

**REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. HON.  
SANDIGANBAYAN, FERDINAND E. MARCOS, IMELDA R. MARCOS,  
ROSENDO D. BONDOC, CESAR E.A. VIRATA, RUBEN ANCHETA, JAIME  
C. LAYA, PLACI...**

*G.R. No. 92594. March 04, 1994*

Ponente: PUNO, J.

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**PUNO, J.:**

An enduring touchstone of a republican form of government is its guarantee of equal protection of law. To the powerless, it is the promise of parity of treatment with the powerful when they are similarly situated. This promise must be matched with performance, and to the extent that the resolutions of the respondent court dated November 29, 1989 and March 9, 1990 accord fidelity to this constitutional precept, we affirm them.

Less the fat of legalese, the facts are few and uncontroverted. Before 1986, the Landoil Group of Companies spearheaded by then Congressman Jose de Venecia, Jr., was able to obtain foreign loans syndicated by various banks aggregating approximately one hundred twenty million US dollars (\$120 M). These foreign loans were guaranteed by PHILGUARANTEE, whose Board of Directors was then composed of private respondents, Rosendo D. Bondoc, Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin, and Cesar Zalamea. Congressman de Venecia's group of companies was unable to seasonably service these foreign loans and this compelled PHILGUARANTEE to assume its obligation as guarantor.

The EDSA revolution in February 1986 swept the Marcoses out of power. One of the first official acts of then President Corazon C. Aquino was the creation of the Presidential Commission on Good Government (PCGG) under E.O. No. 1. It was given the difficult task of recovering the illegal wealth of the Marcoses, their family, subordinates and close associates. In due time, the Marcoses and their cronies had to face a flurry of cases, both civil and criminal, all designed to recover the Republic's wealth allegedly plundered by them while in power. Case No. 0020 for Reconveyance, Reversion, Accounting, Restitution and Damages was one of these cases. It was filed by the petitioner Republic against Jose de Venecia, Jr., Ferdinand E. Marcos, Imelda R. Marcos, Rosendo D. Bondoc, Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and Cesar C. Zalamea. We quote its relevant allegations:

**"IV**

**GENERAL AVERMENTS  
OF  
DEFENDANTS' ILLEGAL ACTS**

"8. From the early years of his presidency, Defendant Ferdinand E. Marcos took undue advantage of his powers as President. All throughout the period from September 21, 1972 to February 25, 1986, he gravely abused his powers under martial law and ruled as Dictator under the 1973 Marcos promulgated Constitution.

Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines embarked upon a systematic plan to accumulate ill-gotten wealth. Among others, in furtherance of said plan and acting in unlawful concert with one another and with gross abuse of power and authority, Defendant Ferdinand E. Marcos and Imelda R. Marcos:

- (a) awarded contracts with the Government to their relatives, business associates, dummies, nominees, agents or persons who were beholden to said Defendants, under terms and conditions grossly and manifestly disadvantageous to the government;
- (b) misappropriated, embezzled and/or converted to their own use funds of Government financial institutions;
- (c) engaged in other illegal and improper acts and practices designed to defraud Plaintiffs and the Filipino people, or otherwise misappropriated and converted to their own use, benefit and enrichment the lawful patrimony and revenues of Plaintiff and the Filipino people.

"9. Among the assets acquired by Defendants in the manner above-described and discovered by the Commission in the exercise of its official responsibilities are funds and other property listed in Annex "A" hereof and made an integral part of this Complaint.

"10. Defendants, acting singly or collectively, and/or in unlawful concert with one another, for the purpose of preventing disclosure and avoiding discovery of their unmitigated plunder of the National Treasury and of their other illegal acts, and employing the services of prominent lawyers, accountants, financial experts, businessman [sic] and other persons, deposited, kept and invested funds, securities and other assets in various banks, financial institutions, trust or investment companies and with persons here and abroad.

## "V

### SPECIFIC AVERMENTS OF DEFENDANTS' ILLEGAL ACTS

"11. Defendant Jose de Venecia, Jr. taking undue advantage of his relationship, influence and connection with Defendants Ferdinand E. Marcos and Imelda R. Marcos, acting by himself and/or in active collaboration with the other Defendants, embarked upon devices, schemes and stratagems to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, among others:

- (a) Organized and headed the Land Oil Group, a big business conglomerate engaged in a wide range of economic activity, such as petroleum exploration and engineering, port management and operation, and other services. The Land Oil Group, more particularly, the Land Oil Resources Corporation, its parent company, and its major subsidiaries, the Philippine-Singapore Ports Corporation, the Greater Manila Land Corporation, Construction Consortium, Inc. and the Philippine Hospitals and Health Services, had operations in the Philippines and abroad, particularly, in the Middle East;
- (b) To finance his huge domestic and overseas operations, Defendant Jose de Venecia, acting through the Land Oil Group, borrowed enormous amounts in foreign currency denominated loans from several syndicates of international banks, such as, but not limited to, Arab Banking Corporation, Ahli Bank of Kuwait, Credit Suisse, First of Boston's, Saudi Cairo Bank, Mellon Bank and the Bank of Montreal. In view of the magnitude of the loans and the project risks involved, the banks required that their loans be fully covered by the absolute and unconditional guarantee of the Government of the Republic of the Philippines;
- (c) Accordingly, Defendant Jose de Venecia applied for Philippine Government guarantee from the Philippine

Export and Foreign Loan Guarantee Corporation (Philguarantee), a government-owned and controlled corporation organized to provide Philippine Government guarantees, and, with the active collaboration of Defendants Rosendo D. Bondoc, who was then the President of Philguarantee and the members of its Board of Directors, Defendants Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and Cesar C. Zalamea was granted full Philippine Government guarantee coverage;

(d) Defendant Jose de Venecia misused the proceeds of the loans by diverting them to other uses and/or appropriation, then for his own personal benefit using for this purpose a string of local and overseas banks, such as, but not limited to, PNB (New York), PNB (Buendia Branch), PCTB (Makati Branch), Swiss Banking Corp. of Hongkong, and the Hongkong and Shanghai Banking Corp. in Hongkong, and in an effort to hide his complicity in the diversion, refused to submit regular accounting and reports, all in violation of the provisions of the loan and guarantee agreements;

(e) Notwithstanding the aforesaid repeated violations Philguarantee, with the active collaboration of Defendants Rosendo D. Bondoc, Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and Cesar C. Zalamea, continued to provide financial assistance to the companies owned and controlled by Defendant Jose de Venecia;

(f) As a result of gross mismanagement and wanton diversion of the loans, the major operations of the Land Oil Group collapsed, Land Oil defaulted in the payment of its maturing principal and interests amortization and, like the man holding the proverbial empty bag, Philguarantee had to advance on its guarantee using for this purpose multi-millions of pesos in scarce government and taxpayers' money, resulting in grave and irreparable damage to Plaintiff and to the entire Filipino people.

"12. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.

## "VI

### CAUSE OF ACTION

"13. First Cause of Action: ABUSE OF RIGHT AND POWER -- (a) Defendants, in perpetrating the unlawful acts described above, committed abuse of right and power which caused untold misery, suffering and damage to Plaintiff. Defendants violated, among others, Articles 19, 20 and 21 of the Civil Code of the Philippines;

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

"14. Second Cause of Action: UNJUST ENRICHMENT -- Defendants illegally accumulated funds and other property in violation of the laws of the Philippines and in breach of their official functions and fiduciary obligations. Defendants, therefore, have unjustly enriched themselves to the grave and irreparable damage and prejudice of Plaintiff. Defendants have an obligation at law, independently of breach of trust and abuse of right and power and; as an alternative, to jointly and severally return to Plaintiff such funds and other property with which Defendants, in gross and evident bad faith, have unjustly enriched themselves or, in default thereof,

restore to Plaintiff the amount of such funds and the value of the other property including those which may have been wasted, and/or lost, with interest thereon from the date of unlawful acquisition until full payment.

"15. Third Cause of Action: BREACH OF TRUST -- A public office is a public trust. By committing all the acts described above, Defendants repeatedly breached public trust and the law, making them jointly and severally liable to Plaintiff. The funds and other property acquired by Defendants as a result of their breach of public trust are deemed to have been acquired for the Benefit of Plaintiff and are, therefore, impressed with constructive trust in favor of Plaintiff and the Filipino people.

"16. Fourth Cause of Action: ACCOUNTING --- The Commission, acting pursuant to the provisions of applicable law, respectfully maintains that Defendants, acting singly or collectively, and/or in unlawful concert with one another, acquired funds, assets and property during the incumbency of Defendant public officers, or while acting in unlawful concert with public officers, manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property. Consequently, they are required to show to the satisfaction of this Honorable Court that they have lawfully acquired all such funds, assets and property which are in excess of their legal net income, and for this Honorable Court to decree that the Defendants are under obligation to account to Plaintiff with respect to all legal or beneficial interests in funds, properties and assets of whatever kind and wherever located in excess of their lawful earnings.

