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G.R. No. 195837 – REPUBLIC OF THE PHILIPPINES, *petitioner*,
versus HONORABLE SANDIGANBAYAN 5TH DIVISION, DON
FERRY, and CESAR ZALAMEA, *respondents*.

G.R. No. 198221 – REPUBLIC OF THE PHILIPPINES, *petitioner*,
versus HONORABLE SANDIGANBAYAN 5TH DIVISION, LUCIO
C. TAN, ESTATE OF FERDINAND E. MARCOS
(REPRESENTED BY IMELDA R. MARCOS, IMEE M.
MANOTOC, IRENE M. ARANETA AND FERDINAND R.
MARCOS, JR.), IMELDA R. MARCOS, CARMEN KHAO TAN,
FLORENCIO T. SANTOS, NATIVIDAD P. SANTOS, DOMINGO
CHUA, TAN HUI NEE, MARIANO TAN ENG LIAN, ESTATE OF
BENITO TAN KEE HIONG (REPRESENTED BY TARCIANA C.
TAN), FLORENCIO N. SANTOS, JR., HARRY C. TAN, TAN ENG
CHAN, CHUNG POE KEE, MARIANO KHOO, MANUEL KHOO,
MIGUEL KHOO, JAMIE KHOO, ELIZABETH KHOO, CELSO
C. RANOLA, WILLIAM T. WONG, ERNESTO B. LIM,
BENJAMIN T. ALBACITA, DON FERRY, WILLY CO,
FEDERICO MORENO, PANFILO O. DOMINGO, HEIRS OF
GREGORIO LICAROS, CESAR ZALAMEA, SHAREHOLDINGS
INC., ALLIED BANKING CORP., FOREMOST FARMS INC.,
FORTUNE TOBACCO CORP., MARANAW HOTELS AND
RESORTS CORP., VIRGINIA TOBACCO REDRYING PLANT,
NORTHERN TOBACCO REDRYING PLANT, ASIA BREWERY
INC., SIPALAY TRADING CORP., HIMMEL INDUSTRIES,
GRANDSPAN DEVELOPMENT CORP., BASIC HOLDINGS
CORP., PROGRESSIVE FARMS, INC., MANUFACTURING
SERVICES AND TRADE CORP., ALLIED LEASING &
FINANCE CORP., JEWEL HOLDINGS INC., IRIS HOLDINGS
AND DEVELOPMENT CORP., and VIRGO HOLDINGS AND
DEVELOPMENT CORP., *respondents*.

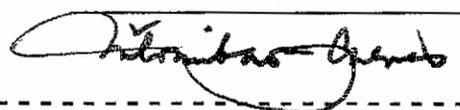
G.R. No. 198974 – REPUBLIC OF THE PHILIPPINES, *petitioner*,
versus HONORABLE SANDIGANBAYAN 5TH DIVISION, LUCIO
C. TAN, ESTATE OF FERDINAND E. MARCOS
(REPRESENTED BY IMELDA R. MARCOS, IMEE M.
MANOTOC, IRENE M. ARANETA AND FERDINAND R.
MARCOS, JR.), IMELDA R. MARCOS, CARMEN KHAO TAN,
FLORENCIO T. SANTOS, NATIVIDAD P. SANTOS, DOMINGO
CHUA, TAN HUI NEE, MARIANO TAN ENG LIAN, ESTATE OF
BENITO TAN KEE HIONG (REPRESENTED BY TARCIANA C.
TAN), FLORENCIO N. SANTOS, JR., HARRY C. TAN, TAN ENG
CHAN, CHUNG POE KEE, MARIANO KHOO, MANUEL KHOO,
MIGUEL KHOO, JAMIE KHOO, ELIZABETH KHOO, CELSO
C. RANOLA, WILLIAM T. WONG, ERNESTO B. LIM,
BENJAMIN T. ALBACITA, DON FERRY, WILLY CO,
FEDERICO MORENO, PANFILO O. DOMINGO, HEIRS OF

GREGORIO LICAROS, CESAR ZALAMEA, SHAREHOLDINGS INC., ALLIED BANKING CORP., FOREMOST FARMS INC., FORTUNE TOBACCO CORP., MARANAW HOTELS AND RESORTS CORP., VIRGINIA TOBACCO REDRYING PLANT, NORTHERN TOBACCO REDRYING PLANT, ASIA BREWERY INC., SIPALAY TRADING CORP., HIMMEL INDUSTRIES, GRANDSPAN DEVELOPMENT CORP., BASIC HOLDINGS CORP., PROGRESSIVE FARMS, INC., MANUFACTURING SERVICES AND TRADE CORP., ALLIED LEASING & FINANCE CORP., JEWEL HOLDINGS INC., IRIS HOLDINGS AND DEVELOPMENT CORP., and VIRGO HOLDINGS AND DEVELOPMENT CORP., *respondents*.

G.R. No. 203592 – REPUBLIC OF THE PHILIPPINES, *petitioner*, *versus* SANDIGANBAYAN 5TH DIVISION, LUCIO C. TAN, ESTATE OF FERDINAND E. MARCOS (REPRESENTED BY IMELDA R. MARCOS, IMEE M. MANOTOC, IRENE M. ARANETA AND FERDINAND R. MARCOS, JR.), IMELDA R. MARCOS, CARMEN KHAO TAN, FLORENCIO T. SANTOS, NATIVIDAD P. SANTOS, DOMINGO CHUA, TAN HUI NEE, MARIANO TAN ENG LIAN, ESTATE OF BENITO TAN KEE HIONG (REPRESENTED BY TARCIANA C. TAN), FLORENCIO N. SANTOS, JR., HARRY C. TAN, TAN ENG CHAN, CHUNG POE KEE, MARIANO KHOO, MANUEL KHOO, MIGUEL KHOO, JAMIE KHOO, ELIZABETH KHOO, CELSO C. RANOLA, WILLIAM T. WONG, ERNESTO B. LIM, BENJAMIN T. ALBACITA, DON FERRY, WILLY CO, FEDERICO MORENO, PANFILO O. DOMINGO, HEIRS OF GREGORIO LICAROS, CESAR ZALAMEA, SHAREHOLDINGS INC., ALLIED BANKING CORP., FOREMOST FARMS INC., FORTUNE TOBACCO CORP., MARANAW HOTELS AND RESORTS CORP., VIRGINIA TOBACCO REDRYING PLANT, NORTHERN TOBACCO REDRYING PLANT, ASIA BREWERY INC., SIPALAY TRADING CORP., HIMMEL INDUSTRIES, GRANDSPAN DEVELOPMENT CORP., BASIC HOLDINGS CORP., PROGRESSIVE FARMS, INC., MANUFACTURING SERVICES AND TRADE CORP., ALLIED LEASING & FINANCE CORP., JEWEL HOLDINGS INC., IRIS HOLDINGS AND DEVELOPMENT CORP., and VIRGO HOLDINGS AND DEVELOPMENT CORP., *respondents*.

Promulgated:

October 3, 2023



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CONCURRING AND DISSENTING OPINION



CAGUIOA, J.:

On July 17, 1987, the Republic of the Philippines (Republic) filed a civil action for reversion, reconveyance, restitution, accounting, and damages (Complaint) against the late President Ferdinand E. Marcos (President FM), Imelda R. Marcos (Imelda), Ferdinand "Bongbong" R. Marcos, Jr. (BBM), Lucio C. Tan (Tan), as well as the officers, directors, and individual stockholders¹ (respondent-stockholders) of Tan's alleged dummy corporations.²

The Republic subsequently filed a Second Amended Complaint to implead additional defendants, including the corporations (respondent-corporations)³ which were allegedly granted concessions by President FM and Imelda.

The consolidated petitions now pending before the Court stem from the proceedings that transpired before the Sandiganbayan in relation to the Second Amended Complaint. These are:

1. The Sandiganbayan's Resolutions dated December 22, 2010 and February 25, 2011 which granted the separate motions to dismiss/demurrer to evidence filed by respondents Don Ferry (Ferry) and Cesar Zalamea (Zalamea), and resulted in the dismissal of the Second Amended Complaint as against them. These resolutions are the subject of the Petition for Review on *Certiorari* docketed as **G.R. No. 195837**;⁴
2. The Sandiganbayan's Order dated June 9, 2011 and Resolution dated August 2, 2011 excluding from the evidence the testimonies of Joselito Yujuico (Joselito) and Aderito Yujuico (Aderito),⁵ as well as the Sandiganbayan's Resolutions dated May 3, 2011 and July 4, 2011 dismissing the Republic's Motion for Voluntary Inhibition. These issuances are the subject of the Petition for *Certiorari* docketed as **G.R. No. 198221**;⁶

¹ Namely, Carmen Khao Tan, Florencio T. Santos, Natividad P. Santos, Domingo Chua, Tan Hui Nee, Mariano Tan Eng Lian, Estate of Benito Tan Kee Hiong represented by Tarciana C. Tan, Florencio N. Santos, Jr., Harry C. Tan, Tan Eng Chan, Chung Poe Kee, Mariano Khoo, Manuel Khoo, Miguel Khoo, Jamie Khoo, Elizabeth Khoo, Celso C. Ranola, William T. Wong, Ernesto B. Lim, Benjamin T. Albacita, Don Ferry, Willy Co, and Federico Moreno. See also *rollo* (G.R. No. 203592) (Vol. IV), p. 2631.

² *Id.* at 2631-2632.

³ Namely, (a) Shareholdings, Inc.; (b) Asia Brewery, Inc.; (c) Allied Banking Corporation; (d) Fortune Tobacco; (e) Maranaw Hotels; (f) Virginia Tobacco; (g) Northern Tobacco; (h) Foremost Farms; (i) Sibalay Trading; (j) Himmel Industries; (k) Grandspan Development Corp.; (l) Basic Holdings Corp.; (m) Progressive Farms, Inc.; (n) Manufacturing Services and Trade Corp.; (o) Allied Leasing and Finance Corp.; (p) Jewel Holdings, Inc.; (q) Iris Holdings and Development Corp.; and (r) Virgo Holdings and Development Corp.

⁴ See *ponencia*, p. 11.

⁵ *Id.* at 61.

⁶ *Id.* at 11-13.

3. The Sandiganbayan's Resolutions dated July 13, 2011 and August 23, 2011 denying the Republic's Motion to Admit Third Amended Complaint for the purpose of impleading PMFTC, Inc. as a party. These resolutions are the subject of the Petition for *Certiorari* docketed as **G.R. No. 198974**;⁷ and
4. The Sandiganbayan's Decision (Assailed Decision) dated June 11, 2012 and Resolution (Assailed Resolution) dated September 26, 2012 dismissing the Republic's Second Amended Complaint. These issuances are the subject of the Petition for Review on *Certiorari* docketed as **G.R. No. 203592**.⁸

The *ponencia* resolves the consolidated petitions, as follows:

WHEREFORE, premises considered, this Court rules on the present consolidated petitions as follows:

- (1) In **G.R. No. 195837**, the Petition for Review on *Certiorari* filed by the Republic is **DENIED**, and the Sandiganbayan's Resolutions dated 22 December 2010 and 25 February 2011 are **AFFIRMED**. The Sandiganbayan's dismissal of the complaint against respondents [Ferry] and [Zalamea] is declared valid.
- (2) In **G.R. No. 198221**, the Petition for *Certiorari* filed by the Republic is **DISMISSED**, and the Sandiganbayan's Order dated 9 June 2011 and Resolution dated 2 August 2011 are **AFFIRMED**. The Court holds that the testimonies of [Joselito] and [Aderito] were correctly excluded from evidence by the Sandiganbayan.

The Sandiganbayan Resolutions dated 3 May 2011 and 4 July 2011 dismissing the Republic's Motion for Voluntary Inhibition are likewise **AFFIRMED**.

- (3) In **G.R. No. 198974**, the Petition for *Certiorari* filed by the Republic is **DISMISSED**, and the Sandiganbayan Resolutions dated 13 July 2011 and 23 August 2011, which denied the Republic's Motion to Admit Third Amended Complaint, are **AFFIRMED**.
- (4) In **G.R. No. 203592**, the Sandiganbayan Decision dated 11 June 2012 and Resolution dated 26 September 2012 dismissing the Republic's Second Amended Complaint for reversion, reconveyance, restitution, accounting and damages are

⁷ *Id.* at 14.

⁸ *Id.* at 16.

AFFIRMED. Consequently, the Petition for Review on *Certiorari* of the Republic of the Philippines is **DENIED** for lack of merit.⁹

I concur with the disposition of the petitions docketed as G.R. Nos. 195837, 198221, 198974 in paragraphs (1), (2), and (3), respectively. However, I disagree with the disposition to affirm the Assailed Decision and Assailed Resolution in paragraph (4).

At the outset, I agree with the holding of the *ponencia* that it was a mistaken notion on the part of the Sandiganbayan that ill-gotten wealth must originate from the vast resources of the government in order to be deemed as such. As I will also explain below, assets and properties illegally acquired by President FM, Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees, even if private in nature, still fall within the concept of ill-gotten wealth as contemplated under prevailing law and jurisprudence.

Moreover, as opposed to the *ponencia*, I find the evidence, offered by the Republic thus far, sufficiently establish that Tan was able to secure a brewery license for his corporation, Asia Brewery, Inc. (Asia Brewery), because of his close business relationship with President FM. The chief evidence proffered by the Republic to prove this was Tan's own Written Disclosure which contained admissions. This was bolstered by the other pieces of evidence adduced by the Republic, specifically, Imelda's Amended Answer with Counterclaim and Compulsory Cross-Claim (Amended Answer), BBM's Testimony, and the Sworn Statement of President FM's financial executor, Rolando Gapud (Gapud).¹⁰

Under prevailing law and jurisprudence, the grant of the brewery license on account of President FM and Tan's close business relationship sufficiently gives rise to the Republic's right of recovery. **It should be stressed, however, that since the brewery license is the only benefit shown to have been granted by President FM in favor of Tan, the Republic's right of recovery in this case is premised solely on the grant of said license. Accordingly, the amount that may be recovered by the Republic must be measured based on the ill-gotten wealth derived therefrom. It cannot include any income or wealth that pertains to Allied Banking Corporation (Allied Bank), Fortune Tobacco Corporation (Fortune Tobacco), Foremost Farms, Inc. (Foremost Farms), Himmel Industries, Inc. (Himmel Industries), Silangan Holdings, Inc. (Silangan Holdings), Dominion Realty and Construction Corporation (Dominion Realty), or Grandspan Development Corporation (Grandspan).**

Strikingly however, there is nothing in the records which would allow the reasonable quantification of such ill-gotten wealth. For this

⁹ *Id.* at 61-62.

¹⁰ *Id.* at 21.

reason, I submit that the Second Amended Complaint should be remanded to the Sandiganbayan to: (i) allow the Republic to present additional evidence that will permit the proper assessment of such ill-gotten wealth with reasonable certainty; and (ii) afford Tan the opportunity to present controverting evidence, if any.

To this end, I submit this Opinion to explain the foregoing submissions in greater detail.

The concept of ill-gotten wealth

The resolution of G.R. No. 203592 centers on the concept of ill-gotten wealth under prevailing law and jurisprudence. Hence, as a starting point, it is apt to discuss its scope and nuances.

The Court has long acknowledged that one of the foremost and pressing concerns of the Aquino government in February 1986 was the recovery of the unexplained or ill-gotten wealth amassed by former President FM and Imelda, their relatives, friends, and business associates.¹¹ The Court, in *Republic v. Lobregat*,¹² succinctly described this undertaking as an enterprise “of great pith and moment,” and was attended by “great expectations.” At the same time, the Court realized that the task of recovering ill-gotten wealth was “initiated not only out of considerations of simple justice but also out of sheer necessity — the national coffers were empty, or nearly so.”¹³ For indeed, when President FM was ousted in 1986, the country’s debt was over a staggering amount of \$26 billion, while his “illegally acquired wealth” alone, not counting that of his relatives and cronies, was then already estimated to be in the aggregate amount of five to ten billion U.S. dollars,¹⁴ an undoubtedly significant disproportion from his income as a public servant.

