



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

JULIETTE GOMEZ ROMUALDEZ, G.R. No. 230391
Petitioner,

- versus -

THE COURT OF APPEALS (16th
Division), FIRST PHILIPPINE
HOLDINGS CORPORATION AND
PRESIDENTIAL COMMISSION
ON GOOD GOVERNMENT,
Respondents.

X-----
X

JULIETTE GOMEZ ROMUALDEZ,
Petitioner,

G.R. No. 250746

Present:

- versus -

HERNANDO, *Acting Chairperson*
LAZARO-JAVIER,*
ZALAMEDA,
MARQUEZ, and
KHO, JR.**, *JJ.*

FIRST PHILIPPINE HOLDINGS
CORPORATION AND
PRESIDENTIAL COMMISSION
ON GOOD GOVERNMENT,
Respondents.

Promulgated:

JUL 05 2023 *with initials*

X-----X

DECISION

ZALAMEDA, *J.:*

* Gesmundo, *C.J.*, with prior participation; Lazaro-Javier, *J.* designated additional Member per Raffle dated 03 February 2020.

** Rosario, *J.*, no part; Kho, *J.*, designated additional Member per Raffle dated 28 December 2022.

In **G.R. No. 230391**, petitioner Juliette Gomez Romualdez (petitioner) filed the instant Petition for *Certiorari*¹ under Rule 65 of the Rules of Court, with prayer for the issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order, seeking to nullify the Resolution² dated 20 September 2016 and the Resolution³ dated 27 February 2017 rendered by the Court of Appeals (CA) in CA-G.R. CV No. 105836. The CA allowed the execution pending appeal of the Order⁴ dated 27 April 2015 and Omnibus Order⁵ dated 21 September 2015, issued by Branch 137, Regional Trial Court (RTC) of Makati City, in Spec. Pro. Case No. M-7588, which granted the Petition⁶ for perpetuation of testimony of petitioner filed by respondent First Philippine Holdings Corporation (FPHC).

On the other hand, in **G.R. No. 250746**, the same petitioner filed the instant Petition for Review on *Certiorari*⁷ under Rule 45 of the Rules of Court, this time, praying for the reversal and setting aside of the Decision⁸ dated 04 September 2019 and Resolution⁹ dated 04 December 2019, issued by the CA in CA-G.R. CV No. 105836. The CA affirmed *in toto* the twin Orders of the RTC in Spec. Pro. Case No. M-7588, granting FPHC's petition for the perpetuation of petitioner's testimony.

Antecedents

G.R. No. 230391

FPHC was the former owner of 6,299,177 shares in the Philippine Commercial and Industrial Bank (PCIB shares).¹⁰ Subsequently, FPHC sold the PCIB shares to Trans Middle East (Phils.) Equities, Inc. (TMEE) and one of the latter's incorporators, Edilberto S. Narciso, Jr. (Narciso).¹¹

In 1986, the Republic of the Philippines, through the respondent Presidential Commission on Good Government (PCGG), sequestered the

¹ *Rollo* (G.R. No. 230391), pp. 3-31.

² *Id.* at pp. 33-47; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Edwin D. Sorongon.

³ *Id.* at 50-53; penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ricardo R. Rosario (now a Member of this Court) and Edwin D. Sorongon.

⁴ *Id.* at 262-266; penned by Presiding Judge Ethel V. Mercado-Gutay.

⁵ *Id.* at 241-245; penned by Presiding Judge Ethel V. Mercado-Gutay.

⁶ *Rollo* (G.R. 250746), pp. 57-73, Annex "D."

⁷ *Id.* at 3-23.

⁸ *Id.* at 27-40, Annex "A." penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Jane Aurora C. Lantion and Ruben Reynaldo G. Roxas.

⁹ *Id.* at 41-46, Annex "B."

¹⁰ Now Banco de Oro Unibank, Inc.

