



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES, G.R. No. 170458
represented by ASSET
PRIVATIZATION TRUST, now Present:
PRIVATIZATION and
MANAGEMENT OFFICE (PMO),
Petitioner,

BRION, J., *Acting Chairperson*
VELASCO, JR.,*
DEL CASTILLO,
MENDOZA, and
LEONEN, JJ.

-versus-

VIRGILIO M. TATLONGHARI,
DOMINGO P. UY, GUILLERMO P.
UY, HINOSAN MOTORS
CORPORATION, and WESTERN
GUARANTY CORPORATION,
Respondents.

Promulgated:

23 NOV 2015

X-----*MARCABALON*-----X

DECISION

LEONEN, J.:

The notation “in trust for” or “for escrow” that comes with deposited funds indicates that the deposit is for the benefit of a third party. In this case, Asset Privatization Trust deposited funds “in trust for” Pantranco North Express, Inc., (Pantranco) a corporation under the management of Asset Privatization Trust. These funds belong to Pantranco. Further, in the

* Designated acting member per S.O. No. 2282 dated November 13, 2015.

absence of evidence that Asset Privatization Trust is authorized to collect Pantranco's indebtedness to Philippine National Bank, the subject funds can be garnished to satisfy the claims of Pantranco's creditors.

Through this Petition for Review, the Asset Privatization Trust¹ challenges the Decision of the Court of Appeals denying it relief.² The Court of Appeals reversed the Decision of the Regional Trial Court of Makati City and held that the subject funds are private funds and can be garnished.³

Pantranco was formerly a government-owned and controlled corporation without original charter.⁴ Sometime in 1972, Pantranco suffered financial losses.⁵ One of Pantranco's creditors was Philippine National Bank. Pantranco's assets was foreclosed by Philippine National Bank, and in 1978, the ownership of Pantranco was transferred to the National Investment Development Corporation, a subsidiary of the Philippine National Bank.⁶

In 1985, National Investment Development Corporation sold Pantranco to North Express Transport, Inc., which was owned by Gregorio Araneta III,⁷ while Pantranco's assets were sold to Max B. Potenciano, Max Joseph A. Potenciano, and Dolores A. Potenciano. The Potencianos thereafter incorporated Pantranco as a private corporation.⁸

After the 1986 People Power Revolution, Pantranco was sequestered by the Presidential Commission on Good Government.⁹ Pantranco was allegedly part of Ferdinand Marcos' ill-gotten wealth and was acquired by using Gregorio Araneta III and the Potencianos as dummies.¹⁰

¹ See Rep. Act No. 8758, otherwise known as An Act Extending the Term of the Committee on Privatization and the Asset Privatization Trust Amending for the Purpose Republic Act Numbered Seven Thousand One Hundred Eighty-one, As Amended. See also *rollo*, p. 54. The term of the Asset Privatization Trust expired on December 31, 2000, as provided under Republic Act No. 8758. It was succeeded by the Privatization and Management Office, which was created through the enactment of Executive Order No. 323, dated December 6, 2000.

² *Rollo*, pp. 51–94, Petition.

³ *Id.* at 100–138, Court of Appeals Decision dated November 15, 2005.

⁴ *Pantranco v. National Labor Relations Commission*, 373 Phil. 520, 524 (1999) [Per J. Quisumbing, Second Division].

⁵ *Id.*

⁶ *Republic v. National Labor Relations Commission*, 331 Phil. 608, 611 (1996) [Per J. Vitug, First Division].

⁷ *Pantranco Employees Association, et al. v. National Labor Relations Commission, et al.*, 600 Phil. 645, 652 (2009) [Per J. Nachura, Third Division].

⁸ See footnote 13 of *Republic v. Marcos*, 681 Phil. 380, 397 (2012) [Per J. Sereno (now Chief Justice), Second Division].

⁹ *Republic v. National Labor Relations Commission*, 331 Phil. 608, 611 (1996) [Per J. Vitug, First Division].

¹⁰ *Republic v. Marcos*, 681 Phil. 380 (2012) [Per J. Sereno (now Chief Justice), Second Division].

The sequestration was lifted in 1988 “to give way to the sale of Pantranco North Express Inc.”¹¹ At that time, Asset Privatization Trust took over Pantranco’s management.¹²

On May 26, 1988, a Complaint was filed against Pantranco. This was docketed as Civil Case No. 88-969 and was entitled *Imexco Enterprises, Inc. v. Northern Express Transport, Inc., PNEI, PNB, NIDC, SBTC and APT* (Imexco case).¹³ The case was raffled to Branch 147 of the Regional Trial Court of Makati.¹⁴

In the Imexco case, the trial court allowed the sale of Pantranco’s assets, “on the condition that the buyer shall comply with the contractual commitments of PNEI-PNB-NIDC, wherein all receipts up to the extent of P25 Million plus the accrued interest thereon shall be deposited with the Security Bank and disbursement for operation to be taken therefrom.”¹⁵ Pantranco prayed for the issuance of a writ of preliminary injunction, which the trial court granted. A ₱1 million bond was required for the issuance of the writ of preliminary injunction.¹⁶

In view of the trial court Order, Pantranco’s Board of Directors passed a Resolution authorizing the transfer of ₱20 million to Asset Privatization Trust as the manager of Pantranco.¹⁷ Pantranco interpreted the trial court’s Order to mean that it was required “to deposit the amount of [₱20] million pesos.”¹⁸ A check amounting to ₱20 million was issued in favor of Asset Privatization Trust.¹⁹

Pantranco subsequently realized that what was required was not the payment of ₱20 million, but only the posting of the ₱1 million bond for the writ of preliminary mandatory injunction to be issued. Pantranco requested Asset Privatization Trust to return the funds. However, Asset Privatization Trust did not do so. The Imexco case was dismissed in 1992, due to “failure to prosecute for an unreasonable length of time.”²⁰

The ₱20 million deposit earned interest, and as of January 31, 1993, the deposit increased to ₱29,533,072.69.²¹

¹¹ *Republic v. National Labor Relations Commission*, 331 Phil. 608, 611 [Per J. Vitug, First Division].

¹² *Id.*

¹³ *Rollo*, p. 102, Court of Appeals Decision dated November 15, 2005.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.* The Decision of the Court of Appeals states that the trial court required ₱25 million, but the Board of Directors authorized the release of ₱20 million only.

¹⁹ *Id.* at 102–103.

²⁰ *Id.* at 103. The Imexco case is different from the cases filed by Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors Corporation.

²¹ *Id.*

Meanwhile, Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors Corporation (Hinosan Motors), as separate creditors of Pantranco,²² filed separate civil cases against Pantranco.²³

The case filed by Domingo P. Uy was raffled to Branch 31 of the Regional Trial Court of Manila and was docketed as Civil Case No. 92-59722.²⁴

The case filed by Guillermo P. Uy was raffled to Branch 33 of the Regional Trial Court of Manila and was docketed as Civil Case No. 92-59724.²⁵

The case filed by Hinosan Motors was raffled to Branch 49 of the Regional Trial Court of Manila and was docketed as Civil Case No. 92-60153.²⁶

The Decisions promulgated by Branch 31, Branch 33, and Branch 49 were all in favor of Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors, and the total monetary award of these Decisions amounted to ₱27,815,188.52.²⁷

Acting on the Decisions, Sheriffs Carmelo V. Cachero of Branch 31, Rodrigo R. Orfiano of Branch 33, and Gerry Duncan of Branch 49 served Notices of Garnishment on Virgilio M. Tatlonghari (Tatlonghari) who was then the National Treasurer.²⁸

Tatlonghari wrote to the Sheriffs separate letters informing them that as of January 31, 1993, Asset Privatization Trust deposited the amount of ₱29,816,225.91 in a Fix Term Account of the Treasurer of the Philippines in trust for Asset Privatization Trust-Pantranco North Express, Inc.²⁹

Tatlonghari “referred the notices [of garnishment] to the Legal Intelligence and Investigation Division of the Bureau of Treasury for opinion and advice.”³⁰ Atty. Acela M. Espinosa (Atty. Espinosa), Chief of the Legal Intelligence and Investigation Division, assigned Special

²² Id. at 308, Regional Trial Court Decision dated July 28, 1999. The case is docketed as Civil Case No. 93-2858-2860.

²³ Id. at 103, Court of Appeals Decision dated November 15, 2005.

²⁴ Id.

²⁵ Id.

²⁶ Id.

²⁷ Id.

²⁸ Id.

²⁹ Id. at 104.

³⁰ Id.

Investigator II Dorothy M. Calimag (Special Investigator Calimag) to act on Tatlonghari's referral.³¹

In a Memorandum, Special Investigator Calimag stated that the money amounting to ₱29,816,225.91 belongs to Pantranco and could be released to Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors.³² Atty. Espinosa concurred with Special Investigator Calimag's recommendation and informed Tatlonghari.³³

Tatlonghari then informed Asset Privatization Trust that notices of garnishment were issued, and that Atty. Espinosa recommended the release of the funds to Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors.³⁴

Asset Privatization Trust, through Atty. Jose M. Suratos, Jr., notified the sheriffs and Tatlonghari of a third-party claim over the subject funds, as shown by the Affidavit of third-party claim of Atty. Jose C. Sison, Associate Executive Trustee.³⁵ Tatlonghari was also given a letter informing him "that the garnished amount should not be released unless a bond be filed by defendant-appellants [Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors] in the same amount."³⁶

Hence, Domingo P. Uy, Guillermo P. Uy, and Hinosan Motors posted indemnity bonds under Western Guaranty Corporation³⁷ for the release of the garnished funds.³⁸ The Sheriffs then informed Asset Privatization Trust that bonds were filed.³⁹

Asset Privatization Trust, through Atty. Jose C. Sison,⁴⁰ suddenly changed its position and informed the sheriffs "that the subject funds belong to the government and not subject to execution notwithstanding the filing of bonds."⁴¹ Tatlonghari was also informed by Asset Privatization Trust through a letter that the funds were government funds and should not be released by the Bureau of Treasury.⁴²

Tatlonghari then sought the opinion of the Treasury Miscellaneous Accounting Division of the Bureau of Treasury.⁴³

³¹ Id.

