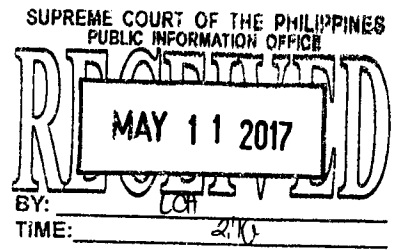


Republic of the Philippines
Supreme Court
 Baguio City



FIRST DIVISION

REPUBLIC OF THE PHILIPPINES, **G.R. No. 186717**
 represented by the **ANTI-MONEY**
LAUNDERING COUNCIL,
 Petitioner,

- versus -

JOCELYN I. BOLANTE, OWEN
VINCENT D. BOLANTE, MA.
CAROL D. BOLANTE, ALEJO
LAMERA, CARMEN LAMERA,
EDNA CONSTANTINO, ARIEL C.
PANGANIBAN, KATHERINE G.
BOMBEO, SAMUEL S. BOMBEO,
MOLUGAN FOUNDATION,
SAMUEL G. BOMBEO, JR., and
NATIONAL LIVELIHOOD
DEVELOPMENT CORPORATION
(Formerly Livelihood Corporation),
 Respondents.

X -----X

REPUBLIC OF THE PHILIPPINES, **G.R. No. 190357**
 represented by the **ANTI-MONEY**
LAUNDERING COUNCIL,
 Petitioner,

- versus -

HON. WINLOVE M. DUMAYAS,
Presiding Judge of Branch 59,
Regional Trial Court in Makati City,
JOCELYN I. BOLANTE, ARIEL C.
PANGANIBAN, DONNIE RAY G.
PANGANIBAN, EARL WALTER G.
PANGANIBAN, DARRYL G.
PANGANIBAN, GAVINA G.
PANGANIBAN, JAYPEE G.

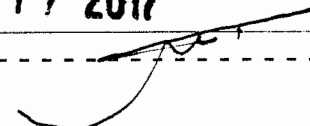
**PANGANIBAN, SAMUEL S.
 BOMBEO, KATHERINE G.
 BOMBEO, SAMUEL G. BOMBEO,
 JR., NATIONAL LIVELIHOOD
 DEVELOPMENT CORPORATION
 (FORMERLY LIVELIHOOD
 CORPORATION), MOLUGAN
 FOUNDATION, ASSEMBLY OF
 GRACIOUS SAMARITANS
 FOUNDATION, INC., ONE
 ACCORD CHRISTIAN
 COMMUNITY ENDEAVOR FOR
 SALVATION & SUCCESS
 THROUGH POVERTY
 ALLEVIATION, INC., SOCIETY'S
 MULTI-PURPOSE FOUNDATION,
 INC., ALLIANCE FOR THE
 CONSERVATION OF
 ENVIRONMENT OF
 PANGASINAN, INC., AND STA.
 LUCIA EDUCATIONAL
 ASSOCIATION OF BULACAN,
 INC.**

Present:

SERENO, *CJ*, Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, *JJ*.

Promulgated:

APR 17 2017



Respondents.

X -----X

DECISION

SERENO, *CJ*:

G.R. No. 186717 is a petition for review on certiorari under Rule 45 of the Rules of Court, with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction. The petition seeks to nullify the Court of Appeals (CA) Resolution¹ in CA-G.R. AMLC No. 00024. The CA Resolution denied petitioner's application to extend the freeze order issued on 4 February 2009² over the bank deposits and investments of respondents.


G.R. No. 190357 is a petition for certiorari under Rule 65 of the Rules of Court challenging the Resolution³ and the Order⁴ issued by the Regional Trial Court of Makati, Branch 59 (RTC), in AMLC Case No. 07-001. The

¹ *Rollo* (G.R. No. 186717), pp. 58-68. The Resolution dated 27 February 2009 issued by the CA First Division was penned by Associate Justice Sesinando E. Villon, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Noel G. Tijam concurring.

² *Id.* at 472-483.

³ *Rollo* (G.R. No. 190357), pp. 42-49. The Resolution dated 3 July 2009 was penned by Presiding Judge Winlove M. Dumayas.

⁴ *Id.* at 50; dated 13 November 2009.



RTC Resolution denied petitioner's application for an order allowing an inquiry into the bank deposits and investments of respondents. The RTC Order denied petitioner's motion for reconsideration.

FACTS

In April 2005, the Philippine National Bank (PNB) submitted to the Anti-Money Laundering Council (AMLC) a series of suspicious transaction reports involving the accounts of Livelihood Corporation (LIVECOR), Molugan Foundation (Molugan), and Assembly of Gracious Samaritans, Inc. (AGS).⁵ According to the reports, LIVECOR transferred to Molugan a total amount of ₱172.6 million in a span of 15 months from 2004 to 2005.⁶ On 30 April 2004, LIVECOR transferred ₱40 million to AGS, which received another ₱38 million from Molugan on the same day.⁷ Curiously, AGS returned the ₱38 million to Molugan also on the same day.⁸

The transactions were reported "suspicious" because they had no underlying legal or trade obligation, purpose or economic justification; nor were they commensurate to the business or financial capacity of Molugan and AGS, which were both lowly capitalized at ₱50,000 each.⁹ In the case of Molugan, Samuel S. Bombeo, who holds the position of president, secretary and treasurer, is the lone signatory to the account.¹⁰ In the case of AGS, Samuel S. Bombeo shares this responsibility with Ariel Panganiban.¹¹

On 7 March 2006, the Senate furnished the AMLC a copy of its Committee Report No. 54¹² prepared by the Committee on Agriculture and Food and the Committee on Accountability of Public Officers and Investigations.¹³

Committee Report No. 54¹⁴ narrated that former Undersecretary of Agriculture Jocelyn I. Bolante (Bolante) requested the Department of Budget and Management to release to the Department of Agriculture the amount of ₱728 million for the purchase of farm inputs under the *Ginintuang Masaganang Ani* Program. This amount was used to purchase liquid fertilizers from Freshan Philippines, Inc., which were then distributed

⁵ *Rollo* (G.R. No. 186717), p. 97.

⁶ *Id.*

⁷ *Id.* at 98.

⁸ *Id.*

⁹ *Id.* at 97.

¹⁰ *Id.*

¹¹ *Id.*

¹² Entitled "TO CONDUCT AN INQUIRY ON THE ALLEGED MISMANAGEMENT AND USE OF THE FERTILIZER FUND OF THE DEPARTMENT OF AGRICULTURE'S *GININTUANG MASAGANANG ANI* PROGRAM TO THE DETRIMENT OF FILIPINO FARMERS WITH THE END IN VIEW OF CHARTING EFFECTIVE POLICIES AND PROGRAM FOR THE AGRICULTURE SECTOR."

¹³ *Rollo* (G.R. No. 186717), p. 98.