"17. Fifth Cause of Action: LIABILITY FOR DAMAGES -- (a) By reason of the unlawful acts set forth above, Plaintiff and the Filipino people have suffered actual damages in an amount representing the pecuniary loss sustained by the latter as a result of Defendants' unlawful acts, the approximate value and interest on which, from the time of their wrongful acquisition, plus expenses which Plaintiff has been compelled to incur and shall continue to incur in its effort to recover Defendants' ill-gotten wealth all over the world. Defendants are, therefore, jointly and severally liable to Plaintiff for actual damages and for expenses incurred in the recovery of Defendants' ill-gotten wealth.

(b) As a result of Defendants' unlawful, malicious, immoral and wanton acts described above, Plaintiff and the Filipino people had painfully endured and suffered for more than twenty long years, and still continue to endure and suffer anguish, fright, sleepless nights, serious anxiety, wounded feelings and moral shock, as well as besmirched reputation and social humiliation before the international community, for which Defendants are jointly and severally liable to Plaintiff and the Filipino people for moral damages.

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

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

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

Needless to state, the de Venecia group of companies and PHILGUARANTEE were sequestered by the petitioner, through the PCGG.

The filing of Case No. 0020 notwithstanding, an investigation was conducted to determine the veracity of the above allegations. The investigation culminated in the signing of a Deed of Assignment between the petitioner

and de Venecia, Jr., representing seven (7) of the eighteen (18) companies of the Land Oil Group. The Deed was premised on the following facts found by the petitioner after its investigation, and recited in its whereas clauses, viz:

"x x x. As a result of such investigation Philguarantee has satisfied itself (i) that such guarantee facility was obtained in the ordinary and regular course of business, and that no favor was accorded to the Landoil officers, in the grant of such guarantee facility; and (ii) that the business reversals experienced by the Landoil Group in connection with its various construction and other projects in the Middle East and elsewhere were due, firstly, to the inability of the Landoil Group to collect its contract receivables from such projects due to the reasons specified in the sixth "whereas" clause, and, secondly, due to the non-payment of its insurance claim under the insurance policy referred to in the succeeding (ninth), "whereas" clause."

Certain obligations were then assumed by de Venecia, Jr., and his group, viz:

"1.1 Upon the request of the Assignee (referring to petitioner), the Assignors (being the above-named companies making up Landoil Group) shall immediately cause to be transferred to the Assignee (or its nominee/s) all the shares of the capital stock of Landoil (up to 45% of the total outstanding issued and subscribed capital stock of Landoil) which have or may hereafter be identified as belonging to Marcos (whether standing in his name or the name [of] any of his nominee/s). x x x

"1.2 Upon the effectiveness of this Agreement, the Assignors shall cause to be paid to the Assignee, through PCGG, the amount of P13, million, which amount represents a portion of Landoil's recovery from an arbitration proceeding which Landoil had caused to be instituted in London against the Lloyd's Syndicate of Insurance Underwriters;

"1.3 Effective immediately, the Assignors hereby assign, transfer and convey to the PCGG: (a) the entire proceeds of the Assignors' claims in the New York case which Landoil has instituted against the insurance brokers, namely, the firm of Alexander and Alexander, and (b) the entire proceeds of the Assignors' contract receivables from all the Assignors' construction and other projects in the Middle East and elsewhere, net of any amount required for the settlement of any compulsory statutory liens for unpaid wages or salaries and ordinary administrative overhead and costs, and attorney's fees and expenses of litigation.

"x x x

"1.5 The Assignors, and or their respective officers, hereby undertake to fully cooperate with the Philippine Government, acting through the PCGG or any other governmental agency, in the prosecution of any case which the Philippine Government may cause to be filed against former President Marcos and his cronies, either by furnishing testimony in any such case, or by providing information in any investigation undertaken in contemplation of the filing of such case, whether in the Philippines or elsewhere, as may be required or directed by the PCGG, or by other appropriate governmental agency from time to time."

In reciprocity, petitioner agreed to cause the dismissal without prejudice of the complaint in Civil Case No. 0020 against de Venecia and his group of co-signors.

Pursuant to this Deed of Assignment, de Venecia Jr., with the express conformity of PCGG, moved to dismiss Civil Case No. 0020 against him. On September 8, 1989, the respondent court granted the motion to dismiss. The dismissal became final and executory. The other private respondents followed suit with their respective motions to dismiss. The motions were opposed by the petitioner. Nonetheless, on December 4, 1989, the respondent court dismissed the Expanded Complaint against herein private respondents. The dismissal was based on two (2) grounds: (1) removal of an indispensable party in the person of de Venecia, Jr., from the Expanded Complaint; and (2) lack of cause of action in view of the facts established and admitted by the petitioner in the Deed of Assignment. Petitioner's motion for reconsideration and its Supplement were denied by the respondent court on

March 9, 1990. Petitioner then filed the petition at bar, where it is contended:

"16. The respondent Court committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing the case against defendant de Venecia's co-defendants, on the following grounds:

- a) The Deed of Assignment executed on July 19, 1989 by Landoil in favor of the petitioner should not be made to benefit de Venecia's co-defendant;
- b) Defendant de Venecia is not an indispensable party in the prosecution of the case against his co-defendants;
- c) The liabilities of de Venecia's co-defendants arose not only from their alleged conspiracy with defendant de Venecia but also by virtue of their individual or collective actions done in unlawful concert with one another;
- d) The causes of action against defendants Ferdinand E. Marcos and Imelda R. Marcos have nothing to do with the Deed of Assignment executed by Landoil in favor of the petitioner; and
- e) The parties manifestly intended to exclude defendant de Venecia's co--defendants from the benefit of the Deed of Assignment in question."

We find partial merit in the petition.

The threshold question is whether the subject Deed of Assignment justifies the dismissal of Civil Case No. 0020 against, first, private respondents Bondoc, Virata, Ancheta, Laya, Mapa, Jr., Ongpin, Zalamea, and second, against the private respondents, Ferdinand and Imelda R. Marcos.

We shall first determine the effect of the Deed of Assignment on the cause of action of petitioner against the first group of private respondents - Bondoc, et al. Petitioner submits that the execution of the Deed need not result in the dismissal of Expanded Complaint against Bondoc, et al. It cites two (2) reasons: (1) Bondoc, et al. were not parties to the Deed, and (2) petitioner did not receive any consideration or benefit from Bondoc, et al., when it executed the said Deed.

Petitioner's submission misses the rationale of the ruling of the respondent court. The respondent court ordered the dismissal of the Expanded Complaint because the Deed contained averments which nullified petitioner's cause of action. More specifically, the Deed averred "x x x as a result of such investigation Philguarantee has satisfied itself (1) that such guarantee facility was obtained in the ordinary and regular course of business, and that no favor was accorded to the Landoil officers, in the grant of such guarantee facility; x x x." If after investigation, petitioner has satisfied itself that the guaranty facility was obtained in the ordinary and regular course of business, it follows that it can no longer insist it has a cause of action against Bondoc and company. This admission of lack of cause of action constitutes an admission against interest. It binds the petitioner as it is not alleged that it was given due to fraud, mistake or inadvertence. The adverse effects of the admission bind petitioner and it is not material that respondents Bondoc and company were not parties to the Deed or that in executing the said Deed, petitioner did not receive any consideration from respondents Bondoc and company. An admission against interest is a voluntary act and its effects do not depend on the concurrence of any other party or consideration of any kind.

Petitioner next contends that the respondent court erred in ruling that it has only one cause of action against the respondents Bondoc and company - i.e., that as members of the Board of Directors of PHILGUARANTEE, they continuously extended and maintained unwarranted guarantees to cover the foreign loans of de Venecia's Land Oil Group of Companies, cronies of the Marcoses. Petitioner's submission is shared by our brethren who dissented from the majority. They are of the view that petitioner pleaded several causes of action. They then point to the introductory part of par. 11 of the Expanded Complaint which used the phrase "among others," viz:

"11. Defendant Jose de Venecia, Jr., taking undue advantage of his relationship, influence and connection with Defendants Ferdinand E. Marcos and Imelda R. Marcos, acting by himself and/or in active collaboration with the other Defendants, embarked upon devices, schemes and stratagems to unjustly enrich themselves at the expense of plaintiff and the Filipino People, among others." (Underlining supplied.)

They also cite par. 8 which used the same phrase "among others," viz:

"x x x Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth. Among others, in furtherance of said plan and acting in unlawful concert with one another and with gross abuse of power and authority, x x x." (Underscoring supplied.)

They also refer to par. 9 which also used the word "among," viz:

"Among the assets acquired by Defendants in the manner above-described and discovered by the Commission in the exercise of its official responsibilities are funds and other property listed in Annex "A" hereof and made an integral part of this Complaint." (Underscoring supplied.)

They then cite paragraphs 13, 14, 15, 16 and 17 of the Expanded Complaint which allegedly enumerated five (5) causes of action.