³² Id.

³³ Id.

³⁴ Id.

³⁵ Id. at 309.

³⁶ Id. at 104.

³⁷ Id. at 156–161, copies of the notices that indemnity bonds were filed and copies of the indemnity bonds.

³⁸ Id. at 104–105.

³⁹ Id. at 105.

⁴⁰ Id. at 162, copies of Atty. Jose C. Sison's letters to the Sheriffs.

⁴¹ Id. at 105.

⁴² Id.

⁴³ Id.

In a Memorandum, the Treasury Miscellaneous Accounting Division informed Tatlonghari “that the deposit was recorded as a trust liability account of the Bureau and not as income of the National Government, and as such, do not form part of the income in the General Fund of the National Government.”⁴⁴

In view of the recommendation of the Treasury Miscellaneous Accounting Division, Tatlonghari wrote to the Asset Privatization Trust that the funds would be released “unless restrained by a Temporary Restraining Order.”⁴⁵

On May 3, 1993, Tatlonghari released the funds, there being no temporary restraining order. In addition, Tatlonghari already received several Motions to cite him in contempt for delaying the release of the funds.⁴⁶

On August 20, 1993, Asset Privatization Trust, representing the Republic of the Philippines, filed several cases under Rule 39, Section 16⁴⁷ of the 1997 Rules of Civil Procedure, with claim for damages.⁴⁸

Tatlonghari, Guillermo P. Uy, Domingo P. Uy, Western Guaranty Corporation, Atty. Acela M. Espinosa, and the Sheriffs were all named as defendants.⁴⁹ These cases were consolidated and raffled to Branch 133 of the Regional Trial Court of Makati City.⁵⁰

⁴⁴ Id.

⁴⁵ Id. at 309.

⁴⁶ Id. at 105.

⁴⁷ Rule 39, sec. 16 of the 1997 Rules of Civil Procedure provides:
Rule 39. Execution, Satisfaction, and Effect of Judgments.

.....

Section 16. Proceedings Where Property Claimed by Third Person. — If the property levied on is claimed by any person other than the judgment obligor or his agent, and such person makes an affidavit of his title thereto or right to the possession thereof, stating the grounds of such right or title, and serves the same upon the officer making the levy and a copy thereof upon the judgment obligee, the officer shall not be bound to keep the property, unless such judgment obligee, on demand of the officer, files a bond approved by the court to indemnify the third-party claimant in a sum not less than the value of the property levied on. In case of disagreement as to such value, the same shall be determined by the court issuing the writ of execution. No claim for damages for the taking or keeping of the property may be enforced against the bond unless the action therefor is filed within one hundred twenty (120) days from the date of the filing of the bond.

The officer shall not be liable for damages for the taking or keeping of the property, to any third-party claimant if such bond is filed. Nothing herein contained shall prevent such claimant or any third person from vindicating his claim to the property in a separate action, or prevent the judgment obligee from claiming damages in the same or a separate action against a third-party claimant who filed a frivolous or plainly spurious claim.

When the writ of execution is issued in favour of the Republic of the Philippines, or any officer duly representing it, the filing of such bond shall not be required, and in case the sheriff or levying officer is sued for damages as a result of the levy, he shall be represented by the Solicitor General and if held liable therefor, the actual damages adjudged by the court shall be paid by the National Treasurer out of such funds as may be appropriated for the purpose.

⁴⁸ *Rollo*, p. 105.

⁴⁹ Id. at 307.

⁵⁰ Id.

The trial court ruled in favor of the Republic.⁵¹ It cited the provisions of Proclamation No. 50 dated December 8, 1986,⁵² which created the Asset Privatization Trust.⁵³

Section 9 of Proclamation No. 50 provides:

SECTION 9. CREATION. There is hereby created a public trust to be known as the Asset Privatization Trust, hereinafter referred to as the Trust, which shall, for the benefit of the National Government, take title to and possession of, conserve, provisionally manage and dispose of assets as defined in Section 2 herein which have been identified for privatization or disposition and transferred to the Trust for the purpose, pursuant to Section 23 of this Proclamation.

The trial court also cited Section 33 of Proclamation No. 50, which states:

SECTION 33. PROCEEDS FROM SALES OF ASSETS. All proceeds from the sale or other disposition of assets net of fees, commissions and other reimbursable expenses of the Trust *shall form part of the General Fund of the National Government and be remitted to the National Treasury immediately upon receipt of such proceeds*: Provided, however, that the Trust shall be entitled to retain, upon approval by the Committee, such portion of the proceeds as may be necessary to maintain a revolving fund to be utilized for the payment of fees and reimbursable expenses and meeting the costs and expenses incurred by the Trust in the conservation and disposition of the assets held by it, or otherwise in the performance of its responsibilities under this Proclamation, including such amounts as may be required to serve borrowings incurred by the Trust pursuant to the authority and for the purposes provided in this Proclamation.

In respect of the proceeds from the sale or other disposition of corporate subsidiaries of parent government corporations, such proceeds shall accrue to the parent corporation. The proceeds shall be net of fees, commissions and other reimbursable expenses of the Trust as approved by the Committee, where the disposition was undertaken by or through the Trust. (Emphasis supplied)

The trial court explained that since Section 33 of Proclamation No. 50 provides that proceeds from the sale of assets form part of the general fund of national government, the assets in this case, which are in cash, should automatically be considered as part of the general fund. Also, Section 29(1),

⁵¹ Id. at 307–315. The Decision was promulgated on July 28, 1999 and was penned by Judge Napoleon E. Inoturan.

⁵² Id. at 310. Proclamation No. 50, otherwise known as the Creation of the Committee on Privatization and the Asset Privatization Trust (1986).

⁵³ Id.

Book IV, Title II, Chapter 4 of the Administrative Code states that the Bureau of Treasury shall “act as the principal custodian of all the national government funds.” It does not state that the Bureau of Treasury is allowed to take custody of private funds. The phrases “in trust for APT-Pantranco North Express, Inc.” and “for the account of Pantranco North Express, Inc.” do not indicate that the funds belong to Pantranco but merely point “to the account where such funds are to be applied and nothing more.”⁵⁴ Hence, the funds deposited by Asset Privatization Trust are public funds that cannot be garnished.⁵⁵

The dispositive portion of the trial court Decision reads:

A. Civil Case No. 93-2858

1. Ordering defendants Domingo P. Uy and Western Guaranty Corporation to pay the plaintiff, jointly and severally, the amount of P12,869,542.97 which was erroneously garnished, plus interest at twelve percent (12%) per annum from May 4, 1993, the date of garnishment, until fully paid;
2. Ordering that the case against defendants Carmelo V. Cachero, Virgilio M. Tatlonghari, and Acela M. Espinosa be dismissed; and
3. Ordering all counterclaims against the plaintiff be likewise dismissed.

B. Civil Case No. 93-2859

1. Ordering defendants Guillermo P. Uy and Western Guaranty Corporation to pay plaintiff, jointly and severally, the amount of P6,581,292.48 which was erroneously garnished, plus interest at twelve percent (12%) per annum from May 4, 1993, the date of garnishment, until fully paid;
2. Ordering that the case against defendants Rodrigo R. Orfiano, Virgilio M. Tatlonghari, and Acela M. Espinosa be dismissed; and
3. Ordering all counterclaims against the plaintiff be likewise dismissed.

C. Civil Case No. 93-2860

1. Ordering defendants Hinosan Motors Corporation and Western Guaranty Corporation to pay plaintiff, jointly and severally, the amount of P8,364,353.07 which was erroneously garnished, plus interest at twelve percent (12%) per annum from May 4, 1993, the date of garnishment, until fully paid;
2. Ordering that the case against defendants Gerry C. Duncan, Virgilio M. Tatlonghari, and Acela M. Espinosa be dismissed; and
3. Ordering all counterclaims against the plaintiff be likewise dismissed.

⁵⁴ Id. at 313.

⁵⁵ Id.

SO ORDERED.⁵⁶

On appeal, the Court of Appeals reversed the Decision of the trial court and held that the funds were not public.⁵⁷

The Court of Appeals held that Section 2 of Proclamation No. 50 must be read in conjunction with Section 23. Under Section 23, the transfer of assets must be identified “in an appropriate instrument describing such assets or identifying the loan or other transactions giving rise to the receivables, obligations and other property constituting assets to be transferred.”⁵⁸ In this case, Asset Privatization Trust did not present any Deed of Assignment to prove that Pantranco’s loan with the Philippine National Bank was assigned to it.⁵⁹

Also, the terms of the loan agreement between Philippine National Bank and Pantranco were not sufficient bases to rule that the subject funds are public funds.⁶⁰ Portions of the loan agreement provide:

Section 8.08. The Borrower [referring to Pantranco] hereby gives the Lender [referring to Philippine National Bank] the right to apply amounts on deposits or otherwise with the Lender, or its branches, subsidiaries or affiliates, in payment or reduction of amounts past due hereunder.

....

Section 8.10. Whenever the Borrower is carried with or indebted to the Lender for more than one account, the Lender shall have the right to apply to any account it chooses, regardless of whether one account is more onerous than the others, any and all payments that shall be made by or shall be received from the Borrower or from other sources for and in behalf of the Borrower, that shall come into possession of the Lender in any manner. This condition shall prevail over all provisions or agreements contained in this Agreement or in other documents or contracts executed or which may hereafter be executed by the Borrower, unless expressly waived by the Lender in writing.⁶¹

The Court of Appeals also held that Asset Privatization Trust had the burden to prove that the subject funds are public funds, but failed to do so.⁶²

⁵⁶ Id. at 314–315.

⁵⁷ Id. at 100–138. The Decision was penned by Court of Appeals Associate Justice Danilo B. Pine and concurred in by Associate Justices Marina L. Buzon, Chair of the Special Ninth Division, and Aurora Santiago-Lagman of the Special Ninth Division, Court of Appeals Manila.

⁵⁸ Id. at 115.

⁵⁹ Id. at 115–117.

⁶⁰ Id. at 118.

⁶¹ Id. at 118–119.

⁶² Id. at 121–125.

In contrast, Guillermo P. Uy, Domingo P. Uy, and Hinosan Motors were able to show the source of the funds with the Bureau of Treasury⁶³ as follows:

The fund was withdrawn by PNEI for the exclusive purpose of complying with the bond requirement imposed by the Regional Trial Court of Makati, Branch 147, in Civil Case No. 88-969, entitled “Imexco Enterprises, Inc. vs. PNEI, et al.”. . . .

. . . .

The Board of Directors thus issued a Board Resolution, authorizing the withdrawal of P20 million to satisfy IMEXCO’s claim, instead of merely posting a bond in the amount of P1 million pesos. . . .

. . . .

A[ssset] P[rivatization] T[rust] duly received the amount as evidenced by Check Voucher No. 9872 dated March 6, 1990. In a Memorandum dated February 28, 1991, the President and General Manager of PNEI requested the Board of Directors to issue another Board Resolution, this time to recover the P20 million earlier advanced to A[ssset] P[rivatization] T[rust] “as there was no necessity for A[ssset] P[rivatization] T[rust] to hold in trust the amount of P20 Million but merely to put up a bond of P1 Million to comply with aforesaid condition.”⁶⁴

Further, the Court of Appeals considered Tatlonghari’s testimony where he explained why the funds were not public funds:

These precepts testified to by Tatlonghari were never controverted by plaintiff-appellee, nor were they alleged as contrary to any law or the rules and procedures of the Bureau of Treasury. In fact, the competence, expertise, experience and informed judgment of Tatlonghari, as the Treasurer, as well as the officials of the T[reasury] M[iscellaneous] A[ccounting] D[ivision], must be given great weight, as they are the ones who are in actual custody of the subject fund.⁶⁵

In addition, the Court of Appeals held that the phrases “for escrow” and “in trust for” should be construed in their ordinary meaning. Clearly, that the funds were held “for escrow” and “in trust for” meant that Asset Privatization Trust was holding the funds for Pantranco. Moreover, if the funds were indeed government funds, there would be “no need to specify the nature of the deposit.”⁶⁶

The dispositive portion of the Court of Appeals Decision states:

⁶³ Id. at 125.

⁶⁴ Id. at 125–127.

⁶⁵ Id. at 131.

⁶⁶ Id. at 132.

WHEREFORE, PREMISES CONSIDERED, the instant appeal is hereby **GRANTED**, the assailed Decision of the Regional Trial Court of Makati, Branch 133, in Civil Cases No. 93-2358, 93-2859 and 93-2860, is **REVERSED** and **SET ASIDE**.

SO ORDERED.⁶⁷

On January 6, 2006, Asset Privatization Trust, through the Office of the Solicitor General, filed this Petition for Review.⁶⁸ In the Resolution dated March 20, 2006, this court required Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation to file their comments.⁶⁹

The Comments of Tatlonghari, Domingo P. Uy, and Western Guaranty Corporation were noted in the Resolution dated July 5, 2006.⁷⁰ Guillermo P. Uy's Comment was noted in the Resolution dated September 13, 2006.⁷¹

In the Resolution dated August 27, 2008, this court ordered Atty. Eduardo B. Flaminiano (Atty. Flaminiano), counsel for Hinosan Motors, to show cause why he should not be cited in contempt for failure to comply with the March 20, 2006 Resolution.⁷²

Atty. Flaminiano filed a Motion/Manifestation⁷³ explaining that Hinosan Motors was dissolved in 1999 and that he no longer represented it.⁷⁴ In the Resolution dated January 21, 2009, this court noted and accepted Atty. Flaminiano's explanation and dispensed with Hinosan Motors' Comment. In the same Resolution, the Office of the Solicitor General was required to file a consolidated Reply.⁷⁵

In the Resolution dated July 15, 2009, this court gave due course to the Petition and required the parties to file their Memoranda.⁷⁶

Asset Privatization Trust, represented by the Office of the Solicitor General, argues⁷⁷ that the subject funds are public funds and cites the definitions of "fund," "government funds," "depository funds," and

⁶⁷ Id. at 137.

⁶⁸ Id. at 51, Petition for Review.

⁶⁹ Id. at 463.

⁷⁰ Id. at 567–568.

⁷¹ Id. at 635–636.

⁷² Id. at 695.

⁷³ Id. at 699–705.

⁷⁴ Id. at 699–700.

⁷⁵ Id. at 706.

⁷⁶ Id. at 793–794.

⁷⁷ Id. at 812–847, Memorandum.

“depository” in the Revised Administrative Code and Presidential Decree No. 1445,⁷⁸ as follows:

(1) “Fund” is a sum of money or other resources set aside for the purpose of carrying out specific activities or attaining certain objectives in accordance with special regulations, restrictions, or limitations, and constitutes an independent fiscal and accounting entity.

(2) “Government funds” includes public moneys of every sort and other resources pertaining to any agency of the Government.

....

(5) “Depository funds” comprises funds over which the officer accountable therefor may retain control for the lawful purposes for which they came into his possession. It embraces moneys in any and all depositories.

(6) “Depository” refers⁷⁹ to any financial institution lawfully authorized to receive government moneys upon deposit.⁸⁰

Asset Privatization Trust argues that “any fund deposited with the Central Bank through the Bureau of Treasury, as long as it remains in the hands of public officers, should be treated as public funds.”⁸¹ Thus, in its view, the Bureau of Treasury and the Central Bank can only handle government funds,⁸² as provided under the Revised Administrative Code:

Section 29. Bureau of Treasury. – The Bureau of Treasury, which shall be headed by and subject to the supervision and control of the National Treasurer who shall be appointed by the President upon the recommendation of the Secretary, shall have the following functions:

(1) Act as the principal custodian of all national government funds;

....

(4) Maintain accounts of the financial transactions of all national secretaries, bureaus, agencies and instrumentalities[.]⁸³

Asset Privatization Trust argues that Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation

⁷⁸ Id. at 831–833. The definition of these terms are provided under Sec. 2, Chap. 1, Subtitle B, Book V of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, and Section 3 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines.

⁷⁹ The Revised Administrative Code uses the term “refers,” while the Government Auditing Code of the Philippines uses the term “means.”

⁸⁰ *Rollo*, pp. 831–833. The Revised Administrative Code and the Government Auditing Code of the Philippines provide the same definitions for these terms.

⁸¹ Id. at 833.

⁸² Id. at 841–843.

⁸³ Id. at 841–842, Sec. 29, Chap. 4, Title II, Book IV of the Revised Administrative Code.

admitted that the subject funds were deposited by Asset Privatization Trust with the Central Bank. This proves that the funds are public in nature because the transfer of funds between government depositories usually involves public funds. Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation are now estopped from claiming otherwise.⁸⁴

Asset Privatization Trust cites *Pacific Products, Inc. v. Vicente S. Ong* to argue that “money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment.”⁸⁵

Asset Privatization Trust also cites *City of Caloocan v. Allarde*, which held that government funds “may not be subject to garnishment or levy.”⁸⁶

Asset Privatization Trust further cites *Commissioner of Public Highways v. San Diego*,⁸⁷ which held that “all government funds deposited with Philippine National Bank by any agency or instrumentality of the government, whether by way of general or special deposit, remain government funds, since such government agencies or instrumentalities do not have any non-public or private funds of their own.”⁸⁸

Asset Privatization Trust argues that assuming the subject funds are private, Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation cannot garnish the funds because Asset Privatization Trust was not included as a party in the case “where respondents obtained a money judgment in their favor and the judgment thereon was not rendered against petitioner but against P[antranco].”⁸⁹ In addition, there is no creditor-debtor relationship between Asset Privatization Trust and Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation.⁹⁰

Further, Asset Privatization Trust argues that the trial court’s finding that the subject funds are public funds is a finding of fact that should be respected by this court.⁹¹

⁸⁴ Id. at 833, citing *Pacific Products, Inc. v. Vicente S. Ong*, 260 Phil. 583, 591 (1990) [Per J. Medialdea, First Division].

⁸⁵ Id. at 833–834.

⁸⁶ Id. at 834–835, citing *City of Caloocan v. Allarde*, 457 Phil. 543, 553 (2003) [Per J. Corona, Third Division].

⁸⁷ 142 Phil. 553 (1970) [Per J. Teehankee, First Division].

⁸⁸ *Rollo*, p. 842.

⁸⁹ Id. at 836.

⁹⁰ Id.

⁹¹ Id.

Domingo P. Uy cites the letter⁹² of Associate Executive Trustee Juan W. Moran, which states that the amount of ₱29,533,072.69 was for the account of Pantranco:

January 25, 1993

Mr. WALFRIDO ALAMPAY
Officer-In-Charge
BUREAU OF TREASURY
Intramuros, Manila

Attention: Ms. MERLITA MENDIOLA
Chief Financial Management
Treasury Misc. Acctg. Division

Dear Sir:

Enclosed is PNB Buendia Check No. B623075 dated January 26, 1993 amounting to P29,533,072.69 representing new placement for Escrow with The Central Bank of the Philippines for the account of PANTRANCO NORTH EXPRESS, INC.

Upon maturity, interest earnings will be added on the principal. It is understood that this arrangement shall be similar to our previous escrow deposits, in that the amount shall earn interest and shall be available on call.

Very truly yours,

(Sgd.)
JUAN W. MORAN
Associate Executive Trustee⁹³
(Emphasis omitted)

Domingo P. Uy also cites the Certification of Deputy Treasurer Walfrido A. Alampay regarding the subject funds, which states as follows:

CERTIFICATION

This is to certify that the Asset Privatization Trust (APT) has deposited with the Central Bank of the Philippines thru the Bureau of Treasury the amount of TWENTY NINE MILLION EIGHT HUNDRED SIXTEEN THOUSAND TWO HUNDRED TWENTY FIVE AND 91/100 PESOS (P29,816,225.91) as of January 31, 1993 in a Fixed Term Deposit Account of the Treasurer of the Philippines-in-Trust for APT-Pantranco North Express, Inc.

This certification is issued upon the request of the Asset Privatization Trust for whatever purpose it may serve.

⁹² Id. at 848–887, Memorandum.

⁹³ Id. at 859–860.

March 29, 1993.

(Sgd.)
Walfrido A. Alampay⁹⁴

Domingo P. Uy argues that these documents show that the subject funds exist.⁹⁵ He also quotes the Court of Appeals Decision and emphasizes that the subject funds are private funds because Asset Privatization Trust was unable to prove its allegation that the subject funds are part of Pantranco's indebtedness to Philippine National Bank, which was assigned to Asset Privatization Trust.⁹⁶ Guillermo P. Uy⁹⁷ and Western Guaranty Corporation⁹⁸ point out that Asset Privatization Trust did not present any deed of assignment or board resolution authorizing the transfer of Philippine National Bank's assets to the national government.

Domingo P. Uy further argues that the cases cited by Asset Privatization Trust, namely, *Pacific Products v. Ong*⁹⁹ and *Commissioner of Highways, et al. v. San Diego et al.*,¹⁰⁰ are not applicable because these cases did not involve the determination of whether the funds involved were private or public in nature.¹⁰¹ Tatlonghari adds that the funds involved in *Pacific Products* were not collected in trust for any private party and that the funds were garnished and disbursed for the payment of salaries of employees of the Bureau of Telecommunications.¹⁰²

Also, Asset Privatization Trust's argument that Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation are estopped from claiming that the subject funds are public in nature does not hold because they never led Asset Privatization Trust "to believe subject funds as public funds."¹⁰³ On the contrary, Asset Privatization Trust is the party in estoppel as seen in the letter of Tatlonghari to Asset Privatization Trust and the Memorandum of the Bureau of Treasury.¹⁰⁴

Tatlonghari's letter to Asset Privatization Trust states:

⁹⁴ Id. at 860. The letter of Juan W. Moran to Walfrido Alampay dated January 25, 1993, and the Certification of Walfrido Alampay dated March 29, 1993 were also cited by respondents Virgilio Tatlonghari (Id. at 893–894) and Western Guaranty Corporation (Id. at 919–920).

⁹⁵ Id. at 859.

⁹⁶ Id. at 863–873.

⁹⁷ Id. at 953, Memorandum.

⁹⁸ Id. at 908–909, Memorandum.

⁹⁹ 260 Phil. 583 (1990) [Per J. Medialdea, First Division].

¹⁰⁰ 142 Phil. 553 (1970) [Per J. Teehankee, First Division].

¹⁰¹ *Rollo*, pp. 881–882.

¹⁰² Id. at 899, Memorandum.

¹⁰³ Id. at 883, Memorandum.

¹⁰⁴ Id. at 884–885.

Please be informed that records of this Office show that the communications between Mr. Juan W. Moran and Ms. Rosalina Cajucom, and Atty. Ramon T. Garcia and Ms. Mely Salvatierra in their letter to Ms. Cajucom dated June 18, 1990 and Mr. Walfrido Alampay, by their own statements, averred and claimed that the amount forwarded to this Office is for deposit in the name of P[antranco] N[orth] E[xpress,] I[nc.], hence, P[antranco] N[orth] E[xpress,] I[nc.] owns the subject deposit and there could be no other evidence to show that said money belongs to APT, more so of the Government.

In view thereof, this Bureau maintains that the amount of P29,816,225.91 deposited with the Central Bank by the A[sset] P[rivatization] T[rust] thru this Office is not an A[sset] P[rivatization] T[rust] (Government) fund (money) but it is a private fund, the ownership of which belongs to the plaintiffs-claimants, hence, the same could be the subject of garnishment and eventually Writ of execution.¹⁰⁵

The Memorandum of the Bureau of Treasury containing the recommendation of the Treasurer Miscellaneous Accounting Division reads:

On January 26, 1993, A[sset] P[rivatization] T[rust] remitted to BTR (Bureau of Treasury) the amount of P29,533 M representing escrow with C[entral] B[ank of the] P[hilippines] for the account of Pantranco North Express, Inc. (PNEI). A[sset] P[rivatization] T[rust]'s deposit is in pursuant to section 3 of A.O. No. 173 which required GOCC's [sic] to deposit their trust receipts to the C[entral] B[ank of the] P[hilippines] thru BTR. In the books of TMAD, this deposit was recorded as a trust liability account (8-84-300) of BTR not as an income of the National Government. As such, we personally believe that the deposit cannot as yet be considered as N[ational] G[overnment] money. Under Section 5 of the Trust Agreement by [the] C[ommittee] O[n] P[rivatization], all proceeds from the sale or other disposition of assets shall form part of the income of the General Fund of the N[ational] G[overnment] and shall be remitted to the National Treasury immediately upon receipt of such proceeds. A[sset] P[rivatization] T[rust]'s deposit for the account of PNEI did not form part of the income in the General Fund of the N[ational] G[overnment].¹⁰⁶

Tatlonghari¹⁰⁷ argues that the subject funds are private funds because these earned interest while in deposit. Public funds do not earn interest.¹⁰⁸

Tatlonghari alleges that the subject funds "were available on call and were not covered by any existing appropriation law for [their] disbursement."¹⁰⁹ This is contrary to the usual nature of public funds that these cannot be available on call and "must be disbursed pursuant to an existing appropriation law."¹¹⁰

¹⁰⁵ Id.

¹⁰⁶ Id. at 885.

¹⁰⁷ Id. at 889-900, Memorandum.

¹⁰⁸ Id. at 890.

¹⁰⁹ Id.

¹¹⁰ Id.

Also, the subject funds could be preterminated. Tatlonghari contends that public funds deposited with the Central Bank can only be preterminated when the budgetary requirements of government agencies need the fund. There is also the limitation that the pretermination must be pursuant to the purpose for which the funds were appropriated. In this case, the subject funds were preterminated without following the requirements for pretermination of public funds.¹¹¹

Western Guaranty Corporation likewise argues that the subject funds are private funds because Asset Privatization Trust can preterminate the deposit, withdraw the funds, and redeposit the funds. To support this argument, Western Guaranty attached a copy of Asset Privatization Trust's letter to the Bureau of Treasury, the contents of which state:

December 21, 1992

Mr. WALFRIDO ALAMPAY
Officer-in-Charge
BUREAU OF TREASURY
Intramuros, Manila

ATTENTION: MS. MERLITA MENDIOLA
Chief Financial Management Specialist
Treasury Miscellaneous Accounting Division

Dear Sir:

This will supercede [sic] our letter this morning regarding pre-termination of Island Cement/Apollo for P503,000,000.00.

Instead of Island Cement/Apollo, we request the following on Escrow with Central Bank be Pre-terminated as soon as possible:

	October 31, 1992 Balance

1. Tolong Sugar Milling Corp. P	9,069,990.38
2. Delta Motors	131,000,000.00
3. <i>Pantranco</i>	29,533,072.60
4. Central Santos Lopez	3,053,017.45
5. Davao Sugar Central	27,315,385.77
6. Delta Motors Corp.	3,662,541.18
7. Bagacay Mines	3,754,072.38
8. Sta. Clara Lumber	4,128,948.93
9. Delta Motors Corp.	6,753,816.37
10. North Cotabato Sugar Ind. Inc.	1,354,818.27
11. Golden Country Farms	2,516,869.40

Total of Pre-Termination	222,142,532.70
	=====

Thank you.

¹¹¹ Id.

Very truly yours,

ATTY. RAMON T. GARCIA
Chief Executive Trustee

MILLIE P. SALVATIERRA
Associate Executive Trustee

CC: CA., Manuel I. Ples¹¹² (Emphasis supplied)

Tatlonghari cites the Memorandum of the Legal Intelligence and Investigation Division of the Bureau of Treasury, which states:

The defendant Pantranco North Express, Inc., has an asset of P29,816,225.91 which was deposited by the Asset Privatization Trust (APT) on January 21, 1993 with the Central Bank of the Philippines through the Bureau of Treasury in trust for Asset Privatization Trust-Pantranco North Express, Inc.

In this connection, since the amount involved is being held in trust by this Treasury for Pantranco North Express, Inc., there is no other alternative by this Treasury but to release the amount demanded by the plaintiffs and by so delivering the money to the plaintiffs, it will cause no injury to this office because it did not acquire ownership over the money involved. Neither will this Treasury be aggrieved by the release of the said amount to the plaintiffs, nor could we appeal the case because we are not a party in interest over the subject matter of this litigation.

Furthermore, the orders and execution are final and executory, hence, the delivery of the amount demanded is ministerial on the part of this Treasury and for failure to comply therewith, the Treasury may be called upon by the above-mentioned courts for interrogation.¹¹³

Tatlonghari argues that the Bureau of Treasury's opinion should be given credence because it is the government agency tasked to take custody of funds. Therefore, it has the expertise to determine the nature of funds. Asset Privatization Trust was unable to prove by preponderance of evidence that the funds are public in nature.¹¹⁴ Western Guaranty Corporation raises the same argument¹¹⁵ and adds that the opinion of the Bureau of Treasury that the funds are not public funds should be respected.¹¹⁶ Guillermo P. Uy also contends that Asset Privatization Trust "failed to show any deed of assignment and board resolution of P[hilippine] N[ational] B[ank]

¹¹² Id. at 936.

¹¹³ Id. at 894–895. Respondent Western Guaranty Corporation also cited the Memorandum of the Legal Intelligence and Investigation Division in its Memorandum (Id. at 920).

¹¹⁴ Id. at 895.

¹¹⁵ Id. at 925, Memorandum.

