Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

SHERIFF ALBERT A. DELA CRUZ OF THE SANDIGANBAYAN SECURITY AND SHERIFF SERVICES, THE SANDIGANBAYAN SECURITY AND SHERIFF SERVICES, *Petitioners*,	**G.R. No. 247439** Present: CAGUIOA, *J.*, Chairperson, INTING,* GAERLAN, DIMAAMPAO, and SINGH, *JJ.*
- versus -	
WELLEX GROUP, INC., *Respondent.*	Promulgated: August 23, 2023

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D E C I S I O N

SINGH, *J.*:

This is a Petition for Review on *Certiorari* (**Petition for Review**)[1] under Rule 45 of the Rules of Court assailing the Decision,[2] dated May 16, 2019, of Branch 132, Regional Trial Court, Makati City (**RTC**), in Civil Case No. 09-399, which ordered Sheriff Edgardo A. Urieta (**Sheriff Urieta**) and petitioner Sandiganbayan Security and Sheriff Services (**SSSS**) to immediately deliver to respondent Wellex Group, Inc. (**Wellex**) the 450,000,000 shares of stock of Waterfront Philippines, Inc. covered by Stock Certificate Nos. 0000026465, 0000026466, 0000026467, 0000026468, 0000026469, 0000026470, 0000026471, 0000026472, and 0000026473

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* On leave.

1 *Rollo*, pp. 12–48.

2 Id. at 49–58. Penned by Judge Rommel O. Baybay.

(**Waterfront Shares**).[3] Wellex is the registered owner of the Waterfront Shares.[4]

The Facts

This case stems from the forfeiture of ill-gotten wealth of former President Joseph Ejercito Estrada (**former President Estrada**), particularly the Waterfront Shares, after he was convicted by the Sandiganbayan of the crime of Plunder.[5] The present case has already been the subject of two previous cases decided by the Court in G.R. No. 187951[6] and G.R. No. 211098.[7]

Sometime in 2000, Equitable-PCI Bank, now Banco de Oro (**BDO**), and a certain Jose Velarde entered into an Investment Management Agreement (**IMA**), whereby BDO agreed to manage Jose Velarde's assets by investing the same and taking possession of the profits and losses on Jose Velarde's behalf. The IMA likewise allowed BDO to grant loans using the funds under investment management, subject to applicable regulations.[8]

On February 4, 2000, IMA Account No. 101-78056-1 (**IMA Account**) was opened under Jose Velarde's name.[9] On the same day, Wellex borrowed ₱500,000,000.00 from the IMA Account. As security for the loan, Wellex mortgaged the Waterfront Shares.[10]

By the time the loan obligation matured on January 29, 2001, Wellex was not able to settle the same. However, BDO, as investment manager of the IMA Account, did not institute any foreclosure proceeding against the Waterfront Shares.[11]

Meanwhile, on April 4, 2001, former President Estrada was charged with Plunder before the Sandiganbayan, which was docketed as Criminal Case No. 26558 (**Plunder Case**).[12] During the trial of the Plunder Case, the prosecution was able to prove former President Estrada's ownership of the Jose Velarde accounts in BDO. Additionally, former President Estrada admitted to signing bank documents as Jose Velarde to fund Wellex's ₱500,000,000.00 loan. Specifically, he admitted to signing as Jose Velarde

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3 Id. at 58.
4 Id. at 49.
5 *The Wellex Group, Inc. v. Sheriff Urieta*, 785 Phil. 594, 610 (2016).
6 *The Wellex Group, Inc. v. Sandiganbayan*, 689 Phil. 44 (2012).
7 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5.
8 Id. at 610.
9 Id.
10 *Rollo*, p. 49, RTC Decision.
11 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 602.
12 Id. at 611.

copies of the IMA, as well as a debit-credit instruction to allow the transfer of ₱500,000,000.00 from the savings account to the IMA Account.[13]

On September 12, 2007, the Sandiganbayan found former President Estrada guilty of the crime of Plunder. The conviction ultimately carried with it the penalty of forfeiture, wherein all ill-gotten wealth amassed by former President Estrada, including the IMA Account and the assets therein, were forfeited in favor of the State.[14]

Consequently, on September 24, 2008, the Sandiganbayan issued a Resolution (**2008 Sandiganbayan Resolution**) directing Sheriff Urieta to cause the forfeiture of, among others, the IMA Account, including the Waterfront Shares, in favor of the State.[15]

Wellex then sought to intervene in the Plunder Case and moved for the reconsideration of the 2008 Sandiganbayan Resolution, arguing that the Waterfront Shares should have been excluded from the forfeiture order. However, the Sandiganbayan, in a Resolution dated April 2, 2009 (**2009 Sandiganbayan Resolution**), denied the reconsideration sought by Wellex. Consequently, Sheriff Urieta scheduled the public auction sale of the Waterfront Shares on May 15, 2009.[16]

G.R. No. 187951 2012 Decision

Aggrieved, Wellex filed a Petition for *Certiorari* before the Court to question the inclusion of the Waterfront Shares among the forfeited assets. The case was docketed as G.R. No. 187951. In its Decision, dated June 25, 2012 (**2012 Decision**), the Court affirmed the inclusion of the Waterfront Shares as part of the assets covered by the forfeiture order. The Court ruled that the IMA Account and its assets were traceable to the account adjudged as former President Estrada's ill-gotten wealth.[17]

Meanwhile, in 2009, Wellex filed a Complaint for Recovery of Possession, Delivery of Stock Certificates and Injunction (**Complaint**) with the RTC, which was docketed as Civil Case No. 09-399.[18] Wellex claimed that it is the owner of the Waterfront Shares; that it fully paid its loan obligation; and that it is entitled to the return of the Waterfront Shares.[19]

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13 Id. at 613.
14 Id. at 602.
15 *Rollo*, p. 50.
16 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 603.
17 Id.
18 *Rollo*, p. 49, RTC Decision.
19 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 603.

With the filing of Civil Case No. 09-399, Sheriff Urieta and the SSSS agreed to maintain the status *quo* and to defer the public auction of the Waterfront Shares until the resolution of the case before the RTC.[20]

Thereafter, Sheriff Urieta and the SSSS, as well as BDO, filed their respective Motions to Dismiss in Civil Case No. 09-399 on the grounds of lack of jurisdiction based on the principle of hierarchy of courts and failure to state a cause of action. In its Order, dated January 9, 2012 (**2012 RTC Order**), the RTC granted the Motions to Dismiss.[21]

Wellex moved for the reconsideration of the 2012 RTC Order, which was, however, denied by the RTC in its Resolution, dated January 15, 2014 (**2014 RTC Resolution**).[22]

G.R. No. 211098 2016 Decision

Undeterred, Wellex filed a Petition for Review on *Certiorari* with the Court assailing the 2012 RTC Order and the 2014 RTC Resolution. The case was docketed as G.R. No. 211098. Wellex argued that the RTC erred in dismissing Civil Case No. 09-399 because it could take cognizance of the same by determining the existence of the legal and formal requirements for executing on a security, particularly on the Waterfront Shares. Thus, Wellex asked the Court to set aside the 2012 RTC Order and direct the resumption of proceedings.[23]

In its Decision, dated April 20, 2016 (**2016 Decision**), the Court granted Wellex's Petition. The Court emphasized that in the 2012 Decision, the Court had already declared with absolute finality that the Waterfront Shares were and should rightfully be included among the forfeited assets in favor of the State. According to the Court, the IMA Trust Account and its assets were traceable to the account adjudged as ill-gotten.[24]

However, the Court likewise reiterated its pronouncement in the 2012 Decision that the forfeiture of the said IMA Account, together with all its assets and receivables, did not affect the validity of the loan transaction between BDO and Wellex.[25] The forfeiture only had the effect of subrogating the State to the rights of BDO as creditor. As such, given that a subrogee merely steps into the shoes of the original creditor, the State acquired no right greater than those of BDO.[26]

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20 Id. at 604.
21 Id.
22 Id.
23 Id. at 605.
24 Id.
25 Id. at 606.
26 Id. at 606–607.

The Court added that considering that the Waterfront Shares serve as security to an acknowledged valid and existing loan obligation, the State, as the subrogee, is obliged to avail of the very same remedies available to the original creditor to collect the loan obligation, which is to first demand from the original debtor to pay the same, and if not paid despite demand, institute either foreclosure proceedings, or the appropriate action for collection before the proper forum. In either case, Wellex will be afforded the opportunity to pay the obligation, or to assert any claim or defense, which Wellex may have against the original creditor.[27]

Moreover, the Court held that given that the cause of action of Wellex in Civil Case No. 09-399 partakes of a valid third-party claim sanctioned by the Rules of Court, affording Wellex the opportunity to assert its claim or defense against the State, the latter should likewise avail of this avenue to affirm its own claims, as creditor, against the loan and/or mortgage securing the said loan, paving the way to the realization of any of the fruits of plunder. Thus, the Court deemed it proper to remand the case to the RTC for further proceedings, where all the civil issues may properly be ventilated.[28]

Consequently, in the 2016 Decision, the Court remanded the case to the RTC for "further proceedings."[29]

Upon the remand of the case to the RTC, the SSSS consistently took the position that the phrase "further proceedings" mentioned in the 2016 Decision did not contemplate a new trial to determine the ownership of the Waterfront Shares. According to the SSSS, the Court had already explicitly pronounced with finality that the State owned the Waterfront Shares. Consequently, when the Court remanded the case to the RTC, the Court was simply referring to proper execution proceedings.[30]

The Ruling of the RTC

On May 16, 2019, the RTC rendered a Decision[31] sustaining Wellex's defense of prescription and ordering Sheriff Urieta and the SSSS to deliver immediately the Waterfront Shares to Wellex, thus:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiff **The Wellex Group, Inc.** and accordingly, the defendants **Sheriff Edgardo A. Urieta and the Sandiganbayan Security and Sheriff Services** are hereby ordered to **DELIVER** immediately to the plaintiff **The Wellex Group, Inc.** Stock Certificate Nos. 0000026465,

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27 Id.
28 Id. at 608–609.
29 Id. at 609.
30 *Rollo*, pp. 62–79, Manifestation and Motion for Clarification, Pre-Trial Brief, and Respondent's Memorandum.
31 Id. at 49–58.

0000026466, 0000026467, 0000026468, 0000026469, 0000026470, 0000026471, 0000026472, and 0000026473 as depicted in the *Sheriff's Report* dated 23 April 2009.

SO ORDERED.[32] (Emphasis in the original; citations omitted)

The RTC held that the Court made a clear pronouncement in the 2016 Decision that the forfeiture of the Waterfront Shares did not affect the validity of the principal loan between Wellex as debtor and BDO as creditor, which remains valid. The only effect of such forfeiture is that the State is subrogated to the rights of the creditor.[33] The RTC added that the State's subrogation to the rights of BDO as creditor has the effect of it merely stepping into the shoes of BDO as creditor and, therefore, it acquired no right greater than that of BDO.[34] The RTC then concluded that Wellex's obligation as mortgagor or debtor has been extinguished by prescription.[35]

Aggrieved, the petitioners Sheriff Albert A. Dela Cruz and the SSSS (collectively, the **petitioners**) filed the present Petition for Review on *Certiorari* before the Court. The petitioners argue that the RTC erred in construing the phrase "further proceedings" in the dispositive portion of the Court's 2016 Decision as a mandate to proceed with the trial of Civil Case No. 09-399.[36]

The petitioners also contend that the RTC further erred in upholding Wellex's claim of prescription.[37] According to the petitioners, the State is immune from the defense of prescription of action in plunder cases pursuant to Section 6 of Republic Act No. 7080,[38] or the Anti-Plunder Law (**Anti-Plunder Law**), which states that "the right of the State to recover properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel."[39]

On the other hand, Wellex argues that the Petition for Review is procedurally defective for being filed out of time.[40]

The Issues

The issues to be resolved by the Court in this case are as follows:

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32 Id. at 58.
33 Id. at 55.
34 Id. at 56.
35 Id. at 57.
36 Id. at 31, Petition for Review on *Certiorari*.
37 Id.
38 Approved on July 12, 1991.
39 *Rollo*, p. 41, Petition for Review on *Certiorari*.
40 Id. at 149, Comment.

1) Is the Petition for Review procedurally defective for being filed out of time?

2) Did the RTC err in construing the phrase "further proceedings" in the dispositive portion of the 2016 Decision as a mandate to proceed with a new trial of the case?

3) Did the RTC commit a reversible error in upholding Wellex's claim of prescription?

The Ruling of the Court

The Court rules that the RTC correctly proceeded with the trial in Civil Case No. 09-399. However, the RTC erred in upholding Wellex's defense of prescription. Section 15, Article XI of the 1987 Constitution expressly states that "[t]he right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel."

Before delving into the substantive issues of this case, the Court will first resolve the procedural question raised by Wellex.

The Petition for Review was not filed out of time, and the petitioners availed of the proper remedy

In its Comment, Wellex argues that the Petition for Review is procedurally defective for being filed out of time. According to Wellex, the petitioners are not assailing the RTC Decision; rather, they ultimately question the RTC's conduct of further proceedings, aside from execution, such as when the RTC proceeded with pre-trial and trial. Wellex added that the decision to conduct further proceedings by setting the case for pre-trial was already questioned by the petitioners in their Manifestation and Motion for Clarification, dated December 29, 2017, which was denied by the RTC in its Order, dated February 9, 2018 (**2018 RTC Order**). Wellex then concludes that the Petition for Review is in reality a lost appeal from the 2018 RTC Order.[41]

Wellex's argument is untenable.