This stand cannot be sustained. Par. 8 of the Expanded Complaint merely laid down the "General Averments of Defendants' Illegal Acts." The specific allegations of the acts and omissions committed by respondents Bondoc and company and constitutive of petitioner's cause of action are recited in par. 11 of the Expanded Complaint. It is for this reason that par. 11 bears the descriptive title "Specific Averments of Defendants' Illegal Acts." Needless to stress, the cause of action of the petitioner against the said respondents is spelled out in par. 11 (a) to (f). A perusal of par. 11 will yield no other conclusion than that there is but one cause of action against these respondents -- that with conspiracy, they allegedly extended unwarranted guarantees to enable the de Venecia group of companies, all cronies of the Marcoses, to obtain foreign loans. The use of the phrase "among others" in the Expanded Complaint does not in any manner mean that petitioner has other concealed causes of action against these respondents. Smart pleaders resort to said artful phrase only to gain more leeway in presenting their evidence. By no stretch of the imagination, however, can it be maintained that the opaque phrase "among others" can confer a cause of action. Such a ruling cannot be reconciled with substantive due process which bars roaming generalities in any kind of complaint, whether civil or criminal. It is for this reason that section 1 of Rule 8 of the Rules of Court requires that "every pleading shall contain in a methodical and logical form, a plain, concise and direct statement of the ultimate facts on which the party pleading relies for his claim or defense, as the case may be...." A transgression of this rule is fatal. Upon the other hand, paragraphs 13 to 17 of the Expanded Complaint contain mere general averments and do not allege petitioner's specific cause of action against these respondents. They speak for themselves and they need not undergo the scalpel of judicial scrutiny.

Petitioner and the dissent further forward the thesis: The averments earlier mentioned and the deed of assignment, juxtaposed with Annex "A," show prima facie that (a) the petitioner did not intend to enter into any amicable settlement with the remaining eleven (11) corporations or regarding the frozen assets listed in said Annex "A," and (b) the assets of the defendants in the said eleven (11) corporations were not necessarily obtained through or as a consequence of the acts or transactions described in subparagraphs (a) to (f), paragraph 11 of the Expanded Complaint, but probably through "the other devices, schemes or stratagems."

Again, we find the thesis untenable. We need not agonize in search for the subjective intent of the petitioner in

concluding the Deed of Assignment only with the seven (7) corporations of the de Venecia group of companies. Speculations on intent can be endless for it is the nature of unmanifested intent to be fugitive. But the effort is superfluous for we need not engage in this difficult intellectual jujitsu. For, whether or not it was petitioner's furtive intent to settle amicably with all the corporations of de Venecia and the respondents Bondoc and company, is not decisive of the case at bar. What is determinative is that in the Deed of Assignment, petitioner itself admitted that it has no cause of action against these respondents in Civil Case No. 0020. The admission was made when, after conducting its own investigation, it found out that (1) de Venecia, Jr., was not a crony but a victim of the Marcoses; (2) the guarantees extended by the private respondents as members of the Board of Director of PHILGUARANTEE were given in "the ordinary and regular course of business and that no favor was accorded to the Landoil officers in the grant of such guarantee facility," and (3) that the business reversals experienced by the Landoil Group in connection with its various construction and other projects in the Middle East and elsewhere were due, firstly, to the inability of the Landoil Group to collect its contract receivables from such projects due to the reasons specified in the sixth "whereas" clause, and, secondly, due to the non-payment of its insurance claim. In light of these specific admissions, there is no need to speculate why the other corporations of de Venecia were not made parties to the Deed of Assignment.

The dissent likewise posits the highly stretched submission that there is a prima facie showing that the "assets of the defendants in the said eleven (11) corporations were not necessarily obtained through or as a consequence of the acts or transactions described in subparagraphs (a) to (f), par. 11 of the Expanded Complaint but probably through "the other devices, schemes or stratagems." This submission of a prima facie showing self-destructs for the factual basis given for its support is a mere guesswork - i.e., that probably the aforementioned assets were obtained through other devices, schemes or stratagems. Moreover, we are dealing with a petition for certiorari, where it may not be proper for this Court, concededly not a trier of fact, to rule about the existence of a prima facie case. To be sure, the facts of the case were not fully developed, for petitioner's Expanded Complaint was dismissed on the basis of private respondents' motion to dismiss.

Additionally, the dissent urges that the petitioner's admissions "x x x do not by themselves clear the Board of Directors or the officers of the Philguarantee from any liability which could have arisen from the grant of the guaranty facility." The given reason is that "private respondents were not sued as directors or officers of a private corporation, but as government officials who under the Constitution were obliged to serve with the highest degree of responsibility, integrity, loyalty and efficiency and to remain accountable to the people." With due deference, this view that respondents Bondoc and company were not sued as members of the Board of PHILGUARANTEE but as public officials is simply irreconcilable with the allegations in the Expanded Complaint of the petitioner, viz:

"x x x

"5. Defendants ROSENDO D. BONDOC was the President of the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee) while Defendants CESAR E.A. VIRATA, RUBEN ANCHETA, JAIME C. LAYA, PLACIDO MAPA, JR., ROBERTO ONGPIN, and CESAR C. ZALAMEA were the members of its Board of Directors."

"x x x

"V

#### SPECIFIC AVERMENTS OF DEFENDANTS' ILLEGAL ACTS

"x x x

"(b) To finance his huge domestic and overseas operations, Defendant Jose de Venecia, acting through the Land Oil Group, borrowed enormous amounts in foreign currency denominated loans from several syndicates of international banks, such as, but not limited to, Arab Banking Corporation, Ahli Bank of Kuwait, Credit Suisse First of Boston, Saudi Cairo Bank, Mellon Bank and the Bank of Montreal. In view of the magnitude of the loans and the project risks involved, the banks required that their loans be fully covered by the absolute and unconditional guarantee of the Government of the Republic of the Philippines.

"(c) Accordingly, Defendant Jose de Venecia applied for Philippine Government guarantee from the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee), a government-owned and controlled corporation organized to provide Philippine Government guarantees, and, with the active collaboration of Defendants Rosendo D. Bondoc, who was then the President of the Philguarantee and the members of its Board of Directors, Defendants Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and Cesar C. Zalamea was granted full Philippine government guarantee coverage;

"(d) Defendant Jose de Venecia misused the proceeds of the loans by diverting them to other uses and/or appropriation, then for his own personal benefit using for this purpose a string of local and overseas banks, such as, but not limited to, PNB (New York), PNB (Buendia Branch), PCTB (Makati Branch), Swiss Banking Corp. of Hongkong, and the Hongkong and Shanghai Banking Corp. in Hongkong, and in an effort to hide his complicity in the diversion, refused to submit regular accounting and reports, all in violation of the provisions of the loan and guarantee agreements;

"(e) Notwithstanding the aforesaid repeated violations, Philguarantee, with the active collaboration of Defendants Rosendo D. Bondoc, Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and Cesar C. Zalamea, continued to provide financial assistance to the companies and controlled by Defendant Jose de Venecia." (Underscoring supplied)

There cannot be any iota of doubt that said respondents were sued as members of the Board of PHILGUARANTEE and not as public officials. Indeed, if they were able to guaranty the foreign loans of petitioner it was because they were members of the Board of PHILGUARANTEE and for no other reason. But even granting arguendo that these respondents were sued as public officials, we cannot perceive how they could be charged with betrayal of their trust considering again petitioner's admission that the guarantee facilities were extended in the "ordinary and regular course of business."

Petitioner further contends that the emerging rule in the United States is that the release of one tortfeasor does not automatically result in the release of the other tortfeasors, hence, the case against the private respondents should not be dismissed even if it had consented to the dismissal of the case against de Venecia, Jr. We fail to see how the principles of tort can apply to the case at bench. Civil Case No. 0020 can hardly be classified as a tort case for, as petitioner itself labels its complaint, it is one for reconveyance, reversion, accounting, restitution and damages. Petitioner has never taken the stance that its cause of action is predicated on tort.

But even if we apply the principles of tort to the case at bench, we still affirm the ruling of the respondent court that the complaint against private respondents as former directors of PHILGUARANTEE should be dismissed. It is true that in *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 US 321, 91 S. Ct. 795, the US Supreme Court held that "a party releases only those other parties whom he intends to release." Nonetheless, the ruling should be interpreted in light of the text of the release document executed by Zenith, viz:

"To All To Whom These Presents Shall Come Or May Concern, Greeting: Know ye, That Zenith Radio Corporation and The Rauland Corporation, each a corporation organized and existing under and by virtue of the laws of the State of Illinois, for and in consideration of the sum of One Dollar (\$1.00) lawful money of the United States of America and other good and valuable consideration, to them in hand paid by ....., the receipt

whereof is hereby acknowledged, have each remised, released and forever discharged, and by these presents does each for itself and its respective subsidiaries, successors and assigns remise, release and forever discharge the said ..... and its subsidiaries and their respective successors and assigns of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law, in admiralty, or in equity, which against said....., its subsidiaries and their respective successors and assigns, said Zenith Radio Corporation and the Rauland Corporation and each of them ever had, now has or which each of them and their respective subsidiaries, successors and assigns, hereafter can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents, not including however, claims, if any, for unpaid balances on any goods sold and delivered.