¹¹ *Rollo* (G.R. No. 250746,) p. 62.

said PCIB shares as these were deemed as ill-gotten wealth of its beneficial owner, Benjamin "Koko" Romualdez (Benjamin), petitioner's husband. A year after, the PCGG included the PCIB shares in the list of properties covered by its complaint for Reconveyance, Reversion, Accounting, Restitution, and Damages filed against petitioner and Benjamin before the Sandiganbayan. The complaint, docketed as Civil Case No. 0035, underwent several revisions, with its third amended complaint having been filed on 22 January 1988 (Civil Case No. 0035).¹²

Subsequently, FPHC filed a motion for leave to intervene and to admit complaint-in-intervention, praying for the sale of the PCIB shares to TMEE be annulled, and thereafter, returned to FPHC.¹³ Allegedly, FPHC's *dummy* board, formed through the machinations of Benjamin, illegally sold the PCIB shares to TMEE and Narciso without real consideration, the latter also being *dummies* of Koko Romualdez.¹⁴

The Sandiganbayan dismissed the complaint on the ground of prescription. The dismissal became final after the Court affirmed the same in its Decision dated 04 December 2009, in the case entitled *First Philippine Holdings Corp. v. Trans Middle East (Phils.) Equities, Inc.*, and docketed as G.R. No. 179505.¹⁵

Undeterred, FPHC filed a second complaint-in-intervention dated 08 September 2012. This time, it tweaked its complaint by alleging that in case the PCIB shares are found to be ill-gotten wealth, PCGG has the legal and moral obligation to return them to FPHC as their rightful owner.¹⁶ However, the Sandiganbayan dismissed the second complaint on the ground that the cause of action was similar to that in the first complaint-in-intervention.¹⁷

Consequently, FPHC filed a petition for review on *certiorari* with the Court, later docketed as G.R. No. 205186.¹⁸ Also, during the pendency of said petition, FPHC filed before the RTC the petition to perpetuate the testimony of petitioner, Benjamin's widow. In said petition, FPHC alleged, *inter alia*:

24. Meanwhile, despite the lapse of almost three (3) decades, the Sandiganbayan still has not yet conducted pre-trial proceedings in said case pending before it.

¹² Id. at 6.

¹³ Id.

¹⁴ Id. at 62-63.

¹⁵ Id. at 6.

¹⁶ *Rollo*, G.R. No. 230391, p. 69.

¹⁷ Id. at 6.

¹⁸ Id. at 13.

25. It is in this light, and further considering the current age and physical condition of the proposed deponent, it is most humbly prayed of the Honorable Court that it allow petitioner FPH to take the deposition and perpetuate the testimony of Mrs. Juliette Gomez Romualdez as an adverse witness.

25.1. Mrs. Juliette Gomez Romualdez will be a material witness for petitioner FPH. Without her testimony, petitioner FPH cannot safely and intelligently proceed to trial against her and the other potential adverse parties;

25.2 Mrs. Juliette Gomez Romualdez is the wife of the late Benjamin Romualdez and has personal knowledge of the circumstances of the acquisition of ill-gotten wealth by her and her husband, including the subject Sequestered BDO shares, then in the form of PCIB shares from FPH to TMEE and Mr. Narciso.

25.1.2. Moreover, after the passing of her husband, Benjamin Romualdez, Mrs. Juliette Gomez Romualdez inherited a substantial portion of the subject Sequestered BDO shares which she apparently has recently sold or transferred to third parties in defiance of the standing *Sandiganbayan Resolution dated 08 October 2007* placing the subject Sequestered BDO shares in *custodia legis*. As a result, the recovery of the subject Sequestered BDO shares by the State will prove to be exceedingly difficult, if not almost impossible.

25.1.2. At present, Mrs. Juliette Gomez Romualdez is advanced in age, being 82 years old already, and the uncertainties of time may later make her unavailable and/or may prejudicially affect her ability to testify before the Sandiganbayan when the case filed by the PCGG in which FPH seeks to intervene, goes to trial and where, to reiterate, she is a material witness for petitioner FPH. Thus, the perpetuation of her testimony is necessary to preserve the same.¹⁹

Petitioner opposed the petition while PCGG filed its manifestation, stating that it was not objecting to the taking of the deposition of petitioner.²⁰

Ruling of the RTC

On 27 April 2015, the RTC issued its Order, granting FPHC's petition, holding that the perpetuation of the testimony of petitioner may prevent a failure or delay of justice since she was already of advanced age. The RTC

¹⁹ Id. at 65-66.

²⁰ Id. at 8.



also noted the lack of objection on the part of the State.²¹

The RTC further ruled that the perpetuation of petitioner's testimony would not cause substantial prejudice or disadvantage to her because the subject matter of the expected action, and the facts sought to be elicited from petitioner, had already been disclosed to her during the hearing of the petition. Moreover, the prayers in the petition were focused only on preserving petitioner's testimony as to her age and physical condition. Finally, the order to take her deposition was not without limitation; neither was it a blanket authority for FPHC to ask any question.²²

Aggrieved, petitioner filed a Motion for Reconsideration [Re: Order dated April 27, 2015],²³ but the RTC denied the same.

Hence, petitioner filed an appeal with the CA.

While said appeal was pending, FPHC filed before the appellate court an Urgent Motion for Execution Pending Appeal [Re: *Order* dated 27 April 2015 and Omnibus Order dated 21 September 2015].²⁴ In response, petitioner filed her Comment/Opposition [Re: *Urgent Motion for Execution Pending Appeal* dated November 24, 2015].²⁵

Ruling of the CA

Acting on these incidents, the CA issued a Resolution dated 20 September 2016, requiring, *inter alia*, for the RTC to issue a writ of execution pending appeal. The dispositive portion of the said Resolution reads:

IN LIGHT OF THE FOREGOING DISQUISITION, this Court resolves to GRANT, as it hereby GRANTS the Motion for Execution Pending Appeal of FPHC for being tenable and meritorious.

Accordingly, let a WRIT OF EXECUTION PENDING APPEAL of the Order dated 27 April 2015 of the Regional Trial Court, Branch 137, Makati City be forthwith issued upon FPHC's filing of a bond in favor of Juliette in the amount of One Hundred Thousand (P100,000.00) Pesos, which shall answer for damages that Juliette may suffer by reason of the writ if it is later on adjudged that FPHC was not entitled thereto.

²¹ Id. at 185.

²² Id. at 186.

²³ Id. at 189-199, Annex "K."

²⁴ *Rollo*, G.R. No. 230391, pp. 247-261, Annex "P."

²⁵ Id. at 272-286, Annex "Q."

Inasmuch as FPHC had already filed a Request to Answer Written Interrogatories dated 22 October 2015, Juliette is hereby DIRECTED to file her Answer to Interrogatories within twenty (20) days from receipt of the writ of execution pending appeal.

Meantime, the Court further resolves to:

- (a) GRANT the Omnibus Motion [(1) For Leave to File and Admit Attached Reply [To: Comment/Opposition (Re: Urgent Motion for Execution Pending Appeal dated 24 November 2015) dated 08 January 2016] dated 08 January 2016; and (2) To Resolve Urgent Motion for Execution Pending Appeal dated 24 November 2015] filed by FPHC;
- (b) ADMIT, as it has already considered, the Reply [To: Comment/Opposition (Re: Urgent Motion for Execution Pending Appeal dated 24 November 2015) dated 08 January 2016] filed by FPHC; and
- (c) NOTE the Change of Mailing Address of Cruz Marcelo & Tenefrancia, the counsel for FPHC

SO ORDERED.²⁶

Consequently, petitioner filed a Motion for Reconsideration [Re: Resolution dated September 20, 2016],²⁷ followed by an Urgent Motion to Stay the Issuance and Implementation of the Writ of Execution Pending Appeal.²⁸

Meanwhile, the RTC set a clarificatory conference/status conference. During said hearing, FPHC manifested that it had already complied with the CA's resolution by paying the required execution bond. It also served petitioner a copy of its Request to Answer Written Interrogatories.²⁹

Accordingly, the RTC, as directed, issued a Writ of Execution Pending Appeal (*Section 11, Rule 51, 1997 Rules of Civil Procedure*)³⁰ in favor of FPHC. Thereafter, the *Ex-Officio* Sheriff repeatedly served petitioner notices,³¹ requesting her to comply with the writ immediately upon receipt, prompting petitioner to file an Urgent Motion to Suspend the Issuance and Implementation of the Writ of Execution Pending Appeal³² and an Urgent

²⁶ Id. at 45-46.

²⁷ Id. at 313-327, Annex "S."

²⁸ Id. at 360-368, Annex "V."

²⁹ Id. at 1248-1362, Annex "17."

³⁰ Id. at 58-60.

³¹ Id. at 61.

³² Id. at 360-365, Annex "W."

Motion to Resolve the Motion for Reconsideration.³³

Additionally, petitioner filed a Motion for Issuance of Protective Order,³⁴ alleging that she was entitled to a protective order to prevent the taking of her written interrogatories. Allegedly, she was medically diagnosed with dementia of the Alzheimer's type in 2010 and her doctor was of the view that "she is unable to comprehend legal issues/or procedures" and should avoid any type of mental stress that could lead to her emotional breakdown or will affect her health.³⁵

On 27 February 2017, the CA issued a Resolution³⁶ resolving the other pending incidents, including the denial of petitioner's Motion for Reconsideration [Re: Resolution dated September 20, 2016] and Urgent Motion to Stay the Issuance and Implementation of the Writ of Execution Pending Appeal.

Hence, the instant petition in G.R. No. 230391.

G.R. No. 250746

While G.R. No. 230391 is pending before the Court, the CA rendered the now assailed Decision³⁷ dated 04 September 2019 denying petitioner's appeal from the RTC's twin Orders dated 27 April 2015 and 21 September 2015. The dispositive portion of said Decision reads:

WHEREFORE, premises considered, the instant appeal is **DENIED**.

Accordingly, the appealed *Order dated 27 April 2015* and *Omnibus Order dated 21 September 2015* of the Regional Trial Court, Branch 137, Makati City, in Special Proceeding Case No. M-7588, are hereby **AFFIRMED in toto**.

SO ORDERED.³⁸

³³ Id. at 396-399, Annex "Z."

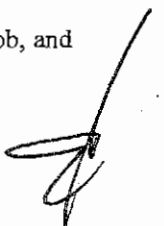
³⁴ Id. at 404-408, Annex "AA."

³⁵ Id. at 405.

³⁶ Id. at 49-53, Annex "B."

³⁷ Id. at 26-40, Annex "A." penned by Associate Justice Marie Christine Azcarraga-Jacob, and concurred in by Associate Justices Jane Aurora C. Lantion, and Ruben Reynaldo G. Roxas.

³⁸ Id. at 39-40.



As the CA denied petitioner's Motion for Reconsideration [Re: Decision dated September 4, 2019],³⁹ she filed the present petition, now docketed as G.R. No. 250746, essentially claiming that Section 7, Rule 24 of the Rules of Court applies in the intended taking of her deposition.⁴⁰

Petitioner now argues that FPHC erroneously filed its petition to perpetuate her testimony before the RTC. According to her, the RTC lacked jurisdiction over the petition, considering that the real purpose of the perpetuation of her testimony was to use the same in the ongoing Civil Case No. 0035 for Reconveyance, Reversion, Accounting, Restitution, and Damages. With the pendency of said civil case and its petition for review of the dismissal of its complaint-in-intervention, FPHC should have filed before the Sandiganbayan a motion to perpetuate said testimony of petitioner under Section 7, Rule 24.⁴¹ Hence, the CA acted without jurisdiction in affirming the RTC's grant of FPHC's petition.

Moreover, petitioner asserts that the CA also violated the long-standing doctrine that no court has the power to interfere with the judgments and decrees of a court of concurrent or coordinate jurisdiction since it was the Sandiganbayan court which first acquired jurisdiction over Civil Case No. 0035.⁴²

Upon petitioner's motion,⁴³ the Court ordered the consolidation of the two petitions.

Issues

For the Court's resolution are the following: 1) whether the CA committed grave abuse of discretion in allowing execution pending appeal of the RTC's Orders, granting the petition to perpetuate the testimony of petitioner; 2) whether the RTC lacks jurisdiction to take cognizance and dispose of FPHC's petition; and 3) whether FPHC's petition to perpetuate testimony of petitioner has basis.

³⁹ Id. at 47-56, Annex "C."

⁴⁰ Id. at 12.

⁴¹ Id. at 13.

⁴² Id. at 17-18.

⁴³ Id. at 24-25; see Motion for Consolidation dated 23 December 2019.

Ruling of the Court

The Court finds both petitions meritorious.
The CA committed grave abuse of discretion in ordering the execution pending appeal

Jurisprudence instructs that where a petition for *certiorari* under Rule 65 of the Rules of Court alleges grave abuse of discretion, the petitioner should establish that the respondent court or tribunal acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.⁴⁴ The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.⁴⁵

Relatedly, grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It refers also to cases in which, for various reasons, there has been a gross misapprehension of facts. Thus, while it is true that the sole office of the writ of *certiorari* is the correction of errors of jurisdiction and does not include a correction of public respondent's evaluation of the evidence and factual findings thereon, it is sometimes necessary to delve into factual issues to resolve allegations of grave abuse of discretion.⁴⁶

Here, the Court is asked to determine the propriety of the CA's Decision to allow execution pending appeal of the twin Orders of the RTC.

To do so, the Court has to be guided by the long-standing doctrine that an execution pending appeal is an extraordinary remedy. It is usually not favored because it affects the rights of the parties which are yet to be ascertained on appeal.⁴⁷ Accordingly, executions pending appeal require the observance of the following requisites: (a) there must be a motion therefor by the prevailing party; (b) there must be a good reason for issuing the writ of execution; and (c) the good reason must be stated in a special order.⁴⁸

Parenthetically, being an exception rather than the rule, it is strictly required that **the reasons allowing execution pending appeal must**

⁴⁴ See *People v. Sandiganbayan*, G.R. No. 228281, 14 June 2021; citation omitted.

⁴⁵ *United Coconut Planters Bank v. Looyuko*, 560 Phil. 581 (2007).

⁴⁶ *Id.*

⁴⁷ See *Maceda, Jr. v. Development Bank of the Philippines*, 372 Phil. 107 (1999).

⁴⁸ See *National Power Corporation v. Heirs of Rabie*, 793 Phil. 479 (2016).



constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment.⁴⁹ *Villamor v. National Power Corporation*⁵⁰ is *apropos*:

The prevailing doctrine as provided for in Section 2, paragraph 3 of Rule 39 of the Rules of Civil Procedure is that discretionary execution is permissible only when good reasons exist for immediately executing the judgment before finality or pending appeal or even before the expiration of the period to appeal. Good reasons consist of compelling circumstances justifying immediate execution lest judgment becomes illusory, or the prevailing party after the lapse of time be unable to enjoy it, considering the tactics of the adverse party who may have apparently no cause but to delay. Such reasons must constitute superior circumstances demanding urgency which will outweigh the injury or damages should the losing party secure a reversal of the judgment. Were it otherwise, execution pending appeal may well become a tool of oppression and inequity instead of an instrument of solicitude and justice.

Clearly, therefore, while the exercise of the power to grant or deny immediate or advance execution of the RTC's twin Orders was addressed to the sound discretion of the appellate court, the existence of good reasons was indispensable to the latter's grant of FPHC's motion for execution pending appeal. Absent any such good reason, the assailed Resolutions must be struck down for having been issued by the CA with grave abuse of discretion.⁵¹

In this case, the CA agreed with FPHC that petitioner's old age and frail physical condition were good reasons for the allowance of execution pending appeal:

There exists a great probability that the assailed RTC Order of 27 April 2015 would be rendered nugatory by the lapse of time until the final resolution of the present appeal due to the advanced age of [petitioner] and her failing health. Under the circumstance, a failure of justice would ineluctably result if her testimony is not taken immediately as any possible delay in the final resolution of the present appeal may deny FPHC of its chance to fully enjoy the favorable decision of the RTC in the event it is affirmed on appeal.

⁴⁹ See *Maceda, Jr. v. Development Bank of the Philippines*, *supra*; emphasis supplied.

⁵⁰ 484 Phil. 298 (2004).

⁵¹ See *Villamor v. National Power Corporation*, *supra*.



Parenthetically, it is a fact of judicial notice that an appeal may take long years to decide. In fact, it is not unlikely that an appealed case, such as the present case, may even reach the Supreme Court before the controversy is finally resolved with finality. And upon its finality, the herein appealed Order, by then, would become meaningless and ineffectual as far as FPHC is concerned if in the *interim* [petitioner] passes away.⁵²

However, the Court finds that the CA haphazardly allowed the execution pending appeal on a myopic reading of the facts that are heavily, albeit unduly, skewed in favor of FPHC.

The CA merely looked into the physical and medical condition of petitioner without even considering that FPHC's complaints-in-intervention were already denied by the Sandiganbayan twice on the ground of prescription of action. What is more, this Court had already affirmed with finality the first Sandiganbayan ruling against FPHC's right of action to assail the validity of TMEE's acquisition of said PCIB shares. These facts alone should have been enough for the CA to take a pause and further assess the merits of FPHC's motion.

Indeed, had the CA been more circumspect in scrutinizing all the available facts before it, it could have, and should have, also duly weighed the possibility that a failure of justice would also ineluctably result if petitioner's testimony were to be unceremoniously taken despite the cloud of uncertainty on the existence of FPHC's cause of action to assail the validity of the acquisition of the PCIB shares and to recover ownership of the same.

As it turns out, the precipitate ruling of the CA, if it had been implemented, could have unduly prejudiced petitioner's right, in view of FPHC's rather adamant, albeit clearly baseless, intent to perpetuate her testimony, as will be discussed hereunder.

It bears to mention on this score that the PCIB shares were registered in the name of TMEE, not Benjamin, and certainly not his widow. The only reason for the existence of the petition was FPHC's insistence that said shares were ill-gotten wealth of Benjamin. However, at the time FPHC filed its motion in 2015, its petition no longer had factual and legal mooring because the third amended complaint – which finally impleaded TMEE in Civil Case No. 0035 – was subsequently dismissed by the Sandiganbayan in its Decision dated 25 January 2010 because of PCGG's failure to sufficiently allege that TMEE, as well as its shares of stock, were part of the ill-gotten wealth of Romualdez. The Court affirmed said dismissal with finality in

⁵² *Rollo*, G.R. No. 230391, p. 44.

G.R. No. 192653.⁵³ Effectively, the PCIB shares were no longer part of Civil Case No. 0035. As the Court declared in the recent case of *Trans Middle East (Phils) Equities, Inc. v. The Sandiganbayan*:⁵⁴

With the final dismissal of Civil Case No. 0035 against TMEE, the Sandiganbayan can no longer hold TMEE's property. Since TMEE ceased to be a party in the said civil case, the shares of stock registered under the name of TMEE cannot be retained in *custodia legis*. Otherwise stated, by the dismissal of the case against TMEE, there is *ipso facto* no more writ of sequestration to speak of.

Since the PCIB shares were no longer in the conversation insofar as Civil Case No. 0035 was concerned, petitioner cannot participate in Civil Case No. 0035 anymore. Evidently, there was no good reason to hasten the perpetuation of petitioner's testimony. Instead, sound discretion dictated the CA to speed up its resolution of petitioner's appeal to finally settle the issue as to the propriety of the RTC's order, allowing the perpetuation of petitioner's testimony.

All things considered, the Court rules that the CA gravely abused its discretion in issuing the assailed Resolutions.

Notwithstanding the issue of jurisdiction, FPHC's petition to perpetuate testimony of petitioner lacks basis

In the now assailed Decision, the appellate court ruled that based on Section 1, Rule 24 of the Rules of Court, the RTC has jurisdiction over FPHC's petition because it was filed in the place of residence of petitioner in Makati City.⁵⁵ On the other hand, petitioner remains insistent that pursuant to Section 7, Rule 24 of the Rules of Court, the Sandiganbayan, not the RTC, has jurisdiction over FPHC's petition because of its pending appeal of the Sandiganbayan's decision to deny FPHC's complaint-in-intervention.

After a scrutiny of the facts on hand, the Court holds that even assuming the RTC has jurisdiction over the petition, the CA nevertheless

⁵³ See *Trans Middle East (Phils) Equities, Inc. v. The Sandiganbayan*, G.R. No. 180350, G.R. No. 205186, G.R. No. 222919, G.R. No. 223237, 06 July 2022; It was noted therein that G.R. Nos. 192651 and 192653 were promulgated on 15 September 2010 and 15 December 2010 but were unpublished.

⁵⁴ G.R. No. 180350, G.R. No. 205186, G.R. No. 222919, G.R. No. 223237, 06 July 2022.

⁵⁵ *Rollo*, G.R. No. 250746, p. 38.

erred in affirming the RTC's ruling to allow the perpetuation of petitioner's testimony, as the petition was utterly devoid of merit.

The subject matter of the FPHC's petition are the PCIB shares supposedly obtained through fraudulent means from FPHC by TMEE, the latter being a dummy corporation created through the instance of Benjamin. With the death of Benjamin, FPHC now anchors its relentless pursuit to invalidate the sale of the PCIB shares on the testimony of herein petitioner, the wife/widow/heir of Benjamin. Allegedly, petitioner has personal knowledge of the circumstances of the acquisition of said PCIB shares by Benjamin through his dummy, TMEE.

To stress, the PCIB shares is registered in the name of TMEE. There is no showing, though, that petitioner is part of TMEE. Notably, too, FPHC's petition failed to allege the ultimate facts on how petitioner knew the manner by which TMEE acquired said shares from FPHC's alleged dummy board. FPHC did not even allege petitioner's actual participation in the negotiation and purchase of said PCIB shares by TMEE.

What is clear, therefore, is that petitioner's only connection to the PCIB shares is her relationship with her late husband, Benjamin, the alleged beneficial owner of said shares. However, FPHC failed to allege sufficient cause for the perpetuation of petitioner's testimony. Since FPHC insists that the PCIB shares were the ill-gotten wealth of Benjamin, dragging petitioner into the controversy, without any proof of her actual knowledge of the alleged fraudulent acquisition of the PCIB shares, will mean that she will have to be examined about communications received by her in confidence from Benjamin regarding said PCIB shares. This is proscribed under the marital privilege rule under Section 24, Rule 130 of the Rules of Court, *thus*:

Section 24. Disqualification by reason of privileged communication. - The following persons cannot testify as to matters learned in confidence in the following cases:

(a) The husband or the wife, during or after the marriage, cannot be examined without the consent of the other as to any communication received in confidence by one from the other during the marriage except in a civil case by one against the other, or in a criminal case for a crime committed by one against the other or the latter's direct descendants or ascendants;

Moreover, FPHC not only failed to sufficiently allege petitioner's personal knowledge and participation in the acquisition of PCIB shares, but likewise, the facts show that Benjamin had no association whatsoever with said shares. As found by the Court in *Trans Middle East (Phils) Equities*,

Inc. v. The Sandiganbayan,⁵⁶ PCGG's own allegation established that the money used for acquisition of said shares was not provided by Benjamin but "came from PCIB and Philippine Commercial Capital, Inc., (PCCI) after SOLOIL, Inc., acting in behalf of TMEE, obtained a loan from PCIB and PCCI." The Court further pointed out that the List of Assets and Other Property of Benjamin marked as Annex "A" in PCGG's third amended complaint would indicate that TMEE is not part of the properties owned and controlled by Benjamin.

There being no link between TMEE and Romualdez, FPHC's posture that the PCIB shares are ill-gotten wealth of Romualdez is, therefore, without factual basis. Parenthetically, since Romualdez is cleared of any connection with TMEE, petitioner, his widow, should not be unfairly used as a bait for FPHC's unwarranted fishing expedition against TMEE and other individuals.

Indeed, FPHC's petition is a classic form of fishing expedition. While it vehemently claims that the validity of the acquisition of PCIB is tainted, it nevertheless effectively admits that its allegation of fraud is weak. As it says, it is only through petitioner's testimony that it can "safely and intelligently proceed to trial" against petitioner and the other adverse witnesses.⁵⁷ It is crystal clear, however, that it has nothing to prove its cause of action.

More importantly, the petition before the RTC was a desperate attempt on FPHC's part to find a friendly court that would entertain its narrative as regards the validity of the sale of the PCIB shares, and give it another lifeline to unfairly continue its lost cause. It's worth mentioning again, however, that even before the filing of the petition before the RTC, the PCIB shares were no longer part of Civil Case No. 0035 with the dismissal of the complaint against TMEE. Additionally, FPHC's petition assailing the dismissal of its second complaint-in-intervention in Civil Case No. 0035 was already dismissed by the Court in G.R. No. 205186. In said case, the Court emphatically held that that the manner by which FPHC will establish that it is the rightful owner of the shares is by rehashing its cause of action based on fraud. However, FPHC's cause of action to assail the validity of the sale of the PCIB shares has long prescribed.

WHEREFORE, the instant petitions are **GRANTED**. The Resolutions dated 20 September 2016 and 27 February 2017 rendered by the Court of Appeals in CA-G.R. CV No. 105836 are hereby **ANNULLED** and **SET ASIDE**. On the other hand, the Court of Appeals' Decision dated 04

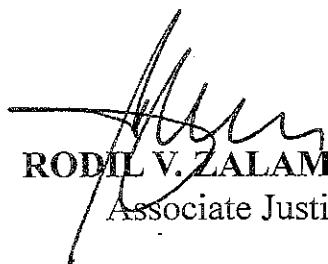
⁵⁶ G.R. No. 180350, G.R. No. 205186, G.R. No. 222919, G.R. No. 223237, 06 July 2022.

⁵⁷ *Rollo*, G.R. No. 230391, p. 70.

September 2019 and Resolution dated 04 December 2019 rendered in the same case are **REVERSED and SET ASIDE**.


Accordingly, the Order dated 27 April 2015 and Omnibus Order dated 21 September 2015, issued by Branch 137, Regional Trial Court of Makati City, in Spec. Pro. Case No. M-7588, are **VACATED and SET ASIDE**. The Petition for perpetuation of testimony of petitioner Juliette Gomez Romualdez is **DENIED**.


SO ORDERED.

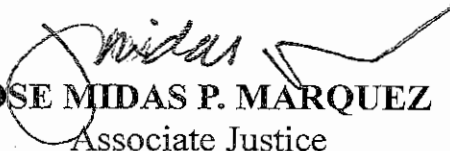


RODIL V. ZALAMEDA
Associate Justice

WE CONCUR:


RAMON PAUL L. HERNANDO
Associate Justice
Acting Chairperson



AMY C. LAZARO-JAVIER
Associate Justice


JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


RAMON PAUL L. HERNANDO
Acting Chairperson

CERTIFICATION

Pursuant to the Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Acting Chief Justice

CERTIFIED TRUE COPY



MARIA TERESA B. SIBULO
Deputy Division Clerk of Court
FIRST DIVISION