¹¹⁶ Id. at 929.

authorizing transfer of its assets to the National Government.”¹¹⁷ It cited the Court of Appeals Decision:

But while A[ssset] P[rivatization] T[rust] insists that the loan of [Pantranco] with P[hilippine] N[ational] B[ank] had already been assigned to it through a Deed of Assignment, no such document was, however, presented nor was it formally offered as evidence by A[ssset] P[rivatization] T[rust]. Since the execution of this instrument is the operative act which authorized A[ssset] P[rivatization] T[rust] to collect from [Pantranco], as mandated by Section 23, then it should have been presented and offered in evidence by A[ssset] P[rivatization] T[rust]. It was thus an error on the part of the trial court to accept, hook, line and sinker, A[ssset] P[rivatization] T[rust]’s allegation that the loan was already assigned to A[ssset] P[rivatization] T[rust] in the absence of the very document required by Section 23. It must be pointed out that the trial court itself relied on Section 23 in its assailed decision, but it seemed that it concentrated on the phrase “for the benefit of the National Government,” without realizing that there must first be an operative act for A[ssset] P[rivatization] T[rust] to lawfully collect from P[antranco] “for the benefit of the National Government.”¹¹⁸

Western Guaranty Corporation¹¹⁹ and Guillermo P. Uy¹²⁰ argue that the Court of Appeals did not err in ruling that the subject funds were private funds because Asset Privatization Trust could not even explain how the funds came into its possession. First, Asset Privatization Trust alleged that it collected the funds from Pantranco. Next, Asset Privatization Trust alleged that the subject funds were for payment of Pantranco’s loan.¹²¹

Western Guaranty Corporation points out that the reason why Asset Privatization Trust refused to pay their claim is that it “c[ould] not take hold of any of the deposits of Pantranco from Philippine National Bank.”¹²² On the other hand, Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation were able to show that the subject funds “were deposited for the account of Pantranco.”¹²³ The notation “for the account of” indicates that the funds belong to Pantranco.¹²⁴

Western Guaranty Corporation contends that the Revised Administrative Code does not prohibit the Bureau of Treasury from accepting private funds. Also, the subject funds were deposited “in escrow” and “in trust for” Pantranco.¹²⁵ In contrast, funds that form part of national government funds are commingled and lose identity. They can only be

¹¹⁷ Id. at 953.

¹¹⁸ Id. at 954, Memorandum.

¹¹⁹ Id. at 901–934, Memorandum.

¹²⁰ Id. at 955, Memorandum.

¹²¹ Id. at 908–909, Memorandum. *See also* rollo, p. 955, Memorandum.

¹²² Id. at 914, Memorandum.

¹²³ Id. at 914–915.

¹²⁴ Id. at 921.

¹²⁵ Id. at 928.

withdrawn if there is a law appropriating the funds. Thus, Asset Privatization Trust cannot claim that the subject funds are public funds.¹²⁶

Guillermo P. Uy¹²⁷ argues that Asset Privatization Trust has the duty to ensure that the rights of its creditors, including Tatlonghari, Domingo P. Uy, Hinosan Motors, and Western Guaranty Corporation, and himself, should not be impaired.¹²⁸ He cites Section 24 of Proclamation No. 50:¹²⁹

SECTION 24. DEEDS OF ASSIGNMENT. Each government institution from which assets are to be transferred pursuant to this Proclamation shall and is hereby directed to execute, promptly and in no event later than thirty days after the issuance by the President of the relevant instrument referred to in Section 23 hereof, a deed of assignment in favor of the National Government, which shall, in annexes thereto, describe, account by account, the nature and extent of such assets and to deliver to the Committee such agreements, instruments, records and other papers in respect of such assets as may be deemed by the Committee to be reasonably necessary or appropriate. . . .

A copy of such deed of assignment, together with excerpts from its annexes describing particular property to be transferred, duly certified to be true by the appropriate official before a notary public or other official authorized by law to administer oaths, shall provide sufficient basis to registers of deeds, transfer agents of corporations and other persons authorized to issue certificates of titles, shares of stock and other evidence of title to issue new certificates, shares of stock or other instruments evidencing title to the assets so described to and in the name of the National Government or its duly authorized agent.

The transfer of any asset of government directly to the national government as mandated herein shall be for the purpose of disposition, liquidation and/or privatization only, any import in the covering deed of assignment to the contrary notwithstanding. Such transfer, therefore, shall not operate to revert such assets automatically to the general fund or the national patrimony, and shall not require specific enabling legislation to authorize their subsequent disposition, but shall remain as duly appropriated public properties earmarked for assignment, transfer or conveyance under the signature of the Minister of Finance or his duly authorized representative, who is hereby authorized for this purpose, to any disposition entity approved by the Committee pursuant to the provisions of this Proclamation. (Emphasis supplied)

¹²⁶ Id.

¹²⁷ Id. at 938–975, Memorandum.

¹²⁸ Id. at 953.

¹²⁹ Id. at 952.

Guillermo P. Uy also cites Section 12(6) of Proclamation No. 50, which provides that the Asset Privatization Trust has the power to settle liabilities,¹³⁰ while Section 23¹³¹ provides that:

SECTION 23. MECHANICS OF TRANSFER OF ASSETS. As soon as practicable, but not later than six months from the date of the issuance of this Proclamation, the President, acting through the Committee on Privatization, shall identify such assets of government institutions as appropriate for privatization and divestment in an appropriate instrument describing such assets or identifying the loan or other transactions giving rise to the receivables, obligations and other property constituting assets to be transferred.

The Committee shall, from the list of assets deemed appropriate for divestment, identify assets to be transferred to the Trust or to be referred to the government institutions in an appropriate instrument, which upon execution by the Committee shall constitute as the operative act of transfer or referral of the assets described therein, and the Trust or the government institution may thereupon proceed with the divestment in accordance with the provisions of this Proclamation and the guidelines issued by the Committee.

....

Where the contractual rights of creditors of any of the government institutions involved may be affected by the exercise of the Committee or the Trust of the powers granted herein, the Committee or the Trust shall see to it that such rights are not impaired. (Emphasis supplied)

In addition, Asset Privatization Trust's claim that it is also a creditor of Pantranco constitutes conflict of interest. Assuming that Asset Privatization Trust is, indeed, a creditor of Pantranco, then it has undue advantage over the other creditors as it is Pantranco's manager/conservator.¹³²

¹³⁰ Id. at 953. This argument was also raised by Western Guaranty Corporation in its memorandum (Id. at 927).

Section 12 (6) of Proclamation No. 50 provides:

SECTION 12. POWERS. Trust shall, in the discharge of its responsibilities, have the following powers:

....

(6) To lease or own real and personal property to the extent required or entailed by its functions; to borrow money and incur such liabilities as may be reasonably necessary to permit it to carry out the responsibilities imposed upon it under this Proclamation; to receive and collect interest, rent and other income from the corporations and assets held by it and to exercise in behalf of the National Government and to the extent authorized by the Committee, in respect of such corporations and assets, all rights, powers and privileges of ownership including the ability to compromise and release claims or settle liabilities, and otherwise to do and perform any and all acts that may be necessary proper to carry out the purposes of this Proclamation: *Provided, however*, that any borrowing by the Trust shall be subject to the prior approval by the majority vote of the members of the Committee;

¹³¹ Id.

¹³² Id. at 955.

Guillermo P. Uy points out that “an application of payment by Philippine National Bank is different from a remittance by P[antranco] or from a taking of a deposit in P[hilippine] N[ational] B[ank] by A[ssset] P[rivatization] T[rust].”¹³³ He further argues that although the subject funds were held by the Bureau of Treasury, it should not automatically mean that the funds are public funds. In addition, the officers of the Bureau of Treasury were of the opinion that the funds belong to Pantranco.¹³⁴

The issues in this case are:

First, whether the funds belong to Pantranco North Express, Inc. and are in the nature of private funds, or whether they belong to petitioner Asset Privatization Trust, in which case the subject funds are public funds; and

Second, whether the funds can be garnished.

We rule that the subject funds belong to Pantranco and are in the nature of private funds. Hence, the subject funds can be garnished and be used to satisfy the claims of respondents Tatlonghari, Domingo P. Uy, Guillermo P. Uy, Hinosan Motors, and Western Guaranty Corporation.

The definition of “government funds” is provided under the Revised Administrative Code and Presidential Decree No. 1445:¹³⁵

“Government funds” includes public moneys of every sort and other resources pertaining to any agency of the Government.

The phrase “pertaining to any agency of the Government” distinguishes government funds from private funds. The definition of “government funds” indicates that for funds to be considered government funds or public funds, it must be shown that the funds properly belong to a government agency. To determine whether an entity is a government agency, we are also guided by the definition provided under the Revised Administrative Code and Presidential Decree No. 1445:¹³⁶

“Government agency” or “agency of the government,” or “agency” refers to any department, bureau or office of the National Government, or any of its branches and instrumentalities, or any

¹³³ Id. at 956.

¹³⁴ Id. at 962.

¹³⁵ Id. at 831–833. The definition of these terms are provided under Section 2(2), Chapter 1, Subtitle B. Book V of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, and Section 3, paragraph 2 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines.

¹³⁶ Section 2 (8), Chapter 1, Subtitle B. Book V of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, and Section 3, paragraph 8 of Presidential Decree No. 1445, otherwise known as the Government Auditing Code of the Philippines.

political subdivision, as well as any government-owned or controlled corporation, including its subsidiaries, or other self-governing board of commission of the Government.

The determination of the nature of funds is important especially in cases where there are allegations that the funds involved are government funds. The general rule is that government funds cannot be garnished. The reason for this rule is explained in *City of Caloocan v. Allarde*.¹³⁷ *City of Caloocan* involved the garnishment of the funds of the City of Caloocan in order to satisfy the claim for backwages of Delfina Hernandez Santiago. The City of Caloocan raised the defense that its funds are public funds and cannot be garnished. In resolving the case, this court cited *Commissioner of Public Highways v. San Diego*¹³⁸ and discussed why public funds are not subject to garnishment:

The rule is and has always been that all government funds deposited in PNB or any other official depository of the Philippine Government by any of its agencies or instrumentalities, whether by general or special deposit remain government funds and may not be subject to garnishment or levy, in the absence of a corresponding appropriation as required by law.

....

The rule is based on obvious considerations of public policy. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.¹³⁹

Pacific Products v. Ong,¹⁴⁰ as cited by petitioner, is not applicable because it does not involve the issue of whether the garnished funds are private funds or public funds. In *Pacific Products*, the funds garnished belonged to the Bureau of Telecommunications and was for payment of the bluestone copper sulfate it purchased from BML Trading and Supply. At the

¹³⁷ 457 Phil. 543 (2003) [Per J. Corona, Third Division].

¹³⁸ 142 Phil. 553 (1970) [Per J. Teehankee, First Division]. Petitioner also cited this case. *Commissioner of Public Highways v. San Diego* involved the expropriation of a parcel of land owned by N.T. Hashim for the construction of Epifanio de los Santos Avenue. The government deposited the amount of ₱23,413.64 and took possession of the parcel of land. In 1958, the judicial administrator of N.T. Hashim's estate, Tomas N. Hashim, filed a money claim for the parcel of land. A compromise agreement was entered by Tomas N. Hashim, the Commissioner of Public Highways, and the Secretary of Public Works and Communications. Tomas Hashim subsequently filed a motion for the issuance of a writ of execution, which was granted. A Notice of Garnishment was served upon Philippine National Bank, being the depository of the funds belonging to the Bureau of Public Highways. The amount garnished was released by the Philippine National bank to the estate of Tomas N. Hashim. Thus, the Commissioner of Public Highways, through then Solicitor General Felix V. Makasiar, filed a petition for certiorari and prohibition. The petition was granted.

¹³⁹ *City of Caloocan v. Allarde*, 457 Phil. 543, 553 (2003) [Per J. Corona, Third Division]. This court denied the petition because the City Council of Caloocan passed an ordinance appropriating money for Santiago's claim. The other cases cited are *Republic v. Palacio*, 132 Phil 369 (1968) [Per J. J.B.L. Reyes, En Banc] and *Providence Washington Insurance Co. v. Republic of the Philippines*, 140 Phil 177 (1969) [Per J. Fernando, En Banc]. See also *Professional Video, Inc. v. TESDA*, 608 Phil. 610 (2009) [Per J. Brion, Second Division].

¹⁴⁰ 260 Phil. 583 (1990) [Per J. Medialdea, First Division].

time the funds were garnished, the funds had not yet been released to BML Trading and Supply. It was clear that the garnished funds were still government funds.

However, there are government entities whose funds may be garnished even without an appropriation law. *National Housing Authority v. Heirs of Guivelondo*¹⁴¹ involved an action for eminent domain. The computation of just compensation for the property belonging to the Heirs of Guivelondo was ₱11,200.00 per square meter. Subsequently, the National Housing Authority moved to dismiss its Complaint for eminent domain, claiming that the amount of just compensation was too high. The Motion to Dismiss was denied by the trial court. A Notice of Levy was served by the trial court's Sheriff. This court held that the funds of the National Housing Authority are not exempt from garnishment and explained that:

Generally, funds and properties of the government cannot be the object of garnishment proceedings even if the consent to be sued had been previously granted and the state liability adjudged.

. . . .

However, if the funds belong to a public corporation or a government-owned or controlled corporation which is clothed with a personality of its own, separate and distinct from that of the government, then its funds are not exempt from garnishment. This is so because when the government enters into commercial business, it abandons its sovereign capacity and is to be treated like any other corporation.¹⁴²

In this case, petitioner has not shown that Pantranco is a government entity. As the history of Pantranco shows, it was originally a government corporation, was foreclosed by Philippine National Bank, and was later sold and incorporated as a private corporation.¹⁴³ Pantranco was sequestered, but the sequestration¹⁴⁴ did not have the effect of transferring ownership to the national government. Sequestration is defined as:

Section 1. Definition –

. . . .

(B) “Sequestration” means taking into custody or placing under the Commission's control or possession any asset, fund or other property, as well as relevant records, papers and documents, in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether the said

¹⁴¹ 452 Phil 481 (2003) [Per J. Ynares-Santiago, First Division].

¹⁴² Id. at 495.

¹⁴³ See footnote 13 of *Republic v. Marcos*, 681 Phil. 380, 397 (2012) [Per J. Sereno, Second Division].

¹⁴⁴ Exec. Order No. 1 (1986), otherwise known as Creating the Presidential Commission on Good Government Rules and Regulations.

asset, fund or property is ill-gotten wealth under Executive Orders Nos. 1 and 2.

In the sequestration of an on-going enterprise, the Commission shall appoint a fiscal agent therein to prevent the transfer, siphoning or dissipation of funds and assets and to audit transactions. Sequestration shall not result in the take-over of the operations of the business, unless otherwise warranted by the exigencies of the situation or required in the national interest.¹⁴⁵

In *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government*,¹⁴⁶ this court discussed that **sequestration** is a provisional remedy and stated that:

By the clear terms of the law, the power of the PCGG *to sequester property* claimed to be “ill-gotten” means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property and any records pertaining thereto may be found, including “business enterprises and entities,” — *for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving, the same — until it can be determined, through appropriate judicial proceedings, whether the property was in truth “ill-gotten,”* i.e., acquired through or as a result of improper or illegal use of or the conversion of funds belonging to the Government or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of official position, authority, relationship, connection or influence, resulting in unjust enrichment of the ostensible owner and grave damage and prejudice to the State. And this, too, is the sense in which the term is commonly understood in other jurisdictions.¹⁴⁷ (Emphasis supplied)

This court also clarified that **sequestration** does not have the effect of transferring title to the Presidential Commission on Good Government:

One thing is certain, and should be stated at the outset: the PCGG *cannot exercise acts of dominion* over property sequestered, frozen or provisionally taken over. As already earlier stressed with no little insistence, the act of sequestration; freezing or provisional takeover of property does not import or bring about a divestment of title over said property; does not make the PCGG the owner thereof. In relation to the property sequestered, frozen or provisionally taken over, the *PCGG is a conservator, not an owner*. Therefore, it can not perform acts of strict ownership; and this is specially true in the situations contemplated by the sequestration rules where, unlike cases of receivership, for example, no court exercises effective supervision or can upon due application and hearing, grant authority for the performance of acts of dominion.

¹⁴⁵ The PCGG Rules and Regulations Implementing Executive Orders Nos. 1 and 2 (1986).

¹⁴⁶ 234 Phil. 180 (1987) [Per J. Narvasa, En Banc].

¹⁴⁷ *Bataan Shipyard and Engineering Co., Inc., v. Presidential Commission on Good Government*, 234 Phil. 180, 207 (1987) [Per J. Narvasa, En Banc].

Equally evident is that the resort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprise being “ill-gotten” be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.¹⁴⁸ (Emphasis in the original)

Hence, when Pantranco was under sequestration, it remained to be a private corporation, and its funds also remained to be private. Although the Presidential Commission on Good Government is a government agency, it does not follow that Pantranco’s funds were converted into public funds by the mere fact that its conservator was a government agency.

The effect of sequestration was also discussed in *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corporation*.¹⁴⁹ Pacific Basin purchased shares of stock of Oriental Petroleum through a brokerage firm. It was found out later that the shares purchased by Pacific Basin were owned by Piedras Petroleum Mining Corporation, a sequestered corporation. Pacific Basin filed a Petition for Mandamus before the Securities and Exchange Commission because Oriental Petroleum, through its stock and transfer agent, would not transfer the shares to Pacific Basin. Oriental Petroleum argued that the shares were government-owned and could only be sold through public bidding under Proclamation No. 50.¹⁵⁰ This court held that the sequestration of Piedras Petroleum did not automatically change the nature of the shares of stock from private property to government property. It further discussed that:

A sequestration order is similar to the provisional remedy of Receivership under Rule 59 of the Rules of Court. The PCGG may thus exercise only powers of administration over the property or business sequestered or provisionally taken over so as to bring and defend actions in its own name; receive rents; collect debts due; pay outstanding debts; and generally do such other acts and things as may be necessary to fulfill its mission as conservator and administrator.

The PCGG, as a mere conservator, does not automatically become the owner of a sequestered property in behalf of the government. *There must be a final determination by the courts if the property is in fact "ill-gotten" and was acquired by using government funds. Thus, O[riental] P[etroleum] and M[inerals] C[orporation] cannot conclusively claim that the subject shares are government property by virtue of a sequestration order on Piedras Petroleum. Such conclusion is non sequitur.*¹⁵¹ (Emphasis supplied)

¹⁴⁸ Id. at 233–234.

¹⁴⁹ 558 Phil. 425 (2007) [Per J. Austria-Martinez, Third Division].

¹⁵⁰ Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust (1986).

¹⁵¹ *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corp.*, 558 Phil. 425, 441 (2007) [Per J. Austria-Martinez, Third Division].

This court also held that the requirement of public bidding under Proclamation No. 50 does not apply because the shares of stock owned by Piedras Petroleum are privately owned. The assets required to undergo public bidding refer to assets that are government-owned. It was reiterated that:

To repeat, the O[riental] P[etroleum] and M[inerals] C[orporation] shares originally owned by Piedras Petroleum, a sequestered corporation controlled by the nominees of PCGG, remain to be privately owned until such time when the court declares that the subject shares were acquired through government funds.¹⁵²

The sequestration of Pantranco was subsequently lifted and Pantranco was then placed under the management of Asset Privatization Trust. One of the powers of the Asset Privatization Trust is:

Section 12. Powers. –

....

- (1) To take title to and possession of and to take such steps as may be necessary to conserve assets transferred to it by the Committee, including, without limitation, to oversee the management and operation of corporations or other businesses constituting such assets, and to file suits and institute proceedings on behalf of and in the name of National Government for the recovery and protection of such assets[.]¹⁵³

Before the Asset Privatization Trust can “take title to and possession of” assets, a deed of assignment must be executed, evidencing the transfer of assets in favor of national government. This requirement is provided under Section 24 of Proclamation No. 50, as follows:

SECTION 24. DEEDS OF ASSIGNMENT. *Each government institution from which assets are to be transferred pursuant to this Proclamation shall and is hereby directed to execute, promptly and in no event later than thirty days after the issuance by the President of the relevant instrument referred to in Section 23 hereof, a deed of assignment in favor of the National Government, which shall, in annexes thereto, describe, account by account, the nature and extent of such assets and to deliver to the Committee such agreements, instruments, records and other papers in respect of such assets as may be deemed by the Committee to be reasonably necessary or appropriate. Each such deed of assignment shall constitute the Minister of Finance in*

¹⁵² Id. at 442.

¹⁵³ Proc. No. 50 (1986), Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or Assets Thereof, and Creating the Committee on Privatization and the Asset Privatization Trust.

representation of the National Government as attorney-in-fact of the government institution empowered to take such action and do such things as may be necessary or desirable to consolidate and perfect the title of the National Government to such assets, exercising for the purpose, any and all such rights and privileges appertaining to the transferor-government institution, pursuant to the provisions of applicable law or contract.

A copy of such deed of assignment, together with excerpts from its annexes describing particular property to be transferred, duly certified to be true by the appropriate official before a notary public or other official authorized by law to administer oaths, shall provide sufficient basis to registers of deeds, transfer agents of corporations and other persons authorized to issue certificates of titles, shares of stock and other evidence of title to issue new certificates, shares of stock or other instruments evidencing title to the assets so described to and in the name of the National Government or its duly authorized agent.

The transfer of any asset of government institutions directly to the national government as mandated herein shall be for the purpose of disposition, liquidation and/or privatization only, any import in the covering deed of assignment to the contrary notwithstanding. *Such transfer, therefore, shall not operate to revert such assets automatically to the general fund or the national patrimony, and shall not require specific enabling legislation to authorize their subsequent disposition*, but shall remain as duly appropriated public properties earmarked for assignment, transfer or conveyance under the signature of the Minister of Finance or his duly authorized representative, who is hereby authorized for this purpose, to any disposition entity approved by the Committee pursuant to the provisions of this Proclamation. Emphasis supplied)

In this case, petitioner did not present the Deed of Assignment that would show that Pantranco or its assets had been transferred to national government. Hence, while petitioner acts as the manager of Pantranco, it has not necessarily acquired ownership over Pantranco's assets. To rule that all assets under the management of petitioner are automatically converted to government property is dangerous because it may affect the rights of creditors. As held by this court, a private corporation remains to be private unless there is a final determination by the courts that it was acquired through the use of ill-gotten wealth.¹⁵⁴

Forfeiture is another mode where ownership of a private corporation is transferred to government. In *Major General Garcia v. Sandiganbayan*,¹⁵⁵ it was discussed that the effect of forfeiture "is to

¹⁵⁴ See *Pacific Basin Securities Co., Inc. v. Oriental Petroleum and Minerals Corp.*, 558 Phil. 425, 441 (2007) [Per J. Austria-Martinez, Third Division].

¹⁵⁵ 499 Phil. 589 (2005) [Per J. Tinga, En Banc]. The issue in this case was whether the Sandiganbayan had jurisdiction over the forfeiture case. This court then discussed whether forfeiture is criminal or civil in nature. It held that the Sandiganbayan has jurisdiction over forfeiture cases. It also held that forfeiture is civil in nature, but the effect of forfeiture is a penalty.

transfer the title to the specific thing from the owner to the sovereign power.”¹⁵⁶ In this case, there was no mention of whether Pantranco was forfeited. Thus, in the absence of evidence that Pantranco and its assets are ill-gotten, or that it has been forfeited, Pantranco remains to be a private corporation.

On the other hand, respondents presented enough evidence to prove the private character of the funds. They were able to show the source of the subject funds and how the amount of ₱29,816,225.91¹⁵⁷ was deposited in trust for Pantranco. As found by the Court of Appeals, the amount of ₱20 million was transferred by Pantranco to petitioner to comply with the bond requirement in the Imexco case.¹⁵⁸ The principal amount earned interest and increased to ₱29,816,225.91. Petitioner did not refute this fact. Instead, it argued that Pantranco was indebted to Philippine National Bank, and Philippine National Bank assigned Pantranco’s indebtedness to petitioner.¹⁵⁹

During a hearing, Atty. Jose Sison, then Associate Trustee and Chief Legal Officer of petitioner, testified:

Q: Mr. Witness, during your direct testimony, you presented and identified a Loan Agreement between Pantranco North Express, Inc. and Philippine National Bank. You testified that the basis of the issuance of this check... in the amount of P29,533,072.69 was pursuant to the [loan agreement]. Is that correct?

....

A: One of the functions of A[ssset] P[rivatization] T[rust] is collection. Among collections undertaken by A[ssset] P[rivatization] T[rust] are the deposits of borrowers particularly deposits to the Philippine National Bank which has been assigned to the National Government. This particular deposit was collected by A[ssset] P[rivatization] T[rust] from the Philippine National Bank for the account of Pantranco North Express, Inc. And so, those are the collections of A[ssset] P[rivatization] T[rust] from the borrowers which have been assigned by P[hilippine] N[ational] B[ank] to the government.

Q: And in this case, the borrower is Pantranco North Express, Inc., or PNEI?

A: That’s right, Sir.

....

¹⁵⁶ *Major General Garcia v. Sandiganbayan*, 499 Phil. 589, 612 (2005) [Per J. Tinga, En Banc], citing *Cabal v. Kapunan, Jr.*, 116 Phil. 1361 (1962) [Per J. Concepcion, En Banc].

¹⁵⁷ *Rollo*, p. 255, Certification.

¹⁵⁸ *Id.* at 125–127.

¹⁵⁹ *Id.* at 836.

Atty. Sison: The loan agreement contains stipulations between the parties to the contract, the agreement between Pantranco North Express, Inc. and Philippine National Bank, and this loan agreement has been assigned to the Asset Privatization Trust by virtue of a Deed of Assignment[.]¹⁶⁰ (Emphasis omitted)

The Deed of Assignment mentioned by Atty. Sison in his testimony, which would prove that petitioner was authorized to collect Pantranco's debt to Philippine National Bank, was never presented. The Court of Appeals discussed that under Section 23 of Proclamation No. 50, petitioner must first identify the assets to be divested or collected in an appropriate instrument before it can actually proceed with the divestment or collection.¹⁶¹ Since no deed of assignment was presented, the argument of petitioner that it could collect Pantranco's indebtedness cannot be given merit.

Also, Atty. Sison's testimony was countered by respondent Tatlonghari when he testified:

Q: At the time that the plaintiff was presenting its evidence to the case, they presented Atty. Jose Sison, who alleged under oath before this Honorable Court that the subject funds were actually public in nature. What can you say regarding that claim made by Atty. Sison?

A: Well that claim made by Atty. Sison is not factual claim [sic] Sir.

Q: Why?

A: *What we have on record is that the deposit was made categorically for the account of Pantranco North Express Inc.* In fact, in a letter dated January 25, 1993 [from Juan W. Moran to Walfrido Alampay], paragraph 2 of the said letter states "Upon maturity interest earnings will be added on the principal, it is understood that this arrangement shall be similar to our previous escrow deposit and that the amount shall earn interest and shall be available on call. Public funds cannot be available on call to any government entity for that matter.

Court: Is that part of the letter?

A: Yes, Your Honor. Paragraph 2 of the letter dated January 25, 1993.

Q: You said public funds are not supposed to earn interest per as the funds, subject of the were [sic] actually earning interest as per letter of Mr. Juan Moran of the A[ssset] P[rivatization] T[rust]. As the then Deputy Treasurer of the Bureau of Treasury, could you also cite other distinctions

¹⁶⁰ Id. at 116–117, Court of Appeals Decision dated April 1, 1997.

¹⁶¹ Id. at 116.

between public funds and private funds in relation to their being deposited with the bank to that matter?

A: *My understanding of a public fund is that it is an amount which can only be availed of or disbursed against an existing appropriation law. The deposit made was not covered by any appropriation law. Any disbursement, therefore, of a public fund, if I remember it correctly, must be secured by an existing appropriation law. No such thing exist [sic] in the case of the deposit.*

Atty. Saladero: You are referring to the deposit, subject of the present case?

A: That's right sir.

Q: Now it was also claimed by Atty. Sison that the funds or the deposits, subject of the present case cannot be preterminated. What can you say regarding that allegation?

A: In fact, it can. As a matter of fact, they did sir.

Q: Could you please explain to the court first what is meant by pretermination?

A: Pretermination means, the withdrawal of the deposit prior to its maturity.

Q: Can a public fund be preterminated?

A: [P]ublic fund, if it is performing part of the budget of a National Agency may also be preterminated, technically speaking. But in the case of the deposit at issue, it is not a public fund. It is a plain deposit for which deposit, just like any other institution can be preterminated at a certain penalty. The penalty being the lowering of interest due from the deposit.

Atty. Saladero: So what is the difference between the pret[er]mination of a public fund and the pretermination of a private fund?

A: As in the case of Pantranco deposit, it is classified as a private fund not a public fund, because if it is a public fund, it cannot be preterminated. It must be covered by an appropriation law.

Q: And was it covered by an appropriation law?

A: No sir, it was not.

Q: You mentioned that contrary to the claims made by Atty. Sison, there was a pretermination of the Pantranco funds. Do you have any evidence regarding the said pretermination?

A: Yes, Sir. In fact, I think it was in the/one [sic] of the letters.

Q: Would you be able to identify this letter which show [sic] that these [sic] was pre-termination of the Pantranco deposit?

A: Yes, Sir.

Q: I am showing to you this letter coming from Asset Privatization Trust sent to Mr. Walfrido Alampay of the Bureau of Treasury dated Decembe[r] 21, 1992 by one Atty. Ramon Garcia, Chief Executive Trustee of the A[ssset] P[rivatization] T[rust]. What is the relation of this letter to the one that you mentioned[?]

A: In paragraph 2 of the letter dated December 21, 1992, it says these [sic] that, “Instead of Island Cement/Appollo, we request the following on escrow with the Central Bank be preterminated as soon as possible. These were eleven (11) items preterminated, one of which is Pantranco. Pantranco is item No. 3.

Q: So this is the letter that you mentioned which shows that there was, in fact, pretermination of the Pantranco deposits, subject of this case?

A: Yes, Sir.¹⁶² (Emphasis supplied)

While respondent Tatlonghari did not state the legal bases of his statements why the subject funds are private funds, petitioner did not rebut respondent Tatlonghari’s statement. Petitioner also did not point to any provision of law that would disprove respondent Tatlonghari’s statements.

Respondent Tatlonghari’s statement that the subject funds could be preterminated is supported by the letter of Chief Executive Trustee Atty. Ramon T. Garcia to Mr. Walfrido Alampay of the Bureau of Treasury dated December 21, 1992.¹⁶³ The letter requested the pretermination of several escrow accounts, including Pantranco’s account.¹⁶⁴

In addition, the officials of the Bureau of Treasury consulted by respondent Tatlonghari all came to the conclusion that the subject funds are private funds. These officials were Dorothy M. Calimag, Special Investigator II; Atty. Acela M. Espinosa, Chief of the Legal Intelligence and Investigation Division; and an official from the Treasury Miscellaneous Accounting Division.¹⁶⁵ As officials of the Bureau of Treasury, they are presumed to have performed their functions with regularity, in the absence of evidence to the contrary.¹⁶⁶ Hence, the Court of Appeals also did not err

¹⁶² Id. at 915–918, Memorandum. The transcript of Virgilio Tatlonghari’s testimony was also quoted in his Memorandum (Id. at 891–893).