"Insert

"Radio Corporation of America', or

"General Electric Company,' or

"Western Electric Company.'

"This release may not be changed orally."[1]

It is clear from the text of this release document in Zenith that the release was made in exchange for a valuable consideration, thus, in satisfaction of Zenith's claim. In the case at bench, petitioner released de Venecia, Jr. and some of his companies not because its claim has already been satisfied by a sufficient consideration, but because of the fact that it could not establish its cause of action against them. Petitioner's investigation showed that de Venecia, Jr., was not a crony of former President Marcos and that he obtained the guarantees to his foreign loans in the regular and ordinary course of business. In plain language, petitioner was convinced that de Venecia, Jr., and company did not commit any actionable wrong, including any tortious act. It ought to follow that the complaint against the respondents Bondoc and company for extending the said guarantees in favor of de Venecia, Jr., cannot also be pursued any further. The complaint against de Venecia, Jr., and these respondents are inseparable, especially because petitioner relied on the theory of conspiracy. In any event, the rule with respect to the effect of release of one tortfeasor on other tortfeasors is still in a state of fluctuation even in the United States. Thus, the 2nd Restatement of the Law on Torts states:

"Statutes. About half of the states have now passed statutes covering the matter. They change the early common law with varying positions, but a substantial number provide that neither a release nor a covenant not to sue discharges the other tortfeasor unless its terms so provide. This is the provision in both the 1955 Uniform Contribution Among Tortfeasors Act and the Uniform Comparative Fault Act.

"Present status. States may now be classed as follows:

- (1) A release amounts to a complete discharge, no matter what language is used.
- (2) An instrument in the form of a release discharges all tortfeasors; a covenant not to sue does not.
- (3) The intent is controlling, irrespective of the language- sometimes with a rebuttable presumption either for or against discharge of the other tortfeasor.
- (4) A release of one tortfeasor does not discharge the other unless it so provides. There is frequent change in the alignment of the states, usually in the direction toward classification."

Next, petitioner argues that the respondent court gravely abused its discretion when it held that de Venecia, Jr., was an indispensable party; hence, his exclusion in the Expanded Complaint ought to result in the dismissal of the

same Complaint against the private respondents. The argument has merit considering that the case can be decided without impleading de Venecia, Jr.. Be that as it may, this ruling is not enough reason to completely reverse the respondent court. As discussed above, the petitioner dropped its cause of action in its Expanded Complaint by signing the said Deed of Assignment. It has precluded itself from further pursuing its complaint not only against de Venecia, Jr., but also against respondents Bondoc and company who served as former directors of PHILGUARANTEE.

We now come to the submission of petitioner that the dismissal of the complaint against the respondents Marcoses ordered by the respondent court is a grave abuse of discretion. We agree that the Marcoses should be treated differently from de Venecia, Jr., and the respondents Bondoc and company. For in the aforementioned Deed of Assignment, the petitioner only recognized the lack of culpability of de Venecia, Jr., and by necessary inference, the respondents Bondoc and company. In contrast, however, the said Deed did not exculpate the Marcoses, but on the contrary, inculpated them. More specifically, the Deed alleged that former President Marcos "by himself and/or through his designated nominees or cronies, owns approximately 45% of the outstanding capital stock of Landoil, and through Landoil, a proportionate portion of the outstanding capital stock of each of the other companies of the Landoil Group". According to the same Deed, the former President and his cronies "coveted the Landoil groups and caused the same to be taken over by his (referring to Marcos) agents and business associates x x x". It was for this reason that in the same Deed, de Venecia, Jr., agreed to surrender to petitioner all the Marcoses' shares in the Landoil group of companies and to cooperate in the prosecution of any case to be filed against the Marcoses. In fine, the Deed of Assignment leaves it crystal clear that petitioner has not surrendered its cause of action against the Marcoses as it did with respect to the respondents Bondoc and company.

One final point. The dismissal of the Complaint against Bondoc and company is compelled by the equal protection clause of the Constitution. De Venecia, Jr. and the respondents Bondoc and company are similarly situated. Respondent Bondoc, et al. were included in the Complaint only because they allegedly gave unwarranted favors to de Venecia, Jr., in guaranteeing the latter's foreign loans. When petitioner admitted that no undue favor was granted to de Venecia, Jr. in the grant of such guaranty facilities and dismissed its complaint against him, petitioner cannot avoid its duty of dismissing its complaint against respondents Bondoc and company. To give a more favored treatment to de Venecia, Jr., when the parties are equally situated is to indulge in invidious discrimination.

IN VIEW WHEREOF, the resolutions dated November 29, 1989 and March 9, 1990 of the respondent court are affirmed with the modification that the Expanded Complaint against the respondents Marcoses in Civil Case No. 0020 is reinstated and ordered to be remanded to the respondent court for further proceedings.

**SO ORDERED.**

Feliciano, Bidin, Regalado, Nocon, Bellosillo, Melo, Vitug, and Kapunan, JJ., concur.  
Narvasa, C.J., Cruz, Romero, and Quiason, JJ., no part.  
Padilla, J., joins J. Davide, Jr., in his dissenting opinion.

[1] 28 L. Ed., 2d, 94

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## DISSENTING OPINION

### DAVIDE, JR., J.:

I respectfully submit that the respondent Sandiganbayan committed grave abuse of discretion in promulgating the challenged resolutions. I am, therefore, unable to concur with the majority opinion except insofar as it orders the reinstatement of the Expanded Complaint in Civil Case No. 0020 against the Marcoses.

The principal issue in this case is whether the dismissal by the Sandiganbayan of Civil Case No. 0020 as against defendant Jose De Venecia, by virtue of a Deed of Assignment executed between the Presidential Commission on Good Government (PCGG) and seven corporations belonging to the Landoil Group, should likewise inure to the benefit of De Venecia's co-defendants. The Sandiganbayan thought that it should and dismissed the case against the co-defendants. The petitioner thinks otherwise and submits that the Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction in so doing.

The material operative facts and procedural antecedents generative of this controversy are not disputed.

The Petitioner, represented by the PCGG, filed on 27 July 1987 with the Sandiganbayan a complaint for Reconveyance, Reversion, Accounting, Restitution and Damages against JOSE DE VENECIA, JR., FERDINAND E. MARCOS, IMELDA R. MARCOS, ROSENDO D. BONDOC, CESAR E.A. VIRATA, RUBEN ANCHETA, JAIME C. LAYA, PLACIDO MAPA, JR., ROBERTO ONGPIN and CESAR C. ZALAMEA.[1] The complaint was docketed as Civil Case No. 0020. Upon prior leave of the Sandiganbayan, the Petitioner filed on 25 January 1988 an Expanded Complaint,[2] the pertinent portions of which read as follows:

### “TV

#### GENERAL AVERMENTS OF DEFENDANTS' ILLEGAL ACTS

8. From the early years of his presidency, Defendant Ferdinand E. Marcos took undue advantage of his powers as President. All throughout the period from September 21, 1972 to February 25, 1986, he gravely abused his powers under martial law and ruled as Dictator under the 1973 Marcos promulgated Constitution. Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth. Among others, in furtherance of said plan and acting in unlawful concert with one another and with gross abuse of power and authority, Defendant Ferdinand E. Marcos and Imelda R. Marcos:

- (a) awarded contracts with the Government to their relatives, business associates, dummies, nominees, agents or persons who were beholden to said Defendants, under terms and conditions grossly and manifestly disadvantageous to the government;
- (b) misappropriated, embezzled and/or converted to their own use funds of Government financial institutions;
- (c) engaged in other illegal and improper acts and practices designed to defraud Plaintiff and the Filipino people, or otherwise misappropriated and converted to their own use, benefit and enrichment the lawful patrimony and revenues of Plaintiff and the Filipino people.

9. Among the assets acquired by Defendants in the manner above-described and discovered by the Commission in the exercise of its official responsibilities are funds and other property listed in Annex “A”

hereof and made an integral part of this Complaint.

10. Defendants, acting singly or collectively, and/or in unlawful concert with one another, for the purpose of preventing disclosure and avoiding discovery of their unmitigated plunder of the National Treasury and of their other illegal acts, and employing the services of prominent lawyers, accountants, financial experts, businessman [sic] and other persons, deposited, kept and invested funds, securities and other assets in various banks, financial institutions, trust or investment companies and with persons here and abroad.

## V

### SPECIFIC AVERMENTS

#### OF DEFENDANTS' ILLEGAL ACTS

11. Defendant Jose de Venecia, Jr. taking undue advantage of his relationship, influence and connection with Defendants Ferdinand E. Marcos and Imelda R. Marcos, acting by himself and/or in active collaboration with the other Defendants, embarked upon devices, schemes and stratagems to unjustly enrich themselves at the expense of Plaintiff and the Filipino people, among others:

a) Organized and headed the Land Oil Group, a big business conglomerate engaged in a wide range of economic activity, such as petroleum exploration and engineering, port management and operation, and other services. The Land Oil Group, more particularly, the Land Oil Resources Corporation, its parent company, and its major subsidiaries, the Philippine-Singapore Ports Corporation, the Greater Manila Land Corporation, Construction Consortium, Inc. and the Philippine Hospitals and Health Services, had operations in the Philippines and abroad, particularly, in the Middle East;

b) To finance his huge domestic and overseas operations, Defendant Jose de Venecia, acting through the Land Oil Group, borrowed enormous amounts in foreign currency denominated loans from several syndicates of international banks, such as, but not limited to, Arab Banking Corporation, Ahli Bank of Kuwait, Credit Suisse First of Boston, Saudi Cairo Bank, Mellon Bank and the Bank of Montreal. In view of the magnitude of the Loans and the project risks involved, the banks required that their loans be fully covered by the absolute and unconditional guarantee of the Government of the Republic of the Philippines;

c) Accordingly, Defendant Jose de Venecia applied for Philippine Government guarantee from the Philippine Export and Foreign Loan Guarantee Corporation (Philguarantee), a government-owned and controlled corporation organized to provide Philippine Government guarantees, and, with the active collaboration of Defendants Rosendo D. Bondoc, who was then the President of Philguarantee and the members of its Board of Directors, Defendants Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and Cesar C. Zalamea was granted full Philippine Government guarantee coverage;

d) Defendant Jose de Venecia misused the proceeds of the loans by diverting them to other uses and/or appropriation, then for his own personal benefit using for this purpose a string of local and overseas banks, such as, but not limited to, PNB (New York), PNB (Buendia Branch), PCTB (Makati Branch), Swiss Banking Corp. of Hongkong and the Hongkong and Shanghai Banking Corp. in Hongkong, and in an effort to hide his complicity in the diversion, refused to submit regular accounting and reports, all in violation of the provisions of the loan and guarantee agreements;

e) Notwithstanding the aforesaid repeated violations, Philguarantee, with the active collaboration of Defendants Rosendo D. Bondoc, Cesar E.A. Virata, Ruben Ancheta, Jaime C. Laya, Placido Mapa, Jr., Roberto Ongpin and

Cesar C. Zalamea, continued to provide financial assistance to the companies and controlled by Defendant Jose de Venecia;

f) As a result of gross mismanagement and wanton diversion of the loans, the major operations of the Land Oil Group collapsed, Land Oil defaulted in the payment of its maturing principal and interests amortization and, like the man holding the proverbial empty bag, Philguarantee had to advance on its guarantee using for this purpose multi-millions of pesos in scarce government and taxpayers' money, resulting in grave and irreparable damage to Plaintiff and to the entire Filipino people.

12. The acts of Defendants, singly or collectively, and/or in unlawful concert with one another, constitute gross abuse of official position and authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of Plaintiff and the Filipino people.

## VI

### CAUSE OF ACTION

13. First Cause of action: ABUSE OF RIGHT AND POWER -- (a) Defendants, in perpetrating the unlawful acts described above, committed abuse of right and power which caused untold misery, suffering and damage to Plaintiff. Defendants violated, among others, Articles 19, 20 and 21 of the Civil Code of the Philippines;

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

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

15. Third Cause of Action: BREACH OF TRUST -- -A public office is a public trust. By committing all the acts described above, Defendants repeatedly breached public trust and the law, making them jointly and severally liable to Plaintiff. The funds and other property acquired by Defendants as a result of, their breach of public trust are deemed to have been acquired for the Benefit of Plaintiff and are, therefore, impressed with constructive trust in favor of Plaintiff and the Filipino people. Consequently, Defendants are solidarily liable to return or reconvey to Plaintiff all such funds and property thus impressed with constructive trust for the benefit of Plaintiff and the Filipino people.

16. Fourth Cause of Action: ACCOUNTING -- The Commission, acting pursuant to the provisions of applicable law, respectfully maintains that Defendants, acting singly or collectively, and/or in unlawful concert with one another, acquired funds, assets and property during the incumbency of Defendant public officers, or while acting in unlawful concert with public officers, manifestly out of proportion to their salaries, to their other lawful income and income from legitimately acquired property. Consequently, they are required to show

to the satisfaction of this Honorable Court that they have lawfully acquired all such funds, assets and property which are in excess of their legal net income, and for this Honorable Court to decree that the Defendants are under obligation to account to Plaintiff with respect to all legal or beneficial interests in funds, properties and assets of whatever kind and wherever located in excess of their lawful earnings.

17. Fifth Cause of Action: LIABILITY FOR DAMAGES -- (a) By reason of the unlawful acts set forth above, Plaintiff and the Filipino people have suffered actual damages in an amount representing the pecuniary loss sustained by the latter as a result of Defendants' unlawful acts, the approximate value and interest on which, from the time of their wrongful acquisition, plus expenses which Plaintiff has been compelled to incur and shall continue to incur in its effort to recover Defendants' ill-gotten wealth all over the world. Defendants are, therefore, jointly and severally liable to Plaintiff for actual damages and for expenses incurred in the recovery of Defendants' ill-gotten wealth.

(b) As a result of Defendants' unlawful, malicious, immoral and wanton acts described above, Plaintiff and the Filipino people had painfully endured and suffered for more than twenty long years, and still continue to endure and suffer anguish, fright, sleepless nights, serious anxiety, wounded feelings and moral shock, as well as besmirched reputation and social humiliation before the international community, for which Defendants are jointly and severally liable to Plaintiff and the Filipino people for moral damages.

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

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

(e) By way of example and correction for the public good and in order to ensure that Defendants' unlawful, malicious, immoral and wanton acts are not repeated, said Defendants are jointly and severally liable to Plaintiff for exemplary damages.”[3]

The Annex “A” mentioned in paragraph 9 of the Expanded Complaint reads as follows:

### **“ASSETS AND OTHER PROPERTY**

OF

JOSE DE VENECIA, JR.

PERSONAL PROPERTY

A. SHARES OF STOCK IN:

1. Landoil Resources Corporation
2. Pacific Asia Builders Corporation
3. Greater Manila Land Corporation
4. Construction Consortium, Inc.
5. Asian Water and Sewer System, Inc.
6. International Medical Group, Inc.

7. Philippine Hospitals and Health Services, Inc.
8. Global Electrification Systems, Inc.
9. Philippine-Singapore Ports Corporation
10. Asiaphil Fisheries Corporation
11. Transnational Systems, Inc.
12. International Agribusiness Corporation
13. IOMC Philippines, Inc.
14. International Centers for Technology Transfer, Inc.
15. Landoil Trading Corporation
16. Multiland Insurance Agency, Inc.
17. Freeport Security Agency, Inc.
18. International Caterer's, Inc.

BANK ACCOUNTS:

1. Frozen Bank Accounts and other Assets of Placido Mapa, Jr.
2. Frozen Bank Accounts and other Assets of Cesar C. Zalamea

AND ALL OTHER ASSETS OF ALL DEFENDANTS SEQUESTERED AND/OR FROZEN BY THE COMMISSION PURSUANT TO EXECUTIVE ORDER NOS. 1 AND 2.”[4]

The five (5) volumes of the original records of Civil Case No. 0020 readily disclose that the case has undergone unnecessary delays through the filing of motions for extension of time to file answer or other responsive pleading, motions for bill of particulars and motions to dismiss, which were followed by exchanges of related pleadings such as opposition, reply to opposition and others. These motions for bill of particulars or motions to dismiss were denied by the Sandiganbayan. Thereafter, separate answers were successively filed by defendants (now private respondents) Ongpin, Laya, Ancheta, Bondoc, Mapa, Jr., Virata and Zalamea. These answers were filed between 21 January 1988 and 10 August 1989.[5]

Alias summons were served upon Ferdinand E. Marcos and Imelda R. Marcos on 10 November 1988 at 2338 Makiki Heights, Honolulu, Hawaii.[6] In its Resolution of 6 April 1989,[7] the Sandiganbayan declared them in default in Civil Case No. 0020 and other cases.

