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SECOND DIVISION

[G.R. No. 189434, April 25, 2012]

FERDINAND R. MARCOS, JR. PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RESPONDENT.

[G.R. NO. 189505]

IMELDA ROMUALDEZ-MARCOS, PETITIONER , VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

SERENO, J.:

These two consolidated Petitions filed under Rule 45 of the 1997 Rules of Civil Procedure pray for the reversal of the 2 April 2009 Decision of the Sandiganbayan in Civil Case No. 0141 entitled *Republic of the Philippines v. Heirs of Ferdinand E. Marcos and Imelda R. Marcos.*[1] The anti-graft court granted the Motion for Partial Summary Judgment filed by respondent Republic of the Philippines (Republic) and declared all assets and properties of Arelma, S.A., an entity created by the late Ferdinand E. Marcos, forfeited in favor of the government.

On 17 December 1991, the Republic, through the Presidential Commission on Good Government (PCGG), filed a Petition for Forfeiture[2] before the Sandiganbayan pursuant to the forfeiture law, Republic Act No. 1379 (R.A. 1379)[3] in relation to Executive Order Nos. 1, 2 and 14.[4] The petition was docketed as Civil Case No. 0141.

Respondent Republic, through the PCGG and the Office of the Solicitor General (OSG), sought the declaration of Swiss bank accounts totaling USD 356 million (now USD 658 million), and two treasury notes worth USD 25 million and USD 5 million, as ill-gotten wealth.[5] The Swiss accounts, previously held by five groups of foreign foundations,[6] were deposited in escrow with the Philippine National Bank (PNB), while the treasury notes were frozen by the *Bangko Sentral ng Pilipinas* (BSP).

Respondent also sought the forfeiture of the assets of dummy corporations and entities established by nominees of Marcos and his wife, Petitioner Imelda Romualdez-Marcos, as well as real and personal properties manifestly out of proportion to the spouses' lawful income. This claim was based on evidence collated by the PCGG with the assistance of the United States Justice Department and the Swiss Federal

Police Department.[7] The Petition for Forfeiture described among others, a corporate entity by the name "Arelma, Inc.," which maintained an account and portfolio in Merrill Lynch, New York, and which was purportedly organized for the same purpose of hiding ill-gotten wealth.[8]

Before the case was set for pretrial, the Marcos children and PCGG Chairperson Magtanggol Gunigundo signed several Compromise Agreements (a General Agreement and Supplemental Agreements) all dated 28 December 1993 for a global settlement of the Marcos assets. One of the "whereas" clauses in the General Agreement specified that the Republic "obtained a judgment from the Swiss Federal Tribunal on December 21, 1990, that the Three Hundred Fifty-six Million U.S. dollars (USD 356 million) belongs in principle to the Republic of the Philippines provided certain conditionalities are met xxx." This Decision was in turn based on the finding of Zurich District Attorney Peter Cosandey that the deposits in the name of the foundations were of illegal provenance.[9]

On 18 October 1996, respondent Republic filed a Motion for Summary Judgment and/or judgment on the pleadings (the 1996 Motion) pertaining to the forfeiture of the USD 356 million. The Sandiganbayan denied the 1996 Motion on the sole ground that the Marcoses had earlier moved for approval of the Compromise Agreements, and that this latter Motion took precedence over that for summary judgment. Petitioner Imelda Marcos filed a manifestation claiming she was not a party to the Motion for Approval of the Compromise Agreements, and that she owned 90% of the funds while the remaining 10% belonged to the Marcos estate.[10]

On 10 March 2000, the Republic filed another Motion for Summary Judgment (the 2000 Motion), based on the grounds that: (1) the essential facts that warrant the forfeiture of the funds subject of the Petition under R.A. 1379 are admitted by respondents in their pleadings and other submissions; and (2) the respondent Marcoses' pretrial admission that they did not have any interest or ownership over the funds subject of the action for forfeiture tendered no genuine issue or controversy as to any material fact.

In a 19 September 2000 Decision, the Sandiganbayan initially granted the 2000 Motion, declaring that the Swiss deposits held in escrow at the PNB were ill-gotten wealth, and, thus, forfeited in favor of the State.[11] In a Resolution dated 31 January 2002, the Sandiganbayan reversed its earlier ruling and denied the 2000 Motion. Alleging grave abuse of discretion on the part of the court in rendering the later Resolution, the Republic filed a Petition for Certiorari with the Supreme Court. In G.R. No. 152154 entitled *Republic of the Philippines v. Sandiganbayan* (for brevity, the "Swiss Deposits Decision"),[12] this Court set aside the 31 January 2002 Sandiganbayan Resolution and reinstated the 19 September 2000 Decision, including the declaration that the Swiss deposits are ill-gotten wealth. On 18 November 2003, the Court denied with finality petitioner Marcoses' Motion for Reconsideration.

On 16 July 2004, the Republic filed a Motion for Partial Summary Judgment (2004 Motion) to declare "the funds, properties, shares in and interests of ARELMA, wherever they may be located, as ill-gotten assets and forfeited in favor of the Republic of the Philippines pursuant to R.A. 1379 in the same manner (that) the Honorable Supreme Court forfeited in favor of the petitioner the funds and assets of similar 'Marcos foundations' such as AVERTINA, VIBUR, AGUAMINA, MALER and PALMY."[13] Petitioner contends that: (1) respondents are deemed to have admitted the allegations of the Petition as regards Arelma; and (2) there is no dispute that the combined lawful income of the Marcoses is grossly disproportionate to the deposits of their foundations and dummy corporations, including Arelma. Ferdinand Marcos, Jr., Imelda Marcos, and Imee Marcos-Manotoc filed their respective Oppositions. Irene Marcos-Araneta filed a Motion to Expunge on the ground that the proceedings in Civil Case No. 0141 had already terminated.

On 2 April 2009, the Sandiganbayan rendered the assailed Decision granting respondent's Motion for Partial Summary Judgment.[14] It found that the proceedings in Civil Case No. 0141 had not yet terminated, as the Petition for Forfeiture included numerous other properties, which the Sandiganbayan and Supreme Court had not yet ruled upon. The Republic's 1996 Motion was merely held in abeyance to

await the outcome of the global settlement of the Marcos assets. Further, this development had prompted the Republic to file the 2000 Motion, which was clearly limited only to the Swiss accounts amounting to USD 356 million. Thus, according to the Sandiganbayan, its 19 September 2000 Decision as affirmed by the Supreme Court in G.R. No. 152154, was in the nature of a *separate judgment* over the Swiss accounts and did not preclude a subsequent judgment over the other properties subject of the same Petition for Forfeiture, such as those of Arelma.[15] The Sandiganbayan held as follows:

> **WHEREFORE**, considering all the foregoing, the Motion for Partial Summary Judgment dated July 16, 2004 of petitioner is hereby **GRANTED**. Accordingly, Partial Summary Judgment is hereby rendered declaring the assets, investments, securities, properties, shares, interests, and funds of Arelma, Inc., presently under management and/or in an account at the Meryll (sic) Lynch Asset Management, New York, U.S.A., in the estimated aggregate amount of **US$3,369,975.00** as of 1983, plus all interests and all other income that accrued thereon, until the time or specific day that all money or monies are released and/or transferred to the possession of the Republic of the Philippines, are hereby forfeited in favor of petitioner Republic of the Philippines.
>
> **SO ORDERED**.[16]

On 22 October 2009, Ferdinand R. Marcos, Jr. filed the instant Rule 45 Petition, questioning the said Decision.[17] One week later, Imelda Marcos filed a separate Rule 45 Petition[18] on essentially identical grounds, which was later consolidated with the first Petition. The grievances of both petitioners boil down to the following issues:

> 1. Whether the forfeiture proceeding, Civil Case No. 0141 with the Sandiganbayan is criminal in nature, such that summary judgment is not allowed;
>
> 2. Whether petitioner Republic complied with Section 3, subparagraphs c, d, and e of R.A. 1375;
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> 3. Whether Civil Case No. 0141 has been terminated such that a motion for partial summary judgment may no longer be allowed; and
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> 4. Whether in this case there are genuine, triable issues which would preclude the application of the rule on summary judgment.

