

## FIRST DIVISION

[ G.R. No. 198393, April 04, 2018 ]

**REPUBLIC OF THE PHILIPPINES, PETITIONER, V. RODOLFO M. CUENCA, FERDINAND E. MARCOS, IMELDA R. MARCOS, ROBERTO S. CUENCA, MANUEL I. TINIO, VICTOR AFRICA, MARIO K. ALFELOR, DON M. FERRY AND OSCAR BELTRAN, RESPONDENTS.**

### DECISION

**TIJAM, J.:**

Petitioner Republic of the Philippines (Republic), represented by the Presidential Commission on Good Government (PCGG), assails through this petition for review<sup>[1]</sup> under Rule 45, the Decision<sup>[2]</sup> dated August 5, 2010 of the Sandiganbayan in Civil Case No. 0016 which dismissed, for insufficiency of evidence, the Republic's complaint for reconveyance, reversion, accounting, restitution and damages. Likewise assailed is the Sandiganbayan's Joint Resolution<sup>[3]</sup> dated August 31, 2011 dismissing the Republic's motion for reconsideration.

#### The Antecedents

On July 24, 1987, the Republic, through the PCGG and assisted by the Office of the Solicitor General (OSG), filed a complaint<sup>[4]</sup> for reconveyance, reversion, accounting, restitution and damages against respondents Rodolfo M. Cuenca, Ferdinand E. Marcos,<sup>[5]</sup> Imelda R. Marcos, Roberto S. Cuenca, Manuel I. Tinio, Jose L. Africa, Mario K. Alfelor,<sup>[6]</sup> Don M. Ferry and Oscar P. Beltran,<sup>[7]</sup> together with other individuals namely, Saul Y. Alfonso, Nora O. Vinluan, Panfilo O. Domingo, Roberto V. Ongpin, Ricardo P. de Leon, Arturo Lazo, Arthur C. Balch, Rodolfo M. Munsayac, and Antonio L. Carpio. The complaint was later amended to include corporate defendants<sup>[8]</sup> alleged to be beneficially owned or controlled by respondent Rodolfo M. Cuenca.<sup>[9]</sup>

Through its complaint and its amendments, the Republic sought to recover from respondents alleged ill-gotten wealth which they acquired in unlawful concert with one another, in breach of trust, and with grave abuse of right and power, which resulted to their unjust enrichment during Ferdinand E. Marcos' rule from December 30, 1965 to February 25, 1986.<sup>[10]</sup>

Specifically, the Republic enumerated the alleged illegal acts committed by respondents in this wise:

12. Defendant, Rodolfo M. Cuenca, by himself, and/or in unlawful concert with defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his influence and association and with the active collaboration and willing participation of above defendant spouses, engaged in schemes, devices and stratagems designed to unjustly enrich

themselves and to prevent disclosure and discovery of ill-gotten assets, among others:

(a) created, organized and managed the Construction and Development Corporation of the Philippines (CDCP), originally from a company known as "Cuenca Construction" and, with the active collaboration, knowledge, assistance and willing participation of defendants Jose L. Africa, Nora O. Vinluan, Roberto S. Cuenca, and Panfilo O. Domingo, obtained favored public works contracts amounting to billions of pesos from the Department of Public Works which later became the Department of Public Highways, and from the National Irrigation Administration, such as the construction of sugar centrals, the Philippine Associated Smelting and Refining Corporation (PASAR), the Philippine Phosphate Fertilizer Corporation (PHILPHOS), and the Light Railway Transit Project (LRT), among others, under terms and conditions manifestly disadvantageous to Plaintiff and the Filipino people;

(b) secured loans and financial assistance fro[m] government financial institutions without sufficient collateral, in contravention of banking laws and sound banking practices, and other terms and conditions manifestly disadvantageous to said government institutions, the plaintiff and the Filipino people. Defendant Panfilo O. Domingo, as director and president of one of these government financial institutions – the Philippine National Bank, abetted, facilitated and collaborated in the illegal execution and release of such loans and financial assistance to CDCP, among other corporations of defendant Rodolfo M. Cuenca, in violation of law, sound banking practice and his duty of loyalty and due care to PNB, to its extreme damage and prejudice and that of plaintiff and the Filipino people;

