

BCD FOREIGN EXCHANGE CORP., PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, REP. BY ANTI-MONEY LAUNDERING COUNCIL (AMLC) AND METROPOLITAN BANK AND TRUST COMPANY (METROBANK), RESPON...*G.R. No. 231495. October 13, 2021*

Ponente: ZALAMEDA, J.

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The instant Petition for Review on Certiorari[1] seeks to reverse and set aside the Resolutions dated 21 March 2017[2] and 10 May 2017[3] of the Court of Appeals (CA) in CA-G.R. AMLC No. 00173. The CA denied petitioner's Motion to Intervene/Motion to Lift Freeze Order over its Metrobank Account No. 7-285-51261-8.[4]

Antecedents

Petitioner BCD Foreign Exchange Corp. (BCD) is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) to engage in the foreign exchange business.[5]

On the other hand, respondent Anti-Money Laundering Council (AMLC), representing the Republic of the Philippines, is the government agency tasked to implement the provisions of Republic Act No. (RA) 9160, otherwise known as the Anti-Money Laundering Act of 2001 (AMLA), as amended. Respondent Metrobank is a private domestic banking corporation duly registered with the SEC and other banking regulatory agencies.

On 28 September 2016, the Republic of the Philippines, through AMLC, filed an Ex-Parte Petition for the Issuance of a Freeze Order (Ex-Parte Petition),[6] pursuant to Section 10 of the AMLA, in relation to Section 44 of A.M. No. 05-11-04-SC, against bank accounts and deposits in the names of Powleean Electronics Marketing, Inc. (Powleean), Chen Jiali, Elsa Alasad (also known as Elsa Alasad Wu), Lianggun Wu (also known as Liang Gun Wu), Aileen Burgos Dilema, Jenelyn Devillires Punay, Anselma Q. Llego, Cristy Arreza Castro, Marephine Cagalitan Martizano, Raquel P. Magtira, and their related web of accounts.

The Ex-Parte Petition was filed following the conduct of separate buy-bust operations leading to the arrest of Claudio Branzuela Bontilao, Jr. (Claudio) and Jovannie Quirante Llego (Jovannie). They were subsequently charged with violation of Section 5, Article II of RA 9165, or the Comprehensive Dangerous Drugs Act of 2002.

During the arrest, numerous items were seized from Claudio and Jovannie, including deposit slips in the name of Powleean, Aileen Burgos Dilema, Jenelyn Devillires Punay, Anselma Q. Llego, Cristy Arreza Castro, Marephine Cagalitan Martizano, and Raquel P. Magtira.

Upon investigation, AMLC found the legitimacy of Powleean's operations doubtful since there were no regular business activities conducted in any of its declared addresses. It also noted that the company's paid-up capital was only P31,250.00, but from years 2015 to 2016, it had transactions amounting to billions of pesos, with cash deposits totaling P1,844,516,398.00 and withdrawals amounting to P2,269,661,751.44. Thus, the AMLC further

looked into the accounts of Chen Jiali, Elsa Alasad, and Lianggun Wu as the incorporators and directors of Powleean.

The Ex-Parte Petition also alleged that an investigation on Chen Jiali revealed that from 2005 to 2016, his over-the counter withdrawals amounted to P7,171,790,903.62, an amount unlikely generated from Powleean Inc., his sole declared source of income. He was also involved in CA-G.R. AMLA Case No. 00151 as one of the persons who allegedly received funds from drug trafficking.[7]

Finding that the facts of the case clearly demonstrate a well-founded belief that the bank accounts of the mentioned parties are related to or involved in an unlawful activity, the CA, on 29 September 2016, issued a Freeze Order immediately effective for a period of six (6) months from notice to the impleaded banks.[8] The banks, including Metrobank, were duly ordered to submit a return indicating the details of the specified accounts or related web of accounts, viz:[9]

WHEREFORE, the Ex-Parte Petition for the Issuance of Freeze Order is hereby GRANTED. Consequently, a FREEZE ORDER is effective immediately for a period of SIX (6) MONTHS FROM NOTICE to the following concerned banks with the following account names and numbers or related web of accounts, wherever they may be found:

xxx xxx

Moreover, the above-mentioned banks are ordered to SUBMIT by personal delivery to this Court and to the AMLC within twenty-four hours from receipt of this Resolution, a DETAILED RETURN of their compliance herewith, specifying all pertinent and relevant information on all the frozen bank accounts subject of this Freeze Order.

