



Republic of the Philippines
 Supreme Court
 Manila

THIRD DIVISION

REPUBLIC OF THE PHILIPPINES represented by the ANTI-MONEY LAUNDERING COUNCIL

G.R. No. 239047

Present:

Petitioner, LEONEN, J., *Chairperson,*
 HERNANDO,*
 INTING,
 DELOS SANTOS, and
 LOPEZ, J., *JJ.*

- versus -

JUAN T. NG and METROPOLITAN BANK AND TRUST COMPANY,

Promulgated:

June 16, 2021

Respondents.

Mis-DCBatt

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DECISION

INTING, J.:

Before the Court is a Petition for Review on *Certiorari* (With Extremely Urgent Application for Temporary Restraining Order)¹ filed by the Republic of the Philippines (Republic), represented by the Anti-Money Laundering Council (AMLC), assailing the Decision² dated April 27, 2018 of the Court of Appeals (CA) in CA-G.R. SP No. 152891. The CA denied the Petition for *Certiorari* (With Application for Temporary Restraining Order and Writ of Preliminary Injunction)³ filed by the Republic, dissolved the Writ of Preliminary Injunction it issued on December 20, 2017, and affirmed the Orders dated September 19, 2016⁴ and May 29, 2017⁵ of Branch 53, Regional Trial Court (RTC), Manila in AMLC Case No. 15-003-53 for Civil Forfeiture.

* On official leave.

¹ *Rollo*, Vol. 1, pp. 3-45.

² *Id.* at 52-67; penned by Presiding Justice Romeo F. Barza with Associate Justices Myra V. Garcia-Fernandez and Pablito A. Perez, concurring.

³ *Rollo*, Vol. 2, pp. 853-889.

⁴ *Id.* at 751-758; penned by Executive Judge Reynaldo A. Alhambra.

⁵ *Id.* at 851-852.

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The Antecedents

The facts, gleaned from the Decision of the CA and the Orders of the RTC, are as follows:

Benhur K. Luy (Luy) is an employee of JLN Group of Companies (JLN Corporation) owned and managed by Janet Lim Napoles (Napoles) *alias* “Jenny Lim” and her family. On March 23, 2013, Luy executed a *Sinumpaang Salaysay*⁶ on JLN Corporation's illegal business practices. Luy averred that upon learning of the illegal business, he planned to separate himself from JLN Corporation and establish his own business. Luy subsequently executed a Supplemental Sworn Statement⁷ dated March 27, 2013 alleging that he was entrusted to establish non-governmental organizations (NGOs) which served as conduits to illegally funneled government funds. The funds were then remitted to Napoles' personal bank accounts which Luy also created.⁸

On April 2, 2013, Merlina Pablo Suñas (Suñas), a project coordinator and employee of JLN Corporation, executed a *Sinumpaang Salaysay*⁹ concerning her personal knowledge of Napoles' unlawful activities. In particular, Suñas alleged that they submitted fictitious liquidation papers to the concerned government agencies in the implementation of the Malampaya fund worth ₱900,000,000.00.¹⁰

On August 5, 2013, Luy, Suñas, and other employees of JLN Corporation, namely, Gertrudes K. Luy (Gertrudes) and Annabelle Luy-Reario (Annabelle) executed a Joint Sworn Statement¹¹ providing minute details of Napoles' operations. The Joint Sworn Statement disclosed the following information:

The True Purpose and Operation of the Foundations

8. JLN [Napoles] initially informed the JLN Corporation Employees (including Benhur K. Luy and Merlina P. Suñas) that these foundations were created to help the farmers improve their lives.

⁶ *Rollo*, Vol. 1, pp. 68-69.

⁷ *Id.* at 71-76.

⁸ *Id.* at 53.

⁹ *Id.* at 77-80.

¹⁰ *Id.* at 53.

¹¹ *Id.* at 82-91.

However, when these foundations began operation about three years after their registration, the real reason became clear. JLN informed us that Government funds will be allocated to these Foundations to finance the implementation of several programs. These funds came from the CDF/PDAF of legislators as well as special funds from government agencies like the DOTC, DA, NABCOR, NLDC, TRC, etcetera.