(c) secured a favored rescue arrangement at the behest of defendants Ferdinand Marcos and Imelda R. Marcos in the form, among others, of conversion of multimillion peso debt in favor of NDC into equity, release of collaterals to CDCP of government funds in violation of the outstanding policy that no such funds shall be paid to persons and/or corporations which have obligations with the government, through the illegal and unconstitutional use of the Letters of Instructions, to the grave damage and prejudice of plaintiff and the Filipino people;

(d) acquired, through Galleon Shipping Corporation, which was beneficially held and/or controlled by defendant Rodolfo M. Cuenca, vessels with dollar loans from abroad, on guarantee of the Development Bank of the Philippines (DBP), for clearly overpriced consideration including improper payments, such as bribes, kickbacks and commissions given to defendants, which loans remain unpaid to date, to the gross disadvantage of plaintiff and the Filipino people;

(e) secured, after Galleon Shipping Corporation defaulted in its obligations, additional financial assistance from government institutions, through the issuance of Letter of Instruction No. 1155, which required the National Development Company (NDC) to buy out the entire shareholdings in Galleon Shipping Corporation of defendant Rodolfo M. Cuenca, Arthur C. Balch, Manuel I. Tinio, Mario K. Alfelor, Rodolfo Munsayac and those of other stockholders for P46.7 Million and to provide the required additional equity;

(f) caused NDC to purchase worthless shares of defendant Rodolfo M. Cuenca in CDCP at par value to the detriment of government institutions and plaintiff;

(g) conspired and executed with the help, cooperation and participation of the other defendants, such other schemes and devices to defraud plaintiff and its agencies millions of pesos for their personal benefit;

(h) willingly participating in defendants Rodolfo M. Cuenca, Ferdinand Marcos and Imelda R. Marcos' scheme to enrich themselves at the expense of plaintiff and the Filipino people, defendants Antonio L. Carpio, Manuel I. Tinio, Arthur C. Balch, Mario K. Alfelor, Rodolfo Munsayac, Roberto V. Ongpin and Don M. Ferry unlawfully caused NDC to release P46.7 Million to Galleon Shipping Corporation; allowed defendant Rodolfo M. Cuenca to continue running the Galleon Shipping Corporation; released defendant Rodolfo M. Cuenca's counter-guarantees for the security of the loans guaranteed by the NDC and DBP and, released the first mortgage of DBP over vessels owned by Galleon Shipping Corporation, thereby resulting in substantial loss of government funds, to the prejudice and damage of plaintiff and the Filipino people;

(i) organized the Universal Holding Corporation, a holding company for CDCP, Sta. Ines Melale, and Resort Hotels, all beneficially held and/or controlled by Ferdinand Marcos, Imelda R. Marcos and Rodolfo M. Cuenca, which corporations with the help, cooperation and participation of defendants Jose L. Africa, Roberto Cuenca, Manuel Tinio, Mario Alfelor, Rodolfo Munsayac, Arthur Balch, Nora O. Vinluan, Ricardo de Leon, among others as directors, officers and/or agents thereof, served as conduits for deposit abroad of illegally obtained funds and property;

(j) transferred, through the Security Bank and Trust Company, US\$8 Million to CDCP International Bank account with Irving Trust, N.Y., which amount was utilized by defendant Ferdinand E. Marcos and Imelda R. Marcos in the purchase of New York properties.

13. Defendants Oscar P. Beltran and Saul Y. Alfonso of the Merchants Construction and Development Corporation, Ricardo P. De Leon and

Arturo Lazo of Tierra Factors Corporation, participated and/or allowed themselves at one time or another to be used in achieving the schemes, devises and stratagems of defendants Ferdinand E. Marcos and Imelda R. Marcos to enrich themselves at the expense of plaintiff and the Filipino people.

14. The acts of defendants, singly or collectively, and/or in unlawful concert with one another constitute brazen abuse of right and power, unjust enrichment, flagrant breach of public trust and fiduciary obligations, acquisition of position and authority, violation of the Constitution and laws of the Republic of the Philippines, to the grave and irreparable damage of plaintiff and the Filipino people. <sup>[11]</sup>

The Sandiganbayan dismissed the case as against Arturo Lazo and Ricardo P. de Leon for failure to state a cause of action. Imelda R. Marcos was designated as Ferdinand E. Marcos' legal representative upon the latter's death in 1989, while Arthur C. Balch's heirs<sup>[12]</sup> were substituted as defendants. Saul Y. Alfonso, Mario K. Alfelor, Rodolfo M. Munsayac, Don M. Ferry and Sta. Ines Melale Veneer and Plywood, Inc., filed their respective answers but did not participate in the proceedings.<sup>[13]</sup>