As the Court found in the much later case of *Republic v. Sandiganbayan*,¹⁵ while President FM made it appear that he had an extremely profitable legal practice before he became President and that, incredibly, he was still receiving payments almost 20 years after, his first income tax return in 1965 belied all of these claims because no such receivables from any client were indicated at all. As to how his and Imelda’s joint income had ballooned over the years, therefore, the Court concurred with the Office of the Solicitor General’s (OSG) conclusion in said case that President FM’s and Imelda’s joint income tax returns from 1965 to 1984 failed to conceal the skeletons of their kleptocracy.¹⁶

It is likewise common knowledge that crony capitalism during the administration of President FM thrived. It was a system that allowed certain

¹¹ See *Republic v. Sandiganbayan*, G.R. No. 152154, July 15, 2003, 406 SCRA 190, 219.

¹² G.R. No. 96073, January 23, 1995, 240 SCRA 376.

¹³ *Id.*

¹⁴ See *id.*

¹⁵ *Supra* note 11.

¹⁶ See *Republic v. Sandiganbayan*, *id.* at 223, citing the Office of the Solicitor General’s findings.



friends and relatives of his and Imelda's to acquire great wealth and economic power through special favors and privileges extended by the government.¹⁷ Reportedly, there were more than 100 companies owned by friends of the Marcos family that failed in the early 80's. Many of these firms were taken over by the State when they were unable to repay loans guaranteed by the government, but the favoritism continued to benefit some cronies through government bailouts even after their firms went belly up.¹⁸ This is why, evidently, the definition of ill-gotten wealth is not only limited to President FM and Imelda, but extends as well to their close relatives, subordinates, business associates, dummies, agents or nominees who also acquired ill-gotten wealth directly or indirectly, through or as a result of the improper or illegal use of funds or properties of the government or by taking undue advantage of their office, authority, influence, connections or relationship with President FM. Whether ill-gotten wealth was acquired by President FM, Imelda or their family on one hand, or their cronies on the other, the same results of unjust enrichment, and grave damage and prejudice to the Filipino people and the Republic of the Philippines were the common denominator.

Verily, just three days after her inauguration in 1986, former President Corazon C. Aquino (President Aquino) issued her very first executive order, Executive Order (EO) No. 1.¹⁹

EO No. 1 created the Presidential Commission on Good Government (PCGG), and charged it with the task of assisting President Aquino in the "recovery of all ill-gotten wealth accumulated by [President FM], his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them, during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, connections or relationship."²⁰

Subsequently, President Aquino issued EO No. 2,²¹ further authorizing the PCGG to freeze or otherwise prevent the transfer, conveyance, encumbrance, concealment, or dissipation of assets and properties pertaining to former President FM and/or his wife Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees.

As clearly reflected in their respective "whereas clauses," the aforesaid EOs were premised on the need to recover the assets and

¹⁷ See William, B. (1984, August 16). *'Crony Capitalism' Blamed for Economic Crisis*. Last accessed on June 6, 2023, from <<https://www.washingtonpost.com/archive/politics/1984/08/16/crony-capitalism-blamed-for-economic-crisis/d99e8760-087d-4d25-ad66-3d324150dc4d/>>.

¹⁸ *Id.*

¹⁹ Creating the Presidential Commission on Good Government, signed on February 28, 1986.

²⁰ *See id.* Sec. 2(a), EO No. 1.

²¹ Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, their Close Relatives, Subordinates Business Associates, Dummies, Agents, or Nominees, signed on March 12, 1986.

properties amassed by President FM, his immediate family, relatives, and close associates illegally acquired during the Marcos regime. To quote:

EO No. 1

WHEREAS, vast resources of the government have been amassed by former [President FM], his immediate family, relatives, and close associates both here and abroad;

WHEREAS, there is an urgent need to recover all ill-gotten wealth[.]

EO No. 2

WHEREAS, the Government of the Philippines is in possession of evidence showing that there are assets and properties purportedly pertaining to former [President FM], and/or his wife, [Imelda], their close relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or **by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines;**

WHEREAS, said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world[.] (Emphasis supplied)

On April 11, 1986, the PCGG issued the Rules and Regulations (PCGG Rules) implementing EO Nos. 1 and 2. Drawing from the modes of acquisition of ill-gotten wealth detailed in EO Nos. 1 and 2, the PCGG Rules explicitly defined ill-gotten wealth, as follows:

SEC. 1. *Definition.* – (A) “Ill-gotten wealth” is hereby defined as any asset, property, business enterprise or material possession of persons within the purview of [EO Nos. 1 and 2], acquired by them directly, or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes:

- (1) Through misappropriation, conversion, misuse or malversation of public funds or raids on the public treasury;
- (2) Through the receipt, directly or indirectly, of any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the official concerned[.];
- (3) By the illegal or fraudulent conveyance or disposition of assets belonging to the government or any of its

subdivisions, agencies or instrumentalities or government-owned or controlled corporations;

- (4) By obtaining, receiving or accepting directly or indirectly any shares of stocks, equity or any other form of interest or participation in any business enterprise or undertaking;
- (5) Through the establishment of agricultural, industrial or commercial monopolies or other combination and/or by the issuance, promulgation and/or implementation of decrees and orders intended to benefit particular persons or special interest; and
- (6) By taking undue advantage of official position, authority, relationship or influence for personal gain or benefit.

Thereafter, EO No. 14 was issued on May 7, 1986, empowering the PCGG to file and prosecute all cases investigated by it under EO Nos. 1 and 2 before the Sandiganbayan.²²

In *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*,²³ the Court further clarified the scope of the concept of ill-gotten wealth by detailing the specific situations contemplated under the aforesaid EO Nos., hence:

The situations envisaged and sought to be governed are self-evident, these being:

- 1) that "(i)ll-gotten properties (were) amassed by the leaders and supporters of the previous regime";
 - a) more particularly, that (i)ll-gotten wealth (was) accumulated by former [President FM], his immediate family, relatives, subordinates and close associates, * * located in the Philippines or abroad, * * (and) business enterprises and entities (came to be) owned or controlled by them, during * * (the Marcos) administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority, influence, [c]onnections or relationship;"
 - b) otherwise stated, that "there are assets and properties purportedly pertaining to former [President FM], and/or his wife [Imelda], their close

²² Sec. 1, EO No. 14.

²³ G.R. No. L-75885, May 27, 1987, 150 SCRA 181.

relatives, subordinates, business associates, dummies, agents or nominees which had been or were acquired by them directly or indirectly, through or as a result of the improper or illegal use of funds or properties owned by the Government of the Philippines or any of its branches, instrumentalities, enterprises, banks or financial institutions, or by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines”;

- c) that “said assets and properties are in the form of bank accounts, deposits, trust accounts, shares of stocks, buildings, shopping centers, condominiums, mansions, residences, estates, and other kinds of real and personal properties in the Philippines and in various countries of the world;” and
- 2) that certain “business enterprises and properties (were) taken over by the government of the Marcos Administration or by entities or persons close to former [President FM].”²⁴ (Emphasis and underscoring supplied)

From the foregoing, two fundamental points become apparent.

Foremost, ill-gotten wealth does not only pertain to assets and properties illegally acquired by President FM himself. Ill-gotten wealth also pertains to assets and properties illegally acquired by other individuals, particularly, President FM’s wife Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees.

As well, the Court affirmed in several cases²⁵ that ill-gotten wealth may be acquired through either of two means: *first*, “through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions” (**first mode of acquisition**), or *second*, “by taking undue advantage of their office, authority, influence, connections or relationship [for personal gain or benefit] resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the

²⁴ *Id.* at 205–206.

²⁵ *Ponencia*, p. 42.

Republic of the Philippines” (second mode of acquisition).

As keenly observed by the *ponencia*, the second mode of acquisition does not require that the assets and properties in question be government-owned in order to be deemed ill-gotten.²⁶ Stated otherwise, assets and properties which are private in nature may still fall within the concept of ill-gotten wealth if they have been acquired by President FM, Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees by taking undue advantage of their office, “authority, influence, connections or relationship”²⁷ for personal gain or benefit²⁸ “resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines.”²⁹

On this score, I agree that the Sandiganbayan unduly restricted the concept of ill-gotten wealth when it held that such “[does] not include all the properties of [President FM], his immediate family, relatives, and close associates[,] but only the part that originated from the [‘vast resources of the government.’]”³⁰ To restrict the definition of ill-gotten wealth in such manner, as did the Sandiganbayan, would be to ignore the plain construction of the definition found in the relevant laws, which, to repeat, contemplate two (2) things: (i) assets and properties originating from government funds and obtained through the first mode of acquiring ill-gotten wealth; or (ii) private assets and properties acquired through the second mode of acquiring ill-gotten wealth. The Sandiganbayan’s narrow interpretation would set a dangerous precedent, as it would effectively remove private assets and properties which were unlawfully acquired by President FM, his immediate family, relatives, or close associates from the scope of EO Nos. 1, 2, and 14.

The broad construction of ill-gotten wealth is reinforced by jurisprudence.

In *Silverio v. Presidential Commission on Good Government*³¹ (*Silverio*), the OSG filed with PCGG a complaint for graft and corrupt practices and other crimes related to public service. Therein petitioner Ricardo Silverio (Ricardo) was impleaded as one of several defendants. During the proceedings, PCGG issued several writs of sequestration against Ricardo’s properties. Ricardo filed a motion to quash the complaint and lift the writs of sequestration, claiming that no probable cause had been shown to justify the sequestration of his properties. However, PCGG did not act on the motion. Aggrieved, Ricardo filed a Rule 65 petition before the Court, imputing grave abuse of discretion on the part of PCGG.

²⁶ *Id.* at 41–43.

²⁷ Whereas Clause, EO No. 2.

²⁸ Sec. 1, PCGG Rules.

²⁹ *Supra* note 27.

³⁰ *Rollo* (G.R. No. 203592, Vol. I), p. 145.

³¹ G.R. No. L-77645, October 26, 1987, 155 SCRA 60.

The Court dismissed Ricardo's petition for lack of merit. In so ruling, the Court held that under EO Nos. 1, 2, and 14, the PCGG is empowered to issue writs of sequestration and similar orders in furtherance of its duty of recovering illegally-acquired wealth. The Court explained:

Under [EO Nos.] 1, 2 and 14, the respondent PCGG is empowered to issue writs of sequestration, and similar orders so as to accomplish its duty of recovering illegally-acquired wealth. The power to *sequester* property means to place or cause to be placed under its possession or control said property, or any building or office wherein any such property or 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.**³² (Emphasis and underscoring supplied)

While *Silverio* primarily involved a motion to lift the provisional sequestration orders of the PCGG, it is well to note that the properties involved therein were private in nature, and owned by therein petitioner Ricardo, a businessman who was charged before the PCGG due to his close relationship with President FM. Thus, in dismissing Ricardo's Petition for *Certiorari*, the Court held that “the record of the case shows *prima facie* that the various business interests of [Ricardo] have enjoyed considerable privileges obtained from former President [FM] during his tenure as Chief Executive in violation of existing laws; privileges which could not have been so obtained were it not for the close association of the petitioner with the former President.”³³

As well, in *Republic v. Tuvera*³⁴ (*Tuvera*), Juan Tuvera (Juan), as Presidential Executive Assistant of President FM, was charged with taking advantage of his relationship and connection with the latter by engaging in a scheme to unjustly enrich himself at the expense of the Republic and of the Filipino people. This was allegedly accomplished on his part by securing a Timber Licensing Agreement (TLA) on behalf of Twin Peaks, a private corporation owned by his son, Victor Tuvera (Victor), despite Twin Peaks' lack of qualification to be a grantee thereof. The Republic, through PCGG, sought the reconveyance of the revenues earned by Twin Peaks in an approximate amount of ₱45 million.³⁵

³² *Id.* at 64–65. Citations omitted.

³³ *Id.* at 65–66.

³⁴ G.R. No. 148246, February 16, 2007, 516 SCRA 113.

³⁵ *See id.* at 120–121.

The Court agreed with the Republic that Juan, Victor, and Twin Peaks had amassed ill-gotten wealth in the form of assets and properties derived through the latter's operations.³⁶ Similar to *Silverio*, the assets and properties found to be ill-gotten in *Tuvera* were also private in nature.

More recently, in the case of *Disini v. Republic*³⁷ (*Disini*), the Republic filed an action for recovery of ill-gotten wealth against Herminio Disini (Herminio), a close associate of President FM. The Republic claimed that contractor Westinghouse Electric Corporation (Westinghouse) and architectural firm Burns & Roe, Inc. (B&R) solicited the influence of Herminio for the purpose of ensuring their appointment as the main contractor and architect-engineer for the government's Bataan Nuclear Power Plant Project (BNPP). In exchange, Herminio received commissions equivalent to a percentage of the price of Westinghouse's and B&R's awarded contracts. The Republic further alleged that Herminio unduly took advantage of his close association with President FM to obtain favorable terms for Westinghouse by requesting the latter to issue orders and directives to the National Power Corporation (NPC) to accept Westinghouse's proposals.

For his part, Herminio argued, among others, that the Republic had no cause of action against him as it failed to present proof that the alleged commissions he received were part of the purchase price paid by the Republic to Westinghouse and B&R. In other words, the Republic failed to adduce proof that the alleged commissions had been derived from government funds. This argument was strongly rejected by the Court, thus:

[C]ontrary to the contention of Disini, **ill-gotten wealth also encompasses those that are derived indirectly from government funds or properties through the use of power, influence, or relationship resulting in unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic. The alleged subject commissions may not have been sourced directly from the public funds but it is beyond cavil that Disini would not have amassed these commissions had he not exerted undue influence on [President FM].**³⁸ (Emphasis and underscoring supplied)

The Court notably added that "the Republic may recover ill-gotten wealth not only from [President FM], Imelda and his immediate family, but also from his dummies, nominees, agents, subordinates and/or business associates **whether or not [President FM] is also found liable together with them.**"³⁹

To repeat, the concept of ill-gotten wealth, as properly understood in

³⁶ *See id.*

³⁷ G.R. No. 205172, June 15, 2021, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/67468>>.

³⁸ *Id.*

³⁹ *Id.*

Silverio, Tuvera, and Disini, can be broken down as follows:

1. Ill-gotten wealth does not only pertain to assets and properties illegally acquired by President FM himself, but also to assets and properties illegally acquired by other individuals, particularly, President FM's wife Imelda, their close relatives, subordinates, business associates, dummies, agents, or nominees. For this reason, the Republic may recover ill-gotten wealth not only from President FM, but also directly from said individuals, whether or not President FM is found liable together with any of them.
2. Ill-gotten wealth may be acquired either "through or as a result of the improper or illegal use of funds or properties owned by the government of the Philippines or any of its branches, instrumentalities, enterprises, banks, or financial institutions" (first mode of acquisition), or "by taking undue advantage of their office, authority, influence, connections or relationship, resulting in their unjust enrichment and causing grave damage and prejudice to the Filipino people and the Republic of the Philippines" (second mode of acquisition). Under the second mode of acquiring ill-gotten wealth, the assets and properties in question need not emanate from the vast resources of the government in order to be deemed ill-gotten and recovered by the Republic.

Furthermore, Section 3 of EO No. 14, as amended, expressly provides that all civil suits for restitution, reparation of damages, or indemnification for consequential damages, forfeiture proceedings, or any other civil actions in connection with EO Nos. 1 and 2 may proceed independently of any criminal proceedings, and may be proved by preponderance of evidence. Thus:

SEC. 3. The civil suits to recover unlawfully acquired property under Republic Act No. 1379 or for restitution, reparation of damages, or indemnification for consequential and other damages or any other civil actions under the Civil Code or other existing laws filed with the Sandiganbayan against [President FM], [Imelda], members of their immediate family, close relatives, subordinates, close and/or business associates, dummies, agents and nominees, may proceed independently of any criminal proceedings and may be proved by a preponderance of evidence.

As often defined, preponderance of evidence is meant that the evidence adduced by one side is, as a whole, superior to that of the other side. Essentially, it refers to the comparative weight of the evidence presented by the opposing parties and is usually considered to be synonymous with the term greater weight of the evidence or greater weight of the credible evidence. Preponderance of evidence is proof that is more convincing to the court as worthy of belief than that which is offered in opposition thereto.⁴⁰

⁴⁰ See *Republic v. Reyes-Bakunawa*, G.R. No. 180418, August 28, 2013, 704 SCRA 163, 177-178.

In this case, the Republic's claim for reconveyance of 60% of the shares of Shareholdings, Inc. (SHI) is anchored on the following premises: (i) President FM and Tan entered into a 60-40 sharing agreement concerning Tan's corporations; (ii) the umbrella corporation SHI, and the three primary holding corporations Basic Holdings Corp. (Basic), Falcon Holdings Corp. (Falcon), and Supreme Holdings Inc. (Supreme) were formed in order to implement said 60-40 arrangement; (iii) President FM had been given beneficial ownership of 60% of the shares of SHI; and (iv) such 60% beneficial interest is presently held by respondent-stockholders as mere dummies of President FM. On this basis, the Republic asserts that said 60% interest should be reconveyed in favor of the Republic as it constitutes ill-gotten wealth.

As I had stated at the outset, I find that the Republic failed to establish that President FM beneficially owned 60% of SHI and that respondent-stockholders merely stand as his dummies. Nevertheless, applying the definition of ill-gotten wealth under prevailing law and jurisprudence, I find that the Republic has preponderantly established that Tan had secured Asia Brewery's license through his close business relationship with President FM. Since this brewery license is the only undue benefit shown to have been granted by President FM in favor of Tan, the extent of the Republic's right of recovery in this case must be measured solely on the basis of the ill-gotten wealth derived by Tan from said brewery license. It cannot be measured on the basis of any wealth derived from the other operating companies whose shares of stocks are also held by SHI, to wit: Allied Bank, Fortune Tobacco, Foremost Farms, Himmel Industries, Silangan Holdings, Dominion Realty, or Grandspan. Accordingly, I submit that it is improper, if not unjust, to use 60% of the shares of SHI as a metric for recovery in this case.

I expound.

The pieces of evidence relied upon and formally offered by the Republic are admissible and should be duly considered

To recall, the Republic's Second Amended Complaint alleged, among others, that:

Tan was a business partner of [President FM]. [President FM] and [Tan] had agreed that the former would own 60% of [SHI] which, in turn, beneficially held and/or controlled substantial shares of Fortune Tobacco, [Asia Brewery], [Allied Bank], and Foremost Farms and other corporations here and abroad. Apart from [the] said 60% beneficial interest of [President FM], [Tan] yearly paid the former sums of money from 1980 to 1986, in exchange for privileges and concessions which [President FM] gave [Tan] . . .⁴¹

⁴¹ *Rollo* (G.R. No. 203592) (Vol. IV), p. 2634.

In support, the Republic presented as evidence, among others, Imelda's Amended Answer filed before the Sandiganbayan, BBM's Testimony before the Sandiganbayan, the Sworn Statement of Gapud, and Tan's Written Disclosure. However, the Sandiganbayan, in its Assailed Decision and Assailed Resolution, did not give credence to the first three (3) pieces of evidence based on inadmissibility.

The Sandiganbayan held that Imelda's Amended Answer was, in fact, disallowed,⁴² and treated BBM's Testimony regarding President FM and Tan's discussions as mere hearsay as he was not privy to those discussions.⁴³ Similarly, the Sandiganbayan also found Gapud's Sworn Statement as hearsay because he did not take the witness stand and was not cross-examined by the defense.⁴⁴

As regards Tan's Written Disclosure, the Sandiganbayan gave it short shrift, ruling that there was no proof that Tan's requests were implemented or that the corporations benefited from President FM. It further ruled that there is no showing that President FM's grant of favors and privileges to a corporation results in the government's ownership of its shares, assets, and properties that may be recovered as ill-gotten wealth.⁴⁵ The respondents, for their part, also have issues as to the inadmissibility of Tan's Written Disclosure. They averred that it was presented by Senator Jovito Salonga (Senator Salonga), whose direct examination on the matter was not completed and who was also not cross-examined by the defense.⁴⁶

The *ponencia* agrees with the findings of the Sandiganbayan that the above-cited pieces of evidence are either inadmissible in evidence or lacking in probative value and hence, are not proof that the assets and properties subject of this case were acquired by Tan by taking advantage of his connections with the Marcos family.⁴⁷ I hold otherwise. I submit that the above-cited pieces of evidence are admissible in evidence and should have been duly considered by the Sandiganbayan. I submit further that they preponderantly establish the Republic's right of recovery against Tan.

IMELDA'S AMENDED ANSWER

While it can be conceded that Imelda's Amended Answer was disallowed by the Sandiganbayan on the ground that her cross-claims did not involve the same transactions or acts as that of the principal cause of action in the Republic's case, said pleading, however, was formally offered as documentary evidence by the Republic. Thus, the statements contained therein may be considered as extrajudicial admissions pursuant to Section 26⁴⁸ (now Section 27), Rule 130 of the Rules of Court, which states that

⁴² See *ponencia*, pp. 44–45.

⁴³ See *id.* at 16.

⁴⁴ See *id.*

⁴⁵ *Rollo* (G.R. No. 203592) (Vol. I), p. 151.

⁴⁶ See *ponencia*, p. 23.

⁴⁷ See *id.* at 43–45.

⁴⁸ Now, 2019 REVISED RULES ON EVIDENCE, Rule 130, approved on October 8, 2019.

“[t]he act, declaration or omission of a party as to a relevant fact may be given in evidence against him or her.” As held in *Bon v. People*,⁴⁹ this rule is based upon the truism that no man [or woman] would make any declaration against himself [or herself], unless it is true.⁵⁰

By analogy, the disallowed pleading of Imelda is akin to an original pleading that was amended or superseded and hence, had disappeared from the record, lost its status as a pleading, and ceased to be a judicial admission which would have required no proof.⁵¹ That said, such pleading may still be utilized against the pleader as an extrajudicial admission, subject to it being first formally offered in evidence.⁵² Since Imelda’s Amended Answer had been formally offered in this case, there should be no reason, therefore, to render it ineffective.

The *ponencia* points out however, that Imelda was not cross-examined on her statements in the Amended Answer.⁵³

Certainly, Imelda’s Amended Answer is in the nature of a private document. Lacking the official or sovereign character of a public document, or the solemnities prescribed by law, a private document requires authentication in the manner allowed by law or the Rules of Court before its acceptance as evidence in court. However, in four (4) instances, the requirement of authentication of a private document is excused, to wit: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.⁵⁴ I submit that Imelda’s Amended Answer falls within the third exception.

It is beyond cavil that Imelda fought for the admission of her Amended Answer before the Sandiganbayan. After the graft court denied its admission, Imelda moved for reconsideration, but the same was denied by the Sandiganbayan *via* a minute resolution.⁵⁵ She then appealed said denial before the Court, which, however, affirmed the Sandiganbayan.⁵⁶ These acts, to my mind, are clear affirmations on her part that her Amended Answer is genuine and authentic. Consequently, it was not imperative anymore for the Republic to authenticate the Amended Answer through the testimony of Imelda.

Furthermore, given the genuineness and due execution of the

⁴⁹ G.R. No. 152160, January 13, 2004, 419 SCRA 101.

⁵⁰ *See id.* at 111.

⁵¹ *See Ching v. Court of Appeals*, G.R. No. 110844, April 27, 2000, 331 SCRA 16, 34.

⁵² *See id.*

⁵³ *Ponencia*, p. 47.

⁵⁴ *Patula v. People*, G.R. No. 164457, April 11, 2012, 669 SCRA 135, 156.

⁵⁵ *Rollo* (G.R. No. 203592) (Vol. I), p. 154.

⁵⁶ *Id.*

Amended Answer, the statements contained therein should be considered as admissions against Imelda's interest. Admissions against [one's] interest are those **made by a party to a litigation** or by one in privity with or identified in legal interest with such party and are **admissible whether or not the declarant is available as a witness.**⁵⁷

So, too, notwithstanding the application of the *res inter alios acta* rule, Imelda's Amended Answer is high quality evidence⁵⁸ that cannot simply be brushed aside. In the first place, the Sandiganbayan should not have bound itself by the technical rules of procedure, taking its cue from the adopted liberal approach of the Court regarding technical rules of procedure in cases involving recovery of ill-gotten wealth.⁵⁹ As previously elaborated by the Court in *Republic v. Gimenez*⁶⁰ (*Gimenez*):

In all the alleged ill-gotten wealth cases filed by the PCGG, this Court has seen fit to set aside technicalities and formalities that merely serve to delay or impede judicious resolution. This Court prefers to have such cases resolved on the merits at the Sandiganbayan. But substantial justice to the Filipino people and to all parties concerned, not mere legalisms or perfection of form, should now be relentlessly and firmly pursued. Almost two decades have passed since the government initiated its search for and reversion of such ill-gotten wealth. The definitive resolution of such cases on the merits is thus long overdue. If there is proof of illegal acquisition, accumulation, misappropriation, fraud or illicit conduct, let it be brought out now. Let the ownership of these funds and other assets be finally determined and resolved with dispatch, free from all the delaying technicalities and annoying procedural sidetracks.⁶¹ (*Italics in the original*)

Thus, here, even if it is assumed that the rule on *res inter alios acta* were to apply, the treatment of the extrajudicial admission as hearsay is bound by the exception on independently relevant statements.⁶² Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be circumstantially relevant as to the existence of such a fact.⁶³

The statements in Imelda's Amended Answer, being extrajudicial admissions against her interest, are independently relevant to prove the arrangement between President FM and Tan. As the Republic emphasized, Imelda maintained in her Amended Answer that their family owns at least 60% of Tan's businesses by virtue of the said arrangement. According to the Republic, Imelda's claim validates its theory that, indeed, President FM

⁵⁷ See *Lazaro v. Agustin*, G.R. No. 152364, April 15, 2010, 618 SCRA 298, 308.

⁵⁸ See *People v. Buntag*, G.R. No. 123070, April 14, 2004, 427 SCRA 180.

⁵⁹ *Republic v. Gimenez*, G.R. No. 174673, January 11, 2016, 778 SCRA 261.

⁶⁰ *Id.*

⁶¹ *Id.* Citation omitted.

⁶² See *Buenaflor Car Services, Inc., v. David, Jr.*, G.R. No. 222730, November 7, 2016, 807 SCRA 191.

⁶³ *Id.*



unlawfully entered into a business arrangement with Tan and then used his position and power to grant numerous concessions and privileges to these corporations in violation of the Constitution and anti-graft laws.⁶⁴

The Republic quoted the following telling narration in Imelda's Amended Answer:

42. Way before and continuing through 1985, former [President FM] had beneficial ownership, together with [Tan], his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired, or in turn invested in, to wit:

1. [Himmel Industries]
2. [Fortune Tobacco]
3. [Foremost Farms]
4. [Asia Brewery]
5. [Grandspan]
6. [Silangan Holding(s)]
7. [Dominium Realty]

43. [President FM] had a sixty percent (60%) beneficial ownership in said companies, which beneficial interests were held in trust by [Tan] personally and through his family members and business associates who appeared as the recorded stockholders of said companies.

44. Sometime in late 1980, [President FM] and [Tan] agreed to consolidate their ownership interests in the various businesses, in one holding company organized under the name [SHI].

[44.1] To implement such consolidation, the record (or nominee) stockholders of the above-named seven (7) operating companies transferred their stockholdings in said companies to defendant [SHI] through separate Deeds of Sale of Shares of Stock.

[44.2] In consideration, and in exchange, for such transfer of shares of the operating companies, [SHI] in turn, issued its shares of stock to the record (nominee) stockholders of the above-named operating companies.

[44.3] In fine, the transferring record (nominee) stockholders of the operating companies became likewise the record (nominee) stockholders of the holding company, [SHI].

45. Having achieved the consolidation of their beneficial ownership interests, through the organization of the holding company, [SHI], [President FM] and [Tan] then agreed to structure the segregation of their beneficial ownership interest[s] in the proportion of sixty percent (60%) for [President FM] and forty percent (40%) for [Tan].

45.1 For this purpose, three ultimate holding companies were organized in the middle of 1984: [Basic], [Supreme], and [Falcon], with

⁶⁴ See rollo (G.R. No. 203592) (Vol. VII), p. 3995.

the intention of having Basic as the record owner of the beneficial interests of [Tan] and his group (40%) and Supreme and Falcon, as the record owners of the aggregate beneficial interest[s] of [President FM] (60%).

45.2 In express acknowledgment of the fact that they merely held their recorded interest in [SHI] in trust for [President FM] and [Tan], in the ratio of 60%-40%, respectively, the record (nominee) stockholders of [SHI] then *assigned* their stockholdings in [SHI] to the newly organized ultimate holding companies as follows:

Stockholders	No. of Shares	% of Holdings
[Basic]	61,617,500	[49.0]%
[Supreme]	31,437,500	25.0%
[Falcon]	31,437,500	25.0%
[Tan]	628,750	0.5%
[Mariano Tan Eng Lian]	628,750	0.5%
TOTAL	125,750,000	100.0%

45.3 To make the shareholdings of Basic conform to the agreed 60%-40% ratio, Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of [SHI] shares held by the former in favor of the latter.

45.[4] After Basic transferred 9% of its 49% stock ownership in [SHI], the stock ownership in [SHI] became as follows:

Stockholders	No. of Shares	% of Holdings
[Basic]	50,300,000	40.0%
[Supreme]	42,755,000	34.0%
[Falcon]	31,437,500	25.0%
[Tan]	628,750	0.5%
[Tan Eng Lian]	628,750	0.5%
TOTAL	125,750,000	100.0%

46. In express recognition of the beneficial ownership of [President FM], the incorporators of both Falcon and Supreme executed and delivered to [President FM] blank Deeds of Assignment.

47. The *assignment* by the defendants record-stockholders of [SHI] of sixty percent (60%) of that company's then outstanding capital stock to Falcon and Supreme which are, in turn, beneficially owned entirely by [President FM], is an express acknowledgment by such defendants, including defendant [Tan], that they held such interests in trust for, and for the benefit of [President FM].

48. Defendant [Imelda] as surviving spouse and heir of [President FM] and the Estate of [President FM], the latter being the legal successor-in-interest of [President FM], repeatedly demanded from defendant [Tan] and the other defendant-record stockholders of [SHI] that they *perform* or *enforce* the trust by delivering and recording the ownership of sixty percent (60%) of [SHI]'s outstanding capital stock to [the] Estate of [President FM], thru Falcon and Supreme, in accordance with the Deeds

of Assignment.

49. Despite and notwithstanding such repeated demands, defendants [Tan] and record (nominee) stockholders of [SHI] failed and refused to comply with said demands.⁶⁵ (Emphasis and italics supplied)

Apart from the foregoing admissions, it is well to note at this juncture that the Republic likewise touched on the alleged public declarations of Imelda about the Marcoses' wealth. One such "critical public declaration" was narrated by the late Senator Salonga:

Imelda: "We own practically everything in the Philippines..."

Many people did not realize how much had been accomplished by the PCGG through sequestration until [Imelda] came out with a series of "bombshell" revelations as published from day to day in the December issues of Philippine Daily Inquirer (December 5, 6, 7, 8 and 9)[.] Without realizing its far-reaching implication, [Imelda] declared:

We practically own everything in the Philippines, from electricity, telecommunication, airlines, banking, beer and tobacco, newspaper publishing, television stations, shipping, oil, mining, hotels, and health resorts, down to coconut mills, small fisheries, real estates and insurance.

[Imelda] said she would reclaim an estimated 500 billion pesos (around \$13 billion 1999), now in the hands of the Marcos cronies. **The prominent Marcos cronies, whom she called "trustees" were, by her own account, merely holding many of the sequestered properties for her own account, merely holding many of the sequestered properties for and in the name of her husband, [President FM]. This was precisely what the PCGG had maintained since 1986 except that the Marcoses are not the real owners — it is the Filipino people. Among the trustees she named were [Tan], Eduardo "Danding" Cojuangco, the late Ramon Cojuangco and his son, Antonio "Tonyboy" Cojuangco, Imelda Cojuangco, Herminio D[i]sini, [Gapud], Jose Yao Campos, Roberto Benedicto and many others.**⁶⁶ (Emphasis in the original)

The Republic highlighted another supposed public declaration made by Imelda through the testimony of Christine Herrera (Herrera), a former reporter from the Philippine Daily Inquirer to whom Imelda granted an interview on the alleged wealth of the Marcoses based on various deeds of sales of shares of stocks and blank deeds of assignments.⁶⁷ The pertinent portions of the testimony of Herrera were quoted by the Republic in its Memorandum as follows:

Atty. Generillo:

Q: Ms. Witness in Exhibit "VVVVVVVVVVVV" a statement attributed to [Imelda] appears, and I would like to read for the record, as follows:

⁶⁵ *Rollo* (G.R. No. 203592) (Vol. VII), pp. 3997-4000.

