

EN BANC

[G.R. No. 107395, January 26, 2000]

**TOURIST DUTY FREE SHOPS, INC., PETITIONER, VS. THE
HONORABLE SANDIGANBAYAN, PRESIDENTIAL COMMISSION ON
GOOD GOVERNMENT, RIZAL COMMERCIAL BANKING
CORPORATION AND BANK OF AMERICA, RESPONDENTS.**

DECISION

BUENA, J.:

This petition for review on certiorari seeks to nullify and set aside the Resolutions of the respondent Sandiganbayan, Second Division, dated June 15, 1992 and September 23, 1992, which (1) dismissed the complaint for injunction and specific performance filed by petitioner against private respondents;^[1] and (2) denied the motion for reconsideration thereof, respectively.^[2]

The facts are undisputed.

On March 11, 1986, the PCGG, through Commissioner Mary Concepcion Bautista, issued a sequestration order against petitioner, the fallo of which reads:

"The Manager
Tourist Duty Free Shops, Inc.
Food Terminal Inc. Compound
Taguig, Metro Manila

Sir:

The Presidential Commission on Good Government by authority of the President of the Philippines has decided to sequester the facilities, assets and funds of Tourist Duty Free Shops, Inc. in order to prevent any dispositions thereof to the prejudice of the people. You are hereby ordered to refrain from:

1. entering into new contracts or transactions;
2. making any disbursements of funds of the corporation except in the ordinary course of business and for the payment of salaries of legitimate employees which are due; and
3. withdrawing funds from the accounts of the corporation, or its branches or subsidiaries.

Please preserve all the records of the corporation, and do not remove or allow the removal of any documents or other records.

Very truly yours,

On July 21, 1987, respondent PCGG filed with the respondent Sandiganbayan a complaint for reconveyance, reversion, accounting, restitution and damages against Bienvenido Tantoco, Bienvenido R. Tantoco, Jr., Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda, Dominador Santiago, Ferdinand E. Marcos, Imelda R. Marcos^[3] which was docketed as Civil Case No. 0008. The complaint alleged, among others:

"15. Defendants x x x Maria Lourdes Tantoco-Pineda, x x x and Dominador Santiago by themselves and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, collaborated in the tatter's scheme, devices and strategems to appropriate and conceal the ownership of assets illegally obtained to the grave damage of Plaintiff among others, as follows:

x x x x x x x x x

`(c) Acted with evident purpose of concealing the ownership of assets illegally obtained, as dummies, nominees and/or agents of Defendants Ferdinand E. Marcos and Imelda R. Marcos in acquiring franchise to operate tourist duty-free shops at international airports, hotels and commercial centers, under which defendants Gliceria R. Tantoco, Maria Lourdes Tantoco-Pineda with the active participation of Bienvenido Tantoco, Sr., Bienvenido Tantoco, Jr. and Dominador R. Santiago, secured presidential approval for them to operate and manage exclusively TDF shops which were supposed to pay only a minimal franchise tax of 7% of the gross income, x x x but only 2% went to the government coffers and the remaining 5% which ran into millions of pesos became defendant Imelda R. Marcos sources of petty cash since these funds were funneled to her private foundations heretofore stated, to the plaintiff's grave damage and prejudice.

`(d) procured, almost unlimited duty and tax-free importation benefits and manipulated importations by mere Draft Acceptances in excess of the amounts allowed by the Central Bank with the knowledge and willing participation of Defendant Dominador Santiago who was then Chairman of Tourist Duty Free Shops, Inc., and the approval of which importations by mere Trade-Acceptance was secured by defendants Tantocos and Santiago through Imelda R. Marcos solely for their personal benefit and for the TDFS.'^[4]

