



REPUBLIC OF THE PHILIPPINES
Sandiganbayan
Quezon City

SECOND DIVISION

REPUBLIC OF THE PHILIPPINES,
represented by the Presidential
Commission on Good Government,
Plaintiff,

Civil Case No. 0181

-versus-

Present:
Herrera, Jr., J. *Chairperson*
Musngi, J. &
*Jacinto, J.

TRADERS ROYAL BANK, now
ROYAL TRADERS HOLDING CO.,
INC., and BANK OF COMMERCE,
Defendants.

Promulgated:

September 24, 2021 and

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DECISION

HERRERA, JR., J.:

Nature Of The Suit

This is a suit filed by the plaintiff Republic of the Philippines against defendants Traders Royal Bank (TRB), formerly Traders Commercial Bank and now known as Royal Traders Holding Co., Inc. (RTHCI), and Bank of Commerce (Bancom) for Sum of Money/Reconveyance and Enforcement of Foreign Judgment pertaining to ill-gotten wealth.

The original **Complaint**¹ dated November 24, 1997 was filed on December 9, 1997 and named only TRB as the lone defendant. However, on January 11, 2005, the plaintiff filed an **Amended Complaint**² dated January 3, 2005 and impleaded as additional defendants RTHCI and Bancom. This was because the **Articles of Incorporation** of TRB was amended on October 17, 2000 changing its name to Royal Traders Holding Co., Inc. (RTHCI). On the other hand, TRB and Bancom entered into a **Purchase and Sale Agreement** on November 11, 2001 whereby Bancom purchased assets and liabilities of TRB.

* Sitting as Special Member as per Administrative Order No. 038-2020 dated February 24, 2020.

¹ Record, Vol. 1, pp. 1-12

² Record, Vol. 2, pp. 376-466

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In the **Amended Complaint**³, the plaintiff alleges and prays that:

*1. Plaintiff is a sovereign entity represented in this complaint by the Presidential Commission on Good Government (PCGG for short), an agency of government created pursuant to Executive Order No. 1, Series of 1986, as amended, and holding office at IRC Bldg., 82 EDSA, Mandaluyong City.

a) Defendant TRADERS ROYAL BANK WAS A FORMER banking corporation duly organized under the laws of the Philippines with ITS FORMER principal office at Traders Royal Bank Tower, Roxas Blvd., Pasay City.

b) ON OCTOBER 17, 2000, THE ARTICLES OF INCORPORATION OF TRADERS ROYAL BANK WAS AMENDED.

c) THE AMENDED ARTICLES OF INCORPORATION OF TRADERS ROYAL BANK IN PART PROVIDES:

AMENDED ARTICLES OF INCORPORATION OF THE ROYAL TRADERS HOLDING CO. INC. (As Amended on October 17, 2000)

[FORMERLY: TRADERS ROYAL BANK]

KNOW ALL MEN BY THESE PRESENTS:

THAT WE, all of whom residents of the Republic of the Philippines have this day voluntarily associated ourselves together for the purpose of forming a Corporation under the Laws of the Philippines.

AND WE HEREBY CERTIFY:

FIRST. – That the name of said Corporation shall be:

ROYAL TRADERS HOLDING CO. INC.

[As amended on March 7, 1979 and amended further on October 17, 2000].

c) THE AMENDMENT CHANGED THE NAME OF TRADERS ROYAL BANK TO ROYAL TRADERS HOLDING CO. INC. WITH PRINCIPAL OFFICE ADDRESS AT TRADERS HOTEL, ROXAS BOULEVARD, PASAY CITY, MANILA, WHERE IT MAY

³ Id. pp. 376-397



BE SERVED WITH SUMMONS AND OTHER COURT PROCESSES.

d) THE PAPERS FILED WITH THE SECURITIES AND EXCHANGE COMMISSION (SEC) TO FORMALIZE THE AMENDMENT OF THE ARTICLES OF INCORPORATION OF TRADERS ROYAL BANK, WITH THE DIRECTORS' CERTIFICATE BEARING THE STAMP OF RECEIPT OF SEC ON AUGUST 7, 2002 IS ATTACHED AS ANNEX "GG" OF THIS AMENDED COMPLAINT.

3. ON NOVEMBER 11, 2001, BY VIRTUE OF A PURCHASE AND SALE AGREEMENT OF THE SAME DATE, DEFENDANT TRADERS ROYAL BANK WAS ACQUIRED/PURCHASED BY BANK OF COMMERCE, A COMMERCIAL BANK WITH PRINCIPAL OFFICE AT BANKER'S CENTRE 6764 AYALA AVENUE, MAKATI CITY, WHERE IT MAY BE SERVED WITH SUMMONS AND OTHER COURT PROCESSES.

4. THE PURCHASE AND SALE AGREEMENT DATED NOVEMBER 9, 2001 IN PART PROVIDES:

PURCHASE AND SALE AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This Agreement, made and executed on this 9th day of November, 2001 in Makati City, Philippines, by and between:

BANK OF COMMERCE, a commercial banking corporation established and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Banker's Centre, 6764 Ayala Avenue, Makati City, and represented herein by its Chairman, ANTONIO O. COJUANGCO and its President, RAUL B. DE MESA (hereinafter referred to as "BANCOMMERCE");

and

TRADERS ROYAL BANK, a commercial banking corporation established and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at TRB Tower, Roxas Boulevard, Pasay City, and represented herein by its Chairman, JULITA C. BENEDICTO and by its President and Chief Executive Officer,

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RENATO H. PERONILLA (hereinafter referred to as "TRB");

WITNESSETH: That –

WHEREAS, BANCOMMERCE and TRB are both organized for the purpose of carrying on the business of commercial banking;

WHEREAS, TRB desires to sell and BANCOMMERCE desires to purchase identified recorded assets of TRB in consideration of BANCOMMERCE assuming identified recorded liabilities of TRB including booked contingent accounts per Consolidated Statement of Condition as of August 31, 2001 subject to adjustment at the closing date as may be agreed upon by BANCOMMERCE and TRB and subject further to the approval of Bangko Sentral ng Pilipinas ("BSP") and Philippine Deposit Insurance Corporation ("PDIC");

NOW, THEREFORE, for and in consideration of the foregoing premises and of the covenants hereafter set forth, the parties hereby agree as follows:

ARTICLE I

SALE OF ASSETS

TRB hereby sells, assigns, transfers and conveys, in a manner absolute, in favor of BANCOMMERCE, to be effective on the "Effectivity Date" as defined below, identified recorded assets and properties owned by TRB, both real and personal, or in which TRB has title or interest, and which are included and deemed part of the assets and resources listed and referred to in TRB's Consolidated Statement of Condition as of August 31, 2001 in the total amount of PESOS: TEN BILLION TWO HUNDRED SIXTY TWO MILLION ONE HUNDRED FIFTY FOUR THOUSAND (P10,262,154,000.00), a copy of which is attached herewith as Annex "A", subject to adjustment at the Effectivity Date as may be agreed upon by BANCOMMERCE and TRB and subject further to the approval of BSP and PDIC.

Said assets and properties shall be inclusive of the banking goodwill of TRB, its bank premises and licenses to operate its head office and branches, its

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leasehold rights, patents, trademarks or copyrights used in connection with its business or products.

Taxes, if any, shall be for the account of TRB to be advanced by BANCOMMERCE.

ARTICLE II

CONSIDERATION: ASSUMPTION OF LIABILITIES

In consideration of the sale of identified recorded assets and properties covered by this Agreement, BANCOMMERCE shall assume identified recorded TRB's liabilities including booked contingent liabilities as listed and referred to in its Consolidated Statement of Condition as of August 31, 2001, in the total amount of PESOS: TEN BILLION FOUR HUNDRED ONE MILLION FOUR HUNDRED THIRTY SIX THOUSAND (P10,401,436,000.00), provided that the liabilities so assumed shall not include:

1. Liability for the payment of compensation, retirement pay, separation benefits and any labor benefits whatsoever arising from incidental to, or connected with employment in, or rendition of employee services to TRB, whether permanent, regular, temporary, casual or contractual.

2. Items in litigation, both actual and prospective, against TRB which include but are not limited to the following:

2.1 Claims of sugar planters for alleged undervaluation of sugar export sales course through TRB; particularly the case entitled Lopez, et al. vs. Traders Royal Bank, et al., docketed as Civil Case No. 00-11178, Bacolod Regional Trial Court, Branch 41 and Lacson, et al. vs. Benedicto, et al. originally docketed as Civil Case 95-9137, Bacolod Regional Trial Court, Branch 44 now pending appeal before the Supreme Court under S.C. G.R. No. 141508, and other related cases which might be filed in connection therewith;

2.2 Claims of the Republic of the Philippines for peso-denominated certificates supposed to have been placed by the Marcos family with TRB;

2.3 Other liabilities not included in said Consolidated Statement of Condition; and

2.4 Liabilities accruing after the effectivity date of this Agreement that were not incurred in the ordinary course of business.

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A COPY OF THE PURCHASE AND SALE AGREEMENT
IS HERETO ATTACHED AS "ANNEX HH."

5. Between the years 1974 up to 1986, the late President Ferdinand E. Marcos acquired and exercised ownership and control over defendant Traders Royal Bank through his close friend and classmate, then Ambassador Roberto S. Benedicto, which the latter exercised through layers of front corporations including the Far East Manager and Investors, Inc., (FEMII), Universal Equity Corp. (UEC), Belgot Investment and Universal Mollasses Co. (UNIMOLCO). Consequently, defendant TRADERS ROYAL BANK became one of the bank depositories of ill-gotten funds of Mr. Marcos and his associates and served as a conduit for transfer of the said funds to other places here and abroad for purposes of investment and re-investment.

First Cause of Action

6. When Mr. Marcos and his family fled the Philippines to escape the wrath of an enraged people at the height of the February 1986 People Power Revolution, he and his entourage arrived in Honolulu, Hawaii, bringing numerous crates of boxes, suitcases, attache cases and envelopes containing jewelry, Philippine and U.S. currencies, certificates of time deposits, documents and bearer certificates, and all such properties constituting ill-gotten wealth which were subsequently claimed by the new Philippine government before the U.S. Customs Service.

7. In order to settle the conflicting claims of ownership over the said properties by and between the Marcoses on the one hand and the Philippine government on the other hand, the government of the United States of America instituted an action for interpleader before the District Court of Honolulu, Hawaii. Subsequently, the Golden Buddha Corporation, successor-in-interest of the late treasure hunter Rogelio Roxas, also presented a claim to said property and instituted court action thereon, and the cases, docketed as Civil Case Nos. 86-00155 and 86-00213 were consolidated in the sala of U.S. District Judge Harold Fong.

8. On October 25, 1991, after the death of Mr. Marcos, his widow, Mrs. Imelda R. Marcos entered into several agreements with the Philippine government by virtue of which she voluntarily assigned in favor of the latter all her interest, as well as the interest of her deceased husband, in all the properties subject matter of the aforesaid interpleader case.

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9. As a consequence of said agreements and assignment, judgment was rendered on December 18, 1992 by the district court of Hawaii, adjudging plaintiff to be the owner and henceforth legally entitled to the possession, custody and control of the properties aforesaid. Copy of the judgment of the Honolulu court is attached hereto as Annex "A".

10. The aforesaid judgment is already final and executory, no appeal or motion for reconsideration having then interposed therefrom. Said judgment was rendered by a competent foreign court with jurisdiction over the parties and the subject matter, and is entitled to recognition and enforcement under Philippine laws.