On 30 June 1989, defendant De Venecia filed a motion to dismiss Civil Case No. 0020 insofar as he is concerned in view of a Deed of Assignment executed on 19 July 1988 between Landoil Resources Corporation, including its subsidiaries, and the Petitioner, through the PCGG as represented by its Acting Chairman, Hon. Adolfo S. Azcuna.[8] On 16 July 1989, De Venecia filed an amended motion to dismiss[9] which the Petitioner opposed on the ground that De Venecia is not a party to the Deed of Assignment and that the said deed is still subject to the approval of the PCGG.[10]

On 8 September 1989, the Sandiganbayan promulgated a Resolution dated 7 September 1989 granting De Venecia's amended motion to dismiss and dismissing Civil Case No. 0020 as against him.[11] As a consequence thereof, Ongpin filed on 11 September 1989 a motion for a hearing on his affirmative defenses.[12] On 12

September 1989, Zalamea filed a motion to dismiss on the ground that there is no more legal and factual basis to proceed against him in view of the dismissal of the case as against De Venecia.[13] He argued that the latter is an indispensable party; hence, the dismissal of the case against De Venecia should result in the dismissal of the case against the other co-defendants pursuant to Section 7, Rule 3 of the Rules of Court. Separate motions to dismiss on the same ground as that of Zalamea's were successively filed by Ongpin, Ancheta, Mapa, Jr. and Laya.[14] Laya filed his motion on 28 September 1989.

In the meantime, the Petitioner filed on 28 September 1989 a motion to reconsider the Resolution of 7 September 1989.[15] However, on 17 October 1989, counsel for De Venecia submitted to the Sandiganbayan a letter of the PCGG dated 16 October 1989 and addressed to the Solicitor General requesting the latter to withdraw the motion for reconsideration.[16]

The Petitioner filed on 17 October 1989 a Consolidated Opposition[17] to the motions to dismiss wherein it alleged the prematurity of the filing of the motions to dismiss since it had filed a motion to reconsider the 8 September 1989 Resolution dismissing the case as against De Venecia.

On 28 September 1989, defendant Ferdinand E. Marcos died and on 10 November 1989, the Petitioner filed a motion for his substitution by his heirs, viz. Imelda R. Marcos, Ferdinand Marcos, Jr., Irene Marcos-Araneta and Imee Marcos-Manotoc.[18] This was granted by the Sandiganbayan in its Resolution of 16 November 1989.[19]

On 4 December 1989, the Sandiganbayan (Second Division) promulgated a Resolution, dated 29 November 1989, dismissing Civil Case No. 0020 as against De Venecia's co-defendants, the private respondents in the instant case.[20] Petitioner's motion of 27 December 1989[21] and supplemental motion of 25 January 1990[22] to reconsider the said Resolution were denied in the Sandiganbayan's Resolution of 9 March 1990.[23] These Resolutions are now challenged in this petition which was filed on 24 April 1990.[24] Petitioner claims that these were issued by the respondent Sandiganbayan with grave abuse of discretion amounting to lack or excess of jurisdiction. In support thereof, the Petitioner contends that:

"a) The Deed of Assignment executed on July 19, 1989 [should be 1988] by Landoil in favor of the petitioner should not be made to benefit De Venecia's co-defendants;

b) Defendant De Venecia is not an indispensable party in the prosecution of the case against his co-defendants;

c) The liabilities of De Venecia's co-defendants arose not only from their alleged conspiracy with defendant De Venecia but also by virtue of their individual or collective actions done in unlawful concert with one another;

d) The causes of action against defendants Ferdinand E. Marcos and Imelda R. Marcos have nothing to do with the Deed of Assignment executed by Landoil in favor of the petitioner; and

e) The parties manifestly intended to exclude defendant De Venecia's co-defendants from the benefit of the Deed of Assignment in question." [25]

I find merit in this petition.

The Deed of Assignment,[26] upon which the dismissal of Civil Case No. 0020 as against De Venecia is based, was executed between the (1) Landoil Resources Corporation, (2) Philippine Singapore Ports Corporation, (3) Asian Water and Sewer System, Inc., (4) Construction Consortium, Inc., (5) Pacific Asia Builders and Developers, Inc., (6) Philippine Hospitals and Health Service, Inc. and (7) Greater Manila Land Corporation, as ASSIGNORS, and represented therein by Ambrosio C. Collado as President of the Landoil Resources Corporation and attorney-in-fact for the others, and the Republic of the Philippines, represented by the PCGG through its then Acting Chairman, Hon. Adolfo S. Azcuna, as the ASSIGNEE. As described therein, the former

“constitute a group of related companies” sometimes referred to as the “Landoil Group,” with the Landoil Resources Corporation, “organized by or at the initiative of Jose de Venecia,” as their “flagship.” These ASSIGNORS are but seven (7) of the eighteen (18) corporations enumerated in Annex “A” of the Expanded Complaint in Civil Case No. 0020.[27] Not parties to the deed of assignment are International Medical Group, Inc.; Global Electrification Systems, Inc.; Asiaphil Fisheries Corporation; Transnational Systems, Inc.; International Agribusiness Corporation; IOMC Philippines, Inc.; International Centers for Technology Transfer, Inc.; Landoil Trading Corporation; Multiland Insurance Agency, Inc.; Freeport Security Agency, Inc.; and International Caterer’s, Incorporated. Pertinent portions of the recital part of the deed of assignment read as follows:

x x x

“(2) Immediately after the organization of the Presidential Commission on Good Government (PCGG) in February 1986, the Landoil Group, acting through Landoil itself, asked the PCGG to place the Landoil Group under sequestration for the reason that former President Ferdinand E. Marcos, by himself and/or through his designated nominees or cronies, owns approximately 45% of the outstanding capital stock of Landoil, and through Landoil, a proportionate portion of the outstanding capital stock of each of the other companies of the Landoil Group;

x x x

(7) To negate the imputation that the Landoil Group are Marcos ‘crony’ companions, and that Jose de Venecia and other officers of the Landoil Group are Marcos ‘cronies,’ the Landoil Group submitted proof tending to show that they were in fact the victims rather than the ‘cronies’ of Marcos who, in 1977, coveted the Landoil Group and caused the same to be taken over by his (Marcos’) agents and business associates for his (Marcos’) benefit after the discovery of oil deposits off Palawan by a consortium of oil exploration companies of which Landoil was a substantial member, and the acquisition of Landoil, also in 1977, of a prime port operations contract in Saudi Arabia with a value of US\$350 million;

(8) After the establishment of the present Aquino Government, Philguarantee caused an investigation to be undertaken as to (a) the background of the issuance of the alleged ‘behest’ guarantee facility in favor of the Landoil Group, and (b) the management and operations of the Landoil Group, both in the Philippines and in the Middle East. As a result of such investigation Philguarantee has satisfied itself (i) that such guarantee facility was obtained in the ordinary and regular course of business, and that no favor was accorded to the Landoil officers, in the grant of such guarantee facility; and (ii) that the business reversals experienced by the Landoil Group in connection with its various construction and other projects in the Middle East and elsewhere were due, firstly, to the inability of the Landoil Group to collect its contract receivables from such projects due to the reasons specified in the sixth ‘whereas’ clause, and, secondly, due to the non-payment of its insurance claim under the insurance policy referred to in the succeeding (ninth) ‘whereas’ clause.”[28]

Subject to certain conditions, the ASSIGNORS assumed the following obligations:

“1.1 Upon the request of the Assignee, the Assignors (being the above-named companies making up Landoil Group) shall immediately cause to be transferred to the Assignee (or its nominee/s) all the shares of the capital stock of Landoil (up to 45% of the total outstanding issued and subscribed capital stock of Landoil) which have or may hereafter be identified as belonging to Marcos (whether standing in his name or the name [of] any of his nominee/s). x x x

1.2 Upon the effectiveness of this Agreement, the Assignors shall cause to be paid to the Assignee, through PCGG, the amount of P13 million, which amount represents a portion of Landoil’s recovery from an arbitration proceeding which Landoil had caused to be instituted in London against the Lloyd’s Syndicate of Insurance Underwriters;

1.3 Effective immediately, the Assignors hereby assign, transfer and convey to the PCGG: (a) the entire proceeds of the Assignors' claims in the New York case which Landoil has instituted against the insurance brokers, namely, the firm of Alexander and Alexander, and (b) the entire proceeds of the Assignors' contract receivables from all the Assignors' construction and other projects in the Middle East and elsewhere, net of any amount required for the settlement of any compulsory statutory liens for unpaid wages or salaries and ordinary administrative overhead and costs, and attorney's fees and expenses of litigation.

x x x

1.5 The Assignors, and or their respective officers, hereby undertake to fully cooperate with the Philippine Government, acting through the PCGG or any other governmental agency, in the prosecution of any case which the Philippine Government may cause to be filed against former President Marcos and his cronies, either by furnishing testimony in any such case, or by providing information in any investigation undertaken in contemplation of the filing of such case, whether in the Philippines or elsewhere, as may be required or directed by the PCGG, or by other appropriate governmental agency from time to time.”[29]

In consideration of the ASSIGNORS' undertakings, the ASSIGNEE, viz., the Republic of the Philippines, agreed:

“2.1 x x x to cause the sequestration order issued against Landoil to be lifted upon the effectiveness of this Agreement. In addition, the Assignee shall cause the dismissal, without prejudice, of Civil Case No. 0020, entitled ‘Republic of the Philippines vs. Jose de Venecia, Jr., et al.,’ in so far as the Assignors and Jose de Venecia are concerned: provided, however, that such case shall be deemed automatically reinstated in the event of non-compliance by any of the Assignors with any of its obligations and undertakings hereunder.”[30]

