EN BANC

**[G.R. No. 152154. July 15, 2003]**

# REPUBLIC OF THE PHILIPPINES, petitioner, vs. HONORABLE SANDIGANBAYAN (SPECIAL FIRST DIVISION), FERDINAND E. MARCOS (REPRESENTED BY HIS ESTATE/HEIRS: IMELDA R. MARCOS, MARIA IMELDA [IMEE] MARCOS-MANOTOC, FERDINAND R. MARCOS, JR. AND IRENE MARCOS-ARANETA) AND IMELDA ROMUALDEZ MARCOS, respondents.

## D E C I S I O N

**CORONA, *J.*:**

This is a petition for certiorari under Rule 65 of the Rules of Court seeking to (1) set aside the Resolution dated January 31, 2002 issued by the Special First Division of the Sandiganbayan in Civil Case No. 0141 entitled *Republic of the Philippines vs. Ferdinand E. Marcos, et. al.*, and (2) reinstate its earlier decision dated September 19, 2000 which forfeited in favor of petitioner Republic of the Philippines (Republic) the amount held in escrow in the Philippine National Bank (PNB) in the aggregate amount of US$658,175,373.60 as of January 31, 2002.

## BACKGROUND OF THE CASE

On December 17, 1991, petitioner Republic, through the Presidential Commission on Good Government (PCGG), represented by the Office of the Solicitor General (OSG), filed a petition for forfeiture before the Sandiganbayan, docketed as Civil Case No. 0141 entitled *Republic of the Philippines vs. Ferdinand E. Marcos, represented by his Estate/Heirs and Imelda R. Marcos,* pursuant to RA 1379[1][1] in relation to Executive Order Nos. 1,[2][2] 2,[3][3] 14[4][4] and 14-A.[5][5]

In said case, petitioner sought the declaration of the aggregate amount of US$356 million (now estimated to be more than US$658 million inclusive of interest) deposited in escrow in the PNB, as ill-gotten wealth. The funds were previously held by the following five account groups, using various foreign foundations in certain Swiss banks:

(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.

In addition, the petition sought the forfeiture of US$25 million and US$5 million in treasury notes which exceeded the Marcos couple's salaries, other lawful income as well as income from legitimately acquired property. The treasury notes are frozen at the Central Bank of the Philippines, now Bangko Sentral ng Pilipinas, by virtue of the freeze order issued by the PCGG.

On October 18, 1993, respondents Imelda R. Marcos, Maria Imelda M. Manotoc, Irene M. Araneta and Ferdinand R. Marcos, Jr. filed their answer.

Before the case was set for pre-trial, a General Agreement and the Supplemental Agreements[6][6] dated December 28, 1993 were executed by the Marcos children and then PCGG Chairman Magtanggol Gunigundo for a global settlement of the assets of the Marcos family. Subsequently, respondent Marcos children filed a motion dated December 7, 1995 for the approval of said agreements and for the enforcement thereof.

The General Agreement/Supplemental Agreements sought to identify, collate, cause the inventory of and distribute all assets presumed to be owned by the Marcos family under the conditions contained therein. The aforementioned General Agreement specified in one of its premises or "whereas clauses" the fact that petitioner "obtained a judgment from the Swiss Federal Tribunal on December 21, 1990, that the Three Hundred Fifty-six Million U.S. dollars (US$356 million) belongs in principle to the Republic of the Philippines provided certain conditionalities are met x x x." The said decision of the Swiss Federal Supreme Court affirmed the decision of Zurich District Attorney Peter Consandey, granting petitioner's request for legal assistance.[7][7] Consandey declared the various deposits in the name of the enumerated foundations to be of illegal provenance and ordered that they be frozen to await the final verdict in favor of the parties entitled to restitution.

Hearings were conducted by the Sandiganbayan on the motion to approve the General/Supplemental Agreements. Respondent Ferdinand, Jr. was presented as witness for the purpose of establishing the partial implementation of said agreements.

On October 18, 1996, petitioner filed a motion for summary judgment and/or judgment on the pleadings. Respondent Mrs. Marcos filed her opposition thereto which was later adopted by respondents Mrs. Manotoc, Mrs. Araneta and Ferdinand, Jr.

In its resolution dated November 20, 1997, the Sandiganbayan denied petitioner's motion for summary judgment and/or judgment on the pleadings on the ground that the motion to approve the compromise agreement "(took) precedence over the motion for summary judgment."

Respondent Mrs. Marcos filed a manifestation on May 26, 1998 claiming she was not a party to the motion for approval of the Compromise Agreement and that she owned 90% of the funds with the remaining 10% belonging to the Marcos estate.

Meanwhile, on August 10, 1995, petitioner filed with the District Attorney in Zurich, Switzerland, an additional request for the immediate transfer of the deposits to an escrow

account in the PNB. The request was granted. On appeal by the Marcoses, the Swiss Federal Supreme Court, in a decision dated December 10, 1997, upheld the ruling of the District Attorney of Zurich granting the request for the transfer of the funds. In 1998, the funds were remitted to the Philippines in escrow. Subsequently, respondent Marcos children moved that the funds be placed in *custodia legis* because the deposit in escrow in the PNB was allegedly in danger of dissipation by petitioner. The Sandiganbayan, in its resolution dated September 8, 1998, granted the motion.

After the pre-trial and the issuance of the pre-trial order and supplemental pre-trial order dated October 28, 1999 and January 21, 2000, respectively, the case was set for trial. After several resettings, petitioner, on March 10, 2000, filed another motion for summary judgment pertaining to the forfeiture of the US$356 million, based on the following grounds:

**I**

THE ESSENTIAL FACTS WHICH WARRANT THE FORFEITURE OF THE FUNDS SUBJECT OF THE PETITION UNDER R.A. NO. 1379 ARE ADMITTED BY RESPONDENTS IN THEIR PLEADINGS AND OTHER SUBMISSIONS MADE IN THE COURSE OF THE PROCEEDING.

**II**

RESPONDENTS' ADMISSION MADE DURING THE PRE-TRIAL THAT THEY DO NOT HAVE ANY INTEREST OR OWNERSHIP OVER THE FUNDS SUBJECT OF THE ACTION FOR FORFEITURE TENDERS NO GENUINE ISSUE OR CONTROVERSY AS TO ANY MATERIAL FACT IN THE PRESENT ACTION, THUS WARRANTING THE RENDITION OF SUMMARY JUDGMENT.[8][8]

Petitioner contended that, after the pre-trial conference, certain facts were established, warranting a summary judgment on the funds sought to be forfeited.

Respondent Mrs. Marcos filed her opposition to the petitioner's motion for summary judgment, which opposition was later adopted by her co-respondents Mrs. Manotoc, Mrs. Araneta and Ferdinand, Jr.

On March 24, 2000, a hearing on the motion for summary judgment was conducted.

In a decision[9][9] dated September 19, 2000, the Sandiganbayan granted petitioner's motion for summary judgment:

CONCLUSION

There is no issue of fact which calls for the presentation of evidence.

The Motion for Summary Judgment is hereby granted.

The Swiss deposits which were transmitted to and now held in escrow at the PNB are deemed unlawfully acquired as ill-gotten wealth.

DISPOSITION

WHEREFORE, judgment is hereby rendered in favor of the Republic of the Philippines and against the respondents, declaring the Swiss deposits which were transferred to and now deposited in escrow at the Philippine National Bank in the total

aggregate value equivalent to US$627,608,544.95 as of August 31, 2000 together with the increments thereof forfeited in favor of the State.[10][10]

Respondent Mrs. Marcos filed a motion for reconsideration dated September 26, 2000. Likewise, Mrs. Manotoc and Ferdinand, Jr. filed their own motion for reconsideration dated October 5, 2000. Mrs. Araneta filed a manifestation dated October 4, 2000 adopting the motion for reconsideration of Mrs. Marcos, Mrs. Manotoc and Ferdinand, Jr.

Subsequently, petitioner filed its opposition thereto.

In a resolution[11][11] dated January 31, 2002, the Sandiganbayan reversed its September 19, 2000 decision, thus denying petitioner's motion for summary judgment:

CONCLUSION

In sum, the evidence offered for summary judgment of the case did not prove that the money in the Swiss Banks belonged to the Marcos spouses because no legal proof exists in the record as to the ownership by the Marcoses of the funds in escrow from the Swiss Banks.

The basis for the forfeiture in favor of the government cannot be deemed to have been established and our judgment thereon, perforce, must also have been without basis.

WHEREFORE, the decision of this Court dated September 19, 2000 is reconsidered and set aside, and this case is now being set for further proceedings.[12][12]

Hence, the instant petition. In filing the same, petitioner argues that the Sandiganbayan, in reversing its September 19, 2000 decision, committed grave abuse of discretion amounting to lack or excess of jurisdiction considering that --

**I**

PETITIONER WAS ABLE TO PROVE ITS CASE IN ACCORDANCE WITH THE REQUISITES OF SECTIONS 2 AND 3 OF R.A. NO. 1379:

A. PRIVATE RESPONDENTS CATEGORICALLY ADMITTED NOT ONLY THE PERSONAL CIRCUMSTANCES OF FERDINAND E. MARCOS AND IMELDA R. MARCOS AS PUBLIC OFFICIALS BUT ALSO THE EXTENT OF THEIR SALARIES AS SUCH PUBLIC OFFICIALS, WHO UNDER THE CONSTITUTION, WERE PROHIBITED FROM ENGAGING IN THE MANAGEMENT OF FOUNDATIONS.

B. PRIVATE RESPONDENTS ALSO ADMITTED THE EXISTENCE OF THE SWISS DEPOSITS AND THEIR OWNERSHIP THEREOF:

1. ADMISSIONS IN PRIVATE RESPONDENTS' ANSWER;

2. ADMISSION IN THE GENERAL / SUPPLEMENTAL AGREEMENTS THEY SIGNED AND SOUGHT TO IMPLEMENT;

3. ADMISSION IN A MANIFESTATION OF PRIVATE RESPONDENT IMELDA R. MARCOS AND IN THE MOTION TO PLACE THE *RES* IN *CUSTODIA LEGIS*; AND

4. ADMISSION IN THE UNDERTAKING TO PAY THE HUMAN RIGHTS VICTIMS.

C. PETITIONER HAS PROVED THE EXTENT OF THE LEGITIMATE INCOME OF FERDINAND E. MARCOS AND IMELDA R. MARCOS AS PUBLIC OFFICIALS.

D. PETITIONER HAS ESTABLISHED A *PRIMA FACIE* PRESUMPTION OF UNLAWFULLY ACQUIRED WEALTH.

**II**

SUMMARY JUDGMENT IS PROPER SINCE PRIVATE RESPONDENTS HAVE NOT RAISED ANY GENUINE ISSUE OF FACT CONSIDERING THAT:

A. PRIVATE RESPONDENTS' DEFENSE THAT SWISS DEPOSITS WERE LAWFULLY ACQUIRED DOES NOT ONLY FAIL TO TENDER AN ISSUE BUT IS CLEARLY A SHAM; AND

B. IN SUBSEQUENTLY DISCLAIMING OWNERSHIP OF THE SWISS DEPOSITS, PRIVATE RESPONDENTS ABANDONED THEIR SHAM DEFENSE OF LEGITIMATE ACQUISITION, AND THIS FURTHER JUSTIFIED THE RENDITION OF A SUMMARY JUDGMENT.

**III**

THE FOREIGN FOUNDATIONS NEED NOT BE IMPLEADED.

**IV**

THE HONORABLE PRESIDING JUSTICE COMMITTED GRAVE ABUSE OF DISCRETION IN REVERSING HIMSELF ON THE GROUND THAT ORIGINAL COPIES OF THE AUTHENTICATED SWISS DECISIONS AND THEIR "AUTHENTICATED TRANSLATIONS" HAVE NOT BEEN SUBMITTED TO THE COURT, WHEN EARLIER THE SANDIGANBAYAN HAS QUOTED EXTENSIVELY A PORTION OF THE TRANSLATION OF ONE OF THESE SWISS DECISIONS IN HIS "PONENCIA" DATED JULY 29, 1999 WHEN IT DENIED THE MOTION TO RELEASE ONE HUNDRED FIFTY MILLION US DOLLARS ($150,000,000.00) TO THE HUMAN RIGHTS VICTIMS.

**V**

PRIVATE RESPONDENTS ARE DEEMED TO HAVE WAIVED THEIR OBJECTION TO THE AUTHENTICITY OF THE SWISS FEDERAL SUPREME COURT DECISIONS.[13][13]

Petitioner, in the main, asserts that nowhere in the respondents' motions for reconsideration and supplemental motion for reconsideration were the authenticity, accuracy and admissibility of the Swiss decisions ever challenged. Otherwise stated, it was incorrect for the Sandiganbayan to use the issue of lack of authenticated translations of the decisions of the Swiss Federal Supreme Court as the basis for reversing itself *because respondents themselves never raised this issue* in their motions for reconsideration and supplemental motion for reconsideration. Furthermore, this particular issue relating to the translation of the Swiss court decisions could not be resurrected anymore because said decisions had been previously utilized by the Sandiganbayan itself in resolving a "decisive issue" before it.

Petitioner faults the Sandiganbayan for questioning the non-production of the authenticated translations of the Swiss Federal Supreme Court decisions as this was a marginal and technical matter that did not diminish by any measure the conclusiveness and strength of what had been proven and admitted before the Sandiganbayan, that is, that the funds deposited by the Marcoses constituted ill-gotten wealth and thus belonged to the Filipino people.

In compliance with the order of this Court, Mrs. Marcos filed her comment to the petition on May 22, 2002. After several motions for extension which were all granted, the comment of Mrs. Manotoc and Ferdinand, Jr. and the separate comment of Mrs. Araneta were filed on May 27, 2002.

Mrs. Marcos asserts that the petition should be denied on the following grounds:

**A.**

PETITIONER HAS A PLAIN, SPEEDY, AND ADEQUATE REMEDY AT THE SANDIGANBAYAN.

**B.**

THE SANDIGANBAYAN DID NOT ABUSE ITS DISCRETION IN SETTING THE CASE FOR FURTHER PROCEEDINGS.[14][14]

Mrs. Marcos contends that petitioner has a plain, speedy and adequate remedy in the ordinary course of law in view of the resolution of the Sandiganbayan dated January 31, 2000 directing petitioner to submit the authenticated translations of the Swiss decisions. Instead of availing of said remedy, petitioner now elevates the matter to this Court. According to Mrs. Marcos, a petition for certiorari which does not comply with the requirements of the rules may be dismissed. Since petitioner has a plain, speedy and adequate remedy, that is, to proceed to trial and submit authenticated translations of the Swiss decisions, its petition before this Court must be dismissed. Corollarily, the Sandiganbayan's ruling to set the case for further proceedings cannot and should not be considered a capricious and whimsical exercise of judgment.