I. Forfeiture proceedings are civil in nature

Petitioner Ferdinand Marcos, Jr. argues that R.A. 1379 is a penal law; therefore a person charged under its provisions must be accorded all the rights granted to an accused under the Constitution and penal laws.[19] He asserts that the Marcoses were entitled to all the substantial rights of an accused, one of these being the right "to present their evidence to a full blown trial as per Section 5 of R.A. 1379."[20] He relies on the 1962 case, *Cabal v. Kapunan*,[21] where the Court ruled that:

> We are not unmindful of the doctrine laid down in Almeda vs. Perez, L-18428 (August 30, 1962) in which the theory that, after the filing of respondents' answer to a petition for forfeiture under Republic Act No. 1379, said petition may not be amended as to substance pursuant to our rules of criminal procedure, was rejected by this Court upon the ground that said forfeiture proceeding is civil in nature. This doctrine refers, however, to the purely

> *procedural* aspect of said proceeding, and has no bearing on the substantial rights of the respondents therein, particularly their constitutional right against self-incrimination.

This argument fails to convince. Petitioner conveniently neglects to quote from the preceding paragraphs of *Cabal,* which clearly classified forfeiture proceedings as quasi-criminal, not criminal. And even so, *Cabal* declared that forfeiture cases partake of a quasi-criminal nature only in the sense that the right against self-incrimination is applicable to the proceedings, *i.e.,* in which the owner of the property to be forfeited is relieved from the compulsory production of his books and papers:

> Generally speaking, informations for the forfeiture of goods that seek no judgment of fine or imprisonment against any person are deemed to be civil proceedings in rem. *Such proceedings are criminal in nature to the extent that where the person using the res illegally is the owner or rightful possessor of it, the forfeiture proceeding is in the nature of a punishment.*
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> xxx xxx xxx
>
> Proceedings for forfeitures are generally considered to be civil and in the nature of proceedings in rem. The statute providing that no judgment or other proceedings in civil cases shall be arrested or reversed for any defect or want of form is applicable to them. *In some aspects, however, suits for penalties and forfeitures are of quasi-criminal nature and within the reason of criminal proceedings for all the purposes of * * * that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself.* The proceeding is one against the owner, as well as against the goods; for it is his breach of the laws which has to be proved to establish the forfeiture and his property is sought to be forfeited.
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> xxx xxx xxx
>
> As already observed, the various constitutions provide that no person shall be compelled in any criminal case to be a witness against himself. T**his prohibition against compelling a person to take the stand as a witness against himself applies only to criminal, quasi-criminal, and penal proceedings, *including a proceeding civil in form for forfeiture of property by reason of the commission of an offense*, but not a proceeding in which the penalty recoverable is civil or remedial in nature**. (Emphasis supplied.)[22]

The right of the Marcoses against self-incrimination has been amply protected by the provisions of R.A. 1379, which prohibits the criminal prosecution of individuals for or on account of any transaction, matter or thing concerning which they are compelled -- after having claimed the privilege against self-incrimination -- to testify or produce evidence, documentary or otherwise.[23] Since this case's inception in 1991, petitioners have participated in the hearings, argued their case, and submitted their pleadings and other documents, never once putting at issue their right against self-incrimination or the violation thereof.[24]

More importantly, the factual context in the present case is wholly disparate from that in *Cabal*, which was originally initiated as an action *in personam*. Manuel C. Cabal, then Chief of Staff of the Armed Forces of the Philippines, was charged with "graft, corrupt practices, unexplained wealth, conduct unbecoming of an officer and gentleman, dictatorial tendencies, giving false statements of his assets and liabilities in 1958 and other equally reprehensible acts."[25] In contradistinction, the crux of the present case devolves solely upon the recovery of assets presumptively characterized by the law as ill-gotten, and owned by the State; hence, it is an action *in rem*. In *Republic v. Sandiganbayan,* this Court settled the rule

that forfeiture proceedings are actions in rem and therefore civil in nature.[26] Proceedings under R.A. 1379 do not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the State.[27]

As early as *Almeda v. Judge Perez*,[28] we have already delineated the difference between criminal and civil forfeiture and classified the proceedings under R.A. 1379 as belonging to the latter, *viz*:

> "Forfeiture proceedings may be either civil or criminal in nature, and may be *in rem* or *in personam*. If they are under a statute such that if an indictment is presented the forfeiture can be included in the criminal case, they are criminal in nature, although they may be civil in form; and where it must be gathered from the statute that the action is meant to be criminal in its nature it cannot be considered as civil. If, however, the proceeding does not involve the conviction of the wrongdoer for the offense charged the proceeding is of a civil nature; and under statutes which specifically so provide, where the act or omission for which the forfeiture is imposed is not also a misdemeanor, such forfeiture may be sued for and recovered in a civil action."

> In the first place a proceeding under the Act (Rep. Act No. 1379) does not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the state. (Sec. 6) In the second place the procedure outlined in the law leading to forfeiture is that provided for in a civil action. Thus there is a petition (Sec. 3), then an answer (Sec. 4), and lastly, a hearing. The preliminary investigation which is required prior to the filing of the petition, in accordance with Sec. 2 of the Act, is provided expressly to be one *similar* to a preliminary investigation in a criminal case. If the investigation is only similar to that in a criminal case, but the other steps in the proceedings are those for civil proceedings, it stands to reason that the proceeding is not criminal. xxx. (citations omitted)

Forfeiture cases impose neither a personal criminal liability, nor the civil liability that arises from the commission of a crime (ex delicto). The liability is based solely on a statute that safeguards the right of the State to recover unlawfully acquired properties.[29] Executive Order No. 14 (E.O. No. 14), Defining the Jurisdiction Over Cases Involving the Ill-gotten Wealth of Former President Ferdinand Marcos, authorizes the filing of forfeiture suits **that will proceed independently of any criminal proceedings**. Section 3 of E.O. 14 empowered the PCGG to file independent civil actions separate from the criminal actions.[30]

Thus, petitioners cannot equate the present case with a criminal case and assail the proceedings before the Sandiganbayan on the bare claim that they were deprived of a "full-blown trial." In affirming the Sandiganbayan and denying petitioners' Motion for Reconsideration in the Swiss Deposits Decision, the Court held:

> Section 5 of RA 1379 provides:

> > The court shall set a date for a hearing which may be open to the public, and during which the respondent shall be given ample opportunity to explain, to the satisfaction of the court, how he has acquired the property in question.

> And pursuant to Section 6 of the said law, if the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court

shall declare such property forfeited in favor of the State.

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A careful analysis of Section 5 of RA 1379 readily discloses that the word "hearing" does not always require the formal introduction of evidence in a trial, only that the parties are given the occasion to participate and explain how they acquired the property in question. If they are unable to show to the satisfaction of the court that they lawfully acquired the property in question, then the court shall declare such property forfeited in favor of the State. There is no provision in the law that a full blown trial ought to be conducted before the court declares the forfeiture of the subject property. Thus, even if the forfeiture proceedings do not reach trial, the court is not precluded from determining the nature of the acquisition of the property in question even in a summary proceeding.[31]

As forfeiture suits under R.A. 1379 are civil in nature, it follows that Rule 35 of the Rules of Court on Summary Judgment may be applied to the present case. This is consistent with our ruling in the Swiss Deposits Decision upholding the summary judgment rendered by the Sandiganbayan over the Swiss deposits, which are subject of the same Petition for Forfeiture as the Arelma assets.