The dismissal by the Sandiganbayan of Civil Case No. 0020 as against De Venecia's co-defendants is anchored on the following grounds:

a) The dismissal of the case as against de Venecia pursuant to the Resolution of 8 September 1989, “which x x x has now become final and executory after the plaintiff withdrew its ‘Motion For Reconsideration,’“ “in effect, removed an indispensable party from this case.” De Venecia is an indispensable party because his involvement in the transactions, together with the Landoil Group, which are described in paragraph 11 of the Expanded Complaint, “constitute and/or comprise the very essence of the only cause of action which is specifically averred in said Complaint, the other causes of action alleged therein being premised on mere general averments.” With the removal of De Venecia from the case with the express conformity of the plaintiff, no judgment can be rendered or liability enforced against the other defendants who are alleged to have acted in conspiracy with him.[31]

(2) The motions to dismiss filed by de Venecia's co-defendants may be treated as motions for summary judgment because when an indispensable party “has x x x been dropped from the complaint by reason of a compromise or amicable settlement which practically negates the legal or factual basis for the principal cause of action, then a fortiori, x x x the cause of action has become not only insufficient but inexistent.” The “issues having been joined already x x x, there is nothing which could prevent defendants from submitting the case for summary judgment.[32]

(3) As to defendants Ferdinand E. Marcos and Imelda R. Marcos, although they were declared in default, a “perusal of the General and Specific Averments of the Expanded complaint, in relation to the causes of action described therein, will indubitably show that above-named defendants' alleged liabilities are intimately intertwined and closely related to the transactions subject matter of the compromise agreement between the PCGG and defendant De Venecia.” Accordingly, the “compromise, x x x inures to, and benefits, defendants spouses Marcoses and completely removes any legal or factual bases for their retention as defendants in this case.”[33]

In its Resolution of 9 March 1990[34] denying the Petitioner's motion to reconsider the said dismissal, the Sandiganbayan stressed that:

“x x x the one and only cause of action set out in the Expanded Complaint appears in paragraph 11 thereof, and outlined in detail under sub-paragraphs (a) and (f), inclusive. The Compromise Agreement, as we had pointed out, not only removed De Venecia as an indispensable party but also deprived the Expanded Complaint of any and all factual or legal support for the sole cause of action set forth therein.”[35]

I cannot agree.

In the first place, the Sandiganbayan got itself entangled in a web of incorrect premises which, unfortunately, became the bases for its conclusions. For one, it is not true that the Petitioner has only one (1) cause of action as described in paragraph 11 of the Expanded Complaint. As could be gathered from the introductory portion of said paragraph 11 under subheading V on Specific Averments of Defendants' Illegal Acts, the acts or transactions enumerated in subparagraphs (a) to (f) thereof are merely “among others.” It reads:

“11. Defendant Jose de Venecia, Jr., taking undue advantage of his relationship, influence and connection with Defendants Ferdinand E. Marcos and Imelda R. Marcos, acting by himself and/or in active collaboration with the other Defendants, embarked upon devices, schemes and stratagems to unjustly enrich themselves at the expense of Plaintiff and the Filipino People, among others:”

x x x

Among simply means “mingled with or in the same group or class” or “in or through the midst of “[36] Moreover, paragraph 8 thereof on General Averments states that:

“x x x Defendant Ferdinand E. Marcos, together with other Defendants, acting singly or collectively, and/or in unlawful concert with one another, in flagrant breach of public trust and of their fiduciary obligations as public officers, with gross and scandalous abuse of right and power and in brazen violation of the Constitution and laws of the Philippines, embarked upon a systematic plan to accumulate ill-gotten wealth. Among others, in furtherance of said plan and acting in unlawful concert with one another and with gross abuse of power and authority, x x x.”

and paragraph 9 states:

“(9) Among the assets acquired by Defendants in the manner above-described and discovered by the Commission in the exercise of its official responsibilities are funds and other property listed in Annex “A” hereof and made an integral part of this complaint.”

Finally, paragraphs 13, 14, 15, 16 and 17 enumerate five (5) causes of action.

As earlier noted, of the eighteen (18) corporations enumerated in Annex “A” of the complaint, only SEVEN (7) are parties to the Deed of Assignment as ASSIGNORS therein. Also listed in said Annex “A” are (1) frozen bank accounts and other assets of defendant Placido E. Mapa, Jr., (2) frozen bank accounts and other assets of defendant Cesar Zalamea, and (3) all other assets of all defendants sequestered and/or frozen by the Commission pursuant to Executive Order Nos. 1 and 2. The averments earlier mentioned and the deed of assignment, juxtaposed with Annex “A,” show prima facie that (a) the Petitioner did not intend to enter into any amicable settlement with the remaining eleven (11) corporations or regarding the frozen assets listed in said Annex “A,” and (b) the assets of the defendants in the said eleven corporations were not necessarily obtained through or as a consequence of the acts or transactions described in subparagraphs (a) to (f), paragraph 11 of the Expanded Complaint, but probably through “the other devices, schemes or stratagems.” Otherwise, these remaining corporations should have been made parties to the deed of assignment. *Inclusio unius est exclusio alterius*.

For another, it is not true that De Venecia is the principal party either in the specific acts described in subparagraphs (a) to (f), paragraph 11 of the Expanded Complaint or in the other “devices, schemes or stratagems.” If, at all, there are principal party defendants in Civil Case No. 0020, then a reading of the Expanded Complaint readily reveals that they are Ferdinand E. Marcos and Imelda R. Marcos. Of course, there are allegations of conspiracy which, for purposes of the nature of the action pursued, must be understood to be civil conspiracy,[37] as distinguished from conspiracy in criminal law.[38]

Nor is it true that De Venecia is an indispensable party with respect to the acts or transactions subject of the causes of action. An indispensable party is defined as one without whom the action cannot be finally determined, whose interest in the subject matter of the suit and in the relief sought is so intertwined with that of the other parties that his legal presence as a party to the proceeding is an absolute necessity.[39] No valid judgment can be rendered where an indispensable party is not impleaded or brought before the court;[40] his non-inclusion in a case is a fatal defect and any judgment rendered therein would be ineffective.[41]

In the instant case, it is clear that De Venecia is not an indispensable party because a final determination of the case can be had without his legal presence. Since the defendants in Civil Case No. 0020 are sued for (a) collective or conspiratorial and (b) individual acts, it follows that the nature of their corresponding obligations to the Petitioner could be joint and several as to the first and individual or personal as to the second. And if they are solidarily liable, it cannot be successfully maintained that De Venecia is an indispensable party. Article 1216 of the Civil Code provides that:

“The creditor may proceed against any one of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt had not been fully collected.”

Hence, a solidary debtor is not an indispensable party. We held so categorically in *Republic vs. Sandiganbayan*,[42] a case which also involves an action for reconveyance, reversion, accounting, restitution and damages filed with the Sandiganbayan against Alfredo (Bejo) Romualdez, Ferdinand E. Marcos, Imelda R. Marcos, Jose P. Campos, Jr. and 45 other defendants. In the said case, we set aside the challenged resolution of the Sandiganbayan denying a motion to drop defendant Campos, Jr. We stated that since the Presidential Commission on Good Government had granted immunity to Jose Y. Campos and his family, such immunity necessarily extended to movant Jose Campos, Jr., who is the son of Jose Y. Campos. Inter alia, we noted:

“The fact that Campos, Jr. and all the other defendants were charged solidarily in the complaint does not make him an indispensable party. We have ruled in the case of *Operators Incorporated vs. American Biscuit Co., Inc.*, [154 SCRA 738 (1987)] that ‘Solidarity does not make a solidary obligor an indispensable party in a suit filed by the creditor.’ Article 1216 of the Civil Code says that the creditor ‘may proceed against anyone of the solidary debtors or some or all of them simultaneously.’”

Even assuming for the sake of argument that De Venecia is indeed a principal party, still, based on a principle of tort upon which the cause of action is also predicated, his release did not operate to release the other tortfeasors. Under American jurisprudence, three rules have developed which deal with the question of whether the release of one joint tortfeasor releases other tortfeasors who are not parties to or named in the release. The first is the ancient common-law rule that a release of one joint tortfeasor releases all other parties jointly liable, regardless of the intent of the parties. The second, otherwise known as the “First Restatement rule,” states that a release of one co-conspirator normally releases all others unless the plaintiff expressly reserves his rights against the others. The third provides that the effect of the release upon co--conspirators shall be determined in accordance with the intentions of the parties. In *Zenith Radio Corp. vs. Hazeltine Research, Inc.*,[43] the Supreme Court of the United States adopted the third rule thus:

“We recently adopted the final rule giving effect to the intentions of the parties in *Aro Mfg. Co. vs. Convertible Top Co.*, supra, a patent infringement case. x x x We concluded that a release, ‘which clearly intends to save the releasor’s rights against a past contributory infringer, does not automatically surrender those rights.’

x x x

The straightforward rule is that a party releases only those other parties whom he intends to release.”