⁶⁶ *Id.* at 4003-4004. Citation omitted.

⁶⁷ *Id.* at 3865.

“Among the biggest companies held by Tan for [President FM] according to the former First Lady were: [Fortune Tobacco], [Allied Bank], [Asia Brewery], [Foremost Farms] and the Flagship Company [SHI]. According to [Imelda] all the shares and stock up to 60% to 100% held by Tan were for [President FM]. Tan, whom she called ‘[*ang magbobote*]’ (bottle peddler) gaining substantial concession in specific taxes, stamp duties for a cigarette Fortune Tobacco and here Asia Brewery Operations’ she said, we gave Tan and [others . . .]”

INTERRUPTED —

(TSN dated July 2, 2008, pp. 24-25)

Atty. Generillo:

Another statement, Your Honor, was on page 1 is as follows:

“[Imelda] said she met Tan through her cousin Herminio [Disini].”

May we request, Your Honor, that this position be bracketed and marked as Exhibit “VVVVVVVVVVVV-3[?]” . . .

Atty. Generillo:

Another statement found on page 2, read[s] as follows:

“She explained that Tan was a small[-]time businessman before he became member of [President FM]’s inner circle, she said Tan was into bottling and filter manufacturing, but that, these were just small businesses[.]”

May we request that this portion be bracketed and marked as Exhibit “VVVVVVVVVVVV-4[?]”

(TSN dated July 2, 2008, pp. 26-27)

Atty. Generillo:

On page 18, Your Honor, of this issue marked as Exhibit “[“]WWWWWWWWWWW-1” there appears a statement, which read, as follows:

“The next thing [President FM] did, [Imelda] said, was to assign trustees who

belong to [President FM]'s inner circle to various companies[.]”

May we request, Your Honor, that this portion be bracketed and marked as Exhibit “WWWWWWWWWW-2[?]”

....

Atty. Generillo:

There is also a statement appearing on page 18, and it reads:

“Eduardo Danding Cojuangco was brought in by Ramon Cojuangco, to [Tan] was brought in by [Imelda]'s cousin-in-law Herminio [Disini], [Gapud], former Security Bank and Trust Company President was brought in by Jose Yao-Campos, owner of the United Laboratories, Roberto Benedicto, Manuel Nieto, and 25 others would be cronies were also top because they were there at the right place at the right time, [Imelda] said[.]”

May we request, Your Honor that this portion be bracketed and marked as Exhibit “WWWWWWWWWW-3[?]”

(TSN dated July 2, 2008, pp. 28-30)

Atty. Generillo:

Another statement appearing on page 18 reads as follow[s]:

“She said ‘since her husband was President at that time, he could not sit as President and Chairman of all the companies he had acquired, so he instead chose his [dummies] who fully agreed to manage the company on his behalf[.]”

May we request, Your Honor, that this portion be bracketed and marked as Exhibit “WWWWWWWWWW-5[?]”

....

Atty Generillo:

Another statement appearing on page 18 reads, as follow[s]:

“Ikaw ang assign dito, ikaw dito, hindi yung ako ang Presidente nito, ako

ang Presidente noon kasi Presidente na ako ng bayan[.]” [T]ranslation in English, Your Honor[:] “[Y]ou are assigned here, you are assigned there, I won’t to (sic) be President of any company because I am already the President of the Philippines[.]” she said. All of them willingly signed Deeds of Trust, this way, they became his close associates, [Imelda] said[.]”]

May we request, Your Honor, that this portion be bracketed and marked as Exhibit “WWWWWWWWWW-6[?]”

(TSN dated July 2, 2008, pp. 31-32)⁶⁸ (Emphasis and italics in the original)

The foregoing evidently shows that Imelda has been consistent with her claims about the arrangement between her husband, President FM, and Tan. These public declarations, taken together with her Amended Answer, should therefore be weighed and evaluated by the Sandiganbayan more carefully and closely.

BBM’S TESTIMONY

As to BBM’s Testimony, the *ponencia* holds that it is hearsay because he was not privy to the alleged 60-40 arrangement of the share transfers between and among the various corporations.⁶⁹

I strongly disagree.

Any evidence — whether oral or documentary — is hearsay if its probative value is not based on the personal knowledge of the witness, but on that of some other person who is not on the witness stand. Hence, information that is relayed to the former by the latter before it reaches the court is considered hearsay.⁷⁰ In other words, hearsay evidence is defined as “evidence not of what the witness knows himself [or herself] but of what he [or she] has heard from others;” and the hearsay rule bars the testimony of a witness who merely recites what someone else has told him or her, whether orally or in writing.⁷¹ This is certainly not the case here. BBM testified on his **own** conversations with his father and on his **own** meetings with Tan and Gapud that both pertain to his **own** orientation and eventual involvement with the business interests of his family in Tan’s companies. Ineluctably, these are facts which he knows of his own personal knowledge and specifically derived from his own perception and experience.⁷²

⁶⁸ *Id.* at 4005–4007.

⁶⁹ *Ponencia*, p. 53.

⁷⁰ *Bon v. People*, *supra* note 49, at 109.

⁷¹ *Calicdan v. Cendaña*, G.R. No. 155080, February 5, 2004, 422 SCRA 272, 278.

⁷² *See* Sec. 22, 2019 REVISED RULES ON EVIDENCE, *supra* note 48.

The equally telling testimony of BBM was quoted by the Republic in this wise:

Q: "When was the first time that you saw [Tan]?"

WITNESS CONG. MARCOS, JR.

A: I could not give you the specific date but I know it was in the early '70s. As I said, the first time I saw him was in the area of the Palace that we call the "Study Room[,] " which is the area next to my father's office.

ATTY. GENERILLO

Q: Did you have opportunity to talk to [Tan]?

A: Yes, several times after we have been introduced. We would say "hello" to each other when we cross each other's paths. And on a couple of occasions, we actually had an opportunity to have substantive conversations aside from meetings.

Q: What do you mean "substantive meetings" or discussions?

A: Well, I remember that at one point, I was summoned by my father to his office and so I went. And he was there with [Tan] in the discussion.

And he at that point told me that he would like me to familiarize myself with the operations of some of the enterprises that we have interests in and that [Tan] was going to help me to be more familiar with the said operations.

Q: Why did your father summon you to his office to familiarize yourself with the business interests of the Marcoses?

A: It was part of a larger effort on the part of the family to really clarify and to conduct an inventory and legal audit of all those business interest that we have.

My sister Imee, who has legal training, was given the job of conducting the legal audit, and I was given the job to go to as many of these enterprises as I could and as I said, learn the operations and meet the people who were running them so that when the time comes that we would take over, we would know how to manage these different interests.

Q: And what was the condition of your father when he summoned you to his office?

A: At that time, he was still quite strong. But then, he was starting to feel the effect of his kidney disease. So perhaps, even that has a factor in his wanting us to know the family's interests.

Q: What happened after that meeting with your father and

defendant [Tan]?

A: Well, at the end of the meeting, [Tan] and I talked and discussed the possibility of having a meeting, just the two of us.

And if I am not mistaken, he was leaving for abroad and so he said that he will contact me as to when we will have that meeting.

Q: Was there any occasion for your father to show proof of the family's interests in [Tan]?

A: Well, when we first began this whole effort, he had me and my sister, we met and we sat down and showed us some documents which are essentially Deeds of Assignment, Shares of Stock, Titles to properties, and all these kinds of things. And he tried to give us a sketch of exactly how the structures were.

And then his instructions to us were — we go out and make sure that first, all documentations were in place because maybe the documents or something were in some persons, the documents or something were in another person, to really reorganize them and collate everything. So, that was the gist of — We had several of those meetings, and that was then I saw these documents.

....

Q: Now, let us go back to the instance where you had substantial discussion with defendant [Tan].

Where did it take place?

A: Well, as I have mentioned, the first time that we actually sat down and talked of anything substantive was in my father's office.

Subsequently, I received a message from [Tan]'s office that he would ask me to meet him at his office in Allied Bank. That is about I think a week or fortnight after I was summoned by my father.

Q: And you meet him at his office?

A: Yes, at his office in Allied Bank.

Q: And what did you discuss with him in that meeting?

A: He laid out the ownership structure of the different corporations that we had an interest in.

Q: Did he tell you what those corporations are?

A: Yes, he actually drew out a diagram, a piece of paper, explaining that there was a company, [SHI], which was a holding corporation for several other corporations.

I will try to remember them all — Foremost Farms,



Fortune Tobacco, Asia Brewery, Himmel Industries, Grandspan, Dominion — I might be missing some but basically, [SHI] was the holding corporation for all those other corporations.

Q: Aside from that meeting in Allied Bank, where else did you meet defendant [Tan]?

A: I think a couple of months after that, I flew to the bottling plant of Asia Brewery in Laguna, by helicopter.

I remember clearly the visit because there was a difficulty landing in the Asia Brewery Compound itself. We nearly had an accident and so we had to land on the next compound, then took a car to Asia Brewery.

Q: What happened in that plant visit?

A: At the plant visit, [Tan] [t]ook me around and basically explained to me what they did in the bottling plant, how the bottles were made, the different sizes that they made, the different kinds of beer, how they fill out the bottles, how they package them, the general operations of the plant.

....

MR. SANCHEZ

Q: You mentioned [SHI].

What is the relationship of [SHI] with the other corporations that you mentioned earlier?

ATTY. MENDOZA

The best evidence are the corporate documents, Your Honors.

J. ESTRADA

Witness may answer!

WITNESS CONG. MARCOS

[SHI] was the holding company for the other companies that I mentioned. And the ownership of the [SHI] was divided at least initially, between three other companies.

This explanation (sic) that [Tan] gave me while we were at his office in Allied Bank.

ATTY. GENERILLO

Could you name the three other companies holding shares in the [SHI]?

A: Yes. The three companies that own [SHI] were Basic, Supreme and Falcon.



Initially, Basic own 50% of [SHI]; Falcon had 25%, and Supreme had 25%.

This changed I think in early 1985 when some shares of Basic were sold to Supreme, the net effect of which, Supreme owned 34% of [SHI].

....

ATTY. GENERILLO

Mr. Witness, do you have proof that [Supreme] and [Falcon] have interests in [SHI]?

WITNESS CONG. MARCOS

Well, there are documents that show Deeds of Sale of [SHI] to the three companies — Basic, Falcon and Supreme. There are also Deeds of Sale of certain percentage of Basic to Supreme.

This was relevant to us because we held the shares of stock in Falcon and in Supreme which were with us, endorsed in blank.⁷³ (Emphasis in the original)

Even assuming *arguendo* that the testimony of BBM may not be admitted as proof of the veracity or truth of the statements he attributed to President FM, Tan, and Gapud, the same may still be admitted for the purpose of placing on record the fact that those statements or the tenor of such statements were indeed made. In other words, again, the doctrine of independently relevant statements finds application, such that regardless of the truth or falsity of a statement, when what is relevant is the fact that such statement has been made, the hearsay rule does not apply and the statement may be shown.⁷⁴ The *ponencia* concedes just as much — that BBM's Testimony is admissible as an independently relevant statement as to the fact that he had conversations with President FM, Tan, and Gapud.⁷⁵

Thus, here, as the Republic correctly pointed out, BBM's direct and personal testimony elaborated on the complex formation of SHI, Falcon, Supreme, and Basic to hold the beneficial ownership of President FM and Tan, and the multifarious *rigodon* of shares and deeds of assignments endorsed in blank.⁷⁶ According to the Republic, BBM's Testimony corroborated the statement of his own mother Imelda, to the effect that the Marcoses were asserting a claim on certain shares of stocks in Tan's companies. The Republic stressed that while BBM testified that President FM did not perform any act reflective of his interests in these corporations, he nonetheless knew that Tan was depositing money in Security Bank, which represented the Marcoses' share in the income of the corporations.⁷⁷

⁷³ *Rollo* (G.R. No. 203592) (Vol. VII), pp. 4013–4017.

⁷⁴ See *People v. Umapas*, G.R. No. 215742, March 22, 2017, 821 SCRA 421.

⁷⁵ See *ponencia*, p. 54.

⁷⁶ See *rollo* (G.R. No. 203592) (Vol. VII), p. 4017.

⁷⁷ See *id.* at 4018.

The Republic added that the testimony of BBM dovetailed with Gapud's Sworn Statement. BBM testified that he knew Gapud was his father's financial manager who regularly came to Malacañang Palace to discuss certain aspects of the cases that he was handling with President FM and later, with him, his mother Imelda, and his sister Imee.⁷⁸ Gapud's Sworn Statement recounts, in part, the purported 60-40 arrangement between President FM and Tan, to wit:

With particular reference, for example, to [Tan], I know that [President FM] and [Tan] had [an] understanding that [President FM] owns 60% of [SHI], (sic) which owns shares of Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. I was asked sometime in 1985 to formalize this arrangement. I went to [Tan] for that purpose. He tried to bargain by reducing the equity of [President FM] to 50%. I told him that I was merely carrying out the instructions of [President FM] and that if he wanted to bargain, he should take up the matter directly with [President FM]. As a matter of fact, [Tan], apart from the 60% equity of [President FM] had been regularly paying, through Security Bank, Sixty Million Pesos [P60 Million] to One Hundred Million Pesos [P100 million] to [President FM], in exchange for privileges and concessions [President FM] had been giving him in relation to the businesses managed by [Tan]. As I said on p. 7 of Annex "A", [Tan] gained substantial concessions in specific taxes and stamp duties for his cigarette (Fortune Tobacco) and beer (Asia Brewery) operations. He belongs to the group that could get presidential decrees and letters on (sic) instruction from [President FM] for their joint benefit. I understand that [Tan] asserted that he was the victim of extortion, and that he outwitted [President FM] by issuing to [him] his 60% equity in fake certificate of stock. This is not accurate. [President FM] and [Tan] were in partnership, and they derived great material benefits from the relationship. As far as I know, [Tan] was not in a position to outwit and outmaneuver [President FM]. I do not know that there is a crony or business associate of [President FM] who could have done that.⁷⁹ (Emphasis in the original)

GAPUD'S SWORN STATEMENT

Like BBM's Testimony, Gapud's Sworn Statement should not be hastily dismissed as mere hearsay. Though it was merely presented by Senator Salonga, whose testimony was not completed, it also offers independently relevant statements that corroborate the close business relationship described by BBM in his testimony, as well as by Imelda in her Amended Answer and by Tan in his Written Disclosure. To be specific, Gapud's Sworn Statement bolstered the described structured arrangement between Tan and President FM on the latter's purported shares of stocks in Fortune Tobacco, Asia Brewery, Allied Bank, and Foremost Farms. Furthermore, it narrated the regular bank deposits being made by Tan in the amounts of P60-P100 million in favor of President FM in exchange for the concessions and favors the former president granted him for his businesses.

⁷⁸ *Id.*

⁷⁹ *Id.* at 4020-4021.

It must be borne in mind that it was an undisputed fact that Gapud was the financial executor of President FM and Imelda and at times, acted as their financial advisor who carried out their instructions. Gapud's Sworn Statement, therefore, should be given consideration as the statements contained therein are, at the very least, circumstantially relevant to the issue at hand. Again, under the doctrine of independently relevant statements, only the fact that Gapud made said statements is relevant, and the truth or falsity thereof is immaterial. Evidence as to the making of such statements is primary, for the statements themselves may constitute a fact in issue or be **circumstantially relevant** as to the existence of such a fact.⁸⁰

Moreover, it is my considered view that Gapud's Sworn Statement is a public document. Significantly, it was subscribed and sworn to (notarized) before Consul General Vicente G. Reyes in the Philippine Consulate General in Hong Kong. It also contained the seal of his office (authenticated). In this regard, *Teoco v. Metropolitan Bank and Trust Company*⁸¹ quoting *Lopez v. Court of Appeals*⁸² is instructive:

From the foregoing provision, when the special power of attorney is executed and acknowledged before a notary public or other competent official in a foreign country, it cannot be admitted in evidence unless it is certified as such in accordance with the foregoing provision of the rules by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept of said public document and authenticated by the seal of his office. A city judge-notary who notarized the document, as in this case, cannot issue such certification.⁸³

Consequently, Gapud's Sworn Statement had been converted into a public document which renders it admissible as evidence of the fact which gave rise to their execution, even against a third person,⁸⁴ without need for further proof of its authenticity.