¹⁴ *Id.* at 104-147.

to local government units and congressional districts beginning January 2004. Based on the Audit Report prepared by the Commission on Audit (COA),¹⁵ the use of the funds was characterized by massive irregularities, overpricing, violations of the procurement law and wanton wastage of scarce government resources.

Committee Report No. 54 also stated that at the time that he served as Undersecretary of Agriculture, Bolante was also appointed by President Gloria Macapagal Arroyo as acting Chairman of LIVECOR.

The AMLC issued Resolution No. 75¹⁶ finding probable cause to believe that the accounts of LIVECOR, Molugan and AGS – the subjects of the suspicious transaction reports submitted by PNB – were related to what became known as the “fertilizer fund scam.” The pertinent portion of Resolution No. 75 provides:

Under the foregoing circumstances, there is probable cause to believe that the accounts of the foundations and its officers are related to the fertilizer fund scam. The release of the amount of ₱728 million for the purchase of farm inputs to the Department of Agriculture was made by Undersecretary Bolante. Undersecretary Bolante was the Acting Chairman of LIVECOR. LIVECOR transferred huge amounts of money to Molugan and AGS, while the latter foundations transferred money to each other. Mr. [Samuel S.] Bombeo was the President, Secretary, and Treasurer of Molugan. He, therefore, played a key role in these transactions. On the other hand, Mr. [Ariel] Panganiban was the signatory to the account of AGS. Without his participation, these transactions could not have been possible.

The acts involved in the “fertilizer scam” may constitute violation of Section 3(e) of Republic Act No. 3019, x x x as well as violation of Republic Act No. 7080 (Plunder).¹⁷

Thus, the AMLC authorized the filing of a petition for the issuance of an order allowing an inquiry into the six accounts¹⁸ of LIVECOR, Molugan, AGS, Samuel S. Bombeo and Ariel Panganiban. The AMLC also required all covered institutions to submit reports of covered transactions and/or suspicious transactions of these entities and individuals, including all the related web of accounts.

¹⁵ Id. at 760-791; entitled Report on the Audit of the ₱728 million GMA Farm Input Fund.

¹⁶ Id. at 97-102; dated 18 September 2006.

¹⁷ Id. at 100.

¹⁸ Id. at 101. The accounts are as follows:

Covered Institution	Account Name	Account Number
LBP	LIVECOR	0672102014
PNB	Molugan	2738301148
PNB	Molugan	2738102331
PNB	AGS	2738301164
PNB	Samuel S. Bombeo	2737006738
BPI	Ariel Panganiban	601614338

The petition was filed *ex parte* before the RTC and docketed as AMLC SP Case No. 06-003. On 17 November 2006, the trial court found probable cause and issued the Order prayed for.¹⁹ It allowed the AMLC to inquire into and examine the six bank deposits or investments and the related web of accounts.

Meanwhile, based on the investigation of the Compliance and Investigation Group of the AMLC Secretariat, a total of 70 bank accounts or investments were found to be part of the related web of accounts involved in the fertilizer fund scam.²⁰

Accordingly, the AMLC issued Resolution No. 90²¹ finding probable cause to believe that these 70 accounts were related to the fertilizer fund scam. It said that the scam may constitute violations of Section 3(e)²² of Republic Act No. (R.A.) 3019 (Anti-Graft and Corrupt Practices Act) and R.A. 7080 (An Act Defining and Penalizing the Crime of Plunder). The AMLC therefore authorized the filing of a petition for the issuance of an order allowing an inquiry into these 70 accounts.²³

¹⁹ Id. at 103.

²⁰ Id. at 151-156.

²¹ Id at 151-159; dated 26 October 2007.

²² Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

²³ Id at 156-159. The accounts are as follows:

Covered Institution	Account Name	Account Number
AIG Philam Savings Bank, Inc.	Ariel C. Panganiban	5179-8819-4757-9006
AIG Philam Savings Bank, Inc.	Katherine G. Bombeo	5179-8819-1260-4003
Banco de Oro	Samuel S. Bombeo	10160445094
Banco de Oro	Samuel S. Bombeo	12160008687
Banco de Oro	Ariel C. Panganiban	10160465761
Citibank	Katherine Bombeo	8243051259
East West Bank	Molugan	04-02-04043-2
East West Bank	Molugan	4302005295
East West Bank	Samuel S. Bombeo	04-02-01842-9
East West Bank	AGS	04-02-04042-4
East West Bank	AGS	36-02-00572-1
East West Bank	One Accord Christian Community Endeavor for Salvation and Success through Poverty Alleviation	36-02-00574-6
East West Bank	Society's Multi-Purpose Foundation, Inc.	36-02-00226-7
East West Bank	Alliance for the Conservation of the Environment of Pangasinan, Inc.	1502053661
East West Bank	Sta. Lucia Educational Association of Bulacan, Inc.	1502053562
Equitable PCI Bank	Samuel Gomez Bombeo, Jr.	1291-16354-4

Cont.

Maybank Phils., Inc.	Ace-Alliance for the Conservation of the Environment of Pangasinan, Inc.	0016-500155-3
Maybank Phils., Inc.	Sta. Lucia Educational Association of Bulacan, Inc.	0016-500154-6
Metropolitan Bank & Trust Co.	Ariel C. Panganiban	3-00364790-1
PNB	Samuel S. Bombeo	247-812382-8
PNB	Samuel S. Bombeo	247-525602-9
PNB	LIVECOR	273-850001-9
Phil. Savings Bank	Ariel C. Panganiban	084-121-00180-8
Planters Development Bank	Ariel C. Panganiban or Donnie Ray G. Panganiban	11-59-004301
Planters Development Bank	Ariel C. Panganiban or Donnie Ray G. Panganiban	11-59-004325
Planters Development Bank	Ariel C. Panganiban or Donnie Ray G. Panganiban	11-59-011458
Planters Development Bank	Ariel C. Panganiban or Earl Walter G. Panganiban	11-59-004305
Planters Development Bank	Ariel C. Panganiban or Earl Walter G. Panganiban	11-59-004324
Planters Development Bank	Ariel C. Panganiban or Earl Walter G. Panganiban	11-59-011457
Planters Development Bank	Ariel C. Panganiban or Darryl G. Panganiban	11-59-004332
Planters Development Bank	Ariel C. Panganiban or Darryl G. Panganiban	11-59-004342
Planters Development Bank	Ariel C. Panganiban or Darryl G. Panganiban	11-59-011464
Planters Development Bank	Ariel C. Panganiban or Gavina G. Panganiban	11-59-004335
Planters Development Bank	Ariel C. Panganiban or Gavina G. Panganiban	11-59-011466
Planters Development Bank	Ariel C. Panganiban or Gavina G. Panganiban	11-59-011474
Planters Development Bank	Ariel C. Panganiban or Jaypee G. Panganiban	11-59-04338
Planters Development Bank	Ariel C. Panganiban or Jaypee G. Panganiban	11-59-011465
Phil. Business Bank	Sps. Samuel & Katherine Bombeo	PN0576-03
Phil. Business Bank	Eduardo F. Suarez &/or Ariel C. Panganiban ITF; MKS Finance Corp.	010-00-000438-9
Union Bank	Samuel S. Bombeo	00894582704-2
Insular Life Assurance Co.	Ariel C. Panganiban	Policy No. 2315613
Pru Life Insurance Corp. of UK	Samuel S. Bombeo	Policy No. CTBF013882
Pru Life Insurance Corp. of UK	Samuel S. Bombeo	Policy No. CTBP013882
Manufacturers Life Insurance Co.	Samuel S. Bombeo	Policy No. 8710170009
Standard Insurance Co., Inc.	Samuel S. Bombeo	Policy No. COC-13643688
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0005978
Performance Foreign Exchange Corp.	Samuel S. Bombeo, Jr.	2649
Prudential Bank	Jocelyn I. Bolante	00000-035110-8
Prudential Bank	Jocelyn I. Bolante	00000-038816-9
Prudential Bank	Jocelyn I. Bolante	00000-044834-4
Prudential Bank	Jocelyn I. Bolante	00000-044915-3
Prudential Bank	Jocelyn I. Bolante	00000-046575-8
Prudential Bank	Jocelyn I. Bolante	00055-000023-1
Prudential Bank	Jocelyn I. Bolante	01055-000093-0
Prudential Bank	Jocelyn I. Bolante	01055-000877-4
Prudential Bank	Jocelyn I. Bolante	04055-000032-3
Prudential Bank	Jocelyn I. Bolante	05055-000167-0
Prudential Bank	Jocelyn I. Bolante	06055-000057-5

On 14 February 2008, this Court promulgated *Republic v. Eugenio*.²⁴ We ruled that when the legislature crafted Section 11²⁵ of R.A. 9160 (Anti-Money Laundering Act of 2001), as amended, it did not intend to authorize *ex parte* proceedings for the issuance of a bank inquiry order by the CA. Thus, a bank inquiry order cannot be issued unless notice is given to the account holders.²⁶ That notice would allow them the opportunity to contest the issuance of the order.

In view of this development, the AMLC issued Resolution No. 40.²⁷ It authorized the filing of a petition for the issuance of a freeze order against the 70 accounts found to be related to the fertilizer fund scam.

Hence, the Republic filed an *Ex Parte* Petition²⁸ docketed as CA-G.R. AMLC No. 00014 before the CA, seeking the issuance of a freeze order against the 70 accounts.

The CA issued a freeze order effective for 20 days.²⁹ The freeze order required the covered institutions of the 70 accounts to desist from and not allow any transaction involving the identified monetary instruments. It also asked the covered institutions to submit a detailed written return to the CA within 24 hours from receipt of the freeze order.

Cont.

Prudential Bank	Jocelyn I. Bolante	06055-000138-5
BPI	Jocelyn I. Bolante	0200111600000001163007351
BPI	Jocelyn I. Bolante	0200111600000001166006794
BPI	Jocelyn I. Bolante	0200111600000001166006808
BPI	Jocelyn I. Bolante	0200111600000001166009033
BPI	Jocelyn I. Bolante	0200111600000001167001579
BPI	Jocelyn I. Bolante	0200111600000001167000203
BPI	Jocelyn I. Bolante	0200111600000001167001978
Union Bank	Jocelyn I. Bolante	009550000582
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	1249800445
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	249046868
Standard Chartered Bank	Jocelyn I. Bolante	BPY 280851100002150

²⁴ 569 Phil. 98 (2008).

²⁵ Section 11. *Authority to Inquire into Bank Deposits*. — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.

²⁶ *Republic v. Eugenio*, supra.

²⁷ *Rollo* (G.R. No. 186717), pp. 160-164; dated 21 May 2008.

²⁸ *Id.* at 74-96; filed on 30 June 2008.

²⁹ *Id.* at 165-184. The Resolution dated 1 July 2008 issued by the CA First Division was penned by Associate Justice Pampio A. Abarintos, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Lucas P. Bersamin (now a Member of this Court) concurring.

The CA conducted a summary hearing of the application,³⁰ after which the parties were ordered to submit their memoranda, manifestations and comments/oppositions.³¹ The freeze order was later extended for a period of 30 days until 19 August 2008.³²

Finding that there existed probable cause that the funds transferred to and juggled by LIVECOR, Molugan, and AGS formed part of the ₱728 million fertilizer fund, the CA extended the effectivity of the freeze order for another four months, or until 20 December 2008.³³ The extension covered only 31 accounts,³⁴ which showed an existing balance based on the returns of the covered institutions.

³⁰ Id. at 184, 185; conducted on 8 July 2008.

³¹ Id. at 186-187.

³² Id. at 185-188; Resolution dated 16 July 2008.

³³ Id. at 268-296; Resolution dated 19 August 2008.

³⁴ Id. at 273-283. The remaining accounts that show an existing balance are as follows:

Covered Institution	Account Name	Account Number
Banco de Oro	Samuel S. Bombeo	12160008687
Banco de Oro	Ariel C. Panganiban	10160465761
Banco de Oro	Ariel C. Panganiban or Gavina Panganiban	0160444063
Citibank	Katherine Bombeo	8243051259
East West Bank	Molugan	04-02-04043-2
East West Bank	Molugan	4302005295
East West Bank	Samuel S. Bombeo	04-02-01842-9
East West Bank	Alliance for the Conservation of the Environment of Pangasinan, Inc.	1502053661
East West Bank	Sta. Lucia Educational Association of Bulacan, Inc.	1502053562
Maybank Phils., Inc.	Ace-Alliance for the Conservation of the Environment of Pangasinan, Inc.	0016-500155-3
Maybank Phils., Inc.	Samuel S. Bombeo	1016-003434-3
Maybank Phils., Inc.	Samuel S. Bombeo	1716-000118-9
Metropolitan Bank & Trust Co.	Ariel C. Panganiban	3-00364790-1
PNB	Samuel S. Bombeo	247-812382-8
PNB	Samuel S. Bombeo	247-525602-9
PNB	LIVECOR	273-850001-9
PNB	LIVECOR	273-502826-2
Union Bank	Samuel S. Bombeo	00894582704-2
Insular Life Assurance Co.	Ariel C. Panganiban	Policy No. 2315613
Manufacturers Life Insurance Co.	Samuel S. Bombeo	Policy No. 871170009
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0005978
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0151320
Performance Foreign Exchange Corp.	Samuel S. Bombeo, Jr.	2649
BPI	Jocelyn I. Bolante	1163-0073-51
BPI	Jocelyn I. Bolante	1164-0006-28
BPI	Jocelyn I. Bolante	0200111600000001163007351
BPI	Jocelyn I. Bolante	0200111600000001166009033
BPI	Jocelyn I. Bolante	0200111600000001167001978
Union Bank	Jocelyn I. Bolante	009550000582
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	1249800445
Standard Chartered Bank	Jocelyn I. Bolante	BPY 280851100002150

In the meantime, the Republic filed an *Ex Parte* Application³⁵ docketed as AMLC Case No. 07-001 before the RTC. Drawing on the authority provided by the AMLC through Resolution No. 90, the *ex parte* application sought the issuance of an order allowing an inquiry into the 70 accounts.

The RTC found probable cause and issued the Order prayed for.³⁶ It allowed the AMLC to inquire into and examine the 70 bank deposits or investments and the related web of accounts.

On 20 October 2008, this Court denied with finality the motion for reconsideration filed by the Republic in *Eugenio*.³⁷ The Court reiterated that Section 11³⁸ of R.A. 9160, as then worded, did not allow a bank inquiry order to be issued *ex parte*; and that the concerns of the Republic about the consequences of this ruling could be more properly lodged in the legislature.

Thus, in order to comply with the ruling in *Eugenio*, the Republic filed an Amended and Supplemental Application³⁹ in AMLC Case No. 07-001 before the RTC. The Republic sought, after notice to the account holders, the issuance of an order allowing an inquiry into the original 70 accounts plus the six bank accounts that were the subject of AMLC SP Case No. 06-003. A summary hearing thereon ensued.

On the belief that the finality of *Eugenio* constituted a supervening event that might justify the filing of another petition for a freeze order, the AMLC issued Resolution No. 5.⁴⁰ The resolution authorized the filing of a new petition for the issuance of a freeze order against 24⁴¹ of the 31 accounts previously frozen by the CA.

³⁵ Id. at 189-206.

³⁶ Id. at 264-267; Order dated 25 July 2008.

³⁷ *Rollo* (G.R. No. 190357), pp. 212-216.

³⁸ Section 11. *Authority to Inquire into Bank Deposits.* — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).

To ensure compliance with this Act, the *Bangko Sentral ng Pilipinas* (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.

³⁹ *Rollo* (G.R. No. 186717), pp. 333-362; dated 22 December 2008.

⁴⁰ Id. at 363-365; dated 26 January 2009.

⁴¹ Id. at 364-365. The 24 accounts are the following:

Covered Institution	Account Name	Account Number
Banco de Oro	Samuel S. Bombeo	12160008687
Banco de Oro	Ariel C. Panganiban	10160465761
Banco de Oro	Ariel C. Panganiban or Gavina Panganiban	0160444063
Citibank	Katherine Bombeo	8243051259
East West Bank	Molugan	04-02-04043-2

Hence, the Republic filed an Urgent *Ex Parte* Petition⁴² docketed as CA-G.R. AMLC No. 00024 before the CA seeking the issuance of a freeze order against the 24 accounts.

In the Resolution dated 4 February 2009,⁴³ the CA issued a freeze order effective for 20 days. The freeze order required the covered institutions of the 24 accounts to desist from and not allow any transaction involving the identified monetary instruments. It also asked the covered institutions to submit a detailed written return to the CA within 24 hours from receipt of the freeze order.

A summary hearing was conducted by the CA for the purpose of determining whether to modify, lift or extend the freeze order.⁴⁴ Thereafter, the parties were required to submit memoranda.

THE CHALLENGED RESOLUTIONS

The assailed CA Resolution dated 27 February 2009⁴⁵ denied the application to extend the freeze order issued on 4 February 2009.

The CA found that the Republic had committed forum shopping.⁴⁶ Specifically, the appellate court found that the parties in CA-G.R. AMLC No. 00024 were the same as those in CA-G.R. AMLC No. 00014. The petition in CA-G.R. AMLC No. 00024 sought the issuance of a freeze order against the same accounts covered by CA-G.R. AMLC No. 00014. Finally,

Cont.

East West Bank	Molugan	4302005295
East West Bank	Samuel S. Bombeo	04-02-01842-9
Maybank Phils., Inc.	Samuel S. Bombeo	1016-003434-3
Maybank Phils., Inc.	Samuel S. Bombeo	1716-000118-9
PNB	Samuel S. Bombeo	247-812382-8
PNB	Samuel S. Bombeo	247-525602-9
PNB	LIVECOR	273-850001-9
PNB	LIVECOR	273-502826-2
Union Bank	Samuel S. Bombeo	00894582704-2
Insular Life Assurance Co.	Ariel C. Panganiban	Policy No. 2315613
Manufacturers Life Insurance Co.	Samuel S. Bombeo	Policy No. 871170009
BPI/MS Insurance Corp.	Ariel C. Panganiban	Policy No. F0005978
Performance Foreign Exchange Corp.	Samuel S. Bombeo, Jr.	2649
BPI	Jocelyn I. Bolante	1164-0006-28
BPI	Jocelyn I. Bolante	0200111600000001163007351
BPI	Jocelyn I. Bolante	0200111600000001166009033
BPI	Jocelyn I. Bolante	0200111600000001167001978
Union Bank	Jocelyn I. Bolante	009550000582
Rizal Commercial Banking Corp.	Jocelyn I. Bolante	1249800445

⁴² Id. at 366-404; filed on 2 February 2009.

⁴³ Id. at 472-483. The Resolution issued by the CA First Division was penned by Associate Justice Sasinando E. Villon, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Noel G. Tijam concurring.

⁴⁴ Id. at 64; conducted on 12 February 2009.

⁴⁵ Id. at 58-68.

⁴⁶ Id. at 66-67.

the rights asserted and reliefs prayed for in both petitions were substantially founded on the same facts, thereby raising identical causes of action and issues.

The CA found no merit in the assertion of the Republic that the ruling in *Eugenio* was a supervening event that prevented the latter from concluding its financial investigation into the accounts covered by the freeze order in CA-G.R. AMLC No. 00014.⁴⁷ The CA noted that *Eugenio* was promulgated on 14 February 2008, or almost five months before the Republic filed CA-G.R. AMLC No. 00014 before the CA and AMLC Case No. 07-001 before the RTC. According to the appellate court, since the Republic was faced with the imminent finality of *Eugenio*, it should have taken steps to expedite the conduct of the inquiry and the examination of the bank deposits or investments and the related web of accounts.

At any rate, the CA found that the petition in CA-G.R. AMLC No. 00024 was effectively a prayer for the further extension of the 5-month, 20-day freeze order already issued in CA-G.R. AMLC No. 00014.⁴⁸ The extension sought is proscribed under Section 53 of Administrative Circular No. 05-11-04-SC.⁴⁹ According to this provision, the effectivity of a freeze order may be extended for good cause shown for a period not exceeding six months.

Aggrieved, the Republic filed the instant petition for review on certiorari with an urgent prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction docketed as G.R. No. 186717.

On 25 March 2009, this Court issued a *Status Quo Ante* Order⁵⁰ enjoining the implementation of the assailed CA Resolution.

At the time of the submission of respondents' Comment⁵¹ and petitioner's Consolidated Reply⁵² in G.R. No. 186717, the RTC issued the challenged Resolution dated 3 July 2009⁵³ in AMLC Case No. 07-001. The trial court denied the Republic's application for an order allowing an inquiry into the total of 76 bank deposits and investments of respondents.

⁴⁷ Id. at 67-68.

⁴⁸ Id. at 68.

⁴⁹ Entitled "Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended," dated 15 December 2005.

⁵⁰ *Rollo* (G.R. No. 186717), pp. 520-522.

⁵¹ Id. at 537-569 (Respondents Jocelyn I. Bolante, et al.), 609-629 (Respondent National Livelihood Development Corporation, formerly LIVECOR), 637-656 (Respondents Ariel C. Panganiban, et al.).

⁵² Id. at 689-700.

⁵³ *Rollo* (G.R. No. 190357), pp. 42-49.

The RTC found no probable cause to believe that the deposits and investments of respondents were related to an unlawful activity.⁵⁴ It pointed out that the Republic, in support of the latter's application, relied merely on two pieces of evidence: Senate Committee Report No. 54 and the court testimony of witness Thelma Espina of the AMLC Secretariat. According to the RTC, Senate Committee Report No. 54 cannot be taken "hook, line and sinker,"⁵⁵ because the Senate only conducts inquiries in aid of legislation. Citing *Neri v. Senate Committee on Accountability of Public Officers and Investigations*,⁵⁶ the trial court pronounced that the Senate cannot assume the power reposed in prosecutorial bodies and the courts – the power to determine who are liable for a crime or an illegal activity.⁵⁷ On the other hand, the trial court noted that the testimony of the witness merely relied on Senate Committee Report No. 54. The latter "admitted that the AMLC did not bother to confirm the veracity of the statements contained therein."⁵⁸

The RTC instead gave credence to the Audit Report prepared by COA. While outlining the irregularities that attended the use of the fertilizer fund, COA also showed that none of the funds were channeled or released to LIVECOR, Molugan or AGS.⁵⁹ The trial court also took note of the evidence presented by Bolante that he had ceased to be a member of the board of trustees of LIVECOR on 1 February 2003, or more than 14 months before the transfers were made by LIVECOR to Molugan as indicated in the suspicious transaction reports submitted by PNB.⁶⁰ Furthermore, the RTC found that the transfers made by LIVECOR to Molugan and AGS came from the ₱60 million Priority Development Assistance Fund of Senator Joker Arroyo.⁶¹

The Republic moved for reconsideration, but the motion was denied by the RTC in the challenged Order dated 13 November 2009.⁶²

Hence, the Republic filed the instant petition for certiorari docketed as G.R. No. 190357.

The Court resolved to consolidate G.R. No. 190357 with G.R. No. 186717, considering that the issues raised in the petitions were closely intertwined and related.⁶³ On 6 December 2010, these petitions were given due course, and all parties were required to submit memoranda.⁶⁴

⁵⁴ Id. at 45.

⁵⁵ Id.

⁵⁶ 586 Phil. 135 (2008).

⁵⁷ *Rollo* (G.R. No. 190357), pp. 45-46.

⁵⁸ Id. at 46.

⁵⁹ Id.

⁶⁰ Id. at 46-47.

⁶¹ Id. at 47-48.

⁶² Id. at 50.

⁶³ Id. at 513-514; Resolution dated 10 March 2010.

⁶⁴ Id. at 693-694.

Amid reports that the Office of the Ombudsman (Ombudsman) had filed plunder cases against those involved in the fertilizer fund scam, the Court issued the Resolution dated 16 November 2011.⁶⁵ We required the AMLC and the Ombudsman to move in the premises and jointly manifest whether the accounts, subject of the instant petitions, were in any way related to the plunder cases already filed.

In their compliance dated 14 March 2012,⁶⁶ the AMLC and the Ombudsman manifested that the plunder case filed in connection with the fertilizer fund scam included Bolante, but not the other persons and entities whose bank accounts are now the subject of the instant petitions. That plunder case was docketed as SB-11-CRM-0260 before the Second Division of the Sandiganbayan.

ISSUES

The following are the issues for our resolution:

1. Whether the Republic committed forum shopping in filing CA-G.R. AMLC No. 00024 before the CA
2. Whether the RTC committed grave abuse of discretion in ruling that there exists no probable cause to allow an inquiry into the total of 76 deposits and investments of respondents

OUR RULING

I.

The Republic committed forum shopping.


As we ruled in *Chua v. Metropolitan Bank and Trust Co.*,⁶⁷ forum shopping is committed in three ways: (1) filing multiple cases based on the same cause of action and with the same prayer, where the previous case has not yet been resolved (the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and with the same prayer, where the previous case has finally been resolved (the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action, but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).

In the instant petitions, the Republic focused its energies on discussing why it did not commit forum shopping on the ground of *litis pendentia*. In its Memorandum, it argued:

⁶⁵ Id. at 829-830.

⁶⁶ *Rollo* (G.R. No. 186717), pp. 1282-1290.

⁶⁷ 613 Phil. 143 (2009).



While it is true that a previous freeze order was issued in *CA-G.R. AMLC No. 00014* covering some of the accounts subject of *CA-G.R. AMLC No. 00024*, *CA-G.R. AMLC No. 00014* had already attained finality when the second petition was filed, neither petitioner nor any of the respondents interposed an appeal therefrom, pursuant to Section 57 of the *Rule of Procedure in Cases of Civil Forfeiture, etc.*. The principle of *litis pendentia* presupposes the pendency of at least one case when a second case is filed. Such situation does not exist in the present controversy since *CA-G.R. AMLC No. 00014* was no longer pending but has attained finality when the second petition was filed.⁶⁸

In a clear illustration of the phrase, *out of the frying pan and into the fire*, the Republic vigorously resisted the application of forum shopping on the ground of *litis pendentia*, only to unwittingly admit that it had possibly committed forum shopping on the ground of *res judicata*.

We are not even sure where the Republic got the notion that the CA found “that the filing of the second petition for freeze order constitutes forum shopping on the ground of *litis pendentia*.”⁶⁹ In its assailed Resolution, the appellate court aptly cited *Quinsay v. CA*,⁷⁰ stating that “forum shopping concurs not only when a final judgment in one case will amount to *res judicata* in another, but also where the elements of *litis pendentia* are present.”⁷¹ It then went on to enumerate the aforecited elements of *litis pendentia*, namely: (1) identity of parties, or those that represent the same interests in both actions; (2) identity of rights asserted and relief sought, with the relief founded on the same facts; and (3) identity of the two preceding particulars, such that any judgment rendered in one proceeding will, regardless of which party is successful, amount to *res judicata* in the other. The CA only discussed how these elements were present in *CA-G.R. AMLC No. 00024* and *CA-G.R. AMLC No. 00014* in relation to each other. Nowhere did the CA make any categorical pronouncement that the Republic had committed forum shopping on the ground of *litis pendentia*.

With this clarification, we discuss how all the elements of *litis pendentia* are present in the two petitions for the issuance of a freeze order.

First, there is identity of parties. In both petitions, the Republic is the petitioner seeking the issuance of a freeze order against the bank deposits and investments. The 24 accounts sought to be frozen in *CA-G.R. AMLC No. 00024* were part of the 31 accounts previously frozen in *CA-G.R. AMLC No. 00014*,⁷² and the holders of these accounts were once again named as respondents.

⁶⁸ *Rollo* (G.R. No. 185717), p. 1202.

⁶⁹ *Id.* at 29.

⁷⁰ 393 Phil. 838 (2000).

⁷¹ *Rollo* (G.R. No. 186717), p. 66.

⁷² *See* notes 34 and 41.

Second, there is an identity of rights asserted and relief sought based on the same facts. The AMLC filed both petitions in pursuance of its function to investigate suspicious transactions, money laundering activities, and other violations of R.A. 9160 as amended.⁷³ The law also granted the AMLC the authority to make an *ex parte* application before the CA for the freezing of any monetary instrument or property alleged to be the proceeds of any unlawful activity, as defined in Section 3(i) thereof.⁷⁴

Both petitions sought the issuance of a freeze order against bank deposits and investments believed to be related to the fertilizer fund scam. Notably, while the petition in CA-G.R. AMLC No. 00014 narrated the facts surrounding the issuance of AMLC Resolution Nos. 75 and 40,⁷⁵ the petition in CA-G.R. AMLC No. 00024 used as its foundation the previous grant of the freeze order in CA-G.R. AMLC No. 00014 and the extensions of its effectivity.⁷⁶ Nevertheless, both petitions highlighted the role of Senate Committee Report No. 54 in providing AMLC with the alleged link between the fertilizer fund scam and the bank deposits and investments sought to be frozen.⁷⁷

Third, the judgment in CA-G.R. AMLC No. 00014 barred the proceedings in CA-G.R. AMLC No. 00024 by *res judicata*.

Res judicata is defined as a matter adjudged, a thing judicially acted upon or decided, or a thing or matter settled by judgment.⁷⁸ It operates as a bar to subsequent proceedings by prior judgment when the following requisites concur: (1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits; and (4) there is – between the first and the second actions – identity of parties, subject matter, and causes of action.⁷⁹

Clearly, the resolution in CA-G.R. AMLC No. 00014 extending the effectivity of the freeze order until 20 December 2008 attained finality upon the failure of the parties to assail it within 15 days from notice. The Resolution was rendered by the CA, which had jurisdiction over applications for the issuance of a freeze order under Section 10⁸⁰ of R.A. 9160 as amended. It was a judgment on the merits by the appellate court, which

⁷³ R.A. 9160, Section 7(5).

⁷⁴ *Id.* at Section 7(6).

⁷⁵ *Rollo* (G.R. No. 186717), pp. 80-85.

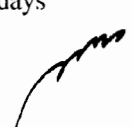
⁷⁶ *Id.* at 376-384.

⁷⁷ *Id.* at 83-85, 391-394.

⁷⁸ *Riviera Golf Club, Inc. v. CCA Holdings, B.V.*, G.R. No. 173783, 17 June 2015, 758 SCRA 691.

⁷⁹ *Mallion v. Alcantara*, 536 Phil. 1049 (2006).

⁸⁰ Section 10. *Freezing of Monetary Instrument or Property*. — The Court of Appeals, upon application *ex parte* by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.



made a determination of the rights and obligations of the parties with respect to the causes of action and the subject matter.⁸¹ The determination was based on the pleadings and evidence presented by the parties during the summary hearing and their respective memoranda. Finally, there was – between CA-G.R. AMLC No. 00014 and CA-G.R. AMLC No. 00024 – identity of parties, subject matter and causes of action.

The Republic's commission of forum shopping is further illustrated by its awareness that the effectivity of the freeze order in CA-G.R. AMLC No. 00014 had already been extended to 5 months and 20 days. Under Section 53⁸² of A.M. No. 05-11-04-SC,⁸³ the original 20-day effectivity period of a freeze order may only be extended by the CA for good cause for a period not exceeding six months. Because of this predicament, the Republic sought to avoid seeking a further extension that is clearly prohibited by the rules by allowing the extended freeze order in CA-G.R. AMLC No. 00014 to lapse on 20 December 2008. Instead, it filed the petition in CA-G.R. AMLC No. 00024 alluding to the exact same facts and arguments but citing a special factual circumstance that allegedly distinguished it from CA-G.R. AMLC No. 00014.

The Republic argued that CA-G.R. AMLC No. 00024 was filed at the advent of *Eugenio*. The ruling was a supervening event that prevented the Republic from concluding its exhaustive financial investigation within the auspices of the bank inquiry order granted by the RTC in AMLC Case No. 07-001 and the freeze order granted by the CA in CA-G.R. AMLC No. 00014.⁸⁴

We find no merit in this argument. The promulgation of *Eugenio* was not a supervening event under the circumstances. "Supervening events refer to facts which transpire after judgment has become final and executory or to new circumstances which developed after the judgment has acquired finality, including matters which the parties were not aware of prior to or during the trial as they were not yet in existence at that time."⁸⁵

As aptly pointed out by the appellate court, *Eugenio* was promulgated five months before the filing of the petition in CA-G.R. AMLC No. 00014.

⁸¹ *De Leon v. De Llana*, G.R. No. 212277, 11 February 2015, 750 SCRA 53.

⁸² Section 53. *Freeze Order*. —

(a) *Effectivity; post-issuance hearing*. — The freeze order shall be effective immediately for a period of twenty days. Within the twenty-day period, the court shall conduct a summary hearing, with notice to the parties, to determine whether or not to modify or lift the freeze order, or extend its effectivity as hereinafter provided.

(b) *Extension*. — On motion of the petitioner filed before the expiration of twenty days from issuance of a freeze order, the court may for good cause extend its effectivity for a period not exceeding six months.

⁸³ Entitled "Rules of Procedure in Cases of Civil Forfeiture, Asset Preservation, and Freezing of Monetary Instrument, Property, or Proceeds Representing, Involving, or Relating to an Unlawful Activity or Money Laundering Offense under Republic Act No. 9160, as Amended," dated 15 December 2005.

⁸⁴ *Rollo* (G.R. No. 186717), pp. 40-41, 1203-1204.

⁸⁵ *Natalia Realty, Inc. v. CA*, 440 Phil. 1 (2002).

Indeed the Decision therein only attained finality upon the denial of the motion for reconsideration on 20 October 2008, or before the filing of the petition in CA-G.R. AMLC No. 0002. The ruling, however, cannot be regarded as a matter that the parties were not aware of prior to or during the trial of CA-G.R. AMLC No. 00014.

In fact, it was because of *Eugenio* that CA-G.R. AMLC No. 00014 was filed in the first place.

We have not painstakingly narrated all the relevant facts of these cases for nothing. It should be noted that before the ruling in *Eugenio*, the AMLC commenced its investigations into the fertilizer fund scam by filing petitions for bank inquiry orders. Thus, it issued Resolutions No. 75 and 90, both authorizing the filing of petitions for the issuance of orders allowing an inquiry into the pertinent bank deposits and investments.

According to the Court in *Eugenio*, “a requirement that the application for a bank inquiry order be done with notice to the account holder will alert the latter that there is a plan to inspect his bank account on the belief that the funds therein are involved in an unlawful activity or money laundering offense.”⁸⁶ Alarmed by the implications of this ruling, the AMLC changed tack and decided to pursue the only other remedy within its power to obtain *ex parte* at the time. Hence, it issued Resolution No. 40 authorizing the filing of CA-G.R. AMLC No. 00014 for the issuance of a freeze order to preserve the 70 bank deposits and investments and prevent the account holders from withdrawing them. The pertinent portion of AMLC Resolution No. 40 provides:

In the Resolution No. 90, dated October 26, 2007, the Council found probable cause that the accounts of the subject individuals and entities are related to the fertilizer fund scam and resolved to authorize the filing of a petition for the issuance of a freeze order allowing inquiry into the following accounts:

x x x x

However, in *Republic vs. Eugenio* (G.R. No. 174629, February 14, 2008), the Supreme Court ruled that proceedings in applications for issuance of an order allowing inquiry should be conducted after due notice to the respondents/account holders.

In the light of the aforesaid ruling of the Supreme Court, the Council resolved to:

1. Authorize the AMLC Secretariat to file with the Court of Appeals, through the Office of the Solicitor General, a petition for freeze order against the following bank accounts and all related web of accounts wherever these may be found.⁸⁷

⁸⁶ *Republic v. Eugenio*, supra at 125.

⁸⁷ *Rollo* (G.R. No. 186717), pp. 69-71.

Notably, it was only after the freeze order had been issued that AMLC Case No. 07-001 was filed before the RTC to obtain a bank inquiry order covering the same 70 accounts.

Presently, while *Eugenio* still provides much needed guidance in the resolution of issues relating to the freeze and bank inquiry orders, the Decision in that case no longer applies insofar as it requires that notice be given to the account holders before a bank inquiry order may be issued. Upon the enactment of R.A. 10167 on 18 June 2012, Section 11 of R.A. 9160 was further amended to allow the AMLC to file an *ex parte* application for an order allowing an inquiry into bank deposits and investments. Section 11 of R.A. 9160 now reads:

Section 11. *Authority to Inquire into Bank Deposits.* — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court **based on an *ex parte* application** in cases of violations of this Act, when it has been established that there is probable cause that the deposits or investments, including related accounts involved, are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof; except that no court order shall be required in cases involving activities defined in Section 3(i)(1), (2), and (12) hereof, and felonies or offenses of a nature similar to those mentioned in Section 3(i)(1), (2), and (12), which are Punishable under the penal laws of other countries, and terrorism and conspiracy to commit terrorism as defined and penalized under Republic Act No. 9372.

The Court of Appeals shall act on the application to inquire into or examine any depositor or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application.

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas may, in the course of a periodic or special examination, check the compliance of a Covered institution with the requirements of the AMLA and its implementing rules and regulations.

For purposes of this section, ‘related accounts’ shall refer to accounts, the funds and sources of which originated from and/or are materially linked to the monetary instrument(s) or property(ies) subject of the freeze order(s).

A court order *ex parte* must first be obtained before the AMLC can inquire into these related Accounts: *Provided*, That the procedure for the *ex parte* application of the *ex parte* court order for the principal account shall be the same with that of the related accounts.

The authority to inquire into or examine the main account and the related accounts shall comply with the requirements of Article III,

Sections 2 and 3 of the 1987 Constitution, which are hereby incorporated by reference. (Emphasis supplied)

The constitutionality of Section 11 of R.A. 9160, as presently worded, was upheld by the Court *En Banc* in the recently promulgated *Subido Pagente Certeza Mendoza and Binay Law Offices v. CA*.⁸⁸ The Court therein ruled that the AMLC's *ex parte* application for a bank inquiry, which is allowed under Section 11 of R.A. 9160, does not violate substantive due process. There is no such violation, because the physical seizure of the targeted corporeal property is not contemplated in any form by the law.⁸⁹ The AMLC may indeed be authorized to apply *ex parte* for an inquiry into bank accounts, but only in pursuance of its investigative functions akin to those of the National Bureau of Investigation.⁹⁰ As the AMLC does not exercise quasi-judicial functions, its inquiry by court order into bank deposits or investments cannot be said to violate any person's constitutional right to procedural due process.⁹¹

As regards the purported violation of the right to privacy, the Court recalled the pronouncement in *Eugenio* that the source of the right to privacy governing bank deposits is statutory, not constitutional.⁹² The legislature may validly carve out exceptions to the rule on the secrecy of bank deposits, and one such legislation is Section 11 of R.A. 9160.⁹³

The Court in *Subido* emphasized that the holder of a bank account that is the subject of a bank inquiry order issued *ex parte* has the opportunity to question the issuance of such an order after a freeze order has been issued against the account.⁹⁴ The account holder can then question not only the finding of probable cause for the issuance of the freeze order, but also the finding of probable cause for the issuance of the bank inquiry order.⁹⁵

II.

The RTC's finding that there was no probable cause for the issuance of a bank inquiry order was not tainted with grave abuse of discretion.

Rule 10.2 of the Revised Rules and Regulations Implementing Republic Act No. 9160, as Amended by Republic Act No. 9194, defined

⁸⁸ G.R. No. 216914, 6 December 2016.

⁸⁹ *Id.* at 11.

⁹⁰ *Id.* at 11-19.

⁹¹ *Id.*

⁹² *Id.* at 20-23.

⁹³ *Id.* at 23.

⁹⁴ *Id.* at 27-39.

⁹⁵ *Id.*

probable cause as “such facts and circumstances which would lead a reasonably discreet, prudent or cautious man to believe that an unlawful activity and/or a money laundering offense is about to be, is being or has been committed and that the account or any monetary instrument or property subject thereof sought to be frozen is in any way related to said unlawful activity and/or money laundering offense.” As we observed in *Subido*,⁹⁶ this definition refers to probable cause for the issuance of a freeze order against an account or any monetary instrument or property subject thereof. Nevertheless, we shall likewise be guided by the pronouncement in *Ligot v. Republic*⁹⁷ that “probable cause refers to the sufficiency of the relation between an unlawful activity and the property or monetary instrument.”