To emphasize, the 2018 RTC Order denying the petitioners' Manifestation and Motion for Clarification was an interlocutory order. An interlocutory order has been defined as one that "does not terminate or finally dismiss or finally dispose of the case, but leaves something to be done by the

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[41] Id.

court before the case is finally decided on the merits."[42] It refers to something between the commencement and end of the suit which decides some point or matter but it is not the final decision on the whole controversy.[43] Aside from denying the petitioners' Manifestation and Motion for Clarification, the 2018 RTC Order also set the case for pre-trial.[44] In fact, the RTC proceeded with the pre-trial and trial of the case to resolve the claims and defenses of both parties. Clearly, the 2018 RTC Order was merely interlocutory as it did not terminate or finally dispose of the case.

As such, appeal was not the proper remedy to assail the 2018 RTC Order. Unlike a final judgment or order, which is appealable, an interlocutory order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.[45] In line with this, Section 1(a) of Rule 41 of the Rules of Court specifically states that no appeal may be taken from an interlocutory order. This rule is only subject to a narrow exception. A party may question an interlocutory order without awaiting judgment after trial if its issuance is tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. In this case, the party can file a special civil action for *certiorari* under Rule 65 of the Rules of Court.[46]

In this case, the petitioners did not allege any grave abuse of discretion on the part of the RTC in issuing the 2018 RTC Order. Consequently, the petitioners correctly waited until the RTC issued its adverse Decision and filed an appeal raising the interlocutory order as one of the reversible errors committed by the RTC.

On a related note, the petitioners availed of the proper remedy when they appealed the RTC Decision directly to the Court. Section 2 of Rule 41 of the Rules of Court, which enumerates the modes of appealing final orders and judgments of regional trial courts, provides that "[i]n all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with the Rule 45." On the other hand, when an appeal raises questions of fact, the appeal must be filed with the Court of Appeals because the Court is not a trier of facts.

In *Republic of the Philippines v. Caraig*,[47] the Court discussed the difference between a question of law and a question of fact as follows:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises

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42 *Metropolitan Bank & Trust Company v. Court of Appeals*, 408 Phil. 686, 694 (2001).
43 Id.
44 *Rollo*, p. 61, Order, dated February 9, 2018.
45 *Carniyan v. Home Guaranty Corporation*, 859 Phil. 744, 755 (2019).
46 *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, 820 Phil. 235, 246 (2017).
47 G.R. No. 197389, October 12, 2020.

> as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[48]

Here, the petitioners raise only questions of law. *First*, they seek the proper interpretation of the phrase "further proceedings" indicated in the dispositive portion of the Court's 2016 Decision. *Second*, they assail the RTC's act of upholding Wellex's defense of prescription on the ground that the right of the State to recover ill-gotten wealth does not prescribe. The petitioners are not questioning the factual findings of the RTC. As such, the resolution of the issues raised by the petitioners rests solely on what the law provides in the given set of circumstances.

Having settled the procedural issues, the Court now resolves the substantive questions raised in this case.

The RTC correctly proceeded with the pre-trial and trial to hear and decide on the respective claims and defenses of the parties

In justifying their non-presentation of evidence before the RTC, the petitioners argue that the phrase "further proceedings" in the dispositive portion of the Court's 2016 Decision only meant that the RTC was ordered to proceed with the proper execution of the Court's 2016 Decision. The petitioners argue that the Court did not intend to mandate the RTC to conduct a new trial on the merits of Wellex's Complaint. To hold otherwise would be inconsistent with the Court's definitive ruling in its 2012 and 2016 Decisions that the Waterfront Shares rightfully belong to the forfeited assets in favor of the State.[49]

The petitioners' argument is untenable.

The petitioners are mistaken in their characterization of the State's right over the Waterfront Shares. To be clear, the State does not own the Waterfront Shares. The forfeiture of the IMA Account, together with its assets, did not in any way cause the transfer of ownership over the Waterfront Shares from Wellex to the State. Being the subject of a mortgage contract, the Waterfront

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48 Id.

49 *Rollo*, p. 37, Petition for Review on *Certiorari*.

Shares were mere collateral or security for the original principal loan contract between Wellex and BDO. As such, when the State was subrogated to the rights of BDO as creditor in the loan contract and as mortgagee in the mortgage contract, the State only acquired BDO's rights over the Waterfront Shares.

Being a mere mortgagee, the Court ruled in the 2016 Decision that the State cannot be allowed to unilaterally sell the mortgaged Waterfront Shares and apply the proceeds thereof as payment, full or partial, to the loan, as this would constitute a clear case of *pactum commissorium*, which is expressly prohibited under Article 2088 of the Civil Code.[50] According to the Court, the State is obliged to avail of the very same remedies available to BDO, the original creditor, to collect the loan obligation, which is to first demand from Wellex to pay the same and if not paid despite demand, institute either foreclosure proceedings or the appropriate action for collection before the proper forum. In either case, Wellex must be afforded the opportunity to pay the obligation or to assert any claim or defense which it may have against BDO.[51]

Finding that the cause of action of Wellex in Civil Case No. 09-399 partakes of a valid third-party claim sanctioned by the Rules of Court, affording Wellex the opportunity to assert its claim or defense against the State, the Court declared that the State should likewise avail of Civil Case No. 09-399 to affirm its own claims, as creditor, against the loan and/or mortgage securing the loan, paving the way for the realization of any of the fruits of plunder.[52]

Based on the foregoing, the language of the Court's 2016 Decision with respect to the reason for remanding of the case to the RTC for further proceedings is clear. The State must affirm in Civil Case No. 09-399 its claims as creditor against Wellex. In other words, the State may demand from Wellex in the said case the payment of the latter's loan obligation. Conversely, Wellex may raise claims or defenses available to it against the State.

However, the necessity of proceeding with a full blown trial is another matter. The Court notes that this case is appropriate for summary judgment because the claims of the State with respect to the existence and validity of the loan and mortgage contracts and the non-payment of Wellex of its loan obligation are already undisputed having been ruled upon with finality by the Court. More importantly, Wellex, in setting up the affirmative defense of prescription, failed to raise a genuine issue because the said defense is prohibited under the 1987 Constitution, as will be discussed below.

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50 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 606.

51 Id. at 607.

52 Id. at 608–609.

Nevertheless, considering that the State did not file a motion for summary judgment, the RTC correctly proceeded with the trial of the case. Considering that the RTC Decision was issued on May 16, 2019, the prior provisions of the Rules of Court apply wherein a motion for summary judgment is required under Rule 35 and the RTC cannot *motu proprio* render a summary judgment.[53]

The State's rights to collect its receivable from Wellex and foreclose the mortgaged Waterfront Shares are imprescriptible

After failing to prove its original claim that it has already paid its loan obligation, Wellex changed its theory and now sets up as a defense a different mode of extinguishment of its obligation—prescription.

Relying on the Court's pronouncements in its 2016 Decision, the RTC ruled that Wellex may invoke the defense of prescription because as subrogee, the State merely steps into the shoes of the original creditor, thus:

> The Supreme Court made a very clear pronouncement that the forfeiture did not affect the validity of the principal loan between [Wellex] as debtor and BDO as creditor, which remains valid. The only effect is that the [S]tate is subrogated to the rights of the creditor, thus:
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> x x x x
>
> The State's subrogation to the rights of BDO as creditor has the effect of it merely stepping into the shoes of BDO as creditor and therefore, it acquires no right greater than that of BDO. x x x
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> x x x x
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> In the case at bar, pursuant to the ruling of the Supreme Court in G.R. No. 211098 that this is the proper proceeding to assert its claim or defense, [Wellex] still claims extinguishment of obligations but this time based on prescription of actions based on the facts herein.[54]

The RTC then proceeded to uphold Wellex's defense of prescription, ratiocinating that the State failed to institute a collection action or mortgage action within 10 years from the time the principal loan matured on January 29, 2001. Citing Articles 1142,[55] 1144,[56] and 1155[57] of the Civil Code, the

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53 *Spouses Pascual v. First Consolidated Rural Bank (Bohol), Inc.*, 805 Phil. 488, 499 (2017).

54 *Rollo*, pp. 55–57, RTC Decision.

55 Article 1142 of the Civil Code states that "[a] mortgage action prescribes after ten years."

56 Article 1144 of the Civil Code provides that actions upon a written contract must be brought within ten years from the time the right of action accrues.

57 Article 1155 of the Civil Code states that "[t]he prescription of actions is interrupted when they are filed before the court, when there is a written extrajudicial demand by the creditors, and when there is any written acknowledgment of the debt by the debtor."

RTC ruled that Wellex's obligation as mortgagor or debtor has been extinguished by prescription for failure of the State to collect on the loan, and to foreclose on the Waterfront shares.[58]

The Court finds this position bereft of merit.

Indeed, the State is a subrogee to the loan contract and mortgage contract between Wellex and BDO. This has already been settled with finality by the Court in its 2012 and 2016 Decisions. As a subrogee, the State is susceptible to defenses that Wellex may have against the original creditor. One of these defenses is that Wellex's obligation has already been extinguished pursuant to Article 1231 of the Civil Code. In fact, this was what Wellex invoked. Previously, Wellex argued that its obligation under the loan contract has already been extinguished on the ground of payment. However, as found by the Court in its 2016 Decision, Wellex failed to prove such fact of payment. Now, Wellex is basing its defense on a different mode of extinguishment of obligations—prescription.

However, notwithstanding the fact that the State is a mere subrogee to BDO in this case, the defense of prescription is not available to Wellex because the right of the State to recover ill-gotten wealth does not prescribe.

To note, subrogation and prescription, as modes of extinguishment of an obligation, are concepts provided for under the Civil Code, which is a general law.[59] On the other hand, the Anti-Plunder Law, which is a special law specifically dealing with ill-gotten wealth, expressly states that the right of the State to recover ill-gotten wealth shall not be barred by prescription, thus:

> Section 6. Prescription of Crimes - The crime punishable under this Act shall prescribe in twenty (20) years. However, **the right of the State to recover properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches, or estoppel**. (Emphasis supplied)

Interestingly, the second sentence of Section 6 of the Anti-Plunder Law was just lifted from Section 15, Article XI of the 1987 Constitution, which states that:

> Section 15. The right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees or transferees, shall not be barred by prescription, laches, or estoppel.

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58 *Rollo*, p. 57, RTC Decision.

59 *Malaki v. People*, G.R. No. 221075, November 15, 2021.

This is evident from the deliberations of the members of the Bicameral Conference Committee when they harmonized House Bill No. 22752 and Senate Bill No. 733 that later became the Anti-Plunder Law, thus:

> CHAIRMAN GARCIA. When we discussed this, I said that even treason, the most heinous crime that a citizen can commit will prescribe. The right to recover the ill-gotten wealth will not prescribe but the crime will prescribe. We are setting the maximum, which is twenty years and I think, for capital offenses, that is …
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> CHAIRMAN TAÑADA. So, can we make that qualification?
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> CHAIRMAN GARCIA. Yes.
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> CHAIRMAN TAÑADA. That the right to recover the ill-gotten wealth shall not prescribe?
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> CHAIRMAN GARCIA. Shall not prescribe, okay. Yeah, that is in the Constitution.
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> CHAIRMAN TAÑADA. Yes, it is in the Constitution.
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> CHAIRMAN GARCIA. Yeah, it is here. Section 15.
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> CHAIRMAN TAÑADA. How does it read?
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> CHAIRMAN GARCIA. "The right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees or transferees shall not be barred by prescription, laches or estoppel."
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> COM. SEC. ADVENTO. Shall we adopt, sir, the wording…
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> CHAIRMAN GARCIA. Well, just to emphasize.
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> CHAIRMAN TAÑADA. Yes, just to emphasize.
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> COM. SEC. ADVENTO. Shall we adopt the wording of the Constitution or…
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> CHAIRMAN TAÑADA. We can follow the wordings of the Constitution.
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> CHAIRMAN GARCIA. Follow the wordings.
>
> HON. ISIDRO. We can follow?
>
> CHAIRMAN TAÑADA. Yes, Section 15, Article 11.[60]

Based on the foregoing, the imprescriptibility of the State's right to recover ill-gotten wealth, being expressly provided for under the 1987 Constitution and the Anti-Plunder Law, prevails over the principles of

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[60] Committee on Revision of Laws, Bicameral Conference Committee Report on the Plunder Bill (1991), 8th Congress.

subrogation and prescription under the Civil Code. Under the doctrine of constitutional supremacy, "if a law or contract violates any norm of the constitution, that law or contract whether promulgated by the legislative or by the executive branch or entered into by private persons for private purposes is null and void and without any force and effect. Thus, since the Constitution is the fundamental, paramount and supreme law of the nation, it is deemed written in every statute."[61] Moreover, it is settled that between a general law and a special law, the latter prevails. For a special law reveals the legislative intent more clearly than a general law does. Verily, the special law should be deemed an exception to the general law.[62]

In this case, the Court has already ruled with finality that the funding for the loan obtained by Wellex was traceable to an account that was part of former President Estrada's ill-gotten wealth. In its 2012 Decision, the Court ruled that:

> From the above findings, it is clear that the funding for the loan to Wellex was sourced from Savings Account No. 0160-62501-5 and coursed through the IMA Trust Account. This savings account was under the name of Jose Velarde and was forfeited by the government after being adjudged as ill-gotten. The trust account can then be traced or linked to an account that was part of the web of accounts considered by the Sandiganbayan as ill-gotten.[63]

The Court also declared that Wellex admitted that the amount that it borrowed originated from an account in the name of Jose Velarde, thus:

> Even [Wellex] admits that the amount of P506,416,666.66 was deposited to S/A 0160-62501-5 *via* a credit memo, and that P500 million was subsequently withdrawn from the said savings account, deposited to IMA Trust Account No. 101-78056-1, and then loaned to [Wellex]. The Sandiganbayan made a categorical finding that former President Estrada was the real and beneficial owner of S/A 0160-62501-5 in the name of Jose Velarde.[64]

These findings were reiterated by the Court in its 2016 Decision as follows:

> Before delving into the merits of the Petition, this Court recognizes the crucial need to emphasize that as per the Decision in G.R. 187951, this Court had already declared with absolute finality that the WPI shares were and should rightfully be included among the forfeited assets in favor of the State. Therefore, this matter is beyond cavil. This Court aptly and succinctly ruled "[i]t is beyond doubt that IMA Trust Account No. 101- 78056-1 and

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61 *Tawang Multi-Purpose Cooperative v. La Trinidad Water District*, 661 Phil. 390, 403 (2011).