¹⁶³ Id. at 936, Annex “1” of Western Guaranty’s Memorandum.

¹⁶⁴ Id.

¹⁶⁵ Id. at 104–105. The official from the Treasury Miscellaneous Accounting Division was not named.

¹⁶⁶ Section 3(m), Rule 131 of the Rules of Evidence provides:

in giving credence to the recommendations of the officials of the Bureau of Treasury.

In any case, petitioner's argument that it was authorized to collect Pantranco's debt to Philippine National Bank was addressed by this court in *Republic v. Pantranco North Express, Inc.*¹⁶⁷

In *Republic v. Pantranco North Express, Inc.*, a Notice of Levy/Sale on Execution of Personal Property was issued over several properties owned by Pantranco, in relation to a labor case filed by Pantranco's retrenched employees. Asset Privatization Trust¹⁶⁸ filed a Notice of Third-Party Claim. It claimed that the levied properties "[were] mortgaged to the National Government" and "that the National Government ha[d] a superior lien over the properties."¹⁶⁹ Asset Privatization Trust argued that:

On March 28, 1994, . . . PNB assigned, transferred and conveyed to the Asset Privatization Trust (now PMO) in trust for the National Government, all of its rights, title[s] and interest on its non-performing assets, including the credit and mortgage account of PNEI. Later, PNEI's assets, including the subject properties, were foreclosed and transferred to A[ssset] P[rivatization] T[rust] in trust for the Republic of the Philippines.¹⁷⁰ (Emphasis supplied)

The Labor Arbiter denied the third-party claim, the denial of which was affirmed by the National Labor Relations Commission. The Office of the Solicitor General filed a Petition for Certiorari before the Court of Appeals without moving for reconsideration of the Decision of the National Labor Relations Commission. Thus, the Court of Appeals dismissed the Petition for Certiorari.¹⁷¹

The issue raised by Asset Privatization Trust before this court was whether the Court of Appeals erred in dismissing its Petition for Certiorari for failure to file a Motion for Reconsideration before the National Labor Relations Commission. Asset Privatization Trust tried to justify the procedural lapse by arguing that the case "involve[d] public interest since the subject properties already belong[ed] to the state; hence beyond the long arm of the labor agency to award in favor of the retrenched employees."¹⁷²

Section 3. Disputable presumptions. -- The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

.....
(m) That official duty has been regularly performed;
.....

¹⁶⁷ 682 Phil. 186 (2012) [Per J. Villarama, Jr., First Division].

¹⁶⁸ Referred to as the Privatization and Management Office in *Republic v. Pantranco North Express, Inc.*

¹⁶⁹ *Republic of the Philippines v. Pantranco North Express, Inc.*, 682 Phil. 186, 190 (2012) [Per J. Villarama, Jr., First Division].

¹⁷⁰ Id. at 191.

¹⁷¹ Id. at 191–192.

¹⁷² Id. at 193.

This court held that there was no error on the part of the Court of Appeals. Asset Privatization Trust could no longer question the Notice of Levy and/or Sale on Execution because the order denying the third-party claim became final and executory. Even when the procedural infirmity was brushed aside, there was still no error on the part of the Court of Appeals since no evidence was presented to show that the properties of Pantranco levied upon “were among those included in the list of accounts that were transferred to the National Government and which were subsequently transferred to the A[sset] P[rivatization] T[rust].”¹⁷³

It was further discussed in *Republic v. Pantranco North Express, Inc.* that even if Pantranco’s properties were transferred to national government, Pantranco’s assets should be “subject to all valid claims against Pantranco North Express, Inc.”¹⁷⁴

*Republic v. National Labor Relations Commission*¹⁷⁵ is another case involving writs of execution and notices of garnishment issued against Pantranco’s assets. Asset Privatization Trust was included in the case as the conservator of Pantranco. Pantranco’s properties were levied upon but the proceeds of the sale could only partially satisfy the judgment. An alias writ of execution was issued and a notice of garnishment was served upon the Land Bank of the Philippines, stating that the garnishment was “upon all credits, interest, bank deposits belonging to respondent Pantranco North Express, Inc. or the respondent Asset Privatization Trust.”¹⁷⁶ Land Bank replied that since Asset Privatization Trust is a government agency, its funds is not subject to garnishment:

A matter that must not be overlooked is the fact that the inclusion of A[sset] P[rivatization] T[rust] as a respondent in the monetary claims against PNEI is merely the consequence, of its being a conservator of assets, a role that A[sset] P[rivatization] T[rust] normally plays in, or the relationship that ordinarily it maintains with, corporations identified for and while under privatization. The liability of A[sset] P[rivatization] T[rust] under this particular arrangement, nothing else having been shown, should be co-extensive with the amount of assets taken over from the privatized firm. *PNEI’s assets obviously remain to be subject to execution by judgment creditors of PNEI. Accordingly, the levy and auction sale of the property of PNEI to satisfy the monetary judgment rendered in favor of PNEI employees can be sustained since such assets are to be deemed subject to all valid claims against PNEI.*¹⁷⁷ (Emphasis supplied)

¹⁷³ Id. at 196.

¹⁷⁴ Id. at 197.

¹⁷⁵ 331 Phil. 608 (1996) [Per J. Vitug, First Division].

¹⁷⁶ Id. at 613.

¹⁷⁷ Id. at 621.

The ruling in these cases is applicable considering that respondents are also creditors with valid claims against Pantranco. As held by this court, Pantranco's assets are subject to the claims of its creditors.

*Philippine National Bank v. Hydro Resources Contractors Corporation*¹⁷⁸ also involved a corporation placed under Asset Privatization Trust. Hercon, Inc. filed a Complaint for sum of money against Nocon Mining and Industrial Corporation (Nocon Mining). Nocon Mining's assets and liabilities were subsequently transferred to Asset Privatization Trust under a Trust Agreement. Thus, Asset Privatization Trust was impleaded as a party. This court held that Asset Privatization Trust could not be held liable for Nocon Mining's debt. However, Asset Privatization Trust "should ensure compliance by Nocon Mining and Industrial Corporation of the judgment against it."¹⁷⁹

Clearly, this court has recognized that the assets of corporations placed under the management of petitioner should be subject to the claims of unpaid creditors.

In respondent Tatlonghari's letter to petitioner, he stated that:

As a rule, depositors must indicate the nature of the deposits they are to make, that is, whether the sum of money they are to deposit is a government fund or merely in trust by the depositors. If the deposit made is for the account of the A[sset] P[rivatization] T[rust], deposit shall be credited to Fund 158 which is the "Special Account in the General Fund." If, however, the money to be deposited is or was merely entrusted to the A[sset] P[rivatization] T[rust], such deposit shall be credited as Fund 105 or Other Funds (Trust Liability Account) because the trustee can never own nor claim ownership over the property entrusted to him.

Please be informed that records of this Office show that the communications between Mr. Juan W. Moran and Ms. Rosalina Cajucom, and Atty. Ramon T. Garcia and Ms. Mely Salvatierra in their letter to Ms. Cajucom dated June 18, 1990 and Mr. Walfrido Alampay, by their own statements, averred and claimed that the amount forwarded to this Office is for deposit in the name of PNEI, hence, PNEI owns the subject deposit and there could be no other evidence to show that said money belongs to A[sset] P[rivatization] T[rust], more so of the Government.¹⁸⁰ (Emphasis supplied)

¹⁷⁸ G.R. Nos. 167530, 167561, 167603, March 13, 2013, 693 SCRA 294 [Per J. Leonardo-De Castro, First Division].

¹⁷⁹ Id. at 316.

¹⁸⁰ *Rollo*, pp. 128–129, Court of Appeals Decision dated November 15, 2015.

Moreover, if petitioner believed that the subject funds were public funds, then the words “in trust for” and “for escrow” should not have been used when it deposited the subject funds with the Central Bank.

This court has defined “escrow” as:

[A] written instrument which by its terms imports a legal obligation and which is deposited by the grantor, promisor, or obligor, or his agent with a stranger or third party, to be kept by the depositary until the performance of a condition or the happening of a certain event, and then to be delivered over to the grantee, promisee, or obligee.¹⁸¹

Furthermore, petitioner does not deny that respondents are creditors. What it questions is the notice of garnishment and the release of the funds to respondents.

Petitioner raises the argument that the trial court’s finding of fact that the subject funds are public funds must be respected by this court.¹⁸² Petitioner, in effect, implies that since the determination of the nature of funds is a question of fact, it is not allowed in a petition for review under Rule 45.

In a Rule 45 petition, this court is limited to the question: “Given the evidence as established by the Court of Appeals, did it make the proper conclusion?” In this case, the nature of funds is a legal conclusion based on the evidence presented. This court is limited to determining whether the Court of Appeals arrived at the proper conclusion. Even assuming that the determination of the nature of the funds involves a question of fact, the Court of Appeals can review these questions.

From the foregoing, it is clear that the subject funds belong to Pantranco and, thus, are private funds and can be subjected to a notice of garnishment.

WHEREFORE, the Petition is **DENIED** and the Decision of the Court of Appeals in CA-G.R. CV No. 64422 is **AFFIRMED**.

SO ORDERED.


MARVIC M.V.F. LEONEN
Associate Justice

¹⁸¹ *Province of Bataan v. Villafuerte, Jr.* 419 Phil. 907, 915 (2001) [Per J. Buena, Second Division].

¹⁸² *Rollo*, p. 836.

WE CONCUR:


ARTURO D. BRION

Associate Justice
Acting Chairperson


PRESBITERO J. VELASCO, JR.
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


JOSE CATRAL MENDOZA
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.


ARTURO D. BRION
Associate Justice
Acting Chairperson, Second Division

CERTIFICATION

Pursuant to 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.


MARIA LOURDES P. A. SERENO
Chief Justice