Even on the assumption that Gapud's Sworn Statement remains a private document, its due execution and authenticity were sufficiently established through the testimony of Senator Salonga who witnessed its execution, typed the statement, and signed it as witness. This is in accordance with Section 20, Rule 132 of the Rules of Court, which provides:

SEC. 20. *Proof of private document.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved either:

⁸⁰ See *People v. Umapas*, G.R. No. 215742, March 22, 2017, 821 SCRA 421.

⁸¹ G.R. No. 162333, December 23, 2008, 575 SCRA 82.

⁸² G.R. No. 77008, December 29, 1987, 156 SCRA 838.

⁸³ *Id.* at 841–842.

⁸⁴ Sec. 23, Rule 132 provides:

Public Documents as Evidence. — Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter.



(a) By anyone who saw the document executed or written;
or

(b) By evidence of the genuineness of the signature or
handwriting of the maker.

Any other private document need only be identified as that which
it is claimed to be.

TAN'S WRITTEN DISCLOSURE

As well, the Republic banked on Tan's Written Disclosure which purportedly provided a detailed narration of his 60-40 arrangement with President FM, the specifics of which the Republic characterized as "impossible to fabricate with unparalleled consistency."⁸⁵ Thus:

255. Respondent [Tan] confirmed [President FM]'s beneficial interests in his various businesses which they cloaked under an umbrella company – [SHI]. To segregate their unlawful business partnership, three (3) holding companies, namely, Basic, Falcon and Supreme, were formed. Thus:

....

SHI was incorporated on November 11, 1979. The original intention for setting up this company was for it to purchase and hold at least 99% of the shares of stock from existing stockholders of the following companies:

1. [Fortune Tobacco]
2. [Asia Brewery]
3. [Foremost Farms]
4. [Himmel Industries]
5. [Grandspan]
6. [Dominium Realty]

This set up is necessary in order to systematize the stock ownership in the various corporations. Also, since the group of companies was getting quite big, [Tan] felt and wanted to [ensure] that the various companies would stay under one umbrella in the event that anything should happen to him — [Tan] wanted to ensure continuity of the companies which he had worked so hard to build up.

By the end of [1980], it became imperative for SHI to close the purchase of the aforementioned shares in order to avail of the minimal transfer tax of [one-fourth] of 1% which became unavailable starting 1981. On October 19, 1981, SHI also acquired all the shares of stock of [Dominium Realty], a realty firm which owns vast tracts of land in Cabuyao, Laguna upon which [Asia Brewery]'s plant stands.

⁸⁵ *Rollo* (G.R. No. 203592) (Vol. VII), p. 3946.

....

On July 20, [1983], three holding companies were incorporated as follows:

1. [Basic]
2. [Falcon]
3. [Supreme]

On the same day, the incorporators of [Falcon] and [Supreme] after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [President FM] thru [Gapud] persisted in his demand for 50, then 51%, then 60% share in SHI.

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of SHI, with the exception of [Tan] and [Tan Eng Lian] who retained 0.5% each. On the same day, the said three holdings companies borrowed from the stockholders-vendors of [SHI] amounts equivalents to the respective purchase prices of the aforementioned shares on [a] 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.⁸⁶ (Emphasis in the original)

As with the Amended Answer of Imelda, however, the *ponencia* posits that as documentary evidence, the Written Disclosure should have been authenticated as genuine and duly executed either by a person who had witnessed its execution or by any other evidence showing its genuineness and due execution. Tan, however, was not presented on direct to authenticate his Written Disclosure and was not cross-examined on the statements he allegedly made.⁸⁷

In the same vein, according to the *ponencia*, the testimony of Senator Salonga on direct examination about Tan's Written Disclosure cannot serve as authentication thereof based on the preceding reasons as well.⁸⁸

Hence, the *ponencia* concludes, the Written Disclosure is hearsay, lacks probative weight, and cannot sustain the Republic's allegations.⁸⁹ Again, I disagree.

While indeed, Tan's Written Disclosure was offered in connection with the testimony of Senator Salonga which had not been completed, it is noteworthy that Tan and the other respondents did not deny that it was properly presented as documentary evidence.⁹⁰ They also failed to deny its

⁸⁶ *Id.* at 3947-3948.

⁸⁷ *Ponencia*, pp. 49-50.

⁸⁸ *Id.* at 50.

⁸⁹ *Id.* at 52.

⁹⁰ *Rollo* (G.R. No. 203592) (Vol. IV), p. 3495.

execution. In fact, it must be emphasized that **Tan relied on this Written Disclosure in his own Memorandum**,⁹¹ albeit on the premise that his arrangement with President FM was reached under duress and was ultimately thwarted. Still, as in the case of Imelda's Amended Answer, this essentially affirms the genuineness and authenticity of the Written Disclosure and thereby excepts such from the requirement of authentication of a private document.⁹²

Tan, in particular, should be estopped from discrediting his Written Disclosure or from excluding it as evidence, when, for all intents and purposes, his own treatment thereof is a deliberate indication that he is lending it full faith and credence. It is incongruous for a party to pray for the exclusion of an adversary's evidence which he or she has nonetheless openly relied upon.

In sum, I submit that the admissions against Imelda's interest in her Amended Answer, the Written Disclosure of Tan, and the Sworn Statement of Gapud are uncannily identical and corroborative of BBM's Testimony. All these pieces of evidence, to stress, were all made without collusion. Hence, they are akin to interlocking extrajudicial confessions which constitute an exception to the general rule that extrajudicial confessions/admissions are admissible in evidence only against the declarants thereof.⁹³

I find it a grievous error, therefore, for the Sandiganbayan to have rejected and ignored the above-discussed pieces of evidence presented by the Republic. As I have expressed earlier, there should be some measure of forbearance with regard to the application of rules of evidence in the prosecution of ill-gotten wealth cases. Indeed, the difference between the admissibility of evidence and the determination of its probative weight is canonical.⁹⁴ Admissibility of evidence refers to the question of whether or not the circumstance or evidence is to be considered at all. On the other hand, the probative value of evidence refers to the question of whether or not it proves an issue.⁹⁵ But as the Court cautioned in *Gimenez*, it is better to admit and consider evidence for determination of its probative value than to outright reject it based on very rigid and technical grounds.⁹⁶ The Republic, in turn, cited *Atienza v. Board of Medicine, et al.*,⁹⁷ where the Court relevantly held:

Although trial courts are enjoined to observe strict enforcement of the rules of evidence, in connection with evidence which may appear to be of doubtful relevancy, incompetency, or admissibility, we have held that:

⁹¹ *Id.* at 3498-3499.

⁹² *See Patula v. People, supra* note 54.

⁹³ *See also People v. Encipido*, G.R. No. L-70091, December 29, 1986, 146 SCRA 478, 492.

⁹⁴ *Republic v. Gimenez, supra* note 59.

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ 657 Phil. 536 (2011).



[I]t is the safest policy to be liberal, not rejecting them on doubtful or technical grounds, but admitting them unless plainly irrelevant, immaterial or incompetent, for the reason that their rejection places them beyond the consideration of the court, if they are thereafter found relevant or competent; on the other hand, their admission, if they turn out later to be irrelevant or incompetent, can easily be remedied by completely discarding them or ignoring them.⁹⁸ (Emphasis and underscoring supplied)

The liberal and prudent approach in ill-gotten wealth cases is not hard to fathom. The Court has always been mindful of the difficulty in gathering voluminous documentary evidence in cases of forfeiture of ill-gotten wealth acquired throughout the years.⁹⁹ This undoubtedly holds true with regard to testimonial evidence, especially of those who fled the country — more so in the present political climate. To be sure, it is never easy to prosecute corruption and take back what rightfully belongs to the government and the people of the Republic,¹⁰⁰ most especially of such magnitude as was rampant in the administration of then President FM. The Court must also bear in mind that corruption or plunder is done stealthily and cleverly, so much so that direct evidence is sometimes nil. This is not a valid reason, however, for the Republic and the courts, as well, not to remain steadfast and soldier on.

***President FM's alleged
beneficial ownership over 60%
of the shares of SHI has not
been established***

In its Memorandum filed before the Court, the Republic, drawing heavily from Imelda's Amended Answer, BBM's Testimony, Gapud's Sworn Statement, and Tan's Written Disclosure, detailed how the alleged sharing agreement had been implemented through the incorporation of SHI:

76. Respondent [Tan] later embarked on consolidating ownership interests in the various businesses in one umbrella company — [SHI].

77. On November 14, 1979, [SHI] was incorporated to purchase and hold 99% of the shares of stocks from the existing stockholders of: [Himmel Industries], [Fortune Tobacco], [Foremost Farms], [Asia Brewery], [Grandspan], [Silangan Holdings], [and Dominion Realty].

78. The incorporators were Estrella Uy, Juanita Tan Lee, Harry Tan, Jaime Qua and Manuel Khoo. [SHI] was incorporated with an authorized capital stock of Five Million Pesos (₱5,000,000.00), One Million Pesos (₱1,000,000.00) of which was subscribed and paid-up.

79. The consolidation gave ... [President FM] beneficial

⁹⁸ *Id.* at 542. Citations omitted.

⁹⁹ *See Republic v. Gimenez, supra* note 59, at 294.

¹⁰⁰ *Id.* at 294–295.

ownership, together with ... [Tan], his family and associates, in the following companies (as well as its subsidiaries and acquired companies or in turn invested in), to wit:

- a) [Himmel Industries]
- b) [Fortune Tobacco]
- c) [Foremost Farms]
- d) [Asia Brewery]
- e) [Grandspan]
- f) [Silangan Holdings]
- g) [Dominium Realty]

80. ... [President FM]'s 60% beneficial ownership in said companies was held in trust by [Tan], personally and through his family members and business associates, who appeared as stockholders-on-record of said companies.

81. To implement the Marcos-Tan consolidation, the record (or nominee) stockholders of the seven (7) companies ... transferred their stockholdings in said companies to [SHI], through separate Deeds of Sales of Shares of Stocks.

82. Thereafter, ... [President FM] and [Tan] structured the segregation of their beneficial ownership interests in the proportion of 60% for ... [President FM] and 40% for ... [Tan].

...

83. To segregate ... [President FM]'s and [Tan]'s beneficial ownership interests, three (3) primary holding companies were organized: [Basic], [Supreme], and [Falcon].

84. Basic was the owner on record of the beneficial interests of ... [Tan] (40%), while Supreme and Falcon were the owners on record of the aggregate beneficial interests of ... [President FM] (60%). These three (3) holding companies were incorporated on July 20, 1983.

....

85. Acknowledging that they were merely holding their interest in [SHI] in trust for ... [President FM] and [Tan], in the ratio of 60-40%, respectively, the stockholders of [SHI] executed deeds assigning their stockholdings/shares therein to the three (3) newly organized ultimate holding companies, Basic, Supreme, and Falcon.

86. On July 16, 1984, the three (3) holding companies purchased 99% of the shares of the stockholders of [SHI] with the exception of respondents [Tan] and [Tan Eng Lian] who retained 0.5% each.

87. To make Basic's shareholdings conform to the agreed [60-40] ratio, shareholders of Basic executed a Deed of Sale of Shares of Stock in favor of Supreme, transferring 9% of [SHI]'s shares held by the former in favor of the latter.

88. After Basic transferred 9% of stock ownership in [SHI], the stock ownership in [SHI] became as follows:

Stockholders	No. of shares	% of Holdings
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[Basic]	50,300,000	40.0%
[Supreme]	42,755,000	34.0%
[Falcon]	31,437,500	25.0%
[Tan]	628,750	0.5%
[Tan Eng Lian]	628,750	0.5%
TOTAL	125,750,000	100.0%

89. In express recognition of the beneficial ownership of [President FM], the incorporators of both Falcon and Supreme executed and delivered to ... [President FM] blank [d]eeds of [a]ssignment, comprising of a total of 60% majority control of the mentioned corporations.¹⁰¹

From the foregoing, the Republic thus posited that 60% of the shares in SHI are held by respondent-stockholders for and on behalf of President FM as nominees, and that such 60% interest constitutes ill-gotten wealth precisely for this reason. Further, as proof of President FM's beneficial interest in the shares in question, the Republic relied on twelve deeds of assignment of shares (blank deeds), the particulars of which are summarized as follows:

Document	Assignors	Assignee/Subject	Consideration
Five undated and unnotarized deeds of assignment ¹⁰² (Falcon deeds)	1. Soolim Co (signed) 2. William C. Lee (signed) 3. Andy Y. Li (signed) 4. Jimmy C. Chua (signed) 5. Antonio Choa (illegible)	Unnamed assignee for an unspecified number of shares in [Falcon]	Unspecified
Five undated and unnotarized deeds of assignment ¹⁰³ (Supreme deeds)	1. Florentina Tan (signed) 2. Eduardo C. Chua (signed) 3. William T. Wong (illegible) 4. Nelson C. Tan (signed) 5. Peter Soo (signed)	Unnamed assignee for an unspecified number of shares in [Supreme]	Unspecified
Undated and unnotarized Deed of Sale of Shares of Stock ¹⁰⁴ (Tan deed)	Tan (signed)	Unnamed assignee for 628,750 shares of stock in SHI	₱628,750.00
Undated and unnotarized Deed of	Tan Eng Lian (signed)	Unnamed assignee for 628,750 shares of stock in	₱628,750.00

¹⁰¹ *Rollo* (G.R. No. 203592) (Vol. VII), pp. 3846–3851.

¹⁰² *Rollo* (G.R. No. 203592) (Vol. II), pp. 1421–1425.

¹⁰³ *Id.* at 1426–1430.

¹⁰⁴ *Id.* at 1431–1432.

Sale of Shares of Stock ¹⁰⁵ (Tan Eng Lian deed)		SHI	
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I diverge from the above position of the Republic. My conclusion is that President FM’s alleged beneficial ownership over 60% of the shares of SHI has not been established. I submit that a holistic appreciation of the evidence merely shows that: (i) Tan might have been forced to agree to the 60-40 arrangement proposed by President FM; (ii) Tan made it appear that the 60-40 arrangement had been implemented through the formation of SHI and the three primary holding corporations Basic, Supreme, and Falcon; and (iii) **Tan had taken steps to preclude the implementation of the 60-40 arrangement by transferring the 60% interest claimed by President FM to legitimate stockholders before the execution of the blank deeds in the latter’s favor.**

a. The blank deeds of assignment are sham documents

Tan’s Written Disclosure detailed the 60-40 arrangement and the context within which it had been forged, as follows:

....

For the duration of martial law which had effectively negated any opposition to [President FM], [Tan] and his enterprises were not spared by the various forms of intimidation and harassment that had plagued other successful businessmen. Details of the Marcos exercise are further described. Perhaps owing to sheer perseverance, ... [Tan’s] enterprises have managed to [survive] the pressure and in the Marial Law era, two major [Tan] companies were organized namely: a) [Allied Bank] which was granted by the Central Bank (CB) a new commercial banking license in May 1977; and b) [Asia Brewery] which had succeeded in proving the misnomer in [the] [b]rewery [i]ndustry being classified as an overcrowded industry for the last two decades in spite of the monopoly’s continued expansion projects.

....

ASIA BREWERY

By hindsight, we can now conclude that [President FM], from the very beginning wanted to acquire the San Miguel Corporation (SMC). However, it was impossible to acquire SMC because it was tightly controlled by the Soriano and Ayala families. The only way is to give SMC a competitor, to bring down the market price of SMC shares and to create conflicts within and among the SMC stockholders.

¹⁰⁵ *Id.* at 1433-1434.

[President FM] then started to say publicly that SMC was a monopoly, that there should be free enterprise. Meanwhile, the GSIS and SSS were ordered to buy SMC shares to a point that Roman Cruz, Jr. became a director of SMC.

The ambition of John Gokongwei in becoming a director of SMC resulted in a proxy fight and court battle, which in turn resulted in a lot of revelations on the very high profitability of a brewery. Before that, every year, SMC would make it of record with the BOI that the market demand will always be met and that therefore, no new brewery should be approved for establishment. It was also on record that SMC had continually been increasing its brewery and bottling facilities.

Preparations went underway for the establishment of the second brewery. Discussions with the BOI were steadfastly maintained and supported SMC's stand on the industry being overcrowded [despite] its continued approval of SMC's expansion projects reached a stalemate.

The issue of [Asia Brewery]'s petition of being the second brewery was broached to [President FM] and nothing seemed to please him more than to provide SMC with competition to realize his obsession of gaining control of SMC. Upon his instruction, BOI approved the application of [Asia Brewery] to establish the second brewery and immediately, the market value of SMC's shares declined from P48 to P25 per share. At this point, Danding Cojuangco started to buy SMC shares. Eventually[,] he was able to buy Gokongwei's and Enrique Zobel's block of shares which gave him a substantial holding. Finally, Andres Soriano sold out to Cojuangco. Thus[,] full control went to Cojuangco.

[President FM] however also took special interest in [Asia Brewery]. As a condition to the grant of a brewery license, [President FM] demanded that 25% of [Asia Brewery] be given to him.

...

In compliance with the said condition, [Silangan Holdings] was incorporated on October 9, 1979. Twenty five percent (25%) of [Asia Brewery]'s shares of stock or fifty million shares was then transferred to [Silangan Holdings]. Upon [President FM]'s insistence, a fake certificate of stocks (sic) purportedly representing 100% of the total shares of [Silangan Holdings] were delivered to him, endorsed in blank. In truth[,] however, the [genuine] book of certificates of stock of [Silangan Holdings] remained intact and remains so [to date]. Not a single certificate of stock of [Silangan Holdings] has as yet been issued as none of the subscriptions to the capital stock have been fully paid.

....

As insurance versus a possible claim by [President FM] or any assignee upon the shares of [Silangan Holdings] purportedly evidenced by the fake certificate of stocks (sic) issued and delivered to him in blank, all stockholders of [Silangan Holdings] sold 100% of their shares to [SHI] on December 19, 1980. Moreover, on December 22, 1980, [Silangan Holdings] sold 49.5 million shares of [Asia Brewery] to SHI (retaining only 500,000 shares).



....

SHI was incorporated on November 11, 1979. The original intention for setting up this company was for it to purchase and hold at least 99% of the shares of stock from existing stockholders of the following companies:

1. [Fortune Tobacco]
2. [Asia Brewery]
3. [Foremost Farms]
4. [Himmel Industries]
5. [Grandspan]
6. [Dominium Realty]

This set up is necessary in order to systematize the stock ownership in the various corporations. Also, since the group of companies was getting quite big, [Tan] felt and wanted to [ensure] that the various companies would stay under one umbrella in the event that anything should happen to him — [Tan] wanted to ensure continuity of the companies which he had worked so hard to build up.

....

After the collapse of the mega-business[es] of his closest cronies (DISINI, SILVERIO AND CUENCA), upon the rapid deterioration of his health, and perhaps also on account of the inability of [Asia Brewery] to generate satisfactory income, [President FM] began to press that he be given a share in SHI. [Tan] attempted to evade the unconscionable demand of [President FM] by spending most of his time outside of the Philippines. From 1983 to the start of 1986, [Tan] spent most of his time abroad. Despite [Tan]'s absence, [President FM] kept up the pressure threatening the issuance of various tax decrees designed at crippling [Fortune Tobacco]. . .

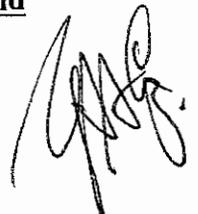
....

On July 20, 1983, three holding companies were incorporated as follows:

1. [Basic]
2. [Falcon]
3. [Supreme]

On the same day, the incorporators of [Falcon] and [Supreme] after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [President FM] thru [Gapud] persisted in his demand for a share in SHI.

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of SHI, with the exception of [Tan] and [Tan Eng Lian] who retained 0.5% each. **On the same day, the said three holding companies borrowed from the stockholders-vendors of SHI amounts equivalent to the respective purchase prices of the aforementioned shares on a 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said**



shares to the original vendors-stockholders in the same proportion as when purchased.

When the pressure became too heavy to bear and with [President FM] already displaying fangs of anger, deeds of assignment signed in blank (without issuing much less surrendering the corresponding stock certificates) by the original incorporators of [Falcon] and [Supreme] as well as by [Tan] and [Tan Eng Lian] for their respective shares which all together were supposed to have accounted for 51% of [SHI]'s shares were delivered to Gapud **without revealing that:**

1. **The original incorporators had already much earlier transferred and assigned their shares to the new group led by [Tan] who were then the genuine and registered owners of the shares with the sole and exclusive authority to transfer the same;**
2. **[Falcon] and [Supreme] had already previously divested themselves of SHI's shares having resold the same to the original owners;**
3. There could be no valid transfer of [Tan] and [Tan Eng Lian's] shares in [SHI] as their respective subscriptions had not been fully paid and to date remains unpaid.

....

Thereafter, [President FM] demanded for an additional 9% to give himself supposedly a 60% control over [SHI]. **To give the semblance of compliance with said demand, it was made to appear that on [February] 28, 1985, [Basic] transferred the equivalent of 9% of SHI's total shares to [Supreme] without revealing that:**

1. [Basic] had in fact already divested itself of all its SHI's shares (as of August 22, 1984) in favor of its original owners;
2. At any rate, no transfer could legally be effected since the subscriptions thereon have to date not yet been fully paid; and
3. Moreover, the transfer document itself was ineffective because:
 - a. What was transferred were 11,317,500 shares of [Basic] (not SHI) when [Basic] only had a total of 1,000,000 paid up shares...;
 - b. [T]he document was executed by some persons who are not stockholders of [Basic].¹⁰⁶ (Emphasis and underscoring supplied)

¹⁰⁶ Rollo (G.R. No. 203592) (Vol. IV), pp. 3496-3502.



If Tan's statements were to be taken as fact, they would entail that Tan had been pressured into ceding 60% interest in the various businesses placed under the umbrella corporation, SHI. To secure his businesses, Tan made it appear that he had complied with President FM's demands by incorporating three holding companies to consolidate their respective 60% and 40% interests in SHI. Thereafter, Tan made it appear that Falcon and Supreme had been incorporated to hold President FM's 60% of the shares in SHI. Later still, Tan caused the execution of blank deeds purportedly transferring 100% of the shares of Falcon and Supreme in President FM's favor in compliance with the latter's demands.

However, unbeknownst to President FM, 100% of the shares of Falcon and Supreme had been previously transferred by the incorporators to respondent-stockholders. Thus, these incorporators, who stood as signatories of the blank Falcon and Supreme deeds, were no longer stockholders of Falcon and Supreme at the time the blank deeds were executed. **Thus, based on Tan's Written Disclosure, which, to repeat, the Republic itself offered as evidence, the signatories of the blank Falcon and Supreme deeds no longer had any capacity to convey, transfer, or assign any interest in said holding companies at the time the blank deeds were executed.**

Strikingly, the Republic did not dispute the veracity of Tan's narration. While it asserted, in general terms, that "exculpatory statements ... [which are] entirely barren of factual support ... ought to be regarded as nothing but feigned defenses,"¹⁰⁷ it nevertheless quoted these "defenses" to elaborate on President FM's *modus operandi* in its Memorandum:

255. Respondent [Tan] confirmed [President FM]'s beneficial interests in his various businesses which they cloaked under an umbrella company – [SHI]. To segregate their unlawful business partnership, three (3) holding companies namely, Basic, Falcon and Supreme, were formed. Thus:

....

On July 20, 1[9]83, three holding companies were incorporated as follows:

1. [Basic]
2. [Falcon]
3. [Supreme]

On the same day, the incorporators of [Falcon] and [Supreme] after paying their subscription in full, sold and transferred 100% of their shares to a new group led by [Tan]. In the meantime, [President FM] thru

¹⁰⁷ *Rollo* (G.R. No. 203592) (Vol. VII), p. 3940.

[Gapud] persisted in his demand for [a] ... share in [SHI].

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of [SHI] with the exception of [Tan] and [Tan Eng Lian] who retained 0.5% each. On the same day, the said three holding companies borrowed from the stockholders-vendors of [SHI] amounts [equivalent] to the respective purchase prices of the aforementioned shares on [a] 30-day term. Unable to pay the loan at maturity, the three companies sold back (on August 22, 1984) the said shares to the original vendors-stockholders in the same proportion as when purchased.

256. Indeed, respondent [Tan] and former [President FM]'s unlawful business partnership is manifested from [Tan]'s act of organizing holding corporations, the structure of which he made known to [President FM] through Gapud; and **[Tan]'s execution of deeds of assignments to conceal [President FM]'s proprietary and financial interests in these holding corporations.**

257. [Tan] explains that [SHI] was intended to purchase and hold at least 99% of the shares of stocks from existing stockholders of respondent corporations... Thereafter, three holding companies, namely, Basic, Falcon, and Supreme, were incorporated to structure the segregation of respondents [President FM] and [Tan]'s 60%-40% ownership interest.

258. The three holding companies purchased 99% of the shares of stocks in [SHI] with the exception of respondents [Tan] and [Tan Eng Lian] who retained 0.5% each. Falcon and Supreme, representing 60% of [SHI] belong to respondent [President FM], while Basic, which holds the remaining 40% interest, belongs to respondent [Tan].

259. The formed layers of holding corporations (Basic, Falcon, Supreme) under the umbrella [SHI], and [Tan's group of companies] execution of blank deeds of assignments (sic), clearly disclose that respondents [Tan, et al.] implemented former [President FM]'s *modus operandi* in hiding and concealing the Marcoses' proprietary interest in [Tan's group of companies].¹⁰⁸ (Emphasis supplied)

Having relied on the afore-quoted statements in Tan's Written Disclosure, the Republic cannot be permitted to cherry-pick the portions thereof that support its cause, and conveniently disregard those which do not. **Taken in its entirety, Tan's Written Disclosure confirms that the blank deeds of assignment were nothing but sham deeds without any legal effect, drawn specifically to mislead President FM into believing that his extortionate demands had been complied with.**

¹⁰⁸ Rollo (G.R. No. 203592) (Vol. VII), pp. 3947-3949.

b. The blank deeds are inadmissible as evidence

Assuming *arguendo* that the blank deeds could be accorded legal effect, they nevertheless remain inadmissible and bereft of any evidentiary value.

The copies of the blank deeds presented as evidence by the Republic and made part of the records of the case are plain photocopies, for while the originals had been turned over by the U.S. government to PCGG, they were later misplaced while in the latter's custody. As revealed during BBM's cross-examination, the Republic, through PCGG, acknowledged such fact and cited this as basis to present secondary evidence, thus:

....

Atty. Generillo [(PCGG)]:

Q: Now Mr. Witness, where are the original copies of these documents?

A: As far as I know[,] the originals are with the [U.S.] Customs.

Q: Now in your previous testimony, you testified that your counsel in the United States was trying to secure these documents from the [U.S.] government?

A: Yes, sir.

Q: Was your counsel in the United States able to secure these documents?

A: No, sir he was not. In fact, he went [to] us in preparation for my appearance today, he wrote me a letter explaining that Mr. [Gabriel,] who was appointed by the District Court in Hawaii to look for the record was unable to locate those documents, the originals of those documents.

....

Atty. Mendoza [counsel for BBM]:

Your Honors, please because of the non-production of these records has been the reason of the testimony of [BBM] was deferred (sic) for several months. I would like to read from the letter now presented by the witness the following statement. This is a letter as manifested addressed to [BBM] from lawyers Bartko, Sandel, Tarant Miller, and the second paragraph of the letter read[s] as follows: "As you know based on the information we received as well as the attached letter from Chief Counsel of the [U.S.] Customs Service Michael V. Smiths to PCGG Commissioner Parlade certified copies of various documents including those involving [Tan] were already given to the PCGG last 27 December

1990. I am curious as to why these have not been presented to the Philippine Courts[.]” ...

CHAIRPERSON:

The PCGG according to the Letter should be in possession of the certified true copies of those documents.

Atty. Generillo:

....

We respectfully submit, Your Honor that these documents are very much relevant to the proof of the allegations in the Complaint, Your Honors, especially with respect to the status of condition of the documents that were seized by the [U.S.] government when the Marcoses landed in Hawaii. Another thing, Your Honor, in the past we have tried to subpoena former Commissioner Cesar Parlade, Your Honors. But the records will show that the attempt of the Honorable Court to subpoena Commissioner Parlade was unsuccessful, Your Honor. But we again issued a subpoena for the testimony of Cesar Parlade on this point . . . But we would like to point out Your Honor that this will lay the basis for the presentation of secondary evidence is (sic) that is necessary. . .¹⁰⁹

However, even if the photocopies of the blank deeds are treated as secondary evidence on account of the unavailability of the original documents, they remain inadmissible. To be sure, all twelve blank deeds are unnotarized and are thus in the nature of private documents.¹¹⁰ At the time these blank deeds were presented by the Republic as evidence, the prevailing rule on proof of private documents was found in Section 20, Rule 132 of the Revised Rules on Evidence which reads:

SEC. 20. *Proof of private documents.* – Before any private document offered as authentic is received in evidence, its due execution and authenticity must be proved by any of the following means:

- (a) By anyone who saw the document executed or written;
- (b) By evidence of the genuineness of the signature or handwriting of the maker; or
- (c) By other evidence showing its due execution and authenticity.

Any other private document need only be identified as that which it is claimed to be.

No witnesses were presented to attest to the execution and authenticity of the blank deeds. As well, no other evidence had been presented to establish the genuineness of the signatures appearing thereon. Verily, the Republic’s failure to properly authenticate the blank deeds in question in

¹⁰⁹ *Rollo* (G.R. No. 203592) (Vol. III), pp. 1669–1675.

¹¹⁰ See Sec. 19, Rule 132 of the REVISED RULES ON EVIDENCE, *supra* note 48.



accordance with Section 20, Rule 132 rendered them inadmissible in evidence, thus:

In the case of *Chua v. Court of Appeals*, it was held that before private documents can be received in evidence, proof of their due execution and authenticity must be presented. This may require the presentation and examination of witnesses to testify as to the due execution and authenticity of such private documents. **When there is no proof as to the authenticity of the writer's signature appearing in a private document, such private document may be excluded.**¹¹¹ (Emphasis supplied)

In stark contrast with the earlier discussion about Imelda's Amended Answer and Tan's Written Disclosure, none of the exceptions to the rule on authentication of private documents are present in the case of these blank deeds. Again, these exceptions are: (a) when the document is an ancient one within the context of Section 21, Rule 132 of the Rules of Court; (b) when the genuineness and authenticity of an actionable document have not been specifically denied under oath by the adverse party; (c) when the genuineness and authenticity of the document have been admitted; or (d) when the document is not being offered as genuine.¹¹² Verily, these blank deeds are palpably inadmissible in evidence.

c. The other documentary evidence presented in support of the Republic's claim over 60% of SHI's are likewise inadmissible

Finally, it bears to mention that the Republic attempted to bolster its claim to 60% of the shares of SHI by presenting documents to show that the other corporations under the SHI umbrella, particularly, Fortune Tobacco and Allied Bank, had been granted undue concessions by President FM. As summarized by the *ponencia*:

Additionally, the Republic presented voluminous documentary evidence in support of its allegations....:

1. *Documents relating to Fortune Tobacco.* There are documents which show that numerous requests for import quotas were made to the Philippine Virginia Tobacco Administration or directly to [President FM], bearing the latter's signature with the words "approved." There are also those showing that respondent Tan, as chairperson of Fortune Tobacco, wrote requests to [President FM] which were favorably acted upon by the latter. Likewise, several documents issued by the Office of the President granting Fortune Tobacco's requests for import quotas were submitted, which state that [President

¹¹¹ *Young Builders Corporation v. Benson Industries, Inc.*, G.R. No. 198998, June 19, 2019, 904 SCRA 485, 502. Citations omitted.

¹¹² *Patula v. People*, *supra* note 54, at 156-157.

FM] approved the request for the import quota.

2. *Documents relating to Allied Bank.* The Republic presented documents which show that respondent Tan wrote direct requests to [President FM] on behalf of Allied Bank. These were likewise approved or granted by [President FM] as shown by notations or issuances by the Office of the President.¹¹³

....

I agree with the *ponencia* in upholding the Sandiganbayan's correct observation that the aforesaid documents pertaining to the alleged concessions granted in favor of Fortune Tobacco and Allied Bank are inadmissible and incompetent. The voluminous documentary evidence were mere photocopies, and the witnesses who testified on these documents had no direct participation in the preparation and execution thereof.¹¹⁴

In sum, without any evidence to prove President FM's beneficial interest in 60% of the shares in SHI, the Republic's claim over said interest crumbles. The Court is left with absolutely no basis to order the reconveyance of said interest in favor of the Republic. To my mind, such 60% interest as a metric for recovery in the absence of preponderant evidence to show that it constitutes ill-gotten wealth would be improper, iniquitous, and extremely unjust.

The grant of the brewery license due to President FM and Tan's close business relationship gives rise to the Republic's right of recovery

Notwithstanding the foregoing, I find that the Republic nevertheless established that Tan did, in fact, take advantage of his close business relationship with President FM to secure an undue benefit, specifically, the brewery license granted in favor of Asia Brewery.

This has been established through the Written Disclosure of Tan, which, to reiterate, he similarly relied upon and even quoted in full in his own Memorandum. To restate:

ASIA BREWERY

By hindsight, we can now conclude that [President FM], from the very beginning wanted to acquire the San Miguel Corporation (SMC). However, it was impossible to acquire SMC because it was tightly controlled by the Soriano and Ayala families. The only way is to give

¹¹³ *Ponencia*, pp. 57-58.

¹¹⁴ *Rollo* (G.R. 203592) (Vol. I), pp. 157-161.

SMC a competitor, to bring down the market price of SMC shares and to create conflicts within and among the SMC stockholders.

[President FM] then started to say publicly that SMC was a monopoly, that there should be free enterprise. Meanwhile, the GSIS and SSS were ordered to buy SMC shares to a point that Roman Cruz, Jr. became a director of SMC.

....

Preparations went underway for the establishment of the second brewery. Discussions with the BOI were steadfastly maintained and supported SMC's stand on the industry being overcrowded [despite] of its continued approval of SMC's expansion projects reached a stalemate.

The issue of [Asia Brewery]'s petition of being the second brewery was broached to [President FM] and nothing seem[s] to please him more than to provide SMC with competition to realize his obsession of gaining control of SMC. Upon his instruction, BOI approved the application of [Asia Brewery] to establish the second brewery and immediately, the market value of SMC's shares declined from P48 to P25 per share. At this point, Danding Cojuangco started to buy SMC shares. Eventually, he was able to buy Gokongwei's and Enrique Zobel's block of shares which gave him a substantial holding. Finally, Andres Soriano sold out to Cojuangco. Thus full control went to Cojuangco.¹¹⁵ (Emphasis and underscoring supplied)

Through the foregoing statements, Tan significantly concedes that: (i) he was aware of President FM's specific interest to gain control of SMC; (ii) he capitalized on President FM's interest in SMC by broaching to President FM the establishment of Asia Brewery to give SMC a competitor and disrupt the latter's dominant position in the market; and (iii) Asia Brewery's license was thereafter granted by the Board of Investments (BOI) upon President FM's instruction. Clearly, the grant of Asia Brewery's license was a benefit granted by President FM in favor of Tan on account of their close business relationship, inasmuch as Tan likewise concedes that he would not have been able to secure the Asia Brewery's license had he not pitched the idea to President FM. In so doing, Tan can be said to have acquired ill-gotten wealth through Asia Brewery in accordance with the second mode of acquisition — by taking undue advantage of his close business relationship with President FM.

At this juncture, it bears stressing that in actions for recovery of ill-gotten wealth, evidentiary substantiation of the allegations as to how the wealth in question had illegally been acquired and by whom is necessary. Prevailing jurisprudence thus instructs that the mere holding of a government position during President FM's administration does not necessarily make a party a close associate within the context of EO No. 1.¹¹⁶

¹¹⁵ *Rollo* (G.R. No. 203592) (Vol. IV), p. 3498.

¹¹⁶ See *Republic v. Rzyes-Bakunawa*, *supra* note 40, at 187.

In *Republic v. Reyes-Bakunawa*,¹¹⁷ the Court notably construed the term “subordinate” as used in EO Nos. 1 and 2 to refer to a person who enjoyed a close association with President FM and/or his wife, Imelda, “similar to that of an immediate family member, relative, and close associate, or to that of a close relative, **business associate**, dummy, agent, or nominee.”¹¹⁸ Indeed, a *prima facie* showing must be made to show that one unlawfully accumulated wealth by virtue of a close association or relation with President FM and/or his wife.¹¹⁹

Here, there can be no gainsaying that Tan enjoyed such close association as a business associate of President FM. Imelda’s Amended Answer and BBM’s Testimony consistently painted Tan as a close business associate of President FM. The relevant portions of said evidence bear repeating here:

Imelda’s Amended Answer

42. Way before and continuing through 1985, former [President FM] had beneficial ownership, together with [Tan], his family and associates, in the following operating companies, as well as the subsidiaries and companies which these operating companies have acquired[,] or in turn invested in, to wit:

1. [Himmel Industries]
2. [Fortune Tobacco]
3. [Foremost Farms]
4. [Asia Brewery]
5. [Grandspan]
6. [Silangan Holdings]
7. [Dominium Realty]

43. [President FM] had a sixty percent (60%) beneficial ownership in said companies, which beneficial interests were held in trust by [Tan] personally and through his family members and business associates who appeared as the recorded stockholders of said companies.¹²⁰ (Emphasis and underscoring supplied)

BBM’s Testimony:

Q: “When was the first time that you saw [Tan]?”

WITNESS CONG. MARCOS, JR.

A: I could not give you the specific date but I know it was in the early ‘70s. As I said, the first time I saw him was in the area of the Palace that we call the “Study Room”, which is the area next to my father’s office.

ATTY. GENERILLO

¹¹⁷ *Id.*

¹¹⁸ *Id.* citing *Republic v. Migrino*, G.R. No. 89483, August 30, 1990, 189 SCRA 289, 297–298.

¹¹⁹ *Id.*

¹²⁰ *Rollo* (G.R. No. 203592) (Vol. VI), p. 3997.

Q: Did you have opportunity to talk to [Tan]?

A: Yes, several times after we have been introduced. We would say “hello” to each other when we cross each other’s paths. And on a couple of occasions, we actually had an opportunity to have substantive conversations aside from meetings.

Q: What do you mean “substantive meetings” or discussions?

A: Well, I remember that at one point, I was summoned by my father to his office and so I went. And he was there with [Tan] in the discussion.

And he at that point told me that he would like me to familiarize myself with the operations of some of the enterprises that we have interests in and that [Tan] was going to help me to be more familiar with the said operations.

Q: Why did your father summon you to his office to familiarize yourself with the business interests of the Marcoses?

A: It was part of a larger effort on the part of the family to really clarify and to conduct an inventory and legal audit of all those business interest that we have.

My sister Imee, who has legal training, was given the job of conducting the legal audit, and I was given the job to go to as many of these enterprises as I could and as I said, learn the operations and meet the people who were running them so that when the time comes that we would take over, we would know how to manage these different interests.

....

Q: Was there any occasion for your father to show proof of the family’s interests in [Tan]?

A: Well, when we first began this whole effort, he had me and my sister, we met and we sat down and showed us some documents which are essentially Deeds of Assignment, Shares of Stock, Titles to properties, and all these kinds of things. And he tried to give us a sketch of exactly how the structures were.

And then his instructions to us were — we go out and make sure that first, all documentations were in place because maybe the documents or something were in some persons, the documents or something were in another person, to really reorganize them and collate everything. So, that was the gist of — We had several of those meetings, and that was then I saw these documents.¹²¹ (Underscoring supplied; emphasis in the original)

¹²¹ *Id.* at 4013–4015.

Tan, on the other hand, was conspicuously evasive and guarded by the way he depicted his acquaintance with President FM. He presented himself as a victim of the former President's intimidation, yet, offered no explanation on how this was so or came about. As it stands, there were apparent gaping holes in his story and attempts to understate his relationship with President FM. But as aptly laid down by the Republic in its Memorandum, in so many words, there were far too many pieces of information relayed in Tan's Written Disclosure that only a business associate would be privy to.

In particular, citing the excerpt from Tan's Written Disclosure anent Asia Brewery, the Republic observed:

[I]t is clear that respondent [Tan] viewed the Marcos-[Tan] partnership as mutually beneficial. Respondent [Tan] utilized [President FM]'s stern intervention in organizing Asia Brewery which, in turn, paved the way for Marcos to penetrate SMC.

245. Further, the [Written Disclosure] reveals respondent [Tan]'s close personal relationship with [President FM] such that: (a) he knew of [President FM]'s interest in SMC; (b) he broached the idea of having a second brewery — respondent Asia Brewery — to former [President FM] to compete with SMC and this pleased the former President because it gave him the opportunity to gain control of SMC; and (c) he had unrestricted access to [President FM] so that when the [BOI] supported SMC's position that the industry was overcrowded, he automatically went directly to [President FM] and sought his help in the organization of a second brewery, the Asia Brewery.

246. Respondents [Tan] and [President FM]'s close personal relations is made more manifest by respondent [Tan]'s knowledge that former [President FM] ordered GSIS and SSS to buy SMC shares on the occasion of which Ramon Cruz, Jr. became a Director of SMC. Eventually, when the BOI approved [Asia Brewery]'s application, upon former [President FM]'s directives, the latter eventually obtained full control of SMC through Danding Cojuangco. Respondent [Tan] had knowledge also of the mega-businesses of former [President FM]'s closest cronies whom he named to be Disini, Silverio and Cuenca.¹²² (Emphasis supplied)

Indeed, Tan's Written Disclosure, no matter how craftily drafted, gives away crucial details of his business relationship with President FM that dovetail with the narrations of Imelda and BBM in their Amended Answer and Testimony, respectively. Whether it was true that he was merely intimidated or coerced into forging a business partnership with President FM is, as regards this issue, beside the point — neither does it matter if he later succeeded in misleading him. The fact remains that under the language of the law, it can legitimately be said that Tan was able to unduly benefit from his close business relationship with President FM. Stated differently, the procurement of such undue benefit would appear to fall squarely within the scope of the second mode of acquiring ill-gotten wealth and gives basis to

¹²² *Id.* at 3942–3943.

the Republic's right of recovery under EO Nos. 1 and 2.

***The case must be remanded
for determination of the
amount to be recovered by the
Republic***

As the Republic's right of recovery in this particular case solely proceeds from the grant of Asia Brewery's license on account of President FM's close business relationship with Tan, the amount which the Republic may recover herein must be based on the amount of ill-gotten wealth derived therefrom.

Here, the records are bereft of any evidence which would allow the Court to determine the precise amount of said ill-gotten wealth so acquired.

Despite this, the Civil Code¹²³ permits the Republic to recover temperate and exemplary damages. Specifically, Article 2224 of the Civil Code provides that temperate damages may be recovered "when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty." On the other hand, Article 2229 of the same statute permits the recovery of exemplary damages "by way of example or correction for the public good", when either moral, temperate, liquidated, or compensatory damages are awarded.

The award of temperate and exemplary damages in actions for recovery of ill-gotten wealth is not novel.

In *Tuvera*, the Court recognized that while the Republic therein failed to prove the exact amount to be recovered, it was nevertheless entitled to temperate and exemplary damages. The Court held:

If only the Court's outrage were quantifiable in sums of money, respondents are due for significant pecuniary hurt. Instead, the Court is forced to explain in the next few paragraphs why respondents could not be forced to [compensate] the Filipino people in appropriate financial terms. The fault lies with those engaged by the government to litigate this case in behalf of the State.

It bears to the most primitive of reasons that an action for recovery of sum of money must prove the amount sought to be recovered. In the case at bar, the Republic rested its case without presenting any evidence, documentary or testimonial, to establish the amount that should be restituted to the State by reason of the illegal acts committed by the respondents. There is the bare allegation in the complaint that the State is entitled to [P48 million] by way of actual damages, but no single proof presented as to why the State is entitled to such amount.

¹²³ Republic Act No. 386 also known as "An Act to Ordain and Institute the Civil Code of the Philippines," approved on June 18, 1949.



Actual damages must be proven, not presumed. **The Republic failed to prove damages. It is not enough for the Republic to have established, as it did, the legal travesty that led to the wrongful obtention by Twin Peaks of the TLA. It should have established the degree of injury sustained by the State by reason of such wrongful act.**

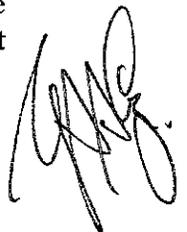
....

[T]here is sufficient basis for an award of temperate damages, also sought by the Republic notwithstanding the fact that a claim for both actual and temperate damages is internally inconsistent. Temperate or moderate damages avail when "the court finds that some pecuniary loss has been suffered but its amount cannot from the nature of the case, be proved with certainty." The textual language might betray an intent that temperate damages do not avail when the case, by its nature, is susceptible to proof of pecuniary loss; and certainly the Republic could have proved pecuniary loss herein. Still, jurisprudence applying Article 2224 is clear that temperate damages may be awarded even in instances where pecuniary loss could theoretically have been proved with certainty.

In a host of criminal cases, the Court has awarded temperate damages to the heirs of the victim in cases where the amount of actual damages was not proven due to the inadequacy of the evidence presented by the prosecution. These cases include *People v. Oliano*, *People v. Suplito*, *People v. De la Tongga*, *People v. Briones*, and *People v. Plazo*. In *Viron Transportation Co., Inc. v. Delos Santos*, a civil action for damages involving a vehicular collision, temperate damages were awarded for the resulting damage sustained by a cargo truck, after the plaintiff had failed to submit competent proof of actual damages.

We cannot discount the heavy influence of common law, and its reliance on judicial precedents, in our law on tort and damages. Notwithstanding the language of Article 2224, a line of jurisprudence has emerged authorizing the award of temperate damages even in cases where the amount of pecuniary loss could have been proven with certainty, if no such adequate proof was presented. The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury. There is no impediment to apply this doctrine to the case at bar, which involves one of the most daunting and noble undertakings of our young democracy — the recovery of ill-gotten wealth salted away during the Marcos years. If the doctrine can be justified to answer for the unlawful damage to a cargo truck, it is a compounded wrath if it cannot answer for the unlawful exploitation of our forests, to the injury of the Filipino people. The amount of [₱1,000,000.00] as temperate damages is proper.

The allowance of temperate damages also paves the way for the award of exemplary damages. Under Article 2234 of the Civil Code, a showing that the plaintiff is entitled to temperate damages allows for the award of exemplary damages. Even as exemplary damages cannot be recovered as a matter of right, the courts are empowered to decide whether or not they should be adjudicated. **Ill-gotten wealth cases are hornbook demonstrations where damages by way of example or correction for the public good should be awarded. Fewer causes of action deserve the stigma left by exemplary damages, which "serve as a deterrent against**



or as a negative incentive to curb socially deleterious actions.” The obtention of the [Timber License Agreement] by Twin Peaks through fraudulent and illegal means was highlighted by Juan Tuvera’s abuse of his position as Presidential Executive Assistant. The consequent exploitation of 26 hectares of forest land benefiting all respondents is a grave case of unjust enrichment at the expense of the Filipino people and of the environment which should never be countenanced. Considering the expanse of forest land exploited by respondents, the volume of timber that was necessarily cut by virtue of their abuse and the estimated wealth acquired by respondents through grave abuse of trust and public office, it is only reasonable that petitioner be granted the amount of [P1,000,000.00] as exemplary damages.

The imposition of exemplary damages is a means by which the State, through its judicial arm, can send the clear and unequivocal signal best expressed in the pithy but immutable phrase, “never again.” It is severely unfortunate that the Republic did not exert its best efforts in the full recovery of the actual damages caused by the illegal grant of the Twin Peaks TLA. To the best of our ability, through the appropriate vehicle of exemplary damages, the Court will try to fill in that deficiency. For if there is a lesson that should be learned from the national trauma of the rule of Marcos, it is that kleptocracy cannot pay. As those dark years fade into the backburner of the collective memory, and a new generation emerges without proximate knowledge of how bad it was then, it is useful that the Court serves a reminder here and now.¹²⁴ (Emphasis and underscoring supplied)

As well, in the more recent case of *Disini*, the Court resolved to award temperate and exemplary damages in favor of the Republic, notwithstanding its failure to prove the total amount of ill-gotten wealth acquired by respondent therein in the form of commissions arising from the BNPP, hence:

Despite the failure of the Republic to prove the total amount of commissions received by [Herminio], the Court fully recognizes its right to recover the ill-gotten wealth. [Herminio] is not at all entitled to these commissions as he illegally acquired them through the use of his influence and close relationship with [President FM] without rendering any service for the benefit of the Republic’s BNPP project.

