A pleading should state the ultimate facts essential to the rights of action or defense asserted, as distinguished from a mere conclusion of fact, or conclusion of law. An allegation that a contract is valid or void, as in the instant case, is a mere conclusion of law.
>
> xxx xxx xxx
> Not being statements of ultimate facts which constitute the basis of a right of the plaintiffs-appellants, nor are they statements of ultimate facts which constitute the wrongful acts or omissions of the defendants-appellees that violated the right of the plaintiffs-appellants the allegations of the complaint in the present case have not fulfilled the requirements of Section 3, Rule 6 of the ... Rules of Court xxx that the complaint should contain a "concise statement of the ultimate facts constituting the plaintiff's cause or causes of action". (Emphasis added.)

It cannot be over-emphasized that the Republic cannot any more prove malice or wrongdoing on the part of either Marcelo or MFC, or that the separate corporate identity of MFC was used for unlawful means. For, the Republic has veritably acknowledged the regularity of the boat-construction contract by its failure to answer written interrogatories and the request for admission propounded by petitioner MFC. To be precise, the Republic did not answer the following written interrogatories[45] of MFC:

> 1.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub- paragraph (d), of the Third Amended Complaint which reads:
>
> (d) illegally securing a loan with a foreign bank with the 'Guarantee of the Government,' upon the personal behest of defendant Ferdinand E. Marcos, which loan remains unpaid to date"

1.1. Was there any loan with a foreign bank ever availed of for ... Republic... to say that the "loan remains unpaid

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

to date?

1.2. Who availed of such loan with a foreign bank?

1.2. When was such loan with a foreign bank availed of?

1.3. How much of such loan with a foreign bank was availed of?

1.4. What is the name of the foreign bank from which such loan was secured and availed of?

1.5. Why was the loan with foreign bank secured?

1.6. In 1982, what were the loan options proposed by the Republic['s]... Philippine National Bank for plaintiff Republic['s]... [PN] to pay for the domestic/deferred letter of credit which the latter was supposed to open in favor of defendant [MFC]?

1.7. In 1983, without a long term foreign loan to pay for the letter of credit which ... [the] ... [PN] was to open with ...[the] Land Bank of the Philippines, was plaintiff Republic['s]... Central Bank of the Philippines willing to approve the importations by defendant [MFC] under the boat-building contract?

1.8. What specific provision of law in 1982 was violated for plaintiff Republic... to conclude that securing a loan with a foreign bank with the guarantee of the government is "illegal"?

1.9. Who required and why was the "Guarantee of Government" secured for the loan with a foreign bank?

1.10. In 1982, without the guarantee of the Republic['s]... National Government, was plaintiff Republic's... own [PNB] Bank willing to lend plaintiff Republic['s]... own [PN] the amounts to pay for the latter's opening of a domestic/deferred letter of credit in favor of defendant [MFC]?

1.11. In 1982, who in ... [the] National Government has power to approve the issuance of ... [the] National Government's guarantee of a loan?

1.12. In 1982, in what a particular form, document or writing should the approval of the issuance of plaintiff Republic['s]... National Government's guarantee of a loan appear?

2.0 Regarding the "Specific Averments of Illegal Acts" in paragraph 11, sub- paragraph (c), of the Third Amended Complaint which reads:

> "(c) unlawfully received and collected from Plaintiff hundreds of millions of pesos by way of advances representing 79% of the contract price for the construction of the aforementioned high-speed fiberglass boats, without, to date, delivering a single boat to the prejudice and

2.1. How much exactly was received and collected from plaintiff Republic...

2.2 Who among the defendants received and collected such amount?

2.3. What does plaintiff Republic... mean by the word "advances"?

2.3.1.Were the amounts received and collected borrowed from plaintiff Republic...?

2.3.2. If they were borrowed, what are the loan documents evidencing the loan?

2.3.3. If they were not borrowed, why were they received and collected from plaintiff Republic...?

2.4. In its 5 June 1991 Request for Admission, plaintiff Republic... asserts and acknowledges that there is an upward adjustment of the contract price from P425.7 Million to P926.524 Million. This was the agreement in

November 1985. What is the "contract price" plaintiff Republic... is referring to in the aforequoted allegations in the Third Amended Complaint?

2.4.1. Under the June 1983 amendment to the contract, the parties agreed that "the foreign exchange risk shall be for the account of the Philippines. With the contract price of P425.7 Million in June 1982 at the exchange rate of P8.00 to US$1.00, what is the additional amount assumed by the plaintiff Republic" [PN] by November 1985 when the exchange rate had changed to P18.00 to US$1.00?

2.5. What are the pre-conditions for the delivery by defendant [MFC] of any boat under the contract?

2.6. Which of these preconditions have been satisfied for plaintiff Republic... to rightfully complain of the non-delivery of the boats to date?

2.7. Article VIII, part B, of the contract stipulates that "delivery of the boats shall be effected" provided that ... [PN] shall have fulfilled all its obligations as stipulated in this contract." Has plaintiff Republic... fulfilled all its obligations as stipulated in the contract?

2.8. Article XIII, part A of the contract signed and executed on 18 June 1982, stipulates and obligates plaintiff Republic... to make the following payments:

"1. THIRTY (30) PERCENT of the total contract price as downpayment upon the signing of the Contract on 18 December 1982."

2. TWENTY (20) PERCENT of the total contract price xxx for the engines, gear boxes, fiberglass materials, radar and communication equipment xxx after SIX (6) MONTHS from date of the execution of this contract xxx or by 18 December 1982."

2.8.1. How many payments were received by defendant [MFC] from plaintiff Republic...?

2.8.2. On what dates were each of such payments received?

2.8.3. What were the amounts received on each of such dates?

2.8.4. How many years, months and/or days had elapsed from 18 June 1992 before each of such payment was received?

2.8.5. How many years, months and/or days had elapsed before or after 18 November 1995 when each payment was received?

2.8.6. What percentage of the adjusted contract price of P926.524 Million was received in each of the payment was received?

2.9. Article XIII, part A, of the contract further stipulates and obligates plaintiff Republic... to open a "CONFIRMED, IRREVOCABLE, DIVISIBLE LETTER OF CREDIT" in favor of defendant Marcelo Fiberglass Corporation.

2.9.1. When did plaintiff Republic... open such a [L/C] for either the full value of the contract price or any part thereof?

2.9.2. What efforts did plaintiff Republic... exert on its own to comply with this obligation?

2.10. Article X, part A, of the contract further provides:

> "If, at any time, either the construction of the boat, or any performance required hereunder as a prerequisite to the delivery of the boat, is delayed due to acts of state, xxx by destruction of the shipyard xxx by fire and/or

> other causes beyond the control of either contracting party, the time of delivery of the boat under this Contract shall be extended for a period of time corresponding to the duration and cause of such events."

2.10.1. Was not the construction of the boats and a prerequisite to the delivery of the boats delayed by an act of state or by cause beyond the control of defendant [MFC] when the state, plaintiff Republic..., paid the 20% of the original contract price, intended for the engines, gear boxes, fiberglass materials, radar and communication equipment of the boats, only in November 1985 or almost three years past due and when the contract price to be paid had increased because of the change foreign exchange rate?

2.10.2. Was not the construction of the boats and a prerequisite to the delivery of the boats delayed by an act of state and by cause beyond the control of defendant [MFC] when the state, plaintiff Republic... never delivered the full 20% of the increased contract price intended for the very engines, gear boxes, fiberglass materials, radar and communication equipment of the boats?

2.10.3. Was not the construction of the boats delayed by an act of state or by cause beyond the control of defendant [MFC] ...when the Central Bank .... from 1982 to 1986, because of the dollar crisis which was aggravated by the murder of Senator Benigno S. Aquino on 21 August 1983, refused or could not provide the foreign exchange necessary for ... [MFC] to import the engines, gear boxes, fiberglass materials and radio and communications equipment for the boats?

2.10.4. Was not a prerequisite to the delivery of the boats delayed by an act of state or by cause beyond the control of defendant [MFC] when the State, plaintiff Republic... never opened or could not open the required [L/C]?

2.10.5. Was not the construction of the boats further delayed by an act of state or by cause beyond the control of defendant [MFC] when the state, plaintiff Republic..., sequestered on 17 February 1987 all assets of ... [MFC], padlocked its offices and shipyard/plant, and barred entry by anyone thereto up to this day?

2.10.6. Was not the construction of the boats further delayed by an act of state or by cause beyond the control of defendant [MFC] when the State, plaintiff Republic..., negligently caused in 1994 the destruction by fire of the shipyard/plant of defendant [MFC] while under its full and exclusive sequestration, control and custody?

2.10.7. Considering that the foregoing causes of the delay in the construction of the boats and delay in the prerequisite to the delivery of the boats, most of which are still existing up to this day, is not the extension of time granted in the contract for the delivery of the boats still continuing?

xxx xxx xxx

3.2. Is such direct payment in violation of the stipulation in the amended contract of June 1983 which allows the payment of the 30% downpayment either by bank draft or [L/C]?

xxx xxx xxx

3.3. Is plaintiff Republic... aware of its own documentary evidence consisting of the 22 December 1983 letter of its own Defense Ministry, through then Minister Juan Ponce Enrile, who explained therein that:

"The Office of Budget and Management (OBM) released the amount of P127.71 M. representing the 30% downpayment required in the contract. The amount was subsequently paid to MFC to save for the government front-end fee and other bank charges amounting to P1,915,650.00"

3.4. Does plaintiff Republic... know that, for the reason stated by its own Defense Ministry, it was itself who requested defendant [MFC] to accept payment and that the latter merely acceded to the request?

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

3.4. Who "secured" the approval of, and who "approved"' the direct payments?

3.4.1. What is the basis of plaintiff Republic... in identifying such person (s) as the one who "secured" the approval?

xxx

4.1. What does plaintiff Republic... mean by the phrase "favored contract"?

4.1.2. What circumstances made the contract being referred to a "favored" one?

4.2. What specific provision of law was violated for plaintiff Republic... to conclude that the contract or the act of obtaining it is "unlawful"?

4.2.1. Is obtaining the contract "unlawful" because it is a "favored" one?

4.2.2. Or, is the contract "favored" because obtaining it is "unlawful"?

4.2.3. What is the reason for the answers to the two preceding questions?

4.3. Without using "unlawful" "favored" or words of similarly sweeping conclusionary import, what is wrong with "obtaining that contract with the [PN] for the construction of high speed fiberglass boats at the costs of hundreds of millions of pesos"?

4.4. What did plaintiff Republic..., its then Ministry of National Defense, its [AFP] and its [PN] do to the offer made in 1979 by defendant [MFC] to construct the boats required by the [PN] until the contract was signed on 18 June 1982?

4.5. What did plaintiff Republic..., its then Ministry of National Defense, its [AFP], and its [PN] do to comply with the contract entered into on 18 June 1983 up to the time defendant [MFC] was sequestered in February 1987?

4.6. With its sovereignty and all resources and powers ..., what efforts did plaintiff Republic... exert to know what itself, its then Ministry of National Defense, its [AFP] and its [PN] did within the periods of almost four (4) years each referred to in the two preceding questions?" (Words in brackets added.)

The Republic did not also answer the written interrogatories of the other defendant corporations. In effect, the Republic admitted the non-participation of the other defendant corporations in the contracts in question. This is evident from the following written interrogatories which were deemed admitted by the Republic:

> 1.1. What is the specific involvement of, or the specific acts done by, each of the other Defendant Corporations in securing the alleged loan?
>
> xxx xxx xxx
>
> 2.1. How much exactly was received and collected by each of the Other Defendant Corporations from plaintiff?
>
> 2.2. When did each of the Other Defendant Corporations receive the amounts allegedly received from plaintiff, if any?
>
> 2.3. What documents indicate that each of the Other Defendant Corporations received such amount allegedly received from plaintiff?
>
> xxx xxx xxx

> 4.1. Which of the other defendant corporations is a party or signatory to the contract referred to by plaintiff?
>
> 4.2. What is the specific involvement of, or the specific acts done by, each of the other defendant corporations in obtaining the contract referred to by plaintiff?"

The Republic cannot plausibly evade the consequences of its failure to answer written interrogatories and requests for admission. If the plaintiff fails or refuses to answer the interrogatories, it may be a good basis for the dismissal of his complaint for non- suit unless he can justify such failure or refusal.[46]

To be sure, the Rules of Court prescribes the procedures and defines all the consequence/s for refusing to comply with the different modes of discovery. The case of Republic v. Sandiganbayan,[47] a case for recovery of ill-gotten wealth where the defendants served upon the PCGG written

interrogatories but the latter refused to make a discovery, is relevant. Some excerpts of what the Court said thereat:

> The message is plain. It is the duty of each contending party to lay before the court the facts in issue--fully and fairly; xxx
>
> Initially, that undertaking of laying the facts before the court is accomplished by the pleadings filed by the parties;... "ultimate facts" are set forth in the pleadings; xxx. The law says that every pleading "shall contain in a ... concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be, omitting the statement of mere evidentiary facts."
>
> Parenthetically, if this requirement is not observed, i.e., the ultimate facts are alleged too generally or "not averred with sufficient definiteness or particularity to enable x x (an adverse party) properly to prepare his responsive pleading or to prepare for trial," a bill of particulars seeking a "more definite statement" may be ordered .... xxx.
>
> The truth is that "evidentiary matters' may be inquired into and learned by the parties before the trial. Indeed, it is the purpose and policy of the law that the parties - before the trial if not indeed even before the pre-trial - should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to their adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. xxx
>
> xxx xxx xxx.
>
> In line with this principle of according liberal treatment to the deposition-discovery mechanism, such modes of discovery as (a) depositions ... under Rule 24,(b) interrogatories to parties under Rule 25, and (c) requests for admissions under Rule 26, may be availed of without leave of court, and generally, without court intervention. The Rules of Court explicitly provide that leave of court is not necessary to avail of said modes of discovery after an answer to the complaint has been served. xxx.
>
> On the other hand, leave of court is required as regards discovery ... in accordance with Rule 27, or ... under Rule 28, which may be granted upon due application and a showing of due cause.
>
> To ensure that availment of the modes of discovery is otherwise untrammeled and efficacious, the 'law imposes serious sanctions on the party who refuses to make discovery, such as dismissing the action or proceeding or part thereof, ...; taking the matters inquired into as established in accordance with the claim of the party seeking discovery; refusal to allow the disobedient party support or oppose designated claims or defenses; xxx
>
> xxx xxx xxx
>
> One last word. xxx all that is entailed to activate or put in motion the process of discovery by interrogatories to

Turn this case into an audio lecture - facts, issues, ruling and doctrine - at batas.org

> parties under Rule 25 of the Rules of Court, is simply the delivery directly to a party of a letter setting forth a list of questions with the request that they be answered individually. That is all. The service of such a communication on the party has the effect of imposing on him the obligation of answering the questions "separately and fully in writing under oath," and serving "a copy of the answers on the party submitting the interrogatories ..." The sanctions for refusing to make discovery have already been mentioned. So, too, discovery under Rule 26 is begun by nothing more complex than the service on a party of a letter or other written communication containing a request that specific facts therein set forth ... be admitted in writing. That is all. Again, the receipt of such a communication by the party has the effect of imposing on him the obligation of serving the party requesting admission with "a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters," failing in which "(e)ach of the matters of which admission is requested shall be deemed admitted." xxx. (emphasis supplied)

While earlier touched upon, other considerations obtain which should have impelled the Sandiganbayan to grant the motion for summary judgment. We refer to the defect in the Republic's complaint itself. We start with the very PN-MFC contract itself which served as the main prop of the Republic's case. There is no dispute that the Republic did not attach to its complaint a copy of what it claims to be a "favored contract," let alone set out therein the relevant terms and conditions of the contract, or pertinent averments as would show, in general, why the same is unlawful or grossly disadvantageous to the State as would merit the tag "favored." The rule obtains that when a claim is based on a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth therein:[48]

> "SECTION 7. Action or defense based on document. - Whenever an action or defense is based upon a written instrument or document, the substance of such instrument or document shall be set forth in the pleading, and the original or a copy thereof shall be attached to the pleading as an exhibit, which shall be deemed to be a part of the pleading, or said copy may with like effect be set forth in the pleading."

The record reveals that it was petitioner Marcelo no less who brought out the contract first, as an attachment to his Answer.

On the alleged illegal advances, the particulars on the matter are not alleged; the circumstances that would justify its conclusion that either petitioner Marcelo or MFC received the 79% monetary equivalent of the contract without delivering a single boat could not be found. Again, the specific information was volunteered by Marcelo himself in his answer.

As to the allegation that the petitioners "secured a loan with a foreign bank with the guarantee of the government, upon the personal behest of defendant Ferdinand Marcos, which loan remains unpaid to date," a copy of the alleged loan document is not appended to the complaint. Neither is there a reference to the pertinent provisions of the loan agreement made in the complaint, nor were the circumstances surrounding the alleged incurring of the obligation enumerated. This is material in the sense that the petitioners deny that there was any loan at all obtained.

On the allegation that petitioners secured the approval of direct payments on the alleged "favored boat supply contract" in violation of the stipulation that payment should be by "confirmed, irrevocable and divisible letter of credit," the existence of a cause of action based on the allegation could not be determined since a copy of the contract was not attached to the complaint, nor was there made a reference to the particular stipulation claimed to have been violated.

With respect to the allegation that the petitioners acted as dummies, nominees or agents of "Ferdinand E. Marcos

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

in corporations such as the Philippine Casino Operators Corporation, beneficially owned and/or controlled by the latter," it is noted that allegation partakes of a conclusion of fact unsupported by a particular averment of circumstances that will show why such inference or conclusion was arrived at. In this regard, we are reminded of the Court's ruling in Republic v. Sandiganbayan:[49]

> Under paragraph 6-A of the Amended Complaint, the Companies alleged to be beneficially owned or controlled by defendants Lucio Tan, Ferdinand and Imelda Marcos and/or the other individual defendants were identified and enumerated, including herein corporate respondents. But except for this bare allegation, the complaint provided no further information with respect to the manner by which herein corporate respondents are beneficially owned or controlled by the individual defendants. Clearly, the allegation is a conclusion of law that is bereft of any factual basis. (emphasis supplied)

To stress, the Rules of Court require every pleading to "contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense."[50] A transgression of this rule is fatal. [51]

In view of the absence of specific averments in the Republic's complaint, the same is defective for it presents no basis upon which the court should act, or for the defendant to meet it with an intelligent answer.[52] The complaint, to stress, did not present the very documents claimed to be the source of the Marcelo-Marcos vinculum: it did not attach the alleged boat supply contract which is the main cause of action against the petitioners; the unpaid loan document from which another claimed cause of action arose; and other relevant documents and information. The Republic tags, at every turn, the PN-MFC contract to be a "favored contract," without, however, so much as stating with sufficient particularity the circumstances that led it to arrive at such conclusion.

The foregoing is nonetheless true with respect to the case against the other petitioner corporations (except MFC). There is no cause of action against them. Not only because the complaint does not, as to them, spell out specific illegal acts and omissions committed by them, but also on account of our ruling in Republic v. Sandiganbayan,[53] or what subsequent opinions would later refer to as The Final Dispositions case, which proscribes their being impleaded in the case. Thus:

> As regards actions in which the complaints seek recovery of defendants' shares of stock in existing corporations (e.g., San Miguel Corporation, etc.) because (they were) allegedly purchased with misappropriated public funds,... the impleading of said firms would clearly appear to be unnecessary. If warranted by the evidence, judgments may be handed down against the corresponding defendants divesting them of ownership of their stock, the acquisition thereof being illegal and consequently burdened with a constructive trust, and imposing on them the obligation of surrendering them to the Government.
>
> Quite the same thing may be said of illegally obtained funds deposited in banks. The impleading of the banks would also appear unnecessary. xxx.
>
> xxx xxx xxx
>
> And as to corporations organized with ill-gotten wealth, but are not 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 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.
>
> Such showing of having been formed with, or having received ill-gotten funds, however strong or convincing, does not, without more, warrant identifying the corporations in question with the persons who formed or made

> use of them to give the color or appearance of lawful, innocent acquisition to illegally amassed wealth " at the least, not so as (to) place on the Government the onus of impleading the former together with the latter in actions to recover such wealth. xxx. 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.
>
> The Government is, thus, not to be faulted for not making such corporations defendants in the actions referred to. It is even conceivable that had this been attempted, motions to dismiss would have lain to frustrate such attempts. (Underscoring supplied)

It does not escape our notice that, in line with our ruling in Republic immediately adverted to, petitioner corporations were perhaps not originally impleaded because it was unnecessary, they being perceived to have been formed with ill-gotten wealth. As against them, there is no cause of action other than that they constitute the res of the action. However, the fact that they were subsequently impleaded in Civil Case No. 21 could only mean that a cause of action exists against them, one that must be specifically alleged in the amended complaint. It appears, however, that their inclusion was made without the corresponding insertion of general or specific averments of illegal acts they are alleged to have committed as should constitute the cause of action against them. It may not be said that those general and specific averments already existing in the complaint before the amendment apply to them, because they refer only to the boat building contract, a transaction for which only Marcelo and MFC have been specifically made answerable.

The Republic"s argument in their Opposition to the Motions for Summary Judgment that the Final Dispositions case suggested that the other petitioner corporations should be impleaded does not commend itself for concurrence. On the contrary, we categorically ruled therein that their impleading is not at all proper.

In all then, we hold that the Sandiganbayan committed grave abuse of discretion in denying the petitioners' separate motions for a summary judgment. To us, the petitioners were entitled to a summary judgment owing to the interplay of the following premises:

- The Republic's complaint, as couched and presented to the Sandiganbayan does not contain concise and direct statement of the ultimate facts on which it relies for its claim against petitioners Marcelo and MFC. Worse still, it does not specify the act or omission by which the other petitioners wronged the Republic. In net effect, the complaint no less does not present genuine ill-gotten wealth issue; and

- In view of the Republic's failure to respond to MFC's interrogatories, the Republic veritably conceded the regularity of the PN-MFC contract, that no wrongdoing was committed vis-á-vis the conclusion of that contract and that the separate personality of MFC was not used for unlawful means to activate the piercing of corporate veil principle. The questions in the interrogatories were simple and direct and the answers thereto would have constituted the fact/s sought to be established. We do not see any reason why the Republic could not have answered them. They refer to relevant matters that could clarify the important facts left out by, to borrow from Republic v. Sandiganbayan,[54] the "roaming generalities in the complaint."

Assume the element of regularity and the bona fides of the transaction and no genuine issue as to any material fact would come into fore.

With the foregoing disquisitions, each of the petitioners' counterclaim for damages need not detain us long. Suffice it to state that resolution thereof entails factual determination which is not proper in a certiorari proceeding.

WHEREFORE, the instant petition is GRANTED and the Resolutions of the Sandiganbayan dated August 27, 2001 and November 19, 2002 are REVERSED and SET ASIDE. Accordingly, the complaint against the

petitioners in Civil Case No. 21 is DISMISSED.

No pronouncement as to costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and Azcuna, JJ., concur.

---

[1] Penned by Associate Justice Teresita Leonardo-de Castro, with Associate Justices Anacleto D. Badoy, Jr. and Ricardo M. Ilarde (both retired), concurring; rollo, pp. 104-120.

[2] Penned by Associate Justice Godofredo L. Legaspi, with Associate Justices Raoul V. Victorino and Rodolfo G. Palattao, Sr., concurring; rollo, pp. 123-125.

[3] Id. at 236 et seq.

[4] Id. at 263- 266.

[5] Id. at 267 et seq.

[6] Id. at p. 127.

[7] The complaint was actually thrice amended, the first filed before a responding pleading could be filed.

[8] Answer to the Second Amended Complaint; rollo, p. 194.

[9]Id. at 278.

[10] Id. at 321.

[11] It was not formally annexed to the petition.

[12] Rollo, pp. 326 et seq.

[13] Id. at 342 et seq.

[14] Philippine Smelters Corp. and Marcelo Tire and Rubber Co., Inc.

[15] Rollo, pp. 362 et seq.; pp. 365 et seq.

[16] Id. at 369.

[17] Id. at 375.

[18] Id. at 381.

[19] Id. at 433.

[20] Id. at 439.

[21] Id. at 446 (for petitioner Marcelo); p. 459 (for Marcelo Fiberglass Corporation [MFC]); and p. 509 (for the other petitioner corporations). The copy of MFC's Motion For Summary Judgment (Annex "V" of the Petition) does not contain a prayer. We take it to be an error in the photocopying.

[22] Per the Sandiganbayan, four defendant corporations did not join in the motion for summary judgment.

[23] Rollo, pp. 518 et seq., and 531 et seq.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

[24] Id. at 522 and 534.

[25] Supra note 1.

[26] Supra note 2.

[27] Rollo, pp. 664 et seq. [28] Id. at 673-677.

[29] Id. at 41.

[30] G.R. No. L-75885, May 27, 1987, 150 SCRA 181.

[31] SECTION 1. Defenses and objections not pleaded.-Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. xxx

[32] Resolution dated August 17, 2001, at 13-15, rollo, pp. 116-118.

[33] Carcon Development Corporation v. CA, G.R. No. 88218, December 19, 1989, 180 SCRA 348.

[34] Evadel Realty and Development Corporation v. Soriano, G.R. No. 144291, April 20, 2001, 357 SCRA 395.

[35] G.R. No. L-40948, June 29, 1976, 71 SCRA 523, 528-29.

[36] Pre-Trial Brief with Written Interrogatories First Set and Request for Admission of Marcelo, Annex "n" of Petition, rollo, pp. 375 et seq.; See also pp. 7-8 Sandiganbayan Resolution of August 27, 2001, rollo, pp. 110-111.

[37] Rollo, p. 375.

[38] Lafarge Cement Phil., Inc.v.Continental Cement Corp., G.R. No. 155173, November 23, 2004, 443 SCRA 522.

[39] Concept Builders, Inc. v. NLRC, G.R. No. 108734, May 29, 1996, 257 SCRA 149.

[40] Secosa v. Heirs of Francisco, G.R. No. 160039, June 29, 2004, 433 SCRA 273.

[41] Matuguina Integrated Wood Products v. Court of Appeals, G.R. No. 98310, October 24, 1996, 263 SCRA 490.

[42] Supra note 27.

[43] Rollo, p. 532.

[44] G.R. No. L-19751, February 28, 1966, 16 SCRA 251.

[45] Pre-Trial Brief for MFC, Annex "O" of the Petition, rollo, pp. 381 et seq.

[46] Santiago Land Development Company v. Court of Appeals, G.R. No. 103922, July 9, 1996, 258 SCRA 535.

[47] G.R. No. 90478, November 21, 1991, 204 SCRA 213.

[48] Rule 8, Sec. 7, 1964 Revised Rules of Court.

[49] G.R. No. 115748, August 7, 1996, 260 SCRA 411.

[50] Rule 8, Sec. 1.

[51] Republic v. Sandiganbayan, G.R. No. 92594, March 4, 1994, 230 SCRA 710.

[52] Republic v. Sandiganbayan, supra.

[53] G.R. No. 96073, January 23, 1995, 240 SCRA 376; also, see Republic v. Sandiganbayan , G.R. No. 152154, July 15, 2003, 406 SCRA 190.

[54] Supra note 51.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.