Likewise, Mrs. Manotoc and Ferdinand, Jr., in their comment, prayed for the dismissal of the petition on the grounds that:

**(A)**

BY THE TIME PETITIONER FILED ITS MOTION FOR SUMMARY JUDGMENT ON 10 MARCH 2000, IT WAS ALREADY BARRED FROM DOING SO.

(1) The Motion for Summary Judgment was based on private respondents' Answer and other documents that had long been in the records of the case. Thus, by the time the Motion was filed on 10 March 2000, estoppel by laches had already set in against petitioner.

(2) By its positive acts and express admissions prior to filing the Motion for Summary Judgment on 10 March 1990, petitioner had legally bound itself to go to trial on the basis of existing issues. Thus, it clearly waived whatever right it had to move for summary judgment.

**(B)**

EVEN ASSUMING THAT PETITIONER WAS NOT LEGALLY BARRED FROM FILING THE MOTION FOR SUMMARY JUDGMENT, THE SANDIGANBAYAN IS CORRECT IN RULING THAT PETITIONER HAS NOT YET ESTABLISHED A *PRIMA FACIE* CASE FOR THE FORFEITURE OF THE SWISS FUNDS.

(1) Republic Act No. 1379, the applicable law, is a penal statute. As such, its provisions, particularly the essential elements stated in section 3 thereof, are mandatory in nature. These should be strictly construed against petitioner and liberally in favor of private respondents.

(2) Petitioner has failed to establish the third and fourth essential elements in Section 3 of R.A. 1379 with respect to the identification, ownership, and approximate amount of the property which the Marcos couple allegedly "acquired during their incumbency".

(a) Petitioner has failed to prove that the Marcos couple "acquired" or own the Swiss funds.

(b) Even assuming, for the sake of argument, that the fact of acquisition has been proven, petitioner has categorically admitted that it has no evidence showing how much of the Swiss funds was acquired "during the incumbency" of the Marcos couple from 31 December 1965 to 25 February 1986.

(3) In contravention of the essential element stated in Section 3 (e) of R.A. 1379, petitioner has failed to establish the other proper earnings and income from legitimately acquired property of the Marcos couple over and above their government salaries.

(4) Since petitioner failed to prove the three essential elements provided in paragraphs (c)[15][15] (d),[16][16] and (e)[17][17] of Section 3, R.A. 1379, the inescapable conclusion is that the prima facie presumption of unlawful acquisition of the Swiss funds has not yet attached. There can, therefore, be no premature forfeiture of the funds.

**(C)**

IT WAS ONLY BY ARBITRARILY ISOLATING AND THEN TAKING CERTAIN STATEMENTS MADE BY PRIVATE RESPONDENTS OUT OF CONTEXT THAT PETITIONER WAS ABLE TO TREAT THESE AS "JUDICIAL ADMISSIONS" SUFFICIENT TO ESTABLISH A PRIMA FACIE AND THEREAFTER A CONCLUSIVE CASE TO JUSTIFY THE FORFEITURE OF THE SWISS FUNDS.

(1) Under Section 27, Rule 130 of the Rules of Court, the General and Supplemental Agreements, as well as the other written and testimonial statements submitted in relation thereto, are expressly barred from being admissible in evidence against private respondents.

(2) Had petitioner bothered to weigh the alleged admissions together with the other statements on record, there would be a demonstrable showing that no such "judicial admissions" were made by private respondents.

**(D)**

SINCE PETITIONER HAS NOT (YET) PROVEN ALL THE ESSENTIAL ELEMENTS TO ESTABLISH A PRIMA FACIE CASE FOR FORFEITURE, AND PRIVATE

RESPONDENTS HAVE NOT MADE ANY JUDICIAL ADMISSION THAT WOULD HAVE FREED IT FROM ITS BURDEN OF PROOF, THE SANDIGANBAYAN DID NOT COMMIT GRAVE ABUSE OF DISCRETION IN DENYING THE MOTION FOR SUMMARY JUDGMENT. CERTIORARI, THEREFORE, DOES NOT LIE, ESPECIALLY AS THIS COURT IS NOT A TRIER OF FACTS.[18][18]

For her part, Mrs. Araneta, in her comment to the petition, claims that obviously petitioner is unable to comply with a very plain requirement of respondent Sandiganbayan. The instant petition is allegedly an attempt to elevate to this Court matters, issues and incidents which should be properly threshed out at the Sandiganbayan. To respondent Mrs. Araneta, all other matters, save that pertaining to the authentication of the translated Swiss Court decisions, are irrelevant and impertinent as far as this Court is concerned. Respondent Mrs. Araneta manifests that she is as eager as respondent Sandiganbayan or any interested person to have the Swiss Court decisions officially translated in our known language. She says the authenticated official English version of the Swiss Court decisions should be presented. This should stop all speculations on what indeed is contained therein. Thus, respondent Mrs. Araneta prays that the petition be denied for lack of merit and for raising matters which, in elaborated fashion, are impertinent and improper before this Court.

**PROPRIETY OF PETITIONER'S ACTION FOR CERTIORARI**

But before this Court discusses the more relevant issues, the question regarding the propriety of petitioner Republic's action for certiorari under Rule 65[19][19] of the 1997 Rules of Civil Procedure assailing the Sandiganbayan Resolution dated January 21, 2002 should be threshed out.

At the outset, we would like to stress that we are treating this case as an exception to the general rule governing petitions for certiorari. Normally, decisions of the Sandiganbayan are brought before this Court under Rule 45, not Rule 65.[20][20] But where the case is undeniably ingrained with immense public interest, public policy and deep historical repercussions, certiorari is allowed notwithstanding the existence and availability of the remedy of appeal.[21][21]

One of the foremost concerns of the Aquino Government in February 1986 was the recovery of the unexplained or ill-gotten wealth reputedly amassed by former President and Mrs. Ferdinand E. Marcos, their relatives, friends and business associates. Thus, the very first Executive Order (EO) issued by then President Corazon Aquino upon her assumption to office after the ouster of the Marcoses was EO No. 1, issued on February 28, 1986. It created the Presidential Commission on Good Government (PCGG) and charged it with the task of assisting the President in the "recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence,

connections or relationship." The urgency of this undertaking was tersely described by this Court in *Republic vs. Lobregat*[22][22]:

> surely x x x an enterprise "of great pith and moment"; it was attended by "great expectations"; it was initiated not only out of considerations of simple justice but also out of sheer necessity - the national coffers were empty, or nearly so.

In all the alleged ill-gotten wealth cases filed by the PCGG, this Court has seen fit to set aside technicalities and formalities that merely serve to delay or impede judicious resolution. This Court prefers to have such cases resolved on the merits at the Sandiganbayan. But substantial justice to the Filipino people and to all parties concerned, not mere legalisms or perfection of form, should now be relentlessly and firmly pursued. Almost two decades have passed since the government initiated its search for and reversion of such ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now. Let the ownership of these funds and other assets be finally determined and resolved with dispatch, free from all the delaying technicalities and annoying procedural sidetracks.[23][23]

We thus take cognizance of this case and settle with finality all the issues therein.

## ISSUES BEFORE THIS COURT

The crucial issues which this Court must resolve are: (1) whether or not respondents raised any genuine issue of fact which would either justify or negate summary judgment; and (2) whether or not petitioner Republic was able to prove its case for forfeiture in accordance with Sections 2 and 3 of RA 1379.

### (1) THE PROPRIETY OF SUMMARY JUDGMENT

We hold that respondent Marcoses failed to raise any genuine issue of fact in their pleadings. Thus, on motion of petitioner Republic, summary judgment should take place as a matter of right.

In the early case of *Auman vs. Estenzo*[24][24]*,* summary judgment was described as a judgment which a court may render before trial but after both parties have pleaded. It is ordered by the court upon application by one party, supported by affidavits, depositions or other documents, with notice upon the adverse party who may in turn file an opposition supported also by affidavits, depositions or other documents. This is after the court summarily hears both parties with their respective proofs and finds that there is no genuine issue between them. Summary judgment is sanctioned in this jurisdiction by Section 1, Rule 35 of the 1997 Rules of Civil Procedure:

> SECTION 1. Summary judgment for claimant.- A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.[25][25]

Summary judgment is proper when there is clearly no genuine issue as to any material fact in the action.[26][26] The theory of summary judgment is that, although an answer may on its face appear to tender issues requiring trial, if it is demonstrated by affidavits, depositions or admissions that those issues are not genuine but sham or fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for petitioner Republic.

The Solicitor General made a very thorough presentation of its case for forfeiture:

x x x

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 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. x x x

xxx xxx xxx

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 form 1966 to 1976 was ₱60,000 a year and from 1977 to 1985, ₱100,000 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 ₱75,000 a year xxx.

ANALYSIS OF RESPONDENTS
LEGITIMATE INCOME

x x x

12. Based on available documents, the ITRs of the Marcoses for the years 1965-1975 were filed under Tax Identification No. 1365-055-1. For the years 1976 until 1984, the returns were filed under Tax Identification No. M 6221-J 1117-A-9.

13. The data contained in the ITRs and Balance Sheet filed by the "Marcoses are summarized and attached to the reports in the following schedules:

Schedule A:

Schedule of Income (Annex "T" hereof);

Schedule B:

Schedule of Income Tax Paid (Annex "T-1" hereof);

Schedule C:

Schedule of Net Disposable Income (Annex "T-2" hereof);

Schedule D:

Schedule of Networth Analysis (Annex “T-3” hereof).

14. As summarized in Schedule A (Annex “T” hereof), the Marcoses reported ₱16,408,442.00 or US$2,414,484.91 in total income over a period of 20 years from 1965 to 1984. The sources of income are as follows:

| | | | |
|---|---|---|---|
| Official Salaries | - | ₱ 2,627,581.00 - | 16.01% |
| Legal Practice | - | 11,109,836.00 - | 67.71% |
| Farm Income | - | 149,700.00 - | .91% |
| Others | - | 2,521,325.00 - | 15.37% |
| Total | | ₱16,408,442.00 - | 100.00% |

15. FM’s official salary pertains to his compensation as Senate President in 1965 in the amount of ₱15,935.00 and ₱1,420,000.00 as President of the Philippines during the period 1966 until 1984. On the other hand, Imelda reported salaries and allowances only for the years 1979 to 1984 in the amount of ₱1,191,646.00. The records indicate that the reported income came from her salary from the Ministry of Human Settlements and allowances from Food Terminal, Inc., National Home Mortgage Finance Corporation, National Food Authority Council, Light Rail Transit Authority and Home Development Mutual Fund.

16. Of the ₱11,109,836.00 in reported income from legal practice, the amount of ₱10,649,836.00 or 96% represents “receivables from prior years” during the period 1967 up to 1984.

17. 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 preceeding his ascendancy to the presidency he did not show any Receivables from client at all, much less the ₱10,65-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 networth was a mere ₱120,000.00 in December, 1965. The joint income tax returns of FM and Imelda cannot, therefore, conceal the skeletons of their kleptocracy.

18. FM reported a total of ₱2,521,325.00 as Other Income for the years 1972 up to 1976 which he referred to in his return as “Miscellaneous Items” and “Various Corporations.” There is no indication of any payor of the dividends or earnings.

19. Spouses Ferdinand and Imelda did not declare any income from any deposits and placements which are subject to a 5% withholding tax. The Bureau of Internal Revenue attested that after a diligent search of pertinent records on file with the Records Division, they did not find any records involving the tax transactions of spouses Ferdinand and Imelda in Revenue Region No. 1, Baguio City, Revenue Region No.4A, Manila, Revenue Region No. 4B1, Quezon City and Revenue No. 8, Tacloban, Leyte. Likewise, the Office of the Revenue Collector of Batac. Further, BIR attested that no records were found on any filing of capital gains tax return involving spouses FM and Imelda covering the years 1960 to 1965.

20. In Schedule B, the taxable reported income over the twenty-year period was ₱14,463,595.00 which represents 88% of the gross income. The Marcoses paid

income taxes totaling ₱8,233,296.00 or US$1,220,667.59. The business expenses in the amount of ₱861,748.00 represent expenses incurred for subscription, postage, stationeries and contributions while the other deductions in the amount of P567,097.00 represents interest charges, medicare fees, taxes and licenses. The total deductions in the amount of ₱1,994,845.00 represents 12% of the total gross income.

21. In Schedule C, the net cumulative disposable income amounts to ₱6,756,301.00 or US$980,709.77. This is the amount that represents that portion of the Marcoses income that is free for consumption, savings and investments. The amount is arrived at by adding back to the net income after tax the personal and additional exemptions for the years 1965-1984, as well as the tax-exempt salary of the President for the years 1966 until 1972.

22. Finally, the networth analysis in Schedule D, represents the total accumulated networth of spouses, Ferdinand and Imelda. Respondent's Balance Sheet attached to their 1965 ITR, covering the year immediately preceding their ascendancy to the presidency, indicates an ending networth of ₱120,000.00 which FM declared as Library and Miscellaneous assets. In computing for the networth, the income approach was utilized. Under this approach, the beginning capital is increased or decreased, as the case may be, depending upon the income earned or loss incurred. Computations establish the total networth of spouses Ferdinand and Imelda, for the years 1965 until 1984 in the total amount of US$957,487.75, assuming the income from legal practice is real and valid x x x.

G. THE SECRET MARCOS DEPOSITS
IN SWISS BANKS

23. The following presentation very clearly and overwhelmingly show in detail how both respondents clandestinely stashed away the country's wealth to Switzerland and hid the same under layers upon layers of foundations and other corporate entities to prevent its detection. Through their dummies/nominees, fronts or agents who formed those foundations or corporate entities, they opened and maintained numerous bank accounts. But due to the difficulty if not the impossibility of detecting and documenting all those secret accounts as well as the enormity of the deposits therein hidden, the following presentation is confined to five identified accounts groups, with balances amounting to about $356-M with a reservation for the filing of a supplemental or separate forfeiture complaint should the need arise.

H. THE AZIO-VERSO-VIBUR

FOUNDATION ACCOUNTS

24. On June 11, 1971, Ferdinand Marcos issued a written order to Dr. Theo Bertheau, legal counsel of Schweizeresche Kreditanstalt or SKA, also known as Swiss Credit Bank, for him to establish the AZIO Foundation. On the same date, Marcos executed a power of attorney in favor of Roberto S. Benedicto empowering him to transact business in behalf of the said foundation. Pursuant to the said Marcos mandate, AZIO Foundation was formed on June 21, 1971 in Vaduz. Walter Fessler and Ernst Scheller, also of SKA Legal Service, and Dr. Helmuth Merling from Schaan were designated as members of the Board of Trustees of the said foundation. Ferdinand Marcos was named first beneficiary and the Marcos Foundation, Inc. was second beneficiary. On November 12, 1971, FM again issued another written order naming Austrahil PTY Ltd. In Sydney, Australia, as the foundation's first and sole beneficiary. This was recorded on December 14, 1971.