11. Among the properties and papers brought into Hawaii by Mr. Marcos, and which were included in the agreement with and assignment by Mrs. Marcos, and which also form part of the res of the interpleader action and the consequent judgment of the U.S. district court, are the following banking instruments issued by defendant TRADERS ROYAL BANK in the ordinary course of its banking operations from 1974 to 1979, wherein defendant categorically and equivocally acknowledged receipt of funds obviously from Mr. Marcos, denominated in Philippine pesos and United States dollars, to wit:

a) *Peso Denominated*

Certificate No.	Date	Amount
2066	October 23, 1975	₱1,000,000
2070	December 9, 1975	400,000
2069	December 12, 1975	10,000,000
2084	April 26, 1976	5,000,000
2086	August 11, 1976	1,000,000
36763	November 26, 1976	7,100,000
38769	December 14, 1976	3,500,000
40760	December 16, 1976	15,400,000
40762	December 20, 1976	1,000,000
54779	March 25, 1977	3,000,000
55772	March 29, 1977	178,870
55771	March 29, 1977	1,000,000
62770	May 27, 1977	3,400,000
64775	June 16, 1977	1,000,000
65776	June 27, 1977	10,000,000
94786	March 17, 1978	1,000,000
112783	June 8, 1978	1,000,000
116784	August 11, 1978	1,000,000

in the aggregate amount of SIXTY-FIVE MILLION, NINE HUNDRED SEVENTY-EIGHT THOUSAND EIGHT

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HUNDRED SEVENTY PESOS (P65,978,870). Copies of the
aforementioned banking instruments are hereto attached to
form integral parts hereof as Annexes "B" to "S" inclusive.

b) Dollar Denominated

Certificate No.	Date	Amount
3705	March 04, 1975	\$2,000,000.00
17356	May 21, 1979	2,400,000.00
17373	November 14, 1979	1,035,362.90

in the aggregate amount of US\$ 5,435,362.90. Copies of the
aforementioned certificates are likewise attached hereto to
form integral parts hereof as Annexes "T", "U" and "V",
respectively.

12. The following banking instruments issued in
defendant TRADERS ROYAL BANK'S former name of
Traders Commercial Bank, are also evidences of
outstanding indebtedness, to wit:

Certificate No.	Date	Amount
1107	February 28, 1974	P8,050,000
1112	March 4, 1974	10,000,000
1121	March 18, 1974	12,000,000

which aggregate to the amount of P30,050,000. Copies of
said certificates are hereto attached to form integral parts
hereof as Annexes "W", "X" and "Y".

13. The first five certificates listed in paragraph 11 above
(Annexes "B" to "F", inclusive) are expressly payable to
bearer, namely:

Certificate No.	Date	Amount
2066	October 23, 1975	P1,000,000
2070	December 9, 1975	400,000
2069	December 12, 1975	10,000,000
2084	April 26, 1976	5,000,000
2086	August 11, 1976	1,000,000

hence they represent an unconditional promise by defendant
TRADERS ROYAL BANK to pay the value thereof to
whoever is in possession of the original certificate.

14. On February 26, 1993, after the originals of
aforementioned banking instruments were turned over to the
PCGG, and pursuant to its mandate to recover ill-gotten
wealth of the late deposed president, PCGG made

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presentment for payment of the banking instruments aforesaid to defendant TRADERS ROYAL BANK. However, Traders Royal Bank refused payment without just and valid cause. Copies of the 3 PCGG letters all dated February 26, 1993 and defendant TRADERS ROYAL BANK'S reply letters thereto dated March 1 and 11, 1993 are hereto attached to form integral parts hereof as Annexes "Z", "AA", "BB", "CC" and "DD".

As can be seen from defendant TRADERS ROYAL BANK'S reply letter (Annex "DD" hereof), defendant's basis for not honoring its own instruments is that the subject documents are allegedly non-negotiable. This excuse has no basis for the reason that whether negotiable or not, the instruments constitute evidence of indebtedness of a banking institution which is still outstanding as shown by the fact that the originals thereof are not yet cancelled, and plaintiff by virtue of the U.S. district court's judgment (Annex "A"), is a holder in due course of said instruments and is entitled to payment.

15. ON NOVEMBER 9, 2001, DEFENDANT TRADERS ROYAL BANK AND THE BANK OF COMMERCE ENTERED INTO AND EXECUTED THE PURCHASE AND SALE AGREEMENT MENTIONED IN PARAGRAPH 4 HEREOF.

16. MEANWHILE, ON OCTOBER 17, 2000, THE NAME TRADERS ROYAL BANK WAS CHANGED TO ROYAL TRADERS HOLDING CO., INC. BY VIRTUE OF THE AMENDMENT OF ITS ARTICLES OF INCORPORATION (ANNEX "GG").

17. THE AMENDMENT WAS OSTENSIBLY IN PREPARATION FOR TRADERS ROYAL BANK'S SALE TO BANK OF COMMERCE FOR THE PURPOSE OF MINGLING ITS ASSETS WITH THE LATTER BANK TO ESCAPE ITS OBLIGATIONS WITH THE GOVERNMENT UPON WHICH THIS COMPLAINT IS BASED.

18. To date, despite repeated demands, defendant TRADERS ROYAL BANK WHICH WAS RENAMED ROYAL TRADERS HOLDING CO. INC., THROUGH ITS SUCCESSOR-IN-INTEREST THE BANK OF COMMERCE failed and refused and still fails and refuses to pay plaintiff the face value of the instruments (Annexes "B" to "Y").

Second Cause of Action

19. Plaintiff repleads all of the foregoing allegations insofar as they may be material and relevant therein.

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20. In 1974, when the defendant TRADERS ROYAL BANK'S name was still Traders Commercial Bank, the Royal Bank of Canada (RBC), the biggest bank in Canada, invested in defendant TRADERS ROYAL BANK by buying equity consisting of 278,488 shares of the common stock thereof under the following stock certificates:

<u>Stock Cert. No.</u>	<u>Date</u>	<u>No. of Shares</u>
161-74 (10,000 shares each certificate)	February 6, 1974	140,000
176	February 13, 1974	9,998
185	June 28, 1974	21,425
251	December 27, 1974	42,855
282	June 30, 1975	20,000
283	June 30, 1975	20,000
284	June 30, 1975	24,210
	Total	278,488

21. In recognition of the equity participation and major investment of RBC in defendant TRADERS ROYAL BANK, the latter's name was officially changed to Traders Royal Bank to signify the emerging partnership between Traders Commercial Bank and Royal Bank of Canada. At the time of RBC's entry, defendant TRADERS ROYAL BANK was already controlled by Messrs. Marcos and Benedicto.

22. In 1976, RBC sold all its 278,488 shares of stock in defendant TRADERS ROYAL BANK to Marcos/Benedicto but ostensibly to Banque de Paris et des Pays Bays (Suisse) SA (hereafter, Banque de Paris) as represented by one Stephanie Cattai. The payment for said sale in the amount of US\$ 3,261,547.06 came from Pretorian, one of the establishments being managed for Marcos by Stephanie Cattai.

23. On August 11, 1978, the Monetary Board of the Central Bank of the Philippines approved the sale of RBC's shareholdings to Banque de Paris.

24. Notwithstanding that the purchaser on record was Banque de Paris, and as glaring proof that the purchase in favor of Banque de Paris was a mere sham, the stock and transfer book of defendant TRADERS ROYAL BANK reflected the aforesaid transfer in the names of 2 of Benedicto's front corporations, FEMII and UEC, Marcos/Benedicto the aforesaid transfer in the names of 2 of Benedicto's front corporations, FEMII and UEC, Marcos/Benedicto apparently forgetting that the transferee on record was Banque de Paris. Subsequently realizing the error, the entries of transfer to FEMII and UEC in the stock and transfer book were later caused to be cancelled

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on the ground that the sale to FEMII and UEC "did not materialize".

25. In the meantime, owing to the non-resolution of RBC's problem concerning its concessional deposit with the Central Bank in the substantial amount of \$20 million which it was required to put up when it first came in, RBC refused to surrender the original certificates of stock for cancellation by the corporate secretary of defendant Traders Royal Bank. There is no doubt, however, that RBC had already transferred its shares way back in 1976, as this was even confirmed by it in a letter dated March 26, 1986 in response to a Central Bank inquiry on the matter. Copy of RBC's aforesaid letter is hereto attached as Annex "EE". Moreover, records show that the last stockholders meeting where RBC was represented by a proxy was on April 24, 1976.

26. The foregoing facts and circumstances prompted the Monetary Board of the Central Bank to instruct its Supervision and Examination Sector (SES) to investigate the ownership of the subject shares, pursuant to which, Feliciano M. Miranda, Jr. the head of said department, conducted an investigation and made a report as contained in the memorandum attached hereto to form an integral part hereof as Annex "FF".

27. The subject shares constitute ill-gotten wealth of the late President Marcos and should be reconveyed to the plaintiff for the following reasons, among others:

a) Marcos' ownership of the shares is evident from the active participation of Stephanie Cattai during the payment of the purchase price for the sale. Cattai is a known financial manager of Mr. Marcos' investments abroad during the time material hereto, and his Marcos connection is established by overwhelming evidence in possession of PCGG.

b) The amount of the purchase price paid to RBC in the sale of the shares is manifestly disproportionate to Marcos' lawful income, hence the transfer constitutes a violation of the Anti-Graft and Corrupt Practices Act, aside from the fact that it is null and void under Article 5 in relation to Article 1409 of the Civil Code.

c) The scheme of employing Banque de Paris as ostensible transferee of the shares was intended to go around the then existing regulation of requiring the transferee to put up a 10:1 counterpart funding, and is therefore also null and void.

28. Despite repeated demands, defendant TRADERS ROYAL BANK WHICH WAS RENAMED ROYAL TRADERS

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HOLDING CO. INC., THROUGH ITS SUCCESSOR-IN-INTEREST, THE BANK OF COMMERCE, failed and refused and still fails and refuses to honor plaintiff's right over the subject shares.

COMMON ALLEGATIONS

29. As a result of DEFENDANTS' failure and refusal to settle plaintiff's claims under the foregoing causes of actions, plaintiff was constrained to institute the present action through undersigned counsel for a fee equivalent to 5% of the total amount due.

PRAYER

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against DEFENDANTS:

1. On the first cause of action

a) Ordering DEFENDANTS to pay plaintiff the face value of the peso-denominated certificates (Annexes "B" to "S") in the amount of P65,978,870, plus interest thereon at the applicable rate computed from maturity thereof until fully paid.

b) Ordering DEFENDANTS to pay plaintiff the face value of the dollar-denominated certificates (Annexes "T", "U" and "V") in the amount of US\$ 5,435,362.90 plus interest thereon at the applicable rate computed from maturity thereof until fully paid.

c) Ordering DEFENDANTS to pay plaintiff the face value of the certificates referred to in paragraph 12 in the amount of P30,050,000.00, plus interest thereon at the applicable rate computed from maturity thereof until fully paid.

II. On the second cause of action, ordering the reconveyance to plaintiff of the 278,488 shares of stock still listed in the books of DEFENDANT TRADERS ROYAL BANK in the name of Royal Bank of Canada, including the 81,510 shares pertaining thereto as subscription rights, as well as any and all other subscription rights pertaining thereto, and all dividends pertaining thereon.

III. Ordering DEFENDANTS to pay plaintiff an amount equivalent to 5% of the amount involved as and for attorney's fees."

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The Original Complaint And Related Proceedings

As earlier stated, the **Original Complaint** dated November 24, 1997 was filed on December 9, 1997. The allegations therein are substantially the same as those in the **Amended Complaint** quoted above, but sans the underscored portions and paragraphs in the latter.

