

**REPUBLIC OF THE PHILIPPINES PETITIONER, VS. MA. IMELDA  
&#8220;IMEE&#8221; R. MARCOS-MANOTOC, FERDINAND  
&#8220;BONGBONG&#8221; R. MARCOS, JR., GREGORIO MA.  
ARANETA III, IRENE R. MARCOS-ARANETA, YEUNG CH...**

*G.R. No. 171701. February 08, 2012*

Ponente: SERENO, J.

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**SERENO, J.:**

Before this Court is a Petition for Review filed by the Republic of the Philippines assailing the Resolutions[1] issued by the Sandiganbayan in connection with an alleged portion of the Marcoses' supposed ill-gotten wealth.

This case involves P200 billion of the Marcoses' alleged accumulated ill-gotten wealth. It also includes the alleged use of the media networks IBC-13, BBC-2 and RPN-9 for the Marcos family's personal benefit; the alleged use of De Soleil Apparel for dollar salting; and the alleged illegal acquisition and operation of the bus company Pantranco North Express, Inc. (Pantranco).

**The Facts**

After the EDSA People Power Revolution in 1986, the first executive act of then President Corazon C. Aquino was to create the Presidential Commission on Good Government (PCGG). Pursuant to Executive Order No. 1, the PCGG was given the following mandate:

Sec. 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:

- (a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship.
- (b) The investigation of such cases of graft and corruption as the President may assign to the Commission from time to time.
- (c) The adoption of safeguards to ensure that the above practices shall not be repeated in any manner under the new government, and the institution of adequate measures to prevent the occurrence of corruption.

Sec. 3. The Commission shall have the power and authority:

- (a) To conduct investigation as may be necessary in order to accomplish and carry out the purposes of this order.
- (b) To sequester or place or cause to be placed under its control or possession any building or office wherein any ill-gotten wealth or properties may be found, and any records pertaining thereto, in order to prevent their destruction, concealment or disappearance which would frustrate or hamper the investigation or otherwise prevent the Commission from accomplishing its task.

- (c) To provisionally take over in the public interest or to prevent its disposal or dissipation, business enterprises and properties taken over by the government of the Marcos Administration or by entities or persons close to former President Marcos, until the transactions leading to such acquisition by the latter can be disposed of by the appropriate authorities.
- (d) To enjoin or restrain any actual or threatened commission of facts by any person or entity that may render moot and academic, or frustrate, or otherwise make ineffectual the efforts of the Commission to carry out its tasks under this order.
- (e) To administer oaths, and issue subpoena requiring the attendance and testimony of witnesses and/or the production of such books, papers, contracts, records, statement of accounts and other documents as may be material to the investigation conducted by the Commission.
- (f) To hold any person in direct or indirect contempt and impose the appropriate penalties, following the same procedures and penalties provided in the Rules of Court.
- (g) To seek and secure the assistance of any office, agency or instrumentality of the government.
- (h) To promulgate such rules and regulations as may be necessary to carry out the purpose of this order.

Thus, numerous civil and criminal cases were subsequently filed. One of the civil cases filed before the Sandiganbayan to recover the Marcoses' alleged ill-gotten wealth was Civil Case No. 0002, now subject of this Petition.

On 16 July 1987, the PCGG, acting on behalf of the Republic and assisted by the Office of the Solicitor General (OSG), filed a Complaint for Reversion, Reconveyance, Restitution, Accounting and Damages against Ferdinand E. Marcos, who was later substituted by his estate upon his death; Imelda R. Marcos; and herein respondents Imee Marcos-Manotoc, Irene Marcos-Araneta, Bongbong Marcos, Tomas Manotoc, and Gregorio Araneta III.

On 1 October 1987, the PCGG filed an amended Complaint to add Constante Rubio as defendant.

Again on 9 February 1988, it amended the Complaint, this time to include as defendants Nemesio G. Co and herein respondents Yeung Chun Kam, Yeung Chun Ho, and Yeung Chun Fan.

For the third time, on 23 April 1990, the PCGG amended its Complaint, adding to its growing list of defendants Imelda Cojuangco, the estate of Ramon Cojuangco, and Prime Holdings, Inc.[2]

The PCGG filed a fourth amended Complaint, which was later denied by the Sandiganbayan in its Resolution dated 2 September 1998.

The allegations contained in the Complaint specific to herein respondents are the following:[3]

29. Defendants Imelda (IMEE) R. Marcos-Manotoc, Tomas Manotoc, Irene R. Manotoc (sic) Araneta, Gregorio Ma. Araneta III, and Ferdinand R. Marcos, Jr., actively collaborated, with Defendants Ferdinand E. Marcos and Imelda R. Marcos among others, in confiscating and/or unlawfully appropriating funds and other property, and in concealing the same as described above. In addition, each of the said Defendants, either by taking undue advantage of their relationship with Defendants Ferdinand E. Marcos and Imelda R. Marcos, or by reason of the above-described active collaboration, unlawfully acquired or received property, shares of stocks in corporations, illegal payments such as commissions, bribes or kickbacks, and other forms of improper privileges, income, revenues and benefits. Defendant Araneta in particular made use of Asialand Development Corporation which is included in Annex "A" hereof as corporate vehicle to benefit in the manner stated above.

31. Defendants Nemesio G. Co, Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan are the controlling stockholders of Glorious Sun Fashion Manufacturing Corporation (Phils.). Through Glorious Sun (Phils.), they acted as fronts or dummies, cronies or otherwise willing tools of spouses Ferdinand and Imelda Marcos and/or the family, particularly of Defendant Imelda (Imee) Marcos-Manotoc, in the illegal salting of foreign exchange[4] by importing denim fabrics from only one supplier - a Hong Kong based corporation which was

also owned and controlled by defendant Hong Kong investors, at prices much higher than those being paid by other users of similar materials to the grave and irreparable damage of Plaintiff.

Thus, petitioner set forth the following causes of action in its Complaint:[5]

32. First Cause of Action: BREACH OF PUBLIC TRUST - A public office is a public trust. By committing all the acts described above, Defendants repeatedly breached public trust and the law, making them liable solidarily to Plaintiff. The funds and other property acquired by Defendants following, or as a result of, their breach of public trust, some of which are mentioned or described above, estimated to amount to P200 billion are deemed to have been acquired for the benefit of Plaintiff and are, therefore, impressed with constructive trust in favor of Plaintiff and the Filipino people. Consequently, Defendants are solidarily liable to restore or reconvey to Plaintiff all such funds and property thus impressed with constructive trust for the benefit of Plaintiff and the Filipino people.

33. Second Cause of Action: ABUSE OF RIGHT AND POWER -

(a) Defendants, in perpetrating the unlawful acts described above, committed abuse of right and power which caused untold misery, sufferings and damages to Plaintiff. Defendants violated, among others Articles 19, 20, and 21 of the Civil Code of the Philippines;

(b) As a result of the foregoing acts, Defendants acquired the title to the beneficial interest in funds and other property and concealed such title, funds and interest through the use of relatives, business associates, nominees, agents, or dummies. Defendants are, therefore, solidarily liable to Plaintiff to return and reconvey all such funds and other property unlawfully acquired by them estimated at TWO HUNDRED BILLION PESOS, or alternatively, to pay Plaintiff, solidarily, by way of indemnity, the damage caused to Plaintiff equivalent to the amount of such funds or the value of other property not returned or restored to Plaintiff, plus interest thereon from the date of unlawful acquisition until full payment thereof.

34. Third Cause of Action: UNJUST ENRICHMENT -

Defendants illegally accumulated funds and other property whose estimated value is P200 billion in violation of the laws of the Philippines and in breach of their official functions and fiduciary obligations. Defendants, therefore, have unjustly enriched themselves to the grave and irreparable damage and prejudice of Plaintiff. Defendants have an obligation at law, independently of breach of trust and abuse of right and power, and as an alternative, to solidarily return to Plaintiff such funds and other property with which Defendants, in gross evident bad faith, have unjustly enriched themselves or, in default thereof, restore to Plaintiff the amount of such funds and the value of the other property including those which may have been wasted, and/or lost estimated at P200 billion with interest thereon from the date of unlawful acquisition until full payment thereof.

35. Fourth Cause of Action: ACCOUNTING -

The Commission, acting pursuant to the provisions of the applicable law, believe that Defendants, acting singly or collectively, in unlawful concert with one another, and with the active collaboration of third persons, subject of separate suits, acquired funds, assets and property during the incumbency of Defendant public officers, manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property. Consequently, they are required to show to the satisfaction of this Honorable Court that they have lawfully acquired all such funds, assets and property which are in excess of their legal net income, and for this Honorable Court to decree that the Defendants are under obligation to account to Plaintiff with respect to all legal or beneficial interests in funds, properties and assets of whatever kind and wherever located in excess of the lawful earnings or lawful income from legitimately acquired property.

36. Fifth Cause of Action - LIABILITY FOR DAMAGES -

(a) By reason of the unlawful acts set forth above, Plaintiff and the Filipino people have suffered actual

damages in an amount representing the pecuniary loss sustained by the latter as a result of the Defendants' unlawful acts, the approximate value and interest of which, from the time of their wrongful acquisition, are estimated at P200 billion plus expenses which Plaintiff has been compelled to incur and shall continue to incur in its effort to recover Defendants' ill-gotten wealth all over the world, which expenses are reasonably estimated at P250 million. Defendants are, therefore, jointly and severally liable to Plaintiff for actual damages in an amount reasonably estimated at P200 Billion Pesos and to reimburse expenses for recovery of Defendants' ill-gotten wealth estimated to cost P250 million or in such amount as are proven during the trial.

(b) As a result of Defendants' acts described above, Plaintiff and the Filipino people had painfully endured and suffered moral damages for more than twenty long years, anguish, fright, sleepless nights, serious anxiety, wounded feelings and moral shock as well as besmirched reputation and social humiliation before the international community.

(c) In addition, Plaintiff and the Filipino people are entitled to temperate damages for their sufferings which, by their very nature are incapable of pecuniary estimation, but which this Honorable Court may determine in the exercise of its sound discretion.

(d) Defendants, by reason of the above described unlawful acts, have violated and invaded the inalienable right of Plaintiff and the Filipino people to a fair and decent way of life befitting a Nation with rich natural and human resources. This basic and fundamental right of Plaintiff and the Filipino people should be recognized and vindicated by awarding nominal damages in an amount to be determined by the Honorable Court in the exercise of its sound discretion.

(e) By way of example and correction for the public good and in order to ensure that Defendants' unlawful, malicious, immoral and wanton acts are not repeated, said Defendants are solidarily liable to Plaintiff for exemplary damages.

In the meantime, the Pantranco Employees Association-PTGWO (PEA-PTGWO), a union of Pantranco employees, moved to intervene before the Sandiganbayan. The former alleged that the trust funds in the account of Pantranco North Express, Inc. (Pantranco) amounting to ₱55 million rightfully belonged to the Pantranco employees, pursuant to the money judgment the National Labor Relations Commission (NLRC) awarded in favor of the employees and against Pantranco. Thus, PEA-PTGWO contested the allegation of petitioner that the assets of Pantranco were ill-gotten because, otherwise, these assets would be returned to the government and not to the employees.

Thereafter, petitioner presented and formally offered its evidence against herein respondents. However, the latter objected to the offer primarily on the ground that the documents violated the best evidence rule of the Rules of Court, as these documents were unauthenticated; moreover, petitioner had not provided any reason for its failure to present the originals.

On 11 March 2002, the Sandiganbayan issued a Resolution[6] admitting the pieces of evidence while expressing some reservation, to wit:

WHEREFORE, taking note of the objections of accused Marcoses and the reply thereto by the plaintiff, all the documentary exhibits formally offered by the prosecution are hereby admitted in evidence; however, their evidentiary value shall be left to the determination of the Court.

SO ORDERED.

Imelda R. Marcos; Imee Marcos-Manotoc and Bongbong Marcos, Jr.; Irene Marcos-Araneta and Gregorio Ma. Araneta III; Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan; and the PEA-PTGWO subsequently filed their respective Demurrers to Evidence.

