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SECOND DIVISION

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

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

[G.R. NO. 189505]

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

D E C I S I O N

SERENO, J.:

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

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

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

Respondent also sought the forfeiture of the assets of dummy corporations and entities established by nominees of Marcos and his wife, Petitioner Imelda Romualdez-Marcos, as well as real and personal properties manifestly out of proportion to the spouses' lawful income. This claim was based on evidence collated by the PCGG with the assistance of the United States Justice Department and the Swiss Federal Police Department.[7] The Petition for Forfeiture described among others, a corporate entity by the name "Arelma, Inc.," which maintained an account and portfolio in Merrill Lynch, New York, and which was purportedly organized for the same purpose of hiding ill-gotten wealth.[8]

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

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

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

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

On 16 July 2004, the Republic filed a Motion for Partial Summary Judgment (2004 Motion) to declare "the funds, properties, shares in and interests of ARELMA, wherever they may be located, as ill-gotten assets and forfeited in favor of the Republic of the Philippines pursuant to R.A. 1379 in the same manner (that) the Honorable Supreme Court forfeited in favor of the petitioner the funds and assets of similar 'Marcos foundations' such as AVERTINA, VIBUR, AGUAMINA, MALER and PALMY."[13] Petitioner contends that: (1) respondents are deemed to have admitted the allegations of the Petition as regards Arelma; and (2) there is no dispute that the combined lawful income of the Marcoses is grossly disproportionate to the

deposits of their foundations and dummy corporations, including Arelma. Ferdinand Marcos, Jr., Imelda Marcos, and Imee Marcos-Manotoc filed their respective Oppositions. Irene Marcos-Araneta filed a Motion to Expunge on the ground that the proceedings in Civil Case No. 0141 had already terminated.

On 2 April 2009, the Sandiganbayan rendered the assailed Decision granting respondent's Motion for Partial Summary Judgment.[14] It found that the proceedings in Civil Case No. 0141 had not yet terminated, as the Petition for Forfeiture included numerous other properties, which the Sandiganbayan and Supreme Court had not yet ruled upon. The Republic's 1996 Motion was merely held in abeyance to await the outcome of the global settlement of the Marcos assets. Further, this development had prompted the Republic to file the 2000 Motion, which was clearly limited only to the Swiss accounts amounting to USD 356 million. Thus, according to the Sandiganbayan, its 19 September 2000 Decision as affirmed by the Supreme Court in G.R. No. 152154, was in the nature of a *separate judgment* over the Swiss accounts and did not preclude a subsequent judgment over the other properties subject of the same Petition for Forfeiture, such as those of Arelma.[15] The Sandiganbayan held as follows:

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

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

> 1. Whether the forfeiture proceeding, Civil Case No. 0141 with the Sandiganbayan is criminal in nature, such that summary judgment is not allowed;
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> 2. Whether petitioner Republic complied with Section 3, subparagraphs c, d, and e of R.A. 1375;
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> 3. Whether Civil Case No. 0141 has been terminated such that a motion for partial summary judgment may no longer be allowed; and

4. Whether in this case there are genuine, triable issues which would preclude the application of the rule on summary judgment.

I. Forfeiture proceedings are civil in nature

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

> We are not unmindful of the doctrine laid down in Almeda vs. Perez, L-18428 (August 30, 1962) in which the theory that, after the filing of respondents' answer to a petition for forfeiture under Republic Act No. 1379, said petition may not be amended as to substance pursuant to our rules of criminal procedure, was rejected by this Court upon the ground that said forfeiture proceeding is civil in nature. This doctrine refers, however, to the purely *procedural* aspect of said proceeding, and has no bearing on the substantial rights of the respondents therein, particularly their constitutional right against self-incrimination.

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

> Generally speaking, informations for the forfeiture of goods that seek no judgment of fine or imprisonment against any person are deemed to be civil proceedings in rem. *Such proceedings are criminal in nature to the extent that where the person using the res illegally is the owner or rightful possessor of it, the forfeiture proceeding is in the nature of a punishment.*
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> xxx xxx xxx
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> Proceedings for forfeitures are generally considered to be civil and in the nature of proceedings in rem. The statute providing that no judgment or other proceedings in civil cases shall be arrested or reversed for any defect or want of form is applicable to them. *In some aspects, however, suits for penalties and forfeitures are of quasi-criminal nature and within the reason of criminal proceedings for all the purposes of * * * that portion of the Fifth Amendment which declares that no person shall be compelled in any criminal case to be a witness against himself.* The proceeding is one against the owner, as well as against the goods; for it

is his breach of the laws which has to be proved to establish the forfeiture and his property is sought to be forfeited.

xxx xxx xxx

As already observed, the various constitutions provide that no person shall be compelled in any criminal case to be a witness against himself. T**his prohibition against compelling a person to take the stand as a witness against himself applies only to criminal, quasi-criminal, and penal proceedings, *including a proceeding civil in form for forfeiture of property by reason of the commission of an offense*, but not a proceeding in which the penalty recoverable is civil or remedial in nature**. (Emphasis supplied.)[22]

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

More importantly, the factual context in the present case is wholly disparate from that in *Cabal*, which was originally initiated as an action *in personam*. Manuel C. Cabal, then Chief of Staff of the Armed Forces of the Philippines, was charged with "graft, corrupt practices, unexplained wealth, conduct unbecoming of an officer and gentleman, dictatorial tendencies, giving false statements of his assets and liabilities in 1958 and other equally reprehensible acts."[25] In contradistinction, the crux of the present case devolves solely upon the recovery of assets presumptively characterized by the law as ill-gotten, and owned by the State; hence, it is an action *in rem*. In *Republic v. Sandiganbayan,* this Court settled the rule that forfeiture proceedings are actions in rem and therefore civil in nature.[26] Proceedings under R.A. 1379 do not terminate in the imposition of a penalty but merely in the forfeiture of the properties illegally acquired in favor of the State.[27]

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

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