

## EN BANC

[ G.R. No. 205172, June 15, 2021 ]

### HERMINIO T. DISINI, PETITIONER, VS. REPUBLIC OF THE PHILIPPINES, RESPONDENT.

**Hernando, J.:**

This Petition for Review on *Certiorari*<sup>[1]</sup> assails the April 11, 2012 Decision<sup>[2]</sup> and the October 24, 2012 Resolution<sup>[3]</sup> of the *Sandiganbayan* in Civil Case No. 0013 which declared as ill-gotten the commissions received by Herminio T. Disini (Disini) relative to the Bataan Nuclear Power Plant (BNPP) project, and ordered him to account for and reconvey the total amount of \$50,562,500.00, with interest until fully paid.<sup>[4]</sup> In its assailed Resolution, the anti-graft court denied the Republic's Motion for Partial Reconsideration and Disini's Partial Motion for Reconsideration and Motion to Strike Out for lack of merit.<sup>[5]</sup>

#### **The Antecedents:**

This case involves the recovery of ill-gotten wealth against Disini, a close associate of former President Ferdinand Marcos (President Marcos), in relation to the BNPP project.<sup>[6]</sup> The BNPP project is a nuclear power plant project awarded to Westinghouse Electric Corporation (Westinghouse) and Burns & Roe, Inc. (B&R), as main contractor and architect-engineer, respectively, in 1976.<sup>[7]</sup> The BNPP remains inoperable to this day.<sup>[8]</sup>

On July 23, 1987, the Republic, through the Presidential Commission on Good Government (PCGG), filed a complaint for reconveyance, reversion, accounting, restitution and damages against Disini, President Marcos and Imelda Marcos (Imelda), for amassing ill-gotten wealth during President Marcos' term.<sup>[9]</sup> Among others, the Republic alleged that Disini received special concessions from President Marcos in relation to the award of the BNPP contract to Westinghouse and B&R, for a scandalously exorbitant amount.<sup>[10]</sup> Allegedly, Disini received substantial commissions from Westinghouse and B&R for the award of the contract and its execution.<sup>[11]</sup>

During trial, only the Republic presented evidence since Disini was a party in default:<sup>[12]</sup> after summons to him remained unserved and after summons by publication against him was completed.<sup>[13]</sup> The default order was sustained by this Court in a Decision rendered on July 5, 2010 which became final and executory on November 18, 2010.<sup>[14]</sup>

The Republic presented the following witnesses *ex parte*, namely: (a) Lourdes Magno, Information Technology Officer III of the PCGG; (b) Rodolfo B. Jacob (Jacob), former President of Herdis Group, Inc. (Herdis); (c) Danilo Richard V. Daniel, Director IV of the PCGG Research Department; (d) Angelo Manahan

(Manahan), former Executive Vice-President and Chief Operating Officer of Herdis; (e) Rafael Sison, former member of the Board of Governors of the Development Bank of the Philippines (DBP); (f) Cristina A. Beranilla, PCGG Legal Assistant; (g) Ricardo Paras III, Chief State Counsel; (h) Atty. Jesus P. Disini (Jesus), second cousin of Disini and former Senior Vice-President of Herdis; and (i) Jesus Vergara (Vergara), former President of Asia Industries, Inc. (AII).<sup>[15]</sup> The Republic also presented the deposition of Rolando C. Gapud (Gapud), former officer of Bancom Development Corporation, former President of the Security Bank and Trust Company, and President Marcos and Imelda's financial advisor.<sup>[16]</sup>

However, Jesus' testimony was not given any probative value in view of his immunity agreement with the Republic that his affidavits were to be used solely for the New Jersey District Court (NJDC) case and the International Court of Arbitration (ICA) proceedings involving Westinghouse and B&R's claims against the Republic. This Court upheld the said immunity agreement in *Disini v. Sandiganbayan*<sup>[17]</sup> which clearly prohibited the Republic from using him as a witness in any claim brought by the Republic against Herminio Disini."

The Republic also offered documentary evidence, such as Exhibits A to Z and series; AA to ZZ and series; AAA to ZZZ and series; and AAAA to DDDD and series.<sup>[18]</sup>

### **Version of the Republic:**

The Republic claimed that Westinghouse solicited the influence of Disini, a known close associate of President Marcos, to become its Special Sales Representative (SSR) to ensure its appointment as the main contractor for the BNPP project, for a fee of 3% of the contract price as commission.<sup>[19]</sup> The Republic also alleged that Disini unduly took advantage of his close association with President Marcos to obtain favorable terms for Westinghouse by requesting President Marcos to issue orders or directives to the National Power Corporation (NPC) to accept Westinghouse's proposals in relation with the BNPP project.