II. Republic complied with Section 3 (c), (d), and (e) of R.A. 1375

Petitioner Marcos, Jr. argues that there are genuine issues of fact as borne by the Pre-trial Order, Supplemental Pre-trial Order, and the Pre-trial Briefs of the parties. He laments that the Republic was unable to meet the necessary averments under the forfeiture law, which requires a comparison between the approximate amount of property acquired during the incumbency of Ferdinand Marcos, and the total amount of governmental salaries and other earnings.[32] While the Petition contained an analysis of Ferdinand Marcos's income from 1965 to 1986 (during his incumbency), there was purportedly no mention of the latter's income from 1940 to 1965 when he was a practicing lawyer, congressman and senator; other earnings until the year 1985; and real properties that were auctioned off to satisfy the estate tax assessed by the Bureau of Internal Revenue.[33]

Petitioner Marcos, Jr. implores us herein to revisit and reverse our earlier ruling in the Swiss Deposits Decision and argues that the pronouncements in that case are contrary to law and its basic tenets. The Court in that case allegedly applied a lenient standard for the Republic, but a strict one for the Marcoses. He finds fault in the ruling therein which was grounded on public policy and the ultimate goal of the forfeiture law, arguing that public policy is better served if the Court gave more importance to the substantive rights of the Marcoses.

In accordance with the principle of immutability of judgments, petitioners can no longer use the present forum to assail the ruling in the Swiss Deposits Decision, which has become final and executory. Aside from the fact that the method employed by petitioner is improper and redundant, we also find no cogent reason to revisit the factual findings of the Sandiganbayan in Civil Case No. 0141, which this Court in the Swiss Deposits Decision found to be thorough and convincing. In the first place, using a Rule 45 Petition to question a judgment that has already become final is improper, especially when it seeks reconsideration of factual issues, such as the earnings of the late President from 1940 to 1965 and the existence of real properties that petitioners claim were auctioned off to pay the taxes. Secondly, petitioners never raised the existence of these earnings and real properties at the outset and never mentioned these alleged other incomes by way of defense in their Answer. In their Answer, and even in their subsequent pleadings, they merely made general denials of the allegations without stating facts admissible in evidence at the hearing. As will be discussed later, both the Sandiganbayan and the Supreme Court found that the Marcoses' unsupported denials of matters patently and necessarily within their knowledge were inexcusable, and that a trial would have served no purpose at all.[34]

R.A. 1379 provides that whenever any public officer or employee has acquired during his incumbency an amount of property manifestly out of proportion to his salary as such public officer and to his other lawful income, said property shall be presumed *prima facie* to have been unlawfully acquired.[35] The elements that must concur for this *prima facie* presumption to apply are the following: (1) the offender is a public officer or employee; (2) he must have acquired a considerable amount of money or property during his incumbency; and (3) said amount is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and income from legitimately acquired property.

Thus, in determining whether the presumption of ill-gotten wealth should be applied, the relevant period is incumbency, or the period in which the public officer served in that position. The amount of the public officer's salary and lawful income is compared against any property or amount acquired for that same period. In the Swiss Deposits Decision, the Court ruled that petitioner Republic was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses "were manifestly and patently disproportionate to their aggregate salaries as public officials."[36]

For a petition to flourish under the forfeiture law, it must contain the following:

> (a) The name and address of the respondent.
> (b) The public officer or employment he holds and such other public offices or employment which he has previously held.
> (c) The approximate amount of property he has acquired during his incumbency in his past and present offices and employments.
> (d) A description of said property, or such thereof as has been identified by the Solicitor General.
> (e) The total amount of his government salary and other proper earnings and incomes from legitimately acquired property, and
> (f) Such other information as may enable the court to determine whether or not the respondent has unlawfully acquired property during his incumbency.[37] (Emphasis supplied)

Petitioners claim that the Republic failed to comply with subparagraphs c, d, and e above, because the latter allegedly never took into account the years when Ferdinand Marcos served as a war veteran with back pay, a practicing lawyer, a trader and investor, a congressman and senator. We find this claim to be a haphazard rehash of what has already been conclusively determined by the Sandiganbayan and the Supreme Court in the Swiss Deposits Decision. The alleged "receivables from prior years" were without basis, because Marcos never had a known law office nor any known clients, and neither did he file any withholding tax certificate that would prove the existence of a supposedly profitable law practice before he became President. As discussed in the Swiss Deposits Decision:

> The Solicitor General made a very thorough presentation of its case for forfeiture:
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> xxx xxx xxx
>
> 4. Respondent Ferdinand E. Marcos (now deceased and represented by his Estate/Heirs) was a public officer for several decades continuously and without interruption as Congressman, Senator, Senate President and President of the Republic of the Philippines from December 31, 1965 up to his ouster by direct action of the people of EDSA on February 22-25, 1986.
>
> 5. Respondent Imelda Romualdez Marcos (Imelda, for short) the former First Lady who ruled with FM (Ferdinand Marcos) during the 14-year martial law regime, occupied the position of

Minister of Human Settlements from June 1976 up to the peaceful revolution in February 22-25, 1986. She likewise served once as a member of the Interim Batasang Pambansa during the early years of martial law from 1978 to 1984 and as Metro Manila Governor in concurrent capacity as Minister of Human Settlements.

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11. At the outset, however, it must be pointed out that based on the Official Report of the Minister of Budget, **the total salaries of former President Marcos as President from 1966 to 1976 was P60,000 a year and from 1977 to 1985, P100,000 a year; while that of the former First Lady, Imelda R. Marcos, as Minister of Human Settlements from June 1976 to February 22-25, 1986 was P75,000 a year.**[38]

The Sandiganbayan found that neither the late Ferdinand Marcos nor petitioner Imelda Marcos filed any Statement of Assets and Liabilities, as required by law, from which their net worth could be determined. Coupled with the fact that the Answer consisted of general denials and a standard plea of "lack of knowledge or information sufficient to form a belief as to the truth of the allegations" – what the Court characterized as "foxy replies" and mere pretense – fairness dictates that what must be considered as lawful income should only be the accumulated salaries of the spouses and what are shown in the public documents they submitted, such as their Income Tax Return (ITR) and their Balance Sheets. The amounts representing the combined salaries of the spouses were admitted by petitioner Imelda Marcos in paragraph 10 of her Answer, and reflected in the Certification dated May 27, 1986 issued by then Minister of Budget and Management Alberto Romulo:

Ferdinand E. Marcos, as President		
1966-1976	at P60,000/year	P660,000
1977-1984	at P100,000/year	800,000
1985	at P110,000/year	110,000
		P1,570,00
Imelda R. Marcos, as Minister		
June 1976-1985	at P75,000/year	P718,000

In addition to their accumulated salaries from 1966 to 1985 are the Marcos couple's combined salaries from January to February 1986 in the amount of P30,833.33. Hence, their total accumulated salaries amounted to P2,319,583.33. Converted to U.S. dollars on the basis of the corresponding peso-dollar exchange rates prevailing during the applicable period when said salaries were received, the total amount had an equivalent value of $304,372.43.[39]

The date contained in the ITRs and Balance Sheets filed by the Marcoses are summarized in Schedules A to D submitted as evidence by the Republic. Schedule A showed that from 1965 to 1984, the Marcoses reported Php 16,408,442.00 or USD 2,414,484.91 in total income, comprised of:

Income Source		Amount		Percentage
Official Salaries	-	P2,627,581.00	-	16.01%
Legal Practice	-	11,109,836.00	-	67.71%
Farm Income	-	149,700.00	-	.91%
Others	-	2,521,325.00	-	15.37%
Total		P16,408,442.00	-	100.00%

The amount reported by the Marcos couple as their combined salaries more or less coincided with the Official Report submitted by the Minister of Budget. Yet what appeared anomalous was the Php 11,109,836 representing "Legal Practice," which accounted for 67% or more than three-fourths of their *reported* income. Out of this anomalous amount, Php 10,649,836, or ***96% thereof,*** represented "receivables from prior years" during the period 1967 to 1984. The Court cited the Solicitor General's findings:

> In the guise of reporting income using the cash method under Section 38 of the National Internal Revenue Code, FM made it appear that he had an extremely profitable legal practice before he became a President (FM being barred by law from practicing his law profession during his entire presidency) and that, incredibly, he was still receiving payments almost 20 years after. **The only problem is that in his Balance Sheet attached to his 1965 ITR immediately preceding his ascendancy to the presidency he did not show any Receivables from client at all, much less the P10.65-M that he decided to later recognize as income. There are no documents showing any withholding tax certificates. Likewise, there is nothing on record that will show any known Marcos client as he has no known law office. As previously stated, his net worth was a mere P120,000.00 in December, 1965.** The joint income tax returns of FM and Imelda cannot, therefore, conceal the skeletons of their kleptocracy.[40]

In addition, the former President also reported a total of Php 2,521,325 which he referred to as "Miscellaneous Items" and "Various Corporations" under "Other Income" for 1972-1976. Spouses Marcos did not declare any income from any deposits that may be subject to a 5% withholding tax, nor did they file any capital gains tax returns from 1960 to 1965. The Bureau of Internal Revenue attested that there are no records pertaining to the tax transactions of the spouses in Baguio City, Manila, Quezon City, and Tacloban.

