IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons)
No. 134 of 2004/Q)

Between

WESTLB AG
(RC No.: F 04158K)

... Plaintiffs

And

1. **PHILIPPINE NATIONAL BANK**
   (Company ID No.:096-005555) (Philippines)
2. **MALER FOUNDATION**
   (ID No.: Not available)
3. **AVERTINA FOUNDATION**
   (ID No.: Not available)
4. **PALMY FOUNDATION**
   (ID No.: Not available)
5. **VIBUR FOUNDATION**
   (ID No.: Not available)
6. **AGUAMINA CORPORATION**
   (ID No.: Not available)
7. **PLAINTIFFS IN THE ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION IN CASE NO. MDL840-R IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII**
   (ID No.: Not available)
8. **ESTATE OF ROGER ROXAS**
   (ID No.: Not available)
9. **THE GOLDEN BUDHA CORPORATION**
   (ID No.: Not available)
10. **THE REPUBLIC OF THE PHILIPPINES**
    (ID No.: Not available)

... Defendants

****

3RD AFFIDAVIT OF H.E. (MRS) BELEN FULE-ANOTA

VOLUME 1 OF 2
- EXHIBITS "BFA-1" TO "BFA-6" -
(PAGES 1 TO 265)

****

Solicitors for the 10th Defendant
Mr C R Rajah, SC
Mr K H Imran
Mr M K Eusuff Ali

Messrs Tan Rajah & Cheah
80 Raffles Place
UOB Plaza One, #58-01
Singapore 048624
Tel No : 6532 2271
Fax No: 6535 2475
(Ref: CRR/IH/EA/2008/3742)

10th Defendants: H.E. (MRS) Belen Fule-Anota: 3rd: 3 JUL 2008

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Originating Summons)
No. 134 of 2004/Q)

Between

WESTLB AG
(RC No.: F 04158K)

... Plaintiffs

And

1. **PHILIPPINE NATIONAL BANK**
   (Company ID No.:096-005555)
   (Philippines)
2. **MALER FOUNDATION**
   (ID No.: Not available)
3. **AVERTINA FOUNDATION**
   (ID No.: Not available)
4. **PALMY FOUNDATION**
   (ID No.: Not available)
5. **VIBUR FOUNDATION**
   (ID No.: Not available)
6. **AGUAMINA CORPORATION**
   (ID No.: Not available)
7. **PLAINTIFFS IN THE ESTATE OF FERDINAND E. MARCOS HUMAN RIGHTS LITIGATION IN CASE NO. MDL840-R IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF HAWAII**
   (ID No.: Not available)
8. **ESTATE OF ROGER ROXAS**
   (ID No.: Not available)
9. **THE GOLDEN BUDHA CORPORATION**
   (ID No.: Not available)
10. **THE REPUBLIC OF THE PHILIPPINES**
    (ID No.: Not available)

... Defendants

AFFIDAVIT
IN SUPPORT OF SUMMONS NO. 2315 OF 2008/M

I, **H.E. (MRS) BELEN FULE-ANOTA**, (Philippine Passport No. DP004931), Ambassador Extraordinary and Plenipotentiary of the Republic of the Philippines to the Republic of Singapore, care of Embassy of the

Philippines, 20 Nassim Road, Singapore 258395, do solemnly and sincerely make oath and say as follows:

1. I am the Ambassador Extraordinary and Plenipotentiary of the Republic of the Philippines to the Republic of Singapore, and am the head of the diplomatic mission of the Republic in Singapore. I am duly authorised to make this affidavit on behalf of the Republic of the Philippines (hereinafter referred to as "the Republic").

2. Insofar as the matters stated herein are within my personal knowledge, they are true. Insofar as they are not within my personal knowledge, they are true to the best of my information and belief and are based on relevant documents pertaining to this action.

3. I make this Affidavit in support of the Republic's application in Summons No. 2315 of 2008/M ("the Application") filed herein on 28 May 2008 to continue to be a party in the interpleader proceedings herein and be at liberty to raise such claims to the subject matter of these proceedings as the Republic deems fit. The interpleader proceedings concern funds held in an escrow account in the name of Messrs Harry Elias Partnership ("HEP") for the credit of the proceedings ("the Funds").