On October 8, 1998, defendant TRB filed an **Answer With Counterclaim**⁴ dated October 6, 1998 and set forth therein Special and Affirmative Defenses, to wit:

*24. The Complaint states no cause of action;

25. Whatever cause or causes of action plaintiff may have or may have had is/are barred by waiver, estoppel, prescription, and/or laches;

26. The Complaint is essentially based on the assumption that the properties being claimed constitute ill-gotten wealth of the late President Marcos;

27. There is no judgment however rendered by any courts declaring the same as part of the late President Marcos' alleged ill-gotten wealth, if there be any;

28. Indeed, there has been no case filed for the recovery of the late President Marcos' alleged ill-gotten wealth, if there be any;

29. If, indeed, the properties claimed constitute part of the late President Marcos' alleged ill-gotten wealth, the suit should be brought against the estate of the late President Marcos, not the defendant who is therefore not the proper party in interest in this case;

30. The notes, certificates of time deposits, documents and bearer certificates, banking instruments, and evidences of indebtedness claimed by plaintiff have all been already paid by the defendant and are no longer outstanding;

31. The shares of stock in defendant have been validly sold to Banque de Paris but subsequently validly sold to UEC and FEMII;

32. At any rate, said shares are the subject of Civil Case No. 0034 before this Honorable Court and later, of a Compromise Agreement between the plaintiff and Roberto S. Benedicto;

⁴ Record, Vol. 1, pp. 102-109

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33. Said Compromise Agreement was approved by the Supreme Court and constitutes *res judicata* between the parties;

34. Plaintiff is now estopped from claiming recovery of said shares; it further states by way of _____;

A pre-trial was conducted. It was subsequently terminated with the issuance of a **Pre-Trial Order**⁵ dated January 8, 1999 containing a stipulation of facts between the and TRB.

The presentation of evidence thereafter ensued.

On February 12, 2004, plaintiff filed a **Request For Admission**⁶ dated February 11, 2004 which reads, *inter alia*:

"PLAINTIFF, requests defendant Traders Royal Bank to make the following admissions for purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial.

i. Defendant is in possession of its Stock and Transfer Books particularly those covering the period 1974-1985 where dispositions of stocks of any stockholder, at all material time, is indicated as well as their transferees.

ii. In 1974 Royal Bank of Canada invested in the defendant by buying equity of 278,488 shares of common stocks.

iii. The number of shares acquired by, and the date of acquisition and the stock certificate numbers issued to, Royal Bank of Canada are as follows:

No. of Shares Cert. No.	Date of Acquisition	Stock
140,000	February 13, 1974	161-174
9,998	February 13, 1974	176
21,425	June 28, 1974	185
42,855	December 27, 1974	251
20,000	June 30, 1975	282
20,000	June 30, 1975	283
24,210	June 30, 1975	284
278,488	Total Shares	

iv. In 1976 the shareholdings of Royal Bank of Canada with the defendant was sold to Banque de Paris et des

⁵ Id, pp. 167-170

⁶ Record, Vol. 2, pp. 235-238

Pays Bays (Suisse) SA, represented by Stephanie Cattui in the amount of US\$ 3,261,547.06.

v. The sale by the Royal Bank of Canada of its share holdings in the defendant to Banque de Paris was approved by the Monetary Board of the Central Bank of the Philippines on August 11, 1978.

vi. The transfer of 278,488 common shares in the name of Royal Bank of Canada to Banque de Paris was never effected by the defendant.

vii. The last stockholders meeting of the defendant where Royal Bank of Canada was duly represented was on April 24, 1976.

viii. The 278,488 common shares in the name of Royal Bank of Canada were transferred to Far East Managers and Investors, Inc. (FEMII) and Universal Equity Corp. (UEC) on February 13, 1984.

ix. The Stock and Transfer Book of the defendant reflects that the certificate of shares issued to FEMII and UEC on the 278,488 common shares in the name of Royal Bank of Canada were cancelled.



x. Despite Royal Bank of Canada's advise to the Bangko Sentral ng Pilipinas Supervision & Examination Sector on March 26, 1984 that they do not hold any Trader's Royal Bank certificates as the same has been transferred to a purchaser in 1976, the Stock and Transfer Book of defendant still reflects that the said shares are in the name of Royal Bank of Canada, to date.

Plaintiff respectfully request admission from the defendant, through its corporate secretary Atty. Dominador Santiago, on the stipulation of facts above mentioned relevant and material to the plaintiff's second cause of action."

On February 27, 2004, Atty. Dominador Santiago filed a **Reply To Request For Admission**⁷ dated February 24, 2004 stating:

"1. That while the Request for Admission dated February 11, 2004, is addressed to "Traders Royal Bank", the same requests this admission be made "through its Corporate Secretary Atty. Dominador R. Santiago", hence, the foregoing reply of the undersigned.

⁷ Id., pp. 247-250



2. That while the Request for Admission does not mention any period of time within which to respond [a requirement of section 2, Rule 26 of the Rules of Court] the undersigned is filing this reply promptly in order not to cause any delay in the proceedings of this Honorable Court;

3. That the undersigned was appointed Corporate Secretary of then Traders Royal Bank in the latter half of the year 2000, when the negotiations for the sale of all the assets of the bank in the Bank of Commerce had already entered its final stage;

4. That the aforesaid negotiations culminated in the execution of a Purchase and Sale Agreement dated September 27, 2000, pursuant to which, to the Traders Royal Bank sold and transferred to the Bank of Commerce all the former's assets and properties, both real and personal. In the words of the agreement –

“Said assets and properties shall be inclusive of the banking goodwill of Traders Royal Bank, its bank **premises** and licenses to operate its head office and branches, its leasehold rights, patents trademarks or copy rights **used in connection with its business or products.**”

5. That the delivery of the “assets and properties” from the Traders Royal Bank to the Bank of Commerce included all corporate records since such was the intent of the parties aside from the fact that no office or premises of any kind or size was left to the then Traders Royal Bank which made it a physical impossibility for the latter to retain or keep records of any kind;

6. That, as required by the Bangko Sentral ng Pilipinas, to then Traders Royal Bank changed its name to Royal Traders Holding Co., Inc. Surrendered its banking license to the Bangko Sentral ng Pilipinas and deleted the business of “banking” from the purposes of the corporation;

7. That the undersigned is unable to truthfully either admit or deny any of the matters contained in the Request for Admission and it is respectfully submitted that the preceding allegations sufficiently detail the reasons for such inability;

8. That the undersigned is not aware of any other person who could be in a position to truthfully either admit or deny any of the matters contained in the Request for Admission.”

On September 15, 2004, Bancom filed a **Manifestation / Notice Of Disclaimer**⁶ dated September 9, 2004 which reads:

1. That while indeed Bank of Commerce and Traders Royal Bank executed a Purchase and Sale Agreement, it is only for selected Assets and Liabilities of Traders Royal Bank.

2. That this Purchase and Sale of selected Assets and Liabilities of Traders Royal Bank is not a merger agreement between this two banks.

3. That this above-entitled case as informed by Bank of Commerce is not one of those mentioned in the said agreement.

4. That Traders Royal Bank continues to remain a legal entity but ceased to be a bank.

5. That while Bank of Commerce has retained Rilloraza Africa de Ocampo and Africa (RADA) Law on **some cases** and as a consequence of such retention pays a monthly retainer fee, it does not/did not in any way hired nor retained said law firm for their services in this above-entitled case.

6. That the handling of this above-entitled case remains to be the liability/responsibility of Traders Royal Bank now Royal Traders Holding, Inc.

WHEREFORE, it is most respectfully prayed that this manifestation of disclaimer be noted and be made as part of the records.⁷

At this stage of the proceedings, the plaintiff has presented the following as witnesses: 1) Julieta C. Bertuben, former PCGG Commissioner; 2) Reynaldo Guiao, former PCGG Commissioner; 3) Eleuterio Camarote, Collecting Officer of PCGG; 4) Renato Tacbad, Acting Manager II, Bangko Sentral ng Pilipinas; 5) Atty. Hector T. Rivera, Supervising Officer, Trust Department, TRB; 6) Apolonio K. Mediña, a Retired Banker; 7) Maria Lourdes O. Magno, Records Officer III, Presidential Commission on Good Government (PCGG); and 8) Feliciano L. Miranda, Director, Philippine National Bank (PNB)

Record shows that in a hearing set on July 8, 1999, the testimonies of Lourdes O. Magno and one Cecile Laforteza were dispensed with, after

⁶ Id. pp. 324-326



the parties agreed to stipulate on the authenticity of prosecution Exhibits "A" and "FF".⁹

Proceedings Following The Filing Of The Amended Complaint

As also previously pointed out, the **Amended Complaint** impleading RTHCI and Bancom as additional defendants and containing the allegations earlier quoted herein was filed on January 11, 2005. In a **Resolution**¹⁰ dated June 30, 2005, the Court admitted the **Amended Complaint**.

On February 21, 2006, Bancom filed an **Answer Ad Cautelam** dated February 17, 2006. However, on June 13, 2006, Bancom filed an **Amended Answer Ad Cautelam with Crossclaim**¹¹ dated February 17, 2006. The cross-claim is against "TRADERS ROYAL BANK, now known as ROYAL TRADERS HOLDING CO. INC." In said **Amended Answer, etc.** Bancom alleges and prays, *inter alia*:

"SPECIAL AND AFFIRMATIVE DEFENSES

11. Bancommerce repleads and incorporates the foregoing allegations.

1.1 Further, Bancommerce alleges that:

12. The Honorable Court has no jurisdiction over the subject matter of the claim.

13. The Amended Complaint states no cause of action.

On 9 November 2001, Bancommerce entered into a Purchase and Sale Agreement with Traders Royal Bank, now known as "Royal Traders Holding Co. Inc."

A copy of the said Purchase and Sale Agreement is attached as Annex "1".

13.1 More particularly, Arts. I and II of the PSA state:

"ARTICLE I

SALE OF ASSETS

TRB hereby sells, assigns, transfers and conveys, in a manner absolute, in favor of BANCOMMERCE, to

⁹ Record, Vol. 1, p. 225
¹⁰ Record, Vol. 3, pp. 81-84
¹¹ Record, Vol. 4, pp. 76-86

be effective on the "Effectivity Date" as defined below, identified recorded assets and properties owned by TRB, both real and personal, or in which TRB has title or interest, and which are included and deemed part of the assets and resources listed and referred to in TRB's Consolidated Statement of Condition as of August 31, 2001 in the total amount of PESOS: TEN BILLION TWO HUNDRED SIXTY TWO MILLION ONE HUNDRED FIFTY FOUR THOUSAND (P10,262,154,000.00), a copy of which is attached herewith as Annex "A", subject to adjustment at the Effectivity Date as may be agreed upon by BANCOMMERCE and TRB and subject further to the approval of BSP and PDIC."

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"ARTICLE II

CONSIDERATION: ASSUMPTION OF LIABILITIES

In consideration of the sale of identified recorded assets and properties covered by this Agreement, BANCOMMERCE shall assume identified recorded TRB's liabilities including booked contingent liabilities as listed and referred to in its Consolidated Statement of Condition as of August 31, 2001, in the total amount of PESOS: TEN BILLION FOUR HUNDRED ONE MILLION FOUR HUNDRED THIRTY SIX THOUSAND (P10,401,436,000.00), provided that the liabilities so assumed shall not include:

1. Liability for the payment of compensation, retirement pay, separation benefits and any labor benefits whatsoever arising from incidental to, or connected with employment in, or rendition of employee services to TRB, whether permanent, regular, temporary, casual or contractual.

2. Items in litigation, both actual and prospective, against TRB which include but are not limited to the following:

2.1 Claims of sugar planters for alleged undervaluation of sugar export sales xxx

2.2 Claims of the Republic of the Philippines for peso-denominated certificates supposed to have been placed by the Marcos family with TRB.

2.3 Other liabilities not included in said Consolidated Statement of Condition; and

2.4 Liabilities accruing after the effectivity dated of this Agreement that were not incurred in the ordinary course of business." (Underscoring Supplied).

13.2 The aforesaid PSA was approved by the Bangko Sentral ng Pilipinas (BSP) per its letter dated 8 November 2001. A copy of the said 8 November 2001, together with the "Proposed Term Sheet for the P&A of TRB by BOC" is appended hereto as Annexes "2" and "3", respectively.

13.3 In Min. No. 58 also dated 8 November 2001, the Monetary Board of the BSP also approved the said PSA. A copy of the said Min No. 58 issued by the Monetary Board is appended hereto as Annex "4".

