

EN BANC

[G.R. No. 207342, August 16, 2016]

**GOVERNMENT OF HONGKONG SPECIAL ADMINISTRATIVE
REGION, REPRESENTED BY THE PHILIPPINE DEPARTMENT OF
JUSTICE, PETITIONER, VS. JUAN ANTONIO MUNOZ,
RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

This case is the third in the trilogy of cases that started with the 2000 case of *Cuevas v. Muñoz*,^[1] which dealt with respondent Juan Antonio Munoz's provisional arrest as an extraditee, and the 2007 case of *Government of Hong Kong Special Administrative Region v. Olalia, Jr.*,^[2] which resolved the question of Muñoz's right to bail as a potential extraditee. Both rulings dealt with and resolved incidents arising during the process of having Munoz extradited to Hong Kong under and pursuant to the *Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons* (RP-HK Agreement).

Up for our consideration and resolution in the current case is whether or not the extradition request of the Government of Hong Kong Special Administrative Region (HKSAR) sufficiently complied with the RP-HK Agreement and Presidential Decree No. 1069 (*Philippine Extradition Law*): On November 28, 2006, the Regional Trial Court (RTC), Branch 8, in Manila granted the request for the extradition of Muñoz.^[3] Although the CA at first ruled that Munoz could be tried in Hong Kong for the crimes of *conspiracy to defraud and accepting an advantage as an agent*, it granted his motion for reconsideration and promulgated the now assailed amended decision on March 1, 2013 in CA-G.R. CV No. 88610,^[4] in which it pronounced that the crime of *accepting an advantage as an agent* should be excluded from the charges for which he would be tried in Hong Kong due to non-compliance with the double criminality rule. Also being challenged is the resolution promulgated on May 29, 2013 by the CA (denying the motion for reconsideration of the petitioner).^[5]

Antecedents

As factual antecedents, the CA narrated the following:

Bared to its essentials, the record shows that in late 1991, respondent-appellant, as Head of the Treasury Department of the Central Bank of the Philippines (CBP), was instructed by its Governor to raise Seven Hundred Million US Dollars (US\$700M) in order to fund the buyback of Philippine debts and the purchase of zero coupon US Treasury Bonds. To this end, respondent-appellant recommended that the amount be obtained through gold loans/swaps, for which, seven (7) contracts of about One

Hundred Million US Dollars (US\$100M) each were to be awarded to certain accredited parties. Two (2) of these contracts were granted to Mocatta, London. These in turn were rolled over as they matured, hence, totaling five (5) gold loan/swap agreements in Mocatta, London's favor.

In relation to this, petitioner-appellee narrates:

x x x x

2. At all material times, Mr. Juan Antonio E. MUÑOZ ("MUÑOZ") was the Head of the Treasury Department of the Central Bank of the Philippines ("CBP"). In July 1993, CBP changed its name to the Bangko Sentral ng Pilipinas.

3. At all material times, Mr. Ho CHI ("CHI") was the Chief Executive of Standard Chartered Bank – The Mocatta Group (Hong Kong) ("MHK"), MHK was a branch of the Mocatta Group in London ("Mocatta London") which was a division of the Standard Chartered Bank.

4. CBP and MHK had been dealing in small gold transactions for several years prior to 1991. During the latter part of 1991, MUÑOZ and CHI began negotiating larger deals up to US\$100 M. CBP were (sic) reluctant to deal with MHK for such large amounts and wanted to deal 'directly with Mocatta (London).

5. CHI approached Philip WILSON ("WILSON"), the then Chief Dealer of Mocatta (London) about the proposed deals. CHI indicated that to get business it would be necessary for Mocatta (London) to pay rebates to an unnamed group of people at CBP. WILSON told CHI that that was wrong in principal (sic). CHI, however, approached Keith SMITH, the then Managing Director of Mocatta (London), who approved the payments.

x x x x

6. Between February 1992 to March 1993, there were a series of "gold swaps" and gold backed loans between CBP (sic) and Mocatta (London) through MHK in Hong Kong. The transactions were a means for CBP to raise finance.

x x x x

9. As a result of these transactions, Mocatta (London) paid out rebates of **US\$1,703,304.87** to an account ("the Sundry Creditors Account") held with MHK for onward transmission by MHK to destinations as instructed by CHI. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (x x x).

x x x x

10. In addition to the gold swaps and the gold backed loans referred to above, there were option agreements created between CBP and MHK. Under an option agreement, CBP granted a right to MHK to exercise (or not to exercise) the option to buy gold at a fixed price on a fixed date.

11. As a result, between 27 July 1992 and 6 May 1993, MHK paid **US\$4,026,000** into the Sundry Creditors Account, ostensibly for CBP, as premiums for these options, xxx

xxxx

13. CHI operated an account at Mocatta Hong Kong, called the MHK No. 3 Account, purportedly on behalf of CBP, for trading in gold. Profits from the trading were accrued to the amount of US\$1,625,000. The trading and the profits were unknown to CBP.

