

EN BANC

[G.R. No. 108552, October 02, 2000]

**ASSET PRIVATIZATION TRUST, PETITIONER, VS.
SANDIGANBAYAN (SECOND DIVISION) AND ROSARIO M. B.
OLIVARES, RESPONDENTS.**

D E C I S I O N

PARDO, J.:

The case is a special civil action for certiorari seeking to annul the resolution of the Sandiganbayan^[1] declaring the annual stock-holders meeting of Philippine Journalist, Inc. (PJI), held on February 4, 1992, and presided over by respondent Rosario M. B. Olivarez valid, while the ramp stockholders meeting presided over by petitioner's representative to be void and illegal, and setting the next annual stockholders' meeting of PJI on February 2, 1993, at 2:00 in the afternoon.

The Sandiganbayan also required the Development Bank of the Philippines (DBP) and petitioner to send their representatives to the meeting, and vote the 67% (per cent) voting rights assigned to them. In the event DBP/APT representatives refused or failed to comply with the order, they would be considered to have waived their right to vote the shares in favor of the assignors thereof.

The facts may be summarized as follows:

On June 17, 1977, Roberto Garcia, Rosario Olivares, Tuynita Salud Soriano, Rosita Sosing, Jose Luna Castro, Araceli Linsangan, Luisa Linsangan, Reynaldo Naval, Manuel Salak and Augusto Villianueva, and the Development Bank of the Philippines represented by Alicia Ll. Reyes, signed an instrument denominated as a "Deed of Assignment of Voting Shares". The deed provides:

"WHEREAS, under Board Resolution No. 3634, dated September 15, 1976 as amended by Board Resolution No. 4374 dated December 1, 1976, of its Board of Governors, the ASSIGNEE, approved in favor of Philippine Journalists, Inc., hereinafter referred to as PJI, a guarantee accommodation for US \$1,745,000.00 to cover 80% of the cost of a Harris N-1650 web offset press to be supplied by Harris Corporation, Rhode Island, U.S.A.;

"WHEREAS, in granting the aforementioned accommodation, the **ASSIGNEE** has required that the same shall be secured by, among other securities, an assignment to the **ASSIGNEE** of no less than 67% of the total subscribed and outstanding subscriptions to the capital stock of PJI, the said percentage of shares assigned to be maintained at all times and to subsist for as long as the **ASSIGNEE** may deem necessary during the existence of the guarantee, to which the PJI is willing to comply;

"**WHEREAS**, as of March 30,1977, there has been subscribed to the capital stock of PJI a total of 1,000 voting shares at P100.00/share and the herein **ASSIGNORS** who are the principal stockholders and officials of PJI and who in their own right own voting shares in the said company the total of which is not less than 67% of the present up to date subscriptions to the capital stock of the firm, as follows:

"Name of Stockholder Certificate of outstanding stock no.	(Assignor)	No. of Shares
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Roberto Garcia	100	29
Rosario Olivares	100	31
Tuynita Salud	55	25
Soriano - do-	45	24
Rosario Sosing	55	28
Jose Luna Castro	53	21
Araceli Linsangan	53	15
Luisa Linsangan	53	16
Reynaldo Naval	53	20
Manuel Salak	53	14
Augusto Villanueva	38	19
- do -	12	09

are willing to assign the said shares in compliance with the requirement of the **ASSIGNEE**.

"**NOW, THEREFORE**, for and in consideration of the foregoing premises, the **ASSIGNORS** hereby cede, transfer and assign in favor of the **ASSIGNEE**, its successors and assigns, the 670 voting shares referred to above under the following terms and conditions:

"1. The assignment is executed as security for the guarantee accommodation granted by the assignee as proxy to vote all the aforementioned shares assigned in all stockholders meeting until the proxy assignment is cancelled as herein below provided.

"2. Upon the happening of all or and of the following events of default:

"a. PJI is in arrears with the payment of any of its amortization obligations to the **ASSIGNEE** and such arrears shall be over 90 days.

"b. PJI conducts its business in gross contravention of the conditions imposed by the **ASSIGNEE** under its Resolution approving the guarantee secured therein including any amendment supplement thereto.

"c. The **ASSIGNOR/s** (or any of them) or PJI file/s petition for voluntary bankruptcy; make/s any assignment for the benefit or in favor of other creditors; consent/s to the appointment of a receiver or trustee of **ASSIGNOR/s** or PJI property on the ground of insolvency or bankruptcy; file/s any petition under the bankruptcy law; or file any petition to take advantage of the insolvency law; or is/are adjudged bankrupt or insolvent.

"d. PJI makes use of the loan herein secured or any part thereof for purpose/s other than that stated herein.

"The proxy assignment mentioned in par. (1) above ipso facto cancelled and the **ASSIGNEE** automatically exercise its right to vote the shares assigned in all stockholders meetings.

"1. The shares so assigned shall be turned over and kept in the custody of the **ASSIGNEE** with annotation on the face of each of the certificates of stock of such assignment as well as in the corporate books.

"Should the shares of stock be pledged or encumbered with a third party, the shares must carry the annotation of the assignment on the face thereof and such annotation also registered in the corporate books.

"1. The **ASSIGNORS** shall maintain at all times the assignment of not less than 67% of the total subscribed and outstanding voting shares in PJI and for this purpose, the **ASSIGNORS** undertake to assign in favor of the **ASSIGNEE** any and all additional share which may be owned or controlled by them or cause other stockholders of the company to make the assignment of their shares to comply with the requirement of the **ASSIGNEE**.

"2. This assignment is irrevocable, subject to the happening of the conditions mentioned in par. (2) above, and shall subsist for as long as the guarantee obligation of PJI is outstanding or for as long as the **ASSIGNEE** may deem necessary."^[2]

In another instrument dated January 16, 1979, denominated as "Supplement to the Deed of Assignment", the parties made the following covenants and stipulations, to wit:

"**WHEREAS**, under Resolution No. 2753 dated September 13, 1979, of its Board of Governors, the **ASSIGNEE** has approved in favor of the Philippine Journalists, Inc., hereinafter referred to as PJI, an additional financing accommodation in the form of a foreign currency loan of US \$124,140.00 to be drawn from any of DBP's own direct foreign currency

borrowings, proceeds of which shall be utilized to finance the acquisition of one unit high speed saddle stitch binder (specifically the Muller Martini Saddle stitcher 235) subject among others to the condition that the same shall be secured by among other securities, an assignment of not less than 67% of the total subscribed and outstanding voting shares of PJI, the said assignment to be maintained at all times during the existence of the above financing accommodation;

"WHEREAS, the above **ASSIGNORS** have assigned to the **ASSIGNEE** a total of 670 voting shares evidenced by the deed of assignment dated June 17, 1977;

"AND WHEREAS, as of September 15, 1978 the total subscribed and paid-up common shares of PJI amounts to 5,000 shares (P5,000.00 at P100.00 per share) and to comply with the assignment of 67% of the total up to date subscribed and outstanding voting shares of PJI, the following additional shares owned by and controlled by the herein **ASSIGNORS**, as follows:

"Name of Stockholder	Certificate Nos.	No. of Shares
Roberto Garcia Rosario Barretto Olivares Tuynita Salud Soriano	33	400
Rosario Sosing Jose Luna Castro Araceli Linsangan Luisa Linsagan Reynaldo Naval	34	400
Manuel Salak Augusto Villanueva	35	400
	36	220
	37	212
	38	212
	39	212
	40	212
	41	212
	42	200
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		2,680 shares

are hereby assigned to the **ASSIGNEE**, as security not only for the additional foreign currency financing accommodations granted the **ASSIGNEE** in favor of PJI, bringing the total number of assigned shares to 3,350 (including the original 670 shares covered by the Deed of Assignment of Voting Shares dated June 17, 1977) which is at least 67 % of the present up to date subscription on common shares to the capital

stock of PJI.

"NOW, THEREFORE, for and in consideration of the foregoing premises, and by way of supplement to the deed of assignment of voting shares executed by the **ASSIGNOR** in favor of the **ASSIGNEE** on June 17, 1977, the **ASSIGNEES** hereby cede transfer and assign their rights and interests on the 2,680 shares (P268,000.00) of stock referred to in the last WHEREAS clause above.

"This assignment shall secure not only the foreign currency loan of US \$124,140.00 referred to above but also all previous and future accommodations granted/to be granted in favor of PJI by the **ASSIGNEE**.

"The assignment is subject to the same terms and conditions of the deed of assignment of June 17, 1977, and said terms and conditions are hereby reiterated, confirmed and continued to be in full force and effect, making said terms and conditions integral parts hereof by reference.

"The **ASSIGNORS** further bind themselves to assign such additional shares as may later be registered in their names, so as to complete and maintain at all times the assignment in favor of the **ASSIGNEE** at not less than 67% of the total subscribed and paid-up shares of the company."^[3]

On February 27, 1987, the DBP pursuant to the provisions of Proclamation No. 50, transferred its rights in PJI to the Asset Privatization Trust (APT). In the exercise of its assigned rights, APT opted to enforce the provisions of the above-mentioned deed of assignment and its supplement.

On January 31, 1992, respondent Rosario B. Olivares filed with the Sandiganbayan an "urgent ex-parte motion to order the appearance of DBP or APT representatives to vote the 67% shares in the stockholders meeting of PJI set for February 4, 1992 at 2:00 in the afternoon."^[4]

On February 3, 1992, the Sandiganbayan issued a resolution which reads as follows:

"WHEREFORE, finding the instant motion to be justified, meritorious and in order We grant the relief prayed for therein, Accordingly, the 1992 Annual Stockholders' meeting of PJI is ordered to be held on February 4, 1992 at 2:00 o'clock P.M. at the training room of the PJI building at Railroad Street, Port Area, Manila, and the present PJI management, its officers, employees, security guards, agents and representatives are hereby enjoined from interfering, obstructing or preventing such meeting to be held or the stockholders from entering said building or premises and conducting said meeting in said building or any appropriate room thereat. Furthermore, the Development Bank of the Philippines/Asset Privatization Trust are hereby enjoined to send their representatives to said meeting and vote the 67 % voting rights assigned to them and, in case of their refusal or failure to comply therewith, they shall be considered to have waived their right to vote said shares in favor of the assignors thereof. Finally, in the event that the representatives of PJI, DBP and APT fail to attend the meeting, defendant Rosario Olivares is