

EN BANC

[G.R. No. 178158, December 04, 2009]

**STRATEGIC ALLIANCE DEVELOPMENT CORPORATION,
PETITIONER, VS. RADSTOCK SECURITIES LIMITED AND
PHILIPPINE NATIONAL CONSTRUCTION CORPORATION,
RESPONDENTS. ASIAVEST MERCHANT BANKERS BERHAD,
INTERVENOR.**

[G.R. No. 180428]

**LUIS SISON, PETITIONER, VS. PHILIPPINE NATIONAL
CONSTRUCTION CORPORATION AND RADSTOCK SECURITIES
LIMITED, RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

Prologue

This case is an anatomy of a P6.185 billion^[1] pillage of the public coffers that ranks among one of the most brazen and hideous in the history of this country. This case answers the questions why our Government perennially runs out of funds to provide basic services to our people, why the great masses of the Filipino people wallow in poverty, and why a very select few amass unimaginable wealth at the expense of the Filipino people.

On 1 May 2007, the 30-year old franchise of Philippine National Construction Corporation (PNCC) under Presidential Decree No. 1113 (PD 1113), as amended by Presidential Decree No. 1894 (PD 1894), expired. During the 13th Congress, PNCC sought to extend its franchise. PNCC won approval from the House of Representatives, which passed House Bill No. 5749^[2] renewing PNCC's franchise for another 25 years. However, PNCC failed to secure approval from the Senate, dooming the extension of PNCC's franchise. Led by Senator Franklin M. Drilon, the Senate opposed PNCC's plea for extension of its franchise.^[3] Senator Drilon's privilege speech^[4] explains why the Senate chose not to renew PNCC's franchise:

I repeat, Mr. President. PNCC has agreed in a compromise agreement dated 17 August 2006 to transfer to Radstock Securities Limited P17,676,063,922, no small money, Mr. President, my dear colleagues, P17.6 billion.

What does it consist of? It consists of the following: 19 pieces of real estate properties with an appraised value of P5,993,689,000. Do we know what is the bulk of this? An almost 13-hectare property right here

in the Financial Center. As we leave the Senate, as we go out of this Hall, as we drive thru past the GSIS, we will see on the right a vacant lot, that is PNCC property. As we turn right on Diosdado Macapagal, we see on our right new buildings, these are all PNCC properties. That is 12.9 hectares of valuable asset right in this Financial Center that is worth P5,993,689,000.

What else, Mr. President? The 20% of the outstanding capital stock of PNCC with a par value of P2,300,000,000-- I repeat, 20% of the outstanding capital stock of PNCC worth P2,300 billion-- was assigned to Radstock.

In addition, Mr. President and my dear colleagues, please hold on to your seats because part of the agreement is 50% of PNCC's 6% share in the gross toll revenue of the Manila North Tollways Corporation for 27 years, from 2008 to 2035, is being assigned to Radstock. How much is this worth? It is worth P9,382,374,922. I repeat, P9,382,374,922.

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Mr. President, P17,676,000,000, however, was made to appear in the agreement to be only worth P6,196,156,488. How was this achieved? How was an aggregate amount of P17,676,000,000 made to appear to be only P6,196,156,488? First, the 19 pieces of real estate worth P5,993,689,000 were only assigned a value of P4,195,000,000 or only 70% of their appraised value.

Second, the PNCC shares of stock with a par value of P2.3 billion were marked to market and therefore were valued only at P713 million.

Third, the share of the toll revenue assigned was given a net present value of only P1,287,000,000 because of a 15% discounted rate that was applied.

In other words, Mr. President, the toll collection of P9,382,374,922 for 27 years was given a net present value of only P1,287,000,000 so that it is made to appear that the compromise agreement is only worth P6,196,000,000.

Mr. President, my dear colleagues, this agreement will substantially wipe out all the assets of PNCC. It will be left with nothing else except, probably, the collection for the next 25 years or so from the North Luzon Expressway. This agreement brought PNCC to the cleaners and literally cleaned the PNCC of all its assets. They brought PNCC to the cleaners and cleaned it to the tune of P17,676,000,000.

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Mr. President, are we not entitled, as members of the Committee, to know who is Radstock Securities Limited?

Radstock Securities Limited was allegedly incorporated under the laws of the British Virgin Islands. It has no known board of directors, except for its recently appointed attorney-in-fact, Mr. Carlos Dominguez.

Mr. President, are the members of the Committee not entitled to know why 20 years after the account to Marubeni Corporation, which gave rise to the compromise agreement 20 years after the obligation was allegedly incurred, PNCC suddenly recognized this obligation in its books when in fact this obligation was not found in its books for 20 years?

In other words, Mr. President, for 20 years, the financial statements of PNCC did not show any obligation to Marubeni, much less, to Radstock. Why suddenly on October 20, 2000, P10 billion in obligation was recognized? Why was it recognized?

During the hearing on December 18, Mr. President, we asked this question to the Asset Privatization Trust (APT) trustee, Atty. Raymundo Francisco, and he was asked: "What is the basis of your recommendation to recognize this?" He said: "I based my recommendation on a legal opinion of Feria and Feria." I asked him: "Who knew of this opinion?" He said: "Only me and the chairman of PNCC, Atty. Renato Valdecantos." I asked him: "Did you share this opinion with the members of the board who recognized the obligation of P10 billion?" He said: "No." "Can you produce this opinion now?" He said: "I have no copy."

Mysteriously, Mr. President, an obligation of P10 billion based on a legal opinion which, even Mr. Arthur Aguilar, the chairman of PNCC, is not aware of, none of the members of the PNCC board on October 20, 2000 who recognized this obligation had seen this opinion. It is mysterious.

Mr. President, are the members of our Committee not entitled to know why Radstock Securities Limited is given preference over all other creditors notwithstanding the fact that this is an unsecured obligation? There is no mortgage to secure this obligation.

More importantly, Mr. President, equally recognized is the obligation of PNCC to the Philippine government to the tune of P36 billion. PNCC owes the Philippine government P36 billion recognized in its books, apart from P3 billion in taxes. Why in the face of all of these is Radstock given preference? Why is it that Radstock is given preference to claim P17.676 billion of the assets of PNCC and give it superior status over the claim of the Philippine government, of the Filipino people to the extent of P36 billion and taxes in the amount of P3 billion? Why, Mr. President? Why is Radstock given preference not only over the Philippine government claims of P39 billion but also over other creditors including a certain best merchant banker in Asia, which has already a final and executory judgment against PNCC for about P300 million? Why, Mr. President? Are we not entitled to know why the compromise agreement assigned P17.676 billion to Radstock? Why was it executed?^[5] (Emphasis supplied)

Aside from Senator Drilon, Senator Sergio S. Osmeña III also saw irregularities in the transactions involving the Marubeni loans, thus:

SEN. OSMEÑA. Ah okay. Good.

Now, I'd like to point out to the Committee that - it seems that this was a politically driven deal like IMPSA. Because the acceptance of the 10 billion or 13 billion debt came in October 2000 and the Radstock assignment was January 10, 2001. **Now, why would Marubeni sell for \$2 million three months after there was a recognition that it was owed P10 billion. Can you explain that, Mr. Dominguez?**

MR. DOMINGUEZ. Your Honor, I am not aware of the decision making process of Marubeni. But my understanding was, the Japanese culture is not a litigious one and they didn't want to get into a, you know, a court situation here in the Philippines having a lot of other interest, et cetera.

SEN. OSMEÑA. Well, but that is beside the point, Mr. Dominguez. All I am asking is does it stand to reason that after you get an acceptance by a debtor that he owes you 10 billion, you sell your note for 100 million.

Now, if that had happened a year before, maybe I would have understood why he sold for such a low amount. But right after, it seems that this was part of an orchestrated deal wherein with certain powerful interest would be able to say, "Yes, we will push through. We'll fix the courts. We'll fix the board. We'll fix the APT. And we will be able to do it, just give us 55 percent of whatever is recovered," am I correct?

MR. DOMINGUEZ. As I said, Your Honor, I am not familiar with the decision making process of Marubeni. But my understanding was, as I said, they didn't want to get into a ...

SEN. OSMEÑA. All right.

MR. DOMINGUEZ. ...litigious situation.^[6]

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SEN. OSMEÑA. All of these financial things can be arranged. They can hire a local bank, Filipino, to be trustee for the real estate. So ...

SEN. DRILON. Well, then, that's a dummy relationship.

SEN. OSMEÑA. In any case, to me the main point here is that a third party, Radstock, whoever owns it, bought Marubeni's right for \$2 million or P100 million. Then, they are able to go through all these legal machinations and get awarded with the consent of PNCC of 6 billion. That's a 100 million to 6 billion. Now, Mr. Aguilar, you have been in the business for such a long time. I mean, this hedge funds whether it's

Radstock or New Bridge or Texas Pacific Group or Carlyle or Avenue Capital, they look at their returns. So if Avenue Capital buys something for \$2 million and you give him \$4 million in one year, it's a 100 percent return. They'll walk away and dance to their stockholders. So here in this particular case, if you know that Radstock only bought it for \$2 million, I would have gotten board approval and say, "Okay, let's settle this for \$4 million." And Radstock would have jumped up and down. So what looks to me is that this was already a scheme. Marubeni wrote it off already. Marubeni wrote everything off. They just got a \$2 million and they probably have no more residual rights or maybe there's a clause there, a secret clause, that says, "I want 20 percent of whatever you're able to eventually collect." So \$2 million. But whatever it is, Marubeni practically wrote it off. Radstock's liability now or exposure is only \$2 million plus all the lawyer fees, under-the-table, etcetera. All right. Okay. So it's pretty obvious to me that if anybody were using his brain, I would have gone up to Radstock and say, "Here's \$4 million. Here's P200 million. Okay." They would have walked away. But evidently, the "ninongs" of Radstock - See, I don't care who owns Radstock. I want to know who is the ninong here who stands to make a lot of money by being able to get to courts, the government agencies, OGCC, or whoever else has been involved in this, to agree to 6 billion or whatever it was. That's a lot of money. And believe me, Radstock will probably get one or two billion and four billion will go into somebody else's pocket. Or Radstock will turn around, sell that claim for P4 billion and let the new guy just collect the payments over the years.

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SEN. OSMEÑA. x x x I just wanted to know is CDCP Mining a 100 percent subsidiary of PNCC?

MR. AGUILAR. Hindi ho. Ah, no.

SEN. OSMEÑA. If they're not a 100 percent, why would they sign jointly and severally? I just want to plug the loopholes.

MR. AGUILAR. I think it was - if I may just speculate. It was just common ownership at that time.

SEN. OSMEÑA. Al right. Now - Also, the ...

MR. AGUILAR. Ah, 13 percent daw, Your Honor.

SEN. OSMEÑA. Huh?

MR. AGUILAR. Thirteen percent ho.

SEN. OSMEÑA. What's 13 percent?

MR. AGUILAR. We owned ...

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