

**HERMINIO T. DISINI, PETITIONER, VS. THE HONORABLE
SANDIGANBAYAN, THE REPUBLIC OF THE PHILIPPINES, AS
REPRESENTED BY THE OFFICE OF THE SOLICITOR GENERAL (OSG),
AND THE PRESIDENTI...**

G.R. No. 175730. July 05, 2010

Ponente: DEL CASTILLO, J.

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DEL CASTILLO, J.:

The simultaneous availment of judicial remedies from different fora for exactly the same ultimate relief and involving the same issue constitutes forum-shopping. It is a prohibited malpractice, condemned for trifling with the courts and their processes.

The Case

The instant Petition for Certiorari and Prohibition[1] under Rule 65 of the Rules of Court seeks to:

- Annul the December 18, 2006 Resolution of the Sandiganbayan (respondent court), which denied petitioner's Motion to Lift Default Order and to Admit Answer, and consequently allowed respondent Republic to present evidence ex-parte in Civil Case No. 0013 entitled "Republic of the Philippines v. Herminio T. Disini, et al.;"
- Annul the orders or declarations made by the Sandiganbayan in open court during the hearing of December 8, 2006, which prevented petitioner from commenting ad cautelam on the Republic's Urgent Manifestation and Motion (hereinafter the Urgent Manifestation and Motion) to Present Evidence Ex-Parte;[2]
- Prohibit the Sandiganbayan from continuing with the ex-parte proceedings and rendering a judgment by default;
- Secure injunctive relief to enjoin the Sandiganbayan from conducting further proceedings in Civil Case No. 0013 and from rendering judgment on the basis of the ex-parte proceedings; and
- Declare null and void all the proceedings conducted as against petitioner because of lack of jurisdiction over his person, violation of his Constitutional rights to due process and fair play, and the arbitrary acts of respondent court which effectively ousted it of jurisdiction to hear the case.[3]

In sum, petitioner assails the Sandiganbayan's refusal to set aside its Order of Default against petitioner, as well as its acts which allegedly reveal its inclination to "railroad" the proceedings and render a precipitate judgment by default against petitioner.[4]

Factual Antecedents

On July 23, 1987, the Republic (through the Presidential Commission on Good Government [PCGG]) filed with the Sandiganbayan a civil complaint for reconveyance, reversion, accounting, restitution, and damages against petitioner Herminio T. Disini (Disini), spouses Ferdinand and Imelda Marcos (Marcos spouses) and Rodolfo B. Jacob (Jacob).[5] The same was docketed as Civil Case No. 0013 and assigned to the First Division of the

Sandiganbayan (respondent court). Summons for Disini was issued on July 29, 1987.[6] Per Sheriff's Return dated September 4, 1987,[7] the summons[8] was unserved on the ground that petitioner did not live at the given address, which was No. 92 Kennedy St., Greenhills, San Juan, Metro Manila. The occupants of said address were the Roman family.

On August 26, 1987,[9] the Complaint was amended[10] to include Rafael A. Sison (Sison) as a party-defendant.[11]

The Amended Complaint alleged that Disini acted in unlawful concert with his co-defendants in acquiring and accumulating ill-gotten wealth through the misappropriation of public funds, plunder of the nation's wealth, extortion, embezzlement, and other acts of corruption.[12]

The Sandiganbayan issued summons on the Amended Complaint on September 3, 1987.[13] On September 15, 1987, the Sandiganbayan Deputy Sheriff proceeded to the same address, No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila. Again, the summons was returned unserved for the reason that the Roman family occupied the said residence.[14]

In the meantime, petitioner's co-defendants, Sison[15] and Jacob,[16] filed their respective answers, while the Marcos spouses were declared in default[17] for failure to file their responsive pleadings despite valid service of summons.[18]

After the lapse of two years without any progress in the case, Jacob filed an Omnibus Motion for the Sandiganbayan to either set the case for pre-trial or to dismiss the same with respect to Jacob for failure to prosecute.[19] Jacob argued that there was no excuse for the delay in prosecuting the case. He reasoned that, if summons could not be served on his co-defendant Disini within a reasonable time, the prosecution should have moved to exclude Disini from the complaint so that the case could be disposed of one way or another instead of being left pending indefinitely.

The Sandiganbayan denied Jacob's motion.[20] It held that the Republic had not lacked in efforts to ascertain Disini's whereabouts; hence, there is no basis to rule that it failed to prosecute the case. Nevertheless, it ordered the Republic to furnish the court with the correct address of petitioner or to file a motion to show the reasonability of expecting Disini to be summoned.

In response, the Republic filed a Manifestation that it is still in the process of securing alias summonses for the unserved defendants and will take steps to serve summons by publication.[21]

On October 11, 1990, the Republic moved to drop Jacob as party-defendant considering that he will testify as a witness for the Republic in its ill-gotten wealth cases both here and abroad.[22] It also sought several times to suspend the pre-trial on various grounds such as the PCGG's vacillation regarding the grant of immunity in favor of Jacob[23] and the Republic's admission that it still could not ascertain Disini's whereabouts for purposes of service of summons. The Republic explained that it was still trying to exhaust all efforts to make a personal or substituted service of summons through the help of the Philippine consulate office in Austria, where Disini is believed to be residing.[24]

On August 4, 1994, the Sandiganbayan resolved to grant the dismissal of the complaint against Jacob with prejudice and ordered him dropped as party-defendant.[25]

When it appeared that pre-trial could finally continue in 1995, the Republic again moved for several resetting of pre-trial for reasons such as looking at the possibility of granting immunity to petitioner's other co-defendant, Sison, and the unavailability of the solicitor assigned to the case.[26]

After displaying utmost liberality in the past as regards the postponement of the pre-trial, the Sandiganbayan issued a strongly-worded Order on January 17, 1997, on which date the Republic was still not ready to submit Sison's affidavit for the consideration of the court. The Order reads:

Over the year, the matter of the affidavit [of Sison] remains unresolved. In the end, this case is sought once more to be reset with no visible product for the effort.

Under the circumstances, should no action be taken thereon with finality on or before March 14, 1997, the Court will assume that the government is not disposed to prosecute this matter and will dismiss the case.[27]

Heeding the Sandiganbayan's warning, the Office of the Solicitor General filed its Manifestation and Urgent Motion to Drop Rafael Sison as Party-Defendant on March 14, 1997.[28]

A year later, on April 8, 1998, the Republic filed an Ex Parte Motion for Leave to Serve Summons by Publication.[29] It stated that resort to service by publication was needed because they could not ascertain Disini's whereabouts despite diligent efforts to do so. While this motion was awaiting resolution five months later, the Republic filed an Urgent Ex Parte Motion for Issuance of Alias Summons.[30] It allegedly received information that Disini had returned to the Philippines and could be served with summons at No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila. Alias summons was issued but was returned unserved on the ground that Disini did not occupy the said house, which belonged to the Roman family.[31] Receiving information that Disini was often seen at No. 35 Buchanan Street, Greenhills, San Juan, Metro Manila, the sheriff proceeded to the new address only to find that it belonged to petitioner's cousin, Jesus Disini.[32]

Failing to serve summons personally on Disini, the Republic filed an Urgent Motion to Resolve Motion for Leave to Serve Summons by Publication on October 3, 2001.[33] While awaiting the resolution of the Urgent Motion, the Republic again received information that petitioner has been regularly seen at the Wack Wack Golf and Country Club in Mandaluyong City and at No. 57 Flamingo Street, Greenmeadows Subdivision, Quezon City. Thus, the Republic sought again the issuance of alias summons, without prejudice to the resolution of its previous Motion for Leave for Issuance of Summons by Publication.[34] The Sandiganbayan issued an alias summons for Disini, but it was returned unserved.

On February 6, 2002, the Republic filed a Motion to Resolve (Ex Parte Motion for Leave to Serve Summons by Publication).[35] The same was granted[36] and on April 23, 2002, the summons and the Amended Complaint were published in People's Tonight, with a copy sent by registered mail to Disini's last known address, No. 92 Kennedy Street, Greenhills, San Juan, Metro Manila.[37] By August 27, 2002, petitioner was declared in default for failure to file his responsive pleading within 60 days from the publication of the summons.[38]

Since three of the party-defendants (Ferdinand Marcos, Imelda Marcos, and petitioner) had been declared in default, while one was dropped to become state witness (Jacob), Sison remained as the sole defendant who could participate in Civil Case No. 0013. Given that there was a pending motion to drop Sison also as party-defendant, the Republic asked the Sandiganbayan to resolve the said motion so that they could proceed with the ex parte presentation of evidence.[39] The said motion was submitted for resolution on September 20, 2002.[40]

On February 17, 2003, with the motion to drop Sison as party-defendant still pending, the Republic asked the Sandiganbayan to hold in abeyance the pre-trial until the said motion had been resolved.[41] On February 27, 2003, the Sandiganbayan clerk of court sent notice of the cancellation of the pre-trial set for March 4, 2003.[42]

The records of the Sandiganbayan became silent from the year 2003 to 2006, revealing an inaction that would only be broken by a foreign court that imposed a deadline on the freeze orders of the Disini Swiss accounts. This development began when petitioner Disini's wife and children filed a petition[43] in a Swiss Federal Court to

remove a previously issued freeze order on their Swiss accounts. On August 18, 2006, the Swiss Federal Court rendered a partial decision^[44] ordering the counsel for the Republic of the Philippines to submit a forfeiture order from a Philippine court with regard to the assets of Liliana and Herminio Disini not later than December 30, 2006; otherwise, the Swiss Federal Court would revoke the freeze order on the Disini Swiss accounts.^[45]

This deadline apparently spurred the Republic (through the PCGG) to file an Urgent Manifestation and Motion^[46] with the Sandiganbayan on November 30, 2006. The Republic prayed for the resolution of its Urgent Motion to Resolve (its motion to drop Rafael Sison as party-defendant).^[47] Should the resolution of this pending motion be favorable to the Republic, it likewise prayed for the setting of the ex parte presentation of evidence at an early date.

On December 7, 2006, petitioner Disini filed a Motion to Lift Order of Default and for Leave to File and Admit Attached Answer,^[48] together with an Answer to Amended Complaint with Compulsory Counterclaims.^[49] He maintained that he was unaware of the civil case pending against him because he never received summons or other processes from the court, nor any pleadings from the parties of the case. His only fault, he averred, was that he was ignorant of the proceedings in the case because of the absence of a proper notice. Petitioner asked the respondent court to look at his meritorious defenses. He then invoked the liberality of the courts in lifting default orders to give both parties every opportunity to defend their cases, and pointed out that the proceedings, being in their pre-trial stage, would not be delayed by petitioner's participation therein.

Petitioner's Answer contained affirmative defenses such as the respondent court's failure to acquire jurisdiction over his person through service by publication and the failure of the Amended Complaint to state a cause of action against him.

With the two motions pending before it, the Sandiganbayan heard the Republic on its Urgent Manifestation and Motion on December 8, 2006. Petitioner Disini's lawyers were present during the hearing but were not allowed to participate therein because of the prevailing default order against Disini. The Sandiganbayan issued the following Order at the end of the said hearing:

This morning, the Court heard the arguments of the counsel for [respondent] regarding the latter's "Urgent Manifestation and Motion" dated November 29, 2006. The Court also gave the [respondent] a non-extendible period of three days counted from today within which to file its comment on the Motion to Lift Order of Default filed by [petitioner] Disini, and the latter is given a non-extendible period of three days from December 11, 2006 or until December 14, 2006, within which to file his reply to the comment of the [respondent], after which the incident shall be considered submitted for resolution without need of oral arguments. The Court will act on the [respondent]'s "Urgent Manifestation and Motion" dated November 29, 2006 after the Court has resolved the Motion to Lift Order of Default.

x x x x^[50]

On December 11, 2006, the Republic filed its Comment/Opposition^[51] stating that it exhausted all efforts to ascertain the whereabouts of petitioner Disini. Failing to do so, the Republic resorted to service of summons by publication. This mode of service is allowed under Sections 14 and 15 of Rule 14 considering that the forfeiture case is in rem and the defendant's address is unknown. The Republic explained that it filed its Ex Parte Motion for Leave to Serve Summons by Publication because it received information that petitioner had already gone to Austria. Clearly then, Disini was no longer a resident of the Philippines. The Republic reiterated that the service of summons by publication is proper considering that what is involved is a forfeiture case, an action in rem, under Republic Act No. 1379, in relation to Executive Order (EO) Nos. 1, 2, 14, and 14-A all issued by President Corazon C. Aquino.

As for petitioner's allegation that the Republic was aware of Disini's address as shown by the fact that summons were properly served at his correct address[52] in two criminal cases pending before the same First Division of the Sandiganbayan, the Republic pointed out that these criminal cases were filed on June 30, 2004, while respondent's Ex Parte Motion for Leave to Serve Summons by Publication was filed on April 8, 1998. Hence, at the time the Republic asked for service by publication, it was not yet aware of petitioner's correct address. Since petitioner failed to file his answer to a validly served Amended Complaint, the motion to lift the order of default is utterly lacking merit.

Petitioner Disini filed his Reply on December 14, 2006[53] basically expounding on the arguments he stated in his Motion to Lift.

On December 15, 2006, the Sandiganbayan granted PCGG's motion to drop Sison as party-defendant in Civil Case No. 0013,[54] leaving only the defaulted defendants (i.e., the Marcos spouses and petitioner Disini) as parties to the case.

Ruling of the Sandiganbayan (Assailed Resolution)

On December 18, 2006, the Sandiganbayan resolved to deny[55] petitioner's Motion to Lift Default Order.

The Sandiganbayan held that the Republic exerted diligence in ascertaining petitioner's whereabouts as evidenced by the two motions it filed for the issuance of alias summons. The Sandiganbayan looked favorably at the Republic's efforts to personally serve the summons on petitioner despite the pendency of its Ex Parte Motion for Leave to Serve Summons by Publication. It held that the Republic's determination to serve summons at the places where the petitioner was last heard of to reside belies the petitioner's claim that the Republic had intended to mislead the court into service by publication all along. The Sandiganbayan likewise held that the rules for a valid service of summons by publication were observed.

The Sandiganbayan did not find any indication that the Republic knew petitioner's actual residence when it sought leave to serve summons by publication in 1998 and 2001.

As for the argument that publication is not proper because the action is in personam, the Sandiganbayan ruled that Civil Case No. 0013 is an action in rem for which service by publication is proper. The case is in rem because it involves the forfeiture of ill-gotten wealth based on EO No. 2,[56] EO No. 14[57] and No. 14-A[58] promulgated by former President Corazon Aquino by virtue of her legislative authority. It cited the case of Republic v. Sandiganbayan and Marcos[59] where the Court ruled that forfeiture proceedings are civil actions in rem.

Given the validity of the service of summons, the respondent court held that petitioner's failure to file a responsive pleading within the allotted period resulted in his default. The respondent court refused to lift the order of default on the ground that there was no fraud, accident, mistake or excusable negligence that would justify such an action.

Petitioner then filed an Extremely Urgent Motion for Reconsideration[60] and an Extremely Urgent Manifestation and Motion[61] on December 19, 2006. Aside from asking for reconsideration, petitioner also prayed that the republic's ex parte presentation of evidence be held in abeyance until the resolution of his motion for reconsideration.

Petitioner's motions were set for hearing on December 20, 2006 but the said hearing did not take place. Instead, the Sandiganbayan issued the following orders on December 19 and 20, 2006 respectively:

Considering the difficulty in obtaining a quorum for the purpose of hearing the Extremely Urgent Manifestation and Motion dated December 18, 2006 of [petitioner] Herminio T. Disini, the Court resolves to cancel the hearing on the abovesaid motion on December 20, 2006, and instead require the [respondent] to file

its written comment on the above-said motion on or before December 22, 2006, after which the motion shall be deemed submitted for resolution.[62]

Considering the difficulty in obtaining a quorum for the purpose of hearing the Extremely Urgent Motion for Reconsideration dated December 19, 2006 of [petitioner] Herminio T. Disini which was filed at the close of office hours on December 19, 2006, the Court resolves to cancel the hearing on the above-said motion on December 20, 2006, and instead require the [respondent] to file its written comment on the above-said motion within a non-extendible period of three (3) days from receipt thereof, after which the motion shall be deemed submitted for resolution, unless the parties or the Court will set the matter for hearing anew after the submission of the above comment.[63]

The Republic's ex parte presentation of evidence held before the Sandiganbayan Executive Clerk of Court began on December 20, 2006 as evidenced by the transcript.[64] While petitioner was not allowed to participate in the said proceedings, he was notified thereof and his counsels were present to observe the same.

On December 22, 2006, petitioner filed this Petition for Certiorari. On January 2, 2007, he filed a Supplement to the Petition for Certiorari and Prohibition[65] protesting the continuation of the ex parte proceedings before the Sandiganbayan as a grave abuse of discretion amounting to lack of jurisdiction. He also filed a Second Supplemental Petition on January 5, 2007.[66]

Proceedings before the Sandiganbayan during the pendency of the instant Petition for Certiorari and Prohibition

On August 7, 2007, the Sandiganbayan issued its Resolution[67] denying petitioner's Extremely Urgent Motion for Reconsideration for lack of merit.

The Republic presented 10 witnesses.[68] It filed its Formal Offer of Evidence dated October 17, 2008, which offer was admitted in the Resolution dated December 3, 2008.[69] On February 11, 2009, the Republic filed its Memorandum.[70]

On July 7, 2009, despite the pendency of his Petition for Certiorari and Prohibition with the Supreme Court, petitioner filed with the Sandiganbayan a Second Motion to Lift the Order of Default[71] dated August 27, 2002 - the very same Order which is now at the heart of the present petition.

On September 8, 2009, petitioner filed with the Sandiganbayan a Motion to Expunge or Cross-Examine Plaintiff's Witnesses.[72] On September 15, 2009, he also filed a Motion to Expunge Evidence Presented Before the Clerk of Court.[73]

On September 23, 2009, petitioner filed with this Court a Motion for Leave to File Supplemental Memorandum,[74] which was denied in a Resolution dated September 30, 2009.[75]

On October 15, 2009, petitioner filed with the Sandiganbayan a Motion to Expunge Rolando Gapud's Deposition taken on October 18-20, 1995.[76] On October 19, 2009, he filed a Motion to Expunge or Cross-Examine Plaintiff's witnesses.[77]

On February 18, 2010, petitioner filed with the Sandiganbayan a Supplement to the Second Motion to Lift the Order of Default dated August 27, 2002 with Motion to Take Judicial Notice.[78] On March 4, 2010, he filed a Motion for Leave to Take Deposition.[79]

Issues

Petitioner raised the following issues for our consideration:

- Whether the Sandiganbayan court gravely abused its discretion in not lifting its default order against petitioner Disini

- Whether the Sandiganbayan court gravely abused its discretion when it allowed the Republic to present its evidence ex-parte while petitioner's Motion for Reconsideration [of the stay of the default order] had not yet been resolved.[80]

Our Ruling

Issue of Validity of Service of Summons

Mooted by Voluntary Appearance

In his Petition, petitioner originally sought the nullification of the proceedings before the Sandiganbayan on the theory of lack of jurisdiction over his person, premised on the alleged impropriety in the service of summons.

However, petitioner subsequently filed several motions with the Sandiganbayan which sought various affirmative reliefs from that court, sans any qualification of the nature of its appearance and without reserving or reiterating its previous objection on the ground of lack of jurisdiction over the person. These motions are:

- (a) Motion to Expunge Exhibits "A," "B," "C," "D," "E," "XX," "YY," "ZZ," "EE," and their Submarkings or Cross-Examine Plaintiff's Witness,[81] which sought to expunge various affidavits of the Republic's witnesses;
- (b) Motion to Expunge Evidence Presented Before the Clerk of Court,[82] which prayed that all the evidence presented before the clerk of court be stricken off the records for being taken in violation of the Rules;
- (c) Motion to Expunge Gapud's Deposition taken on 18-20 October 1995,[83] which sought to remove from the records the deposition offered by the Republic;
- (d) Motion to Expunge Exhibits "FFF" and "GGG",[84] which sought to strike off the mentioned exhibits of respondents and asked the Sandiganbayan to permit petitioner to cross-examine witness Jesus Disini;
- (e) Motion for Consolidation,[85] which prayed that Civil Case No. 0013 be consolidated with Criminal Case Nos. 28001 and 28001; and
- (f) Motion for Leave to Take Deposition based on Section 1 of Rule 23 (Depositions Pending Action or De Benne Esse).[86]

In regard to the last mentioned Motion for Leave to Take Deposition[87] (which is the last pleading on record), it is important to note that there are two instances when the defendant can take depositions under Section 1 of Rule 23: (1) after the court has acquired jurisdiction over the defendant or the property subject of the action; and (2) after an answer has been served. Both instances presuppose that the court has already acquired jurisdiction over the defendant. By seeking the relief contained in this provision, petitioner is deemed to have voluntarily submitted himself to the jurisdiction of the Sandiganbayan. Thus, petitioner may be held to have waived his objections regarding the lack of jurisdiction over his person by seeking affirmative relief through the said provision.

While petitioner bewailed the mode of service of summons on him and questioned the Sandiganbayan's jurisdiction over his person, he has rendered his own arguments moot by his voluntary appearance or submission to the jurisdiction of the Sandiganbayan. Jurisprudence holds that an objection based on lack of jurisdiction over the person is waived when the defendant files a motion or pleading which seeks affirmative relief other than the dismissal of the case.[88]

Issue of Non-Lifting of Default Order

Dismissed for Forum-shopping

When petitioner filed this Petition on December 22, 2006 assailing the Sandiganbayan's December 18, 2006 Resolution, the latter was still the subject of a pending Extremely Urgent Motion for Reconsideration filed by

petitioner with the Sandiganbayan. The filing of the instant petition before this Court while a motion for reconsideration was still pending before the Sandiganbayan constitutes, strictly speaking, forum-shopping,[89] which could have warranted the outright dismissal of the petition. However, in light of the due process issues raised by petitioner and the very real possibility that he had no other speedy remedy available to him, his Petition was given due course.

Inexplicably, and in continuing disregard of the rules on forum-shopping and judicial courtesy, petitioner raised again the same issue (validity of the default order and the propriety of lifting said default order) in a Second Motion to Lift the Order of Default dated August 27, 2002 which he filed with the Sandiganbayan after the latter denied his Extremely Urgent Motion for Reconsideration.

This Second Motion to Lift the Order of Default was filed on July 27, 2009, admittedly during the pendency of the instant Petition. Both remedies seek from different fora exactly the same ultimate relief (lifting of the default order issued by the Sandiganbayan) and raise the same issue (validity of the default order and the propriety of lifting said default order). In availing himself of these two remedies, petitioner has engaged in forum-shopping.

There is forum shopping when one party repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely, by some other court.[90] Forum shopping is a prohibited malpractice and condemned as trifling with the courts and their processes.[91] It is proscribed because it unnecessarily burdens the courts with heavy caseloads, and unduly taxes the manpower and financial resources of the judiciary.[92] It is inimical to the orderly administration of justice as it creates the possibility of conflicting decisions being rendered by two courts,[93] and opens the system to the possibility of manipulation.[94]

In filing a Second Motion to Lift the Order of Default with the Sandiganbayan while the instant Petition is pending with this Court, petitioner has unfairly doubled his chances of securing the lifting of the default order. "This misdeed amounts to a wagering on the result of [petitioner's] twin devious strategies, and shows not only [his] lack of faith in this Court in its evenhanded administration of law but also [his] expression of disrespect if not ridicule for our judicial process and orderly procedure." [95]

The situation here is strikingly similar to that in *People v. Sandiganbayan*. [96] In that case, the petitioner had filed with the Sandiganbayan a motion for consolidation of a bribery case with a plunder case. The Sandiganbayan refused, leading the petitioner to file a petition for certiorari with this Court. While the said petition was pending with this Court, the petitioner filed another motion for consolidation with the Sandiganbayan, praying anew for the consolidation of the bribery case with a plunder case. The motion raised the same issues and prayed for the same remedy as the pending petition with this Court, namely, the consolidation of the bribery case and the plunder case. The Court held that "such move clearly constitutes forum-shopping."

This is almost exactly what happened in the instant case. Petitioner had filed with the Sandiganbayan a motion to lift default order. The Sandiganbayan refused, leading petitioner to file a petition for certiorari with this Court. While the said petition was pending with this Court, petitioner filed another motion to lift default order with the Sandiganbayan, praying anew for the lifting of the default order. Thus, following the ruling in *People v. Sandiganbayan*, we rule that petitioner's actuations clearly constitute forum-shopping.

Because of the forum-shopping committed by petitioner, the Court cannot grant the relief he prayed for.

Certiorari is an improper remedy

Petitioner imputes grave abuse of discretion on the Sandiganbayan for allegedly "railroading" the proceedings in

violation of his right to due process and fair trial. More specifically, petitioner points out that when the Sandiganbayan denied his Motion to Lift Order of Default (December 18, 2006), he immediately filed an Extremely Urgent Motion for Reconsideration (December 19, 2006). However, before the latter could be resolved, the Sandiganbayan allowed the ex-parte presentation of evidence to proceed (December 20, 2006). This prompted petitioner to file the instant Petition with this Court two days later (December 22, 2006).

While it may have been more convenient if the Sandiganbayan resolved first the Extremely Urgent Motion for Reconsideration before allowing the ex-parte presentation of evidence, we cannot say that the course taken by the Sandiganbayan constitutes grave abuse of discretion. We cannot infer from the Sandiganbayan's deliberate speed that it was done to prejudice petitioner. There was adequate justification for the Sandiganbayan's resolve to finish the twenty-year old forfeiture case with dispatch. Aside from the length of time that Civil Case No. 0013 has stagnated in the dockets, the Republic's manifestation (that a resolution was necessary by December 30, 2006 in order to maintain the Swiss Federal Court's freeze order on petitioner's Swiss accounts) is reason enough not to further delay the case as a matter of public interest. Besides, it should be remembered that when the Sandiganbayan received evidence ex-parte on December 20, 2006, petitioner was still in default and his Motion to Lift Default Order has already been denied. The ex-parte presentation of evidence on December 20, 2006 was simply consistent with petitioner's default status as of that time.

Grave abuse of discretion refers to such "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. The actions of the Sandiganbayan were not thus tainted under the circumstances we described above. Thus, we cannot accept petitioner's contention that the proceedings taken below must be nullified because of the alleged "railroading" by the Sandiganbayan.

Moreover, Rule 65 petitions for certiorari are extraordinary remedies available only when there is grave abuse of discretion amounting to lack of jurisdiction and the petitioner has no other plain, speedy, and adequate remedy for correcting such abuse.[97]

By filing a Second Motion to Lift the Order of Default and the various motions seeking the Sandiganbayan's correction of the perceived errors during the Republic's ex parte presentation of evidence, petitioner has revealed his belief that he had adequate remedies before the Sandiganbayan. A resort to a Rule 65 petition is, under the premises, improper.

WHEREFORE, the Petition for Certiorari is DISMISSED. Costs against petitioner.

SO ORDERED.

Corona, C.J., (Chairperson), Carpio,[*] Velasco, Jr., and Perez, JJ., concur.

[*] In lieu of Associate Justice Teresita J. Leonardo-De Castro, per raffle dated June 28, 2010.

[1] Rollo, pp. 3-75.

[2] Sandiganbayan rollo, Vol. IV, pp. 470-475. The Urgent Manifestation and Motion prays for the resolution of PCGG's earlier motion to drop Sison as party-defendant (filed on September 17, 2002; id. at 374-377; considered submitted for resolution by virtue of Sandiganbayan's Order dated September 20, 2002; id. at 411) and the motion-to-intervene filed by strangers to the amended complaint (filed September 15, 2006; id. at 428-432). In the

event that these motions are resolved in PCGG's favor, they also pray that they be allowed to present evidence ex-parte.

[3] Rollo, pp. 852-853.

[4] Id. at 853.

[5] Sandiganbayan rollo, Vol. I, pp. 1-22.

[6] Id. at 23.

[7] Id. at 72.

[8] Id. at 23.

[9] Sandiganbayan Resolution dated August 26, 1987, id. at 68.

[10] Id. at 44-66.

[11] Id. at 41-43.

[12] The portions of the Amended Complaint that pertain to petitioner are as follows:

4. Defendant HERMINIO T. DISINI is a close associate of defendant Ferdinand E. Marcos and the husband of the first cousin of Defendant Imelda R. Marcos. By reason of this relationship, defendant Herminio Disini was awarded by defendant Ferdinand E. Marcos the tobacco filter monopoly. It was from the said monopoly that the former first derived his fortune. In the same token, at the behest of defendant Ferdinand E. Marcos, the corporations under Defendant Herminio Disini became the beneficiaries of rescue funds infused by the government to the tune of several billion pesos. Later, said defendant Herminio Disini obtained staggering commissions from the Westinghouse in exchange for securing the nuclear plant contract from the Philippine government. Said defendant may be served with summons and other court processes at his last known address at 92 Kennedy St., Greenhills, San Juan, Metro Manila. Defendant Herminio T. Disini is temporarily outside, even as he remains a resident and citizen of the Philippines.[12]

x x x x

13. Defendants Herminio T. Disini and Rodolfo Jacob, by themselves and/or in unlawful concert, active collaboration and willing participation of defendants Ferdinand E. Marcos and Imelda R. Marcos, and taking undue advantage of their association and influence with the latter defendant spouses in order to prevent disclosure and recovery of ill-gotten assets, engaged in devices, schemes, and stratagems such as:

(a) acted as the above defendant spouses' dummy, nominee and/or agent in acquiring and exercising control of several corporations, such as: (1) Herdis Group of Companies, (2) Energy Corporation, (3) Vulcan Industrial Mining, (4) United Oriental Bank, (5) Three-M;

(b) unlawfully obtained favored loans and rescue funds from government financing institutions, under terms and conditions grossly and manifestly disadvantageous to plaintiff and the Filipino people;

(c) unlawfully utilizing the Herdis Group of Companies and Asia Industries, Inc. as conduits through which defendants received, kept, and/or invested improper payments such as unconscionably large commissions from foreign corporations like the Westinghouse Corporation;

(d) secured special concessions, privileges and/or benefits from defendants Ferdinand E. Marcos and Imelda R. Marcos, such as a contract awarded to Westinghouse Corporation which built an inoperable nuclear facility in the country for a scandalously exorbitant amount that included defendant's staggering commissions - defendant

Rodolfo Jacob executed for HGI the contract for the aforesaid nuclear plant;

(e) participated in numerous stratagems and devices to prevent disclosure and to avoid discovery of their unabated plunder of the public treasury by, among others, acting as conduits to siphon out of the country illegally acquired assets of defendants Ferdinand E. Marcos and Imelda R. Marcos, through Fe Roa Gimenez, a defendant in a separate suit;

(f) obtained, with the active collaboration of defendant Rafael A. Sison, from the Development Bank of the Philippines (DBP) huge amounts in peso and foreign currency denominated loans and guarantees in favor of Cellophil Resources Corporation, a corporation beneficially held and controlled by Defendant Herminio T. Disini, in violation of duly approved DBP policies on allowable collateral ratios, maximum allowable exposure and standard conditions for loans and guarantee accommodations. (Amended Complaint, pp. 11-13; Sandiganbayan rollo, Vol. I, pp. 54-56)

[13] Sandiganbayan rollo, Vol. I, p. 70.

[14] *Id.* at 81.

[15] Filed on November 18, 1987 (*Id.* at 100-106).

[16] Filed on February 14, 1989 (*Id.* at 323-336).

[17] Sandiganbayan Resolution dated June 23, 1989 (*Id.* at 490-505).

[18] *Marcos v. Garchitorena*, G.R. Nos. 90110-43, February 22, 1990 (unsigned resolution).

[19] Sandiganbayan rollo, Vol. I, pp. 570-571.

[20] Resolution dated October 26, 1989. Sandiganbayan rollo, Vol. II, p. 10.

[21] *Id.* at 56-57.

[22] Sandiganbayan rollo, Vol. III, pp. 12-13.

[23] *Id.* at 80-83 and 120-121.

[24] *Id.* at 20-22.

[25] *Id.* at 292-308.

[26] *Id.* at 542, 561-562, 567; Sandiganbayan rollo, Vol. IV, pp. 24-25, 69-70, 78, 90-91.

[27] Sandiganbayan rollo, Vol. IV, pp. 195-196.

[28] *Id.* at 201-202.

[29] *Id.* at 243-244.

[30] Filed on September 11, 1998, *id.* at 251-252.

[31] Sheriff's Return, *id.* at 258-259.

[32] Sheriff's Return, *id.* at 258-259.

[33] *Id.* at 285-287.

[34] Filed on November 8, 2001, *id.* at 292-294.

[35] *Id.* at 299-301.

[36] Id. at 318-319.

[37] Id. at 343-344.

[38] Id. at 365-366.

[39] Id. at 374-377.

[40] Id. at 411.

[41] Id. at 418-421.

[42] Id. at 423.

[43] Entitled Pacienca Escolin-Disini, Liliana and Herminio Angel Disini, and Lea Disini vs. District Attorney I of the Canton of Zurich, Section B, Superior Court of the Canton of Zurich, 3rd Criminal Chamber, and the Republic of the Philippines. Id. at 476-492.

[44] Id. at 476-492.

[45] The relevant portion of the Swiss Federal Court decision, as translated into English, reads as follows:

Facts of the Case

A.

In April 1986, the Republic of the Philippines requested the Swiss authorities for judicial assistance in the repatriation of assets which had been misappropriated by Ferdinand E. Marcos, his family members and persons close to him in the exercise of their official functions. This group of persons includes Herminio T. Disini. On April 7, 1986, the Solicitor General of the Philippines initiated a criminal investigation against him.

On October 21, 1986, the Office of the Investigating Judge of Canton Fribourg ordered the accounts of Herminio T. Disini blocked.

B.

With the requests for judicial assistance dated March 20, 1989 and July 11, 1991, the Republic of the Philippines also requested the blocking of the accounts of family members of Herminio T. Disini and return of the corresponding account records.

By an order dated October 14, 1991, the Investigating Judge of Canton Fribourg granted the request, ordered the referenced accounts of Schweizerische Volksbank (now: Credit Suisse) under the names of Pacienca Escolin-Disini (the wife of Herminio T. Disini), Herminio Angel Disini (the son of Herminio T. Disini) and his wife Liliana, and Lea Disini (the daughter of Herminio T. Disini) to be blocked. The account records were delivered to the Republic of the Philippines on November 8, 1999.

Subsequently, a number of requests by the account holders to release the blocked assets were rejected.

x x x x

D.

On December 21, 2004, the account holders filed another petition demanding the release of their accounts stating that there were no criminal or civil proceedings pending in the Philippines for which judicial assistance could be

provided. The [Cantonal] Attorney's Office dismissed the petition by Herminio Angel and Liliana Disini, Paciencia Escolin-Disini and Lea Disini on August 30, 2005 referring to a report by the Philippines dated June 10, 2005 ("Status Report") which stated that a number of criminal and forfeiture proceedings were pending against Herminio T. Disini.

x x x x

The Supreme Court considers:

x x x x

5.3 The appellants' account records were sent to the Philippines as early as 1991. As such, the Philippines have already had all of the records necessary to confiscate the appellants' assets blocked in Switzerland.

The Philippine forfeiture proceeding (Civil Case No. 0013) was initiated in 1987, that is 19 years ago. According to the Philippine authorities, Herminio T. Disini was declared in default on August 27, 2002 after he had allegedly prevented the service of court summonses for years and thereby blocked the case. Nonetheless, the case is still pending in the pre-trial phase.

x x x x

5.4 However, after the account block has been maintained for so long without the Philippines ever indicating a term for the conclusion of the forfeiture proceeding, it appears - also in light of Art. 3 par. 3 of the Judicial Assistance Treaty - appropriate to provide the Republic of the Philippines with a final opportunity to reach a forfeiture decision concerning the appellants' assets.

Therefore the counsel of the Philippines is granted until December 31, 2006 to submit to the Supreme Court at least a lower court forfeiture decision concerning the appellants' assets blocked in Switzerland. Until then, the Supreme Court case will be stayed. After expiration of this period, the Supreme Court will revoke the block on the accounts of Liliana and Herminio Angel Disini if no forfeiture order has been handed down or if the submitted decision does not meet the minimum requirements of Art. 74a IRSG.

x x x x

Thus the Federal Court decides

1.

To the legal representative of the Republic of the Philippines is given a time limit until December 31, 2006 in order to file a *erstinstanzlichen Einziehungsentscheid* (first instance decision) with regard to the assets of Liliana and Herminio Angel Disini which are blocked in Switzerland.

x x x x

[46] Sandiganbayan rollo, Vol. IV, pp. 470-475.

[47] It also included a motion to resolve the Motion to Intervene filed by third parties, who claim equitable ownership of a piece of real estate, which was included in the list of sequestered assets of Disini. This Motion to Intervene was eventually dismissed on the ground that the property over which the movants claim an interest is not among the properties in litigation in Civil Case No. 0013. Sandiganbayan rollo, Vol. V, pp. 120-123.

[48] Id. at 5-21.

[49] Id. at 22-64.

[50] Id. at 74-A. Signed by Presiding Justice Teresita J. Leonardo-De Castro, Diosdado M. Peralta, Efren N. Dela

Cruz.

[51] Id. at 80-99.

[52] The correct address of Herminio T. Disini was No. 1 Lark Street, Greenmeadows, Quezon City.

[53] Sandiganbayan rollo, Vol. V, pp. 100-129.

[54] Id. at 124-127.

[55] Id. at 131-138.

[56] Dated March 12, 1986.

[57] Dated May 7, 1986.

[58] Dated August 18, 1986.

[59] 416 SCRA 133, 141.

[60] Sandiganbayan rollo, Vol. V, pp. 140-169.

[61] Id. at 170-175.

[62] Id. at 197. Issued on December 19, 2006.

[63] Id. at 198. Issued on December 20, 2006.

[64] Id. at 200-206.

[65] Id. at 312-328.

[66] Rollo, pp. 533-590.

[67] Sandiganbayan rollo, Vol. VII, pp. 420-434.

[68] Stephen Tanchuling on December 22, 2006; Ma. Lourdes Magno y Oliveros on January 9, 2007; Danilo Daniel on January 25, 2007; Angelito Vicente Manahan on February 14, 2007; Rafael Sison on March 26, 2007; Maria Cristina Beronilla on August 1, 2007; Rodolfo Jacob on January 12, 2007; Jesus Jose Vergara on January 15, 2007; Ricardo Valera Paras on August 14, 2007; and Jesus Disini on August 8, 2008.

[69] Sandiganbayan rollo, Vol. X, p. 2.

[70] Id. at 25-83.

[71] Id. at 101-205.

[72] Id. at 342-355.

[73] Id. at 356-361.

[74] Rollo, pp. 1229-1242.

[75] Id. at 1245-1246.

[76] Sandiganbayan rollo, Vol. XI, pp. 56-69.

[77] Id. at 146-176.

[78] Id. at 321-342.

[79] Id. at 378-386.

[80] Rollo, p. 870.

[81] Filed on September 8, 2009. Sandiganbayan, rollo, Vol. X, pp. 342-355.

[82] Filed on September 15, 2009. Id. at 356-361.

[83] Filed on October 15, 2009. Sandiganbayan rollo, Vol. XI, pp. 56-69.

[84] Filed on October 19, 2009. Id. at 146-176.

[85] Filed on February 8, 2010. Id. at 302-311.

[86] Filed on March 4, 2010. Id. at 378-386.

[87] Id.

[88] Philippine Commercial International Bank v. Spouses Dy, G.R. No. 171137, June 5, 2009, 588 SCRA 612, 629..

[89] Montes v. Court of Appeals, G.R. No. 143797, May, 4, 2006, 489 SCRA 432-443, 439-440; Go v. Looyuko, G.R. Nos. 147923, 147962 & 154035, October 26, 2007, 537 SCRA 445, 477-478; Madara v. Hon. Perello, G.R. No. 172449, August 20, 2008, 562 SCRA 638-659, 654-655.

[90] Feliciano v. Villasin, G.R. No. 174929, June 27, 2008, 556 SCRA 348-373, 370.

[91] Chemphil Export & Import Corporation v. Court of Appeals, 321 Phil. 619, 655-656 (1995).

[92] Abines v. Bank of the Philippine Islands, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 428.

[93] Tan v. Court of Appeals, G.R. No. 164966, June 8, 2007, 524 SCRA 306, 318, citing Top Rate Construction & General Services, Inc. v. Paxton Development Corporation, 457 Phil. 740, 748 (2003).

[94] Madara v. Hon. Perello, *supra* note 89.

[95] Top Rate Construction & General Services, Inc. v. Paxton Development Corporation, *supra* note 93 at 760.

[96] 456 Phil. 707, 718 (2003).

[97] RULES OF COURT, Rule 65, Section 1.

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