

HEIRS OF GREGORIO LICAROS; NAMELY, CONCEPCION B. LICAROS AND ABELARDO B. LICAROS, PETITIONERS, VS. SANDIGANBAYAN AND REPUBLIC OF THE PHILIPPINES, RESPONDENTS.

G.R. No. 157438. October 18, 2004

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Basic is the rule that only the allegations of a complaint may be used to determine whether a cause of action is being pleaded. Whether these are true or false is unimportant at this point. The test is, assuming the allegations to be true, can a valid judgment, as prayed for by the plaintiff, be rendered by the court? If so, then the complaint states a cause of action.

In the present case, the Second Amended Complaint contains sufficient allegations to implicate Gregorio S. Licaros in an alleged conspiracy to accumulate ill-gotten wealth. The contentions that his acts were done in good faith, or by the Monetary Board are matters of defense that cannot abate the Complaint upon a motion to dismiss.

The Case

Before the Court is a Petition for Certiorari[1] under Rule 65 of the Rules of Court, seeking to nullify the August 13, 2002[2] and the February 6, 2003[3] Resolutions of the Sandiganbayan in Civil Case No. 0005. The decretal portion of the first assailed Resolution reads:

“WHEREFORE, for lack of merit, the motion to dismiss is hereby DENIED.”[4]

The second challenged Resolution denied petitioners’ Motion for Reconsideration.

The Facts

Gregorio S. Licaros, petitioners’ predecessor-in-interest, served as governor of the Central Bank of the Philippines from 1970 to 1980, during the incumbency of then President Ferdinand E. Marcos. He died on August 3, 1983.

On July 17, 1987, the Republic of the Philippines -- through the Presidential Commission on Good Government (PCGG), assisted by the Office of the Solicitor General (OSG) -- filed a Complaint for reversion, reconveyance, restitution, accounting and damages against former President Marcos and his alleged crony, Lucio C. Tan. The Complaint, docketed as Sandiganbayan Case No. 0005, summed up the nature of the action as follows:

“x x x. This is a civil action against Defendants Lucio C. Tan, Ferdinand E. Marcos, Imelda R. Marcos and the rest of the Defendants to recover from them ill-gotten wealth consisting of funds and other property which they, in unlawful concert with one another, had acquired and accumulated in flagrant breach of trust and of their fiduciary obligations as public officers, with grave abuse of right and power and in brazen violation of the Constitution and laws of the Republic of the Philippines, thus resulting in their unjust enrichment during Defendant Ferdinand E. Marcos’ 20 years of rule from December 30, 1965 to February 25, 1986, first as

President of the Philippines under the 1935 Constitution and, thereafter, as one-man ruler under martial law and Dictator under the 1973 Marcos-promulgated Constitution.”[5]

Aside from the main defendants (Marcos, his wife Imelda R. Marcos, and Tan), twenty-three other persons -- who had purportedly acted as their dummies, nominees or agents -- were likewise impleaded in the Complaint. It alleged, among others, that Tan -- with the connivance of some government officials, including Central Bank Governor Gregorio S. Licaros -- had fraudulently acquired the assets of the General Bank and Trust Company (GBTC), now known as the Allied Bank. A pertinent portion of the Complaint reads thus:

“SPECIFIC AVERMENTS OF
DEFENDANTS’ ILLEGAL ACTS

“13. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of his relationship and influence with Defendant spouses, among others:

(a) without sufficient collateral and for a nominal consideration, with the active collaboration, knowledge and willing participation of Defendant Willy Co, arbitrarily and fraudulently acquired control of the General Bank and Trust Company which eventually became Allied Banking Corporation, through then Central Bank Governor Gregorio Licaros x x x.”[6] (Emphasis supplied)

Despite the allegation, Licaros was not impleaded in this Complaint or in the subsequent Expanded Complaint.

On September 13, 1991, four years after the filing of the original action,[7] the Republic filed a Motion for Leave to Amend Complaint and for Admission of a Second Amended Complaint, which impleaded the Estate/Heirs of Licaros for the first time. The Amended Complaint, reiterating earlier allegations in the Expanded Complaint, detailed Licaros’ participation in the alleged unholy conspiracy as follows:

“THE PARTIES

“5a. Former Central Bank Governor Licaros, now deceased, had facilitated the fraudulent acquisition of the assets of General Bank and Trust Company (GBTC) worth over P688 Million at that time, to favor the Marcoses and the Lucio Tan Group who acquired said GBTC’s assets for a measly sum of P500,000.00. Hence, his Estate represented by his heirs must be impleaded as a party defendant for the purpose of obtaining complete relief. The said heirs may be served with summons and other court processes at Home Bankers Trust, 105 Paseo de Roxas, Makati, Metro Manila.

x x x x x x x x

“SPECIFIC AVERMENTS OF DEFENDANTS’

ILLEGAL ACTS

“14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his relationship and influence with Defendant spouses, and embarking upon devices, schemes and strat[a]gems, including the use of Defendant Corporations, among others:

(a) without sufficient collateral and for a nominal consideration, with the active collaboration, knowledge and willing participation of Defendant Willy Co, arbitrarily and fraudulently acquired control of the General Bank and Trust Company (GBTC) which eventually became Allied Banking Corporation. Through the manipulation of then Central Bank Governor Gregorio Licaros and of then President Panfilo O. Domingo of the Philippine National Bank (PNB), as shown by, but not limited to the following circumstances:

(1) In 1976, the General Bank and Trust Company, (GBTC for short) got into financial difficulties. The Central Bank then extended an emergency loan to GBTC reaching a total of P310 million. In extending this loan, the

CB, however, took control of GBTC when the latter executed an irrevocable Proxy of 2/3 of GBTC's outstanding shares in favor of the CB and 7 of the 11-member Board of Directors were CB nominees. Subsequently, on March 25, 1977, the Monetary Board of CB issued a Resolution declaring GBTC insolvent, forbidding it to do business and placing it under receivership.

(2) In the meantime, a public bidding for the sale of GBTC assets and liabilities was scheduled at 7:00 P.M. on March 28, 1977. Among the conditions of the bidding were: (a) submission by the bidder of Letter of Credit issued by a bank acceptable to CB to guaranty payment or as collateral of the CB emergency loan; and (b) a 2-year period to repay the said CB emergency loan. On March 29, 1977, CB thru a Monetary Board Resolution, approved the bid of the group of Lucio Tan and Willy Co. This bid, among other things, offered to pay only P500,000.00 for GBTC assets estimated at P688,201,301; Capital Accounts of P103,984,477.55; Cash of P25,698,473.00; and the takeover of the GBTC Head Office and branch offices. The required Letter of Credit was not also attached to the bid. What was attached to the bid was a letter of Defendant Panfilo O. Domingo as PNB President promising to open an irrevocable letter of credit to secure the advances of the Central Bank in the amount of P310 Million. Without this letter of commitment, the Lucio Tan bid would have not been approved. But such letter of commitment was a fraud because it was not meant to be fulfilled. Defendants Ferdinand E. Marcos, Gregorio Licaros and Panfilo O. Domingo conspired together in giving the Lucio Tan group undue favors such as the doing away with the required irrevocable letter of credit, the extension of the term of payment from two years to five years, the approval of the second mortgage as collateral for the Central Bank advances which was deficient by more than P90 Million, and other concessions to the great prejudice of the government and of the GBTC stockholders.”[8]

The Amended Complaint restated the same causes of action originally appearing in the initial Complaint: (1) abuse of right and power in violation of Articles 19, 20 and 21 of the Civil Code; (2) unjust enrichment; (3) breach of public trust; (4) accounting of all legal or beneficial interests in funds, properties and assets in excess of lawful earnings and income; and (5) actual, moral, temperate, nominal and exemplary damages.

On September 3, 2001, the heirs of Licaros filed a Motion to Dismiss the Complaint. Essentially, it raised the following grounds therefor: (1) lack of cause of action and (2) prescription. On October 12, 2001, the Republic filed its Opposition to the Motion.

Ruling of the Sandiganbayan

The Sandiganbayan held that the averments in the Second Amended Complaint had sufficiently established a cause of action against former Central Bank Governor Licaros. Ruled untenable was the argument of petitioners that he could not be held personally liable, because the GBTC assets had been acquired by Tan through a public bidding duly approved by the Monetary Board. According to the anti-graft court, this argument was a matter of defense that could not be resorted to in a motion to dismiss, and that did not constitute a valid ground for dismissal.

It was immaterial that Licaros was not a business associate of the main defendants; and not an officer, a director, or a stockholder of any of the defendant corporations. The paramount issue hinged on his acts as Central Bank governor, particularly his participation in an allegedly illegal conspiracy with Marcos and Domingo to give undue advantage to Tan's bid for the GBTC assets.

The Sandiganbayan also brushed aside the claim of petitioners that the action against Licaros had already prescribed. It pointed to Section 15 of Article XI of the 1987 Constitution, which mandated that “[t]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel.”

Hence, this Petition.[9]

Issues

In their Memorandum, petitioners raise the following issues[10] for our consideration:

“A.

Whether or not the Second Amended Complaint states a cause of action against petitioners.

“B.

Whether or not the Second Amended Complaint is barred by prescription and laches.

“C.

Whether or not Respondent Court has jurisdiction to determine the validity of the liquidation of General Bank and Trust Company (GENBANK or GBTC) and its acquisition by the Lucio Tan group and the consequent culpability of the late Central Bank Governor Licaros in view of the pendency of the issues in G.R. No. 152551 (General Bank and Trust Co. versus Central Bank of the Philippines, et. al.).”[11]

The Court’s Ruling

The Petition has no merit.

First Issue:

Cause of Action

A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect and not to violate that right; and (3) an act or omission constituting a breach of obligation of the defendant to the plaintiff or violating the right of the plaintiff, for which the latter may maintain an action for recovery of damages.[12]

The allegations in the Second Amended Complaint clearly and unequivocally outlines its cause of action against Defendant Licaros as follows:

“The wrongs committed by Defendants, acting singly or collectively and in unlawful concert with one another, include the 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, as more fully described below, all at the expense and to the grave and irreparable damage of the plaintiff and the Filipino people.

x x x x x x x x

“Former Central Bank Governor Gregorio Licaros, now deceased, had facilitated the fraudulent acquisition of the assets x x x General Bank and Trust Company (GBTC) worth over P688-Million at that time, to favor the Marcoses and the Lucio Tan group who acquired said GBTC’s assets for a measly sum of P500,000.00. Hence, his Estate represented by his heirs must be impleaded as a party defendant for the purpose of obtaining complete relief.”[13]

The Second Amended Complaint was unambiguous when it charged that Licaros, during his lifetime, had conspired with the main defendants -- particularly former President Ferdinand E. Marcos, Imelda R. Marcos, Lucio Tan and Philippine National Bank President Panfilo O. Domingo -- in facilitating the allegedly questionable transfer of the GBTC assets to Tan.

This charge of “conspiracy” casts a wide net, sufficiently extensive to include all acts and all incidents incidental,

related to or arising from the charge of systematic plunder and pillage against the main defendants in Sandiganbayan Case No. 0005. The assailed role of Licaros as Central Bank governor in the questioned GBTC deal is not excluded therefrom. If proven, the allegation of conspiracy may make him liable with his co-defendants.

The alleged conspiracy to defraud the Republic put the case against the Estate/Heirs of Licaros squarely under the exclusive jurisdiction of the Sandiganbayan. Said the Court:

“Under Section 2 of the President’s Executive Order No. 14 issued on May 7, 1986, all cases of the Commission regarding the ‘Funds, Moneys, Assets and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, their close Relatives, Subordinates, Business Associates, Dummies, Agents or Nominees’ whether civil or criminal are lodged with the ‘exclusive and original jurisdiction of the Sandiganbayan’ and necessarily fall likewise under the Sandiganbayan’s exclusive and original jurisdiction, subject to the review on certiorari exclusively by the Supreme Court.”[14] (Emphasis supplied)

No Ground to Dismiss
the Amended Complaint.

In *Virata v. Sandiganbayan*,^[15] a similar case for reconveyance, reversion, accounting and restitution of the allegedly hidden loot of the Marcos regime, this Court denied petitioners’ prayer for the dismissal of the Expanded Complaint, insofar as it had impleaded him. Applicable to the instant case is our pronouncement therein:

“The essential elements of a cause of action are a legal right of the plaintiff, a correlative obligation of the defendant, and an act or omission of the defendant violative of said legal right. The test of sufficiency of the facts to constitute a cause of action is whether or not, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer. As stated in *Adamos vs. J.M. Tuason & Co., Inc.*, (25 SCRA 529), ‘It is a well-settled rule that in a motion to dismiss based on the ground that the complaint fails to state a cause of action, the question submitted to the court for determination is the sufficiency of the allegations in the complaint itself. Whether these allegations are true or not is beside the point, for their truth is hypothetically admitted. The issue rather is: admitting them to be true, may the court render a valid judgment in accordance with the prayer in the complaint? So rigid is the norm prescribed that if the court should doubt the truth of the facts averred, it must not dismiss the complaint but require an answer and proceed to hear the case on the merits.’”[16]

Starkly similar to the foregoing discussion, the herein petitioners are seeking the dismissal of the present case, because (1) the actions imputed to Licaros as Central Bank governor were allegedly official acts of the members of the Monetary Board acting as a collegial body; and (2) the acquisition was done through a public bidding and in good faith. These contentions are evidently matters of defense, the veracity of which must be determined in a full-blown trial (or in a pretrial stipulation), and not in a mere motion to dismiss.

