



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated March 2, 2020, which reads as follows:

“G.R No. 214408 (TOURIST DUTY FREE SHOPS, INC., petitioner v. PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, RIZAL COMMERCIAL BANKING CORPORATION, and BANK OF AMERICA, respondents); G.R No. 214521 (PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, petitioner v. TOURIST DUTY FREE SHOPS, INC., RIZAL COMMERCIAL BANKING CORPORATION, and BANK OF AMERICA, respondents). — To be valid, sequestration and freeze orders from the Presidential Commission on Good Government need the signatures of at least two (2) commissioners. However, if such orders were released prior to the issuance of the Presidential Commission on Good Government’s Rules and Regulations, a signature from just one (1) commissioner is enough for their validity to remain, owing to the Rules’ prospective application.

This Court resolves the Petitions for Review filed by the Presidential Commission on Good Government¹ and Tourist Duty Free Shops, Inc.² (Tourist Duty Free Shops), both assailing the Sandiganbayan’s Decision and Resolution upholding the validity of the Presidential Commission on Good Government’s March 11, 1986 Sequestration Order.

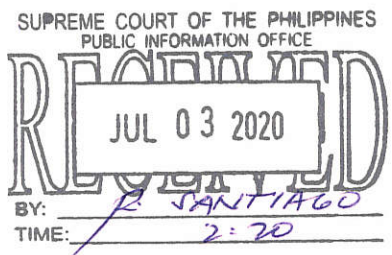
On September 6, 1977, then President Ferdinand Marcos (President Marcos) issued Presidential Decree No. 1193, which authorized Tourist Duty Free Shops “to establish, operate and maintain duty and tax free stores at all international airports and seaports, as well as at selected hotels, tourists resorts, and commercial or trading centers throughout the country[.]”³

On February 28, 1986, newly elected President Corazon C. Aquino, through Executive Order No. 1, created the Presidential Commission on

¹ Rollo (G.R. No. 214521), pp. 12–31.

² Rollo (G.R. No. 214408), pp. 11–49.

³ Presidential Decree No. 1193 (1977), sec. 1.



Good Government, which was empowered to sequester ill-gotten wealth and assets after proper investigation.⁴

On March 11, 1986,⁵ Commissioner Mary Concepcion Bautista of the Presidential Commission on Good Government issued a Sequestration Order against Tourist Duty Free Shops' assets and directed it to preserve the company records and to refrain from the following:

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.⁶

That same day, the Presidential Commission on Good Government issued Rizal Commercial Banking Corporation a Freeze Order, directing it to disallow any transactions from Tourist Duty Free Shops' account with the bank.⁷

On April 11, 1986, the Presidential Commission on Good Government promulgated its Rules and Regulations.⁸

On May 2, 1986, Tourist Duty Free Shops filed before this Court a Petition for Certiorari with prayer for injunction over the enforcement of the Sequestration Order. Its Petition was docketed as G.R. No. 74302.⁹

On May 27, 1986, this Court resolved to deny the prayer for a temporary restraining order:¹⁰

Accordingly, the Court Resolved as follows:

- (1) The sequestration order of all the assets of petitioner stands and, therefore, no temporary restraining order will issue against the same;
- (2) The respondent Commission's order authorizing the Philippine Tourism Authority to conduct an audit and inventory of

⁴ Executive Order No. 1 (1986), sec. 3(a).

⁵ *Rollo* (G.R. No. 214408), p. 129.

⁶ *Id.*

⁷ *Presidential Commission on Good Government v. Sandiganbayan*, 673 Phil. 107, 113 (2011) [Per J. Peralta, Third Division].

⁸ Rules and Regulations Implementing Executive Orders No. 1 and No. 2 (1986), available at <<http://pcgg.gov.ph/rules-and-regulations/>> (accessed on December 16, 2019).

⁹ *Presidential Commission on Good Government v. Sandiganbayan*, 673 Phil. 107, 113 (2011) [Per J. Peralta, Third Division].

¹⁰ *Id.*

petitioner's goods likewise stands and no temporary restraining order will issue against the same, provided that petitioner Company will be entitled to a sufficient number of representatives as it may designate to be present to protect its interest in the taking of such audit and inventory;

- (3) After the completion of such audit and inventory by the Philippine Tourism Authority within the period of five (5) days from notice hereof, petitioner TDFSI shall be permitted to undertake the following activities under the supervision of respondent Commission's authorized representatives: (a) to dispose and sell all its existing stocks in the ordinary course of business at such reasonable number of outlets as may be determined by respondent Commission. All proceeds of such sales shall at the end of the day be turned over to the respondent Commission's duly-authorized representatives. The respondent Commission in turn shall hold the same in trust and deposit such proceeds in special trust account so designated; and (b) to pay by means of checks issued by and countersigned by the respondent Commission's fiscal agent, or comptroller or duly-authorized representatives so designated, ordinary operational expenses such as payrolls, rentals, utilities, etc.

It is understood that no new contracts or transactions may be entered into by petitioner, nor shall any payment for accounts of, suppliers be made, except with the approval of the Commission.

Finally, the Court directs the Clerk of Court to deliver the three (3) keys deposited with the Court to respondent Commission's duly-authorized representative[.]¹¹ (Citation omitted)

While this case was pending, on July 21, 1987, the Presidential Commission on Good Government filed before the Sandiganbayan a Complaint for Reconveyance, Reversion, Accounting, Restitution, and Damages against President Marcos, his wife Imelda, and Bienvenido R. Tantoco and his family. This was docketed as Civil Case No. 0008.¹²

Later, on October 8, 1991, this Court dismissed Tourist Duty Free Shops' Petition in G.R. No. 74302, without prejudice to the filing of a case before the Sandiganbayan. The Resolution became final and executory on October 16, 1991.¹³

On December 18, 1991, Tourist Duty Free Shops filed before the Sandiganbayan a Complaint for Injunction and Specific Performance with prayer for injunctive reliefs, including prohibitory and mandatory injunction.¹⁴ The Complaint, docketed as Civil Case No. 0142, also assailed the Sequestration Order.

¹¹ Id. at 113–114.

¹² Id. at 114.

¹³ Id.

¹⁴ *Rollo* (G.R. No. 214408), pp. 113–119.

On June 15, 1992, the Sandiganbayan dismissed the Complaint, ruling that the issues it posed were “intimately related with those raised in Civil Case No. 0008 such that the resolution of the issues raised in the former might render inutile or nugatory any future determination and resolution of the merits of the causes of action in the latter case.”¹⁵ Tourist Duty Free Shops moved for reconsideration, but its motion was denied.¹⁶

Hence, Tourist Duty Free Shops filed a Petition before this Court, docketed as G.R. No. 107395, assailing the Sandiganbayan’s rulings.¹⁷

On January 26, 2000, in *Tourist Duty Free Shops, Inc. v. Sandiganbayan*,¹⁸ this Court reversed and set aside the Sandiganbayan’s dismissal of Civil Case No. 0142. Contrary to the Sandiganbayan’s finding, this Court ruled that the elements of *litis pendentia* with Civil Case No. 0008 were absent.¹⁹

Accordingly, on July 26, 2001, the Sandiganbayan granted Tourist Duty Free Shops’ application for the writ of preliminary mandatory and prohibitory injunction in Civil Case No. 0142, upon the posting of a ₱100,000.00 bond.²⁰

On August 3, 2001, the Sandiganbayan enjoined the Presidential Commission on Good Government from implementing the Sequestration Order. This allowed Tourist Duty Free Shops to access its accounts with the Bank of America and Rizal Commercial Banking Corporation without prior approval from the Presidential Commission on Good Government.²¹

Thus, the Presidential Commission on Good Government filed an Urgent Motion to Recall Writ of Preliminary Mandatory Injunction, a Motion for Reconsideration, and a Supplemental Motion for Reconsideration.²²

On January 23, 2002, the Sandiganbayan denied the Motion for Reconsideration. It ruled that the Sequestration Order was void as it was not issued by the Presidential Commission on Good Government as a body, as required by Executive Order No. 1.²³

¹⁵ *Presidential Commission on Good Government v. Sandiganbayan*, 673 Phil. 107, 115 (2011) [Per J. Peralta, Third Division].

¹⁶ *Id.*

¹⁷ *Id.* at 116.