13.4 As required by the Monetary Board, Bancommerce and Traders Royal Bank also executed a "Supplement (to the Purchase and Sale Agreement Dated 09 November 2001). A copy of the said Supplement is appended hereto as Annex "5".

13.5 On 19 September 2001, the Board of Directors of the Philippine Deposit Insurance Corporation under Resolution No. 2001-09-108 approved the grant of financial assistance to Bancommerce in consideration for the purchase of identified recorded assets and assumption of identified recorded liabilities of Traders Royal Bank as of 31 August 2001.

14. The peso denominated certificates, in the total amounts of P65,978,870.00 and P30,050,000.00 (hereinafter "Peso Certificates"); the dollar denominated certificates in the amount of \$5,435,362.90 (hereinafter the "Dollar Certificates), as well as the 278,488 shares of stock allegedly listed in the books of Traders Royal Bank in the name of Royal Bank of Canada including the alleged "81,510 shares pertaining to the said shares as subscription rights", (hereinafter "Shares") were not among the assets acquired by, or among the liabilities assumed by, Bancommerce from Traders Royal Bank.

14.1 As stated in the PSA, only the assets and liabilities which were identified and listed in Traders Royal Bank's Consolidated Statement of Condition as of August 31, 2001 form part of the assets and liabilities of Traders Royal Bank that were acquired by, and assumed by Bancommerce.

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14.2 The Peso and Dollar Certificates and the Shares were not among the assets and liabilities of Traders Royal Bank listed in its Consolidated Statement of Condition as of August 31, 2001 (hereinafter "CSOC"). A copy of the CSOC is appended hereto as Annex "6".

14.3 As matter of fact, the alleged claim of the plaintiff for peso/dollar denominated certificates supposedly placed by the Marcos family with the TRB was expressly excluded in the PSA among the liabilities assumed by Bancommerce.

14.4 It is thus plain to see that the Peso and Dollar Certificates as well as the Shares were not acquired or assumed by Bank of Commerce.

15. The allegation of plaintiff that the Articles of Incorporation of Traders Royal Bank was amended "ostensibly in preparation for Traders Royal Bank's Sale to Bank of Commerce for the purpose of mingling its assets with the latter bank to escape its obligation with the Government upon which this Complaint is based" is baseless.

15.1 Traders Royal Bank or its assets was not mingled with Bancommerce. As explained, Bancommerce purchased identified recorded assets and assumed identified recorded liabilities of Traders Royal Bank, now known as "Royal Traders Holding Co. Inc."

15.2 In fact, Art. III of the said PSA provides for the effects and consequences after the effectivity of the said agreement (PSA). Art. III of the PSA states:

ART. III

The effectivity of this Agreement shall have the following effects and consequences:

1. BANCOMMERCE and TRB shall continue to exist as separate corporations with distinct corporate personalities.
2. With the transfer of its branching licenses to BANCOMMERCE and upon surrender of its banking license to BSP, TRB shall exist as an ordinary corporation placed outside the supervisory jurisdiction of BSP. To this end, TRB shall cause the amendment of its articles and by-

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laws to delete the terms "bank" and "banking" from its corporate name and purpose.

3. There shall be no employer-employee relationship between BANCOMMERCE and the personnel and officers of TRB.

15.3 Moreover, the following, among others, show that there was no mingling of assets between Bancommerce and Traders Royal Bank now known as "Royal Traders Holding Co. Inc.":

a. Bancommerce and TRB maintained their as separate corporate personalities, distinct and independent of each other. The separate existence of Bancommerce on one hand and Traders Royal Bank now known as "Royal Traders Holding Co. Inc.", negates any mingling of assets between the two corporations.

b. Bancommerce did not absorb the employees of Traders Royal Bank now known as "Royal Traders Holding Co. Inc." The employees Traders Royal Bank were all retired by Traders Royal Bank and their retirement benefits were paid by Traders Royal Bank. Traders Royal Bank, (now known as "Royal Traders Holding Co. Inc."), not Bancommerce, settled the retirement benefits of its employees. Attached as Annex 7 is the Certification on Payment signed by the President of Traders Royal Bank, now known as "Royal Traders Holding Co. Inc."

c. Certain liabilities remain as obligations of Traders Royal Bank (now known as "Royal Traders Holding Co. Inc.") and were excluded in the PSA, as stated in Art. 11 of the PSA quoted earlier.

And by way of...

COMPULSORY COUNTERCLAIM

16. Bancommerce repleads and incorporates the foregoing allegations and further state:

17. By instituting this baseless and malicious suit, Bancommerce was compelled to engaged the services of counsel under a time billing fee arrangement at an average rate of at least PESOS TWO THOUSAND FIVE HUNDRED and 00/100 (P2,500.00) an hour for which plaintiff should be

adjudged liable, as attorney's fees and the costs of litigation, plus legal interest until fully paid.

18. Moreover, in order to deter others from instituting similar baseless and unfounded suits, and false accusations and in order to serve the public good, plaintiff should be adjudged to pay defendant the amount of at least PESOS TWO MILLION and 00/100 (P2,000,000.00) as exemplary damages, plus legal interest until fully paid.

**AS CROSS-CLAIM AGAINST TRADERS ROYAL
BANK, now known as ROYAL TRADERS
HOLDING CO. INC.**

20. Cross-claimant repleads the foregoing allegations and further states:

20.1 Cross claimant, Bancommerce, never assumed the Peso denominated certificates in the amounts of P65,978,870.00 and P30,050,000.00; the Dollar denominated certificates in the amount of \$5,435,362.90 as well as the 278,488 shares of stock allegedly listed in the books of Traders Royal Bank in the name of Royal Bank of Canada including the alleged "81,510 shares pertaining to the said shares as subscription rights" as shown in the PSA itself, the payment of the said peso and dollar denominated certificates and the reconveyance of the aforesaid shares are obligations of Traders Royal Bank, now known as Royal Traders Holding Co. Inc., and not of Bancommerce.

PRAYER

WHEREFORE, Bancommerce respectfully prays that judgment be rendered as follows:

1. Ordering the dismissal of the complaint for utter lack of merit.
2. As to the compulsory counterclaim, ordering plaintiff to pay defendant:
 - a. Exemplary damages in the amount of PESOS TWO MILLION and 00/100 (P2,000,000.00).
 - b. Attorney's fees/litigation expense in an amount that may be proven during the trial on

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the basis of the time billing fee arrangement between Bancommerce and counsel.

c. Costs of suit.

3. On the crossclaim:

xxx.”

The case was set for pre-trial anew which was terminated on August 20, 2009. The Court thereafter issued a **Pre-Trial Order** ¹² dated September 29, 2009.

The presentation of evidence continued.

On December 14, 2012, the plaintiff filed its **Formal Offer Of Evidence With Motion For Transfer Of Marking And Remark Of Exhibits** ¹³ dated December 19, 2012.

In a **Resolution** ¹⁴ dated September 25, 2013, the Court resolved to strike-off the record the testimonies of the plaintiff's witnesses Eleuterio Camarote, Reynaldo Guiano and Julieta Bertuben as against Bancom for lack of cross-examination of said witnesses by Bancom. The plaintiff's motion seeking reconsideration of the **Resolution** was denied and the subsequent petition for certiorari filed with the Supreme Court assailing said **Resolution** was dismissed with finality.

In a **Resolution** ¹⁵ dated June 5, 2017, the Court resolved to admit Exhibits "A" to "Z", "AA" to "II", "II-1", "II-2" and "II-3", and "JJ" to "MM" of the plaintiffs. However, upon a subsequent motion for partial reconsideration filed by defendant Bancom, the Court issued a **Resolution** ¹⁶ dated September 18, 2017 and ruled that the plaintiff's documentary Exhibits "A", "AA", "BB" and "L" to "Y" were not admitted against Bancom. Hence, with respect to said documentary exhibits, the plaintiff filed a **Tender of Excluded Evidence** ¹⁷ dated February 8, 2018.

The presentation of defendants' evidence ensued.

On September 9, 2019, Defendant Bancom filed its **Formal Offer Of Documentary Exhibits** ¹⁸ dated September 3, 2019. This was resolved by the Court in a **Resolution** ¹⁹ dated October 14, 2019.

¹² Record, Vol. 5, pp. 53-61

¹³ Id, pp. 278-325

¹⁴ Record, Vol. 6, pp. 336-341

¹⁵ Record, Vol. 7, pp. 363-365

¹⁶ Id, p. 424

¹⁷ Id, pp. 486-493

¹⁸ Record, Vol. 8, pp. 321-383

¹⁹ Id, p. 450

On October 28, 2020, the plaintiff presented its rebuttal evidence.

To prove its cause/s of action, the plaintiff presented as witnesses the following: 1) Julieta C. Bertuben, former PCGG Commissioner; 2) Reynaldo Guiano, former PCGG Commissioner; 3) Eleuterio Camarote, Collecting Officer of PCGG; Acting Manager II, Bangko Sentral ng Pilipinas; 4) Atty. Hector Rivera, former Supervising Trust Officer of Traders Royal Bank, 5) Apolinario Medina, former Vice-President in charge of accounting and cashier and latter President of Traders Royal Bank; 6) Ma. Lourdes Magno, Records Custodian, Presidential Commission on Good Government (PCGG); 7) Feliciano Miranda, former Deputy Governor for Bank Supervision and Examination, Central Bank; 8) Atty. Dominador Santiago, former Corporate Secretary of Traders Royal Bank; and 9) Renato Tacbad, Examiner, Central Bank.

The plaintiff also presented as evidence documents marked as Exhibits "A" to "Z", "AA" to "II", "II-1", "II-2" and "II-3" and "JJ" to "MM". As earlier stated, however, Exhibits "A", "AA", "BB" and "L" to "Y" were not admitted as against Bancom.

For its defense, defendant Bancom presented as witnesses the following: 1) Raul de Mesa, President and Chief Executive Officer (CEO), Bank of Commerce; 2) Maricel Dancel, an accountant from Rodrigo Berenguer and Guno Law Firm; 3) George Consul, Vice-President, Bank of Commerce; and Amelia Belarmino, Trust Officer, Bank of Commerce.

Bancom also presented as evidence documents marked as Exhibits "1" to "3", "4", "4-a" to "4-h", "5", "5-a" to "5-c", "6", "6-a" to "6-c", "7", "8", "8-a" to "8-k", "9", "10", "10-A", "11", "11-A" to "11-Y", "12" and "12-a" to "12-p".

SUMMARY OF TESTIMONIES OF PLAINTIFF'S WITNESSES

Reynaldo Guiao, former PCGG Commissioner in charge of sequestered corporations, assets and others, testified that he personally delivered to defendant Traders Royal Bank the letters with regard to the deposit certificates of Traders Royal Bank which the PCGG had presented for encashment.²⁰

Eleuterio Camarote, Collecting Officer of the PCGG and custodian of the originals of the bank certificates and bank drafts subject matter of the instant case, testified that, as the Collecting Officer, he had the occasion to take in his official custody bank deposits, certificates and demand drafts of Traders Royal Bank. It was then Commissioner Bertuben

²⁰ TSN of March 10, 1999, p. 2-19

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who turned over to him for safekeeping in the PCGG vault the documents subject matter of the instant case.²¹

Julieta Bertuben, former PCGG Commissioner, testified that she was sent by former PCGG Chairman Magtanggol Gunigundo to defendant Traders Royal Bank to encash several deposit certificates issued by the said bank which came from the articles and other documents from Hawaii pursuant to a judgment issued by the District Court of Hawaii dated December 18, 1992.²²

Atty. Hector Rivera, former Supervising Trust Officer of Traders Royal Bank and latter on Vice-president for the Trust Department, testified that the bank certificates of deposit and trust certificates subject matter of the instant case were all bearer instruments duly issued by Traders Royal Bank. The signatures appearing there are those of Traders Royal Bank officials Mr. Leopoldo Vergara, Atty. Severino Buan, Jr., Mr. Apolinario Medina, and him. Only limited persons have authority to sign such documents. When a client comes to the Trust Department, the client delivers to them funds or properties and then they have a trust agreement with the client. These funds or properties were deposited in a trust fund. In this case, Exhibits "B", "C", "D", "E", "F", and "J", all of these funds were placed in Account No. 20. Not all the time the funds given to the Trust Department comes in actual cash. Sometimes it comes in check. The funds which he received under Exhibits "G", "I", "K", "L", "M", "N", "O", "P", "Q", "R", and "S" were deposited under Trust Indenture No. 76128. There were times that the withdrawal is not always in favor directly of the client who made the investment. In case of Account No. 76128 and Account No. 20, the funds were given to them in the Trust Department by Mr. Dominador Pangilinan, the President of Traders Royal Bank. On July 29, 1987, the agents of the government, particularly the PCGG, together with the Central Bank examiner which was assigned with the PCGG, went to the office of Traders Royal Bank and sequestered all the documents of the Trust Department consisting of twenty-four (24) boxes. He was requested by Mr. Pangilinan to make a final accounting of Account No. 20 and Account No. 128. Afterwards, in order to comply with the request of Mr. Pangilinan, he prepared a check for the total amount of the balance and then delivered the said check to Mr. Pangilinan. Mr. Pangilinan already passed away in late 1986. In Traders Royal Bank, there is no prohibition regarding officials dealing with the bank in their private capacities. Payments were made directly to Mr. Pangilinan despite the non-presentation and failure to surrender the Certificates of Deposit.²³

Apolinario Medina, former Assistant Vice-President and President of Traders Royal Bank, testified that since 1974, Traders Royal Bank's Trust Department had used two ways for deposits to a trust fund. Under

²¹ TSN of March 10, 1999, pp. 20-30

²² TSN of August 31, 1999, pp. 3-9

²³ TSN of July 11, 2000, pp. 5-31; TSN of April 27, 2000, pp. 24-44; TSN of October 5, 2000, pp. 3-38; TSN of Feb. 27, 2001, pp. 3-17; TSN of March 19, 2001, pp. 3-18

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the first method, a deposit into the trust fund is handled as a normal bank deposit. The second method involved Atty. Hector Rivera, the vice-president in-charge of the Trust Department, or Mr. Leopoldo Vergara, the executive vice-president and later on president of Traders Royal Bank, submitting funds to Traders Royal Bank's Accounting Department which would subsequently issue a Certificate of Deposit to a particular account number as directed by Rivera or Vergara. Withdrawals from the account usually came from the instructions of Vergara. From 1974 to 1984, he saw large sums of money deposited into Traders Royal Bank through the direction of Rivera or Vergara. The deposits generally came in the form of checks and the amount reached PhP20,000,000.00. The frequency of the large deposits slowed down considerably after 1981. He received the checks from Rivera or Vergara and were deposited into confidential numbered trust accounts at Traders Royal Bank. Only Rivera or Vergara knew the identity of the account holder for the confidential trust accounts. On several occasions, Rivera or Vergara had just returned from the Malacanang Palace with a check for deposit to the secret trust account. He believed that the checks were given to Rivera or Vergara by President Ferdinand Marcos. Most of the checks given to him by Rivera or Vergara for deposit to the secret trust account were payable to "cash" or "bearer".²⁴

Ma. Lourdes Magno, Records Custodian of PCGG, testified that the subject certificate of trust deposits and bank drafts were part of the jewelries and commercial documents which were seized by the US Custodian Service from the Marcoses when they fled to Hawaii. Sometime in February 1993, she was one of the employees who were instructed to proceed to the Central Bank to do an inventory of the jewelries, other items and documents of the late President Marcos which were turned over to the Philippine government from Hawaii. Among the contents of those articles from the Marcoses were the certificates of time deposit. They were instructed to pull out those certificates and hand them to former Commissioner Juliet Bertuben.²⁵

Feliciano Miranda, former Deputy Governor for Bank Supervision and Examination of Central Bank, testified that he was the head of the department which conducted examination of the books of accounts of Traders Royal Bank. The Monetary Board, under its Resolution No. 474 dated May 27, 1988, directed him to look into the identity of the owners of 278,488 paid-in shares of stocks of Traders Royal Bank which are still registered in the name of Royal Bank of Canada as of August 31, 1987. The stock and transfer book of the Traders Royal Bank shows that in 1974 and 1975, the Royal Bank of Canada subscribed to the shares of stocks of Traders Royal Bank. However, the Royal Bank of Canada wrote a letter dated March 26, 1986 informing the Central Bank that it no longer holds any stock certificates of Traders Royal Bank and that these shares were

²⁴ TSN of April 17, 2001, pp. 2-20; TSN of April 6, 2001, pp. 3-33

²⁵ TSN of December 6, 2001, pp. 2-8; TSN of March 21, 2002, pp. 3-8; TSN of March 17, 2010, pp. 4-14; TSN of October 28, 2020, pp. 8-15

transferred to the purchaser way back 1976. During the investigation, Traders Royal Bank claimed that the sale of the shares of stock to Banque de Paris did not materialize. He ordered the said investigation. The examiners submitted to him a report on their findings which he evaluated. Per his investigator, the approved sale of the Royal Bank of Canada to Banque de Paris was not implemented because the certificates of stocks cannot be surrendered. When he requested for information and asked about these shares, Royal Bank of Canada stated that they do not have any claim to those shares of stocks anymore. In the books of Traders Royal Bank, the shares of stocks were still in the name of the Royal Bank of Canada. Nobody in the bank could say whether the said shares of stocks have been sold to anybody and therefore it affirms that nobody was claiming the shares of stocks. He also stated that since there is a law for the escheat of assets held by the banks to the Government, he suggested that the General Counsel of the Central Bank should study whether they could fall under that particular law to escheat to the Government.²⁶

Atty. Dominador Santiago, former counsel and Corporate Secretary of Traders Royal Bank, testified that the Traders Royal Bank ceased to operate as a banking institution in compliance with Central Bank regulation. They changed the corporate name from Traders Royal Bank to Royal Traders Holding Co. Inc. Per his interpretation, all assets of Traders Royal Bank were transferred to Bank of Commerce but some liabilities of the former were not transferred to the latter.²⁷

Renato Tacbad, former examiner of the Central Bank who was in charge of the examination of the books and records of Traders Royal Bank and Bank of Commerce with respect to their operation, identified the Traders Royal Bank certificates subject matter of the instant case and containing the signatures of Mr. Hector Rivera and Mr. Apolinario Medina, the Vice-President of Trust Department and the Assistant Vice-President of Accounting and Cashier of Traders Royal Bank, respectively. He testified that in 1999, Traders Royal Bank and Bank of Commerce started to have a decision for the acquisition of Traders by Bank of Commerce based on the Purchase and Sale Agreement between the two banks. The Agreement involved selected assets and liabilities of Traders Royal Bank. Traders Royal Bank is no longer an existing bank beginning August 15, 2002. The Securities and Exchange Commission approved on the said date the Amendment of the Articles of Incorporation and By-Laws of Traders Royal Bank on the deletion of the term "bank" and "banking" from its corporate name and purpose. They formed a holding company. Since the holding company is not a bank, it is not under the jurisdiction of the Central Bank hence, they did not have any information regarding the assets of the said holding company.²⁸

²⁶ TSN of May 27, 2002, pp. 2-31; TSN of August 29, 2002, pp. 3-27; TSN of August 29, 2002, pp. 2-13

²⁷ TSN of October 12, 2010, pp. 29-74

²⁸ TSN of March 24, 2000, pp. 4-17; TSN of April 27, 2000, pp. 2-23; TSN of January 25, 2011, pp. 5-10; TSN of March 15, 2011, pp. 5-28

SUMMARY OF TESTIMONIES OF DEFENDANT'S WITNESSES

Raul De Mesa, former President, CEO, Chairman of the Board of Bank of Commerce, testified that the peso-denominated certificates in the total amounts of P65,978,870.00 and P30,050,000.00, the dollar-denominated certificates in the amount of USD5,435,362.90, as well as the 278,488 shares of stock allegedly listed in the books of Traders Royal Bank in the name of Royal Bank of Canada including the alleged 81,150 shares pertaining to the said shares as subscription rights, were not among the assets acquired by, or among the liabilities assumed by, Bank of Commerce from Traders Royal Bank. The Bank of Commerce entered into a Purchase and Sale Agreement (PSA) with Traders Royal Bank, wherein it was expressly provided that the two corporations continue to exist as two separate corporations with distinct personalities and in the said PSA. The liabilities subject of this case are expressly excluded from the liabilities of Traders Royal Bank assumed by Bank of Commerce. The PSA was signed by him as the President/CEO of Bank of Commerce; Julia Benedicto, Chairman of Traders Royal Bank; Renato Peronilla, President/CEO of Traders Royal Bank; Antonio Cojuangco, Chairman of Bank of Commerce, all at the same time and in his presence. Traders Royal Bank was later known as Royal Traders Holding Co. Inc. per its Amended Articles of Incorporation. The Bank of Commerce did not absorb the employees of Traders Royal Bank. Said employees were all retired by Traders Royal Bank and their retirement benefits were settled and paid by Traders.²⁹

Marilyn Dancel, an accountant in Rodrigo Berenguer & Guno Law Firm, testified that Bancommerce engaged the services of the said law firm to protect its interest against herein plaintiff. Bancommerce incurred expenses for attorney's fees during the period from January 2002 until August 2013 in the amount of PhP705,983.88. Of the said amount, Bancommerce already paid PhP595,369.48 to Rodrigo Berenguer & Guno Law Office.³⁰

George Consul, Vice-President of Bank of Commerce, testified that he was then the Head of Branch Operations Division responsible in overseeing the overall quality of operations and support of the branches, as well as control and custody over the records of the branches of, and of Bank of Commerce. He testified that the certificates subject matter of the instant case as well as the shares of stock never entered or were recorded in the books of Bank of Commerce. He reviewed the records of Bank of Commerce, both current and historical, from 2001 upon execution of the Purchase and Sale Agreement with Traders Royal Bank. No such

²⁹ TSN of August 1, 2018, pp. 5-23
³⁰ TSN of July 16, 2018, pp. 4-18

instruments or assets as can be seen from the Certification from Bank of Commerce dated July 31, 2018.³¹

ISSUES FOR RESOLUTION

The issues for resolution in this case are as follows:

1) Whether plaintiff Republic of the Philippines is entitled to the following:

(a) Payment of the face-value plus interest of the TRB issued bank certificates in Philippine pesos and United States dollars referred to in paragraphs 11 and 12 of the Amended Complaint; and

(b) Reconveyance of the 278, 488 shares of stock listed in the books of TRB in the name of Royal Bank of Canada, including the 81,510 shares of subscription rights;

-and-

2) Whether TRB, now RTHCI, and Bancom may be held liable to the plaintiff Republic of the Philippines for the payment and reconveyance above stated.

RELEVANT EVENTS

The late former Philippine President Ferdinand E. Marcos was ousted from office during the **People Power Revolution** in February of 1986. Mr. Marcos and his family, among others, flew to Honolulu, Hawaii. They brought with them numerous crates of boxes, suitcases, bags, etc. containing jewelry, money, documents and other properties, etc.

On February 28, 1986, the late President Corazon C. Aquino issued **Executive Order No. 1** creating the Presidential Commission on Good Government (PCGG) primarily tasked to recover all ill-gotten wealth accumulated by former President Marcos, his immediate family, relatives, subordinates and closed associates, whether located in the Philippines or abroad.

The PCGG laid claim before the US Customs Service on properties constituting ill-gotten wealth brought by Mr. Marcos to Hawaii. To settle conflicting claims over said properties, the United States instituted an action for interpleader before the District Court of Honolulu, Hawaii. On December 18, 1992, the US District Court of Honolulu, Hawaii rendered Y

³¹ TSN of September 12, 2018, pp. 10-14

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judgment denominated *Findings of Facts, Conclusions of Law and Judgment.*

FINDINGS AND CONCLUSION

There is no dispute that the United States District Court for the District of Hawaii rendered the decision denominated *Findings of Fact, Conclusions Of Law and Judgment*³² dated December 18, 1992 in the consolidated Civil Case Nos. 86-00155 and 86-00213, entitled "*United States of America, Stakeholder, Versus The Republic Of The Philippines, Roger Roxas and the Golden Buddha Corporation, Counterdefendants and Claimants.*" The pertinent portions of said decision read:

"FINDINGS OF FACT

1. The res in this Fed. R. Civ. P. 22 interpleader action is that merchandise (the "Res") listed on the attached document entitled "ARTICLES ACCOMPANYING MARCOS PARTY UPON ARRIVAL HONOLULU HAWAII ON FEBRUARY 26, 1986," less all articles previously released by the Stakeholder, the United States of America, pursuant to prior orders of this court.

2. There are two remaining claimants to the Res: (1) the Republic of the Philippines and (2) Roger Roxas and the Golden Budha Corporation (the "Golden Budha Parties"). The Stakeholder is the United States of America.

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4. The Res was on board an aircraft which arrived at Honolulu International Airport on February 26, 1986. The aircraft accompanied another aircraft which had arrived earlier and had on board approximately 90 people including the former President and First Lady of the Republic of the Philippines, Ferdinand Marcos and Imelda Marcos.

5. The Marcoses were the sole claimants to possession of the Res upon its arrival. Thus, the court rejects the arguments by the Golden Budha Parties that the 90 other people arriving with the Marcoses were in possession of the Res. The court finds that the Marcoses were the possessors of the Res upon its arrival in Honolulu.

³² Exhibit "A" series

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6. The United States Customs Service held the Res for entry processing and inventory. The United States as Stakeholder filed this interpleader action after the Republic of the Philippines and the Marcoses made competing claims to ownership of the Res.

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Claim of the Republic of the Philippines

13. The Republic of the Philippines' claim to the Res is premised on the assigned rights of the Marcoses to possession and ownership of the Res.

14. On October 25, 1991, the Republic of the Philippines entered into several agreements with Imelda Marcos in order to settle the disputes between them, including the subject dispute of this interpleader action over custody of the Res. These agreements are entitled the Settlement Agreement and Partial Release of Claims; the Conveyance Grant and Bill of Sale, and the Waiver and Release of Claims and Assignment of Interest. Together they will be referred to as the "Settlement".

The Settlement purports to assign not only Imelda's interest in the Res to the Republic of the Philippines, but also any interest of the estate of Ferdinand Marcos. Imelda Marcos signed the Settlement both for herself and as "executor of the estate of Ferdinand Marcos". In exchange, the Republic of the Philippines agreed to dismiss other legal actions brought by the Republic of the Philippines against the Marcoses.

15. Imelda Marcos and the estate of Ferdinand Marcos were subsequently dismissed as parties to this interpleader action pursuant to a stipulation by all other parties, including the Golden Budha Parties.

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CONCLUSIONS OF LAW

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c. The decision is made for pragmatic reasons as well. Nearly seven years have passed since the Marcoses arrived in Honolulu and more than three years have passed since Ferdinand Marcos died.

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Allowing Imelda Marcos to act for the estate of Ferdinand Marcos is necessary to finally resolve this interpleader litigation and relieve the United States Customs Service of the Res. The court finds that when the Res arrived in Hawaii on February 26, 1986, both President and Mrs. Marcos were the recognized joint possessors. They were also the joint claimants to the Res. When President Marcos died, Imelda Marcos became the surviving joint possessor and claimant with cognizable surviving duties and rights. Thus, the court finds as a matter of law that when Imelda Marcos assigned her interest, as well as that of the estate of Ferdinand Marcos, to the Republic of the Philippines pursuant to the Settlement she had both the right and authority to do so.

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5. The Settlement assigned the interests of Imelda Marcos and the estate of Ferdinand Marcos in the Res to the Republic of the Philippines.

6. Therefore the court finds, as a matter of fact and of law, that the Republic of the Philippines is entitled to possession, custody, and control of the Res. The Stakeholder, the United States of America, is hereby discharged from liability to any of the parties herein by reason of its custodial status over the Res since February 1986 upon delivery of the Res to the Republic of the Philippines in accordance with this order.

7. To the extent that any of these Conclusions of Law constitute findings of fact, they shall be so considered and construed.

IT IS SO ORDERED."

A) TRB Liable To Plaintiff
Republic Of The Philippines

The United States Government has turned over to the Philippine Government jewelry, documents and other items brought by the late President Marcos to Hawaii. Among the properties and papers which form part of the "Res" referred to in the decision of the US District Court of Hawaii are the banking documents where TRB effectively acknowledged receipt of funds from President Marcos, denominated in Philippine pesos and United States dollars, as follows:

a) Peso Denominated ³³

<u>Certificate No.</u>	<u>Date</u>	<u>Amount</u>
2066	October 23, 1975	₱1,000,000
2070	December 9, 1975	400,000
2069	December 12, 1975	10,000,000
2084	April 26, 1976	5,000,000
2086	August 11, 1976	1,000,000
36763	November 26, 1976	7,100,000
38769	December 14, 1976	3,500,000
40760	December 16, 1976	15,400,000
40762	December 20, 1976	1,000,000
54779	March 25, 1977	3,000,000
55772	March 29, 1977	178,870
55771	March 29, 1977	1,000,000
62770	May 27, 1977	3,400,000
64775	June 16, 1977	1,000,000
65776	June 27, 1977	10,000,000
94786	March 17, 1978	1,000,000
112783	June 8, 1978	1,000,000
116784	August 11, 1978	1,000,000
TOTAL:		₱65,978,870.00

b) Dollar Denominated ³⁴

<u>Certificate No.</u>	<u>Date</u>	<u>Amount</u>
3705	March 04, 1975	\$2,000,000.00
17356	May 21, 1979	2,400,000.00
17373	November 14, 1979	1,035,362.90
TOTAL:		US\$ 5,435,362.90

c) Peso Denominated ³⁵
 (Issued by Traders Commercial Bank)

<u>Certificate No.</u>	<u>Date</u>	<u>Amount</u>
1107	February 28, 1974	₱8,050,000
1112	March 4, 1974	10,000,000
1121	March 18, 1974	12,000,000
TOTAL:		₱30,050,000.00

³³ Exhibits "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R" and "S"

³⁴ Exhibits "T", "U" and "V"

³⁵ Exhibits "W", "X" and "Y"

The judgment of the United States District Court of Hawaii in the consolidated Civil Case Nos. 86-00155 and 86-00213 upheld the Settlement executed by Imelda Marcos as well as her right and authority when she "assigned her interest, as well as that of the estate of Ferdinand Marcos, to the Republic of the Philippines" over the Res which includes the TRB issued bank certificates mentioned above. Said judgment entitled the plaintiff Republic of the Philippines to the payment of the face value of the above-mentioned peso-denominated and dollar-denominated bank certificates issued by TRB.

The aforementioned judgment of the United States District Court of Hawaii may be enforced here in the Philippines, pursuant to **Section 48, Rule 39 of the Rules of Court on Execution of Judgment, etc.** which reads:

"SEC. 48. Effect of foreign judgments. — The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:

(a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;

(b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title;

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact."

In *Mijares v. Hon. Santiago Ranada, et al.*³⁶, the Supreme Court explained:

"xxx. in an action to enforce a foreign judgment, **the matter left for proof is the foreign judgment itself, and not the facts from which it prescinds.**

As stated in Section 48, Rule 39, the actionable issues are generally restricted to a review of jurisdiction of the foreign court, the service of personal notice, collusion, fraud, or mistake of fact or law. **The limitations on review is in consonance with a strong and pervasive policy in all legal systems to limit repetitive litigation on claims and issues.**

Otherwise known as the policy of preclusion, it seeks to protect party expectations resulting from previous litigation,

³⁶ G.R. No. 139325, April 12, 2005

to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes, and – in a larger sense – to promote what Lord Coke in the Ferrer's Case of 1599 stated to be the goal of all law: "rest and quietness."

If every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering immaterial the previously concluded litigation. (Emphasis and underscoring supplied)

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Aside from the widespread practice, it is indubitable that the procedure for recognition and enforcement is embodied in the rules of law, whether statutory or jurisprudential, adopted in various foreign jurisdictions. In the Philippines, this is evidenced primarily by Section 48, Rule 39 of the Rules of Court which has existed in its current form since the early 1900s. **Certainly, the Philippine legal system has long ago accepted into its jurisprudence and procedural rules the viability of an action for enforcement of foreign judgment, as well as the requisites for such valid enforcement, as derived from internationally accepted doctrines.** Again, there may be distinctions as to the rules adopted by each particular state, but they all prescind from the premise that there is a rule of law obliging states to allow for, however generally, the recognition and enforcement of a foreign judgment. The bare principle, to our mind, has attained the status of *opinio juris* in international practice.

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Thus, relative to the enforcement of foreign judgments in the Philippines, it emerges that there is a general right recognized within our body of laws, and affirmed by the Constitution, to seek recognition and enforcement of foreign judgments, as well as a right to defend against such enforcement on the grounds of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact." (Emphasis supplied)

Plaintiff's witness Ma. Lourdes O. Magno, Records Officer of the Letters and Records Division of the PCGG, testified that the originals of the bank documents turned over to the PCGG are in her custody.

She declared:

"Q And Ms. Magno will you tell this Honorable Court what were your positions or was your position or designation that

you have taken as part of the PCGG while you were at the PCGG?

A I am with the Letters and Records Division as Records Officer. I took over as Officer-in-charge of the Library and Records Division in 1992.

Q And currently your position is?

A Up to the present as Officer in charge of the Library and Records Division up to the present.

Q Basically, what is your job description?

A Over all in charge of the day to day operation of Letter and Records Division and I have custody of all the records and files that were turned over to the Letter for safekeeping. I assist the lawyers doing the research of the cases that they were handling, I issued certification as to the documents which are researching in line with the cases they were handling with the PCGG.

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Atty. Sanchez:

The photocopy is a faithful reproduction of the original of the document Findings of Facts, Conclusions of Law and Judgment promulgated by the Honolulu Court of the United States of Hawaii consisting of 12 pages.

Solicitor de Leon:

May we request that the same be marked as Exhibit A and be sub-marked the succeeding pages as Exhibit A-1, etc.

Now, your Honor, I am presenting to the witness set of photocopy Traders Royal Bank Certificate namely: Traders Royal Bank Certificate 2066 dated October 23, 1975 amounting to One Thousand Pesos, Traders Royal Bank Certificate No. 2070 dated December 9, 1975 amounting to Four Hundred thousand Pesos, Traders Royal Bank Certificate 2069 dated September 12, 1975 amounting to Ten Million Pesos, Traders Royal Bank Certificate No. 2084 dated April 26, 1976 amounting to Five Million Pesos, Traders Royal Bank Certificate 2086 dated August 11, 1976 amounting to One Million Pesos, Traders Royal Bank Certificate No. 36763 dated November 26, 1976 amounting to Seven Million One Hundred Thousand Pesos, Traders Royal Bank Certificate 38769 dated December 14, 1976 amounting to Three Million Five hundred thousand Pesos,

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Traders Royal Bank Certificate No. 40760 dated December 16, 1976 amounting to Fifteen Million Four Hundred thousand Pesos, Traders Royal Bank Certificate 40762 dated December 20, 1976 amounting to One Million Pesos, Traders Royal Bank Certificate No. 54779 dated March 27, 1977 amounting to Three Million Pesos, Traders Royal Bank Certificate 55772 dated March 29, 1977 amounting to One Hundred Seventy Eight Thousand Eight Hundred and Seventy Pesos, Traders Royal Bank Certificate No. 55771 dated March 29, 1977 amounting to One Million Pesos, Traders Royal Bank Certificate 62770 dated May 27, 1977 amounting to Three Million Four Hundred Thousand Pesos, Traders Royal Bank Certificate No. 64775 dated June 6, 1977 amounting to One Million Pesos, Traders Royal Bank Certificate 65770 dated June 27, 1977 amounting to Ten Million Pesos, Traders Royal Bank Banking Certificate No. 94786 dated March 17, 1977 amounting to One Million Pesos, Traders Royal Bank Certificate 112783 dated June 8, 1978 amounting to One Million Pesos, Traders Royal Bank Certificate No. 16784 dated August 11, 1978 amounting to One Million Pesos, Traders Royal Bank Certificate of Deposit No. 3705 dated March 4, 1975 amounting to Two Million U.S. dollars, Traders Royal Bank Certificate of Deposit No. 17356 dated May 21, 1979 amounting to Two Million Four Hundred U.S. dollar, Traders Royal Bank Certificate of Deposit No. 17373 dated November 14, 1979 amounting to One Million Thirty Five Thousand three hundred sixty two and nineteen centavos U.S. Dollars, Traders Royal Bank Banking Certificate No. 1107 dated February 28, 1974 amounting to Eight Million Fifty thousand Pesos, Traders Royal Bank Banking Certificate 11112 dated March 4, 1974 amounting to Ten Million Pesos, and lastly Traders Royal Bank Banking Certificate No. 11121 dated March 19, 1974 amounting to Twelve thousand Pesos. May I ask the witness to go through these certificates?

A Yes sir I am familiar with all these documents because I have with me the original." ³⁷

In February of 1993, demand letters ³⁸ were sent by the PCGG, through then Chairman Magtanggol Gunigundo, to TRB for the payment of the amounts covered by the bank certificates to the National Treasurer of the Philippines or the Bureau of Treasury, but TRB refused to do so.

In its **Answer With Counterclaim**, TRB simply assert that:

"30. The notes, certificates of time deposits, documents and bearer certificates, banking instruments, and evidences

³⁷ TSN of March 17, 2010, pp. 5-10
³⁸ Exhibits "Z", "AA" and "BB"

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of indebtedness claimed by plaintiff have all been already paid by the defendant and are no longer outstanding." 39

The Court finds the above assertion totally untenable. The bank certificates which were brought by the Marcoses to Hawaii, which are included as part of the Res in the interpleader case decided by the US District Court of Hawaii and now sought to be enforced for payment to plaintiff, have not been surrendered to TRB. This negates TRB's claim that payments have been made.

Atty. Hector Rivera, formerly of the Trust Department of TRB, gave testimony that he made payments to Dominador Pangilinan, former President of TRB, without requiring the surrender of the certificates of deposit.

Atty. Rivera testified:

"Q: What happens to the Certificates of Trust Deposits when they are presented for payment? Are they returned to the bank?

A: In some cases, they are returned to the bank. In some other cases, they are not returned.

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Q: So, how would you know if the person carrying these bearer instruments can withdraw the funds from your bank?

A: As I said, we deal only with the persons who give us these trust funds. And since in this case it was Mr. Pangilinan who gave it to us and who said that it should be issued to bearer, we only would honor the request of Mr. Pangilinan.

Q: Was Mr. Dominador Pangilinan the president of Traders Royal Bank at that time?

A: Yes, ma'am. At that time, when these certificates were issued, he was our president.

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JUSTICE ESTRADA:

I would like to know what is the procedure in claiming or getting the amount that the Certificates of Deposits or

* Record, Vol. 1, p. 107

Promissory Notes represent from the bank. What I know is that when the bearer of the Certificates of Deposits whose name appears in the Certificate of Deposit presents it to the bank, the bank will pay the amount plus the interest earned which is indicated in the Certificate of Deposit, provided that the bearer is the owner of the Certificate of Deposit which is indicated in the certificate itself?

A: Yes, Your Honor, that's correct.

Q: So that is the procedure. Now, is it also the procedure that when the amount is turned over to the bearer or the owner of the Certificate of Deposit, the Certificate is surrendered to the bank?

A: That's right, Your Honor.

Q: And the bank would pay the amount indicated in the Certificate unless a Certificate of Deposit is also surrendered to the bank?

A: Yes, that's correct, Your Honor.

Q: Because I—correct me if I'm wrong, because I think you answered to one of the questions of the government lawyer that sometimes you don't require the surrender of the Certificate of Deposit. Why did you say that when you just told me that the Certificate of Deposit should be surrendered to the bank?

A: Your Honor, in some instances our president, Mr. Pangilinan, tells us, "I am going to deliver to you the Certificates" and then he sometimes does not do that to us. Since we are just minor officials of the bank, we cannot demand these things from our president, Your Honor.

Q: You mean to say if the president of the bank is the one concerned, you do not require the normal procedure to be followed?

A: Yes, Your Honor, since he is our president.

Q: Why is it? I thought you have an equal treatment with regard to anybody dealing with the bank regardless of whether he is an official or not?

A: That's correct, Your Honor, but in this case subject matter of our discussion is where funds coming from Mr. Pangilinan. And so we always do not have any questions if these things come from the president. So, since he is the president of the bank, he would finally decide on whatever it is regarding that account that he has with us.

Q: I have another question. You mean to say—I have not seen the Certificates of Deposits—are they in the name of Mr. Pangilinan?

A: No, Your Honor.

Q: Whose name appears in the Certificates of Deposits?

SOL. ESCUTIN:

They are all bearer instruments, Your Honor, payable upon demand."

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"JUSTICE NAZARIO:

And Mr. Pangilinan was then what?

A: He was then president of Traders Royal Bank, Your Honor.

JUSTICE ESTRADA:

How come he has the Certificates of Deposits when he is the president of the bank? You deal with third persons aside from the officials of the bank, how come the Certificates of Deposits are in his possession?

A: Because the funds that we receive, Your Honor, come from Mr. Pangilinan.

Q: Not as an officer of the bank but in his personal capacity?

A: Your Honor, I really do not know the nature of the funds that he had. I never questioned Mr. Pangilinan on whose funds are these.

Q: That's why. You do not know the source of the funds but then Mr. Pangilinan has in his possession this Certificate of Deposit not as an official of the bank but as a private persons aside from being an official bank?

A: Yes, Your Honor.

JUSTICE NAZARIO:

You mean aside from being an official of the bank, he deals with the bank privately?

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A: Yes, Your Honor.

Q: Did he order you, did he ask you or did he request you to pay the Certificates of Deposits? How did he ask you to act on these Certificates of Deposits?

A: Well, he calls us up in the office and tells us to prepare either a check or give him cash for the payment of these Certificates of Deposits.

Q: In his office?

A: Yes, Your Honor.⁴⁰

Atty. Rivera's testimony vis-a-vis the alleged payments is unreliable. Not a single surrendered certificate of deposit was presented by Mr. Rivera to support the claim of payment.

In *Far East Bank and Trust Company v. Estrella Querimit*⁴¹, the Supreme Court explained:

*A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. The principles governing other types of bank deposits are applicable to certificates of deposit, as are the rules governing promissory notes when they contain an unconditional promise to pay a sum certain of money absolutely. The principle that payment, in order to discharge a debt, must be made to someone authorized to receive it is applicable to the payment of certificates of deposit. Thus, a bank will be protected in making payment to the holder of a certificate indorsed by the payee, unless it has notice of the invalidity of the indorsement or the holder's want of title. **A bank acts at its peril when it pays deposits evidenced by a certificate of deposit, without its production and surrender after proper indorsement. As a rule, one who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove payment. The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.**

⁴⁰ TSN of March 19, 2001, pp. 4-5, 11-15

⁴¹ 373 SCRA 665

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In this case, the certificates of deposit were clearly marked payable to "bearer," which means, to "[t]he person in possession of an instrument, document of title or security payable to bearer or indorsed in blank." **Petitioner should not have paid respondent's husband or any third party without requiring the surrender of the certificates of deposit.**

Petitioner claims that it did not demand the surrender of the subject certificates of deposit since respondent's husband, Dominador Quermit, was one of the bank's senior managers. But even long after respondent's husband had allegedly been paid respondent's deposit and before his retirement from service, the FEBTC never required him to deliver the certificates of deposit in question. Moreover, the accommodation given to respondent's husband was made in violation of the bank's policies and procedures.

Petitioner FEBTC thus failed to exercise that degree of diligence required by the nature of its business. Because the business of banks is impressed with public interest, the degree of diligence required of banks is more than that of a good father of the family or of an ordinary business firm. The fiduciary nature of their relationship with their depositors requires them to treat the accounts of their clients with the highest degree of care. A bank is under obligation to treat the accounts of its depositors with meticulous care whether such accounts consist only of a few hundred pesos or of millions of pesos. Responsibility arising from negligence in the performance of every kind of obligation is demandable.

Petitioner failed to prove payment of the subject certificates of deposit issued to the respondent and, therefore, remains liable for the value of the dollar deposits indicated thereon with accrued interest."

As it is TRB remains liable for the payment of the face value of the peso as well as dollar denominated bank certificates in question.

With respect to the plaintiff's second cause of action for the reconveyance to it of the 278,488 shares of stock in the name of the Royal Bank of Canada, including the 81,510 shares pertaining thereto as subscription rights, the Court finds no sufficient basis to grant the same. Said shares of stocks are not under TRB's name and hence no transfer can be made.

Witness Feliciano Miranda testified:

*JUSTICE VILLARUZ:



Q: The Stock Certificate issued in the name of Royal Bank of Canada, was it ever seen in the books of stocks?

A: The stock certificates were not seen by the examiners. What the examiners saw was the Stock and Transfer Book where the shares of stocks indicated in favor of Royal Bank of Canada.

Q: In the Stock and Transfer Book of the Traders Royal Bank, did it indicate that the stock certificate issued in the name of Royal Bank of Canada was cancelled?

A: No, sir.

Q: So insofar as books of the corporation is concerned, the stock certificate of Royal Bank of Canada still exists and there was no transfer of assignment in their stock certificate?

A: Insofar as August 30, 1988.

Q: When was the supposed sale of Royal Bank of Canada shares to Banque de Paris?

A: The Royal Bank of Canada said they sold it sometime in 1976.

Q: And there was no Stock Certificate at all issued to Banque de Paris in the Stock and Transfer Books of Traders Royal Bank?

A: There is no record in the Stock and Transfer Books that it was recorded in the name of Banque de Paris.⁴²

The shares are still under the name of Royal Bank of Canada (RBC) which is not a party to this case. Also, no sufficient evidence was presented in this case to prove that the shares belong to former President Marcos and part of his ill-gotten wealth.

**B) Defendant Bancom Cannot
Be Held Liable To Plaintiff
Republic Of The Philippines**

In the *Amended Complaint*, the plaintiff seeks to also hold defendant Bancom liable for its claims against TRB because of the

⁴² TSN of August 29, 2002, pp. 9-10.

Purchase and Sale Agreement (PSA) entered into on November 9, 2001 whereby Bancom acquired assets and liabilities of TRB. Plaintiff claims that the PSA was entered into after TRB earlier amended its **Articles of Incorporation** and changed its corporate name to Royal Traders Holding Co., Inc. (RTHCI). While Bancom acquired assets and liabilities of TRB under the PSA, they expressly excluded by stipulation pending claims of the Republic of the Philippines. Plaintiff contends that the PSA was intended to help TRB, now RTHCI, escape its obligations to the plaintiff.

The PSA⁴³, insofar as pertinent, provides:

"ARTICLE I

SALE OF ASSETS

TRB hereby sells, assigns, transfers and conveys, in a manner absolute, in favor of BANCOMMERCE, to be effective on the "Effectivity Date" as defined below, identified recorded assets and properties owned by TRB, both real and personal, or in which TRB has title or interest, and which are included and deemed part of the assets and resources listed and referred to in TRB's Consolidated Statement of Condition as of August 31, 2001 in the total amount of PESOS: TEN BILLION TWO HUNDRED SIXTY TWO MILLION ONE HUNDRED FIFTY FOUR THOUSAND (P10,262,154,000.00), a copy of which is attached herewith as Annex "A", subject to adjustment at the Effectivity Date as may be agreed upon by BANCOMMERCE and TRB and subject further to the approval of BSP and PDIC.

Said assets and properties shall be inclusive of the banking goodwill of TRB, its bank premises and licenses to operate its head office and branches, its leasehold rights, patents, trademarks or copyrights used in connection with its business or products.

Taxes, if any, shall be for the account of TRB to be advanced by BANCOMMERCE.

ARTICLE II

CONSIDERATION: ASSUMPTION OF LIABILITIES

In consideration of the sale of identified recorded assets and properties covered by this Agreement, BANCOMMERCE shall assume identified recorded TRB's liabilities including booked contingent liabilities as listed and referred to in its Consolidated Statement of Condition as of

⁴³Exhibit "HH"

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August 31, 2001, in the total amount of PESOS: TEN BILLION FOUR HUNDRED ONE MILLION FOUR HUNDRED THIRTY SIX THOUSAND (P10,401,436,000.00), provided that the liabilities so assumed shall not include:

1. Liability for the payment of compensation, retirement pay, separation benefits and any labor benefit whatsoever arising from incidental to, or connected with employment in, or rendition of employee services to TRB, whether permanent, regular, temporary, casual or contractual.
2. Items in litigation, both actual and prospective, against TRB which include but are not limited to the following:
 - 2.1 Claims of sugar planters for alleged undervaluation of sugar export sales course through TRB; particularly the case entitled Lopez, et al. vs. Traders Royal Bank, et al., docketed as Civil Case No. 00-11178, Bacolod Regional Trial Court, Branch 41 and Lacson, et al. vs. Benedicto, et al., originally docketed as Civil Case 95-9137, Bacolod Regional Trial Court, Branch 44 now pending appeal before the Supreme Court under S.C. G.R. No. 141508, and other related cases which might be filed in connection therewith;
 - 2.2 Claims of the Republic of the Philippines for peso-denominated certificates supposed to have been placed by the Marcos family with TRB;
 - 2.3 Other liabilities not included in said Consolidated Statement of Condition; and
 - 2.4 Liabilities accruing after the effectivity date of this Agreement that were not incurred in the ordinary course of business."

By way of defense, Bancom precisely contends that: 1) The subject bank certificates issued by Traders Commercial Bank and latter TRB were not among those acquired by Bancom under the PSA; 2) Obligations arising from pending claims of the Republic of the Philippines were expressly excluded from those acquired by Bancom under the PSA; 3) The PSA was approved by the Bangko Sentral Ng Pilipinas (BSP) in a letter dated November 8, 2001; and 4) The PSA categorically stipulated that Bancom and TRB shall continue with their respective corporate personalities. In short, there was no merger of Bancom and TRB. They remain separate corporate entities, distinct and independent of each other.

From the evidence adduced in this case, testimonial and documentary, however, the Court cannot help but observe the following: 1) The Philippine government filed this instant suit in 1997 seeking to enforce a foreign judgment against TRB that includes payment of obligations in

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dollars and pesos –about P96,000,000.00 and US\$ 5,435,362.00, as principal amounts – covered by certificates issued by TRB as a banking institution. Bancom was well aware of this at the time the PSA was entered into on November 9, 2001; 2) The PSA expressly excluded the claim of the Republic of the Philippines against TRB as a banking institution. Even before the execution of the PSA on November 8, 2001, the amendment of the **Articles of Incorporation** was already being worked out changing TRB's corporate name to Royal Traders Holding Co., Inc. (RTHCI) and deleting banking from its operation. It was already apparent then, if not at all clear, that this would possibly defeat the claim of the Republic as it will consequently negate the satisfaction of judgment that may be rendered in its favor; and 3) Although the amendment was approved by the Securities and Exchange Commission (SEC) on August 15, 2002, TRB's Articles of Incorporation was already amended in October 2001, changing its corporate name to Royal Traders Holding Co., Inc. (RTHCI) and deleting banking from its operation. This fact ought to be known to Bancom at that time because the change of corporate name was even stipulated in Article III(2) of the PSA to wit:

“ARTICLE III

EFFECTS AND CONSEQUENCES

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2. With the transfer of its branching licenses to BANCOMMERCIAL and upon surrender of its commercial banking license to BSP, TRB shall exist as an ordinary corporation placed outside the supervisory jurisdiction of BSP. **To this end, TRB shall cause the amendment of its articles and by-laws to delete the terms “bank” and “banking” from its corporate name and purpose.**”

Thus, the BSP, in its *Circular Letter (Series of 2002)*⁴⁴ dated September 9, 2002, gave the following notice:

“CIRCULAR LETTER
(Series of 2002)

**TO: ALL BANKS AND NON-BANK
FINANCIAL INTERMEDIARIES**

The Securities and Exchange Commission approved on August 15, 2002 the Amendment of the Articles of Incorporation and By-Laws of Traders Royal Bank on the deletion of the term “banks” and “banking” from its corporate

⁴⁴ Exhibit “KK”

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name and purpose, pursuant to the purchase of assets and assumption of liabilities of Traders Royal Bank by Bank of Commerce. Accordingly, the bank franchise of Traders Royal Bank has been automatically revoked and Traders Royal Bank has ceased to operate as banking entity.

Effective July 3, 2002, the banking activities and transactions of Bank of Commerce and Traders Royal Bank have been consolidated and the former has carried their operations since then.

For your information and guidance."

Be that as it may, the Court cannot hold Bancom liable with TRB in this case.

In *Bank of Commerce v. Radio Philippines Network, Inc. (RPN), et al.*⁴⁵, the Supreme Court, through its Third Division, ruled that the PSA entered into on November 8, 2001 by TRB and Bancom did not result in merger or *de facto* merger of the two (2) entities. The High Court declared that the execution of the PSA was valid. It categorically ruled that TRB and Bancom "did not enter into the P and A Agreement to enable TRB to escape from its liability to creditors with pending court cases."

The Supreme Court said, among others:

"It is pointed out that under common law, if one corporation sells or otherwise transfers all its assets to another corporation, the latter is not liable for the debts and liabilities of the transferor if it has acted in good faith and has paid adequate consideration for the assets, except: (1) where the purchaser expressly or impliedly agrees to assume such debts; (2) where the transaction amounts to a consolidation or merger of the corporations; (3) where the purchasing corporation is merely a continuation of the selling corporation; and (4) where the transaction is entered into fraudulently in order to escape liability for such debts.

But, in the first place, common law has no application in this jurisdiction where existing statutes governing the situation are in place. Secondly, none of the cited exceptions apply to this case.

1. Bancommerce agreed to assume those liabilities of TRB that are specified in their P & A Agreement. That agreement specifically excluded TRB's contingent liabilities that the latter might have arising from pending litigations in

⁴⁵G.R. No. 195615, April 21, 2014.

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court, including the claims of respondent RPN, et al. The pertinent provision of the P & A provides:

Article II

CONSIDERATION: ASSUMPTION OF LIABILITIES

In consideration of the sale of identified recorded assets and properties covered by this Agreement, BANCOMMERCE shall assume identified recorded TRB's liabilities including booked contingent liabilities as listed and referred to in its Consolidated Statement of Condition as of August 31, 2001, in the total amount of PESOS: TEN BILLION FOUR HUNDRED ONE MILLION FOUR HUNDRED THIRTY SIX THOUSAND (P10,410,436,000.00), provided that the liabilities so assumed shall not include:

x x x x

2. Items in litigation, both actual and prospective, against TRB which include but not limited to the following:

2.1 Claims of sugar planters for alleged under valuation of sugar export sales x x x;

2.2 Claims of the Republic of the Philippines for peso-denominated certificates supposed to have been placed by the Marcos family with TRB;

2.3 Other liabilities not included in said Consolidated Statement of Condition; and

2.4 Liabilities accruing after the effectivity date of this Agreement that were not incurred in the ordinary course of business. (Underscoring supplied)

2. As already pointed out above, the sale did not amount to merger or *de facto* merger of Bancommerce and TRB since the elements required of both were not present.

3. The evidence in this case fails to show that Bancommerce was a mere continuation of TRB. TRB retained its separate and distinct identity after the purchase. Although it subsequently changed its name to Traders Royal Holding's, Inc. such change did not result in its dissolution. "The changing of the name of a corporation is no more than creation of a corporation than the changing of the name of a natural person is the begetting of a natural person. The act, in both cases, would seem to be what the language which we use to designate it imports—a change of name and not a

change of being." As such, Bancommerce and TRB remained separate corporations.

4. To protect contingent claims, the BSP directed Bancommerce and TRB to put up P50 million in escrow with another bank. It was the BSP, not Bancommerce that fixed the amount of the escrow. **Consequently, it cannot be said that the latter bank acted in bad faith with respect to the excluded liabilities. They did not enter into the P & A Agreement to enable TRB to escape from its liability to creditors with pending court cases."**

WHEREFORE, premises considered, judgment is hereby rendered, as follows:

1) Ordering Royal Traders Holding Co., Inc. (RTHCI), formerly Traders Royal Bank (TRB)/Traders Commercial Bank (TCB), to pay the plaintiff Republic of the Philippines the amounts representing the face value of the TRB/TCB issued bank certificates described below, to wit:

a) Peso Denominated

Certificate No.	Date	Amount
2066	October 23, 1975	P1,000,000
2070	December 9, 1975	400,000
2069	December 12, 1975	10,000,000
2084	April 26, 1976	5,000,000
2086	August 11, 1976	1,000,000
36763	November 26, 1976	7,100,000
38769	December 14, 1976	3,500,000
40760	December 16, 1976	15,400,000
40762	December 20, 1976	1,000,000
54779	March 25, 1977	3,000,000
55772	March 29, 1977	178,870
55771	March 29, 1977	1,000,000
62770	May 27, 1977	3,400,000
64775	June 16, 1977	1,000,000
65776	June 27, 1977	10,000,000
94786	March 17, 1978	1,000,000
112783	June 8, 1978	1,000,000
116784	August 11, 1978	1,000,000
	TOTAL:	<u>P65,978,870.00</u>

b) Dollar Denominated

<u>Certificate No.</u>	<u>Date</u>	<u>Amount</u>
3705	March 04, 1975	\$2,000,000.00
17356	May 21, 1979	2,400,000.00
17373	November 14, 1979	1,035,362.90
TOTAL:		US\$ 5,435,362.90

c) Peso Denominated
(Issued in the name Traders Commercial Bank)

<u>Certificate No.</u>	<u>Date</u>	<u>Amount</u>
1107	February 28, 1974	P8,050,000
1112	March 4, 1974	10,000,000
1121	March 18, 1974	12,000,000
TOTAL:		P30,050,000.00

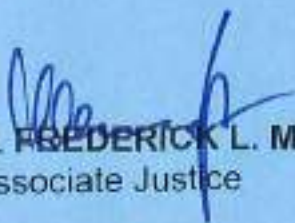
with interest thereon of twelve percent (12%) per annum reckoned from February 1993, until all the amounts are fully paid;

- 2) Dismissing the Amended Complaint as against defendant Bank of Commerce; and
- 3) Dismissing the compulsory counterclaim of defendant Bank of Commerce against plaintiff Republic of the Philippines.

SO ORDERED.


OSCAR C. HERRERA, JR.
Chairperson
Associate Justice

We concur:


MICHAEL FREDERICK L. MUSNGI
Associate Justice


BAYANI H. JACINTO
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.


OSCAR C. HERRERA, JR.
Chairperson
Second 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.


AMPARO M. CABOTAJE-TANG
Presiding Justice