Second Issue:
Prescription

The instant action for reconveyance, restitution, and accounting impleads the Estate/Heirs of Gregorio Licaros for previous acts committed by the decedent during his lifetime, more particularly for conspiring with the main defendants to prejudice the Republic. An action to recover ill-gotten wealth is outside the purview of the ordinary rules on prescription, as contained in Article 1146 of the Civil Code.^[17] Section 15 of Article XI of the 1987 Constitution states:

“Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees,

from them or from their nominees or transferees, shall not be barred by prescription, laches or estoppel.”

The intendment of the foregoing constitutional provision -- exempting actions to recover ill-gotten wealth from the operation of the general rules of prescription -- presumably lies in the special attendant circumstances and the primordial state interests involved in cases of such nature.

From the preceding discussion, it is clear that any action involving the recovery of unlawfully acquired properties against Licaros or his transferees, may not be deemed to have prescribed. The language of the Constitution, the law and the Rules of Court is clear and unequivocal. Clearly, the Sandiganbayan did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the assailed Resolutions denying, for lack of merit, petitioners’ Motion to Dismiss.

Third Issue:

Pendency of GR No. 152551

Inconsequential

Petitioners further argue that in not dismissing the Complaint against Licaros for his acts as Central Bank governor, the anti-graft court is in effect passing judgment on the validity of the liquidation of the GBTC and its acquisition by the Lucio Tan group. They contend that the Second Amended Complaint, insofar as it had impleaded Licaros, was clearly pushed beyond the Sandiganbayan’s jurisdiction, as the issue is presently being raised in GR No. 152551 (*General Bank and Trust Co. v. Central Bank of the Philippines et al.*), pending before this Court.

Suffice it to say that, having established the jurisdiction of the Sandiganbayan over the Second Expanded Complaint and without prejudging the merits of the aforementioned case, this Court believes, and so holds, that a further discussion of this third alleged error raised by petitioners is no longer necessary.

Epilogue

This Court is as interested as the government in recovering ill-gotten wealth. We commend the present leadership of both the PCGG and the OSG for their demonstrated zeal in prosecuting this case. Asking only for an extended period of 40 days, the Office of the Solicitor General has filed its Comment and Memorandum within record time.[18] Petitioners are also to be lauded for their timeliness in filing their Reply and Memorandum,[19] which manifest a candid intent to settle the issues raised and not to delay unduly the resolution of Sandiganbayan Case No. 0005.

The conduct of both parties in the foregoing case has made it possible for the Court to dispose of the matter in less than a year after the last pleading was filed. Such conduct should characterize the ideal that must be aspired for by parties involved in cases of ill-gotten wealth, when they prosecute and defend their causes before the courts -- with utmost dispatch.

The Court, however, cannot ignore earlier lapses, particularly the past lackadaisical prosecution of the present case. The voluminous records show that while the original Complaint had been filed on August 20, 1987, and subsequently expanded in 1988 to include additional and more specific allegations, it was only in 1991 -- or more than four years later -- when it was amended to include as party-defendants Gregorio Licaros, his heirs and his estate. No new evidence had surfaced within the interim period to justify their belated inclusion. The Amended Complaint was, in essence, a rehash of the earlier Expanded Complaint.

While the rules allow amendments, they must be made on just and reasonable grounds. An amendment is unwarranted if it involves facts already within the knowledge of the plaintiffs at the time of the filing of the original action; otherwise, the protracted trial involving the allegedly ill-gotten wealth of Marcos -- almost twenty

years in the running -- may further stretch unreasonably with no end in sight.

More incredibly, from the time the Second Amended Complaint was filed in 1991, it took the then PCGG and the then OSG ten long years to cause the service of summons on the heirs of Gregorio Licaros.[20] The OSG cannot, as it did in its Memorandum, so cavalierly dismiss the delay by conveniently pointing to the clerk of court as the official who had the duty to issue summonses to the defendants. While indeed the Rules of Court entrusts that task to the clerk of court, it behooved the plaintiff to ascertain and inform the court where the summons could be served.

As manifested in the present Petition, Mrs. Concepcion Licaros, the widow of Gregorio S. Licaros, has been living at 802 Harvard Street, Mandaluyong City, to this day. The same address appears on both the private and the official records of the deceased -- particularly on his Death Certificate,[21] which respondents could have obtained with facility. That it took the then OSG all of ten years just to cause the service of summons on the Licaros heirs is certainly dismaying.

After nearly twenty years, the commitment to exorcise the specter of the bygone dictatorship, a resolve that was forged on the streets of EDSA in 1986, may have sadly been lost to memory. Those who are tasked to undo past wrongs and transgressions are exhorted to tenaciously and steadfastly keep the resolve alive, so that our people could at last put a closure to this dark chapter in our history, avoid the same thorny path, and move forward in the quest for our nation's destiny.

WHEREFORE, the Petition is hereby DISMISSED and the assailed Resolutions AFFIRMED.

Costs against petitioners.

Sandoval-Gutierrez, Corona, and Garcia, JJ., concur.

Carpio-Morales, J., on leave.

[1] Rollo, pp. 3-25.

[2] Id., pp. 27-34. Fifth Division. Penned by Justice Minita V. Chico-Nazario (Division chair and now a member of this Court), with the concurrence of Justices Ma. Christina G. Cortez-Estrada and Francisco H. Villaruz Jr. (members).

[3] Id., pp. 36-37.

[4] Assailed Resolution dated August 13, 2002, p. 8; rollo, p. 34.

[5] Complaint dated July 17, 1987, p. 2; records, Vol. 1, p. 2.

[6] Id., pp. 13-14.

[7] See Expanded Complaint; records, Vol. 1, pp. 312-346.

[8] Assailed Resolution dated August 13, 2002, pp. 4-8; rollo, pp. 30-32. For a full text of the Second Amended Complaint dated September 5, 1991, see records, Vol. 4, pp. 1598-1635.

9 This case was deemed submitted for decision on December 3, 2003, upon receipt by this Court of respondents' Memorandum, signed by Commissioner Victoria A. Avena and Special Legal Counsels Jose Jose, Aileen Duremdes and Alfonso Tan Jr. of the PCGG; and Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Alexander G. Gesmundo and Associate Solicitor Mauricia E. Dinopol of the OSG. Petitioners' Memorandum, signed by Atty. Ernesto Vinluan Perez, was received by the Court on November 12, 2003.

[10] The question of whether the Second Amended Complaint -- insofar as it impleaded the Heirs of Gregorio S. Licaros -- is a personal or real action has neither been raised by the parties nor passed upon by the Sandiganbayan. Hence, the same question shall not be passed upon by this Court.

[11] Petitioners' Memorandum, p. 10; rollo, p. 232. Original in upper case.

[12] Vergara v. Court of Appeals, 319 SCRA 323, 327, November 26, 1999.

[13] Second Amended Complaint, *supra*.

[14] Republic of the Philippines v. Sandiganbayan, 186 SCRA 864, 871, June 27, 1990, per Gutierrez Jr., J.

[15] 202 SCRA 680, October 15, 1991.

[16] *Id.*, p. 694, per Davide Jr., J. (now CJ).

[17] Article 1146 of the Civil Code provides, among others:

“The following actions must be instituted within four years:

- (1) Upon an injury to the rights of the plaintiff’
- (2) Upon a quasi-delict.”

[18] On May 22, 2003, the OSG asked for an extension of 30 days within which to file its Comment on the Petition, which had been submitted to this Court on May 23, 2003. On June 23, 2003, the OSG asked for another 10 days within which to file the aforementioned pleading. It finally filed its Comment on July 2, 2003, and its Memorandum on December 3, 2003.

[19] Petitioners filed their Petition on March 24, 2003, their Reply on August 21, 2003, and their Memorandum on November 12, 2003.

[20] It was already on August 3, 2001, when the OSG, in its Manifestation with Ex Parte Motion for the Issuance of an Alias Writ of Summons, informed the Sandiganbayan of the address of herein petitioners. Records, Vol. 9, pp. 352-353.

Accordingly, during its proceedings on August 9, 2001, the Sandiganbayan ordered the issuance of an alias writ of summons to be served on petitioners. (Records, Vol. 9, p. 359).

The Sheriff's Return dated August 22, 2001, showed that the summons had finally been served on Concepcion B. Licaros on August 20, 2001. Records, Vol. 9, p. 391.

[21] Rollo, p. 56.

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