

EN BANC

[G.R. No. 180705, November 27, 2012]

**EDUARDO M. COJUANGCO, JR., PETITIONER, VS. REPUBLIC OF
THE PHILIPPINES, RESPONDENT.**

D E C I S I O N

VELASCO JR., J.:

The Case

Of the several coconut levy appealed cases that stemmed from certain issuances of the Sandiganbayan in its Civil Case No. 0033, the present recourse proves to be one of the most difficult.

In particular, the instant petition for review under Rule 45 of the Rules of Court assails and seeks to annul a portion of the Partial Summary Judgment dated July 11, 2003, as affirmed in a Resolution of December 28, 2004, both rendered by the Sandiganbayan in its **Civil Case ("CC") No. 0033-A** (the judgment shall hereinafter be referred to as "PSJ-A"), entitled "*Republic of the Philippines, Plaintiff, v. Eduardo M. Cojuangco, Jr., et al., Defendants, COCOFED, et al., BALLARES, et al., Class Action Movants.*" CC No. 0033-A is the result of the splitting into eight (8) amended complaints of CC No. 0033 entitled, "*Republic of the Philippines v. Eduardo Cojuangco, Jr., et al.,*" a suit for recovery of ill-gotten wealth commenced by the Presidential Commission on Good Government ("PCGG"), for the Republic of the Philippines ("Republic"), against Eduardo M. Cojuangco, Jr. ("Cojuangco") and several individuals, among them, Ferdinand E. Marcos, Maria Clara Lobregat ("Lobregat"), and Danilo S. Ursua ("Ursua"). Each of the eight (8) subdivided complaints, CC No. 0033-A to CC No. 0033-H, correspondingly impleaded as defendants only the alleged participants in the transaction/s subject of the suit, or who are averred as owner/s of the assets involved.

Apart from this recourse, We clarify right off that PSJ-A was challenged in two other separate but consolidated petitions for review, one commenced by COCOFED *et al.*, docketed as G.R. Nos. 177857-58, and the other, interposed by Danilo S. Ursua, and docketed as G.R. No. 178193.

By Decision dated January 24, 2012, in the aforesaid G.R. Nos. 177857-58 (*COCOFED et al. v. Republic*) and G.R. No. 178193 (*Ursua v. Republic*) consolidated cases^[1] (hereinafter collectively referred to as "**COCOFED v. Republic**"), the Court addressed and resolved all key matters elevated to it in relation to PSJ-A, except for the issues raised in the instant petition which have not yet been resolved therein. In the same decision, We made clear that: (1) PSJ-A is subject of another petition for review interposed by Eduardo Cojuangco, Jr., in G.R. No. 180705, entitled *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*, which shall be decided separately by the Court,^[2] and (2) the issues raised in the instant petition should not be affected

by the earlier decision “save for determinatively legal issues directly addressed [t]herein.”^[3]

For a better perspective, the instant recourse seeks to reverse the Partial Summary Judgment^[4] of the anti-graft court dated **July 11, 2003**, as reiterated in a Resolution^[5] of December 28, 2004, denying COCOFED’s motion for reconsideration, and the **May 11, 2007** Resolution^[6] denying COCOFED’s motion to set case for trial and declaring the partial summary judgment final and appealable, all issued in PSJ-A. In our adverted January 24, 2012 Decision in *COCOFED v. Republic*, we affirmed with modification PSJ-A of the Sandiganbayan, and its Partial Summary Judgment in Civil Case No. 0033-F, dated **May 7, 2004** (hereinafter referred to as “PSJ-F”).^[7]

More specifically, We upheld the Sandiganbayan’s ruling that the coconut levy funds are special public funds of the Government. Consequently, We affirmed the Sandiganbayan’s declaration that Sections 1 and 2 of Presidential Decree (“P.D.”) 755, Section 3, Article III of P.D. 961 and Section 3, Article III of P.D. 1468, as well as the pertinent implementing regulations of the Philippine Coconut Authority (“PCA”), are unconstitutional for allowing the use and/or the distribution of properties acquired through the coconut levy funds to private individuals for their own direct benefit and absolute ownership. The Decision also affirmed the Government’s ownership of the six CIIF companies, the fourteen holding companies, and the CIIF block of San Miguel Corporation shares of stock, for having likewise been acquired using the coconut levy funds. Accordingly, the properties subject of the January 24, 2012 Decision were declared owned by and ordered reconveyed to the Government, to be used only for the benefit of all coconut farmers and for the development of the coconut industry.