14. On 12 October 1993, this **US\$1,625,000** was transferred to the Sundry Creditors Account. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (xxx).

x x x x

15. Apart from the aforesaid, there were other payments made by MHK to the Sundry Creditors Account, ostensibly for CBP, namely:

commission on gold	US\$227,086.18
location swaps	
commission on	US\$ 47,524.69
silver location swaps	
commission on	US\$ 9,750.00
options	
interest	US\$ 32,889.61

16. None of the above payments were known to CBP and none of them ever reached CBP. Funds from this Sundry Creditors Account were subsequently disbursed to the benefit of CHI and MUÑOZ personally (x x x).

x x x x

On the other hand, respondent-appellant gives his version, thus:

x x x the Central Bank executed all these gold loan/swap agreements with the same counter party, namely, Mocatta London. Munoz signed in behalf of the Central Bank while Phil Wilson signed for Mocatta London.

x x x x

In late 1992 (around November or December), Munoz received a note from Mocatta London requesting that their accreditation as official counter party of the Central Bank be transferred to Standard Chartered Bank (SCB) in view of an ongoing reorganization which will result in Mocatta London being a mere division of SCB. Before such reorganization, both Mocatta London and Mocatta Hong Kong operated as independent subsidiaries of SCB.

x x x x

As mentioned earlier, the Monetary Board approved the transfer of the accreditation of Mocatta London as authorized counter party of the bank to SCB sometime in February or March of 1993. Mocatta London became known as SCB-The Mocatta Group, or SCB-The Mocatta Group (sic), or SCB-The Mocatta Group London, while Mocatta became known as SCB-the Mocatta Group Hong Kong. Phil Wilson was the Chief Executive Officer for London, while Ho Chi was the Chief Executive for Hong Kong. The Group Chief Executive Officer was Ron Altringham.

As can be seen in **Annex 'C'**, even with the SCB reorganization, the gold [loan]/swap agreements continued to be contracted with Mocatta London. As shown, both the gold loan/swap agreements dated March 25, 1993 and June 30, 1993 were signed by Phil Wilson for Mocatta London (SCB-The Mocatta Group London). With the accreditation of SCB as the official counter party of the bank, however, CB did allow the dealers to transact minor trading transactions with Mocatta Hong Kong. CB also allowed Mocatta Hong Kong to quote on the gold and silver location swaps CB periodically did to decongest its vaults at the gold plant in Quezon City. The gold swap/loan agreements, however, as shown in the Annex, continued to be rolled over with Mocatta London.

During Muñoz's stay in Treasury at the bank as its Head, he did not involve himself in the details of work done by the Dealing Group, Treasury Service Group (TSG) and Accounting which were all headed by either Director or a Deputy Director who could clarify any issue that may arise, and who consult with him on matters they were unsure. The department had been operational over 6 years when Muñoz joined, and the Treasury transactions had already become routine for majority of the staff. Muñoz meet (sic) weekly with senior officers to inform of development and discuss problems of the department.

In respect to the five gold loan/swap agreements with Mocatta

London (as well as the agreements contracted with other official counter parties), upon the signing of each agreement, a copy of the agreement was forwarded to the Dealing Group for proper implementation. The Treasury dealers usually coordinated with dealers of the counter party involved in effecting the necessary transactions.

These agreements are the subject often (10) criminal cases filed against respondent-appellant in Hong Kong - i.e., three (3) counts of *accepting an advantage as an agent*, contrary to Section 9(1) (a) of the Prevention of Bribery Ordinance, Cap. 201 and seven (7) counts of *conspiracy to defraud*, contrary to the common law of HKSAR.^[6]

Invoking the *Agreement Between the Government of the Republic of the Philippines and the Government of Hong Kong for the Surrender of Accused and Convicted Persons* (RP-HK Agreement), which was signed in Hong Kong on January 30, 1995, the Hong Kong Special Administrative Region (HKSAR) sent Note No. SBCR 11/1/2716/80 dated July 9, 1997 to the Philippine Consulate General in Hong Kong to inquire on which agency of the Philippine Government should handle a request for extradition under the RP-HK Agreement. The Philippine Consulate General replied through Note No. 78-97 dated October 16, 1997 that the proper agency was the Department of Justice (DOJ).^[7] On September 13, 1999, therefore, the DOJ received the request for the provisional arrest of Muñoz pursuant to Article 11(1) of the RP-HK Agreement. On September 17, 1999, the National Bureau of Investigation (NBI), acting for and in behalf of HKSAR, initiated the proceedings for his arrest in the RTC, whose Branch 19 then issued on September 3, 1999 the order granting the application for the provisional arrest of Muñoz. Branch 19 consequently issued the corresponding order of arrest. On October 14, 1999, Muñoz challenged through *certiorari*, prohibition and *mandamus* the validity of the order for his arrest in the CA, which declared the order of arrest null and void in its judgment promulgated on November 9, 1999. DOJ Secretary Serafin R. Cuevas consequently appealed the decision of the CA to this Court, which reversed the CA on December 18, 2000 in *Cuevas v. Muñoz*,^[8] disposing:

WHEREFORE, the petition is GRANTED, and the assailed Decision of the Court of Appeals, dated November 9, 1999, in CA-G.R. SP No. 55343 is hereby REVERSED and SET ASIDE. Respondent's "Urgent Motion For Release Pending Appeal" is hereby DENIED.

SO ORDERED.

Meantime, on November 22, 1999,^[9] the DOJ, representing the HKSAR, filed a petition in the RTC for the surrender of Munoz to the HKSAR to face the criminal charges against him in Hong Kong. He filed a petition for bail. Initially, on October 8, 2001, the RTC, through Presiding Judge Ricardo Bernardo, Jr. of Branch 10, denied the petition for bail after hearing on the ground that there was no Philippine law that allowed bail in extradition cases, and that he was a high "flight risk." But after the case was re-assigned to Branch 8, presided by Judge Felixberto T. Olalia, Jr., following the inhibition of Judge Bernardo, Jr., Muñoz filed his motion for reconsideration against the denial of his petition for bail. Granting the motion for reconsideration on December 20, 2001,^[10] Judge Olalia, Jr. allowed bail to Muñoz under the conditions stated in the order of that date. Not satisfied, the DOJ assailed