9. The financial transactions of JLN and JLN-owned-or-controlled corporations on one hand, and the foundations on the other hand, were recorded by me, Benhur K. Luy, being part and parcel of the tasks assigned to me by JLN. Based on my (Benhur K. Luy) records, the financial transactions of the above are as follows:

9.1. Upon receipt by the foundations of these government funds, the same will be immediately withdrawn through over-the-counter transactions by either the President of the foundation, or any authorized representative to be determined by JLN, accompanied by some security personnel of JLN.

X X X

9.2. At times, once monies are withdrawn from foundation accounts, the same will be directly remitted to JLN either in the JLN Corporation office in Discovery Center Suites in Ortigas Center, Pasig City or in her condominium unit at Unit 18B, Pacific Plaza Tower in Taguig City.

9.3. I, Gertrudes K. Luy, personally saw that at times, the cash delivered to the above condominium unit was stashed in the vault, or in the bathtub of JLN's bathroom.

X X X X

9.4. To liquidate these funds, JLN will instruct her employees, including us, Benhur K. Luy and Merlina P. Suñas, to prepare Acknowledgment Receipts from supposed beneficiaries, Accomplishment Reports, and Requests for the release of remaining funds, and Official Receipts.

9.5. The implementation of these programs, however, involve three types: a) under-delivery; b) mis-delivery; or c) ghost delivery, depending on the instructions of JLN and the "commission" being requested by certain government officials. Accordingly, then, the liquidation documents that JLN employees

prepare are either partially or completely false. For example, the list of beneficiaries may be a mix of bona fide beneficiaries and fictitious individuals. The acknowledgment receipts purportedly executed by the beneficiaries in a listing are either wholly or partially truthful, or completely fake; the Official Receipts issued by the NGOs are also fake. In short, the government funds intended to certain beneficiaries in fact do not reach them; while the funds received by these foundations were diverted, as narrated in the sample transactions above, to the personal account of JLN or to her owned-or-controlled corporations like Jo-Chris Trading, JLN Corporation, and JCLN Global Properties Development Corporation.

9.6. Some bank transactions instructed by JLN to be done and recorded by Benhur K. Luy involve fund transfers from these foundations to specific accounts of certain government officials.

10. In summary, and based on our personal knowledge, all government funds received by these foundations were actually diverted from their intended purposes to the personal accounts of JLN and to her owned-or-controlled corporations like JLN Corporation, Jo-Chris Trading, JCLN Global Properties Development Corporation, and TNU Trading.¹²

The issuance of the statements prompted the National Bureau of Investigation (NBI) to send a Letter¹³ dated July 17, 2013 to the AMLC requesting a financial investigation in relation to any suspected financial transactions of Luy and Napoles. The Office of the Ombudsman sent a similar Letter¹⁴ dated August 6, 2013 to the AMLC requesting its assistance to conduct an examination and secure pertinent records and documents concerning several accounts, including those of Luy and Napoles, which were found to be related to the Priority Development Assistance Fund (PDAF) scam.¹⁵

On September 11, 2013, another *Pinagsamang Sinumpaang Salaysay*¹⁶ was executed by Luy, Suñas, and other JLN employees implicating several government officials, including Senators Ramon Revilla III, Juan Ponce Enrile, and Jose “Jinggoy” Ejercito Estrada (Estrada), as part of the PDAF scheme. On September 16, 2013, the NBI

¹² *Id.* at 53-55.

¹³ *Id.* at 103-104.

¹⁴ *Id.* at 105-106.

¹⁵ *Id.* at 55.

¹⁶ *Id.* at 92-102.

filed eight complaints for Plunder under Section 2¹⁷ of Republic Act No. (RA) 7080¹⁸ and for violation of Section 3(e)¹⁹ of RA 3019²⁰ against Napoles and other government officials, including Senator Estrada. On March 28, 2014, the Office of the Ombudsman issued Joint Resolution²¹ in OMB-C-C-0313 and OMB-C-C13-0397 finding probable cause against those charged in the complaints filed by the NBI. Informations against the respondents in the complaints were filed before the Sandiganbayan.