On 6 December 2005, the Sandiganbayan issued the assailed Resolution,[7] which granted all the Demurrers to Evidence except the one filed by Imelda R. Marcos. The dispositive portion reads:

WHEREFORE, premises considered, the Demurrer to Evidence filed by defendant Imelda R. Marcos is hereby DENIED. The Demurrer to Evidence filed by defendants Maria Imelda Marcos Manotoc, Ferdinand Marcos, Jr., Irene Marcos Araneta, Gregorio Maria Araneta III, Yeung Chun Kam, Yeung Chun Fan, Yeung Chun Ho, and intervenor PEA-PTGWO, are hereby GRANTED. The sequestration orders on the properties in the name of defendant Gregorio Maria Araneta III, are accordingly ordered lifted.

SO ORDERED.

The Sandiganbayan denied Imelda R. Marcos' Demurrer primarily because she had categorically admitted that she and her husband owned properties enumerated in the Complaint, while stating that these properties had been lawfully acquired. The court held that the evidence presented by petitioner constituted a prima facie case against her, considering that the value of the properties involved was grossly disproportionate to the Marcos spouses' lawful income. Thus, this admission and the fact that Imelda R. Marcos was the compulsory heir and administratrix of the Marcos estate were the primary reasons why the court held that she was responsible for accounting for the funds and properties alleged to be ill-gotten.

Secondly, the court pointed out that Rolando Gapud, whose deposition was taken in Hong Kong, referred to her as one directly involved in amassing ill-gotten wealth. The court also considered the compromise agreement between petitioner and Antonio O. Floirendo, who disclosed that he had performed several business transactions upon the instructions of the Marcos spouses.

With regard to the siblings Imee Marcos-Manotoc and Bongbong Marcos, Jr., the court noted that their involvement in the alleged illegal activities was never established. In fact, they were never mentioned by any of the witnesses presented. Neither did the documentary evidence pinpoint any specific involvement of the Marcos children.

Moreover, the court held that the evidence, in particular, exhibits "P,"[8] "Q,"[9] "R,"[10] "S,"[11] and "T,"[12] were considered hearsay, because their originals were not presented in court, nor were they authenticated by the persons who executed them. Furthermore, the court pointed out that petitioner failed to provide any valid reason why it did not present the originals in court. These exhibits were supposed to show the interests of Imee Marcos-Manotoc in the media networks IBC-13, BBC-2 and RPN-9, all three of which she had allegedly acquired illegally. These exhibits also sought to prove her alleged participation in dollar salting through De Soleil Apparel.

Finally, the court held that the relationship of respondents to the Marcos spouses was not enough reason to hold the former liable.

In the matter of the spouses Irene Marcos and Gregorio Araneta III, the court similarly held that there was no testimonial or documentary evidence that supported petitioner's allegations against the couple. Again, petitioner failed to present the original documents that supposedly supported the allegations against them. Instead, it merely presented photocopies of documents that sought to prove how the Marcoses used the Potencianos[13] as dummies in acquiring and operating the bus company Pantranco.

Meanwhile, as far as the Yeungs were concerned, the court found the allegations against them baseless. Petitioner failed to demonstrate how their business, Glorious Sun Fashion Garments Manufacturing, Co. Phils. (Glorious Sun), was used as a vehicle for dollar salting; or to show that they themselves were dummies of the Marcoses. Again, the court held that the documentary evidence relevant to this allegation was inadmissible for being mere photocopies, and that the affiants had not been presented as witnesses.

Finally, the court also granted the Demurrer filed by PEA-PTGWO. While the court held that there was no evidence to show that Pantranco was illegally acquired, the former nevertheless held that there was a need to first determine the ownership of the disputed funds before they could be ordered released to the rightful owner.

On 20 December 2005, petitioner filed its Motion for Partial Reconsideration, insisting that there was a preponderance of evidence to show that respondents Marcos siblings and Gregorio Araneta III had connived with their parents in acquiring ill-gotten wealth. It pointed out that respondents were compulsory heirs to the deposed President and were thus obliged to render an accounting and to return the ill-gotten wealth.

Moreover, petitioner asserted that the evidence established that the Yeungs were dummies of the Marcoses, and that the Pantranco assets were part of the Marcoses' alleged ill-gotten wealth.

Finally, petitioner questioned the court's ruling that the evidence previously admitted was later held to be inadmissible in evidence against respondents, thus, depriving the former of due process.

Inadvertently, petitioner was not able to serve a copy of the motion on respondents Imee Marcos-Manotoc and Bongbong Marcos, Jr. But upon realizing the oversight, it immediately did so and filed the corresponding Manifestation and Motion before the court. Nonetheless, this inadvertence prompted Imee Marcos-Manotoc and Bongbong Marcos, Jr. to file their Motion for Entry of Judgment.

On 2 March 2006, the court issued the second assailed Resolution,[14] denying petitioner's Motion. The court pointed out its reservation in its Resolution dated 12 March 2002, wherein it said that it would still assess and weigh the evidentiary value of the admitted evidence. Furthermore, it said that even if it included the testimonies of petitioner's witnesses, these were not substantial to hold respondents liable. Thus, the court said:

WHEREFORE, there being no sufficient reason to set aside the resolution dated December 6, 2005, the plaintiff's Motion for Partial Reconsideration is hereby DENIED. The plaintiff's Motion and Manifestation dated January 18, 2006 is GRANTED in the interest of justice. The Motion for Entry of Judgment filed by defendants Imee Marcos and Bongbong Marcos is DENIED.

SO ORDERED.

Hence, this Petition.