The Balance Sheet attached to the couple's ITR for 1965 indicates an ending net worth of Php 120,000, which covered the year immediately preceding their ascendancy to the presidency. As previously mentioned, the combined salaries of the spouses for the period 1966 to 1986, or in the two decades that they stayed in power, totaled only USD 304,372.43. In stark contrast, as shown by Schedule D, computations establish the total net worth of the spouses for the years 1965 until 1984 in the total amount of USD 957,487.75, assuming that the income from legal practice is real and valid.[41] **The combined salaries make up only 31.79% of the spouses' total net worth from 1965 to 1984. This means petitioners are unable to account for or explain more than two-thirds of the total net worth of the Marcos spouses from 1965 to 1984.**

Thus, for the final time, we soundly reiterate that the Republic was able to establish the *prima facie* presumption that the assets and properties acquired by the Marcoses were manifestly and patently disproportionate to their aggregate salaries as public officials. The Republic presented further evidence that they had bigger deposits beyond their lawful incomes, foremost of which were the Swiss accounts deposited in the names of five foundations spirited away by the couple to different countries. Petitioners herein thus failed to overturn this presumption when they merely presented vague denials and pleaded "lack of sufficient knowledge" in their Answer.

In any case, petitioners may no longer question the findings of the Sandiganbayan affirmed by the Supreme Court in the Swiss Deposits Decision, as these issues have long become the "law of the case" in the original Petition for Forfeiture. As held in *Philippine Coconut Producers Federation, Inc. (COCOFED) v. Republic*:[42]

> Law of the case … is a term applied to an established rule that when an appellate court passes

> on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, … so long as the facts on which such decision was predicated continue to be the facts of the case before the court.
>
> Otherwise put, the principle means that questions of law that have been previously raised and disposed of in the proceedings shall be controlling in succeeding instances where the same legal question is raised, provided that the facts on which the legal issue was predicated continue to be the facts of the case before the court.

In the case at bar, the same legal issues are being raised by petitioners. In fact, petitioner Marcos Jr. admits outright that what he seeks is a reversal of the issues *identical* to those already decided by the Court in the Swiss Deposits Decision.[43] He may not resuscitate, via another petition for review, the same issues long laid to rest and established as the law of the case.

III. Civil Case No. 0141 has not yet terminated

Petitioners next argue that the "law of the case" doctrine should be applied, not to the ruling affirming the forfeiture, but to the grant of the summary judgment over the Swiss accounts as affirmed by the Supreme Court in the Swiss Deposits Decision. They contend that since the Court's Decision mentioned only the deposits under the five Swiss foundations, then the Republic can no longer seek partial summary judgment for forfeiture over the Arelma account. And since the said Decision has long become final and has in fact been executed, they insist that the Sandiganbayan has lost its jurisdiction over the case.

Petitioners are under the mistaken impression that the Swiss Deposits Decision serves as the entire judgment in Civil Case No. 0141. Just because respondent Republic succeeded in obtaining summary judgment over the Swiss accounts does not mean it is precluded from seeking partial summary judgment over a different subject matter covered by the same petition for forfeiture. In fact, Civil Case No. 0141 pertains to the recovery of **all** the assets enumerated therein, such as (1) holding companies, agro-industrial ventures and other investments; (2) landholdings, buildings, condominium units, mansions; (3) New York properties; (4) bills amounting to Php 27,744,535, time deposits worth Php 46.4 million, foreign currencies and jewelry seized by the United States customs authorities in Honolulu, Hawaii; (5) USD 30 million in the custody of the Central Bank in dollar-denominated Treasury Bills; shares of stock, private vehicles, and real estate in the United States, among others.[44]

In the enumeration of properties included in the Petition, the Arelma assets were described as "Assets owned by Arelma, Inc., a Panamanian corporation organized in Liechtenstein, for sole purpose (*sic*) of maintaining an account in Merrill Lynch, New York."[45] Paragraph 59 of the Petition for Forfeiture states:

> 59. FM and Imelda used a number of their close business associations or favorite cronies in opening bank accounts abroad for the purpose of laundering their filthy riches. Aside from the foundations and corporations established by their dummies/nominees to hide their ill-gotten wealth as had already been discussed, several other corporate entities had been formed for the same purpose, to wit:
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> (1). ARELMA, INC – (T)his was organized for the sole purpose of maintaining an account and portfolio in Merrill Lynch, New York.
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> (2). Found among Malacañang documents is a letter dated September 21, 1972 by J.L. Sunier, Senior Vice President of SBC to Mr. Jose V. Campos, a known Marcos crony (See Annex

"V-21" hereof). In the said letter, instructions were given by Sunier to their Panama office to constitute a Panamanian company, the name of which will be either Larema, Inc. or Arelma, Inc., or Relma, Inc. this company will have the same set-up as Maler; the appointment of Sunier and Dr. Barbey as attorneys and appointment of selected people in Panama as directors; the opening of direct account in the name of the new company with Merrill Lynch, New York, giving them authority to operate the account, but excluding withdrawals of cash, securities or pledging of portfolio; and sending of money in favor of the new company under reference AZUR in order to cut links with the present account already opened with Merrill Lynch under an individual's name.

(3). Also found was a letter dated November 14, 1972 and signed by Jose Y. Campos (Annex "V-21-a" hereof). The letter was addressed to SEC, Geneva, and Sunier duly authorized by their "mutual friend" regarding the opening of an account of Arelma, Inc. with Merrill Lynch, New York to the attention of Mr. Saccardi, Vice-President.

(4). On May 19, 1983, J. L. Sunier wrote a letter with a reference "SAPPHIRE" and a salutation "Dear Excellency" stating, among others, the current valuation by Merrill Lynch of the assets of Arelma, Inc. amounting to $3,369,975 (Annex "V-21-b" hereof).

(5). Included in the documents sent by SBC, Geneva, through the Swiss Federal Department of Justice and Police were those related to Arelma, Inc. as follows:

(a) Opening bank documents for Account No. 53.145 A.R. dated September 17, 1972, signed by Dr. Barbey and Mr. Sunier. This was later on cancelled as a result of the change in attorneys and authorized signatories of the company (Annexes "V-21-c" and "V-21-d" hereof).

(b) Opening bank documents for Account No. 53. 145 A.R. signed by new attorneys led by Michel Amandruz (Annexes "V-21-e" and "V-21-f" hereof).

(c). Bank statements for Account No. 53.145 A.R. with ending balance of $26.10 as of 12-31-85 (Annex "V-21-g" and "V-21-h" hereof).