¹⁸ 380 Phil. 328 (2000) [Per J. Buena, En Banc].

¹⁹ *Id.* at 339–341.

²⁰ *Presidential Commission on Good Government v. Sandiganbayan*, 673 Phil. 107, 116 (2011) [Per J. Peralta, Third Division].

²¹ *Id.* at 117.

²² *Id.* at 117–118.

²³ *Id.* at 118.

Thus, before this Court, the Presidential Commission on Good Government filed a Petition for Certiorari and Prohibition with prayer for injunction, docketed as G.R. No. 152500.²⁴

On September 14, 2011, this Court in *Presidential Commission on Good Government v. Sandiganbayan*²⁵ ruled in favor of the Presidential Commission on Good Government and set aside the Sandiganbayan's injunctive orders. Nonetheless, it pointed out that its Decision was limited to the propriety of the injunction orders and purposely did not touch upon the validity of the Sequestration and Freeze Orders, which continued to enjoy presumptions of validity pending the final outcome of Civil Case No. 0142.²⁶ The dispositive portion of the Decision read:

WHEREFORE, premises considered, the petition is hereby *GRANTED*. The Resolution[s] dated July 26, 2001, October 5, 2001, January 23, 2002 and the Writ of Preliminary Mandatory Injunction and Preliminary Injunction dated August 3, 2001 are hereby *SET ASIDE*. Consequently, the Sequestration Order dated March 11, 1986 directed against Tourist Duty Free Shops, Inc. and the Freeze Order issued subsequent thereto, *STAND* subject to the final outcome of Civil Case No. 0142.

The Sandiganbayan is *DIRECTED* to resolve Civil Case No. 0142 with dispatch.

SO ORDERED.²⁷ (Emphasis in the original)

On November 19, 2013,²⁸ the Sandiganbayan dismissed Tourist Duty Free Shops' Complaint in Civil Case No. 0142.

It held that the Sequestration Order was validly issued as this Court in G.R. No. 74302 found a *prima facie* case after weighing the Presidential Commission on Good Government's evidence that Tourist Duty Free Shops belonged solely to the Marcos Spouses or in partnership with the Tantocos.²⁹

The Sandiganbayan further averred that the Presidential Commission on Good Government did not violate the 1987 Constitution since its Complaint against the Marcos Spouses and the Tantocos, the alleged owners of Tourist Duty Free Shops, was filed within six (6) months of the Sequestration Order's issuance.³⁰

²⁴ Id.

²⁵ 673 Phil. 107 (2011) [Per J. Peralta, Third Division].

²⁶ Id. at 125–128.

²⁷ Id. at 128–129.

²⁸ *Rollo* (G.R. No. 214408), pp. 50–86. The Decision was penned by Associate Justice Oscar C. Herrera, Jr. and was concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Second Division of the Sandiganbayan.

²⁹ Id. at 69–70.

³⁰ Id. at 71–76.

The Sandiganbayan also declared that despite the Sequestration Order having but a single signatory, it remained valid because it was issued on March 11, 1986, prior to the Presidential Commission on Good Government's Rules and Regulations, which now require at least two (2) commissioners to sign off on a sequestration or freeze order. The Sandiganbayan highlighted that the Rules do not apply retroactively.³¹

Nonetheless, the Sandiganbayan denied the Presidential Commission on Good Government's counterclaims against Tourist Duty Free Shops. It did not find that Tourist Duty Free Shops was prompted by malice in filing its Complaint.³²

The dispositive portion of the Sandiganbayan Decision read:

WHEREFORE, premises considered, judgment is hereby rendered dismissing the *Complaint* dated December 18, 1991 of the Tourist Duty Free Shops, Inc. (TDFSI).

The counterclaims of the Presidential Commission on Good Government and Rizal Commercial Banking Corporation against TDFSI are likewise dismissed.

SO ORDERED.³³ (Emphasis in the original)

The Presidential Commission on Good Government and Tourist Duty Free Shops separately moved for reconsideration.³⁴ On September 15, 2014, in separate Resolutions,³⁵ the Sandiganbayan denied both Motions.

In denying the Presidential Commission on Good Government's Motion for Partial Reconsideration, the Sandiganbayan reiterated that the mere filing of an action does not make the plaintiff liable for damages, as the law does not penalize the right to litigate.³⁶

As for Tourist Duty Free Shops' Motion for Reconsideration, the Sandiganbayan underscored that it did not need to make a categorical ruling on whether the company's assets were ill-gotten, as the case before it was an action to prevent the Sequestration Order's implementation. It maintained that the issue of whether Tourist Duty Free Shops' assets were ill-gotten was being heard in Civil Case No. 0008.³⁷

³¹ Id. at 70–71.

³² Id. at 85.

³³ Id.

³⁴ Id. at 87–108 and 289–299.

³⁵ *Rollo* (G.R. No. 214521), pp. 69–72 and 73–76. Both Resolutions were penned by Associate Justice Oscar C. Herrera, Jr. and concurred in by Associate Justices Teresita V. Diaz-Baldos and Napoleon E. Inoturan of the Second Division of the Sandiganbayan.

³⁶ Id. at 70–71.

³⁷ Id. at 75.

Thus, before this Court, the Presidential Commission on Good Government and Tourist Duty Free Shops filed their respective Petitions for Review³⁸ of the Sandiganbayan's November 19, 2013 Decision and September 15, 2014 Resolutions.

On November 10, 2014, the petitions were consolidated.³⁹

In its Petition,⁴⁰ Tourist Duty Free Shops insists that the Sandiganbayan did not fully put an end to the controversy presented for its resolution.⁴¹ It asserts that Civil Case No. 0142, not Civil Case No. 0008, was the proper judicial proceeding to determine whether its assets were ill-gotten.⁴²

Tourist Duty Free Shops also maintains that the Presidential Commission on Good Government failed to file an action for recovery after issuing the Sequestration Order, thereby violating Article VIII, Section 26 of the Constitution.⁴³

In its Comment,⁴⁴ the Presidential Commission on Good Government points out that Civil Case No. 0142 was an injunctive action to prevent the implementation of the Sequestration Order. Moreover, it asserts that this Court in *Tourist Duty Free Shops, Inc.* had already found a *prima facie* case for its issuance, which has become the law of the case.⁴⁵

The Presidential Commission on Good Government likewise denies that it violated the Constitution, maintaining that it filed Civil Case No. 0008 within six (6) months from issuing the Sequestration Order.⁴⁶ It asserts that "Civil Case No. 0142 cannot be the appropriate judicial proceeding" for the Sequestration Order, it being instituted by Tourist Duty Free Shops, "whose assets [were] shown by *prima facie* evidence to be ill-gotten."⁴⁷

In its Comment,⁴⁸ the Bank of America claims to be a disinterested party and that as Tourist Duty Free Shops' depository bank, it always acted in good faith when it followed the Sequestration and Freeze Orders.⁴⁹

³⁸ *Rollo* (G.R. No. 214521), pp. 12–31, Presidential Commission on Good Government's Petition; and *rollo* (G.R. No. 214408), pp. 11–48, Tourist Duty Free Shops' Petition.

³⁹ *Rollo* (G.R. No. 214521), pp. 9–10.

⁴⁰ *Rollo* (G.R. No. 214408), pp. 11–48.

⁴¹ *Id.* at 24–28.

⁴² *Id.* at 29–31.

⁴³ *Id.* at 42–45.

⁴⁴ *Rollo* (G.R. No. 214521), pp. 145–169.

⁴⁵ *Id.* at 154–156.

⁴⁶ *Id.* at 158–160.

⁴⁷ *Id.* at 159.

⁴⁸ *Id.* at 100–110.

⁴⁹ *Id.* at 105.