By Resolution of September 4, 2012,^[8] the Court affirmed the above-stated Decision promulgated on January 24, 2012.

It bears to stress at this juncture that the only portion of the appealed Partial Summary Judgment dated July 11, 2003 (“PSJ-A”) which remains at issue revolves around the following decretal holdings of that court relating to the “compensation” paid to petitioner for exercising his personal and exclusive option to acquire the FUB/UCPB shares.^[9] It will be recalled that the Sandiganbayan declared the Agreement between the PCA and Cojuangco containing the assailed “compensation” null and void for not having the required valuable consideration. Consequently, the UCPB shares of stocks that are subject of the Agreement were declared conclusively owned by the Government. It also held that the Agreement did not have the effect of law as it was not published as part of P.D. 755, even if Section 1 thereof made reference to the same.

Facts

We reproduce, below, portions of the statement of facts in *COCOFED v. Republic* relevant to the present case:^[10]

In 1971, **Republic Act No. ("R.A.") 6260** was enacted creating the Coconut Investment Company ("CIC") to administer the **Coconut Investment Fund** ("CIF"), which, under Section 8 thereof, was to be sourced from a PhP 0.55 levy on the sale of every 100 kg. of copra. Of the PhP 0.55 levy of which the copra seller was – or ought to be – issued **COCOFUND** receipts, PhP 0.02 was placed at the disposition of COCOFED, the national association of coconut producers declared by the Philippine Coconut Administration ("PHILCOA" now "PCA") as having the largest membership.

The declaration of martial law in September 1972 saw the issuance of several presidential decrees ("P.D.") purportedly designed to improve the coconut industry through the collection and use of the coconut levy fund. While coming generally from impositions on the first sale of copra, the coconut levy fund came under various names x x x. Charged with the duty of collecting and administering the Fund was PCA. Like COCOFED with which it had a legal linkage, the PCA, by statutory provisions scattered in different coco levy decrees, had its share of the coco levy.

The following were some of the issuances on the coco levy, its collection and utilization, how the proceeds of the levy will be managed and by whom and the purpose it was supposed to serve:

1. **P.D. No. 276** established the Coconut Consumers Stabilization Fund ("**CCSF**") and declared the proceeds of the CCSF levy as trust fund, to be utilized to subsidize the sale of coconut-based products, thus stabilizing the price of edible oil.

2. **P.D. No. 582** created the Coconut Industry Development Fund ("**CIDF**") to finance the operation of a hybrid coconut seed farm.

3. Then came **P.D. No. 755** providing under its Section 1 the following:

It is hereby declared that the policy of the State is to provide readily available credit facilities to the coconut farmers at preferential rates; that this policy can be expeditiously and efficiently realized by the implementation of the "Agreement for the Acquisition of a Commercial Bank for the benefit of Coconut Farmers" executed by the [PCA]...; and that the [PCA] is hereby authorized to distribute, for free, the shares of stock of the bank it acquired to the coconut farmers....

Towards achieving the policy thus declared, P.D. No. 755, under its **Section 2**, authorized PCA to utilize the CCSF and the CIDF collections to acquire a commercial bank and **deposit the CCSF levy collections in said bank interest free**, the deposit withdrawable only when the bank has attained a certain level of sufficiency in its equity capital. The same section also decreed that all levies PCA is authorized to collect shall not be considered as special and/or fiduciary funds or form part of the general funds of the government within the contemplation of P.D. No. 711.

4. **P.D. No. 961** codified the various laws relating to the development of

coconut/palm oil industries.

5. The relevant provisions of P.D. No. 961, as later amended by **P.D. No. 1468** (*Revised Coconut Industry Code*), read:

ARTICLE III
Levies

Section 1. *Coconut Consumers Stabilization Fund Levy*. — The [PCA] is hereby empowered to impose and collect ... the Coconut Consumers Stabilization Fund Levy,

....

