

was favorably ruled upon by this Court when it resolved to admit¹⁰² the prosecution's Consolidated Formal Offer of Documentary Evidence filed on December 3, 2015, there being no opposition from the accused.¹⁰³

Culled from these evidence, testimonial and documentary, hereunder is the Court's determination of the presence or absence of the element of 'pecuniary interest' of Ms. Marcos, in any business, contract or transaction relating to each of the foundations and entities subject of the instant cases.

**Criminal Case No. 17287
(Maler Foundation)**

Here, the financial and pecuniary interest of the accused in Maler Foundation is undoubtedly established.

The Rules and Regulations of then Maler Establishment signed by Ferdinand and Imelda Marcos on October 19, 1968,¹⁰⁴ states among others, that:

"Art. 1. During their lifetime, Mr. Ferdinand E. Marcos or Ms. Imelda R. Marcos will have sole and full right of disposal on 50% each of the aforementioned assets, it being understood that all their orders are to be given to Maler Establishment c/o Swiss Bank Corporation."

Having the full right of disposal of Maler Establishment, Ms. Marcos participated directly or indirectly, in the management of the affairs of the said Establishment. Evidence shows that Mr. Ferdinand and Ms. Imelda Marcos appointed Dr. Andre Barbey and Jean Louis Sunier as attorneys of the company and as administrator and manager of all assets of Maler Establishment, which according to them "we have just bought from Swiss Bank Corporation, Geneva." This is shown in a Letter the Marcos couple signed dated October 19, 1968 addressed to Messrs. Andre Barbey and Jean Louis Sunnier c/o Swiss Bank Corporation, Geneva.¹⁰⁵

In a separate Letter of same date, October 19, 1968, signed by the Marcos couple and addressed to "Maler Establishment c/o Swiss Bank Corporation Geneva,"¹⁰⁶ it was stated –

With reference to the Rules and Regulations addressed today to your company, please note that all instructions to be transmitted to you in the future will be signed with the word **John Lewis** as per specimen given on this letter. These instructions will have to be

¹⁰² Minutes of the Proceedings held on March 14, 2016, Records, Vol. 11, p. 389

¹⁰³ Records, Vol. 11, p. 273

¹⁰⁴ Exhibit "J"-Maler

¹⁰⁵ Exhibit "G"-Maler

¹⁰⁶ Exhibit "I"-Maler

given by letter, it being understood that the word John Lewis will be put at the very end of the message. We expressly declare that this word John Lewis will have the same values as our own personal signature and that full discharge for all responsibility will be given to you for the operations ordered under this name."

Ms. Marcos also mentioned in a Letter signed by her dated October 19, 1968 addressed to "Maler Establishment c/o Swiss Bank Corporation" that:¹⁰⁷

"With reference to the assets we have deposited under No. 134.240 G.M. in the name of your company with Swiss Bank Corporation, Geneva, we wish to confirm the validity of the Rules and Regulations signed today by us. We further declare that each one of us has a 50% right of ownership on these assets."

While Maler Establishment was created on February 5, 1962, at the time when Ms. Marcos was not yet a public officer, evidence shows that Ms. Marcos continued to have her financial interest in the said establishment, and had control over the disposition thereof. In fact, on November 17, 1981 it was converted to Maler Foundation, increasing its capital to SFr 30,000 via a Decision/Resolution of the "*The legal owner, legal founder,*" SEDES Trust Company, and appointing Dr. Karlheinz Ritter as Board of the foundation authorized to sign individually.¹⁰⁸ The Articles of Incorporation of Maler Foundation was registered on November 17, 1981,¹⁰⁹ which appears to be the same Articles applied to Maler Establishment registered on February 5, 1962. On February 28, 1984, Maler Foundation transferred the power of attorney for the management of its assets maintained in SBC to Suntrust Investment Co., S.A. under Account 98.929 N.Y Vaduz Liechteinstein, Geneva,¹¹⁰ and under Account 254.508 B.T. Vaduz-Lienchteinstein, Geneva of February 28, 1984.¹¹¹

Circumstantial evidence also shows Ms. Marcos' disposition of the finances of Maler Foundation. In Jaime Lay'a Memorandum to Ms. Marcos dated October 21, 1983,¹¹² he asked for help from Ms. Marcos to look for investment in the US dollar treasury notes issue of the Philippines. As a response, Ms. Marcos wrote solicitation letters to various businessmen,¹¹³ which allegedly was taken by the Marcos' Swiss foundations as instruction for them to invest in US dollar denominated notes issue of the Philippines. Placements then came in, including those from (1) Bank Hofmann, Zurich-

¹⁰⁷ Exhibit "H"-Maler

¹⁰⁸ Exhibit "O(t)"-Maler.

¹⁰⁹ Exhibit "P(t)"-Maler.

¹¹⁰ Exhibit "R"-Maler

¹¹¹ Exhibit "R-2"-Maler.

¹¹² Exhibit "W-2"-Maler, "W-3"-Maler

¹¹³ Exhibit "S"-Maler

US\$50M (2) SBC-Geneva-US\$10M, and (3) Paribas-Geneva-US\$15M, all under the name of *Roberto Benedicto*, as shown by the (1) Sales Report of the Central Bank of the Philippines on the US\$ Denominated Treasury Notes as of October 4, 1983.¹¹⁴ (2) the Memorandum of Jaime Laya dated October 21, 1983 to Mr. and Ms. Marcos regarding the status of dollar treasury notes indicating the investment of Roberto Benedicto in the amount of US\$75M,¹¹⁵ and (3) another Sales Report of CB as of November 14, 1983 indicating said placement of Roberto Benedicto.¹¹⁶

Maler's investment in the US\$ Treasury Notes appears to be through its account with SBC, Geneva (which had four accounts- 254508-BT for Maler I Foundation and CO-94.678-SB for Maler II Establishment; at the early stage, its account number was CO-134-240-GM and 98929-NY, respectively) shown in the series of Subscription Statements or movement of capital in these accounts.¹¹⁷ These investments earned profits as shown in the (1) Memorandum of the CB Treasury Department dated June 13, 1984¹¹⁸ crediting interests due on June 15, 1984 on US\$ Treasury Notes issued on September 21, 1983 to Bank Hofmann, Zurich (re its placement of US\$50M) and SBC Corporation (re its placement of US\$10M), and in the (2) Memorandum of CB Government Securities Department to the CB Treasury Office re: payment of interest due December 17, 1984.¹¹⁹ Ms. Marcos' interests in the treasury notes investments is shown by her act of directly monitoring its progress.¹²⁰

**Criminal Case No.17288
("Trinidad Foundation")**

Similar to Maler Foundation, the financial and pecuniary interest of Ms. Marcos in Trinidad Foundation is evident.

Documentary evidence shows that **Trinidad Foundation** was established and managed by Ms. Marcos in Switzerland through her appointed trustees. On August 26, 1970, in Vaduz, Ms. Marcos issued and signed a written Mandate to Mr. Markus Geel to arrange with a Liechtenstein lawyer to establish Trinidad for the account of Ms. Marcos marked as *Exhibit "D"-Trinidad*. It states:

¹¹⁴ Exhibit "W"-Maler;

¹¹⁵ Exhibit "W-2"-Maler and "W-3-Maler,"

¹¹⁶ Exhibit "W-4"-Maler.

¹¹⁷ Exhibits "X"-Maler and series, "V"-Maler and series

¹¹⁸ Exhibit "W-5"-Maler

¹¹⁹ Exhibit "V"-Maler.

¹²⁰ Exhibits "U"-Maler and "W"-Maler.

"I kindly request you to arrange with a Liechtenstein lawyer or company of your choice for my account and under my personal responsibility the creation of a foundation in Liechtenstein, having its domicile in Triesenberg. The name of the Foundation shall be

TRINIDAD FOUNDATION

I have approved the By-laws and regulations of the foundation and beg you to appoint as Trustees the following persons:

Mr. C.W. Fessler
Mr. E. Scheller
Dr. Otto A. Tondury

I finally instruct you to fully pay the capital of the Foundation, amounting to Sw.Fr.100'000—and to debit my account with this sum as well as with all your expenses in connection with the creation of the Foundation included a remuneration for your services.

Yours faithfully,

Imelda Romualdez Marcos (sgd)

The Statutes of Trinidad Foundation of August 28, 1970 signed by Ms. Marcos¹²¹ shows that it had for its purpose "*the investment and administration of the Foundation's assets and the utilization of the capital and interest in favor of the persons specified in separate Regulations.*" In the Regulations of Trinidad Foundation dated August 28, 1970 signed by both Markus Geel and Ms. Marcos in Zurich,¹²² Ms. Marcos was named as the first beneficiary during her lifetime while her children, Imelda (Imee), Ferdinand Jr. (Bongbong) and Irene were named as second beneficiaries in equal shares. The "Agreement" of even date¹²³ was signed by and between Ms. Marcos and Mr. Markus Geel constituting a mandator/mandatory relationship pertinent to Trinidad Foundation, whereby Mr. Geel as mandatory would act in conformity with the instructions given by Ms. Marcos, as mandatory. Ms. Marcos' financial interest and participation in the management of Trinidad Foundation are also shown in another Agreement between Ms. Marcos, as mandator, and Mr. C Walter Fessler/Mr. Ernest Scheller, as mandatary, dated August 28, 1970.¹²⁴

¹²¹ Exhibit "E"-Trinidad

¹²² Exhibit "F" to "F-3"-Trinidad

¹²³ Exhibit "G"-Trinidad

¹²⁴ Exhibit "H"-Trinidad

Again, while Trinidad Foundation was created at the time when Ms. Marcos was not yet a public officer, she maintained her financial interests therein and continued to managed its affairs up to its dissolution.

In a Letter signed by Ms. Marcos to the Board of Trustees of Trinidad Foundation dated March 10, 1981,¹²⁵ she instructed it to remit to Bank Hofmann, Zurich, "all assets, securities, time deposits and balances presently held in Trinidad Foundation, as a final distribution of Trinidad Foundation, which is to be liquidated thereafter," in favor of Fides Trust Company, Zurich, for the account "*Reference Dido*". She wrote—

"I have taken note of the accounts and of the investments as well as of the activities of Trinidad Foundation regarding the period from its constitution up to this date.

I approve the accounts and all additional statements without any reservation, and I release the executives and officers as well as all other persons who took part in the management of the company's affairs or in the administration of the company's assets for their activities during this period."

Yours faithfully,

Imelda Romualdez Marcos (sgd)

Prior to Trinidad's dissolution in accordance with the foregoing directive of Ms. Marcos, various Credit and Debit Advices and Statements of Accounts pertaining to Trinidad Foundation show the movement of capital of the said foundation.¹²⁶ As certified to by the Office of the Public Register/Record Vaduz dated August 12, 1981,¹²⁷ Trinidad Foundation was accordingly dissolved in line with the decision/resolution of the Board of the foundation dated August 3, 1981.

Criminal Case No. 17289 ("Rayby Foundation")

The financial interest of Ms. Marcos over Rayby Foundation is also apparent from the documents presented by the prosecution.

Primarily, in an undated Letter signed by Ms. Marcos addressed to Mr. Theo Bertheau,¹²⁸ she mandated the latter to establish Rayby Foundation with a note that its capitalization and costs be debited against the account of Trinidad Foundation. She stated:

¹²⁵ Exhibit "I"-Trinidad,

¹²⁶ Exhibits "K" to "YY"-Trinidad

¹²⁷ Exhibit "J"-Trinidad,

¹²⁸ Exhibit "C"- Rayby

"I kindly request you to arrange through an appropriate Liechtenstein intermediary for my account and under my personal responsibility the creation of a Foundation in Liechtenstein, having domicile in Vaduz. The name of the foundation shall be

RAYBY- FOUNDATION

I have approved the By-laws; a copy of them, signed by me, is attached hereto. Please take care that the following gentlemen are appointed as members of the Foundation's Council"

1. Mr. C. W. Fessler
2. Mr. E. Scheller
3. Mr. F. W. Schweizer

I further instruct you to fully pay the capital of the Foundation, amounting to Sw.Frs 100'000--, and to debit the US-Dollar account of Trinidad foundation with this sum as well as with all your expenses and fees in connection with the creation of the captioned Foundation. Moreover, I request you to transfer securities for the equivalent of US-dollar 1 Mil. From the safekeeping account of Trinidad Foundation to a new safekeeping account in the name of the new Foundation.

Yours faithfully,

Imelda Romualdez Marcos (sgd)

The certifications issued by the District Court Chancery of Liechtenstein Vaduz dated June 22, 1973¹²⁹ and July 2, 1973¹³⁰ confirm the establishment of Rayby Foundation on June 22, 1973 with the same personalities - Fessler, Sheller and Ritter as members of the Board of Directors, and FW Schweizer as additional director.

In the Agreement of June 22, 1973 signed by and between Ms. Marcos and Mr. Theo Bertheau,¹³¹ Ms. Marcos as mandator constituted Mr. Bertheau as mandatary, who had the following function, viz:

"x x x undertakes to exercise the functions of the founder only in accordance with such instructions as he may receive from the mandatory in person or from an intermediary duly introduced by written power of attorney."

As mandator, Ms. Marcos in the same Agreement undertook the following, viz:

¹²⁹ Exhibit "D(t)" -Rayby

¹³⁰ Exhibit "E(t)" -Rayby

¹³¹ Exhibit "F" -Rayby

" x x x assumes full responsibility for all the acts and dispositions of the mandatory deriving from the mandate x x x."

Another agreement with similar provisions was signed on June 22, 1973 between Ms. Marcos, as mandator, and Mr. C.W. Fessler, Mr. E. Scheller, Mr. F.W. Schweizer, as mandataries who were staff members of Swiss Credit Bank.¹³² The By-laws of Rayby Foundation marked as *Exhibit "H"-Rayby*, was signed by Ms. Marcos. Article 7 thereof shows the extent of control of Ms. Marcos over Rayby Foundation via its "founder", to wit:

"The founder is authorized to amend or modify the Deed of foundation or these By-laws and to issue supplementary provisions to these by-laws in the form of Regulations.

He appoints the beneficiaries and decides the extent of their benefit.

He appoints and removes the members of the Foundation's Council.

He is authorized to dissolve the Foundation.

The founder may transfer all these powers to a third party whom he designates in a Deed of Appointment. The third party has the right to further transfer the powers on other persons.

X x x"

Ms. Marcos' pecuniary interest in Rayby Foundation is further shown in the Regulations of Rayby Foundation dated June 22, 1973¹³³ signed by Mr. Theo Bertheau, whereby the latter designated Ms. Marcos as its "first and only beneficiary x x x during her lifetime."

It appears that Rayby Foundation was created to where the assets of Trinidad Foundation would be transferred. The transfer did not take place because on March 10, 1981, in Manila, Ms. Marcos signed and issued a written order to the Board of Trustees of Rayby, thru a Letter¹³⁴ directing the transfer to Trinidad Foundation, for its account with Credit Suisse, Zurich (SKA) any assets and balances held by Rayby, and to subsequently liquidate Rayby. Correlatively on even date, Ms. Marcos ordered the Board of Trinidad Foundation to dissolve Rayby and transfer all its assets to Bank of Hofmann in favor of Fides Trust Co. under the account "*Reference Dido*".¹³⁵ In accordance therewith, SKA issued Debit Advice on June 12, 1981 debiting the amount of SFR 8,572.50 from Rayby Foundation G 19 Current Account 403031-01,¹³⁶ and crediting on the same day SFR 8,572.50 to Trinidad

¹³² Exhibit "G"-Rayby

¹³³ Exhibit "I"-Rayby

¹³⁴ Exhibit "J"-Rayby

¹³⁵ Exhibit "I"-Trinidad.

¹³⁶ Exhibit "K"-Rayby



Foundation G 19 Current Account 463498-41.¹³⁷ In accordance with the aforesaid directive of Ms. Marcos, Rayby Foundation was dissolved on April 6, 1981, as shown in the Certification from the Office of the Public Register, Vaduz.¹³⁸

Ms. Marcos' hand in the establishment, control and dissolution of Rayby Foundation, as borne by the foregoing documentary evidence, highly sustains her pecuniary interest in the said foundation.

Criminal Case No. 172890
(“Palmy Foundation”)

The documents presented pertinent to Palmy Foundation, woven together, likewise prove that it belongs to Ms. Marcos.

The Certification of Public Registry Office, Vaduz dated March 19, 2002¹³⁹ shows that Palmy Foundation was created on May 13, 1981, whereby the following persons were given the “joint authority to sign,” viz: Dr. Ivo Beck, and Limag Management & Administration AG, Vaduz, while “Gestionsanstalt, Vaduz” was authorized as legal representative. *Exhibit “D” and “E”-Palmy* shows that on September 10, 1981, Palmy Foundation, represented by Limag Management, entered into a Contract for the opening of an account and/or safekeeping account with Credit Suisse (Swiss Credit Bank) to be credited in the name *Palmy Stiftung Vaduz G9* with all its correspondence pertinent to the said account to be mailed to Fides Trust Co., a member of the Board of Directors of Palmy Foundation. Ms. Marcos’ financial interests in Palmy is circumstantially linked to her earlier order shown in *Exhibit “I”-Trinidad*, directing Trinidad Foundation to dissolve Rayby Foundation and transfer all its assets to Bank of Hofmann in favor of Fides Trust Co. under the account “Reference Dido.” In the handwritten letter dated November 27, 1981 of Ferdinand Marcos to the Board of Trustees of Avertina Foundation,¹⁴⁰ an instruction was given for the latter to place US\$2M at the disposal of Imelda Marcos, who in turn, ordered that the said amount be credited to Palmy Foundation.

It is worth noting that in a Decision rendered by Magistrate Peter Cosandey dated December 6, 1989 marked as *Exhibits “Z” and “Z(t)-Palmy*, Palmy Foundation was one of the subjects of the *Petition for Legal Assistance* by the Philippine Government filed on April 7, 1986 by its

¹³⁷ Exhibit “L”-Rayby

¹³⁸ Exhibit “M(t)”-Rayby

¹³⁹ Exhibit “I(t)”-Palmy

¹⁴⁰ Exhibit “CC”-Palmy



hired legal counsels - Fontanet and Salvioni. The pertinent portions of said Decision states that –

“x x x

The Palmy Foundation was established on May 13, 1981 in Vaduz (Doc. No. 24007). Atty. Ivo Beck of Vaduz and the LIMAG Management and Administrative Corporation of Vaduz were named members of the Foundation's Board of Trustees. The account was officially opened with Credit Suisse on September 10, 1981. (Doc. No. 24000-24004). The beneficial owner of the foundation was not made known to the bank since the Fides Trust Company acted as fiduciary (Doc. No. 24005-24006).

“The records available at the Credit Suisse do not show who the beneficial owner of the Palmy Foundation is. However, when one compares the listing of the securities in the safe deposit register of Trinidad Foundation as of December 31, 1981 (Doc. No. 24229-24233), one can clearly see that practically the same securities are listed. This can likewise be observed with the rest of the foundations under new names. Under the circumstances, it is certain that Palmy Foundation is the beneficial successor of the Trinidad foundation. [underscoring supplied]

“It is clearly seen from the documents cited above that all three foundations named belong to Imelda Marcos and from at least a quasi-legal and financial entity, which justifies ruling on the further use of the bank documents and the assets of the foundations in a single unified Order.

“b) The Palmy Foundation at the very least is directly connected to the Petition for Legal Assistance. It is named in the Petition and in the Memorandum of the Legal Counsels Fontanet and Salvioni dated April 25, 1986 (act.2.3.2. Clause 58). It is also one of the subjects of the failed partial release of assets in July 1986. Further mention is made of the Palmy Foundation, among others, in the Preliminary Report on the Marcos Accounts in Switzerland submitted by the Financial Monitoring Team on May 23, 1988 (act. 2.3.76), where it is stated in the appendix, that this Foundation is under the direct and sole beneficial ownership of Imelda Marcos.”

As stated earlier, the Decision of Zurich Magistrate Cosandey dated December 6, 1989 ruled in favor of the Philippine Government and the appeal therefrom to Swiss Federal Supreme Court by the Marcoses was denied in a Sentence of the Swiss Federal Court dated December 21, 1990.

By and large, any doubt on Ms. Marcos' interest in Palmy is obliterated by a “Declaration” dated April 11, 1989¹⁴¹ of Dr. Ivo Beck, who was given the authority to sign for Palmy Foundation, stating that the beneficial owner of Palmy Foundation, holder of Account No. 391528 was Ms. Imelda Marcos

¹⁴¹ Exhibit “DD”-Palmy



of Malacañang, Manila, Philippines. Another document signed by G. Raber dated September 30, 1988, marked as *Exhibit "EE"-Palmy* shows that Palmy, holder of Account No. 391528-9 was owned by the "Marcos Familie."

This evidence clearly leads to the inevitable conclusion of Ms. Marcos' pecuniary interest in Palmy foundation.

**Criminal Cases Nos. 17291 ("Asian Reliability Loan")
and 19225 ("Asian Reliability Company, Inc.")**

The facts underlying these two (2) cases are intertwined, thus, the alleged pecuniary interest of Ms. Marcos in Asian Reliability Company, Inc.(ARCI) and in the loans applied for by ARCI, the subject of these cases, shall be jointly discussed.

In Criminal Case No. 19225, Ms. Marcos allegedly had financial interest in the said corporation as part owner thereof, which she acquired sometime in 1980, while in Criminal Case No. 17291, Ms. Marcos purportedly intervened in the opening, managing, and/or administering its business venture by securing and recommending the approval of Central Bank Governor Jaime C. Laya for ARCI's applied \$25M loan for its semiconductor projects guaranteed by the Philippine Guarantee Corporation (PHILGUARANTEE).

Although nothing from the record shows that the said local corporation was registered in the name of Ms. Marcos, her beneficial ownership as part owner of ARCI is circumstantially shown by the fact that Mr. and Ms. Marcos have been regularly consulted and briefed of the operations of ARCI, made aware of the profitability of its business projects, and even informed them of the management disputes within ARCI, *viz*:

1. Letter to Ferdinand Marcos dated January 5, 1984 penned by Antonio Garcia, President of Dynetics Corporation where ARCI owns interest, reporting on the intra-corporate dispute in Dynetics and where it was stated that Vicente Chuidian holds the voting trust of and represents the Marcoses in Dynetics thru ARCI, marked as Exhibit "D."
 2. Memorandum of Vicente Chuidian to Ferdinand Marcos dated January 18, 1984 which was routed to accused Imelda in her capacity as Minister of Human Settlements; Chuidian claims to have personally spoken to Ms. Marcos who instructed him to brief Ferdinand of their electronic business, ARCI's revised overall financial plan and financial picture of Dynetics, as Exhibit "E."
 3. Letter to Imelda Marcos of Chuidian dated January 31, 1984 reporting on what he referred to as "*our electronic business*" as Exhibit "F" (ARCI);
- J
I
N

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4. Letter to Ferdinand Marcos by Chuidian dated June 26, 1984 reporting on ARCI business, as Exhibit "G" (ARCI);
 5. Typewritten translation of the marginal note of Ferdinand on the Memorandum of Cesar Virata, former Prime Minister dated September 27, 1985, as Exhibit "J" to "J-4" (ARCI).

The pecuniary interest of the Marcoses in ARCI is sustained by witness Rosendo Bondoc, Acting President of Philguarantee who stood as its representative in ARCI's Board. In the Transcript of Stenographic Notes¹⁴² of hearing before the PCGG held on June 5, 1986 involving Bondoc, he stated that he knew of the electronics business of the "highest authority" referring to Mr. and Ms. Marcos, and that he talked personally with Mr. Ferdinand Marcos on ARCI. He knew of the estimated cost of the electronic project of ARCI and of Philguarantee's case against Chuidian because of the incurred losses of the government on ARCI's loan. And that he was told by Ms. Marcos not to resign from Philguarantee.

In his testimony and Affidavit¹⁴³ dated February 20, 1992, Cesar Virata corroborated the testimony of Rosendo Bondoc concerning the financial interest of Ferdinand and Imelda Marcos on the conduct of business of ARCI and Dynetics. Victor Macalincag, Treasurer of the Republic of the Philippines, also testified on his Affidavit¹⁴⁴ dated February 20, 1992 substantiating Virata's testimony. They executed a Joint Supplemental Affidavit¹⁴⁵ dated April 22, 1992 affirming the discretion and supervision of Ferdinand Marcos over the affairs of ARCI and Philguarantee. By logical assumption from the foregoing evidence, Mr. and Ms. Marcos, to whom the registered officers of ARCI regularly reported to as regards ARCI operations and profitability, undoubtedly had beneficial interests in ARCI.

Corollary thereto, Ms. Marcos' intervention in facilitating and securing from the Central Bank of the Philippines, thru then Governor Jaime C. Laya, the grant of ARCI's applied US\$25M loan for its electronic projects guaranteed by the Philguarantee, is necessarily tainted by some pecuniary interests. Proof of said intervention consists of the Letter dated August 3, 1982 of Vicente Chuidian to Jaime Laya,¹⁴⁶ bearing Ms. Marcos' marginal note who wrote:

*"To Gov. Laya, We refer for your approval. Thank you,
[signed] Imelda Marcos;"*

(sgd) Imelda Marcos



¹⁴² Exhibit "K" (ARCI)

¹⁴³ Exhibit "L" (ARCI) and Exhibit "MM" (ARCI);

¹⁴⁴ Exhibit "M" (ARCI)

¹⁴⁵ Exhibit "N" (ARCI)

¹⁴⁶ Exhibit "A" (ARCI)

Proving a similar point is the Memorandum¹⁴⁷ of Chuidian to Guillermo Soliven, Special Assistant to CB Governor dated July 14, 1983 also bearing Ms. Marcos' marginal note, which states:

*"Gov. J. Laya, I highly recommend the approval of this proposal vital to our development program. Thank you. [signed]
Imelda R. Marcos July 30, 1983"*

(sgd) Imelda Marcos

On this score, the Court is more than convinced of Ms. Marcos' pecuniary interest in ARCI, who intervened in facilitating the grant of ARCI's applied loan from the Central Bank. This is corroborated by the affirmative testimonies of witnesses Laya, Virata and Macalincag, which are credible, they being competent officers who were privy to the subject transactions of Ms. Marcos relating to ARCI, and who were not shown to have any motive to perjure.

