

## **FIRST DIVISION**

**[ G.R. No. 139941, January 19, 2001 ]**

**VICENTE B. CHUIDIAN, PETITIONER, VS. SANDIGANBAYAN  
(FIFTH DIVISION) AND THE REPUBLIC OF THE PHILIPPINES,  
RESPONDENTS.**

### **D E C I S I O N**

**YNARES-SANTIAGO, J.:**

The instant petition arises from transactions that were entered into by the government in the penultimate days of the Marcos administration. Petitioner Vicente B. Chuidian was alleged to be a dummy or nominee of Ferdinand and Imelda Marcos in several companies said to have been illegally acquired by the Marcos spouses. As a favored business associate of the Marcoses, Chuidian allegedly used false pretenses to induce the officers of the Philippine Export and Foreign Loan Guarantee Corporation (PHILGUARANTEE), the Board of Investments (BOI) and the Central Bank, to facilitate the procurement and issuance of a loan guarantee in favor of the Asian Reliability Company, Incorporated (ARCI) sometime in September 1980. ARCI, 98% of which was allegedly owned by Chuidian, was granted a loan guarantee of Twenty-Five Million U.S. Dollars (US\$25,000,000.00).

While ARCI represented to Philguarantee that the loan proceeds would be used to establish five inter-related projects in the Philippines, Chuidian reneged on the approved business plan and instead invested the proceeds of the loan in corporations operating in the United States, more particularly Dynetics, Incorporated and Interlek, Incorporated. Although ARCI had received the proceeds of the loan guaranteed by Philguarantee, the former defaulted in the payments thereof, compelling Philguarantee to undertake payments for the same. Consequently, in June 1985, Philguarantee sued Chuidian before the Santa Clara County Superior Court,<sup>[1]</sup> charging that in violation of the terms of the loan, Chuidian not only defaulted in payment, but also misused the funds by investing them in Silicon Valley corporations and using them for his personal benefit.

For his part, Chuidian claimed that he himself was a victim of the systematic plunder perpetrated by the Marcoses as he was the true owner of these companies, and that he had in fact instituted an action before the Federal Courts of the United States to recover the companies which the Marcoses had illegally wrested from him.<sup>[2]</sup>

On November 27, 1985, or three (3) months before the successful people's revolt that toppled the Marcos dictatorship, Philguarantee entered into a compromise agreement with Chuidian whereby petitioner Chuidian shall assign and surrender title to all his companies in favor of the Philippine government. In return, Philguarantee shall absolve Chuidian from all civil and criminal liability, and in so doing, desist from pursuing any suit against Chuidian concerning the payments Philguarantee had made on Chuidian's defaulted loans.

It was further stipulated that instead of Chuidian reimbursing the payments made by Philguarantee arising from Chuidian's default, the Philippine government shall pay Chuidian the amount of Five Million Three Hundred Thousand Dollars (US\$5,300,000.00). Initial payment of Five Hundred Thousand Dollars (US\$500,000.00) was actually received by Chuidian, as well as succeeding payment of Two Hundred Thousand Dollars (US\$200,000.00). The remaining balance of Four Million Six Hundred Thousand Dollars (US\$4,600,000.00) was to be paid through an irrevocable Letter of Credit (L/C) from which Chuidian would draw One Hundred Thousand Dollars (US\$100,000.00) monthly.<sup>[3]</sup> Accordingly, on December 12, 1985, L/C No. SSD-005-85 was issued for the said amount by the Philippine National Bank (PNB). Subsequently, Chuidian was able to make two (2) monthly drawings from said L/C at the Los Angeles branch of the PNB.<sup>[4]</sup>

With the advent of the Aquino administration, the newly-established Presidential Commission on Good Government (PCGG) exerted earnest efforts to search and recover money, gold, properties, stocks and other assets suspected as having been illegally acquired by the Marcoses, their relatives and cronies.

Petitioner Chuidian was among those whose assets were sequestered by the PCGG. On May 30, 1986, the PCGG issued a Sequestration Order<sup>[5]</sup> directing the PNB to place under its custody, for and in behalf of the PCGG, the irrevocable L/C (No. SSD-005-85). Although Chuidian was then residing in the United States, his name was placed in the Department of Foreign Affairs' Hold Order list.<sup>[6]</sup>