SO ORDERED.[10]

In compliance with the notice of the CA, Metrobank submitted detailed returns. On 26 October 2016, Metrobank filed its Fourth Supplemental Return, including accounts under the name of BCD, identified as recipients of funds from the accounts subject of the Freeze Order:

- Account No. 7-285-51225-1 – a closed account (Old BCD Account); and
- Account No. 7-285-51261-8 – with an amount of PhP 48,539,839.65 (Subject BCD Account).[11]

The following day, Metrobank sent a Letter[12] to BCD notifying it that the abovementioned accounts were identified as related and/or materially linked to one of the accounts in the Freeze Order.

As a response, BCD filed a Motion[13] on 15 February 2017, praying that the Freeze Order and all its effects over the Subject BCD Account be lifted and set aside. It argued that Metrobank, a mere private entity, had no legal right to freeze the accounts of BCD, much less determine whether the same are part of the related web of accounts covered by the Freeze Order. BCD further contended that Metrobank could not have frozen its accounts without violating the Bank Secrecy Law.

Ruling of the CA

On 21 March 2017, the CA promulgated its assailed Resolution[14] denying the Motion to Lift Freeze Order filed by BCD, viz:

WHEREFORE, premises considered, the Motion to Lift Freeze Order filed by BCD Foreign Exchange Corp. is DENIED.

SO ORDERED.[15]

The CA held that while BCD is not one of the respondents in AMLC's Ex Parte Petition, Metrobank identified its accounts as related to those listed in the Freeze Order, in accordance with Paragraph R, Rule III, of the 2016 Revised Implementing Rules and Regulations (RIRR) of the AMLA.

Moreover, the CA found that, from March to November 2013, the Old BCD Account was a direct recipient of 36 deposit transactions amounting to P48,262,720.00 from Chen Jiali's Metrobank Savings Account No. 30115279290, an account subject of the Freeze Order.[16] However, BCD failed to show proof that it had legitimate transactions with Chen Jiali. Notably, the Old BCD Account was closed on 06 December 2013, while the Subject BCD Account contained the amount of P48,539,839.65.

The CA also gave credence to AMLC's allegation that voluminous financial documents in the name of BCD were recovered during a drug operation conducted in 2013, leading to the implication of spouses Shi Xiu Lun and Wu Rong.

Lastly, the CA pronounced that there is no violation of the Bank Secrecy Act, as the case falls under the exceptions provided under the AMLA, specifically when there is probable cause that the deposits are related to unlawful activities.

The motion for reconsideration filed by BCD was denied by the CA through its Resolution dated 10 May 2017.[17] Hence, this petition.

Issue

The essential issue for resolution in this case is whether the CA erred in issuing the assailed Resolutions, which maintained the effects of the Freeze Order over the Subject BCD Account.

Ruling of the Court

In assailing the Resolutions of the CA, BCD argues that: (1) Metrobank has no legal authority to freeze the Subject BCD Account, much less determine whether it constitutes a "materially linked account" or part of the "related web of accounts"; (2) in freezing the Subject BCD Account, Metrobank could not have derived authority from the RIRR of RA 9160; and (3) Metrobank could not have validly frozen the Subject BCD Account without violating the Bank Secrecy Law.[18]

The petition is unmeritorious.

First, on the procedural issue. Respondents argue in their respective Memoranda[19] that the Freeze Order had already expired on 30 March 2017. On 28 March 2017, the Republic instituted a civil forfeiture case before Regional Trial Court (RTC) of Manila,[20] which has issued a Provisional Asset Preservation Order (PAPO) and an Asset Preservation Order (APO)[21] covering the Subject BCD Account. As such, respondents maintain that the instant petition should be dismissed for being moot and academic.

The Court has explained that a case is moot when supervening events have terminated the legal issue between the parties, such that an adjudication of the case would be of no practical value and there is no actual substantial relief which would be negated by the dismissal of the petition.[22]

In this case, after the expiration of the Freeze Order, the CA remanded the case and transmitted the records to RTC Manila for consolidation with the pending civil forfeiture case, in accordance with Section 56 of A.M. No. 05-11-04-SC, or the Rule of Procedure in Cases of Civil Forfeiture.

Accordingly, the instant petition may be dismissed on the ground of mootness, since BCD's remedy is to appeal from or assail the incidents or actions pertaining to the Civil Forfeiture Case. We note, however, that BCD raises

the argument that Subject BCD Account would not have been involved in the Civil Forfeiture Case were it not for the proceedings before the CA.

Meanwhile, in the said civil forfeiture case, BCD filed a Motion to Discharge questioning the inclusion of Subject BCD Account from the effects of the APO. The RTC granted the motion in an Order dated 09 July 2018. Nonetheless, the same was reversed upon a motion for reconsideration[23] filed by the Republic. In its resolution, the RTC specifically made reference to the instant petition filed with this Court, to wit:[24]

In fact, in the petition for review filed by respondent BCD with the Supreme Court (docketed as G.R. No. 231495) the latter asked the following:

"WHEREFORE, premises considered, it is most respectfully prayed that the herein assailed Resolution be SET ASIDE and a new one be issued as follows:

1. Declaring the Freeze Order and all its effects over BCD's Metrobank Account No. 7-285-51261-8 LIFTED and SET ASIDE;
2. Declaring the inclusion by the Court of Appeals BCD's Account No. 7-285-51261-8 as among the related or materially linked accounts to the alleged unlawful activity of Jiali Chen, et al., IMPROPER and UNLAWFUL;
3. Ordering the Court of Appeals and the AMLC to EXCLUDE the said BCD's Account No. 7-285-51261-8 from the Freeze Order and as among the related or materially linked accounts in AMLC Case No. 17-002-53 before the RTC of Manila;
4. Ordering METROBANK to ALLOW BCD to transact on its Account No. 7-285-51261-8 in the normal and ordinary course and as matter of right. xxx"

Clearly, respondent BCD is asking that its subject Metrobank Account No. 7-285-5121-68 be declared as not related to or materially linked to an alleged unlawful activity. Such being the case, it was premature to discharge said respondent BCD's Metrobank Account No. 7-285-51261-8 from the effects of APO issued on April 17, 2017, considering that respondent's (sic) BCD's petition for review was filed with the Supreme Court on June 30, 2017.[25] (Emphasis supplied)

Considering BCD's allegations of denial of due process involving proprietary rights, this Court deems it proper to settle the issue once and for all. This is also to prevent similar questions from re-emerging,[26] either from the pending Civil Forfeiture Case or other cases involving the issuance and implementation of Freeze Orders.

Section 56 of the Rule of Procedure in Cases of Civil Forfeiture provides that the CA shall accordingly issue an ex-parte Freeze Order, if it is satisfied from the allegations of the petition that there exists probable cause that the monetary instrument, property, or proceeds are in any way related to or involved in any unlawful activity as defined in Section 3(i) of RA 9160, as amended by RA 9194.

On the other hand, Section 55 thereof provides that upon receipt of the Freeze Order, any covered institution, such as a bank, "shall immediately desist from and not allow any transaction, withdrawal, deposit, transfer, removal, conversion, other movement or concealment of the account representing, involving or relating to the subject monetary instrument, property, proceeds or its related web of accounts." [27]

Related accounts are defined as "those accounts, the funds and sources of which originated from and/or are materially linked to the monetary instruments or properties subject of the freeze order." [28]

Upon receipt of the Freeze Order issued based on the determination of probable cause by the CA, Metrobank discovered that the Old BCD Account was a direct recipient of funds amounting to P48,262,720.00 from Chen Jiali's Metrobank Savings Account No. 301152799290, one of the accounts listed in the Freeze Order. The Old BCD Account was eventually closed. However, BCD eventually opened a new account, herein Subject BCD

Account, with the amount of P48,539,839.65, almost the same amount of cash the Old BCD Account contained.