Petitioner assailed the sequestration order via a complaint for injunction and specific performance against herein respondents before the respondent Sandiganbayan which was docketed as Civil Case No. 0142. In its complaint, petitioner alleged that the writ of sequestration is void because: (1) it was issued without any investigation; (2) all the assets, funds and properties of petitioner were lawfully acquired and earned; (3) the writ of sequestration was signed by only one of the five commissioners of the respondent PCGG; and (4) the respondent PCGG has not filed any action against petitioner to recover the latter's assets, funds and

properties, nor has it registered any list of the sequestered assets with the respondent Sandiganbayan pursuant to Section 26, Article XVIII of the 1987 Constitution^[5] and therefore, the writ of sequestration is now deemed automatically lifted. As regards respondent Bank of America (BA for brevity) and respondent Rizal Commercial Banking Corporation (RCBC for brevity), petitioner asserts that said banks refuse to comply with their contractual obligation to allow herein petitioner to withdraw its funds and to honor its checks. Petitioner therefore prays that judgment be rendered (1) declaring the writ of sequestration invalid; (2) enjoining PCGG from implementing the writ of sequestration and (3) ordering respondent banks to comply with their contractual obligations to petitioner and allow the latter to withdraw its funds without need of any approval by the PCGG.^[6]

Petitioner likewise filed an ex-parte motion to assign the case to the Second Division of the Sandiganbayan praying that the complaint be assigned to the said division where Civil Case No. 0008 is pending since "it is in a better position to assess/appreciate whether or not the said case is sufficient to bind the complainant and, more importantly, whether or not the said case is sufficient compliance with the requirement of the Constitution."^[7]

On December 23, 1991, respondent Sandiganbayan issued a Resolution requiring the private respondents to file their answers which respondent PCGG complied with on January 22, 1992. In its answer, respondent PCGG asserts *inter alia*: (1) that the writ of sequestration is valid and implemented within the bounds of law; (2) that the PCGG is not the proper party-in-interest but the Republic of the Philippines; (3) that the Republic and the PCGG are immune from suit; and (4) that the case should be dismissed on the ground of *litis pendencia* or should be consolidated with Civil Case No. 0008 where the subject assets and funds deposited with respondents BA and RCBC are among those placed under sequestration.^[8]

Respondents RCBC and BA filed their separate answers basically contending that they are merely obeying the writ of sequestration issued by respondent PCGG and that the case should be merely between petitioner and respondent PCGG.^[9]

On March 23, 1992, petitioner filed a motion for immediate relief *pendente lite* praying that it be allowed to withdraw funds from respondent RCBC to pay for its normal and operating expenses.^[10] The motion was granted in a Resolution dated April 8, 1992. Respondent RCBC was ordered to honor the checks of the petitioner issued in payment of nine expenses itemized in petitioner's motion but ordered the latter to course its request for further disbursements with the Operations Department of PCGG.^[11]

On May 7, 1992, petitioner filed another omnibus motion praying for the reconsideration of the aforesaid resolution, to resolve its pending motion for issuance of a writ of preliminary mandatory injunction and to set the case for pre-trial conference.^[12]

On June 15, 1992, respondent Sandiganbayan, without acting on the pending motion of herein petitioner, issued the now assailed Resolution, the decretal portion of which reads:

"WHEREFORE, premises considered, the instant case is hereby dismissed, without costs, and without prejudice to the re-filing by plaintiff of the proper motions in Civil Case No. 0008. Consequently, all pending incidents herein are hereby deemed moot and academic.

"SO ORDERED."^[13]

Petitioner moved for reconsideration alleging that respondent Sandiganbayan erred in dismissing the case *motu proprio* and in dismissing the case based on *litis pendencia*,^[14] a ground not enumerated in Section 1, Rule 16 of the Rules of Court. The petitioner likewise argues that the reasons/grounds relied upon by the respondent Sandiganbayan in dismissing the complaint are not correct and that the dismissal contravenes the ruling of the respondent Sandiganbayan in a similar case.^[15]

Respondent PCGG opposed the motion^[16] arguing that the dismissal was repeatedly prayed for in its pleadings and that the basis for praying for the dismissal was *litis pendencia* which is a ground for filing a motion to dismiss under the Rules. It further argues that it is imperative for the court to dismiss the present case because of the substantial identity and correlation in the causes of action, reliefs sought and parties between the present case and Civil Case No. 0008.^[17]

On September 23, 1992, public respondent issued the other assailed order denying petitioner's motion for reconsideration.