In the meantime, Philguarantee filed a motion before the Superior Court of Santa Clara County of California in Civil Case Nos. 575867 and 577697 seeking to vacate the stipulated judgment containing the settlement between Philguarantee and Chuidian on the grounds that: (a) Philguarantee was compelled by the Marcos administration to agree to the terms of the settlement which was highly unfavorable to Philguarantee and grossly disadvantageous to the government; (b) Chuidian blackmailed Marcos into pursuing and concluding the settlement agreement by threatening to expose the fact that the Marcoses made investments in Chuidian's American enterprises; and (c) the Aquino administration had ordered Philguarantee not to make further payments on the L/C to Chuidian. After considering the factual matters before it, the said court concluded that Philguarantee "had not carried its burden of showing that the settlement between the parties should be set aside."<sup>[7]</sup> On appeal, the Sixth Appellate District of the Court of Appeal of the State of California affirmed the judgment of the Superior Court of Sta. Clara County denying Philguarantee's motion to vacate the stipulated judgment based on the settlement agreement.<sup>[8]</sup>

After payment on the L/C was frozen by the PCGG, Chuidian filed before the United States District Court, Central District of California, an action against PNB seeking, among others, to compel PNB to pay the proceeds of the L/C. PNB countered that it cannot be held liable for a breach of contract under principles of illegality, international comity and act of state, and thus it is excused from payment of the L/C. Philguarantee intervened in said action, raising the same issues and arguments it had earlier raised in the action before the Santa Clara Superior Court, alleging that PNB was excused from making payments on the L/C since the settlement was

void due to illegality, duress and fraud.<sup>[9]</sup>

The Federal Court rendered judgment ruling: (1) in favor of PNB excusing the said bank from making payment on the L/C; and (2) in Chuidian's favor by denying intervenor Philguarantee's action to set aside the settlement agreement.<sup>[10]</sup>

Meanwhile, on February 27, 1987, a Deed of Transfer<sup>[11]</sup> was executed between then Secretary of Finance Jaime V. Ongpin and then PNB President Edgardo B. Espiritu, to facilitate the rehabilitation of PNB, among others, as part of the government's economic recovery program. The said Deed of Transfer provided for the transfer to the government of certain assets of PNB in exchange for which the government would assume certain liabilities of PNB.<sup>[12]</sup> Among those liabilities which the government assumed were unused commercial L/C's and Deferred L/C's, including SSD-005-85 listed under Dynetics, Incorporated in favor of Chuidian in the amount of Four Million Four Hundred Thousand Dollars (US\$4,400,000.00).<sup>[13]</sup>

On July 30, 1987, the government filed before the Sandiganbayan Civil Case No. 0027 against the Marcos spouses, several government officials who served under the Marcos administration, and a number of individuals known to be cronies of the Marcoses, including Chuidian. The complaint sought the reconveyance, reversion, accounting and restitution of all forms of wealth allegedly procured illegally and stashed away by the defendants.

In particular, the complaint charged that Chuidian, by himself and/or in conspiracy with the Marcos spouses, engaged in "devices, schemes and stratagems" by: (1) forming corporations for the purpose of hiding and avoiding discovery of illegally obtained assets; (2) pillaging the coffers of government financial institutions such as the Philguarantee; and (3) executing the court settlement between Philguarantee and Chuidian which was grossly disadvantageous to the government and the Filipino people.

In fine, the PCGG averred that the above-stated acts of Chuidian committed in unlawful concert with the other defendants constituted "gross abuse of official position of authority, flagrant breach of public trust and fiduciary obligations, brazen abuse of right and power, unjust enrichment, violation of the Constitution and laws" of the land.<sup>[14]</sup>

While the case was pending, on March 17, 1993, the Republic of the Philippines filed a motion for issuance of a writ of attachment<sup>[15]</sup> over the L/C, citing as grounds therefor the following:

- (1) Chuidian embezzled or fraudulently misapplied the funds of ARCI acting in a fiduciary capacity, justifying issuance of the writ under Section 1(b), Rule 57 of the Rules of Court;
- (2) The writ is justified under Section 1(d) of the same rule as Chuidian is guilty of fraud in contracting the debt or incurring the obligation upon which the action was brought, or that he concealed or disposed of the property that is the subject of the action;

- (3) Chuidian has removed or disposed of his property with the intent of defrauding the plaintiff as justified under Section 1(c) of Rule 57; and
- (4) Chuidian is residing out of the country or one on whom summons may be served by publication, which justifies the writ of attachment prayed for under Section 1(e) of the same rule.

The Republic also averred that should the action brought by Chuidian before the U.S. District Court of California to compel payment of the L/C prosper, in spite of the sequestration of the said L/C, Chuidian can ask the said foreign court to compel the PNB Los Angeles branch to pay the proceeds of the L/C. Eventually, Philguarantee will be made to shoulder the expense resulting in further damage to the government. Thus, there was an urgent need for the writ of attachment to place the L/C under the custody of the Sandiganbayan so the same may be preserved as security for the satisfaction of judgment in the case before said court.

Chuidian opposed the motion for issuance of the writ of attachment, contending that:

- (1) The plaintiff's affidavit appended to the motion was in form and substance fatally defective;
- (2) Section 1(b) of Rule 57 does not apply since there was no fiduciary relationship between the plaintiff and Chuidian;
- (3) While Chuidian does not admit fraud on his part, if ever there was breach of contract, such fraud must be present at the time the contract is entered into;
- (4) Chuidian has not removed or disposed of his property in the absence of any intent to defraud plaintiff;
- (5) Chuidian's absence from the country does not necessarily make him a non-resident; and
- (6) Service of summons by publication cannot be used to justify the issuance of the writ since Chuidian had already submitted to the jurisdiction of the Court by way of a motion to lift the freeze order filed through his counsel.

On July 14, 1993, the Sandiganbayan issued a Resolution ordering the issuance of a writ of attachment against L/C No. SSD-005-85 as security for the satisfaction of judgment.<sup>[16]</sup> The Sandiganbayan's ruling was based on its disquisition of the five points of contention raised by the parties. On the first issue, the Sandiganbayan found that although no separate affidavit was attached to the motion, the motion itself contained all the requisites of an affidavit, and the verification thereof is deemed a substantial compliance of Rule 57, Section 3 of the Rules of Court.

Anent the second contention, the Sandiganbayan ruled that there was no fiduciary relationship existing between Chuidian and the Republic, but only between Chuidian and ARCI. Since the Republic is not privy to the fiduciary relationship between Chuidian and ARCI, it cannot invoke Section 1(b) of Rule 57.

On the third issue of fraud on the part of Chuidian in contracting the loan, or in concealing or disposing of the subject property, the Sandiganbayan held that there was a *prima facie* case of fraud committed by Chuidian, justifying the issuance of the writ of attachment. The Sandiganbayan also adopted the Republic's position that since it was compelled to pay, through Philguarantee, the bank loans taken out by Chuidian, the proceeds of which were fraudulently diverted, it is entitled to the issuance of the writ of attachment to protect its rights as creditor.

Assuming that there is truth to the government's allegation that Chuidian has removed or disposed of his property with the intent to defraud, the Sandiganbayan held that the writ of attachment is warranted, applying Section 1(e) of Rule 57. Besides, the Rules provide for sufficient security should the owner of the property attached suffer damage or prejudice caused by the attachment.<sup>[17]</sup>

Chuidian's absence from the country was considered by the Sandiganbayan to be "the most potent insofar as the relief being sought is concerned."<sup>[18]</sup> Taking judicial notice of the admitted fact that Chuidian was residing outside of the country, the Sandiganbayan observed that:

"x x x no explanation whatsoever was given by him as to his absence from the country, or as to his homecoming plans in the future. It may be added, moreover, that he has no definite or clearcut plan to return to the country at this juncture - given the manner by which he has submitted himself to the jurisdiction of the court."<sup>[19]</sup>

Thus, the Sandiganbayan ruled that even if Chuidian is one who ordinarily resides in the Philippines, but is temporarily living outside, he is still subject to the provisional remedy of attachment.

Accordingly, an order of attachment<sup>[20]</sup> was issued by the Sandiganbayan on July 19, 1993, ordering the Sandiganbayan Sheriff to attach PNB L/C No. SSD-005-85 for safekeeping pursuant to the Rules of Court as security for the satisfaction of judgment in Sandiganbayan Civil Case No. 0027.

On August 11, 1997, or almost four (4) years after the issuance of the order of attachment, Chuidian filed a motion to lift the attachment based on the following grounds: First, he had returned to the Philippines; hence, the Sandiganbayan's "most potent ground" for the issuance of the writ of preliminary attachment no longer existed. Since his absence in the past was the very foundation of the Sandiganbayan's writ of preliminary attachment, his presence in the country warrants the immediate lifting thereof. Second, there was no evidence at all of initial fraud or subsequent concealment except for the affidavit submitted by the PCGG Chairman citing mere "belief and information" and "not on knowledge of the facts." Moreover, this statement is hearsay since the PCGG Chairman was not a witness to the litigated incidents, was never presented as a witness by the Republic and thus was not subject to cross-examination.

Third, Chuidian denies that he ever disposed of his assets to defraud the Republic, and there is nothing in the records that support the Sandiganbayan's erroneous conclusion on the matter. Fourth, Chuidian belied the allegation that he was also a defendant in "other related criminal action," for in fact, he had "never been a