G.R. No. 149802

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REPUBLIC OF THE PHILIPPINES
Supreme Court
Manila

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G.R. No. 149802 January 20, 2006

ALFONSO T. YUCHENGCO AND Y REALTY CORPORATION, Petitioners,

vs.

THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION, REPUBLIC OF THE PHILIPPINES, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, ESTATE OF FERDINAND E. MARCOS, IMELDA R. MARCOS, PRIME HOLDINGS, INC., ESTATE OF RAMON U. COJUANGCO, represented by IMELDA O. COJUANGCO, and IMELDA O. COJUANGCO, Respondents.

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G.R. No. 150320 January 20, 2006

ALFONSO T. YUCHENCGO AND Y REALTY CORPORATION, Petitioners,

vs.

THE HONORABLE SANDIGANBAYAN, FOURTH DIVISION, REPUBLIC OF THE PHILIPPINES, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, ESTATE OF FERDINAND E. MARCOS, IMELDA R. MARCOS, PRIME HOLDINGS, INC., ESTATE OF RAMON U. COJUANGCO represented by IMELDA O. COJUANGCO, and IMELDA O. COJUANGCO, Respondents.

x ----------x

G.R. No. 150367 January 20, 2006

REPUBLIC OF THE PHILIPPINES, Petitioner,

vs.

HON. SANDIGANBAYAN (FOURTH DIVISION), ESTATE OF FERDINAND E. MARCOS (represented by its Administrator, the Bureau of Internal Revenue), IMELDA R. MARCOS, PRIME HOLDINGS, INC., ESTATE OF RAMON U. COJUANGCO (represented by its Administratrix, IMELDA O. COJUANGCO), IMELDA O. COJUANGCO, ALFONSO T. YUCHENGCO, and Y REALTY CORPORATION, Respondents.

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G.R. No. 153207 January 20, 2006

ALFONSO T. YUCHENGCO AND Y REALTY CORPORATION, Petitioners,

vs.

REPUBLIC OF THE PHILIPPINES, PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, ESTATE OF

FERDINAND E. MARCOS, IMELDA R. MARCOS, PRIME HOLDINGS, INC., ESTATE OF RAMON U. COJUANGCO represented by IMELDA O COJUANGCO, and IMELDA O. COJUANGCO, Respondents.

x ----------x

G.R. No. 153459 January 20, 2006

REPUBLIC OF THE PHILIPPINES, represented by the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, Petitioner,

vs.

ESTATE OF FERDINAND E. MARCOS, IMELDA R. MARCOS, IMELDA (IMEE) R. MARCOS-MANOTOC, TOMAS MANOTOC, IRENE R. MARCOS-ARANETA, GREGORIO MA. ARANETA, III, FERDINAND R. MARCOS, JR., IMELDA COJUANGCO, ESTATE OF RAMON COJUANGCO (represented by the Administratrix, IMELDA COJUANGCO), PRIME HOLDINGS, INC., ALFONSO T. YUCHENGCO, AND Y. REALTY CORPORATION, Respondents.

D E C I S I O N

CARPIO MORALES, *J.:*

These five consolidated petitions pray for the nullification of certain issuances of the Sandiganbayan in Civil Case No. 0002, "Republic of the Philippines v. Estate of Ferdinand E. Marcos, et al."

The complaint in Civil Case No. 0002 (or the case) was filed before the Sandiganbayan on July 16, 1987 by the Republic of the Philippines (the Republic) through the Presidential Commission on Good Government (PCGG) against former President and Mrs. Marcos, their three children, and some other individuals. The

complaint was later amended to implead additional defendants.

The case is for the recovery of alleged ill-gotten wealth of the Marcoses, among which are shares of stock in the Philippine Telecommunications Investment Corporation (PTIC): 76,779 shares in the name of Ramon U. Cojuangco, 21,525 shares in the name of Imelda O. Cojuangco, and 111,415 shares in the name of Prime Holdings Incorporated (PHI). PTIC is the biggest stockholder of PLDT, it owning some 28% of the outstanding shares in PLDT at the time Civil Case No. 0002 was filed.[1]

In the course of the proceedings in Civil Case No. 0002, the first three petitions assailing interlocutory orders of the Sandiganbayan were filed before this Court.

Thus, the petitions in **G.R. Nos. 149802 and 150320**, filed by Alfonso Yuchengco and Y Realty Corporation, complainants-in-intervention in Civil Case No. 0002, assail via petition for certiorari orders and resolutions of the Sandiganbayan denying their motions to suspend trial pending discovery proceedings and to re-set trial dates (with alternative prayer for a change in the order of trial), and declaring them as having waived their right to present evidence.

The petition in **G.R. No. 150367**, filed by the Republic, assails via petition for certiorari the Sandiganbayan Orders denying its Respectful Motion for Additional Time to Complete the Presentation of Evidence and directing it to submit its offer of evidence within 30 days.

During the pendency of these first three petitions, the Sandiganbayan continued with the proceedings in Civil Case No. 0002, no restraining order enjoining the same having been issued by this Court.

The Sandiganbayan, still during the pendency of the first three petitions, promulgated in Civil Case No. 0002 a Partial Decision on May 6, 2002 the dispositive portion of which reads:

WHEREFORE, premises considered, the complaint of plaintiff Republic of the Philippines on the PLDT shares subject of separate trial is hereby DISMISSED for lack of merit.

The Motion for Summary Judgment [filed by Imelda Cojuangco, et al] is hereby GRANTED, and the Complaint-in-Intervention [filed by the Yuchengcos] DISMISSED.

SO ORDERED. (Underscoring supplied)

The last two of the five petitions at bar, both for review on certiorari, were thereupon filed. The petition in **G.R. No. 153207** filed by the complainants-in-intervention Yuchengcos, and that in **G.R. No. 153459** filed by the Republic**,** both challenge the Partial Decision.

The incidents that gave rise to the filing of the petitions are stated in the minority's dissenting opinion penned by Justice Cancio Garcia which immediately follows this majority opinion. The dissenting opinion substantially reiterates the draft that Justice Garcia prepared which was used by this Court as a working basis for its deliberations.

In issue in these petitions are:

1. Whether petitioners in **G.R. Nos. 149802, 150320** and **150367** were denied due process when the Sandiganbayan in effect directed them to terminate the presentation of their respective evidence; and

2. Whether the Partial Decision being assailed via petition for review in **G.R. Nos. 153207 and 153459**, conforms to the

evidence presented, the law and/or settled jurisprudence.

There is no disagreement with respect to the disposition-dismissal by the minority of the first three petitions – the first having become moot, and the second and third for lack of grave abuse of discretion on the part of the Sandiganbayan.[2] There is also no disagreement with respect to the disposition-denial by the minority of the fourth petition (G.R. No. 153207) in the absence of reversible error on the part of the Sandiganbayan.

It is with respect to the disposition-denial by the minority of the fifth petition (G.R. No. 153459) insofar as it denied the prayer of the Republic for a judgment ordering the Estate of Ramon U. Cojuangco (Cojuangco), Imelda O. Cojuangco, PHI, their assigns, nominees and agents to reconvey to the Republic 111,415 PTIC shares registered in the name of PHI that the majority does not agree, in light of the immediately following discussions.

The Sandiganbayan having held in its 73-page Partial Decision[3] that the Republic has failed to prove that the PLDT shares sought to be recovered are ill-gotten, thus:

. . . the Republic has failed to provide such "proof of authenticity or reliability" of the documents offered by it in evidence. Thus almost all the documents offered by the Republic are photocopies, and no effort was undertaken . . . to submit the originals of said documents, or to have them properly identified, or to otherwise justify the admission of mere photocopies. Not surprisingly, defendants . . . objected to the admission of the Republic's documentary exhibits, citing violation of the Best Evidence Rule (Section 3, Rule 130 of the Revised Rules of Civil Procedure ["Rules"], the Rules of Presentation of Documentary Evidence

(Section 20, Rule 132 of the Rules). The Hearsay Evidence Rule, and the rule as to Purpose/s of Documentary Evidence (Section 34, Rule 132 of the Rules)."[4] (Underscoring supplied),

a discussion of the evidence presented in the case is in order.

FACTUAL BACKGROUND OF PHI AND ITS DEALINGS WITH PTIC

PHI was registered on October 5, 1977 with the following five (5) incorporators: **Jose D. Campos, Jr. (son of Jose Yao Campos), Rolando Gapud (Gapud), Renato Lirio (Lirio), Ernesto Abalos (Abalos), and Gervacio Gaviola (Gaviola)**, with 400 shares each, with a par value of ₱100 per share. The total amount of capital stock subscribed was thus ₱200,000.00, ₱50,000.00 of which was actually paid.[5] Its place of business was at 66 United Street, Mandaluyong, Metro Manila.[6]

The five PHI incorporators, in their capacity as stockholders, elected themselves as directors on October 10, 1977. On even date, they elected the following as officers of the corporation:

Rolando C. Gapud - President

Jose D. Campos, Jr. - Vice-President

Gervasio T. Gaviola - Treasurer

Francisco G. De Guzman - Secretary

Rodolfo R. Dimaano - Assistant Secretary

Meanwhile, 54,349 shares in another corporation, PTIC, were "contributed to and/or abandoned" by one of its stockholders, General Telephone and Electronics (GTE), an American

corporation, in favor of PTIC.

On December 20, 1977, the PTIC Board of Directors resolved to sell such 54,349 shares to its stockholders in proportion to their holdings.[7] No stockholder, apart from Cojuangco, PTIC President and member of its Board of Directors, expressed interest in purchasing the shares.[8] All the 54,349 shares were then transferred to his name.

Cojuangco and Luis Tirso Rivilla (Rivilla), another stockholder of PTIC, together with PHI President Gapud, forged an agreement dated January 27, 1978 referring to the "various discussions during which [Cojuangco and Rivilla] offered to sell and [PHI] agreed to purchase partially paid subscriptions and common shares of [PTIC]."[9] The agreement which indicated the basic terms and conditions of the transaction states that the number of PTIC shares which Cojuangco and Rivilla were prepared to sell to PHI was "**111,415 common shares** representing **46.1250%** of the subscribed and outstanding shares of PTIC."

On April 20, 1978, the PTIC Board of Directors granted Cojuangco and Rivilla authorization to transfer their PTIC shares to PHI.[10]

Cojuangco thereafter ceded to PHI 77,719 PTIC shares registered in his name via two separate deeds of assignment both dated May 2, 1978, one for 44,023 shares and the other for 33,696 shares.[11] Rivilla likewise conveyed PTIC 33,696 shares registered in his name to PHI via a deed of assignment also dated May 2, 1978.[12] Thus, **a total of 111,415 PTIC shares** was **transferred to PHI** on **May 2, 1978.**

Gapud and Jose D. Campos, Jr. later assigned all their shares in

PHI (400 shares each) to Cojuangco and PTIC Director Oscar Africa (Africa), respectively, via two separate deeds of assignment dated February 18, 1981.[13]

On May 9, 1981, Cojuangco and Africa were elected directors of PHI, replacing Gapud and Jose D. Campos, Jr., while the other directors – Lirio, Abalos, and Gaviola – remained as such.[14] On even date, Cojuangco and Africa were elected by the PHI Board of Directors as President and Vice-President, respectively, while de Guzman and Gaviola remained as Secretary and Treasurer, respectively.[15]

Subsequently, by Deed of Assignment[16] dated June 1983 (the day is not indicated), Africa transferred all his 400 PHI shares — 240 to Antonio Cojuangco and 160 to Trinidad Cojuangco Yulo. On even date, the remaining incorporators on the board of directors – Lirio, Abalos, and Gaviola – each executed a deed of assignment transferring their PHI shares to members of the Cojuangco family. Thus Lirio transferred 240 shares to Antonio Cojuangco and 160 to Trinidad C. Yulo;[17] Abalos transferred 320 shares to Ramon O. Cojuangco, Jr. and 80 to Miguel O. Cojuangco;[18] and Gaviola transferred 320 shares to Ma. Victoria O. Cojuangco Yulo and 80 also to Antonio Cojuangco.[19]

BENEFICIAL OWNERSHIP OF PHI

Significantly, respondents in G.R. No. 153459, namely: Estate of Ramon Cojuangco, Imelda O. Cojuangco, PHI, and Imelda R. Marcos all agree with petitioner Republic that PHI has an undisclosed beneficial owner, their only disagreement being who this owner is.

The Cojuangcos and PHI in their Comment proffer that the beneficial owners are the Cojuangcos, arguing as follows:

x x x The unsupported allegation that President Marcos owned the disputed shares in PLDT, PTIC and PHI **may** perhaps explain the circumstances surrounding PHI's incorporation, why PTIC's stockholders were disinterested in purchasing PLDT's shares in 1977, why PTIC's stockholders waived their right of first refusal in 1978, why there are no proper entries in PHI's Stock and Transfer Book, or why the subject shareholdings were not included in Ramon U. Cojuangco's Estate inventory. However, the converse syllogism is not true – the details of PHI's incorporation, or the fact that PTIC's stockholders were disinterested in purchasing PLDT's shares in 1977, or that PTIC's stockholders waived their right of first refusal in 1978, or that there are no proper entries in PHI's Stock and Transfer Book, or that 400 PHI shares were not included in Ramon U. Cojuangco's Estate inventory do not necessarily establish that President Marcos owned the subject shares in PHI, PTIC and PLDT.

These circumstances show that PHI had an undisclosed principal and beneficial owner. Subsequent events, i.e. the *assignment of shares* in 1981 and 1983, reveal and **confirm that Mr. Ramon U. Cojuangco and his family were the principal and beneficial owners of PHI**, and, corollarily, the subject PHI, PTIC and PLDT shares, not President Marcos.[20] (Emphasis, italics and underscoring supplied)

Imelda Marcos, on the other hand, consistent with the theory of petitioner

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SEPARATE DISSENTING OPINION

SANDOVAL-GUTIERREZ, *J.*:

I join Mr. Justice Cancio C. Garcia in his well-crafted Dissent in G.R. No. 153459 denying the Republic's petition and affirming respondent Sandiganbayan's Decision.

In civil suits for forfeiture before the Sandiganbayan, like the instant case, the Republic must meet the burden of proof and establish **with a preponderance of evidence** that the property in question –

". . . are assets and properties purportedly pertaining to former President Ferdinand E. Marcos and/or his wife Mrs. Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking advantage of their office, authority, influence, connections or relationships, resulting in their unjust enrichment, and causing damage and prejudice to the Filipino people and the Republic of the Philippines."[1]

The alleged ill-gotten assets in this case are shares of stock in Prime Holdings Inc. (PHI) which, in turn, holds shares in Philippine Telecommunications Investment Corporation (PTIC), a shareholder in the Philippine Long Distance Telephone Company (PLDT). The Republic's case is premised on the theory that PHI is a "dummy corporation," not owned by private respondent Cojuangco family,

but merely held in beneficial trust for former President Ferdinand E. Marcos.

I have closely reviewed the records and revisited both factual and legal bases of the Sandiganbayan Decision, and found that the Republic failed to prove its case by preponderance of evidence.

The Republic's case is anchored almost entirely upon the testimonies of Messrs. Jose Y. Campos, Rolando Gapud and Francisco de Guzman. They attempted to prove that PHI was a corporate vehicle "organized for" Marcos. As "beneficial owner" of PHI, Marcos used Ramon U. Cojuangco as a "dummy" controlling PHI and its assets.

The same witnesses identified the *modus operandi* employed by Marcos to hide his ill-gotten wealth. Unfortunately, the evidence for the Republic fails to show that PHI is Marcos' "dummy corporation."

Witness Campos, in describing the *modus operandi* behind dummy corporations "organized for" Marcos, stated:

"In the organization, administration and management of the above-named corporations, as it was my policy that whenever such a corporation is organized for and on behalf of the intended beneficiaries, **I execute and I require all my said associates to execute a Deed of Trust or Deed of Assignment duly signed in favor of an unnamed beneficiary and to deliver the original copy thereof to the former President**. It is in fact my policy and procedure that we disclaim completely any interest in any such business and make it clear to the former President that we hold such interests on his behalf."

In his affidavit, Campos named PHI as one of the companies he organized for President Marcos. Yet, when asked if the *modus*

operandi was applied to PHI as it was with the other Marcos dummy corporations, he vacillated,[2] thus:

"3. In your Sworn Statement, page 2, you stated that with respect to the corporations you held in trust for President Marcos, it was your 'policy' that whenever such a corporation was organized, you executed, and you required all your business associates to execute, a Deed of Trust or Deed of Assignment in favor of an 'unnamed beneficiary,' and delivered the originals thereof to President Marcos. xxx Was this 'policy' FOLLOWED IN THE CASE OF [PHI]? xxx

ANSWER: 'All the corporations I organized – that was the standard policy – that we surrendered direct to President Marcos.'"

Campos also testified that he had **never communicated in any manner whatsoever with President Marcos, his alleged principal, nor with Ramon Cojuangco regarding Marcos' beneficial ownership of shares of stock in PHI or PTIC or Prime Holdings, Inc.**, thus:

"7. Did you ever have any discussions or correspondences with President Marcos regarding his beneficial ownership or the beneficial ownership by any member of his family, directly or indirectly, of shares of stock in Philippine Long Distance Telephone Company (PLDT), Philippine Telecommunications Investment Corporation (PTIC) or Prime Holdings, Inc.?

Answer: **No, Ma'am.**

x x x

Did you ever have any discussions or correspondences with Ramon U. Cojuangco regarding the beneficial ownership by

President Marcos or any member of his family, directly or indirectly, of shares of stock in PLDT, PTIC or Prime Holdings, Inc.?

Answer: **No, Ma'am**."

Considering the fact that Campos – by his own admission – was the organizer of dummy corporations for Marcos, it is contrary to human experience that he never had any discussion with the former President about PHI, if indeed it was such a dummy corporation.

Obviously, there was nothing to discuss with President Marcos about PHI because it was not one of his dummy corporations. In fact, the Republic's other witness, Atty. Francisco de Guzman, admitted that PHI did not meet the description of a Marcos dummy corporation, thus, to quote the very same passage cited in the Dissent:

"Q: **Was it the standard operating procedure in Jose Yao Campos holdings companies that the stock certificates of the stockholders would be endorsed in blank?**

A: **Yes, sir.**

Q: And who would hold custody or possession of those/ bank endorsed stock certificates?

A: In the case of many of the corporations I think including Prime Holdings, Inc. these are not fully paid shares and therefore, I knew that no stock certificates have been issued, sir.

Q: **So, specifically in the case of Prime Holdings, Inc. there were no stock certificates issued because the subscriptions were not fully paid?**

A: Yes, sir.

Q: **Do you know if the stockholders of Prime Holdings, Inc., this is prior to 1981, had executed Deed of Assignment in blank for their subscription to PHI shares?**

A: **Yes, sir, the standard operating procedure in the companies of Mr. Campos is that all the subscribers would have either a Deed of Assignment signed or a Deed of Trust, sir.**

Q: And you are referring to these holding companies that Mr. Campos, a number of holding companies that Mr. Campos have caused to be incorporated, these are the companies?

A: Yes, sir.

Q: You said Deed of Trust, would there be a designated trustee?

A: No, sir.

Q: So, these are Deeds of Assignment or Deeds of Trust, the beneficiary of which would be left blank?

A: Yes, sir.

Q: But the assignors or the trustees or grantors would all sign, would all execute these Deeds?

A: Yes, sir.

Q: Who would have possession, you mentioned standard operating procedure or SOP, under the SOP who would hold the blank deeds?

A: A copy of which usually two (2) copies are made, sir.

Q: Two (2) originals?

A: No.

Q: Xerox copies?

A: No. One original and one Xerox copy and the original will be included in the records, sir.

Q: The records of that particular company?

A: Yes, sir, and the other one we give it to the Treasurer.

Q: Of that particular company?

A: No, to Mr. Gaviola, sir.

Q: Mr. Gaviola was the Treasurer of Prime Holdings, Inc. wasn't he?

A: I think he is because he is always, was the Treasurer of many of the companies of Mr. Campos, sir.

Q: So, there is the SOP also, MR. Gervacio Gaviola is the Treasurer of Prime Holdings, Inc.?

A: Yes, sir.

xxx xxx xxx

Q: Now, who would hold the records of these companies which would include those blank Deeds of Assignment or Deeds of Trust?

A: **Well, the actual custodian of that will be the Legal Department who has all the legal files, sir.**

Q: **Was it not or would you consider it risky that the blank Deeds of Assignment or blank Deeds of Trust of all the shares in this companies he right there in the records, be among the corporate records, that somebody could take them and put their names?**

A: **Maybe there is some risk there but you see, sir, the people in the Legal Department are well trusted by all of us. They**

have been with the company for many years and considering the competence that they have established with us, nobody would even get those records without, let's say order of Mr. Campos or me or the Corporate Secretary, sir.

Q: And who were these trusted people of the Legal Department?

A: The lawyers, sir.

Q: Could you give us the names?

A; Yes, two of them died and one of them retired. Mr. Urbano Francisco was the only survivor, sir.

Q: Can I have the names of those who died?

A: Ed Halagao, I cannot remember the other one, sir.

Q: These are the trusted lawyers of the Legal Department of UNILAB?

A: Yes, sir.

xxx

Q: **Do you know what happened to those blank deeds of Assignment of Deeds of Trust of Prime Holdings, Inc. that were entrusted with the trusted lawyers of UNILAB?**

A: **When Prime Holdings, Inc.'s records were delivered, all those records, all those papers are with the records, sir.**

Q: So, you are referring to the 1982 delivery to the representative of Mr. Ramon U. Cojuangco?

A: **Yes, sir, except two (2) Deeds of Assignment which were I think made directly afterwards when Mr. Gapud and Mr. Jose Campos, Jr. made the direct assignments to persons actually**

designated in the Deeds of Assignment, sir.

Q: Who were those?

A: The shares of Mr. Gapud was (*sic*) given to Mr. Ramon U. Cojuangco, Mr. Campos, Jr. I can't remember to whom he made the assignment, sir."

If, according to the Republic's own witness, the shares of a Marcos dummy corporation are covered by a Deed of Assignment endorsed to an unnamed beneficiary, then Atty. De Guzman's above admissions are fatal to the Republic's case. His categorical declaration is that the blank Deeds of Assignment and Deeds of Trust covering PHI shares were not delivered to Marcos, but to Ramon U. Cojuangco.

Now, delivery of the blank deeds of Assignment and Deeds of Trust was a crucial element of the *modus operandi*. Considering that Marcos was not in possession of the Deeds over PHI shares, he could not have controlled or managed PHI. To be sure, there was no point organizing PHI as a dummy corporation for Marcos since he could not perform these functions.

Witness Gapud testified that he assigned his PHI shares to Ramon U. Cojuangco – not Marcos, thus:

"CONSUL AGUILUCHO: **Is it really true that you assigned your 400 shares [in Prime Holdings] to Ramon U. Cojuangco?**

MR. GAPUD: **Yes.**

CONSUL AGUILUCHO: How much did you receive as consideration for assigning your shares to him?

MR. GAPUD: The consideration for this assignment was that upon my assignment, first, my fiduciary responsibilities as nominee were

extinguished, and secondly, I had transferred and extinguished any and all liabilities under the subscription payable.

CONSUL AGUILUCHO: **Do you know if Ramon Cojuangco received the said shares for himself or for anybody else?**

MR. GAPUD: **I don't know.**"

In fact, while he could have easily identified Marcos as the beneficial owner of PHI, witness Gapud – who succeeded Campos as President of PHI – refused under oath to do so. Instead:

"CONSUL AGUILUCHO: The heirs of Ramon U. Cojuango, namely Imelda O. Cojuangco and her children… claim that they own eighty (80) percent of the outstanding capital stock of Prime Holding, while the Estate of Ramon U. Cojuangco allegedly owns the remaining twenty (20) percent? Question: Based on your personal knowledge, do you affirm or deny the said allegation?

MR. GAPUD: **I do not know. I can neither affirm nor deny.**"

The majority of my colleagues hold that "Gapud's statement relating to subsequent execution of deeds of assignment to Cojuangco and his kin does not detract from the prior delivery of blank deeds to the former President, especially so in this case where, by Gapud's own recounting, he and his co-incorporators executed the 1981 and 1983 Deeds of Assignment with the knowledge and authorization of the same person to whom the earlier deeds were delivered – President Marcos."

But the *ponencia* conveniently sidesteps the reality that there is no evidence of such prior delivery to Marcos. Witness de Guzman declared that the blank Deeds of Assignment over PHI shares were placed in the custody of the Legal Department, and thereafter

delivered to Ramon Cojuangco, together with all the records of PHI.

The majority also hold that the alleged execution by the incorporators, as "nominees" of Marcos, of the Deeds of Assignment/Deeds of Trust is consistent with Gapud's statement that he received virtually nothing in return for PHI shares. But to my mind, this is fallacious – a conjecture made to fit an insignificant fact. A straightforward explanation is simply that when the PHI shares were assigned to Ramon U. Cojuangco – the true beneficial owner -Gapud's role as a nominee became untenable. Obviously, a nominee's role ends when the principal's exercise of his right begins.

Nor is it accurate to say that there was an absence of consideration for the transfer of the PHI shares. Gapud himself admitted that the consideration for the assignment of his shares to Cojuangco was the termination of his fiduciary responsibilities as nominee and the extinguishment of his liabilities under the subscription.

The *ponencia* does not explain why Marcos allowed the execution of the Deeds of Assignment in favor of respondent Cojuangcos. If PHI was indeed a dummy corporation, then it would be contrary to human experience for President Marcos to deprive himself of the legal mechanism to assert his alleged beneficial ownership.

Indeed, if the transfer of PHI shares to the Cojuangco family was with the "blessings" of President Marcos, then it can only mean the he was never interested in those shares – a fact consistent with Campos' statement that he "never discussed" the PHI shares with Marcos. Therefore, the plausible reason for this is that Marcos never owned the shares in the first place.

The realistic scenario, therefore, is that these shares actually

pertained to Ramon U. Cojuangco from the beginning and the assignments to him and members of his family merely confirmed what already existed in fact. In other words, Cojuangco – not Marcos – has been the beneficial owner of the shares *from the start*. This explains why no blank Deeds of Trust or Assignment were executed and delivered by the stockholders of PHI, and the reason why they executed and delivered Deeds of Assignment specifically naming Ramon U. Cojuangco and the members of his family as the assignees of the PHI shares. This also explains why PHI's capitalization was not increased despite its acquisition of PTIC shares. An increase was unnecessary because Ramon U. Cojuangco actually did not part with the ownership of the PTIC shares transferred to PHI, since after all, he, not Marcos, owned the PHI. That he is the owner thereof is shown by the following circumstances:

(a) respondent Cojuangco took over as Chairman and President of PHI after the assignment; and (b) the books and records of PHI were turned over to him, as testified to by de Guzman, the Republic's witness. Certainly, these assignments are effective:

"When a formal deed of assignment is executed by the transferor in favor of a transferee, for the purpose of assigning shares of stock, endorsement and delivery requirements stated in Section 63 of the Corporation Code are deemed substantially complied with. This mode of transfer covers a situation where no certificate of stock has been issued or where the stock certificate is not in the possession of the transferor-stockholder so that the shares of stock may be transferred by means of a deed of assignment."[3]

Additionally, the Republic failed to prove that Marcos had a

subsisting interest in PHI. There had been no intervention on his part in the affairs of PLDT, PTIC, or PHI. Nor did he issue instructions that "hugely and inexplicably benefited" these companies indicating he had any actual interest therein.

Another source of debate in this case has been the evidentiary standard applicable to this and other ill-gotten wealth cases, given the Sandiganbayan's reliance on *Baseco vs. PCGG*[4] and related jurisprudence. The *ponencia* stresses that this Court never intended to lay down evidentiary standards in *Baseco* and, therefore, the Sandiganbayan's reference to such standards is nothing more than its "inference from its reading of the Decision."

I disagree. To my mind, *Baseco* is applicable.

Baseco is a landmark ruling that confirms the *modus operandi* described by the Republic's witnesses here. In that case, "street certificates" (i.e. stock certificates endorsed in blank) and Deeds of Assignment to various corporations including *Baseco*, also assigned in blank, were among the documents found to have been in Marcos' possession in Malacañang. We were convinced that based on such proof, Marcos "actually owns well nigh one hundred percent of its outstanding stock."[5]

But unlike *Baseco*, here there is no such documentary evidence. Neither PHI stock certificates nor PHI Deeds of Assignment have turned up in Marcos' hands. Witness de Guzman testified that assignments of PHI shares were delivered to Cojuangco, not Marcos. Documentary evidence (Exhibits "1" to "5", for instance) clearly identify Ramon U. Cojuangco and the members of his family as the assignees of PHI shares – certainly removing any idea that these were assigned in blank to an "unnamed beneficiary."

Because this is a civil forfeiture case, then the Republic must establish, by a "preponderance of evidence," that the PHI shares were "ill-gotten wealth." Its burden is explained by this Court, thus:

"Equiponderance of evidence rule states:

When the scales shall stand upon an equipoise and there is nothing in the evidence which shall incline it to one side or the other, the court will find for the defendant.

Under said principle, the plaintiff must rely on the strength of his evidence and not on the weaknesses of defendant's claim. Even if the evidence of the plaintiff may be stronger than that of the defendant, **there is no preponderance of evidence on his side if such evidence is insufficient in itself to establish his cause of action.**"[6] *1awphil.net*

Similarly:

"We are at a loss to determine which position is correct. Under the circumstances, we are constrained to decide the issues under the rule of burden of proof.

Where the evidence on an issue of fact is in equipoise or there is any doubt on which the evidence preponderates the party having the burden of proof falls upon that issue, that is to say, if the evidence touching on disputed facts is equally balanced, or if it does not produce a just, rational belief of its existence, or it leaves the mind in a state of perplexity the party holding the affirmative as to such fact must fail. (23 C.J. 11-12)"[7]

So must it be in this case. On the assumption that the Republic has presented a persuasive case, it may not be said that the defendants do not have in their favor an equally persuasive one.

Even were we to find the balance of evidence to be just about at equipoise, the Republic's instant claim – as a matter of law – must fall.

Some might argue that the evidentiary requirement in civil forfeiture cases has an even higher standard, that is, proof beyond reasonable doubt. In *Cabal vs. Kapunan*,[8] we ruled that proceedings for forfeiture of property in favor of the State (under the Anti-Graft Law) is criminal and penal in nature because such actions are primarily to punish for violation of a duty or a public wrong and to deter others from offending in the like manner. Forfeiture of property is in substance a criminal proceeding, and such forfeiture has been held to partake of the nature of a penalty.

WHEREFORE, I vote to **DENY** the petition in G. R. No. 153459 and **AFFIRM** respondent Sandiganbayan's Partial Decision.

ANGELINA SANDOVAL-GUTIERREZ
Associate Justice

Footnotes

[1] First Whereas Clause, Executive Order No. 2 (1986).

[2] Deposition of 18 December 1995, Transcript, Exhibit ZZZ to ZZZ-1-N.

[3] *Id*. at 807.

[4] No. L-75885, May 27, 1987, 150 SCRA 181.

[5] *Ibid*, at 228.

[6] *Sapu-an, et al. vs. CA*, G.R. No. 91869, October 19, 1992, 214 SCRA 701, 705-706.

[7] *Pilar Development Corp. vs. IAC*, No. L-72283, December 12, 1986, 146 SCRA 215.

[8] 6 SCRA 1059, citing *Katigbak vs. Solicitor General, et al.*, G.R. No. 19328, December 22, 1989.

BACK TOP

CONCURRING OPINION

CALLEJO, SR., *J.*:

I concur with the majority opinion penned by Madam Justice Conchita Carpio Morales and vote to grant the petition in G.R. No. 153459 to the extent that it prays for the reconveyance to the Republic of the Philippines of 111,415 shares of stock of the Philippine Telecommunication Investment Corp. (PTIC) registered in the name of Prime Holdings Inc. (PHI).

PTIC is the biggest stockholder of Philippine Long Distance Telephone Co. (PLDT), owning 28% of its outstanding shares or totaling approximately 625 million PLDT shares valued at approximately 1.6 billion pesos.

The shares of stock of PTIC are registered in the following names: 111,415 (46% of total shares) are held by PHI; 76,779 were held by Ramon Cojuangco during his lifetime; and 21,525 are held by Imelda Cojuangco (44% of total shares).

In its Amended Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages, the Republic of the Philippines, through the Presidential Commission on Good

Government (PCGG), alleges, *inter alia,* that these PTIC shares of stock held by PHI and the Cojuangcos belong in truth and in fact to the Marcoses. In other words, PHI and the Cojuangcos are mere dummies/conduits/nominees of the Marcoses who effectively owned PTIC and, necessarily, the disputed shares of stock of PLDT.

Pursuant to its mandate, the PCGG filed the complaint for reversion of the Marcoses' ill-gotten wealth including these PLDT shares of stock to the Republic.

In their respective Answers, PHI and the Cojuangcos vehemently deny that the Marcos family owned the disputed shares of stock. PHI, in particular, asserted that the members of the family of the late Ramon Cojuangco own all the outstanding shares in PHI.

Imelda Marcos, on the other hand, admitted in her Answer that they hold beneficial ownership over these shares of stock. She maintained that their wealth was lawfully acquired.

Alfonso Yuchengco and Y Corp. filed a complaint in intervention seeking to recover from the Cojuangcos their shares of stock and asserting ownership thereof as against the Republic. Yuchengco claims that the Marcos regime compelled him into giving up 6% of PTIC shares formerly owned by Gregorio Romulo and Leonides Virata and deprived him of exercising his option to buy General Telephone and Electronics, Inc.'s (GTE's) 25% equity in PTIC. This 25% equity in PTIC was subsequently acquired by PHI.

After protracted hearings, the Sandiganbayan rendered the assailed Partial Decision dated May 6, 2002 dismissing the Republic's complaint insofar as it seeks to recover the PLDT shares.

The petition in G.R. No. 153459 is filed by the Republic assailing the Partial Decision. Yuchengco and Y Corp. also assail the said Partial Decision in their petition in G.R. No. 153207.

The petition in G.R. No. 150367 is filed by the Republic assailing the Sandiganbayan's Order denying its Respectful Motion for Additional Time to Complete the Presentation of Evidence. The petitions in G.R. Nos. 149802 and 150320 were filed by Yuchengco and Y Corp. assailing the Orders of the Sandiganbayan denying their motions to suspend trial pending discovery proceedings and cancellation of hearings. The Sandiganbayan declared them to have waived their right to present evidence.

In the Partial Decision, the Sandiganbayan ruled that the Republic failed to prove that the PLDT shares are part of the ill-gotten wealth of the Marcoses. Consequently, it affirmed the PHI's and the Cojuangco's ownership over the disputed shares. The Sandiganbayan held that "almost all the documents offered by the Republic are photocopies;" thus, the latter failed to provide "such proof of authenticity or reliability:"

We are therefore constrained to find that the Republic's documentary evidence, to the extent that they are mere photocopies, or are otherwise unidentified, unauthenticated, and constitutive of hearsay, may not be justifiably relied upon by this Court, nor may their integrity be assumed, for their purpose of establishing the facts, or for supporting the theory pursued by the Republic.

More particularly, there is no competent evidence to show that defendant Ferdinand Marcos had any hand in PTIC, or in the acquisition by the defendants Cojuangco in their own names of any

of their shares therein. There is no competent evidence to establish or even infer, the existence of a relationship of trust between the defendants Cojuangco and defendant Ferdinand Marcos with PTIC, or to establish that presidential concessions, benefits, or other incentives that could have improved the financial and operational situation of PTIC, PLDT, and PHI, were accorded said companies by defendant Ferdinand Marcos. Accordingly, there is no competent evidence to prove the Republic's allegation that the PLDT shares herein were ill-gotten.

On the other hand, there is evidence for the defense which establishes the fact that all shares in PHI were vested upon defendant Ramon U. Cojuangco and his family. Thus documents were offered in evidence plainly naming and identifying Ramon U. Cojuangco and members of his family as assignees of PHI shares, and in the absence of blank Deeds of Assignment and/or Deeds of trust executed by stockholders of PHI, said corporation may not be said to have been organized for defendant Marcos's benefit. To reiterate, it is the existence of such blank Deeds of Assignment and/or Deeds of Trust that distinguishes corporations asserted to be owned by defendant Ferdinand Marcos from the others.

More importantly, with the assignment of PHI shares specifically to defendant Ramon U. Cojuangco and members of his family, defendant Ferdinand Marcos lost the essential legal instrumentation or mechanism upon which he could have claimed the shares in ownership or compel the reconveyance thereof to him.

Likewise, there is, by the evidence, sufficient basis to conclude that the defendants Cojuangco acquired the shares in their names in PTIC as the actual and beneficial owners thereof. In fact, based on

plaintiff's own offered document, it is clear and indubitable that defendants Cojuangco were original stockholders of PTIC, hence held some of their shares therein as early as 1967. These shares have been claimed by them in actual and beneficial ownership. When defendant Ramon U. Cojuangco died on May 6, 1984, the 76,779 PTIC shares registered in his name were declared as part of his estate.[1]

The Sandiganbayan, in fine, ruled that the Republic failed to prove by preponderant evidence that PTIC as well as the disputed shares in PLDT belonged to the Marcoses.

The majority opinion further adds the following relevant facts:

PHI was incorporated in 1977 by Jose D. Campos (son of Jose Yao Campos), Gapud, Renato Lirio, Ernesto Abalos and Gervacio Gaviola, with 400 shares each in their names. These incorporators were also the officers of PHI.

Meanwhile, in 1977, 54,349 shares of PTIC, originally owned by GTE, a US corporation, were acquired by Ramon Cojuangco, who was then PTIC President and member of its board of directors.

In 1978, together with Luis Revilla, another stockholder of PTIC, Ramon Cojuangco ceded a total of 111,415 PTIC shares to PHI through several deeds of assignment.

In 1981, Gapud and Jose D. Campos later assigned all their shares in PHI (400 shares each) to Cojuangco and Oscar Africa, respectively, through separate deeds of assignment.

On that same year, Cojuangco and Africa became directors of PHI and its President and Vice-President, respectively.

In 1983, Africa transferred his 400 PHI shares to Antonio

Cojuangco and Trinidad Cojuangco Yulo. Also, Lirio, Abalos and Gaviola, remaining incorporators of PHI, transferred their 1,200 shares in PHI to members of the Cojuangco family through deeds of assignment. In effect, the Cojuangcos acquired full control of PHI.

Deposition of Campos

Campos was a Marcos crony. He categorically stated that he organized corporations for and in behalf of Pres. Marcos. He gave a list of these corporations which included PHI. It was his policy that "whenever such corporation is organized for and on behalf of the intended beneficiaries, I execute and require all my said business associates to execute a Deed of Trust or Deed of Assignment duly signed in favor of unnamed beneficiary and to deliver the original copy thereof to the former President."

In 1979, he suffered a severe heart attack; thus, he transferred to Gapud the management of these corporations.

When categorically asked during his deposition whether the policy of executing deeds of trust or assignment in favor of an "unnamed beneficiary" and delivering them to then Pres. Marcos was followed in the case of PHI, Campos replied that "all the corporations I organized – that was the standard policy – that we surrendered direct to President Marcos."

These statements were corroborated by the testimony of de Guzman on cross-examination to the effect that he received instructions from Campos to organize PHI and thereafter, he (Campos) told him that it was Gapud who would be giving instructions regarding PHI.

The foregoing statements clearly show that PHI was one of the

corporations organized by Campos for and in behalf of Pres. Marcos and that in all the corporations he organized, it was the standard policy that they surrendered [a deed of trust or assignment] direct to the latter. In other words, PHI was beneficially owned by Pres. Marcos.

Deposition of Gapud

Gapud was one of the incorporators of PHI and a close associate of Campos. When asked whether he knew the beneficial owners of PHI, Gapud answered that what he knew was that "the shares of stock and/or assignments endorsed in blank were delivered to Pres. Marcos by Mr. Campos." Also, that the deed of assignment in blank covering his (Gapud's) 400 shares in PHI was delivered by Campos to Pres. Marcos. However, he affirmed that he subsequently transferred these shares to Ramon Cojuangco through a deed of assignment.

Gapud's testimony corroborates Campos' statement that PHI was organized for and in behalf of Pres. Marcos. There is no contradiction between Gapud's claims that blank deed of assignment covering his shares in PHI was delivered to Pres. Marcos and, later, he executed a deed of assignment covering these same shares in favor of Cojuangco.

I agree with the disquisitions of the majority that Gapud's statement relating to the subsequent execution of deeds of assignment to Cojuangco and his kin does not detract from the prior delivery of blank deeds to the former President, especially so in this case where, by Gapud's own recounting, he and his co-incorporators executed the 1981 and 1983 deeds of assignment with the knowledge and authorization of the same person to whom the

earlier deeds were delivered – President Marcos.

VICE CONSUL HERNANDEZ

So the aforesaid Deeds of Assignments obviously were with the knowledge and upon authorization and order of former President Ferdinand E. Marcos, is this correct?

MR. GAPUD. Considering that Prime Holdings, Inc. was incorporated upon the instructions of former President Marcos, obviously all the nominees would act only upon his authorization. That's my answer.

As gleaned from the deposition of Gapud, there is practically no consideration for the transfer by Gapud of his shares to Cojuangco:

CONSUL AGUILUCHO. How much did you receive as consideration for assigning your shares to him?

MR GAPUD. The consideration for the assignment was that upon my assignment, first, my fiduciary responsibilities as nominee were extinguished, and secondly, I had transferred and extinguished any and all liabilities under the subscription payable.

Deposition of de Guzman

De Guzman was the Corporate Secretary of PHI. In his testimony, de Guzman identified the original incorporators of PHI, namely, Gapud, Lirio, Gaviola and Abalos, as close associates of Campos. The other incorporator, Jose D. Campos, Jr., was the latter's son. The office of PHI was within the premises of the United Laboratories, another corporation controlled by Campos.

Based on the foregoing, there is nary any evidence on Cojuangco's role in the organization of PHI to substantiate the thesis that the same was beneficially owned by Cojuangco. On the other hand, the

Republic's thesis that President Marcos is the beneficial owner of PHI "is deduced from established facts which, weighed by common experience, engender the inference as a very strong probability." Preponderance of evidence lies with the Republic.

On the basis of the evidence on record, I am convinced that that President Marcos owned PHI and all the incorporators thereof acted under his direction and that once this is acknowledged, the following conclusions inevitably follow:

1. Cojuangco was elected President and took over the management of PHI on 1981 with the cooperation of the Marcos nominees who, it must be emphasized, still held the majority stockholding as of that date;

2. As the remaining incorporators on the Board divested their shares only in 1983, Cojuangco managed a Marcos-controlled corporation for at least two years;

3. The simultaneous divestment of shares by the three remaining incorporators on the Board to Cojuangco's close relatives in 1983 were with the knowledge and authorization of their Principal – President Marcos.

The preponderance of evidence lies with the Republic with respect to the 111,415 shares of PTIC registered in the name of PHI. Such evidence consists of the statement of Campos as corroborated by the statements of Gapud and De Guzman.

For clarity, the ownership of the outstanding PTIC shares are divided as follows:

q 111,415 shares are held by the Prime Holdings Inc. (PHI);

q 76,779 were held by Ramon Cojuangco during his lifetime and;

q 21,525 are held by Imelda Cojuangco.

Thus, 46% of the total shares are held by PHI while the other 44% are held by the Cojuangcos. However, as shown earlier, the Cojuangco family eventually acquired control of PHI when, in 1983, its incorporators transferred their shares to the former.

With respect to the incorporation of PHI, the following allegations in the Sworn Statement dated March 21, 1986 of Campos are enlightening:

> 1. My relationship with the then President Ferdinand E. Marcos dates back to the time when he was first elected as Congressman of the then Philippine Congress. The relationship continued when he was then elected President of the Republic of the Philippines. **Thereafter I assisted in the organization and acquisition of some business ventures for the former President. Following his directive I instructed my lawyers and requested the assistance of my other business associates and officers of the company to organize, establish and manage these business ventures for and on behalf of the President;**
>
> **2. The companies that we have organized for and on behalf of former President Marcos are listed in Annex "A" attached herewith;**
>
> 3. In the organization, administration and management of the abovenamed corporations, it was my **policy** that whenever such a corporation is organized for and on behalf of the intended beneficiaries, I execute and I require all my said

business associates to execute a **Deed of Trust or Deed of Assignment** duly signed in favour of an unnamed beneficiary and to deliver the original copy thereof to the former President. It is in fact my **policy** and procedure that we disclaim completely any interest in any of such businesses and make it clear to the former President that we hold such interests on his behalf;

4. In the latter part of 1979 suffered a severe heart attack and was confined in the intensive care unit of the Makati Medical Center. x x x

5. Occasioned by the withdrawal of my active participation in the management of the abovenamed corporations, **Mr. Rolando C. Gapud** who was my financial consultant took over the direct responsibility of directing, managing and administering all the activities of the said corporations. However, since Mr. Gapud did not have the administrative staff to efficiently manage the businesses, he requested me that all the employees and officers involved in the organization should continue to remain in the companies even only in a nominal capacity considering that they had previously disclaimed any interest therein. It is for this reason that Rolando C. Gapud and my business associates, namely, Mariano K. Tan, **Jose D. Campos, Jr.,** Luciano E. Salazar, **Francisco G. De Guzman,** Guillermo C. Gastrock, **Ernesto S. Abalos, Gervasio T. Gaviola,** Rodolfo Dimaano, Manuel Engwa, Lourdes F. Florentino, Florentin, Daniel Q. Tan and Elizabeth S. Campos continued to be named stockholders in these corporations although they did not have any financial interest therein. (Emphasis and underscoring supplied).

Annex A referred to by Campos included PHI.

In his Sworn Statement dated December 18, 1995, Campos further averred:

3. In your Sworn Statement, page 2, you stated that with respect to the corporations you held in trust for President Marcos, it was your "policy" that whenever such a corporation was organized, you executed, and you required all your business associates to execute, A Deed of Trust or Deed of Assignment in favor of an "unnamed beneficiary", and delivered the originals thereof to President Marcos. x x x **Was this "policy" followed in the case of [PHI]? x x x**

ANSWER: All the corporations I organized – that was the standard policy – that we surrendered direct to President Marcos.

3.1 Was it also your policy to deliver to President Marcos the stock certificates that you and your business associates held in trust for him?

ANSWER: Yes, Ma'm.

3.2 If stock certificates that you and your business associates held in trust for President Marcos were delivered to him was it also your policy to have the stock certificates indorsed in blank? Were the stock certificates in {PHI} indorsed in blank?

ANSWER: **If** there are certificates issued in Prime Holdings, it is the same way it was delivered to him. **If** there is such certificate issued, it is indorsed in blank and **follow the same pattern for all the corporations**. Whatever we have decided, we deliver, sign in blank and deliver to him.

3.3. Did you and your business associates deliver to President Marcos the stock certificates issued by [PHI]? If not, what did you and your business associates do with the stock certificates?

ANSWER: **If** Prime Holdings certificates have been issued, as I said Ma'm, it is delivered to the President.

4. In your Sworn Statement, page 2, you also stated that "it is in fact my policy and procedure that we disclaim completely any interest" in the business organized for President Marcos and "make it clear to the former President that we held such interests in his behalf" . . . . **Was this "policy and procedure" followed in the case of [PHI]? xxx**

ANSWER: The policy is followed by every corporation that we organized for the President.

4.1 Did you and your business associates also "disclaim completely any interest" in ... (PTIC) and "make it clear to the former President that we hold such interests on his behalf"?

ANSWER: Ma'm, as I said, I don't know that Prime Holdings has such holdings of the PTIC shares that you referred to. ('Emphasis and underscoring supplied)

The admissions of Campos are judicial; hence, conclusive on him and his successors-in-interest. The same can be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[2] All proofs submitted by him and his successors contrary thereto or inconsistent therewith should be ignored, whether objection is interposed by him or not.[3] The admissions of Campos are even admissions against interest, and, hence,

trustworthy. For their part, the Cojuangcos failed to allege, much less show, that the admissions of Campos were made through palpable mistake or that no such admission was made.

It bears stressing that under Executive Order No. 14,[4] the quantum of evidence required in cases involving forfeiture proceedings is preponderance of evidence, *i.e.*, "evidence which is of greater weight, or more convincing than that which is offered in opposition to it. The term 'preponderance of evidence' means the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the terms 'greater weight of evidence' or 'greater weight of the credible evidence.' Preponderance of the evidence means evidence which is offered in opposition thereto."[5]

The testimony of Campos, as corroborated by Gapud and de Guzman, that he organized PHI for and in behalf of Pres. Marcos should be accorded great probative weight. The incorporators of the said corporation were close associates of Campos and, in fact, Gapud admitted that he did not really own the shares registered in his name and that the deed of assignment covering these shares was delivered by Campos to Pres. Marcos.

Reliance by the dissenting opinion on the deeds of assignment purportedly executed by the PHI incorporators in favor of Cojuangco family members is misplaced. The fact that in these deeds of assignments the Cojuangcos were specifically named, does not constitute proof that the beneficial ownership of PHI belonged to the Cojuangcos although they (deeds of assignment with specific names) deviated from the "standard practice"

mentioned by Campos of delivering invariably blank deeds of assignment to Pres. Marcos.

To reiterate, there is no evidence at all that there was a consideration for the transfer by the incorporators of their shares in favor of the Cojuangcos. As Gapud stated in his deposition:

CONSUL AGUILUCHO: How much did you receive as consideration for assigning your shares to him [referring to Ramon Cojuangco]?

MR. GAPUD: The consideration for the assignment was that upon my assignment, first, my fiduciary responsibilities as nominee were extinguished, and secondly, I had transferred and extinguished any and all liabilities under the subscription payable.

This lack of consideration renders the acquisition by the Cojuangcos of the said PHI shares of no juridical effect.

It also appears that the transfer by these incorporators of their shares in favor of Cojuangco was made with the knowledge and consent of then Pres. Marcos. As Gapud further averred in his deposition:

VICE CONSUL HERNANDEZ: Can we note your objection and let Mr. Gapud answer.

So the aforesaid Deeds of Assignments obviously will be with the knowledge and upon authorization and order of former Pres. Ferdinand E. Marcos, is this correct?

MR. GAPUD: Considering that Prime Holdings, Inc. was incorporated upon the instructions of former President Marcos, obviously all the nominees would act only upon his authorization. That's my answer.

VICE CONSUL HERNANDEZ: So the deposition ends.

Given the lack of consideration and the authority given by Pres. Marcos therefor, it would thus appear that the deeds of assignment executed by the PHI incorporators in favor of Ramon Cojuangco and his family were forged for the purpose of conveying management and control of PHI to the latter who likewise acted for and in behalf of Pres. Marcos.

In fine, the preponderance of evidence lies with the Republic insofar as the 111,415 shares in PTIC held by PHI are concerned. Again, the evidence shows that PHI was organized for and in behalf of Pres. Marcos. Thus, the 111,415 shares in PTIC, and necessarily the corresponding shares in PLDT, held by PHI must be reconveyed to the Republic as part of the Marcoses' ill-gotten wealth.

ACCORDINGLY, I vote to grant the petition in G.R. No. 153459 to the extent that it prays for the reconveyance to the Republic of 111,415 shares of stock of PTIC registered in the name of PHI.

ROMEO J. CALLEJO, JR.
Associate Justice

Footnotes

[1] Assailed Partial Decision, pp. 32-33.

[2] Rule 129, Section 4, Revised Rules of Evidence.

[3] *Cunanan v. Amparo,* 80 Phil. 229.

[4] Executive Order No. 14 provides that "civil suits for restitution, reparation of damages, forfeiture proceedings provided for under Republic Act No. 1379, or any other civil

action under the Civil Code or other existing laws, in connection with (said EO Nos. 1 and 2) may be filed separately from and proceed independently of any criminal proceedings and may be proved by preponderance of evidence.

[5] *Republic v. Court Appeals*, 204 SCRA 160.

BACK TOP

DISSENTING OPINION

GARCIA, *J.:*

Before the Court are these five (5) separate petitions to nullify and set aside certain issuances of the Sandiganbayan, Fourth Division, in **Civil Case No. 0002**, a complaint for reconveyance, reversion, accounting, restitution and damages thereat instituted by the **Republic of the Philippines (Republic**), through the **Presidential Commission on Good Government (PCGG).**

Per its *en banc* Resolution of March 4, 2003,[1] the Court ordered the consolidation of these five (5) petitions, emanating, as they all do, from the same case.

I. THE UNDERLYING CASE:

CIVIL CASE NO. 0002

Civil Case No. 0002, one of several suits involving ill-gotten or unexplained wealth that the ***Republic*****,** through the ***PCGG*****,** initiated with the Sandiganbayan pursuant to Executive Order (EO) Nos. 1 and 2 in relation to EO No. 14, all series of 1986,[2] seeks the recovery of ill-gotten wealth from former **President Ferdinand E.**

Marcos (***Pres. Marcos*****,** hereafter), later substituted by his Estate, his wife, their three (3) children (***Marcos family***, or ***Marcoses***, collectively) and their alleged cronies. Among the properties identified as partaking the nature of "*ill-gotten wealth*", as the term is contextually understood, are shares of stock in **Philippine Telecommunications Investment Corporation** (***PTIC,*** for short) which, in turn, covered over two (2) million shares in **Philippine Long Distance Telephone Company, Inc.** (***PLDT***). The ***Republic*** seeks to recover the covered PLDT shares from **Imelda O. Cojuangco**, the **Estate of Ramon U. Cojuangco,** represented by its administratrix Imelda O. Cojuangco (collectively, "***Cojuangcos***"), and **Prime Holdings, Inc**. (***PHI***), as part of the alleged "*ill-gotten wealth*" of the Marcos family.

Subsequently, petitioner **Alfonso T. Yuchengco** (***Yuchengco***), joined later by his ally, **Y Realty Corporation** (***Y Realty***), intervened, claiming they are the rightful owners of PHI's 46% shareholding in PTIC. They would assert that their claim for recovery of the property allegedly unjustly taken from them is superior to the forfeiture claim of the Republic.

Acting on a February 1996 motion of the ***Cojuangcos***, the Sandiganbayan would later resolve to sever the PLDT-share-ownership issue from the other claims involved in Civil Case No. 0002, and allowed a separate trial with respect only to the issue related to the PLDT shares. In the course of the separate trial, the Sandiganbayan (Fourth Division) issued certain orders and resolutions, *infra*, that are now subject to challenge in either one of the herein five (5) consolidated petitions.

Three (3) of these petitions, *i.e.*, **G.R. No. 150367, G.R. No. 149802** and **G. R. No. 150320,** are for *certiorari* under Rule 65 of

the Rules of Court, the first filed by ***Republic*** and the remaining two, by **Yuchengco/Y Realty (**collectively, the ***Yuchengcos***). These recourses similarly assail as having been issued in grave abuse of discretion or in excess or lack of jurisdiction, *ergo* null and void, certain resolutions and orders issued by the graft court in Civil Case 0002. As each petitioner in these three (3) petitions alleged, the resolutions and orders adverted to effectively deny them due process of law. Accordingly, they pray that writs of certiorari issue with the end in view of enjoining respondent Sandiganbayan to allow them additional trial dates for purposes of presenting their respective evidence in the separate trial below.

On the other hand, **G.R. No. 153459** and **G.R. No. 153207,** filed by ***Republic*** and the ***Yuchengcos****,* respectively, under Rule 45 of the Rules of Court, each seeks a review and the setting aside, allegedly for not being in accord with the evidence adduced below, and for being contrary to law and settled jurisprudence, the Sandiganbayan's **Partial Decision**[3] on the PLDT issue dated **April 25, 2002**, but promulgated on **May 6, 2002** (simply **Partial Decision**, hereafter). The Partial Decision, which was rendered after the three (3) aforementioned petitions for *certiorari* had been filed, disposes, as follows:

WHEREFORE, premises considered, the complaint of the plaintiff Republic of the Philippines on the PLDT shares subject of separate trial is hereby DISMISSED for lack of merit.

The Motion for Summary Judgment is hereby GRANTED, and the Complaint-in-Intervention DISMISSED.

SO ORDERED.

The arguments and counter-arguments of the herein four (4) main

sets of litigants (the ***Republic*****,** the ***Marcoses*****,** the ***Cojuangcos*** and the ***Yuchengcos***) on a menu of issues presently pressed in pleadings after pleadings are as numerous as they are extensive. What is more, the parties, along the way, squeezed the rules of procedure to the hilt, thus adding incidental matters to an already complex proceedings. So as not to be sidetracked, or, worse still, waylaid thereby and thus neglect, if not altogether miss, the proverbial tree for the forest, the Court shall limit itself and shall accord particular focus only to what it perceives to be material determinative facts and matters which led to the filing of the instant petitions. Towards the same end, the Court shall condense the several issues raised into two (2) core questions for resolution*,* to wit*:*

1. whether or not petitioners in **G.R. Nos. 149802, 150320** and **150367** were denied due process when the respondent court in effect directed them to terminate the presentation of their respective evidence; and

2. whether or not the challenged Partial Decision, subject of the petitions for review in **G.R. Nos. 153459 and 153207,** conforms to the evidence presented, the law and/or settled jurisprudence.

II. THE PARTIES & THEIR PRINCIPAL

CLAIM in CIVIL CASE No. 0002

A. *Petitioner Republic*

The original complaint in Civil Case No. 0002, filed on July 16, 1987 by the ***Republic***, thru the ***PCGG***, named, as defendants, Pres. Marcos and Imelda R. Marcos (***Mrs. Marcos***, hereafter), their

three (3) children, and seven (7) other individuals. As the case progressed, the ***Republic*** successively amended its original complaint to include other alleged illegally acquired assets and/or implead other parties.

Among the properties sought to be recovered as part of the alleged ill-gotten wealth of the Marcos family are, as indicated earlier, shares of stock in PTIC and PLDT.

The ***Republic's*** Third Amended Complaint ("Amended Complaint"), dated April 20, 1990,[4] impleaded, as additional party-defendants, the herein respondents ***Cojuangcos/PHI***, and, as to them, the Amended Complaint pertinently avers:

> 1. This is a civil action against Defendants Ferdinand E. Marcos, Imelda R. Marcos, . . . Imelda Cojuangco, the Estate of Ramon Cojuangco, and Prime Holdings, Inc. to recover from them ill-gotten wealth consisting of funds and other property which they . . . had acquired and accumulated in flagrant breach of trust and of their fiduciary obligations as public officers, . . . thus resulting in their unjust enrichment during Defendant Ferdinand E. Marcos' 20 years of rule . . . .
>
> 2. The wrongs committed by Defendants, acting singly or collectively and in unlawful concert with one another. . . include the misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal and public trust . . . .
>
> xxx xxx xxx
>
> 17. Among the assets acquired by Defendants in the manner above-described . . . are funds and other property listed in

> Annex "A" hereof and made an integral part of this Complaint, [including, but not limited to the following]:
>
> xxx xxx xxx
>
> c. Stocks
>
> Shares of stocks in numerous corporations . . ., including about 2.4 million shares of . . . [PLDT] valued, at current market prices, approximately P1.6 Billion pesos and covered by shares of stock in . . . (PTIC) registered in the names of Prime Holdings Inc. (PHI), Ramon Cojuangco and the latter's associates.
>
> During his lifetime, Ramon U. Cojuangco held 76,779 shares of stock in PTIC, while Imelda O. Cojuangco held 21,525 shares of stock in her own name, the beneficial and actual ownership of which is that of defendants Ferdinand Marcos and his family.
>
> Defendant Prime Holdings, Inc. (PHI) held 111,415 shares which in truth and in fact belong to defendants Ferdinand E. Marcos and his family. This stockholding of defendants Marcos and his family in PTIC, through Ramon U. Cojuangco and PHI, constitutes the majority stockholding in PTIC. PTIC, in turn, is the biggest stockholder of PLDT shares. In the manner above stated, defendants Marcos and his family effectively controlled PLDT. (Underscoring in the Original; Words in bracket, added)

As may thus be gathered from the above averments, petitioner ***Republic,*** as plaintiff *a quo***,** seeks to recover from respondents ***Cojuangcos/PHI,*** the following PTIC shares of stock, *viz*: (1) the 111,415 shares in PHI's name; (2) the 76,779 and the 21,525 shares in the name of Ramon U. Cojuangco and Imelda O. Cojuangco, respectively**.** The desired recovery is predicated on the

postulate that the three, as defendants *a quo*, are mere dummies/nominees/conduits of the Marcos family in the control of PLDT.

B. *Respondents Cojuangcos and PHI*

In its Answer dated June 5, 1990,[5] to the Republic's Amended Complaint, ***PHI*** belied allegations that the Marcos family is the beneficial owner of its 111,415 PTIC shares, stating in this regards, as follows:

11. Answering defendant PHI specifically denies the allegations contained in paragraphs 20 (a) and 20 (b) of plaintiff's Complaint. Insofar as the facts alleged in paragraph 20 (c) thereof, defendant PHI respectfully alleges that: (a) Defendant PHI is the registered stockholder of 111,415 shares in . . . (PTIC); that "during his lifetime" Ramon U. Cojuangco held 76,779 shares of stock in PTIC; that Imelda O. Cojuangco held 21,525 shares of stock "in her name", but answering defendant specifically denies that these shares registered in said names are owned, actually and/or beneficially, by Ferdinand E. Marcos and his family.

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The truth of the matter is that the members of the family of the late Ramon U. Cojuangco own all the outstanding shares in PHI in full legal and beneficial ownership . . . .

Respondent ***Cojuangcos'*** Answer dated June 9, 1990,[6] to the same Amended Complaint contains virtually the same material averments as those in PHI's answer. And like PHI, the ***Cojuangcos*** also pray for the dismissal, as to them, of the Amended Complaint.

C. *Respondent Imelda R. Marcos*

As its most essential, **Mrs. Marcos'** Answer with Counterclaim dated November 22, 1993,[7] confirmed the ***Republic's*** allegation about the Marcoses' ownership over the PLDT shares in controversy, but with the qualification that these shares were legitimate acquisitions. Very much later, however, Mrs. Marcos, by motion dated January 22, 1999, sought leave to amend answer for the purpose of pursuing a cross-claim against Cojuangcos/PHI. The respondent court, however, denied her motion, holding that the proferred Amended Answer with Cross-Claim thus attached to her motion varied her theory of defense, in that, while she asserted in her original answer that the late Pres. Marcos had lawfully acquired and thus owned the PLDT shares in question, she, in the intended amended answer with cross-claim, traversed the allegations of the Republic's Amended Complaint by pleading lack of knowledge of facts sufficient to form a belief as to the truth thereof. Nonetheless, the respondent court allowed Mrs. Marcos to file a pleading to contain her cross-claim against Cojuangcos/PHI.

Accordingly, Mrs. Marcos filed a Cross-Claim dated April 21, 1999[8] against Cojuangcos/PHI, alleging, *inter alia*, the following:

2. The . . . (PLDT), . . . is one of the assets listed in Annex "A" of the Third Amended Complaint [of the Republic] . . . .

3. The Philippine Telecommunications Investment Corp. (PTIC) was organized . . . with the primary purpose to " . . . otherwise deal in all securities, shares of stocks and bonds of the [PLDT]." x x x . PTIC is the single biggest corporate stockholder of PLDT.

3.1. PTIC's capital stock were originally subscribed by . . ., among others: defendants Ramon Cojuangco and Imelda Cojuangco both of whom held shares of stock in their respective names as trustees

. . .for and in behalf of the late President Ferdinand E. Marcos, . . . and family . . . . All shares of stock in PTIC acquired and registered in their respective names subsequent to the incorporation were likewise acquired and held for and behalf of said principals.

3.2. On 7 December 1967, defendant Ramon Cojuangco and Mr. Luis T. Rivilla,. . . executed an agreement whereby . . . (67,392) shares of PTIC, which were held in their names were transferred, . . . unto defendant Imelda R. Marcos in consideration of the extinguishment of [their] loan of . . .(P3,400,000.00) . . . .

xxx xxx xxx

3.4. Mrs. Marcos subsequently authorized Messrs. Cojuangco and Rivilla, their assigns, . . . to hold said 67,392 PTIC shares for and in her behalf on the understanding, agreement and recognition of her true, lawful and beneficial ownership thereof.

4. Sometime in 1977, defendants Ramon Cojuangco and Imelda Cojuangco likewise acquired for and in behalf of Mr. and Mrs. Marcos and their family approximately . . . (54,349) fully paid shares of stock in PTIC from General Telephone and Electronics, Inc. (GTE), an American company. Again, this share acquisition was on the understanding, agreement and recognition that defendant Cojuangcos were mere trustees/nominees of Mr. and Mrs. Marcos and their family.

xxx xxx xxx

5. All the shares of stock of PTIC registered in the name of defendants Ramon Cojuangco, Imelda Cojuangco, their assigns, nominees and representatives, . . ., were never acquired and held in their own right, . . . since they have always been held by them as trustees/nominees for and in behalf of Mr. and Mrs. Marcos and

family – the true, lawful and beneficial owners thereof.

xxx xxx xxx

6. On 05 October 1977, ... (PHI) was organized . . . as an investment and holding company. PHI's principal asset at present is the . . . (111,415) PTIC shares of stock registered and held in PTIC.

6.1 PHI was incorporated to serve as the holding company of all the PTIC shares owned by Mr. and Mrs. Marcos and family, in addition to those being held by trustees/nominees . . . . For this purpose, PHI was organized with the following as incorporators [Jose D. Campos, Rolando C. Gapud, Renato E. Lirio, Gervaso T. Gaviola and Ernesto S. Abalos, with 400 shares each], all of whom are the trustees/nominees of the Marcoses:

xxx xxx xxx

6.3 In 1978, . . . (111,415) shares of stock in PTIC were transferred and registered in the name of PHI. These PTIC shares came from various sources, including from registered stockholders of PTIC.

xxx xxx xxx (Words in bracket added.)

On the basis of the foregoing averments, Mrs. Marcos, for her own behalf and that of her family, prayed that judgment be rendered ordering the Cojuangcos/PHI, their assignees and agents, to transfer in her favor (i) the aforesaid shares of stock in PTIC being held by them as trustees/nominees of the Marcos family, and (ii) all the two thousand (2,000) shares of stock in PHI being held by them as such trustees/nominees, together with all the fruits accruing from the time that they were constituted or acted as such trustees/nominees.

In fine, Mrs. Marcos maintained that all PTIC shares registered in

the names of Cojuangcos/PHI as well as the PHI shares which are registered in the name of its incorporators have always been held by them as trustees and/or nominees of the Marcos spouses and their family who are the lawful and beneficial owners thereof. She assumed the same posture in her Pre-trial Brief dated April 24, 1999[9] as well in her Answer to petitioner Republic's Request for Admission.[10]

Via a Resolution promulgated on February 22, 2000,[11] the respondent court dismissed Mrs. Marcos' Cross-claim "*for being barred and for failure to state a cause of action*." Her motion for reconsideration was denied in another Resolution of May 23, 2000.[12]

D. Petitioner *Yuchengcos*

Petitioner ***Yuchengco*** filed his Complaint-in-Intervention and his Amended Complaint-in-Intervention in August 1988 and May 1993, respectively, both of which the Sandiganbayan (Third Division) admitted. He asserted ownership over a certain number of PTIC shares and necessarily a portion of the disputed PLDT shares. ***Y Realty*** later joined Yuchengco in his Second Amended Complaint-in-Intervention and, to the extent of their combined claim over the disputed PLDT shares, pitted the same against that of either the ***Republic***, the **Marcos** family, or the ***Cojuangcos/PHI***.

The ***Yuchengcos's*** joint Second Amended Complaint-in-Intervention dated September 20, 1993[13] - admitted on June 11, 1995 - contained the ensuing material averments:

FIRST CAUSE OF ACTION

6. In the early to mid-1960's, the largest block of stock of . . .

> [PLDT] was held by General Telephone & Electronics Corporation ("GTE"), which held 28% of its outstanding stock.
>
> In 1967, GTE decided to divest its shareholdings in PLDT. . . . GTE agreed to sell its PLDT shares to the Ramon U. Cojuangco group, which included . . . Ferdinand E. Marcos and/or . . . Imelda R. Marcos, Estate of Ramon U. Cojuangco and Imelda O. Cojuangco, and their nominees.
>
> The Ramon U. Cojuangco group caused. . . (PTIC) to be formed for the purpose of purchasing GTE's 28% stockholdings in PLDT. xxx.
>
> 7. In 1967, PTIC was owned by the following: GTE received 25% of PTIC as part of the consideration for selling its shareholding in PLDT to PTIC. Approximately 57% of the PTIC stock was divided among the Ramon U. Cojuangco group.
>
> Gregorio Romulo and Leonides Virata each received 3% of PTIC for their services rendered . . . .
>
> The remaining 12% of PTIC was divided among various persons. Plaintiff-in-intervention Yuchengco - . . . who already controlled 10% of PLDT – purchased 7.75% of the stock in PTIC (18,720 shares) . . . . He placed the 7.75% shares in the name of . . . Y Realty Corporation.
>
> 8. Some time after PTIC's acquisition of 28% of PLDT, Gregorio Romulo and Leonides Virata . . . approached . . . Yuchengco and offered to sell their respective 3% shareholdings in PTIC to him for P300,000.00 each. Plaintiff-in-intervention Yuchengco agreed to buy.
>
> 9. But, the Ramon U. Cojuangco group learned of the agreed sale and sent Atty. Alberto Meer to . . . Yuchengco to inform him that . . .

President Marcos objected to his acquiring additional shares in PTIC. xxxx Yuchengco was instructed to pay the purchase price of P600,000.00 and to transfer the 6% stockholdings to the Ramon U. Cojuangco group. Otherwise, . . . Yuchengco was told, his business interests would suffer.

Gregorio Romulo, upon finding out, also strenuously objected to selling to the Ramon U. Cojuangco group.

But, . . . Yuchengco and Gregorio Romulo complied as they could not do otherwise. xxx Yuchengco paid the P600,000.00 price. The 6% stockholdings of Gregorio Romulo and Leonides Virata were transferred to the Ramon U. Cojuangco group and eventually to. . .[PHI].

10. xxx **Yuchengco was the victim of illegal coercion and duress of the Marcos regime.** He was **coerced into giving up** Gregorio **Romulo's and** Leonides **Virata's 6%** shareholdings in PTIC . . . .

xxx Yuchengco was prevented by the same illegal coercion and duress and by force *majeure* (Martial Law) from seeking judicial relief until after the ouster of the former regime.

11. Consequently, . . . [PHI] holds the 6% stockholdings in PTIC, and all dividends and distributions attributable thereto, in constructive trust for . . .

xxx xxx xxx

SECOND CAUSE OF ACTION

xxx xxx xxx

14. On 22 November 1967 – at about the time GTE sold out its PLDT shares to PTIC and received 25% of PTIC – GTE through its

. . ., John J. Douglas, entered into a "put and call" agreement with . . . Yuchengco for GTE's 25% stockholdings in PTIC. xxx

15. But, as with the Leonides Virata and Gregorio Romulo shares, … Yuchengco was prevented from acquiring GTE's 25% shares in PTIC by exercise of his "put and call" agreement with GTE.

16. In February 1976, **GTE was compelled** by the Ramon U. Cojuangco group to waive its 25% stockholdings in PTIC for free. At a meeting in Tokyo with Ted Brophy, . . . and Ramon U. Cojuangco, [and 3 others], Brophy waived the 25% stockholdings, notwithstanding plaintiff's "put and call" agreement with GTE. Said 25% stockholdings in PTIC were re-issued to the Ramon U. Cojuangco group for a nominal amount and eventually transferred to . . . [PHI].

xxx xxx xxx

17. Again, . . . **Yuchengco . . . was coerced into not exercising his "put and call" agreement with GTE** for the latter's 25% stockholdings in PTIC, when he was otherwise ready, willing and able to do so. xxx.

Plaintiff-in-intervention Yuchengco **was prevented by the same illegal coercion and duress** and by force majeure (Martial Law) from seeking judicial relief until after the ouster of the former regime.

18. Consequently, . . .[PHI] and the owners of . . . [PHI] – whether they be (a) the Estate of Ramon U. Cojuangco and Imelda O. Cojuangco (b) plaintiff Republic and the PCGG, or (c) the Estate of Ferdinand E. Marcos and Imelda R. Marcos – hold the 25% stockholdings in PTIC, and all dividends and distributions attributable thereto, in constructive trust for plaintiff-in-intervention

Yuchengco, and should be compelled to turn over the same to him.

ALTERNATIVE THIRD CAUSE OF ACTION

xxx xxx xxx

20. In the event the Honorable Court should adjudge that . . . Yuchengco is not entitled to recover, under the Second Cause of Action, the 25% shareholdings in PTIC formerly belonging to GTE, then plaintiffs-in-intervention are at least entitled to recover 4.6% of said 25% shareholdings, as demonstrated below.

20.1. xxx Y Realty Corporation owns 7.7% of the stock in PTIC, and . . . Yuchengco is entitled to recover the 6% shareholdings formerly belonging to Gregorio Romulo and Leonides Virata . . . – for a total of 13.75%.

20.2. When GTE was coerced by the Ramon U. Cojuangco group to waive its 25% stockholdings in PTIC in February 1976, the remaining stockholders of PTIC were entitled to a *pro-rata* distribution of said 25% stockholdings – which were instead wholly re-issued to the Ramon U. Cojuangco group for a nominal amount and eventually transferred to . . . [PHI].

20.3. Thus, plaintiffs-in-intervention, with 13.75% of the remaining 75% stock, were entitled to 4.6% of the 25% stockholdings formerly belonging to GTE."

[It is thus prayed] –

On the first cause of action,

(a) xxx Ordering . . . [PHI] to turn over the 6% PTIC shareholdings including stock, cash and other dividends and stock splits thereon, to . . . Yuchengco; and

(b) Adjudging plaintiff-in-intervention Yuchengco to be the true owner of said 6% PTIC [formerly Virata's and Romulo's], shareholdings;

On the second cause of action

(a) Ordering . . . [PHI] to turn over the 25% PTIC shareholdings (formerly of GTE), including all . . . dividends and stock splits thereon, to . . . Yuchengco [as true owner thereof]; and xxx

On the alternative third cause of action,

(a) Ordering defendant-in-intervention [PHI] to turn over 4.6% of its PTIC shareholdings (plaintiffs-in-intervention's *pro-rata* share of GTE's former 25% shares), including all stock, cash and other dividends and stock splits thereon, to plaintiffs-in-intervention; and

(b) Adjudging plaintiffs-in-intervention to be the true owners of said 4.6% PTIC shareholdings." (Underscoring as found in the original; Emphasis and words in bracket added).

In their answer to the Amended Complaint-in-Intervention, which they later manifested as serving as their answer to the Second Amended Complaint-in-Intervention, respondents ***Cojuangcos/PHI*** set up, *inter alia,* by way of affirmative defense, the following grounds: (1) lack of cause of action, since the PTIC and PHI shares of stock in the name of the late Ramon U. Cojuangco and members of his family were lawfully acquired by them; (2) neither of the Marcos spouses was a member of the Ramon U. Cojuangco group, so that they (the Marcos spouses) have no interest whatsoever over any share in the said corporations; and (3) no jurisdiction has been acquired by the Sandiganbayan over the Amended Complaint-in-Intervention for non-payment of the proper docket fees.

III. THE PETITIONS

A. *G.R. Nos. 150367 and 153459 (Republic's)*

On February 16, 2001, petitioner ***Republic*** secured a *subpoena ad testificandum*[14] for *Mrs. Marcos* to testify as its witness respecting her claim over the disputed PLDT shareholdings. Mrs. Marcos, however, wasted no time in moving for the quashal of the subpoena, invoking in this regard her right against self-incrimination. In its opposition to motion, petitioner ***Republic*** argued that Mrs. Marcos has waived such right when, in her Answer and subsequent pleadings, she made judicial admissions and declaration of the beneficial ownership of the Marcoses over the disputed PLDT shares. The respondent court, per its Order of May 4, 2001, denied her motion to quash subpoena.[15] Another resolution of July 9, 2001 would eventually follow denying reconsideration of the denial of her motion to quash subpoena, along the following tenor:

Be that as it may, the prosecution's Opposition to Motion to Quash, dated 3 April 2001, specifically mentions only defendant Imelda Marcos' admission that Ferdinand Marcos acquired the properties mentioned in paragraph 19 of the complaint; hence, other than this fact, said prosecution may not propound any question that may violate her right against self-incrimination, upon proper and timely objection.

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WHEREFORE, defendant Imelda Marcos' Motion for Reconsideration dated 19 June 2001, is hereby denied, and the subpoena earlier issued stand. However, in lieu of the testimony of said defendant in court, the plaintiff may, instead, make use of the

provisions in Rule 26 of the Revised Rules on Civil Procedure. [16]

In the meantime, petitioner ***Republic*** continued presenting other witnesses, relying - as it would later claim – on the oral assurance given by the graft court during the hearing on **March 26, 2001** that it would allow the Republic to present Mrs. Marcos as its adverse or hostile witness.

At the May 28, 2001 hearing, the respondent court directed petitioner ***Republic*** to wrap up by May 30, 2001 the presentation of its evidence. This prompted petitioner ***Republic*** to posthaste file its "*Respectful Motion For Additional Time To Complete Presentation Of Evidence*"[17]therein praying for two (2) additional settings to complete the presentation of its evidence. But, in an open court **Order dated May 30, 2001,**[18] the respondent court denied the said respectful motion; the desired reconsideration was also denied per a **Resolution dated August 27, 2001**.[19]

Meanwhile, in the September 5, 2001 hearing, PCGG Special Counsel Tomas Evangelista, apparently unaware of the ***August 27, 2001 Order*** adverted to, reiterated the Republic's intention to present Mrs. Marcos as its witness, only to be apprised by the respondent court of its August 27, 2001 Order, *supra*. In the end, Atty. Evangelista requested that he be allowed thirty (30) days within which to file the ***Republic's*** formal offer of documentary evidence, which respondent court in fact directed him to do *via* an **Order dated September 5, 2001**[20] .

Hence, petitioner ***Republic*** filed on October 6, 2001 its "*Formal Offer of Evidence"* dated October 4, 2001, followed later by a "*Supplemental Offer of Evidence*" dated November 13, 2001[21]

therein reserving the right to present the testimony of Mrs. Marcos, as a hostile witness regarding her cross-claim, should this Court grant its petition for certiorari that it (*Republic*) intended to file. The intended petition was eventually filed and is presently docketed as **G.R. No. 150367**.

Via its petition in G.R. No. 150367, petitioner ***Republic*** seeks to nullify the following issuances of the respondent court, as described hereunder for better perspective:

> 1) **Order dated May 30, 2001,**[22] denying the Republic's respectful motion for additional time to complete the presentation of evidence and **Resolution of August 27, 2001,**[23] denying the motion to reconsider the May 30, 2001 order; and
>
> 2) **Order dated September 5, 2001,**[24] directing the Republic to submit its offer of evidence within 30 days from that date.

It is the ***Republic's*** submission that the respondent court gravely abused its discretion when it issued the aforementioned assailed orders and resolution considering that:

I. THE ASSAILED ORDERS . . . AMOUNT TO A DEPRIVATION OF THE REPUBLIC'S SUBSTANTIVE AND CONSTITUTIONALLY ENSHRINED RIGHT TO THE FULL RECOVERY OF THE MARCOSES' ILL-GOTTEN WEALTH.

II. THE ASSAILED ORDERS BLATANTLY VIOLATED THE REPUBLIC'S RIGHT TO PROCEDURAL DUE PROCESS OF LAW WHEN THE RESPONDENT COURT, AFTER ISSUING AND SUSTAINING THE VALIDITY OF THE SUBPOENA TO IMELDA

MARCOS, DENIED PETITIONER'S PLEA TO PRESENT HER AS ADVERSE/HOSTILE WITNESS AND TO COMPLETE THE PRESENTATION OF THE REPUBLIC'S EVIDENCE.

A. BY ISSUING THE ASSAILED ORDERS, THE RESPONDENT COURT VIOLATED THE REPUBLIC'S RIGHT TO DUE PROCESS OF LAW INASMUCH AS IT BARRED THE REPUBLIC FROM PRESENTING IMELDA MARCOS AS ADVERSE/HOSTILE WITNESS, NOTWITHSTANDING THAT THE REPUBLIC CONSISTENTLY AND CATEGORICALLY ASSERTED ITS RIGHT TO PRESENT HER AS SUCH WITNESS.

B. BY ISSUING THE ASSAILED ORDERS, THE RESPONDENT COURT RENDERED NUGATORY ITS OWN SUBPOENA DIRECTED TO IMELDA MARCOS, WHOSE VALIDITY THE RESPONDENT COURT HAD ALREADY SUSTAINED WITH FINALITY.

C. BY ISSUING THE ASSAILED ORDERS, THE RESPONDENT COURT CAPRICIOUSLY SUBORDINATED THE PROCESS OF LAW TO EXPEDIENCY AND DISPATCH.

D. BY ISSUING THE ASSAILED ORDERS, THE RESPONDENT COURT DEPRIVED THE REPUBLIC OF DUE PROCESS OF LAW WHEN IT EFFECTIVELY BARRED THE REPUBLIC FROM PRESENTING, AMONG OTHER EVIDENCE, IMELDA MARCOS, A VITAL AND MATERIAL WITNESS WHOSE TESTIMONY WITH RESPECT TO HER CROSS-CLAIM AGAINST THE RESPONDENTS COJUANGCOS WILL BUTTRESS THE REPUBLIC'S CAUSE OF ACTION IN CIVIL CASE NO. 0002 NOT ONLY AGAINST

> HER, BUT ALSO AGAINST THE RESPONDENTS COJUANGCOS.
>
> E. THE ASSAILED ORDERS BETRAY THE RESPONDENT COURT'S GLARING, ALL-TOO-TRANSPARENT TURNABOUT INASMUCH AS THEY IRONICALLY SUPPRESSED THE ENFORCEABILITY OF THE RESPONDENT COURT'S OWN SUBPOENA TO IMELDA MARCOS, EVEN AS THE RESPONDENT COURT HAD ALREADY SUSTAINED THE VALIDITY OF THAT SUBPOENA.

On the basis of the foregoing arguments, petitioner ***Republic*** prays, by way of relief, that this Court, upon the annulment of the assailed Orders and Resolution subject of its petition in **G.R. No. 150367,** direct the respondent court to allow the ***Republic*** to complete its presentation of evidence, and compel respondent Mrs. Marcos to take the witness stand.

In their comment to the petition in G.R. No. 150367, respondents ***Cojuangcos/PHI*** maintained the correctness of the assailed orders and resolution. Setting particular focus on ***Republic's*** claim of having been denied its day in court, said respondents contend that an agreed calendar of hearings was in place, but petitioner ***Republic*** moved to cancel a number of trial dates for lack of preparedness or for want of ready witnesses, which thus impelled the respondent court to come out with the assailed issuances.

In the light of conflicting allegations thus made, the Court deems it appropriate to recite additional determinative antecedents as may be gathered from the records. Thus –

It would appear that at the preliminary conference held on

September 28, 1998, the parties agreed to continue the preliminary conference and the pre-trial on January 14, 1999. Following a series of postponements, the pre-trial for the Republic's Amended Complaint was finally conducted on May 25, 2000 and terminated on the same day. The Pre-trial Order issued on that date sets the trial of the case, upon mutual agreement, to July 10, 14, 31, August 11 and 18, 2000 at 8:30 in the morning.

Thereafter, the respondent court issued a Supplemental Pre-Trial Order dated July 10, 2000,[25] therein defining the principal issue, as follows:

Whether the properties, assets, and funds sought to be recovered by the plaintiff are ill-gotten or lawfully acquired;

Subsequent events show that the scheduled July 10, 2000 hearing was cancelled at the instance of petitioner Republic's counsel. The July 14, 2000 hearing was also cancelled and reset to July 31, 2000. The July 31, 2000 hearing was likewise cancelled but the parties agreed, however, for the continuation of trial on August 11 and 18, 2000 in the morning and on September 13, 18, 20 and 25, 2000, morning and afternoon sessions**.**

Presented in the August 11, 2000 hearing as petitioner Republic's witness was Atty. Francisco G. de Guzman. The August 18, 2000 hearing - when petitioner Republic intended to present the PCGG records custodian, Ma. Lourdes Magno - was cancelled. Owing to the voluminous records she had to identify and testify on, the respondent court ordered that Magno's testimony be taken before the Executive Clerk of Court on three trial dates to end on September 5, 2000.

On September 5, 2000, the respondent court scheduled four (4)

hearings for the remaining days of the month of September 2000.

However, the first three (3) settings, *i.e.,* September 13, 18 and 20, 2000, were, upon petitioner Republic's written motion dated September 11, 2000, and for reasons ranging from its inability to locate a misplaced deposition to affording the new assigned Solicitor time to go over the case records, cancelled.

Despite the developments immediately adverted to above, the parties and their counsels nonetheless appeared for the September 18, 2000 hearing. There, Atty. Taningco of the PCGG manifested that the Government panel is in the process of compiling the records to support the Republic's motion for admission, which, in turn, would serve as his basis for recommending the filing of a motion for summary judgment. Accordingly, the respondent court, in a bid to expedite an early case disposition, then blocked off the following dates for the presentation of evidence: For petitioner ***Republic***, December 5, 2000, January 29, 30 and 31, February 1 and 2, 2001; and for respondents ***Cojuangcos/PHI***, March 12, 13, 14, 15, 26, 27 and 28, 2001.

What transpired next were the following events:

1. The scheduled hearing on December 5, 2000 was cancelled because the Republic's witness was not available.

2. Petitioner Republic filed a motion to reset the January 29, 30 and 31, 2001 hearings, its Special Counsel having just received his assignment order for Civil Case No. 0002.

3. On January 29, 2001, petitioner Republic manifested its intention to call Mrs. Marcos on the witness stand, but requested for additional hearing dates, pleading that it will not

be ready to present Mrs. Marcos within its allotted time. Respondents Cojuangcos/ PHI offered to stipulate on the testimony of the Republic's intended witness, one Atty. Manuel G. Montecillo.

4. Respondent court cancelled the January 29, 2001 hearing and required the parties to make an appearance at the next scheduled hearing, January 30, 2001, as previously set.

5. The January 30, 2001 schedule was cancelled, as requested by petitioner Republic, owing to lack of witness. In addition, the same petitioner also asked for the cancellation of the three (3) succeeding scheduled hearings, *i.e*., January 31, February 1 and 2, 2001, and instead requested for a February 9, 2001 setting, undertaking to present Mrs. Marcos on that date, then rest its case, with or without her testimony.

6. The February 9, 2001 setting was reset, owing to the unavailability on that day of the Republic's intended witness, Mrs. Marcos, who, Atty. Evangelista of PCGG explained, was physically indisposed. Acting on the Republic's request for a month to present Mrs. Marcos, the respondent court granted the desired resetting to March 12, 13, 14 and 15, 2001, on the condition that the Republic will have to rest its case with or without her testimony.

7. On March 12, 2001, the Republic requested to reset the scheduled hearing. Respondent court gave the Republic another opportunity to present its evidence and accordingly reset the hearings to March 26, 27, and 28, 2001, as previously scheduled.

8. On March 26, 2001, the Republic presented Lourdes

> Magno, the PCGG record custodian. Her direct, cross and redirect examinations were done that day. Ms. Magno was followed on March 27, 2001, by Rosalie Sarthou of the BIR. Respondents Cojuangcos/PHI manifested that the Republic had until the next trial date to finish its presentation of evidence.
>
> 9. After the parties, in the March 28, 2001 hearing, were through with Ms. Sarthou, the Republic requested and was granted five additional trial dates, *i.e.,* May 7, 9, 16, 28, and 30, 2001, for the presentation of further evidence.
>
> 10. The hearing on May 7, 2001 was cancelled and reset to May 9, 2001. On May 9, 2001, Republic presented Mr. Danilo Daniel, a PCGG Director, after which the presentation of further evidence was continued to May 28, and 30, 2001.

It is upon the foregoing factual backdrop that the respondent court issued, in the May 28, 2001 hearing, its Order of even date directing petitioner Republic to terminate the presentation of its evidence on the hearing of May 30, 2001. The May 28, 2000 Order is, as earlier stated, what moved petitioner Republic to file its "*Respectful Motion for Additional Time To Complete Presentation Of Evidence*".[26]

In the meantime, pending resolution of G.R. No. 150367, the separate trial continued. After respondents Cojuangcos/PHI have rested their case, the respondent court rendered its **Partial Decision**, which, to reiterate, is the subject of petitioner Republic's petition for review, now docketed as **G.R. No. 153459,** on the following supporting grounds:

THE SANDIGANBAYAN COMMITTED (SIC) GRAVELY ERRED IN ITS PARTIAL DECISION DATED MAY 6, 2002 WHEN IT DECIDED QUESTIONS OF SUBSTANCE IN A WAY NOT IN ACCORD WITH LAW OR WITH THE APPLICABLE DECISIONS OF THE HONORABLE COURT AND/OR HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS CONSIDERING THAT:

I. THE SANDIGANBAYAN PARTIAL DECISION DATED MAY 6, 2002 DOES NOT COMPLY WITH THE BASIC REQUIREMENT UNDER SECTION 14, ARTICLE VIII OF THE 1987 CONSTITION THAT "NO DECISION SHALL BE RENDERED BY ANY COURT WITHOUT CLEARLY AND DISTINCTLY EXPRESSING THEREIN THE FACTS AND THE LAW ON WHICH IT IS BASED," HENCE, PETITIONER WAS DEPRIVED OF ITS RIGHT TO DUE PROCESS OF LAW.

II. THE SANDIGANBAYAN RULED IN ITS PARTIAL DECISION DATED MAY 6, 2002 AGAINST THE ADMISSIBILITY OF THE DOCUMENTARY EVIDENCE AFTER ADMITTING THE SAME IN EVIDENCE, THEREBY DEPRIVING PETITIONER OF ITS RIGHT TO DUE PROCESS OF LAW.

III. THE PARTIAL DECISION DATED MAY 6, 2002 IS FATALLY FLAWED AS IT FAILED OR OMITTED TO MENTION VITAL FACTS AND REFUSED TO CONSIDER MATERIAL EVIDENCE PRESENTED BY PETITIONER TO SUPPORT ITS COMPLAINT AND REFUSED TO CONSIDER EVIDENCE WHICH THE SANDIGANBAYAN ITSELF HAD IN FACT ALREADY ADMITTED.

IV. PETITIONER WAS DEPRIVED OF THE OPPORTUNITY TO PRESENT RESPONDENT IMELDA R. MARCOS AS ITS ADVERSE/HOSTILE WITNESS, ALSO IN A MANNER VIOLATIVE OF PETITIONER'S FUNDAMENTAL RIGHT TO PROCEDURAL AND SUBSTANTIVE DUE PROCESS OF LAW.

V. THE SANDIGANBAYAN DISREGARDED THE DECLARATIONS UNDER OATH/JUDICIAL ADMISSIONS OF RESPONDENT IMELDA MARCOS POSITIVELY IDENTIFYING AND CLAIMING OWNERSHIP OVER THE SUBJECT SHARES IN PLDT, WHICH DECLARATION LIKEWISE CONCLUSIVELY ESTABLISHES AND CONFIRMS THE ACTUAL AND BENEFICIAL OWNERSHIP BY RESPONDENTS MARCOS OF SAID SHARES OR, THEIR PRINCIPAL-NOMINEE RELATIONSHIP.

VI. THE SANDIGANBAYAN COMMITTED UNDUE HASTE IN DECIDING THE CASE, IN UTTER DISREGARD OF ITS MANDATED DUTY TO ASCERTAIN THE TRUTH IN ALL MATTERS IN CONTROVERSY."

Petitioner ***Republic*** thus pray for a judgment: (1) reversing and setting aside the Partial Decision dated April 25, 2002; and (2) ordering respondents Cojuangcos/PHI, their assignees, nominees, and agents to RETURN and RECONVEY to the Republic *"(a) the 111,415 PTIC shares in the name of Prime Holdings, Incorporated (PHI) ceded and conveyed by Ramon U. Cojuangco and Luis T. Rivilla to PHI; (b) the 76,779 PTIC shares in the name of Ramon U. Cojuangco; and (c) the 21,525 PTIC shares in the name of Imelda O. Cojuangco, for being ILL-GOTTEN WEALTH of Ferdinand E.*

Marcos and his family".[27]

This brings us to the **Yuchengcos**' petitions.

B. ***G.R. Nos. 149802, 150320 and 153207*** **[*Yuchengcos'*]**

As already elsewhere herein mentioned, petitioner **Yuchengcos** intervened in Civil Case No. 0002 to recover ownership of a portion of the disputed PLDT shares the forfeiture of which petitioner Republic itself is pursuing owing to their being "*ill-gotten wealth"*. Mr. Yuchengco's original Complaint-in-Intervention was filed on August 11, 1988; the Amended Complaint-in-Intervention, on May 31 1993, and the Second Amended Complaint-in-Intervention, on September 22, 1993, this time joined by **Y Realty**.

In a Resolution dated October 9, 1996, the respondent court dismissed the Amended Complaint-in-Intervention for non-payment of docket fees, among other grounds, and denied the Yuchengcos' Motion to Admit Second Amended Complaint, posthaste sending the Yuchengcos to this Court on earlier separate petitions for review on certiorari.

However, Mr. Yuchengco's intervention was effectively reinstated and his and Y Realty's Second Amended Complaint-in-Intervention admitted by the respondent court pursuant to the Decision rendered by this Court in G.R. No. 131127, (*Yuchengco vs. Republic, et al.)*, on June 8, 2000,[28] in relation to a companion Decision dated March 13, 2001,[29] in G.R. No. 131530, (*Y Realty Corporation vs. Hon. Sandiganbayan)*.

In its Decision in G.R. No. 131127, this Court ordered petitioner Yuchengco *"to submit to public respondent Sandiganbayan the value of the properties he seeks to recover and to pay the proper*

docket fees therefor within thirty (30) days upon determination thereof either by the Sandiganbayan or its clerk of court, which in turn is directed to act with dispatch on the matter."

Following another round of legal skirmish on our judgments in G.R. No. 131127 and G.R. No. 131530, the respondent court assessed the Yuchengcos the docket fees due on the Second Amended Complaint-in-Intervention in the amount of ₱8,729,185.00, which the latter paid on April 4, 2001.

Barely a month after, the Yuchengcos filed with the respondent court an "*Urgent Motion To Suspend Trial Pending Discovery Proceedings*" dated April 30, 2001,[30] followed by a "*Supplement"* thereto dated May 7, 2001[31]. Thereat, they prayed for the cancellation of the separate trial settings already made and agreed upon until they shall have fully undertaken pre-trial discovery proceedings under the provisions of Rule 23 of the Rules of Court, a right they allegedly are entitled to, but were unable to exercise due to the erroneous dismissal by the respondent court of their Amended Complaint-in-Intervention.

The Yuchengcos commenced with the discovery process by filing and serving notices for the deposition-taking of Atty. Francisco De Guzman, former PHI Corporate Secretary, and Atty. Teresa Mercado- Ferrer, then Corporate Secretary of PTIC on May 15, 2001 and May 17, 2001, respectively, with a request for the issuance of *subpoena* for them. On May 15, 2001, however, they filed amended notices re-scheduling the deposition taking of Attys. De Guzman and Mercado-Ferrer for May 31, 2001 and June 1, 2001, respectively. The Yuchengcos would later request another rescheduling and issuance of the corresponding subpoenas for the

June 11 and 12, 2001 deposition taking of both individuals. The deposition taking of Atty. De Guzman proceeded as scheduled – and was completed - on June 12, 2001. The scheduled deposition taking of Atty. Mercado-Ferrer on June 11, 2001, however, was deferred upon her request for a 2-week time to prepare therefor. Her deposition was finally taken on July 6 and completed on July 13, 2001.

In the meantime, the respondent court, *via* a **Resolution dated May 24, 2001**,[32] as reiterated in an **Order** given in open court on **July 12, 2001**, denied the Yuchengcos' "*Urgent Motion To Suspend Trial Pending Discovery*" and its "*Supplement*", for the reason that: (a) Rule 23 of the Rules of Court does not authorize the suspension of trial owing alone to the fact that a party wishes, in the interim, to avail itself of a mode of discovery; (b) petitioners were not being deprived of their right of discovery, as they have in fact taken the deposition of Mr. Gregorio Romulo in 1987; and (c) the ground relied upon was not among the instances calling for the suspension of trial under Section 8, Rule 30 of the Rules of Court.[33] The Yuchengcos would receive a copy of the denying resolution on June 7, 2001. Respondent court would, in a **Resolution** of **September 5, 2001**,[34] deny the Yuchengcos' motion for reconsideration [filed on August 17] of the aforesaid May 24, 2001 order.

At the hearing of May 30, 2001 for the continuation of the reception of the Republic's evidence, respondent court issued an order to reflect that the parties agreed on the following settings, *viz*: (1) July 12, 2001 for the pre-trial conference *vis-à-vis* the Yuchengcos' complaint-in-intervention, and July 30 and August 7, 2001 for the

reception of their evidence; and (2) August 29 and September 12, 2001, for the reception of the evidence for respondents Cojuangcos and PHI.[35]

In the pre-trial conference for the complaint-in-intervention conducted on July 12, 2001, the Yuchengcos orally moved for the resetting of the scheduled pre-trial as well as the trial dates previously agreed upon. They likewise moved to change the order of trial *vis-à-vis* respondents Cojuangcos/PHI, such that they (Yuchengcos) shall be presenting their evidence as plaintiffs-in-intervention only after Cojuangcos/PHI shall have presented their defense evidence in relation to the Republic's Amended Complaint. Both motions were denied in open court. The parties thereupon agreed on their trial dates. The dispositive portion of the **July 12, 2001 Pre-Trial Order** reads:

WHEREFORE, with this Pretrial Order, the pretrial stage of this case with respect to plaintiff-in-intervention Y Realty Corporation is hereby terminated.

As agreed upon by all the parties, let the trial on the merits be set on July 26 and 30, 2001 for the reception of evidence for said plaintiff-intervenor, and on August 7, 29, 2001 and September 5 and 12, 2001 for the turn of the defendants-intervenors to present their evidence. [36]

At the initial scheduled hearing on July 26, 2001 for the presentation of their evidence as plaintiffs-in-intervention, the Yuchengcos were unable to present any witness to testify on their behalf. Likewise, on July 30, 2001, the Yuchengcos manifested that the subpoenaed Atty. de Guzman and Atty. Mercado-Ferrer were not in court. This development prompted respondents

> Cojuangcos/PHI to counter-manifest that De Guzman's and Mercado-Ferrer's testimonies need not be taken anymore, both having already been deposed and subjected to cross-examination, for which reason they (Cojuangcos/ PHI) have waived their right to cross-examine.
>
> At the next hearing session – August 7, 2001 - the Yuchengcos again moved for the cancellation and resetting of the hearing on the ground that the witness they intended to present on that day – one Nene Trajano - was unavailable. The respondent court denied the motion to cancel, and, in an open court order, deemed the Yuchengcos as having waived their right to present evidence, rationalizing as follows:
>
> When this case was called for hearing today, Atty. Laurence Arroyo appeared for the plaintiffs-in-intervention, . . ., and moved for the cancellation of today's hearing as his . . . witnesses are not present in Court.
>
> The Court reminded the plaintiffs-in-intervention that precisely the parties agreed on the trial dates for them to present and terminate the presentation of their respective evidence*, i.e.,* the hearings for plaintiffs-in-intervention were set on July 26, 30, and August 7, 2001 and for defendants-in-intervention on August 29, September 5 and 12. It appears that the plaintiffs-in-intervention failed to present their evidence on July 26, 30, and in today's hearing.
>
> In view thereof, the plaintiffs-in-intervention are hereby deemed to have waived their right to present further evidence and let the reception of evidence by the defendants-in-intervention be set on August 29, September 5, and 12, 2001 at 8:30 in the morning, as previously scheduled and agreed upon by the parties. [37]

On August 15, 2001, the Yuchengcos moved for a reconsideration of the respondent court's Resolution of **May 24, 2001,** as reiterated in the open-court Order decreed on July 12, 2001. The desired reconsideration was, however, denied per the respondent court's **Resolution dated September 5, 2001**.[38]

The Yuchengcos received a copy of the formal Order of August 7, 2001, on August 15, 2001 and took due notice of the denying September 5 Resolution on September 18, 2001.

Unable to accept these denials, the Yuchengcos came to us *via* their present petition in **G.R. No. 149802**, on the singular ground that -

RESPONDENT SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION, OR ACTED WITHOUT OR IN EXCESS OF ITS JURISDICTION, IN ISSUING THE QUESTIONED RESOLUTIONS AND ORDER, ALL OF WHICH CONSTITUTE AN ARBITRARY DENIAL OF PETITIONER'S RIGHT TO PRE-TRIAL DISCOVERY.

In the meantime, on August 21, 2001, the Yuchengcos moved for a reconsideration of the Order of August 7, 2001,[39] but their motion for reconsideration was likewise denied by the respondent court per its **Resolution dated September 28, 2001**,[40] saying:

xxx it appearing that the court, in various instances, had accorded plaintiffs-in-intervention the opportunities to present their evidence but failed altogether to do so, thus effectively delaying the early disposition of the instant case which has been pending for the last fourteen (14) years.

The Yuchengcos received their copy of the Resolution of September 28, 2001 on October 8, 2001.

On October 12, 2001, the respondent court rejected the Yuchengcos' further requests for the issuance of *subpoenae* to Imelda O. Cojuangco, her son, Antonio, and three (3) other individuals. For, as explained by the respondent court, such request is an attempt on the part of the Yuchengcos to set to naught its earlier Order considering them as having waived their right to present further evidence.

Hence, the Yuchengcos' second petition for *certiorari*, now docketed as **G.R. No. 150320,** in which they ascribe to the respondent court the commission of grave abuse of discretion or of an act in excess of its jurisdiction in issuing the Order and Resolution dated August 7, 2001 and September 28, 2001, respectively. Pressing on, the Yuchengcos argue that they -

> I. xxx WERE DEPRIVED OF THEIR RIGHT TO PRESENT EVIDENCE AND THEIR DAY IN COURT IN VIOLATION OF DUE PROCESS.
>
> II. xxx SHOULD NOT HAVE BEEN COMPLELLED TO PRESENT EVIDENCE WHEN RESPONDENTS REPUBLIC/PCGG HAD NOT YET FORMALLY OFFERED THEIR EVIDENCE AND RESTED THEIR CASE.
>
> III. xxx SHOULD NOT HAVE BEEN COMPELLED TO PRESENT EVIDENCE BEFORE RESPONDENTS (DEFENDANTS) PHI/COJUANGCOS.
>
> IV. xxx WERE UNREASONABLY BOUND TO THE SCHEDULE OF TRIAL IN THE 30 MAY 2001 ORDER, CONSISTING OF MERELY 3 TRIAL DATES SPANNING 13 DAYS.

> V. RESPONDENT SANDIGANBAYAN ERRONEOUSLY FOUND THAT PETITIONERS FAILED TO PRESENT EVIDENCE ON 26 AND 30 JULY AND 7 AUGUST 2001. (Petition, G.R. No. 150320, p. 26)

To summarize, assailed and sought to be nullified by the Yuchengcos in their certiorari petitions in **G.R. No. 149802** and **G.R. No. 150320**, are the following related issuances of the respondent court:

> (1) **Resolution dated May 24, 2001,** denying their "*Urgent Motion To Suspend Trial Pending Discovery*" and its Supplement;
>
> (2) **Order dated July 12, 2001,** denying their verbal motions for the re-setting of the agreed pre-trial and trial dates insofar as their complaint-in-intervention is concerned or, in the alternative, for a change in the order of trial so that Cojuangcos/ PHI be made to present their evidence in relation to the complaint of petitioner Republic ahead of them (Yuchengcos), and the **Resolution dated September 5, 2001,** denying reconsideration of the **Resolution dated May 24, 2001** and of the **Order of July 12, 2001**; and
>
> (3) **Resolution dated August 7, 2001,** declaring them as being deemed to have waived their right to present evidence, and the **Resolution dated September 28, 2001,** denying reconsideration of the **Resolution of August 7, 2001**.

Apropos the Yuchengcos' Second Amended Complaint-in-Intervention, respondent Cojuangcos/PHI filed on September 20, 2001 a "*Motion For Summary Judgment*".[41] They contended that

the pleadings and affidavits on record failed to tender any genuine issue on the alleged coercion and duress allegedly exerted by the late Pres. Marcos and/or the Cojuangco group. According to them, the desired recovery of PLDT shares sought under the Second Amended Complaint-in-Intervention is anchored on such coercion and duress employed.

To this motion for summary judgment, the Yuchengcos interposed an opposition, followed by a supplement to opposition.

On the basis of the foregoing antecedents, and acting on the motion for summary judgment, the respondent court rendered its assailed **Partial Decision**.[42] Feeling aggrieved, just like the Republic, over the dismissal of their PLDT shares claims, the Yuchengcos have challenged in their petition in **G.R. No. 153207** the aforesaid **Partial Decision**, raising the following issues for resolution:

> I. The Sandiganbayan gravely erred when it insisted on rendering the questioned Partial Decision despite the pendency of G.R. Nos. 149802 and 150320.
>
> II. The Sandiganbayan gravely erred in confining the presentation of petitioners' evidence to three (3) hearing dates spanning less than two (2) weeks.
>
> III. The Sandiganbayan gravely erred in granting respondents PHI/Cojuangcos' Motion for Summary Judgment.
>
> IV. The Sandiganbayan gravely erred in finding that the subject PTIC shares do not partake of the character of ill-gotten wealth. (Petition, G.R. No. 153207, pp. 33-34)

IV. THE COURT'S RULING

As a matter of sound and long appellate practice, the Court, before considering the merits of a petition before it, looks into the matter of timeliness and accordingly would dismiss or otherwise deny further due course to petitions for non-compliance with the jurisdictional *caveat* on timeliness of filing. The threshold question, therefore, is whether or not all the five (5) petitions at bar were timely filed.

Lateness and Mootness** of the Petition in **G.R. NO. 149802

A review of the records clearly indicates that the Yuchengcos' petition for certiorari in **G.R. No. 149802** was filed out of time. As it were, there can hardly be any quibbling that the Resolution of May 24, 2001 assailed thereby is interlocutory in character. For, respondent court's refusal to suspend trial until the Yuchengcos shall have completed their discovery did not terminate the case. Further proceedings were still required, such as the further reception of evidence for all parties, inclusive of the Yuchengcos. In his *ponencia* in *Investments, Inc. vs. Court of Appeals*,[43] then Justice and later Chief Justice Andres Narvasa explained the nature of an interlocutory order and how it differs with one that is final:

The concept of *"final judgment*", as distinguished from one which has "become final" (or "executory" as of right [final and executory]), is definite and settled. A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g*., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered,

the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move . . . and ultimately, of course, to cause the execution of the judgment once it becomes *"final*" or, to use the established and more distinctive term, "*final and executory*".

xxx xxx xxx

Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory", *e.g*., an order denying a motion to dismiss under Rule 16 of the Rules, ... Unlike a "*final"* judgment or order, which is appealable, as above pointed out, an 'interlocutory' order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case. (at pp. 339-340)

Following *Investments, Inc*., the remedy of an appeal from the interlocutory May 24, 2001 Order was unavailing to the Yuchengcos, thus the propriety of their coming to this Court, with respect to that order, in **G.R. No. 149802** *via* a special action for certiorari under Rule 65 of the Rules of the Court**.**

It may be recalled, however, that prior to the filing of their petition in G.R. No. 149802, the Yuchengcos first urged the respondent court for a reconsideration of its **May 24, 2001 Resolution**, a copy of which they received, by their own admission, on June 7, 2001. The corresponding motion filed on **August 15, 2001** also sought the reconsideration of the open-court **Order dated July 12, 2001**.

Given these defining dates, there is a need to look into the timeliness of the said motion as a preliminary step to determine the timeliness of the Yuchengcos' petition in **G.R. No. 149802** itself.

The rule on the filing of petitions for certiorari is embodied in Section 4, Rule 65 of the Rules of Court, partly reading -

SEC. 4. *When and where petition filed.* – The petition may be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion. [44]

As the rule now thus stands, the 60-day reglementary period within which to file a petition for certiorari shall be reckoned from notice of the resolution or order sought to be nullified, save when a motion for reconsideration is timely filed in which case the 60-day period shall start from receipt of the denial of such motion.

A corollary rule, subsumed in the same Section 4 of Rule 65, applies in the event it is determined that a motion for reconsideration is not timely. In such a situation, a party seeking to avail himself of the remedy of certiorari under the same Rule 65, does not have a new 60-day period from receipt of the denial of the motion for reconsideration, within which to file the petition. As such, the timeliness of the petition must be reckoned from the date of notice or receipt of the order or resolution assailed, as if no motion for reconsideration was filed.

Given the following sequence of events: a copy of the May 24, 2001 resolution was received on June 7; the motion for reconsideration thereof was filed on August 15, with a copy of the resolving issuance dated September 5 received on September 18,

the question that now comes to fore is: *Vis-a-vis* the May 24, 2001 resolution, was the motion for its reconsideration filed on August 15, 2001 timely, so that the Yuchengcos can validly reckon, as they in fact did, the 60-day period from their receipt on September 18, 2001 of the September 5, 2001 Resolution denying reconsideration of the Resolution of May 24, 2001 jointly with the Order of July 12, 2001?

To answer the poser, a determination must first be made as to when should a motion for reconsideration of an interlocutory order be filed. In *Denso (Phils.), Inc. vs. The Intermediate Appellate Court, et al.,*[45] this Court ruled that a motion for reconsideration of an interlocutory order is not subject to the usual limiting fifteen-day period of appeal prescribed for final judgments or orders. The *Denso* ruling, however, stopped short of directly addressing the issue of precisely when should a party file a motion for reconsideration of an interlocutory order. For, apart from saying that such motion is not subject to the 15-day-appeal-period rule, it merely held that moving for reconsideration after the lapse of a 38-day period after receipt of the assailed order is not unreasonable.

While the Rules of Court has no specific provision dealing directly with the question, Section 4 of Rule 65 provides a logical answer.

Taken in its proper perspective, the clause "not subject to the limiting 15-day period for appeal prescribed for final judgments or orders" cannot plausibly be stretched to mean that the period to ask for reconsideration of an interlocutory order can exceed the 60-day threshold prescribed under the Section 4 of Rule 65 for filing a petition for certiorari. Else, a legal aberration would ensue where a party who has merely 60 days from notice of an adverse

interlocutory order to interpose a special action for certiorari would be allowed a longer period to move for reconsideration of such order.

Withal, the filing of the Yuchengcos' motion for reconsideration of the Resolution of May 24, 2001 on August 15, 2001, which is the **69th day** from notice of the said Resolution on June 7, 2001, is beyond the 60-day period prescribed under the present Section 4 of Rule 65, and is, therefore, late. Perforce, and as discussed earlier**,** their petition in **G.R. No. 149802** itself was belatedly filed. In fine, for lack of a timely motion for reconsideration of the May 24, 2001 Resolution, the same has, in a manner of speaking, thereby become final and executory. Certiorari, insofar as the said resolution is concerned, is no longer available.

Apropos the Order of July 12, 2001, this Court is of the view that the same petition in G.R. No. 149802 has, with respect to such order, become moot and academic. As we look back at the incidents subject of the stated order, the Yuchengcos had moved that the trial be suspended to await the completion of their discovery procedure or, in the alternative, for respondents Cojuangcos/PHI to present their evidence, vis-à-vis the claim of petitioner Republic, ahead of them (Yuchengcos). By this desired variation of the order of trial, the Yuchengcos were, as we see it, actually hoping to be given additional trial dates for presentation of evidence on top of those dates allotted them but did not utilize. Owing, however, to the promulgation of the **Partial Decision** dated April 25, 2002, we can assume that during the pendency of the petition in **G.R. No. 149802**, petitioner Republic and respondent Cojuangcos/PHI had, in the separate trial on the PLDT shares, already finished with the presentation of their evidence and have

rested their case, the latter in relation to both the Republic's Amended Complaint and the Yuchengcos' Complaint-in-Intervention. In net effect, the change in the order of presentation of evidence veritably sought in **G.R. No. 149802** can no longer be granted, or, if granted, can no longer be implemented. It is, therefore, futile to belabor, let alone rule, on the merits of this particular petition insofar as it relates to the **Order of July 12, 2001.** Time and again, we have said that courts exist to decide actual controversies, and do not render opinions on moot cases.

*The **Due Process Issue** in*

G.R. NOS. 150320 and 150367

The Court shall first pass upon the issue of due process, or lack of it, to be precise, uniformly invoked in **G.R. Nos. 150320** and **150367**. If non-observance of the requirements of due process indeed tainted the separate trial below, then the resolution on the issue of the substantive correctness of the **Partial Decision** raised in petitions for review in **G.R. No. 153459** and **G.R. No. 153207** should be clear, simple and unavoidable. For, a judgment arrived at after a trial marred by lack of due process deserves to be immediately struck down as a nullity.

It may be well to revisit the various issuances sought to be annulled under Rule 65 of the Rules of Court on due procedural ground. Specifically, petitioner Republic assails, in **G.R. No.150367,** the respondent court's **Order dated May 30, 2001** denying its motion for additional time to present its evidence, as well as the **Order dated September 5, 2001** requiring the same petitioner to file and terminate its formal offer of evidence within 30 days. On the other hand, in **G.R. No. 150320,** the Yuchengcos urge the annulment of

the **August 7, 2001** and **September 28, 2001 Resolutions** in which they were deemed by the respondent court to have waived their right to present further evidence. At bottom, respondent court issued these assailed orders and/or resolutions owing to both petitioners' failure to complete the presentation of their respective evidence within the agreed trial dates, a failure which, if allowed to continue, would, in the eyes of that court, further derail the early disposition of Civil Case No. 0002. It could have been that the respondent court was, in the end, actuated by the desire to resolve a case that has been pending for the last fourteen (14) years. And this, in hindsight, is not an idle speculation on our part as respondent court would later write in its **Partial Decision**, citing *Republic vs. Sandiganbayan,*[46] the following:

We stress that the resolution of the complaint-in-intervention, along with the principal case, is long overdue. What the Supreme Court has said in this regard four years ago has acquired even greater urgency today –

'xxx Eleven years have passed since the government started its search for and reversion of such alleged ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is adequate proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought now . . .'

It cannot be gainsaid that the respondent court merely exercised its discretion to order – and to be guided by such order - the termination of the respective presentation of evidence by both petitioners Yuchengcos and Republic or to set a limiting timetable for such presentation. We are loathe to disturb such exercise of

judicial discretion which has spawned the petitions for certiorari in **G.R. No. 150320** and **G.R. No. 150367**. For, jurisprudence teaches that certiorari lies only when the tribunal acts without or oversteps its jurisdiction, or gravely abuses its discretion, [47] as when the power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal hostility.[48] The abuse must, in fine, be of such degree as to amount to an evasion of positive duty, or a virtual refusal to perform a duty enjoined, or to act at all, in contemplation of law, as to be equivalent to having acted without jurisdiction.[49]

What we said in *Lee, et al. vs. People*[50] is also apropos, *viz*.:

xxx Certiorari may not be availed of where it is not shown that the respondent court lacked or exceeded its jurisdiction over the case even if its findings are not correct.

In other words, certiorari will issue only to correct errors or jurisdiction and not to correct errors of procedure or mistakes in the court's findings and conclusions. An interlocutory order may be assailed by certiorari only when it is shown that the court acted without or in excess of jurisdiction or with grave abuse of discretion. However, this Court generally frowns upon this remedial measure as regards interlocutory orders. To tolerate the practice of allowing interlocutory orders to be the subject of review by certiorari will not only delay the administration of justice but will also unduly burden the courts. (At pp. 402-03)

Complementing *Lee* is *Ampeloquio, Sr. vs. Court of Appeals*[51] where we wrote:

xxx If every error committed by the trial court were to be a proper

object of review by certiorari, the trial would never come to an end and the appellate courts' dockets would be clogged *ad infinitum* with the aggrieved parties-litigants filing petitions against every interlocutory order of the trial court. Such a situation could only undermine the proper conduct of litigation before the courts and ought not to be tolerated if we are to enhance the prompt administration of justice at every level of the judicial hierarchy.

In the light of the foregoing doctrinal holdings, we can say without fear of contradiction that not every erroneous interlocutory order, if that be the case, is correctible by certiorari. We grant certiorari only upon clear showing that the trial court issued its challenged interlocutory order without or in excess of jurisdiction or in grave abuse of discretion amounting to lack of jurisdiction. Conversely, absent the vitiating element of want or excess of jurisdiction, certiorari is unavailing as a remedy.

We thus sustain as defensible, nay correct, under the obtaining factual milieu and certainly within the jurisdiction of the respondent court, the issuance of the assailed orders and resolutions respecting the presentation of evidence. As it were, petitioners Republic's and Yuchengcos' respective certiorari petitions basically rest on the postulate that the respondent court violated their right to due process of law when it refused to grant them what basically were requests for further postponements to further receive their respective evidence.

Lest it be overlooked, the matter of granting or denying a plea for continuance or postponement is, as a rule, addressed to the sound discretion of the trial court.[52] In 1916, or some eighty nine (89) years ago, the landmark case of *Lino- Luna vs.*

Arcenas,[53] expounded on the juridical concept of "*discretion*" in the following wise:

In its very nature, the discretionary control conferred upon the trial judge over the proceedings had before him implies the absence of any hard-and-fast rule by which it is to be exercised, and in accordance with which it may be reviewed. But the discretion conferred upon the courts is not a willful, arbitrary, capricious and uncontrolled discretion. It is a sound, judicial discretion which should always be exercised with due regard to the rights of the parties and the demands of equity and justice. As was said in the case of The Styria vs. Morgan (186 U.S., 1, 9): "The establishment of a clearly defined rule of action would be the end of discretion, and yet discretion should not be a word for arbitrary will or inconsiderate action." So in the case of Goodwin vs. Prime (92 Me., 355), it was said that "discretion implies that in the absence of positive law or fixed rule the judge is to decide by his view of expediency or by the demands of equity and justice."

There being no "positive law or fixed rule" to guide the judge in the court below in such cases, there is no "positive law or fixed rule" to guide a court of appeal in reviewing his action in the premises, and such courts will not therefore attempt to control the exercise of discretion by the court below unless it plainly appears that there was "inconsiderate action" or the exercise of mere "arbitrary will," or in other words that his action in the premises amounted to "an abuse of discretion." But the right of an appellate court to review judicial acts which lie in the discretion of inferior courts may properly be invoked upon a showing of a strong and clear case of abuse of power to the prejudice of the appellant, or that the ruling objected to rested on an erroneous principle of law not vested in

discretion.

The doctrine, supported by numerous citations of authority, is thus stated in the Encyclopedia of Pleading and Practice (vol. 2, pp. 416, 418):

Abuse of discretion. - Accordingly, where the power is so exercised as to deprive a party of a legal right, or unduly benefit one party at the expense of the other, or where, generally, the injustice or inexpediency of the act is so clear as to show beyond a reasonable doubt the violation of equitable considerations, the act of decision is always reviewable in some form on appeal, as an abuse of power.

'*Presumption.* - The presumption on appeal that the exercise of discretionary powers was sound is very strong. The appellant must rebut it by showing a strong and clear case of abuse of power to his prejudice, or that the decision below rested on an erroneous principle of law not vested in discretion. A mere mistake of judgment, or a difference in opinion between the appellate and the trial court, is not sufficient.'

It cannot be stressed enough that postponements have a way of causing delays of the vexatious kind. With this in mind and with respect to the specific issue before us, we are now confronted with the task of harmonizing two (2) basic, but not necessarily irreconcilable, rights etched no less in the Bill of Rights. We refer to the right to due process, on one hand, and the right to speedy trial, on the other. This undertaking becomes all the more made difficult by the stark reality that these petitions involve "*ill-gotten wealth"* reputedly amassed by the Marcos family, their friends and former business associates where, as in several like cases, the Court itself dictated a resolution in "*utmost dispatch*", albeit acknowledging in

the same breath that "*over and above the exigencies of recovering ill-gotten wealth, we must carry out the more pressing constitutional task of seeing to it that all parties are afforded due processes and substantial justice",* stressing that this burden extends *"[E]ven to those suspected . . . of having acquired and/or accumulated ill-gotten wealth…"* [54]

It is, therefore, well-nigh apropos to hark on judicial precedents on the two constitutional rights adverted to above.

In the abstract "*due process*" has been described as nothing more and nothing less than "*the embodiment of the sporting idea of fair play*."[55] Its irreducible minimum requirements are notice and hearing,[56] the right to be heard being its most basic tenet.[57] In *PCIB vs. Court of Appeals,*[58]we held that the essence of due process is that a party is afforded a reasonable opportunity to be heard in support of his case; what the law abhors and prohibits is the absolute absence of the opportunity to be heard. Hence, a party cannot feign denial of due process when, having been afforded the opportunity to present his side, chooses, for whatever reason, not to be heard.[59]

On the other hand, the right to speedy trial, as an adjunct to the right of all persons to a speedy disposition of their cases before judicial, quasi-judicial, or administrative bodies, requires that court proceedings should be conducted according to fixed rules and must be free from vexatious, capricious and oppressive delays.[60] In the determination of whether or not the right to speedy trial has been violated, the factors that may be considered and balanced are length of delay, reason for the delay, assertion of the right or failure

to assert it, and prejudice to counsel by the delay.[61]

Given the foregoing perspective, it was in keeping with the imperatives of speedy trial for the respondent court, in the exercise of its discretion, to issue the orders/resolutions assailed in **G.R. No. 150320** and **G.R. No. 150367** as a necessary consequence to its denial of petitioners' innumerable motions for postponement.

An old but still good decisional law holds that the postponement of the hearing of a case, which had been previously set with due notice to the parties and their attorneys, is not an absolute right of the litigants nor of their counsel.[62] Owing, however, to the practice that persists to this day, we acknowledged the stubborn reality that continuances and postponements form part of the procedural system of dispensing justice.[63] But even so, the Court has already taken measures to cleanse the system of this practice which, when abused, as it has often been abused, leads to "*the wheels of justice grinding to a halt*". One reformative step is the mandatory continuous trial scheme prescribed under Supreme Court (SC) Administrative Order No.4, series of 1988, in relation to SC Circular No. 1-89. Under this scheme, "*trials are to be held on the scheduled dates without needless postponements, the factual issues for trial well defined at pre-trial and the whole proceedings terminated and ready for judgment within ninety (90) days from the date of the initial hearing, unless, for meritorious reasons, an extension is permitted*". Following a trial period involving the participation of designated pilot courts, the Court issued Administrative Circular (AC) No. 3-90, series of 1990, decreeing the adoption of the mandatory continuous trial system starting February 15, 1990, in all trial courts.

> Not to be overlooked as another measure towards a speedy disposition of cases is the issuance of SC Administrative Circular No. 3-99 prescribing guidelines on effective management of cases to ensure their speedy disposition. Some highlights:
>
> B. *Trial*
>
> (5) The judge shall conduct trial with utmost dispatch, with judicious exercise of the court's power to control trial proceedings to avoid delay.
>
> xxx xxx xxx
>
> (7) The trial shall be terminated within ninety (90) days from initial hearing. Appropriate disciplinary sanctions may be imposed on the judge and the lawyers for failure to comply with this requirement due to causes attributable to them.
>
> (8) Each party is bound to complete the presentation of his evidence within the trial dates assigned to him. After the lapse of said dates, the party is deemed to have completed the presentation of evidence. However, upon verified motion based on compelling reasons, the judge may allow a party additional trial dates in the afternoon; provided that said extension will not go beyond the three-month limit computed from the first trial date except when authorized in writing by the Court Administrator, Supreme Court.
>
> It is thus abundantly clear that the mandatory continuous trial scheme, the guidelines on trial, and, to a significant level, the ideal articulated in *Republic (PCGG) vs. Sandiganbayan*[64] to resolve "*ill-gotten wealth cases"* with utmost dispatch, circumscribed, in a way, the respondent court's otherwise wide latitude in the conduct of its proceedings. At bottom, then, respondent court acted with some

degree of circumspection and, doubtless, well within its authority when, in its assailed issuances in **G.R. No. 150367**, it refused to accommodate petitioner Republic with additional trial dates and ordered it to file its formal offer of exhibits and rest its case. The same conclusion applies to petitioner Yuchengcos in **G.R. No. 150320**. Grave abuse of discretion cannot be ascribed on the respondent court in (i) proceeding to hear the evidence of the Yuchengcos on the agreed trial dates of July 26 and 30 and August 7, 2001, (ii) refusing to reset the hearings to later dates, and (iii) declaring them to have effectively waived their right to present further evidence when they were still without evidence or witness on the last trial date. There is hardly any dispute that these were trial dates previously agreed upon and to which the Yuchengcos committed to abide. And under the cited Guidelines on Trial, petitioner Yuchengcos were bound to complete the presentation of their evidence within the trial dates assigned to them. Likewise, at the end of the trial dates, they were deemed to have completed with the presentation of their evidence. It would be an aberration for the Court to fault and reverse the graft court for following what it has enjoined the latter to observe in the first place.

As to petitioner Republic, it was given, per our own count, no less than twenty (20) trial dates. There were, in fact, more trial settings than those agreed upon and directed in the pre-trial of May 25, 2000. The accommodating attitude of the graft court towards petitioner Republic did not escape petitioner Yuchengcos' notice. While perhaps a bit exaggerated, petitioner Yuchengcos statement in page 88 of their "Consolidated Memorandum" that *"not once did [the Sandiganbayan] deny their (Republic's) requests to cancel scheduled hearings*" belies the Republic's lament that the

respondent court did not accord it "*fair, adequate and reasonable opportunity to present all evidence they consider vital".*

The problem lies not in the alleged unreasonable refusal of the respondent court to grant the Republic more trial dates, but, as the respondent court aptly suggested, in the Republic's innumerable requests for cancellation and resetting of hearings, on one pretext after another, which, at the end of the day, reflected on the unpreparedness of its set of counsels and the seeming unavailability of admissible material evidence. With the view we take of the case, petitioner Republic sought, but in vain, to present respondent Mrs. Marcos, it being its posture that her testimony - after she had announced to the four winds that the Marcos family owns the disputed PLDT shares in the name of respondent Cojuangcos/PHI - would have been vital to its case. Ironical as it may sound, petitioner Republic seems to imply by its consuming bid to have Mrs. Marcos on the witness stand that it cannot adequately prove its case without her testimony. For, how else explain the fact that it footnoted its Formal Offer of Evidence with the reservation to have her testify, if so allowed by this Court?

To be sure, we have taken note of petitioner Republic's assertion that respondent court gave its word during the March 26, 2001 hearing that it can present Mrs. Marcos after all of its intended witnesses shall have testified. This assurance, if indeed given, cannot be taken to mean, however, that the court has to forever await her testimony. The refusal to grant petitioner Republic additional trial dates just to have the unwilling Mrs. Marcos testify is understandable, when taken in the perspective of vexatious delays juxtaposed with the Republic's counsel's commitment given in one of the hearings to finish with the presentation of evidence with or

without her testimony. As we refer to the records, we see that the first time petitioner Republic manifested its intention to present Mrs. Marcos as its hostile witness was during the hearing of January 29, 2001. But the succeeding scheduled hearing dates, *i.e*, January 30 and 31, 2001, February 1, 2, and 9, March 12, 13, 14, 15, 26, 27, and 28, May 7, 9, 16 and 28, 2001 came and went without Mrs. Marcos testifying as a witness of petitioner Republic. It is in fact not amiss to say that all these scheduled hearings were, at the instance of petitioner Republic, cancelled or reset to other dates, either because of the unavailability of the intended witness or the government handling counsel was ill prepared for trial.

The Yuchengcos were no better. They agreed to present their evidence on certain trial dates, but were unable to do so in any of those trial dates, inclusive of the last scheduled hearing. In any event, the depositions of Attys. de Guzman and Mercado-Ferrer, together with that of Gregorio Romulo, were received in evidence for said petitioners over the objections of the adverse parties. Moreover, petitioner Yuchengcos wasted their trial dates by their unyielding insistence on presenting witnesses who have already been deposed, and even after respondents Cojuangcos/PHI anticipatorily manifested their intention to waive their right to further cross-examine the deponents. While perhaps a bit anti-climactic to state at this juncture, there was no attempt to present petitioner Yuchengco himself, when it would seem that he was in the best of position to testify on his and/or Y Realty Corporation's claim over the PTIC and PLDT shares or on the alleged duress exerted on him by the Marcoses or the Cojuangco group.

Neither do we find persuasive cogency in the Yuchengcos' posture that the separate trial should have been suspended to await the

completion of their discovery efforts. For, such arrangement, if allowed and put in motion, would have veritably provided said petitioners with tools to cause the indefinite suspension of the separate trial by the convenient plea of inadequate availment of discovery. Besides, we are at loss to understand the Yuchengcos' contention about their inability to undertake discovery procedure until this Court reinstated their Amended Complaint-in-Intervention heretofore dismissed by the respondent court. There is no rule, and the Yuchengcos have cited none – precluding them from undertaking such discovery procedure prior to the reinstatement action of this Court. Neither is there any rule requiring the suspension of trial just to allow a party-litigant to complete discovery procedure.

And, when we take into stock of respondent court's constant reminders to the contending parties to observe the trial schedule in view of the length of time that Civil Case No. 0002 has been pending, petitioners Republic and Yuchengcos have, in the final reckoning, only themselves to point at for their present plight. The recorded facts indicate that they were not denied the opportunity to be heard.

Finally, we cannot write *finis* to the due process issue without resolving the question of whether the respondent court, through the use of its coercive powers, could have had compelled Mrs. Marcos to be petitioner Republic's hostile witness and testify on the circumstances surrounding their (the Marcos family) claimed acquisition and ownership of the disputed PLDT and PTIC shares.

The Court only has to recall that when Mrs. Marcos refused to make a court appearance for petitioner Republic, she invoked her right against self-incrimination under Article III, Section 17 of the

Constitution.[65] She was correct. She cannot be compelled to testify without violating her constitutional right against self-incrimination. As she aptly observed, Civil Case No. 0002, while basically a civil suit, is penal in nature, since it is, for all intents and purposes, a forfeiture proceeding, taken under and pursuant to EO Nos. 1 and 2, series of 1986.[66] These twin issuances indeed seek, as ultimate objective, the "*recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates*", and the properties being contemplated to be recovered being those "*funds, moneys, assets and properties illegally acquired or misappropriated*" by said persons – thus, stamping upon the civil suit the characteristics of a forfeiture proceedings.

The suggestion that the right against compulsory self-incrimination may be invoked only in criminal proceedings is valid to a certain extent, but not enough justification to compel Mrs. Marcos to testify against her volition, given the penal characteristics of Civil Case No. 0002. This is because Rule 115, Section 1(e) of the Rules of Court accords the accused at a trial the right "*to be exempt from being compelled to be witness against himself* ". The kernel of this privilege is testimonial compulsion, or simply a prohibition against legal process to extract from a person's own lips an admission of guilt against his will.[67] As this Court has further explained in *People vs. Ayson*[68] -

The right of a defendant in a criminal case (to be exempt from being a witness against himself) signifies that he cannot be compelled to testify or produce evidence in the criminal cases in which he is the accused, or one of the accused. He cannot be

compelled to do so *even by subpoena* or other process or order of the Court. He cannot be required to be a witness either for the prosecution, or for a co-accused, or even for himself. In other words – unlike an ordinary witness (or a party in a civil action) who may be compelled to testify by subpoena, having only the right to refuse to answer a particular incriminatory question at the time it is put to him – *the defendant in a criminal action can refuse to testify altogether. He can refuse to take the witness stand, be sworn, answer any question*. And, as the law categorically states, his neglect or refusal to be a witness shall not in any manner prejudice or be used against him. (Emphasis supplied)

Lest we be misunderstood, this Court's concurrence with Mrs. Marcos is really nothing more than being faithful with what was taught in the oft-cited case of *Cabal vs. Kapunan,*[69] to wit:

In a strict signification, a forfeiture is a divestiture of property without compensation, in consequence of a default or an offense, and the term is used in such a sense in this article. A forfeiture, as thus defined, is imposed by way of *punishment* not by the mere convention of the parties, but by the lawmaking power, to insure a prescribed course of conduct. It is a method deemed necessary by the legislature to restrain *the commission of an offense and to aid in the prevention of such an offense*. The effect of such a forfeiture is to transfer the title to the specific thing from the owner to the sovereign power. (23 Am. Jur. 599, italics in the original)

In Black's Law Dictionary a "forfeiture" is defined to be "the incurring of a liability to pay a definite sum of money as the consequence of violating the provisions of some statute or refusal to comply with some requirement of law". It may be said to be a

penalty imposed for misconduct or breach of duty. (Com. vs. French, 114 S.W. 255)

As a consequence, proceedings for forfeiture of property are deemed criminal or penal, and, hence, the exemption of defendants in criminal cases from the obligation to be witnesses against themselves is applicable thereto.

xxx xxx xxx

The rule protecting a person from being compelled to furnish evidence which would incriminate him exists not only when he is liable criminally to prosecution and punishment, but also when his answer would tend to expose him to a xxx forfeiture xxx." (Am. Jur. Sec. 43, p. 48) (Italics in the original)

Assayed against the cited jurisprudence, respondent Mrs. Marcos can, as was her bent, refuse to testify altogether, notwithstanding the express allegations she made in the pleadings adverted to by petitioner Republic.

*The Propriety of **SUMMARY JUDGMENT** as*

Against the Yuchengcos' Second Amended Complaint-in-Intervention

Under Section 3, Rule 35, of the 1997 Rules of Civil Procedure, summary judgment may be allowed where, save for the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. Summary or accelerated judgment is a procedural technique aimed at weeding out sham claims or defenses at an early stage of the litigation, thereby avoiding the expense and loss of time involved in a trial. Even if the pleadings appear, on their face, to raise issues,

summary judgment may still ensue as a matter of law if the affidavits, depositions and admissions show that such issues are not genuine.[70] The presence or absence of a genuine issue as to any material fact determines, at bottom, the propriety of summary judgment. A "genuine issue", as differentiated from a fictitious or contrived one, is an issue of fact that requires the presentation of evidence. To the party who moves for summary judgment rests the onus of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial.[71]

Guided by the principles above indicated, we hold that, under the circumstances obtaining, summary judgment is proper and the respondent court did not commit a reversible error in granting the corresponding motion for summary judgment filed by respondents Cojuangcos/PHI on the Second Amended Complaint-in-Intervention.

As may be observed, petitioner Yuchengco anchored his claim over the disputed PLDT shares on the proposition that the Marcos regime coerced him into giving up 6% of PTIC shares formerly owned by Gregorio Romulo and Leonides Virata which he paid for. Apart from this 6% PTIC-share transaction, he alleged having entered into a "*put and call*" agreement with GTE for the purchase of the latter's 25% equity in PTIC, but that he was again coerced into not exercising his option to purchase, only to be apprised later that PHI acquired the same 25% stockholdings.

It cannot be overemphasized, *vis-à-vis* the Yuchengcos' claim that, when respondents Cojuangcos/PHI moved for summary judgment, the Yuchengcos, consequent to their having been deemed to have

waived their right to present their evidence, were effectively precluded from pursuing discovery procedure. In net effect, the only facts before the respondent court at the time of the filing of the motion for summary judgment were those to be gathered from the pleadings and the depositions of Mr. Romulo and Attys. de Guzman and Mercado-Ferrer.

No substantial proof of coercion or duress, however, appears from the depositions on file. On the other hand, the only relevant facts deducible from the deposition of Atty. Mercado-Ferrer on the "*put and call"* option, are: (1) the put option of petitioner Alfonso T. Yuchengco expired in 1972; and (2) petitioner Y Realty Corporation executed a waiver of its pre-emptive right on the transfer of the PTIC shares held by GTE to Mr. Ramon U. Cojuangco in 1978. Thus, if, by its own terms, the "*put and call"* option expired in 1972, Yuchengco's right had long lapsed when the assignment of the PTIC shares were made in favor of the late Ramon U. Cojuangco. Moreover, the waiver Y Realty Corporation executed may be seen to confirm petitioner Yuchengco's assent to the aforesaid assignment of PTIC shares in favor of Ramon Cojuangco.

As to Mr. Gregorio D. Romulo, his deposition taken on August 3, 1987 yields the following:

"ATTY. QUISUMBING:

Q: And who were the major stockholders in that corporation i.e. [PTIC]?

A: The stockholders involved is the Gentel who turned over their equity to PLDT into the corporation and it was assumed that this company formed in the Bahamas would be the body agent of PLDT which in turn would buy all those equipments from Gentel through

the Bahamas corporation paying Gentel its share with a large commission, I do not know.

Q: When you said Gentel, are you referring to General Telephone & Electronics Corporation you have mentioned?

A: Yes, sir.

Q: And … who held the interest in PTIC eventually?

A: What resulted, from my point of view, was while in Manila, I received word that I was the owner of 3% shares in PTIC, I immediately wired my office in New York and wanted to know if I could hold the shares in my name or if they wanted to transfer to them but I had the offer and I wanted to know definitely what was the position of the Headquarters with regards to this.

Q: And what was their position?

A: Our position was the acquired 3% do not mean anything to us of a company that is from PLDT, at least one regular share of the PLDT had no or rather IT&T had no interest in PLDT except to acquire if it could be acquired and we have quite to iron in the fire at that time so I don't know now.

Q: Who else held stockholding interest?

A: I was informed that Leo Virata had 3%, Tony Meer had 3%, Oscar Africa had 1% or 2% and the rest were distributed among the relatives and in-laws of Cojuangco, oh yes, Mr. Alfonso Yuchengco. I don't know if awarded or allowed to possess the 7% of the original shares.

ATTY. FRANCISCO:

I would like to request for the striking of the testimony of the

witness from the record, that is hearsay because he claimed that he was merely informed of the other interests.

ATTY. LEANO:

I adopt the manifestation of counsel.

xxx xxx xxx

COMMISSIONER:

ALL objections are recorded.

ATTY. QUISUMBING:

Q: Did you subsequently make any confirmation of the information that you received?

A: Yes, but I never saw a piece of paper, I was told by Ramon Cojuangco and Antonio Meer about this information after their return from their trip abroad and that we successfully negotiated the purchase of PLDT.

Q: And what was the role of then President Marcos in this acquisition?

ATTY. LEANO:

No basis.

ATTY. FRANCISCO:

Leading.

xxx xxx xxx

COMMISSIONER:

But the witness may answer the question if he so desire.

A: I believe that I can answer the question by simply telling the

Court how we were informed that PLDT was available apparently because I am only told this. The person that found that this PLDT was going to be sold to Ninoy Aquino was his cousin Danding Cojuangco, his cousin told the President and the President asked Ambassador Roberto S. Benedicto to go to the offices of PLDT and stop all ways then he signed for Monching Cojuangco because he felt that a transaction of this nature, of this large was beyond the abilities of Danding . . . I do not know but that was then transmitted to us by Monching Cojuangco, I do not know and I cannot testify to the veracity of this story but what we were told that in order to meet us …

ATTY. FRANCISCO:

I move to strike out the answer of the witness for being hearsay.

ATTY. PALMA:

Counsel for Prime Holding adopts the same objection.

ATTY. LEANO:

For Mrs. Cojuangco, the same objection for being hearsay.

COMMISSIONER:

All objections recorded.

xxx xxx xxx

ATTY. QUISUMBING:

Q: So General Telephone and Electronics Corporation was paid the monthly fee and who made those payment on the fees?

ATTY. LEANO:

The best evidence would be the payment.

A: I believe it was already PLDT that is being privy to the financial method, PLDT is not answering definitely who came, who held but much later on, every interest then was bought up by at that time Chairman of the Board of the DBP and that our friend Alfonso Yuchengco may eventually had PTIC but since we were, at least was completely out of the picture, I did not know whether it was true or not but since Leo Virata was still at that time very much involved with PLDT because of the guarantee issued by DBP during the time of Licaros, I believe he has reason to at least suspect that the company of General Telephone had negotiated with Mr. Yuchengco, I do not know if this is true, I have not spoken to Mr. Yuchengco about this matter, he has not asked me to speak about this. I decided this because naturally it is always a matter of motive, my motive is that long before Senator Salonga made sequestration, I was sequestered and so with Leo Virata and I felt my repose had been dead a long time that whoever enjoyed the benefits of that sequestration should at least be taken to proper authorities or in turn make amends of the years that they have illegally enjoyed the recourse which is substantial and which at today's prices must be worth an awful of money.

Q: Now, you mentioned Licaros of the DBP …

ATTY. LEANO:

I object, may I move for the striking out of the answer for being hearsay.

ATTY. PALMA:

Same objection for being hearsay.

ATTY. FRANCISCO:

It is not responsive to the question.

ATTY. LEANO:

All his statements are hearsay, all his statements are mere expression of opinion and under the law, the best evidence should be the document.

xxx xxx xxx

COMMISSIONER:

All objections are recorded.

ATTY. QUISUMBING:

Q: You mentioned the DBP and Licaros, were they connected then at that time and how?

A: In the purchase of eventually of PLDT, it required the guaranty of the DBP that any future commitments made by this group will be guaranteed by the Philippine government.

Q: What specifically was guaranteed by the DBP?

A: Of my knowledge, it was required that the agreed purchase price be guaranteed by DBP to Gentel.

Q: Do you remember the figure? And the guarantee of the DBP was given in favor of whom?

A: It was released by order of Mr. Licaros in favor, I believe of PTIC.

Q: Which is the PTIC, what did you mean by PTIC, what firm?

A: That PTIC is the Philippine Telecommunications Investment Company.

Q: So the DBP issued a guaranty, guaranteeing PTIC an obligation to whom?

A: To Gentel.

Q: Was there an intermediary bank involved in the U.S.?

A: In the later operation, I only remember the Irving Trust lending $1million to Ramon Cojuangco in order to pay the options of this group to purchase PLDT from Gentel.

xxx xxx xxx

Q: You spoke of this sequestration or rather the sequestration of yours and of Leo Virata, what did you mean by that, will you give us specifics?

A: I will give you the specifics as I know it happened to me personally. Leo Virata and I decided to bail out because we did not like what was going on, we offered our shares to Alfonso Yuchengco, he offered to pay them but being honorable, we have to tell Ramon Cojuangco and Tony Meer that in turn have a meeting in the new PLDT building where across from the office of Tony and Ramon was a lunch and we were told that our shares had to be given to Pasig, now what that mean, I do not know, there is approximately no way to verify that. Those words were enough for Ramon, to tell Monching, go ahead and take these two and you will be taken cared of later on, he was never paid, I found out this.

Q: While you say you do not know exactly what Pasig means, who used the word Pasig?

A: Monching, Ramon Cojuangco.

Q: What do you understand of Pasig?

ATTY. LEANO:

May I make another objection insofar as the estate is concerned

because of the testimony of the witness, we would like to manifest our continuing objection to any and all questions and matters that would affect the estate of Ramon Cojuangco, we are making this objection in behalf of the widow whom we are representing in behalf of the estate.

COMMISSIONER:

The objection is recorded.

A: Now, this is the way we were told, and Mr. Cojuangco, there was a pre-long negotiation in that lunch between Mr. Virata, myself and later, Mr. Yuchengco. I do not know how the thing terminated because I was asked by Mr. Virata to go home because I get very violent, I did not like being treated that way by anybody and that is it, I went home and much later on because I refused to discuss this with anybody, I found out that Mr. Yuchengco was never paid but that he paid me, I know he did because I used in my name to pay a corporate obligation to the RCBC bank which is I believe was his bank.

Q: Now, you said that you got violently angry, so what did you understand by the word Pasig?

A: I cannot specify because in my mind, at that time there was a turmoil, too much I understand we have been drinking since lunch time and this was about 4:00 in the afternoon, so what was conveyed to me by the words Pasig, I cannot definitely say now but I do know what it conveyed in those days the long regime of powers that were in control at that time.

Q: You said that you have never been treated that way before, you refer to your selling, to your offer to sell to Yuchengco but being forced to sell to another?

ATTY. LEANO:

He never said that, may we just make our objection.

Q: What were forced to do that made you angry?

A: What made me angry was, I know that the company had a tremendous future, when Mr. Yuchengco gave me a visit in the hospital seven years ago on my stroke, not now, he mentioned the fact that he had never been reimbursed of the money that he advanced to me and that I thought that was terrible.

Q: Now let us go back to your reasons as well as of the reasons Leo Virata in getting rid of this 3% share each in PTIC, what were those reasons exactly that made you decide to sell out?

A: Normally, inspection of the corporation means to look to the corporation papers, I never did, or they are signed by the incorporators in terms of the original documents at the buyers' list, I never saw them, we understood that PTIC was in operation, pay regular dividends, I never saw them, so naturally I asked the man who got me in to all this things in the first place, what happened, he said, I do not know, I have not received anything either, so let us get rid of this and we have thought most likely the buyer is Mr. Alfonso Yuchengco.

Q: What happened to your offer to Yuchengco?

A: He accepted it, I and Leo Virata arrived and we decided to tell Monching and Tony that we had sold our shares to Mr. Yuchengco. Apparently Leo told Ramon this only and by the time we arrived in the PLDT building, he had already apparently consulted and we were told that the Pasig did not like and said go ahead and you will be taken cared of which much later on told me never happened.

Doon ako nagalit, masiyado nanag pag-oonse. Well, anyway now, there is nothing more demanding of persons at their state that being locked in a hospital room for years and in the usual reading, I decided whoever enjoyed those shares, better make good and since I have read in the newspapers about investigation of PTIC which seem to get out the cloud, I decided to do this, maybe to give some clue to the investigation of PTIC, I don't know.

Q: And what was the figure agreed upon with Mr. Yuchengco?

A: Apparently . . .

ATTY. LEANO

I just want to make the same objection for being hearsay.

ATTY. QUISUMBING:

These objections are to be used during the presentation of evidence not at the taking of the deposition. Just remember that.

ATTY.LEANO: But we want to make our objection.

xxx xxx xxx

COMMISSIONER:

All objections are recorded.

A: I do not know anymore that anybody else, after this maybe stray bit of information will be remembered later on but none right now and I was reviewing over my mind time and again, my participation in the whole affair, I was eventually and I was used in that way as a means to get IT&T into their negotiation and let Gentel to the bargaining if only to show that they could afford to buy Gentel, in effect, they were closing the deal, leaving IT&T to force Gentel to sit down and negotiate with them. That was the idea because

unfortunately, IT&T did not work for them but for this group apparently that I do not know anymore.

Q: My last question only is, how much is the figure for the sale of this 3%

A: I understand, well, I used part of it to pay an obligation worth P636,000.00, it was an obligation with the defunct T.J. Wolfe that was bought by me which appears in its book that amount or a little bit more with RCBC, now the balance maybe used by Mr. Virata for something else, I do not know. x x x

CROSS EXAMINATION:

BY ATTY. LEANO

xxx xxx xxx

Q: Was Tony Meer present in that meeting?

A: He was always in the meeting . . . . (TSN of the Deposition of Gregorio L. Romulo, August 3, 1987 pp. 12 –37). [72]

As we see it, Mr. Romulo's deposition is virtually a hearsay account and should, therefore, be disregarded, being itself inadmissible in evidence. Supporting and opposing affidavits shall be based on personal knowledge of the declarant, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Therefore, in determining whether summary judgment is proper, statements contained in affidavits, which would be inadmissible in evidence (such as statements of opinion, belief and hearsay) must be disregarded. So it must be with the Romulo deposition.

One minor point. Petitioner Yuchengcos drew attention to the pendency of their petitions in **G.R. Nos. 149802** and **150320** when

the **Partial Decision** was rendered, suggesting doubtless that it was error on the part of the respondent court to proceed with the separate trial below without awaiting the outcome of said petitions.

We are not persuaded. The pendency of the petitions in G.R. Nos. 149802 and 150320 did not, without more, dilute the validity of the assailed **Partial Decision** or diminish the authority of the respondent court to render the same. Section 7, Rule 65 of the Rules of Court says as much:

SEC. 7. *Expediting proceedings; injunctive relief.* - The court in which the petition [for certiorari, prohibition or mandamus] is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case unless a temporary restraining order or a writ of preliminary injunction has been issued against the public respondent from further proceedings in the case.

The governing rule, in fine, is that to arrest the course of the principal action during the pendency of certiorari proceedings, there must be an interrupting restraining order or a writ of preliminary injunction from the appellate court directed to the lower court.[73] There was none in the instant case. Accordingly, it was in order for the respondent court to proceed with the separate trial in Civil Case No. 0002 and necessarily in rendering a judgment, in this instance, the **Partial Decision**, which, in its estimation, is called for by the facts and law of the case.

DISMISSAL OF THE AMENDED COMPLAINT

AGAINST COJUANGCOS/PHI

> We now come what, to us, is the center of the controversy. We refer to the question of whether or not the disputed PLDT shares, which are covered by the equally disputed PTIC shares of respondents Cojuangcos/PHI, are indeed part of the "ill-gotten wealth" of the Marcos family - *ergo* to be forfeited in favor of the State - using the evidentiary standards and determinative indicia set out in *Bataan Shipyard & Engineering Co., Inc.* (Baseco) *vs. PCGG*,[74] and applied analogously in subsequent cases,[75] whence the conclusion that the wealth is "*ill-gotten*" may be reasonably deduced. Respondent court cited the benchmark outlined in *Baseco* in support of its **Partial Decision**,[76] to wit:
>
> One, evidence indicating manifest partiality and favorable treatment by the former President towards the alleged trustees, as demonstrated by active interplay between him and such trustees and/or presidential interventions which have resulted in inexplicable benefits to the trustees or to the corporations held by him through such trustees; and
>
> Two, the existence of documents and records in the possession of the former President which, through indorsements and/or assignment made thereon in blank by his trustees, provide the legal instrumentation for him to assert, now or in the future, ownership or control over the properties held by his trustees and/or to recover such properties from them. (At p. 23)
>
> The respondent court dismissed the Republic's Amended Complaint as against the Cojuangcos/ PHI on the finding that the former has not adequately discharged its burden of proving, by the threshold preponderance of evidence required in "ill-gotten wealth" cases, that the subject PLDT shares are ill-gotten. Wrote the

respondent court:

xxx the Republic has failed to provide such "proof of authenticity or reliability" of the documents offered by it in evidence. Thus almost all the documents offered by the Republic are photocopies, and no effort was undertaken . . . to submit the originals of said documents, or to have them properly identified, or to otherwise justify the admission of mere photocopies. Not surprisingly, defendants . . . objected to the admission of the Republic's documentary exhibits, citing violation of the Best Evidence Rule (Section 3, Rule 130 of the Revised Rules of Civil Procedure ["Rules"], the Rules on Presentation of Documentary Evidence (Section 20, Rule 132 of the Rules), the Hearsay Evidence Rule, and the rule as to Purpose/s of Documentary Evidence (Section 34, Rule 132 of the Rules)." (at p. 31)

Excepting, petitioner Republic tags the respondent court's determinative finding as a "*sweeping conclusion"* or "*bare generalization*". Pressing the point, petitioner Republic argues that the **Partial Decision** did not identify with particular specificity which evidence failed to hurdle the bar of admissibility for being "*mere photocopies"* or "*are otherwise unidentified, unauthenticated, and constitutive of hearsay"*.[77]

Petitioner Republic's lament is, to a point, well taken. Indeed, not all documents the Republic offered in evidence in the separate trial on the PLDT shares suffer from the infirmity imputed on them by the graft court. For, as argued with some measure of merit, most of these documentary evidence have been identified and authenticated during the deposition taking of the deponents whose depositions were entered into evidence after the usual procedure of

comparing the originals with the faithful reproductions thereof which were those marked in evidence. And certainly not lost on this Court is the fact that some documents are common exhibits, thus, there exists no tenable reason for any of the parties offering them as common exhibits to object to their admissibility.

Were want of proof of authenticity and reliability of the offered documentary evidence was, with respect to the Republic's Amended Complaint, the rationale behind the adverse **Partial Decision**, as it strikes this Court to be, we can only say that such disposition is not in accordance with Section 3 of EO No. 14[78] which enjoins courts, in resolving suits filed in the recovery efforts, not to strictly apply technical rules of evidence. Be that as it may, we instead take the course of delving into the substance of the evidence on record which petitioner Republic asserts to be "*vital facts and material evidence*",[79] and thereby determine whether or not the respondent court indeed justifiably ignored them in arriving at the disputed holding dismissing the Amended Complaint as against the Cojuangcos/PHI. Towards this end, the Court shall first ascertain what could be those asserted "*vital facts and material evidence"* be by looking at the allegations of the Republic in its Petition. Thus, according to the Republic's petition in **G.R. No. 153459**, to cite pertinently:

> 1. PHI was registered by Jose Y. Campos on November 8, 1977 with a paid-up capital of a measly Fifty Thousand Pesos (P50,000.00) and utilizing as place of business the address of UNILAB, a corporation owned and controlled by Jose Y. Campos, and with UNILAB's officers and directors, namely Rolando Gapud, Renato Lirio, [etc.] . . . and Gervacio Gaviola

> managing PHI xxx albeit, said managing officers and directors had no financial interest whatsoever in PHI.
>
> 2. On May 2, 1978, Ramon U. Cojuangco, ceded and conveyed in favor of PHI by way of Deed of Assignment dated May 2, 1978, some 44,023 shares of stock of PTIC . . . . On that same date, also by way of Deed of Assignment . . . Ramon U. Cojuangco ceded and conveyed in favor of PHI another 33,696 shares of stock of PTIC . . . . Also on the same date, Luis Tirso Rivilla ceded and conveyed in favor of PHI another 33,696 shares . . . . Ramon U. Cojuangco and Luis Tirso Rivilla were compensated by PHI for said PTIC shares of stock which all in all sum up to 111,415 shareholdings in the name of PHI. xxx
>
> 3. From the foregoing evidence, there is no doubt that respondent PHI is a corporation which was formed and organized and maintained by the former dictator, President Ferdinand E. Marcos through confessed dummies, Jose Yao Campos and Rolando C. Gapud, who, in conspiracy with Ramon U. Cojuangco and Luis Tirso Rivilla, sought to acquire for the Marcoses the single biggest majority shareholdings in PLDT.
>
> 4. The foregoing is confirmed by the declarations of confessed nominees/cronies of former President Ferdinand E. Marcos: Jose Y. Campos, Roland C. Gapud and Atty. Francisco de Guzman.
>
> xxx xxx xxx

On the basis of the foregoing evidence, respondents Cojuangcos cannot lawfully acquire ownership of title over the PHI shares of

stocks, because the same constitute the Marcos ill-gotten wealth, formed and/or acquired in violation of the 1973 Constitution. xx (Petition, G.R. No. 153459, pp. 69-90)

Indubitably, petitioner Republic calls attention to the sworn declarations of Messrs. Jose Yao Campos, Roland C. Gapud and Atty. Francisco de Guzman (Campos, Gapud and de Guzman, respectively, hereafter) as alleged proof of its theory of the case, *i.e.,* that the disputed PLDT shares are in fact owned by the Marcos family and that respondents Cojuangcos/PHI are but dummies/nominees/conduit for the Marcos family to control PLDT. It is, hence, our task to scrutinize the sworn declarations of Campos *et al*., to ascertain if they indeed prove the facts adverted to by petitioner Republic, failing which would naturally impel this Court to affirm the **Partial Decision** insofar as it dismissed the Republic's Amended Complaint against the respondents Cojuangcos/PHI.

Following are excerpts of the Sworn Statement of Mr. Campos, dated March 21, 1986[80]:

"xxx a discussion between me and Mr. Ramon Diaz, a member of the Commission [PCGG} who inquired about certain assets and properties that I might be holding in favour (sic) of certain beneficiaries and which . . . are now about to be claimed by the Philippine Government.

> 1. My relationship with the then President Ferdinand E. Marcos dates back to the time when he was first elected as Congressman . . . [and] continued when he was then elected President . . . . Thereafter I assisted in the organization and acquisition of some business ventures for the former

President. Following his directive I instructed my lawyers and requested the assistance of my other business associates and officers of the company to organize, establish and manage these business ventures for and on behalf of the President;

2. The companies that we have organized for and on behalf of former President Marcos are listed in Annex "A" attached herewith;

3. In the organization, administration and management of the abovenamed corporations, it was my policy that whenever such a corporation is organized for and on behalf of the intended beneficiaries, I execute and I require all my said business associates to execute a Deed of Trust or Deed of Assignment duly signed in favour (sic) of an unnamed beneficiary and to deliver the original copy thereof to the former President. It is in fact my policy and procedure that we disclaim completely any interest in any of such businesses and make it clear to the former President that we hold such interests on his behalf;

4. In the latter part of 1979 I suffered a severe heart attack . . . . Because of this . . ., I requested former President Marcos to relieve me of my responsibilities regarding the businesses that have been entrusted to me and following such request, I signed and delivered to him a Certification dated January 1980, attached herewith as Annex "B" to the effect that my family including my wife and children expressly disclaimed any interest in the businesses that I have been holding in his behalf and they acknowledged the truthfulness, authenticity and validity of various Deeds of Trust and Deeds of Assignment which I and my business associates signed and executed as

> aforementioned covering properties, interest and shares of stock of the corporations listed therein.
>
> 5. Occasioned by the withdrawal of my active participation in the management of the above named corporations, Mr. Rolando C. Gapud who was my financial consultant took over the direct responsibility of directing, managing and administering all the activities of the said corporation. However, since Mr. Gapud did not have the administrative staff to efficiently manage the businesses, he requested me that all the employees and officers involved in the organization should continue to remain in the companies even only in a nominal capacity considering that they had previously disclaimed any interest therein. It is for this reason that Roland C. Gapud and my business associates, namely, . . . Francisco G. de Guzman, . . . Ernesto Abalos, Gervasio T. Gaviola, . . ., Renato E. Lirio, Rafael de Guzman, [etc.] . . . continued to be named stockholders in these corporations although they did not have any financial interest therein;
>
> xxx xxx xxx

Among the Philippine corporations listed in item #4.16 of Annex "A" of Mr. Campos' aforesaid Sworn Statement and held in trust by him and his associates was "*Prime Holdings Corporation*".

Moreover, on the occasion of his deposition-taking on December 18, 1995 at the Philippine Consulate General, Vancouver, British Columbia, Canada Mr. Campos, responding to written interrogatories, made the following declarations in answer:[81]

"2.2 The records show that [PHI] owns approximately 46% of the

stock of . . . (PTIC) which in turn owns approximately 28% of Philippine Long Distance Telephone Company (PLDT). The records of this Civil Case No. 0002 show that PCGG has sequestered 111,415 shares of stock in PTIC registered in the name of [PHI]. Was anything with respect to PTIC delivered to the PCGG by Atty. De Guzman or anyone else in your behalf? Please describe with specificity the things that were delivered.

ANSWER: As I said, I don't know that Prime Holdings has any holdings of PTIC.

3. In your Sworn Statement, page 2, you stated that with respect to the corporations you held in trust for President Marcos, it was your "policy" that whenever such a corporation was organized, you executed, and you required all your business associates to execute, a Deed of Trust or Deed of Assignment in favor of an "unnamed beneficiary", and delivered the originals thereof to President Marcos. x x x. Was this "policy" followed in the case of [PHI]? xxx

ANSWER: All the corporations that I organized – that was the standard policy – that we surrendered direct to President Marcos.

3.1. Was it also your policy to deliver to President Marcos the stock certificates that you and your business associates held in trust for him?

ANSWER: Yes, Ma'm.

3.2. If stock certificates that you and your business associates held in trust for President Marcos were delivered to him was it also your policy to have the stock certificates indorsed in blank? Were the stock certificates in [PHI] Inc. indorsed in blank?

ANSWER: If there are certificates issued in Prime Holdings, it is the same way it was delivered to him. If there is such certificate issued, it is indorsed in blank and follow the same pattern for all the corporations. Whatever we have decided, we deliver, sign in blank and deliver to him.

3.3 Did you and your business associates deliver to President Marcos the stock certificates issued by [PHI]? If not, what did you and your business associates do with the stock certificates?

ANSWER: If Prime Holdings certificates have been issued, as I said Ma'm, it is delivered to the President.

4. In your Sworn Statement, page 2, you also stated that "it is in fact my policy and procedure that we disclaim completely any interest" in the businesses organized for President Marcos and "make it clear to the former President that we held such interests in his behalf". xxx. Was this "policy and procedure" followed in the case of [PHI]? xxx

ANSWER: The policy is followed by every corporation that we organized for the President.

4.1 Did you and your business associates also "disclaim completely any interest" in . . . (PTIC) and "make it clear to the former President that we hold such interests on his behalf"?

ANSWER: Ma'm, as I said, I don't know that Prime Holdings has such holdings of the PTIC shares that you referred to.

5. The records of . . . (PTIC) show that Luis T. Rivilla owned approximately P4,565,750 worth of shares of stock in PTIC and that some time in 1978-1980, he transferred approximately P2,903,762 worth of such shares to [PHI]. Who was the true or

beneficial owner of the shares of stock in PTIC transferred by Luis T. Rivilla to [PHI] in 1978-1980?

ANSWER: Any matters that pertain to PTIC, I don't have any knowledge of, Ma'am.

xxx

ANSWER: Consul Morales, just to make everything short, after my heart attack in 1979, Mr. Gapud took over the management of the corporations that belonged to the President . . . I did not participate anymore in anything of the President's corporations managed by Mr. Gapud after my heart attack and after he took over the management of those corporations. It is because of health reasons that I was compelled not only to relinquish that to the President, but also my own companies and …

xxx xxx xxx

10. Did you ever have any discussions or correspondence with anyone other than President Marcos, Ramon U. Cojuangco or Rolando C. Gapud regarding the beneficial ownership by President Marcos or any member of his family, directly or indirectly, of shares of stock in PLDT, PTIC, or Prime Holdings, Inc.?

ANSWER: No, Ma'am.

xxx xxx xxx

11. In your Sworn Statement, pages 2-3, you stated that because of a heart attack in the latter part of 1979, you requested President Marcos to relieve you or your responsibilities regarding the businesses entrusted to you, and that Rolando C. Gapud took over the direct responsibility of directing, managing and administering all the activities of the said corporations. xxx

ANSWER: Yes, Ma'm.

11.1 Please describe in detail the circumstances surrounding the transfer, if any, of the direct responsibility of directing, managing and administering all the activities of PHI] to Mr. Gapud?

ANSWER: As I stated Ma'am, Prime Holdings has been a holding company. The only assets are the stock certificates and there is nothing. I think – at that time I transferred – there is nothing Mr. Gapud has to manage to do because it's a shared corporation. (Words in bracket added)

Contextually, the only conclusion the Court can plausibly attach to the above response of Mr. Campos is that he had no knowledge about PHI's shareholdings in PTIC. His answers, such as "*Ma'm, as I said I don't know that Prime Holdings has such holdings of the PTIC shares that you referred to"*, and "*Any matters that pertain to PTIC I don't have any knowledge"* say as much. It is also a fact deducible from Mr. Campos' sworn declarations that he adhered to a set of pattern or practice when he organized corporations for then Pres. Marcos. Thus, he declared that he, his family and his associates executed deeds of trust or assignment in favor of an unnamed beneficiary, and there disclaim any interest in the corporations that he (Mr. Campos) organized for Pres. Marcos. Or, they indorsed the stock certificates in blank. And, all of such deeds or certificates were delivered to the late President. Yet, Mr. Campos was unable to declare with certitude if these patterns and practices were followed vis-à-vis PHI. Accordingly, the question begging an answer is whether there truly exists, in respect to PHI shares, certificates indorsed in blank or deeds of trust or assignment in favor of an unnamed beneficiary delivered to the late President. If there is one person who can provide a satisfactory answer to this

question, it is Mr. Campos. But he is not saying anything. Under this scenario, we cannot see our way clear on how the sworn declarations of Mr. Campos could have, as asserted by petitioner Republic, proved that respondent PHI was merely incorporated to hold the PTIC shares, that in turn would have proved that PHI together with respondents Cojuangcos were mere dummies of the Marcos family to hold the controlling share of PLDT.

On the other hand, Mr. Gapud's deposition - taken on October 19, October 20 and December 11, 1995 at the Hong Kong Philippine Consulate Office - materially reads:

"CONSUL AGUILUCHO:

On paragraph 4 of Exhibit "E", Mr. Gaviola stated:

'That I have no personal knowledge of the operation of Prime Holdings, Inc. as Mr. Rolando C. Gapud handled all the directing, managing and administering of all the activities of the said corporation.'

Question: Based on your personal knowledge, do you affirm or deny the contents of the said paragraph 4 of Exhibit "E"?

MR. GAPUD: I affirm. xxx

Madam Consul, I would like to make a clarification here. Because Mr. Gaviola says I handled all the directing and managing and administering of all the activities. Prior to the heart attack of Mr. Campos I recall that he was also involved in the administration of this company. So, with that clarification I affirm paragraph 4.

CONSUL AGUILUCHO: For how long did you manage [PHI]?

MR. GAPUD: I would estimate maybe two or three years after Mr. Campos' heart attack.

CONSUL AGUILUCHO: Do you know anything about the . . . (PTIC), 46% of the capital stock of which is owned by [PHI]?

MR. GAPUD: Well, very little except for that which I have read from the newspapers.

CONSUL AGUILUCHO: Do you know the PTIC owns 25% of the common voting stock of the . . . PLDT?

MR. GAPUD: Yes.

CONSUL AGUILUCHO : Do you know the beneficial owner or owners of [PHI]?

MR. GAPUD : What I know . . . is the shares of stock and/or the assignments endorsed in blank were delivered to President Marcos by Mr. Campos.

CONSUL AGUILUCHO: The heirs of Ramon U. Cojuangco, namely: Imelda O. Cojuangco and her children . . .claim that they own . . .(80%) percent of the outstanding capital stock of [PHI], while the Estate of Ramon U. Cojuangco allegedly owns the remaining twenty (20%) percent.

Question: Based on your personal knowledge, do you affirm or deny the said allegation?

MR. GAPUD: I do not know. I can neither affirm or deny.

CONCUL AGUILUCHO: The said heirs also alleged that [PHI] was incorporated on 5 October 1977 with the following stockholders, namely: Rolando C. Gapud, Renato E. Lirio, Jose D. Campos, Jr., Gervasio T. Gaviola and Ernesto S. Abalos, with 400 shares each, . . .

Question: Based on your personal knowledge, do you affirm or

deny the said allegation?

MR. GAPUD: I affirm.

CONCUL AGUILUCHO: Did you really own the 400 shares of the Prime Holdings?

MR. GAPUD: No.

CONSUL AGUILUCHO: For whom did you hold those 400 shares?

MR. GAPUD: Well, as I said earlier the shares and/or assignment indorsed in blank were delivered by Mr. Campos to President Marcos.

CONSUL AGUILUCHO: The same heirs likewise alleged:

"In separate Deeds of Assignment dated 18 February 1981, two (2) of the incorporators of Prime Holdings, namely: Rolando C. Gapud and Jose D. Campos, Jr., assigned and conveyed to Messrs. Ramon U. Cojuangco and Oscar Africa, respectively, all their shareholdings in Prime, consisting of four hundred (400) shares of stock each, or twenty (20%) percent each of the shares of stock of Prime (Annexes "C" and "-1").

Question: Based on your personal knowledge, do you affirm or deny the said allegation?

xxx

MR. GAPUD: Madam Consul, I think I can only affirm that which pertains to me, namely: the Deed of Assignment that I signed. I will leave it to Mr. Campos to affirm his Deed of Assignment.

ATTY. MANALAYSAY: Madam Consul General, in view of the identification by the witness of the Deed of Assignment, may we request that the same be marked as our Exhibit "1" (Cojuangco)

xxx xxx xxx

ASST. SOLICITOR GENERAL DEL ROSARIO: Do you identify this as your signature?

MR. GAPUD: Yes.

xxx xxx xxx

CONSUL AGUILUCHO: May we continue?

Showing you the said Annex "C" now marked as Exhibit "F" for purposes of this proceeding, do you affirm or deny the authenticity of this document?

MR. GAPUD: Yes, I affirm.

CONSUL AGUILUCHO: Is it really true that you assigned your 400 shares to Ramon U. Cojuangco?

MR. GAPUD: Yes.

CONSUL AGUILUCHO: How much did you receive as consideration for assigning your shares to him?

MR. GAPUD: The consideration for the assignment was that upon my assignment, first, my fiduciary responsibilities as nominee were extinguished, and secondly, I had transferred and extinguished any and all liabilities under the subscription payable.

CONSUL AGUILUCHO: Do you know if Ramon U. Cojuangco received the said shares for himself or for anybody else?

MR. GAPUD: I don't know.

xxx xxx xxx. [82] (Underscoring added)

Continuing his deposition-taking on December 11, 1995, Mr. Gapud also said:

"VICE CONSUL HERNANDEZ: No. 5, regarding [PHI] which was one of the companies organized for former President Ferdinand E, Marcos, as stated by deponent Jose Y. Campos in his Sworn Statement (EXHIBIT "D") and affirmed by you also, and the various Deeds of Assignment of shares in Prime Holdings, Inc. by the listed Stockholders-Nominees in favor of the late Ramon U. Cojuangco and his children, respectively, namely:

Deed of Assignment dated February 18, 1981 signed by you and marked EXHIBIT "F";

Deed of Assignment dated February 18, 1981 signed by JOSE D. CAMPOS, JR., copy marked EXHIBIT "F-1";

Deed of Assignment dated June 1983 signed by RENATO E. LIRIO, copy marked as EXHIBIT "F-2";

Deed of Assignment dated June 1983 signed by GERVACIO T. GAVIOLA, copy marked as EXHIBIT "F-3";

Deed of Assignment dated June 1983 signed by ERNESTO S. ABALOS, copy marked EXHIBIT "F-4";

Deed of Assignment dated July 1983 signed by OSCAR T. AFRICA, copy marked EXHIBIT "F-5";

The aforesaid Deeds of Assignments obviously will be with the knowledge and upon authorization and order of former President Ferdinand E. Marcos, is this correct?

ATTY. MANALAYSAY: Your Honor, before the witness answers the question, we would like to reiterate our objection insofar as the question referring to Mr. Oscar T. Africa is concerned. We are objecting to the question on the ground that Mr. Gapud would be incompetent to testify with respect to Mr. Africa, considering that

> Mr. Africa is not among the stockholders-nominees mentioned by Mr. Campos or Mr. Gapud as far as Prime Holdings is concerned and Mr. Africa is not among the incorporators of Prime Holdings, Inc.
>
> xxx xxx xxx
>
> VICE CONSUL HERNANDEZ: Can we note your objection and let Mr. Gapud answer?
>
> So the aforesaid Deeds of Assignments obviously will be with the knowledge and upon authorization and order of former President Ferdinand E. Marcos, is this correct?
>
> MR. GAPUD: Considering that [PHI] was incorporated upon the instructions of former President Marcos, obviously all the nominees would act only upon his authorization. That's my answer. [83]

Like Mr. Campos before him, Mr. Gapud also seems to be without personal knowledge of whether or not PHI owned shares in PTIC. He admits that whatever he knows about PHI's holding in PTIC, if there be any, is based only on what he has read from the newspapers. True it is that he acknowledged not actually owning the 400 PHI shares in his name. But when asked for whom he held such shares, he hedged on his answer, saying: "*Well, as I said earlier the shares and/or assignment indorsed in blank were delivered by Mr. Campos to President Marcos*". Mr. Gapud, however, would later contradict himself with respect to the disposition of the said 400 PHI shares with his statement that he assigned what on paper was his PHI shares to the late Ramon U. Cojuangco. Clearly, it would have been implausible for him to make the assignment to Mr. Cojuangco if the covering certificates had previously been delivered to Pres. Marcos. He also affirmed that

his assignment of PHI shares to Mr. Cojuangco was for a consideration, albeit this consisted of being freed from his fiduciary responsibilities as nominee and of the extinguishment of his liabilities on his subscription.

Taken as a package, Mr. Gapud's sworn statements do not sufficiently prove petitioner Republic's theory of the case.

The sworn statement of Atty. Francisco de Guzman, former PHI corporate secretary, taken during his deposition on June 12, 2001, is hereunder pertinently reproduced, *viz*.:

ATTY. QUISUMBING: But as of 1978 . . . Prime Holdings, Inc. [PHI] was incorporated on instruction of Mr. Jose Yao Campos in 1977, so as of 1978 [PHI] was still a holding company of Mr. Campos?

xxx xxx xxx

Witness: Please repeat the question.

Atty. Quisumbing :The records in the Securities and Exchange Commission indicate that [PHI] was incorporated in October of 1977 and you already testified that [PHI] was incorporated on instructions of Mr. Campos?

Witness: Yes sir:

Q: And you also testified that Prime Holdings is a holding company?

A: Yes, sir.

Q: Of Mr. Campos?

A: I said holding company, you asked me what is the nature of the company and I think you clarified the question, a holding company is one that hold assets and I said yes, sir, that's how I understand a

holding company.

Q: And you testified that all of these five (5) original stockholders of [PHI] worked for Mr. Campos?

A: Yes, sir.

Q: So, the following year of 1978 you were still Corporate Secretary of [PHI]?

A: Yes, sir.

Q: And were you still taking instructions from Mr. Campos the following year 1978 with regard to [PHI]?

A: Yes, sir.

Q: And how long after that did you continue to take instructions from Mr. Campos with regard to [PHI]?

A: xxx I'm not too sure about this, but he distanced himself in many operations even of United Laboratories when he had a heart attack in 1979, sir.

Q: So you are saying that you took instructions from Mr. Campos with regard to [PHI] until 1979 when Mr. Campos had a heart attack?