(d). An informative letter stating that Account 53. 145 A.R. was related to an account opened with Merrill Lynch Asset Management, Inc., New York for Arelma, Inc. The opening of this account slowly made Account 53. 145 A.R. an inactive account (See Annexes "V-21-I" and "V-21-j" hereof).[46]

When the Marcos family fled Manila in 1986, they left behind several documents that revealed the existence of secret bank deposits in Switzerland and other financial centers.[47] These papers, referred to by respondent as Malacañang documents, detailed how "Arelma, Inc."[48] was established. Attached as Annex V-21 was the Letter of Instruction sent to the Panamanian branch of the Sunier company to open Arelma. The latter was to have the same set-up as Maler, one of the five Swiss foundations, subject of the 2000 Motion. Annexes "V-21-c" to "V-21-j" pertained to documents to be used to open an account with Merrill Lynch Asset Management, Inc. in New York.

The Swiss Deposits Decision dealt *only* with the summary judgment as to the five Swiss accounts, because the 2000 Motion for Partial Summary Judgment dated 7 March 2000 specifically identified the five Swiss accounts only. It did not include the Arelma account. There was a prayer for general reliefs in the 1996 Motion, but as has been discussed, this prayer was dismissed by the Sandiganbayan. The dismissal was based solely on the existence of the Compromise Agreements for a global settlement of the Marcos assets, which the Supreme Court later invalidated. The 2000 Motion for Summary Judgment was confined only to the five accounts amounting to USD 356 million held by five Swiss foundations.

As clarified by the Solicitor General during the hearing of 24 March 2000 in the Sandiganbayan:

> PJ: The Court is of the impression and the Court is willing to be corrected, that ones (sic) the plaintiff makes a claim for summary judgment it in fact states it no longer intends to present evidence and based on this motion to render judgment, is that correct?
>
> SOL. BALLACILLO: Yes, your Honors.
>
> PJ: In other words, on the basis of pre-trial, you are saying…because if we are talking of a partial claim, then there is summary judgment, unless there is preliminary issue to the claim which is a matter of stipulation.
>
> SOL. BALLACILLO: We submit, your Honors, that there can be partial summary judgment on this matter.
>
> **PJ: But in this instance, you are making summary judgment on the entire case?**
>
> **SOL. BALLACILLO: With respect to the $365 million.**
>
> **PJ: In the complaint you asked for the relief over several topics. You have $356 million, $25 million and $5 million. Now with regards to the $365 million, you are asking for summary judgment?**
>
> **SOL. BALLACILLO: Yes, your Honor.**
>
> **PJ: And, therefore, you are telling us now, "that's it, we need not have to prove."**
>
> **SOL. BALLACILLO: Yes, your Honors.**[49] (Emphasis supplied.)

The Court's discussion clearly did not include the Arelma account. The dispositive portion of the Swiss Deposits Decision states:

> **WHEREFORE**, the petition is hereby GRANTED. The assailed Resolution of the Sandiganbayan dated January 31, 2002 is SET ASIDE. The Swiss deposits which were transferred to and are now deposited in escrow at the Philippine National Bank in the estimated aggregate amount of US$658,175,373.60 as of January 31, 2002, plus interest, are hereby forfeited in favor of petitioner Republic of the Philippines.[50]

Thus, the other properties, which were subjects of the Petition for Forfeiture, but were not included in the 2000 Motion, can still be subjects of a subsequent motion for summary judgment. To rule otherwise would run counter to this Court's long established policy on asset recovery which, in turn, is anchored on considerations of national survival.

E.O. 14, Series of 1986,[51] and Section 1(d) of Proclamation No. 3[52] declared the national policy after the Marcos regime. The government aimed to implement the reforms mandated by the people: protecting their basic rights, adopting a provisional constitution, and providing for an orderly transition to a government under a new constitution. The said Proclamation further states that "The President shall give priority to measures to achieve the mandate of the people to recover ill-gotten properties amassed by the leaders and supporters of the previous regime and protect the interest of the people through orders of sequestration or freezing of assets or accounts." One of the "whereas" clauses of E.O. 14 entrusts the

PCGG with the "just and expeditious recovery of such ill-gotten wealth in order that the funds, assets and other properties may be used to hasten national economic recovery." These clauses are anchored on the overriding considerations of national interest and national survival, always with due regard to the requirements of fairness and due process.

With the myriad of properties and interconnected accounts used to hide these assets that are in danger of dissipation, it would be highly unreasonable to require the government to ascertain their exact locations and recover them simultaneously, just so there would be one comprehensive judgment covering the different subject matters.

In any case, the Sandiganbayan rightly characterized their ruling on the 2004 Motion as a **separate judgment,** which is allowed by the Rules of Court under Section 5 of Rule 36:

> *Separate judgments.*—When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and may prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor the judgment is rendered.[53]

Rule 35 on summary judgments, admits of a situation in which a case is not fully adjudicated on motion,[54] and judgment is not rendered upon all of the reliefs sought. In *Philippine Business Bank v. Chua*,[55] we had occasion to rule that a careful reading of its Section 4 reveals that a partial summary judgment was never intended to be considered a "final judgment," as it does not "[put] an end to an action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for." In this case, there was never any final or complete adjudication of Civil Case No. 0141, as the Sandiganbayan's partial summary judgment in the Swiss Deposits Decision made no mention of the Arelma account.

Section 4 of Rule 35 pertains to a situation in which separate judgments were necessary because some facts existed without controversy, while others were controverted. However, there is nothing in this provision or in the Rules that prohibits a subsequent separate judgment after a partial summary judgment on an entirely **different subject matter** had earlier been rendered. There is no legal basis for petitioners' contention that a judgment over the Swiss accounts bars a motion for summary judgment over the Arelma account.

Thus, the Swiss Deposits Decision has finally and thoroughly disposed of the forfeiture case **only as to the five Swiss accounts**. Respondent's 2004 Motion is in the nature of a separate judgment, which is authorized under Section 5 of Rule 36. More importantly respondent has brought to our attention the reasons why a motion for summary judgment over the Arelma account was prompted only at this stage. In *Republic of the Philippines v. Pimentel*,[56] a case filed by human rights victims in the United States decided by the US Supreme Court only in 2008, the antecedents of the Arelma account were described as follows:

> In 1972, Ferdinand Marcos, then President of the Republic, incorporated Arelma, S.A. (Arelma), under Panamanian law. Around the same time, Arelma opened a brokerage account with Merrill Lynch, Pierce, Fenner & Smith Inc. (Merrill Lynch) in New York, in which it deposited $2 million. As of the year 2000, the account had grown to approximately $35

million.

Alleged crimes and misfeasance by Marcos during his presidency became the subject of worldwide attention and protest. A class action by and on behalf of some 9,539 of his human rights victims was filed against Marcos and his estate, among others. The class action was tried in the United States District Court for the District of Hawaii and resulted in a nearly $2 billion judgment for the class. See *Hilao v. Estate of Marcos,* 103 F.3d 767 (C.A.9 1996). We refer to that litigation as the Pimentel case and to its class members as the Pimentel class. In a related action, the Estate of Roger Roxas and Golden Budha *[sic]* Corporation (the Roxas claimants) claim a right to execute against the assets to satisfy their own judgment against Marcos' widow, Imelda Marcos. See *Roxas v. Marcos*, 89 Hawaii 91, 113-115, 969 P.2d 1209, 1231-1233 (1998).

The Pimentel class claims a right to enforce its judgment by attaching the Arelma assets held by Merrill Lynch. The Republic and the Commission claim a right to the assets under a 1955 Philippine law providing that property derived from the misuse of public office is forfeited to the Republic from the moment of misappropriation. See An Act Declaring Forfeiture in Favor of the State Any Property Found To Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor, Rep. Act No. 1379, 51:9 O.G. 4457 (June 18, 1955).

After Marcos fled the Philippines in 1986, the Commission was created to recover any property he wrongfully took. Almost immediately the Commission asked the Swiss Government for assistance in recovering assets-including shares in Arelma-that Marcos had moved to Switzerland. In compliance the Swiss Government froze certain assets and, in 1990, that freeze was upheld by the Swiss Federal Supreme Court. In 1991, the Commission asked the Sandiganbayan, a Philippine court of special jurisdiction over corruption cases, to declare forfeited to the Republic any property Marcos had obtained through misuse of his office. That litigation is still pending in the Sandiganbayan. (Citations omitted.)

The pursuit of the Arelma account encountered several hindrances, as it was subject to not one, but **two** claims of human rights victims in foreign courts: the Pimentel class and the Roxas claimants. The government and the PCGG were able to obtain a Stay Order at the appellate level, but the trial court judge vacated the stay and awarded the Arelma assets to the Pimentel class of human rights victims.

As early as 1986, the PCGG had already sought assistance from the Swiss government to recover the Arelma assets; however, it was only in 2000 that the Swiss authorities turned over two Stock Certificates, which were assets of Arelma. The transfer by Switzerland of the Stock Certificates to the Republic was made under the same conditions as the bank deposits of the five Swiss foundations.[57]

Meanwhile, the Pimentel case was tried as a class action before Judge Manuel Real of the United States District Court for the Central District of California. Judge Real was sitting by designation in the District of Hawaii after the Judicial Panel on Multidistrict Litigation consolidated the various human rights Complaints against Marcos in that court.[58] Judge Real directed Merrill Lynch to file an action for interpleader in the District of Hawaii, where he presided over the matter, and where the Republic and the PCGG were named as defendants. In *Pimentel*, the Court further narrates how Judge Real ruled that the pending litigation in Philippine courts could not determine entitlement to the Arelma assets:

After being named as defendants in the interpleader action, the Republic and the Commission asserted sovereign immunity under the Foreign Sovereign Immunities Act of 1976 (FSIA), 28 U.S.C. § 1604. They moved to dismiss pursuant to Rule 19(b), based on the premise that the action could not proceed without them… Judge Real initially rejected the request by the

> Republic and the Commission to dismiss the interpleader action. They appealed, and the Court of Appeals reversed. It held the Republic and the Commission are entitled to sovereign immunity and that under Rule 19(a) they are required parties (or "necessary" parties under the old terminology). See *In re Republic of the Philippines,* 309 F.3d 1143, 1149-1152 (C.A.9 2002). The Court of Appeals entered a stay pending the outcome of the litigation in the Sandiganbayan over the Marcos assets.
>
> **After concluding that the pending litigation in the Sandiganbayan could not determine entitlement to the Arelma assets, Judge Real vacated the stay, allowed the action to proceed, and awarded the assets to the Pimentel class. A week later, in the case initiated before the Sandiganbayan in 1991, the Republic asked that court to declare the Arelma assets forfeited, arguing the matter was ripe for decision. The Sandiganbayan has not yet ruled. In the interpleader case the Republic, the Commission, Arelma, and PNB appealed the District Court's judgment in favor of the Pimentel claimants. This time the Court of Appeals affirmed. Dismissal of the interpleader suit, it held, was not warranted under Rule 19(b) because, though the Republic and the Commission were required ("necessary") parties under Rule 19(a), their claim had so little likelihood of success on the merits that the interpleader action could proceed without them. One of the reasons the court gave was that any action commenced by the Republic and the Commission to recover the assets would be barred by New York's 6-year statute of limitations for claims involving the misappropriation of public property.[59] (Citations omitted)**

The American Supreme Court reversed the judgment of the Court of Appeals for the Ninth Circuit and remanded the case with instructions to order the District Court to dismiss the interpleader action. The former held that the District Court and the Court of Appeals failed to give full effect to sovereign immunity when they held that the action could proceed without the Republic and the Commission:

> Comity and dignity interests take concrete form in this case. The claims of the Republic and the Commission arise from events of historical and political significance for the Republic and its people. The Republic and the Commission have a unique interest in resolving the ownership of or claims to the Arelma assets and in determining if, and how, the assets should be used to compensate those persons who suffered grievous injury under Marcos. There is a comity interest in allowing a foreign state to use its own courts for a dispute if it has a right to do so. The dignity of a foreign state is not enhanced if other nations bypass its courts without right or good cause. Then, too, there is the more specific affront that could result to the Republic and the Commission if property they claim is seized by the decree of a foreign court.[60]

Thus it was only in 2008 that the Republic was finally able to obtain a favorable judgment from the American Supreme Court with regard to the different claims against the Arelma assets. Petitioners never intervened or lifted a finger in any of the litigation proceedings involving the enforcement of judgment against the Arelma assets abroad. We find merit in respondent's observation that petitioner Imelda Marcos's participation in the proceedings in the Philippines, particularly her invocation of her right against undue deprivation of property, is inconsistent with her and Ferdinand Marcos, Jr.'s insistence that the properties in question do not belong to them, and that they are mere beneficiaries.[61]

Indeed, it is clear that the Arelma assets are in danger of dissipation. Even as the United States Supreme Court gave weight to the likely prejudice to be suffered by the Republic when it dismissed the interpleader in *Pimentel,* it also considered that the "balance of equities may change in due course. One relevant change may occur if it appears that the Sandiganbayan cannot or will not issue its ruling within a reasonable period of time. If the Sandiganbayan rules that the Republic and the Commission have no right

to the assets, their claims in some later interpleader suit would be less substantial than they are now."[62]

IV. Petitioners' sham denials justify the application of summary judgment

As already settled in the Swiss Deposits Decision and reiterated in the discussion above as the law of the case, the lawful income of the Marcoses is only USD 304,372.43. As discussed in paragraph 9 of the Petition for Forfeiture, Annex V-21-b states that Arelma's assets as of 19 May 1983 were worth USD 3,369,975.00.[63] **The entirety of the lawful income of the Marcoses represents only 9% of the entire assets of Arelma, which petitioners remain unable to explain.**

In their Answer to the Petition for Forfeiture, petitioners employ the same tactic, consisting of general denials based on a purported lack of knowledge regarding the whereabouts of the Arelma assets. Paragraph 32 of the said pleading states:

> Respondents **specifically DENY** paragraph 59 of the Petition insofar as it alleges that the Marcoses used their cronies and engaged in laundering their filthy riches for being false and conclusory of the truth being that the Marcoses did not engage in any such illegal acts and that all the properties they acquired were lawfully acquired; and specifically DENY the rest **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents are not privy to the alleged transactions.[64]

This particular denial mimics petitioners' similar denials of the allegations in the forfeiture Petition pertaining to the Swiss accounts and is practically identical to paragraphs 7 to 37 of the Answer. The Swiss Deposits Decision has characterized these as "sham" denials:

> 17. Respondents **specifically DENY** paragraph 18 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.
>
> 18. Respondents **specifically DENY** paragraph 19 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs and that they are not privy to the activities of the BIR.
>
> 19. Respondents **specifically DENY** paragraph 20 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.
>
> 20. Respondents **specifically DENY** paragraph 21 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.
>
> 21. Respondents **specifically DENY** paragraph 22 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents cannot remember with exactitude the contents of the alleged ITRs.
>
> 22. Respondents **specifically DENY** paragraph 23 insofar as it alleges that Respondents clandestinely stashed the country's wealth in Switzerland and hid the same under layers and layers of foundation and corporate entities for being false, the truth being that Respondents aforesaid properties were lawfully acquired.

23. Respondents **specifically DENY** paragraphs 24, 25, 26, 27, 28, 29 and 30 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegation** since Respondents were not privy to the transactions regarding the alleged Azio-Verso-Vibur Foundation accounts, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

24. Respondents **specifically DENY** paragraphs 31, 32, 33, 34, 35, 36,37, 38, 39, 40, and 41 of the Petition **for lack of knowledge or information sufficient to form a belief as to the truth of the allegations** since Respondents are not privy to the transactions and as to such transaction they were privy to they cannot remember with exactitude the same having occurred a long time ago, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

25. Respondents **specifically DENY** paragraphs 42, 43, 44, 45, and 46, of the Petition **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 and as to such transaction they were privy to they cannot remember with exactitude the same having occurred a long time ago, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

26. Respondents **specifically DENY** paragraphs 49, 50, 51 and 52, of the Petition **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 and as to such transaction they were privy to they cannot remember with exactitude the same having occurred a long time ago, except that as to Respondent Imelda R. Marcos she specifically remembers that the funds involved were lawfully acquired.