Therefore, Metrobank included both the Old BCD Account and Subject BCD Accounts in its Report when it determined that these are recipients of funds from an account subject of the Freeze Order.[29] Contrary to the contention of BCD, it was not Metrobank that determined probable cause as basis to include Subject BCD Account in the Freeze Order. Guided by the clear definition of the rules on what a related account is, Metrobank merely complied with the instruction of the CA to submit a detailed Return specifying all pertinent information on the accounts listed in the Freeze Order, with other related accounts and the corresponding grounds for the identification of each.[30]

As such, Metrobank acted in good faith in including Subject BCD Account in its Report. Otherwise, it would have put itself at risk of being held liable for violating the provisions of AMLA, as amended by RA 10365.[31] In any case, any person whose account is frozen is not left without remedy. An aggrieved party may file a Motion to Lift the Freeze Order to show that no probable cause exists,[32] as what BCD did in this case.

It is also noteworthy that when BCD filed its Motion to Lift the Freeze Order, it had the opportunity to explain why Subject BCD Account should not be deemed as a related account. It failed to do so. There were no explanations on why BCD received exorbitant amounts of cash from Chen Jiali, or information on the sources of its funds, even after AMLC had questioned the legitimacy of its operations.[33] The bulk of its arguments only attacked the authority of Metrobank, as a mere private entity, to determine that Subject BCD Account is part of the related web of accounts. Notably, such arguments of BCD were retained in the instant petition.

Moreover, AMLC had already established that Subject BCD Account is part of the related web of accounts based on the following evidence: (1) a drug operation conducted in 2013 led to the recovery of voluminous financial documents in the name of BCD; and (2) BCD is not conducting any activity in any of its declared places of business.[34]

To stress, only probable cause is needed to justify the issuance of a Freeze Order, as the relief is merely preemptive in character.[35] In determining the presence of probable cause, this Court has explained:

In resolving the issue of whether probable cause exists, the CA's statutorily-guided determination's focus is not on the probable commission of an unlawful activity (or money laundering) that the OMB has already determined to exist, but on whether the bank accounts, assets, or other monetary instruments sought to be frozen are in any way related to any of the illegal activities enumerated under R.A. No. 9160, as amended, has been explained as the sufficiency of the relation between an unlawful activity and the property or monetary instrument which is the focal point of Section 10 of RA 9160, as amended.[36] (Emphasis supplied)

Considering the circumstances, there is probable cause to justify the maintenance of the effects of the Freeze Order over Subject BCD Account, which has been shown to fall under the definition of a "related account." Had it been ruled otherwise, the point of issuing a Freeze Order would have been defeated, i.e., to prevent the disposal of property while the Republic prepares to file a criminal or civil forfeiture case.[37]

Consequently, there is no merit to BCD's allegation that Metrobank violated the Bank Secrecy Act. Under the AMLA, an exception to the Bank Secrecy Act is when there is probable cause that the accounts involved are related or connected to an unlawful activity, including a violation of the Comprehensive Dangerous Drugs Act of 2002.[38]

WHEREFORE, the Petition is DENIED. The assailed Resolutions dated 21 March 2017[39] and 10 May 2017[40] of the Court of Appeals (CA) in CA-G.R. AMLC No. 00173 are AFFIRMED.

SO ORDERED.

Leonen (Chairperson), Rosario, and Dimaampao, JJ., concur.
Carandang,[*] J., on official leave.

[*] On official leave per Special Order No. 2851 dated 07 October 2021.

[1] Rollo, Vol. 1, pp. 10-43.

[2] Id. at 45-51. Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela.

[3] Id. at 62-63.

[4] Id. at 50.