In support of its complaint, the Republic presented the testimonies of Ma. Lourdes O. Magno (PCGG Records Officer II), Evelita E. Celis (Financial Analyst V of the PCGG's Research and Intelligence Department), Evelyn R. Singson (Executive Vice-President of Security Bank and Trust Company), Atty. Orlando L. Salvador (Coordinator and Legal Consultant of the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans) and Stephen P. Tanchuling (Records Officer V of PCGG's Research Department).<sup>[14]</sup>

The testimonies of the witnesses for the Republic are summarized by the Sandiganbayan in its assailed Decision as follows:

Ma. Lourdes O. Magno was Records Officer II of the PCGG from May 1992 up to the time of her testimony in January 1999. Magno was custodian of the records for the PCGG, including the documents in this case, marked as Exhibits "A" to "Y" for the [petitioner]. She testified that while some of the records of the PCGG were turned over by the previous Chairman and Commissioners of the PCGG and others came from its Research Department, she could not determine how each particular document was obtained by the PCGG.

Evelita E. Celis was Financial Analyst V of the Research and Intelligence Department of the PCGG since February 17, 1992. She testified that the main function of their department was to conduct research, gather, evaluate and analyze the data, and then to prepare a comprehensive report to be submitted to the PCGG's Legal Department for verification reports. She prepared the report entitled, "Executive Summary of Rodolfo M. Cuenca, SB Case No. 0016" after she had analyzed the documents pertinent to this case. However, she stated that she had no personal knowledge of the transactions involved in said documents. The documents were gathered by the staff of the Intelligence Division from various sources such as the Presidential Library, the Asset Privatization

Trust, the Office of the Securities and Exchange Commission, and from the files of the Behest Loans cases.

Evelyn R. Singson was Executive Vice President of Security Bank and Trust Company from 1980 to 1986. She testified that she executed an Affidavit on August 18, 1986 in connection with the efforts of the government to recover the Marcos wealth.

Atty. Orlando L. Salvador was coordinator and legal consultant of the Presidential *Ad Hoc* Fact-Finding Committee on Behest Loans. He testified that the said committee was created on October 8, 1992 by then President Fidel Ramos by virtue of his issuance of Administrative Order No. 30 (A.O. No. 30). On November 9, 1992, President Ramos issued Memorandum Order No. 61 (M.O. No. 61), which broadened the scope of the *Ad Hoc* Committee to include investigation, inventory and study of all non-performing loans, both behest and non-behest. When the Committee had concluded its investigation, including its review and examination of the account of the PNCC, Salvador made an Executive Summary thereof and submitted it to then President Ramos. The same report was attached to his complaint affidavit which was subsequently filed before the Ombudsman on May 18, 1994 against the defendants.

On cross-examination, Salvador claimed that although he sat in the deliberations of the Committee as its consultant and was asked for his opinion on certain matters, he was not given the opportunity to vote. However, he had no personal knowledge of the different transactions making up the account and his participation was limited to summarizing the report which he digested into his Executive Summary. He reiterated that he did not interview parties involved in the transactions of the behest loans, but only reviewed the findings and reports submitted to him because his role was to ascertain whether the reports faithfully reflected the circumstances of each account as stated in the documents. Also, he alleged that he did not indict the Marcoses in his complaint affidavit despite their participation in the form of marginal notes on the documents subject of his report because the marginal notes were only favorable endorsements and did not qualify under the definition of behest loans. He further reasoned that it was up to the Ombudsman to determine who should be the defendants in a criminal case.

Stephen P. Tanchuling was Records Officer V of the Research Department of the PCGG for more than four years at the time he gave his testimony. He testified that it was his job to secure documents from the concerned agencies, then to collate the same upon order of the Legal Department. He claimed that the Research Department prepared the official report entitled "Executive Summary on Rodolfo Cuenca (SB Case No. 0016)" and that most of its supporting documents came from the Presidential Library in Malacañang. While he attested that the supporting documents were certified true copies, he admitted that he did not ask the Records Custodian if said copies were based on actual originals existing in their departments.<sup>[15]</sup>

The Republic then proceeded to formally offer its documentary evidence. Acting on the Republic's formal offer of evidence, as well as the comments/oppositions filed by