Background to the Application

4. The Republic had previously applied in Summons No. 1048 of 2006/M to be joined as a party to the interpleader proceedings for the purposes of asserting the Republic's interest in the subject matter of the proceedings and to claim state immunity. The Honourable Court granted the Order for, inter alia, the Republic to be added as a Defendant to the proceedings on 11 May 2006.

5. Subsequently, by way of an application in Summons No. 3874 of 2006 ("the Stay Application"), the Republic applied to stay the proceedings on the basis of state immunity. This application was heard by the Honourable Justice Kan Ting Chiu who dismissed the application (See WestLB AG v Philippine National Bank [2001] 1 SLR 967).

6. The Republic appealed to the Court of Appeal against the above dismissal of its stay application. The matter was heard by the Court of Appeal on 1 August 2007 and the appeal was dismissed. (See Republic of the Philippines v Maler Foundation and others [2008] SGCA 14 ("the Appeal Decision")). For ease of reference, a copy of the Appeal Decision is annexed hereto and marked as "**BFA-1**".

7. In the above proceedings, the Republic was represented by HEP who also represented the 1st Defendant, Philippine National Bank ("PNB"). The Republic has since engaged Messrs Tan Rajah & Cheah ("TRC") to act on its behalf. TRC filed a Notice of Change of Solicitor herein on 28 May 2008.

8. The Court of Appeal in its Appeal Decision recognised that the Republic has at least an "arguable" claim to the Funds by virtue of the Order of the Supreme Court of the Philippines on 15 July 2003, which reviewed the decision of the Sandiganbayan (a special court established under the Constitution of the Philippines), and ordered that the Marcos assets be forfeited to the Republic.

9. The Court of Appeal also, inter alia, stated that:

(a) "It is only just and in conforming with the public policy of Singapore that [the Republic] should submit to the jurisdiction of our courts if it wishes to claim the Funds on the basis that it has a beneficial interest in them." (Paragraph 59 of the Appeal Decision.)

(b) PNB was not the agent of the Republic in the interpleader proceedings and the Republic did not submit to jurisdiction through PNB. (Paragraphs 63 to 65 of the Appeal Decision.)

(c) The Stay Application by the Republic was a submission by the Republic to the jurisdiction of the Singapore Courts. (Paragraphs 80 to 81 of the Appeal Decision.)

10. The Republic had earlier been allowed to participate in the proceedings for the sole purpose of asserting state immunity. The Republic's position is that it is the owner of the Funds. As stated above, the Court of Appeal recognises that the Republic has an interest in the Funds. It therefore stands to reason that the Republic should be allowed to continue to participate in the proceedings to assert its claim to the Funds and/or raise any other reliefs or claims the Republic considers appropriate.

The Republic's Interest in the Funds

11. As indicated earlier, the Republic is the owner of the Funds. The background facts as to how the Funds came to be deposited in Singapore are set out at paragraphs 4 to 9 of the Appeal Decision.

However, certain indisputable facts bear highlighting and are set out in the paragraphs below.

12. On 7 April 1986, the Republic had sought formal assistance from Switzerland to recover the assets of the former President of the Philippines, the late Ferdinand Edralin Marcos ("Mr Marcos") and Mrs Imelda Romualdez Marcos ("Mrs Marcos") which the Republic suspected were illegally amassed from the Republic during Mr Marcos' presidency. The request was made by the Philippine Solicitor General to the Swiss Federal Office for Police Matters by a letter dated 7 April 1986. The specific request as contained in the letter is as follows:

> "I. (a) To ascertain and subsequently provide my Office with information as to where and in which cantons said ill-gotten fortune, including real estate, personal property, shares, securities and deposits in bank and other financial institutions in Switzerland are located.
>
> (b) The names of the depositors and the banks involved.
>
> (c) The amounts involved.
>
> II. To take the necessary precautionary measures, such as sequestration so that the assets of the accused be frozen in order to preserve the existing values and to prevent the transfer of these assets to parts unknown beyond our reach."

Annexed hereto and marked as "**BFA-2**" is a copy of the abovementioned Request for Mutual Assistance dated 7 April 1986 (without enclosures).

13. Prior to and in anticipation of the above request on 24 March 1986, the Swiss Federal Council, the highest governing body in the Swiss Executive Branch, issued an Executive Order freezing all the Marcos' assets in Switzerland. The respective investigating magistrates of the Swiss cantons of Zurich, Fribourg and Geneva issued freezing orders

which superseded the Executive Order of the Swiss Federal Council. The investigating magistrates also allowed the transfer of banking documents to the Republic. The cantonal order of Zurich involved the 3rd, 4th and 5th Defendants. The cantonal order of Fribourg involved the 6th Defendant. The cantonal order of Geneva involved the 2nd Defendant.

14. Mr Marcos passed away on 28 September 1989. The Estate of Mr Marcos, Mrs Marcos and various Foundations (which include the 2nd to 6th Defendants) unsuccessfully challenged the Fribourg and Zurich cantonal freeze orders of the investigating magistrates. The Swiss Federal Supreme Court affirmed the Fribourg and Zurich orders with slight modifications in 2 decisions dated 21 December 1990. The decision of the investigating magistrate of Geneva was not challenged but the investigating magistrate of Geneva modified his order to conform to the above decisions of the Swiss Federal Supreme Court. In the decision involving Fribourg, after affirming the order for transfer of the banking documents, the Swiss Federal Supreme Court ordered, inter alia, as follows:

> "The remittance to the requesting State of the assets blocked in Fribourg is in principle granted, their transfer however being deferred until an executory decision in the Sandiganbayan or another Philippine tribunal legally competent in criminal matters to pronounce on their restitution to those entitled or their confiscation. **The proceeding opened to these ends must commence within a maximum of one year from the pronouncement of the present decision, failing which the seizure of the assets shall be lifted on the request of the interest[ed] parties. This proceeding shall moreover satisfy the requirements of Articles 4 and 58 [of the Swiss Constitution] and Article 6 [of the European Convention on Human Rights and Fundamental Freedoms].**
>
> **Before ordering enforcement of a judgment of restitution to those entitled or of confiscation the authorities of the requested State must examine if this judgment has been rendered as a result of a procedure meeting the requirements -- recalled above -- and if, by its contents, [it] conforms to Swiss public policy."**
> (words in square brackets and emphasis added)

The portions highlighted in bold above were the modifications made by the Swiss Federal Supreme Court. Annexed hereto and collectively marked as "**BFA-3**" are copies of the English translations of the abovementioned 2 decisions of the Swiss Federal Supreme Court dated 21 December 1990.

15. On 23 May 1991, the Office of the District Attorney of the canton of Zurich ("the Zurich District Attorney") was appointed as lead canton by the Swiss Federal Office for Police Matters.

16. The Republic initiated forfeiture proceedings against the Estate of Mr Marcos and Mrs Marcos on 17 December 1991 (i.e. within one year of the Swiss Federal Supreme Court's abovementioned decision dated 21 December 1990) and 6 criminal complaints against Mrs Marcos on 18 December 1991 before the Sandiganbayan. The Zurich District Attorney made a declaratory order on 6 February 1992 that the Republic's initiation of the abovementioned proceedings fulfilled the requirements set by the Swiss Federal Supreme Court. This decision was not appealed. Annexed hereto and marked as "**BFA-4**" is a copy of the Petition dated 17 December 1991 filed in the forfeiture proceedings before the Sandiganbayan.

17. As the proceedings in Philippines were pending, the Republic, through the Presidential Commission on Good Government of the Philippines ("PCGG") made an Additional Request for Mutual Assistance on 7 August 1995 ("the Additional Request") to the Zurich District Attorney. The Additional Request was for an early transfer of the assets to the Republic of the Philippines and into an escrow account prior to the presentation of a final and binding judgment of the Philippine Court as to the entitlement of the assets. The escrow

account was to be with PNB in the name of the relevant Foundations and to be administered by PNB in accordance with the guidelines laid down by the Zurich District Attorney and for the assets not to be disposed of other than in accordance with a final and enforceable judgment of the Sandiganbayan or another competent court or in accordance with an agreement between the Republic and the Marcoses. Annexed hereto and marked as "**BFA-5**" is a copy of the Additional Request (without enclosures).

18. On 14 August 1995, Escrow Agreements were signed between the Republic and the Trust Banking Group of PNB for various Foundations including each of the 2nd to 6th Defendants. Annexed hereto and marked as "**BFA-6**" are copies of the abovementioned Escrow Agreements dated 14 August 1995 for each of the 2nd to 6th Defendants.

19. In considering the Additional Request, the Zurich District Attorney considered, inter alia, the following:

(a) the status of the proceedings in the Philippines;

(b) the accused's (the Estate of Mr Marcos and Mrs Marcos) enjoyment of extensive rights of defence in the Philippines;

(c) the various claims being made against the assets in Switzerland, including attempts to obtain mutual assistance in civil matters from the Swiss Government in Switzerland by the Human Rights claimants (the 7th Defendant) which had been denied; and,

(d) that it would be sensible to transfer the assets "into the jurisdiction of the competent probate authorities in order to gain homogenous jurisdiction for all actions including the Estate including all execution measures" considering that the Philippines' Probate Court has jurisdiction of the probate proceedings in respect of the Estate of Mr Marcos, his last domicile being Metro Manila.

The above considerations are set out at Part III, pages 175 to 179 of the Zurich District Attorney's Order dated 21 August 1995 in respect of the 3rd to 5th Defendants exhibited under paragraph 20 below.

20. The Zurich District Attorney made an order on 21 August 1995 granting the Additional Request on condition that:

> "3. The transfer of the assets takes place in the framework of the obligations of the requesting state, represented by the Presidential Commission on Good Government, as well as of the obligations of the Philippine National Bank, set out in the escrow agreements of 14 August 1995 regarding the foundations Avertina, Palmy, and Vibur.
>
> 4. Further to the obligations already undertaken by PNB the following policy regarding the investment of the assets transferred shall be established: The assets may be invested in the money market and in securities, on the condition that the debtor or the company, respectively, has a Standard & Poors' rating of at least "AA". The purchase of options is only admissible insofar already existing securities' positions shall be secured (hedging)."

As evident from the above quoted extract, the above order covered the 3rd, 4th and 5th Defendants. Two other similar orders were made by the Zurich District Attorney which applied to the 2nd and 6th Defendants. Annexed hereto and marked as "**BFA-7**" are copies of the English translations and the respective German texts of the 3 orders made by the Zurich District Attorney on 21 August 1995.

21. The Estate of Mr Marcos, Mrs Marcos, the 2nd to 6th Defendants, the 9th Defendant and the Swiss Bank Corporation branches of Fribourg and Geneva attempted to block the transfer before the Swiss Courts. The Swiss Federal Supreme Court ruled against these claims in several similar decisions. In its decision dated 10 December 1997 in the matter of the Federal Office for Police Affairs v. Aguamina Corporation, the Swiss Federal Supreme Court confirmed the decision of the Zurich District Attorney with the following amendments:

> "a) The Republic of the Philippines guarantees to decide about the seizure or restitution of the assets to the entitled parties, respectively, in judicial proceedings which satisfy the procedural principles as established in art. 14 of the International Pact of December 16, 1966, regarding civil and political rights (UN-Pact II).
>
> b) The Republic of the Philippines informes *(sic)* the Swiss authorities about the present state and regularly about all essential developments
>
> - regarding the judicial proceedings for collecting and restitution and
>
> - regarding measures and proceedings to indemnify the victims of human rights violations under the Marcos regime (art. 2 ciph. 2 and 3 and art. 14 UN-Pact II, art. 14 and 16 para 1 of the UN-Agreement against torture and other cruel, inhuman or humiliating treatment or punishment dated December 10, 1984)"

Annexed hereto and marked as "**BFA-8**" is a copy of the English translation of the Swiss Federal Supreme Court's decision of 10 December 1997 in the matter of the Federal Office for Police Affairs v. Aguamina Corporation.

22. In order to satisfy the conditions of the Zurich District Attorney as modified by the Swiss Federal Supreme Court, PNB deposited the monies including the Funds in various banks in Singapore which had Standard & Poors' ratings of at least "AA". One of these banks was the Plaintiff, WestLB AG.

23. By a decision dated 15 July 2003 which was affirmed by its Full Bench on 18 November 2003, the Philippine Supreme Court ordered the Marcos Assets (which included the Funds) to be forfeited to the Republic. Annexed hereto and collectively marked as "**BFA-9**" are copies of the decisions of 15 July 2003 and 18 November 2003 of the Philippine Supreme Court.

24. Following a meeting between the Swiss and Philippine authorities, the Federal Office of Justice of Switzerland issued a notice on 5 August 2003 in the form of a press release titled "Philippines given access to over USD 683 million, Confiscation ruling closes Marcos case". The press release stated, inter alia, that:

> "Once the Federal Office of Justice (at the time: the Federal Office of Police Matters) had declared the guarantee given by the Philippines to be satisfactory and the Swiss Federal Supreme Court had dismissed appeals against the ruling, the assets could be transferred in 1998 to a escrow account with the Philippines National Bank in Manila. **Following the confiscation ruling of the Philippine Supreme Court on 15 July 2003, which confirmed the view of the Swiss Federal Supreme Court with regard to the criminal origin of the monies seized, the Philippine government may now dispose of the assets, worth some USD 683 million. No further decisions are due on the part of the Swiss authorities.** The Philippine parliament is currently debating legislation under which the Marcos assets would be used for land reform and to compensate the victims of human rights violations."
> (emphasis added)

Annexed hereto and marked as "**BFA-10**" is a copy of the abovementioned press release.

25. On 24 January 2008, the Embassy of Switzerland sent an Aide Memoire to the Ministry of Foreign Affairs of Singapore which stated, inter alia, as follows:

> "The transfer was made under the condition that the funds were to be held in an escrow account opened at the Philippine National Bank (PNB), whose beneficiaries were the Philippine Government and a foundation representing the Marcos family interests. The assets of this account were subject to the jurisdiction of Philippine Courts, which had the competence to determine whether they were ill-gotten and therefore belonged to the Republic of the Philippines. The Philippine Supreme Court forfeited the assets in favor of the Republic on 15 July 2003. The Swiss authorities took note of this final judgment of the Philippine Supreme Court."
>
> ...
>
> "Switzerland trusts upon the willingness of other States to acknowledge the legal property of the Republic of the Philippines on the Marcos assets in accordance with the decisions of the Swiss Federal Supreme Court to hand over these assets to the Republic of the Philippines."

Annexed hereto and marked as "**BFA-11**" is a copy of the abovementioned Aide Memoire and cover note dated 24 January 2008.

26. The above facts are by no means comprehensive. The Republic shall refer to the full facts at the appropriate juncture in these proceedings. The above facts however show that the Funds ended up in Singapore as a direct result of the acts of the Republic and the Swiss Authorities. These acts included the Republic's Additional Request to the Swiss Authorities for early transfer of the assets, the Swiss Authorities' approval of the Additional Request subject to certain conditions and the Republic's decision to place the assets with PNB as escrow agent with the approval of the Swiss Authorities. If not for the Republic's aforesaid actions, the Swiss Authorities would not have allowed the

assets to be removed from Switzerland and the assets (including the Funds) would not be in Singapore.

27. By reason of the aforesaid, I humbly pray for an order in terms of the application herein.

SWORN by the abovenamed
H.E. (MRS) BELEN FULE-ANOTA
on this the 2nd day of July 2008
at Singapore

Before me

COMMISSIONER FOR OATHS
William Oh
Kim Chong
C2008/0227
1 Apr 2008 – 31 Mar 2009
SINGAPORE

A COMMISSIONER FOR OATHS

This Affidavit is filed on behalf of the 10th Defendant.

This is the exhibit marked as **"BFA-10"** referred to in

the Affidavit of

H.E. (MRS) BELEN FULE-ANOTA

sworn before me on

this the 24 day of July 2008.

Before me,

COMMISSIONER FOR OATHS
William Oh
Kim Chong
C2008/0227
1 Apr 2008 - 31 Mar 2009
SINGAPORE

A COMMISSIONER FOR OATHS

Schweizerische Eidgenossenschaft
Confédération suisse
Confederazione Svizzera
Confederaziun svizra

Federal Office of Justice

Philippines given access to over USD 683 million

Confiscation ruling closes Marcos case

Press Release, FOJ, 05.08.2003

Zurich/Bern, 5 August 2003. Satisfaction with the positive conclusion of the Marcos case was expressed by the Swiss and Phillippine authorities at a meeting in Zurich on Tuesday. Following the confiscation ruling of the Supreme Court in Manila, the Phillippines may now dispose of the Marcos assets that were deposited in a frozen account in 1998 and have since grown to approximately USD 683 million. The only matter still outstanding is the issue of assets worth USD 10 million in the names of those associated with the Marcos regime.

The Marcos case began in 1986 when the Federal Council ordered bank accounts to be frozen. In 1990, the Swiss Federal Supreme Court approved the handover to the Phillippines of bank documents relating to the Marcos family, but ruled that the actual return of assets would be conditional upon a final and absolute judgment by a Phillippine court. In 1997, the Court established that the majority of the Marcos foundation assets were of criminal origin and permitted their transfer to a escrow account in Manila, even though no Phillippine court ruling had yet been issued.

The Swiss Federal Supreme Court set two conditions for this advance transfer, however. The Phillippines had to provide an assurance that the confiscation or repayment of the assets in question would be handled through judicial proceedings that complied with the principles of the International Civil and Political Rights Pact, and the Phillippine government also had to undertake to brief the Swiss authorities regularly on the judicial confiscation and repayment proceedings, as well as on the precautions and procedures pertaining to compensation for victims of violations of human rights under the Marcos regime.

No further decision required from Swiss authorities

Once the Federal Office of Justice (at the time: the Federal Office of Police Matters) had declared the guarantee given by the Phillippines to be satisfactory and the Swiss Federal Supreme Court had dismissed appeals against the ruling, the assets could be transferred in 1998 to a escrow account with the Phillippine National Bank in Manila. Following the confiscation ruling of the Phillippine Supreme Court on 15 July 2003, which confirmed the view of the Swiss Federal Supreme Court with regard to the criminal origin of the monies seized, the Phillippine government may now dispose of the assets, worth some USD 683 million. No further decisions are due on the part of the Swiss authorities. The Phillippine parliament is currently debating legislation under which the Marcos assets would be used for land reform and to compensate the victims of human rights violations.

USD 10 million still frozen

On Tuesday, representatives of the Office of the District Attorney IV of Canton of

Zurich, the Federal Office of Justice, and the Phillippine Presidential Commission on Good Government (PCGG) met in Zurich to discuss the outstanding legal assistance proceedings against others involved in the Marcos case, i.e. former ministers and other individuals. In 2000, bank documents were handed over to the Phillippines and a portion of the frozen assets (USD 5.5 million) transferred as an advance payment. The Office of the District Attorney IV for Canton of Zurich subsequently released assets worth approximately USD 30 million because the Phillippine authorities were unable to provide evidence that they were still pursuing criminal proceedings against the individuals concerned. Around USD 10 million remain frozen in Switzerland. The Phillippine judicial authorities will therefore have to issue a ruling on the confiscation of USD 15.5 million in the names of persons associated with the Marcos case.

USD) vorzeitig überwiesen. In der Folge gab die Bezirksanwaltschaft IV für den Kanton Zürich Vermögenswerte in Höhe von rund 30 Mio. USD frei, weil die philippinischen Behörden nicht nachweisen konnten, dass sie nach wie vor ein Strafverfahren gegen die betroffenen Personen führten. Rund 10 Mio. USD bleiben noch in der Schweiz gesperrt. Die philippinische Justiz wird demnach noch über die Einziehung von 15,5 Mio. USD der Mitbeteiligten im Fall Marcos zu entscheiden haben.

For more information

Dieter Jann, Office of the District Attorney IV for Canton of Zurich, T +41 44 248 27 82,
Federal Office of Justice, T +41 31 322 77 88, E-Mail

Last update: 05.08.2003