In the issuance of a bank inquiry order, the power to determine the existence of probable cause is lodged in the trial court. As we ruled in *Eugenio*:

Section 11 itself requires that it be established that “there is probable cause that the deposits or investments are related to unlawful activities,” and it obviously is the court which stands as arbiter whether there is indeed such probable cause. The process of inquiring into the existence of probable cause would involve the function of determination reposed on the trial court. Determination clearly implies a function of adjudication on the part of the trial court, and not a mechanical application of a standard pre-determination by some other body. The word “determination” implies deliberation and is, in normal legal contemplation, equivalent to “the decision of a court of justice.”

The court receiving the application for inquiry order cannot simply take the AMLC’s word that probable cause exists that the deposits or investments are related to an unlawful activity. It will have to exercise its own determinative function in order to be convinced of such fact.⁹⁸

For the trial court to issue a bank inquiry order, it is necessary for the AMLC to be able to show specific facts and circumstances that provide a link between an unlawful activity or a money laundering offense, on the one hand, and the account or monetary instrument or property sought to be examined on the other hand. In this case, the RTC found the evidence presented by the AMLC wanting. For its part, the latter insists that the RTC’s determination was tainted with grave abuse of discretion for ignoring the glaring existence of probable cause that the subject bank deposits and investments were related to an unlawful activity.

Grave abuse of discretion is present where power is exercised in an arbitrary or despotic manner by reason of passion, prejudice or personal

⁹⁶ Id. at 32.

⁹⁷ 705 Phil. 477 (2013), 501-502.

⁹⁸ *Republic v. Eugenio*, supra at 126.

hostility, that is so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined or to act at all in contemplation of law.⁹⁹ For certiorari to lie, it must be shown that there was a capricious, arbitrary and whimsical exercise of power – the very antithesis of the judicial prerogative.¹⁰⁰

We find no reason to conclude that the RTC determined the existence of probable cause, or lack thereof, in an arbitrary and whimsical manner.

To repeat, the application for the issuance of a bank inquiry order was supported by only two pieces of evidence: Senate Committee Report No. 54 and the testimony of witness Thelma Espina.

We have had occasion to rule that reports of the Senate stand on the same level as other pieces of evidence submitted by the parties, and that the facts and arguments presented therein should undergo the same level of judicial scrutiny and analysis.¹⁰¹ As courts have the discretion to accept or reject them,¹⁰² no grave error can be ascribed to the RTC for rejecting and refusing to give probative value to Senate Committee Report No. 54.

At any rate, Senate Committee Report No. 54 only provided the AMLC with a description of the alleged unlawful activity, which is the fertilizer fund scam. It also named the alleged mastermind of the scam, who was respondent Bolante. The entire case of the AMLC, however, hinged on the following excerpt of Senate Committee Report No. 54:

But Undersecretary Bolante's power over the agriculture department was widely known. And it encompasses more than what the Administrative Code provided.

In fact, **at the time that he was Undersecretary, Jocelyn Bolante was concurrently appointed by the President in other powerful positions: as Acting Chairman of the National Irrigation Administration, as Acting Chairman of the Livelihood Corporation x x x.**¹⁰³ (Emphasis supplied)

It was this excerpt that led the AMLC to connect the fertilizer fund scam to the suspicious transaction reports earlier submitted to it by PNB.

However, the RTC found during trial that respondent Bolante had ceased to be a member of the board of trustees of LIVECOR for 14 months before the latter even made the initial transaction, which was the subject of the suspicious transaction reports. Furthermore, the RTC took note that

⁹⁹ *Imutan v. CA*, 190 Phil. 233 (1981).

¹⁰⁰ *Id.*

¹⁰¹ *Manotok Realty, Inc. v. CLT Realty Development Corp.*, 565 Phil. 59 (2007).

¹⁰² *Id.*

¹⁰³ *Rollo* (G.R. No. 190357), p. 72.

according to the Audit Report submitted by the Commission on Audit, no part of the ₱728 million fertilizer fund was ever released to LIVECOR.

We note that in the RTC Order dated 17 November 2006 in AMLC SP Case No. 06-003, the AMLC was already allowed *ex parte* to inquire into and examine the six bank deposits or investments and the related web of accounts of LIVECOR, Molugan, AGS, Samuel S. Bombeo and Ariel Panganiban. With the resources available to the AMLC, coupled with a bank inquiry order granted 15 months before *Eugenio* was even promulgated, the AMLC should have been able to obtain more evidence establishing a more substantive link tying Bolante and the fertilizer fund scam to LIVECOR. It did not help that the AMLC failed to include in its application for a bank inquiry order in AMLC SP Case No. 06-003 LIVECOR's PNB account as indicated in the suspicious transaction reports. This PNB account was included only in the application for a bank inquiry order in AMLC Case No. 07-001.

As it stands, the evidence relied upon by the AMLC in 2006 was still the same evidence it used to apply for a bank inquiry order in 2008. Regrettably, this evidence proved to be insufficient when weighed against that presented by the respondents, who were given notice and the opportunity to contest the issuance of the bank inquiry order pursuant to *Eugenio*. In fine, the RTC did not commit grave abuse of discretion in denying the application.

WHEREFORE, the petition in G.R. No. 186717 is **DENIED**. The Court of Appeals Resolution dated 27 February 2009 in CA-G.R. AMLC No. 00024 is **AFFIRMED**.

The petition in G.R. No. 190357 is **DISMISSED**. The Resolution dated 3 July 2009 and Order dated 13 November 2009 issued by the Regional Trial Court of Makati, Branch 59, in AMLC Case No. 07-001 are **AFFIRMED**.


The *Status Quo Ante* Order issued by this Court on 25 March 2009 is hereby **LIFTED**.

SO ORDERED.




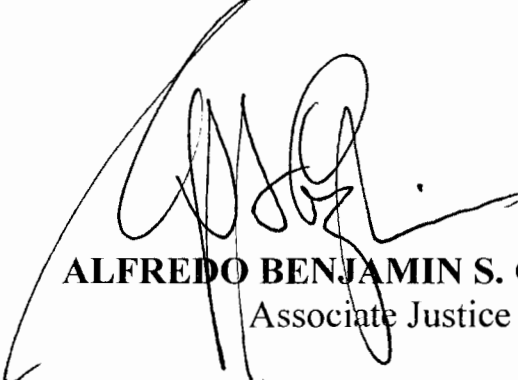
MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:


TERESITA J. LEONARDO-DE CASTRO
Associate Justice

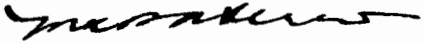

MARIANO C. DEL CASTILLO
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.


MARIA LOURDES P. A. SERENO
Chief Justice