Upon careful perusal of the foregoing, the Court finds that respondent Mrs. Marcos and the Marcos children indubitably failed to tender genuine issues in their answer to the petition for forfeiture. A genuine issue is an issue of fact which calls for the presentation of evidence as distinguished from an issue which is fictitious and contrived, set up in bad faith or patently lacking in substance so as not to constitute a genuine issue for trial. Respondents' defenses of "lack of knowledge for lack of privity" or "(inability to) recall because it happened a long time ago" or, on the part of Mrs. Marcos, that "the funds were lawfully acquired" are fully insufficient to tender genuine issues. Respondent Marcoses' defenses were a sham and evidently calibrated to compound and confuse the issues.[65] (Emphasis supplied.)

In the case at bar, petitioners give the same stock answer to the effect that the Marcoses did not engage in any illegal activities, and that *all* their properties were lawfully acquired. They fail to state with particularity the ultimate facts surrounding the alleged lawfulness of the mode of acquiring the funds in Arelma (which totaled USD 3,369,975.00 back in 1983), considering that the entirety of their lawful income amounted only to USD 304,372.43, or only 9% of the entire Arelma fund. Then, as now, they employ what the Court in G.R. No. 152154 characterized as a “negative pregnant,” not just in denying the criminal provenance of the Arelma funds, but in the matter of ownership of the said funds. As discussed by the Court in the first *Republic* case, cited by the Sandiganbayan:

Evidently, this particular denial had the earmark of what is called in the law on pleadings as a *negative pregnant*, that is, 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 at. 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, it has been held that the qualifying circumstances alone are denied while the fact itself is admitted.**[66]

Due to the insufficiency of petitioners' denial of paragraph 59 which in effect denies only the qualifying circumstances, and by virtue of the Court's ruling in the Swiss Deposits Decision, petitioners are deemed to have admitted the factual antecedents and the establishment of Arelma. In paragraph 32 of their Answer, they only deny the first few sentences of paragraph 59, while conveniently neglecting to address subparagraphs 1 to 5 and the opening bank documents described in 5 (a) to (d) of the Petition for Forfeiture. Paragraphs 1 and 2 of the Petition discusses the establishment of a Panamanian company to be named either "Larema, Inc. or Arelma, Inc., or Relma, Inc.;" the appointment of several people as directors; and the opening of a direct account with Merrill Lynch. Paragraphs 3 to 5 also of the Petition for Forfeiture detail correspondences between a "J.L. Sunier" and a letter addressed to Malacañang with the salutation "Dear Excellency."

Regarding the averment of petitioners that they lack knowledge sufficient to form a belief as to the truth of the above allegations in the Petition for Forfeiture, the Court's discussion in the Swiss Deposits Decision bears reiterating:

> Here, despite the serious and specific allegations against them, the Marcoses responded by simply saying that they had no knowledge or information sufficient to form a belief as to the truth of such allegations. Such a general, self-serving claim of ignorance of the facts alleged in the petition for forfeiture was insufficient to raise an issue. Respondent Marcoses should have positively stated how it was that they were supposedly ignorant of the facts alleged.[67]

Petitioners cannot escape the fact that there is manifest disparity between the amount of the Arelma funds and the lawful income of the Marcoses as shown in the ITRs filed by spouses Marcos. The Swiss Deposits Decision found that the genuineness of the said ITRs and balance sheets of the Marcos spouses have already been admitted by petitioners themselves:

> Not only that. Respondents' answer also technically admitted the genuineness and due execution of the Income Tax Returns (ITRs) and the balance sheets of the late Ferdinand E. Marcos and Imelda R. Marcos attached to the petition for forfeiture, as well as the veracity of the contents thereof.
>
> The answer again premised its denials of said ITRs and balance sheets on the ground of lack of knowledge or information sufficient to form a belief as to the truth of the contents thereof. Petitioner correctly points out that respondents' denial was not really grounded on lack of knowledge or information sufficient to form a belief but was based on lack of recollection. By reviewing their own records, respondent Marcoses could have easily determined the genuineness and due execution of the ITRs and the balance sheets. They also had the means and opportunity of verifying the same from the records of the BIR and the Office of the President. They did not.
>
> When matters regarding which respondents claim to have no knowledge or information sufficient to form a belief are plainly and necessarily within their knowledge, their alleged ignorance or lack of information will not be considered a specific denial. An unexplained denial of information within the control of the pleader, or is readily accessible to him, is evasive and is insufficient to constitute an effective denial.[68] (Footnotes omitted.)

We find that petitioners have again attempted to delay the goal of asset recovery by their evasiveness and the expedient profession of ignorance. It is well-established that a profession of ignorance about a fact that is necessarily within the pleader's knowledge or means of knowing is as ineffective as no denial at all. On a similar vein, there is a failure by petitioners to properly tender an issue, which as correctly ruled by the Sandiganbayan, justifies the Republic's resort to summary judgment.

Summary judgment may be allowed where there is no genuine issue as to any material fact and where the moving party is entitled to a judgment as a matter of law.[69] In *Yuchengco v. Sandiganbayan,* the Court has previously discussed the importance of summary judgment in weeding out sham claims or defenses at an early stage of the litigation in order to avoid the expense and loss of time involved in a trial, *viz*:

> 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. 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. [70]

Even if in the Answer itself there appears to be a tender of issues requiring trial, yet when the relevant affidavits, depositions, or admissions demonstrate that those issues are not genuine but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for plaintiff.[71]

Summary judgment, or accelerated judgment as it is sometimes known, may also call for a hearing so that both the movant and the adverse party may justify their positions. However, the hearing contemplated (with 10-day notice) is for the purpose of determining whether the issues are genuine or not, not to receive evidence of the issues set up in the pleadings. In *Carcon Development Corporation v. Court of Appeals,* [72] the Court ruled that a hearing is not de riguer. The matter may be resolved, and usually is, on the basis of affidavits, depositions, and admissions. This does not mean that the hearing is superfluous; only that the court is empowered to determine its necessity.

It is the law itself that determines when a summary judgment is proper. Under the rules, summary judgment is appropriate when there are no genuine issues of fact that call for the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issues, when the affidavits, depositions and admissions show that such issues are not genuine, then summary judgment as prescribed by the rules must ensue as a matter of law. What is crucial to a determination, therefore, is the presence or absence of a genuine issue as to any material fact. When the facts as pleaded appear uncontested or undisputed, then summary judgment is called for.[73]

Guided by the principles above indicated, we hold that under the circumstances obtaining in the case at bar, summary judgment is proper. The Sandiganbayan did not commit a reversible error in granting the corresponding 2004 Motion for Summary Judgment filed by respondent. The latter is well within its right to avail itself of summary judgment and obtain immediate relief, considering the insufficient denials and pleas of ignorance made by petitioners on matters that are supposedly within their knowledge.

These denials and pleas constitute admissions of material allegations under paragraph 59 of the Petition for Forfeiture – a tact they have employed repeatedly in Civil Case No. 0141. As discussed, the purpose of summary judgment is precisely to avoid long drawn litigations and useless delays.[74] We also affirm the Sandiganbayan's findings that the moving party, the Republic, is now entitled to judgment as a matter of law.

WHEREFORE, the instant Petition is **DENIED**. The Decision dated 2 April 2009 of the Sandiganbayan is **AFFIRMED**. All assets, properties, and funds belonging to Arelma, S.A., with an estimated aggregate amount of **USD 3,369,975** as of 1983, plus all interests and all other income that accrued thereon, until the time or specific day that all money or monies are released and/or transferred to the possession of the Republic of the Philippines, are hereby forfeited in favor of Respondent Republic of the Philippines.

SO ORDERED.

Brion, [*] *(Acting Chairperson), Abad,* [**] *Perez*, and *Reyes, JJ.,* concur.

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[*] Acting chairperson in lieu of Justice Antonio T. Carpio, who took no part due to previous inhibition in a related case.

[**] Per Raffle dated 25 April 2012.

[1] Penned by Justice Norberto Y. Geraldez (Chairperson) and concurred in by Associate Justices Efren N. de la Cruz, and Teresita V. Diaz Baldos.

[2] Petition for Forfeiture, *rollo* (G.R. No. 189434), pp. 110-188.

[3] An Act Declaring Forfeiture in Favor of the State Any Property Found To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing for the Procedure Therefor.

[4] Series of 1986, issued by then President Corazon C. Aquino on 28 February 1986. E.O. 14, as amended by E.O. 14-A, tasked the PCGG with the conduct of investigations in criminal and civil actions for the recovery of unlawfully acquired property and vested the Sandiganbayan with exclusive and original jurisdiction over these cases.

[5] Supra note 2.

[6] Identified as the (1) Azio-Verso-Vibur Foundation accounts; (2) Xandy-Wintrop: Charis-Scolari-Valamo-Spinus-Avertina Foundation accounts; (3) Trinidad-Rayby-Palmy Foundation accounts; (4) Rosalys-Aguamina Foundation accounts, and (5) Maler Foundation accounts. (Sandiganbayan Decision dated 2 April 2009, p. 24); rollo [G.R. No. 189434], p. 74.

[7] Supra note 2, at 115.

[8] Supra note 2, at 170.

[9] *Republic of the Philippines v. Sandiganbayan*, 453 Phil. 1059 (2003).

[10] Id., citing the Sandiganbayan Resolution dated 20 November 1997.

[11] Penned by Justice Catalino R. Castañeda and concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Gregory S. Ong (Special Division).

[12] *Republic of the Philippines v. Sandiganbayan,* supra note 9.

[13] Sandiganbayan Decision, *rollo* (G.R. No. 189505), p. 10.

[14] Sandiganbayan Decision, *rollo* (G.R. No. 189505), pp. 7-62.

[15] Id. at 43.

[16] Id. at 61.

[17] Petition, *rollo* (G.R. No. 189434), p. 12-54.

[18] Petition, *rollo,* (G.R. No. 189505), pp. 65-101.

[19] Petition, *rollo* (G.R. No. 189434), p. 27.

[20] Id. at 32.

[21] 116 Phil. 1361, 1369 (1962).

[22] Id. at 1366-1368, citing 23 Am. Jur. 612, 15 Am. Jur., Sec. 104, p. 368, 58 Am. Jur., Section 44, p. 49.

[23] Section 8. Protection against self-incrimination. Neither the respondent nor any other person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and other records on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to prosecution; but no individual shall be prosecuted criminally for or on account of any transaction, matter or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and conviction for perjury or false testimony committed in so testifying or from administrative proceedings.

[24] *Republic of the Philippines v. Sandiganbayan* (18 November 2003, on the Marcoses' Motion for Reconsideration), 461 Phil. 598, 614 (2003).

[25] *Cabal v. Kapunan*, supra note 21, at 1362.

[26] G.R. No. 90529, 16 August 1991, 200 SCRA 667.

[27] Supra note 24, at 611.

[28] G.R. No. L-18428, 115 Phil. 120 (1962).

[29] *Depakakibo Garcia v. Sandiganbayan,* G.R. Nos. 170122 & 171381, 12 October 2009, 603 SCRA 348.

[30] *Republic v. Sandiganbayan,* 255 Phil. 71 (1989).

[31] Supra note 24 at 613-614.

[32] R.A. 1375, Sec. 3 c, d, and e.

[33] Petition for Review, *rollo* (G.R. No. 189434), p. 30.

[34] *Republic of the Philippines v. Sandiganbayan*, supra note 9, at 1119.

[35] R.A. 1379, Sec. 2.

[36] *Republic of the Philippines v. Sandiganbayan,* supra note 9, at 1143.

[37] R.A. 1375, Sec. 3.

[38] *Republic of the Philippines v. Sandiganbayan*, supra note 9, at 1089-90.

[39] *Republic of the Philippines v. Sandiganbayan*, supra note 8, at 1128-1129.

[40] *Republic v. Sandiganbayan*, supra note 9, at 1091.

[41] Supra note 9, at 1092-1093.

[42] G.R. Nos. 177857-58, 11 February 2010, 612 SCRA 255.

[43] Petitioner Marcos, Jr. states: "Thus, before the ground relied upon is discussed, Petitioner implores this Honorable Court to look at Civil Case No. 0141 anew and to not apply in this instance the pronouncements in S.C. G.r. No. 152154 entitled *'Republic of the Philippines vs. Hon. Sandiganbayan, et al.*' for, with all due respect, this Honorable Court should abandon its pronouncements therein for being contrary to law and its basic tenets." Rollo (G.R. No. 189434), p. 26.

[44] See Annexes to the Petition for Foreclosure, Annexes A to G, I to P, V, and their sub-annexes, as cited in footnote 25 of the Sandiganbayan Decision.

[45] Footnote 25 of the Sandiganbayan Decision, *rollo*, p. 80.

[46] Petition for Forfeiture, p. 61, supra note 2, at 170.

[47] Bautista, Jaime, S., "Recovery of the Marcos Assets," delivered at the International Law Association, presented by Levy V. Mendoza, Director of the Presidential Commission on Good Governance, www.unafei.or.jp/english/pdf/PDF.../Third_GGSeminar_P72-79.pdf, accessed on 7 March 2012.

[48] More accurately known as Arelma, S.A.

[49] TSN, 24 March 2000, pp. 13-14.

[50] Supra note 9, at 1150.

[51] E.O. 14, Series of 1984, Defining The Jurisdiction Over Cases Involving The Ill-Gotten Wealth of Former President Ferdinand E. Marcos, Mrs. Imelda R. Marcos, Members of Their Immediate Family, Close Relatives, Subordinates, Close and/or Business Associates, Dummies, Agents and Nominees.

[52] Dated 25 March 1986.

[53] 1997 Rules of Civil Procedure, Rule 36, Sec. 5.

[54] Sec. 4 states: "*Case not fully adjudicated on motion*.—If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall

ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly."

[55] G.R. No. 178899, 15 November 2010, 634 SCRA 635.

[56] 553 U.S. 851, 858, 128 S. Ct. 2180.

[57] Supra note 47.

[58] Supra note 56, at 859, citing Hilao v. Estate of Marcos, 103 F.3d 767 (C.A.9 1996), at 771.

[59] Supra note 56, at 859.

[60] Supra note 56, at 866.

[61] Rollo (G.R. No. 189434), p. 514.

[62] Supra note 56, at 873.

[63] Found among the Malacañang documents and attached as "Annex V-21-b" of the Petition was a letter written by J.L. Sunier with a reference to "SAPPHIRE" and a salutation 'Dear Excellency" stating, among others, the current valuation by Merrill Lynch of Arelma, Inc. at USD 3,369,975.

[64] Rollo (G.R. No. 189434), p. 196.

[65] Supra note 9 at 1101-1103.

[66] Supra note 9, at 1107.

[67] Supra note 9 at 1106.

[68] Supra note 9 at 1111-1112.

[69] 1997 Rules of Civil Procedure, Rule 35, Sec. 3.

[70] 515 Phil. 1, 12 (2006).

[71] *Carcon Development Corporation v. Court of Appeals,* 259 Phil 836, 840 (1989).

[72] Supra.

[73] *Evadel Realty v. Spouses Antero and Virginia Soriano*, 409 Phil. 450 (2001).

[74] *Nocom v. Camerino*, G.R. No. 182984, 10 February 2009, 578 SCRA 390, 409-410.