Rizal Commercial Banking Corporation, for its part, manifests⁵⁰ that it had already allowed Tourist Duty Free Shops to withdraw all of its funds, following the Sandiganbayan's Writ of Mandatory Preliminary Injunction and Preliminary Injunction. This, it notes, renders moot Tourist Duty Free Shops' prayer that it be directed to comply with its contractual obligations.⁵¹

In its own Petition,⁵² the Presidential Commission on Good Government insists that Tourist Duty Free Shops acted with malice by filing a groundless and baseless suit in Civil Case No. 0142. It reasons that the validity of the Sequestration Order could have been questioned in Civil Case No. 0008, thus, when Tourist Duty Free Shops did so in a separate suit, it committed forum shopping and displayed bad faith.⁵³ To the Presidential Commission on Good Government, this and other similar acts were evidence of a "diabolical scheme" meant to subvert the ends of justice.⁵⁴

Finally, the Presidential Commission on Good Government contends that in the interest of public policy, Tourist Duty Free Shops should be ordered to return the funds they had withdrawn from the Bank of America and Rizal Commercial Banking Corporation.⁵⁵

In its Consolidated Reply-Comments,⁵⁶ Tourist Duty Free Shops points out that the issue in Civil Case No. 0142 was not whether the Sequestration Order was validly issued, but rather, whether its assets were illegally acquired.⁵⁷

Tourist Duty Free Shops also belies the Presidential Commission on Good Government's claim that it complied with the Constitution by filing Civil Case No. 0008. According to it, this Court in two (2) separate cases had already declared that Civil Case No. 0142 was an independent action where the legality of the Tourist Duty Free Shops' assets would be settled.⁵⁸

In its Reply,⁵⁹ the Presidential Commission on Good Government reiterates that Civil Case No. 0142 involved an injunctive action to prevent the Sequestration Order's execution, while the issue on whether Tourist Duty Free Shops' assets were ill-gotten was raised in Civil Case No. 0008, the Complaint for Reconveyance.⁶⁰

⁵⁰ Id. at 233–236.

⁵¹ Id. at 233–234.

⁵² Id. at 12–31.

⁵³ Id. at 22.

⁵⁴ Id. at 24.

⁵⁵ Id. at 26–27.

⁵⁶ Id. at 182–192.

⁵⁷ Id. at 184.

⁵⁸ Id. at 184–185.

⁵⁹ Id. at 202–212.

⁶⁰ Id. at 207–208.

This Court⁶¹ then directed the parties to file their respective memoranda, with which the parties complied, except for Rizal Commercial Banking Corporation.⁶²

On September 25, 2019, the Sandiganbayan⁶³ dismissed Civil Case No. 0008.

The two (2) issues for this Court's resolution are:

First, whether or not the Sandiganbayan erred in denying Tourist Duty Free Shops' Complaint for injunction and in upholding the validity of the Sequestration and Freeze Orders; and

Second, whether or not the Sandiganbayan erred in denying the Presidential Commission on Good Government's counterclaim for damages.

I

Tourist Duty Free Shops claims that the Sandiganbayan not only erred in denying its Complaint, but also rendered an incomplete judgment as it did not rule on the threshold issue of whether its assets were ill-gotten.⁶⁴

Tourist Duty Free Shops is mistaken on both counts.

The Sandiganbayan cannot be faulted for not ruling on whether Tourist Duty Free Shops' assets were ill-gotten. The Complaint⁶⁵ in Civil Case No. 0142, a petition for injunction and specific performance, had asked the Sandiganbayan to restrain the Presidential Commission on Good Government from implementing the Sequestration Order and to direct the Bank of America and Rizal Commercial Banking Corporation to allow Tourist Duty Free Shops to withdraw its funds. This was reinforced in its prayer, which read:

WHEREFORE, it is most respectfully prayed that:

(A) Upon the filing hereof, a *restraining order be issued*

⁶¹ Id. at 217–218.

⁶² Id. at 220–232, 238–283, and 284–308.

⁶³ *Republic v. Tantoco*, Civil Case No. 0008, September 25, 2019, <http://sb.judiciary.gov.ph/DECISIONS/2019/I_Civil_0008_Republic%20vs%20Tantoco,%20et%20a1_09_25_2019.pdf>. The Decision was penned by Associate Justice Michael Frederick L. Musngi and concurred in by Associate Justices Oscar C. Herrera, Jr. and Lorifel L. Pahimna of the Second Division of the Sandiganbayan.

⁶⁴ *Rollo* (G.R. No. 214521), pp. 294–299.

⁶⁵ *Rollo* (G.R. No. 214408), pp. 113–119.

enjoining the defendant PCGG from performing any act in implementation of the writ of sequestration, Annex "D" hereof, and the defendant-banks from requiring approval of their co-defendant before allowing withdrawal of the funds of the plaintiff;

(B) After hearing, that a writ of preliminary injunction be issued making the restraining order permanent until further orders from this Honorable Court;

(C) After trial on the merits, judgment be rendered:

1. Declaring the writ of sequestration, Annex "D" hereof, as absolutely invalid;
2. Enjoining the defendant PCGG from performing any act in implementation of the writ of sequestration, Annex "D" hereof; *Ordering the defendant-banks to comply with their contractual obligations to the plaintiff and to allow the latter to withdraw its own funds without need of any approval by the defendant PCGG;* and
3. Ordering the defendants jointly and severally to pay the costs of the suit.

PLAINTIFF further prays for such other relief which this Honorable Court may deem just and equitable under the premises.⁶⁶ (Emphasis supplied)

On the other hand, Article XVIII, Section 26 of the Constitution provides that a sequestration order may be issued upon a showing of a *prima facie* case:

SECTION 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.

A *prima facie* case refers to the degree of evidence that suffices to establish a party's claim and counterbalance the accused's presumption of

⁶⁶ Id. at 118-119.

innocence, which would warrant a conviction unless contrary evidence is presented.⁶⁷

Here, the Sandiganbayan found that a *prima facie* case attended the issuance of the Sequestration Order, as echoed in this Court's Resolution in G.R. No. 74302:

The Supreme Court, in the Resolution dated May 27, 1986 in G.R. No. 74302, found the existence of a *prima facie* case for the issuance of the Sequestration Order dated March 11, 1986. It ruled:

“The Court is satisfied that respondent Commission acted with *prima facie* basis in issuing the sequestration order of petitioner's assets. It has submitted figures tending to show that the petitioner Company “belonged to the Marcoses, either alone or in partnership with the family of Gliceria Tantoco.” The TDFS was incorporated by relatively unknown persons with a paid up capital of ₱250,000.00. Thereafter, in 1975, it got a special permit from the then President to operate duty-free shops and then obtained its exclusive franchise to continue its operation for 25 years under Presidential Decree No. 1193 enjoying several privileges: store spaces at international airports, and in hotels and commercial centers, duty and tax free importations. All it had to pay the government for these was a franchise tax of 7% of its net sales.

Of the 7%, only 2% went to the government and the remaining 5% went to three private foundations, namely, Nutrition Center of the Philippines (2.8%); The Manila Seedling Bank Foundation, Inc. (1.2%); and the Mt. Samat Reforestation (1%). By 1983, the capitalization of petitioner had reached of (*sic*) sum of P80M with the Tantoco sisters, daughters of Gliceria Tantoco, appearing to hold 98.5% of its shares of stocks as follows:

Ma. Lourdes Tantoco Pineda -	₱40,800,000.00
Ma. Carmen Tantoco Lopez -	38,000,000.00
Dominador R. Santiago -	400,000.00
Jose B. Teodoro, Jr. -	400,000.00
Redentor Yambao -	400,000.00
Total	₱80,000,000.00

Respondent Commission submitted various other documents showing that their mother, Gliceria Tantoco, appeared to be running the affairs of petitioner Company although she did not appear as stockholder or officer of record. She wrote various letters addressed to then Central Bank Governor Jaime Laya furthering the interest of the

⁶⁷ *Bellosillo v. The Board of Governors*, 520 Phil. 676, 684–685 (2006) [Per J. Garcia, Second Division].

Company. It further appears she had written several letters or reports to the then President's wife reporting on the profits of the company far exceeding their projections.