25. In an undated instrument, Marcos changed the first and sole beneficiary to CHARIS FOUNDATION. This change was recorded on December 4, 1972.

26. On August 29, 1978, the AZIO FOUNDATION was renamed to VERSO FOUNDATION. The Board of Trustees remained the same. On March 11, 1981, Marcos issued a written directive to liquidated VERSO FOUNDATION and to transfer all its assets to account of FIDES TRUST COMPANY at Bank Hofman in Zurich under the account "Reference OSER." The Board of Trustees decided to dissolve the foundation on June 25, 1981.

27. In an apparent maneuver to bury further the secret deposits beneath the thick layers of corporate entities, FM effected the establishment of VIBUR FOUNDATION on May 13, 1981 in Vaduz. Atty. Ivo Beck and Limag Management, a wholly-owned subsidiary of Fides Trust, were designated as members of the Board of Trustees. The account was officially opened with SKA on September 10, 1981. The beneficial owner was not made known to the bank since Fides Trust Company acted as fiduciary. However, comparison of the listing of the securities in the safe deposit register of the VERSO FOUNDATION as of February 27, 1981 with that of VIBUR FOUNDATION as of December 31, 1981 readily reveals that exactly the same securities were listed.

28. Under the foregoing circumstances, it is certain that the VIBUR FOUNDATION is the beneficial successor of VERSO FOUNDATION.

29. On March 18, 1986, the Marcos-designated Board of Trustees decided to liquidate VIBUR FOUNDATION. A notice of such liquidation was sent to the Office of the Public Register on March 21, 1986. However, the bank accounts and respective balances of the said VIBUR FOUNDATION remained with SKA. Apparently, the liquidation was an attempt by the Marcoses to transfer the foundation's funds to another account or bank but this was prevented by the timely freeze order issued by the Swiss authorities. One of the latest documents obtained by the PCGG from the Swiss authorities is a declaration signed by Dr. Ivo Beck (the trustee) stating that the beneficial owner of VIBUR FOUNDATION is Ferdinand E. Marcos. Another document signed by G. Raber of SKA shows that VIBUR FOUNDATION is owned by the "Marcos Familie"

30. As of December 31, 1989, the balance of the bank accounts of VIBUR FOUNDATION with SKA, Zurich, under the General Account No. 469857 totaled $3,597,544.00

## I. XANDY-WINTROP: CHARIS-SCOLARI-VALAMO-SPINUS-AVERTINA FOUNDATION ACCOUNTS

31. This is the most intricate and complicated account group. As the Flow Chart hereof shows, two (2) groups under the foundation organized by Marcos dummies/nominees for FM's benefit, eventually joined together and became one (1) account group under the AVERTINA FOUNDATION for the benefit of both FM and Imelda. This is the biggest group from where the $50-M investment fund of the Marcoses was drawn when they bought the Central Bank's dollar-denominated treasury notes with high-yielding interests.

32. On March 20, 1968, after his second year in the presidency, Marcos opened bank accounts with SKA using an alias or pseudonym WILLIAM SAUNDERS, apparently to hide his true identity. The next day, March 21, 1968, his First Lady, Mrs. Imelda Marcos also opened her own bank accounts with the same bank using an American-sounding

alias, JANE RYAN. Found among the voluminous documents in Malacañang shortly after they fled to Hawaii in haste that fateful night of February 25, 1986, were accomplished forms for “Declaration/Specimen Signatures” submitted by the Marcos couple. Under the caption “signature(s)” Ferdinand and Imelda signed their real names as well as their respective aliases underneath. These accounts were actively operated and maintained by the Marcoses for about two (2) years until their closure sometime in February, 1970 and the balances transferred to XANDY FOUNDATION.

33. The XANDY FOUNDATION was established on March 3, 1970 in Vaduz. C.W. Fessler, C. Souviron and E. Scheller were named as members of the Board of Trustees.

34. FM and Imelda issued the written mandate to establish the foundation to Markus Geel of SKA on March 3, 1970. In the handwritten Regulations signed by the Marcos couple as well as in the type-written Regulations signed by Markus Geel both dated February 13, 1970, the Marcos spouses were named the first beneficiaries, the surviving spouse as the second beneficiary and the Marcos children – Imee, Ferdinand, Jr. (Bongbong) and Irene – as equal third beneficiaries.

35. The XANDY FOUNDATION was renamed WINTROP FOUNDATION on August 29, 1978. The Board of Trustees remained the same at the outset. However, on March 27, 1980, Souviron was replaced by Dr. Peter Ritter. On March 10. 1981, Ferdinand and Imelda Marcos issued a written order to the Board of Wintrop to liquidate the foundation and transfer all its assets to Bank Hofmann in Zurich in favor of FIDES TRUST COMPANY. Later, WINTROP FOUNDATION was dissolved.

36. The AVERTINA FOUNDATION was established on May 13, 1981 in Vaduz with Atty. Ivo Beck and Limag Management, a wholly-owned subsidiary of FIDES TRUST CO., as members of the Board of Trustees. Two (2) account categories, namely: CAR and NES, were opened on September 10, 1981. The beneficial owner of AVERTINA was not made known to the bank since the FIDES TRUST CO. acted as fiduciary. However, the securities listed in the safe deposit register of WINTROP FOUNDATION Category R as of December 31, 1980 were the same as those listed in the register of AVERTINA FOUNDATION Category CAR as of December 31, 1981. Likewise, the securities listed in the safe deposit register of WINTROP FOUNDATION Category S as of December 31, 1980 were the same as those listed in the register of Avertina Category NES as of December 31, 1981.Under the circumstances, it is certain that the beneficial successor of WINTROP FOUNDATION is AVERTINA FOUNDATION. The balance of Category CAR as of December 31, 1989 amounted to US$231,366,894.00 while that of Category NES as of 12-31-83 was US$8,647,190.00. Latest documents received from Swiss authorities included a declaration signed by IVO Beck stating that the beneficial owners of AVERTINA FOUNDATION are FM and Imelda. Another document signed by G. Raber of SKA indicates that Avertina Foundation is owned by the “Marcos Families.”

37. The other groups of foundations that eventually joined AVERTINA were also established by FM through his dummies, which started with the CHARIS FOUNDATION.

38. The CHARIS FOUNDATION was established in VADUZ on December 27, 1971. Walter Fessler and Ernst Scheller of SKA and Dr. Peter Ritter were named as directors. Dr. Theo Bertheau, SKA legal counsel, acted as founding director in behalf of FM by virtue of the mandate and agreement dated November 12, 1971. FM himself was named the first beneficiary and Xandy Foundation as second beneficiary in accordance with the handwritten instructions of FM on November 12, 1971 and the Regulations. FM gave a

power of attorney to Roberto S. Benedicto on February 15, 1972 to act in his behalf with regard to Charis Foundation.

39. On December 13, 1974, Charis Foundation was renamed Scolari Foundation but the directors remained the same. On March 11, 1981 FM ordered in writing that the Valamo Foundation be liquidated and all its assets be transferred to Bank Hofmann, AG in favor of Fides Trust Company under the account "Reference OMAL". The Board of Directors decided on the immediate dissolution of Valamo Foundation on June 25, 1981.

40 The SPINUS FOUNDATION was established on May 13, 1981 in Vaduz with Atty. Ivo Beck and Limag Management, a wholly-owned subsidiary of Fides Trust Co., as members of the Foundation's Board of Directors. The account was officially opened with SKA on September 10, 1981. The beneficial owner of the foundation was not made known to the bank since Fides Trust Co. acted as fiduciary. However, the list of securities in the safe deposit register of Valamo Foundation as of December 31, 1980 are practically the same with those listed in the safe deposit register of Spinus Foundation as of December 31, 1981. Under the circumstances, it is certain that the Spinus Foundation is the beneficial successor of the Valamo Foundation.

41. On September 6, 1982, there was a written instruction from Spinus Foundation to SKA to close its Swiss Franc account and transfer the balance to Avertina Foundation. In July/August, 1982, several transfers from the foundation's German marks and US dollar accounts were made to Avertina Category CAR totaling DM 29.5-M and $58-M, respectively. Moreover, a comparison of the list of securities of the Spinus Foundation as of February 3, 1982 with the safe deposit slips of the Avertina Foundation Category CAR as of August 19, 1982 shows that all the securities of Spinus were transferred to Avertina.

J. TRINIDAD-RAYBY-PALMY FOUNDATION ACCOUNTS

42. The Trinidad Foundation was organized on August 26, 1970 in Vaduz with C.W. Fessler and E. Scheller of SKA and Dr. Otto Tondury as the foundation's directors. Imelda issued a written mandate to establish the foundation to Markus Geel on August 26, 1970. The regulations as well as the agreement, both dated August 28, 1970 were likewise signed by Imelda. Imelda was named the first beneficiary and her children Imelda (Imee), Ferdinand, Jr. (Bongbong) and, Irene were named as equal second beneficiaries.

43. Rayby Foundation was established on June 22, 1973 in Vaduz with Fessler, Scheller and Ritter as members of the board of directors. Imelda issued a written mandate to Dr. Theo Bertheau to establish the foundation with a note that the foundation's capitalization as well as the cost of establishing it be debited against the account of Trinidad Foundation. Imelda was named the first and only beneficiary of Rayby foundation. According to written information from SKA dated November 28, 1988, Imelda apparently had the intention in 1973 to transfer part of the assets of Trinidad Foundation to another foundation, thus the establishment of Rayby Foundation. However, transfer of assets never took place. On March 10, 1981, Imelda issued a written order to transfer all the assets of Rayby Foundation to Trinidad Foundation and to subsequently liquidate Rayby. On the same date, she issued a written order to the board of Trinidad to dissolve the foundation and transfer all its assets to Bank Hofmann in favor of Fides Trust Co. Under the account "Reference Dido," Rayby was dissolved on April 6, 1981 and Trinidad was liquidated on August 3, 1981.

44. The PALMY FOUNDATION was established on May 13, 1981 in Vaduz with Dr. Ivo Beck and Limag Management, a wholly-owned subsidiary of Fides Trust Co, as members of the Foundation's Board of Directors. The account was officially opened with the SKA on September 10, 1981. The beneficial owner was not made known to the bank since Fides Trust Co. acted as fiduciary. However, when one compares the listing of securities in the safe deposit register of Trinidad Foundation as of December 31,1980 with that of the Palmy Foundation as of December 31, 1980, one can clearly see that practically the same securities were listed. Under the circumstances, it is certain that the Palmy Foundation is the beneficial successor of the Trinidad Foundation.

45. As of December 31, 1989, the ending balance of the bank accounts of Palmy Foundation under General Account No. 391528 is $17,214,432.00.

46. Latest documents received from Swiss Authorities included a declaration signed by Dr. Ivo Beck stating that the beneficial owner of Palmy Foundation is Imelda. Another document signed by Raber shows that the said Palmy Foundation is owned by "Marcos Familie".

K. ROSALYS-AGUAMINA FOUNDATION ACCOUNTS

47. Rosalys Foundation was established in 1971 with FM as the beneficiary. Its Articles of Incorporation was executed on September 24, 1971 and its By-Laws on October 3, 1971. This foundation maintained several accounts with Swiss Bank Corporation (SBC) under the general account 51960 where most of the bribe monies from Japanese suppliers were hidden.

48. On December 19, 1985, Rosalys Foundation was liquidated and all its assets were transferred to Aguamina Corporation's (Panama) Account No. 53300 with SBC. The ownership by Aguamina Corporation of Account No. 53300 is evidenced by an opening account documents from the bank. J. Christinaz and R.L. Rossier, First Vice-President and Senior Vice President, respectively, of SBC, Geneva issued a declaration dated September 3, 1991 stating that the by-laws dated October 3, 1971 governing Rosalys Foundation was the same by-law applied to Aguamina Corporation Account No. 53300. They further confirmed that no change of beneficial owner was involved while transferring the assets of Rosalys to Aguamina. Hence, FM remains the beneficiary of Aguamina Corporation Account No. 53300.

As of August 30, 1991, the ending balance of Account No. 53300 amounted to $80,566,483.00.

L. MALER FOUNDATION ACCOUNTS

49. Maler was first created as an establishment. A statement of its rules and regulations was found among Malacañang documents. It stated, among others, that 50% of the Company's assets will be for sole and full right disposal of FM and Imelda during their lifetime, which the remaining 50% will be divided in equal parts among their children. Another Malacañang document dated October 19,1968 and signed by Ferdinand and Imelda pertains to the appointment of Dr. Andre Barbey and Jean Louis Sunier as attorneys of the company and as administrator and manager of all assets held by the company. The Marcos couple, also mentioned in the said document that they bought the Maler Establishment from SBC, Geneva. On the same date, FM and Imelda issued a letter addressed to Maler Establishment, stating that all instructions to be transmitted with regard to Maler will be signed with the word "JOHN LEWIS". This word will have the

same value as the couple's own personal signature. The letter was signed by FM and Imelda in their signatures and as John Lewis.

50. Maler Establishment opened and maintained bank accounts with SBC, Geneva. The opening bank documents were signed by Dr. Barbey and Mr. Sunnier as authorized signatories.

51. On November 17, 1981, it became necessary to transform Maler Establishment into a foundation. Likewise, the attorneys were changed to Michael Amaudruz, et. al. However, administration of the assets was left to SBC. The articles of incorporation of Maler Foundation registered on November 17, 1981 appear to be the same articles applied to Maler Establishment. On February 28, 1984, Maler Foundation cancelled the power of attorney for the management of its assets in favor of SBC and transferred such power to Sustrust Investment Co., S.A.

52. As of June 6, 1991, the ending balance of Maler Foundation's Account Nos. 254,508 BT and 98,929 NY amount SF 9,083,567 and SG 16,195,258, respectively, for a total of SF 25,278,825.00. GM only until December 31, 1980. This account was opened by Maler when it was still an establishment which was subsequently transformed into a foundation.

53. All the five (5) group accounts in the over-all flow chart have a total balance of about Three Hundred Fifty Six Million Dollars ($356,000,000.00) as shown by Annex "R-5" hereto attached as integral part hereof.

x x x x x x.[27][27]

Respondents Imelda R. Marcos, Maria Imelda M. Manotoc, Irene M. Araneta and Ferdinand Marcos, Jr., in their answer, stated the following:

xxx xxx xxx

4. Respondents ADMIT paragraphs 3 and 4 of the Petition.

5. Respondents specifically deny paragraph 5 of the Petition in so far as it states that summons and other court processes may be served on Respondent Imelda R. Marcos at the stated address the truth of the matter being that Respondent Imelda R. Marcos may be served with summons and other processes at No. 10-B Bel Air Condominium 5022 P. Burgos Street, Makati, Metro Manila, and ADMIT the rest.

xxx xxx xxx

10. Respondents ADMIT paragraph 11 of the Petition.

11. Respondents specifically DENY paragraph 12 of the Petition for lack of knowledge sufficient to form a belief as to the truth of the allegation since Respondents were not privy to the transactions and that they cannot remember exactly the truth as to the matters alleged.

12. Respondents specifically DENY paragraph 13 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 Balance Sheet.

13. Respondents specifically DENY paragraph 14 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.

14. Respondents specifically DENY paragraph 15 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.

15. Respondents specifically DENY paragraph 16 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.

16. Respondents specifically DENY paragraph 17 of the Petition insofar as it attributes willful duplicity on the part of the late President Marcos, for being false, the same being pure conclusions based on pure assumption and not allegations of fact; 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 cannot remember with exactitude the contents of the alleged ITRs or the attachments thereto.

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.

The following pleadings filed by respondent Marcoses are replete with indications of a spurious defense:

(a) Respondents' Answer dated October 18, 1993;

(b) Pre-trial Brief dated October 4, 1999 of Mrs. Marcos, Supplemental Pre-trial Brief dated October 19, 1999 of Ferdinand, Jr. and Mrs. Imee Marcos-Manotoc adopting the pre-trial brief of Mrs. Marcos, and Manifestation dated October 19, 1999 of Irene Marcos-Araneta adopting the pre-trial briefs of her co-respondents;

(c) Opposition to Motion for Summary Judgment dated March 21, 2000, filed by Mrs. Marcos which the other respondents (Marcos children) adopted;

(d) Demurrer to Evidence dated May 2, 2000 filed by Mrs. Marcos and adopted by the Marcos children;

(e) Motion for Reconsideration dated September 26, 2000 filed by Mrs. Marcos; Motion for Reconsideration dated October 5, 2000 jointly filed by Mrs. Manotoc and Ferdinand, Jr., and Supplemental Motion for Reconsideration dated October 9, 2000 likewise jointly filed by Mrs. Manotoc and Ferdinand, Jr.;

(f) Memorandum dated December 12, 2000 of Mrs. Marcos and Memorandum dated December 17, 2000 of the Marcos children;

(g) Manifestation dated May 26, 1998; and

(h) General/Supplemental Agreement dated December 23, 1993.

An examination of the foregoing pleadings is in order.

➢ ➢ **Respondents' Answer dated October 18, 1993.**

In their answer, respondents failed to specifically deny each and every allegation contained in the petition for forfeiture in the manner required by the rules. All they gave were stock answers like "they have no sufficient knowledge" or "they could not recall because it happened a long time ago," and, as to Mrs. Marcos, "the funds were lawfully acquired," without stating the basis of such assertions.

Section 10, Rule 8 of the 1997 Rules of Civil Procedure, provides:

> A defendant must specify each material allegation of fact the truth of which he does not admit and, whenever practicable, shall set forth the substance of the matters upon which he relies to support his denial. Where a defendant desires to deny only a part of an averment, he shall specify so much of it as is true and material and shall deny the remainder. Where a defendant is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint, he shall so state, and this shall have the effect of a denial.[28][28]

The purpose of requiring respondents to make a specific denial is to make them disclose facts which will disprove the allegations of petitioner at the trial, together with the matters they rely upon in support of such denial. Our jurisdiction adheres to this rule to avoid and prevent unnecessary expenses and waste of time by compelling both parties to lay their cards on the table, thus reducing the controversy to its true terms. As explained in *Alonso vs. Villamor*,[29][29]

> A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is rather a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. Lawsuits, unlike duels, are not to be won by a rapier's thrust.

On the part of Mrs. Marcos, she claimed that the funds were lawfully acquired. However, she failed to particularly state the ultimate facts surrounding the lawful manner or mode of acquisition of the subject funds. Simply put, she merely stated in her answer with the other respondents that the funds were "lawfully acquired" without detailing how exactly these funds were supposedly acquired legally by them. Even in this case before us, her assertion that the funds were lawfully acquired remains bare and unaccompanied by any factual support which can prove, by the presentation of evidence at a hearing, that indeed the funds were acquired legitimately by the Marcos family.

Respondents' denials in their answer at the Sandiganbayan were based on their alleged lack of knowledge or information sufficient to form a belief as to the truth of the allegations of the petition.

It is true that one of the modes of specific denial under the rules is a denial through a statement that the defendant is without knowledge or information sufficient to form a belief as to the truth of the material averment in the complaint. The question, however, is whether the kind of denial in respondents' answer qualifies as the specific denial called for by the rules. We do not think so. In *Morales vs. Court of Appeals*,[30][30] this Court ruled that if an allegation directly and specifically charges a party with having done, performed

or committed a particular act which the latter did not in fact do, perform or commit, a categorical and express denial must be made.

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.[31][31]

To elucidate, the allegation of petitioner Republic in paragraph 23 of the petition for forfeiture stated:

> 23. The following presentation very clearly and overwhelmingly show in detail how both respondents clandestinely stashed away the country's wealth to Switzerland and hid the same under layers upon layers of foundations and other corporate entities to prevent its detection. Through their dummies/nominees, fronts or agents who formed those foundations or corporate entities, they opened and maintained numerous bank accounts. But due to the difficulty if not the impossibility of detecting and documenting all those secret accounts as well as the enormity of the deposits therein hidden, the following presentation is confined to five identified accounts groups, with balances amounting to about $356-M with a reservation for the filing of a supplemental or separate forfeiture complaint should the need arise.[32][32]

Respondents' lame denial of the aforesaid allegation was:

> 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 foundations and corporate entities for being false, the truth being that Respondents' aforesaid properties were lawfully acquired.[33][33]

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.[34][34] 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.[35][35]

In the instant case, the material allegations in paragraph 23 of the said petition were not specifically denied by respondents in paragraph 22 of their answer. The denial contained in paragraph 22 of the answer was focused on the averment in paragraph 23 of the petition for forfeiture that "Respondents clandestinely stashed the country's wealth in Switzerland and hid the same under layers and layers of foundations and corporate entities." Paragraph 22 of the respondents' answer was thus a denial pregnant with admissions of the following substantial facts:

(1) the Swiss bank deposits existed and

(2) that the estimated sum thereof was US$356 million as of December, 1990.

Therefore, the allegations in the petition for forfeiture on the existence of the Swiss bank deposits in the sum of about US$356 million, not having been specifically denied by respondents in their answer, were deemed admitted by them pursuant to Section 11, Rule 8 of the 1997 Revised Rules on Civil Procedure:

> Material averment in the complaint, xxx shall be deemed admitted when not specifically denied. xxx.[36][36]

By the same token, the following unsupported denials of respondents in their answer were pregnant with admissions of the substantial facts alleged in the Republic's petition for forfeiture:

> 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, 41 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 transactions they were privy to, they cannot remember with exactitude the same having occurred a long time ago, except as to respondent Imelda R. Marcos, she specifically remembers that the funds involved were lawfully acquired.
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> 25. Respondents specifically DENY paragraphs 42, 43, 45, and 46 of the petition for lack of knowledge or information sufficient to from 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.
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> 26. Respondents specifically DENY paragraphs 49, 50, 51 and 52 of the petition for lack of knowledge and 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.

The matters referred to in paragraphs 23 to 26 of the respondents' answer pertained to the creation of five groups of accounts as well as their respective ending balances and attached documents alleged in paragraphs 24 to 52 of the Republic's petition for forfeiture. Respondent Imelda R. Marcos never specifically denied the existence of the Swiss funds. Her claim that "the funds involved were lawfully acquired" was an acknowledgment on her part of the existence of said deposits. This only reinforced her earlier admission of the allegation in paragraph 23 of the petition for forfeiture regarding the existence of the US$356 million Swiss bank deposits.

The allegations in paragraphs 47[37][37] and 48[38][38] 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 paragraph 52-a[39][39] of 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 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*,[40][40] 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[41][41] attached to the petition for forfeiture which Mrs. Marcos failed to specifically deny as required by the rules.[42][42]

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.[43][43]

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.

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.[44][44] 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.[45][45]

The form of denial adopted by respondents must be availed of *with sincerity and in good faith, and certainly not for the purpose of confusing the adverse party as to what allegations of the petition are really being challenged; nor should it be made for the purpose of delay*.[46][46] In the instant case, the Marcoses did not only present unsubstantiated assertions but in truth attempted to mislead and deceive this Court by presenting an obviously contrived defense.

Simply put, a profession of ignorance about a fact which is patently and necessarily within the pleader's knowledge or means of knowing is *as ineffective as no denial at all*.[47][47] Respondents' ineffective denial thus failed to properly tender an issue and the averments contained in the petition for forfeiture were deemed judicially admitted by them.

As held in J.P. Juan & Sons, Inc. vs. Lianga Industries, Inc.:

> Its "specific denial" of the material allegation of the petition without setting forth the substance of the matters relied upon to support its general denial, when such matters were plainly within its knowledge and it could not logically pretend ignorance as to the same, therefore, failed to properly tender on issue.[48][48]

Thus, the general denial of the Marcos children 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 they were not privy to the transactions" cannot rightfully be accepted as a defense because they are the legal heirs and successors-in-interest of Ferdinand E. Marcos and are therefore bound by the acts of their father vis-a-vis the Swiss funds.

### ➢ ➢ PRE-TRIAL BRIEF DATED OCTOBER 18, 1993

The pre-trial brief of Mrs. Marcos was adopted by the three Marcos children. In said brief, Mrs. Marcos stressed that the funds involved were lawfully acquired. But, as in their answer, they failed to state and substantiate how these funds were acquired lawfully. They failed to present and attach even a single document that would show and prove the truth of their allegations. Section 6, Rule 18 of the 1997 Rules of Civil Procedure provides:

> The parties shall file with the court and serve on the adverse party, x x x their respective pre-trial briefs which shall contain, among others:
>
> x x x
>
> (d) the documents or exhibits to be presented, stating the purpose thereof;
>
> x x x
>
> (f) the number and names of the witnesses, and the substance of their respective testimonies.[49][49]

It is unquestionably within the court's power to require the parties to submit their pre-trial briefs and to state the number of witnesses intended to be called to the stand, and a brief summary of the evidence each of them is expected to give as well as to disclose the number of documents to be submitted with a description of the nature of each. The tenor and character of the testimony of the witnesses and of the documents to be deduced at the trial thus made known, in addition to the particular issues of fact and law, it becomes

apparent if genuine issues are being put forward necessitating the holding of a trial. Likewise, the parties are obliged not only to make a formal identification and specification of the issues and their proofs, and to put these matters in writing and submit them to the court within the specified period for the prompt disposition of the action.[50][50]

The pre-trial brief of Mrs. Marcos, as subsequently adopted by respondent Marcos children, merely stated:

> x x x
>
> WITNESSES
>
> 4.1 Respondent Imelda will present herself as a witness and reserves the right to present additional witnesses as may be necessary in the course of the trial.
>
> x x x
>
> DOCUMENTARY EVIDENCE
>
> 5.1 Respondent Imelda reserves the right to present and introduce in evidence documents as may be necessary in the course of the trial.

Mrs. Marcos did not enumerate and describe the documents constituting her evidence. Neither the names of witnesses nor the nature of their testimony was stated. What alone appeared certain was the testimony of Mrs. Marcos only who in fact had previously claimed ignorance and lack of knowledge. And even then, the substance of her testimony, as required by the rules, was not made known either. Such cunning tactics of respondents are totally unacceptable to this Court. We hold that, since no genuine issue was raised, the case became ripe for summary judgment.

- **OPPOSITION TO MOTION FOR SUMMARY JUDGMENT DATED MARCH 21, 2000**

The opposition filed by Mrs. Marcos to the motion for summary judgment dated March 21, 2000 of petitioner Republic was merely adopted by the Marcos children as their own opposition to the said motion. However, it was again not accompanied by affidavits, depositions or admissions as required by Section 3, Rule 35 of the 1997 Rules on Civil Procedure:

> x x x The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before hearing. After hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.[51][51]

The absence of opposing affidavits, depositions and admissions to contradict the sworn declarations in the Republic's motion only demonstrated that the averments of such opposition were not genuine and therefore unworthy of belief.

- **Demurrer to Evidence dated May 2, 2000;**[52][52] **Motions for Reconsideration;**[53][53] **and Memoranda of Mrs. Marcos and the Marcos children**[54][54]

All these pleadings again contained no allegations of facts showing their lawful acquisition of the funds. Once more, respondents merely made general denials without alleging facts which would have been admissible in evidence at the hearing, thereby failing to raise genuine issues of fact.

Mrs. Marcos insists in her memorandum dated October 21, 2002 that, during the pre-trial, her counsel stated that his client was just a beneficiary of the funds, contrary to petitioner Republic's allegation that Mrs. Marcos disclaimed ownership of or interest in the funds.

This is yet another indication that respondents presented a fictitious defense because, during the pre-trial, Mrs. Marcos and the Marcos children *denied* ownership of or interest in the Swiss funds:

> PJ Garchitorena:
>
> Make of record that as far as Imelda Marcos is concerned through the statement of Atty. Armando M. Marcelo that the US$360 million more or less subject matter of the instant lawsuit as allegedly obtained from the various Swiss Foundations do not belong to the estate of Marcos or to Imelda Marcos herself. That's your statement of facts?
>
> Atty. MARCELO:
>
> Yes, Your Honor.
>
> PJ Garchitorena:
>
> That's it. Okay. Counsel for Manotoc and Manotoc, Jr. What is your point here? Does the estate of Marcos own anything of the $360 million subject of this case.
>
> Atty. TECSON:
>
> We joined the Manifestation of Counsel.
>
> PJ Garchitorena:
>
> You do not own anything?
>
> Atty. TECSON:
>
> Yes, Your Honor.
>
> PJ Garchitorena:
>
> Counsel for Irene Araneta?
>
> Atty. SISON:
>
> I join the position taken by my other compañeros here, Your Honor.
>
> xxx
>
> Atty. SISON:
>
> Irene Araneta as heir do (sic) not own any of the amount, Your Honor.[55][55]

We are convinced that the strategy of respondent Marcoses was to confuse petitioner Republic as to what facts they would prove or what issues they intended to pose for the court's resolution. There is no doubt in our mind that they were leading petitioner

Republic, and now this Court, to perplexity, if not trying to drag this forfeiture case to eternity.

➢ ➢ **Manifestation dated May 26, 1998 filed by MRS. Marcos; General/Supplemental Compromise Agreement dated December 28, 1993**

These pleadings of respondent Marcoses presented nothing but feigned defenses. In their earlier pleadings, respondents alleged either that they had no knowledge of the existence of the Swiss deposits or that they could no longer remember anything as it happened a long time ago. As to Mrs. Marcos, she remembered that it was lawfully acquired.

In her Manifestation dated May 26, 1998, Mrs. Marcos stated that:

> COMES NOW undersigned counsel for respondent Imelda R. Marcos, and before this Honorable Court, most respectfully manifests:
>
> That respondent Imelda R, Marcos owns 90% of the subject matter of the above-entitled case, being the sole beneficiary of the dollar deposits in the name of the various foundations alleged in the case;
>
> That in fact only 10% of the subject matter in the above-entitled case belongs to the estate of the late President Ferdinand E. Marcos.

In the Compromise/Supplemental Agreements, respondent Marcoses sought to implement the agreed distribution of the Marcos assets, *including the Swiss deposits.* This was, to us, an unequivocal admission of ownership by the Marcoses of the said deposits.

But, as already pointed out, during the pre-trial conference, respondent Marcoses denied knowledge as well as ownership of the Swiss funds.

Anyway we look at it, respondent Marcoses have put forth no real defense. The “facts” pleaded by respondents, while ostensibly raising important questions or issues of fact, in reality comprised mere verbiage that was evidently wanting in substance and constituted no genuine issues for trial.

We therefore rule that, under the circumstances, summary judgment is proper.

In fact, it is the law itself which determines when summary judgment is called for. Under the rules, summary judgment is appropriate when there are no genuine issues of fact requiring the presentation of evidence in a full-blown trial. Even if on their face the pleadings appear to raise issue, if 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.[56][56]

In sum, mere denials, if unaccompanied by any fact which will be admissible in evidence at a hearing, are not sufficient to raise genuine issues of fact and will not defeat a motion for summary judgment.[57][57] A summary judgment is one granted upon motion of a party for an expeditious settlement of the case, it appearing from the pleadings, depositions, admissions and affidavits that there are no important questions or issues of fact posed and, therefore, the movant is entitled to a judgment as a matter of law. A motion

for summary judgment is premised on the assumption that the issues presented need not be tried either because these are patently devoid of substance or that there is no genuine issue as to any pertinent fact. It is a method sanctioned by the Rules of Court for the prompt disposition of a civil action where there exists no serious controversy.[58][58] Summary judgment is a procedural device for the prompt disposition of actions in which the pleadings raise only a legal issue, not a genuine issue as to any material fact. The theory of summary judgment is that, although an answer may on its face appear to tender issues requiring trial, if it is established by affidavits, depositions or admissions that those issues are not genuine but fictitious, the Court is justified in dispensing with the trial and rendering summary judgment for petitioner.[59][59]

In the various annexes to the petition for forfeiture, petitioner Republic attached sworn statements of witnesses who had personal knowledge of the Marcoses' participation in the illegal acquisition of funds deposited in the Swiss accounts under the names of five groups or foundations. These sworn statements substantiated the ill-gotten nature of the Swiss bank deposits. In their answer and other subsequent pleadings, however, the Marcoses merely made general denials of the allegations against them without stating facts admissible in evidence at the hearing, thereby failing to raise any genuine issues of fact.

Under these circumstances, a trial would have served no purpose at all and would have been totally unnecessary, thus justifying a summary judgment on the petition for forfeiture. There were no opposing affidavits to contradict the sworn declarations of the witnesses of petitioner Republic, leading to the inescapable conclusion that the matters raised in the Marcoses' answer were false.

Time and again, this Court has encountered cases like this which are either only half-heartedly defended or, if the semblance of a defense is interposed at all, it is only to delay disposition and gain time. It is certainly not in the interest of justice to allow respondent Marcoses to avail of the appellate remedies accorded by the Rules of Court to litigants in good faith, to the prejudice of the Republic and ultimately of the Filipino people. From the beginning, a candid demonstration of respondents' good faith should have been made to the court below. Without the deceptive reasoning and argumentation, this protracted litigation could have ended a long time ago.

Since 1991, when the petition for forfeiture was first filed, up to the present, all respondents have offered are foxy responses like "lack of sufficient knowledge or lack of privity" or "they cannot recall because it happened a long time ago" or, as to Mrs. Marcos, "the funds were lawfully acquired." But, whenever it suits them, they also claim ownership of 90% of the funds and allege that only 10% belongs to the Marcos estate. It has been an incredible charade from beginning to end.

In the hope of convincing this Court to rule otherwise, respondents Maria Imelda Marcos-Manotoc and Ferdinand R. Marcos Jr. contend that "by its positive acts and express admissions prior to filing the motion for summary judgment on March 10, 2000, petitioner Republic had bound itself to go to trial on the basis of existing issues. Thus, it had legally waived whatever right it had to move for summary judgment."[60][60]

We do not think so. The alleged positive acts and express admissions of the petitioner did not preclude it from filing a motion for summary judgment.

Rule 35 of the 1997 Rules of Civil Procedure provides:

Rule 35

Summary Judgment

Section 1. Summary judgment for claimant. - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief may, ***at any time after the pleading in answer thereto has been served***, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Section 2. Summary judgment for defending party. - A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory relief is sought may, ***at any time***, move with supporting affidavits, depositions or admissions for a summary judgment in his favor as to all or any part thereof. (Emphasis ours)[61][61]

Under the rule, the plaintiff can move for summary judgment “at any time after the pleading in answer thereto (i.e., in answer to the claim, counterclaim or cross-claim) has been served." No fixed reglementary period is provided by the Rules. How else does one construe the phrase "any time after the answer has been served?”

This issue is actually one of first impression. No local jurisprudence or authoritative work has touched upon this matter. This being so, an examination of foreign laws and jurisprudence, particularly those of the United States where many of our laws and rules were copied, is in order.

Rule 56 of the Federal Rules of Civil Procedure provides that a party seeking to recover upon a claim, counterclaim or cross-claim may move for summary judgment at *any time after the expiration of 20 days from the commencement of the action* or after service of a motion for summary judgment by the adverse party, and that a party against whom a claim, counterclaim or cross-claim is asserted may move for summary judgment at any time.

However, some rules, particularly Rule 113 of the Rules of Civil Practice of New York, specifically provide that a motion for summary judgment may not be made until issues have been joined, that is, only after an answer has been served.[62][62] Under said rule, after issues have been joined, the motion for summary judgment may be made *at any stage of the litigation*.[63][63] No fixed prescriptive period is provided.

Like Rule 113 of the Rules of Civil Practice of New York, our rules also provide that a motion for summary judgment may not be made until issues have been joined, meaning, the plaintiff has to wait for the answer before he can move for summary judgment.[64][64] And like the New York rules, ours do not provide for a fixed reglementary period within which to move for summary judgment.

This being so, the New York Supreme Court's interpretation of Rule 113 of the Rules of Civil Practice can be applied by analogy to the interpretation of Section 1, Rule 35, of our 1997 Rules of Civil Procedure.

Under the New York rule, after the issues have been joined, the motion for summary judgment may be made at any stage of the litigation. And what exactly does the phrase "at any stage of the litigation" mean? In *Ecker vs. Muzysh*,[65][65] the New York Supreme Court ruled:

> "PER CURIAM.
>
> Plaintiff introduced her evidence and the defendants rested on the case made by the plaintiff. The case was submitted. Owing to the serious illness of the trial justice, a decision was not rendered within sixty days after the final adjournment of the term at which the case was tried. With the approval of the trial justice, the plaintiff moved for a new trial under Section 442 of the Civil Practice Act. The plaintiff also moved for summary judgment under Rule 113 of the Rules of Civil Practice. ***The motion was opposed mainly on the ground that, by proceeding to trial, the plaintiff had waived her right to summary judgment*** and that the answer and the opposing affidavits raised triable issues. The amount due and unpaid under the contract is not in dispute. The Special Term granted both motions and the defendants have appealed.
>
> The Special Term properly held that the answer and the opposing affidavits raised no triable issue. ***Rule 113 of the Rules of Civil Practice and the Civil Practice Act prescribe no limitation as to the time when a motion for summary judgment must be made. The object of Rule 113 is to empower the court to summarily determine whether or not a bona fide issue exists between the parties, and there is no limitation on the power of the court to make such a determination at any stage of the litigation***." (emphasis ours)

On the basis of the aforequoted disquisition, "any stage of the litigation" means that "even if the plaintiff has proceeded to trial, this does not preclude him from thereafter moving for summary judgment."[66][66]

In the case at bar, petitioner moved for summary judgment after pre-trial and before its scheduled date for presentation of evidence. Respondent Marcoses argue that, by agreeing to proceed to trial during the pre-trial conference, petitioner "waived" its right to summary judgment.

This argument must fail in the light of the New York Supreme Court ruling which we apply by analogy to this case. In *Ecker*,[67][67] the defendant opposed the motion for summary judgment on a ground similar to that raised by the Marcoses, that is, "that plaintiff had waived her right to summary judgment" by her act of proceeding to trial. If, as correctly ruled by the New York court, plaintiff was allowed to move for summary judgment even *after* trial and submission of the case for resolution, more so should we permit it in the present case where petitioner moved for summary judgment *before* trial.

Therefore, the phrase "anytime after the pleading in answer thereto has been served" in Section 1, Rule 35 of our Rules of Civil Procedure means "at any stage of the litigation." Whenever it becomes evident at any stage of the litigation that no triable issue exists, or that the defenses raised by the defendant(s) are sham or frivolous, plaintiff may move for summary judgment. A contrary interpretation would go against the very objective of the Rule on Summary Judgment which is to "weed out sham claims or defenses thereby avoiding the expense and loss of time involved in a trial."[68][68]

In cases with political undertones like the one at bar, adverse parties will often do almost anything to delay the proceedings in the hope that a future administration sympathetic to them might be able to influence the outcome of the case in their favor. This is rank injustice we cannot tolerate.

The law looks with disfavor on long, protracted and expensive litigation and encourages the speedy and prompt disposition of cases. That is why the law and the rules provide for a number of devices to ensure the speedy disposition of cases. Summary judgment is one of them.

Faithful therefore to the spirit of the law on summary judgment which seeks to avoid unnecessary expense and loss of time in a trial, we hereby rule that petitioner Republic could validly move for summary judgment any time after the respondents' answer was filed or, for that matter, at any subsequent stage of the litigation. The fact that petitioner agreed to proceed to trial did not in any way prevent it from moving for summary judgment, as indeed no genuine issue of fact was ever validly raised by respondent Marcoses.

This interpretation conforms with the guiding principle enshrined in Section 6, Rule 1 of the 1997 Rules of Civil Procedure that the "[r]ules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding."[69][69]

Respondents further allege that the motion for summary judgment was based on respondents' answer and other documents that had long been in the records of the case. Thus, by the time the motion was filed on March 10, 2000, estoppel by laches had already set in against petitioner.

We disagree. Estoppel by laches is the failure or neglect for an unreasonable or unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, warranting a presumption that the person has abandoned his right or declined to assert it.[70][70] In effect, therefore, the principle of laches is one of estoppel because "it prevents people who have slept on their rights from prejudicing the rights of third parties who have placed reliance on the inaction of the original parties and their successors-in-interest".[71][71]

A careful examination of the records, however, reveals that petitioner was in fact never remiss in pursuing its case against respondent Marcoses through every remedy available to it, including the motion for summary judgment.

Petitioner Republic initially filed its motion for summary judgment on October 18, 1996. The motion was denied because of the pending compromise agreement between the Marcoses and petitioner. But during the pre-trial conference, the Marcoses denied ownership of the Swiss funds, prompting petitioner to file another motion for summary judgment now under consideration by this Court. It was the subsequent events that transpired after the answer was filed, therefore, which prevented petitioner from filing the questioned motion. It was definitely not because of neglect or inaction that petitioner filed the (second) motion for summary judgment years after respondents' answer to the petition for forfeiture.

In invoking the doctrine of estoppel by laches, respondents must show not only unjustified inaction but also that some unfair injury to them might result unless the action is barred.[72][72]

This, respondents failed to bear out. In fact, during the pre-trial conference, the Marcoses disclaimed ownership of the Swiss deposits. Not being the owners, as they claimed, respondents did not have any vested right or interest which could be adversely affected by petitioner's alleged inaction.

But even assuming for the sake of argument that laches had already set in, the doctrine of estoppel or laches does not apply when the government sues as a sovereign or asserts governmental rights.[73][73] Nor can estoppel validate an act that contravenes law or public policy.[74][74]

As a final point, it must be emphasized that laches is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[75][75] Equity demands that petitioner Republic should not be barred from pursuing the people's case against the Marcoses.

**(2) The Propriety of Forfeiture**

The matter of summary judgment having been thus settled, the issue of whether or not petitioner Republic was able to prove its case for forfeiture in accordance with the requisites of Sections 2 and 3 of RA 1379 now takes center stage.

The law raises the *prima facie* presumption that a property is unlawfully acquired, hence subject to forfeiture, if its amount or value is manifestly disproportionate to the official salary and other lawful income of the public officer who owns it. Hence, Sections 2 and 6 of RA 1379[76][76] provide:

x x x x x x

> Section 2. Filing of petition. – Whenever any public officer or employee has acquired during his incumbency an amount or property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired.
>
> x x x x x x
>
> Sec. 6. Judgment – 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 in question, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become the property of the State. *Provided*, That no judgment shall be rendered within six months before any general election or within three months before any special election. The Court may, in addition, refer this case to the corresponding Executive Department for administrative or criminal action, or both.

From the above-quoted provisions of the law, the following facts must be established in order that forfeiture or seizure of the Swiss deposits may be effected:

(1) ownership by the public officer of money or property acquired during his incumbency, whether it be in his name or otherwise, and

(2) the extent to which the amount of that money or property exceeds, i. e., is grossly disproportionate to, the legitimate income of the public officer.

That spouses Ferdinand and Imelda Marcos were public officials during the time material to the instant case was never in dispute. Paragraph 4 of respondent Marcoses' answer categorically admitted the allegations in paragraph 4 of the petition for forfeiture as to the personal circumstances of Ferdinand E. Marcos as a public official who served without interruption as Congressman, Senator, Senate President and President of the Republic of the Philippines from December 1, 1965 to February 25, 1986.[77][77] Likewise, respondents admitted in their answer the contents of paragraph 5 of the petition as to the personal circumstances of Imelda R. Marcos who once served as a member of the *Interim Batasang Pambansa* from 1978 to 1984 and as Metro Manila Governor, concurrently Minister of Human Settlements, from June 1976 to February 1986.[78][78]

Respondent Mrs. Marcos also admitted in paragraph 10 of her answer the allegations of paragraph 11 of the petition for forfeiture which referred to the accumulated salaries of respondents Ferdinand E. Marcos and Imelda R. Marcos.[79][79] The combined accumulated salaries of the Marcos couple were reflected in the Certification dated May 27, 1986 issued by then Minister of Budget and Management Alberto Romulo.[80][80] The Certification showed that, from 1966 to 1985, Ferdinand E. Marcos and Imelda R. Marcos had accumulated salaries in the amount of ₱1,570,000 and ₱718,750, respectively, or a total of ₱2,288,750:

| | |
|---|---|
| <u>Ferdinand E. Marcos, as President</u> | |
| 1966-1976 at ₱60,000/year | ₱660,000 |
| 1977-1984 at ₱100,000/year | 800,000 |
| 1985 at ₱110,000/year | 110,000 |
| | ₱1,570,00 |
| <u>Imelda R. Marcos, as Minister</u> | |
| June 1976-1985 at P75,000/year | ₱718,000 |

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 ₱30,833.33. Hence, their total accumulated salaries amounted to ₱2,319,583.33. 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.

The dollar equivalent was arrived at by using the official annual rates of exchange of the Philippine peso and the US dollar from 1965 to 1985 as well as the official monthly rates of exchange in January and February 1986 issued by the Center for Statistical Information of the *Bangko Sentral ng Pilipinas*.

Prescinding from the aforesaid admissions, Section 4, Rule 129 of the Rules of Court provides that:

> Section 4. – Judicial admissions – An admission, verbal or written, made by a party in the course of the proceedings in the same case does not require proof. The admission

may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[81][81]

It is settled that judicial admissions may be made: (a) in the pleadings filed by the parties; (b) in the course of the trial either by verbal or written manifestations or stipulations; or (c) in other stages of judicial proceedings, as in the pre-trial of the case.[82][82] Thus, facts pleaded in the petition and answer, as in the case at bar, are deemed admissions of petitioner and respondents, respectively, who are not permitted to contradict them or subsequently take a position contrary to or inconsistent with such admissions.[83][83]

The sum of $304,372.43 should be held as the only known lawful income of respondents since they did not file any Statement of Assets and Liabilities (SAL), as required by law, from which their net worth could be determined. Besides, under the 1935 Constitution, Ferdinand E. Marcos as President could not receive "any other emolument from the Government or any of its subdivisions and instrumentalities".[84][84] Likewise, under the 1973 Constitution, Ferdinand E. Marcos as President could "not receive during his tenure any other emolument from the Government or any other source."[85][85] In fact, his management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution:

> Article VII, Sec. 4(2) – The President and the Vice-President shall not, during their tenure, hold any other office except when otherwise provided in this Constitution, nor may they practice any profession, participate directly or indirectly in the management of any business, or be financially interested directly or indirectly in any contract with, or in any franchise or special privilege granted by the Government or any other subdivision, agency, or instrumentality thereof, including any government owned or controlled corporation.
>
> Article VII, Sec. 11 – No Member of the National Assembly shall appear as counsel before any court inferior to a court with appellate jurisdiction, x x x. 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.
>
> Article IX, Sec. 7 – The Prime Minister and Members of the Cabinet shall be subject to the provision of Section 11, Article VIII hereof and may not appear as counsel before any court or administrative body, or manage any business, or practice any profession, and shall also be subject to such other disqualification as may be provided by law.

Their only known lawful income of $304,372.43 can therefore legally and fairly serve as basis for determining the existence of a *prima facie* case of forfeiture of the Swiss funds.

Respondents argue that petitioner was not able to establish a *prima facie* case for the forfeiture of the Swiss funds since it failed to prove the essential elements under Section 3, paragraphs (c), (d) and (e) of RA 1379. As the Act is a penal statute, its provisions are mandatory and should thus be construed strictly against the petitioner and liberally in favor of respondent Marcoses.

We hold that it was not for petitioner to establish the Marcoses' other lawful income or income from legitimately acquired property for the presumption to apply because, as between petitioner and respondents, the latter were in a better position to know if there were such other sources of lawful income. And if indeed there was such other lawful income, respondents should have specifically stated the same in their answer. Insofar as petitioner Republic was concerned, it was enough to specify the known lawful income of respondents.

Section 9 of the PCGG Rules and Regulations provides that, in determining *prima facie* evidence of ill-gotten wealth, the value of the accumulated assets, properties and other material possessions of those covered by Executive Order Nos. 1 and 2 must be out of proportion to the *known lawful income* of such persons. The respondent Marcos couple did not file any Statement of Assets and Liabilities (SAL) from which their net worth could be determined. Their failure to file their SAL was in itself a violation of law and to allow them to successfully assail the Republic for not presenting their SAL would reward them for their violation of the law.

Further, contrary to the claim of respondents, the admissions made by them in their various pleadings and documents were valid. It is of record that respondents judicially admitted that the money deposited with the Swiss banks belonged to them.

We agree with petitioner that respondent Marcoses made judicial admissions of their ownership of the subject Swiss bank deposits in their answer, the General/Supplemental Agreements, Mrs. Marcos' Manifestation and Constancia dated May 5, 1999, and the Undertaking dated February 10, 1999. We take note of the fact that the Associate Justices of the Sandiganbayan were unanimous in holding that respondents had made judicial admissions of their ownership of the Swiss funds.

In their answer, aside from admitting the *existence* of the subject funds, respondents likewise admitted *ownership* thereof. Paragraph 22 of respondents' answer stated:

> 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 foundations and corporate entities for being false, the truth being that **respondents' aforesaid properties were lawfully acquired.** (emphasis supplied)

By qualifying their acquisition of the Swiss bank deposits as lawful, respondents unwittingly admitted their ownership thereof.

Respondent Mrs. Marcos also admitted ownership of the Swiss bank deposits by failing to deny under oath the genuineness and due execution of certain actionable documents bearing her signature attached to the petition. As discussed earlier, Section 11, Rule 8[86][86] of the 1997 Rules of Civil Procedure provides that material averments in the complaint shall be deemed admitted when not specifically denied.

The General[87][87] and Supplemental[88][88] Agreements executed by petitioner and respondents on December 28, 1993 further bolstered the claim of petitioner Republic that its case for forfeiture was proven in accordance with the requisites of Sections 2 and 3 of RA 1379. The whereas clause in the General Agreement declared that:

> WHEREAS, the FIRST PARTY has obtained a judgment from the Swiss Federal Tribunal on December 21, 1990, that the $356 million belongs in principle to the Republic of the Philippines provided certain conditionalities are met, but even after 7 years, the FIRST PARTY has not been able to procure a final judgment of conviction against the PRIVATE PARTY.

While the Supplemental Agreement warranted, *inter alia*, that:

> In consideration of the foregoing, the parties hereby agree that the PRIVATE PARTY shall be entitled to the equivalent of 25% of the amount that may be eventually withdrawn from said $356 million Swiss deposits.

The stipulations set forth in the General and Supplemental Agreements undeniably indicated the manifest intent of respondents to enter into a compromise with petitioner. Corollarily, respondents' willingness to agree to an amicable settlement with the Republic only affirmed their ownership of the Swiss deposits for the simple reason that no person would acquiesce to any concession over such huge dollar deposits if he did not in fact own them.

Respondents make much capital of the pronouncement by this Court that the General and Supplemental Agreements were null and void.[89][89] They insist that nothing in those agreements could thus be admitted in evidence against them because they stood on the same ground as an accepted offer which, under Section 27, Rule 130[90][90] of the 1997 Rules of Civil Procedure, provides that "in civil cases, an offer of compromise is not an admission of any liability and is not admissible in evidence against the offeror."

We find no merit in this contention. The declaration of nullity of said agreements was premised on the following constitutional and statutory infirmities: (1) the grant of criminal immunity to the Marcos heirs was against the law; (2) the PCGG's commitment to exempt from all forms of taxes the properties to be retained by the Marcos heirs was against the Constitution; and (3) the government's undertaking to cause the dismissal of all cases filed against the Marcoses pending before the Sandiganbayan and other courts encroached on the powers of the judiciary. *The reasons relied upon by the Court never in the least bit even touched on the veracity and truthfulness of respondents' admission with respect to their ownership of the Swiss funds.* Besides, having made certain admissions in those agreements, respondents cannot now deny that they voluntarily admitted owning the subject Swiss funds, notwithstanding the fact that the agreements themselves were later declared null and void.

The following observation of Sandiganbayan Justice Catalino Castañeda, Jr. in the decision dated September 19, 2000 could not have been better said:

> x x x The declaration of nullity of the two agreements rendered the same without legal effects but it did not detract from the admissions of the respondents contained therein. Otherwise stated, the admissions made in said agreements, as quoted above, remain binding on the respondents.[91][91]

A written statement is nonetheless competent as an admission even if it is contained in a document which is not itself effective for the purpose for which it is made, either by reason of illegality, or incompetency of a party thereto, or by reason of not being signed,

executed or delivered. Accordingly, contracts have been held as competent evidence of admissions, although they may be unenforceable.[92][92]

The testimony of respondent Ferdinand Marcos, Jr. during the hearing on the motion for the approval of the Compromise Agreement on April 29, 1998 also lent credence to the allegations of petitioner Republic that respondents admitted ownership of the Swiss bank accounts. We quote the salient portions of Ferdinand Jr.'s formal declarations in open court:

ATTY. FERNANDO:

> Mr. Marcos, did you ever have any meetings with PCGG Chairman Magtanggol C. Gunigundo?

F. MARCOS, JR.:

> Yes. I have had very many meetings in fact with Chairman.

ATTY. FERNANDO:

> Would you recall when the first meeting occurred?

PJ GARCHITORENA:

> In connection with what?

ATTY. FERNANDO:

> In connection with the ongoing talks to compromise the various cases initiated by PCGG against your family?

F. MARCOS, JR.:

> The nature of our meetings was solely concerned with negotiations towards achieving some kind of agreement between the Philippine government and the Marcos family. The discussions that led up to the compromise agreement were initiated by our then counsel Atty. Simeon Mesina x x x.[93][93]

xxx xxx xxx

ATTY. FERNANDO:

> What was your reaction when Atty. Mesina informed you of this possibility?

F. MARCOS, JR.:

> My reaction to all of these approaches is that I am always open, we are always open, we are very much always in search of resolution to the problem of the family and any approach that has been made us, we have entertained. And so my reaction was the same as what I have always … why not? Maybe this is the one that will finally put an end to this problem.[94][94]

xxx xxx xxx

ATTY. FERNANDO:

> Basically, what were the true amounts of the assets in the bank?

PJ GARCHITORENA:

So, we are talking about liquid assets here? Just Cash?

F. MARCOS, JR.:

Well, basically, any assets. Anything that was under the Marcos name in any of the banks in Switzerland which may necessarily be not cash.[95][95]

xxx xxx xxx

PJ GARCHITORENA:

x x x What did you do in other words, after being apprised of this contract in connection herewith?

F. MARCOS, JR.:

I assumed that we are beginning to implement the agreement because this was forwarded through the Philippine government lawyers through our lawyers and then, subsequently, to me. I was a little surprised because we hadn't really discussed the details of the transfer of the funds, what the bank accounts, what the mechanism would be. But nevertheless, I was happy to see that as far as the PCGG is concerned, that the agreement was perfected and that we were beginning to implement it and that was a source of satisfaction to me because I thought that finally it will be the end.[96][96]

Ferdinand Jr.'s pronouncements, taken in context and in their entirety, were a confirmation of respondents' recognition of their ownership of the Swiss bank deposits. Admissions of a party in his testimony are receivable against him. If a party, as a witness, deliberately concedes a fact, such concession has the force of a judicial admission.[97][97] It is apparent from Ferdinand Jr.'s testimony that the Marcos family agreed to negotiate with the Philippine government in the hope of finally putting an end to the problems besetting the Marcos family regarding the Swiss accounts. This was doubtlessly an acknowledgment of ownership on their part. The rule is that the testimony on the witness stand partakes of the nature of a formal judicial admission when a party testifies clearly and unequivocally to a fact which is peculiarly within his own knowledge.[98][98]

In her Manifestation[99][99] dated May 26, 1998, respondent Imelda Marcos furthermore revealed the following:

That respondent Imelda R. Marcos owns 90% of the subject matter of the above-entitled case, being the sole beneficiary of the dollar deposits in the name of the various foundations alleged in the case;

That in fact only 10% of the subject matter in the above-entitled case belongs to the estate of the late President Ferdinand E. Marcos;

xxx xxx xxx

Respondents' ownership of the Swiss bank accounts as borne out by Mrs. Marcos' manifestation is as bright as sunlight. And her claim that she is merely a beneficiary of the Swiss deposits is belied by her own signatures on the appended copies of the documents substantiating her ownership of the funds in the name of the foundations. As already mentioned, she failed to specifically deny under oath the authenticity of such documents, especially those involving "William Saunders" and "Jane Ryan" which actually referred to Ferdinand Marcos and Imelda Marcos, respectively. That failure of Imelda

Marcos to specifically deny the existence, much less the genuineness and due execution, of the instruments bearing her signature, was tantamount to a judicial admission of the genuineness and due execution of said instruments, in accordance with Section 8, Rule 8[100][100] of the 1997 Rules of Civil Procedure.

Likewise, in her Constancia[101][101] dated May 6, 1999, Imelda Marcos prayed for the approval of the Compromise Agreement and the subsequent release and transfer of the $150 million to the rightful owner. She further made the following manifestations:

xxx xxx xxx

> 2. The Republic's cause of action over the full amount is its forfeiture in favor of the government if found to be ill-gotten. On the other hand, **the Marcoses defend that it is a legitimate asset.** Therefore, both parties have an inchoate right of ownership over the account. If it turns out that the account is of lawful origin, the Republic may yield to the Marcoses. Conversely, the Marcoses must yield to the Republic. (underscoring supplied)

xxx xxx xxx

> 3. Consistent with the foregoing, and the Marcoses having committed themselves to helping the less fortunate, in the interest of peace, reconciliation and unity, defendant MADAM IMELDA ROMUALDEZ MARCOS, in firm abidance thereby, hereby affirms her agreement with the Republic for the release and transfer of the US Dollar 150 million for proper disposition, without prejudice to the final outcome of the litigation respecting the ownership of the remainder.

Again, the above statements were indicative of Imelda's admission of the Marcoses' ownership of the Swiss deposits as in fact "the Marcoses defend that it (Swiss deposits) is a legitimate (Marcos) asset."

On the other hand, respondents Maria Imelda Marcos-Manotoc, Ferdinand Marcos, Jr. and Maria Irene Marcos-Araneta filed a motion[102][102] on May 4, 1998 asking the Sandiganbayan to place the *res* (Swiss deposits) in *custodia legis*:

> 7. Indeed, the prevailing situation is fraught with danger! Unless the aforesaid Swiss deposits are placed in custodia legis or within the Court's protective mantle, its dissipation or misappropriation by the petitioner looms as a distinct possibility.

Such display of deep, personal interest can only come from someone who believes that he has a marked and intimate right over the considerable dollar deposits. Truly, by filing said motion, the Marcos children revealed their ownership of the said deposits.

Lastly, the Undertaking[103][103] entered into by the PCGG, the PNB and the Marcos foundations on February 10, 1999, confirmed the Marcoses' ownership of the Swiss bank deposits. The subject Undertaking brought to light their readiness to pay the human rights victims out of the funds held in escrow in the PNB. It stated:

> WHEREAS, the Republic of the Philippines sympathizes with the plight of the human rights victims-plaintiffs in the aforementioned litigation through the Second Party, desires to assist in the satisfaction of the judgment awards of said human rights victims-plaintiffs, by releasing, assigning and or waiving US$150 million of the funds held in escrow under the Escrow Agreements dated August 14, 1995, although the Republic is not obligated to do so under final judgments of the Swiss courts dated December 10 and 19, 1997, and January 8, 1998;

> WHEREAS, the Third Party is likewise willing to release, assign and/or waive all its rights and interests over said US$150 million to the aforementioned human rights victims-plaintiffs.

All told, the foregoing disquisition negates the claim of respondents that "petitioner failed to prove that they acquired or own the Swiss funds" and that "it was only by arbitrarily isolating and taking certain statements made by private respondents out of context that petitioner was able to treat these as judicial admissions." The Court is fully aware of the relevance, materiality and implications of every pleading and document submitted in this case. This Court carefully scrutinized the proofs presented by the parties. We analyzed, assessed and weighed them to ascertain if each piece of evidence rightfully qualified as an admission. Owing to the far-reaching historical and political implications of this case, we considered and examined, individually and totally, the evidence of the parties, even if it might have bordered on factual adjudication which, by authority of the rules and jurisprudence, is not usually done by this Court. There is no doubt in our mind that respondent Marcoses admitted ownership of the Swiss bank deposits.

We have always adhered to the familiar doctrine that 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.[104][104] This doctrine is embodied in Section 4, Rule 129 of the Rules of Court:

> SEC. 4. *Judicial admissions.* — An admission, verbal or written, made by a party in the course of the proceedings in the same case, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.[105][105]

In the absence of a compelling reason to the contrary, respondents' judicial admission of ownership of the Swiss deposits is definitely binding on them.

The individual and separate admissions of each respondent bind all of them pursuant to Sections 29 and 31, Rule 130 of the Rules of Court:

> SEC. 29. *Admission by co-partner or agent.* — The act or declaration of a partner or agent of the party within the scope of his authority and during the existence of the partnership or agency, may be given in evidence against such party after the partnership or agency is shown by evidence other than such act or declaration. The same rule applies to the act or declaration of a joint owner, joint debtor, or other person jointly interested with the party.[106][106]

> SEC. 31. *Admission by privies.* — Where one derives title to property from another, the act, declaration, or omission of the latter, while holding the title, in relation to the property, is evidence against the former.[107][107]

The declarations of a person are admissible against a party whenever a "privity of estate" exists between the declarant and the party, the term "privity of estate" generally denoting a succession in rights.[108][108] Consequently, an admission of one in privity with a party to the record is competent.[109][109] Without doubt, privity exists among the respondents in this case. And where several co-parties to the record are jointly interested in the subject matter of the controversy, the admission of one is competent against all.[110][110]

Respondents insist that the Sandiganbayan is correct in ruling that petitioner Republic has failed to establish a *prima facie* case for the forfeiture of the Swiss deposits.

We disagree. The sudden turn-around of the Sandiganbayan was really strange, to say the least, as its findings and conclusions were not borne out by the voluminous records of this case.

Section 2 of RA 1379 explicitly states that "whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. x x x"

The elements which must concur for this *prima facie* presumption to apply are:

(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 the income from legitimately acquired property.

It is undisputed that spouses Ferdinand and Imelda Marcos were former public officers. Hence, the first element is clearly extant.

The second element deals with the amount of money or property acquired by the public officer during his incumbency. The Marcos couple indubitably acquired and owned properties during their term of office. In fact, the five groups of Swiss accounts were admittedly owned by them. There is proof of the existence and ownership of these assets and properties and it suffices to comply with the second element.

The third requirement is met if it can be shown that such assets, money or property is manifestly out of proportion to the public officer's salary and his other lawful income. It is the proof of this third element that is crucial in determining whether a *prima facie* presumption has been established in this case.

Petitioner Republic presented not only a schedule indicating the lawful income of the Marcos spouses during their incumbency but also evidence that they had huge deposits beyond such lawful income in Swiss banks under the names of five different foundations. We believe petitioner 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. Otherwise stated, petitioner presented enough evidence to convince us that the Marcoses had dollar deposits amounting to US $356 million representing the balance of the Swiss accounts of the five foundations, an amount way, way beyond their aggregate legitimate income of only US$304,372.43 during their incumbency as government officials.

Considering, therefore, that the total amount of the Swiss deposits was considerably out of proportion to the known lawful income of the Marcoses, the presumption that said dollar deposits were unlawfully acquired was duly established. It was sufficient for the

petition for forfeiture to state the approximate amount of money and property acquired by the respondents, and their total government salaries. Section 9 of the PCGG Rules and Regulations states:

> *Prima Facie Evidence.* – Any accumulation of assets, properties, and other material possessions of those persons covered by Executive Orders No. 1 and No. 2, whose value is out of proportion to their known lawful income is *prima facie* deemed ill-gotten wealth.

Indeed, the burden of proof was on the respondents to dispute this presumption and show by clear and convincing evidence that the Swiss deposits were lawfully acquired and that they had other legitimate sources of income. A presumption is *prima facie* proof of the fact presumed and, unless the fact thus *prima facie* established by legal presumption is disproved, it must stand as proved.[111][111]

Respondent Mrs. Marcos argues that the foreign foundations should have been impleaded as they were indispensable parties without whom no complete determination of the issues could be made. She asserts that the failure of petitioner Republic to implead the foundations rendered the judgment void as the joinder of indispensable parties was a *sine qua non* exercise of judicial power. Furthermore, the non-inclusion of the foreign foundations violated the conditions prescribed by the Swiss government regarding the deposit of the funds in escrow, deprived them of their day in court and denied them their rights under the Swiss constitution and international law.[112][112]

The Court finds that petitioner Republic did not err in not impleading the foreign foundations. Section 7, Rule 3 of the 1997 Rules of Civil Procedure,[113][113] taken from Rule 19b of the American Federal Rules of Civil Procedure, provides for the compulsory joinder of indispensable parties. Generally, an indispensable party must be impleaded for the complete determination of the suit. However, failure to join an indispensable party does not divest the court of jurisdiction since the rule regarding indispensable parties is founded on equitable considerations and is not jurisdictional. Thus, the court is not divested of its power to render a decision even in the absence of indispensable parties, though such judgment is not binding on the non-joined party.[114][114]

An indispensable party[115][115] has been defined as one:

> [who] must have a direct interest in the litigation; and if this interest is such that it cannot be separated from that of the parties to the suit, if the court cannot render justice between the parties in his absence, if the decree will have an injurious effect upon his interest, or if the final determination of the controversy in his absence will be inconsistent with equity and good conscience.

There are two essential tests of an indispensable party: (1) can relief be afforded the plaintiff without the presence of the other party? and (2) can the case be decided on its merits without prejudicing the rights of the other party?[116][116] There is, however, no fixed formula for determining who is an indispensable party; this can only be determined in the context and by the facts of the particular suit or litigation.

In the present case, there was an admission by respondent Imelda Marcos in her May 26, 1998 Manifestation before the Sandiganbayan that she was the sole beneficiary of 90% of the subject matter in controversy with the remaining 10% belonging to the estate

of Ferdinand Marcos.[117][117] Viewed against this admission, the foreign foundations were *not* indispensable parties. Their non-participation in the proceedings did not prevent the court from deciding the case on its merits and according full relief to petitioner Republic. The judgment ordering the return of the $356 million was neither inimical to the foundations' interests nor inconsistent with equity and good conscience. The admission of respondent Imelda Marcos only confirmed what was already generally known: that the foundations were established precisely to hide the money stolen by the Marcos spouses from petitioner Republic. It negated whatever illusion there was, if any, that the foreign foundations owned even a nominal part of the assets in question.

The rulings of the Swiss court that the foundations, as formal owners, must be given an opportunity to participate in the proceedings hinged on the assumption that they owned a nominal share of the assets.[118][118] But this was already refuted by no less than Mrs. Marcos herself. Thus, she cannot now argue that the ruling of the Sandiganbayan violated the conditions set by the Swiss court. The directive given by the Swiss court for the foundations to participate in the proceedings was for the purpose of protecting whatever nominal interest they might have had in the assets as formal owners. But inasmuch as their ownership was subsequently repudiated by Imelda Marcos, they could no longer be considered as indispensable parties and their participation in the proceedings became unnecessary.

In *Republic vs. Sandiganbayan,*[119][119] this Court ruled that impleading the firms which are the *res* of the action was unnecessary:

> "And as to corporations organized with ill-gotten wealth, but are not themselves guilty of misappropriation, fraud or other illicit conduct – in other words, the companies themselves are not the object or thing involved in the action, the res thereof – there is no need to implead them either. Indeed, their impleading is not proper on the strength alone of their having been formed with ill-gotten funds, absent any other particular wrongdoing on their part…
>
> Such showing of having been formed with, or having received ill-gotten funds, however strong or convincing, does not, without more, warrant identifying the corporations in question with the person who formed or made use of them to give the color or appearance of lawful, innocent acquisition to illegally amassed wealth – at the least, not so as place on the Government the *onus* of impleading the former with the latter in actions to recover such wealth. Distinguished in terms of juridical personality and legal culpability from their erring members or stockholders, said corporations are not themselves guilty of the sins of the latter, of the embezzlement, asportation, etc., that gave rise to the Government's cause of action for recovery; their creation or organization was merely the result of their members' (or stockholders') manipulations and maneuvers to conceal the illegal origins of the assets or monies invested therein. In this light, they are simply the *res* in the actions for the recovery of illegally acquired wealth, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions."

Just like the corporations in the aforementioned case, the foreign foundations here were set up to conceal the illegally acquired funds of the Marcos spouses. Thus, they were simply the *res* in the action for recovery of ill-gotten wealth and did not have to be impleaded for lack of cause of action or ground to implead them.

Assuming *arguendo,* however*,* that the foundations were indispensable parties, the failure of petitioner to implead them was a curable error, as held in the previously cited case of *Republic vs. Sandiganbayan*:[120][120]

> "Even in those cases where it might reasonably be argued that the failure of the Government to implead the sequestered corporations as defendants is indeed a procedural abberation, as where said firms were allegedly used, and actively cooperated with the defendants, as instruments or conduits for conversion of public funds and property or illicit or fraudulent obtention of favored government contracts, etc., slight reflection would nevertheless lead to the conclusion that the defect is not fatal, but one correctible under applicable adjective rules – e.g., Section 10, Rule 5 of the Rules of Court [specifying the remedy of amendment during trial to authorize or to conform to the evidence]; Section 1, Rule 20 [governing amendments before trial], in relation to the rule respecting omission of so-called necessary or indispensable parties, set out in Section 11, Rule 3 of the Rules of Court. It is relevant in this context to advert to the old familiar doctrines that the omission to implead such parties "is a mere technical defect which can be cured at any stage of the proceedings even after judgment"; and that, particularly in the case of indispensable parties, since their presence and participation is essential to the very life of the action, for without them no judgment may be rendered, amendments of the complaint in order to implead them should be freely allowed, even on appeal, in fact even after rendition of judgment by this Court, where it appears that the complaint otherwise indicates their identity and character as such indispensable parties."[121][121]

Although there are decided cases wherein the non-joinder of indispensable parties in fact led to the dismissal of the suit or the annulment of judgment, such cases do not jibe with the matter at hand. The better view is that non-joinder is not a ground to dismiss the suit or annul the judgment. The rule on joinder of indispensable parties is founded on equity. And the spirit of the law is reflected in Section 11, Rule 3[122][122] of the 1997 Rules of Civil Procedure. It prohibits the dismissal of a suit on the ground of non-joinder or misjoinder of parties and allows the amendment of the complaint at any stage of the proceedings, through motion or on order of the court on its own initiative.[123][123]

Likewise, jurisprudence on the Federal Rules of Procedure, from which our Section 7, Rule 3[124][124] on indispensable parties was copied, allows the joinder of indispensable parties even after judgment has been entered if such is needed to afford the moving party full relief.[125][125] Mere delay in filing the joinder motion does not necessarily result in the waiver of the right as long as the delay is excusable.[126][126] Thus, respondent Mrs. Marcos cannot correctly argue that the judgment rendered by the Sandiganbayan was void due to the non-joinder of the foreign foundations. The court had jurisdiction to render judgment which, even in the absence of indispensable parties, was binding on all the parties before it though not on the absent party.[127][127] If she really felt that she could not be granted full relief due to the absence of the foreign foundations, she should have moved for their inclusion, which was allowable at any stage of the proceedings. She never did. Instead she assailed the judgment rendered.

In the face of undeniable circumstances and the avalanche of documentary evidence against them, respondent Marcoses failed to justify the lawful nature of their acquisition of the said assets. Hence, the Swiss deposits should be considered ill-gotten wealth and forfeited in favor of the State in accordance with Section 6 of RA 1379:

SEC. 6. Judgment.— 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, and by virtue of such judgment the property aforesaid shall become property of the State x x x.

**THE FAILURE TO PRESENT AUTHENTICATED TRANSLATIONS OF THE SWISS DECISIONS**

Finally, petitioner Republic contends that the Honorable Sandiganbayan Presiding Justice Francis Garchitorena committed grave abuse of discretion in reversing himself on the ground that the original copies of the authenticated Swiss decisions and their authenticated translations were not submitted to the court *a quo*. Earlier PJ Garchitorena had quoted extensively from the unofficial translation of one of these Swiss decisions in his *ponencia* dated July 29, 1999 when he denied the motion to release US$150 Million to the human rights victims.

While we are in reality perplexed by such an incomprehensible change of heart, there might nevertheless not be any real need to belabor the issue. The presentation of the authenticated translations of the original copies of the Swiss decision was not *de rigueur* for the public respondent to make findings of fact and reach its conclusions. In short, the Sandiganbayan's decision was not dependent on the determination of the Swiss courts. For that matter, neither is this Court's.

The release of the Swiss funds held in escrow in the PNB is dependent solely on the decision of this jurisdiction that said funds belong to the petitioner Republic. What is important is our own assessment of the sufficiency of the evidence to rule in favor of either petitioner Republic or respondent Marcoses. In this instance, despite the absence of the authenticated translations of the Swiss decisions, the evidence on hand tilts convincingly in favor of petitioner Republic.

**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.

**SO ORDERED.**

*Davide, Jr., C.J., Bellosillo, Panganiban, Ynares-Santiago, Austria-Martinez, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.*
*Puno, and Vitug, JJ., in the result*
*Quisumbing, Sandoval-Gutierrez, J., on official leave.*
*Carpio, J., no part.*

[1][1] An Act Declaring Forfeiture In Favor of the State Any Property To Have Been Unlawfully Acquired By Any Public Officer or Employee and Providing For the Procedure Therefor.