Section 5. *Exemption*. — The **[CCSF]** and the **[CIDF]** as well as all disbursements as herein authorized, shall **not** be construed ... **as special and/or fiduciary funds**, or as **part of the general funds** of the national government within the contemplation of PD 711; ... **the intention being that said Fund and the disbursements thereof as herein authorized for the benefit of the coconut farmers shall be owned by them in their private capacities**: (Emphasis supplied)

6. **Letter of Instructions No. ("LOI") 926**, s. of 1979, made reference to the creation, out of other coco levy funds, of the Coconut Industry Investment Fund ("**CIIF**") in P.D. No. 1468 and entrusted a portion of the CIIF levy to UCPB for investment, on behalf of coconut farmers, in oil mills and other private corporations, with the following equity ownership structure:

Section 2. Organization of the Cooperative Endeavor. – The [UCPB], in its capacity as the investment arm of the coconut farmers thru the [CIIF] ... is hereby directed to invest, on behalf of the coconut farmers, such portion of the CIIF ... in private corporations ... under the following guidelines:

a) The coconut farmers shall own or control at least ... (50%) of the outstanding voting capital stock of the private corporation [acquired] thru the CIIF and/or corporation owned or controlled by the farmers thru the CIIF (Words in bracket added.)

Through the years, a part of the coconut levy funds went directly or indirectly to [finance] various projects and/or was converted into various assets or investments.^[11] Relevant to the present petition is the acquisition of the **First United Bank** ("FUB"), which was subsequently renamed as **United Coconut Planters Bank** ("UCPB").^[12]

Apropos the intended acquisition of a commercial bank for the purpose stated earlier, it would appear that FUB was the bank of choice which Pedro Cojuangco's group (collectively, "Pedro Cojuangco") had control of. The plan, then, was for PCA to buy all of Pedro Cojuangco's shares in

FUB. However, as later events unfolded, a simple direct sale from the seller (Pedro) to PCA did not ensue as it was made to appear that Cojuangco had the exclusive option to acquire the former's FUB controlling interests. Emerging from this elaborate, circuitous arrangement were two deeds. The first one was simply denominated as *Agreement*, dated May 1975, entered into by and between Cojuangco for and in his behalf and in behalf of "*certain other buyers*", and Pedro Cojuangco in which the former was purportedly accorded the option to buy 72.2% of FUB's outstanding capital stock, or 137,866 shares (the "option shares," for brevity), at PhP 200 per share. On its face, this agreement does not mention the word "option."

The second but related contract, dated May 25, 1975, was denominated as *Agreement for the Acquisition of a Commercial Bank for the Benefit of the Coconut Farmers of the Philippines*. It had PCA, for itself and for the benefit of the coconut farmers, purchase from Cojuangco the shares of stock subject of the First Agreement for PhP200.00 per share. As additional consideration for PCA's buy-out of what Cojuangco would later claim to be his exclusive and personal option, it was stipulated that, from PCA, Cojuangco shall receive equity in FUB amounting to 10%, or 7.22%, of the 72.2%, or fully paid shares. And so as not to dilute Cojuangco's equity position in FUB, later UCPB, the PCA agreed under paragraph 6 (b) of the second agreement to cede over to the former a number of fully paid FUB shares out of the shares it (PCA) undertakes to eventually subscribe. It was further stipulated that Cojuangco would act as bank president for an extendible period of 5 years.

Apart from the aforementioned 72.2%, PCA purchased from other FUB shareholders 6,534 shares [of which Cojuangco, as may be gathered from the records, got 10%.].

While the 64.98% portion of the option shares ($72.2\% - 7.22\% = 64.98\%$) ostensibly pertained to the farmers, the corresponding stock certificates supposedly representing the farmers' equity were in the name of and delivered to PCA. There were, however, shares forming part of the aforesaid 64.98% portion, which ended up in the hands of non-farmers. The remaining 27.8% of the FUB capital stock were not covered by any of the agreements.

Under paragraph #8 of the second agreement, PCA agreed to expeditiously distribute the FUB shares purchased to such "*coconut farmers holding registered COCOFUND receipts*" on equitable basis.

As found by the Sandiganbayan, the PCA appropriated, out of its own fund, an amount for the purchase of the said 72.2% equity, **albeit it would later reimburse itself from the coconut levy fund.**

And per Cojuangco's own admission, PCA paid, out of the CCSF, the entire acquisition price for the 72.2% option shares.^[13]

As of June 30, 1975, the list of FUB stockholders included Cojuangco with 14,440