Petitioner raises the same issues it raised in its Motion for Reconsideration filed before the Sandiganbayan, to wit:[15]

- THE SANDIGANBAYAN ERRED IN GRANTING THE DEMURRER TO EVIDENCE FILED BY RESPONDENTS MA. IMELDA (IMEE) R. MARCOS AND FERDINAND (BONGBONG) R. MARCOS, JR., CONSIDERING THAT MORE THAN PREPONDERANT EVIDENCE ON RECORD CLEARLY DEMONSTRATES THEIR CONNIVANCE WITH FORMER PRESIDENT FERDINAND E. MARCOS AND OTHER MARCOS DUMMIES AND ABUSED THEIR POWER AND INFLUENCE IN UNLAWFULLY AMASSING FUNDS FROM THE NATIONAL TREASURY.
- PETITION PROVED, BY MORE THAN PREPONDERANT EVIDENCE, THAT RESPONDENT-SPOUSES GREGORIO ARANETA III AND IRENE MARCOS ARANETA CONNIVED WITH FORMER PRESIDENT MARCOS IN UNLAWFULLY ACQUIRING BUSINESS INTERESTS WHICH ARE GROSSLY DISADVANTAGEOUS TO THE GOVERNMENT, AND IN A MANNER PROHIBITED UNDER THE CONSTITUTION AND ANTI-GRAFT STATUTES.
- RESPONDENTS IMEE, BONGBONG, AND IRENE MARCOS ARE COMPULSORY HEIRS OF FORMER PRESIDENT MARCOS AND ARE EQUALLY OBLIGED TO RENDER AN ACCOUNTING AND RETURN THE ALLEGED ILL-GOTTEN WEALTH OF THE MARCOSES.

- THERE EXISTS CONCRETE EVIDENCE PROVING THAT RESPONDENTS YEUNG CHUN KAM, YEUNG CHUN FAN, AND YEUNG CHUN HO ACTED AS DUMMIES FOR THE MARCOSES, AND USED THE CORPORATION, GLORIOUS SUN, AS A CONDUIT IN AMASSING THE ILL-GOTTEN WEALTH. ACCORDINGLY, THE SANDIGANBAYAN ERRED IN GRANTING THEIR DEMURRER TO EVIDENCE.

- THE DEMURRER TO EVIDENCE FILED BY INTERVENOR PEA-PTGWO WITH RESPECT TO THE PANTRANCO ASSETS SHOULD NOT HAVE BEEN GRANTED SINCE AMPLE EVIDENCE PROVES THAT THE SAID ASSETS INDUBITABLY FORM PART OF THE MARCOS ILL-GOTTEN WEALTH, AS BUTTRESSED BY THE FACT THAT NO JUDICIAL DETERMINATION HAS BEEN MADE AS TO WHOM THESE ASSETS RIGHTFULLY BELONG.

- THE SANDIGANBAYAN'S RULING WHICH REJECTED PETITIONER'S DOCUMENTARY EXHIBITS ALLEGEDLY FOR BEING "INADMISSIBLE" DIRECTLY CONTRADICTS ITS EARLIER RULING ADMITTING ALL SAID DOCUMENTARY EVIDENCE AND WAS RENDERED IN A MANNER THAT DEPRIVED PETITIONER'S RIGHT TO DUE PROCESS OF LAW.

There is some merit in petitioner's contention.

The Marcos Siblings and  
Gregorio Araneta III

Closely analyzing petitioner's Complaint and the present Petition for Review, it is clear that the Marcos siblings are being sued in two capacities: first, as co-conspirators in the alleged accumulation of ill-gotten wealth; and second, as the compulsory heirs of their father, Ferdinand E. Marcos.[16]

With regard to the first allegation, as contained in paragraph 29 of its Third Amended Complaint quoted above, petitioner accused the Marcos siblings of having collaborated with, participated in, and/or benefitted from their parents' alleged accumulation of ill-gotten wealth. In particular, as far as Imee Marcos-Manotoc was concerned, she was accused of dollar salting by using Glorious Sun to import denim fabrics from one supplier at prices much higher than those paid by other users of similar materials. It was also alleged that the Marcoses personally benefitted from the sequestered media networks IBC-13, BBC-2, and RPN-9, in which Imee Marcos had a substantial interest.

Irene Marcos-Araneta, on the other hand, was accused of having conspired with her husband, respondent Gregorio Araneta III, in his being President Marcos' conduit to Pantranco, thereby paving the way for the President's ownership of the company in violation of Article VII, Section 4, paragraph 2 of the 1973 Constitution.[17]

To prove the general allegations against the Marcos siblings, petitioner primarily relied on the Sworn Statement[18] and the Deposition[19] of one of the financial advisors of President Marcos, Rolando C. Gapud, taken in Hong Kong on various dates.

Meanwhile, to prove the participation and interests of Imee Marcos-Manotoc in De Soleil Apparel and the media networks, petitioner relied on the Affidavits of Ramon S. Monzon,[20] Yeung Kwok Ying,[21] and Rodolfo V. Puno;[22] and the transcript of stenographic notes (TSN) taken during the PCGG hearing held on 8 June 1987.[23]

As to spouses Irene Marcos-Araneta and Gregorio Araneta III, petitioner submitted the Articles of Incorporation of Northern Express Transport, Inc.;[24] the Memorandum of Agreement[25] and the Purchase Agreement[26] between Pantranco and Batangas Laguna Tayabas Bus Company, Inc. (BLTBCo.); the Confidential Memorandum regarding the sale of the Pantranco assets;[27] the Affidavit[28] and the letter to the PCGG[29] of Dolores A. Potenciano, owner of BLTBCo.; the Affidavit[30] and the Memorandum[31] of Eduardo Fajardo, who was then

the Senior Vice-President of the Account Management Group of the Philippine National Bank (PNB), which was in turn the creditor for the Pantranco sale; and the Affidavit of Florencio P. Lucio, who was the Senior Account Specialist of the National Investment and Development Corporation.[32]

Petitioner contends that these documents fall under the Rule's third exception, that is, these documents are public records in the custody of a public officer or are recorded in a public office. It is its theory that since these documents were collected by the PCGG, then, necessarily, the conditions for the exception to apply had been met. Alternatively, it asserts that the "documents were offered to prove not only the truth of the recitals of the documents, but also of other external or collateral facts." [33]

#### The Court's Ruling

Petitioner failed to observe the best evidence rule.

It is petitioner's burden to prove the allegations in its Complaint. For relief to be granted, the operative act on how and in what manner the Marcos siblings participated in and/or benefitted from the acts of the Marcos couple must be clearly shown through a preponderance of evidence. Should petitioner fail to discharge this burden, the Court is constrained and is left with no choice but to uphold the Demurrer to Evidence filed by respondents.

First, petitioner does not deny that what should be proved are the contents of the documents themselves. It is imperative, therefore, to submit the original documents that could prove petitioner's allegations.

Thus, the photocopied documents are in violation Rule 130, Sec. 3 of the Rules of Court, otherwise known as the best evidence rule, which mandates that the evidence must be the original document itself. The origin of the best evidence rule can be found and traced to as early as the 18[th] century in *Omychund v. Barker*, [34] wherein the Court of Chancery said:

The judges and sages of the law have laid it down that there is but one general rule of evidence, the best that the nature of the case will admit.

The rule is, that if the writings have subscribing witnesses to them, they must be proved by those witnesses.

The first ground judges have gone upon in departing from strict rules, is an absolute strict necessity. Secondly, a presumed necessity. In the case of writings, subscribed by witnesses, if all are dead, the proof of one of their hands is sufficient to establish the deed: where an original is lost, a copy may be admitted; if no copy, then a proof by witnesses who have heard the deed, and yet it is a thing the law abhors to admit the memory of man for evidence.

Petitioner did not even attempt to provide a plausible reason why the originals were not presented, or any compelling ground why the court should admit these documents as secondary evidence absent the testimony of the witnesses who had executed them.

In particular, it may not insist that the photocopies of the documents fall under Sec. 7 of Rule 130, which states:

Evidence admissible when original document is a public record. ? When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

Secs. 19 and 20 of Rule 132 provide:

SECTION 19. Classes of documents. ? For the purpose of their presentation in evidence, documents are either public or private.

Public documents are:

- (a) The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
- (b) Documents acknowledged before a notary public except last wills and testaments; and
- (c) Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private.

SECTION 20. Proof of private document. -- Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

- (a) By anyone who saw the document executed or written; or
  - (b) By evidence of the genuineness of the signature or handwriting of the maker.
- Any other private document need only be identified as that which it is claimed to be.

The fact that these documents were collected by the PCGG in the course of its investigations does not make them per se public records referred to in the quoted rule.

Petitioner presented as witness its records officer, Maria Lourdes Magno, who testified that these public and private documents had been gathered by and taken into the custody of the PCGG in the course of the Commission's investigation of the alleged ill-gotten wealth of the Marcoses. However, given the purposes for which these documents were submitted, Magno was not a credible witness who could testify as to their contents. To reiterate, "[i]f the writings have subscribing witnesses to them, they must be proved by those witnesses." Witnesses can testify only to those facts which are of their personal knowledge; that is, those derived from their own perception.[35] Thus, Magno could only testify as to how she obtained custody of these documents, but not as to the contents of the documents themselves.

Neither did petitioner present as witnesses the affiants of these Affidavits or Memoranda submitted to the court. Basic is the rule that, while affidavits may be considered as public documents if they are acknowledged before a notary public, these Affidavits are still classified as hearsay evidence. The reason for this rule is that they are not generally prepared by the affiant, but by another one who uses his or her own language in writing the affiant's statements, parts of which may thus be either omitted or misunderstood by the one writing them. Moreover, the adverse party is deprived of the opportunity to cross-examine the affiants. For this reason, affidavits are generally rejected for being hearsay, unless the affiants themselves are placed on the witness stand to testify thereon.[36]

As to the copy of the TSN of the proceedings before the PCGG, while it may be considered as a public document since it was taken in the course of the PCGG's exercise of its mandate, it was not attested to by the legal custodian to be a correct copy of the original. This omission falls short of the requirement of Rule 132, Secs. 24 and 25 of the Rules of Court.[37]

In summary, we adopt the ruling of the Sandiganbayan, to wit:

Further, again contrary to the theory of the plaintiff, the presentation of the originals of the aforesaid exhibits is not validly excepted under Rule 130, Section 3 (a), (b), and (d) of the Rules of Court. Under paragraph (d), when 'the original document is a public record in the custody of a public officer or is recorded in a public office,' presentation of the original thereof is excepted. However, as earlier observed, all except one of the exhibits introduced by the plaintiff were not necessarily public documents. The transcript of stenographic notes (TSN) of the proceedings purportedly before the PCGG, the plaintiff's exhibit "Q", may be a public document, but what was presented by the plaintiff was a mere photocopy of the purported TSN. The Rules provide that when the original document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof. Exhibit "Q" was not a

certified copy and it was not even signed by the stenographer who supposedly took down the proceedings.

The rest of the above-mentioned exhibits cannot likewise be excepted under paragraphs (a) and (b) of Section 3. Section 5 of the same Rule provides that 'when the original documents has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.' Thus, in order that secondary evidence may be admissible, there must be proof by satisfactory evidence of (1) due execution of the original; (2) loss, destruction or unavailability of all such originals and (3) reasonable diligence and good faith in the search for or attempt to produce the original. None of these requirements were complied with by the plaintiff. Similar to exhibit 'Q', exhibits 'P', 'R', 'S', and 'T' were all photocopies. 'P', 'R', and 'T' were affidavits of persons who did not testify before the Court. Exhibit 'S' is a letter which is clearly a private document. Not only does it not fall within the exceptions of Section 3, it is also a mere photocopy. As We previously emphasized, even if originals of these affidavits were presented, they would still be considered hearsay evidence if the affiants do not testify and identify them.[38]

Thus, absent any convincing evidence to hold otherwise, it follows that petitioner failed to prove that the Marcos siblings and Gregorio Araneta III collaborated with former President Marcos and Imelda R. Marcos and participated in the first couple's alleged accumulation of ill-gotten wealth insofar as the specific allegations herein were concerned.

The Marcos siblings are compulsory heirs.

To reiterate, in its third Amended Complaint, petitioner prays that the Marcos respondents be made to (1) pay for the value of the alleged ill-gotten wealth with interest from the date of acquisition; (2) render a complete accounting and inventory of all funds and other pieces of property legally or beneficially held and/or controlled by them, as well as their legal and beneficial interest therein; (3) pay actual damages estimated at P200 billion and additional actual damages to reimburse expenses for the recovery of the alleged ill-gotten wealth estimated at P250 million or in such amount as may be proven during trial; (4) pay moral damages amounting to P50 billion; (5) pay temperate and nominal damages, as well as attorney's fees and litigation expenses in an amount to be proven during the trial; (6) pay exemplary damages in the amount of P1 billion; and (7) pay treble judicial costs.[39]

It must be stressed that we are faced with exceptional circumstances, given the nature and the extent of the properties involved in the case pending with the Sandiganbayan. It bears emphasis that the Complaint is one for the reversion, the reconveyance, the restitution and the accounting of alleged ill-gotten wealth and the payment of damages. Based on the allegations of the Complaint, the court is charged with the task of (1) determining the properties in the Marcos estate that constitute the alleged ill-gotten wealth; (2) tracing where these properties are; (3) issuing the appropriate orders for the accounting, the recovery, and the payment of these properties; and, finally, (4) determining if the award of damages is proper.

Since the pending case before the Sandiganbayan survives the death of Ferdinand E. Marcos, it is imperative therefore that the estate be duly represented. The purpose behind this rule is the protection of the right to due process of every party to a litigation who may be affected by the intervening death. The deceased litigant is himself protected, as he continues to be properly represented in the suit through the duly appointed legal representative of his estate.[40] On that note, we take judicial notice of the probate proceedings regarding the will of Ferdinand E. Marcos. In *Republic of the Philippines v. Marcos II*, [41] we upheld the grant by the Regional Trial Court (RTC) of letters testamentary in solidum to Ferdinand R. Marcos, Jr. and Imelda Romualdez-Marcos as executors of the last will and testament of the late Ferdinand E. Marcos.

Unless the executors of the Marcos estate or the heirs are ready to waive in favor of the state their right to defend or protect the estate or those properties found to be ill-gotten in their possession, control or ownership, then they may not be dropped as defendants in the civil case pending before the Sandiganbayan.

Rule 3, Sec. 7 of the Rules of Court defines indispensable parties as those parties-in-interest without whom there can be no final determination of an action. They are those parties who possess such an interest in the controversy that a final decree would necessarily affect their rights, so that the courts cannot proceed without their presence. Parties are indispensable if their interest in the subject matter of the suit and in the relief sought is inextricably intertwined with that of the other parties.[42]

In order to reach a final determination of the matters concerning the estate of Ferdinand E. Marcos - that is, the accounting and the recovery of ill-gotten wealth - the present case must be maintained against Imelda Marcos and herein respondent Ferdinand "Bongbong" R. Marcos, Jr., as executors of the Marcos estate pursuant to Sec. 1 of Rule 87 of the Rules of Court. According to this provision, actions may be commenced to recover from the estate, real or personal property, or an interest therein, or to enforce a lien thereon; and actions to recover damages for an injury to person or property, real or personal, may be commenced against the executors.

We also hold that the action must likewise be maintained against Imee Marcos-Manotoc and Irene Marcos-Araneta on the basis of the non-exhaustive list attached as Annex "A" to the Third Amended Complaint, which states that the listed properties therein were owned by Ferdinand and Imelda Marcos and their immediate family.[43] It is only during the trial of Civil Case No. 0002 before the Sandiganbayan that there could be a determination of whether these properties are indeed ill-gotten or were legitimately acquired by respondents and their predecessors. Thus, while it was not proven that respondents conspired in accumulating ill-gotten wealth, they may be in possession, ownership or control of such ill-gotten properties or the proceeds thereof as heirs of the Marcos couple. Thus, their lack of participation in any illegal act does not remove the character of the property as ill-gotten and, therefore, as rightfully belonging to the State.

Secondly, under the rules of succession, the heirs instantaneously became co-owners of the Marcos properties upon the death of the President. The property rights and obligations to the extent of the value of the inheritance of a person are transmitted to another through the decedent's death.[44] In this concept, nothing prevents the heirs from exercising their right to transfer or dispose of the properties that constitute their legitimes, even absent their declaration or absent the partition or the distribution of the estate. In *Jakosalem v. Rafols*,[45] we said:

Article 440 of the Civil Code provides that "the possession of hereditary property is deemed to be transmitted to the heir without interruption from the instant of the death of the decedent, in case the inheritance be accepted." And Manresa with reason states that upon the death of a person, each of his heirs "becomes the undivided owner of the whole estate left with respect to the part or portion which might be adjudicated to him, a community of ownership being thus formed among the coowners of the estate while it remains undivided." (3 Manresa, 357; *Alcala vs. Alcala*, 35 Phil. 679.) And according to article 399 of the Civil Code, every part owner may assign or mortgage his part in the common property, and the effect of such assignment or mortgage shall be limited to the portion which may be allotted him in the partition upon the dissolution of the community. Hence, in the case of *Ramirez vs. Bautista*, 14 Phil. 528, where some of the heirs, without the concurrence of the others, sold a property left by their deceased father, this Court, speaking thru its then Chief Justice Cayetano Arellano, said that the sale was valid, but that the effect thereof was limited to the share which may be allotted to the vendors upon the partition of the estate. (Emphasis supplied)

Lastly, petitioner's prayer in its Third Amended Complaint directly refers to herein respondents, to wit:

1. AS TO THE FIRST SECOND AND THIRD CAUSES OF ACTION - To return and reconvey to Plaintiff all funds and other property acquired by Defendants during their incumbency as public officers, which funds

and other property are manifestly out of proportion to their salaries, other lawful income and income from legitimately acquired property which Defendants have failed to establish as having been, in fact, lawfully acquired by them, alternatively, to solidarily pay Plaintiff the value thereof with interest thereon from the date of acquisition until full payment.

2. AS TO THE FOURTH CAUSE OF ACTION - to individually render to this Honorable Court a complete accounting and inventory, subject to evaluation of Court-appointed assessors, of all funds and other property legally or beneficially held and/or controlled by them, as well as their legal and beneficial interest in such funds and other property. (Emphasis supplied)

In sum, the Marcos siblings are maintained as respondents, because (1) the action pending before the Sandiganbayan is one that survives death, and, therefore, the rights to the estate must be duly protected; (2) they allegedly control, possess or own ill-gotten wealth, though their direct involvement in accumulating or acquiring such wealth may not have been proven.

Yeung Chun Kam, Yeung Chun  
Ho And Yeung Chun Fan

It is worthy to note that respondents draw our attention to *American Inter-Fashion Corporation v. Office of the President*[46] in which they contend that this Court considered the allegation of dollar salting as baseless. The cited case, however, finds no application herein as the former merely ruled that Glorious Sun was denied due process when it was not furnished by the Garments and Textile Export Board (GTEB) any basis for the cancellation of the export quota because of allegations of dollar salting. That Decision did not prevent petitioner from adducing evidence to support its allegation in Civil Case No. 0002 before the Sandiganbayan under a different cause of action.

Nevertheless, the allegations against Yeung Chun Kam, Yeung Chun Ho and Yeung Chun Fan in the case at bar were also proved to be baseless. Again, petitioner failed to illustrate how respondents herein acted as dummies of the Marcoses in acquiring ill-gotten wealth. This Court notes that the Complaint against the Yeungs alleges that the Marcoses used Glorious Sun - the garment company in which the Yeungs are controlling stockholders - for illegal dollar salting through the company's importation of denim fabrics from only one supplier at prices much higher than those being paid by other users of similar materials. Notably, no mention of De Soleil Apparel was made.

To prove its allegations, petitioner submitted the controverted Exhibits "P," "Q," "R," "S," and "T." As earlier discussed in detail, these pieces of evidence were mere photocopies of the originals and were unauthenticated by the persons who executed them; thus, they have no probative value. Even the allegations of petitioner itself in its Petition for Review are bereft of any factual basis for holding that these documents undoubtedly show respondents' participation in the alleged dollar salting. The pertinent portion of the Petition reads:

To illustrate, the Affidavit dated May 29, 1987 executed by Mr. Ramon Monzon which was submitted as Exhibit P, showed that respondent Imee Marcos-Manotoc owns and controls IBC-13, BBC-2 and (R)PN-9, and has interest in the De Soleil Apparel. The testimony of Mr. Ramon Monzon during the hearing on June 8, 1987 before the Presidential Commission on Good Government as shown in the Transcript of Stenographic Notes also affirmed his declarations in the Affidavit dated May 29, 1987. The Transcript of Stenographic Notes dated June 8, 1987 was presented as Exhibit Q. Moreover, the Affidavit dated March 21, 1986 of Yeung Kwok Ying which was presented as Exhibit R disclosed that Imee Marcos-Manotoc is the owner of 67% equity of De Soleil Apparel. The letter dated July 17, 1984 signed by seven (7) incorporators of De Soleil Apparel, addressed to Hongkong investors which was presented as Exhibit S confirmed that the signatories hold or own 67% equity of the corporation in behalf of the beneficial owners previously disclosed to the addressees. In

addition to the foregoing documents, petitioner presented the Affidavit of Rodolfo V. Puno, Chairman of the Garments and Textile Export Group (GTEB) as Exhibit T wherein he categorically declared that the majority of De Soleil Apparel was actually owned by respondent Imee Marcos-Manotoc.[47]

The foregoing quotation from the Petition is bereft of any factual matter that warrants a consideration by the Court. Straight from the horse's mouth, these documents are only meant to show the ownership and interest of Imee Marcos Manotoc in De Soleil - and not how respondent supposedly participated in dollar salting or in the accumulation of ill-gotten wealth.

### **PEA-PTGWO**

The PEA-PTGWO Demurrer to Evidence was granted primarily as a consequence of the prosecution's failure to establish that the assets of Pantranco were ill-gotten, as discussed earlier. Thus, we find no error in the assailed Order of the Sandiganbayan.

#### **A Final Note**

As earlier adverted to, the best evidence rule has been recognized as an evidentiary standard since the 18<sup>th</sup> century. For three centuries, it has been practiced as one of the most basic rules in law. It is difficult to conceive that one could have finished law school and passed the bar examinations without knowing such elementary rule. Thus, it is deeply disturbing that the PCGG and the Office of the Solicitor General (OSG) - the very agencies sworn to protect the interest of the state and its people - could conduct their prosecution in the manner that they did. To emphasize, the PCGG is a highly specialized office focused on the recovery of ill-gotten wealth, while the OSG is the principal legal defender of the government. The lawyers of these government agencies are expected to be the best in the legal profession.

However, despite having the expansive resources of government, the members of the prosecution did not even bother to provide any reason whatsoever for their failure to present the original documents or the witnesses to support the government's claims. Even worse was presenting in evidence a photocopy of the TSN of the PCGG proceedings instead of the original, or a certified true copy of the original, which the prosecutors themselves should have had in their custody. Such manner of legal practice deserves the reproof of this Court. We are constrained to call attention to this apparently serious failure to follow a most basic rule in law, given the special circumstances surrounding this case.

The public prosecutors should employ and use all government resources and powers efficiently, effectively, honestly and economically, particularly to avoid wastage of public funds and revenues. They should perform and discharge their duties with the highest degree of excellence, professionalism, intelligence and skill.[48]

The basic ideal of the legal profession is to render service and secure justice for those seeking its aid.[49] In order to do this, lawyers are required to observe and adhere to the highest ethical and professional standards. The legal profession is so imbued with public interest that its practitioners are accountable not only to their clients, but to the public as well.

The public prosecutors, aside from being representatives of the government and the state, are, first and foremost, officers of the court. They took the oath to exert every effort and to consider it their duty to assist in the speedy and efficient administration of justice.[50] Lawyers owe fidelity to the cause of the client and should be mindful of the trust and confidence reposed in them.[51] Hence, should serve with competence and diligence.[52]

We note that there are instances when this Court may overturn the dismissal of the lower courts in instances when it is shown that the prosecution has deprived the parties their due process of law. In *Merciales v. Court of Appeals*,[53] we reversed the Decision of the RTC in dismissing the criminal case for rape with homicide. In that

case, it was very apparent that the public prosecutor violated the due process rights of the private complainant owing to its blatant disregard of procedural rules and the failure to present available crucial evidence, which would tend to prove the guilt or innocence of the accused therein. Moreover, we likewise found that the trial court was gravely remiss in its duty to ferret out the truth and, instead, just "passively watched as the public prosecutor bungled the case."

However, it must be emphasized that Merciales was filed exactly to determine whether the prosecution and the trial court gravely abused their discretion in the proceedings of the case, thus resulting in the denial of the offended party's due process. Meanwhile, the present case merely alleges that there was an error in the Sandiganbayan's consideration of the probative value of evidence. We also note that in Merciales, both the prosecution and the trial court were found to be equally guilty of serious nonfeasance, which prompted us to remand the case to the trial court for further proceedings and reception of evidence. Merciales is thus inapplicable to the case at bar.

Nevertheless, given the particular context of this case, the failure of the prosecution to adhere to something as basic as the best evidence rule raises serious doubts on the level and quality of effort given to the government's cause. Thus, we highly encourage the Office of the President, the OSG, and the PCGG to conduct the appropriate investigation and consequent action on this matter.

WHEREFORE, in view of the foregoing, the Petition is **PARTIALLY GRANTED**. The assailed Sandiganbayan Resolution dated 6 December 2005 is **AFFIRMED** with **MODIFICATION**. For the reasons stated herein, respondents Imelda Marcos-Manotoc, Irene Marcos-Araneta, and Ferdinand R. Marcos, Jr. shall be maintained as defendants in Civil Case No. 0002 pending before the Sandiganbayan.

Let a copy of this Decision be furnished to the Office of the President so that it may look into the circumstances of this case and determine the liability, if any, of the lawyers of the Office of the Solicitor General and the Presidential Commission on Good Government in the manner by which this case was handled in the Sandiganbayan.

### **SO ORDERED.**

Brion,[\*] (Acting Chairperson), Villarama, Jr.,[\*\*] Perez, and Reyes, JJ., concur.

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[\*] In lieu of Associate Justice Antonio T. Carpio who inhibited from the case.

\*\* Additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated 30 January 2012.

[1] Penned by Associate Justice Gregory S. Ong, with Associate Justices Jose R. Hernandez and Rodolfo A. Ponferrada, concurring; rollo, pp. 119-246.

[2] Rollo, pp. 742-778.

[3] Id. at 763-765.

[4] Presidential Decree No. 1883, Sec. 2 defines "salting of foreign exchange" as when any person engaged in the business of exporting underdeclares or undervalues his exports, either as to price or quantity, or any person engaged in the business of importation overvalues or overdeclares his importations, either as to price or quantity, for the purpose of salting and retaining foreign exchange abroad in violation of existing laws and Central Bank rules and regulations.

[5] Rollo, pp. 765-771.

[6] Rollo, pp. 796-800.

[7] Id. at 119-236.

[8] Affidavit of Ramon S. Monzon.

[9] TSN taken during the hearing held before the PCGG on the 6[th] Floor, Philcomcen Building, Ortigas Avenue, Pasig, Metro Manila, on 8 June 1987.

[10] Affidavit of Yeung Kwok Ying.

[11] Letter of Paulino Petralba to Yeung Chun Kam, Yeung Chun Ho, and Arcie Chan.

[12] Affidavit of Rodolfo V. Puno.

[13] Max B. Potenciano, Max Joseph A. Potenciano, and Dolores A. Potenciano were owners of Batangas Laguna Tayabas Bus Company (BLTBCo.). In line with the government's privatization program, the assets of Pantranco were sold to the BLTBCo. in 1985. The Potencianos thereafter incorporated Pantranco as a private corporation.

[14] Rollo, pp. 237-246.

[15] Id. at 55-57.

[16] Attached as Annex "A" to the Complaint is a list of assets and other properties purported to be owned by Ferdinand E. Marcos, Imelda R. Marcos, and their immediate family.

[17] (2) The President and the Vice-President shall not, during their tenure, hold any other office, except when otherwise provided in this Constitution, nor may they practice any profession, participate directly or indirectly in any business, or be financially interested directly or indirectly in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporation.

[18] Rollo, pp. 318-325.

[19] Id. at 350-455.

[20] Id. at 247-255.

[21] Id. at 313.

[22] Id. at 316-317.

[23] Id. at 256-312.

[24] Id. at 456-473.

[25] Id. at 475-479.

[26] Id. at 480-493.

[27] Id. at 494.

[28] Id. at 497-503.

[29] Id. at 504-507.

[30] Id. at 512-515.

[31] Id. at 516-519.

[32] Id. at 526-528.

[33] Id. at 65.

**[34] 26 E.R. 15 (1745).**

[35] Rules of Court, Rule 130, Sec. 36.

[36] People's Bank and Trust Company v. Leonidas, G.R. No. 47815, 11 March 1992, 207 SCRA 164.

[37] SECTION 24. Proof of official record. -- The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in a foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

SECTION 25. What attestation of copy must state. -- Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

[38] Rollo, pp. 221-222.

[39] Id. at 771-773.

[40] Sumaljag v. Spouses Literato, G.R. No. 149787, 18 June 2008, 555 SCRA 53.

[41] G.R. Nos. 130371 & 130855, 4 August 2009, 595 SCRA 43.

[42] Macababba, Jr. v. Masirag, G.R. No. 161237, 14 January 2009, 576 SCRA 70.

[43] Rollo, pp. 776-778.

[44] Civil Code, Art. 774.

[45] 73 Phil. 628 (1942).

[46] 274 Phil. 691 (1991).

[47] Id. at 58-59.

[48] R.A. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees, Sec. 4(a) and (b).

[49] Mayer v. State Bar, 2 Cal.2d, 71.

[50] Code of Professional Responsibility, Canon 12.

[51] Id., Canon 17.

[52] Id., Canon 18.

[53] 429 Phil. 70 (2002).

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