Meanwhile, AII and Westinghouse entered into an agreement wherein the former would act as the latter's SSR in the Philippines for a fee of \$3,000,000.<sup>[20]</sup> Thereafter, Power Contractors, Inc. (PCI); a consortium entered into by Onofre B. Banson, Antonio P. Chanco, Vergara, Jose P. Dans, Jr., Rufino M. Asi, Ventura O. Ducut, Claudio B. Altura, Lucio C. Torres, and Jacob, as stockholders, Monark International Inc., Vinnell-Belvoir Corporation, and Engineering Equipment, Inc., was formed to undertake the civil and other related works of the BNPP project.<sup>[21]</sup> PCI was 40% owned by AII.<sup>[22]</sup>

Thereafter, Disini, through his company Herdis, acquired AII's 40% interest in PCI to gain and benefit from PCI's contract with Westinghouse.<sup>[23]</sup> Also, he acquired AII to benefit from the latter's SSR agreement with Westinghouse.<sup>[24]</sup> The Republic claimed that all commissions due to AII was directly paid by Westinghouse to Disini, through Herdis, and not to AII which resulted in the latter's financial distress.

On the other hand, B&R had a written agreement with Technosphere Consultant Group, Inc. (TCI), a company owned by Herdis. Pursuant to their agreement, TCI would receive a commission of 10% of the contract price of B&R as the architect-engineer in the BNPP project. This commission was for the services rendered by

Disini in influencing President Marcos to award the BNPP project to B&R as architect-engineer.

Both Westinghouse and B&R made their payments to Disini beginning 1976. However, these commissions were not recorded in the books of Herdis, Ail or TCL. Instead, they were remitted by Westinghouse and B&R to a certain Rene Pasche in Switzerland who deposited the money in Disini's Switzerland bank accounts. However, in 1978, Westinghouse started to remit the commissions through the International Corporate Bank (Interbank) in the Philippines in which Disini and Jacob were the authorized signatories. A substantial portion of the Interbank account was then deposited in the overseas bank accounts in Switzerland under the account names "965 Summa" and "735 Phil" with Disini's wife, Pacencia, and Jacob as the authorized signatories.<sup>[25]</sup>

### ***Sandigan Decision***

On April 11, 2012, the *Sandiganbayan* rendered its assailed Decision declaring the commissions in the amount of \$50,562,500.00 received by Disini to be ill-gotten wealth<sup>[26]</sup> and ordering him to account for and reconvey the said amount to the Republic.<sup>[27]</sup> The dispositive portion of the assailed Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered DECLARING ILL-GOTTEN the commissions received by defendant HERMINIO T. DISINI in connection with the Bataan Nuclear Power Plant transaction. Defendant Disini is ordered to ACCOUNT for these commissions and to RECONVEY the total amount of \$50,562,500.00 he received by virtue of this transaction to the Plaintiff, with interest until fully paid. Plaintiff's claims for actual, moral, temperate, nominal, exemplary damages, attorney's fees, litigation expenses, and treble judicial costs are DISMISSED for not being established by a preponderance of evidence.<sup>[28]</sup>

Notably, only Disini was found liable by the *Sandiganbayan* of having amassed ill-gotten wealth by way of substantial commissions totaling \$50,562,500.00 which he received from Westinghouse and B&R in connection with the BNPP project. The *Sandiganbayan* found Disini to be a close personal and business associate of President Marcos based on the following: his appearances in Malacañang to play golf together with a select group of people, several phone calls from President Marcos himself, submission of *aide memoires* to President Marcos which contained information relating to the business development of Herdis, and various requests to President Marcos for the approval of his loans from government banks and other requests for the benefit of his companies.<sup>[29]</sup>

In ruling for the Republic, the *Sandiganbayan* relied on the testimonies of witnesses Manahan, Vergara, and Jacob, all of whom were privy to the BNPP project.<sup>[30]</sup> It held that the evidence presented by the Republic established the following:

Disini, as the owner of Herdis and a known close associate and family friend of President Marcos, served as an SSR of Westinghouse<sup>[31]</sup> and B&R<sup>[32]</sup> in exchange for substantial commissions totaling \$50,562,500.00.<sup>[33]</sup> As Westinghouse and B&R's SSR, Disini used his personal and close association with President Marcos to ensure that the BNPP project would be awarded to Westinghouse and B&R.<sup>[34]</sup> In

addition, Disini sought private concessions from President Marcos in the form of orders which favored and allowed Westinghouse and B&R to continue with the BNPP project despite unfavorable terms against the Philippines.<sup>[35]</sup>

In arriving at the total amount of commissions received by Disini from Westinghouse and B&R, the *Sandiganbayan* primarily relied on Exhibit E-9,<sup>[36]</sup> Disini's purported summary of the total commissions from Westinghouse and B&R in relation to the BNPP project. The Anti-Graft Court found no probative value on the documentary evidence relating to the existence of Disini's Switzerland bank accounts to prove receipt of commissions as they were mere photocopies, unauthenticated and not properly translated.

Nonetheless, the *Sandiganbayan* ruled that even if most of the documentary evidence were photocopies with no probative value, the testimonies of Manahan, Vergara, Jacob and Sison constituted preponderant evidence that: (a) Disini and President Marcos were close associates, or relatives by affinity; (b) President Marcos acquiesced to Disini's representation as the exclusive agent for Westinghouse and B&R with respect to the BNPP project; (c) Westinghouse and B&R agreed to pay commission to Disini for the latter to influence President Marcos to award the contracts to them; and (d) Disini, did in fact, receive these commissions.

However, while the *Sandiganbayan* found Disini liable, it held that there was no evidence of President Marcos' and Imelda's receipt of the commissions.<sup>[37]</sup> Thus, they were not held liable.<sup>[38]</sup>

Both parties filed their respective motions for reconsideration. The Republic argued that it sufficiently proved that analogous grants of loans and guarantees were given to the companies owned by President Marcos and Disini through Presidential Decree (P.D.) Nos. 550 and 750; and Letter of Instruction (LOI) Nos. 658 and 1132. It insisted that President Marcos and Disini misappropriated, embezzled and converted funds of government financial institutions by granting unwarranted favors to Herdis. It likewise alleged that President Marcos accumulated ill-gotten wealth in conspiracy with Disini, thus, he should also be held liable for the receipt of commissions from Westinghouse and B&R in relation to the BNPP project. Lastly, it claimed that it is entitled to actual, temperate, nominal and exemplary damages, attorney's fees and other judicial costs.

On the other hand, Disini opined that the Republic had no cause of action against him as there was no contract or quasi-contract violated. Also, he alleged that witnesses Manahan, Vergara and Jacob had no personal knowledge of the allegations in their affidavits. Specifically, he cited Manahan's Transcripts of Stenographic Notes (TSN) in Criminal Case No. 28001-02<sup>[39]</sup> filed before the *Sandiganbayan* which showed his lack of personal knowledge on matters alleged in his affidavit. Also, he insisted that he did not take undue advantage of his alleged close relationship with President Marcos for personal gain or benefit. Lastly, no evidence was adduced to prove the amount of commissions he allegedly received from Westinghouse and B&R.

On October 24, 2012, the *Sandiganbayan* denied both the Republic's Motion for Partial Reconsideration and Disini's Partial Motion for Reconsideration and Motion to Strike Out for lack of merit.<sup>[40]</sup> It ruled that Disini, having been declared in default,

cannot present as evidence Manahan's TSN in Criminal Case Nos. 28001-02 in a motion for reconsideration.

As a party in default, Disini lost his right to present evidence and to participate in the trial by filing a Motion to Strike Out. Thus, the *Sandiganbayan* ruled that , it is not bound to recognize the said Motion to Strike Out filed by Disini or to act on it.

As to the Republic's motion for partial reconsideration, the *Sandiganbayan* held that i:t failed to present credible evidence to prove the accumulation of ill-gotten wealth by President Marcos, Imelda and Disini based on P.D.s and LOI issued by President Marcos. The anti-graft court noted that the Republic did not offer any evidence to prove the specific amounts of loans or other accommodations granted by President Marcos to Disini.

It opined that the Republic; should not expect the *Sandiganbayan* to make its own investigation to determine the particular loan amounts or accommodations and favorable treatment granted to Disini by President Marcos based on P.D. Nos. 550 and 750 as well as LOI Nos. 658 and 1132. As to the damages claimed by the Republic, the *Sandiganbayan* ruled that there was no factual basis for the award of moral, temperate, nominal and exemplary damages.<sup>[41]</sup>

As to Disini 's motion for partial reconsideration, the Sandiganbayan ruled that Jacob's testimony proved that Disini indeed received commissions from Westinghouse and B&R for his services rendered regarding the award of the BNPP project to them. Absent any countervailing evidence, Jacob's testimony deserved probative weight despite the lack of documentary proof. However, the Sandiganbayan maintained its ruling that there was no sufficient evidence to show that President Marcos and Imelda received any commissions from Westinghouse and B&R.<sup>[42]</sup>

Hence, Disini filed the instant Petition for Review on Certiorari under Rule 45. Meanwhile, on June 3, 2014, Disini died and was substituted in the suit by his heir Herminio Angel E. Disini, Jr.<sup>[43]</sup>

## Issues

Disini raised the following issues<sup>[44]</sup> in his Petition:

1. Whether the *Sandiganbayan* violated the rule on authentication of documents under Section 120 of Rule 132 of the Rules of Court when it admitted and relied on Republic's Exhibit E-9. x x x
2. Whether there [was] a civil law cause of action that justifie[d] the *Sandiganbayan*'s [order] to account for and reconvey, to the Republic the sum of \$50,562,500.00. x x x
3. Whether the *Sandiganbayan* violated Section 14 of Article VIII of the 1987 Constitution when it concluded that the Westinghouse contract exist[ed]. x x x
4. Whether the *Sandiganbayan* violated Section 14 of Article VIII of the [1987 Constitution] when it concluded that [Disini] received the sum of \$50,562,500.00. x x x