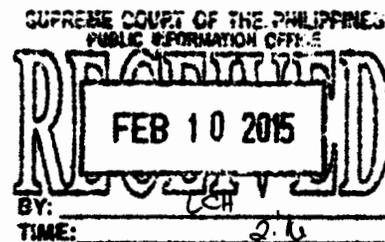




Republic of the Philippines
Supreme Court
 Manila
FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated November 19, 2014, which reads as follows:

“G.R. No. 156646 - REPUBLIC OF THE PHILIPPINES, represented by the Anti-Money Laundering Council, Petitioner, v. FIRST PACIFIC NETWORK INC., Respondent.

This is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking the review of the Decision¹ dated September 5, 2002 and the Resolution² dated January 7, 2003 of the Court of Appeals in CA-G.R. SP No. 69291, entitled “*Republic v. First Pacific Network, Inc.*,” which granted petitioner Anti-Money Laundering Council’s (AMLC) petition for extension of effectivity of Freeze Order No. FO-003 but for a limited period of only thirty (30) days counted from its date of receipt of the assailed September 5, 2002 ruling of the Court of Appeals.

The undisputed facts of this case as narrated in the assailed September 5, 2002 Decision of the Court of Appeals follows:

The Anti-Money Laundering Council (AMLC for brevity), a government agency created under Republic Act No. 9160, otherwise known as the Anti-Money Laundering Council Act of 2001 (AMLA),

- over – eight (8) pages

¹ *Rollo*, pp. 32-37; penned by Associate Justice Romeo A. Brawner with Associate Justices Jose L. Sabio, Jr. and Mario L. Guariña III, concurring.
² *Id.* at 39.

received a report from a certain Reynaldo Geronimo, who claims to have personal knowledge that respondent FPN [First Pacific Network, Inc.] is involved in illegal securities trading and maintains a bank account at the main Branch of Standard Chartered Bank at Ayala Avenue, Makati City (Standard Chartered for brevity), under Account Number 904-AE-49351009, where petitioner allegedly deposited the proceeds of its illegal securities trading activities.

It appears that on 24 January 2002, the Regional Trial Court of Makati City, Branch 136, issued three search warrants against several persons for Illegal Trading of Securities without the necessary license issued by the Securities and Exchange Commission (SEC for brevity). On 25 January 2002, the raiding teams composed of agents of the NBI and the SEC served the search warrants, and were forthwith able to seize several documents, including, among others, false buy-sell confirmation slips, client files, documents showing the share transactions of clients, stock quotations, broker's scripts, and the fictitious names used by the brokers/salesmen and their corresponding real names, belonging to First Pacific. Upon further investigation, it was discovered that First Pacific was not registered with the SEC to engage in the buying and selling of securities. The evidence gathered in such raid would tend to show *prima facie* proof that First Pacific was engaged in illegal trading of securities, in contravention of Section 28 of R.A. No. 8799.

After evaluating the documents seized and the report received, the AMLC found reasonable grounds to believe that the money deposited by First Pacific with Standard Chartered was related to an illegal activity. It thus issued Resolution No. 041 directing the immediate issuance and service of the freeze order upon First Pacific's account. x x x.³

Before the lapse of the freeze order, AMLC requested the Court of Appeals to extend the effectivity of the freeze order against respondent First Pacific Network, Inc.'s (FPN) bank account with the main branch of Standard Chartered Bank at Ayala Avenue, Makati City. The Court of Appeals gave the AMLC an extension of not more than 30 days in its assailed September 5, 2002 Decision, the dispositive portion of which states:

- over -

361

³ Id. at 32-33.



WHEREFORE, the Petition is hereby GRANTED. The freeze [order] issued by the AMLC on the bank account of First Pacific Network, Inc., at the main Branch of Standard Chartered Bank at Ayala Avenue, Makati City, under Account Number 904-AE-49351009, is hereby extended to thirty days from receipt of this Decision.⁴

Dissatisfied with the ruling of the Court of Appeals, AMLC filed, on September 30, 2002, a Motion for Clarification and/or Partial Reconsideration.⁵ This motion was denied by the Court of Appeals in the assailed January 7, 2003 Resolution.

Hence, AMLC filed the present petition putting forward the following ground in support thereof:

THE COURT OF APPEALS ERRED IN DENYING FURTHER EXTENSION OF THE EFFECTIVITY OF THE SUBJECT FREEZE ORDER DESPITE THE EXISTENCE OF COMPELLING REASON TO KEEP RESPONDENT'S BANK ACCOUNT IN *CUSTODIA LEGIS*.⁶

In fine, the only issue to be resolved in this case is whether the freeze order issued against respondent's bank account should be further extended beyond the thirty (30)-day period granted by the Court of Appeals and until the appropriate case has been filed against respondent.

AMLC asserts that considering the intricacy and magnitude of the transactions involved, the novelty of the law governing the offense, the recent organization of the AMLC, and the advanced technology of electronic banking that enables a depositor to transfer or remove any deposit, or even close an account instantly, there is a pressing need to extend the period of effectivity of the freeze order so as not to render the same ineffectual pending further investigation and filing of appropriate charges in court.

On the other hand, respondent counters that Section 5 of Republic Act No. 9160 or the "*Anti-Money Laundering Council Act of 2001*" confers upon the Regional Trial Court (RTC) the jurisdiction to try all cases of

- over -

361

⁴ Id. at 36.

⁵ Id. at 167-174.

⁶ Id. at 17.

money laundering, and as the extension of period of the freeze order is a provisional remedy akin to preliminary injunction with prayer for temporary restraining order, therefore, an extension should only be granted after due notice and hearing by the RTC in a main case for forfeiture or criminal case for violation of Republic Act No. 9160; that the non-filing of a petition for extension before the RTC has caused the fifteen-day period to lapse; and that the due process clause under the Constitution demands that no extension be granted unless there be filed a main case against respondent with the RTC.

The pertinent provision of law involved in this case is Section 10 of Republic Act No. 9160, which is reproduced below:

Section 10. *Authority to Freeze.* – Upon determination that probable cause exists that any deposit or similar account is in any way related to an unlawful activity, **the AMLC may issue a freeze order, which shall be effective immediately, on the account for a period not exceeding fifteen (15) days.** Notice to the depositor that his account has been frozen shall be issued simultaneously with the issuance of the freeze order. The depositor shall have seventy-two (72) hours upon receipt of the notice to explain why the freeze order should be lifted. The AMLC has seventy-two (72) hours to dispose of the depositor's explanation. If it fails to act within seventy-two (72) hours from receipt of the depositor's explanation, the freeze order shall automatically be dissolved. The fifteen (15)-day freeze order of the AMLC **may be extended upon order of the court,** provided that the fifteen (15)-day period shall be tolled pending the court's decision to extend the period.

No court shall issue a temporary restraining order or writ of injunction against any freeze order issued by the AMLC except the Court of Appeals or the Supreme Court. (Emphases supplied.)

On March 5, 2003, during the pendency of the instant petition, Congress enacted Republic Act No. 9194, entitled as "*An Act Amending Republic Act No. 9160, Otherwise Known As The Anti-Money Laundering Act of 2001.*" It amended, among other provisions, Section 10 of Republic Act No. 9160 as follows:

- over -



SEC. 7. Section 10 of [R.A. 9160] is hereby amended to read as follows:

“SEC. 10. *Freezing of Monetary Instrument or Property.* – **The Court of Appeals**, upon application *ex parte* by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, **may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.**” (Emphases supplied.)

Meanwhile, on November 15, 2005, we promulgated A.M. No. 05-11-04-SC or the “*Rule of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended*” (Rule in Civil Forfeiture Cases). Under Section 53(b) of this rule, a freeze order could be extended for a maximum period of six months, to wit:

Section 53. *Freeze order.* —

x x x x

(b) *Extension.* — On motion of the petitioner filed before the expiration of twenty days from issuance of a freeze order, **the court may for good cause extend its effectivity for a period not exceeding six months.** (Emphasis supplied.)

Congress further amended Section 10 of the Anti-Money Laundering Act of 2001 with Republic Act No. 10167 which was made into law on June 6, 2012. The amendment to Section 10 was laid out in Section 1 of the said law in the following manner:

SECTION 1. Section 10 of Republic Act No. 9160, as amended, is hereby amended to read as follows:

“SEC. 10. *Freezing of Monetary Instrument or Property.* – Upon verified *ex parte* petition by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, **the**

- over -

Court of Appeals may issue a freeze order, which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)[-]hour period shall exclude the nonworking days.”

“A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the twenty (20)-day original freeze order.”

“No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court.”
(Emphasis supplied.)

Recently, Republic Act No. 10365, which was enacted on February 15, 2013, further amended Section 10 of Republic Act No. 9160 by mandating that the Court of Appeals may issue a freeze order the duration of which shall not exceed six months otherwise it would be considered lifted, to wit:

SEC. 8. Section 10 of [R.A. 9160], as amended by Republic Act No. 10167, is hereby amended to read as follows:

“SEC. 10. *Freezing of Monetary Instrument or Property.* – Upon a verified *ex parte* petition by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, **the Court of Appeals may issue a freeze order which shall be effective immediately, and which shall not exceed six (6) months depending upon the circumstances of the case: *Provided, That if there is no case filed against a person whose account has been frozen within the period determined by the court, the freeze order shall be deemed ipso facto lifted: Provided, further,*** That this new rule shall not apply to pending cases in the courts. In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition. If the application is filed a day before a nonworking day, the computation of the twenty-four (24)-hour period shall exclude the nonworking days.

“A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the freeze order.



“No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court.”
(Emphasis supplied.)

It is clear from the foregoing amendments to Republic Act No. 9160 that, at present, the Court of Appeals has been given sole authority and discretion to issue a freeze order as well as to extend its effectivity. It is likewise apparent that a freeze order is meant to be a temporary legal remedy in order to facilitate the attainment of the purpose of the Anti-Money Laundering Law.

In *Ligot v. Republic*,⁷ we discussed the finite nature and objective of a freeze order in this manner:

A freeze order is an **extraordinary and interim relief** issued by the CA to prevent the dissipation, removal, or disposal of properties that are suspected to be the proceeds of, or related to, unlawful activities as defined in Section 3(i) of RA No. 9160, as amended. The primary objective of a freeze order is to **temporarily preserve** monetary instruments or property that are in any way related to an unlawful activity or money laundering, by preventing the owner from utilizing them during the duration of the freeze order. The relief is **pre-emptive** in character, meant to prevent the owner from disposing his property and thwarting the State’s effort in building its case and eventually filing civil forfeiture proceedings and/or prosecuting the owner.

In the case at bar, we find no error in the decision of the Court of Appeals to extend Freeze Order No. FO-003 to a definite period of thirty (30) days. The state of law and jurisprudence at the time of the issuance of the assailed ruling of the Court of Appeals gave the appellate court discretion to extend a freeze order only for a reasonable period of time which was later clarified by A.M. No. 05-11-04-SC as not exceeding more than six (6) months.

AMLC’s prayer that the freeze order at issue be extended until proper legal actions allowed under Republic Act No. 9160 shall have been taken against respondent cannot be therefore accommodated considering that both Congress and this Court have decreed, in no vague terms, that a freeze order cannot be issued or extended for an indefinite period of time.

- over -

361

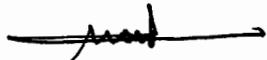
⁷ G.R. No. 176944, March 6, 2013, 692 SCRA 509, 536-537.



WHEREFORE, premises considered, the petition is **DENIED** for lack of merit.

SO ORDERED.” **BERSAMIN, J.**, on official travel; **VELASCO, JR., J.**, acting member per S.O. No. 1870 dated November 4, 2014.

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court ^{m/v}
361

The Solicitor General (x)
Makati City

Court of Appeals (x)
Manila
(CA-G.R. SP No. 69291)

Atty. Gerardo G.F. Erese
Counsel for Respondent
3715 Bautista St., Palanan
1225 Makati City

Anti-Money Laundering Council
Bangko Sentral ng Pilipinas
Roxas Blvd., Manila 1000
(AMLC Case No. FO-003)

Public Information Office (x)
Library Services (x)
Supreme Court
(For uploading pursuant to A.M.
No. 12-7-1-SC)

Judgment Division (x)
Supreme Court

SR

9

li