The Court observed that “[t]o adopt the ancient common-law rule would frustrate ... partial settlements, and thereby promote litigation, while adoption of the First Restatement rule would create a trap for unwary plaintiffs’ attorneys.”

In the instant case, the release of De Venecia is clearly intended to apply only to him. There was, evidently, no intent to spread the benefit to the other tortfeasors.

For still another reason, the “admissions” by the Petitioner in paragraph 8 of the deed of assignment that the guaranty facility in favor of the Assignors “was obtained in the ordinary and regular course of business,” that “no favor was accorded to the Landoil officers in the grant” thereof and that the business reversals experienced by the Landoil Group in connection with its various construction and other projects were due to the special reasons therein enumerated are not equivalent to an admission that De Venecia’s co-defendants incurred no liability whatsoever with respect thereto. That the facility was obtained in such manner with no favor to the Landoil officers do not, by themselves, clear the Board of Directors or the officers of the Philguarantee from any liability which could have arisen from the grant of the guaranty facility. Private respondents were not sued as directors or officers of a private corporation, but as government officials who under the Constitution were obliged to serve with the highest degree of responsibility, integrity, loyalty, and efficiency and to remain accountable to the people.[44] Indeed, if it were the intention of the parties in the deed of assignment to accord to the private respondents the same benefit as that granted to De Venecia, they could have easily done so without loss of time or effort. Better yet, the parties could have explicitly stipulated that, in consideration of the assignment made by the Assignors, the Petitioner shall (a) lift the sequestration issued against Landoil and (b) dismiss Civil Case No. 0020. It is evident from the deed of assignment that the only non-signatory thereto who is to be benefited thereby is defendant De Venecia. That favor granted him is known as a stipulation pour autrui under Article 1311 of the Civil Code as the Sandiganbayan correctly stated in its Resolution of 8 September 1989 granting De Venecia’s amended motion to dismiss.[45] Under the said article, for such a stipulation to be effective and binding it is necessary that the contracting parties “must have clearly and deliberately conferred a favor upon a third person.”[46] A “mere incidental benefit or interest of a person is not sufficient.” The deed of assignment in question fails to even remotely suggest such a grant in favor of the private respondents, and for the Sandiganbayan to read into the document that which the parties themselves have not even thought of would be to stipulate for the parties, which is beyond its power to do so.

Moreover, these “admissions” are contained in the “whereas” clauses or in the recital part of the Deed of Assignment and are inconsistent with the following provisions in the operative part thereof, to wit: (1) the ASSIGNORS shall transfer to the ASSIGNEE all the capital shares of Landoil (up to 45% of the capital stock) identified as belonging to Marcos; (2) the ASSIGNORS shall fully cooperate with the PCGG or any government agency in the prosecution of any case to be filed against Marcos and his cronies; and (3) the dismissal of Civil Case No. 0020 against the ASSIGNORS and De Venecia shall be without prejudice, and the case shall be deemed automatically reinstated in the event of the ASSIGNORS’ non-compliance with any of their obligations. These obligations are, in fact, consistent with the 14th to 16th causes of action enumerated in the Expanded Complaint.

These “admissions” are merely embodied in the recital part of the deed. It is a settled rule in the construction of contracts that in case of a conflict between the operative part of a contract and the recitals thereof, the former will prevail.<sup>[47]</sup> The recitals are but merely introductory and prefatory statements of a deed and are not an essential part of the operating portions of the contract. They may be used as a guide in interpreting ambiguous portions of the operative part, but cannot supersede the latter.

Finally, the Sandiganbayan’s grave abuse of discretion became more pronounced insofar as the challenged resolutions benefit defendant Ferdinand E. Marcos and Imelda R. Marcos. They are the principal dramatis personae in Civil Case No. 0020, and the allegations in the Expanded Complaint do not limit the causes of action against them to transactions involving Philguarantee which, if proven, do not at all, by any standard, make them the least culpable. As a matter of fact, the ASSIGNORS in the deed of assignment admit that approximately 45% of the outstanding capital stock of the flagship corporation, Landoil Resources Corporation, and through the latter, “a proportionate portion of the outstanding capital stock of the six other corporations” are owned by defendant Ferdinand E. Marcos. Since the remaining eleven (11) corporations listed in Annex “A” of the Expanded Complaint are not parties to the deed of assignment, the allegations with respect thereto as against the Marcoses stand. It must, however, be stressed that, because of his death, Ferdinand E. Marcos had been substituted in Civil Case No. 0020 by his heirs pursuant to the Sandiganbayan’s Resolution of 16 November 1989. Accordingly, he ceased to be a party and the challenged resolutions are, insofar as he is concerned, ineffective. Be that as it may, the error committed by the Sandiganbayan in granting him such unusual benefit compounded the arbitrariness of the resolutions. Finally, as an additional indicium of such arbitrariness, although under the deed of assignment the dismissal of the case against the Assignors and De Venecia was to be “without prejudice,” the challenged dismissal against the latter’s co-defendants was without qualification.

WHEREFORE, I vote to grant the petition and to set aside the challenged resolutions, with costs against the private respondents.

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[1] Original Records (OR), Civil Case No. 0020, vol. 1, 1-24.

[2] Id., vol. 2, 583-D to 583-Y; Annex “E” of Petition; Rollo, 52-84.

[3] Rollo, 59-79,

[4] Rollo, 84.

[5] OR, Civil Case No. 0020, vol. 2, 566-576; 592-607; 769-777; 883-893; and vol. 3, 1072-1085; 1086-1105; and 1286-1293, respectively.

[6] Id., vol. 3, 1065-1071.

[7] Id., 1174-1181.

[8] OR, Civil Case No. 0020, vol. 3, 1215-1232. Copy of the Deed of Assignment is attached to the motion as Annex “A.”

[9] Id., 1233-1250.

[10] Id., 1263-1265.

[11] Id., 1333-1336.

[12] Id., 1343-1348.

[13] Id., 1352-1354.

[14] OR, Civil Case No. 0020, vol. 3, 1370-1376; 1382-1385; 1387-1393; and 1415-1417, respectively.

[15] Id., 1405-1409.

[16] Id., 1469.

[17] Id., 1472-1475.

[18] Id., 1493-1495.

[19] Id., 1497-1500.

[20] OR, Civil Case No. 0020, vol. 4, 1504-1519; Annex “A” of Petition; Rollo, 31-42. Per Associate Justice Romeo M. Escareal, concurred in by Associate Justices Jose Balajadia, who wrote a separate concurring opinion, and Cipriano A. del Rosario.

[21] Id., 1524-1529.

[22] Id., 1566-1571.

[23] Id., 1636-1639.

[24] Rollo, op. cit., 8-28.

[25] Rollo, 17-18.

[26] Annex “F” of Petition; Id., 85-97.

[27] Id., 84.

[28] Rollo, 85-89.

[29] Rollo, 90-94.

[30] Id., 94.

[31] Id., 37-39.

[32] Rollo, 40.

[33] Id., 41.

[34] Id., 43-46.

[35] Id., 45.

[36] Black’s Law Dictionary, 83 (6th ed. 1990).

[37] Civil conspiracy that gives rise to a cause of action is the combination of two or more persons for purposes of accomplishing by concerted action either lawful purpose by unlawful means or unlawful purpose by lawful means. (Black’s Law Dictionary, 223, 5th ed).

[38] Article 8, Revised Penal Code.

[39] *Borlasa vs. Polistico*, 47 Phil. 345 [1925]; *Co vs. Intermediate Appellate Court*, 162 SCRA 390 [1988]; *Lozano vs. Ballesteros*, 195 SCRA 681 [1991].

[40] Leyte-Samar Sales Co. vs. Cea, 93 Phil. 100 [1953].

[41] Dacudao vs. Dueñas, 108 Phil. 94 [1960]; see also, Espiritu vs. Court of Appeals, 58 SCRA 195 [1974].

**[42] 173 SCRA 72 [1989].**

[43] 401 U.S. 321, 28 L Ed 2d 77, 91 S Ct 795 [1971].

[44] Section 1, Article XIII, 1973 Constitution. Now Section 1, Article XI, 1987 Constitution.

[45] Rollo, 104.

[46] See Marmont Resort Hotels Enterprises vs. Guiang, 168 SCRA 373, 382 [1988], citing Florentino vs. Encarnacion, 79 SCRA 193 [1977].

[47] Jamison vs. Franklin Life Insurance Co., 136 P. 2d 265 (Ariz. Sup. Ct. 1943). The same rule applies to a statute. Whereas clauses do not form a part thereof, strictly speaking; they are not part of the operative language of the statute; they are, nonetheless, helpful to the extent that they articulate the general purpose or reason underlying a new enactment. (Llamado vs. Court of Appeals, 174 SCRA 566 [1989]).

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