Hence, this petition.

It is erroneous for petitioner to claim that respondent Sandiganbayan dismissed the case without any motion to dismiss having been filed by the private respondent. The dismissal of petitioner's complaint was prayed for by respondent PCGG in its answer and other pleadings. In its answer, the respondent PCGG alleged that:

"14. This case should be dismissed on the ground of litis pendencia or there is another action pending involving the same parties for the same cause, i.e. 'Republic of the Philippines vs. Bienvenido Tantoco, et al, Civil Case No. 0008; or should be consolidated and/or treated a mere incident of Civil Case No. 0008.

"15. The subject assets and funds, deposited with defendants Rizal Commercial Banking Corporation (RCBC) and Bank of America (BA) sequestered by PCGG are among the assets of the defendants in Civil Case No. 0008;"^[18] (Underscoring Supplied)

Again, in its Opposition^[19] to petitioner's Motion for Immediate Relief Pendente Lite^[20] respondent PCGG stated that "this Opposition is filed subject to our position that this case should be dismissed and/or consolidated with the principal case, Civil Case No. 008 x x x as we manifested in our Answer under the Heading 'Special and Affirmative Defenses'." This was reiterated in respondent PCGG's Opposition^[21] to petitioner's Omnibus Motion.^[22]

Hence, while no motion to dismiss was filed, respondent PCGG has been constantly

pleading for the dismissal of the case in its answer and in the subsequent pleadings submitted to the respondent Sandiganbayan. This is allowed under Section 6, Rule 16 of the Rules of Court which provides that if no motion to dismiss has been filed, any of the grounds for dismissal provided for in the Rules may be pleaded as an affirmative defense in the answer and, in the discretion of the court, a preliminary hearing may be had thereon as if a motion to dismiss had been filed. A preliminary hearing on the affirmative defense invoking any of the grounds for dismissal is not even mandatory as may be shown from the use of the word "may" in the above rule.

Additionally, the cases of **Manila Herald Publishing Co., Inc. vs. Ramos**^[23] and **Malig vs. Bush**,^[24] relied upon by petitioner in support of its claim finds no application in the case at bar. In the "Manila Herald" case, the defendant never filed any motion to dismiss nor an answer. It never initiated nor prayed for the dismissal of the case. Such is not the case at bar. Respondent PCGG repeatedly sought for the dismissal of the case on the ground of *litis pendencia* in its answer and subsequent pleadings. Similarly, the "Malig" case is not applicable because prescription of action, the ground relied upon by the court in dismissing the case, was not the ground, i.e., lack of jurisdiction, raised by the defendant in its motion to dismiss. In this case, however, the ground for dismissal invoked by respondent PCGG was the same ground which respondent court considered in dismissing the case.

Nonetheless, it was erroneous for the Sandiganbayan to dismiss this case on the ground of *litis pendencia*. The requisites of *litis pendencia*, to note, are the following:

1. Identity of parties or of representation in both cases,
2. Identity of rights asserted and relief prayed for,
3. The relief must be founded on the same facts and the same basis, and
4. Identity in the two preceding particulars should be such that any judgment which may be rendered in the other action, will, regardless of which party is successful, amount to *res judicata* on the action under consideration.

These requisites are absent in this case. For one, there are no identity of parties in the present case and Civil Case No. 0008. Here, petitioner, RCBA and BA are not parties in Civil Case No. 0008. Neither are the defendants in the latter case parties to the present case. Also, there is no identity of rights asserted and relief prayed for. The action in Civil Case No. 0008 involves "reconveyance, reversion, accounting, restitution and damages " against defendants therein which does not include petitioner, RCBC or BA, while the main thrust of the instant case is for specific performance against RCBC and BA. The evident and logical conclusion then is that any decision that may be rendered in any of these two cases cannot constitute *res judicata* on the other. The instant case and Civil Case No. 0008, therefore, ought to be resolved independently. To merge the former with the latter case via mere motion is clearly unwarranted.

A merger of these two (2) cases can neither be justified under the following doctrines laid down in **"Republic vs. Sandiganbayan"**^[25] cited by respondents, viz: