REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

*SPECIAL DIVISION**

REPUBLIC OF THE PHILIPPINES,
Petitioner,

CIVIL CASE NO. 0141

FOR: Forfeiture under R.A. 1379 in relation to E.O Nos. 1, 2, 14 & 14-A

-versus-

PRESENT:

HEIRS OF FERDINAND E. MARCOS AND IMELDA R. MARCOS,
Respondents.

GERALDEZ, J., *Chairman,*
DE LA CRUZ, &
DIAZ-BALDOS, *JJ.*

PROMULGATED:

APR 02 2009

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D E C I S I O N

GERALDEZ, J.:

Before this Court is the *Motion for Partial Summary Judgment*[1] dated July 16, 2004 of petitioner Republic of the Philippines. Respondent Ferdinand R. Marcos, Jr. filed his *Comment/Opposition [to the subject motion] with Motion to Dismiss*[2] dated September 6, 2004; respondent

* This Special Division was created by virtue of the En Banc Resolution, dated December 2, 2008, of the Honorable Supreme Court in A.M. No. 08-10-05-SB

[1] Record, Vol. 20, pp. 529-539

[2] Ibid, Vol. 21, pp. 7-32

Imelda R. Marcos filed her separate *Opposition [to the subject motion]*[3] dated October 3, 2004; and respondent Ma. Imelda "Imee" Marcos-Manotoc filed her own *Manifestation and Opposition [to the subject motion] with Motion to Cite Petitioner in Direct Contempt of Court*[4] dated October 17, 2004. Petitioner filed its *Consolidated Reply [to the oppositions of the respondents]*[5] dated December 15, 2004.

Subsequent to the foregoing, petitioner filed with leave of court its *Supplemental Motion for Summary Judgment*[6] dated May 20, 2005. Respondent Ferdinand R. Marcos, Jr. filed his corresponding *Comment/ Opposition*[7] dated July 4, 2005. Respondent Imelda R. Marcos filed her *Comment/Opposition [to the supplemental motion]*[8] dated July 12, 2005 and *Memorandum*[9] dated September 5, 2005. Respondent Irene Marcos-Araneta filed a *Motion to Expunge (Petitioner's Motion for Partial Summary Judgment dated 12 June 2004)*[10] dated May 20, 2007. Petitioner filed its *Comment/Opposition*[11] thereto dated May 31, 2007 and, in compliance to the Court's *Minute Resolution* dated May 24, 2007, petitioner filed its *Memorandum*[12] dated June 1, 2007.

SUMMARY OF THE PLEADINGS FILED BY THE PARTIES

Petitioner prays for a summary judgment in this case "declaring the funds, properties, shares in and interests of ARELMA, wherever they may be located, as ill-gotten assets and forfeited in favor of the Republic of the

[3] Ibid., pp. 57-75
[4] Ibid., pp. 87-96
[5] Ibid., pp. 117-130
[6] Ibid., pp. 194-198
[7] Ibid., pp. 30-251
[8] Ibid., pp. 54-267
[9] Ibid., pp. 289-301
[10] Ibid., pp. 453A-453C
[11] Ibid., Vol. 22, pp.3-7
[12] Ibid., Vol. 21, pp. 458-476

Philippines pursuant to R. A. 1379" in the same manner the Honorable Supreme Court forfeited in favor of the petitioner the funds and assets of similar "Marcos foundations" such as "AVERTINA, VIBUR, AGUAMINA, MALER, and PALMY." Petitioner cites Rule 35 of the Rules of Court and the case of *Republic vs. Sandiganbayan and the Heirs of Ferdinand E. Marcos*[13] to support the grounds of its subject motion.

Petitioner premises that the issue as to the "legitimate income of the respondent spouses Marcoses as public officials of the land" has been laid to rest in the above-mentioned case as follows:

> Petitioner Republic presented not only a schedule indicating the lawful income of the Marcos spouses during their incumbency but also evidence that they had huge deposits beyond such lawful income in Swiss Banks, under the names of five different foundations. We believe petitioner was able to establish the prima facie presumption that the assets and properties acquired by the Marcoses were manifestly and disproportionate to their aggregate salaries as public officials. Otherwise stated, petitioner presented enough evidence to convince us that the Marcoses had dollar deposits amounting to US$356 Million representing the balance of the Swiss accounts of the five foundations, an amount way, way beyond their aggregate legitimate income of only US$304,372.43 during their incumbency as public officials.
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> Considering, therefore, that the total amount of the Swiss Deposits was considerably out of proportion to the known lawful income of the Marcoses, the presumption that said dollar deposits were unlawfully acquired was duly established.

The foregoing pronouncement allegedly forms the basis for the "forfeiture of all other ill-gotten assets acquired by the Marcoses and their agents or successors in interest that exceed whatever legitimate income the Supreme Court said they had."

[13] G.R. No. 152154, July 15, 2003

Petitioner claims that among the ill-gotten assets adverted to are the assets of an entity or an account known as Arelma. This entity or account allegedly has an estimated value of US$35 Million at present which was managed by "Merrill Lynch Asset Management, Inc., New York, USA in behalf of the respondent Marcoses." Petitioner quotes paragraph 59 of its petition for forfeiture as follows:

> 59. FM and Imelda used a number of their close business associates or favorite cronies in opening bank accounts abroad for the purpose of laundering their filthy riches. Aside from the foundations and corporations established by their dummies / nominees to hide their ill-gotten wealth as had already been discussed, several other corporate entities have been formed for the same purpose, to wit:
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> 1. ARELMA, INC. – this was organized after the sole purpose of maintaining an account and portfolio in Merrill Lynch, New York.
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> 2. Found among Malacañang documents is a letter dated September 21, 1972 by J.L. Sunier, Senior Vice President of SBC to Mr. Jose Y. Campos, a known crony (See Annex "v-21" hereof). In the said letter, instructions were given by Sunier to their Panama office to constitute a company, the name of which will be either Larema, Inc. or Arelma, Inc. or Relma, Inc. The company will have the same set-up as Maler; the appointment of selected people in Panama as directors; the opening of direct account in the name of the new company with Merrill Lynch, New York, giving them authority to operate the account but excluding withdrawals of cash, securities or pledging of portfolio; and sending of money in favor of the new-company under reference AZUR in order to cut links with the present account already opened with Merrill Lynch under an individual's name;
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> 3. Also found was a letter dated November 13, 1972 and signed by Jose Y. Campos (Annex "v-21-a"). The letter was addressed to SBC, Geneva and contained a confirmation of a verbal instruction to Mr. Sunier duly authorized by their "mutual friend" regarding the opening of an account of Arelma, Inc., with Merrill Lynch, New York, to the attention of Mr. Soccordi, Vice-President.
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> 4. On May 19, 1983, J.L. Sunier wrote a letter with a reference "SAPPHIRE" and a salutation "Dear Excellence" stating, among others, the current valuation by Merrill Lynch of the assets of Arelma, Inc. amounting to US$3,369,975 (Annex "v-21-b" hereof).

5. Included in the documents sent by SBC, Geneva, through the Swiss Federal Department of Justice and Police were those related to Arelma, Inc. as follows:

(a) Opening bank documents for Account No. 53-145 A.R. dated September 17, 1972 signed by Dr. Barbey and Mr. Sunier. This was later on cancelled as a result of the change in attorneys and authorized signatories of the company (Annexes "v-21-c" and v-21-d" hereof).

(b) Opening bank documents for Account No. 53-145 A.R. signed by attorney led by Michel Amandruz (Annexes "v-21-e" and "v-21-f" hereof).

(c) Bank Statements for Account No. 53-145 A.R. with ending balance of $26.10 as of 12-23-85 (Annex "v-21-g" and "v-21-h" hereof).

(d) An informative letter stating that Account No. 53-145 A.R. was related to an account opened with Merrill Lynch Asset Management, Inc., New York for Arelma, Inc. The opening of this account slowly made Account No. 53-145 A.R. an inactive account (see Annexes "v-21-i" and "v-21-j" hereof).

6. Transmittal of additional documents on this matter had been requested from the Swiss authorities concerned.

Petitioner then cites two (2) grounds to support its subject motion, to wit:

A

The respondents are deemed to have admitted the allegations of the Petition as regards Arelma.

B

There is no dispute that the combined lawful income of the Marcoses is grossly disproportionate to the Swiss Bank Deposits of their foundations and dummy corporations, including Arelma.

As for its first ground, petitioner contends that the respondents, particularly Imelda R. Marcos, are deemed to have admitted the allegations of paragraph 59 of the petition. The alleged denial of respondent Imelda R. Marcos to the said allegation in the petition such as "lack of sufficient knowledge and/or the funds were lawfully acquired without stating the basis [of the] assertion"[14] constitute a "negative pregnant"[15] or an ineffective denial which amounts to an admission of the subject allegation in the petition.

The petitioner also points out that there are other circumstances which would show that the respondents admitted that Arelma was among the entities established by them to hide their ill-gotten wealth. The petitioner elaborates as follows:

> On file further, with the expediente of this Honorable Court are the aborted General Agreement and Supplemental Agreement passed upon in G.R. No. 152154. In that General Agreement dated December 28, 1993, it was stated that:

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[14] Petitioner quotes the Answer of respondent Imelda R. Marcos to paragraph 59 of the petition as follows:

> Respondents specifically DENY paragraph 59 of the Petition insofar as it alleges that the Marcoses used their cronies and engaged in laundering their filthy riches for being false and conclusory the truth being that the Marcoses did not engage in any such illegal acts and that the properties were lawfully acquired and specifically DENY the rest for lack of knowledge or information sufficient to form a belief as to the truth of the allegations. Respondents are not privy to the alleged transactions.

[15] Petitioner quotes the explanation of the Hon. Supreme Court in the case of *Republic vs Sandiganbayan and the Heirs of Ferdinand E. Marcos*, supra, as follows:

> Evidently, this particular denial had the earmark of what is called in law or pleadings as negative pregnant, that is, a denial pregnant with the admission of the substantial facts in the pleading respondent to which are not squarely denied. It was in effect an admission of the averments it was directed at. Stated otherwise, a negative pregnant is a forum of negative expression which carries with it an affirmation or at least implication of some kind favorable to the adverse party. It is a denial pregnant with an admission of substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of an allegation as so qualified or modified are literally denied, it has been held that qualifying circumstances alone are the denied while the fact itself is admitted.

> 4. All disclosures of assets made by the private party shall not be used as evidence by the FIRST PARTY in any criminal, civil, tax or administrative case, but shall be valid and binding against said PARTY for use by the account and/or recovering any asset. The PRIVATE PARTY withdraws any objection to the withdrawal by and/or release to the FIRST PARTY by the Swiss banks and/or Swiss authorities of the $356 Million, its accrued interests, and/or any other account over which the PRIVATE PARTY waives any right, interest or participation in favor of the FIRST PARTY.

The foregoing stipulation is a further admission that the Swiss accounts of ARELMA are included in reference to 'any other account'. The fact that the respondents waived any right, interest or participation in that Swiss account indubitably proves their ownership thereof. They could not have waived anything which they claim not to be theirs.

Further buttressing this admission is the declaration of Imelda Marcos in her Manifestation dated May 26, 1998 where she categorically and unqualifiedly stated, that:

> The respondent Imelda Marcos owns 90% of the subject matter of the above entitled case being the sole beneficiary of the dollar deposits in the name of the various foundations alleged in the case.

ARELMA is among those entities and foundations alleged in this case to have been put up by the respondents to hide their ill-gotten wealth. This is a sweeping admission that all properties and assets mentioned in the Petition are claimed by the Marcoses even as the respondents ineffectually deny - - without elaborating - - that it is ill-gotten.

Anent its second ground, petitioner argues that the assets of Arelma, which was worth US$3,360,975.00 as of May 1983, are grossly disproportionate to the lawful income of the respondents. The lawful income of the respondents was only US$304,372.43 as allegedly settled in the case of *Republic vs Sandiganbayan and the Heirs of Ferdinand E. Marcos*, *supra*, by the Hon. Supreme Court.

In his *Comment/Opposition with Motion to Dismiss*, respondent Ferdinand R. Marcos, Jr. (respondent Marcos, Jr.) posits two (2) reasons in opposing the subject motion.

First, he avers that this case is "dismissible on the ground of no cause of action for failure to implead the real parties-in-interest". Respondent Marcos, Jr. points out that the last will and testament of the late President Marcos was admitted to probate[16] before the Regional Trial Court of Pasig, Branch 156 in a case docketed as Special Proceedings No. 10279. The said court allegedly issued an *Order* dated October 2, 2002 appointing "Imelda R. Marcos, Ferdinand R. Marcos, Jr. and Justice Undersecretary Ramon J. Liwag [later substituted by Justice Undersecretary Jose C. Calida]" as the executors and/or special administrators. In such capacity, respondent Marcos, jr. insists that these persons are the "representative parties"[17] for the estate of the said deceased thus making them the real parties-in-interest in this case. Respondent Marcos, Jr. argues that the "claim against the estate" of the deceased by petitioner should have been filed in the probate court in the first place pursuant to Rule 86 of the Rules of Court.

Second, respondent Marcos, Jr. claims that the subject motion itself lacks merit relying on Section 3 of RA No. 1379 which provides the requisite allegations in the petition for forfeiture, which are, in turn, the "basis of the writ to be issued 'commanding said officer to show cause why the property or part thereof should not be declared property of the State'" as provided for by Section 2 of the said law. He contends that the petitioner failed to allege these "requisite jurisdictional averments" and to prove the same. Likewise, respondent Marcos, Jr. contends that the subject motion failed to establish that the funds are ill-gotten/unlawfully acquired; that the funds are owned by respondents; that the total salary and other incomes/earnings legitimately acquired property by respondents from 1940 to 1985 or for 45 years; and how much property is manifestly out of proportion to the salary and income and earnings legitimately acquired that is subject of forfeiture.

[17] Citing Section 3 of Rule 3 of the Rules of Court

Respondent Marcos, Jr. elaborates that the respondents in this case are not the owners of the funds in question and enumerates the "admission/documents" which would allegedly support his claim, thus:

a. The documents of petitioner show that Arelma, Inc. is the owner of the funds.

b. The Swiss decisions recognize the other Foundations mentioned by petitioner as the owners of the funds.

c. The pleadings of the petitioner admit that the Swiss funds are in the names of the named Foundations.

d. The 6 escrow agreements executed by petitioner, the named Foundations and the Philippine National Bank admit that the owners of the funds are the named Foundations.

e. Private respondents never admitted they are the owners of the Arelma funds in question, contrary to petitioner's stance that respondent Imelda R. Marcos did so in her answer, in the General and Supplemental Agreement and the Manifestation dated May 26, 1998. Respondent Imelda Marcos has alleged that she is "the sole beneficiary" of the funds in question. An averment as the sole beneficiary is not an admission that she is the owner of the funds in question.

Respondent Marcos, Jr. maintains that there is also no basis to determine the legitimate incomes and earnings of the respondents which are manifestly out of proportion to the disputed funds. The petition allegedly omitted to aver: "(a) the properties or income acquired by Ferdinand E. Marcos for almost 16 years from 1940 to 1965 before becoming a president; (b) the other incomes and earnings from legitimately acquired property from 1940 to 1985 for 45 years; and (c) the numerous real estates of respondents in Metro Manila, in Ilocos, Leyte, among others, that were auctioned to satisfy the more than P23 Billion Estate Tax".

Respondent Marcos, Jr. likewise contends that Republic Act (RA) No. 1379 "precludes summary judgment as the proceeding or process to decide a forfeiture case". Section 6 of the said law allegedly grants the respondents an opportunity to explain and present evidence on how they have acquired the questioned funds, and that only after the respondents were unable to show to the satisfaction of the court that they have lawfully acquired the subject funds can the court declare these funds forfeited in favor of the petitioner. He avers that a summary judgment ultimately deprives the respondents of their "right to be informed and answer the requisite jurisdictional averments" and denies them their "right to present evidence".

Respondent Marcos, Jr. further argues that a summary judgment in this case is "not available or warranted" for the following reasons:

(1) The petition failed to implead Arelma, Inc. which is the "recorded and documented owner of the subject funds" and thus an indispensable party in this case;

(2) The respondents specifically denied the material allegations of the petition and the genuineness and due execution of the "illegible photocopies of documents annexed";

(3) The respondents did not deny under oath the alleged "actionable documents" referred to by the petitioner since they did not appear as parties to these documents; nonetheless, only the "genuineness and due execution" of these documents may be deemed admitted by the respondents but not the veracity of its contents which the petitioner must prove;

(4) The respondents never admitted the ownership of the funds or "the total salary and income / property acquired from 1940 to 1985 (45 years) or allegations that the funds are unlawfully acquired / ill-gotten or manifestly out of proportion to the respondents' salaries as public officers or the income legitimately acquired by respondents, as defined in Section 1 of RA No. 1379 for 45 years, or the documents / records of Arelma, Inc. or that private respondents violated RA No. 1379 and / or EO Nos. 1, 2, 14 & 14-A, as amended"; and

(5) There are "disputed issues" which this Court discussed in its *Order* dated October 10, 1995 and held the "need for petitioner to prove the legitimate income of spouses Marcos; the identity of the basic or principal figures of the funds and the interest; the basis to determine the legitimate income of the Marcoses as of February 25, 1986 to enable respondents-beneficiaries explain under RA No. 1379 the disparity in their legitimate income with the property in question", which the petitioner allegedly failed to substantiate in the course of the pretrial proceedings.

In addition, respondent Marcos, Jr. points out that the Court has already denied a similar motion for summary judgment of the petitioner in a *Resolution* dated December 16, 1997 as there appeared genuine issues of fact. This resolution allegedly became final because the petitioner failed to question the findings of this Court either through a motion for reconsideration or appeal. The "request for admission" of petitioner served on September 23, 1999 to the respondents regarding the "Income Tax Returns (ITR); the schedule of analysis of alleged legitimate income of Marcos couple for the years 1966-1985; and the documents pertaining to the Swiss account groups and the other annexes to the petition", all allegedly show that the petitioner judicially admitted that there are genuine issues of fact. The "pre-trial brief" of the petitioner and the *Pre-Trial Order* dated October 28, 1999 as well as the *Supplemental Pre-Trial Order* dated January 21, 2000 of this Court likewise tell that the "material averments of the petition and documents were controverted by the answers of the respondents thus raising genuine issues of fact". Respondent Marcos, Jr. claims that there were already several trial settings in this case which were cancelled and rescheduled at petitioner's instance. He alleges that this is because petitioner lacked evidence to substantiate its allegations and that the instant motion is merely a subterfuge to avoid the trial proceeding in which the petitioner has nothing to present.

Lastly, respondent Marcos, Jr. contends that a motion for summary judgment "must be supported by affidavits, depositions or undisputed admissions elicited clearly and positively from the pleadings, or request for admissions of facts and / or documents and other modes of discovery" as provided for by Rule 35 of the Rules of Court. He alleges that the subject motion failed to comply with the cited rule and, thus, the petitioner's contention of "admission of material averments of the petition [by the respondents]" has no supporting basis.

In her *Opposition* [to the subject motion] dated October 3, 2004, respondent Imelda Romualdez-Marcos (respondent Imelda Marcos) cites her grounds as follows:

> Petitioner's Motion for Partial Summary Judgment is Improper in that:
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> a. There are Factual Issues that Require the Introduction of Evidence.
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> b. A Rendition of Summary Judgment will violate Respondent's Right to Due Process of Law.

Respondent Imelda Marcos supports the contentions of respondent Marcos, Jr. that the subject motion should fail because (1) of the absence of any "affidavit and certified true copies" of documents which Section 5 of Rule 35 of the Rules of Court and the case of *Auman vs Estenzo*[18] require; and that (2) there are factual issues in this case which require the presentation of evidence.

[18] G.R. No. L-40500, February 27, 1976

Anent the alleged factual issues, respondent Imelda Marcos points out that these matters were determined by this Court in its *Pre-Trial Order* dated October 28, 1999 and *Supplemental Pre-Trial Order* dated January 21, 2000 which she quotes as follows:

> By way of statement of the issues and considering the admission already made, the basic question is, how much could be stated as the correct amount that spouses Marcoses could have legally acquired and maintained as of around February 25, 1986, and how much of the funds in the Swiss Banks which are subject matter of this proceeding could not have been legitimately acquired by President Ferdinand E. Marcos and / or spouses Marcos for the period from 1965 to 1986 (Pre-Trial Order).
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> [T]he primary issue which the Republic must address before all other issues is whether or not these funds obtained from the Swiss Banks through the various decisions of the Swiss Federal Court do indeed belong to Ferdinand E. Marcos or Imelda R. Marcos or the Estate of Marcos which, for purposes of this proceedings, will be considered the same person (Supplemental Pre-Trial Order).

Respondent Imelda Marcos further points out that the petitioner has agreed in the pre-trial order to present witnesses such as the "representative from the Bureau of Internal Revenue to testify on the income tax returns of the spouses Marcos from 1965 to 1984 and a witness as to Exhibit 'H', which refers to the Report from the PCGG Financial Data Monitoring Team as of October 21, 1987". The petitioner allegedly also "undertook to file [before] this Court authenticated translations of the decisions of the Federal Supreme Court of Switzerland 'in order that these decisions can be legally appreciated'". Respondent Imelda Marcos claims that the petitioner has not yet presented evidence concerning these matters and, therefore, the petitioner should not be allowed to "unilaterally declare that there are no factual issues involved [in this case]". The alleged issues should be ventilated in the course of the trial.

Respondent Imelda Marcos similarly agrees that a summary judgment will violate the right of the respondents to due process of law. She points out that petitioner must prove by competent evidence the facts constituting the "prima facie presumption of unlawful acquisition" under RA No. 1379 before it can be used against the respondents. She adds that it must be shown that the questioned property was acquired by the public officer during his incumbency as such and that its value is "disproportionate to his total networth before his incumbency and salaries during his incumbency".

Respondent Imelda Marcos avers that petitioner allegedly failed to prove all these facts as it merely relied in the case of *Republic vs. Sandiganbayan and the Heirs of Ferdinand E. Marcos*, *supra*, which only settled "the issue of the legitimate income of the Marcoses as public officials" but not the total networth of the respondents before they assumed their role as public servants nor "when the subject Arelma funds were acquired and their value at such acquisition". RA No. 1379 will be violated, according to respondent Imelda Marcos, if the Court will merely "infer" from their purported judicial admissions the facts constituting the "presumption of unlawful acquisition" as provided under the law. She adds that RA No. 1379 still allows the respondents to present evidence to rebut the "presumption of unlawful acquisition" assuming the petitioner had successfully invoked the alleged judicial admissions and that the Court should provide the respondents this opportunity otherwise it will consequentially amount to a denial of their right to due process of law.

In her *Manifestation and Opposition [to the subject motion] with Motion to Cite Petitioner in Direct Contempt of Court*, respondent Ma. Imelda "Imee" Marcos-Manotoc (respondent Manotoc) claims that the

subject motion should fail because the "U.S. District Court of Hawaii in C.A. No. 86-0390 and MDL No. 840 entitled *Celsa Hilao, Et Al. vs. Estate of Ferdinand E. Marcos and IN RE Estate of Ferdinand E. Marcos*" has first acquired jurisdiction over the funds subject matter also of this case as early as 1986 and thus excluded this Court's jurisdiction over the same. Respondent Manotoc concomitantly claims that the petitioner is "guilty of forum shopping" and should be held in "direct contempt of court pursuant to Section 5 of Rule 7" of the Rules of Court. She explains that the petitioner participated in the proceedings in the cases in the said foreign court and even received a "notice of the hearing for the permanent injunction" and had an opportunity to present evidence thereat. These circumstances, respondent Manotoc points out, show that "the petitioner has engaged itself as a claimant of the same funds in two (2) different and distinct jurisdictions".

In its *Consolidated Reply*, petitioner contends in essence that the grounds, issues and arguments raised by respondents in their respective oppositions to the subject motion are mere rehash and have already been passed upon and adjudicated with finality by the Hon. Supreme Court in the case of *Republic vs. Sandiganbayan and the Heirs of Ferdinand E. Marcos*, *supra*. Petitioner argues that the opposition of respondent Imelda Marcos did not raise any new issues and asserts that petitioner does not need to present evidence to prove "the legitimate income of the Marcoses" as this was already settled with finality.

Anent the opposition of respondent Manotoc, petitioner argues that the United States (US) District Court of Hawaii did not have the jurisdiction to enjoin in any case the petitioner Republic because of its immunity from

suit[19]; that this Court, and not the said foreign court, first acquired jurisdiction over the Arelma funds and that, in any event, whatever "jurisdiction the district court has over [these] assets cannot bind the [petitioner] because of the Republic's sovereign immunity"[20]; that the participation of the petitioner in the proceedings at the US District Court was confined merely to contest the foreign court's jurisdiction to enjoin the petitioner and to assert its sovereign immunity but not to make any "affirmative claims"; and that "Judge Real" of the US District Court did not conclude that the funds in question were "not ill-gotten" but rather simply found that "there was no evidence as to where and how Marcos obtained the money" as the petitioner did not present such evidence precisely because it was only asserting its sovereign immunity.

With respect to the opposition of respondent Marcos, Jr., petitioner argues that the said respondent is already *in estoppel* to insist for the dismissal of this case on the ground of "failure to state a cause of action" allegedly because the instant case was not brought in the name of the "representative parties" who are the real parties-in-interest. According to petitioner, respondent Marcos, Jr. belatedly raised this ground, thus, he should not be permitted to assert the same for the first time at this stage of the proceedings. Nonetheless, petitioner contends that there is no legal necessity "to implead the executor or administrator of the Estate of the Late Ferdinand Marcos as party respondent it being a matter of judicial notice that what is being prosecuted here is the ill-gotten wealth of the Marcoses which properly belongs not to the estate of the late Ferdinand Marcos but to the Filipino people". Petitioner further contends that this case should not be dismissed simply on the ground that the "representative parties of the

[19] Citing the case of In Re: Estate of Ferdinand Marcos Human Rights Litigation [94 F.3rd 539, 548 (9th Cir. 1996)]
[20] Citing the case of In Re: Republic of the Philippines [309 F.3rd 1147, 1149-52 (9th Cir. 2002)]

estate of the deceased president" were not impleaded as party respondents. It is allegedly enough that the "heirs of the estate of the late Ferdinand Marcos" were impleaded in this case as party respondents considering that respondent Imelda Marcos admitted in her *Manifestation* dated May 26, 1998 that she owns 90% of the subject matter of this case being the sole beneficiary of the dollar-deposits in the name of the various foundations alleged in the petition and that only 10% of the subject matter in the petition belongs to the estate of the late Ferdinand Marcos.

In its *Supplemental Motion for Summary Judgment*, petitioner addresses the crucial issues raised by the respondents in compliance with this Court's *Order* dated February 15, 2005. This motion allegedly deals with the following issues:

1. Whether it is Arelma, Inc. or the estate of Ferdinand E. Marcos is the real party-in-interest;
2. Whether or not there is factual basis for plaintiff's assertion that the Arelma funds are disproportionate to the totality of the properties and assets of the late Ferdinand E. Marcos; and
3. Whether the procedure to be followed in this case is that provided for in RA 1379 or in Rule 35 of the Rules of Court.

As regards the first issue, petitioner argues that neither Arelma, Inc. nor the estate of Ferdinand E. Marcos is the real party-in-interest in this case. The petitioner explains that Arelma, Inc. "is a Swiss Foundation created at the behest of [President] Marcos whose funds are held in an account at Merrill Lynch New York." After the filing of the instant petition, the Republic of the Philippines, through the PCGG, allegedly filed a request for "mutual assistance with the District Attorney IV of the Canton of Zurich with respect to this foundation" which was granted[21]. The "share certificates and funds of Arelma" were consequently frozen and ordered

[21] Attached as Annex A to the supplemental motion

transferred on escrow to the Philippine National Bank (PNB) pending the outcome of this case and subject to the exclusive disposition of this Court. The Arelma funds thus constitute the *res* of the case which are the subject of forfeiture in favor of the petitioner pursuant to RA No. 1379. Petitioner claims that the true owner of the Arelma funds is not the Marcos Estate but the state as the same are "fruits of illegal activities" which at all times belonged to the Philippine government.

Anent the second issue, petitioner contends that the Arelma account was worth $3,369,975.00 on May 19, 1983 which the respondents did not deny and in fact admitted; that the lawful income of the Marcoses after their "20-year rule" is only $304,372.43 as decreed by the Hon. Supreme Court in the case of *Republic vs. Sandiganbayan and the Heirs of Ferdinand E. Marcos*, supra; and that the property invested by the Marcoses in Arelma, Inc. is therefore obviously disproportionate to their lawful income as public officials. As for the third issue, the petitioner posits that Rule 35 of the Rules of Court applies in this case in conjunction with RA No. 1379 in the same manner the Hon. Supreme Court decided the afore-cited case.

In his *Comment/Opposition* to the supplemental motion, respondent Marcos, Jr. refutes the arguments of the petitioner respecting the issues earlier cited. About the first issue, respondent Marcos, Jr. claims that the real party-in-interest in this case is the Estate of Ferdinand E. Marcos. Respondent Imelda Marcos did not allegedly admit that she is the owner of the funds of Arelma, Inc. as she is yet claiming ownership thereof as a "beneficiary". Petitioner is thus without basis to claim that the Arelma funds came from "illegal activities" and that the same rightfully belongs to the Philippine government. Respondent Marcos Jr. further argues that Arelma, Inc. should as well be impleaded as an indispensable or necessary party.

The "creation of Arelma, Inc. at the bequest of President Marcos is not an admitted fact" but allegedly an issue of fact which Arelma, Inc. should be given an "opportunity to ventilate its side to the issue" and considering that its funds and assets are the subject matter of this litigation. Respondent Marcos, Jr. also contends that Arelma, Inc. cannot be considered the *res* of the case because it is not among the sequestered corporations; hence, the Court did not acquire jurisdiction over the same and the need to implead the said corporation is inevitable.

As regards the second issue, respondent Marcos, Jr. asserts that the petitioner failed to allege and prove the "required jurisdictional averments" under RA No. 1379, particularly, the fact that the disputed funds are "ill-gotten or unlawfully acquired" and that the same are "manifestly out of proportion" to the "total salary and other proper earnings and income legitimately acquired property of respondents". Anent the third issue, respondent Marcos, Jr. contends that the procedure laid in RA No. 1379, and not in Rule 35 of the Rules of Court, governs in this case mainly because the instant petition was filed pursuant to the said law. He argues further that a summary judgment in this case will diminish the substantive right of the respondents to present evidence as provided for by Sections 2, 3, 5 and 6 of RA No. 1379 which Section 6 of Article VIII of the Constitution proscribes.

In her *Comment/Opposition* to the supplemental motion, respondent Imelda Marcos similarly rejects the contentions of the petitioner as regards the issues propounded. She argues that Arelma, Inc. is an indispensable party in this case; that the said corporation cannot be considered the *res* of this case as the Court has not acquired jurisdiction over the same; and that the Estate of Ferdinand E. Marcos is also an indispensable party in this

case because it stands to be benefited or injured by the outcome of the decision of the Court as to the ownership over Arelma, Inc. and its accounts. Respondent Imelda Marcos then contends that petitioner lacks factual basis to assert that the "value of the account is disproportionate to the lawful income of respondents". The ruling of the Hon. Supreme Court in the case of *Republic vs. Sandiganbayan and the Heirs of Ferdinand E. Marcos*, *supra*, is not allegedly enough to prove the asserted fact as the said decision did not settle "the issues on (a) whether respondents acquired the subject Arelma, Inc. account; (b) or whether respondents acquired these account during their incumbency; or (c) whether the net worth of the account at the time it was acquired was grossly disproportionate to the total assets of respondents before their incumbency as public officials." The respondent also argues that Rule 35 of the Rules of Court cannot apply in this case without violating the right of the respondents to present evidence under RA No. 1379.

In the recently filed *Motion to Expunge (Petitioner's Motion for Partial Summary Judgment dated 12 June 2004)*, respondent Irene Marcos-Araneta (respondent Araneta) prays that the subject motion be expunged from the records of this case. Respondent Araneta alleges and argues as follows:

> xxx xxx xxx
>
> 2. The Honorable Court may take judicial notice of the fact that the instant case was elevated to the Supreme Court by petitioner and that the High Court decided upon the case in G.R. No. 152154 on 15 July 2003.
>
> 3. Respondents filed their respective motions for reconsideration to the decision but all were denied by the Supreme Court.
>
> 4. The Honorable court may also take judicial notice of the fact that the said decision in G.R. No. 152154 subsequently became final and executory without petitioner moving for any reconsideration thereto.

5. And also, the Honorable Court may take judicial notice of the fact that upon finality of the said decision, petitioner hurriedly moved for execution of the Supreme Court's judgment.

6. The parties are all aware that the decision in this case was satisfied. The Honorable Court was likewise made aware of the fulfillment of the judgment.

7. In view of the foregoing, the instant Civil Case No. 0141 is then procedurally terminated and closed.

8. It is elementary that a case that has been terminated, satisfied, and closed, cannot be reopened by anybody via a mere motion. In fact, it can no longer be reopened in any way.

9. Therefore, petitioner's instant motion for reconsideration of the Supreme Court's decision and which now is in the guise of a motion for partial summary judgment filed in the court of origin, should not be entertained. It should have been immediately expunged from the records after its filing.

xxx xxx xxx

Petitioner opposes the motion of respondent Araneta as it is already barred by Section 12 of Rule 8 of the Rules of Court[22] and for lack of merit. It adds that the said provision of the Rules of Court does not allow the striking out of a pleading by a party after the filing of a responsive pleading thereto and that the motion to strike out the pleading must have been made within twenty (20) days after the service of the pleading sought to be stricken out from the records of the case. Petitioner points out that respondent Araneta has already filed a responsive pleading to the subject motion which she now seeks to expunge. In a *Manifestation* dated October 11, 2004, respondent Araneta adopted in *toto* the *Opposition (to the Motion for Partial Summary Judgment)* dated October 3, 2004 of respondent

[22] Quoted by petitioner as follows:

SEC. 12. Striking out of pleading or matter contained therein. – Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within twenty (20) days after the service of the pleading upon him, or upon the court's own initiative at any time, the court may order any pleading to be stricken out or that any sham or false, redundant, immaterial, impertinent, or scandalous matter be stricken out therefrom.

Imelda Marcos. The petitioner further points out that the pleading which respondent Araneta seeks to strike out was filed three years ago which means that the twenty (20) day period to file a motion to strike out a pleading had long passed. Nonetheless, the petitioner argues that the subject matter of its present motion is the Arelma account and that the Hon. Supreme Court's decision in *Republic vs. Sandiganbayan and the Heirs of Ferdinand E. Marcos*, *supra*, "did not touch upon the matter of the Arelma assets" but the five (5) other foreign foundations in certain Swiss banks, namely the following:

1. Azio-Verso-Vibur Foundation accounts;
2. Xandy-Wintrop: Charis-Scolari-Valamo-Spinus-Avertina Foundation accounts;
3. Trinidad-Rayby-Palmy Foundation accounts;
4. Rosalys-Aguamina Foundation accounts; and
5. Maler Foundation accounts.

Finally, in its *Memorandum*, petitioner presents its case against the respondents and prays for a favorable action on its *Motion for Partial Summary Judgment*.

Petitioner claims that "the object of forfeiture in the instant motion is the so-called 'Arelma, Inc.' account, now with an estimated value of US $35 Million worth of funds, investments, and securities stashed away in an entity known as Merrill Lynch Asset Management, Inc., New York, USA". Quoted hereunder is the summary of the facts of the case according to the petitioner:

> In 1972, Marcos created and transferred $2 Million to Arelma, S.A., a Panamanian stock corporation with two outstanding shares that, prior to 1998, were held in Switzerland. Arelma invested the funds with Merrill Lynch in New York, and by the year 2000, that investment had grown to approximately US$ 35 Million.

In 1986, the Republic filed a petition for judicial assistance with the Swiss authorities under the International Mutual Assistance on Criminal Matter (IMAC), and pursuant to which treaty the accounts of Arelma in Switzerland were ordered frozen (among others), the Swiss authorities having identified Arelma as a repository for Marcos' assets.

On January 11 2000, the Swiss authorities transmitted two (2) originals of bearer certificates of Arelma, Inc. to the Philippine National Bank (PNB) to be held in escrow pending final determination of ownership by the Philippine courts.

Petitioner cites the foundation of its subject motion which is paragraph 59 in the petition of forfeiture to elaborate on its allegations against the respondents. The petitioner then alleges that the crucial issues at this stage of the proceedings are as follows:

ISSUES

I.

WHETHER OR NOT THE PROCEEDINGS IN CIVIL CASE NO. 0141 HAVE BEEN COMPLETELY TERMINATED.

II.

WHETHER OR NOT THERE IS SUFFICIENT BASIS FOR SUMMARY JUDGMENT.

The chief arguments of the petitioner are quoted as follows:

ARGUMENTS

I. THE PROCEEDINGS IN THE CASE AT BAR HAVE NOT BEEN TERMINATED BECAUSE OF THE SUPREME COURT RULING IN G.R. NO. 152154. THE OWNERSHIP ISSUE OVER THE ARELMA ASSETS MUST BE RESOLVED.

II. THERE IS SUFFICIENT BASIS FOR SUMMARY JUDGMENT WITH RESPECT TO THE ARELMA ASSETS.

A. SUMMARY JUDGMENT IS PROPER IN THE CASE AT BAR.

1. THERE ARE NO FACTUAL ISSUES THAT REQUIRE THE INTRODUCTION OF EVIDENCE.

2. THE PROCEEDINGS IN THE COURTS OF THE UNITED STATES DO NOT PRECLUDE THIS HONORABLE COURT FROM RENDERING A DECISION WITH RESPECT TO THE ARELMA ASSETS.

B. RESPONDENTS ARE DEEMED TO HAVE ADMITTED THE MATERIAL ALLEGATIONS OF THE PETITION REGARDING THE ARELMA ACCOUNT.

C. THE LAWFUL INCOME OF THE MARCOSES DURING THEIR INCUMBENCIES AS PUBLIC OFFICIALS IS GROSSLY DISPROPORTIONATE TO THE ASSETS OF ARELMA, INC.

Petitioner contends that, in the case of *Republic vs Sandiganbayan and the Heirs of Ferdinand E. Marcos*, supra, the Hon. Supreme Court decided in favor of the petitioner Republic of the Philippines the ownership issue as to the following Swiss accounts:

1. Azio-Verso-Vibur Foundation accounts;
2. Xandy-Wintrop: Charis-Scolari-Valamo-Spinus-Avertina Foundation accounts;
3. Trinidad-Rayby-Palmy Foundation accounts;
4. Rosalys-Aguamina Foundation accounts; and
5. Maler Foundation accounts.

The nature of the disputed Arelma account in this case is allegedly similar to the foregoing which was not resolved by the Hon. Supreme Court. However, according to the petitioner, the High Court did not foreclose the right of the petitioner to pursue further proceedings in this case.

Petitioner moves for a summary judgment under the provisions of Rule 35 of the Rules of Court as there are no factual issues that require the introduction of evidence. Firstly, petitioner insists that the findings of the Hon. Supreme Court in the case of *Republic vs. Sandiganbayan and the*

Heirs of Ferdinand E. Marcos, supra, as regards the "amount of the legitimate income of the Marcoses" as public officers from 1966 to 1986 has settled this factual issue. Secondly, petitioner maintains that respondents are deemed to have admitted the material allegations of the petition involving the Arelma account particularly the fact that they own the funds in the said account. This is allegedly so because the denial of the respondents to the material allegations of the petition for forfeiture constitutes a "negative pregnant" which amounts to an admission. Based on these premises, petitioner claims that it is evident that the lawful income of the Marcoses during their incumbencies as public officials is grossly disproportionate to the assets of Arelma, Inc. Specifically, the adverted lawful incomes of the respondents were only $304,372.43 whereas the assets of Arelma were worth $3,369,975.00 in 1983. The funds in the Arelma account are therefore ill-gotten wealth of the respondents which should be forfeited in favor of the petitioner pursuant to R.A. No. 1379 in the same manner the Hon. Supreme Court ordered the forfeiture of the funds and assets of similar "Marcos foundations" such as Avertina, Vibur, Aguamina, Maler, and Palmy.

Petitioner, moreover, claims that "the proceedings in the courts of the United States do not preclude this Court from rendering a decision with respect to the Arelma assets". The petitioner outlines the alleged relevant antecedent proceedings before the filing of the subject motion as follows:

II. Proceedings in Switzerland

Following the filing of the instant petition, the Arelma account was indeed found to be among the Swiss foundations caused to be established by the Marcoses. The District Attorney of Zurich, Peter Cosandey, held it to be on 21 August 1995, and his Order was affirmed by the Swiss Federal Supreme Court on 19 December 1997.

On 11 January 2000, the Swiss authorities transmitted two (2) originals of bearer certificates of Arelma, Inc. to the Philippine National Bank (PNB), to be held in escrow pending final determination of ownership by the Philippine courts.

III. Proceedings before the Court of the United States

On 12 July 2000, the PCGG requested Merill Lynch to transfer the Arelma funds to an escrow account with the PNB.

Merill Lynch refused PCGG's request for transfer, citing the existence of other claimants. On 21 September 2000, Merill Lynch filed an interpleader action covering the assets of Arelma. Impleaded in the suit as defendants were the Republic of the Philippines, the PCGG, the Estate of Roger Roxas, Golden Budha Corporation, the human rights claimants, etc. This interpleader suit was docketed as Civil Case No. CV00-595 MLR with the US District Court of Hawaii, presided by Judge Real.

The Republic invoked sovereign immunity. But, not satified with the Republic's defenses, Judge Real awarded all the assets of Arelma to the human rights claimant. This interpleader suit has been the subject of several appeals elevated by the Republic to the U.S. 9th Circuit Court of Appeals.

The U.S. 9th Circuit Court of Appeals rendered a Decision dated 4 May 2006, affirming the Decision of the District Court of Hawaii to award the Arelma assets to the human rights claimants who were parties to the case heard by the latter court. The Court of Appeals rejected the Republic's contention that it was an indispensable party to the action, and not merely a necessary party.

A crucial factor that led the U.S. Court of Appeals to affirm the District Court's decision was the Republic's "failure to secure a judgment" from its own courts that the Arelma assets in dispute belong to it. The court's ruling, which was principally based on equity and good conscience, stressed:

> "(S)econd, the Republic's right in the United States to reclaim the spoils of office from Marcos has been unquestioned since Republic of the Philippines v. Marcos, 862 F. 2d 1355 (9th Cir. 1988) (en banc). The Republic has set up the PCGG to effect this end. It is now eighteen years since the 1988 decision and four years since we stayed this action. The shares of Arelma have been since 1995 in escrow at the Philippine National Bank. In all this time, the Republic has not obtained a judgment that the assets in dispute belong to it. We do not hold the Republic guilty of laches, but we do note as an equitable consideration that its failure to secure a judgment affecting these assets is a factor to be taken into account."

A petition for rehearing was filed on behalf of the Republic with the US 9th Circuit Court of Appeals, on the basis of which the Republic obtained a stay order on the execution of Judge Real's award in favor of the human rights claimants. However, the Court of Appeals then reaffirmed its holding that the Republic and the PCGG are not indispensable parties, and it awarded the Arelma assets to the human rights claimants.

The Republic has filed a petition for certiorari with the Supreme Court of the United States, questioning the grounds relied upon by the U.S. Court of Appeals in its decision. Principally, the Republic assails the US Court of Appeals decision for undermining the important public interests served by the immunity principle. The Republic's arguments are, thus:

"A. The Decision Below Undermines Important Principles of Sovereign Immunity and Departs from the Standards that Govern Rule 19 (b)

1. A Case Must Be Dismissed Under Rule 19(b) When A Necessary Party Has Sovereign Immunity

2. The Ninth Circuit's Ruling Conflicts With The Decisions Of Other Courts Of Appeals, Which Have Held That A Sovereign Asserting Immunity Is An Indispensable Party Under Rule 19(b)

3. The Ninth Circuit's Understanding Of The Rule 19(b) Factors Cannot Be Reconciled With The Holdings Of This Court and Other Court of Appeals

B. The Decision Below Threatens To Undermine International Cooperation In Combating Official Corruption And Cause Friction In the United State's Relationship With An Important Ally"

As shown above, petitioner claims that it has consistently argued that the ownership of the Arelma assets should be determined in the forfeiture proceedings before this Court and not in the District Court of Hawaii. The petitioner also emphasizes that the "crucial factor which led the U.S. Court of Appeals to affirm the District Court's decision was the Republic's 'failure to secure a judgment' from 'its own courts' that the Arelma assets in

dispute belong to it" which implicitly recognizes this Court's authority to resolve the said ownership issue. This is allegedly further buttressed by an official statement by the Swiss Government in its *Note Verbale*[23] dated April 5, 2007 with the following view:

> Swiss Federal Supreme Court decision in 1997 and 1998 affirmed that, under international law, the Philippines should have the opportunity to determine the appropriate manner in which the Marcos funds should be used for compensating victims of human rights violations under the Marcos regime. Ultimately, Switzerland returned assets valued at approximately $600 Million, with the understanding that the Philippines, in dealing with the claims of the class action plaintiffs group, would follow procedures consistent with the United Nations Convention against Torture and the United Nations International Covenant on Civil and Political Rights – Pact II.
>
> Switzerland wishes to highlight that the importance of close cooperation between governments in dealing with the recovery of illicit assets is recognized explicitly by the United Nations Convention on Corruption, which was signed by the United States, the Philippines and Switzerland. The rulings of the U.S. courts at issue appear to run counter to the current trends in multilateral cooperation represented by the Convention and by Switzerland's own prior actions in assisting the Philippines. In effect, the Merrill Lynch rulings appear to assert that U.S. courts should have a priority in authority over the Philippines in resolving the disposition of Marcos assets, and in doing so seem to negate the Philippines' sovereign interests. For these reasons, Switzerland believes that the court decisions, in their language and result, could make future intergovernmental cooperation in such matters more complicated. Switzerland is confident that the United State Government shares Switzerland's concern and that it will take all the necessary steps to ensure that the court decisions are revered or appropriately modified.

On the other hand, only respondent Imelda Marcos filed a memorandum in which she reiterates all her objections to the subject motion.

[23] Attached as Annex "A" to petitioner's *Urgent (Fourth) Motion for Early Resolution* dated April 30, 2007; Records, Volume 12, pp. 435, 440-441

In the meantime, an important development ensued. On June 12, 2008, the US Supreme Court finally came out with its decision granting the petition for certiorari the petitioner Republic of the Philippines filed before the said US Supreme Court. The decretal portion of the said decision states:

> *The judgment of the Court of Appeals for the Ninth Circuit is reversed, and the case is remanded with instructions to order the District Court to dismiss the interpleader action.*[24]

DISCUSSION AND RULING

On both issues, petitioner Republic's present motion for partial summary judgment is impressed with merit.

I. Proceedings in Civil Case No. 0141 Had Not Terminated

This Court agrees with petitioner's argument that proceedings in Civil Case No. 141 had not completely closed or terminated. Apart from the Arelma assets, there are numerous other valuable assets, funds and property involved in the Republic's forfeiture petition.[25]

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[24] Republic of the Philippines vs. Pimentel, Temporary Administrator of Estate of Pimentel, deceased, et al., Docket No. 06-1204 [June 12, 2008], http://www.supremecourtus.gov/opinions/07pdf/06-1204.pdf.
This US Supreme Court decision was also cited and therein attached as Annex "A" by the petitioner Republic of the Philippines in its Supplement to Respectful Urgent Motion to Resolve, dated May 21, 2008, filed on June 16, 2008, see Records, Volume 22, pp. 183-222.

[25] They are: (1)Holding companies, agro-industrial ventures and other investments; (2)Landholdings, buildings, condominium units, mansions and other houses built, improved or acquired by the Marcos spouses; (3)Properties surrendered to the government by Marcos crony Jose Y. Campos estimated to be Php2.5 billion and Php250 million cash; (4)Properties surrendered to the government by another Marcos crony, Antonio Floirendo, estimated to be US$30 million, Php70 million cash and US$653,856.40 paid as taxes in the United States; (5)New York properties valued at US$250 million; (6)Paintings and silverware

Respondents Marcoses assert that this forfeiture proceeding is deemed closed and terminated by this Court's Resolution dated November 20, 1997 which denied the first *Motion for Summary Judgment and/or Judgment on the Pleadings* dated October 18, 1996 (1996 Motion, hereinafter).

This Court is not persuaded. The said 1997 resolution did not result in a final adjudication of the substantive merits of the 1996 Motion. The same resolution rejected said motion on the sole ground that ... "the motion to approve the compromise agreement[26] "(took) precedence over the motion for summary judgment."[27] This resolution, in effect, merely held in abeyance the Court's action on the 1996 Motion to await the outcome of the ongoing global settlement of the Marcos assets.

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sold at public auction in the United States worth US$17 million, and jewelries, paintings and other valuable decorative arts found in Malacañang and in the United States estimated to be about US$23.9 million; (7)Bills amounting to Php27,744,535.00, foreign currencies and jewelries amounting to US$4 million and certificates of time deposit worth Php46.4 million seized by U.S. customs authorities upon arrival of the Marcos family in Honolulu, Hawaii; (8)The US$30 million in the custody of the Central Banks part of the dollar-denominated treasury bills purchased by the Marcoses from the Central Bank through their dummies; (9)Shares of stock in Piedras Petroleum Co., Inc. (PIEDRAS) and in Oriental Petroleum & Minerals Corporation (OCPM) worth Php500 million; (10)Shares of stock in Balabac Oil Company worth Php42 million and 60% of sequestered assets of CDCP in the amount of P172,378,030.00; (11)Php10 million described by Jesus Tanchangco in his affidavit[25] and 45% beneficial ownership of Marcos in Landoil as stated by Jose de Venecia, Jr. in his affidavit; (12) Php974,885,480.46 and US$6,522,361.29 deposited in the Securities Bank & Trust Co. (SBTC); (13) Total amount of shareholdings of the Marcoses in SBTC which were sold by PCGG at Php161,200,000.00 and which has increased to Php238.7 million, excluding the Php15 million already received by PCGG; (14) 21 vehicles registered in the names of Fernando and Susan Timbol estimated to be worth Php5.1 million; (15) Deposits in Traders Royal Bank totaling over Php1 billion invested by Marcos from 1978 to May 9, 1983; (16) Properties in the United States already recovered in the total amount of US$25.7 million on recovered and sold assets abroad; and (17)Assets owned by **Arelma, Inc.**, a Panamanian corporation organized in Liechtenstein, for sole purpose of maintaining an account in Merrill Lynch, New York (*see Forfeiture petition's Annexes A to G, I to P, V and their sub-annexes*)

[26] The Marcos children and then PCGG Chairman Magtanggol Gunigundo entered into a *General Agreement* and *Supplemental Agreements* dated December 28, 1993 for a global settlement of the Marcos family assets. The Marcos children filed a motion dated December 7, 1995 for the approval and enforcement of the said agreements. However, said agreements were declared null and void by the Supreme Court in Chavez v. *PCGG and Gunigundo* in G.R. No. 130716.

[27] 406 SCRA 210, (2003).

Significantly, the 1996 Motion presumably involved all the assets subject of the present forfeiture petition in view of its prayer for general reliefs, thus:

> WHEREFORE, it is most respectfully prayed that on the basis of the failure of the respondents to deny specifically the actionable documents attached to the Petition, summary judgment be rendered declaring the assets of the respondents subject of this case, more particularly the $356 million bank deposits in five (5) account groups already identified in the SKA and SBC as mentioned in the two (2) Swiss Federal Tribunal's decisions and the $25 million and $15 million in treasury notes frozen in the Central Bank per freeze order of the PCGG which are in excess of the Marcos couple's salary and other lawful income and income from legitimately acquired property, forfeited in favor of the Republic of the Philippines, and **granting to the petitioner other reliefs and remedies as may be legal and equitable under the premises.** (emphasis supplied)

In a *catena* of cases, it has been ruled that the general prayer is broad enough "to justify extension of a remedy different from or together with the specific remedy sought." Even without the prayer for a specific remedy, proper relief may be granted by the court if the facts alleged in the complaint and the evidence introduced so warrant. The prayer in the complaint for other reliefs equitable and just in the premises justifies the grant of a relief not otherwise specifically prayed for.[28] This rule has also been applied to pleadings. Thus, where a party has prayed only for specific relief or reliefs as to a specific subject matter, usually no different relief may be granted. However, where a prayer for general relief is added to the demand of specific relief, the court may grant such other appropriate relief as may be consistent with the allegations and proofs.[29]

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[28] United Overseas Bank Of The Philippines (Formerly Westmont Bank), Petitioner, Vs. Rosemoor Mining And Development Corporation And Dra. Lourdes S. Pascual, Respondents. [G.R. No. 172651, October 2, 2007.]

[29] Casent Realty & Development Corporation, Petitioner, Vs. Premiere Development Bank, Respondent. [G.R. No. 163902. January 27, 2006.]

Thus, with the subsequent nullification of the compromise agreements by the Hon. Supreme Court in G.R. No. 130716, entitled *Chavez vs. PCGG and Gunigundo,*[30] petitioner Republic would not at all be precluded from pursuing summary judgment on forfeiture of the remaining assets and property involved in Civil Case No. 141.

In contrast, petitioner's second *Motion for Summary Judgment* dated March 7, 2000 (2000 Motion, for brevity), compared with the 1996 motion, was confined to the then US$356 million held by the Swiss Foundations of Azio-Verso-Vibur, Xandy-Wintrop, Charis-Scolari-Valamo-Spinus-Avertina, Trinidad-Rayby-Palmy, Rosalys-Aguamina and Maler, which funds were remitted to PNB in escrow to await the Philippine Court's resolution on their forfeiture or restitution. Clarification on this can be had from an excerpt of the transcript of stenographic notes of the hearing on the motion on March 24, 2000, quoted below:

"PJ:

> "The Court is of the impression and the Court is willing to be corrected, that ones the plaintiff makes a claim for summary judgment it in fact states it no longer intends to present evidence and based on this motion to render judgment, is that correct?

"SOL. BALLACILLO

> "Yes, your Honors.

"PJ

> "In other words, on the basis of pre-trial, you are saying...because if we are talking of a partial claim, then there is summary judgment, unless there is preliminary issue to the claim which is a matter of stipulation.

"SOL. BALLACILLO

> "We submit, your Honors, that there can be partial summary judgment on this matter.

[30] See Footnote No. 2

"PJ

"But in this instance, you are making summary judgment on the entire case?

"SOL. BALLACILLO

"That is with respect to the $356 million.

"PJ

"In the complaint you asked for the relief over several topics. You have $356 million, $25 million and $5 million. Now with regards to the $356 million you are asking for summary judgment?

"SOL. BALLACILLO

"Yes, your Honor.

"PJ

"And, therefore, you are telling us now, "that's it, we need not have to prove."

"SOL. BALLACILLO

"Yes, your Honors.[31]

As may be recalled, this Court granted petitioner's 2000 motion for summary judgment in a decision dated September 19, 2000. Said decision of this Court stated that said motion for summary judgment pertains to the forfeiture of the US $356 Million, as sought in said motion, and undoubtedly specific as to the amounts held in escrow by the PNB. The disposition of said forfeiture judgment reads:

"WHEREFORE, judgment is hereby rendered in favor of the Republic of the Philippines and against the respondents, declaring the Swiss deposits which were transferred to and now deposited in escrow at the Philippine National Bank in the total aggregate value equivalent to US$627,608,544.95 as of August 31, 2000 together with the increments thereof forfeited in favor of the State." (emphasis added)

[31] TSN dated March 24, 2000, pp. 13-14.

Although this Court later reversed itself in a Resolution dated January 31, 2002, the Hon. Supreme Court reinstated the partial forfeiture judgment in its Decision dated July 15, 2003 in G.R. No. 152154. Said the Supreme Court in its 2003 decision:

> "In said case, petitioner sought the declaration of the aggregate amount of US$356 million (now estimated to be more than US$658 million inclusive of interest) deposited in escrow in the PNB, as ill-gotten wealth. The funds were previously held by the following five account groups, using various foreign foundations in certain Swiss banks:
>
> (1) Azio-Verso-Vibur Foundation accounts;
> (2) Xandy-Wintrop:Charis-Scolari-Valamo-Spinus-Avertina-Foundation accounts;
> (3) Trinidad-Rayby-Palmy Foundation accounts;
> (4) Rosalys-Aguamina Foundation accounts and
> (5) Maler Foundation accounts.
>
> xxx xxx xxx
>
> "xxx petitioner, on March 10, 2000, filed another motion for summary judgment pertaining to the forfeiture of the US$356 million, based on the following grounds:
>
> xxx xxx xxx
>
> "WHEREFORE, the petition is hereby GRANTED. The assailed Resolution of the Sandiganbayan dated January 31, 2002 is SET ASIDE. The Swiss deposits which were transferred to and are now deposited in escrow at the Philippine National Bank in the estimated aggregate amount of US$658,175,373.60 as of January 31, 2002, plus interest, are hereby forfeited in favor of petitioner Republic of the Philippines."[32]

Misleading, therefore, is respondent Irene Marcos-Araneta's contention in her *Motion to Expunge* dated May 20, 2007 that the instant petition is already procedurally terminated and closed, because the Hon. Supreme Court's decision in G.R. No. 152154 became final and executory. It is crystal clear to this Court that the said decision did not write *finis* to Civil Case No. 0141.

[32] 406 SCRA 190, 209, 211, 271 and 275 (2003)

Relevantly, it has been held that a partial summary judgment is merely interlocutory and not a final judgment,[33] on a case not fully adjudicated on motion. Such nature is specifically provided for in Section 4 of Rule 34 (now *Rule 35*) of the Rules of Court, which reads:

> "SEC. 4. *Case not fully adjudicated on motion.* — If on motion under this rule, judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly."

To be sure, since the decision in G.R. No. 152154 disposed of with finality all matters and issues pertaining to the earlier mentioned five (5) Swiss Foundations (Arelma not included), and their funds and investments remitted to the PNB as escrow agent, this court finds it more appropriate to consider said summary judgment as a final one, because there is nothing left to be done by the Court [34] in respect to said foundations.

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[33] Province of Pangasinan and Colet vs. Court of Appeals Guevarra et al., 220 SCRA 731 (1993)

[34] In Investments, Inc. v. Court of Appeals, 147 SCRA 335, 339-341 (1987), it was held that: a "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence presented at the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of res judicata or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory".

In any case, petitioner's *Motion for Partial Summary Judgment* date June 14, 2004 can be considered as seeking separate judgment with respect to the Arelma assets only. Conformably with Section 5, Rule 36 of the Revised Rules of Court, the rendition of a separate judgment when more than one claim for relief is presented in an action is sanctioned in this jurisdiction:

> *"Sec. 5. Separate judgments.* — When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, **may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims.** In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor the judgment is rendered." (emphasis supplied)

Hence, it is the Court's view that the Decision dated July 15, 2003 of the Supreme Court in G.R. No. 152154 was in reality a separate judgment which had as its subject matter only petitioners' claim with respect to the US$356 million funds held in escrow with PNB, it did not include the Arelma assets nor the other remaining funds and property so that petitioner Republic is not barred from seeking their forfeiture in this pending Civil Case No. 141.

II. Forfeiture of the Arelma Assets on Summary Judgment is Justified

This Court is convinced also that there is sufficient basis to render separate summary judgment on the Arelma assets.

In light of familiar principles on *stare decisis*[35] and *law of the case*[36], We need not belabor on lengthily discussing the parties' contentions on the issues involving *propriety of rendering summary judgment*, *indispensable parties*, and *due process of law* since these are the very same issues between the same parties on the same subject matter that had been resolved with finality in the Decision dated July 15, 2003[37] and Resolution dated November 18, 2003[38] of the Hon. Supreme Court in G.R. No. 152154. This is in consonance with the rule that summary judgment, as it is aptly called an *accelerated judgment*, is ... *a device for weeding out sham claims or defenses at an early stage of the litigation.*[39]

Nonetheless, this Court finds it essential to clarify that under Section 1 of Rule 36 *there would seem to be no limitation as to the type of actions in which the remedy* (of summary judgment) *is available, except where the material facts alleged in the complaint are required to be proved.*[40] Clearly excluded are those which are imbued with public policy that ought to be decided in a full blown trial such as *annulment of marriage*[41] obviously because our fundamental law ordains marriage to be an "inviolable social

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[35] Petitioner Republic argues that the maxim – *stare decisis et non quieta movere* – invokes adherence to precedents and mandates not to unsettle things which are established. When the court has once laid dawn a principle of law as applicable to a certain state of facts it must adhere to that principle and apply to all future cases where the facts are substantially the same (*citing Tala Realty Services Corporation vs. Banco Filipino Savings and Mortgage Bank, G.R. No. 143263, 29 January 2004*).

[36] Law of the case is the term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal (City of Makati vs. Ygaña 533 SCRA 474). It applies when "an appellate court passes on a question and remands the case of the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal (Bat..es vs. Lutheran Church in the Philippines, 475 SCRA 13). The basis for this legal doctrine is "public policy, judicial orderliness and economy as well as protection of time and interests of litigants (Tabaco vs. Court of Appeals, 328 SCRA 36).

[37] Supra

[38] 416 SCRA 133 (2003). To be sure, the same issues on propriety of summary judgment and indispensable parties were extensively discussed and squarely resolved at pages 220 to 254 and pages 270 to 274 of 406 SCRA, respectively; and due process, at pages 139 to 146 of 416 SCRA.

[39] Angelica Viajar, et. al. vs. Hon. Numeriano G. Estenzo, et. al. [G.R. No. L-43882. April 30, 1979.]

[40] Sancho de Leon vs. Estanislao Faustino [G.R. No. L-15804, November 29, 1960]

[41] Ibid.

institution" that the State is mandated to preserve; and/or those where fundamental rights of the people in general to suffrage are impinge, like cases on *election protests*.[42]

This forfeiture proceeding under R.A. No. 1379 is not among those excluded under Rule 36. Said statute sets forth presumptions and procedures that are just and reasonable, especially when viewed in light of Constitutional provisions on "public office" and "accountability of public officers." Further, respondents' proprietary rights here are amply protected by the due process clause of the Constitution, which, no less than the Hon. Supreme Court *en banc*, in G.R. No. 152154, is satisfied in cases of summary judgment.

Further, respondents Marcoses are clearly misplaced in assailing this Court's authority and jurisdiction to rule on the controversy. Very basic is the rule that jurisdiction of a Court is fixed by law and, correlatively, determined from the allegations of the complaint or petition.

Indubitably, this is a Petition for Forfeiture filed pursuant to the provisions of Republic Act (R.A.) No. 1379, in conjunction with and in relation to Executive Order (E.O.) Nos. 1, 2, 14 and 14-A. The Republic alleged the respondents acquired during their incumbency both real and personal property *manifestly out of proportion* to their salaries as public officers and to their lawful income making them liable under Republic Act No. 1379.

[42] Jeremias F. Dayo vs. COMELEC, et. al. [G.R. No. 94681, July 18, 1991]

Under Presidential Decree (P.D.) No. 1606, as amended by P.D. 1629, Batas Pambansa (B.P.) Blg. 129, P.D. 1861, R.A. No. 7975 and R.A. No. 8249, as well as relevant provisions of E.O. No 1, 2, 14, 14-A, 101, and 184, the Sandiganbayan is vested with jurisdiction over forfeiture petitions instituted by the PCGG under R.A No. 1379. Section 4 of P.D. 1606 as amended, reads:

> "SEC. 4. *Jurisdiction* . – The Sandiganbayan shall exercise original jurisdiction in all cases involving:
>
> "a. Violations of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, Republic Act No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code, where one or more of the principal accused are officials occupying the following positions in the government, whether in a permanent, acting or interim capacity, at the time of the commission of the offense;
>
> xxx xxx xxx
>
> "c. Civil and criminal cases filed pursuant to and in connection with Executive Order Nos. 1, 2, 14 and 14-A."

This forfeiture proceeding cannot possibly be considered as an unlawful intrusion into the probate proceedings pending with the Regional Trial Court, in Pasig City, which, sitting with limited probate jurisdiction, would have no authority to take cognizance of, much less to rule on, issues concerning the ill-gotten character of the Arelma assets. More so, in the absence of showing that the Arelma assets had, in fact, been listed in the probate proceeding as part of the estate of the deceased former President Marcos.

As held by the Hon. Supreme Court, this forfeiture proceeding is an action *in rem*.[43] Especially so in this case because this forfeiture petition was instituted by the PCGG in pursuit of mutual legal assistance it undertook with the Swiss government. Hence, the forfeiture petition cannot be viewed as impinging upon Hawaii court's jurisdiction to enforce its US$2 billion award in favor of the Pimentel class on the Arelma funds in Merill Lynch New York. In this regard, the following pronouncements of the Hon. Supreme Court in G.R. No. 152154, are instructive. Thus:

> "xxx We take judicial notice of newspaper accounts that a certain Judge Manuel Real of the US District Court of Hawaii issued a 'global freeze order' on the Marcos assets, including the Swiss deposits. We reject this order outrightly because it is a transgression not only of the principle of territoriality in public international law but also of the jurisdiction of this Court recognized by the parties-in-interest and the Swiss government itself." [44]

This Court is further enlightened with the ensuing arguments held on March 17, 2008 before the United States Supreme Court between herein petitioner Republic and the Pimentel class, in certiorari case No 06-1204, entitled *Republic of the Philippines v. Jerry Pimentel, et al.* There, it was clarified that even if the Arelma funds are within US territory and jurisdiction -- the determination of their ill-gotten character rests with Philippine Courts, and if Philippine judgment finds that the funds are ill-gotten and forfeits the same, such forfeiture judgment could be enforced on US soil pursuant to US Congress Act No. 2467 or pursuant to treaties, like the United Nation's Convention against Corruption (UNCAC) to which the US and Philippine governments are both signatories. We quote with approval the following arguments of the US Deputy Solicitor General Edwin S. Kneedler, ESQ., speaking as *amicus curiae* on behalf of the US government, thus:

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[43] 416 SCRA 133, 146 (2003)
[44] *Ibid.*, at pages 146-147

"JUSTICE KENNEDY: I understand, but in my hypothetical case it's just as if somebody is at the North Pole and you can't serve them.

"MR. KNEEDLER: Right. But if the sovereign -- if the foreign sovereign can't be sued, I think it's all the more -- I mean it can't even be reached -- it may be all the more reason why that interest should be given weight.

"We think the sovereign interest in this case is particularly compelling for reasons that have already been stated. The Government of the Philippines claims that it owns these assets. By contrast, the Respondents are unsecured judgment creditors. The Government of the Philippines claims it owns these, these assets; under a special Philippine statute dating to 1955 that declares ill-gotten gains gained toward -- during time in office, forfeit to the government, and it has a strong interest in having that dispute resolved in its own courts.

"As we explain in our brief, the United States strongly supports that position and that interest of the United States is strongly supported by the fact that it is a party to a mutual legal assistance treaty with the Philippines. Such treaties are common in this country. There is a comparable treaty between the Philippines and the Swiss Government which led to the repatriation from Switzerland to the Philippines of a large -

"CHIEF JUSTICE ROBERTS: Mr. Kneedler, getting back to your previous point, why isn't the Philippine National -- why don't -- why doesn't the Philippine National Bank adequately represent the interest of the Republic? Under Philippine law, as I understand, any recovery by the bank in this case would be the property of the Philippines.

"MR. KNEEDLER: Because the Philippines - excuse me. The Philippine National Bank is an escrow agent. It would have a conflict of interest in representing the interests of the Government of the Philippines with respect to its prior claim to the assets as against the Marcos estate. PNB is holding these assets in escrow pending the outcome of the very litigation we are talking about in the Philippines.

"CHIEF JUSTICE ROBERTS: Well, they are - they're certainly subject to Philippine law, and I understand that there's no dispute that under Philippine law the assets would be taken from the Philippine National Bank for the benefit of the government.

"MR. KNEEDLER: That's true, but the interests of the Philippine Government in obtaining - in having its interest confirmed that it owns these assets as of the time of the wrongdoing going back to 1972, that interest would not be advanced by PNB because PNB is holding them in escrow depending -- pending the outcome of that very dispute between the Marcoses and the Philippine Government and couldn't be expected to advance in this case the Government of the Philippines' interest or claim of ownership to those assets.

"One other international agreement I wanted to mention was the Convention Against Corruption, to which the United States is a party. And also there is a statute passed by Congress, 2467, that provides for forfeiture in the United States of assets that are deemed to be forfeited pursuant to a foreign proceeding. So international agreements -

"JUSTICE GINSBURG: Doesn't that depend on there being a foreign judgment, which we don't have in this case?

"MR. KNEEDLER: We -- we don't have it yet, but that -- that reflects the important interest of having our courts stay their hands pending the outcome of the proceedings in the Philippines in which that would be determined.

"JUSTICE GINSBURG: Isn't it also a requirement that in that proceeding in the foreign nation that all claimants would have an opportunity to be heard, which is not true here?

"MR. KNEEDLER: Well, what -- what the statute requires is that the foreign proceedings be in accordance with due process and that parties claiming an -- an interest in the property be entitled to be present. Again, the claimants here do not claim an interest in the property as an owner.

"They are unsecured judgment creditors of the -- of the Marcos estate, and it -- it might be useful to think about what is true in the reverse situation, in the forfeiture proceeding brought by the United States in U.S. courts against a criminal defendant, for example. An unsecured creditor of the -- of the defendant claiming the assets is typically found not even to have standing to intervene. But if it does intervene, it would not have a claim superior to that of the United States because it wouldn't be a bona fide purchaser of the assets, and it wouldn't be without knowledge of the illegal conduct.

"JUSTICE STEVENS: Mr. Kneedler, may I ask you this question: Would the case be different if there were secured creditors rather than judgment creditors?

"MR. KNEEDLER: In -- in U.S. courts a secured creditor would get past the standing stage, but would not -- would not get past the bona fide purchaser for value without knowledge of the wrongdoing.

"In this case it has been clear since 1986, for example, that the Government of the Philippines has -- has been seeking the repatriation of Arelma and its assets.

"JUSTICE SOUTER: Well, it's been doing it on a fairly sporadic basis. If I remember the facts correctly, first it got a stay with respect to the disposition of assets, and then the stay expired and the government didn't

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do anything about it, and then the government didn't come into action again until this particular claim was raised.

"MR. KNEEDLER: Well, I think it -

"JUSTICE SOUTER: Maybe -- let me put the - sort of my response in the form of a question. In drawing or refusing to draw the conclusion of "indispensable party," do you claim that a court may or may not consider the equitable or inequitable behavior of the government?

"MR. KNEEDLER: Well, I -- perhaps in an extreme case, but I -- first of all, I think the courts of the United States should be very reluctant to deem a foreign government's conduct inequitable in the sense that you're describing it. And I think, for the reasons Mr. Rothfeld said, **repatriating these assets is an extremely complicated thing. But the Philippines Government sought these assets in -- beginning in 1986, obtained a freeze order in 1986, again in 1990. It got a final determination by the district attorney in Switzerland in 1995, confirmed by the federal court of Switzerland in 1997, that the assets could be returned. These assets, the shares, the Arelma shares, however, were not actually returned until 2000 by the Swiss Government."**[45] (emphasis supplied)

Earlier, the U.S. 9th Circuit Court of Appeals in Philippine National Bank v. United States District Court for the District of Hawaii (In re: Philippine National Bank), 397 F.3d 768 (9th Cir. 2005) reversed the order of the Hawaii District Court in compelling the Swiss banks to transfer and convey the assets to satisfy the US$1.9billion it had awarded in favor of the Pimentel Class. The U.S. Court of Appeals ruled:

"There is no question that the judgment of the Philippine Supreme Court gave effect to the public interest of the Philippine government. The forfeiture action was not a mere dispute between private parties; it was an action initiated by the Philippine government pursuant to its 'statutory mandate to recover property allegedly stolen from the treasury.' In re Estate of Ferdinand Marcos Human Rights Litig., 94 F.3d at 546. We have earlier characterized the collection efforts of the Republic to be governmental. The subject matter of the forfeture action thus qualified for treatment as an act of state.

[45] Pages 21 to 25, Annex A, Republic's Respectful Urgent Motion.

"The class plaintiffs next argue that the act of state doctrine is inapplicable because the judgment of the Philippine Supreme Court did not concern matters within its own territory. Generally, the act of state doctrine applies to official acts of foreign sovereigns 'performed within [their] own territory.' The act of the Philippine Supreme Court was not wholly external, however. Its judgment, which the district court declared invalid, was issued in the Philippines and much of its force upon the Philippine Bank arose from the fact that the Bank is Philippine corporation. It is also arguable whether the bank accounts have a specific locus in Singapore, although they apparently were carried on the books of bank branches there. See Callejo v. Bancomer, S.A. 764 F.2d 1101, 1121-25 (5th Cir. 1985) (discussing differing theories of situs of intangibles). Even if we assume for purposes of decision that the assets were located in Singapore, we conclude that this fact does not preclude treatment of the Philipppine judgment as an act of state in the extraordinary circumstances of this case. '[T]he [act of state] doctrine is to be applied pragmatically and flexibly, with reference to its underlying considerations.' Tchacosh C. v. Rockwell International Corp., 766 F.2d 1333, 1337 (9th Cir. 1985). Thus, even when an act of a foreign state affects property outside of its territory, 'the considerations underlying the act of state doctrine may still be present.' Callejo, 764 F.2d at 1121 .29. Because the Republic's 'interest in the enforcement of its laws does not end at its borders,' *id.*, the fact that the escrow funds were deposited in Singapore does not preclude the application of the act of state doctrine. The underlying governmental interest of the Republic supports treatment of the judgment as an act of state.

"It is most important to keep in mind that the Republic did not simply intrude into Singapore in exercising its forfeiture jurisdiction. The presence of the assets a freeze order by the Swiss government, enacted in anticipation of the request of the Philippine government, to preserve the Philippine government's claims against the very assets in issue today. Credit Suisse, 130 F.3d at 1346-47. Indeed, the Phillipine National Bank argues that the district court's orders violated our mandate in Credit Suisse 'directing the district court to refrain from taking any further action" with regard to assets of the Marcos estate "held or claimed to be held by the [Swiss] Banks.' Id. At 1348. The district court held that our mandate did not apply to the assets once they left the hands of the Swiss banks. We need not decide the correctness of that ruling because we conclude that, in these circumstances, the Philippine forfeiture judgment is an act of state. The Swiss government did not repudiate its freeze order, and the Swiss banks did not transfer the funds in the ordinary course of business. They delivered the funds into escrow with the approval of the Swiss courts in order to permit the very adjudication of the Philippine courts that the district court considered invalid. To permit the district court to frustrate the procedure chosen by the Swiss and Philippine governments to adjudicate the entitlement of the Republic to these assets would largely nullify the effect of our decision in Credit Suisse. In these unusual circumstances, we not view the choice of a Singapore locus for the escrow of funds to be fatal to the treatment of the Philippine Supreme Court's judgment as an act of state.

> "Four of the five Bauman factors thus favor issuance of the writ. We therefore grant the Bank's petition. The district court's order, dated February 25, 2004, to the Philippine National Bank to show cause, and its oder dated April 8, 2004, to the Bank to produce its employee, Rogel L. Zenarosa, for a deposition are vacated. **The district court is directed to refrain from any further action against the Philippine National Bank in this action or any other action involving any of the funds that were the subject of the decision of the Philippine Supreme Court dated July 15, 2003.**" (Emphasis added)

It is not disputed that the Arelma, Inc., and its assets are part of those subject of mutual legal assistance between the Philippine and Swiss Governments. Therefore, there is no reason to doubt that this Court has jurisdiction and authority to render a judgment of forfeiture on all assets and funds of Arelma, Inc, even including those funds which were invested at Merrill Lynch, New York.

This Court shall then proceed into the issue of whether or not Arelma Inc. and all its assets and funds belong to former President Ferdinand E. Marcos and members of his immediate family and whether their forfeiture is justified under R.A. No. 1379.

R.A. No. 1379, entitiled "An Act Declaring Forfeiture In Favor Of The State Any Property Found to Have Been Unlawfully Acquired By Any Public Officer Or Employee And Providing For The Proceedings Therefor," provides ... *whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired.*[46] The

[46] Section 6 of Republic Act 1379

statute states further ... *if the respondent is unable to show to the satisfaction of the court that he has lawfully acquired the property in question, then the court shall declare such property, forfeited in favor of the State, and by virtue of such judgment the property aforesaid shall become property of the State.*[47]

This Court finds and so rules that Arelma Inc. forms part of the ill-gotten assets of respondents Marcoses. This Ruling anchors on the basic allegations of the forfeiture petition, *vis-à-vis*, the answers, other pleadings and documents submitted by the parties to this Court, including pleadings they filed subsequent to Republic's 2004 motion for partial summary judgment, where the parties have not, thus far, substantially departed from their original submissions and arguments.

Thus, in light of the ruling in G.R. No. 152154, this Court holds that respondent Imelda R. Marcos' responses to the forfeiture petition's paragraph 59 and its sub-paragraphs, using in her answer the stock phrase "*lack of sufficient knowledge*" and/or "*the funds were lawfully acquired*" without stating the basis of such assertions, are ineffective denials amounting to admissions. Said stock responses belong to the same specie of what the Hon. Supreme Court described as negative pregnant in G.R. No. 152154, thus:

> "Evidently, this particular denial had the earmark of what is called in the law on pleadings as a negative pregnant, that is, a denial pregnant with the admission of the substantial facts in the pleading responded to which are not squarely denied. It was in effect an admission of the averments it was directed at. Stated otherwise, a negative pregnant is a form of negative expression which carries with it an affirmation or at least an implication of some kind favorable to the adverse party. It is a denial

[47] Id.

> pregnant with an admission of the substantial facts alleged in the pleading. Where a fact is alleged with qualifying or modifying language and the words of the allegation as so qualified or modified are literally denied, it has been held that the qualifying circumstances alone are denied while the fact itself is admitted." [48]

Consequently, respondent Imelda Marcos' insufficient denials constitute admissions of material allegations under paragraph 59 of the forfeiture petition, among which include averments that said respondent and former President Marcos organized and established Arelma, Inc., through Mr. Jose Y. Campos, for the sole purpose of maintaining an account and portfolio in Merill Lynch, New York; that Arelma Inc. was one of the corporations established to hide the Marcoses' ill-gotten wealth; that Arelma's establishment follows the same set up and pattern of one of the earlier mentioned five (5) Swiss foundations, *i.e.*, Maler foundation; that directors and nominees would be given the authority to operate the Merill Lynch account, but excluding withdrawals of cash, securities or pledging of portfolio; and that, as of May 19, 1983, the valuation by Merill Lynch of the assets of Arelma, Inc., amounted to US$3,369,975.00.

Looking further at respondent Mrs. Marcos's statements and averments in her Manifestation dated May 26, 1998, in her Constancia dated May 6, 1999; and the other Marcos heirs manifestations and statements with respect to Undertaking dated February 10, 1999, as well --- this Court finds that Arelma, Inc., being one of foundations mentioned in the forfeiture petition and subject of mutual legal assistance between the Swiss and Philippine governments, was one of those constituted Marcos ill-gotten assets. In this regard, this Court has no reason to depart from the following pronouncements and observations of the Supreme in G.R. No. 152154, *viz*:

[48] 406 SCRA, at page 236

In her Manifestation dated May 26, 1998, respondent Imelda Marcos furthermore revealed the following:

> That respondent Imelda R. Marcos owns 90% of the subject matter of the above-entitled case, being the sole beneficiary of the dollar deposits in the name of the various foundations alleged in the case;
>
> That in fact only 10% of the subject matter in the above-entitled case belongs to the estate of the late President Ferdinand E. Marcos;
>
> xxx xxx xxx

Likewise, in her Constancia dated May 6, 1999, Imelda Marcos prayed for the approval of the Compromise Agreement and the subsequent release and transfer of the $150 million to the rightful owner. She further made the following manifestations:

> *xxx xxx xxx*
>
> *2. The Republic's cause of action over the full amount is its forfeiture in favor of the government if found to be ill-gotten. On the other hand, the Marcoses defend that it is a legitimate asset. Therefore, both parties have an inchoate right of ownership over the account. If it turns out that the account is of lawful origin, the Republic may yield to the Marcoses. Conversely, the Marcoses must yield to the Republic. (italics supplied)*
>
> *xxx xxx xxx*
>
> *3. Consistent with the foregoing, and the Marcoses having committed themselves to helping the less fortunate, in the interest of peace, reconciliation and unity, defendant MADAM IMELDA ROMUALDEZ MARCOS, in firm abidance thereby, hereby affirms her agreement with the Republic for the release and transfer of the US Dollar 150 million for proper disposition, without prejudice to the final outcome of the litigation respecting the ownership of the remainder.*

Again, the above statements were indicative of Imelda's admission of the Marcoses' ownership of the Swiss deposits as in fact "the Marcoses defend that it (Swiss deposits) is a legitimate (Marcos) asset."

On the other hand, respondents Maria Imelda Marcos-Manotoc, Ferdinand Marcos, Jr. and Maria Irene Marcos-Araneta filed a motion on May 4, 1998 asking the Sandiganbayan to place the res (Swiss deposits) in custodia legis:

7. Indeed, the prevailing situation is fraught with danger! Unless the aforesaid Swiss deposits are placed in custodia legis or within the Court's protective mantle, its dissipation or misappropriation by the petitioner looms as a distinct possibility.

Such display of deep personal interest can only come from someone who believes that he has a marked and intimate right over the considerable dollar deposits. Truly, by filing said motion, the Marcos children revealed their ownership of the said deposits.

Lastly, the Undertaking entered into by the PCGG, the PNB and the Marcos foundations on February 10, 1999, confirmed the Marcoses' ownership of the Swiss bank deposits. The subject Undertaking brought to light their readiness to pay the human rights victims out of the funds held in escrow in the PNB. It stated:

WHEREAS, the Republic of the Philippines sympathizes with the plight of the human rights victims-plaintiffs in the aforementioned litigation through the Second Party, desires to assist in the satisfaction of the judgment awards of said human rights victims-plaintiffs, by releasing, assigning and or waiving US$150 million of the funds held in escrow under the Escrow Agreements dated August 14, 1995, although the Republic is not obligated to do so under final judgments of the Swiss courts dated December 10 and 19, 1997, and January 8, 1998;

WHEREAS, the Third Party is likewise willing to release, assign and/or waive all its rights and interests over said US$150 million to the aforementioned human rights victims-plaintiffs.

All told, the foregoing disquisition negates the claim of respondents that "petitioner failed to prove that they acquired or own the Swiss funds" and that "it was only by arbitrarily isolating and taking certain statements made by private respondents out of context that petitioner was able to treat these as judicial admissions." The Court is fully aware of the relevance, materiality and implications of every pleading and document submitted in this case. This Court carefully scrutinized the proofs presented by the parties. We analyzed, assessed and weighed them to ascertain if each piece of evidence rightfully qualified as an admission. Owing to the far-reaching historical and political implications of this case, we considered and examined, individually and totally, the evidence of the parties, even if it might have bordered on factual adjudication which, by authority of the rules and jurisprudence, is not usually done by this Court. There is no doubt in our mind that respondent Marcoses admitted ownership of the Swiss bank deposits.[49]

[49] 406 SCRA at pages 263 to 265

From subsequent pleadings filed by the herein respondents Marcos heirs in opposition to this partial motion for summary judgment, it cannot escape attention that they portray the very same ambivalent posture above. While disclaiming ownership of Arelma, Inc., they do not deny control and beneficial interest over its assets, funds and investments. Moreover, the Marcoses' opposition to this motion is vigorous, so manifest and so patent that they even took the cudgels for Arelma, Inc., when they raised its alleged fundamental rights to due process of law in seeking dismissal of this motion. Squarely in point here is the above pronouncement of the Supreme Court that ... *such display of deep personal interest can only come from someone who believes that he has a marked and intimate right over the considerable dollar deposits. Truly, by filing said motion, the Marcos children revealed their ownership of the said deposits.*

As correctly argued by petitioner Republic, Arelma, Inc. is one of those entities and foundations alleged in this case to have been put up by the respondents to hide ill-gotten wealth. Hence, respondent Mrs. Marcos' declarations in her Manifestation dated May 26, 1998 constitute sweeping admissions that all property and assets mentioned in the petition (including Arelma, Inc.) are owned by the Marcoses even as they ineffectually deny, without elaborating, that the same are ill-gotten.

On record are the aborted General Agreement and Supplemental Agreement which comprehend all entities and foundations the Marcoses used as conduits or repositories of ill-gotten wealth, again including Arelma, Inc. that is one subject of this forfeiture petition. In that General Agreement, dated December 28, 1993, the Marcoses stipulated that:

"4. All disclosures of assets made by the private party shall not be used as evidence by the FIRST PARTY in any criminal, civil, tax or administrative case, but shall be valid and binding against said PARTY for use by the account and/or recovering any asset. The PRIVATE PARTY withdraws any objection to the withdrawal by and/or release to the FIRST PARTY by the Swiss banks and/or Swiss authorities of the $356 Million, its accrued interests, **and/or any other account** over which the PRIVATE PARTY waives any right, interest or participation in favor of the FIRST PARTY." xxx (emphasis supplied)

Indeed, the foregoing stipulation proves respondents' claim of ownership of the Swiss foundations, Arelma Inc. included. The fact that they waive any right, interest or participation in that Swiss foundation clearly proves their ownership thereof. Their now belated disclaimer is diametrically opposed to their previous posture of waiver since they could not have waived anything which did not belong to them.

More importantly, this Court cannot ignore the following pronouncements of the Swiss Federal Supreme Court in **Federal Office for Police Affairs, Division International Legal Assistance, Appellant vs. Fondation Maler, Arelma, Inc., PA-Panama City,** (Request for Mutual Assistance B 65471/29 for the Republic of the Philippines), dated December 19, 1997 that former President Marcos was in full control of the Arelma, Inc. whose assets have been preliminarily determined to be of criminal provenance, thus:

"According to this legal practice, any parties which had received assets of criminal provenance, no matter whether in good or bad faith, disqualified as uninvolved third parties (in BGE 111 Ib 129, unprinted E.3). Such jurisdiction cannot be applied directly to art. 74a para 4 lit. c IMAC, which aims at protecting the bona fide acquirer from seizure of the criminally acquired objects or assets. However, it must be required at least that the party is in fact a "third party" and not only a fictitious, only formally independent legal entity which was created and is controlled by the defendant in order to continue to control the criminally acquired assets. In such a case, also the good faith of the respective party must be denied, as it participates in the bad faith of the defendant. In the case at hand the

> **Opponents to the Appeal are nominal owners of the bank accounts in dispute; however, they were controlled by Ferdinand Marcos who - notwithstanding the legal independence of the foundation and the corporation, respectively - had retained the power to dispose of the assets. The Opponents to the Appeal have not contested this, nor have they been able to substantiate an acquisition in good faith independent of Ferdinand Marcos."** (emphasis added)

Undeniably, the Hawaii District Court attempted to execute its almost US$2 billion award to the Pimentel Class on the Arelma funds in Merill Lynch, holding that Arelma, Inc., is a mere shell corporation of the Marcoses; while the Swiss Federal Supreme Court rejected Arelma, Inc.'s opposition to the freezing and transfer of its assets to PNB in escrow, on grounds that they have been preliminarily found to be of criminal provenance and that former President Marcos had full power and control over their disposition. We could not possibly find a way of ruling or deciding otherwise.

In the forfeiture petition, the Republic claims that based on their income tax returns, the Marcoses' reported income for the years 1965-1984 is only Php 16,408,442.00 or US$2,414,484.91. This was supposed to be the amount that was deemed admitted by respondents Marcoses as their combined lawful income. However, after carefully examining the documents on record, this Court's forfeiture decision of September 19, 2000, held that the respondents Marcoses' combined salaries and income amounted to only US$304,372.43.[50] Although this Court vacated this finding when it reversed this forfeiture judgment, the Hon. Supreme Court, in G.R. No. 152154, reinstated the same, and held:

[50] at pages 18 and 20.

> "The sum of $304,372.43 should be held as the only known lawful income of respondents since they did not file any Statement of Assets and Liabilities (SAL), as required by law, from which their net worth could be determined. Besides, under the 1935 Constitution, Ferdinand E. Marcos as President could not receive 'any other emolument from the Government or any of its subdivisions and instrumentalities.' Likewise, under the 1973 Constitution, Ferdinand E. Marcos as President could 'not receive during his tenure any other emolument from the Government or any other source.' In fact, his management of businesses, like the administration of foundations to accumulate funds, was expressly prohibited under the 1973 Constitution."[51]

Respondents failed to dispute that as of 1983, the Arelma, Inc. assets were already valued at US$3,369,975.00. Suffice it to say that said value alone of the Arelma Inc., assets already demonstrates manifest and gross disparity with the known lawful income of the Marcoses in the amount of US$304,372.43. The value of the asset is almost ten (10) times the amount of said income.[52]

By reason of respondents Marcoses' failure to prove to the satisfaction of the court their lawful acquisition of the property in question, this Court is constrained to declare such property, the Arelma, Inc., and all its assets and funds, forfeited in favor of petitioner Republic of the Philippines, pursuant to R.A. No. 1379.

[51] at pages 256 to 157.

[52] Even more so, if We consider the value of property and assets already recovered from the government, among which include those ceded by Mr. Jose Y. Campos who, on May 28 1986, turned over to the Philippine government about 200 land titles and stock certificates, then worth US$250 million, and US$12.5 million in cash which they held for and on behalf of Marcos and his family, in exchange for immunity from prosecution; Mr. Antonio Floirendo, who, in 1987, agreed to turn over to the government his title to assets and property in New York and Hawaii. These are the Lindenmere estate in Center Moriches, L.I., valued at $3.5 million to $4 million; three (3) apartments at the Olympic Towers on Fifth Avenue, then valued at between US$2 million and US$3 million, and a Makiki Heights mansion in Honolulu, then valued at US$1.5 million to US$2 million. Mr. Floreindo turned over as well, US$3.5 million in cash, in exchange for the dismissal of the cases filed against him, and lifting of the freeze order against his own assets and property; and the telecommunications shares valued at PhP25 billion which, in 2006, the Supreme Court, in G.R. No. 153459, held to be forming part of the Marcos ill-gotten wealth.

WHEREFORE, considering all the foregoing, the Motion for Partial Summary Judgment dated July 16, 2004 of petitioner is hereby **GRANTED**. Accordingly, Partial Summary Judgment is hereby rendered declaring all the assets, investments, securities, properties, shares, interests, and funds of Arelma, Inc., presently under management and/or in an account at the Meryll Lynch Asset Management, New York, U.S.A., in the estimated aggregate amount of US$3,369,975.00 as of 1983, plus all interests and all other income that accrued thereon, until the time or specific day that all money or monies are released and/or transferred to the possession of the Republic of the Philippines, are hereby forfeited in favor of petitioner Republic of the Philippines.

SO ORDERED.

NORBERTO Y. GERALDEZ
Chairman
Special Division

WE CONCUR:

EFREN N. DE LA CRUZ
Associate Justice

TERESITA V. DIAZ-BALDOS
Associate Justice

ATTESTATION

I attest that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

NORBERTO Y. GERALDEZ
Chairman, First Division

CERTIFICATION

Pursuant to Article VIII, Section 13, of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

EDILBERTO G. SANDOVAL
Acting Presiding Justice