Evidently, [Herminio] unjustly enriched himself by receiving substantial commissions from Westinghouse and B&R and acting as the SSR in order to ensure the award of the [BNPP] project to the said companies by taking undue advantage of his close relationship with [President FM]. Article 22 of the Civil Code provides that “[e]very person who through an act or performance by another, or any other means, acquires or comes into possession of something at the expense of the latter without just or legal ground, shall return the same to him.”

There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment essentially contemplates

¹²⁴ *Republic v. Tuvera*, *supra* note 34, at 149–153. Citations omitted.

payment when there is no duty to pay, and the person who receives the payment has no right to receive it.

....

In fine, the Republic's failure to particularly prove the actual amount of commissions received by [Herminio] should not override its right to recover the illegally-acquired commissions considering the fact that it has satisfactorily established, by preponderance of evidence, [Herminio]'s receipt thereof. Necessarily, public funds were released for the construction of the BNPP project. [Herminio] indirectly amassed a portion of these public funds through commissions paid by Westinghouse and B&R. These commissions or "kickbacks" are not only illegal or fraudulent but detrimental to the Republic and highly unfair and prejudicial to ordinary Filipino taxpayers.

However, actual damages to be recoverable must be supported by evidence on record and cannot be left merely to the discretion of the court. While We affirm the Republic's entitlement to recover [Herminio]'s ill-gotten wealth, no other evidence was presented to show the definite amount thereof. The Republic failed to substantiate its claim for actual pecuniary loss or damages sustained by reason of [Herminio]'s acquisition of ill-gotten wealth.

While it is true that the Republic failed to prove the amount of commissions received, this does not mean, however, that [Herminio] is free from any liability under this civil action for reconveyance, reversion, accounting, restitution and damages. Thus, under the principle of unjust enrichment, We uphold the Republic's right to recover these commissions in favor of the Filipino people. No one should unjustly enrich himself by receiving commissions in connection with a government project when clearly he has no right for it nor entitled to retain the same.

Nonetheless, since recovery thereof cannot be effected due to the absence of a definite amount, We deem it proper to award the Republic temperate damages for the pecuniary loss and the Filipino people suffered on account of [Herminio]'s illegal acquisitions of substantial commissions from Westinghouse and B&R, albeit the amount thereof not being proven with certainty. Under Article 2224 of the Civil Code, temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be determined with certainty...

....

Here, the Republic is entitled to recover temperate damages as there is no doubt that [Herminio] trampled on the rights of the Filipino people to benefit from, and make good use of, these ill-gotten wealth, i.e., substantial commissions or kickbacks he acquired; and that the whole nation significantly suffered pecuniary loss due to [Herminio]'s illegal acquisition of these public funds.

....

Considering the relevant circumstances of this case, the

amount of One Billion Pesos [(P1,000,000,000.00)] as temperate damages is reasonable and justified. It bears stressing that this is not just an ordinary civil action for recovery of property and damages. This is an action for recovery of ill-gotten wealth which is imbued with public interest and concerns not only the government but every Filipino citizen, then and now. As part of the healing process of this nation, the Freedom Constitution specifically mandates the President to prioritize the recovery of these ill-gotten wealth. Hence, the loss or injury suffered by every Filipino due to [Herminio]'s acquisition of ill-gotten wealth must be duly recognized and compensated.

Further, We note that the Filipino people have not at all benefited from the BNPP as it has remained inoperable as of this writing, a proverbial White Elephant. Obviously, a considerable amount of public funds had been invested and allocated for the construction of the BNPP, which funds came from the blood, sweat and tears of the Filipino taxpayers. The ill-gotten wealth should have been used and spent for and by the rightful owner thereof and not just by one person or a select group of people in power.

Also, the Republic was unduly deprived of its rights over these substantial commissions as part of public funds, and was compelled to litigate for their recovery for more than three decades. We cannot overemphasize that [Herminio] received these ill-gotten wealth starting in 1976 when the construction of the BNPP began. Consequently, he had profited immensely from these commissions for a significant portion of his lifetime at the expense of the Filipinos.

Taking into consideration the inflation rate and the Philippine Peso's purchasing power at that time, these substantial commissions, if recovered, would have been greatly valued now and could have been used for the betterment of the Philippines. In addition, the Republic would have been entitled to recover legal interest on the total amount of commissions received had it proved such.

Undeniably, the recovery of these illegally acquired public funds, properties and assets has great impact on every Filipino's life. Hence, the award of One Billion Pesos [(P1,000,000,000.00)] temperate damages is reasonable under the circumstances taking into consideration the rights of all Filipino citizens encroached upon by [Herminio]'s acquisition of ill-gotten wealth and the damage caused to the Republic for its failure to make good use of the same.

With the grant of temperate damages, this allows the imposition of exemplary damages by way of example or correction for the public good. Exemplary damages cannot be recovered as a matter of right and are only considered when moral, temperate, liquidated or compensatory damages are granted. "Exemplary damages are designed by our civil law to permit the courts to reshape behavior that is socially deleterious in its consequence by creating negative incentives or deterrents against such behavior." Its purpose is to serve as a deterrent to serious wrong doings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.

There is no doubt that [Herminio]'s receipt of [these] substantial commissions from Westinghouse and B&R is illegal and despicable which is no less than abhorred by our Freedom Constitution as its mandate



includes eradication of graft and corruption, punishment of those guilty thereof and recovery of ill-gotten wealth. Verily, [Herminio]'s conduct should be corrected and deterred as his use of influence or power for his own personal benefit to the detriment of the Republic caused substantial injury not only to public funds but to the morale, trust and confidence of Filipinos in the government and its projects. Hence, this Court finds it reasonable under the circumstances to award One Million Pesos [(P1,000,000.00)] as exemplary damages.¹²⁵ (Emphasis and underscoring supplied)

It bears noting, however, that in the foregoing cases, the Court's award for temperate and exemplary damages had been based on specific monetary values. In *Tuvera*, the P1,000,000.00 award for temperate and exemplary damages drew upon the assertion that the undue award of a TLA in favor of therein respondents Juan, Victor, and Twin Peaks resulted in revenues amounting to "approximately P45,000,000.00." On the other hand, in *Disini*, the Court based its award of temperate and exemplary damages on the price of the government contracts established to have been awarded in favor of contractors Westinghouse and B&R through Herminio's influence.

In this case, no similar metric exists.

To reiterate, the 60-40 arrangement cannot serve as the Court's basis to determine the damages which may be assessed in favor of the Republic as its right to recover in this case is anchored not on said arrangement, but on the undue influence exerted by Tan in order to secure Asia Brewery's license. Thus, the damages due the Republic must be assessed based on the portion of the latter's revenue which may be deemed ill-gotten.

In the absence of proof respecting these material facts, the Court is precluded from making a reasonable determination as to the monetary damage sustained by the Republic and its people on account of the undue benefit granted in favor of Tan. Thus, the Court cannot assess damages, whether temperate or exemplary, in favor of the Republic at this stage in the proceedings, considering that these damages have not been reasonably established in appropriate financial terms.¹²⁶ **To do otherwise would inequitably and unfairly disregard the reality that the growth and success of Asia Brewery did not rest solely on the undue benefit granted by President FM in the form of its license.**

The Court can surely take judicial notice of the fact that it has been 40 years since Asia Brewery was established following the grant of its BOI license, and that it has since continued to operate 37 years after President FM's ouster.

As Tan's Written Disclosure reveals, he managed to secure Asia Brewery's license by pitching it as a possible competitor for SMC. In turn,

¹²⁵ *Disini v. Republic*, *supra* note 37. Citations omitted.

¹²⁶ *See Tuvera v. Republic*, *supra* note 34.

President FM's motive in allowing for the establishment of Asia Brewery was in order that a competitor would disrupt SMC's monopoly **and drive down the prices of its shares to allow his then ally, Danding Cojuangco, to gain control.**¹²⁷

Notably, the records of the case are bereft of any evidence to show that President FM granted Asia Brewery any other benefit or concession apart from its initial brewery license. In fact, Tan's Written Disclosure indicates that President FM was not satisfied with Asia Brewery's profitability. It was precisely Asia Brewery's unsatisfactory performance which prompted President FM to demand a 60% share in *all* corporations¹²⁸ under the SHI umbrella, in addition to the 25% share in Asia Brewery which he initially asked for.¹²⁹ It would thus appear that instead of enjoying additional benefits or concessions to augment its profitability, Asia Brewery had been placed at a disadvantage due to President FM's subsequent takeover threats.

More, at the time Asia Brewery began its operations in 1982, the beer market was monopolized by industry giant SMC.¹³⁰ In turn, competing with SMC proved to be difficult for Asia Brewery, as SMC appeared to have exerted efforts to maintain its dominance in the local beer market. In 1988, SMC filed a complaint against Asia Brewery for infringement of trademark and unfair competition on account of the latter's Beer Pale Pilsen or *Beer na Beer* product which competed with SMC's San Miguel Pale Pilsen for a share in the local beer market. In a 1993 Decision rendered in *Asia Brewery, Inc. v. Court of Appeals*,¹³¹ the Court found no basis to support SMC's assertions and held that Asia Brewery neither infringed SMC's trademark nor committed unfair competition with respect to the latter's San Miguel Pale Pilsen product.¹³²

As well, the Court can take judicial notice of the fact that Asia Brewery filed an action against SMC in 1997, claiming that the latter committed "unfair trade practices" by hoarding, smashing, and illegally removing Asia Brewery's empty beer bottles and plastic crates from circulation.¹³³ The CA later directed SMC to pay Asia Brewery ₱68,000,000.00 in damages to compensate the latter for its unfair trade practices.¹³⁴

¹²⁷ See *rollo* (G.R. No. 203592, Vol. IV), p. 3498.

¹²⁸ Fortune Tobacco, Foremost Farms, Himmel Industries, Grandspan Development, and Dominion Realty.

¹²⁹ See *rollo* (G.R. No. 203592) (Vol. IV), pp. 3496–3502.

¹³⁰ See *About Us*. (*n.d.*). *Asia Brewery* [website]. Last accessed October 14, 2023, from <<https://asiabrewery.com/pages/about-us>>.

¹³¹ G.R. No. 103543, July 5, 1993, 224 SCRA 437.

¹³² See *id.* at 456.

¹³³ ABS-CBN News. (2008, November 24). *Asia Brewery Wins First Round in Unfair Trade Practices Case Vs San Miguel*. Last accessed October 14, 2023, from <<https://news.abs-cbn.com/business/11/24/08/asia-brewery-wins-first-round-unfair-trade-practices-case-vs-san-miguel>>.

¹³⁴ Philippine Daily Inquirer. (2011, October 5). *Asia Brewery Wins Bottle Case Vs San Miguel Corp*. Last accessed October 14, 2023, from <<https://business.inquirer.net/23021/asia-brewery-wins-bottle-case>>.

Despite such heavy political and market pressure, Asia Brewery thrived through the years and has managed to remain in business due in large part to the industry of its own officers and employees. It bears noting that beyond sustaining its business operations, Asia Brewery has since managed to raise its share in the Philippine beer market to 38% as of 2013.¹³⁵ Despite being known as a beer company, Asia Brewery now dominates the drinking water, soy milk, energy drink, and alco-mix categories.¹³⁶ The company has also been a reliable contributor to the net profit of the Lucio Tan Group, Inc. (LT Group), albeit in a comparatively smaller way than the other big companies in the LT Group. For the first half of 2023, Asia Brewery reportedly accounted for ₱340 million or 3% of the total net income of the LT Group. This is 16% higher than the ₱294 million last year, as revenues were 3% higher at ₱8.41 billion from ₱8.14 billion.¹³⁷

As such, the peg from which the damages to be awarded here must not carelessly include income that has been honestly and legitimately earned by Asia Brewery. To borrow the words of Justice Jose P. Laurel, “the administration of justice is not a matter of guess work.”¹³⁸

On this basis, I submit, as I did at the outset, that the remand of the Petition docketed as G.R. No. 203592 is necessary so that the temperate and exemplary damages due the Republic may be assessed and determined **with some measure of certainty**.

Indeed, as what has been emphasized by the Court in the past, the factual premises of the EOs governing the recovery of ill-gotten wealth cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated.¹³⁹ The desire to be less than this methodical may be all too real, considering that it is a matter of “extensive notoriety” that “an immense fortune” and “vast resources of the government have been amassed by former [President FM], his immediate family, relatives, and close associates both here and abroad” through “all sorts of clever schemes and manipulations to disguise and hide their illicit acquisitions,” and hence, may already be well within the realm of judicial notice as to dispense with proof thereof.¹⁴⁰ Be this as it may, the requirement of evidentiary substantiation has been expressly acknowledged, and the procedure to be followed explicitly laid down, in EO No. 14.¹⁴¹

vs-san-miguel-corp>. There is no publicly available data confirming that a subsequent appeal had been lodged.

¹³⁵ Philippine Daily Inquirer. (2013, January 28). *Asia Brewery to Expand Throughout Asia*. Last accessed June 8, 2023, from <<https://business.inquirer.net/104639/asia-brewery-to-expand-throughout-asia>>.

¹³⁶ *Id.*

¹³⁷ Manila Bulletin. (2023, August 11). *LT Group's Profits Decline to P13B*. Last accessed October 14, 2023, from <<https://mb.com.ph/2023/8/11/lt-group-s-profits-decline-to-p13-b>>.

¹³⁸ *Go Occo & Co. v. De La Costa*, 63 Phil. 445, 449 (1936).

¹³⁹ See *Republic v. Reyes-Bakunawa*, *supra* note 40, citing *Bataan Shipyard & Engineering Co., Inc. (Baseco) v. Presidential Commission on Good Government*, *supra* note 23.

¹⁴⁰ See *Republic v. Reyes-Bakunawa*, *id.* at 187.

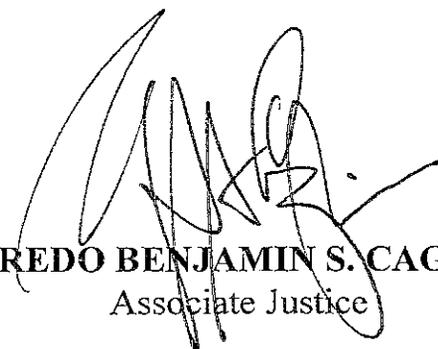
¹⁴¹ *Id.*

While my submission to remand here seems, at first blush, a backslide from *Tuvera* and *Disini*, this is but an imperative one to be taken in step with the rule of law. While the long-running remedial efforts of the Republic to recover ill-gotten wealth from the Marcoses and their cronies should never be brought to naught, especially in the face of an alarmingly proliferating historical denialism of late, these efforts must be done fairly and judiciously. Inasmuch as the injustice that the former regime of kleptocracy had inflicted on our nation should be fought relentlessly, it should not be through means that are as equally unjust.

In view of the foregoing, I vote that the Court:

1. **AFFIRM** the Sandiganbayan's Resolutions dated December 22, 2010 and February 25, 2011 in **G.R. No. 195837**;
2. **AFFIRM** the Sandiganbayan's Order dated June 9, 2011 and Resolution dated August 2, 2011 in **G.R. No. 198221**; as well as the Sandiganbayan's Resolutions dated May 3, 2011 and July 4, 2011 dismissing the Republic's Motion for Voluntary Inhibition;
3. **AFFIRM** the Sandiganbayan's Resolutions dated July 8, 2011 and August 23, 2011 in **G.R. No. 198974** which denied the Republic's Motion to Admit Third Amended Complaint; and
4. **REVERSE** the Sandiganbayan's Decision dated June 11, 2012 and Resolution dated September 26, 2012 in **G.R. No. 203592**.

Further, the I vote that the case be **REMANDED** to the Sandiganbayan to (i) allow the Republic to present additional evidence that will permit the proper assessment of such ill-gotten wealth with some measure of certainty; and (ii) afford Tan the opportunity to present controverting evidence, if any, as to the proper quantification of damages.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice