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G.R. No. 195837 – Republic of the Philippines, *Petitioner* v. Honorable Sandiganbayan 5th Division, Don Ferry, and Cesar Zalamea, *Respondents*.

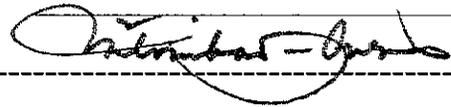
G.R. No. 198221 – Republic of the Philippines, *Petitioner* v. Sandiganbayan 5th Division, *et al.*, *Respondents*.

G.R. No. 198974 – Republic of the Philippines, *Petitioner* v. Sandiganbayan 5th Division, *et al.*, *Respondents*.

G.R. No. 203592 – Republic of the Philippines, *Petitioner* v. Sandiganbayan 5th Division, *et al.*, *Respondents*.

Promulgated:

October 3, 2023



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SEPARATE OPINION

SINGH, J.:

I express full concurrence with the *ponencia*'s disposition in G.R. Nos. 195837 and 198974. However, I respectfully express my disagreement with the disallowance of the testimonies of the Republic's witnesses in G.R. No. 198221 and some of the findings in G.R. No. 203592 relating to the inadmissibility of particular evidence.

G.R. No. 198221: Disallowance of the Yujuicos' testimonies

To recall, during the trial, the Republic presented Joselito and Aderito Yujuico (the **Yujuicos**) to testify on its allegations pertaining to the liquidation of General Bank and Trust Company (**GenBank**) and Lucio Tan's (**Tan**) acquisition of its assets through Allied Banking Corporation (**Allied Bank**) without sufficient collateral and consideration, (**GenBank Liquidation**). However, the Sandiganbayan disallowed the testimonies, reasoning that the legality of the GenBank Liquidation had been decided by the Court in *General Bank & Trust Co. v. Central Bank of the Philippines (GenBank Case)*.¹ The Republic also requested the recall of Joselito Yujuico for the presentation of its rebuttal evidence, to no avail.²

¹ 524 Phil. 232 (2006).

² *Ponencia*, pp. 9 & 13–14.



The Republic argued that the Yujuicos' testimonies are not barred by *res judicata* because the GenBank Case did not involve proving the concessions Ferdinand E. Marcos (**Marcos**) granted to Tan and their unlawful collaboration with the Central Bank and the Philippine National Bank to acquire GenBank. On the other hand, Tan and his co-respondents maintained that the Republic cannot present the Yujuicos as their testimonies involve facts and issues already established and resolved in the GenBank Case.³

The *ponencia* rules that the GenBank Case bars by *res judicata* the Yujuicos' testimonies on the allegations in the Second Amended Complaint pertaining to the validity of the GenBank Liquidation, particularly paragraph 14, subparagraphs (a)(1), (2), and (3).⁴

I respectfully opine that the *ponencia*'s ruling should be qualified such that the Yujuicos' testimonies in relation to issues which were not resolved in the GenBank Case – reflected in paragraph 14, subparagraphs (b) and (c) of the Second Amended Complaint – should be allowed.

In the GenBank Case, the Court ruled that the Central Bank did not violate any existing procedural or substantive law when it ordered the closure of GenBank,⁵ and eventually adopted Tan's group of companies' bid as its liquidation plan.⁶ The Court found that GenBank failed to discharge the burden of proving bad faith on the part of the Central Bank Monetary Board (**MB**) when it issued the assailed Resolutions which operationalized the liquidation and sale of GenBank to Tan's group.⁷

Here, the Republic intended to present the Yujuicos as witnesses to testify on paragraph 14, subparagraphs (a)(1)(2)(3), (b) and (c) of the Second Amended Complaint,⁸ which read:

14. Defendant Lucio C. Tan, by himself and/or in unlawful concert with Defendants Ferdinand E. Marcos and Imelda R. Marcos, taking undue advantage of his relationship and influence with Defendant Spouses, and embarking upon devices, schemes and stratagems, including the use of Defendant Corporations, among others:

(a) without sufficient collateral and for nominal consideration, with the active collaboration, knowledge and willing participation of Defendant Willy Co, arbitrarily and fraudulently acquired control of [GenBank] which eventually became [Allied Bank], through the manipulation of

³ *Id.* at 18–37.

⁴ *Id.* at 33–86.

⁵ Central Bank Monetary Board Resolution No. 675 (1977).

⁶ Central Bank Monetary Board Resolution No. 677 (1977).

⁷ *General Bank & Trust Co. v. Central Bank of the Philippines*, *supra*.

⁸ *Rollo* (G.R. No. 203592), p. 4128.

then Central Bank Governor [Licaros], and of then President [Domingo] of the Philippine National Bank [PNB], as shown by, but not limited to, the following circumstances:

(1) In 1976, [GenBank] got into financial difficulties. The Central Bank then extended an emergency loan to [GenBank] reaching a total of ₱310 million. In extending this loan, the CB however, took control of [GenBank] when the latter executed an irrevocable proxy of 2/3 of [GenBank]'s outstanding shares in favor of the [Central Bank] and when 7 of the 11-member Board of Directors were [Central Bank] nominees. Subsequently, on March 25, 1977, the Monetary Board of [Central Bank] issued a Resolution declaring [GenBank] insolvent, forbidding it to do business and placing it under receivership.

(2) In the meantime, a public bidding for the sale of [GenBank] assets and liabilities was scheduled at 7:00 P.M. on Ma[r]ch 28, 1977. Among the conditions of the bidding were: (a) submission by the bidder of Letter of Credit issued by a bank acceptable to [Central Bank] to guaranty payment or as collateral of the [Central Bank] emergency loan; and (b) a 2-year period to repay the said CB emergency loan. On March 29, 1977, [Central Bank] thru a Monetary Board Resolution, approved the bid of the group of Lucio Tan and Willy Co. This bid, among other things, offered to pay only ₱500,000.00 for [GenBank] assets estimated at ₱688,201,301.45; Capital Accounts of ₱103,984,477.55; Cash of ₱25,698,473.00; and the takeover of the [GenBank] Head Office and branch offices. The required Letter of Credit was not also attached to the bid. What was attached to the bid was a letter of Defendant [Domingo] as PNB President promising to open an irrevocable letter of credit to secure the advances of the Central Bank in the amount of ₱310 Million. Without this letter of commitment, the Lucio Tan bid would not have been approved. But such letter of commitment was a fraud because it was not meant to be fulfilled. Defendants [Marcos], [Licaros] and [Domingo] conspired together in giving the Lucio Tan group undue favors such as doing away with the required irrevocable letter of credit, the extension of the term of payment from two years to five years, the approval of [a] second mortgage as collateral for the Central Bank advances which was deficient by more than ₱90 Million, and many other concessions to the great prejudice of the government and of the [GenBank] stockholders.

(3) As already stated, [GenBank] eventually became [Allied Bank] in April, 1977. The defendants Lucio Tan, Willy S. Co and Florencio T. Santos are not only incorporators and directors but they are also the major shareholders of this new bank.

(b) delivered to Defendant spouses Ferdinand and Imelda Marcos, sometime in July, 1977 or thereafter, substantial beneficial interests in shares of stock worth millions of pesos in the [Asia Brewery] through dummies, nominees or agents, with the active collaboration, knowledge and willing participation of Defendants Florencio T. Santos, as then President [Tan Eng Lian], as then Treasurer, and Domingo Chua Mariano Khoo, as then Directors of [Asia Brewery] in consideration of substantial concessions



which their varied business ventures were unduly privileged to enjoy, such as but not limited, the grant of dollar allocation amounting to about U.S. \$6,934,500.00.

(c) gave improper payments such as gifts, bribes and commissions, and/or guaranteed "dividends" to said Defendant spouses in various sums, such as ₱10M in 1980, ₱10M in 1981, ₱20M in 1982, ₱40 1983, ₱40M in 1984, ₱50M in 1985, ₱50M in 1986, in consideration of Defendant Spouses' continued support of Defendant Lucio Tan's diversified business ventures and/or Defendant Spouses' ownership or interest in said diversified business ventures, such as [Allied Bank], and its subsidiaries here and abroad, including [the respondent corporations and the foreign corporations]. Even earlier, Tan gave the amounts of ₱11 million in 1975, about ₱2 million in 1977, and ₱44 million in 1979, among other amounts.⁹
(Emphasis and underscoring supplied)

Paragraph 14(a) of the Republic's Second Amended Complaint clearly pertains to issues which were resolved in the GenBank Case. Thus, the Republic's attempt to relitigate the GenBank Liquidation is barred by *res judicata* by conclusiveness of judgment.

The rule of conclusiveness of judgment dictates that any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claim or demand, purpose, or subject matter of the two suits is the same.¹⁰

Clearly, the issues on the validity of the MB's declaration of insolvency of GenBank and its subsequent acquisition by Tan and company are barred by *res judicata* by conclusiveness of judgment, because these were conclusively settled in the GenBank Case despite its different cause of action. However, the same cannot be said for paragraph 14, subparagraphs (b) and (c) of the Second Amended Complaint.

The aforementioned paragraphs do not contest only the validity of the GenBank Liquidation, as the allegations clearly concern alleged undue favors and concessions which Marcos granted to Tan at the expense of the government. Thus, the Republic should have been given the opportunity to present its case through the presentation of the Yujicos' testimonies in so far

⁹ Ponencia, pp. 33-34; rollo (G.R. No. 203592), pp. 4151-4155.

¹⁰ *Vda. De Cruz v. Carriaga, Jr.*, 256 Phil. 72 (1989).



as they relate to paragraph 14, subparagraphs (b) and (c) of the Second Amended Complaint.

G.R. No. 203592: Dismissal of the Republic's Complaint

To recount, the Sandiganbayan found that the Republic failed to prove that the subject assets and properties¹¹ were ill-gotten because there was no showing that the same originated from the vast resources of the government.¹²

The *ponencia* holds that the Sandiganbayan unduly restricted the concept of ill-gotten wealth as such need not be solely derived from the government's resources,¹³ but affirms the Sandiganbayan and dismisses the Republic's Complaint for reversion, reconveyance, restitution, accounting, and damages against the respondents, due to the inadmissibility of key pieces of evidence it relied on to prove its claims.

I humbly express my concurrence, subject to reservations as will be discussed below.

As defined in the *ponencia*, "ill-gotten wealth" pertains to "assets acquired 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."¹⁴ Thus, there are two ways by which ill-gotten wealth is acquired. The second manner, which is of concern in this case, requires a showing of the following elements: (a) assets and properties were acquired; (b) these were acquired by Marcos, Imelda R. Marcos (**Imelda**), their close relatives, subordinates, business associates, dummies, agents, or nominees; (c) the manner of acquisition is by taking undue advantage of their office, authority, influence, connections, or relationship; and (d) the acquisition resulted in their unjust enrichment and caused grave damage and prejudice to the Filipino people and the Republic of the Philippines.

¹¹ These consist of two aircrafts and shares of stocks in 19 companies, including Shareholdings, Inc. See *ponencia*, p. 9.

¹² *Ponencia*, p. 15.

¹³ *Id.* at 41-43.

¹⁴ *Id.* at 42.



In relation thereto, Executive Order No. (EO) 14,¹⁵ as amended, provides that the degree of proof required for civil cases involving the Marcos wealth held by their family, business associates, dummies, agents, and nominees is preponderance of evidence. Jurisprudence involving the ill-gotten wealth of Marcos explains that this only requires the determination, based on the evidence presented, in light of common human experience, which of the theories proffered by the parties is more worthy of credence.¹⁶

In this regard, 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.¹⁷

Evidence is admissible when it is relevant to the issue and is not excluded by the law or the rules,¹⁸ or is competent. The weight to be given to such evidence, once admitted, depends on judicial evaluation within the guidelines provided in Rule 133 and the jurisprudence laid down by the Court. Thus, while evidence may be admissible, it may be entitled to little or no weight at all. Conversely, evidence which may have evidentiary weight may be inadmissible because a special rule forbids its reception.¹⁹

Jurisprudence further instructs that evidence of a statement made or a testimony is hearsay if offered against a party who has no opportunity to cross-examine the witness. Hearsay evidence is excluded precisely because the party against whom it is presented is deprived of or is bereft of opportunity to cross-examine the persons to whom the statements or writings are attributed.²⁰

The function of cross-examination is to test the truthfulness of the statements of a witness made on direct examination. The opportunity of cross-examination has been regarded as an essential safeguard of the accuracy and completeness of a testimony and against falsehoods and frauds.²¹

In this case, the Republic anchors its claim, that Marcos' interests in Tan's businesses were consolidated into 60% of Shareholdings, Inc. shares, on four key pieces of evidence: (a) Imelda's Amended Answer with Counterclaim and Compulsory Cross-Claim, dated November 19, 2001

¹⁵ Entitled "DEFINING THE JURISDICTION OVER CASES INVOLVING THE ILL-GOTTEN WEALTH OF FORMER PRESIDENT FERDINAND E. MARCOS, MRS. IMELDA R. MARCOS, MEMBERS OF THEIR IMMEDIATE FAMILY, CLOSE RELATIVES, SUBORDINATES, CLOSE AND/OR BUSINESS ASSOCIATES, DUMMIES, AGENTS AND NOMINEES," approved on May 7, 1986.

¹⁶ *Republic v. Tuvera*, 545 Phil. 21 (2007).

¹⁷ *PNOC Shipping and Transport Corp. v. Court of Appeals*, 358 Phil. 38 (1998).

¹⁸ RULES OF COURT, Rule 128, sec. 3.

¹⁹ *People v. Turco, Jr.*, 392 Phil. 498 (2000).

²⁰ *Phil. Free Press Inc. v. Court of Appeals*, 510 Phil. 411 (2005).

²¹ *Republic v. Sandiganbayan*, 678 Phil. 358 (2011).

(**Imelda's Amended Answer**); (b) Ferdinand R. Marcos, Jr.'s (**Marcos, Jr.**) testimony; (c) Tan's written disclosure, dated May 10, 1986 (**Tan's Written Disclosure**); and (d) Rolando Gapud's (**Gapud**) sworn statement, dated January 14, 1987 (**Gapud's Sworn Statement**) to prove its claim that 60% of the shares in Shareholdings, Inc. is ill-gotten wealth.

(a) *Imelda's Amended Answer*

Imelda alleged that before and continuing through 1985, Marcos had beneficial ownership in Tan's companies which were consolidated in 60% of shares in Shareholdings, Inc. through Falcon Holdings Corp. (**Falcon**) and Supreme Holdings, Inc. (**Supreme**) in 1984. She further claimed that Tan, his family, and his close business associates held these shares in trust, which they recognized by their execution and delivery of blank deeds of assignment to Marcos.

42. **Way before and continuing through 1985, former President Ferdinand Marcos (FM) had beneficial ownership, together with defendant Lucio C. Tan ("LT"), 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, Inc.
2. Fortune Tobacco Corp.
3. Foremost Farms, Inc.
4. Asia Brewery, Inc.
5. Grandspan Development Corp.
6. Silangan Holdings, Inc.
7. Dominion Realty and Construction Corp.

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

44. **Sometime in late 1980, FM and LT agreed to consolidate their ownership interests in the various businesses, in one holding company organized under the name Shareholdings, Inc.**

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 Shareholdings, Inc. 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, Shareholdings, Inc. 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, Shareholdings, Inc.

45. Having achieved the consolidation of their beneficial ownership interests, through the organization of the holding company, Shareholdings, Inc., **FM and LT then agreed to structure the segregation of their beneficial ownership interests in the proportion of sixty percent (60%) for FM and forty percent (40%) for LT.**

45.1 For this purpose, **three ultimate holding companies were organized in the middle of 1984: Basic Holdings Corp. ("Basic") Supreme Holdings, Inc. ("Supreme"), and Falcon Holdings Corp. ("Falcon"), with the intention of having Basic as the record owner of the beneficial interests of LT and his group (40%) and Supreme and Falcon, as the record owners of the aggregate beneficial interests of FM (60%).**

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

Stockholders	No. of Shares	% of Holdings
Basic Holdings Corp.	61,617,500	49.0%
Supreme Holdings, Inc.	31,437,500	25.0%
Falcon Holdings Corp.	31,437,500	25%
Lucio C. Tan	628,750	0.5%
Mariano Tanenglian	628,750	0.5%
TOTAL	125,750,000	100.0%

45.4 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 Shareholdings, Inc. shares held by the former in favor of the latter.

45.5 After Basic transferred 9% of its 49% stock ownership in Shareholdings, Inc., the stock ownership in Shareholdings, Inc. became as follows:

Stockholders	No. of Shares	% of Holdings
Basic Holdings Corp.	50,300,000	40.0%
Supreme Holdings, Inc.	42,755,000	34.0%
Falcon Holdings Corp.	31,437,500	25%
Lucio C. Tan	628,750	0.5%
Mariano Tanenglian	628,750	0.5%
TOTAL	125,750,000	100.0%

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

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

48. Defendant Imelda R. Marcos as surviving spouse and heir of FM and the Estate of Ferdinand E. Marcos, the latter being the legal successor-in-interest of FM repeatedly demanded from defendant LT and the other defendants-record stockholders of Shareholdings, Inc. that they perform or enforce the trust by delivering and recording the ownership of sixty percent (60%) of Shareholdings, Inc.'s outstanding capital stock to defendant Estate of Ferdinand E. Marcos, thru Falcon and Supreme, in accordance with the Deeds of Assignment.²² (Emphasis supplied)

While 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, the said pleading was nonetheless marked and formally offered as Exhibit M,¹⁵ and was even admitted as evidence by the Sandiganbayan.

As borne out by the records, the Republic filed its Manifestation and Motion on January 3, 2012, praying, among others, that Imelda's Amended Answer, which was marked as Exhibit M,¹⁵ be offered as evidence. The said Manifestation and Motion was granted by the Sandiganbayan in the Resolution, dated January 9, 2012. Hence, Imelda's Amended Answer was considered as part of the formally offered evidence of the Republic.²³ On January 12, 2012, the Sandiganbayan issued a Resolution admitting **all** the exhibits offered by the Republic.²⁴

To my mind, having been duly admitted by the Sandiganbayan as evidence for the Republic, and considering further that it was in fact filed by Imelda, who is a party to this case, the statements contained therein should have been considered as admissions against Imelda's interest.

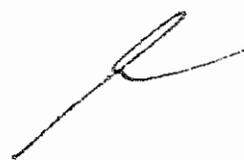
I further disagree with the *ponencia's* position that Imelda should have been presented and cross-examined to authenticate the said pleading. Admissions against one's interest are those made by a party to a litigation or by one in privity with or identified in legal interest with such party, and are admissible whether or not the declarant is available as a witness.²⁵ Thus, since the statements in the Amended Answer are made by a party to a litigation, the

²² *Rollo* (G.R. No. 203592), pp.1307-1310.

²³ *Id.* at 140-141.

²⁴ *Id.* at 141.

²⁵ *Unchuan v. Lozada*, 603 Phil. 410, 424-425 (2009).



rule excluding hearsay testimony, which rests mainly on the ground that there is no opportunity to cross-examine the person to whom statements or writings are attributed, does not apply.²⁶

Moreover, there was no showing that any of the respondents opposed or objected to Imelda's Amended Answer when it was offered as evidence. The rule is that the failure to object to the offered evidence renders it admissible, and the court cannot, on its own, disregard such evidence. In other words, when a party failed to timely object, the evidence becomes part of the evidence in the case. Hence, all the parties are considered bound by any outcome arising from the offer of evidence properly presented.²⁷

As well, the said pleading was never expunged from the records, nor was there any attempt on the part of the respondents to exclude the same. It must be emphasized that every court has the positive duty to consider and give due regard to everything on record that is relevant and competent to its resolution of the ultimate issue presented for its adjudication.²⁸

Given the foregoing, it was therefore erroneous for the Sandiganbayan to have declared Imelda's Amended Answer as inadmissible in evidence.

(b) *Marcos, Jr.'s testimony*

Marcos, Jr. testified that Shareholdings, Inc. is a holding company for Marcos' interests in Tan's various businesses. He maintained that the shareholders on record of 60% of Shareholdings, Inc. are Falcon and Supreme, companies established before 1985 and which Marcos owned as evidenced by deeds of assignment of stocks indorsed in blank.

Q: And what did you discuss with [Tan] 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 of diagram, a piece of paper, explaining that there was a company Shareholdings, Inc., which was a holding corporation for all those corporations.

I will try to remember them all – Foremost Farms, Fortune Tobacco, Asia Brewery, Himmel Industries, Grandspan, Dominion – I might

²⁶ *People v. Catacutan y Mortera*, G.R. No. 260731, February 13, 2023.

²⁷ *Advance Paper Corp. v. Arma Traders Corp.*, 723 Phil. 401 (2013).

²⁸ *CIR v. Jerry Ocier*, 843 Phil. 573 (2018).



be missing some but basically, **Shareholdings, Inc. was the holding corporation for all these corporations.**

.....

Q: You mentioned Shareholdings, Inc. What is the relationship of Shareholdings, Inc. with the other corporations that you mentioned earlier?

A: Shareholdings, Inc. was the holding company for the other companies that I mentioned. And the ownership of the Shareholdings, Inc. was divided at least initially, between three other companies.

This explanation that Mr. Tan gave me while we were at his office in Allied Bank.

Q: Could you name the three other companies holding shares in the Shareholdings, Inc.

A: **Yes. The three companies that own Shareholdings, Inc. Basic, Supreme and Falcon.**

Initially, Basic own 50% of Shareholdings, Inc.; 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 Shareholdings, Inc.

Q: Mr. Witness, do you have proof that Supreme Holdings, Inc. and Falcon Holdings, Inc. have interests in Shareholdings, Inc.?

A: **Well, there are documents that show Deeds of Sale of Shareholdings, Inc. 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.

.....

Q: What is the connection of the Marcos family to Supreme Holdings?

A: **Supreme Holdings and Falcon Holdings belong to my father.**

Q: **What document/s or proof do you have that the Falcon Holdings and Supreme Holdings belong to your father?**

A: **He showed me the Deeds of Assignment in blank that were signed by the Share[h]olders of those corporation[s] Falcon and Supreme Holdings.**

.....



Q: Now in connection with Lucio C. Tan, what did Rolando Ga[p]ud tell you?

A: **In case of Lucio Tan Corporations, I remember one thing that he told me that he was finalizing the 60/40 sharing between Lucio Tan and my father.**

....

Q: Apart from the statement of Mr. Rolando Ga[p]ud that he was finalizing the arrangement between your father and Lucio Tan on a 60/40 sharing arrangement. What else did Rolando Ga[p]ud tell you with respect to defendant Lucio Tan?

A: Well, he was commenting on the discussions that were being made between Lucio Tan and my father; That Lucio Tan made the counter proposal that the sharing will be 50/50 rather than 60/40.

Q: What did Rolando Ga[p]ud tell you with respect to this counter proposal of Lucio Tan to have a 50/50 arrangement?

A: I remembered verbatim said that the Ilocano prevail.

Q: What do you mean?

A: **My father's proposal for a 60/40 sharing was in the end what was followed.**²⁹ (Emphasis supplied)

The above testimony narrated events which Marcos, Jr. personally observed. Accordingly, it is admissible, in so far as it pertains to the occurrence of Marcos, Jr.'s meetings with Tan and Gapud as independently relevant statements.³⁰

The doctrine of independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it constitutes a fact in issue or is circumstantially relevant to the existence of such fact. Thus, the hearsay rule does not apply, and the statements are admissible as evidence.³¹

Thus, Marcos, Jr.'s testimony, covering these meetings and the information related to him, is admissible proof of the occurrence of such

²⁹ *Rollo* (G.R. No. 203592), pp. 4013–4017; TSN, February 13, 2008, pp. 41 and 68–69.

³⁰ See *People v. Umapas*, 807 Phil. 975 (2017) and *Country Bankers Insurance Corp. v. Lianga Bay & Community Multi-Purpose Cooperative, Inc.*, 425 Phil. 511 (2002).

³¹ *XXX v. People*, G.R. No. 241390, January 13, 2021, citing *Gubaton v. Amador*, 835 Phil. 825, 833 (2018).



meetings and conversations, but not of the truth of the statements made therein.

(c) *Tan's Written Disclosure*

Tan confirmed the ownership structure of Shareholdings, Inc. He also admitted that in 1984 and 1985, the ownership of 60% of Shareholdings, Inc. shares were transferred to Falcon and Supreme which were incorporated in 1983. However, Tan disclaimed Marcos' ownership of 60% of its shares through Falcon and Supreme. He purportedly misled Marcos by delivering blank deeds of assignment, which were partly executed by the incorporators who were no longer the genuine and registered owners of the shares.

After the collapse of the mega business 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, Marcos began to press that he be given a share of [Shareholdings, Inc.]. [Tan] attempted to evade the unconscionable demand of Marcos by spending most of his time outside the Philippines. From 1983 to start of 1986, [Tan] spent most of his time abroad. Despite [Tan's] absence, Marcos kept up the pressure threatening the issuance of various tax decrees designed at crippling [Fortune Tobacco]. In fact, an ad valorem tax was slapped increasing the specific tax on cigarettes. The said tax immediately caused [Fortune Tobacco's] sales to drop by 35% while increasing the sales of La Suerte by 50%. [Tan] was compelled to choose from the following options:

1. liquidate and/or siphon his assets and run abroad (like cronies who really did not build up their businesses with their own capital and hardwork), or,
2. delay the takeover by trying to get around the persistent demands for issuance of certificates of stock in blank and hope for the best, but with a resolve to stay in the country in any eventuality.

[Tan] decided to stay in the country and took the second option.

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

1. **Basic Holdings Corp. (BASIC)**
2. **Falcon Holdings Corp. (FALCON)**
3. **Supreme Holdings, Inc. (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, **Marcos, through Rolando Gapud, persisted in his demand for a 50, then 51%, then 60% share in [Shareholdings Inc.]**

On July 16, 1984, the three holding companies purchased 99% of the shares of the stockholders of [Shareholdings, Inc.], with the



exception of [Tan] and Mariano Tanenglian (MT) who retained 0.5% each. On the same day the said three holding companies borrowed from the stockholders-vendors of [Shareholdings, Inc.] 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 Marcos 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 [Mariano Tanenglian] for their respective shares which all together were supposed to have accounted for 51% of Shareholdings, Inc.'s shares were delivered to Gapud without revealing that:**

1. The original incorporators had already much earlier transferred and assigned their share 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 [Shareholdings, Inc.'s] shares having resold the same to the original owners;
3. There could be no valid transfer of [Tan] and [Mariano Tanenglian] shares in [Shareholdings, Inc.] as their respective subscriptions had not been fully paid and to date remains unpaid.

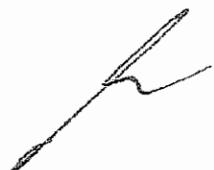
Thereafter, Marcos demanded for an additional 9% to give himself supposedly a 60% control over Shareholdings, Inc. To give the semblance of compliance with said demand, it was made to appear that **on Feb. 28, 1985, BASIC transferred the equivalent of 9% of [Shareholdings, Inc.'s] total shares to SUPREME** without revealing that:

1. BASIC had in fact already divested itself of all its [Shareholdings, Inc.'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 [Shareholdings, Inc.'s]) when BASIC only had a total of 1,000,000 paid up shares from a total authorized capital stock of 5,000,000 shares;
 - b. The document was executed by some persons who are not stockholders of BASIC.³² (Emphasis supplied)

Former Senator Jovito Salonga (**Sen. Salonga**) presented and identified Tan's Written Disclosure before the Sandiganbayan. However, his direct examination was not completed and neither was he cross-examined.³³ The

³² *Rollo* (G.R. No. 203592), pp. 839-848.

³³ *Ponencia*, pp. 48-49.



Republic did not even present Tan to testify on or identify his own written disclosure, as his name is clearly absent from its list of witnesses. It relied solely on the testimony of Sen. Salonga to prove the contents thereof.³⁴ Hence, Tan's Written Disclosure is inadmissible for being hearsay.

(d) *Gapud's Sworn Statement*

Gapud detailed Marcos' acquisition of beneficial interest in Tan's businesses. He confirmed that in 1985, Tan ceded 60% of Shareholdings, Inc. to Marcos in exchange for several privileges and concessions which greatly benefitted the former's companies.

With particular reference, for example, to MR. LUCIO TAN, I know that **Mr. Marcos and Mr. Lucio Tan had an understanding that Mr. Marcos owns 60% of Shareholdings, Inc.** 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 Mr. Lucio Tan for that purpose. He tried to bargain by reducing the equity of Mr. Marcos to 50%. I told him that I was merely carrying out the instructions of Mr. Marcos and that if he wanted to bargain, he should take up the matter directly with Mr. Marcos. As a matter of fact, Mr. Lucio Tan, **apart from the 60% equity of Mr. Marcos had been regularly paying**, through Security Bank, Sixty Million Pesos (P60 million) to One Hundred Million Pesos (P100 million) to **Mr. Marcos, in exchange for privileges and concessions** Mr. Marcos had been giving him in relation to the businesses managed by Mr. Lucio Tan. xxx. Mr. Marcos and Mr. Tan were in partnership, and they derived great material benefits from that relationship.

....

... As far as I can remember, **there was only one instance of what I can describe as a legitimate earning of Mr. Marcos, namely, the retirement benefits** of Mr. Marcos coming from the Government Service Insurance System (GSIS), but this was a **very small insignificant amount** – around One hundred thousand pesos (P100,000), or the equivalent today of about \$5,000 – which was given to him, through the Security Bank, when he reached the age of 65.³⁵ (Emphasis supplied)

Gapud executed several sworn statements and/or was deposed in relation to other Marcos ill-gotten wealth cases. However, none of these cases specifically and/or solely relied on the sworn statement subject of this case.³⁶

³⁴ *Rollo* (G.R. No. 203592), pp. 58–65.

³⁵ *Id.* at 1494.

³⁶ *Disini v. Republic*, G.R. No. 205172, June 15, 2021; *Estate of Marcos v. Republic* (Resolution), 803 Phil. 524 (2017); *Republic v. Sandiganbayan*, 733 Phil. 196 (2014); *Republic v. Marcos-Manotok*, 681 Phil. 380 (2012); *Republic v. Sandiganbayan*, 678 Phil. 358 (2011); *Yuchengco v. Sandiganbayan*, 515 Phil. 1 (2006); *Republic v. Estate of Hans Menzi*, 512 Phil. 425 (2005).

The Republic's failure to put Gapud on the stand is fatal to its case as it rendered his sworn statement inadmissible for being hearsay.³⁷ Notably, in *Republic v. Marcos-Manotok*,³⁸ the Court applied the doctrine that affidavits whose affiants were not presented as witnesses are classified as hearsay because these are not generally prepared by the affiants and the adverse party is deprived of the opportunity to cross-examine them. Even Sen. Salonga's presentation and identification of Gapud's Sworn Statement was futile, because he was not cross-examined.

In summary, two of four of the Republic's principal pieces of evidence are inadmissible. While they may be relevant in proving the Republic's claims, they are excluded and inadmissible for being hearsay.

The details of the transfer of Tan's interest to Marcos are found in Marcos, Jr.'s Testimony and Gapud's Sworn Statement.

In his testimony, Marcos, Jr. explained the ownership structure of Shareholdings, Inc. and categorically declared that two of its parent companies (Supreme and Falcon), with 60% ownership, belonged to Marcos. When asked for proof, he said that Marcos showed him blank Deeds of Assignment executed by the shareholders of Supreme and Falcon.³⁹ Imelda's Amended Answer alleged the same, and this was corroborated in Gapud's Sworn Statement. Gapud disclosed that in addition to the ₱60 to ₱100 million which Tan regularly paid Marcos, the 60% equity in Shareholdings, Inc. was in exchange for several governmental privileges and concessions.

Considering that Tan's Written Disclosure and Gapud's Sworn Statement are inadmissible, although Marcos, Jr.'s testimony is admissible as independently relevant and Imelda's Amended Answer is an admission against her interest, it does not rise to the level of preponderance to establish the Republic's claims.

With the foregoing, I opine that the Republic failed to discharge its burden of proving, by a preponderance of evidence, that Marcos acquired 60% of Shareholdings, Inc. shares, sometime during his term as President between 1983 and 1985, by taking undue advantage of his office.

The Court has repeatedly acknowledged the Republic's tedious job in gathering evidence of ill-gotten wealth, which is mostly cleverly concealed and not easily apparent and accessible given the nature of its illegality. Nonetheless, the Court must uphold the rules of evidence in the prosecution

³⁷ *People's Bank and Trust Co. v. Leonidas*, 283 Phil. 991 (1992).

³⁸ 681 Phil. 380 (2012).

³⁹ TSN, February 13, 2008, pp. 41 and 68-69.



of ill-gotten wealth cases as they are founded on the bedrock principle of due process of law.



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Associate Justice