62 *Commissioner of Internal Revenue v. Bases Conversion and Development Authority*, G.R. No. 217898, January 15, 2020, 928 SCRA 642, 659.

63 *The Wellex Group, Inc. v. Sandiganbayan*, supra note 6, at 59.

64 Id. at 64.

> its assets were traceable to the account adjudged as ill-gotten. As such, the trust account and its assets were indeed within the scope of the forfeiture Order issued by the Sandiganbayan in the plunder case" against former President Estrada.[65]

Therefore, notwithstanding the Court's pronouncements that the loan contract between Wellex and BDO was valid and that the subject matter of the controversy brought forth by Wellex in Civil Case No. 09-399 is purely civil in nature, the same did not negate the established fact that the amount loaned to Wellex was part of the ill-gotten wealth of former President Estrada. Consequently, considering that the Court directed the State to affirm its claims against Wellex on the loan and mortgage contracts in Civil Case 09-399, the said case is but a continuation of the proceedings for the recovery of ill-gotten wealth. Thus, the provisions under the second sentence of Section 6 of the Anti-Plunder Law and Section 15, Article XI of the 1987 Constitution apply to this case. In *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,[66] the Court ruled that Section 15, Article XI of the 1987 Constitution applies to **civil actions** for recovery of ill-gotten wealth.

Notably, the imprescriptibility provided under Section 6 of the Anti-Plunder Law and Section 15, Article XI of the 1987 Constitution extends to the recovery of ill-gotten wealth from the **transferees** of the erring public officers. The question now arises whether Wellex is considered a transferee of former President Estrada with respect to the ill-gotten wealth used to fund Wellex's loan.

The Court rules in the affirmative.

In *Chavez v. Judicial and Bar Council*,[67] the Court held that where the words of a statute or the 1987 Constitution are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation:

> **One of the primary and basic rules in statutory construction is that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. It is a well-settled principle of constitutional construction that the language employed in the Constitution must be given their ordinary meaning except where technical terms are employed. As much as possible, the words of the Constitution should be understood in the sense they have in common use.** What it says according to the text of the provision to be construed compels acceptance and negates the power of the courts to alter it, based on the postulate that the framers and the people mean what they say. *Verba legis non est recedendum* – from the words of a statute there should be no departure.

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65 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 605.
66 375 Phil. 697 (1999).
67 691 Phil. 173 (2012).

> The *raison d' être* for the rule is essentially two-fold: First, because it is assumed that the words in which constitutional provisions are couched express the objective sought to be attained; and second, because the Constitution is not primarily a lawyer's document but essentially that of the people, in whose consciousness it should ever be present as an important condition for the rule of law to prevail.[68] (Emphasis supplied; citations omitted)

Black's Law Dictionary defines "transferee" as "[o]ne to whom a property interest is conveyed."[69] Similarly, Webster's Third New International Dictionary defines the term "transferee" as "a person to whom a transfer or conveyance is made."[70] The term "conveyance," on the other hand, is defined as "the legal process of moving land or property from one owner to another."[71] Based on the foregoing definitions, a borrower in a contract of loan is a transferee of the money borrowed. The Civil Code defines simple loan as a contract whereby "one of the parties delivers to another ... money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid."[72] Additionally, "[a] person who receives a loan of money or any other fungible thing acquires the ownership thereof."[73]

In this case, the Court already decided with finality that the amount loaned by Wellex was part of former President Estrada's ill-gotten wealth. In fact, it is now undisputed that the IMA Account, including its assets, have been duly forfeited in favor of the government. These assets include the IMA Account's receivable from Wellex. Clearly, Wellex is a transferee of former President Estrada's ill-gotten wealth.

Notwithstanding the validity of the loan contract and assuming that Wellex acted in good faith in entering into the said contract, these do not exempt Wellex from the application of the imprescriptibility provisions under the 1987 Constitution and the Anti-Plunder Law, since these do not distinguish between a transferee-in-good-faith and a transferee-in-bad-faith. It is a basic rule in statutory construction that where the law does not distinguish, the courts should not distinguish. *Ubi lex non distinguit nec nos distinguere debemos*. No distinction should be made in the application of the law where none has been indicated. Courts can only interpret the law; it cannot read into the law what is not written therein.[74]

Even assuming that there is doubt as to the applicability of Section 6 of the Anti-Plunder Law and Section 15, Article XI of the 1987 Constitution to a transferee in good faith, the same conclusion would be arrived at if the Court

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68 Id. at 199–200.

69 BLACK'S LAW DICTIONARY 1803 (11th ed. 2019).

70 WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2427 (1993).

71 CAMBRIDGE DICTIONARY, available at <https://dictionary.cambridge.org/us/dictionary/english/conveyance>.

72 CIVIL CODE, Art. 1933.

73 CIVIL CODE, Art. 1953.

74 *Ambrose v. Suque-Ambrose*, G.R. No. 206761, June 23, 2021.

looks into the intent of the framers of the 1987 Constitution in including the term "transferee" in Section 15, Article XI thereof.

In *Francisco v. House of Representatives*,[75] the Court, citing *Civil Liberties Union v. Executive Secretary*,[76] ruled that in case of ambiguity in the words used in the 1987 Constitution, said words should be interpreted in accordance with the intent of its framers, thus:

> Second, where there is ambiguity, *ratio legis est anima*. The words of the Constitution should be interpreted in accordance with the intent of its framers. And so did this Court apply this principle in *Civil Liberties Union v. Executive Secretary* in this wise:
>
> > A foolproof yardstick in constitutional construction is the intention underlying the provision under consideration. Thus, it has been held that the Court in construing a Constitution should bear in mind the object sought to be accomplished by its adoption, and the evils, if any, sought to be prevented or remedied. A doubtful provision will be examined in the light of the history of the times, and the condition and circumstances under which the Constitution was framed. The object is to ascertain the reason which induced the framers of the Constitution to enact the particular provision and the purpose sought to be accomplished thereby, in order to construe the whole as to make the words consonant to that reason and calculated to effect that purpose.[77] (Emphasis omitted)

A review of the deliberations of the members of the Constitutional Commission reveals that the framers specifically intended the imprescriptibility to apply to all transferees of ill-gotten wealth, even those who obtained the same in good faith. What is now Section 15 of Article XI of the Constitution was originally Section 13 of the proposed Article on Accountability of Public Officers.

On motion for reconsideration by Commissioner Christian S. Monsod (**Commissioner Monsod**), who explained that the intention of the Committee was to limit the proposed Section 13 to civil actions, and without objection on the part of Commissioner Hilario G. Davide, Jr. (**Commissioner Davide**), the motion for reconsideration was granted. As a consequence, the amendment of Commissioner Davide regarding the applicability of the Section to criminal actions was deleted.

> RECONSIDERATION OF APPROVAL OF PROPOSED RESOLUTION NO. 456
> (Article on the Accountability of Public Officers)

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75 460 Phil. 830 (2003).
76 272 Phil. 147 (1991).
77 *Francisco v. House of Representatives*, supra note 75, at 885–886.

> THE PRESIDING OFFICER (Mr. de los Reyes). As many as are in favor of reconsidering Section 13, please raise your hand. (Several Members raised their hand.)
>
> The results show 27 votes in favor and 1 against; the reconsideration is approved.
>
> Commissioner Monsod is again recognized.
>
> MR. MONSOD. I propose that we delete the phrases: "or their co-principals, accomplices or accessories" and "or to prosecute offenses in connection therewith." So, the entire article will now read: "The right of the State to recover properties unlawfully acquired by public officials or employees shall not be barred by prescription, laches or estoppel."
>
> THE PRESIDING OFFICER (Mr. de los Reyes). Is there any objection to the amendment?
>
> Commissioner Suarez is recognized.
>
> MR. SUAREZ. Thank you, Mr. Presiding Officer.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). The Commissioner may proceed.
>
> MR. SUAREZ. I just would like to request the proponent to make it very clear that the elimination of the phrases "co-principals, accomplices, or accessories" and "or to prosecute offenses in connection therewith," shall not preclude those who may have been connected with the commission of the offense even if they are not public officials or employees. They still can be part of the prosecution of the crime committed.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). What is the reaction of Commissioner Monsod.
>
> MR. MONSOD. That is correct.
>
> MR. SUAREZ. Thank you, Mr. Presiding Officer.[78]

Considering the deletion of the phrase "co-principals, accomplices and accessories," Commissioner Adolfo S. Azcuna (**Commissioner Azcuna**) recommended that the provision include transferees in bad faith, thus:

> [THE PRESIDING OFFICER (Mr. de los Reyes).] Is there any objection to the amendment of Commissioner Monsod?
>
> Commissioner Azcuna is recognized.
>
> MR. AZCUNA. **Mr. Presiding Officer, the phrase "co-principals, accomplices and accessories" refers to criminal cases. So I propose to insert the phrase "OR THEIR TRANSFEREES IN BAD FAITH" in order to be able to recover these properties even from transferees of the**

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78 IV Record, Constitutional Commission 41 (August 28, 1986).

> **public officers if they are done in bad faith. Hence, the amended section will read: "The right of the State to recover properties unlawfully acquired by public officials or employees OR THEIR TRANSFEREES IN BAD FAITH."**
>
> THE PRESIDING OFFICER (Mr. de los Reyes). What does Commissioner Monsod say?
>
> MR. MONSOD. We have no objection to that, but I understand there is a comment on this matter.[79] (Emphasis supplied)

However, Commissioner Davide objected to Commissioner Azcuna's recommendation in so far as it qualified the term "transferees" to those who acted in bad faith. Commissioner Davide proposed that there should be no qualification whether the transferee is in good faith or in bad faith, thus:

> MR. DAVIDE. Mr. Presiding Officer.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Davide is recognized.
>
> **MR. DAVIDE. I would object if we qualify transferees in bad faith, because to my mind if an action to recover the ill-gotten wealth proceeds from a criminal act, then there cannot be any obstacle to its recovery even from anybody regardless of the manner of acquisition. Here, we will be putting up the defense of good faith, and so it could no longer be recovered if it had been transferred to another party. So I would really object. It is better that we should not make any qualification whether the transferee is a transferee in good faith or a transferee in bad faith.**
>
> MR. NOLLEDO. Mr. Presiding Officer.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Azcuna, the proponent of the amended, is recognized first.
>
> MR. AZCUNA. Mr. Presiding Officer, I share with the statement of Commissioner Davide that the right should extend to transferees. However, there are transferees in good faith against which even stolen goods under present law cannot be recovered, like the goods bought in a public market. My concern, therefore, is that there should be some words inserted to make it clear that the State can, regardless of prescription laws, still go after this ill-gotten wealth in the hands of the associates of public officials or private persons. Perhaps, the word "associates" in R.A. No. 1379 can be used instead of the phrase "co-principals" or "TRANSFEREES IN BAD FAITH."[80] (Emphasis supplied)

Commissioners Jose N. Nolledo and Florenz D. Regalado (**Commissioner Regalado**) expressed their concurrence with Commissioner Davide's proposal. Commissioner Regalado emphasized that although parties to a case involving ill-gotten wealth may raise different defenses, they should

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79 IV Record, Constitutional Commission 41 (August 28, 1986).
80 IV Record, Constitutional Commission 41 (August 28, 1986).

not be allowed to invoke the statute of limitations or prescription as a defense. For his part, Commissioner Azcuna moved to withdraw his proposed amendment and declared that he wanted to preserve the right of the State to recover ill-gotten property regardless of prescription, even when this property is in the hands of transferees or whether they are in bad faith or good faith:

> MR. NOLLEDO. Mr. Presiding Officer.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Nolledo is recognized.
>
> MR. NOLLEDO. Mr. Presiding Officer, thank you for recognizing me.
>
> I share the views of Commissioner Davide because I am the original author of this provision. I filed a resolution to this effect, and I hope Commissioner Azcuna will be kind enough to withdraw his amendment, because pursuant to Article 1505 of the Civil Code of the Philippines, a certain title could be passed only if the transferor has not title whatsoever. Therefore, applying the pertinent provisions of Article 1505 of the Civil Code of the Philippines dealing on sales, whoever is in possession of the ill-gotten wealth whether in good faith or in bad faith must surrender the same to the government.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Regalado is recognized.
>
> MR. REGALADO. Mr. Presiding Officer, I sustain the position of Commissioner Davide and consequently that of Commissioner Nolledo also. We should not make permutations in this constitutional provision. The law will deal with the specific case. If a property is acquired in bad faith, under Article 1379, Section 12, that act is already a criminal offense. Assuming that it was not a criminal offense, at least, the civil law will come in as to whether or not there was bad faith for value or for a consideration, or as to whether or not there was conspiracy. Let us not look into all the varied situations and the permutations. It is sufficient as a statement of principle. **What we are just trying to avoid here is the setting in of the statute of limitations. Perhaps, individually, in different cases, there may be different defenses that may also arise which the parties may invoke. Let us have the courts of justice appreciate those defenses exclusive of the question of the statute of limitations or prescription because this is a constitutional provision.** We cannot make subject to these conditions, like "except," "provide," "however," and so forth.
>
> THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Azcuna is recognized.
>
> MR. AZCUNA. Mr. Presiding Officer, I am willing to withdraw my amendment as long as it is made clear that the absence of prescription runs even against a private person who has acquired this ill-gotten wealth – that is, we have the same intention. **We want the right of the State to recover this property regardless of prescription, even when this property is in the hands of transferees or whether or not they are in bad faith or good faith as long as that is the intention because the wording refers only to recovering it from the public officials or from government employees**.
>
> Thank you.

THE PRESIDING OFFICER (Mr. de los Reyes). The amendment of Commissioner Azcuna is deemed withdrawn.

MR. PADILLA. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Padilla is recognized.

MR PADILLA. I second the proposed amendment of Commissioner Azcuna. I think he should not withdraw. The Civil Code has been mentioned and, precisely, the Civil Code provides that an owner who has lost or has been unlawfully deprived of his property has the right to recover it from whoever may be the possessor. However, if the possessor be an alleged pledgee or buyer in good faith, the right of the owner is superior to the transferee and it need not be in bad faith. If it is in bad faith, it is with more reason. But under Article 559 of the Civil Code, the transfer of stolen property does not vest title to the transferee because the original owner has superior rights over this property.

Mr. Presiding Officer, there have been many decisions regarding personal property which has been stolen and transferred by sale or even in good faith to a third person, now called a transferee. As long as the owner is deprived by an unlawful of his property, that owner has a superior right to recover from the transferee, even if the latter be a pledgee or a buyer in good faith. The only exception is about public fairs and markets which are not really in effect because even the State in a sale at public auction does not warrant the title. We agree to remove the phrase "co-principals, accomplices, or accessories," because that would imply a criminal action against the persons criminally liable. **However, in the recovery of ill-gotten wealth belonging to the people or to the nation, this act is superior over any supposed rights of a transferee, even if he claims to have acted in good faith.** So, the suggested phrase "public officials or employees" is already a good amendment. The phrase "OR THEIR TRANSFEREES IN BAD FAITH" need not be mentioned.

MR. NOLLEDO. That is correct.

MR. PADILLA. As long as the property is stolen, the original owner has a superior right over any other transferee.

x x x x

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Azcuna is recognized.

MR. AZCUNA. Convinced by the persuasive logic of Commissioner Padilla, I would like to reintroduce my amendment in modified form. The amendment would be just to add the word "TRANSFEREES" so as to read: "to recover the ill-gotten wealth from the government officials, employees or their TRANSFEREES."

THE PRESIDING OFFICER (Mr. de los Reyes). Is that satisfactory to Commissioner Monsod?

MR. MONSOD. There is a problem on the interpretation of this Article 13 once we add that word "TRANSFEREES," because it says: "The right of

the State to recover properties unlawfully acquired by public officials or employees." If we add that word "TRANSFEREES," it would mean that the transferees were also involved in the unlawful acquisition of the said property.

THE PRESIDING OFFICER (Mr. de los Reyes). I thought the Commissioner said he had agreed to the formulation.

MR. MONSOD. That is why we are all reconsidering our positions here.

x x x x

In order to clarify the intent of the amendment, we suggest that the amendment be stated this way: "FROM THEM OR FROM THEIR TRANSFEREES." So, the entire section will read: "The right of the State to recover properties unlawfully acquired by public officials or employees FROM THEM OR FROM THEIR TRANSFEREES shall not be barred by prescription, laches or estoppel."

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Azcuna is recognized.

MR. AZCUNA. I accept the amendment.

THE PRESIDING OFFICER (Mr. de los Reyes). Mr. Presiding Officer, I recall I presented an amendment precisely on this provision. I gave way to Commissioner Davide at that time because the imprescriptibility provision was supposed to cover both criminal and civil actions. I just want to clarify this from Commissioner Monsod or from Commissioner Davide if in the present formulation, what is covered is only imprescriptibility of civil action and not of criminal action. Commissioner Davide can probably answer that.

MR. MONSOD. Mr. Presiding Officer.

THE PRESIDING OFFICER (Mr. de los Reyes). Commissioner Monsod is recognized.

MR. MONSOD. Yes, it is just the imprescriptibility of the civil action.

MR. MAAMBONG. If only civil action, it does not cover imprescriptibility of criminal action.

MR. MONSOD. Yes, that is right.

MR. MAAMBONG. Thank you.

THE PRESIDING OFFICER (Mr. de los Reyes). Is the Commission now prepared to vote on the issue?

MR. RAMA. Yes.

THE PRESIDING OFFICER (Mr. de los Reyes). Is there any objection to the amendment of Commissioner Monsod? (Silence) The Chair hears none; the amendment is approved.[81] (Emphasis supplied)

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[81] IV Record, Constitutional Commission 41–44 (August 28, 1986).

Thereafter, on motion of the Committee on Style, the Section 13 which became Section 15, was approved, thus:

> MR. RODRIGO. In Section 15, we inserted: "FROM THEM OR FROM THEIR NOMINEES OR TRANSFEREES" and we deleted "co-principals, accomplices or accessories or to prosecute offenses in connection therewith." So, Section 15 reads: "The right of the State to recover properties unlawfully acquired by public officials or employees, FROM THEM OR FROM THEIR NOMINEES OR TRANSFEREES shall not be barred by prescription, laches, or estoppel."
>
> I move for its approval.
>
> THE PRESIDING OFFICER (Mr. Jamir). Is there any objection? (Silence). The Chair hears none; the amendment is approved.[82]

Based on the foregoing, it is beyond doubt that the framers of the 1987 Constitution intended Section 15, Article XI thereof to apply to all kinds of transferees of properties unlawfully acquired by public officials. As eloquently stated by Commissioner Ambrosio B. Padilla, the recovery of ill-gotten wealth belonging to the people or to the nation is superior over any supposed rights of a transferee, even if he or she claims to have acted in good faith.

Additionally, the Civil Code itself provides that prescription does not run against the State, thus:

> Article 1108. Prescription, both acquisitive and extinctive, runs against:
>
> x x x x
>
> 4) **Juridical persons, except the State** and its subdivisions. [83] (Emphasis supplied)

In *Ramiscal v. Commission on Audit*,[84] the Court applied Article 1108 (4) of the Civil Code as follows:

> **Article 1108 (4) of the Civil Code expressly provides that prescription does not run against the State and its subdivisions.** This rule has been consistently adhered to in a long line of cases involving reversion of public lands, where it is often repeated that when the government is the real party in interest, and it is proceeding mainly to assert its own right to recover its own property, there can, as a rule, be no defense grounded on laches or prescription. **We find that this rule applies, regardless of the nature of the government property. Article 1108 (4) does not distinguish between real or personal properties of the State.**

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82 *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 375 Phil. 697, 723 (1999); V Record, Constitutional Commission 801–802.

83 CIVIL CODE, Art. 1108.

84 819 Phil. 597 (2017).

> **There is also no reason why the logic behind the rule's application to reversion cases should not equally apply to the recovery of any form of government property. In fact, in an early case involving a collection suit for unpaid loans between the Republic and a private party, the Court, citing Article 1108 (4) of the Civil Code, held that the case was brought by the Republic in the exercise of its sovereign functions to protect the interests of the State over a public property.**[85] (Emphasis supplied; citations omitted)

The case of *Republic of the Philippines v. Grijaldo* (***Grijaldo***)[86] is likewise instructive. In *Grijaldo*, the appellant obtained five loans from the Bank of Taiwan, Ltd. in 1943. By virtue of Vesting Order No. P-4, dated January 21, 1946, and under the authority provided for in the Trading with the Enemy Act, as amended, the assets in the Philippines of the Bank of Taiwan, Ltd. were vested in the Government of the United States. Pursuant to the Philippine Property Act of 1946 of the United States, these assets, including the loans in question, were subsequently transferred to the Republic of the Philippines. In his attempt to escape from liability, the appellant in *Grijaldo* argued that the right of the State to collect has already prescribed.[87] The Court, citing Article 1108(4) of the Civil Code, rejected the appellant's argument, thus:

> Firstly, **it should be considered that the complaint in the present case was brought by the Republic of the Philippines not as a nominal party but in the exercise of its sovereign functions, to protect the interests of the State over a public property. Under paragraph 4 of Article 1108 of the Civil Code prescription, both acquisitive and extinctive, does not run against the State. This Court has held that the statute of limitations does not run against the right of action of the Government of the Philippines.**[88] (Emphasis supplied; citation omitted)

Therefore, Wellex is barred from raising the defense of prescription in this case. Pursuant to the express provisions of the 1987 Constitution and the Anti-Plunder Law, the right of the State to recover the ill-gotten wealth transferred by former President Estrada to Wellex is imprescriptible. Moreover, the Civil Code expressly states that prescription does not run against the State.

Wellex must now pay its obligation under the loan contract as it has no more defense against the enforcement of the same; however, the State should comply with the rule on the creditor-mortgagee's right to collect the debt or

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85 Id. at 605–606.
86 122 Phil. 1060 (1965).
87 Id. at 1067.
88 Id.

foreclose the mortgage as these are mutually exclusive remedies

Considering that Wellex's sole affirmative defense of prescription is not applicable in this case, it is now incumbent upon Wellex to fulfill its obligation under its loan contract. To reiterate, the validity of the loan and mortgage contracts which are the subjects of this case, as well as Wellex's failure to pay its obligation under the loan contract, are now undisputed.

In relation to this, the Court, in its 2016 Decision, remanded the case to the RTC to give the State an opportunity "to affirm its own claims, as creditor, against the loan and/or mortgage securing the said loan, paving the way to the realization of any of the fruits of plunder."[89] However, due to their erroneous interpretation of the Courts' order in its 2016 Decision to remand the case to the RTC for "further proceedings," the petitioners merely argued in their various pleadings before the RTC that the State is the owner of the Waterfront Shares,[90] and that the term "further proceedings" in the Court's 2016 Decision refers purely to execution matters and not a re-trial on the issue of possession or ownership of the Waterfront Shares.[91]

Notably, due to their erroneous insistence that the State owns the Waterfront Shares, the petitioners did not indicate in the proceedings before the RTC the remedy the State was availing of to recover Wellex's debt.

In its 2016 Decision, the Court held that as a subrogee, the State is obliged to avail of the very same remedies available to the original creditor to collect the loan obligation, **which is to first demand from the original debtor to pay the same, and if not paid despite demand, institute either foreclosure proceedings, or the appropriate action for collection before the proper forum.**[92]

The RTC found that there was no collection action or mortgage action filed by either BDO or the State against Wellex.[93] As such, the State should first make a demand against Wellex to pay its loan obligation. Should Wellex fail to pay despite demand, the State can then institute against Wellex either a personal action for collection of debt or a real action to foreclose the mortgaged Waterfront Shares.

To emphasize, it is a settled rule that "these remedies of collection and foreclosure are mutually exclusive. The invocation or grant of one remedy

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89 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 609.
90 *Rollo*, p. 63, Manifestation and Motion for Clarification.
91 Id. at 74, Respondents' Memorandum.
92 *The Wellex Group, Inc. v. Sheriff Urieta*, supra note 5, at 607.
93 *Rollo*, p. 57, RTC Decision.

precludes the other."[94] In *Pineda v. De Vega*,[95] the Court discussed this rule as follows:

> We hold, therefore, that, in the absence of express statutory provisions, a mortgage creditor may institute against the mortgage debtor either a personal action for debt or a real action to foreclose the mortgage. In other words, he may pursue either of the two remedies, but not both. By such election, his cause of action can by no means be impaired, for each of the two remedies is complete in itself. Thus, an election to bring a personal action will leave open to him all the properties of the debtor for attachment and execution, even including the mortgaged property itself. And, if he waives such personal action and pursues his remedy against the mortgaged property, an unsatisfied judgment thereon would still give him the right to sue for a deficiency judgment, in which case, all the properties of the defendant, other than the mortgaged property, are again open to him for the satisfaction of the deficiency. In either case, his remedy is complete, his cause of action undiminished, and any advantages attendant to the pursuit of one or the other remedy are purely accidental and are all under his right of election. On the other hand, a rule that would authorize the plaintiff to bring a personal action against the debtor and simultaneously or successively another action against the mortgaged property, would result not only in multiplicity of suits so offensive to justice (Soriano vs. Enriques, 24 Phil., 584) and obnoxious to law and equity (Osorio vs. San Agustin, 25 Phil., 404), but also in subjecting the defendant to the vexation of being sued in the place of his residence or of the residence of the plaintiff, and then again in the place where the property lies.[96]

As such, the petitioners should have elected and pursued in the proceedings before the RTC either the collection of Wellex's loan obligation or the foreclosure of the mortgaged Waterfront Shares. However, the petitioners failed to do so. Considering that the RTC has already conducted trial and rendered a decision in Civil Case No. 09-399 without the petitioners availing of the remedies to recover Wellex's debt, the Court deems it unnecessary to remand the case to the RTC for further proceedings. As discussed above, the State should now avail of the remedies available to it as creditor and mortgagee under the loan contract with Wellex before a proper forum. Lest it be forgotten, Wellex has no more defense against the enforcement of the subject loan and mortgage contracts.

WHEREFORE, the Petition for Review is **PARTIALLY GRANTED**. The Decision, dated May 16, 2019, of Branch 132, Regional Trial Court, Makati City, in Civil Case No. 09-399, is **REVERSED**. The Complaint for Recovery of Possession, Delivery of Stock Certificates and Injunction with Application for Temporary Restraining Order and Writ of Preliminary Injunction filed by respondent Wellex Group, Inc. is **DISMISSED**.

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94 *Pineda v. De Vega*, 851 Phil. 1106, 1119 (2019).
95 Id.
96 Id. at 1119–1120.

SO ORDERED.

MARIA FILOMENA D. SINGH
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On leave)
HENRI JEAN PAUL B. INTING
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

ATTESTATION

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

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ALEXANDER G. GESMUNDO
Chief Justice