

## SECOND DIVISION

[ G.R. No. 187951, June 25, 2012 ]

**THE WELLEX GROUP, INC., PETITIONER, VS. SANDIGANBAYAN,  
RESPONDENT.**

### DECISION

**SERENO, J.:**

This is a Petition for Certiorari under Rule 65 seeking to nullify the Resolutions dated 24 September 2008 and 02 April 2009 promulgated by the Sandiganbayan (Special Division) in Criminal Case No. 26558, *People of the Philippines v. Joseph Ejercito Estrada*.

Petitioner The Wellex Group, Inc. (Wellex) assails the mentioned Resolutions of the Sandiganbayan, alleging that the latter unduly included 450 million shares of stock of Waterfront Philippines, Inc. in the forfeiture proceedings ordered under respondent's Amended Writ of Execution in Criminal Case No. 26558. Petitioner asserts that the subject shares of stock should not be forfeited as part of the execution process in the plunder case, because Wellex is not a party to the case. Thus, it avers that the Sandiganbayan committed grave abuse of discretion in issuing the questioned Resolutions, which included the shares for forfeiture.

#### ***The Facts***

On 12 September 2007, the Sandiganbayan, through its Special Division, promulgated a Decision in Criminal Case No. 26558, the plunder case filed against former President Joseph Ejercito Estrada (former President Estrada). The said Decision found him guilty of the crime of plunder and ordered the forfeiture of the following:

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the Government of the following:

- (1) The total amount of Five Hundred Forty Two Million Seven Hundred Ninety One Thousand Pesos (P545,291,000.00) [sic], with interest and income earned, inclusive of the amount of Two Hundred Million Pesos (P200,000,000.00), deposited in the name and account of the Erap Muslim Youth Foundation.
- (2) The amount of One Hundred Highly Nine Million Pesos (P189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.

(3) The real property consisting of a house and lot dubbed as "Boracay Mansion" located at #100 11<sup>th</sup> Street, New Manila. Quezon City.<sup>[1]</sup>

On 25 October 2007, President Arroyo granted former President Estrada executive clemency through a Pardon, which he accepted on 26 October 2007.<sup>[2]</sup> The Pardon, however, expressly stipulates as follows:

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.<sup>[3]</sup>

With this development, the Special Division of the Sandiganbayan on 26 October 2007 ordered the issuance of a Writ of Execution for the satisfaction of the judgment, which was not covered by the Executive Clemency granted to former President Estrada.<sup>[4]</sup> On 05 November 2007, the Writ of Execution<sup>[5]</sup> was issued against him.

On 09 November 2007, former President Estrada filed a Motion to Quash Writ of Execution.<sup>[6]</sup> He alleged that the Writ of Execution expanded the 12 September 2007 Decision by including within the scope of forfeiture "any and all" of his personal and real properties. He believes that the added portion in the writ is tantamount to the imposition of a penalty and is thus a nullity.<sup>[7]</sup>

In the plunder case, the Office of the Special Prosecutor filed an Opposition<sup>[8]</sup> to the Motion to Quash of the former President. It rebutted his averments of movant Estrada and asserted its position that the Writ of Execution sought to be quashed did not vary the 12 September 2007 Decision of the Sandiganbayan, but in fact only implemented Section 2 of Republic Act No. 7080,<sup>[9]</sup> the Plunder Law, under which he was convicted.<sup>[10]</sup>

On 21 January 2008, Wellex wrote a letter<sup>[11]</sup> to Banco De Oro expressing the desire to retrieve the Waterfront shares the former had used as collateral to secure an earlier loan obligation to Equitable-PCI Bank. It was at this time that Wellex became aware of the Writ of Constructive Dstraint issued by the BTR to Investment Management Account (IMA) Trust Account No. 101-78056-1 in relation to the plunder case. While petitioner admits the existence of its loan and acknowledges Equitable-PCI Bank as the lender, the former wants the mortgaged shares back. Alleging that its loan obligation for which the shares were given as collateral has been extinguished, petitioner says:

It appears that interest payments on the loan were made for a certain period but these payments stopped at some point in time. Inquiries resulted in our view that coincident to the stoppage of interest payments, **principal payment of the obligation was made by or on behalf of the borrower, not to your bank as investment manager, but**

**instead directly to the owner of the account.** THE WELLEX GROUP, INC. is presently interested in retrieving the shares given as security for the loan obligation which apparently has been extinguished. (Emphasis supplied)<sup>[12]</sup>

On 28 January 2008, the Sandiganbayan promulgated a Resolution partially granting the Motion to Quash of former President Estrada. It qualified its ruling by stating that the forfeiture process under the Plunder Law was limited only to those proven to be traceable as ill-gotten. The dispositive portion of the 28 January 2008 Resolution reads:

NOW THEREFORE, you are hereby commanded to cause the forfeiture in favor of the government of the abovementioned amounts and property listed in the said dispositive portion of the decision, including payment in full of your lawful fees for the service of the writ.

**In the event that the amounts or property listed for forfeiture in the dispositive portion be insufficient or could no longer be found, you are authorized to issue notices of levy and/or garnishment to any person who is in possession of any and all form of assets that is traceable or form part of the amounts or property which have been ordered forfeited by this Court, including but not limited to the accounts receivable and assets found at Banco De Oro (the successor in interest of Equitable PCI Bank) in the personal IMA Trust Account No. 101-78056-1 in the name of Jose Velarde (which has been adjudged by the Court to be owned by former President Joseph Ejercito Estrada and the depositary of the ill-gotten wealth) consisting of Promissory Notes evidencing the loan of P500,000,000.00 with due date as of August 2, 2000 and the chattel mortgage securing the loan; Waterfront shares aggregating 750,000,000 shares (estimated to be worth P652,000,000.00 at the closing price of P0.87 per share as of January 21, 2008); and Common Trust Fund money in the amount of P95,759,000.00 plus interest earned thereby.**

**You are hereby directed to submit a weekly report on your proceedings in the implementation of this Writ of Execution.** (Emphasis supplied)

Pursuant to the 28 January 2008 Resolution, the Sandiganbayan issued an Amended Writ of Execution on 19 February 2008 directing Sheriff Edgardo A. Urieta, Chief Judicial Staff Officer, Security and Sheriff Services of the Sandiganbayan, to implement the amended writ and to submit a weekly report through the Executive Clerk of Court.<sup>[14]</sup>

On 22 February 2008, Sheriff Urieta submitted a Sheriffs Progress Report on the implementation of the Amended Writ of Execution. The report stated, among others, that Banco De Oro Unibank, Inc. (BDO), having acquired Equitable PCI-Bank, informed his office that the Jose Velarde Account was under the Constructive

Distrain issued by the Bureau of Internal Revenue (BIR). Thus, the assets under the said account could not yet be delivered to the Sandiganbayan pursuant to the Writ of Execution, pending the termination of the investigation conducted by the National Investigation Division of the BIR.<sup>[15]</sup>

On 18 April 2008, BDO filed through its counsel a Manifestation (with Motion for Leave to File Manifestation) confirming to the Sandiganbayan that the assets of JMA Trust Account No. 101-78056-1 (as of 02 October 2002) under the name of Jose Velarde remained intact.<sup>[16]</sup> The assets of the trust account, which included 450 million shares of Waterfront Philippines, was under the auspices of its Trust Department. Those assets remained on hold by virtue of a Constructive Distrain issued on January 2001 by the BIR through its then officer in charge, Commissioner Lilian B. Hefti.<sup>[17]</sup> BDO also sought the guidance of the Sandiganbayan on how to proceed with the disposition of the subject IMA Trust Account in view of the lien by the BIR and the claim of Wellex.<sup>[18]</sup>

On 16 May 2008, the Sandiganbayan held a hearing, in which the parties explained their respective positions on the propriety of the levy over the subject shares. Thereafter, it ordered the parties to submit their respective memoranda.<sup>[19]</sup> Only the BIR filed its Memorandum, while petitioner Wellex failed to file any.<sup>[20]</sup>