The AMLC filed before the CA an *ex parte* application under Section 11²² of RA 9160,²³ praying for the issuance of an order to authorize it to inquire into the bank accounts of those charged in the Informations. The CA granted the application in its Resolution²⁴ dated

¹⁷ Section 2 of Republic Act No. (RA) 7080 provides:

SECTION 2. *Definition of the Crime of Plunder; Penalties.* — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(e) hereof, in the aggregate amount or total value of at least Seventy-five million pesos (P75,000,000.00), shall be guilty of the crime of plunder and shall be punished by life imprisonment with perpetual absolute disqualification from holding any public office. Any person who participated with said public officer in the commission of plunder shall likewise be punished. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State.

¹⁸ Entitled “An Act Defining and Penalizing the Crime of Plunder,” approved on July 12, 1991.

¹⁹ Section 3(e) of RA 3019 provides:

SECTION 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e)Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

²⁰ Entitled “Anti-Graft and Corrupt Practices Act,” approved on August 17, 1960.

²¹ *Rollo*, Vol. 1, pp. 252-371.

²² Section 11 of RA 9160 provides:

SECTION 11. *Authority to Inquire into Bank Deposits.* — Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments involved are in any way related to a money laundering offense: *Provided*, That this provision shall not apply to deposits and investments made prior to the effectivity of this Act.

²³ Anti-Money Laundering Act of 2001, September 29, 2001.

May 28, 2014 in CA-G.R. AMLC No. 00108. In the Resolution²⁵ dated August 15, 2014 in CA-G.R. AMLC No. 00113 (in relation to AMLC No. 00108), the CA allowed a supplemental bank inquiry on other persons who were revealed to be connected to the earlier examined accounts, including the account of Juan T. Ng (Ng), a supposed close friend of Senator Estrada.²⁶ Ng allegedly received the following amounts:

Date	Description	Amount	Source
03/30/2010	Furd Transfer	Php10,000,000.00	Debited from Metrobank Account No. 255-3-25504715-0 of Agri and Economic Program for Farmer's Foundation
04/13/2010	MetroBank Manager's Check	Php10,000,000.00	Debited MetroBank Account No. 073-3-07367717-4 of Social Development Program for Farmer's Foundation, Inc.
03/15/2012	Metrobank Check No 7302	Php9,750,000.00	Metrobank Account of Janet Napoles ²⁷

The AMLC issued an Inquiry Report²⁸ on the transactions related to Senator Estrada's involvement in the pork barrel scam. The report revealed significant transfers from several accounts of Senator Estrada to

²⁴ *Rollo*, Vol. 1, pp. 408-434; penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando (now Court of Appeals Presiding Justice) and Normandie B. Pizarro, concurring.

²⁵ *Id.* at 436-458.

²⁶ *Id.* at 56.

²⁷ *Id.* at 56-57, 439-440.

²⁸ See Inquiry Report on the Bank Transactions Related to the Alleged Involvement of Senator Jose P. "Jinggoy" Ejercito Estrada in the PDAF Scam, *id.* at 459-548.

Ng's accounts, including one to Metrobank Account No. 3067507917 (subject account).²⁹

On May 14, 2015, the Republic, represented by the AMLC, filed a Verified Petition for Civil Forfeiture (With Prayer for the Issuance of a Provisional Asset Preservation Order and an Asset Preservation Order)³⁰ (Petition for Forfeiture), docketed as AMLC Case No. 15-003-53, against Ng before the RTC. The Republic prayed for the issuance of a Provisional Asset Preservation Order (PAPO) against Ng, alleging that there is a strong and convincing evidence concerning the involvement of his subject account in the pork barrel scam. The Republic also prayed for the issuance of an Asset Preservation Order (APO) to prevent funds from being removed, transferred, concealed, or disposed.³¹

The RTC found the Republic's allegations sufficient in form and substance. In an Order³² dated May 19, 2015, the RTC issued a PAPO *ex parte* after finding that there is probable cause that the subject account may be related to unlawful activities covered by RA 7080. The RTC set the summary hearing on the issuance of the APO. On May 21, 2015, Metrobank filed a return, informing the RTC that the subject account has been frozen in compliance with the PAPO. The subject account has a frozen balance of ₱62,286.27.³³ On May 26, 2015, Metrobank filed a Manifestation that it would no longer file its Comment. Metrobank requested that it be excused from participating in the proceedings, but that it be furnished with relevant orders and pleadings to facilitate its compliance with the lawful orders of the RTC.³⁴ Ng filed his Comment/Opposition with Motion to Lift/Discharge PAPO³⁵ on the ground that he was never charged nor implicated in the pork barrel scam.

The Ruling of the RTC

In an Order³⁶ dated September 19, 2016, the RTC denied the Republic's prayer for the issuance of an APO and granted Ng's motion to lift/discharge the PAPO.³⁷ The RTC ruled that apart from the fact that

²⁹ *Id.* at 57.

³⁰ *Rollo*, Vol. 2, pp. 602-613.

³¹ *Rollo*, Vol. 1, p. 57.

³² *Rollo*, Vol. 2, pp. 615-616.

³³ *Id.* at 751.

³⁴ *Id.* at 751-752.

³⁵ *Id.* at 617-620.

³⁶ *Id.* at 751-758

³⁷ *Id.* at 758.

three JLN Corporation's checks were deposited with the subject account, it found no clear and convincing explanation from the Republic on how the checks were credited to the subject account.³⁸ It held that Ng is a well-established businessman in the business of extending loans to his friends with Chinese blood. It further held that it was not shown that when Ng received Napoles' payment for the loans the latter obtained from the former, Ng was aware that the money were proceeds of the PDAF scam.³⁹

The Republic filed a Motion for Reconsideration.⁴⁰ In a Resolution⁴¹ dated May 29, 2017, the RTC denied the motion.

The Republic filed a Petition for *Certiorari* (With Application for Temporary Restraining Order and Writ of Preliminary Injunction) before the CA.

The Ruling of the CA

In the Resolution⁴² dated October 13, 2017, the CA granted the Republic's prayer for the issuance of a Temporary Restraining Order (TRO) and enjoined the enforcement of the RTC Orders dated September 19, 2016 and May 29, 2017. The TRO was valid for 60 days. In the Resolution⁴³ dated December 20, 2017, the CA granted the Republic's prayer for the issuance of a Writ of Preliminary Injunction restraining the RTC, Metrobank, their representatives, agents, or other persons acting on their behalf from enforcing the RTC Orders dated September 19, 2016 and May 29, 2017.

In the assailed Decision now before the Court, the CA denied the Republic's petition, affirmed the Orders dated September 19, 2016 and May 29, 2017 of the RTC, and dissolved the Writ of Preliminary Injunction it issued on December 20, 2017.

³⁸ *Id.* at 757.

³⁹ *Id.*

⁴⁰ *Id.* at 759-774.

⁴¹ *Id.* at 851-852.

⁴² *Id.* at 893-894; penned by Associate Justice Romeo F. Barza with Associate Justices Myra V. Garcia-Fernandez and Pabito A. Perez, concurring.

⁴³ *Id.* at 896-899; penned by Presiding Justice Romeo F. Barza with Associate Justices Maria Elisa Sempio Diy and Jhosep Y. Lopez (now a member of the Court), concurring.

The CA ruled that a petition for *certiorari* is not a remedy for errors of judgment, but is limited to the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction.⁴⁴ It held that while the subject account has been implicated in the pork barrel scam, the records suggest otherwise; and that the basis for the probable cause for the issuance of an APO is its allowance, through a Resolution dated August 15, 2015, to conduct a bank inquiry on the subject account as one of the many recipients of an amount of ₱16,637,000.00 from Senator Estrada's Unionbank account and which originated from Napoles' illegal activities.⁴⁵ However, the CA found that the allegation cannot serve as a basis for the issuance of an APO; that the Republic failed to reasonably establish the subject account's connection to the transferred amount; that the Republic also failed to specify the exact portion of ₱16,637,000.00 received by the subject account; and that there was a discrepancy in the amounts and dates stated in the Resolution authorizing the conduct of the bank inquiry with the alleged funds received by the subject account from JLN Corporation.⁴⁶ The CA further ruled that the Republic failed to substantiate that the transfers were made during the material dates of the pork barrel scam. It rejected the Republic's contention that an APO is issued as a matter of course in a civil forfeiture proceeding, ruling that the RTC has full discretion, after a summary hearing, whether to modify or lift a PAPO or to thereafter issue an APO.⁴⁷

The Republic, unsatisfied with the CA Decision, elevated the matter before the Court.

In his Comment,⁴⁸ Ng asserted that the RTC Orders dated September 19, 2016 and May 29, 2017 attained finality when the Republic filed a petition for *certiorari* instead of an appeal. Ng alleged that the RTC is not duty bound to issue an APO in forfeiture proceedings and maintained that the Republic failed to establish probable cause to justify the issuance of an APO.

Metrobank did not file its Comment on the petition. Nevertheless, the Court notes that Metrobank previously asked the RTC that it be excused from participating in the proceedings and from filing a

⁴⁴ *Rollo*, Vol. 1, p. 61.

⁴⁵ *Id.* at 61-62.

⁴⁶ *Id.* at 62-63.

⁴⁷ *Id.* at 64-65.

⁴⁸ *Rollo*, Vol. 2, pp 1051-1057.

responsive pleading. Metrobank only requested that it be furnished with the pleadings and court orders relative to the case to allow it to comply with the lawful orders of the court. As such, the Court now dispenses with Metrobank's Comment.

The Issues

I

Whether or not there is probable cause that the funds in Ng's Metrobank Account No. 3067507917 are related to the Pork Barrel Scam.

II

Whether or not Ng discharged the burden of showing why an APO should not be issued against Metrobank Account No. 3067507917.⁴⁹

The Ruling of the Court

The petition has merit.

Remedy of the Republic

Preliminarily, the Court rules on the argument raised by Ng that the Orders dated September 19, 2016 and May 29, 2017 attained finality when the Republic filed a petition for *certiorari* instead of an appeal before the CA. The Republic received a copy of the Order dated May 29, 2017 on August 8, 2017.⁵⁰ It filed a Petition for *Certiorari* with the CA on October 6, 2017.⁵¹ Hence, Ng maintained that the Orders of the RTC had become final and executory because the Republic did not timely file an appeal.

The filing of an appeal is provided under Section 34(a) of A.M. No. 05-11-04-SC⁵² which reads :

⁴⁹ *Rollo*, Vol. 1, p. 17.

⁵⁰ *Rollo*, Vol. 2, p. 854.

⁵¹ October 6, 2017 is the date of the Petition for *Certiorari* (*id.* at 887), and the date of filing indicated by Ng in his Comment (*id.* at 1057).

⁵² Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceed Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as amended, approved on November 15, 2005.

Section 34. *Appeal.* —

(a) *Notice and period of appeal.* — An aggrieved party may appeal the judgment to the Court of Appeals by filing within fifteen days from its receipt a notice of appeal with the court which rendered the judgment and serving a copy upon the adverse party.

Section 34, however, pertains to the remedy of an aggrieved party after a judgment or final order of the court which, in this case, is the civil forfeiture of the subject account of Ng. The “judgment” referred to in Section 34 is the judgment under Section 32, which states:

Section 32. *Judgment.* — The Court shall render judgment within thirty days from submission of the case for resolution. It shall grant the petition if there is preponderance of evidence in favor of the petitioner and declare the monetary instrument, property, or proceeds forfeited to the State or, in appropriate cases, order the respondent to pay an amount equal to the value of the monetary instrument or property and adjudge such other reliefs as may be warranted.

In this case, there is no final resolution yet on the civil forfeiture which is the main case. The only issue in contention is the issuance of an APO pending the resolution of the civil forfeiture. Hence, the Republic correctly availed itself of the remedy of a petition for *certiorari* under Rule 65 because the matters concerning the issuance and lifting of the PAPO and the issuance or non-issuance of the APO are only ancillary to the main case of civil forfeiture.

The Court made a distinction between a final judgment or order and an interlocutory order, thus:

A final judgment or order, from which an appeal may be taken, is one that finally disposes of the case and leaves nothing more to be done by the court (e.g., an adjudication on the merits of the case on the basis of the evidence). In contrast, an interlocutory order is one that merely resolves incidental matters and does not finally dispose of the case. When an interlocutory order is issued, the court is still tasked with adjudicating on the merits of the case.⁵³

The Court explained that the remedy against an interlocutory order is not an appeal, but a special civil action for *certiorari* under Rule 65 to prevent multiple appeals in a single action that would

⁵³ *Crispino, et al. v. Tansay*, 801 Phil. 711, 722 (2015). Citations omitted.

unnecessarily cause delay during the trial of the case.⁵⁴ A final judgment is appealable while an interlocutory order is not.⁵⁵

Hence, the Orders dated September 19, 2016 and May 29, 2017 of the RTC have not attained finality because the Republic availed itself of the correct remedy before the CA.

Existence of Probable Cause

The determination of probable cause in a forfeiture proceeding is no different from the determination of probable cause in other proceedings: it is a factual issue that is improper in a petition under Rule 45.⁵⁶ The rule, however, is subject to exceptions, thus:

- (1) When the conclusion is grounded entirely on speculation, surmises and conjectures;
- (2) When the inference of the Court of Appeals from its findings of fact is manifestly mistaken, absurd and impossible;
- (3) Where there is grave abuse of discretion;
- (4) When the judgment is based on a misapprehension of facts;
- (5) When the appellate court, in making its findings, went beyond the issues of the case, and the same are contrary to the admissions of both the appellant and the appellee;
- (6) When the findings of said court are contrary to those of the trial court;
- (7) When the findings are without citation of specific evidence on which they are based;
- (8) When the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondents; and
- (9) When the findings of facts of the Court of Appeals are premised on the absence of evidence and are contradicted on record.⁵⁷

In the case before the Court, the Republic invokes the exceptions, alleging that the CA “*made egregiously erroneous inferences;*” “*misapprehended the facts;*” made factual findings that are “*premised on*

⁵⁴ *Id.* at 723, citing *Pahila-Garrido v. Tortogo*, 671 Phil. 320, 334-335 (2011).

⁵⁵ *Uematsu v. Balinon*, G.R. No. 234812, November 25, 2019.

⁵⁶ See *Levi Strauss (Phils.) Inc. v. Lim*, 593 Phil. 435 (2008).

⁵⁷ *Asia Brewery, Inc. v. Court of Appeals*, 296 Phil. 298, 309 (1993). Citations omitted.

supposed want of evidence and contradicted by the evidence on record,” and “*overlooked certain relevant facts, which, if properly considered, would justify a different conclusion.*”⁵⁸ The Republic avers that the RTC gravely abused its discretion in requiring the AMLC to establish, by clear and convincing proof, that the subject account is related to the pork barrel scam; and that the CA committed a reversible error in ruling that the RTC has full discretion on issuance of an APO.

The Court partly agrees with the Republic.

Indeed, the CA correctly ruled that after the issuance of the PAPO, the RTC still has the discretion whether to lift it or to issue an APO instead. However, the discretion must not be exercised arbitrarily. The RTC must conform with the procedure set forth under Sections 11 and 12 of A.M. No. 05-11-04-SC, which provide:

Section 11. *Ex Parte Issuance of Provisional Asset Preservation Order.* — Where the executive judge of the regional trial court or, in his absence, the vice-executive judge or, in their absence, any judge of the regional trial court available in the same station, has determined that probable cause exists on the basis of allegations of a verified petition sufficient in form and substance, with a prayer for the issuance of an asset preservation order, that the monetary instrument, property, or proceeds subject of the petition are in any way related to an unlawful activity as defined in Section 3(i) of Republic Act No. 9160, as amended by Republic Act No. 9194, the court may issue *ex parte* a provisional asset preservation order effective immediately forbidding any transaction, withdrawal, deposit, transfer, removal, conversion, concealment or other disposition of the subject monetary instrument, property, or proceeds. Such order shall be effective for a period of twenty days from the respective dates of service to respondent or any person acting in his behalf, and upon each covered institution or government agency in accordance with Section 14 of this Rule.

Section 12. *Summary Hearing.* — The court shall schedule a hearing at a date and time within the twenty-day period at which the respondent may for good cause show why the provisional asset preservation order should be lifted. The court shall determine within the same period whether the provisional asset preservation order should be modified or lifted or an asset preservation order should issue and act accordingly.

It is clear from Section 12 of A.M. No. 05-11-04-SC that after the

⁵⁸ *Rollo*, Vol. 1, pp. 3-4.

issuance of the PAPO, the burden is shifted to respondent who “*may for good cause show why the provisional asset preservation order should be lifted.*” It is imperative upon the respondent to prove that the monetary instrument, property, or proceeds subject of the petition are not related to an unlawful activity as defined in Section 3(i)⁵⁹ of RA 9160, as amended by RA 9194.

In this case, Ng asserted that Napoles was an acquaintance he met during one of the parties sponsored by Mr. George Ty, Chairman of Metrobank; that while he has a friendly acquaintance with Napoles, they had no business transactions; that there were instances when Napoles would borrow money from him; that because of their Chinese heritage, tradition, and culture, he would acquiesce to Napoles’ requests by way of accommodation, in the same manner that he would accommodate other friends and businessmen of Chinese descent; that Napoles would sometimes pay in cash, or sometimes deposit the payment to the subject account; that the last time he received payment from Napoles was on September 30, 2010 and October 1, 2010 for the loan of ₱24,000,000.00, with ₱500,000.00 as interest because there was a delay in the payment.⁶⁰ Ng added that the accommodation he gave to Napoles was the same accommodation he gave to fellow Chinese businessmen struggling with their businesses and that they were given without security or collateral because he trusted them.⁶¹

The RTC accepted Ng’s explanation, without presentation of any document to support the supposed loan. The RTC then ruled that the Republic failed to give a clear and convincing explanation that the subject account is related to the unlawful activities of Napoles.

The Court finds that the ruling of the RTC, sustained by the CA, does not conform with the evidence on record. The Court notes the CA’s observation that the enumeration of the transactions in the Petition for Forfeiture differs from the transactions enumerated in the bank inquiry. On one hand, the Petition for Forfeiture states that the subject account

⁵⁹ Section 3(i) of RA 9160, as amended, provides:

Section 3. *Definitions.* — For purposes of this Act, the following terms are hereby defined as follows:

x x x x

(i) “*Unlawful Activity*” refers to any act or omission or series or combination thereof involving or having relation to the following:

x x x x

⁶⁰ *Rollo*, Vol. 2, p. 756.

⁶¹ *Id.*

received the following amounts:

Date	Amount received (in PHP)	Mode	Source
September 30, 2010	10,000,000.00	Deposit of Metrobank Check No. 0733638724	JLN Corporation's Metrobank Account No. 007073509285
September 30, 2010	10,000,000.00	Deposit of Metrobank Check No. 0733638725	JLN Corporation's Metrobank Account No. 007073509285
October 1, 2010	4,500,000.00	Deposit of Metrobank Check No. 0733638727	JLN Corporation's Metrobank Account No. 007073509285 ⁶²

On the other hand, the bank inquiry, as contained in the August 15, 2014 Resolution in CA-G.R. AMLC No. 00113, states:

Date	Description	Amount	Source
03/30/2010	Fund Transfer	Php10,000,000.00	Debited from Metrobank Account No. 255-3-25504715-0 of Agri and Economic Program for Farmer's Foundation
04/13/2010	MetroBank Manager's Check	Php10,000,000.00	Debited MetroBank Account No. 073-3-67717-4 of Social Development

⁶² Rollo, Vol. 1, pp. 39-40.

			Program for Farmer's Foundation, Inc.
03/15/2012	MetroBank Check No. 7302	Php9,750,000.00	MetroBank Account of Janet Napoles ⁶³

However, despite the discrepancy, Ng admitted to receiving the amount of ₱24,500,000.00 deposited to the subject account from Napoles, which he claimed was payment for the loans he extended. Coupled with the admission, the Court underscores that Ng failed to present any loan agreement to substantiate his claim. To the Court, Ng's mere allegation that Napoles was just an acquaintance with whom he had no business transactions, but to whom he extended loans on several occasions by way of accommodation because of their Chinese heritage, tradition, and culture⁶⁴ does not satisfy the good cause required under Section 12 of A.M. No. 05-11-04-SC in order for the PAPO to be lifted.

The CA also ruled that the AMLC failed to prove that the dates of the deposits fall within the time frame of the PDAF scam. A reading of the *Pinagsamang Sinumpaang Salaysay* shows that Luy recorded transactions from 2004 to 2011 and from 2011 to 2012.⁶⁵ It is thus too early, at the stage of determining whether the APC should issue, to make a conclusion that the AMLC was not able to prove that the transactions were made within the period of the PDAF scam.

In addition, the deposits made by Napoles and the NGOs are not the only basis presented by the AMLC. The subject account also received money from Senator Estrada's bank account that is also under investigation. In the Resolution⁶⁶ dated August 15, 2014 in CA-G.R. AMLC No. 00113, the CA granted the Verified Supplemental *Ex-Parte* Application for bank inquiry filed by AMLC. The bank inquiry included the subject account as one of the recipients of the amount of ₱16,637,000.00 from Senator Estrada's Union Bank account. The Resolution dated August 15, 2014 showed that the amount of ₱16,637,000.00 was transferred to seven Metrobank accounts, all in the name of Ng. One of the seven accounts is the subject account. The CA

⁶³ *Id.* at 56-57.

⁶⁴ *Rollo*, Vol. 2, p. 756.

⁶⁵ *Id.* at 98.

⁶⁶ *Rollo*, Vol. 1, pp. 436-458.

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ruled that the AMLC failed to specify what part of the ₱16,637,000.00 was transferred to the subject account. The Court does not find it necessary, for the purpose of determining whether to issue an APO, to identify the specific amount transferred to each account considering that the money has one source and the account holder of all the accounts is the same.

To be clear, the issuance of a PAPO or an APO is only to secure the funds contained in the subject account which, at the time of the issuance of the PAPO, had a frozen balance of ₱962,286.27. The amount is minuscule considering the money involved in the PDAF scam. The civil foreclosure will still proceed where the parties will be given opportunities to present more evidence to prove their respective claims. The Court also takes into account the AMLC's argument that the subject account is not the only account of Ng that received transfers from Napoles and JLN Corporation, but the subject account is the only remaining open account since the others were already closed. Hence, prudence and the evidence presented would justify the issuance of an APO pending the outcome of the civil foreclosure case. Considering the foregoing, the Court disagrees with the CA that the RTC did not gravely abuse its discretion in issuing its Orders dated September 19, 2016 and May 29, 2017.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 27, 2018 of the Court of the Appeals in CA-G.R. SP No. 152891 is **MODIFIED** in that the application for the issuance of the Asset Preservation Order before Branch 53, Regional Trial Court, Manila is **GRANTED**.

The Regional Trial Court is directed to **ISSUE** an Asset Preservation Order against respondent Juan T. Ng with respect to Metrobank Account No. 3067507917, the subject account in AMLC Case No. 15-003-53.

SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

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WE CONCUR:



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

(On official leave)
RAMON PAUL L. HERNANDO
Associate Justice




EDGARDO L. DELOS SANTOS
Associate Justice



JHOSEP Y. LOPEZ
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.



MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



ALEXANDER G. GESMUNDO
Chief Justice