Notably, when confronted with these allegations and evidence, Ms. Marcos chose to remain silent and did not even testify. This is contrary to the actuation of an innocent person who normally would stand and rise up to his defense when challenged by incriminating assertions as in these cases.

**Criminal Case No. 22867
("Azio-Verzo-Vibur Foundations")**

**Criminal Case No. 22869
("Avertina Foundation comprised of
two (2) groups of foundations –
[1] Xandy/Wintrop Foundations and
[2] Charis/Scolari/Valamo/ Spinus Foundations")**

Ms. Marcos' pecuniary interest in these foundations are herein discussed jointly, considering that by evidence, the creation and collapse of the aforementioned foundations subject of Criminal Cases Nos. 22867 and 22869 appear to be interrelated.

The *Informations* for these cases basically allege that Ms. Marcos had direct or indirect financial interests, and participated in the management of the abovementioned foundations, which she and her husband utilized as a conduit in the funneling of ill-gotten wealth, by opening and maintaining bank accounts with SKA or Credit Swiss Bank or Swiss Credit Bank Corporation

¹⁴⁷ Exhibit "B" (ARCI)

J
N

(SBC) in the name of these foundations for the benefit of Ms. Marcos, her late husband Ferdinand, and their children.

Mr. Marcos' pecuniary interest in these foundations is evident from the documents, where she was categorically shown to have employed the same pattern of intervention she and her husband perpetrated in the management of Maler, Trinidad, Rayby and Palmy foundations, for the benefit of the Marcos family.

A trace back of documents reveal that **Vibur Foundation** was former **Verzo Foundation**, which in turn was previously named **Azio Foundation**.

On June 11, 1971, Mr. Marcos requested Dr. Theo Bertheau for the creation of **Azio Foundation** in Vaduz.¹⁴⁸ Mr. Marcos executed a Power of Attorney¹⁴⁹ appointing Roberto S. Benedicto as his attorney-in-fact with respect to Azio Foundation. In the Regulations of Azio dated June 11, 1971 signed by Mr. Marcos in Manila,¹⁵⁰ he named himself as the first beneficiary of Azio and the "*Marcos Foundation, Inc., Manila*" as the second beneficiary. Dr. Theo Bertheau accordingly signed and issued in Zurich on June 23, 1971 the said Regulations¹⁵¹ bearing the instruction of Mr. Marcos. Later, in his handwritten Letter dated November 12, 1971,¹⁵² Mr. Marcos ordered Azio Foundation to name Austraphil PTY Ltd. Co. as the first and only beneficiary of Azio Foundation, which Dr. Theo Bertheau followed by signing the Regulations of Azio in Zurich dated December 14, 1971¹⁵³ bearing the same directive of Mr. Marcos.

In a handwritten Letter signed by Mr. Marcos dated December 14, 1971,¹⁵⁴ he canceled the existing Regulations of Azio and named **Charis Foundation** as first and only beneficiary. This is also shown in Azio's Regulations signed by Dr. Theo Bertheau dated December 4, 1972.¹⁵⁵

In the Resolution of the Legal Founder of Azio dated August 29, 1978,¹⁵⁶ the company name of **Azio Foundation** was changed to **Verzo Foundation**.¹⁵⁷ Dr. Helmuth M. Merlin, Walter C. Fessler and Ernst Sheller were authorized to sign and issue orders for Verzo Foundation.¹⁵⁸ The Letter of Mr. Marcos to Verzo's Board of Directors dated March 11, 1981

¹⁴⁸ Letter dated June 11, 1971 as Exhibit "F"-Vibur-Avertina

¹⁴⁹ Exhibit "G"-Vibur-Avertina

¹⁵⁰ Exhibit "I"-Vibur-Avertina

¹⁵¹ Exhibit "J"-Vibur-Avertina

¹⁵² Exhibit "K"-Vibur-Avertina

¹⁵³ Exhibit "L"-Vibur-Avertina

¹⁵⁴ Exhibit "M"-Vibur-Avertina

¹⁵⁵ Exhibit "N"-Vibur-Avertina

¹⁵⁶ Exhibit "O(t)" -Vibur-Avertina

¹⁵⁷ Exhibit "O(t)" -Vibur-Avertina

¹⁵⁸ Exhibit "P(t)" -Vibur-Avertina.

requested to remit all assets, securities, time deposits and balances of Verzo to Bank Hofmann AG Zurich in favor of Fides Trust Company Zurich.¹⁵⁹

The Office of the Public Register, Vaduz certified ¹⁶⁰ that **Vibur Foundation** was registered in Vaduz on May 13, 1981 with Dr. Ivo Beck and Limag Management as its Board members. The Board opened an account in Credit Suisse Bank via a Contract dated September 10, 1981.¹⁶¹ As shown earlier, Dr. Ivo Beck, and Limag Management were the same signing authorities relative to Palmy Foundation account¹⁶² in which Ms. Marcos had financial interest. Fiduciary time deposits and deposit of securities of **Vibur Foundation** were also arranged on September 10, 1981 and September 12, 1981.¹⁶³ On March 18, 1986, **Vibur Foundation** was dissolved in a Resolution of its Board signed by Dr. Ivo Beck on behalf of Limag Management.¹⁶⁴ In the "Declaration" for opening an account or securities account no. 467857-5 of Vibur Foundation dated April 11, 1989 signed by Dr. Ivo Beck, it named Ferdinand Marcos as beneficial owner.¹⁶⁵ The "Classification Note: Confidential" signed by G. Raber on behalf of Vibur Foundation, dated September 30, 1988, reference to said account no. 467857-5 named **Marcos Family** as the owner.¹⁶⁶

From the foregoing, the pecuniary interest of Ms. Marcos in **Vibur Foundation** has sufficient documentary basis. Her financial interests in Vibur is categorically shown in the handwritten letter of Mr. Marcos¹⁶⁷ addressed to Credit Suisse, Zurich, where he ordered the closure of accounts of Vibur with Suisse Credit Bank and transfer its assets to:

"Xandy Foundation:

Mrs. Jane Ryan
Mr. William Saunders
Mr. Ferdinand E. Marcos"

Basically, the names "**William Saunders**" and "**Jane Ryan**" under Xandy Foundation referred to Ferdinand Marcos and Imelda Marcos, respectively. It was shown that earlier contracts and documents executed and signed by Mr. Marcos and Ms. Marcos in 1968 for the opening of current

¹⁵⁹ Exhibit "Q"-Vibur-Avertina.

¹⁶⁰ Exhibits "R(t)"-Vibur-Avertina

¹⁶¹ Exhibit "S"-Vibur-Avertina; Exhibit "S-7"-Vibur-Avertina.

¹⁶² Exhibit "I(t)"-Palmy

¹⁶³ Exhibits "S-9" and "T"-Vibur-Avertina

¹⁶⁴ Exhibit "W-(t)"-Vibur-Avertina.

¹⁶⁵ Exhibit "Z"-Vibur-Avertina

¹⁶⁶ Exhibit "AA(t)"-Vibur-Avertina

¹⁶⁷ Exhibits "HH"-Vibur-Avertina."

account/safe custody with Credit Suisse used said pseudonyms.¹⁶⁸ Ms. Marcos as "Jane Ryan" constituted Mr. Marcos as her lawful attorney to represent her in Swiss Credit Bank as per Power of Attorney dated March 21, 1968.¹⁶⁹

On the other hand, it was Mr. Marcos and Ms. Marcos thru their Letter¹⁷⁰ to Mr. Markus Geel dated March 3, 1970, who instructed the creation of **Xandy Foundation**. The Letter states:

Dear Sir,

I kindly request you to arrange with a Liechtenstein lawyer or company of your choice for my account and under my personal responsibility the creation of a Foundation in Liechtenstein, having its domicile in Vaduz. The name of the Foundation shall be SANDY FOUNDATION

I have approved the By-laws and regulations of the Foundation and beg you to appoint as Trustees the following persons:

Mr. C. W. Fessler
Mr. C. Souviron
Mr. E. Sheller

I finally instruct you to fully pay the capital of the Foundation, amounting to Sw.Fr. 100'000. - and to debit my account with this sum as well as with all your expenses in connection with the creation of the Foundation included a remuneration for your services.

Yours faithfully,

(sgd) Ferdinand E. Marcos
(sgd) Imelda R. Marcos

Mr. and Ms. Marcos prepared and signed the handwritten "Regulations of Sandy Foundation" dated February 13, 1970¹⁷¹ where the said spouses were named as the first beneficiaries, the surviving spouse as the second beneficiary and the Marcos children as the third beneficiaries. The typewritten version of the said Regulation was signed by Mr. Markus Geel.¹⁷²

Later, the company name of Xandy Foundation Vaduz was changed to **Wintrop Foundation**, Vaduz.¹⁷³ with C.W. Fessler, Dr. Helmuth Merlin, C. Souviron and E. Scheller as authorized signatories of Wintrop.¹⁷⁴ In their

¹⁶⁸ Exhibit "CC"-Vibur-Avertina; Exhibit "DD"-Vibur-Avertina; Exhibit "EE"-Vibur-Avertina; Exhibit "FF"-Vibur-Avertina; Exhibit "GG-6"

¹⁶⁹ Exhibit "GG" Vibur-Avertina.

¹⁷⁰ Exhibit "JJ"-Vibur-Avertina

¹⁷¹ Exhibit "KK"-Vibur-Avertina

¹⁷² Exhibit "LL"-Vibur-Avertina.

¹⁷³ Certification by the Office of Public Record Vaduz dated September 7, 1978 as Exhibit MM(t)-Vibur-Avertina

¹⁷⁴ Exhibit "NN"-Vibur-Avertina.

Letter to the Board of Trustees of Wintrop Foundation dated March 10, 1981,¹⁷⁵ Mr. and Ms. Marcos stated:

"Gentlemen:

We request you to kindly remit to
Bank Hofmann AG, Zurich
in favor of Fides Trust Company, Zurich
attn. Mr. Rychner
for account: "Reference Port, Rubrique R + Rubrique S
respectively", (sic)

all assets, securities, time deposits xxx presently held in Wintrop Foundation, x x x as a final distribution of Wintrop Foundation, which is to be liquidated thereafter.

We have taken note of the accounts and of the investments as well as of the activities of

WINTROP FOUNDATION

regarding the period from its constitution up to this date.

We approve the accounts and all additional statements without any reservation, and we release the executives and officers as well as all other persons who took part in the management of the company's affairs or in the administration of the company's assets for their activities during this period.

Yours very truly,
(sgd) Ferdinand Marcos
(sgd) Imelda Marcos"

Meanwhile, a Certification from Vaduz Public Register dated May 13, 1981 shows **Avertina Foundation** was registered with Dr. Ivo Beck in Vaduz and Limag Management as members of the Board.¹⁷⁶ It opened its account, safekeeping accounts, deposit of securities or renting of safety deposit box with Suisse Bank.¹⁷⁷ The beneficial owners of Avertina accounts were Ferdinand Marcos and Imelda Marcos, named in the "Declaration on opening an account or securities account" reference: 211925 dated April 11, 1989¹⁷⁸ by Dr. Ivo Beck, as representative of the account holder.

Along the same scheme of transferring accounts and assets from one foundation to another, Mr. Marcos wrote Dr. Theo Bertheau an undated letter¹⁷⁹ where he requested to arrange for the creation of **Charis Foundation**

¹⁷⁵ Exhibit "OO"-Vibur-Avertina

¹⁷⁶ Exhibit "PP(t)"-Vibur-Avertina

¹⁷⁷ Exhibits "QQ", "RR," "SS" "TT", "UU", "VV", "WW", "XX", "YY", "ZZ" and "AAA"-Vibur-Avertina.

¹⁷⁸ Exhibit "HHH"-Vibur-Avertina

¹⁷⁹ Exhibit "KKK"-Vibur- Avertina

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and to name C.W. Fessler, E. Scheller and Peter Ritter as members of the Board. The Agreement¹⁸⁰ was signed between Mr. Marcos as mandator, with C.W. Fessler and E. Scheller as mandataries of **Charis Foundation Zurich** dated November 12, 1971, which further constituted a special power of attorney in favor of Roberto Benedicto as his representative in the Council of Charis.¹⁸¹ In his hand printed regulation¹⁸² of Charis dated November 12, 1971 signed by Mr. Marcos, he named himself as first beneficiary and Xandy Foundation as second beneficiary. The Regulations of Charis issued in accordance therewith by Dr. Bertheau on December 30, 1971¹⁸³ named Mr. Marcos as first beneficiary and Xandy Foundation as second beneficiary.

The pattern of changing the names of the foundations continued, *viz*: (1) the company name of Charis Foundation was changed to **Scolari Foundation** on December 13, 1974 shown in the Certification of Liechtenstein, District Court Chancery¹⁸⁴ and the Certification by Public Register of Vaduz of even date.¹⁸⁵ Notably, the same personalities - C.W Fessler, Peter Ritter and E. Scheller - were constituted as members of the Board of Scolari.¹⁸⁶ (2) Scolari Foundation was renamed to **Velamo Foundation** on August 29, 1978¹⁸⁷ constituting the same C. Walter Fessler, Dr. Peter Ritter and Ernst Scheller as board members.¹⁸⁸ Mr. Marcos ordered on March 11, 1981 the latter's Board of Trustees for the remittance of all assets, securities, time deposits, balances held by Velamo to Bank Hofmann AG, Zurich in favor of Fides Trust Company, Zurich under account "Reference Omal."¹⁸⁹

It was also shown that **Spinus Foundation** was registered on May 13, 1981 per Certification of same date of the Office of Public Register Vaduz with familiar personalities, Dr. Ivo Beck and Limag Management, as Board members authorized to sign.¹⁹⁰ It opened an account or safekeeping account in Credit Suisse shown in a Contract dated September 10, 1981,¹⁹¹ with Special arrangements supplementing the contract dated September 10, 1981 and Letter of Special Instruction of Spinus to Credit Suisse for arrangement of fiduciary deposits.¹⁹² **Spinus Foundation** closed

¹⁸⁰ Exhibit "LLL"-Vibur-Avertina

¹⁸¹ Exhibit "MMM" and "PPP"-Vibur-Avertina

¹⁸² Exhibit "NNN"-Vibur-Avertina

¹⁸³ Exhibit "OOO"-Vibur-Avertina

¹⁸⁴ Exhibit "QQQ"-Vibur-Avertina & Exhibit "QQQ"-Vibur-Avertina

¹⁸⁵ Exhibit "SSS"-Vibur-Avertina

¹⁸⁶ Exhibit "RRR(t)"-Vibur-Avertina

¹⁸⁷ Exhibits "SSS" and "UUU"-Vibur-Avertina

¹⁸⁸ Exhibit "TTT"-Vibur-Avertina

¹⁸⁹ Exhibit "UUU"-Vibur-Avertina

¹⁹⁰ Exhibit "VVV"-Vibur-Avertina

¹⁹¹ Exhibit "WWW"-Vibur-Avertina

¹⁹² Exhibit "WWW, "YYY," And "ZZZ," -Vibur-Avertina

its account from Credit Suisse and remitted the same to **Avertina Foundation**,¹⁹³ while various placements were made under Avertina account of securities listed.¹⁹⁴ It has to be recalled that as earlier shown, the beneficial owners of **Avertina Foundation** were Mr. Ferdinand Marcos and Ms. Imelda Marcos.

Criminal Case No. 22868
(“Rosaly’s-Aguamina Foundations”)

In this case, it was alleged that Ms. Marcos had direct or indirect financial interests, and participated in the management and administration of **Aguamina Foundation**, formerly Rosaly’s Foundation, which she and her husband utilized as a conduit for the funneling of ill-gotten wealth. They opened and maintained bank accounts with SKA or Credit Swiss Bank or Swiss Credit Bank Corporation (SBC) in the name of Aguamina Foundation for their benefit, which she ordered to be remitted to the Central Bank of the Philippines to be invested in high-yielding issues of Dollar Treasury Notes. She allegedly intervened in the placements of the Central Bank for the benefit of this foundation.

The prosecution tried to prove the pecuniary interest of Ms. Marcos in Aguamina circumstantially under the theory of conspiracy, which is sustained by evidence. As already stated, Ms. Marcos used the pseudonym, “*Jane Ryan*” and Mr. Marcos’ pseudonym, “*William Saunders*” to open accounts in Swiss banks, who thereafter worked for the deposits and transfers of funds under these account names, inclusive of the Aguamina Foundation. The scheme is similar to that perpetrated in Xandy, Trinidad, Maler, Rayby, Palmy and Azio Foundations. Ms. Marcos’ pecuniary interest in Aguamina is necessarily related to her husband, who was the named beneficiary of Aguamina. As alleged, the further act of Ms. Marcos and her husband in appealing to the Swiss Federal Supreme Court the Decision of the Cantonal Magistrate of Fribourgh granting the request of the Philippines for mutual assistance in criminal matters, which covered Aguamina Foundation, among others,¹⁹⁵ points to the conclusion that that Ms. Marcos was one of the beneficial owners thereof. In fact, Ms. Marcos’ denial of having been privy to the transactions of Aguamina was rejected by the Supreme Court in the forfeiture case involving the Marcos family.¹⁹⁶

¹⁹³ Exhibits “DDDD” to “GGGG” -Vibur-Avertina

¹⁹⁴ Exhibits “RRRR” to “TTTT”-Vibur-Avertina

¹⁹⁵ Exhibit “A-222868 &22870”

¹⁹⁶ GR No. 152154, July 15, 2003

***Ms. Marcos' impliedly admitted ownership of,
or pecuniary interest in these foundations which
were subject of the forfeiture proceedings before the
Sandiganbayan docketed as Civil Case No. 0141***

Meanwhile, Ms. Marcos' *Answer* to the Petition for Forfeiture particularly under paragraph 22 thereof, marked as Exhibit "Y-4-a" is an admission of her pecuniary interest in the foundations subject of these cases, to wit: Maler, Trinidad, Rayby, Palmy, Aguamina and Vibur-Avertina group of foundations. She pleaded therein that she "*den[ies] x x x in so far as it alleges that [they] clandestinely stashed the country's wealth in Switzerland x x x the truth being that [their] aforesaid properties were lawfully acquired.*" Her statement is a negative pregnant, such that her ownership of the subject properties is deemed admitted. In *Republic of the Philippines v. Sandiganbayan*,¹⁹⁷ the Supreme Court explained:

A denial pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied. It was in effect an admission of the averments it was directed. Stated otherwise, a negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, has been held that the qualifying circumstances alone are denied while the fact itself is admitted.

As held by the Supreme Court in the same case,¹⁹⁸ citing the case of *Santiago vs. de los Santos*, 61 SCRA 146 [1974]:

An admission made in the pleadings cannot be controverted by the party making such admission and becomes conclusive on him, and that all proofs submitted by him contrary thereto or inconsistent therewith should be ignored, whether an objection is interposed by the adverse party or not. This doctrine is embodied in Section 4, Rule 129 of the Rules of Court.

The Supreme Court in *Republic vs. Sandiganbayan*¹⁹⁹ went on to state that:

The allegations in x x x of the petition for forfeiture referring to the creation and amount of the deposits of the Rosalys-Aguamina Foundation as well as the averment in x x x the said petition with respect to the sum of the Swiss bank deposits estimated to be US\$356 million were again not specifically denied by respondents

¹⁹⁷ Id.

¹⁹⁸ Id.

¹⁹⁹ Id.

in their answer. The respondents did not at all respond to the issues raised in these paragraphs and the existence, nature and amount of the Swiss funds were therefore deemed admitted by them. As held in *Galofa vs. Nee Bon Sing*, if a defendant's denial is a negative pregnant, it is equivalent to an admission.

Moreover, respondents' denial of the allegations in the petition for forfeiture for lack of knowledge or information sufficient to form a belief as to the truth of the allegations since respondents were not privy to the transactions was just a pretense. Mrs. Marcos' privity to the transactions was in fact evident from her signatures on some of the vital documents attached to the petition for forfeiture which Mrs. Marcos failed to specifically deny as required by the rules. It is worthy to note that the pertinent documents attached to the petition for forfeiture were even signed personally by respondent Mrs. Marcos and her late husband, Ferdinand E. Marcos, indicating that said documents were within their knowledge.

As correctly pointed out by Sandiganbayan Justice Francisco Villaruz, Jr. in his dissenting opinion:

The pattern of: 1) creating foundations, 2) use of pseudonyms and dummies, 3) approving regulations of the Foundations for the distribution of capital and income of the Foundations to the First and Second beneficiary (who are no other than FM and his family), 4) opening of bank accounts for the Foundations, 5) changing the names of the Foundations, 6) transferring funds and assets of the Foundations to other Foundations or Fides Trust, 7) liquidation of the Foundations as substantiated by the Annexes U to U-168, Petition [for forfeiture] strongly indicate that FM and/or Imelda were the real owners of the assets deposited in the Swiss banks, using the Foundations as dummies.

How could respondents therefore claim lack of sufficient knowledge or information regarding the existence of the Swiss bank deposits and the creation of five groups of accounts when Mrs. Marcos and her late husband personally masterminded and participated in the formation and control of said foundations? This is a fact respondent Marcoses were never able to explain.

The admission is heightened by the fact that in the subject criminal cases, Ms. Marcos never bothered to present any evidence in Court to counter her pecuniary interest in these foundations, the creation of which she and her husband conceived, and the affairs thereof they personally directed.

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Criminal Case No. 22870
(“Pretorien-Gladiator- Cesar – ESG Foundations”)

Likewise, the prosecution attempted to establish Ms. Marcos' interests in these foundations by circumstantial evidence, and theory of conspiracy.

Ms. Marcos allegedly had direct or indirect financial interests in the management of the abovementioned foundations/establishments, which she and her husband utilized as a conduit for the funneling of ill-gotten wealth. Allegedly, they opened and maintained bank accounts with Banque de Paribas for the account of the following establishments -**Pretorien, Gladiator, Cesar, and ESG**, for the benefit of Mr. and Ms. Marcos, and their children, which Ms. Marcos ordered to be remitted to the Central Bank of the Philippines to be invested in high-yielding issues of Dollar Treasury Notes; that she intervened in the placements of the Central Bank for the benefit of these foundations.

The following records show that various accounts were opened in Banque de Paribas, Switzerland, to wit: (1) Application to open account no. 073043 in the name of Imelda Marcos filed on October 3, 1980 thru S. Cattaui and Ph. Siegenthaler;²⁰⁰ (2) Power of Attorney executed by Ms. Marcos in favor of Mr. Ferdinand Marcos dated September 29, 1980 in relation to her account at Banque de Paris under Account No. 073043²⁰¹ (3) [Secret] account of Ferdinand Marcos with Banque de Paris in Geneva under Account No. 36521N²⁰² (4) Power of Attorney given by Ferdinand Marcos to S. Cattaui in relation to Banque de Paris Account No. 36521N²⁰³ (5) Transfer of fund dated March 30, 1979 effected from Pretorien, Cesar, Gladiator and Mabari Foundations²⁰⁴ (6) Statement of Income Securities as of November 10, 1978²⁰⁵ (7) Letters of Mr. and Ms. Marcos to hold all securities and cash at the disposal of Michael de Guzman²⁰⁶ (8) Statement of Baltazar Aquino on alleged kickbacks he collected for Ferdinand Marcos²⁰⁷ (9) Statements of Antonio Florendo, Reymundo Feliciano, Jesus Tanchangco, Jesus Vergara on the “Westinghouse Deal” and “Binondo Central Bank,”²⁰⁸ which allegedly were invested in Swiss banks.

Ms. Marcos' had pecuniary interest in Account No. 073043, which she opened at Banque de Paribas thru her agent, S. Cattaui cannot be denied,

²⁰⁰ Exhibit “P”-22868 &22870

²⁰¹ Exhibit “P-1” and “P-2”-22868 &22870

²⁰² Exhibit “P-4” to “P-8”-22868 &22870

²⁰³ Exhibit “P-3”-22868 &22870

²⁰⁴ Exhibit “P-9”-22868 &22870

²⁰⁵ Exhibit “P-10”-22868 &22870

²⁰⁶ Exhibit “S” and “S-1”-22868 &22870

²⁰⁷ Exhibit “T”-22868 &22870

²⁰⁸ Exhibit “T-5” to “T-12”-22868 &22870

where she gave an explicit authority to Ferdinand Marcos in relation to this account for whose acts she was, therefore, bound. Her pecuniary interest in relation to Account No. 36521N was by virtue of her husband's interest therein, who appeared to have authorized the same person, S. Cattaui, in opening this account.

However, as to how the funds of the said account eventually landed for the account of Pretorian, Cesar, Gladiator and ESG foundations, as allegedly these foundations were used as conduits for funneling ill-gotten wealth, and some of the funds were allegedly remitted to the Philippine Central Bank for investment upon the order of Ms. Marcos, the evidence is hazy and lacking in material details. All that the documents showed were bits and pieces of deposits and transfer of funds in various accounts, without effectively bridging by clear evidence the relation of the accounts opened by Mr. and Ms. Marcos to these foundations, much less to their alleged ill-gotten wealth.

Third Element

**That the accused (a) intervenes or takes part in
her official capacity in connection with such interests;
or is (b) prohibited from having such interest
by the Constitution or by any law**

There are two modes by which a public officer may violate Section 3(h) of Republic Act No. 3019. The *first mode* is - if in connection with his or her pecuniary interest in any business, contract, or transaction, the public officer intervenes or takes part in his or her official capacity. The *second mode* is when he or she is prohibited from having such interest by the Constitution or by any law.

"Actual intervention in his official capacity" in the business, contract or transaction in which the public officer has financial or pecuniary interest is required under the *first mode*. In **Trieste vs. Sandiganbayan**,²⁰⁹ the Supreme Court held:

What is contemplated in Section 3(h) of the anti-graft law is the *actual intervention* in the transaction in which one has financial or pecuniary interest in order that liability may attach. (Opinion No. 306, Series 1961 and Opinion No. 94, Series 1972 of the Secretary of Justice). The official need not dispose his shares in the corporation as long as he does not do anything for the firm in its contract with the office. For the law aims to prevent the dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Congressional Record, Vol. 11, page 603).

209 145 SCRA 508 (1986)

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In *Macariola vs. Asuncion*,²¹⁰ citing *People vs. Menses*, it was ruled that:

As was held in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition on public officers against directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "(I)t is not enough to be a public official to be subject to this crime; it is necessary that by reason of his office, he has to intervene in said contracts or transactions; and, hence, the official who intervenes in contracts or transactions which have no relation to his office cannot commit this crime." (People vs. Meneses, C.A. 40 O.G. 11th Supp. 134, cited by Justice Ramon C. Aquino; Revised Penal Code, p. 1174, Vol. 11 [1976]).

The application of actual intervention was further affirmed and elucidated in the cases of *Caballero, et. al vs. Sandiganbayn*²¹¹ and *Palma Gil, et. al. vs. People*.²¹² However, this requirement is not essential under the *second mode* of commission of the offense. What is only required is that the public officer had prohibited interests under the Constitution or by law, either in the management of a business (Article IX, Section 8 of the 1973 Constitution) or had intervened in any matter before the government for his pecuniary benefit (Article VIII, Section 11 of the 1973 Constitution).

Article VIII Section 11 of the 1973 Constitution states:

Section 11. No Member of the National Assembly shall appear as counsel before any court inferior to a court with appellate jurisdiction, before any court in any civil case wherein the government, or any subdivision, agency, or instrumentality thereof is the adverse party, or before any administrative body. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by, the government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, during his term of office. He shall not intervene in any matter before any office of the government for his pecuniary benefit.

The prohibition under Article VIII Section 11 finds no application to Ms. Marcos in Criminal Cases Nos. 17287 (Maler Foundation), 17288 (Trinidad Foundation), 17289 (Rayby Foundation) and 172890 (Palmy

²¹⁰ 208 SCRA 283 (1992)

²¹¹ GR No. 137355-58, September 25, 2007

²¹² 177 SCRA 229 (1989)



Foundation), 22867 (Azio-Verzo-Vibur Foundations), 22869 (Avertina Foundation), 22870 (Rosaly's-Aguamina Foundations).

For one, in Criminal Cases Nos. 17287 (Maler Foundation), 17288 (Trinidad foundation), 17289 (Rayby foundation) and 172890 (Palmy foundation), Ms. Marcos is not charged with violation of such provision of the 1973 Constitution, but under another provision - Article IX, Section 8 thereof.

Second, while in Criminal Cases Nos. 22867 (Azio-Verzo-Vibur Foundations), 22869 (Avertina Foundation), 22870 (Rosaly's-Aguamina), Ms. Marcos is charged with violation of RA 3019 Section 3 (h) in relation to Article VIII, Section 11 of the 1973 Constitution, a mere possession of pecuniary interest in the foundations subject of these cases is not penalized thereunder. What is prohibited is the intervention in her official capacity in any transaction, contract, franchise or special privilege granted by the government. In these foundations, the evidence does not say so, nor does it show that she intervened, for her pecuniary benefit, in any matter before any government office. The setting up of these Swiss foundations, the contracts or transactions that relate thereto, were private in character, which did not require any intervention of the Philippine Government, or in which Ms. Marcos would have been called upon to act or intervene in her official capacity as a member of the National Assembly or as a Cabinet member.

As cited in *Trieste vs. Sandiganbayan*,²¹³ what the law aims to prevent here is the use of influence, authority and power of a public officer, i.e. as a member of the National Assembly, in a transaction or business with the government. This is not the situation in the aforesaid cases.

However, the circumstance is changed *viz-a-viz* Article IX, Section 8 of the 1973 Constitution, with which Ms. Marcos is charged in Criminal Cases Nos. 17287 to 17290, 22867, 22869, and 22870 in relation to RA No. 3019, Section 3 (h). Said Constitutional provision states:

Section 8. The Prime Minister and the Members of the cabinet shall be subject to the provisions of sections ten and eleven of Article Eight hereof and may not appear as counsel before any court or administrative body, or participate in the management of any business, or practice any profession.

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²¹³ Supra, Note 155

"Management" is defined as "the organization and coordination of the activities of a business in order to achieve a defined objective."²¹⁴ Ms. Marcos, in her Memorandum, cited a definition of "*management*" as "the administration of an organization, whether it be a business, a not-for-profit organization, or government body x x x includes the activities of setting the strategy of an organization and coordinating the efforts of its employees to accomplish its objectives through the application of available resources, such as financial, natural, technological and human resources."²¹⁵

As overwhelmingly established by evidence in **Criminal Cases Criminal Cases Nos. 17287, 17288, 17289, 172890, 22867, 22869, and 22870**, Ms. Marcos organized, coordinated and directed the affairs of Maler, Trinidad, Rayby, Palmy, Azio-Verzo-Vibur, Avertina, and Rosalys-Aguamina Foundations, either personally or thru her designated agents, from the creation up to the end or dissolution thereof, including the transfer and disposition of their respective assets and accounts. In other words, Ms. Marcos participated in the management thereof, by exercising control over their assets and the disposal thereof, appointing the persons to represent these foundations, transmitting instructions, and ratifying the decisions and circumstances of these persons, all geared towards a particular objective.

Ms. Marcos argued as a defense in her Memorandum that, what is prohibited under Article IX, Section 8 is to "*participate in the management of any business.*" Allegedly, the subject foundations are not in the nature of a business.

The Court is not convinced.

A "*business*" is generally defined as the activity of making one's living or making money by producing or buying and selling goods or services. Simply put, it is any activity or enterprise entered into for profit.²¹⁶ On the other hand, a "*foundation*" is generally established and maintained for charitable, educational, religious or other benevolent purpose. In a civil law system such as the Swiss regime, a foundation is normally defined "as legal entity established by the endowment of assets for a specified purpose. In theory, this purpose must be one of public interest."²¹⁷

²¹⁴ <http://www.businessdictionary.com/definition/management.html>

²¹⁵ Memorandum, Records, Vol. XII, p. 191

²¹⁶ <https://en.wikipedia.org/wiki/Business>, citing Burton's Legal Thesaurus, 4E. S.v. "business." Retrieved April 1, 2018 from <https://legal-dictionary.thefreedictionary.com/business>

²¹⁷ "The Swiss Legal Framework on Foundations and Its Principles About Transparency," Lucas R. Arrivillaga Georg von Schnurbein, International Journal of Not-for-Profit Law / Vol. 16, No. 1, September 2014 / 30, citing Art. 80 of the Swiss Civil Code (<http://www.icnl.org/research/journal/vol16iss1/swiss-legal-framework.pdf>)

The term "foundation" shall not be controlling in determining the nature of engagement of the subject Swiss entities put up by Ms. Marcos. Though named as a "foundation," the evidence shows that these entities were put up primarily for the entrepreneurial activity of opening bank accounts and deposits, transferring funds, earning interests and even profit from investment, for the private benefit of the Marcos family as beneficiaries. The purpose of setting up these entities is definitely not charitable, educational, religious or otherwise in service of public interests. In fact, in the related case of *Republic vs. Sandiganbayan*²¹⁸ involving some monies and Swiss accounts of the Marcoses, the Supreme Court ruled that "***management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution x x x x.***" Here, Ms. Marcos' predicate act of "having a pecuniary interest" in these foundations, the affairs of which she is shown to have actively administered for her private gain and benefit, falls within the context of the proscribed acts under Article IX, Section 8 of the 1973 Constitution.

In *Doromal vs. Sandiganbayan*,²¹⁹ it was enunciated that there are two reasons for these prohibition: (1) to avoid conflict of interest; and (2) to force the officials to devote full time to their official duties.

It is by intent of the law to be stricter with the members of the Cabinet, among others, because they exercise more powers. Therefore, more checks and restraints against them are called for since there is more possibility of abuse in their case.²²⁰ Considering that the setting up of these foundations by Ms. Marcos is evidently tainted with her private pecuniary interest, it is with more reason that the application of this prohibition in these cases shall not be *technically* restrained. Rather, the intent of the law shall be given its full course and application. Thus, for each of these cases, the Court finds Ms. Marcos liable for violation of RA 3019, Section 3 (h) in relation to Article IX, Section 8 of the 1973 Constitution.

On the civil aspect of Criminal Cases Nos. 17287 (Maler Foundation), 17288 (Trinidad Foundation), 17289 (Rayby Foundation) and 172890 (Palmy foundation), 22867 (Azio-Verzo-Vibur Foundations), 22869 (Avertina Foundation), 22870 (Rosaly's-Aguamina), considering that the accounts and assets of the foundations involved in these cases had been the subject of a separate forfeiture proceedings, this Court defers to the latter's disposition thereof.

²¹⁸ Supra, Note 196

²¹⁹ 177 SCRA 354 (1989)

²²⁰ Bernas, Joaquin, "The 1987 Constitution: A Commentary," 2009 edition, citing Commissioner Foz, p864.

Going to Criminal Case No. 19225 (ARCI and Dynetics), the Information alleges that Ms. Marcos –

"x x x unlawfully acquire financial pecuniary interest in Asian Reliability Company, Inc., and Dynetics, private entities, then headed by Vicente B. Chuidian by becoming part owners thereof wherein she is prohibited by law and the Constitution from having any interest."

While Ms. Marcos' pecuniary interest in ARCI has evidentiary basis as earlier discussed, by itself alone, said circumstance does not make an offense. By solely having a financial interest in a business, as generally alleged in the *Information*, without any allegation of fact as to how the same becomes unlawful, does not properly charge an offense. The fundamental test of whether the facts averred in the information amount to an offense is whether the facts alleged would establish the essential elements of the crime as defined by law.²²¹ The information must allege clearly and accurately the elements of the crime charged. In this case, however, the specific provision of the 1973 Constitution or law alleged to have been violated in relation to RA 3019 Section 3 (h) was not stated in the charge sheet, whereas, the specific acts upon which the supposed violation of the law is anchored is lacking. The accused's constitutional right demands that she be informed of the nature and cause of accusation against her pursuant to Article IV, Section 1 of the 1973 Constitution that "*no person shall be deprived of life, liberty, or property without due process of law x x x.*" The prosecution's failure to do so on this score inevitably results to the dismissal of the charge against the accused.

Likewise, Ms. Marcos cannot be found guilty in **Criminal Case No. 17291 (ARCI Loan)**.

True, it was shown by evidence that Ms. Marcos' intervened in ARCI's application for US\$25M loan with the Central Bank of the Philippines guaranteed by Philguarantee by recommending the approval of ARCI's applied loan, through her letter to Mr. Jaime Laya, then Central Bank Governor. While this act may be in violation of Article VIII, Section 11 of the 1973 Constitution, to wit: "*to intervene in any matter before any office of the government for his pecuniary benefit,*" the same is not the offense charged in this case. The *Information* rather charges a violation of RA 3019 Section 3(h) in relation to *Article IX Section 8 of the 1973 Constitution*, which prohibits "*management in any business.*" Due process requires that an

²²¹ Mendoza-Ong v. People, 414 SCRA 181; Lazarte vs. Sandiganbayan GR No. 180122, March 13, 2009

accused be properly informed of the cause of accusation against him or her, lest the accused is entitled to an acquittal.

Meanwhile, a review of evidence points not to Ms. Marcos, but to her husband Mr. Marcos, who personally participated in the management, control and direction of the affairs of ARCI. Criminal responsibility being personal to the perpetrator thereof, the same cannot be attributed by implication to Ms. Marcos. The evidence merely shows Ms. Marcos' financial interests in ARCI, being the spouse of Mr. Marcos, but evidence of her active participation in the management and control thereof, which is prohibited under Article VIII, Section 11 of the 1973 Constitution, is insufficient. There is no positive act on her part that is shown to sustain her alleged management or administration of ARCI. In fact, the prosecution evidence shows that at the lone instance when Ms. Marcos' was consulted by Chuidian about ARCI thru his Letter dated January 18, 1984,²²² the response of Ms. Marcos was merely for Chuidian to brief Mr. Marcos about the matter.

On the other hand, Ms. Marcos' intervention with the Central Bank to facilitate the grant of ARCI's applied loan is not an act of management. As previously defined, "management" is "the organization and coordination of the activities of a business in order to achieve a defined objective."²²³ A contrary interpretation of "management" to include Ms. Marcos' intercession with the Central Bank in relation to its applied loan would unreasonably stretch too far the contextual definition of "management" *viz-a-viz* Article IX, Section 8 of the 1973 Constitution.

Anent Criminal Case No. 22870 ("Pretorien-Gladiator-Cesar- ESG Foundations"), it was already discussed that Ms. Marcos' pecuniary interest is shown by evidence of Account No. 073043, which she opened through S. Cattaui and Ph. Siegenthaler, as well as to Account No. 36521N opened by Mr. Marcos. However, the evidence is unclear as to how these accounts relate to Pretorien-Gladiator- Cesar – ESG Foundations. The evidence is inadequate to prove the active participation of Ms. Marcos in the management of the subject foundations, or intervention in any matter before the government for her pecuniary benefit relative to these foundations in supposed violation of Article VIII, Section 11 and Article IX Section 8 of the 1973 Constitution, respectively. Thus, for Criminal Case No. 22870, the acquittal of Ms. Marcos is imperative. In the case of *Macayan vs. People of the Philippines*, it was held:²²⁴

²²² Exhibit "E"

²²³ <http://www.businessdictionary.com/definition/management.html>

²²⁴ GR No. 175842, March 18, 2015

It must be stressed that in our criminal justice system, the overriding consideration is not whether the court doubts the innocence of the accused, but whether it entertains a reasonable doubt as to their guilt. Where there is no moral certainty as to their guilt, they must be acquitted even though their innocence may be questionable. The constitutional right to be presumed innocent until proven guilty can be overthrown only by proof beyond reasonable doubt.

Final Statement

It is pertinent to state in closing that proof beyond reasonable doubt which is the quantum of evidence required to convict an accused, is meant that all things given, the mind of the judge can rest at ease concerning its verdict.²²⁵ Conviction in a criminal case does not entail absolute certainty - what is required only is that degree of proof which, after an examination of the entire records of the case, produces in an unprejudiced mind moral certainty of the culpability of the accused.²²⁶ With these guideposts in mind, thus, the Court hereby renders its verdict.

WHEREFORE, judgment is hereby rendered finding the accused, Imelda R. Marcos:

(a) **GUILTY** beyond reasonable doubt for violation of RA No. 3019, Section 3(h) in relation to *Article IX, Section 8 of the 1973 Constitution* in **Criminal Cases Nos. 17287, 17288, 17289, 172890, 22867, 22868, and 22869** whereby she is sentenced, in each of these cases, to suffer the indeterminate penalty of imprisonment from six (6) years and one (1) month as minimum to eleven (11) years as maximum, with perpetual disqualification to hold public office. As regards the civil aspect consisting of forfeiture of the assets and accounts of the foundations subject of these cases, the Court defers to the disposition thereof in the forfeiture proceedings separately instituted against the accused;

(b) **ACQUITTED** in **Criminal Case No. 19225**, for failure of the *Information* therein to charge an offense;

²²⁵ Pilares, Sr. vs. People, 518 SCRA 143

²²⁶ People vs. Delim, 533 SCRA 366

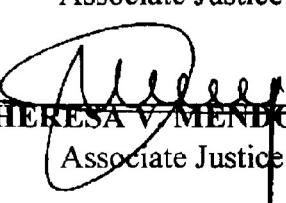
(c) **ACQUITTED** in Criminal Cases Nos. 17291 and
22870, for insufficiency of evidence.

SO ORDERED.


MARYANN E. CORPUS-MANALAC
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


RAFAEL R. LAGOS
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CARABAJAL - TANG
Presiding Justice