

THIRD DIVISION

JUN 01 2016

G.R. No. 211098: THE WELLEX GROUP, INC., Petitioner, **v. SHERIFF EDGARDO A. URIETA OF THE SANDIGANBAYAN SECURITY AND SHERIFF SERVICES, THE SANDIGANBAYAN SECURITY AND SHERIFF SERVICES, AND BDO UNIBANK, INC. (FORMERLY EQUITABLE PCI BANK, INC.),** Respondents.

Promulgated:
April 20, 2016

W. Lapitan

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DISSENTING OPINION

LEONEN, J.:

I dissent. Third-party claims involving properties forfeited consequent to a conviction for plunder must be filed before the Sandiganbayan, regardless of the civil nature of such claims.

Before this court is a Petition for Review on Certiorari¹ assailing the Order² dated January 9, 2012 of Branch 139 and the Resolution³ dated January 15, 2014 of Branch 132, both of the Regional Trial Court of Makati City. On the ground of lack of cause of action, the trial court dismissed petitioner the Wellex Group, Inc.'s Complaint for recovery of possession of 450,000,000 shares of stock in Waterfront Philippines, Inc. (Waterfront shares).⁴ The shares of stock were forfeited in favor of the state as a consequence of Former President Joseph Estrada's (Former President Estrada) conviction for plunder.⁵

Equitable-PCI Bank and a certain Jose Velarde (Velarde) entered into an Investment Management Agreement.⁶ The bank agreed to manage Velarde's assets, investing them and taking possession of the profits and losses on Velarde's behalf.⁷ The agreement likewise allowed the bank to grant loans using the funds under investment management, subject to applicable regulations.⁸

¹ *Rollo*, pp. 42-70.

² *Id.* at 82-91. The Order was issued by Presiding Judge Benjamin T. Pozon.

³ *Id.* at 76-81. The Resolution was penned by Judge Rommel O. Baybay.

⁴ *Id.* at 91, Regional Trial Court Order dated January 9, 2012.

⁵ *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44, 60-61 (2012) [Per J. Sereno (now C.J.), Second Division].

⁶ *Rollo*, pp. 779-784.

⁷ *Id.* at 779.

⁸ *Id.*

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On February 4, 2000, Investment Management Agreement (IMA) Account No. 101-78056-1 was opened under Velarde's name.⁹ Apart from the IMA account, Velarde maintained a savings account in Equitable-PCI Bank with account number 0160-62501-5.¹⁰

On the same day that Velarde opened his IMA account, the Wellex Group, Inc. loaned ₱500,000,000.00 from Equitable-PCI Bank, payable in six (6) months.¹¹ As security for the loan, the Wellex Group, Inc. mortgaged 450,000,000 of its Waterfront shares.¹²

On August 2, 2000, a loan extension was granted to the Wellex Group, Inc. and its President, William Gatchalian, mortgaged 300,000,000 of his own Waterfront shares as additional security for the loan.¹³

In the meantime, on April 4, 2001, Former President Estrada was charged with plunder before the Sandiganbayan.¹⁴ The Information was amended on April 18, 2001¹⁵ to add, among others, "Jose Velarde" as one of Former President Estrada's alleged aliases.¹⁶ According to the Amended Information, Former President Estrada allegedly compelled the Government Service Insurance System and the Social Security System to purchase shares of stock from Belle Corporation, resulting in his earning a total of ₱189,700,000.00 in commissions.¹⁷ This amount was allegedly deposited in his "Jose Velarde" accounts in Equitable PCI-Bank.¹⁸

The accusatory portion of the Amended Information reads:

AMENDED INFORMATION

The undersigned Ombudsman Prosecutor and OIC-Director, EPIB Office of the Ombudsman, hereby accuses former PRESIDENT OF THE PHILIPPINES, Joseph Ejercito Estrada a.k.a. 'ASIONG SALONGA' AND a.k.a 'JOSE VELARDE', together with Jose 'Jinggoy' Estrada, Charlie 'Atong' Ang, Edward Serapio, Yolanda T. Ricaforte, Alma Alfaro, JOHN DOE a.k.a. Eleuterio Tan OR Eleuterio Ramos Tan or Mr. Uy, Jane Doe a.k.a Delia Rajas, and John DOES & Jane Does, of the crime of Plunder, defined and penalized under R.A. No. 7080, as amended by Sec. 12 of R.A. No. 7659, committed as follows:

⁹ Id.

¹⁰ *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44, 58 (2012) [Per J. Sereno (now C.J.), Second Division], citing the Sandiganbayan Decision dated September 12, 2007 in *People v. Estrada*, Criminal Case No. 26558 (Id. at 48).

¹¹ *Rollo*, p. 158, Promissory Note and Chattel Mortgage.

¹² Id. at 166, List/Description of Mortgaged Properties.

¹³ Id. at 786-790.

¹⁴ *Estrada v. Sandiganbayan*, 427 Phil. 820, 839 (2002) [Per J. Puno, En Banc].

¹⁵ Id.

¹⁶ Id. at 842.

¹⁷ Id. at 844.

¹⁸ Id.

That during the period from June, 1998 to January, 2001, in the Philippines, and within the jurisdiction of this Honorable Court, accused Joseph Ejercito Estrada, THEN A PUBLIC OFFICER, BEING THEN THE PRESIDENT OF THE REPUBLIC OF THE PHILIPPINES, by himself AND/OR in CONNIVANCE/CONSPIRACY with his co-accused, WHO ARE MEMBERS OF HIS FAMILY, RELATIVES BY AFFINITY OR CONSANGUINITY, BUSINESS ASSOCIATES, SUBORDINATES AND/OR OTHER PERSONS, BY TAKING UNDUE ADVANTAGE OF HIS OFFICIAL POSITION, AUTHORITY, RELATIONSHIP, CONNECTION, OR INFLUENCE, did then and there wilfully, unlawfully and criminally amass, accumulate and acquire BY HIMSELF, DIRECTLY OR INDIRECTLY, ill-gotten wealth in the aggregate amount OR TOTAL VALUE of FOUR BILLION NINETY SEVEN MILLION EIGHT HUNDRED FOUR THOUSAND ONE HUNDRED SEVENTY THREE PESOS AND SEVENTEEN CENTAVOS [P4,097,804,173.17], more or less, THEREBY UNJUSTLY ENRICHING HIMSELF OR THEMSELVES AT THE EXPENSE AND TO THE DAMAGE OF THE FILIPINO PEOPLE AND THE REPUBLIC OF THE PHILIPPINES, through ANY OR A combination OR A series of overt OR criminal acts, OR SIMILAR SCHEMES OR MEANS, described as follows:

.....

(c) by directing, ordering and compelling, FOR HIS PERSONAL GAIN AND BENEFIT, the Government Service Insurance System (GSIS) TO PURCHASE 351,878,000 SHARES OF STOCK, MORE OR LESS, and the Social Security System (SSS), 329,855,000 SHARES OF STOCK MORE OR LESS, OF THE BELLE CORPORATION . . . ; AND BY COLLECTING OR RECEIVING, DIRECTLY OR INDIRECTLY, BY HIMSELF AND/OR IN CONNIVANCE WITH JOHN DOES AND JANE DOES, COMMISSIONS OR PERCENTAGES BY REASON OF SAID PURCHASES OF SHARES OF STOCK IN THE AMOUNT OF ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND PESOS [P189,700,000.00], MORE OR LESS, FROM THE BELLE CORPORATION WHICH BECAME PART OF THE DEPOSIT IN THE EQUITABLE-PCI BANK UNDER THE ACCOUNT NAME "JOSE VELARDE";

.....

CONTRARY TO LAW.¹⁹ (Underscoring in the original, emphasis supplied)

¹⁹ Id. at 842-845.

During trial, the prosecution proved Former President Estrada's ownership of the Velarde accounts in Equitable-PCI Bank.²⁰ As for Former President Estrada, he admitted to signing bank documents as Jose Velarde to fund the Wellex Group, Inc.'s ₱500,000,000.00 loan.²¹ Specifically, he admitted to signing as Jose Velarde copies of the Investment Management Agreement as well as a debit-credit instruction to allow the transfer of ₱500,000,000.00 from the savings account to the IMA account.²²

While the plunder case was still pending resolution, Equitable-PCI Bank merged with Banco de Oro in 2007, with the surviving bank being Banco de Oro.²³

Through the Decision dated September 12, 2007, the Sandiganbayan convicted Former President Estrada of plunder.²⁴ The Sandiganbayan ordered the ₱189,000,000.00 deposited in the Velarde accounts, inclusive of interests and income earned, forfeited in favor of government.²⁵ The dispositive portion of the September 12, 2007 Decision partly provides:

Moreover, in accordance with Section 2 of Republic Act No. 7080, as amended by Republic Act No. 7659, the Court hereby declares the forfeiture in favor of the Government of the following:

....

(2) The amount of One Hundred Eighty Nine Million Pesos (₱189,000,000.00), inclusive of interests and income earned, deposited in the Jose Velarde account.²⁶ (Citation omitted)

However, Former President Estrada was pardoned by Former President Gloria Macapagal Arroyo on October 25, 2007.²⁷ The pardon expressly stipulated that:

The forfeitures imposed by the Sandiganbayan remain in force and in full, including all writs and processes issued by the Sandiganbayan in pursuance hereof, except for the bank account(s) he owned before his tenure as President.²⁸ (Citation omitted)

²⁰ *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44, 58 (2012) [Per J. Sereno (now C.J.), Second Division].

²¹ *Id.* at 58–59.

²² *Id.*

²³ GMA News Online, *SEC approves Banco de Oro, Equitable merger* <<http://www.gmanetwork.com/news/story/44145/money/companies/sec-approves-banco-de-oro-equitable-merger>> (visited March 21, 2016)

²⁴ *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44, 48 (2012) [Per J. Sereno (now C.J.), Second Division].

²⁵ *Id.* at 48–49.

²⁶ *Id.*

²⁷ *Id.* at 49.

²⁸ *Id.*

Former President Estrada accepted the pardon on October 26, 2007.²⁹

With this development, the Sandiganbayan ordered the issuance of a writ of execution to implement parts of the September 12, 2007 Decision not covered by the pardon. The Writ of Execution was issued against Former President Estrada on November 5, 2007.³⁰

Former President Estrada moved to quash the Writ of Execution, arguing that the Writ expanded the scope of the properties ordered forfeited.³¹ The Office of the Special Prosecutor opposed the Motion to Quash and asserted that the Writ of Execution did not vary the terms of the September 12, 2007 Decision.³²

In the Resolution dated January 28 2008, the Sandiganbayan partially granted the Motion to Quash. It qualified the scope of the Writ of Execution to include only those that form part of Former President Estrada's ill-gotten wealth.³³ Thus, the Sandiganbayan issued an Amended Writ of Execution³⁴ on February 19, 2008, particularly alluding to the Waterfront shares as properties forfeited in favor of government.³⁵ The Amended Writ of Execution partly provides:

NOW THEREFORE, you are hereby commanded to cause the forfeiture in favor of the government of the abovementioned amounts and property listed in the said dispositive portion of the decision, including payment in full of your lawful fees for the service of the writ.

In the event that the amounts or property listed for forfeiture in the dispositive portion be insufficient or could no longer be found, you are authorized to issue notices of levy and/or garnishment to any person who is in possession of any and all form of assets that is traceable or form part of the amounts or property which have been ordered forfeited by this Court, including but not limited to the accounts receivables and assets found at Banco de Oro (the successor in interest of Equitable PCI Bank) in the personal IMA Trust Account No. 101-78056-1 in the name of Jose Velarde (which has been adjudged by the Court to be owned by former President Joseph Ejercito Estrada and the depository of the ill-gotten wealth) consisting of Promissory Notes evidencing the loan of P500,000,000.00 with due date as of August 2, 2000 and the chattel mortgage securing the loan; *Waterfront shares aggregating 750,000,000 shares (estimated to be worth P652,500,000.00 at the closing price of P 0.87 per share as of January 21, 2008[.]*³⁶ (Underscoring in the original, emphasis supplied)

²⁹ Id.

³⁰ Id.

³¹ Id. at 50.

³² Id.

³³ Id. at 51.

³⁴ *Rollo*, pp. 759–761.

³⁵ Id. at 760.

³⁶ Id.

Sheriff Edgardo A. Urieta (Sheriff Urieta) of the Sandiganbayan was commanded to implement the Writ of Execution. In his Sheriff's Progress Report submitted on February 22, 2008, Sheriff Urieta stated that Velarde's IMA account was under the Bureau of Internal Revenue's constructive distraint. Therefore, the bank could not deliver to the Sandiganbayan the assets under the IMA account.³⁷

Banco De Oro confirmed Sheriff Urieta's Report.³⁸ In the Manifestation³⁹ dated April 18, 2008, Banco de Oro stated that the assets under the IMA account remained intact but were under constructive distraint.⁴⁰

Banco de Oro likewise informed the Sandiganbayan that the Wellex Group, Inc. had earlier requested the retrieval of its Waterfront shares.⁴¹ In its Letter⁴² dated January 21, 2008, the Wellex Group, Inc. said that it directly paid the owner of the IMA account, thus extinguishing its loan obligation to the bank.⁴³ The Letter dated January 21, 2008 partly states:

It appears that interest payments on the loan were made for a certain period but these payments stopped at some point in time. Inquiries resulted in our view that coincident to the stoppage of interest payments, principal payment of the obligation was made by or on behalf of the borrower, not to your bank as investment manager, but instead directly to the owner of the account. THE WELLEX GROUP, INC. is presently interested in retrieving the shares given as security for the loan obligation which apparently has been extinguished.⁴⁴

To settle the conflicting claims to the Waterfront shares, the Sandiganbayan scheduled a hearing on May 16, 2008.⁴⁵ The Bureau of Internal Revenue, Banco de Oro, and the Wellex Group, Inc. were heard on their respective positions and were thereafter ordered to file their respective memoranda.⁴⁶ The Bureau of Internal Revenue filed a Memorandum and Banco de Oro a Submission. However, the Wellex Group, Inc. filed none.⁴⁷

³⁷ *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44, 52 (2012) [Per J. Sereno (now C.J.), Second Division].

³⁸ *Rollo*, pp. 697-698, Banco de Oro Unibank, Inc.'s Manifestation.

³⁹ *Id.* at 697-700.

⁴⁰ *Id.* at 698.

⁴¹ *Id.* at 699.

⁴² *Id.* at 707-708.

⁴³ *Id.* at 708.

⁴⁴ *Id.*

⁴⁵ *Id.* at 495, Sandiganbayan Resolution dated April 25, 2008 in *People v. Estrada*, docketed as Criminal Case No. 26558. The Resolution was signed by Presiding Justice and Chair Diosdado M. Peralta (now Associate Justice of this Court) and Associate Justices Francisco H. Villacruz, Jr. and Rodolfo A. Ponferrada of the Special Division.

⁴⁶ *Id.* at 498, Sandiganbayan Order dated May 16, 2008 in *People v. Estrada*, docketed as Criminal Case No. 26588. The Order was issued by Presiding Justice and Chair Diosdado M. Peralta (now Associate

The Sandiganbayan emphasized the Wellex Group, Inc.'s failure to file a memorandum on its claim to the Waterfront shares.⁴⁸ The court likewise cited Banco de Oro's Certification that the bank had not yet received any payment from the Wellex Group, Inc. for its ₱500,000,000.00 loan.⁴⁹

With respect to the Bureau of Internal Revenue, the Sandiganbayan acknowledged the validity of the Bureau's claim over the assets under the IMA account.⁵⁰ However, it noted that the Bureau had not yet issued a formal assessment to Former President Estrada; hence, the Bureau's claim was not yet final.⁵¹

The September 12, 2007 Decision, the Sandiganbayan continued, was already final and executory. Thus, the Sandiganbayan ruled that the assets under the IMA account were ripe for forfeiture.⁵²

In the Resolution⁵³ dated September 24, 2008, the Sandiganbayan directed Sheriff Urieta to issue another Notice to Deliver to Banco de Oro for the bank to remit to the court the assets under the IMA account.⁵⁴ The Resolution dated September 24, 2008 states, in part:

As regards the claim of the Wellex Group, Inc., considering the Certification issued by the BDO's Trust and Investment Group managing the subject IMA Account that "they have not received any principal payment on the loan/investment amounting to P500,000,000.00 granted/made by said account to the Wellex Group, Inc.," which Certification was not rebutted by Wellex, its alleged claim to the subject IMA Account has no legal basis. Besides, the claim of the government always enjoys the highest priority over the claim of private individuals or entities as regards assets/amounts which have been ordered forfeited in favor of the government and/or distrained for tax liability. This circumstance is apparently realized by Wellex Group, which did not submit a memorandum to support its stand even when it was given by the Court the opportunity to do so.

Justice of this Court) and Associate Justices Francisco H. Villacruz, Jr. and Rodolfo A. Ponferrada of the Special Division.

⁴⁷ Id. at 712, Sandiganbayan Resolution dated September 24, 2008 in *People v. Estrada*, docketed as Criminal Case No. 26588.

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Id. at 713.

⁵¹ Id. at 713-714.

⁵² Id.

⁵³ Id. at 710-715. The Resolution was signed by Presiding Justice and Chair Diosdado M. Peralta (now Associate Justice of this Court) and Associate Justices Francisco H. Villacruz, Jr. and Rodolfo A. Ponferrada of the Special Division.

⁵⁴ Id. at 714-715.

WHEREFORE, in light of the foregoing, Mr. Edgardo Urieta, SB Chief Judicial Officer, Security and Sheriff Services, this Court, is hereby directed to issue another NOTICE TO DELIVER to Banco de Oro Unibank, Inc. (formerly BDO[-]JPCIB, Inc.) for the latter to deliver/remitt to this Court the amount of ONE HUNDRED EIGHTY NINE MILLION SEVEN HUNDRED THOUSAND (P189,700,000.00) PESOS, inclusive of interest and income earned, covered by IMA Trust Account No. 101-78056-1 in the name of Jose Velarde, within fifteen (15) days from receipt thereof.

SO ORDERED.⁵⁵

The Wellex Group, Inc. filed a Petition/Motion for Reconsideration⁵⁶ praying that the Waterfront shares be excluded from the forfeiture order.⁵⁷ The Motion was denied in the Resolution⁵⁸ dated April 2, 2009.

On April 20, 2009, Sheriff Urieta issued the Notice to Deliver,⁵⁹ with which Banco de Oro complied. Banco de Oro delivered to Sheriff Urieta the assets under the IMA account, including the Waterfront shares.⁶⁰

The Wellex Group, Inc. filed an Urgent *Ex-Parte* Motion for Clarification of the Resolution dated 02 April 2009⁶¹ arguing that the Waterfront shares do not form part of the forfeited IMA account.⁶² In the Resolution⁶³ dated April 23, 2009, the Sandiganbayan merely noted the Urgent *Ex-Parte* Motion without action.

Alleging grave abuse of discretion on the part of Sandiganbayan,⁶⁴ the Wellex Group, Inc. filed before this Court a Petition for Certiorari on June 22, 2009.⁶⁵ The Wellex Group, Inc. maintained that the Sandiganbayan expanded the scope of its September 12, 2007 Decision when it included the Waterfront shares in the forfeiture order.⁶⁶

The Petition, docketed as G.R. No. 187951, was dismissed by this Court in the Decision dated June 25, 2012.⁶⁷ On the premises that (a) the beneficial owner of the forfeited Velarde accounts was Former President

⁵⁵ Id.

⁵⁶ Id. at 717–757.

⁵⁷ Id. at 755.

⁵⁸ Id. at 671–680. The Resolution was signed by Associate Justice Francisco H. Villacruz, Jr. (Chair) and Associate Justices Rodolfo A. Ponferrada and Ma. Cristina G. Cortez-Estrada of the Special Division.

⁵⁹ Id. at 763–764.

⁶⁰ Id. at 415–416, Banco de Oro Unibank, Inc.’s Comment with Opposition.

⁶¹ Id. at 682–688.

⁶² Id. at 684–686.

⁶³ Id. at 692. The Resolution was signed by Associate Justice Francisco H. Villacruz, Jr. (Chair) and Associate Justices Rodolfo A. Ponferrada and Ma. Cristina G. Cortez-Estrada of the Special Division.

⁶⁴ Id. at 190–191, Petition for Certiorari in G.R. No. 187951.

⁶⁵ Id. at 173.

⁶⁶ *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44, 48 (2012) [Per J. Sereno, Second Division].

⁶⁷ Id.

Estrada;⁶⁸ (b) that the ₱500,000,000.00 loaned to the Wellex Group, Inc. came from the Velarde IMA account;⁶⁹ and that (c) the Wellex Group, Inc. mortgaged 450,000,000.00 of its Waterfront shares as security for the loan,⁷⁰ this Court held in *The Wellex Group, Inc. v. Sandiganbayan*⁷¹ that the Waterfront shares were among Former President Estrada's assets, which were forfeited in favor of government.⁷²

Since the loan was sourced from Former President Estrada's IMA account, this Court held that the ₱500,000,000.00 receivable from the Wellex Group, Inc. as well as the 450,000,000 Waterfront shares became assets of the IMA account.⁷³ Considering that the IMA account was forfeited in favor of government, the assets of the IMA account "follow the fate of the trust account and are forfeited as well."⁷⁴

However, this Court stated that the loan contract remained valid, thus subrogating the government to the rights of the IMA account over its assets, including the Waterfront shares.⁷⁵ This Court further noted that the Wellex Group, Inc. waived its right to assail this finding of fact before the Sandiganbayan when it failed to file a memorandum as required during the May 16, 2008 hearing.⁷⁶

According to this Court, the Wellex Group, Inc. failed to prove its claim that it had directly paid its loan.⁷⁷ This Court likewise observed that the Wellex Group, Inc. never revealed the identity of its alleged principal or creditor to whom it paid the ₱500,000,000.00.⁷⁸ Thus, its claim of payment remained "highly doubtful."⁷⁹

The Decision in *The Wellex Group, Inc. v. Sandiganbayan* became final and executory.

Meanwhile, on May 6, 2009—one month before the Wellex Group, Inc. filed its Petition for Certiorari before this Court on June 22, 2009—the Wellex Group, Inc. filed before the Regional Trial Court of Makati a Complaint⁸⁰ for Recovery of Possession, Delivery of Stock Certificates, and Injunction with Application for Temporary Restraining Order and or Writ of

⁶⁸ Id. at 57 and 64.

⁶⁹ Id. at 58.

⁷⁰ Id. at 60.

⁷¹ 689 Phil. 44 (2012) [Per J. Sereno (now C.J., Second Division)].

⁷² Id. at 60–65.

⁷³ Id. at 60.

⁷⁴ Id. at 61.

⁷⁵ Id.

⁷⁶ Id. at 62.

⁷⁷ Id. at 61–62.

⁷⁸ Id. at 61.

⁷⁹ Id.

⁸⁰ *Rollo*, pp. 247–263.

Preliminary Injunction. Hence, the Wellex Group, Inc. filed before this Court a separate civil action *in addition* to the Complaint filed before the Regional Trial Court of Makati.

Impleaded as defendants in the Complaint for recovery of possession were Sheriff Urieta, the Sandiganbayan Security and Sheriff Services, and Banco de Oro.⁸¹ The Wellex Group, Inc. made the following allegations in its Complaint:

12. [The Wellex Group, Inc.] learned that the principal of the IMA Account is Mr. Jaime Dichaves. To avoid being defaulted in its loan obligations, [The Wellex Group, Inc.] dealt directly with the principal and eventually settled its loan obligations.

13. Having settled its loan obligations, [The Wellex Group, Inc.] made demands upon defendant [Banco de Oro] to return the subject stock certificates, but the latter unjustifiably failed to comply with plaintiff's just and valid demands. The last of such demands was evidenced by the demand letter made by [The Wellex Group, Inc.'s] counsel to [Banco de Oro] dated 05 November 2008. . . .

14. Instead, on 22 April 2009, without the authority and consent of [The Wellex Group, Inc.], defendant [Banco de Oro] delivered to and defendant Sheriff Urieta took possession and control of the subject stock certificates and shares of stocks. Worse, likewise without the authority and consent of [The Wellex Group, Inc.], defendant Sheriff Urieta is now poised to sell the subject shares of stocks at public auction on 15 May 2009 at 10 o'clock in the morning. . . .

15. On the face of the Sheriff's Report and the Notice of Sale, the seizure and intended sale of the subject shares of stocks are anchored on the Amended Writ of Execution dated 19 February 2008 (hereinafter the "Amended Writ") and the Resolution dated 02 April 2009 (hereinafter the "subject Resolution") issued in Criminal Case No. 26558. But the same is misleading.

15.1 The Amended Writ merely gave authority to defendant Sheriff Urieta to issue a notice of levy on the subject shares of stocks, not to take possession and control much less to sell the same at public auction. . . .

15.2 Assuming *ex gratia argument* that the Amended Writ authorized defendant Sheriff Urieta to take possession and control of the subject stock certificates and shares of stock, the same is patently null and void and, hence, of no effect because:

15.2.1 The Sandiganbayan Decision dated 12 September 2007, which the Amended Writ was supposed to implement, never authorized anyone to take possession and control of the subject shares of stock much less to sell the

⁸¹ Id. at 247.

same. Hence, the Amended Writ varied the terms of the 12 September 2007 Sandiganbayan Decision. . . .

15.2.2 Notably, it was issued in Criminal Case No. 26558 **despite the absence of plaintiff who is an indispensable party with respect to the subject shares of stocks.** Hence, it was issued in violation of plaintiff's right to due process.

15.3 The subject Resolution merely authorized the issuance of another Notice to Deliver to defendant BDO for the delivery to the Sandiganbayan of the amount of PhP189,700,000.00, inclusive of interest and income earned, covered by the IMA Account. **It did not authorize Sheriff Urieta to take control and possession of the subject shares of stocks, much less to sell the same at public auction. . . .**

15.4 The subject shares of stocks have never been foreclosed and, as such, the ownership thereof still pertains to plaintiff. In other words, the subject shares of stocks do not form part of the IMA Account and may not be validly levied upon.

15.5 In fact, the Chattel Mortgage on the subject shares of stocks has already been nullified as a result of the settlement of [The Wellex Group, Inc.'s] loan obligations. Hence, there is absolutely no basis to claim that the subject shares of stocks are part of the IMA Account that may properly be subject of execution.

16. Moreover, defendant Sheriff Urieta has also failed to comply with the legal requirements for the sale of the subject shares of stocks at public auction. As such, any sale of the same is a nullity.

17. Defendant [Banco de Oro] acted in bad faith and in breach of its obligations in delivering the subject stock certificates to defendant Sheriff Urieta, since the subject shares of stocks are registered in the name of [The Wellex Group, Inc.], coupled with the fact that [The Wellex Group, Inc.] was never declared in default and the subject stock certificates have never been foreclosed. In the event that the subject shares of stock may no longer be recovered by [The Wellex Group, Inc.], defendant [Banco de Oro] should be held liable to [The Wellex Group, Inc.] for the value of the subject shares of stocks.⁸² (Emphasis in the original)

The application for temporary restraining order was heard on May 12, 2009.⁸³ During the hearing, Sheriff Urieta agreed to postpone the public sale scheduled on May 15, 2009 until the trial court resolved whether or not to grant the provisional remedies prayed for by the Wellex Group, Inc.⁸⁴

⁸² Id. at 250–254.

⁸³ Id. at 328–330, Regional Trial Court Order dated May 12, 2009. The Order was issued by Judge Marissa Macaraig-Guillen of Branch 60 of the Regional Trial Court of Makati City.

⁸⁴ Id. at 328.

On May 18, 2009, Banco de Oro filed a Motion to Dismiss/Opposition to the Application for a Writ of Preliminary Injunction⁸⁵ based on four (4) grounds. First, the principle of hierarchy of courts allegedly barred the Regional Trial Court of Makati City from restraining the Sandiganbayan, a superior court, from implementing its September 12, 2007 Plunder Decision.⁸⁶ Second, the Wellex Group, Inc. allegedly committed forum shopping by filing a case that raised the issue of ownership of the Waterfront shares, an issue that had been earlier raised before the Sandiganbayan.⁸⁷ Third, *litis pendentia* barred the Complaint for recovery of possession because the Sandiganbayan still had to implement the Writ of Execution in the plunder case.⁸⁸ Lastly, the Complaint allegedly failed to state a cause of action against Banco de Oro because the bank had already delivered to the Sandiganbayan the possession of the Waterfront shares.⁸⁹

For their part, Sheriff Urieta and the Sandiganbayan Security and Sheriff Services filed their Motion to Dismiss⁹⁰ on June 15, 2009, arguing lack of jurisdiction on the part of the trial court.

In opposition⁹¹ to the Motions to Dismiss, the Wellex Group, Inc. argued that the Complaint filed was for injunction and recovery of possession, actions that are well within the Regional Trial Court's jurisdiction.⁹² It added that the Sandiganbayan could not have passed upon with finality the issue of who retains title to the Waterfront shares because the Sandiganbayan is a court of limited jurisdiction, and the Wellex Group, Inc. was not a party to Former President Estrada's plunder case.⁹³

Resolving the Motion to Dismiss, the trial court agreed with Banco de Oro and Sheriff Urieta that it had no jurisdiction over the subject matter of the Wellex Group, Inc.'s Complaint.⁹⁴ It yielded to the authority of the Sandiganbayan, stating that the anti-graft court had already passed upon the subject matter of the Wellex Group, Inc.'s Complaint as well as the ultimate relief sought.⁹⁵ The trial court refused to enjoin the public sale of the Waterfront shares for it would "result in the review of the findings of the Sandiganbayan in the [plunder] case,"⁹⁶ "amount[ing] to an indirect circumvention of the prohibition against interference by a non-superior court."⁹⁷

⁸⁵ Id. at 264–304.

⁸⁶ Id. at 266–277.

⁸⁷ Id. at 277–286.

⁸⁸ Id. at 286–289.

⁸⁹ Id. at 289–301.

⁹⁰ Id. at 305–325.

⁹¹ Id. at 585–599.

⁹² Id. at 587–590.

⁹³ Id. at 590–594.

⁹⁴ Id. at 90, Regional Trial Court Order dated January 9, 2012.

⁹⁵ Id.

⁹⁶ Id.

⁹⁷ Id.

The trial court likewise ruled that the Wellex Group, Inc. had no cause of action against Banco de Oro.⁹⁸ It held that Banco de Oro correctly delivered the Waterfront shares to the Sandiganbayan under “the lawful order and process of the Sandiganbayan in the [plunder] case.”⁹⁹

Declaring the application for issuance of temporary restraining order and writ of preliminary injunction moot and academic, Branch 139 of the Regional Trial Court, Makati City dismissed the Complaint in the Order dated January 9, 2012.¹⁰⁰ The dispositive portion of the January 9, 2012 Order reads:

WHEREFORE, premises considered, the separate *Motions to Dismiss* filed by defendant [Banco de Oro] and by the public defendants are hereby **GRANTED** for being meritorious. The plaintiff’s complaint is hereby **DISMISSED** for lack of cause of action.

Consequently, the plaintiff’s *Application for Issuance of TRO and/or Writ of Preliminary Injunction* is hereby **DENIED** for lack of jurisdiction and for being **MOOT** and **ACADEMIC**.

SO ORDERED.¹⁰¹ (Emphasis in the original)

On February 10, 2012, the Wellex Group, Inc. moved for reconsideration.¹⁰² It emphasized that it was not a party to the plunder case; thus, the Sandiganbayan could not have validly adjudicated with finality the issue of ownership of the Waterfront shares.¹⁰³ As a third-party claimant, the Wellex Group, Inc. argued that it had a cause of action for recovery of possession¹⁰⁴—an action under the Regional Trial Court’s jurisdiction.¹⁰⁵

On April 5, 2013, the Wellex Group, Inc. moved for the voluntary inhibition of Presiding Judge Benjamin T. Pozon (Judge Pozon).¹⁰⁶ According to the Wellex Group, Inc., it lost confidence in Judge Pozon’s

⁹⁸ Id. at 91.

⁹⁹ Id.

¹⁰⁰ Id.

¹⁰¹ Id.

¹⁰² Id. at 92–114.

¹⁰³ Id. at 95–103.

¹⁰⁴ Id. at 104–111.

¹⁰⁵ Batas Blg. 129 (1981), sec. 19(2), as amended by Rep. Act No. 7691 (1994), sec. 1, provides:
SEC. 19. *Jurisdiction in civil cases.*—Regional Trial Courts shall exercise exclusive original jurisdiction:

.....
2. In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds Twenty thousand pesos (P20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (P50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts[.]

¹⁰⁶ *Rollo*, pp. 917–925, Motion for Voluntary Inhibition.

ability to impartially decide the case considering the long period that the Motion for Reconsideration remained unresolved.¹⁰⁷ Banco de Oro opposed the Motion for Voluntary Inhibition.¹⁰⁸

Nevertheless, in the Order¹⁰⁹ dated June 5, 2013, Judge Pozon granted the Motion and inhibited from hearing the case “to maintain the public confidence in the Courts and in [o]rder to preserve its integrity.”¹¹⁰

From Branch 139 of the Regional Trial Court of Makati City, the case was re-raffled to Branch 132 presided by Judge Rommel O. Baybay.¹¹¹ In the Order¹¹² dated August 16, 2013, the trial court deemed the Motion for Reconsideration submitted for resolution.

Still, the trial court refused to proceed with the Complaint for recovery of possession in deference to the authority of the Sandiganbayan.¹¹³ The trial court denied the Motion for Reconsideration in the Resolution¹¹⁴ dated January 15, 2014.

On February 20, 2014, the Wellex Group, Inc. directly filed before this Court a Motion for Extension of Time¹¹⁵ to File Petition for Review on Certiorari, impleading Sheriff Urieta, the Sandiganbayan Security and Sheriff Services, and Banco de Oro as respondents.¹¹⁶ With leave of court,¹¹⁷ Banco de Oro filed a Motion to Dismiss and Opposition *Ad Cautelam*¹¹⁸ arguing that this Court may not take cognizance of the Petition because it necessarily raises questions of fact.¹¹⁹

This Court granted the Motion for Extension of Time to File Petition for Review on Certiorari¹²⁰ and noted the Motion to Dismiss and Opposition *Ad Cautelam*.¹²¹ The Wellex Group, Inc. eventually filed its Petition for Review on Certiorari, on which Banco de Oro commented.¹²² Sheriff Urieta and the Sandiganbayan Security and Sheriff Services, through the Office of

¹⁰⁷ Id. at 918.

¹⁰⁸ Id. at 927–935, Opposition [Re: Motion for Voluntary Inhibition dated 05 April 2013].

¹⁰⁹ Id. at 938–939.

¹¹⁰ Id. at 939.

¹¹¹ Id. at 941, Regional Trial Court Order dated August 16, 2013.

¹¹² Id.

¹¹³ Id. at 14, Regional Trial Court Resolution dated January 15, 2014.

¹¹⁴ Id. at 9–15.

¹¹⁵ Id. at 3–6.

¹¹⁶ Id. at 3.

¹¹⁷ Id. at 28–31, Motion for Leave to File and Admit Motion to Dismiss and Opposition *Ad Cautelam*.

¹¹⁸ Id. at 32–37.

¹¹⁹ Id. at 33–35.

¹²⁰ Id. at 26, Supreme Court Resolution dated March 12, 2014.

¹²¹ Id. at 39, Supreme Court Resolution dated June 2, 2014.

¹²² Id. at 401–491, Banco de Oro Unibank, Inc.’s Comment with Opposition.

the Solicitor General, subsequently manifested to this Court that they were adopting Banco de Oro's Comment as their Comment.¹²³

In its Petition for Review on Certiorari, the Wellex Group, Inc. maintains that the Regional Trial Court of Makati City had jurisdiction over its Complaint for recovery of possession.¹²⁴ Considering that it is not a party to the plunder case, the Wellex Group, Inc. insists that it is a third-party claimant whose title to the Waterfront shares could not have been adjudicated with finality by the Sandiganbayan.¹²⁵ It further argues that it properly availed itself of a reivindicatory action before the regular courts to recover the possession of the Waterfront shares.¹²⁶

In its Comment,¹²⁷ Banco de Oro prays for the summary dismissal of the Petition for Review on Certiorari.¹²⁸ According to Banco de Oro, the Petition for Review on Certiorari requires re-litigating the issue of whether the Wellex Group, Inc. had already paid its loan obligation, a matter already resolved in the negative by the Sandiganbayan in its September 12, 2007 Decision. This issue, Banco de Oro argues, is a factual issue that this Court cannot pass upon when resolving a petition for review on certiorari.¹²⁹

On the issue of jurisdiction, Banco de Oro contends that the trial court correctly dismissed the Complaint for recovery of possession in deference to the authority of the Sandiganbayan. Banco de Oro maintains that resolving the Complaint for recovery of possession would require a review of the findings of the Sandiganbayan in its September 12, 2007 Decision, specifically, that Former President Estrada owned the forfeited IMA account, and that the Waterfront shares were among the IMA account's assets. Banco de Oro argues that had the trial court taken cognizance of the Complaint, it would have interfered with the execution of the Sandiganbayan's Decision in the plunder case.¹³⁰

Banco de Oro adds that the Wellex Group, Inc. committed forum shopping by filing its Complaint for recovery of possession before the Regional Trial Court of Makati City. It argues that Wellex Group, Inc. earlier filed a third-party claim before the Sandiganbayan when it filed the Petition/Motion for Reconsideration praying for the exclusion of the Waterfront shares from the forfeiture order. This third-party claim incorporated in the Petition/Motion for Reconsideration was denied by the Sandiganbayan in the Resolution dated April 2, 2009. The Wellex Group,

¹²³ Sheriff Edgardo A. Urieta, et al.'s Manifestation and Motion dated November 17, 2014, p. 1.

¹²⁴ *Rollo*, pp. 55-58, Petition for Review on Certiorari.

¹²⁵ *Id.* at 58-65.

¹²⁶ *Id.*

¹²⁷ *Id.* at 401-491.

¹²⁸ *Id.* at 488.

¹²⁹ *Id.* at 438-449.

¹³⁰ *Id.* at 451-463.

Inc. cannot be allowed to re-file a third-party claim, this time before the regular courts.¹³¹

The issue for this court's resolution is whether the Regional Trial Court of Makati City had jurisdiction to hear, try, and decide petitioner Wellex Group, Inc.'s Complaint for recovery of possession and injunction.

I

According to the ponencia, it is "beyond cavil"¹³² that the 450,000,000 Waterfront shares belonged to the IMA account and, therefore, were among the assets forfeited in favor of government pursuant to this Court's Decision in *The Wellex Group, Inc. v. Sandiganbayan*.¹³³ In addition, the ponencia reiterated that the IMA account acquired the Waterfront shares as security for petitioner's ₱500,000,000.00 loan—a loan that, as this Court likewise found in *The Wellex Group, Inc. v. Sandiganbayan*, was funded by money sourced from the IMA account.¹³⁴

Based on these premises, the ponencia stated that government through the Sandiganbayan cannot "unilaterally"¹³⁵ sell the Waterfront shares at public auction without first demanding from petitioner payment for its ₱500,000,000.00 loan.¹³⁶ The ponencia said that only upon petitioner's failure to pay despite demand could government either foreclose the chattel mortgage over the Waterfront shares or institute "the appropriate action for collection"¹³⁷ against petitioner; otherwise, the government would violate Article 2088¹³⁸ of the Civil Code, which prohibits *pactum commissorium*.¹³⁹

On the merits, the ponencia held that the Regional Trial Court of Makati had jurisdiction over petitioner's Complaint because it was "purely civil in nature."¹⁴⁰ The Sandiganbayan, the ponencia said, may not take cognizance of petitioner's third-party claim since the anti-graft court "only [has] a special or limited jurisdiction."¹⁴¹ As further explained by the ponencia:

¹³¹ Id. at 464–483.

¹³² Ponencia, p. 5.

¹³³ Id.

¹³⁴ Id. at 6.

¹³⁵ Id.

¹³⁶ Id. at 6–7.

¹³⁷ Id. at 7.

¹³⁸ CIVIL CODE, art. 2088 provides:

Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

¹³⁹ Ponencia, pp. 6–7.

¹⁴⁰ Id. at 7.

¹⁴¹ Id. at 8.

While this Court has time and again affirmed that the Sandiganbayan has jurisdiction over the civil aspect of criminal cases, as conferred to it by law, the case before the trial court does not involve the civil aspect of [the plunder case]. The same has nothing to do with the ownership of the IMA Account and/or any of its financial assets, which, as stated above, has been adjudged forfeited in favor of the State. In contrast, the said case is an ordinary civil case entailing the propriety of the actions of a creditor in proceeding against the security for its loan, which necessitates the application of the provisions of the Civil Code, therefore falling under the exclusive jurisdiction of the Regional Trial Courts.¹⁴² (Citations omitted)

After “commend[ing] the trial court for acting cautiously and exercising prudence in applying the principle of hierarchy of courts[,]”¹⁴³ the ponencia nevertheless granted the Petition and remanded the case to the trial court for further proceedings.¹⁴⁴ The dispositive portion of the ponencia reads:

WHEREFORE, premises considered, **JUDGMENT** is hereby rendered **GRANTING** the instant Petition and **SETTING ASIDE** the Order dated 9 January 2012 and Resolution dated 15 January 2014 of the Regional Trial Court of Makati City, Branch 132 in Civil Case No. 09-399. This case is hereby remanded to the trial court for further proceedings.

SO ORDERED.¹⁴⁵ (Emphasis in the original)

II

I do not agree with the ponencia. The trial court correctly dismissed petitioner’s Complaint for recovery of possession. The trial court had no jurisdiction to take cognizance of the Complaint.

Third-party claims are inevitable in proceedings involving forfeiture. To conceal the true nature of a property as unlawfully acquired, a public officer may have transferred to third persons the title to the property. The transferees—whether they are dummies, nominees, agents, subordinates, business associates, or innocent purchasers for value—may challenge the inclusion of their properties under their title and argue that the properties legitimately belong to them.¹⁴⁶

¹⁴² Id.

¹⁴³ Id.

¹⁴⁴ Id. at 8–9.

¹⁴⁵ Id.

¹⁴⁶ See Rep. Act No. 7080 (1991), sec. 1(d), which provides:
Section 1. Definition of terms. – As used in this Act, the term –

.....
d) “*Ill-gotten wealth*” means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through

Petitioner argues that its Complaint for recovery of possession of the Waterfront shares is in the nature of a third-party claim.¹⁴⁷ Also known as *terceria*, a third-party claim is the remedy available to persons other than the judgment obligor who claim title to or the right to possess the property levied.

Under Rule 39, Section 16 of the Rules of Court, a third-party claim must be filed *before the court issuing the writ of execution*. The reason is that a court, once it acquires jurisdiction, retains this jurisdiction until it enforces and executes its decision. Consistent with the doctrine of adherence of jurisdiction, Rule 39, Section 16 provides:

SEC. 16. Proceedings where property claimed by third person.—

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

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

dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

- 1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
- 2) By receiving, directly or indirectly, 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 public officer concerned;
- 3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;
- 4) By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;
- 5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or
- 6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

¹⁴⁷ *Rollo*, pp. 58–65, Petition for Review on Certiorari.

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

Proceeding from these premises, any third-party claim involving property forfeited *pursuant to a plunder decision* must be filed before the Sandiganbayan, this despite the fact that third-party claim involves issues of ownership or possession—matters that are considered civil in nature.

Aware that third-party claims involving forfeited properties may involve questions of ownership or possession, the legislature nevertheless vested in the Sandiganbayan jurisdiction over prosecutions for plunder,¹⁴⁸ the penalty for which includes the forfeiture of all the assets of the accused which are found to be ill-gotten.¹⁴⁹ “This is line with the purpose behind the creation of the Sandiganbayan as an anti-graft court—to address the urgent problem of dishonesty in public service.”¹⁵⁰ This is precisely why the Sandiganbayan is a court of special jurisdiction: it is primarily a criminal court, but with jurisdiction over certain civil proceedings.

Hence, the argument that a third-party claim is civil in nature and may not be taken cognizance of by the Sandiganbayan is incorrect.¹⁵¹ Those who claim ownership or possession of properties forfeited by virtue of a plunder decision must intervene in the proceedings before the Sandiganbayan. Not only is this consistent with the doctrine of adherence of jurisdiction; it also prevents splitting of jurisdiction and multiplicity of suits.¹⁵²

¹⁴⁸ Rep. Act No. 7080 (1991), sec. 3 provides:

Section 3. *Competent Court.* – Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the Sandiganbayan.

¹⁴⁹ Rep. Act No. 7080 (1991), sec. 2, as amended by Rep. Act No. 7659 (1993), sec. 12, provides:

Sec. 2. *Definition of the Crime of Plunder; Penalties.* – Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

¹⁵⁰ *Maj. Gen. Garcia v. Sandiganbayan*, 499 Phil. 589, 614 (2005) [Per J. Tinga, En Banc].

¹⁵¹ *See Maj. Gen. Garcia v. Sandiganbayan*, 499 Phil. 589, 614 (2005) [Per J. Tinga, En Banc].

¹⁵² *See Presidential Commission on Good Government v. Judge Peña*, 243 Phil. 93, 109 (1988) [Per C.J. Teehankee, En Banc].

It has been settled in *The Wellex Group, Inc. v. Sandiganbayan* that the Waterfront shares form part of the assets forfeited in favor of the state as a consequence of Former President Estrada's conviction for plunder. In the Amended Writ of Execution dated February 19, 2008, the Sandiganbayan in the plunder case categorically ordered the implementing sheriff to:

issue notices of levy and/or garnishment to any person who is in possession of any and all form of assets that is traceable or form part of the amounts or property which have been ordered forfeited by this court, including but not limited to the accounts receivables and assets found at Banco de Oro . . . consisting of . . . Waterfront shares aggregating 750,000,000 shares[.]¹⁵³

The court that issued the assailed Writ of Execution was the Sandiganbayan. The Sandiganbayan, not the Regional Trial Court, is the court with jurisdiction to take cognizance of petitioner's third party claim.

Consequently, the Regional Trial Court has no jurisdiction over petitioner's Complaint for recovery of possession of the Waterfront shares.

III

The trial court has no jurisdiction to issue a temporary restraining order or a writ of preliminary injunction against an order of the Sandiganbayan. Corollary to the doctrine of non-interference, which prohibits co-equal courts from interfering with each other's orders or judgments,¹⁵⁴ inferior courts cannot interfere with the orders and judgments of superior courts.

The Regional Trial Court is a lower court as opposed to the Sandiganbayan. Under Section 4¹⁵⁵ of Republic Act No. 7975, the Sandiganbayan exercises "exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts[.]" Section 7¹⁵⁶ of

¹⁵³ Rollo, p. 760, Amended Writ of Execution.

¹⁵⁴ See *Foster-Gallego v. Spouses Galang*, 479 Phil. 148, 165–166 (2004) [Per J. Carpio, First Division].

¹⁵⁵ Rep. Act No. 7975 (1995), sec. 4, as amended by Rep. Act No. 8249 (1997), sec. 4, provides:
SEC. 4. *Jurisdiction*. . . .

. . . .
The Sandiganbayan shall exercise exclusive appellate jurisdiction over final judgments, resolutions or orders of regional trial courts whether in the exercise of their own original jurisdiction or of their appellate jurisdiction as herein provided.

¹⁵⁶ Pres. Decree No. 1606 (1978), sec. 7, as amended by Rep. Act No. 7975 (1995), sec. 3, and Rep. Act No. 8249 (1997), sec. 5, provides:
SEC. 7. *Form, Finality and Enforcement of Decisions*. . . .

. . . .
Decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on certiorari raising pure questions of law in accordance with Rule 45 of the Rules of Court. Whenever, in any case decided by the Sandiganbayan, the penalty of reclusion perpetua, life

Presidential Decree No. 1606 provides that the “[d]ecisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court[.]”

Since the Sandiganbayan is a superior court, the Regional Trial Court has no jurisdiction to issue a temporary restraining order or a writ of injunction against the Sandiganbayan’s orders and decisions. Applied to this case, the Regional Trial Court of Makati City had no jurisdiction to issue a temporary restraining order or a writ of preliminary injunction to prevent the sale of properties forfeited by virtue of Former President Estrada’s conviction for plunder.

IV

Apart from lack of jurisdiction, the trial court correctly dismissed petitioner’s Complaint on the ground of forum shopping.

As pointed out by Banco de Oro, petitioner had earlier intervened in the proceedings before the Sandiganbayan.¹⁵⁷ Petitioner first assailed the inclusion of the Waterfront shares in the forfeiture order in the Petition/Motion for Reconsideration dated October 11, 2008,¹⁵⁸ which the Sandiganbayan denied in the Resolution dated April 2, 2009.

The second time petitioner intervened was when it filed before the Sandiganbayan the Urgent *Ex-Parte* Motion for Clarification of the Resolution dated 02 April 2009. Petitioner maintained that the Waterfront shares were not assets of the Velarde IMA account, thus:

4. [The Wellex Group, Inc.] would like to seek clarification on the following points:

....

- c. Furthermore, it is significant to note that the 450 Million Waterfront Philippines (WPI) Shares of Stock (Initial Collateral) and the 300 Million Wellex (WIN) Shares of Stocks (Additional Collateral) are **NOT assets** of the IMA Trust Account since such shares merely served as **collateral/accessory** to the Promissory Note & Chattel Mortgage for Php500 Million. In computing the Investment portfolio of the IMA Account, the value of the collaterals SHOULD NOT have been included as they are mere securities to the loan obligation. To compute the value of the Php500 Million PN together with the value of the collaterals would

imprisonment or death is imposed, the decision shall be appealable to the Supreme Court in the manner prescribed in the Rules of Court.

¹⁵⁷ *Rollo*, pp. 464–467, Banco de Oro Unibank, Inc.’s Comment with Opposition.

¹⁵⁸ *Id.* at 756, Petition/Motion for Reconsideration.

be tantamount to doubling the amount of the loan obligation. That being the case, how should the WPI and WIN shares be treated?

- d. Assuming without conceding that the aforesaid shares are subject of forfeiture pursuant to the 02 April 2009 Resolution, just the same the State may not directly go against the things mortgaged such as in the present case. It is well settled that if the debtor fails to comply with an obligation, the creditor is merely entitled to move for the sale of the thing mortgaged with the formalities required by law in order to collect the amount of his claim from the proceeds and the prohibition against *pactum commissorium* forbids creditors to automatically appropriate the pledged or mortgaged properties. In which case, how would the State proceed with the shares of WPI and WIN?¹⁵⁹ (Emphasis in the original)

Petitioner made the same contention in its Complaint for recovery of possession before the Regional Trial Court of Makati:

15.4. The [Waterfront shares of stock] have never been foreclosed and, as such, the ownership thereof still pertains to plaintiff. In other words, ***the subject shares do not form part of the IMA Account and may not be validly levied upon.***¹⁶⁰ (Emphasis supplied)

From the foregoing, petitioner raised before the Regional Trial Court of Makati City and the Sandiganbayan the same issue of whether the Waterfront shares formed part of the IMA account forfeited in favor of the state.

This is clearly forum shopping. Petitioner “repetitively avail[ed] [itself] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.”¹⁶¹

Moreover, petitioner committed *willful and deliberate* forum shopping. Petitioner falsely declared in the Certification against Forum Shopping attached to its Complaint for recovery of possession that “[it] has not . . . commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency.”¹⁶² It did not state in the Certification against Forum Shopping that it had earlier filed a claim before the Sandiganbayan involving the same issue of ownership of the Waterfront shares.

¹⁵⁹ Id. at 684–686, Urgent *Ex-Parte* Motion for Clarification of the Resolution dated 02 April 2009.

¹⁶⁰ Id. at 253, Complaint.

¹⁶¹ *Asia United Bank, et al. v. Goodland Company, Inc.*, 660 Phil. 504, 514 (2011) [Per J. Del Castillo, First Division].

¹⁶² *Rollo*, p. 261, Complaint.

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Under Rule 7, Section 5 of the Rules of Court, forum shopping is a ground for dismissal of a complaint.¹⁶³ The trial court correctly dismissed petitioner's Complaint for recovery of possession.

V

Lastly, selling the Waterfront shares at public auction would not amount to a circumvention of the prohibition on *pactum commissorium*.

A *pactum commissorium* is a stipulation in a deed of mortgage, allowing the creditor to *automatically* appropriate or dispose of the property mortgaged in case the debtor fails to comply with his or her obligation under the principal contract. It is prohibited under Article 2088¹⁶⁴ of the Civil Code and is null and void.

Here, there was no automatic appropriation of the property mortgaged. When the IMA account and all of its assets were declared forfeited, this Court in *The Wellex Group, Inc. v. Sandiganbayan* recognized the validity of the loan agreement between petitioner and Banco de Oro, in effect recognizing petitioner's title to the Waterfront shares it mortgaged to Banco de Oro.

However, petitioner's ₱500,000,000.00 loan remained unpaid. Even before the forfeiture of the assets of the IMA account, petitioner had defaulted in its loan obligation to Banco de Oro. Banco de Oro served several demand letters¹⁶⁵ on petitioner, regardless of the stipulation in the Promissory Note and Chattel Mortgage that the amount payable shall "become immediately due and payable without demand or notice"¹⁶⁶ in case petitioner fails to pay the loaned amount. Petitioner ignored all these demand letters.

That petitioner already paid the loan to Jaime Dichaves, the alleged principal of the IMA account, is not supported by the record. It is also immaterial. In order to extinguish an obligation, "[p]ayment [must] be made to the person in whose favor the obligation has been constituted, or his successor in interest, or any person authorized to receive [payment]."¹⁶⁷ Jaime Dichaves is none of these, for as this Court ruled in *The Wellex*

¹⁶³ See *Maj. Gen. Garcia v. Sandiganbayan*, 499 Phil. 589, 621–622 (2005) [Per J. Tinga, En Banc].

¹⁶⁴ CIVIL CODE, art. 2088 provides:

Article 2088. The creditor cannot appropriate the things given by way of pledge or mortgage, or dispose of them. Any stipulation to the contrary is null and void.

¹⁶⁵ *Rollo*, pp. 767–768, 770–771, and 773–774.

¹⁶⁶ *Id.* at 159, Promissory Note and Chattel Mortgage.

¹⁶⁷ CIVIL CODE, art. 1240.

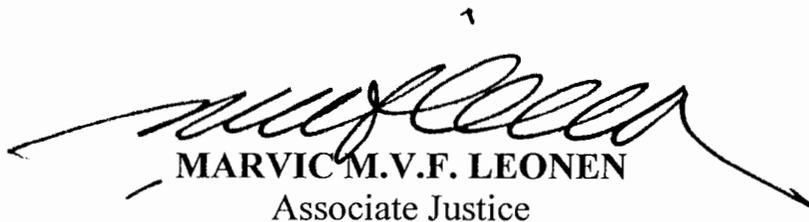
Group, Inc. v. Sandiganbayan, Former President Estrada is the principal of the Velarde IMA account.

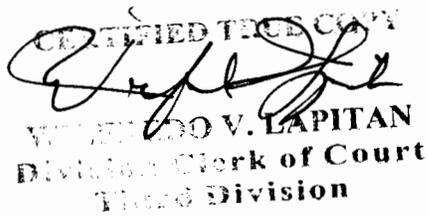
Even if payment may be made to a third person, the payment must redound to the benefit of the creditor in order to extinguish the obligation.¹⁶⁸ It has not been shown that Banco de Oro was benefited in any way when petitioner allegedly paid the loan to Jaime Dichaves.

Having subrogated Banco de Oro in its rights as petitioner's creditor, the state acquired the right to foreclose the property and sell the Waterfront shares at public auction. The state did not acquire the title to the Waterfront shares and is only selling the Waterfront shares at public auction as a necessary consequence of the forfeiture of the IMA account and its assets.

The proper remedy of petitioner is to pay its loan to the state. Only then would it be entitled to the possession of the Waterfront shares.

ACCORDINGLY, the Petition for Review on Certiorari must be **DENIED**.


MARVIC M.V.F. LEONEN
Associate Justice


WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

JUN 01 2016

¹⁶⁸ CIVIL CODE, art. 1241.