Under the foregoing circumstances, the Court finds no basis for the issuance of a restraining order against the enforcement of the Commission's sequestration order as well as its order to conduct an audit and inventory of petitioner's goods in all its warehouses and stores.⁶⁸ (Citations omitted)

It is also well established that the Presidential Commission on Good Government's Rules and Regulations, which require at least two (2) commissioners' signatures for sequestration and freeze orders to be valid, applies prospectively. Thus, such orders with only one (1) signature, but were issued prior to the Rules' issuance, remain valid. This Court in *Republic v. Sandiganbayan*⁶⁹ explained:

The questioned sequestration order was, however, issued on March 19, 1986, *prior* to the promulgation of the PCGG Rules and Regulations. As a consequence, we cannot reasonably expect the Commission to abide by said rules which were nonexistent at the time the subject writ was issued by then Commissioner Mary Concepcion Bautista. Basic is the rule that no statute, decree, ordinance, rule or regulation (and even policies) shall be given retrospective effect unless explicitly stated so. We find no provision in said Rules which expressly gives them retroactive effect, or implies the abrogation of previous writs issued not in accordance with the same Rules. Rather, what said Rules provide is that they "shall be effective immediately," which, in legal parlance, is understood as "upon promulgation." Only penal laws are given retroactive effect insofar as they favor the accused.⁷⁰ (Emphasis in the original, citations omitted)

This was repeated in *Presidential Commission on Good Government v. Sandiganbayan*,⁷¹ where this Court expounded:

It has been settled in a number of cases that Sequestration and Freeze Orders signed by only one Commissioner and issued prior to the adoption of the PCGG Rules and Regulations cannot be invalidated. The PCGG Rules and Regulations were promulgated on April 11, 1986. Section 3 thereof requires that the sequestration order be issued upon the authority of at least two Commissioners. The questioned Sequestration Order was, however, issued on March 11, 1986 prior to the promulgation of the PCGG Rules and Regulations. Consequently, we cannot reasonably expect the PCGG to abide by said rules which were nonexistent at the time the subject orders were issued by then Commissioner Mary Concepcion Bautista.⁷² (Citations omitted)

⁶⁸ *Rollo* (G.R. No. 214521), pp. 51-52.

⁶⁹ 336 Phil. 304 (1997) [Per J. Panganiban, Third Division].

⁷⁰ *Id.* at 318-319.

⁷¹ 673 Phil. 102 (2011) [Per J. Peralta, Third Division].

⁷² *Id.* at 127.

II

There is likewise no basis to grant Presidential Commission on Good Government's claims for damages because of Tourist Duty Free Shops' purportedly groundless, baseless, and malicious suit.

For a claim for award of damages based on malicious prosecution to prosper, there must have been malice and a lack of probable cause.⁷³ This Court, in *Diaz v. Davao Light and Power Co., Inc.*,⁷⁴ discussed the elements of malicious prosecution:

[M]alicious prosecution has been defined as an action for damages brought by or against whom a criminal prosecution, civil suit or other legal proceeding has been instituted maliciously and without probable cause, after the termination of such prosecution, suit, or other proceeding in favor of the defendant therein. It is an established rule that in order for malicious prosecution to prosper, the following requisites must be proven by petitioner: (1) the fact of prosecution and the further fact that the defendant (respondent) was himself the prosecutor, and that the action finally terminated with an acquittal; (2) that in bringing the action, the prosecutor acted without probable cause; and (3) that the prosecutor was actuated or impelled by legal malice, that is, by improper or sinister motive. The foregoing are necessary to preserve a person's right to litigate which may be emasculated by the undue filing of malicious prosecution cases. From the foregoing requirements, it can be inferred that malice and want of probable cause must both be clearly established to justify an award of damages based on malicious prosecution.⁷⁵ (Citations omitted)

The Presidential Commission on Good Government imputes malice to Tourist Duty Free Shops' act of filing a separate case, Civil Case No. 0142, despite being able to contest the validity of the Sequestration Order in Civil Case No. 0008. Supposedly, this act constitutes forum shopping.⁷⁶

However, in *Tourist Duty Free Shops, Inc.*,⁷⁷ this Court held that the Sandiganbayan erred in dismissing Civil Case No. 0142 on the ground of *litis pendentia*:

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

1. Identity of parties or of representation in both cases,
2. Identity of rights asserted and relief prayed for,

⁷³ *Diaz v. Davao Light and Power Co., Inc.*, 549 Phil. 271, 298 (2007) [Per J. Callejo, Sr., Third Division].

⁷⁴ 549 Phil. 271 (2007) [Per J. Callejo, Sr., Third Division].

⁷⁵ *Id.* at 298.

⁷⁶ *See rollo* (G.R. No. 214521), p. 22.

⁷⁷ 380 Phil. 328 (2000) [Per J. Buena, En Banc].

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 (*sic*) 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.⁷⁸ (Emphasis supplied)

Furthermore, although the Sandiganbayan upheld the Sequestration Order’s validity, it does not automatically mean that Tourist Duty Free Shops’ Complaint was baseless and maliciously filed. It is notably stated in the Sandiganbayan’s assailed Decision that the injunctive action “was filed to seek reliefs and remedies which [Tourist Duty Free Shops] believes it was entitled to under the circumstances.”⁷⁹

Finally, the Presidential Commission on Good Government’s other claims for relief lack merit, since the sums withdrawn from the Bank of America and Rizal Commercial Banking Corporation were done during the lifespan of the Sandiganbayan’s Writ of Preliminary Mandatory and Preliminary Injunction. The dispositive portion of the July 26, 2001 Resolution reads:

ACCORDINGLY, and finding merit, the Motion of plaintiff for the issuance of a writ of preliminary mandatory injunction and preliminary injunction is hereby granted upon posting of a bond in the amount of One Hundred Thousand (P100,000.00), Pesos. *Defendant-PCGG is enjoined from further implementing the writ of sequestration or the letter dated March 11, 1986 until further orders from this Court.*

As regard to the defendant-banks, considering that it has no reason to prevent plaintiff from withdrawing funds with them or transacting business with them and there exist a contract separate and distinct from the issue/s under consideration, *they are likewise enjoined, until further orders from this Court, from requiring prior approval from defendant-PCGG before it allows plaintiff to withdraw funds or monies and/or transact*

⁷⁸ Id. at 339.

⁷⁹ *Rollo* (G.R. No. 214408), p. 85.

business with them, and said defendant-banks are likewise ordered to accept whatever checks plaintiff has issued.

SO ORDERED.⁸⁰ (Emphasis supplied, citation omitted)

The Writ of Preliminary Mandatory and Preliminary Injunction was only lifted on September 14, 2011 when this Court granted the Presidential Commission on Good Government's Petition for Certiorari in G.R. No. 152500. Hence, the withdrawals from Tourist Duty Free Shops' accounts with the Bank of America and Rizal Commercial Banking Corporation were validly done.

Just to put these cases in context, this Court takes judicial notice⁸¹ of the Sandiganbayan's September 25, 2019 Decision⁸² dismissing the Presidential Commission on Good Government's Complaint for Reconveyance against the Tantocos and the Marcos Spouses in Civil Case No. 0008. The dispositive portion of the Decision read:

WHEREFORE, in view of the foregoing, the subject Expanded Complaint for Reconveyance, Reversion, Accounting, Restitution and Damages is **DISMISSED** for insufficiency of evidence.

SO ORDERED.⁸³ (Emphasis in the original)

Though informative, the Sandiganbayan's ruling has no bearing on the resolution of the present cases, since it was not raised and litigated in the action and the decision is subject to a different process.

WHEREFORE, the Petitions for Review of the Presidential Commission on Good Government and Tourist Duty Free Shops, Inc. are both **DENIED** for lack of merit. The November 19, 2013 Decision and September 15, 2014 Resolutions of the Sandiganbayan in Civil Case No. 0142 are **AFFIRMED**.

⁸⁰ *Presidential Commission on Good Government v. Sandiganbayan*, 673 Phil. 107, 116 (2011) [Per J. Peralta, Third Division].

⁸¹ RULES OF COURT, Rule 129, sec. 1 provides:
SECTION 1. *Judicial notice, when mandatory.* — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

⁸² *Republic v. Tantoco*, Civil Case No. 0008, September 25, 2019, <http://sb.judiciary.gov.ph/DECISIONS/2019/I_Civil_0008_Republic%20vs%20Tantoco,%20et%20al_09_25_2019.pdf>. The Decision was penned by Associate Justice Michael Frederick L. Musngi and concurred in by Associate Justices Oscar C. Herrera, Jr. and Lorifel Lacap Pahimna of the Second Division of the Sandiganbayan.

⁸³ *Id.* at 29.

SO ORDERED.” (Reyes, A., J., *designated additional member vice Gesmundo, J.*).

Very truly yours,

Misael DC Batt
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