[5] Id. at 96.

[6] Id. at 404-435.

[7] Id. at 424-425.

[8] Id. at 103-130.

[9] Id.

[10] Id. at 125-129.

[11] Id. at 46.

[12] Id. at 100.

[13] Id. at 64-95.

[14] Id. at 45-51.

[15] Id. at 50.

[16] Id. at 192-204.

[17] Id. at 62-63.

[18] Id. at 10-43.

[19] Rollo, Vol. 2, pp. 576-611 and 876-910.

[20] Id. at 692-764.

[21] Id. at 775-778.

[22] Express Telecommunications Co., Inc. v. AZ Communications, Inc., G.R. No. 196902, 13 July 2020, citing Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration, 728 Phil. 535 (2014).

[23] Rollo, Vol. 2, pp. 914-937.

[24] Id. at 962-969.

[25] Id. at 968-969.

[26] Id. at 914-937.

[27] A.M. No. 05-11-04-SC, Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation under R.A. 9160. Effective: 15 December 2005.

[28] Rule 3(R), 2016 Revised Implementing Rules and Regulations of Republic Act No. 9160, as amended.

[29] Rollo, Vol. 1, pp. 184-190.

[30] Rule 10. Freeze Order. - xxx xxx

E. Duties of Covered Persons and Concerned Government Agencies upon Receipt of Freeze Order.—

1. Implement Freeze Order.— Upon receipt of the notice of the freeze order, the covered person and government agency concerned shall immediately freeze the monetary instrument or property subject thereof, and shall immediately desist from and not allow any transaction, withdrawal, transfer, removal, conversion, other movement or concealment thereof.

2. Freeze Related Accounts.— Upon receipt of the freeze order and upon verification by the covered person that there are accounts related to the monetary instrument or property subject of the freeze order, the covered person shall immediately freeze these related accounts wherever these may be found.

If the related accounts cannot be determined within twenty-four (24) hours from receipt of the freeze order due to the volume and/or complexity of the transactions or any other justifiable factors, the covered person shall effect the freezing of the related accounts within a reasonable period and shall submit a supplemental return thereof to the Court of Appeals and the AMLC within twenty-four (24) hours from the freezing of said related accounts.

3. Furnish Copy of Freeze Order to Owner or Holder.— The covered person and government agency concerned shall likewise immediately furnish a copy of the notice of the freeze order upon the owner or holder of the monetary instrument or property or related accounts subject thereof.

4. Submit Detailed Return .— Within twenty-four (24) hours from receipt of the freeze order, the covered person and government agency concerned shall submit, by personal delivery, to the Court of Appeals and to the AMLC, a written detailed return on the freeze order.

The covered persons shall also submit to the AMLC, through the internet, an electronic detailed return in a format to be prescribed by the latter.

5. Contents of the Detailed Return.— The detailed return on the freeze order shall specify all the pertinent and relevant information, which shall include the following:

a. For covered persons: The account numbers and/or description of the monetary instrument, property, or proceeds involved;

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c. For covered persons and government agencies, whichever are applicable:

- The names of the account holders, personal property owners or possessors, or real property owners or occupants;

- The value of the monetary instrument, property, or proceeds as of the time the assets were ordered frozen;

- All relevant information as to the status and nature of the monetary instrument, property, or proceeds;

- The date and time when the freeze order was served; and

- The basis for the identification of the related accounts.

[31] Republic Act No. 9160, Sec. 14, as amended.

[32] Subido Pagente Certeza Mendoza and Binay Law Offices v. The Court of Appeals, 802 Phil. 314 (2016).

[33] Rollo, Vol. 1, pp. 192-204.

[34] Id. at 196.

[35] Ligot v. Republic of the Philippines, Phil. 477 (2013).

[36] Yambao v. Republic, G.R. No. 171054, 26 January 2021.

[37] Rollo, Vol. 1, p. 196.

[38] Republic Act No. 9160, Sec. 11.

[39] Rollo, Vol. 1, pp. 45-51.

[40] Id. at 62-63.

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