

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. SANDIGANBAYAN, BIENVENIDO R. TANTOCO, JR., DOMINADOR R. SANTIAGO, FERDINAND E. MARCOS, IMELDA MARCOS, BIENVENIDO R. TANTOCO, SR., GL...

G.R. No. 188881. April 21, 2014

Ponente: SERENO, C.J.

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SERENO, C.J.:

This Petition for Certiorari under Rule 65 of the Rules of Court seeks to nullify the Sandiganbayan Resolution dated 3 June 2009 in Civil Case No. 0008.[1] The Second Division of the graft court denied admission of Exhibits “MMM” to “AAAAAAA” in the Formal Offer of Evidence filed by petitioner Republic.[2]

Twenty four years ago, the Republic, through the Presidential Commission on Good Government (PCGG), commenced a complaint[3] for “reconveyance, reversion, accounting, restitution and damages” against Bienvenido R. Tantoco, Jr. (Tantoco), Dominador R. Santiago (Santiago), Ferdinand E. Marcos, Imelda, R. Marcos, Bienvenido R. Tantoco, Sr., Gliceria R. Tantoco, and Maria Lourdes Tantoco-Pineda. Instead of filing an Answer, respondents Tantoco and Santiago filed a “Motion To Strike Out Some Portions of the Complaint and For Bill of Particulars,” which were both denied for lack of bases.

On 27 July 1989, Tantoco and Santiago filed with the Sandiganbayan a pleading denominated “Interrogatories to Plaintiff.” A month later, they filed both an “Amended Interrogatories to Plaintiff” and a Motion for Production and Inspection of Documents. This time, the Sandiganbayan admitted the Amended Interrogatories and granted the Motion for Production and Inspection of Documents. When the PCGG elevated the issue to the Supreme Court, this Court, through then Justice Andres R. Narvasa, affirmed the Orders of the Sandiganbayan in this wise:

The Court finally finds that, contrary to the petitioner's theory, there is good cause for the production and inspection of the documents subject of the motion dated August 3, 1989. Some of the documents are, according to the verification of the amended complaint, the basis of several of the material allegations of said complaint. Others, admittedly, are to be used in evidence by the plaintiff. It is matters such as these into which inquiry is precisely allowed by the rules of discovery, to the end that the parties may adequately prepare for pre-trial and trial. xxx.

x x x x

WHEREFORE, the petition is DENIED, without pronouncement as to costs. The temporary restraining order issued on October 27, 1989 is hereby LIFTED AND SET ASIDE. SO ORDERED.[4]

Pre-trial commenced, and from 3 January to 14 July 1993, the PCGG produced documents pre-marked as Exhibit “A” to “LLL” before Atty. Renato T. Bocar and respondents’ counsel.[5] On 10 September 1996, the pre-trial was declared closed.[6] On 23 and 25 September 1996, the temporary markings of Exhibits “A” to “LLL,” together with their sub-markings, were adopted. However, over the objections of respondents Tantoco and

Santiago, the PCGG produced and caused the pre-marking of additional documents, Exhibits “MMM” to “AAAAAAA.”[7]

Tantoco and Santiago filed a “Motion under Rule 29 of the Rules of Court,” claiming that the additional documents were never produced at the discovery proceedings and praying that petitioner be sanctioned for contempt. The Sandiganbayan denied the motion on 17 February 1997 (First Resolution).[8] Trial proceeded; however, new documents not shown at discovery were still being marked. Tantoco and Santiago again filed a “Motion to Ban Plaintiff From Offering Exhibits Not Earlier Marked During the Discovery Proceedings,” which the graft court denied on 29 May 2002.[9]

Petitioner filed its Formal Offer of Evidence on 16 March 2007.[10] On 15 January 2008, the Sandiganbayan ruled that with the exception of some documents,[11] “all Exhibits... are denied admission. The due execution and authenticity of these documents remain challenged since the prosecution failed to show otherwise.”[12] On petitioners’ Motion for Reconsideration, the Sandiganbayan partly relented and admitted Exhibits “MMM” to “AAAAAAA” (Second Resolution).[13] As certified to by the Chief Administrative Officer of the PCGG,[14] Exhibits “MMM” to “AAAAAAA” were turned over to its Legal Division and include the following:

Exh. MMM

Memorandum for Hon. Teodoro Pena, signed by Juan C. Tuvera

Xerox

NNN

Undated handwritten letter purportedly written by Glecy R. Tantoco

No remarks whether original or photocopy

OOO

Letter to Ferdinand E. Marcos from Bienvenido Tantoco with handwritten marginal note dated 8 May 1982

No remarks whether original or photocopy

PPP

Undated letter to “Mam” from “Glecy”

Xerox

QQQ

(missing)

(missing)

RRR

Proclamation No. 50 dated Dec. 15, 1986, signed by Pres. Corazon Aquino

From APT

RRR

Complaint filed by RP thru Asset Privatization Trust (APT) against Rustan Investment & Management Corporation

Xerox

SSS

Administrative Order No. 14 dated Feb. 3, 1987 signed by Pres. Corazon Aquino

From APT

SSS

Answer with Compulsory Counterclaim filed by Rustan Investment & Management Corporation

Xerox

TTT

Contract dated Feb. 27, 1987 by and between RP and DEBP

No remarks whether original or photocopy

TTT

Order- Civil Case No. 89-5268, RP v. Rustan Investment

From APT

UUU

Order- Civil Case No. 89-5268, RP v. Rustan Investment

From APT

VVV

(missing)

(missing)

WWW

Eastern Inspection Bureau for Phil. Eagle Mines, Inc. dated Oct. 18, 1989

From APT

XXX

Letter dated Dec. 20, 1990 for Asset Privatization Trust from Dominador R. Santiago

Xerox

YYY- YYY-22

Articles of Incorporation of Rustan Investment & Management Corp. dated Feb. 21, 1966

Xerox

YYY-23-YYY-33

Certificate of Filing of Amended Articles of Incorporation dated Nov. 20, 1981

Xerox

ZZZ

NBI Questioned Documents Report No. 729-1101 dated Jan. 21, 2002

Original

AAAA-1

Undated, handwritten note signed by Ferdinand Marcos

Malacañang Lib

AAAA-2

Memo for the Pres. Dated 23 Jul 79 with handwritten markings

Malacañang Lib

AAAA-3

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-4

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-5

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-6

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-7

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-8-11

Handwritten note dated Dec. 28, 1978 Office of the President stationery paper

Malacañang Lib

AAAA-12-17

Handwritten note Office of the President stationery paper

Malacañang Lib

AAAA-18

Handwritten note dated Jan. 7, 1978 Office of the President stationery paper

Malacañang Lib

AAAA-19-25

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-27-29

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-30-34

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

AAAA-35-41

Handwritten note Office of the President stationery paper (undated)

Malacañang Lib

BBBB-1a-1b

Microfilm of "Questioned" documents

No remarks whether original or photocopy

BBBB-2-7

Microfilm of "Questioned" documents

No remarks whether original or photocopy

BBBB-8-12

Microfilm of "Questioned" documents

No remarks whether original or photocopy

BBBB-13-20

Microfilm of "Questioned" documents

No remarks whether original or photocopy

BBBB-21-28

Microfilm of "Questioned" documents

No remarks whether original or photocopy

BBBB-29-33

Microfilm of "Questioned" documents

No remarks whether original or photocopy

CCCC-1-11

Executive Summary of Phil. Eagle Mines, Inc.

Xerox

DDDD-1-28

SEC Records of Phil. Eagle Mines, Inc.

Xerox

EEEE-1-13

TSN – Evelyn Singson

Xerox

FFFF-1-13

Affidavit of Evelyn R. Singson dated Aug. 18, 1986

Xerox

GGGG-1-6

SBTC (Security Bank and Trust Company) bank documents/ credit ticket/ certificate of deposit/telegraphic transfer/ telex/ money transfer

PCGG Lib

HHHH-1-9

SBTC debit tickets/ transmittal documents/ telexes

PCGG Lib

IIII-1-5

SBTC debit tickets/ telexes/ wire transfers

PCGG Lib

JJJJ-1-7

SBTC debit tickets/ wire transfers/ telexes/ transmittal letters

PCGG Lib

KKKK-1-4

SBTC debit tickets/ transmittal documents/ Irving Trust documents

PCGG Lib

LLLL-1-4

SBTC debit tickets/ transmittal documents/ Irving Trust documents

PCGG Lib

MMMM-1-3

SBTC debit tickets/ transmittal documents/ Irving Trust documents

PCGG Lib

NNNN-1-3

SBTC debit tickets/ transmittal documents/ Irving Trust documents

PCGG Lib

OOOO-1-6

SBTC debit tickets/ transmittal documents/ Irving Trust documents

PCGG Lib

PPPP-1-2

SBTC money transfers/ telex

PCGG Lib

QQQQ-1-2

SBTC money transfers/ telex

PCGG Lib

RRRR-1-2

SBTC debit tickets/ money transfers/ telex

PCGG Lib

SSSS- SSSS-2

SBTC debit tickets/ money transfer/ Irving Trust documents

PCGG Lib

TTTT-1-4

SBTC debit tickets/ money transfer/ telex/ Irving Trust documents

PCGG Lib

UUUU-1-4

SBTC debit tickets/ money transfer/ telex/ Irving Trust documents

PCGG Lib

VVVV-1-5

SBTC debit tickets/ money transfer/ telegraphic transfer/ Irving Trust documents

PCGG Lib

WWWW-1-3

SBTC debit tickets/ telex/ Irving Trust documents

PCGG Lib

XXXX-1-5

SBTC debit tickets/ money transfer/ telegraphic transfer/ Irving Trust documents

PCGG Lib

YYYY-1-3

SBTC debit tickets/ money transfer/ Irving Trust documents

PCGG Lib

ZZZZ to ZZZZ-1

SBTC debit tickets/ telegraphic transfer

PCGG Lib

AAAAA-1-3

SBTC debit tickets/ telex/ telegraphic transfer

PCGG Lib

BBBBB-1-16

SBTC credit ticket/ debit ticket/ money transfer/ telegraphic transfer, etc.

PCGG Lib

CCCCC-1-10

SBTC credit ticket/ debit ticket/ money transfer/ telegraphic transfer, etc.

PCGG Lib

DDDDD-DDDDD-1

SBTC debit tickets/ telegraphic transfer

PCGG Lib

EEEE-1-6

SBTC credit ticket/ debit ticket/ telex

PCGG Lib

FFFFF-1-5

SBTC document/ credit ticket/ debit ticket/ telex

PCGG Lib

HHHHH-1-7

SBTC certificate of deposit/ debit & credit ticket/ money transfer/ telex

PCGG Lib

IIIII-1-6

SBTC debit & credit tickets/ money & wire transfers

PCGG Lib

JJJJJ-1-3

SBTC debit & credit tickets/ telex

PCGG Lib

KKKKK-1-4

SBTC credit ticket/ money transfer/ telex

PCGG Lib

LLLLL-1-4

SBTC Certificate of Deposit/ debit & credit tickets/ telex

PCGG Lib

MMMMM-1-11

SBTC debit & credit tickets/ certificate of deposits/ telex

PCGG Lib

NNNNN-1-5

SBTC debit & credit tickets/ telex

PCGG Lib

OOOOO-1-6

SBTC Certificate of Deposit/ debit & credit tickets/ telex

PCGG Lib

PPPPP-1-2

SBTC credit ticket/ debit advise/ telegraphic transfer

PCGG Lib

QQQQQ-1-5

SBTC Certificate of Deposit/ debit & credit tickets/ telex

PCGG Lib

RRRRR-1-10

SBTC Certificate of Deposit/ debit & credit tickets/ telex

PCGG Lib

SSSSS-1-5

SBTC Certificate of Deposit/ debit & credit tickets/ telex/ debit advise

PCGG Lib

TTTTT-1-28

Affidavit of Apolinario K. Medina dated July 23, 1987

Xerox

UUUUU-1-21

Affidavit of Dominador Pangilinan dated July 24, 1987

Xerox

VVVVV

Memo for Comm Ruben Carranza, Jr. from Dir. Danilo R.V. Daniel dated June 6, 2003

Xerox

WWWWW-1

Letter dated Dec. 8, 1982 to Gallery Bleue from Richard Lynch (Hammer Galleries), unsigned

Xerox

XXXXX to 1

Invoice dated Dec. 8, 1982 for Gallery Bleue total \$545,000.00

Xerox

YYYYY-1-2

Invoice dated Dec. 8, 1982 for Gallery Bleue total \$545,000.00 signed by Mrs. Tantoco

Xerox

ZZZZZ

Letter dated Dec. 8, 1982 to Gallery Bleue

Xerox

AAAAAA-1-3

Fe R. Gimenez- Bankers' Trust Check #485 dated Dec. 8, 1982 pay to Hammer Galleries

Xerox

BBBBBB-1-2

Memo for Comm Ruben Carranza, Jr. from Dir. Danilo

Xerox

CCCCCC-1-2

Knoedler-Modarco S.A. – New York for Gallery Bleue dated July 20, 1983

Xerox

DDDDDD-1-5

Citibank, N.A. debit advice for \$810,005.00

Xerox

EEEEEE-1-4

Citibank, N.A. cashier's check #38865 dated Nov. 22, 1983 for \$810,000.00

Xerox

FFFFFF-1-3

Letter dated Nov. 22, 1983 to Mrs. Tantoco from Peter Sansone of Knoedler-Modarco

Xerox

GGGGGG-1-26

Declaration of Oscar M. Carino dated June 23, 1987

Original

HHHHHH-1-2

Agreement between Leslie R. Samuels and Gliceria R. Tantoco

Xerox

IIIII to 1

Bankers' Trust Company Check #02002598 dated Sept. 3, 1981 for \$1,000,000.00

Xerox

JJJJJ to 1

Letter dated Sept. 4, 1981 from Alan Forster of Sotheby's

Xerox

KKKKKK-1-3

Bankers' Trust Check #02002282 dated Sept. 18, 1981 for \$4,950,000.00

Xerox

LLLLLL-1-2

Hammer Galleries' Invoice dated Dec. 9, 1982 for Gallery Bleue total \$323,000.00

Xerox

MMMMMM-1-3

Bankers' Trust Check #200 for Hammer Galleries dated Dec. 20, 1982 for \$323,000.00 issued by Fe Gimenez

Xerox

NNNNNN-1-2

Hammer Galleries' Commercial Invoice dated Dec. 27, 1982 for Gallery Bleue

Xerox

OOOOOO-1

Bankers Trust Statement of Account

Xerox

PPPPPP-1-4

Credit Suisse/ Trinidad Foundation/ Debit Advice/ \$480,015.79

Xerox

QQQQQQ-1-4

Credit Suisse/ Palmy Foundation/ Debit Advice/\$700,006

Xerox

RRRRRR-1-3

Credit Suisse/ Palmy Foundation/ Debit Advice/\$2,000,005.62

Xerox

SSSSSS

Certificate of the Swiss Authority executing request for documents/ Peter Cossandy

Xerox

SSSSSS-1

Certificate of Authenticity of Business Records/ Martin Grossman

Xerox

SSSSSS-2

List of documents numbered by the Examining Magistrate/ Peter Cossandy

Xerox

TTTTTT-1-10

Letter dated Feb. 3, 1984 for Mrs. Gliceria Tantoco Re: Glockhurst Corp.

Xerox

UUUUUU-1

Debit Advice for Php3,241,393.00

Xerox

VVVVVV-1-3

Traders' Royal Bank Manager's Check #00671 dated July 28, 1981 for Php3, 241,393.00

Xerox

WWWWWW-1

Traders' Royal Bank Debit Advise for Php4,283,440.29

Xerox

XXXXXX-1-3

TRB Manager's Check #001282 for Php3,200,000.00

Xerox

YYYYYY-1-3

Letter from Rico Tantoco dated 5/6/82 to Fe

Xerox

ZZZZZZ-1-4

Status of Holdings in Phil. Eagle Mines, Inc. (PEMI) grand total of Php2,640,351.90

Xerox

AAAAAAA-1-105

Affidavit of Rolando Gapud dated Aug. 1, 1987 with annexes

PCGG Lib

Respondents, in turn, filed their Motion for Reconsideration, to which the graft court issued the assailed Resolution, stating:

After a thorough review of the circumstances, this Court is convinced that it is fair and just to grant defendants' Motion under Rule 29 of the Rules of Court filed on October 1, 1996 and to sanction the plaintiff for its deliberate refusal and failure to comply with the directive of this Court which was confirmed no less (sic) by the Supreme Court. The plaintiff must be prevented from offering in evidence all the documents that were not produced and exhibited at the time the plaintiff was under a directive to do so, i.e. Exhibits "MMM" to "AAAAAAA" xxx. In arriving at this conclusion, the Court is not unmindful of the fact that the exhibits involved have not passed the test of admissibility in any event.[15]

Petitioner Republic now raises the sole issue of whether or not the Sandiganbayan committed grave abuse of discretion in excluding the documents due to petitioner's own failure to produce them at the pre-trial.

We deny the petition.

After a careful scrutiny of the records, We find that in excluding Exhibits "MMM" to "AAAAAAA," the Sandiganbayan properly exercised its discretion over evidence formally offered by the prosecution. Nothing therein shows that the court gravely exceeded its jurisdiction. For the reviewing court to interfere with the exercise of discretion by the lower court, the petitioner must show that the former's action was attended by grave abuse of discretion, defined as a capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or

so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.[16]

Petitioner would have us reverse the Sandiganbayan solely because the latter purportedly made contrary rulings in its earlier Resolutions. The Republic invokes the First Resolution, specifically the graft court's view that the exclusion of the Exhibits "would be too technical," since their non-production "could be attributed to inadvertence rather than willful disobedience." However, this First Resolution merely disposed of respondents' Motion to cite petitioner in contempt. It does not constitute an irrevocable stamp of admissibility.

Petitioner conveniently disregards the basic rule of evidence, namely, that the issue of the admissibility of documentary evidence arises only upon formal offer thereof. This is why objection to the documentary evidence must be made at the time it is formally offered, and not earlier.[17] Accordingly, the Court ruled in *Interpacific Transit, Inc. v. Aviles* as follows:

x x x. The identification of the document before it is marked as an exhibit does not constitute the formal offer of the document as evidence for the party presenting it. Objection to the identification and marking of the document is not equivalent to objection to the document when it is formally offered in evidence. What really matters is the objection to the document at the time it is formally offered as an exhibit.

x x x x

It would have been so simple for the defense to reiterate its former objection, this time seasonably, when the formal offer of exhibits was made. It is curious that it did not, especially so since the objections to the formal offer of exhibits was made in writing. In fact, the defense filed no objection at all not only to the photocopies but to all the other exhibits of the prosecution.[18] (Emphases supplied)

Seasonable objection to the subject "Exhibits" can only be properly made upon formal offer. The Sandiganbayan acknowledged that Tantoco and Santiago had been consistent in reiterating their objections. The court even clarified in its First Resolution that their "Motion Filed Under Rule 29," was but in pursuance of their continuing objection to the marking of evidence not produced at discovery. Hence, nothing in the said Resolution can be read as a ruling on its admissibility. Its dispositive portion clearly states: "Under all these circumstances, there is no basis for the Court to declare plaintiff in contempt of court and it would be too much of a technicality to bar it from introducing the additional exhibits in evidence." [19]

The Second Resolution, while issued after petitioner had submitted its Formal Offer of Evidence, noted that all the documents contained therein were photocopies.[20] It stated that a mere certification from the Clerk of Court that they "appear to be the original copy" would not suffice. The Sandiganbayan still admitted them as evidence, yet the only reason cited for doing so was liberality, viz: "There is nothing in the rules which categorically prohibits the admission of additional documentary evidence when called for as a case progress [sic]. What is clear is that it is the Court's discretion to allow or disallow its reception." [21] Thus, the Sandiganbayan fittingly corrected itself when once and for all, it excluded the photocopies in its latest Resolution.

This Court discusses the contents and implications of the two earlier Resolutions, because petitioner simply has no other argument supporting its claim to reverse the Sandiganbayan. For those documents introduced in evidence as proof of their contents, the assailed Resolution stated that petitioner has not made any effort whatsoever to explain why it submitted mere photocopies. When the subject of inquiry is the content of a document, submission of a certified true copy is justified only in clearly delineated instances such as the following:

a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

- b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.[22]

Nothing on record shows, and petitioner itself makes no claim, that the Exhibits fall under any of the exceptions to the Best Evidence rule. Secondary evidence of the contents of writings is admitted on the theory that the original cannot be produced by the party who offers the evidence within a reasonable time by the exercise of reasonable diligence. Even then, the general rule is that secondary evidence is still not admissible until the non-production of the primary evidence has been sufficiently accounted for.[23]

The Separate Opinion concurs in our dismissal of the petition for failure to show that the Sandiganbayan committed grave abuse of discretion. However, it disagrees with the latter's misapplication of the Best Evidence Rule. While the Sandiganbayan provided several reasons for its ultimate exclusion of the documents, it did not distinguish: 1) Which particular documents are to be excluded for violation of the Best Evidence Rule; and 2) Which of the remaining ones it has treated as private documents that lacked proper authentication. The detailed analysis of each piece of evidence vis-à-vis the purpose for which they were presented falls squarely under the purview and competence of the trial court. The Supreme Court cannot substitute its own conclusions for the factual determinations of the trial court. It is not the function of this Court to examine, review or evaluate the evidence. Absent any showing of grave abuse of discretion, as discussed above, this Court is then constrained to uphold the reasons forwarded by the Sandiganbayan.

The authority of the trial court to control its own discovery processes cannot be undermined. In this case, the Sandiganbayan's exercise of this power is neither whimsical nor oppressive. A writ of certiorari is available only to review final judgments or decrees, and will be refused where there has been no final judgment or order and the proceeding for which the writ is sought is still pending and undetermined in the lower tribunal. Pursuant to this rule, it has been held that certiorari will not lie to review or correct discovery orders made prior to trial.[24]

As for the documentary evidence which are purportedly transmittal letters, petitioner remains unable to prove their due execution and authenticity. We subscribe to the view forwarded by the Sandiganbayan in its Second Resolution, which we quote below:

The fact that the documents were certified as true copies of the original by the PCGG does not enhance its admissibility. These documents have remained private even if it is in the custody of the PCGG. What became public are not the private documents (themselves) but the recording of it in the PCGG. For, "while public records kept in the Philippines, of private writings are also public documents...the public writing is not the writing itself but the public record thereof. Stated otherwise, if a private writing itself is inserted officially into a public record, its record, its recordation, or its incorporation into the public record becomes a public document, but that does not make the private writing itself a public document so as to make it admissible without authentication." [25] (Citation omitted, emphasis supplied.)

Aside from lack of authentication and failure to present the originals of these documents, what ultimately tipped the scales against petitioner in the view of the graft court was the former's lack of forthrightness in complying with the Supreme Court directive. The Sandiganbayan said:

Thereafter, it did not take long in the process of the presentation of plaintiff's evidence before it became apparent that plaintiff's exhibits consist mostly of documents which have not been exhibited during the

discovery proceedings despite the directive of this Court as confirmed by the Supreme Court. Plaintiff's failure to offer a plausible explanation for its concealment of the main bulk of its exhibits even when it was under a directive to produce them and even as the defendants were consistently objecting to the presentation of the concealed documents gives rise to a reasonable [inference] that the plaintiff, at the very outset, had no intention whatsoever of complying with the directive of this Court.[26]

Petitioner failed to obey the mandate of G.R. No. 90478, which remains an important case on pre-trial and discovery measures to this day; the rationale of these rules, especially on the production of documents, must be constantly kept in mind by the bar:

The message is plain. It is the duty of each contending party to lay before the court the facts in issue-fully and fairly; i.e., to present to the court all the material and relevant facts known to him, suppressing or concealing nothing, nor preventing another party, by clever and adroit manipulation of the technical rules of pleading and evidence, from also presenting all the facts within his knowledge.

x x x x

The truth is that "evidentiary matters" may be inquired into and learned by the parties before the trial. Indeed, it is the purpose and policy of the law that the parties — before the trial if not indeed even before the pre-trial — should discover or inform themselves of all the facts relevant to the action, not only those known to them individually, but also those known to adversaries; in other words, the desideratum is that civil trials should not be carried on in the dark; and the Rules of Court make this ideal possible through the deposition-discovery mechanism set forth in Rules 24 to 29. xxx.

x x x x

x x x. (I)t is the precise purpose of discovery to ensure mutual knowledge of all the relevant facts on the part of all parties even before trial, this being deemed essential to proper litigation. This is why either party may compel the other to disgorge whatever facts he has in his possession; and the stage at which disclosure of evidence is made is advanced from the time of trial to the period preceding it.[27] (Emphasis supplied)

After failing to submit the documentary evidence during discovery, when it was clearly ordered by both the Sandiganbayan and the Supreme Court to do so, petitioner also repeatedly failed to prove the due execution and authenticity of the documents. Having failed in its belated attempts to assuage the Sandiganbayan through the submission of secondary evidence, petitioner may not use the present forum to gain relief under the guise of Rule 65.

WHEREFORE, in view of the foregoing, we deny the instant Petition for lack of merit. The Resolution of the Sandiganbayan in Civil Case No. 0008 (dated 3 June 2009) is AFFIRMED.

SO ORDERED.

Leonardo-De Castro, Villarama, Jr., and Reyes, JJ., concur.
Bersamin, J., with concurring and dissenting opinion.

[1] Rollo, pp. 25-27; Penned by Associate Justice Edilberto G. Sandoval and concurred in by Associate Justices Teresita V. Diaz-Baldos and Samuel R. Martires.

[2] Filed on 13 March 2007.

[3] Docketed as Civil Case No. 0008.

[4] Republic v. Sandiganbayan, G. R. No. 90478, 21 November 1991, 204 SCRA 212, 232- 234.

- [5] Rollo, p. 159.
- [6] Id. at 160.
- [7] Id.
- [8] Sandiganbayan Resolution dated 17 February 1997; id. at 158-165.
- [9] Sandiganbayan Resolution dated 29 May 2002; id. at 179-180.
- [10] Attached as Annex “G” to the Petition; id. at 74-113.
- [11] Exhibits “EEE” to “EEEE-15,” “O,” “S,” “XX,” “DDD,” “RRR,” “SSS,” “TTT,” “UUU,” “DDDD-1” to “DDDD-28,” “TTTT,” to “TTTT-3,” “UUUUU” to “UUUUU-3,” “AAAAAAA” to “AAAAAAA-9,” “G,” “II,” “QQQ,” “VVV,” “AAAA,” “AAAA-26,” “III-1,” “KKK-1,” and “LLL.”
- [12] Rollo, pp. 213-215.
- [13] Id. at 56-58.
- [14] Id. at 45-54.
- [15] Id. at 24-27; Sandiganbayan Resolution dated 3 June 2009.
- [16] Land Bank of the Philippines v. Court of Appeals, 456 Phil. 755 (2003).
- [17] 264 Phil. 753 (1990).
- [18] Id. at 759-760.
- [19] Rollo, p. 164.
- [20] Id. at 29.
- [21] Id. at 58.
- [22] Rules of Court, Rule 130, Sec. 3.
- [23] Department of Education, Culture and Sports v. Del Rosario, 490 Phil. 194, 204 (2005).
- [24] Northwest Airlines v. Cruz and Court of Appeals, 376 Phil. 96 (1999).
- [25] Rollo, p. 30.
- [26] Id. at 25-26.
- [27] Supra note 4 at 222-228.

CONCURRING AND DISSENTING OPINION

BERSAMIN, J.:

The Court hereby affirms the Sandiganbayan’s assailed resolution denying admission to Exhibits “MMM” to “AAAAAAA” of petitioner Republic of the Philippines (Republic). There is no question that the Republic has not complied with the rules pertinent to the authentication of private documents as a condition for their admission as judicial evidence, and has not also satisfied the requirements for proving public documents.

I CONCUR.

However, I need to write this Opinion in order to clarify two points, namely: (1) the application of the Best Evidence Rule; and (2) the exclusion of evidence as a discovery sanction. To that extent, this Separate Opinion may differ from the ponencia.

A brief narration of the antecedents is necessary.

The Republic, through the Presidential Commission on Good Government (PCGG), brought against the respondents in the Sandiganbayan an action for reconveyance, reversion, accounting, restitution and damages. During the proceedings in the action, respondents Bienvenido R. Tantoco, Jr. and Dominador R. Santiago filed a Motion for Production and Inspection of Documents, praying that they be allowed to examine and copy the following documents during pre-trial, to wit:

- 1) The “official records and other evidence” on the basis of which the verification of the amended complaint asserted that its allegations were “true and correct;”
- 2) The documents listed in PCGG’s Pre-Trial Brief as “intended to be presented and ** marked as exhibits for the plaintiff;” and
- 3) “[T]he minutes of the meeting of the PCGG which chronicles the discussion (if any) and the decision (of the Chairman and members) to file the complaint [in this case].”

The Sandiganbayan granted the motion.

On November 21, 1991, this Court, in *Republic v. Sandiganbayan*,^[1] affirmed the Sandiganbayan’s grant of the motion. Accordingly, the PCGG produced during the pre-trial several documents that were marked as Exhibits “A” to “LLL.” The pre-trial was terminated on September 10, 1996.

Thereafter, the PCGG produced and caused the pre-marking of additional documents denominated as Exhibits “MMM” to “QQQ.” Tantoco and Santiago filed a Motion under Rule 29 of the Rules of Court, praying that the Republic be sanctioned for contempt of court for not producing said documents during the discovery proceedings. The Sandiganbayan denied the motion of Tantoco and Santiago on February 17, 1997.

Later on, the Republic again submitted and caused the marking of additional documents denominated as Exhibits “RRR” to “YYY” over the objection of Tantoco and Santiago who filed a Motion to Ban Plaintiff from Offering Exhibits Not Earlier Marked During the Discovery Proceedings. Yet again, the Sandiganbayan denied the motion on May 29, 2002.

On March 16, 2007, the Republic finally filed its Formal Offer of Evidence, under which Exhibits “MMM” to “AAAAAAA,” the subjects of the petition herein, were described and offered in evidence as follows:

EXHIBIT NO.

DESCRIPTION

PURPOSE

MMM

Memorandum dated May 10, 1982 for Hon. Teodoro Pena, Minister of Natural Resources issued by Presidential Assistant, Juan C. Tuvera, informing him that the President had approved the request of Rustan Investment and

Management Corp. for the extension of its shipment of 9,000 cu.m logs until the loading is completed

To show that the Tantocos and/or their corporations were extended undue and unwarranted influence, advantages and concessions by Ferdinand and Imelda Marcos;

To show that the Tantocos were close associates of the Marcoses

NNN

Undated handwritten letter of Glecly R. Tantoco to “FE” pertaining to the request as mentioned in Exhibit “MMM”

OOO

Letter dated April 29, 1982 addressed to Pres. Ferdinand E. Marcos from Bienvenido R. Tantoco, Jr. as President of Rustan Investment & Management Corp. pertaining to the request for extension as stated in Exhibit “MMM”

PPP

Undated handwritten letter of Glecly R. Tantoco to “MAM”

RRR

Complaint in Civil Case No. 89-5268 for Recovery of Deficiency filed by the Government of the Republic of the Philippines, thru its trustee, Asset Privatization Trust (APT) against Rustan Investment & Management Corp., in relation to its joint and solidary obligation with the Philippine Eagle Mines foreign currency loans obtained from DBP

To show that a complaint had been filed by the government against Rustan Investment and Management Corporation, a Tantoco corporation, for the huge loans obtained from the DBP;

To show that the Tantocos and/or their corporation, because of their close association with Ferdinand and Imelda Marcos, were extended undue and unwarranted advantages and concessions, and obtained huge loans

SSS

(two documents were marked as Exhibit SSS)

Answer with Compulsory Counterclaim Civil Case No. 89-5268 - RP thru Asset Privatization Trust v. Rustan Investment & Management Corp.

To show that Rustan Investment and Management Corporation filed an answer to the complaint filed against it for recovery of deficiency by reason of its joint and solidary obligation with Philippine Eagle Mines, another Tantoco-controlled corporation

Administrative Order No. 14 approving the identification and transfer to the National Government of certain assets and liabilities of DBP and PNB, promulgated by Pres. Corazon C. Aquino on Feb. 3, 1987

(The Sandiganbayan took judicial notice of AO 14 during the September 11, 2001 hearing.)

To show that an Administrative Order was issued by President Aquino approving the identification and transfer of certain assets, liabilities, deposits and receivables to the National Government from DBP to PNB

SSS-1

List of Assets for Transfer from DBP and PNB as of June 30, 1986

SSS-2

Summary of Assets for transfer from PNB as of June 30, 1986

SSS-3

Schedule of Assets for transfer, deposits with and due from banks from PNB as of June 30, 1986

SSS-4

Schedule of Assets for transfer, bank premises, furniture and equipment from PNB as of June 30, 1986

SSS-5 to 7

Schedule of Assets for transfer-loans and loan related accounts, as of June 30, 1986

SSS-8 to 10

DBP non-performing accounts for transfer as of June 30, 1986

TTT

Contract between the Government of the Republic of the Philippines and DBP regarding the transfer of the latter's assets and liabilities to the National Government, in accordance with Proclamation No. 50, December 8, 1986, as amended

(The Sandiganbayan took judicial notice of the Deed of Transder during the September 11, 2001 hearing.)

To show that the DBP, by virtue and in consideration of the National Government's assumption of its certain liabilities, transferred its assets, involving receivables to the government

UUU

Order dated June 4, 1996 of the RTC of Makati City, Branch 62, in Civil Case No. 89-5268, declaring Philippine Eagle Mining Corporation in default for failure to answer within 60 days from the last publication

To show that the Philippine Eagle Mining Corporation was declared in default for failure to file answer to the complaint

WWW

Combined Credit and Property Checkings dated 18 October 1989 conducted by Eastern Inspection Bureau on Phil. Eagle Mines, Inc.

To show that an inspection and investigation was conducted against PEMI showing that the company was controlled by Tantocos

XXX

Letter of Dominado(r) R. Santiago to Asset Privatization Trust dated 20 Dec. 1990 offering to pay P5M to APT in exchange for the dropping of the case against RIMCO

To show that Rustan Investment and Management Corp. (RIMCO) offered P5M to APT in exchange for the dropping of the case against RIMCO

YYY to YYY-22

Articles of Incorporation of RIMCO; Treasurer's Affidavit signed by Gliceria Tantoco dated 30 June 1965; By-Laws of RIMCO; Certificate of Filing of Certificate of Increase of Capital Stock by RIMCO

To show that RIMCO is a corporation controlled by the Tantocos, known close associates/dummies of President Marcos

YYY 23 to YYY 33

ZZZ to ZZZ-1

Amended Articles of Incorporation of RIMCO;

Questioned Documents Report No. 729-1101 by the National Bureau of Investigation (NBI) as requested by Hon. Manuel P. Paras, Legal Director of PCGG, the conclusion of which states that the questioned signatures/handwritings on one hand and the standard sample signatures/handwritings of President Ferdinand E. Marcos on the other hand, were written by one and the same person (using Exhibits "Q-1 and Q-2" and "S-1 to S-40" as bases)

To show that Bienvenido Tantoco is a dummy of President Ferdinand Marcos;

To show that the marginal notes/signatures appearing in the subject documents were written/signed by Ferdinand Marcos

AAAA-1

Handwritten letter by President Ferdinand E. Marcos (undated) addressed to the Honorable Antonio Logarta thanking him for testifying in "Malundasan" cases which led to Pres. FM's acquittal

To show that President Marcos made notations and letters to his close associates

AAAA-2

Typewritten note to President FM with handwritten notes, dated 23 July 1979

AAAA-3 to AAA-41

Handwritten notes on notepad with letterhead of the Office of the President of the Philippines, Manila

BBBB to BBBB-33

Microfilm of "questioned documents"

To show that the subject documents containing the handwritten notes of Pres. Marcos were microfilmed

CCCC to CCCC-11

Executive Summary on PEMI

To show that PEMI is a Tantoco-controlled corporation and had been granted tax-exemption by virtue of P.D. No. 463

DDDD-1 to DDDD-28

SEC Records of PEMI

To show that PEMI is a Tantoco-controlled corporation

EEEE to EEEE-15

TSN of the testimony of Evelyn Singson

To show that Evelyn Singson testified with respect to the correct dollar and peso accounts of the Marcoses at the Security Bank and Trust Company

FFFF to FFFF-13

Affidavit dated 18 August 1986 of Evelyn R. Singson directly linking the First Family to Peso and Foreign Currency Savings and Trust Accounts managed and maintained by Rolando Gapud, then President of Security Bank and Trust Company (SBTC)

To establish that the affiant has personal knowledge or aware of the facts or conditions relative to the allegations contained in her affidavit

GGGG to GGGG-6

Security Bank and Trust Company (SBCTC) bank documents/credit ticket/certificate of deposit/telegraphic transfer/telex/money transfer involving \$4,300,000.00 to Citibank N.A. 153 East Road 53rd St. New York to Account # 1086-9607 of Glockhurst Corp. N.V.

To show the existence of bank transactions involving the SBTC secret bank account of the Marcoses with banks abroad

HHHH to HHHH-9

Security Bank and Trust Company (SBCTC) debit tickets/transmittal documents/telex

To prove that there were regular bank transactions, withdrawals and debits with respect to the secret bank accounts of the Marcoses

IIII to IIII-5

SBTC debit tickets/telexes/wire transfers

To prove that there were regular bank transactions, withdrawals and debits with respect to the secret bank accounts of the Marcoses

JJJJ to JJJJ-7

SBTC debit tickets/wire transfers telexes/transmittal letters

To prove that there were regular bank transactions, withdrawals and debits with respect to the secret bank accounts of the Marcoses

KKKK to KKKK-4

SBTC debit tickets/transmittal documents/Irving Trust Documents

To show that there were bank transactions involving the secret bank accounts of the Marcoses at SBTC with banks abroad

LLLL to LLLL-4

SBTC debit tickets/transmittal documents/Irving Trust Documents

MMMM to MMMM-3

SBTC debit tickets/transmittal documents/Irving Trust Documents

To show that there were partial withdrawals, debits, and money transfer involving the secret bank accounts of the Marcoses at SBTC with banks abroad

NNNN to SSSSS-5

SBTC debit and credit tickets/certificate of deposit/telex/wire, money, and telegraphic transfers/debit advise/Irving Trust Documents

To show that there were bank transactions involving the secret bank accounts of the Marcoses at SBTC with banks abroad

TTTTT to TTTTT-16

Affidavit of Apolinario K. Medina dated July 23, 1987, with annexes

To show that Apolinario K. Medina under oath freely and voluntarily made allegations in his Sworn Statement;

To establish that the affiant has personal knowledge or aware of the facts or conditions stated in his affidavit.

TTTTT-17a

Withdrawal on July 28, 1981 by Rustan Investment & Mgt. in the amount of P3,241,393.00

To show that RIMCO, a Tantoco-controlled corporation, is a conduit of Ferdinand and Imelda Marcos in accumulating ill-gotten wealth

TTTTT-18 to TTTTT-18a

Withdrawal on September 4, 1981 by Philippine Eagle amounting to P3,200,000.00

To show that PEMI, a Tantoco-controlled corporation, is a conduit of Ferdinand and Imelda Marcos in accumulating ill-gotten wealth

TTTTT-21 to TTTTT-28

Credit and debit tickets of Traders Royal Bank

To show that there were money transfers, credits, debits involving Marcoses' secret account at traders Royal Bank with several banks abroad

UUUUU to UUUUU-16

Affidavit of Dominador Pangilinan, former Acting President and President of Traders Royal Bank dated July 24,

2987

To show that Dominador Pangilinan under oath freely and voluntarily made allegations in his Sworn Statement;

To establish that the affiant has personal knowledge or aware of the facts or conditions

UUUUU-17 to

UUUUU-17a

Withdrawals of P3,241,393.00 by Rustan Investment and Management Corporation

To show that RIMCO, a Tantoco-controlled corporation, served as a conduit of Ferdinand and Imelda Marcos in accumulating ill-gotten wealth

UUUUU-18 to

UUUUU-18a

Withdrawals of P3,200,000.00 by Philippine Eagle Mining Corporation

To show that PEMI, a Tantoco-controlled corporation, is a dummy of Ferdinand and Imelda Marcos

UUUUU-19 to

UUUUU-21

Part of Annexes of Affidavit of Dominador Pangilinan

To show that the affiant has personal knowledge or aware of facts or conditions stated in his affidavit

VVVVV to VVVVV-1

Memorandum dated June 6, 2003 of Director Danilo R.V. Daniel, PCGG Research and Development Department to PCGG Commissioners Ruben Carranza, Jr. and Vyva M. Aguirre

To show that as per investigation of PCGG and interviews with the witnesses, the Tantocos and Rustan Investment Corp. were beneficiaries of ill-gotten funds from Marcos Trust Account No. 76-128 in Traders Royal Bank;

WWWWW to WWWWW-1

Letter of Richard Lynch, Director of Hammer Galleries dated December 8, 1982 to Gallery Bleue, Rustan's Makati involving the invoice for the purchase of 3 paintings by Imelda Marcos

To show that the purchase of valuable paintings by Imelda Marcos was coursed through Gallery Bleue of Rustan's Makati;

To show that the Tantocos and/or Rustan's are dummies of the Marcoses

XXXXX to XXXXX-1

Invoice for paintings amounting to \$545,000.00

To show that the purchase of valuable paintings by Imelda Marcos was coursed through Gallery Bleue of Rustan's Makati

YYYYY to YYYYY-2

Acknowledgment by Mrs. Tantoco of Invoice for painting "Hoosick Valley" amounting to \$70,000.00

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

ZZZZZ

Acknowledgment receipt for the delivery of “Hoosick Valley” painting

AAAAAA to
AAAAAAA-2

Bankers Trust Company check dated Dec. 15, 1982 for \$70,000.00 to Hammer Galleries by Fe Gimenez under checking account No. 001-34714415 for the Grandma Moses painting

To show that payment of paintings from Hammer Galleries was through Bankers trust Co. Check #485 amounting to \$70,000.00 dated 12/15/82 issued by Fe Gimenez, personal secretary of Imelda Marcos

BBBBBB to BBBBBB-2

Memorandum dated 23 April 2003 of Director Danilo R.V. Daniel, PCGG Research and Development Department to PCGG Commissioners Ruben Carranza regarding paintings ordered from Hammer Galleries

To show the manner by which the purchase of valuable paintings by the Marcoses using ill-gotten funds was undertaken

CCCCCC to CCCCCC-3

Knoedler-Madarco S.A. – New York’s Advice/Invoice for Gallery Bleue dated 20 July 1983 for the purchase of 5 paintings by President and Mrs. Marcos amounting to US\$2,200,000.00

To show that valuable paintings sold to Gallery Bleue in Rustan’s Makati were for the benefit of Ferdinand and Imelda Marcos

DDDDDD to DDDDDD-3

Citibank, N.A. Debit advice for \$810,005.00

To show that payment to Knoedler-Madarco S.A. for valuable paintings were paid out of the funds of Glockhourst Corporation, an account of Gliceria Tantoco in Citibank N.A. New York

EEEEEE to EEEEE-4

Citibank, N.A. Cashier’s Check No. 38865 for US\$810,000.00 dated 22 November 1983

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

FFFFFF to FFFFFF-3

Letter dated 22 November 1983 to Mrs. Tantoco from Peter Sansone of Knoedler-Modarco acknowledging receipt of check payment of \$810,000.00 for “Madonna and Child” and “City of Venice Adoring the Christ Child” paintings

To show that Gliceria Tantoco is a close associate, dummy or agent of the Marcoses

GGGGGG to
GGGGGG-(1)2

Declaration of Oscar M Carino dated 23 June 1987 who narrated the disbursements of PNB-New York Branch of various amounts to individuals and corporations, for the purchase of building at 730 Fifth Avenue, New York and the purchase of the art collection of Mr. Leslie Samuels amounting to US\$4,950,000.00

To show that the disbursements from the General Funds of PNB New York were done under instructions from Mrs. Fe Gimenez, Imelda Marcos herself, Roberto Benedicto or his secretary Betty Rivera, and Benjamin Romualdez

To show that Oscar M. Carino has personal knowledge or aware of the other facts or conditions stated in his declaration

GGGGGG-12a to GGGGGG-12b

Part of the declaration of Mr. Carino which mentioned the participation of Mrs. Gliceria Tantoco during a meeting with Mr. Leslie Samuels for the purchase of art works

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

HHHHHH to
HHHHHH-2a

Agreement between Leslie R. Samuels and Gliceria Tantoco for the purchase of paintings and art works amounting to US\$5,950,000.00

IIIII to IIIII-1

Banker's Trust Company check dated September 3, 1981 for US\$1,000,000.00 in favour of Sotheby ParkeBenet, Inc.

To show that a check was issued in favour of Sotheby ParkeBenet, Inc.

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

JJJJJ to JJJJJ-1

Letter dated September 4, 1981 from Alan Forster of Sotheby's acknowledging receipt from Gliceria Tantoco, Banker's Trust Company check dated September 3, 1981 amounting to \$1,000,000.00

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

KKKKKK to
KKKKKK-3

Banker's Trust Check #02002282 dated September 18, 1981 for \$4,950,000.00

To show that payment for the paintings ordered from Mr. Samuels was paid out of funds from the bank account in Banker's Trust, New York

LLLLLL to
LLLLLL-2

Hammer Galleries Invoice dated December 9, 1982 for Gallery Bleue of Rustan's amounting to US\$323,000.00

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

MMMMMM to MMMMMM-3

Banker's Trust Check #0200 for Hammer Galleries dated December 20, 1982 for \$323,000.00 issued by Fe Gimenez

To show that payment for the paintings ordered from Hammer Galleries was paid out of funds from the bank account in Banker's Trust, New York

NNNNNN to
NNNNNN-3

Hammer Galleries Invoice dated December 27, 1982 for Gallery Bleue of Rustan's Makati

To show that the Tantocos knowingly acted as dummies, nominees and/or agents of Ferdinand and Imelda Marcos in acquiring valuable paintings for the Marcoses

OOOOOO to
OOOOOO-1

Banker's Statement of Account

To show that some Philippine Banks where the Marcoses had accounts transacted with Banker's Trust Company

PPPPPP to
RRRRRR-3

Credit Suisse/Palmy Foundation/Debit Advice for different amounts

To show that the funds of foreign foundations were moved/diverted to accounts of known close associates/cronies of the Marcoses

SSSSSS to
SSSSSS-4

Certificate of Authenticity of Business Records issued by Martin Grossman

To show that several foreign foundations were set up whose funds were later diverted to accounts of known close associates/cronies of the Marcoses

TTTTTT to
TTTTTT-10

Letter dated February 3, 1984 for Mrs. Gliceria Tantoco Re: Glockhurst Corp., N.V. Current Account #10869607

To show that Gliceria Tantoco acted as dummy and agent of the Marcoses in the management of account # 10869607

UUUUUU to
UUUUUU-1

Debit Advice for P3,241,393.00

To show that a Manager's check was issued by Traders Royal Bank from a secret bank account of the Marcoses

from said bank in favor of RIMCO

VVVVVV to
VVVVVV-3

Traders Royal Bank Manager's Check #000671 dated July 28, 1981 for P3,214,393.00

WWWWWW to WWWWWW-1

Traders Royal Bank Debit Advise for P4,283,440.29

To show that the amount was debited from a secret bank account of the Marcoses from Traders Royal Bank in favor of RIMCO

XXXXXX to
XXXXXX-3

Trader's Royal Check #001282 for P3,200,000

To show that a check was issued and debited to the Marcoses' known trust account with Traders Royal Bank

YYYYYY to
YYYYYY-3

Letter from Rico Tantoco dated 5/6/82 to Fe Gimenez re Philippine Eagle Mines

To show that the Tantocos are close associates, dummies, agents of the Marcoses

ZZZZZZ to
ZZZZZZ-4

Status of Holdings in Philippine Eagle Mines, Inc. (PEMI) with grand total of P2,640,351.90

To show that the Tantocos are close associates, dummies, agents of the Marcoses

AAAAAAA to AAAAAA-105

Affidavit of Rolando Gapud dated August 1, 1987 with Annexes

To prove that Rolando C. Gapud is a crony, dummy, nominee, agent or trustee of the late Ferdinand Marcos and Imelda Marcos in several companies or entities;

To prove that President Marcos and Imelda took advantage of their official position for personal gain or benefit to the prejudice and damage of the Filipino people.[2]

The respondents objected to the admission of the Republic's exhibits principally because of the lack of proper authentication in accordance with Section 20, Rule 132 of the Rules of Court.

On January 15, 2008, the Sandiganbayan denied admission to the Republic's exhibits.[3] The Sandiganbayan, noting that all the exhibits were merely certified true copies of documents, applied the Best Evidence Rule; and pointed out that the documents, most of which were private writings, had not been properly authenticated.

Acting on the Republic's motion for reconsideration, the Sandiganbayan, through its September 25, 2008 Resolution, modified its previous ruling by admitting Exhibits "FF," "GG" to "GG-1," "HH" to "HH-1," "XX," "YY," "AAA," "BBB," "CCC," and Exhibits "MMM" to "AAAAA;"[4] held that the Republic substantially complied with the order to produce the requested documents; opined that the purpose for which discovery was

sought was already satisfactorily complied with; and refused to exclude the Republic's exhibits solely on the ground that they had not been produced during the discovery proceedings.

The respondents then sought reconsideration, and the Sandiganbayan partly granted their motion for reconsideration through its Resolution of June 3, 2009, thusly:

IN VIEW OF THE FOREGOING CONSIDERATIONS, defendants' Motion for Reconsideration dated October 23, 2008 is partly granted thus: Exhibits "MMM" to "AAAAAAA" inclusive are hereby denied admission. Inferentially and as a corollary incident defendants' motion to prevent the plaintiff from introducing those documents in evidence is considered granted. however, Exhibits "FF", "GG", "GG-1", "HH", "XX", "YY", "ZZ", "AAA", "BBB" and "CCC" are admitted but subject to the qualifications hereinabove noted. Plaintiff's Motion to Present Original Documents dated October 20, 2008 is hereby noted.

So ordered.

Issue

Did the Sandiganbayan, in denying admission in evidence to Exhibits "MMM" to "AAAAAAA," commit grave abuse of discretion?

Submission

Although I CONCUR with the result reached by the ably-written ponencia of the Chief Justice, I have to point out that in dealing with offers of exhibits by the parties the trial courts must be ever aware of the specific purpose or purposes for which the exhibits are offered. I hold that such purpose or purposes determine the rules of admissibility that apply to the exhibits.

An exhibit that is offered may be a document, but its being a document does not necessarily mean that its admission must always rest on the rules on admissibility governing documentary evidence. The decisive factor is the purpose or purposes of the offer.

Let me clarify.

A.

The Best Evidence Rule does not apply
when the subject of inquiry is not
the contents of a document

Under the Best Evidence Rule, the original document must be produced whenever its contents are the subject of inquiry. The rule is encapsulated in Section 3, Rule 130 of the Rules of Court, as follows:

Section 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

- (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
- (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
- (c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and
- (d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Why the Best Evidence Rule applies only when the terms of a writing are the subject of inquiry are suitably explained in *Heirs of Margarita Prodon v. Heirs of Maximo S. Alvarez*,^[5] viz:

The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court, considering that (a) the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; (b) there is a substantial hazard of inaccuracy in the human process of making a copy by handwriting or typewriting; and (c) as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally. The rule further acts as an insurance against fraud. Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat. Lastly, the rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings.

But the evils of mistransmission of critical facts, fraud, and misleading inferences arise only when the issue relates to the terms of the writing. Hence, the Best Evidence Rule applies only when the terms of a writing are in issue. When the evidence sought to be introduced concerns external facts, such as the existence, execution or delivery of the writing, without reference to its terms, the Best Evidence Rule cannot be invoked. In such a case, secondary evidence may be admitted even without accounting for the original.

Although the application of the Best Evidence Rule may be simple, determining whether the contents or terms of a writing are the subject of the inquiry, or whether a piece of evidence (other than the original document) intends to prove the contents of a writing, is more difficult than it seems. In *Railroad Management Company LLC v. CFS Louisiana Midstream Co.*,^[6] the US Court of Appeals (Fifth Circuit), which was faced with the complex task of determining whether to admit in evidence the affidavits of certain witnesses that had been submitted in evidence supposedly to prove the existence of an assignment agreement, acknowledged the difficulty in applying the Best Evidence Rule particularly because the party proffering the affidavits had contended that they were not intended to “prove the content” of the document (agreement), but only their “existence.” It held that the affidavits were in fact submitted to prove the contents of the agreement, and observed as follows:

The purpose, flexibility, and fact-intensive nature of the application of the best evidence rule persuade us that the following factors are appropriately considered when distinguishing between whether it is the content of the document or merely its existence that a witness intends to testify concerning:

(a) the relative importance of content in the case, (b) the simplicity or complexity of content and consequent risk of error in admitting a testimonial account, (c) the strength of the proffered evidence and the presence or absence of bias or self-interest on the part of the witnesses, (d) the breadth of the margin for error within which mistake in a testimonial account would not undermine the point to be proved, (e) the presence or absence of the actual dispute as to content, (f) the ease or difficulty of producing the writing, and (g) the reasons why the proponent of other proof of its content does not have or offer the writing itself.^[7]

Indeed, when the terms or contents of a writing must be proved to make a case or put up a defense, the Best Evidence Rule is controlling.^[8] But when the terms or contents are not in issue, and the matter to be proved exists independently of the writing and can be satisfactorily established by parol evidence (or other secondary evidence), the latter is equally primary.^[9]

Given the foregoing guidelines, the Best Evidence Rule is not controlling in the case before the Sandiganbayan. None of the issues presented there would be resolved only upon a consideration of the contents of any of the affected exhibits. Specifically, the exhibits (including the letters and memoranda) were presented to establish that either the Marcoses had extended undue and unwarranted influence, advantage and concessions to the

respondents, or that the Marcoses had held a close relationship – financial or otherwise – with their alleged cronies. But considering that such facts were matters that could be competently inferred from the mere existence and execution of the documents themselves, the Republic did not need to present the documents to prove the particular transactions or incidents detailed in the documents. Hence, the production in court of the originals of the exhibits was neither crucial nor decisive.

When what is sought to be proved is an external or collateral matter, the original of the exhibit need not be produced in court in order to ensure its trustworthiness for purposes of the case. Such trustworthiness is already safeguarded by the rules on authentication and proof of documents embodied in Section 19 to Section 33 of Rule 132, Rules of Court. The court may safely rely on the documents thus authenticated and proved even without producing their originals, for it was not their terms or contents that were the subject of the inquiry.

B.

Only a willful or bad-faith refusal to comply with a discovery order should warrant the imposition of a harsh sanction under Rule 29 of the Rules of Court, like exclusion of evidence.

I have to stress that the Republic's non-production of the documents during the discovery proceeding merited their exclusion as evidence. To me, their exclusion as evidence, a harsh sanction, should be applied only in extreme cases of discovery abuse.

The primary basis for sanctions to be prescribed on abuse of discovery or a refusal to comply with discovery proceedings is Rule 29 of the Rules of Court. With respect to the refusal to comply with an order to produce and allow the inspection of a document issued under Rule 27 of the Rules of Court, Section 3 of Rule 29 specifically provides as follows:

Section 3. Other consequences. — If any party or an officer or managing agent of a party refuses to obey an order made under section 1 of this Rule requiring him to answer designated questions, or an order under Rule 27 to produce any document or other thing for inspection, copying, or photographing or to permit it to be done, or to permit entry upon land or other property or an order made under Rule 28 requiring him to submit to a physical or mental examination, the court may make such orders in regard to the refusal as are just, and among others the following:

(a) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental condition of the party, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibiting him from introducing in evidence designated documents or things or items of testimony, or from introducing evidence of physical or mental condition;

(c) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; and

(d) In lieu of any of the foregoing orders or in addition thereto, an order directing the arrest of any party or agent of a party for disobeying any of such orders except an order to submit to a physical or mental examination.

In other words, the sanctions may consist of: (a) regarding as established the contents of the document sought to be produced; (b) refusing to allow the disobedient party to support or oppose claims or defenses; (c) prohibiting the disobedient party from introducing designated documents in evidence; (d) striking out pleadings or parts thereof; (e) staying further proceedings until the order is obeyed; (f) dismissing the action or any part thereof; (g) rendering judgment by default against the disobedient party; and (h) directing the arrest of the disobedient party.

It is important to note, however, that the sanctions under Section 3 are not exclusive. The courts retain the inherent power to impose sanctions for abuse of the judicial process, including abuse of discovery.^[10] Section 5(c) of Rule 135 of the Rules of Court particularly grants a court the power to “compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein.” A party who refuses to comply with the order to produce and allow the inspection of documents may then be held in indirect contempt under Section 3, Rule 71 of the Rules of Court.

The general purpose of the sanctions is to render the discovery process effective. Sanctions serve an additional threefold purpose, namely: (1) to ensure that a party will not be able to profit from its own failure to comply with discovery; (2) to secure compliance with the particular order at hand; and (3) to act as a general deterrent in the case and in other litigations.^[11] In *Insular Life Assurance Co., Ltd. v. Court of Appeals*,^[12] the Court has observed that the choice of what sanction to impose upon the noncompliant party is within the court’s sound discretion, and that such discretion should be exercised having always in mind the paramount and overriding interest of justice, “[f]or while the modes of discovery are intended to attain the resolution of litigations with great expediency, they are not contemplated, however, ultimately to be causes of injustice. It behooves trial courts to examine well the circumstances of each case and to make their considered determination thereafter.”^[13]

In *Solidbank Corporation v. Gateway Electronics Corporation*,^[14] the trial court penalized the respondent for not exerting diligent efforts to comply with its order to produce certain documents by considering as established the matters relating to the contents of the requested documents. The Court struck down the sanction primarily on the ground that the respondent’s noncompliance with the court order had not been willful or made in bad faith, observing thusly:

We hold that the trial court committed grave abuse of discretion in issuing the aforesaid Order. It is not fair to penalize Gateway for not complying with the request of Solidbank for the production and inspection of documents, considering that the documents sought were not particularly described. Gateway and its officers can only be held liable for unjust refusal to comply with the modes of discovery if it is shown that the documents sought to be produced were specifically described, material to the action and in the possession, custody or control of Gateway.

Neither can it be said that Gateway did not exert effort in complying with the order for production and inspection of documents since it presented the invoices representing the billings sent by Gateway to Alliance in relation to the Back-end Services Agreement. Good faith effort to produce the required documents must be accorded to Gateway, absent a finding that it acted willfully, in bad faith or was at fault in failing to produce the documents sought to be produced. (Bold emphasis supplied)

The requirement of “willfulness” or “bad faith” as a condition for the imposition of discovery sanction is particularly crucial when the sanction to be imposed is harsh or prejudicial to the claim or defense of the disobedient party, like the dismissal of the case, or, as in this instance, the exclusion of evidence. Indeed, the exclusion of critical evidence has been denominated as an “extreme” sanction not normally to be imposed absent a showing of willful deception or flagrant disregard of a court order.^[15]

To conclude that the Republic lacked forthrightness in complying with the order for the production of documents from the fact that, as stated in the Sandiganbayan’s Resolution of June 3, 2009, the Republic had “fail[ed] to offer

a plausible explanation for its concealment of the main bulk of its exhibits even when it was under a directive to produce them xxx giv[ing] rise to a reasonable inference that the plaintiff, at the very outset, had no intention whatsoever of complying with the directive of the Court”[16] is unwarranted. Bad faith or willfulness should not be inferred from the mere failure of the Republic to render a plausible explanation. Good faith should be presumed in favor of the Republic. The respondents still carried the burden to show that the failure to produce the documents during the discovery proceeding had been in bad faith or willful. Absent such showing, the Republic should not be sanctioned with exclusion of its evidence.

I express my concurrence with the earlier Resolution of February 17, 1997, whereby the Sandiganbayan declared:

The x x x requirement of “willfulness” is imposed under Section 3(b), Rule 29 on Refusal to Make Discovery, Revised Rules of Court, which provides that the Court may prohibit a party for refusing to comply with a discovery order from introducing in evidence documents designated therein. Thus, it has been held that under Rule 37 of the Federal Rules of Court Procedure from which the above cited Section 3, Rule 29 was taken:

But such discretion [to make whatever disposition is just in the light of the facts of the particular case] must be exercised in a judicious manner, and relief under the rule is justified only in the exceptional case such as where the recalcitrant party has acted in willful disregard of, or with gross indifference to, an order of court requiring discovery or with such deliberate callousness or negligence as to occasion an inability to comply with the court’s order. (*Wembley, Inc. vs. Diplomat Tie Co.* (DC Md) 216 F Supp. 565)

Absent proof of plaintiff’s willful failure to comply with discovery order, order precluding him from offering proof tending to contradict certain defense would not be granted (*Campbell vs. Johnson* (DC NY) 101 F. Supp. 705)

In this case, there is no evidence that the plaintiff willfully disobeyed or disregarded the Resolution issued on August 25, 1989. Absent such proof and consistently with good faith which is presumed, the non-production or non-marking of the additional exhibits at the discovery proceedings could be attributed to inadvertence rather than willful disobedience, considering that the record from which Exhibits A to LLL and submarkings were collated was voluminous or that the relevance and importance of Exhibits MMM to QQQ and submarkings were overlooked at that time and consequently omitted from being produced or marked as evidence.

This observation gains greater cogency from the undisputed fact that there was substantial compliance with the Resolution – 152 documents were produced as against 10 which were not made available or temporarily marked. And the first four of the 10 were relatively unimportant for being mere covering transmittal letter which Mr. Tantoco and Atty. Santiago themselves branded as immaterial and impertinent

Anent the deposition (Exhibit QQQ), it could not have [been] brought out at the discovery proceedings because it was yet inexistent at the time. The documents (Exhibits QQQ-1 to QQQ-5) were submarked for the reason that they were mentioned in the deposition (TSN, September 25, 1996, 99. 18-19). (Emphasis supplied.) [17]

C.

To be admissible, private documents must be authenticated; and public documents must be proved in accordance with pertinent provisions of Rule 132 of the Rules of Court

The foregoing submissions notwithstanding, I humbly submit that the Court rightly dismisses the petition for certiorari on the ground that the Sandiganbayan did not gravely abuse its discretion in refusing to admit the documents offered by the Republic. To me, the Sandiganbayan did not abuse its discretion, least of all gravely, because the Republic did not comply with the requirement of authentication of private documents as a condition

for their admission as evidence, and did not also satisfy the requirement of presenting public documents as evidence.

For purposes of their use as evidence in judicial proceedings, documents are classified into private and public. Rule 132 of the Rules of Court so specifies, viz:

Section 19. Classes of Documents. — For the purpose of their presentation 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 acknowledge 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.

Properly classifying a document as public or private is crucial in determining its admissibility as evidence. A public document is admissible in evidence even without further proof of its due execution and genuineness, but a private document must be properly authenticated before it is admitted in evidence.[18] In short, the party offering the private document must first show, to the satisfaction of the court, that it was duly executed by the person who is claimed to have executed it.[19]

Patula v. People[20] explains the need for authentication for private documents but not of public documents, thus:

The nature of documents as either public or private determines how the documents may be presented as evidence in court. A public document, by virtue of its official or sovereign character, or because it has been acknowledged before a notary public (except a notarial will) or a competent public official with the formalities required by law, or because it is a public record of a private writing authorized by law, is self-authenticating and requires no further authentication in order to be presented as evidence in court. In contrast, a private document is any other writing, deed, or instrument executed by a private person without the intervention of a notary or other person legally authorized by which some disposition or agreement is proved or set forth. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. The requirement of authentication of a private document is excused only in four instances, specifically: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.[21]

The assailed documents, Exhibits “MMM” to “AAAAAAA,” consisted of both private and public documents. For the private documents, the Republic should have duly authenticated them in accordance with Section 20, Rule 132 of the Rules of Court, to wit:

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.

Section 20 permits only two methods of authentication, namely: (a) by testimony of a person who witnessed the execution of the document; or (b) by evidence of the genuineness of the signature or handwriting of the maker of the document.

The documents categorized as private documents were composed of: (a) private letters; [22] (b) executive summary by a private entity; [23] (c) credit and property examination; [24] (d) affidavits/statements made by certain individuals; [25] (e) acknowledgment receipts/invoices issued by private individuals; [26] (f) checks and other bank/commercial documents; [27] and (g) agreement. [28] The records do not show that the Republic proved the authenticity of the private documents offered in evidence, however, because no competent witnesses had testified having seen any of the documents being executed, or because no evidence showed that the signatures appearing on the documents (if signed) were those of the purported signatories.

In some instances, like Exhibits “WWW” (Combined Credit and Property Checkings dated 18 October 1989 by Eastern Inspection Bureau on Phil. Eagle Mines, Inc.) and Exhibit “XXX” (Letter of Dominador Santiago to Asset Privatization Trust dated 20 Dec. 1990), the Republic justified their offer by stating that the original copies of said documents had been presented during the hearing. [29] But the presentation of the original copies alone did not apparently satisfy the rule on authentication, or exempt compliance with such rule. Indeed, authentication required affirmative action — an attestation by the party offering the document that the latter was what it purported to be.

As to the other private documents (e.g., Exhibit “WWWWW,” Letter of Richard Lynch, Director of Hammer Galleries dated December 8, 1982 to Gallery Bleu, Rustan’s Makati), the Republic claimed that they had been identified by witnesses during the trial. However, the witnesses who supposedly testified on the documents did not appear to be competent to identify and authenticate the documents in accordance with Rule 20, *supra*, either because they did not witness the execution or signing of the documents, or because they were not familiar with the signatures of the makers. [30] For instance, although Danilo Daniel testified on Exhibit “WWWWW” in his capacity as the Director for Research and Development of the PCGG, he was not shown to have been privy to the making or execution of the exhibit.

As to the exhibits classified as public documents, I note that they did not conform to the mode of proving public documents as delineated in Sections 23, 24, 25, 27, 28 and 30, Rule 132 of the Rules of Court. Indeed, those rules prescribed — in lieu of authentication — the form and manner by which public documents could be offered as evidence in judicial proceedings.

Public documents classified under Section 19(a) of Rule 132 must be proved in accordance with Section 24 of the Rule, to wit:

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 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.

Some of the exhibits that fell under this category of public documents – (a) Exhibit “MMM” (Memorandum issued by Presidential Assistant, Juan C. Tuvera, to Hon. Teodoro Peña, Minister of Natural Resources); (b) Exhibit “RRR” (Complaint in Civil Case No. 89-5268); (c) Exhibit “SSS” (Answer with Compulsory Counterclaim in Civil Case No. 89-5268); (d) Exhibit “EEEE” (TSN of the testimony of Evelyn Singson); (e)

Exhibit “VVVVV” (Memorandum dated June 6, 2003 of Director Danilo Daniel, PCGG Research and Development Department, to the PCGG Commissioners); and (f) Exhibit “BBBBBB” (Memorandum dated 23 April 2003 of Director Danilo Daniel, PCGG Research and Development Department, to PCGG Commissioners) – did not meet the requirement of proof because they merely plain photocopies. Exhibit “ZZZ” (Questioned Documents Report), although marked as “original,” was inadmissible for lacking the attestation required by Section 24.

Exhibit “UUU” (RTC Order dated June 4, 1996 in Civil Case No. 89-5268), also a Section 19(a) document, was a certified true copy of the original. However, the certification was made by Asset Privatization Trust, not by the Regional Trial Court that had apparently issued the order and held the legal custody of the document. It does not also appear that the certification was written in accordance with the form of attestation required by Section 25 of Rule 132 of the Rules of Court, to wit:

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.

I indicate at this point that in the hearing conducted on September 11, 2001 the Sandiganbayan already took judicial notice of matters that were sought to be proved by Exhibit “SSS” (Administrative Order No. 14), and Exhibit “TTT” (Contract between the government and DBP regarding the transfer of the latter’s assets to the National Government), both of which were Section 19(a) documents. As the consequence of the taking of judicial notice, no further proof was necessary to establish the matters such documents related to. Hence, discussing whether or not said exhibits were admissible or not would serve no practical purpose.

The rest of the exhibits, which were public records of private documents required by law to be entered therein, fell under Section 19(c) of Rule 132. As to them, Section 7 of Rule 132 states:

Section 27. Public record of a private document. — An authorized public record of a private document may be proved by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

The exhibits falling under this category were Exhibit “YYY to Exhibit YYY-33” (Articles of Incorporation of RIMCO, Treasurer’s Affidavit, Certificate of Filing of Certificate of Increase of Capital Stock by RIMCO, Amended Articles of Incorporation); and Exhibit “DDDD” (SEC Records of PEMI). These exhibits, being mere photocopies not attested to by the Securities and Exchange Commission, were inadmissible.

Finally, I hold that Exhibit “BBBB” (microfilm of “questioned documents”) was more correctly classified as “object” instead of “documentary” evidence. This is evident from a reading of the purpose of its offer in evidence, which was: “To show that the subject documents containing the handwritten notes of Pres. Marcos were microfilmed.” But Exhibit “BBBB,” its nature as object evidence notwithstanding, still needed to be authenticated before admission in evidence. In its Motion for Reconsideration dated February 4, 2008 filed in the Sandiganbayan, the Republic had represented only that the original documents (referring to the microfilmed documents) had been presented at the trial by the Officer-in-Charge of the Malacañang Presidential Library.[31] The relevant microfilmed documents were not presented in court and identified by the custodian. Hence, Exhibit “BBB” should not be admitted in evidence

ACCORDINGLY, I vote to DISMISS the petition for certiorari in accordance with the foregoing disquisition.

- [1] G.R. No. 90478, November 21, 1991, 204 SCRA 212.
- [2] Rollo, pp. 87-101.
- [3] Id. at 213-215
- [4] Id. at 58.
- [5] G.R. No. 170604, September 2, 2013, 704 SCRA 465, 478-479.
- [6] 428 F.3d. 214 (2005)
- [7] Id. at 218-219
- [8] E.g., *Commonwealth v. Harris*, 719 A.2d 1049, 1051 (1998); *Nelson v. State Bd. of Veterinary Med.*, 938 A.2d 1163.
- [9] Id.
- [10] See Renfrew, *Discovery Sanctions: A Judicial Perspective*, 67 Cal. L.Rev. 2 (1979), p. 268.
- [11] *Litigation-Ending Sanctions: Alaska Court's Use of Rule 37*, 2 Alaska Law Review 77, 81.
- [12] G.R. No. 97654, November 14, 1994, 238 SCRA 88.
- [13] Id. at 93.
- [14] G.R. No. 164805, April 30, 2008, 553 SCRA 256, 271.
- [15] *Steele v. Aramark Corp.*, 36 I.E.R. Cas. (BNA) 683 (2013).
- [16] Rollo, pp. 25-26.
- [17] Id. at 162-165.
- [18] *Salas v. Sta. Mesa Market Corporation*, G.R. No. 157766, July 12, 2007, 527 SCRA 465, 471.
- [19] Francisco, R.J., *Basic Evidence*, 1999 Edition, p. 277.
- [20] G.R. No. 164457, April 11, 2012, 669 SCRA 135.
- [21] Id. at 156-157.
- [22] Exhibits "NNN," "OOO," "PPP," "XXX," "AAAA-41," "WWWWW" "FFFFFF," "JJJJJ," "TTTTTT," and "YYYYYY."
- [23] Exhibit "CCCC."
- [24] Exhibit "WWW."
- [25] Exhibits "FFFF," "TTTTTT," "UUUUU," "GGGGG," "AAAAAAA," and "ZZZZZ."
- [26] Exhibits "XXXXX to ZZZZZ," "CCCCC," "LLLLL," and "NNNNN."
- [27] Exhibits "GGGG-SSSS," "AAAAA," "DDDDD to EEEEE," "IIIII," "KKKKK," "MMMMM," "OOOOO to SSSSS," and "UUUUU to XXXXX."
- [28] Exhibit "HHHHH."
- [29] Exhibit "CCCC."

[29] Rollo, p. 35.

[30] Id. at 117 and 122.

[31] Id. at 35.

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