A: Yes, that is the possibility of having instructions from him because after that he really was very inactive in all these corporations and it was then that Mr. Gapud who took over, sir.

Q: In 1979?

A: Yes, sir.

Q: By the way, in 1979 after Mr. Campos suffered this heart attack and I believe that was late 1979, did Mr. Campos also retire from

active involvement in UNILAB?

A: Yes, sir.

xxx xxx xxx

Q: After 1979 when Mr. Gapud took over, are you aware if there are any transfers of shares of stocks in [PHI] to other people?

A: Yes, sir.

Q: Will you tell us about that?

A: My recollection is, Mr. Gapud himself made a Deed of Assignment but I don't remember to whom the Deed of Assignment, in whose favor.

Q: What year was that?

A: I cannot recall the year, sir.

Q: But this was in 1979?

A: I suppose so, sir.

Q: Now, did Mr. Gapud assign his four hundred shares to Mr. Ramon U. Cojuangco?

A: I think the document will show because I cannot recall as to the person who made the assignment, sir, I'm sorry, I don't really have a single paper of the records, sir.

xxx xxx xxx

Q: Was it the standard operating procedure in Jose Yao Campos holdings companies that the stock certificates of the stockholders would be endorsed in blank?

A: Yes, sir.

Q: And who would hold custody or possession of those blank

endorsed stock certificates?

A: In the case of many of the corporations I think including [PHI] these are not fully paid shares and therefore, I knew that no stock certificates have been issued, sir.

Q: So, specifically in the case of [PHI] there were no stock certificates issued because the subscriptions were not fully paid?

A: Yes, sir.

Q: Do you know if the stockholders of [PHI], this is prior to 1981, had executed Deed of Assignment in blank for their subscriptions to PHI shares?

A: Yes, sir, in the standard operating procedure in the companies of Mr. Campos is that all the subscribers would have either a Deed of Assignment signed or a Deed of Trust, sir.

Q: And you are referring to these holding companies that Mr. Campos, a number of holding companies that Mr. Campos have caused to be incorporated, these are the companies?

A: Yes, sir.

Q: You said Deed of Trust, would there be a designated trustee?

A: No, sir.

Q: So, these are Deeds of Assignment or Deeds of Trust, the beneficiary of which would be left blank?

A: Yes, sir.

Q: But the assignors or the trustees or grantors would all sign, would all execute these Deeds?

A: Yes, sir.

Q: Who would have possession, you mentioned standard operating procedure or SOP, under that SOP who would hold the blank deeds?

A: A copy of which usually two (2) copies are made, sir.

Q: Two (2) originals?

A: No.

Q: Xerox copies?

A: No, one original and one xerox copy and the original will be included in the records, sir.

Q: The records of that particular company?

A: Yes, sir, and the other one we give it to the Treasurer.

Q: Of that particular company?

A: No, to Mr. Gaviola, sir.

Q: Mr. Gaviola was the Treasurer of [PHI] wasn't he?

A: I think he is because he is always, was the Treasurer of many of the companies of Mr. Campos, sir.

Q: So, there is the SOP also, Mr. Gervacio Gaviola is the Treasurer of [PHI]?

A: Yes, sir.

xxx xxx xxx

Q: Do you know, so what happened to those blank Deeds of Assignment and Deeds of Trust of [PHI] that were entrusted with the trusted lawyers of UNILAB?

A: When [PHI's] records were delivered, all those records, all those papers are with the records, sir.

Q: So, you are referring to the 1982 delivery to the representative of Mr. Ramon U. Cojuangco?

A: Yes, sir, except two (2) Deeds of Assignment which were I think made directly afterward when Mr. Gapud and Mr. Jose Campos, Jr. made the direct assignments to persons actually designated in the Deeds of Assignment, sir.

Q: Who were those?

A: The shares of Mr. Gapud was given to Mr. Ramon U. Cojuangco, Mr. Campos, Jr. I can't remember to whom he made the assignment, sir.

Q: Does the name Atty. Africa ring a bell?

A: Yes, sir.

Q: Would he be the person who was the assignee of the shares of either Mr. Gapud or Mr. Campos, Jr.?

A: Well, I think so, sir.

Q: Now, this was in the year 1981, do you recall that?

A: No, sir.

Q: Do you recall it might be 1982?

A: I have no idea as to the year when this was made, sir.

Q: But you testified that there was a change of ownership of [PHI] that led to the change of officers including yourself in 1982?

A: I didn't say ownership, sir. I said that when there was a change when Mr. Ramon Cojuangco became the Chairman, just on time when he said there will be a change of officer that is why they got the records from me.

Q: So, are you saying that there was no change of ownership in [PHI] in 1981, 1982?

A: Except the assignments made by the two (2) persons, sir. That is what I know.

xxx xxx xxx

Q: You indicated earlier that those change of officers of [PHI] in 1982, who were the new officers that took over?

A: I do not know, sir.

xxx xxx xxx

Q: Who do you know was changed among the officers of [PHI] Holdings, Inc.

A: Mr. Gapud as the Chairman and President, sir.

Q: Was replaced?

A: Was replaced by Mr. Cojuangco, sir.

Q: By Mr. Ramon Cojuangco?

A: Yes, sir.

Q: And this is about 1982?

A: Possibly I cannot recall the exact date, sir.

xxx xxx xxx

Atty. Quisumbing:

You testified earlier that Mr. Cojuangco became the President?

Witness: Yes, sir. I testified to that effect because that was the instruction given to me that the succeeding minutes of the annual meeting Mr. Gapud told me that the new Chairman and President

will be, was Mr. Ramon Cojuangco, sir.

Q: And that was the instruction of Mr. Gapud?

A: Yes, sir.

Q: He was the President and Chairman before Mr. Cojuangco?

A: Yes, sir.

Q: Now, did you have any involvement in [PHI] after 1982

A: None, sir.

Q: And you testified that all the records that you were holding of [PHI] were taken from you in 1982

A: Yes, sir.

Q: By Mr. Gapud?

A: Yes, sir.

Q: Do you know who if (*sic*) *he* retained those records or if he turned it over to the new Chairman and President?

A: Well, he told me he will be turning it over to the Cojuangcos, sir.

Q: And those include the blank Deeds of Assignment and Deeds of Trust?

A: I suppose so, sir.[84] (Underscoring and the word "PHI" in bracket in lieu of the words "Prime Holdings Inc." added)

In *esse*, Atty. Guzman merely reiterated facts deducible from the sworn declarations of Mr. Campos and Mr. Gapud, foremost of which is that PHI was among the corporations organized upon Mr. Campos' instructions and that for all the corporations of Mr. Campos, deeds of trust or assignment were executed. Atty. De Guzman's statements are also affirmatory of the fact that Mr.

Gapud assigned PHI shares in his name to Mr. Cojuangco. Interestingly, however, Atty. De Guzman disclosed a detail about the formation and the running of PHI not heretofore known, *i.e.*, that there were two copies of the deeds of trust or assignment, one a machine copy, and the other, the original, that was kept in the records of the company. But of particular significance from this disclosure is the actuality that until the time that Mr. Cojuangco assumed the chairmanship and presidency of PHI and the records were delivered to him (Cojuangco), the deeds of trust or assignment were on file with the records, "*except two (2) Deeds of Assignment which were xxx made directly afterward when Mr. Gapud and Mr. Jose Campos, Jr. made the direct assignments to persons actually designated in the Deeds of Assignments".*

Given the above, it would appear that the execution of the Deeds of Assignment to Ramon Cojuangco markedly departs from the set pattern usually followed in the organization of corporations on behalf of the late President Marcos, respondent PHI included. The pattern, to repeat, consisted of: the execution of deeds of trust or assignment to an unnamed beneficiary, or to indorse in blank the stock certificates, and deliver the corresponding deeds to the late President. In the case of what for the nonce may be referred to as the "*Cojuangco assignment*", the beneficiary portion of the deeds was not in blank. Instead, the name of Mr. Ramon Cojuangco specifically appeared therein. Possession of the deeds were with the respondents Cojuangcos, not the Marcoses, necessarily implying that nothing was delivered to the late President Marcos in regards to the covered PHI shares. And there can be no serious argument that petitioner Republic has not produced any deed of assignment or trust executed to an unnamed beneficiary or

certificates indorsed in blank which would have otherwise corresponded to the disputed shareholdings of the Cojuangcos in PLDT by virtue of the PHI shares assigned to them.

Upon the above observations and absent any positive testimony, even from persons already extended by the PCGG state immunity from criminal prosecution and like privileges, notably Messrs. Campos, Gapud and De Guzman, provided they disclose, among other things, relevant information respecting the alleged accumulated "ill-gotten wealth" of the Marcoses, that respondents Cojuangcos held their assigned shares on behalf of the late Pres. Marcos, we also hold as untenable petitioner Republic's unyielding posture that the aforementioned deeds of assignment to respondents Cojuangcos are sham and fictitious.

In all, this Court is unable to accord concurrence to petitioner Republic's theory that the disputed PLDT shares, covered by the necessary PTIC stock certificates in the name of respondents Cojuangcos/PHI, are part of the Marcoses' "*ill-gotten wealth*", for lack of direct and substantial proof thereof. Petitioner Republic's recovery efforts cannot be predicated on speculations, surmises or vague inferences, as here. In this sense, the respondent court stood on solid legal ground when it held that "*a claim or recovery of properties alleged by the Republic to have been ill-gotten cannot proceed under the mere presumption that said properties are indeed ill-gotten".*

On another point, petitioner Republic has made much of respondent court's failure to appreciate in its favor the allegations, partaking of judicial admissions, made by respondent Mrs. Marcos in her Answer to its Amended Complaint, Cross-claim and other pleadings, bearing on the Marcoses' ownership of the disputed

PLDT shares. In this regard, suffice it to state that these admissions are evidence against the party who made them or, in appropriate case, their privies.[85] In the concrete, the admissions adverted to made by Mrs. Marcos, even if they partake of judicial admissions, are binding and conclusive only as to her. They cannot bind or prejudice respondents Cojuangcos/PHI who have taken issue against Mrs. Marcos on her ownership claim over the PLDT shares in question.

This brings us to what are known as the "General Telephone & Electronics [GTE] Documents", which to petitioner Republic are likewise material evidentiary link to prove that the disputed PLDT shares form part of the Marcoses' "*ill-gotten wealth"*, but which merited scant consideration from, if not altogether ignored by, the respondent court.

Two (2) letters comprise the GTE Documents: one, purportedly from Leslie H. Warker of GTE to Mr. Ramon Cojuangco confirming an appointment with the latter's "*principal*"; and the other, from Theodore F. Brophy of GTE to US Assistant Secretary of State Eugene H. Braderman naming then Pres. Marcos as the "Principal". Per petitioner Republic's account, photo-copies of the GTE Documents were among the papers and materials seized by the US Customs Service from the Marcos family in February 26, 1986 in Hawaii and subsequently turned over to PCGG.

The Warker letter under date of June 18, 1967[86] reads in full, as follows:

Mr. Ramon Cojuangco

Manila

Philippine Islands

Dear Mr. Cojuangco:

We have received your cable on July 18, 1967 to Mr. Douglas in which you confirmed that an appointment had been secured for Mr. Brophy to meet with your principal during the week of August 13, 1967, the date and hour to be finalized upon Mr. Brophy's arrival.

Based on this assurance, the "Proposal with Respect to the Sale of General Telephone & Electronics Corporation's Stockholdings in [PLDT] to a Philippine Group" dated June 6, 1967 will remain open until 4:30 p.m. New York time on August 31, 1967, and unless accepted by that time (or further extended) will expire.

Article VIII. D. of the proposal shall be deemed to be modified in this respect by this letter.

I assure you of Mr. Brophy's cooperation with you in pursuing the proposal and hope that during your meetings you will be able to reach a mutually satisfactory solution to any questions which may arise.

Sincerely yours,

(Sgd.) LESLIE H. WARKER"

The Brophy letter to Mr. Braderman[87] referred to above reads:

October 9, 1967

Dear Mr. Braderman:

In accordance with your request to Mr. Stratton Anderson of our Washington Office, I am enclosing a copy of a "Proposal with Respect to the Sale of General Telephone & Electronics Corporation's Stockholdings in [PLDT] to a Philippine Group", dated

June 6, 1967, together with a letter of July 18, 1967 amending the Proposal, and a copy of a press release issued by this Corporation upon the completion of the step provided for in Article VIII E.P. of the proposal.

The 'principal' referred to in the July 18 letter is President Marcos.

Since the transaction has not been completed, and we cannot be sure at this time that it will be completed, we would prefer not to submit a detailed memorandum concerning the background of the Proposal. I would, however, be glad to discuss it with you on the telephone and answer any questions you may have.

Sincerely yours,

(Sgd.) Theodore F. Brophy"

Petitioner Republic contends that the said GTE Documents are "*authorized public records of a private document*". As such, it argues, citing Section 27 of Rule 132,[88] that there would be no need to present the original copies thereof, as they may be proved by a mere copy thereof, provided such copy is attested by the legal custodian of the records, with an appropriate certificate that such officer has the custody. According to said petitioner, the attestation of Ms. Lourdes Magno, PCGG Record Officer, with the certification that she has such custody would suffice for the purpose of authenticating and proving their genuineness so as to have the GTE documents received in evidence.

We disagree. Not every single paper or document in the custody of PCGG in relation to its quest to recover the "*ill-gotten wealth*" of the Marcos family has the character and probative value of an "*authorized public record*". Even the official seal of the PCGG on

the two (2) GTE Documents does not suffice to make them "*authorized public records*" of a private document and thus enhance their admissibility. The GTE Documents are still private writings. The GTE Documents turned over by the US Government in the hands of the PCGG are not self-authenticating, for what is contextually considered a public document is not the private writing, but the public record thereof.[89] Their authenticity and due execution, as condition *sine qua non* for their reception in evidence, with the evidentiary weight they might otherwise be entitled to, must first be proved under Section 20, Rule 132 of the Rules Court, which reads:

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

(a) By anyone who saw the document executed or written, or

(b) By evidence of the genuineness of the signature or handwriting of the maker.

Any other private document need only be identified as that which it is claimed to be."*lawph!l.net*

A contrary ruling would otherwise put the recovery suits beyond the pale of the law on admissibility of evidence. This could not have been the intention of then President Corazon C. Aquino when she issued EO No. 14, series of 1986, *supra*, providing that "*technical rules of procedure and evidence shall not be applied strictly to [said ill-gotten wealth cases]."*

In *Republic vs. Sandiganbayan (Third Division),*[90] the Court wrote:

> xxx Eleven years have passed since the government initiated its search for and reversion of such ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is proof of illegal acquisition, accumulation, misappropriation, fraud of illicit conduct, let it be brought out now. Let the ownership of these funds and other assets be finally determined and resolved with dispatch, free from all the delaying technicalities and annoying procedural sidetracks.
>
> A little over six years (6) later, in July 2003, the Court, in *Republic vs. Sandiganbayan* [91] repeated the same message imparted in the earlier *Republic* case, although the clause "[A]lmost two decades have passed" was used, and aptly so, in lieu of "[E]leven years have passed".
>
> What we said in both *Republic* cases is as sound and compelling as it is today. It should not, however, be given a slant to mean that the Court has laid down a policy that each and every recovery suit brought by the PCGG shall be governed by different norms of justice or fair play. Far from it. If the required quantum of proof obtains to establish illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, ours is the duty to affirm the recovery efforts of the Republic. On the other hand, should such proof be wanting, we have the equally exacting obligation to declare that it is so. Simple justice demands such attitude from this Court. So does the guarantee against deprivation of property without due process, which, like other basic constitutional guarantees, applies to all individuals, including tyrants, charlatans and scoundrels of every stripe, to borrow from Justice Isagani A. Cruz in his dissent in *Marcos vs. Manglapus*.[92]

It has been said that each case, and each litigious situation, must stand on its own peculiar set of facts, just as every case disposition must stand on the basis of such facts established by relevant and competent evidence in the light of applicable statutory and decisional law. Other decided cases may be appropriate as points of reference , but, in the ultimate analysis, one's cause of action shall succeed or fail on the basis of the superiority of his evidence, taking into account the burden of proof assigned on each party and the *quantum* of evidence required by the circumstances. So it must be with ill-gotten wealth recovery cases,

Insofar as the disputed PLDT shares in underlying **Civil Case No. 0002** are concerned, we agree with the holding of the respondent court that there is no satisfactory proof that they are indeed part of the "*ill-gotten wealth"* being recovered by the State. The case for petitioner Republic falls short to satisfy the standards set mainly in *BASECO*[93] to establish a finding of "ill-gotten wealth". We thus lend concurrence to respondent court's conclusion, that:

"Hence, a claim for recovery of properties alleged by the Republic to have been ill-gotten cannot proceed under the mere presumption that said properties are indeed ill-gotten. Before that characterization can be appended to the properties sought to (be) recovered, there must be proof of such claim. The characterization cannot arise on the basis of public notoriety. In the case at bar, the Republic failed to present the proof required to characterize the PLDT shares as ill-gotten. As a necessary consequence of this failure, its claim for recovery thereof cannot succeed." (at p. 41)

In amplification of the foregoing, I reiterate what I wrote in my "COMMENT" (Annex "A" hereof) to the DISSENTING (now

majority) OPINION of Justice Morales and my "REJOINDER" (Annex "B" hereof) to her reply to my comment.

WHEREFORE, I vote to **DENY**, for lack of merit, the instant petitions and to **AFFIRM** the assailed issuances of the Sandiganbayan (4th Division) in Civil Case No. 0002.

CANCIO C. GARCIA
Associate Justice

Footnotes

[1] Rollo (G.R. 150367), p. 564. An earlier resolution of November 19, 2001; Rollo (G.R. 150369), p. 564.] consolidated the petition in G.R. No. 150320 with the petition in G.R. No. 149802.

[2] EO 1 created the PCGG to assist the President in the recovery of vast government resources allegedly amassed by former Pres. Marcos, his immediate family, relatives and close associates; EO 2 asserted that ill-gotten assets are in the form of, among others, trust accounts and shares of stock, and EO 14, as amended, vested the Sandiganbayan exclusive & original jurisdiction over all cases of ill-gotten wealth.

[3] Penned by Justice Narciso S. Nario and concurred in by Justices Rodolfo Palatao and Nicodemo Ferrer; Rollo (G. R No. 153459), pp. 9- 81.

[4] Rollo (G.R. No. 150367), pp. 72 *et seq*.

[5] *Ibid.,* pp. 118 *et seq.*

[6] *Ibid.,* pp. 110 *et seq*.

[7] *Ibid*., pp. 124 *et seq.*

[8] *Ibid*., pp. 163-171.

[9] *Ibid.*, pp. 203 *et seq.*

[10] *Id.*, pp. 213 *et seq*.

[11] *Id.,* pp. 582 *et seq.*

[12] *Id.*, pp. 589 *et seq*.

[13] *Id*., pp. 420-432.

[14] Rollo (G.R. No. 150367), p. 222.

[15] *Ibid*., pp. 333-334.

[16] *Ibid*., pp. 318.

[17] *Ibid*., pp. 277 *et seq*.

[18] *Ibid.*, pp. 65-66.

[19] *Ibid*., pp. 68 *et seq.*

[20] *Ibid*., p. 71; In the same order, the trial court made reference to the manifestation of Cojuangco/PHI that, instead of presenting their witness on the witness stand, they are submitting the deposition of Mr. Campos, Atty. De Guzman and Atty. Mercado Ferrer as evidence.

[21] Annex "BB" and "CC", respectively, of the Petition in G.R. 153459.

[22] See Note No. 18, *supra*.

[23] See Note No. 19, *supra*.

[24] See Note No. 20, *supra*.

[25] Partial Decision, p. 17; See Note No. 3, *supra.*

[26] See Note No. 17, *supra*.

[27] Petition, G.R. No. 153459, p. 167.

[28] Reported in 344 SCRA 290.

[29] Rollo (G.R. No. 149802), pp**.** 106 et seq.

[30] *Ibid.*, pp. 90 *et seq*.

[31] *Id.*, pp. 100 *et seq*.

[32] *Id*., p. 58 *et seq*

[33] Sec. 8. Suspension of Actions.- The suspension of actions shall be governed by the provisions of the Civil Code. Article 2030 of the Civil Code provides for suspension of action: 1. If willingness to discuss a possible compromise is expressed by one of the parties; or 2. If it appears that one of the parties, before the commencement of the action or proceedings, offered to discuss a possible compromise but the other party refused the offer.

[34] Rollo (G.R. No. 149802), p. 61

[35] *Ibid*., pp.184-185; July 26 would later be included as intervenors' hearing date.

[36] Rollo (G.R. No. 150367), pp. 302 *et seq*.

[37] Rollo (G.R. No. 150320), pp. 78-79.

[38] Rollo (G.R. No. 149802), p. 61.

[39] See Note No. 37, *supra*.

[40] Rollo (G.R. No. 150320), p. 80.

[41] Rollo, (G.R. No. 153207), pp. 689-714.

[42] See Note No. 3, *supra*.

[43] 147 SCRA 334 [1987].

[44] As amended by SC Adm. Memo. No. 00-2-03-SC , September 1, 2000.

[45] 148 SCRA 280 [1987].

[46] 269 SCRA 334 [1999].

[47] *Litton Mills, Inc. vs. Galleon Trader, Inc*., 163 SCRA 489 [1988].

[48] *Butuan Bay Export Corp. vs. CA*, 97 SCRA 297 [1980].

[49] *Pure Foods Corp. vs. NLRC*, 171 SCRA 415 [1989].

[50] 393 SCRA 397, 402-403 [2002]

[51] 333 SCRA 465 [2000], citing *Espiritu vs. Solidum*, 52 SCRA 131[1973].

[52] *PNB vs. Donasco*, 7 SCRA 409 [1963].

[53] 34 Phil. 80, 96-97 [1916].

[54] *Republic [PCGG] vs. Sandiganbayan* [First Division], 258 SCRA 685 [1996].

[55] *Ynot vs. IAC*, 148 659 [1987], quoting Justice Felix Frankfurter.

[56] *David vs. Aquilisan*, 94 SCRA 707 [1979], citing other cases.

[57] *Alliance of Democratic Free Labor Organization vs. Laguesma*, 254 SCRA 565 [1996].

[58] 406 SCRA 575, citing *DBP vs. Court of Appeals*, 302 SCRA 362.

[59] *Stronghold Insurance Co. vs. CA*, 205 SCRA 605.

[60] *Acosta vs. People*, 5 SCRA 774 [1962].

[61] *Talabon vs. Iloilo Provincial Warden*, 78 Phil. 599 [1947].

[62] *Linis vs. Rovira*, 61 Phil. 137, 139 [1935] .

[63] *People vs. Maceda*, 188 SCRA 532 [1990]; *Perez vs. Perez*, 73 SCRA 517 [1976].

[64] See Note No. 54*, supra* .

[65] Sec. 17. No person shall be compelled to be a witness against himself.

[66] See Note No. 2*, supra*.

[67] *Villaflor vs. Summers*, 41 Phil. 62 [1921].

[68] 175 SCRA 216 [1989].

[69] 6 SCRA 1059 [1962].

[70] *Carcon Development Corp. vs. CA*, 180 SCRA 348 [1989].

[71] *Evadel Realty and Development Corporation vs. Soriano*, 357 SCRA 395 [2001].

[72] Rollo (G.R. No. 153207), pp. 1597 *et seq*.

[73] *Yasay vs. Desierto*, 300 SCRA 494 [1998], citing *Reyes vs. Comelec*, 254 SCRA 514 [1996]; *People vs. Almendras, et al*., 401 SCRA 555, 571 [2003].

[74] 150 SCRA 181 [1987].

[75] *Silverio vs. PCGG*, 155 SCRA 60 [1987]; *Republic vs. Sandiganbayan*, 240 SCRA 376 [1987].

[76] See Note No. 3*, supra*.

[77] Petition, G.R. No. 150459, pp. 41-42.

[78] See Note No. 2, *supra*.

[79] Petition, G.R. No. 153459, p. 61.

[80] Exhibit "MMM"; Rollo (153459) pp. 549 *et seq*.

[81] Transcript, EXHIBIT ZZZ to ZZZ-1-N.

[82] TSN, pp. 14 to 19, EXHIBIT "000-4"; Rollo (G.R. No.153459), pp. 1679-1685.

[83] *Ibid.*, pp. 1709-1710.

[84] Rollo (G.R. No. 153207), pp. 1323 *et seq*.

[85] *Santiago vs. De los Santos*, 61 SCRA 146 [1974].

[86] Rollo (G.R. No. 153459), p. 1716.

[87] *Ibid*., p. 1717.

[88] SEC. 27. Public record of a private document.- An authorized public record of a private document may be proved

by the original record, or by a copy thereof, attested by the legal custodian of the record, with an appropriate certificate that such officer has the custody.

89 Herrera, REMEDIAL LAW, Vol. VI, 99 ed., p. 229.

90 269 SCRA 316 [1999], See Note No. 46.

91 406 SCRA 190 [2003].

92 177 SCRA 668 [1989].

93 See Note No. 74, *supra*.