[2][2] E.O. No. 1 - promulgated on February 28, 1986, only two (2) days after the Marcoses fled the country, creating the PCGG which was primarily tasked to assist the President in the recovery of vast government resources allegedly amassed by former President Marcos, his immediate family, relatives, and close associates, both here and abroad.

[3][3] E.O. No. 2 – issued twelve (12) days later, warning all persons and entities who had knowledge of possession of ill-gotten assets and properties under pain of penalties prescribed by law, prohibiting them from concealing, transferring or dissipating them or from otherwise frustrating or obstructing the recovery efforts of the government.

[4][4] E.O. No. 14 – Series of 1986, as amended by E.O. No. 14-A.

[5][5] Also series of 1986, vested Sandiganbayan the exclusive and original jurisdiction over cases, whether civil or criminal, to be filed by the PCGG with the assistance of the Office of the Solicitor General. The law also declared that the civil actions for the recovery of unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil action under the Civil Code or other existing laws filed with the Sandiganbayan against Ferdinand Marcos et. al., may proceed independently of any criminal proceedings and may be proved by preponderance of evidence.

[6][6] Declared null and void by this Court on December 9, 1998 in the case of "*Francisco I. Chavez vs. PCGG and Magtanggol Gunigundo",* docketed as G.R. No. 130716.

[7][7] In April 1986, pursuant to E.O. No. 2, the Republic of the Philippines through the PCGG filed a request for mutual assistance with the Swiss Federal Police Department, under the procedures of the International Mutual Assistance in Criminal Proceedings (IMAC) to freeze the bank deposits of the Marcoses located in Switzerland.

IMAC is a domestic statute of Switzerland which generally affords relief to the kind of request from foreign governments or entities as authorized under E.O. No. 2.

The various Swiss local authorities concerned granted the request of petitioner Republic, and ordered the Swiss deposits to be "blocked" until the competent Philippine court could decide on the matter.

[8][8] Volume III, Rollo, p. 2195.

[9][9] Penned by Justice Catalino R. Castañeda, Jr. and concurred in by Presiding Justice Francis E. Garchitorena and Associate Justice Gregory S. Ong.

[10][10] Volume III, Rollo, p. 2218.

[11][11] Penned by Presiding Justice Francis E. Garchitorena with the separate concurring opinions of Associate Justice Nicodemo T. Ferrer and Associate Justice Gregory S. Ong. Associate Justices Catalino R. Castañeda, Jr. and Francisco H. Villaruz, Jr. both wrote their respective dissenting opinions.

[12][12] Volume I, Rollo, pp. 145-146.

[13][13] Volume I, Rollo, pp. 60-62.

[14][14] Volume IV, Rollo, p. 2605.

[15][15] Sec. 3 – the petition shall contain the following information

xxx

(c) The approximate amount of property he has acquired during his incumbency in his past and present offices and employments.

[16][16] (d) A description of said property, or such thereof as has been identified by the Solicitor General.

[17][17] (e) The total amount of his government salary and other proper earnings and incomes from legitimately acquired property xxx.

[18][18] Volume IV, Rollo, pp. 2651-2654.

[19][19] Same as Section 1, Rule 65 of the old Rules of Court.

[20][20] *Filoteo, Jr. vs. Sandiganbayan*, 263 SCRA 222 [1996].

[21][21] *Central Bank vs. Cloribel*, 44 S 307, 314 [1972].

[22][22] 240 SCRA 376 [1995].

[23][23] *Republic vs. Sandiganbayan*, 269 SCRA 316 [1997].

[24][24] 69 SCRA 524 [1976].

[25][25] Substantially the same as Section 1, Rule 34 of the old Rules of Court.

[26][26] *Agcanas vs. Nagum*, L-20707, 143 Phil 177 [1970].

[27][27] Rollo, Vol. I, pp. 22-37.

[28][28] Substantially the same as Section 10, Rule 8 of the old Rules of Court.

[29][29] 16 Phil., 315, 321-322 [1910].

[30][30] 197 SCRA 391 [1991].

[31][31] *Philippine Advertising vs. Revilla*, 52 SCRA 246 [1973].

[32][32] Petition, Annex C, Volume I, Rollo, p. 236.

[33][33] Answer, Annex D, Volume II, Rollo, p. 1064.

[34][34] 61A Am. Jur., 172-173.

[35][35] *Blume vs. MacGregor,* 148 P. 2d. 656 [see p.428, Moran, Comments on the Rules of Court, 1995 ed.].

[36][36] Substantially the same as Section 1, Rule 9 of the old Rules of Court.

[37][37] *Supra.*

[38][38] *Supra.*

[39][39] "All the five (5) group accounts in the over-all flow chart have a total balance of about Three Hundred Fifty Six Million Dollars ($356,000,000.00) as shown by Annex 'R-5' hereto attached as integral part hereof."

[40][40] 22 SCRA 48 [1968]

[41][41] XANDY-WINTROP-AVERTINA FOUNDATION: (a) Contract for opening of deposit dated March 21, 1968; (b) Handwritten instruction; (c) Letter dated March 3, 1970; (d) Handwritten regulation of Xandy dated February 13, 1970; (e) Letter of instruction dated March 10, 1981; (f) Letter of Instructions dated March 10, 1991.

TRINIDAD-RAYBY-PALMY FOUNDATION: (a) Management agreement dated August 28, 1990; (b) Letter of instruction dated August 26, 1970 to Markers Geel of Furich; (c) Approval of Statutes and By-laws of Trinidad Foundation dated August 26, 1990; (d) Regulations of the Trinidad Foundation dated August 28, 1970; (e) Regulations of the Trinidad Foundation prepared by Markers Geel dated

August 28, 1970; (f) Letter of Instructions to the Board of Rayby Foundation dated March 10, 1981; (g) Letter of Instructions to the Board of Trinidad Foundation dated March 10, 1981.

MALER ESTABLISHMENT FOUNDATION: (a) Rules and Regulations of Maler dated October 15, 1968; (b) Letter of Authorization dated October 19, 1968 to Barbey d Suncir; (c) Letter of Instruction to Muler to Swiss Bank dated October 19, 1968.

[42][42] "Where an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading xxx, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party under oath, specifically denies them, and sets forth what he claims to be the facts xxx."

[43][43] Annex A-F, Volume I, Rollo, pp. 193-194.

[44][44] *Ice Plant Equipment vs. Martocello, D.C.P.*, 1941, 43 F. Supp. 281.

[45][45] *Phil. Advertising Counselors, Inc. vs. Revilla*, L- 31869, Aug. 8, 1973.

[46][46] *Warner Barnes & Co., Ltd. vs. Reyes, et. al.*, 55 O.G. 3109-3111.

[47][47] *Philippine Bank of Communications vs. Court of Appeals*, 195 SCRA 567 [1991].

[48][48] 28 SCRA 807, 812 [1969].

[49][49] Rule 20 of the old Rules of Court was amended but the change(s) had no adverse effects on the rights of private respondents.

[50][50] *Development Bank of the Phils. vs. CA,* G.R. No. L-49410, 169 SCRA 409 [1989].

[51][51] Substantially the same as Section 3, Rule 34 of the old Rules of Court.

[52][52] adopted by the Marcos children.

[53][53] dated September 26, 2000 as filed by Mrs. Marcos; dated October 5, 2000 as jointly filed by Mrs. Manotoc and Ferdinand, Jr.; supplemental motion for reconsideration dated October 9, 2000 jointly filed by Mrs. Manotoc and Ferdinand, Jr.;

[54][54] dated December 12, 2000 and December 17, 2000 as filed by the Marcos children.

[55][55] TSN, pp. 47-48, October 28, 1999.

[56][56] *Evadel Realty and Development Corp. vs. Spouses Antera and Virgilio Soriano*, April 20, 2001.

[57][57] *Plantadosi vs. Loew's, Inc.*, 7 Fed. Rules Service, 786, June 2, 1943.

[58][58] *Rabaca vs. Velez*, 341 SCRA 543 [2000].

[59][59] *Carcon Development Corp. vs. Court of Appeals*, 180 SCRA 348 [1989].

[60][60] Rollo, pp. 2659-70.

[61][61] Substantially the same as Sections 1 and 2, Rule 34 of the old Rules of Court.

[62][62] Rule 113. Summary Judgment. - ***When an answer is served*** in an action to recover a debt or a liquidated demand arising,

1. on a contract, express or implied, sealed or not sealed; or

2. on a judgment for a stated sum;

the answer may be struck out and judgment entered thereon on motion, and the affidavit of the plaintiff or of any other person having knowledge of the facts, verifying the cause of action and stating the amount claimed, and his belief that there is no defense to the action; unless the defendant by affidavit or other proof, shall show such facts as may be deemed, by the judge hearing the motion, sufficient to entitle him to defend. (*emphasis ours*)

[63][63] 73 Am Jur 2d 733, §12; 49 C.J.S. 412, § 224.

[64][64] Moran, **COMMENTS ON THE RULES OF COURT,** Vol. II. (1996), pp. 183-184.

[65][65] 19 NYS2d 250 [1940].

[66][66] 73 Am Jur 2d 733, §12; 49 C.J.S. 412, § 224.

[67][67] *Supra*.

[68][68] *Gregorio Estrada vs. Hon. Fracisco Consolacion*, et. al., 71 SCRA 523 [1976].

[69][69] Substantially the same as Section 2, Rule 1 of the old Rules of Court.

[70][70] *Madeja vs. Patcho*, 123 SCRA 540 [1983].

[71][71] *Mejia de Lucas vs. Gamponia*, 100 Phil. 277 [1956].

[72][72] *Diaz vs. Gorricho*, 103 Phil. 261 [1958].

[73][73] *Collado vs. Court of Appeals*, G.R. No.107764, October 4, 2002; Section 15, Article XI of the 1987 Constitution.

[74][74] *Go Tian An vs. Republic of the Philippines*, 124 Phil. 472 [1966].

[75][75] *Tijam vs. Sibonghanoy*, 23 SCRA 29 [1968].

[76][76] "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", approved on June 18, 1955.

[77][77] Petition, Annex D, Volume II, p. 1081.

[78][78] *Ibid*.

[79][79] *Id*., p. 1062.

[80][80] Exhibit “S.”

[81][81] Substantially the same as Section 2, Rule 129 of the old Rules of Court.

[82][82] Regalado, Remedial Law Compendium, Vol. II, 1997 ed., p. 650.

[83][83] Moran, Comments on the Rules of Court, Volume V, 1980 ed., p. 64.

[84][84] Section 9, Article VII.

[85][85] Section 4(1), Article VII.

[86][86] Substantially the same as Section 1, Rule 9 of the old Rules of Court.

[87][87] Annex F-1, Volume II, Rollo, pp. 1095-1098.

[88][88] Annex F-2, Volume II, Rollo, pp.1099-1100.

[89][89] *Chavez vs. PCGG*, 299 SCRA 744, [1998].

[90][90] Substantially the same as Section 24, Rule 130 of the old Rules of Court.

[91][91] Annex HH, Volume III, Rollo, p. 2205.

[92][92] 31A C.J.S., Par. 284, p.721.

[93][93] Annex I, Volume II, Rollo, pp. 1177-1178.

[94][94] *Ibid*, p. 1181.

[95][95] *Ibid*, p. 1188.

[96][96] *Ibid*, p. 1201.

[97][97] 29A Am. Jur., Par. 770, p. 137.

[98][98] 31A C.J.S., Par. 311, p.795.

[99][99] Annex M, Volume II, Rollo, pp.1260-1261.

[100][100] Substantially the same as Section 8, Rule 8 of the old Rules of Court.

[101][101] Annex S, Volume II, Rollo, pp.1506-1507.

[102][102] Annex L, Volume II, Rollo, p. 1256.

[103][103] Annex P-1, Volume II, Rollo, p. 1289.

[104][104] *Santiago vs. de los Santos*, 61 SCRA 146 [1974].

[105][105] Substantially the same as Section 2, Rule 129 of the old Rules of Court.

[106][106] Substantially the same as Section 26, Rule 130 of the old Rules of Court.

[107][107] Substantially the same as Section 28, Rule 130 of the old Rules of Court.

[108][108] 29 Am Jur 2d Par. 824, p. 211.

[109][109] 31A C.J.S., Par. 322, p. 817.

[110][110] *Ibid,* p. 814.

[111][111] Miriam Defensor Santiago, *Rules of Court Annotated*, 1999 ed., p. 857.

[112][112] Rollo, pp. 2255-2265.

[113][113] Sec. 7. *Compulsory joinder of indispensable parties.*—Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. The same as Section 7, Rule 3 of the old Rules of Court.

[114][114] 59 AM. JUR. 2D PARTIES §97 (2000).

[115][115] Supra note 3 § 13 (2000).

[116][116] Supra note 3 citing Picket vs. Paine, 230 Ga 786, 199 SE2d 223.

[117][117] Rollo, p. 1260. Manifestation:

"Comes now undersigned counsel for the respondent Imelda R. Marcos, and before this Honorable Court, most respectfully manifests:

That respondent Imelda R. Marcos owns 90% of the subject-matter of the above-entitled case, being the *sole beneficiary of the dollar deposits in the name of the various Foundations* alleged in the case;

That in fact only 10% of the subject-matter in the above-entitled case belongs to the Estate of the late President Ferdinand E. Marcos;"

[118][118] Rollo, p. 2464, quoted from the December 18, 2000 memorandum of respondent Mrs. Marcos:

"On the other hand, the opponent to the appeal, formally the owner of the assets to be seized and restituted, has not been involved in the collecting procedure pending in the Philippines. Even though such opponent is nothing but a legal construction to hide the true ownership to the assets of the Marcos family, they nevertheless are entitled to a hearing as far as the proceedings are concerned with accounts which are nominally theirs. The guarantees of the Republic of the Philippines therefore must include the process rights not only of the defendants but also of the formal owners of the assets to be delivered."

[119][119] 240 SCRA 376, 469 [1995].

[120][120] *Supra.*

[121][121] *Id* at 470-471.

[122][122] Substantially the same as Section 11, Rule 3 of the old Rules of Court.

[123][123] Sec. 11. *Misjoinder and non-joinder of parties.* – Neither misjoinder nor non-joinder of parties is ground for the dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

[124][124] Same as Section 7, Rule 3 of the old Rules of Court.

[125][125] Supra note 3 § 265 (2000)

[126][126] *Id* citing *Gentry vs. Smith* (CA5 Fla) 487 F2d 571, 18 FR Serv 2d 221, later app (CA5 Fla) 538 F2d 1090, on reh (CA5 Fla) 544 F2d 900, holding that a failure to request the joinder of a defendant was excused where the moving party's former counsel, who had resisted the joinder, abruptly withdrew his appearance and substitute counsel moved promptly to join the corporation.

[127][127] Supra note 3.