On 28 May 2008, instead of filing its memorandum, BDO made a submission informing the Sandiganbayan that the bank had not yet received any payment from Wellex for the latter's principal obligation, which was secured by the subject Waterfront shares and covered by a Promissory Note and a chattel mortgage, both dated 04 February 2000.<sup>[21]</sup>

We quote the Certification issued by BDO as follows:

### **C E R T I F I C A T I O N**

As the Investment Manager of **Investment Management Account (IMA) No. 101-78056-1** covered by the Investment Management Agreement dated February 4, 2000, we hereby certify that we have not received any principal payment on the loan/investment amounting to **PESOS: FIVE HUNDRED MILLION (P 500,000,000.00)** granted/made by said account to The Wellex Group. Inc. covered by the Promissory Note and Chattel Mortgage dated February 4, 2000, as amended on August 2, 2000 (the "Loan"). Thus, the same remains outstanding in the books of Equitable PCI Bank. Inc. - Trust Banking (now Banco de Oro Unibank-Trust and Investments Group).

We likewise certify that interest payments on the Loan totalling **PESOS: EIGHTY MILLION & 00/100 (P80,000,000.00)** were received from The Wellex Group, Inc. starting March 6, 2000 until January 29, 2001. No further interest payments were made thereafter. Such interest payments were invested by the Bank in various investment outlets such that, as of date, it now amounts to **PESOS: NINETY SIX MILLION FOUR HUNDRED EIGHT THOUSAND NINE HUNDRED EIGHTY SEVEN & 90/100 (P 96,408,987.90)**.

This certification is being issued for whatever legal purpose this may serve.

May 28, 2008, Makati City.<sup>[22]</sup> (Emphasis in the original)

On 24 September 2008, the Sandiganbayan promulgated a Resolution dated 15 September 2008 acknowledging the validity of the claim of the BIR against the former President and his spouse for income tax deficiency. However, the Resolution noted that despite the prior issuance by the BIR of a Constructive Dstraint over the subject trust account, it failed to issue a formal assessment to the spouses Estrada. The Sandiganbayan noted that the BIR had not yet finished its investigation to determine the deficiency income tax of the spouses for the taxable year 1999. The anti-graft court held that it could not wait for the BIR to finish the investigation of the matter before the former could proceed with the forfeiture of the IMA Trust Account, considering that its Decision convicting the former President had already become final.<sup>[23]</sup>

Thus, the Sandiganbayan ruled that the subject IMA Trust Account was ripe for forfeiture after the conviction of former President Estrada in the plunder case had become final and executory. The dispositive portion of its Resolution reads:

WHEREFORE, in the fight of the foregoing, Mr. Edgardo Urieta, SB Chief Judicial Officer. Security and Sheriff Services, this Court, is hereby directed to issue another NOTICE TO DELIVER to Banco De Oro Unibank, Inc. (formerly BDO-EPCIB, Inc.) for the latter to deliver/remit to this Court the amount of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND (F 189,700,000.00) PESOS, inclusive of interest and income earned, covered by IMA Trust Account No. 101-78056-1 in the name of Jose Velarde, within fifteen (15) days from receipt thereof.<sup>[24]</sup>

On 11 October 2008, the Commissioner of Internal Revenue (CIR), as well as Wellex, filed a Motion for Reconsideration (MR) of the 24 September 2008 Resolution of the Sandiganbayan.<sup>[25]</sup>

On 02 April 2009, the Special Division of the Sandiganbayan promulgated a Resolution<sup>[26]</sup> denying the MRs filed by the CIR and petitioner Wellex. In denying the MR of the CIR, the Sandiganbayan ruled (hat the former's right to forfeit the subject IMA Trust Account was anchored on the Decision convicting former President Estrada under the Plunder Law and had already become final and executory. It ruled that the CIR's claim over the IMA Trust Account rested on flimsy grounds, because the assessment issued to the spouses Estrada over an alleged deficiency in their income tax payment was not yet final. Hence, it concluded that the Constructive Dstraint could not defeat the court's preferential right to forfeit the assets of the subject IMA Trust Account, which was included in the Decision on the plunder case.<sup>[27]</sup>

The Sandiganbayan also denied the MR of Wellex. It ruled that petitioner failed to