control laws so that they may refrain from patronizing the products of these firms so as to impress upon the owners and operators of these plants the message that not only the government, but also the public, will not tolerate their acts of pollution.

Lastly, government should set the example in complying with air pollution control laws. No matter how stringent the laws on air pollution control are, if the power plants and other stationary structures operated and owned by the government continue to spew out pollutants into the air, persons will not take air pollution control laws seriously.

If these recommendations are adopted, the author is confident that pollution control law in the Philippines will become a vibrant law, and not the dead-letter law that it is alleged to be.

THE DOCTRINE OF PIERCING THE CORPORATE VEIL AS APPLIED BY THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG)

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On the basis of prima facie *evidence, the Presidential Commission on Good Government (PCGG) issued writs of sequestration over "ill-gotten" corporations through an administrative piercing of the corporate veil. On August 2, 1987, within the deadline set in Sec. 26, Art. XVIII of the 1987 Constitution, the PCGG filed the judicial actions corresponding to the issued writs of sequestration. It impleaded only the stockholders as party-defendants due to its application of the doctrine of piercing of the corporate veil. The prima facie "ill-gotten" corporations themselves were merely listed in an annex of the complaints filed as assets sought to be recovered by the State.*

After the lapse of the constitutional deadline for bringing the judicial actions, the sequestered corporations filed with the Sandiganbayan a petition for certiorari, *alleging that no judicial action was brought against the corporations themselves within the deadline. They further prayed for the lifting of the writs of sequestration.*

The main issue before the Sandiganbayan focused on whether the PCGG filed a judicial action corresponding to the writs of sequestration over the petitioner-corporations on or before the constitutional deadline.

The position of the PCGG was in the affirmative. It urged the Sandiganbayan to apply the "doctrine of piercing of the corporate veil" as it did at the administrative level. The Sandiganbayan, however, ruled that the PCGG could not pierce the corporate veil for lack of factual basis. This decision was later sustained by the Supreme Court since no judicial action was brought against the sequestered corporations within the constitutional deadline. This was because the said corporations were not impleaded as party-defendants in the complaints filed by PCGG. The writs of sequestration were automatically lifted.

This paper analyzes the PCGG's use of the doctrine of piercing the corporate veil at the administrative level, and the Court's appreciation or misappreciation of that use in terms of factual substantiation for piercing. The basic postulate is that the corporation is a mere creature of the State. The Supreme Court, therefore, may pierce the corporate veil in cases where fraud is involved, or where the corporation is a mere

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alter ego of another entity, or for equitable reasons in cases involving State's concerns or public policy. After considering all factors, the Court, however, will not pierce when the State suffers no substantial loss. Nevertheless, the mere lifting of the writ because of the failure to implead the corporations themselves is not the end, nor a preclusion, of any judicial action to recover the "ill- gotten" corporations. The decision of the court to lift the writ of sequestration should not, therefore, be understood as an adjudication on the merits of the PCGG's claim that the corporations are "ill-gotten."

INTRODUCTION

The jurisprudence related to Executive Order Nos. 1, 2, 14 and related issuances, collectively called the "Governing Law" or the "PCGG Law," have come to be regarded by many in the bench and bar as an esoteric field. The "PCGG Law" has resulted in several controversial legal principles, not only as invoked by the Presidential Commission on Good Government (PCGG) but also as enunciated in other court decisions.

This paper aims to examine one area of controversy — the question of applying the "doctrine of piercing the corporate veil" not to strictly corporate cases, but to cases involving public policy.

The analysis commences in Chapter II where the separate juridical personality of a corporation and the corollary doctrine of piercing of the corporate veil are discussed. As a rule, the courts shall respect the separate juridical personality of the corporation. When, however, the separate juridical personality is abused, i.e., it is used to protect a fraud, justify a wrong, commit a crime, evade taxes, or deceive the public, then the courts shall set aside the veil of corporate fiction and shall treat the corporation merely as an association of persons. This enables the prejudiced parties to hold the responsible owners or officers of the corporation liable. Piercing is a remedy of last resort. In the world of commerce where this doctrine is used as a remedial tool, the corporation's separate juridical personality generally remains respected except when there is factual basis for piercing.

Chapter III then highlights the pertinent provisions of the PCGG law, its powers, the moral dimension of the PCGG Law, the nature of sequestration, and the contemplated situations or factual milieu in which a corporation order may issue. This chapter will also introduce the controversy treated in this paper — the deadline imposed by the Constitution[1] on the PCGG to bring actions corresponding to the writs of sequestration it had issued either before or after the ratification of the 1987 Constitution. Said provision of law imposes a deadline upon the PCGG with regard to the writ of sequestration after the ratification of the Constitution. The judicial actions corresponding to said writs must be filed within six months from the ratification

[1] PHILIPPINE CONST., art. XVIII, sec. 26.

of the Constitution. With regard to writs issued after the ratification, the PCGG must file the corresponding judicial actions within six months from issuance of the writs. Failure to file the corresponding judicial action within the specified deadline would automatically lift the writs of sequestration issued by the PCGG.

Before the judicial actions were filed, the PCGG used piercing as an administrative tool in issuing writs of sequestration. This was done after administrative investigations revealed that the corporations were "ill-gotten" or were "abused" entities, used by their owners to hide a crime, protect fraud, deceive the public, or commit injustice.

The PCGG issued writs of sequestration to the corporations after the discovery of *prima facie* evidence tending to prove the illegal purpose to which the separate juridical entities were used. It then filed the corresponding judicial actions to recover the sequestered or "ill-gotten" corporations before 2 August 1987, well within the Constitutional deadline. In filing the judicial action corresponding to the writs of sequestration, the PCGG disregarded the veil of corporate fiction in its complaint by impleading only the crony or nominee involved — the majority stockholder — and merely listing the corporations in an annex of the complaint as sequestered properties. In effect, the PCGG ignored the separate personality of the corporations because the administrative investigations had shown that the corporate vehicle was used for fraud or was an alter-ego of Marcos and his friends.

Two years after, the PCGG filed the complaint. The sequestered corporations filed a petition for certiorari with the Sandiganbayan, praying for the lifting of the writs, contending that no judicial action had been brought against them within the Constitutional deadline. They prayed for the lifting of the writs.

The bone of contention in this controversy is whether a judicial action was filed by the PCGG within the Constitutional deadline corresponding to the writs of sequestration it had issued.

The Sandiganbayan upheld the contention of the sequestered corporations. The writs of sequestration were automatically lifted for failure of the PCGG to file a "corresponding judicial action" within the Constitutional deadline against the corporations as party-defendants, distinct and separate from the defendant majority stockholders. The Sandiganbayan laid down a test for the filing of the judicial action: whether the corporations were impleaded. If they were impleaded, a judicial action had been brought against them. If not, no judicial action was filed. For want of factual basis, the Sandiganbayan rejected the PCGG's use of the piercing doctrine as the reason for not impleading the corporations themselves. The Supreme Court later sustained the Sandiganbayan position.

The foregoing legal scenario is the subject of Chapter V. Said chapter shall analyze the disposition of the piercing doctrine in the controversy. It shall analyze the PCGG's use of the piercing doctrine at the administrative level and the court's appreciation or misappreciation of such administrative application. This paper shall also study the PCGG's use of piercing, itself a commercial law doctrine, at a judicial level, in an action that involved State concerns and public policy.

The analysis will give a better understanding of the doctrine as used by the PCGG in the light of its mandated tasks.

This paper shall be relevant insofar as it looks into another angle of the piercing doctrine — the use of this doctrine in an action involving State concerns, public welfare and public policy.

I. THE DOCTRINE OF PIERCING THE CORPORATE VEIL

A corporation is a fiction of law. It is an "artificial being created by operation of law, having the right of succession and the powers, attributes and properties expressly authorized by law, or incident to its existence.[2] As an artificial being, it has a separate juridical personality distinct from the stockholders owning it. The separate juridical personality of a corporation is generally respected in law.

Ancillary to the main doctrine is the doctrine of piercing the corporate veil. This doctrine is availed of as a remedial tool whenever there is abuse of corporate fiction or when it is used to commit fraud by people owning it or responsible for it. Piercing is a remedy of last resort. If there is no sufficient evidence to warrant piercing, the courts will respect the separate juridical personality.

A. The Main Doctrine: Separate Juridical Personality

The discussion in this paper springs from the main doctrine of "separate juridical personality." As a rule, the law and the Supreme Court respect the corporation as a juridical person, separate and distinct from its owners.

The main doctrine is enunciated in the case of *Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila*.[3] In this case, the stockholders of F. Guanzon and Sons, Inc. executed a certificate of liquidation and distributed among themselves the assets of the corporation including real property located in Manila. When they presented the certificate of liquidation, the Register of Deeds, however, denied registration. The Commissioner of Land Registration stated that the propriety or impropriety of the grounds for denial of registration hinges on whether that certificate of liquidation issued to the stockholders merely involved a distribution or a transfer or conveyance of corporate assets. The stockholders contended that the certificate of liquidation was not a conveyance or transfer but merely a distribution of the assets of the corporation which had been dissolved. The Commissioner, however, concurred with the Register of Deeds. The Commissioner maintained that although the certificate of liquidation involved a distribution of the corporate assets, it was, in effect, a transfer of said assets from the corporation to the stockholders.

[2] The Corporation Code of the Philippines, B.P. Blg. 68, sec. 2 (1980).

[3] 6 SCRA 373 (1962).

The Supreme Court confirmed the stand of the Register of Deeds. It held that "a corporation is a juridical person distinct from the members composing it. Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. While shares of stock constitute personal property, they do not represent property of the corporation."[4] The stockholders cannot merely distribute the assets of the corporation among themselves without effecting a deed of conveyance or transfer. "Indeed, since the purpose of the liquidation, as well as the distribution of the assets of the corporation, is to transfer their title from the corporation to the stockholders in proportion to their shareholdings, x x x that transfer cannot be effected without the corresponding deed of conveyance from the corporation to the stockholders."[5]

The Supreme Court had other occasions to state the main doctrine. In *Manila Gas Corporation v. The Collector of Internal Revenue*[6] plaintiff Manila Gas is a corporation organized under the laws of the Philippines. It has two non-resident foreign corporate stockholders. For several years, plaintiff paid to these stockholders dividends upon which withholding income taxes were paid to the defendant Collector. This case resulted from an action brought by the plaintiff, Manila Gas, against the defendant Collector for the recovery of the amounts the former withheld as taxes on dividends which had been paid to the latter under protest. Plaintiff's thesis was that the dividends paid by it to its stockholders were not subject to tax because to impose a tax thereon would be to do so on the plaintiff corporation. Furthermore, this amounts to a violation of the terms of its franchise which exempted the corporation from tax on dividends. This argument was predicated on the constitutional provision that no law impairing the obligation of contracts shall be enacted. The Supreme Court decided the issue in favor of the defendant Collector. It invoked the main doctrine stating that "a corporation has a personality distinct from that of its stockholders, enabling the taxing power to reach the latter when they receive dividends from the corporation... [D]ividends of a domestic corporation, which are paid and delivered in cash to foreign corporations as stockholders, are subject to the payment of the income tax, the exemption clause in the charter of the corporation notwithstanding."[7] In sum, stockholders cannot avail of tax exemptions granted to a corporation due to the separate juridical personality of the corporation.

With this background on the main doctrine of separate juridical personality, a discussion of the ancillary doctrine of the piercing of the corporate veil may be understood in a better light.

[4] *Id.* at 375.

[5] *Id.* at 376

[6] 62 Phil. 895 (1936).

[7] *Id.* at 898.

B. The Ancillary Doctrine: Piercing the Corporate Veil

Ancillary to the main doctrine of separate juridical personality is the doctrine of piercing the corporate veil (hereinafter "piercing"). Piercing was first spelled out in the case of *U.S. v. Milwaukee Refrigerator Transit Co., et. al.*[8]

> If any general rule can be laid down, in the present state of authority, it is that a corporation will be looked upon as a legal entity as a general rule, and until sufficient reason to the contrary appears; but, when the notion of legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, the law will regard the corporation as an association of persons.[9]

The Supreme Court has often resorted to the doctrine of piercing in various cases, rendering the doctrine a jurisprudential constant in corporate law through the years. One such case in Philippine corporate law would be *Koppel (Phils.), Inc. v. Yatco.*[10] In this case, Koppel (Phils.), Inc. is duly licensed to engage in business as a merchant and commercial broker. It is 99.5% owned by the American-based Koppel Industrial Car and Equipment Company. Whenever there is an interested local buyer, Koppel (Phils.) quotes to its buyers a price higher than that given by Koppel (U.S.A.). In two of these transactions, the Collector demanded 1.5% of the gross sales as merchant's tax. The Collector considered Koppel (Phils.) a mere branch or agency or dummy of Koppel (U.S.A.). Koppel (Phils.) paid under protest, contending that it was a corporation distinct and separate from the American corporation. It further contended that it was exempt from paying the merchant's tax.

The pertinent issue is whether Koppel (Phils.) is liable for the merchant's tax. The Supreme Court answered in the affirmative and recited the doctrine in *U.S. v. Milwaukee.*[11] The Supreme Court held that in the transactions involved, public interest and convenience would be defeated and tax evasion perpetrated unless the SC can resort to the doctrine of "disregard of the corporate fiction. The corporate entity is disregarded where it is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality or agency of another corporation.

In numerous instances which will be discussed hereafter, the Supreme Court chose not to respect the separate juridical personality. Instead, it set aside the corporate fiction whenever it was used to justify a wrong, to commit a crime, to perpetrate a fraud, to subvert the ends of justice, or to evade public policy.

The main effect of disregarding the corporate fiction is that the stockholders will be held personally liable for the acts and contracts of the corporation whose existence is ignored. In the recent piercing case of *Umali*

[8] 142 Fed. 247 (1905).

[9] *Id.* at 255.

[10] 77 Phil. 496 (1946).

[11] *Id.* at 505.

v. Court of Appeals,[12] the Supreme Court said that the legal corporate entity was disregarded only if it was sought to hold the officers and stockholders directly liable for a corporate debt or obligation.[13] When valid grounds exist for piercing, "the corporation will be considered as a mere association of persons. The members of stockholders of the corporation will be considered as the corporation, that is, liability will attach directly to the officers and stockholders."[14]

C. An Overview of the Classification of Piercing Cases

There are three classes of piercing, namely: the "fraud cases," the "alter ego cases," and the "equity cases."

The *Umali* case describes the first two cases, namely the "fraud" and "alter ego" cases when it said:

> [t]he doctrine applies when the corporate fiction is used to defeat public convenience, justify wrong, *protect fraud*, or defend crime. (Koppel (Phils.), Inc. v. Yatco, etc., 77 Phils. 496 [1946]) or when it is made as a shield to confuse the legitimate issues (Telephone Engineering & Services Co., Inc. v. Workmen's Compensation Commission, et al., 104 SCRA 354 [1981]) or where a corporation is the mere *alter ego* or business conduit of a person, or where the corporation is so organized and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation (Koppel (Phils.), Inc. v. Yatco, etc. ante)[15] (emphases supplied).

The "fraud" and "alter ego" classes of piercing mentioned by the Court above have been earlier concretely categorized by Professor Adolfo S. Azcuna in his paper.[16] He said:

> [i]n the Philippines, the grounds for disregarding the veil of corporate entity are of two kinds: (1) the corporate entity is used to promote fraud, injustice, illegality or wrong; and (2) the corporate entity is a mere alter ego, business conduit, brand of agency of a person.[17]

The third class of piercing is the "equity case" which is described by Professor Cesar L. Villanueva in his paper[18] as the " 'dumping ground,' where no fraud or alter ego circumstances can be the basis of the Supreme Court to warrant piercing. The main feature of equity cases is the need to render justice in the situation at hand or to brush aside merely technical defenses."[19] In equity piercing cases, there need not be any factual basis at all.

[12] 189 SCRA 529 (1990).

[13] *Id.* at 543.

[14] *Id.* at 542, citing 3 AGBAYANI, COMMERCIAL LAWS OF THE PHILIPPINES, AT 18 [1988].

[15] *Id.* at 542, with the Court's footnotes in parentheses.

[16] Azcuna, *The Doctrine of Piercing the Veil of Corporate Fiction: Review and Analysis of Philippine Supreme Court Decisions from Willets to Ramirez*, 18 Ateneo L.J. 9 (1970).

[17] *Id.* at 34.

[18] Villanueva, *Restatement of the Doctrine of Piercing the Veil of Corporate Fiction* (1992) (unpublished).

1. FRAUD CASES

When a corporate entity is used to promote fraud, illegality, injustice or a wrong, the courts have disregarded the veil of corporate fiction. An illustrative case is *Palacio v. Fely Transportation Co.*[20] In this case, the incorporators of defendant Fely Transportation Co. were Isabelo Calingasan, his wife, his son and his two daughters. Isabelo Calingasan then hired Alfredo Carillo as company driver. Subsequently, Carillo ran over the child Mario Palacio. Carillo was adjudged guilty of reckless driving, and was sentenced to suffer imprisonment and to indemnify the offended party by way of consequential damages. The registered owner of the jeep, Calingasan, sold the jeep to Fely Transportation Co.. When the plaintiff attempted to enforce the subsidiary liability against the company, defendant company interposed the defense that there was no cause of action against the company. In resolving the issue on subsidiary liability, the Supreme Court disregarded the separate corporate personality of Fely Transportation by holding that Isabelo Calingasan and defendant Fely Transportation may be regarded as one and the same person. It is evident that the main purpose in forming the corporation was to evade his subsidiary civil liability resulting from the conviction of his driver. The Supreme Court stated that " [We] believe that this is one case where the defendant corporation should not be heard to say that it has a personality separate and distinct from its members when to allow it to do so would be to sanction as a shield to further an end subversive of justice."[21] The Supreme Court pierced the corporate veil in this case to prevent the owner from escaping his subsidiary liability, and thus defraud the plaintiffs by invoking the doctrine of separate juridical personality.

Another fraud case is *Namarco v. Associated Finance Co., Inc.*[22] In this case, Associated Financing Co. (Associated) through its president, Francisco Sycip, entered into an agreement to exchange sugar with National Marketing Co. (Namarco). Associated would deliver to Namarco 22,520 bags of "Victorias" and/or national refined sugar in exchange for 7,732.71 bags of "Busilak" and 17286 piculs of "Pasumil" raw sugar belonging to Namarco.

Pursuant thereto, Namarco delivered the requisite amount of raw sugar but Associated failed to deliver the 22,520 bags of refined sugar. Namarco then demanded in writing from Associated the immediate delivery of the bags of refined sugar or payment of its cash equivalent. Associated refused to deliver the sugar or to pay the cash equivalent. Hence, Namarco instituted the action to recover the sum of money. After due trial, Associated was ordered to pay Namarco. Namarco appealed only the portion of the decision

[19] *Id.* at 32.

[20] 5 SCRA 1011 (1962).

[21] *Id.* at 1015, citing *La Campana Coffee Factory, et. al. v. Kaisahan ng mga Manggagawa, et. al.*, G.R. No. L-5677 (May 25, 1953).

[22] 19 SCRA 962 (1967).

dismissing the case against Francisco Sycip. The issue is whether Sycip may be held jointly and severally liable with Associated for the sums of money adjudged in favor of Namarco. The Court held in the affirmative. Evidence indicated that: (1) Sycip and his wife owned majority of the subscribed capital stock of Associated; (2) negotiations involving the exchange agreement were conducted exclusively by Sycip; (3) it was Sycip who made personal representations and gave assurances that Associated was in actual possession of the sugar; and (4) Associated was insolvent at the time of the negotiations.

The Supreme Court further stated that:

> The foregoing facts, fully established by the evidence, can lead to no other conclusion than that Sycip was *guilty of fraud because through false representations* he succeeded in inducing NAMARCO to enter into the aforesaid exchange agreement, with full knowledge, on his part, of the fact that ASSOCIATED whom he represented and over whose business and affairs he had absolute control, was in no position to comply with the obligation it had assumed. Consequently, he cannot now seek refuge behind the general principle that a corporation has a personality distinct and separate from that of its stockholders and that the latter are not personally liable for the corporate obligation.[23] (emphasis supplied)

At this point, it has to be stressed that although the Court may opt to pierce the corporate veil upon proof of fraud, piercing is still a remedy of last resort. Unless warranted by the evidence presented in Court, the Court shall respect the separate juridical personality of the corporation. Not every allegation and proof of fraud will warrant piercing.

This is illustrated in *Umali v. Court of Appeals*[24] where the Court respected the separate juridical personality of the corporation despite petitioners' allegations and proof of fraud to urge the Court to pierce the corporate veil. In that case, Santiago Rivera was the nephew of Mauricia Meer vda. de Castillo. The Castillo family were the owners of a parcel of land located in Lucena City which was given as security for a loan from the Development Bank of the Philippines. For their failure to pay the amortization, foreclosure of the said property was about to be initiated. After Santiago Rivera discovered the problem, he proposed to the Castillo family subdivision of the four parcels of land adjacent to the mortgaged property to raise the necessary funds. The idea was accepted by the Castillo family and a Memorandum of Agreement was executed between Slobec Realty (Slobec), represented by Rivera, and the Castillo family. In this agreement, Rivera obliged himself to pay certain sums of money to the Castillos upon the signing of the agreement. After the property had been converted into a subdivision, Rivera, armed with the agreement, approached Modesto Cervantes, President of Bormaheco, Inc., and proposed to purchase certain tractors.

[23] *Id.* at 965.

[24] 189 SCRA 529 (1990).

Thereafter, Bormaheco, Inc. and Slobec, represented by its president Rivera, executed a Sales Agreement over one unit of Caterpillar tractor. Slobec gave a down payment and chattel mortgage in favor of Bormaheco. Slobec then obtained from the Insurance Corporation of the Philippines (ICP) a surety bond as further security for the unpaid balance. The surety bond was in turn secured by an Agreement of Counter-Guaranty with Real Estate Mortgage executed by Rivera as president of Slobec and members of the Castillo family, as mortgagors with ICP as mortgagee.

For violation of the terms and conditions of the Counter-Guaranty Agreement, the parcels of land of the Castillos were foreclosed by ICP. ICP was the highest bidder, thus becoming the owner of the parcels of land.

Later on, ICP sold these parcels of land to Phil. Machinery Parts Manufacturing Co. (PM Parts). Subsequently, PM Parts requested the members of the Castillo family to vacate the land.

Thereafter, the Castillos filed an action for annulment of title, contending that the Agreement of Counter-Guaranty with Real Estate Mortgage and the Deed of Sale were void for being entered into in fraud of them. They urged the Court to pierce the veil of corporate fiction, alleging that Slobec and Bormaheco, Inc. employed fraud in causing the foreclosure and subsequent sale of the real properties belonging to them.

The Supreme Court declined piercing and opted to adhere to the main doctrine. While the Court did not discount the possibility of the existence of fraud in the foreclosure proceedings, it believed that piercing was not the proper remedy in order to declare the foreclosure proceedings a nullity.[25] The Court further ruled that:

> [I]n the first place, the legal corporate entity is disregarded only if its is sought to hold the officers and stockholders directly liable for a corporate debt or obligation. In the instant case, x x x it is these corporations which desire to enforce an alleged right against petitioners. Assuming that petitioners were indeed defrauded by private respondents in the foreclosure of the mortgaged properties, this fact alone, under the circumstances is not sufficient to justify the piercing of the corporate fiction, since petitioners do not intend to hold the officers and/or members of respondent corporations personally liable therefor.[26]

The Supreme Court stressed that petitioners were merely seeking the declaration of the nullity of the foreclosure sale and the relief sought may be obtained without having to disregard the corporate fiction. The Supreme Court also mentioned that piercing was not warranted because petitioners failed to establish by clear and convincing evidence that private respondents were purposely formed and operated, and thereafter transacted with petitioners with the sole intention of defrauding the latter.[27]

[25] *Id.* at 542 - 543.
[26] *Id.* at 543.
[27] *Id.*

In sum, piercing the corporate veil is resorted to by the Court whenever the corporate entity is used to promote fraud, injustice, illegality or wrongs. Not every allegation and evidence of fraud, however, will warrant piercing.

2. ALTER EGO CASES

There is a long line of jurisprudence which will show that piercing is an available remedy whenever the corporate entity is a mere alter ego, business conduit, or agency of a person whether natural or juridical. In the case of *Marvel Building Corporation v. David*[28] an action was brought by plaintiffs as stockholders of the Marvel Building Corporation (Marvel) to enjoin the defendant Collector of Internal Revenue (Collector) from selling at public auction various properties described in the complaint. The properties included three parcels of land, with buildings situated thereon, all registered in the name of Marvel. These properties were seized and distrained by defendant to collect war-profit taxes assessed against plaintiff Maria B. Castro. Plaintiffs alleged that the said properties (land and buildings) belonged to the Marvel Building Corporation and not to Maria B. Castro. The Collector claimed that Maria B. Castro was the true and sole owner of all the subscribed stocks of Marvel, including those appearing to have been subscribed and paid for by the other stockholders. Consequently, Maria B. Castro was also the true and exclusive owner of the properties seized.

> Is Maria B. Castro the owner of all the shares of stock of the Marvel Building Corporation and the other stockholders her dummies?[29]

The Supreme Court ruled in the affirmative. It held that Maria B. Castro had enough motive to hide her enormous profits and evade her taxes because of the following circumstances: (1) the existence of endorsed certificates discovered by the internal revenue officers between 1948 and 1949 in the possession of the Secretary-Treasurer; (2) that twenty five certificates were signed by the president of the corporation for no justifiable reasons; (3) that two sets of certificates were issued; (4) the other subscribers had no income of sufficient magnitude to justify their big subscriptions; (5) no receipts were issued for the subscriptions; (6) the subscriptions were not also deposited by the treasurer in the name of the corporation but instead were deposited in Maria B. Castro's name; (7) stockholders or the directors never appeared to have met to discuss the business of the corporation; (8) Maria B. Castro advanced big sums of money of the corporation without any previous arrangement or accounting; and (9) the books of accounts were kept as if they belonged to Maria B. Castro alone.

"What are their necessary implications? Maria B. Castro would not have asked them to endorse the stock certificates, or would not be keeping these

[28] 94 Phil 376 (1954).
[29] *Id.* at 381.

in her possession." If the stockholders of record were really the owners, "they never would have consented that Maria Castro keep the funds without receipts or accounting, nor that she manages the business without their knowledge or concurrence, were they owners of the stocks in their own right."[30]

The Court concluded that Maria B. Castro "is the sole and exclusive owner of all the shares of stock" of the Marvel Building Corporation and that the other partners are mere dummies.[31] Thus, Maria B. Castro was considered as a mere alter ego of Marvel. She can, therefore, be held personally liable for the war-profit taxes.

Another landmark alter ego case is *Yutivo & Sons Hardware Co. v. Court of Tax Appeals.*[32] As compared with the *Marvel* case where a corporation was an alter ego of a natural person, *Yutivo* demonstrates a situation where a corporation is an alter ego of another corporation.

In this case Yutivo & Sons Hardware Co. (Yutivo) was a domestic corporation engaged in the buying of cars from General Motors (GM) and the subsequent selling of the same cars to the public. In 1946, Southern Motors, Inc. (Southern) was organized. It was compietely managed and controlled by the owners of Yutivo. Instead of selling the cars directly to the public, Yutivo sold the cars purchased from GM to Southern which sold the cars to the public. GM paid the original sales tax.

In 1947, GM pulled out of the Philippines. Yutivo now became the wholesale importer of GM cars. Yutivo continued the practice of selling these cars to the public through Southern. Under this scheme, the sales tax was now shouldered by Yutivo as importer at its wholesale price to Southern and not on the retail price. Yutivo disclaimed any tax liability with respect to retail sales.

In 1950, the Collector of Internal Revenue assessed Yutivo for deficiency sales tax, claiming that the taxable base included the retail sales made by Southern to the public, and not only the wholesale sales made by Yutivo to SM. The Collector disregarded the corporate personality of Southern in order to arrive at the true tax liability of Yutivo.

The Supreme Court sustained the Collector's application of the piercing doctrine. When the corporation is the mere alter ego or business conduit of a person, it may be disregarded — even without tax fraud having been committed. The Collector correctly disregarded the separate legal identities of the corporations to arrive at the true tax liability of Yutivo.

Notably, the Court pronounced that Yutivo never meant to defraud the Collector when Southern was organized. For one thing, when Southern was organized, it was GM which paid sales taxes on the cars. Assuming that Southern was indeed organized for the purpose of avoiding tax liabilities, the Court held that there was nothing wrong with tax avoidance.[33]

[30] *Id.* at 381-380.

[31] *Id.* at 389.

[32] 1 SCRA 160 (1961).

[33] *Id.* at 166, 169 - 170.

Yutivo clearly proves that "alter ego" and "fraud cases" are distinct classes of piercing. The presence of one is sufficient to warrant piercing.

At this point, it may be said that not all alter ego allegations warrant piercing. The *obiter dictum* in the case of *Lidell & Co. Inc. v. Collector of Internal Revenue*[34] puts a precaution in "alter ego" cases. "The mere fact that one or more corporations are owned and controlled by a single stockholder is not of itself sufficient ground for disregarding separate corporate entities. Authorities[35] support the rule that it is lawful to obtain a corporation charter, even with a single substantial stockholder, to engage in a specific activity, and such activity may co-exist with other private activities of the stockholder. If the corporation is a substantial one, conducted lawfully and without fraud on another, its separate identity is to be respected."[36]

In sum, the courts may pierce the corporate veil upon showing that a corporate entity is a mere alter ego, business conduit, branch or agency of a natural or juridical person. Fraud need not be present in alter ego cases. If the alleged alter ego corporation is, however, a substantial one, and it is conducted lawfully and not fraudulently, its separate juridical identity is to be respected.

3. EQUITY CASES

When the circumstances of a piercing case do not categorically fall under "fraud cases" or "alter ego cases", the Court may still pierce the corporate veil for equitable reasons. This is a catch-all category. Unlike fraud and alter ego cases, equity cases need not be substantiated by factual basis. There is really no actual basis at all.

The Supreme Court had the occasion to speak of the rationale for equity cases in the case of *Emilio Cano Enterprises v. Court of Industrial Relation,*[37] which is an alter ego case.[38] In this case, Emilio Cano and Rodolfo Cano, president-proprietor and manager, respectively, of Emilio Cano Enterprises, Inc. (Cano) were found guilty by the Court of Industrial Relations (CIR) of unfair labor practices charged against them by Honorata Cruz. As a consequence, they were ordered jointly and severally to reinstate Honorata, with payment of backwages, to her former position. Subsequently, Emilio Cano died. Thereafter, the order of execution was directed against the properties of Cano instead of the respondents named in the decision. The Company filed a motion to quash the writ by invoking separate juridical personality.

[34] 2 SCRA 632 (1961).

[35] *Burnet, Commissionner v. Clarke,* 287 U.S. 410, 53 S. Ct. 207, 77 L.Ed. 397 (1978); *Burnet, Commissionner v. Commonwealth Improvement Co.,* 287 U.S. 415, 53 S. Ct. 198, 77 L. Ed. 399 (1978).

[36] *Lidell,* 2 SCRA at 640.

[37] 13 SCRA 290 (1965).

[38] Villanueva, *supra* note 18 at 32.

The bone of contention is whether the judgment rendered against persons in their capacity as officers of a corporation can be made effective against properties of the corporation, where the corporation itself was not a party in the case.

The Supreme Court ruled in the affirmative. "While it is an undisputed rule that a corporation has a personality separate and distinct from its members or stockholders because of a fiction of law, here we should not lose sight... that the Emilio Cano Enterprises, Inc. is a close family corporation... Here is an instance where the corporation and its members can be considered as one. And to hold such entity liable for the acts of its members is not to ignore the legal fiction but merely to give meaning to the principle that such fiction cannot be invoked if its purpose is to act as a shield to further an end subversive of justice."[39]

The Court provided the rationale for equity cases in this case:

> Verily the order against them [the corporate officers] is in effect against the corporation. No benefit can be attained if this case were to be remanded to the court a quo merely in response to a technical substitution of parties for such would only cause an unwarranted delay that would work to Honorata's prejudice. This is contrary to the spirit of the law which enjoins a speedy adjudication of labor cases, disregarding as much as possible the technicalities of procedure. We, therefore, find unmeritorious the relief herein prayed for.[40]

For equitable reasons, the Court will brush aside a mere technicality, such as one involving the impleading of indispensable parties. It will pierce the corporate veil outright, and hold the officers liable, instead of going through the technical procedure of impleading the indispensable party.

D. Levels of Usage of Piercing

There are two levels of usage of the "piercing doctrine." One is piercing at the administrative level. The other is piercing at the judicial level.

1. ADMINISTRATIVE LEVEL

Quasi-judicial bodies and administrative agencies of the government resort to piercing when evidence shows that the corporate fiction is used to perpetuate a fraud or to commit a crime or to justify a wrong. Frequent usage of piercing is applied in tax evasion cases. This is illustrated by the case of *Commissioner of Internal Revenue v. Norton & Harrison.*[41] This is an alter ego tax evasion case involving two corporations. In this case, the Court said that "revenue officers, in proper cases, may disregard the separate corporate entity where it serves but a shield to tax evasion and treat the person who actually may take the benefits of the transactions as the person... taxable."[42]

[39] *Id.* at 292.
[40] *Id.* at 293.
[41] 11 SCRA 714 (1964).
[42] *Id.* at 721, *citing Lidell & Co., Inc. v. Collector of Internal Revenue,* 2 SCRA 632 (1961).

The use of the doctrine as an administrative tool enables the Bureau of Internal Revenue to hold the responsible persons liable for the payment of taxes.

2. JUDICIAL LEVEL

In the case of *Cruz v. Dalisay,*[43] the Court had the occasion to say that it has the power to pierce the veil of corporate entity. In this case, the respondent, Senior Deputy Sheriff of Manila, attached or levied the money belonging to complainant Cruz when he was not himself the judgment debtor in the final judgment of the National Labor Relations Commission (NLRC). Said judgment was sought to be enforced against Qualitrans Limousine Service, Inc., a duly registered corporation. The tenor of the NLRC judgment and implementing writ directed Qualitrans, Inc. to reinstate the discharged employees and pay them full backwages. "Respondent, however, chose to 'pierce the veil of corporate entity' usurping a power belonging to the court and assumed improvidently since the complainant is the owner/president of Qualitrans... [that] they are one and the same."[44] The Court recited once more the main doctrine of separate juridical personality, i.e., that a corporation is separate and distinct from its owners or stockholders.

More importantly, the Court stated that the power to pierce belongs to the Court. Any legal or allowable administrative piercing is still subject to judicial review whenever the defendant brings the issue of separate juridical personality to the courts.

It has been shown that in equity cases like *Emilio Cano,* the Supreme Court may opt not to look for any factual basis for piercing the corporate veil. Fraud and alter ego cases, however, involve a mere procedural technicality. Because of this, the courts always need to determine whether there is factual basis for piercing.

Although *Dalisay* has said that piercing is purely a judicial function, there are other landmark cases like *Marvel, Yutivo, Koppel* and *Lidell* which have allowed or sustained administrative application of piercing. In all these cases, however, factual basis exists at the administrative level to substantiate a fraud or alter ego case of piercing. In the end, the Court becomes the final arbiter on whether the administrative application of piercing is proper.

II. HISTORICAL AND FACTUAL BACKGROUND

Three days after the February Revolution,[45] President Corazon C. Aquino, by direct mandate of the sovereign people, issued Executive Order No. 1, creating the Presidential Commission on Good Government (PCGG). The purpose of E.O. No. 1 is to charge PCGG with the task of "recovery of all

[43] 152 SCRA 482 (1982).
[44] *Id.* at 486.
[45] February 28, 1986.

ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates...including take-over or sequestration of all business enterprises and entities owned or controlled by them... directly or through nominees, by taking undue advantage of their public office..."[46] The powers of the PCGG include the conduct of investigations, the sequestration of ill-gotten wealth,[47] and the provisional take-over of business enterprises and properties taken over by the government of Marcos.

Subsequently,[48] President Corazon C. Aquino, still by virtue of the judgment or direct mandate of the sovereign people, promulgated the Freedom Constitution[49] succinctly affirming the authority of the PCGG. Under the Freedom Constitution, the "President shall give priority to measures to achieve the mandate of the people" to "recover ill-gotten properties amassed by the leaders and supporters of the previous regime" and to "protect the interest of the people through orders of sequestration or freezing of assets or accounts."[50]

After a year of protests by cronies whose assets had been sequestered, the sovereign people ratified the 1987 Constitution, reaffirming the State's exercise of police power with regard to the legitimacy of the power and authority of the PCGG. This is embodied in Section 26 Article XVIII of the 1987 Constitution which speaks of the authority of the State to issue sequestration or freeze orders and to file judicial actions for the recovery of "ill-gotten" wealth.

The sovereign police power, as directly exercised by the sovereign, gives both birth and purpose to the PCGG. It is the basis of these powers, functions and duties to address a public need. The rock-bottom foundation of the task with which the PCGG is charged in terms of assisting the newly-installed Presidency is the axiom *salus populi est suprema lex*: The welfare of the people is the supreme law, the supreme constitution.

Public survival, public interest, and public welfare were the primary reasons for Executive Order No. 1. The State, in order to promote what Justice Holmes comprehensively calls "the great public needs"[51] may interfere with personal liberty, with property, and with business and occupations to secure this fundamental aim of our Government, to which aim "the rights of the individual are subordinated"[52] "in aid of what is sanctioned by usage, or held by the prevailing morality or strong and preponderant opinion to be greatly and immediately necessary to public welfare."[53]

[46] Creating the Presidential Commission on Good Government, E.O. No. 1, Sec 2(a) (1986).

[47] "Ill-gotten wealth" is any asset, property, business enterprise or material possession of persons within the purview of Executive Orders Nos. 1 and 2, acquired by them directly or indirectly thru dummies, nominees, agents, subordinates and/or business associates by any of the following means or similar schemes x x x (Rules and Regulations of the PCGG, sec. 1(a) (1986).

[48] March 25, 1986.

[49] Otherwise known as Proclamation No. 3.

[50] FREEDOM CONST., art. II sec. 1(c), (d) (1986).

[51] *Noble State Bank v. Haskell*, 219 U.S. 186, at 188 (1910).

[52] *Calalang v. Williams*, 70 Phil. 726, at 735 (1940).

[53] FREEDOM CONST., art. II sec. 1(c), (d) (1986).

A. The Moral Dimension of the PCGG Law

The political decision to create the Presidential Commission on Good Government with sufficient power to cope with a perceived "great public need" was based largely on a matter of public knowledge: the magnitude of the "great public need" to be met and the plenitude of unprecedented problems attendant thereto brought about in the wake of the era and practice of a deposed "kleptocracy." In other words, in resorting to the exercise of police power through the creation and adequate authorization of the PCGG, the sovereign people as well as their newly-installed leader-legislator know whereof they speak, albeit, they spoke in whispers and in mortal dread during the era of kleptocracy. As witness, the following declaration of a dying man on but a few glimpses into the *tempore et mores* of the said era:

> I wrote this volume... lest the frailty of human memory — or any incident *a la* Nalundasan — consign to oblivion the matters I had in mind to form the vital parts of this book....
>
> x x x x x x x x x
>
> Some of the materials that went into this work had been of public knowledge in the Philippines. If I had used them, it was with the intention of utilizing them as lines to heretofore unrevealed facets of the various ruses that Marcos employed to establish his dictatorship.
>
> x x x x x x x x x
>
> ... the new oligarchy assumed control of a growing, seemingly endless list of corporations and business firms in the country. The new oligarchy is made up of the ruling duumvirate themselves, their relatives, their cronies and a few favored military commanders.
>
> And the new oligarchy has not been discriminating in its oppressive business manipulations. By dictatorial decrees promulgated by Marcos, the...
>
> ... very few who could bask in the reflected notoriety of the conjugal dictatorship have become the noveau riche as they mastered the levers and uses of power made available by the guns of martial law.[54]

Mijares revealed that the "ruling duumvirate," Mr. and Mrs. Marcos, "wanted substantial participation in the stock structure of established enterprises for free or for nominal considerations... The reasoning of Ferdinand and Imelda was that they had dispensed so many favors to these business enterprises by way of loans and other concessions from government institutions."[55]

The estimated loss of resources of the government, and the resultant impoverishment brought upon a hapless people through the above-described

[54] MIJARES, THE CONJUGAL DICTATORSHIP 187 - 190 (1976).

[55] *Id.* at 191.

unrestrained piracy is now part of Philippine history. This fact is embedded in the transcripts of the proceedings of the 1986 Constitutional Commission:

> This pillage of an entire nation... is unequalled in the modern history of the world. The loot taken away by Mr. Marcos and his family and cronies reached the amount of $10-billion or P200-billion.
>
> We made a computation... if one were to live for 60 years and were to spend P1-million a day, it would take that person nine lifetimes before he could finish off P200-billion.
>
> The P200-billion stashed away by Mr. Marcos is three times the national budget for fiscal year 1986, which is P60-billion.
>
> x x x x x x x x x
>
> With P200-billion, we could have purchased 6.6 billion textbooks and built 4 million classrooms and 800,000 school buildings throughout the country...[56]

B. *The PCGG Law: Judicially Clarified*

The Supreme Court did its best to clarify the PCGG Law in *Bataan Shipyard and Engineering Co., Inc. v. Presidential Commission on Good Government* (BASECO).[57] In that case, the PCGG issued writs of sequestration, addressed to three "fiscal agents" (later on called "asset monitors") of the Commission, commanding them to sequester several corporations, among which was Bataan Shipyard & Engineering Co. (BASECO), in order to prevent the destruction or disappearance of corporate funds or assets or otherwise prevent dissipation thereof. On the strength of that sequestration order, the PCGG agent assigned to BASECO addressed a letter to the President and other officers of petitioner firm, requesting for the production of certain corporate books and papers. Subsequently, PCGG issued several orders addressed to BASECO officers, including: (1) the termination of the contract for security services; (2) the change of mode of payment for the contractual charges for the use of BASECO's road network; (3) the stoppage of the contracts for the improvement of the wharf at Engineer Island and for the operation of the Sesiman Rock Quarry at Mariveles Bataan; and (4) the order to dispose of or sell metal scraps. These series of orders, issued by virtue of the fact that BASECO had been placed under sequestration[58] culminated in the takeover of BASECO by PCGG. Commissioner Ramon A. Diaz decreed the provisional takeover by the PCGG of BASECO, the Philippine Dockyard Corporation, and all their affiliated companies. Diaz invoked the provisions of Section 3(c) of Executive Order No. 1, empowering the Commission to provisionally take over in the public

[56] Commissionner W.V. Villacorta: on the amendment to the proposed New Constitution recognizing the sequestration powers of the PCGG, Committee Hearing: 5 THE CONSTITUTIONAL COMMISSION OF 1986 516 (1986).

[57] 150 SCRA 181 (1987).

[58] E.O. No. 1, sec. 3(b).

interest business enterprises and properties that had been taken over by the Government of the Marcos Administration.

In a special civil action for certiorari and prohibition, BASECO prayed that the Court "declare unconstitutional and void Executive Orders Numbered 1 and 2;"[59] and "annul the sequestration order x x x and all other orders subsequently issued x x x inclusive of the takeover order x x x and termination of services of BASECO officers."[60]

The Court, however, upheld the constitutionality or validity of E.O. Nos. 1 and 2 as well as related executive orders, such as E.O. No. 14. Consequently, the PCGG orders issued in the course of the sequestration of BASECO were also upheld as valid. In its decision, the Court gave a discourse on several aspects of the PCGG Law. Some of these aspects which are material to this paper shall be discussed hereunder.

1. WHAT IS SEQUESTRATION?

BASECO made it clear that pending judicial determination by the Sandiganbayan whether an asset is indeed "ill-gotten" and therefore belongs to the Filipino people, a PCGG writ of sequestration over said property, issued on the basis of *prima facie* evidence as required by the 1987 Constitution, remains operative over said asset only as a provisional measure. *BASECO* stresses this point by way of defining not only what constitutes or characterizes "ill-gotten" asset and the "cronies" or "nexus" responsible or liable for the ill-acquisition thereof, but also what is meant by "sequestration" itself.

As defined in *BASECO*, sequestration means

> to place or cause to be placed under its (PCGG's) possession or control said property ("ill-gotten" property)... including 'business enterprises and entities.'[61]
>
> The purpose of sequestration is to prevent the destruction, concealment or dissipation of and otherwise to conserve and preserve the same until it can be determined through *appropriate judicial proceeding* whether the property is in truth "ill-gotten".

The PCGG Rules and Regulations, cited in the *BASECO* case as forming part of PCGG Law or "Governing Law," defines "sequestration" to mean the:

> taking into custody or placing under the Commission's control or possession any asset, fund or other property, as well as relevant records, papers and documents, in order to prevent their concealment, destruction, impairment or dissipation pending determination of the question whether the said asset, fund or property is ill-gotten wealth under Executive Orders Nos. 1 and 2.[62]

[59] E.O. No. 2[1986] is entitled: "Regarding the Funds, Moneys, Assets, and Properties Illegally Acquired or Misappropriated by Former President Ferdinand Marcos, Mrs. Imelda Romualdez Marcos, Their Close Relatives, Subordinates, Business Associates, Dummies, Agents, or Nominees."

[60] *Bataan Shipyard*, 150 SCRA 181, at 198.

[61] *Id.* at 209.

[62] PCGG Rules and Regulations, sec. 1(b) (1986).

The Supreme Court gives the nature of sequestration in footnote number forty-five of the *BASECO* decision, explaining that a writ of sequestration is "merely, but essentially, a conservatory measure, somewhat in the nature of a judicial deposit." It is a conservatory writ "whenever the right of the property is involved, to preserve, pending litigation, specific property subject to conflicting claims of ownership or liens and privileges."[63] Bouvier's Law Dictionary[64] and the judiciary of Louisiana define sequestration as "a mandate of the court ordering the sheriff, in certain cases to take possession, and to keep, a thing of which another person has the possession, until after the decision of a suit, in order that it be delivered to him who shall be adjudged entitled to have the property or the possession of that thing."[65]

The writ of sequestration issued by the PCGG is addressed to a PCGG officer or agent, commanding him to sequester properties, assets, business enterprises — "ill-gotten" wealth. The issuance of the writ is not the end, but only the beginning of a PCGG "administrative case" or "proceeding" for the recovery of "ill-gotten" assets. Subsequent to the issuance of the writ, the Constitution[66] mandates that a "corresponding judicial action" be filed.

The contemplated situations envisaged and sought to be governed by the PCGG Law involves the ill-gotten properties that had been acquired or amassed by the leaders and supporters of the previous (Marcos) regime through abuse of power or other improper means. The said properties or assets include the business enterprises and properties that had been taken over by the Marcos Administration or by persons close to the former President Marcos.[67]

2. LIMITATIONS OF THE SEQUESTRATION POWER: DUE PROCESS AND PROTECTION FOR THOSE AFFECTED

While in *BASECO* the Supreme Court upheld the validity and constitutionality of the PCGG Law, it equally stresses that the fundamental rights of private property and free enterprise must be protected.

BASECO pronounced that "there can be no debate about the validity and eminent propriety of the Government's plan to recover all ill-gotten wealth."[68] It further said that "neither can there be any debate about the proposition that assuming" the described factual premises of the contemplated situations "of the Executive Orders and Proclamation No. 3 to be true, to be demonstrable by competent evidence, the recovery from Marcos, his family, and his minions of assets and properties involved, is not only a right but a duty on the part of the Government."[69]

[63] *Bataan Shipyard*, 150 SCRA at 209, citing 79 C.J.S. 1074.
[64] 3rd Rev., Vol. 2, at 3046.
[65] *Bataan Shipyard*, 150 SCRA at 209 citing BOUVIER'S LAW DICTIONARY, 3rd Rev., at 3046.
[66] PHILIPPINE CONST., art. XVIII, sec. 26.
[67] *Bataan Shipyard*, 150 SCRA 181, at 205 - 206.
[68] *Id.* at 206.
[69] *Id.* 206 - 207.

That duty, or right, is, however, subject to constraints. Those affected by the exercise of police power by the PCGG must be accorded their day in court. Marcos or his cronies, from whom any alleged ill-gotten asset is to be recovered must be given the opportunity to contest the sequestration order over the assets. *BASECO* clarified this in this wise:

> ... [t]he factual premises of the Executive Orders cannot simply be assumed. They will have to be duly established by adequate proof in each case, in a proper judicial proceeding, so that the recovery of the ill-gotten wealth may be validly and properly adjudged and consummated...[70]

The PCGG then has the burden of proof in the judicial action or proceeding to show that the sequestered property is truly "ill-gotten."

Due process is not to be taken lightly, even in the PCGG's issuance of writs or orders that would result in administrative sequestration proceedings. The Court in *BASECO* reiterates this:

> 8. Requisites for validity [of PCGG orders]
>
> What is indispensable is that , x x x there exists a *prima facie* factual foundation x x x for the sequestration, freeze or takeover order, and adequate and fair opportunity to contest it and endeavor to cause its negation or nullification.[71]

The Court, however, added that "[w]hat is anathema to due process is not so much the absence of previous notice but the absolute absence thereof and lack of opportunity to be heard."[72]

The Court lifted the last whereas clause of Executive Order No. 14 in emphasizing that in the implementation of the PCGG's powers, there must be "due regard to the requirements of fairness and due process."[73] Valid as the "right and duty" of the government might be,

> still a balance must be sought with the equally compelling necessity that a proper respect be accorded and adequate protection assured, the fundamental rights of private property and free enterprise. The Court emphasizes that property rights must be accorded protection because of the role private property plays in the stimulation to economic effort.[74]

As an ancillary to this protective mandate over private property, the Court in *BASECO* underscored that "PCGG may not exercise acts of ownership... over property sequestered...:

[70] *Id.* at 207.
[71] *Id.* at 215.
[72] *Id.* footnote no. 61.
[73] Defining the Jurisdiction Over Cases Involving The Ill-Gotten Wealth of Former President Ferdinand E. Marcos. Executive Order No. 14, last whereas cl. (1986).
[74] *Bataan Shipyard*, 150 SCRA 181, at 207, citing *Guido v. Rural Progress Administration*, 84 Phil. 847.

> [R]esort to the provisional remedies in question should entail the least possible interference with business operations or activities so that, in the event that the accusation of the business enterprises bring 'ill-gotten' be not proven, it may be returned to its rightful owner as far as possible in the same condition as it was at the time of sequestration.[75]

Thus, the PCGG may only exercise powers of administration over the property or business sequestered, much like a court appointed receiver.[76] There shall be no divestment of title over property seized.[77]

As a conclusion of this chapter, it is seen that the mandate of the PCGG is to promote public interest. It being constituted to meet a great public need and a great demand of the sovereign people, the PCGG was driven the power of sequestration. Corresponding to its great task ahead of it, it was undoubtedly given ample powers under the PCGG Law which was affirmed by the ratification of the Constitution.

How has the judiciary treated such ample powers? Has the judiciary helped the PCGG all along in terms of the interpretation or application of the PCGG Law?

The morality and validity of PCGG's task and exercise of its ample powers have been upheld by the Supreme Court in *BASECO*. The pursuit of PCGG's task is however, limited by due process considerations and due respect of private property rights.

These limitations have to be weighed against the public interest that infuses the PCGG's great task. The court, ultimately, has to balance this public interest attendant to the PCGG's exercise of its powers on one hand and considerations of due process and respect of private property on the other, for no one may be deprived of property without due process of law.

III. THE CONTROVERSY

A. *Antecedent Facts*

Section 26, Article XVIII of the 1987 Constitution sets a deadline for the Government to file the judicial action corresponding to the order or writ of sequestration issued by PCGG. More particularly:

> Sec. 26. The authority to issue sequestration or freeze orders under Proclamation No. 3, dated March 25, 1986, in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.
>
> A sequestration and freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed *within six months from its ratification*. For those issued after such ratification, the judicial action or proceeding shall be commenced *within six months from the issuance thereof.*
>
> *The sequestration or freeze order is deemed automatically lifted if no judicial action or proceeding is commenced as herein provided.* (emphasis supplied)

[75] *Id.*

[76] *Id.* at 236.

[77] *Id.* at 211.

In its thrust to recover "ill-gotten wealth", the PCGG issued writs of sequestration over assets, properties, business enterprises, or material possessions of Ferdinand E. Marcos, his wife, their close relatives, subordinates, business associates, dummies, agents, or nominees. The writs were issued by the PCGG after administrative investigation or determination and finding of a prima facie case that the assets were "ill-gotten". Some prima facie findings of ownership were unearthed through an administrative piercing of the corporate veil. The piercing at the administrative level of some corporations revealed that the ownership of certain corporations was traceable to Marcos, his close friends, relatives, dummies who are the "nexus" responsible for the acquisition or establishment of the corporations through unlawful or improper means.

There were many judicial actions[78] corresponding to the writs of sequestration filed by the PCGG well within the constitutional deadline. The antecedents of these judicial actions may be summarized in the following "Interco story";[79] a paradigm of PCGG judicial actions.

On July 10, 1987, PCGG issued separate writs of sequestration over International Copra Export Corporation[80] and Interco Manufacturing Corporation, based on a prima facie finding that Eduardo Cojuangco, Jr. "beneficially owns shares of stocks in these two corporations through the employment of ostensible dummies or nominees, like Enrique Luy who is the majority stockholder of both corporations."[81]

On July 31, 1987, within the constitutional deadline, the PCGG filed Civil Case No. 0033 entitled *Republic of the Philippines v. Eduardo Cojuangco, Jr., Enrique Luy*, and sixty-one other defendants before the Sandiganbayan. The sixty-one other defendants were alleged to be dummies or nominees of Cojuangco. Enrique Luy was one of the defendants. Listed in "Annex A" of the complaint are the sequestered properties and business enterprises among which are the International Copra Export Corporation and the Interco Manufacturing Corporation.

[78] Among these are *Republic v. Fe Roa Gimenez, et. al.*, Civil Case No. 007 (Sept. 17, 1991); *Republic v. Cuenca*, Civil Case No. 0016 (Oct. 10, 1991); *Republic v. Martal*, Civil Case No. 0025 (Oct. 24, 1991); *Republic v. Jose L. Africa, et. al.*, Civil Case No. 0009 (May 22, 1992).

[79] *PCGG v. International Copra Export Corporation, Interco Manufacturing Copra and Sandiganbayan*, G.R. No. 92755 (July 26, 1991).

[80] "Interco" shall hereinafter be used to refer either to the story relating to these two corporations or to all pleadings and court decisions involving these two.

[81] *PCGG v. International Copra Export Corporation, Interco Manufacturing Corp., and Sandiganbayan*, G.R. No. 92755, Adv. Sh. at 1.

Many of the impleaded individual defendants have filed their answers and the litigation or proceedings against these defendants are still on-going.

About two years after PCGG filed Civil Case No. 0033, where they were listed as "ill-gotten" corporations, International Copra Export Corporation and Interco Manufacturing Corporation, as petitioners, filed before the Supreme Court a petition for certiorari where it challenged the authority of PCGG in continuing to implement the writs of sequestration it had earlier issued over them. They prayed that the writs of sequestration issued over them be lifted, because more than six months had already lapsed since the issuance of the writs without the PCGG filed a judicial action against them. The Constitutional deadline was therefore violated.

The Supreme Court resolved to refer the case to the Sandiganbayan for proper disposition. The case was docketed as Civil Case No. 0086.

B. The Thesis and the Anti-Thesis

To the German philosopher Georg Wilhelm Friedrich Hegel is attributed the proposition that everything in our universe, whether in respect of matter or ideas, is nothing more than a current thesis — arising from a previous thesis overthrown by an antitheses resulting in a synthesis, the current thesis. This process may be productive in approaching the area of controversy on hand.

1. THE SANDIGANBAYAN THESIS

The issue raised by the corporations before the Sandiganbayan is "the interpretation of the pertinent legal provision in the 1987 Constitution requiring the institution of the 'corresponding judicial action or proceeding within six months from the ratification of the Constitution for sequestration or freeze orders issued by [PCGG], failing in which, said sequestration or freeze order is deemed automatically lifted."[82]

PCGG filed its Comment, stating among others, that it had filed the "corresponding judicial action" via Civil Case No. 0033 where the impleaded defendants were the stockholders of the corporations and where the corporations, themselves, as sequestered, were listed in "Annex A" of the complaint.

PCGG urged the Sandiganbayan to apply the *"doctrine of piercing of the corporate veil"* which the PCGG had resorted to in its administrative investigations. Based on *prima facie* evidence arising from these investigations, the PCGG disregarded the separate juridical personality of the corporations upon a finding that the corporation were "ill-gotten wealth," and as such were being merely used as fronts by Cojuangco. PCGG manifested to the Sandiganbayan that these corporations were the subject of recovery in Civil Case No. 0033, the "corresponding judicial action."

[82] *International Copra Export Corp. and Interco Manufacturing Corp., v. PCGG*, Sandiganbayan Civil Case No. 0086 at 1 (March 29, 1990).

The PCGG, however, failed to present before the Sandiganbayan the prima facie basis of PCGG's findings. The Sandiganbayan eventually ruled that the writs were deemed automatically lifted for failure of the PCGG to file the "corresponding judicial action" within six months, as mandated by the Constitution. The Court declined to pierce the corporate veil for lack of factual or legal basis. The Court chose to respect the separate juridical personality of the corporations, distinct from the legal personality of Luy, the majority stockholder.

In its decision, the Sandiganbayan incorporated the earlier ruling in *Philippine International Corporation v. PCGG*[83] where the Sandiganbayan ruled that the writs were deemed automatically lifted for failure of the PCGG to file the corresponding judicial action. Echoing *BASECO* on the protection of private property, the Sandiganbayan anchored its ruling on "due process" considerations. It said:

> x x x [w]e can take judicial notice of the fact that no judicial action has been instituted since the issuance of the questioned writ x x x , then such writ is deemed automatically lifted. *No other interpretation is allowable, consistent with the requirements of justice and due process* x x x [84] (emphasis supplied)

Due process, therefore, is the *ratio decidendi* of the Sandiganbayan decision. The corporations on record not having been impleaded as party-defendants in any PCGG complaint, then no corresponding judicial action within the constitutional deadline was brought against the corporations, as distinct and separate entities from their owners. Consequently, the writs of sequestration on these corporations are deemed automatically lifted. This, in essence, is the Sandiganbayan's thesis.

2. THE SUPREME COURT THESIS

The PCGG then filed a petition for certiorari with the Supreme Court, alleging that the Sandiganbayan abused its discretion in deciding that no judicial action was filed pursuant to the Constitution. The PCGG also alleged before the Supreme Court that the PCGG had filed a judicial action against the corporations through Civil Case No. 0033, where *Eduardo Cojuangco, Jr., Enrique Luy* and several others, as alleged owners of and/or nominees in the corporations, were impleaded as defendants, and where a list of sequestered corporations is attached as Annex A. As in the Sandiganbayan case, PCGG urged the Supreme Court to use the "piercing doctrine."

The Supreme Court denied PCGG's petition. The Court recited the thesis of the Sandiganbayan in its decision.[85]

Thereafter, the PCGG filed a Motion for Reconsideration, invoking once more the applicability of the "piercing doctrine." In addition, the PCGG also

[83] Civil Case No. 0089 (Dec. 28, 1989).

[84] *International Copra Export Corporation, et. al., v. PCGG*, Sandiganbayan Civil Case No. 0089.

urged upon the court that there was no need to implead the corporations as party-defendants in the judicial action (Civil Case No. 0033) brought by it against the owners and stockholders. This is because the corporations were treated as the "res" or the "subject matter." In said case, a judicial action need not be brought against the corporations, as the "res" or the "subject matter." The PCGG urged the Court not to limit the test of whether or not a "corresponding judicial action" was filed on the basis of whether the PCGG impleaded the corporations as party-defendants. It contended that the impleading test is too mechanical. The PCGG contended that the fact that the corporations were treated as the "res" in the complaints is substantial compliance with the Constitutional mandate.

The Motion was denied and the Court did not pass upon the "res" arguments of the PCGG. The Court reiterated its earlier decision upholding the separate juridical personality of the corporations. It restated its earlier ruling that:

> [i]n this jurisdiction, a corporation has a legal personality distinct and separate from its stockholders. Thus, a suit against any of the stockholders is not *ipso facto* a suit against the corporation itself.[86]

The Supreme Court adjudged as unmeritorious the PCGG's argument that the "doctrine of piercing of the corporate veil" was applicable in the case at bar. The Court said:

> [t]he Sandiganbayan correctly found the record bereft of *sufficient basis* from which to conclude that private respondents' respective corporate identities have been used to defeat public convenience, protect fraudulent schemes, or evade obligations and liabilities under states.[87] (emphasis supplied)

Clearly, the Court upheld and respected the separate juridical personalities of the corporations for want of a sufficient basis to pierce the corporate fiction. "Whether Enrique Luy, a major stockholder of private respondents, acted as a dummy of Eduardo Cojuangco, Jr., and whether the shareholdings of Enrique Luy are beneficially owned by Eduardo Cojuangco, Jr., are matters still to be established in Civil Case No. 0033."[88]

In sum, the PCGG failed to substantiate its piercing at the judicial level. As a consequence, the Court's pronouncement that no judicial action was filed against the corporations remain. Also, the writs of sequestration over the corporations were deemed automatically lifted.

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[85] *PCGG v. International Copra Export Corp. et. al.*, G.R. No. 92755 (Oct. 3, 1990).

[86] *PCGG v. International Copra Export Corp. et. al.*, G.R. No. 92755, Adv. Sh. at 4 (July 26, 1991).

[87] *Id.*

[88] *Id.*

3. THE PCGG'S ANTI-THESIS

Furthermore, the Supreme Court rejects the Government's position that the PCGG, during its investigations, found more than *prima facie* evidence that the corporations are mere conduits or "shields" used by the Marcoses and his "cronies" to acquire, maintain, or enjoy "ill-gotten assets." Upon the filing of the judicial actions or complaints, the PCGG has already pierced the corporate veils or disregarded the separate personalities of the corporations involved. It, however, merely impleaded only the cronies who were the stockholders thereof, and who acted as dummies or fronts for the Marcoses for mutual benefits, with the Marcoses owning 80% to 100% of the corporations. In effect, the PCGG urged the Sandiganbayan that it should apply the doctrine of piercing the corporate veil.

The PCGG's position discussed in the foregoing is digested and restated by the dissenting Justices in the Resolution dated July 26, 1991, thus:

> SARMIENTO, J., Dissenting C.J. Fernan joined]:
>
> I hold that the suit against Enrique Luy is substantial compliance with the provisions of the Constitution. I therefore see no reason why the writs of sequestration against the corporations of which Luy is the majority stockholder should be considered lifted.
>
> It is to be noted that Luy is specifically alleged to have acted as front for Eduardo Cojuangco, Jr. or whoever is the true owner, through schemes and machinations designed to conceal the principal's identity. It would defeat, I respectfully submit, the mandate of the Presidential Commission on Good Government to recover cronies' ill-gotten wealth if the respondents were allowed to make use of devices, like the veil of corporate fiction, precisely to escape that mandate.
>
> I believe that in this case, that veil may be reasonably pierced.
>
> Indeed, should the Sandiganbayan find Enrique Luy to have acted as a dummy for Eduardo Cojuangco, Jr., he must account for the wealth accumulated by him for and on his behalf, and the respondent corporations cannot escape liability simply because they are possessed of separate juridical personalities.[89]

In search of a synthesis, the controversy may be reworded or restated in the following main issues:

(1) Whether by not impleading the sequestered corporations, and listing them as subjects of the writs of sequestration in an annex to the complaint filed against the impleaded individuals, the PCGG has complied with the Constitutional deadline of filing the judicial action corresponding to the issued writs of sequestration;

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[89] *Id.* at 6.

(2) Whether the doctrine of piercing of the corporate veil can be made to apply as a justification for not impleading the sequestered corporations as party-defendants;

(3) Whether the corporations, at the very least, may be treated merely as "res" or "subject matter" of the judicial action instead of as parties-in-interest to be impleaded; and whether this treatment can comply with the Constitutional deadline.

With the above statement of the issues that resolved around the main controversy tackled in this paper, the stage is ready for a discourse on the disposition of the piercing doctrine in the Interco story.

IV. THE DISPOSITION OF THE PIERCING DOCTRINE IN THE INTERCO STORY

Interpreting and applying Section 26, Article XVIII of the Constitution, in relation to the express finding that the sequestered corporations *have not been impleaded* in any action as party-defendants, the Sandiganbayan, as well as the Supreme Court, lifted the writs of sequestration. Since they were not impleaded as party-defendants, the Court ruled that there were no judicial defendants. The Court, in effect, ruled that there was no judicial action filed against the corporations as required by the Constitution. A contrary ruling would violate "due process."

In opposing the lifting of the writs of sequestration, the Government urged the Sandiganbayan to apply the doctrine of piercing to resolve the question of whether the sequestered corporations should be impleaded as party-defendants in the PCGG complaint filed in court, particularly in Civil Case No. 0033. The PCGG argued that with the application of the piercing doctrine, there was no need to implead a sequestered corporation. A judicial action may be deemed to have been filed or commenced in compliance with the Constitutional requirement, upon filing of Civil Case No. 0033, where the corporations were not impleaded but listed in Annex A of the complaint.

In resolving the above question, the Court answered in the affirmative, i.e., that the sequestered corporations are to be impleaded, and thus laid down a "test" of compliance with the Constitution as well as with due process. In its decision applying this test, the Court stated that the piercing of the corporate veil was not applicable because no substantial proof was presented to justify piercing.

A. PCGG's Resort to the Doctrine Is Legally Tenable

In the chapter on "Piercing the Corporate Veil", several cases involving piercing at the administrative level by the B.I.R. were discussed. In *Marvel Building*, the revenue officer pierced the veil of a corporation to hold Mariano B. Castro liable for war profit taxes. In *Norton and Harrison* and *Lidell*, the

recognized the revenue officer's authority to disregard the separate corporate entity where it serves as a shield to tax evasion. In *Koppel*, the revenue officer pierced the corporate veil to hold Koppel (Phil.) liable for the merchant sales tax it sold for and in behalf of Koppel (U.S.A.).

In all these cases, the Commissioner of Internal Revenue initially applied the piercing doctrine as an administrative tool upon a finding that the corporation is a mere alter ego of a taxpayer or when the corporation is used to evade taxes. The Commissioner, in effect, unconditionally pierced the corporate veil to hold the responsible persons, whether natural or juridical, liable. Where the responsible persons or taxpayers do not go to the courts and question the Commissioner's administrative application of piercing, the matter ends at the administrative level. The issue of piercing does not reach the courts. Where the responsible persons go to court to question the application of piercing, the Court may uphold or disapprove of the administrative piercing effected by administrative officials.

It is submitted that PCGG is likewise authorized by the PCGG Law by sheer legal definition of "sequestration,"[90] to disregard the corporate fiction when it issues a writ over a *prima facie* "ill-gotten" business enterprise or corporation. The PCGG initially disregards the corporate veil to determine if the corporation is a front of Marcos or his crony. Having determined that to be positive, the PCGG then issues a writ of sequestration over the corporation.

Therefore, the PCGG appears to be legally correct in its claim that even at the administrative level, based on *prima facie* evidence, it has pierced the corporate veil of "ill-gotten" corporations upon issuance of the writs of sequestration, and upon filing with the court of the complaint or judicial action against the involved crony or dummy. The corporations need not be impleaded as distinct party-defendants.

The illustrative cases of *Lidell, Koppel, Marvel Building,* and *Norton and Harrison* show that the Commissioner of Internal Revenue is allowed by law to pierce the corporate veil in order to avail of the remedy of levy and distraint on corporations or their entire assets, regardless of their alleged separate personality from that of the alleged stockholders or owners thereof. Similarly, the PCGG is impliedly authorized by law to pierce the corporate veil in order "to sequester or place or caused to be placed under its control or possession"[91] ill-gotten assets that may include corporations. While the "nexus" liable or responsible for the evasion of taxes may either be a corporation, like in *Norton and Harrison* or a natural person like in *Marvel Building*, the "nexus" liable or responsible for the ill-acquisition of ill-gotten assets under the PCGG Law is a natural person–"Ferdinand E. Marcos, [any member of] his immediate family, relatives, subordinates and close associates"[92] or Ferdinand E. Marcos or his wife Imelda Romualdez Marcos, their close relatives, subordinates, business associates, dummies, agents or nominees.[93]

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[90] Rules and Regulations of the PCGG, sec. 1 (6b).
[91] E.O. No. 1, sec. 3.
[92] E.O. No. 1, sec. 2(a).
[93] E.O. No. 2, sec. 1.

Applying the rule of *ejusdem generis*, the "dummies, agents, or nominees" mentioned in Executive Order No. 2 are natural persons. Where the dummies, agents, or nominees in fact take corporate forms, PCGG's resort to the doctrine of piercing the corporate veil becomes more legally tenable, by treating the corporate dummies, agents or nominees as nothing more than the alter egos of natural persons — the cronies or the "nexus." This is more so in the case of the "front" or "paper" corporations established by Marcos or other "nexus" or "cronies" enumerated or specified in the PCGG Law. Since the Constitution and the law[94] prohibit Marcos and other officials from having any interest in any franchise or other business, "paper" companies are convenient fronts or aliases for them.

Therefore, the PCGG's application of the piercing doctrine is legally sound since it can be availed of as a tool purely at the administrative level. But this general rule would fail to apply in case where a party affected brings the matter to the Court, as was done by petitioner corporations in *Interco*. In the courts, the doctrine may be adopted or otherwise applied as a judicial tool upon ample substantiation.

B. PCGG's Misconception

In *Interco* (Civil Case No. 0086), it appears, however, that the PCGG entertains the misconception that its administrative piercing of the corporate veil is binding upon or remains valid with the Court. Since the PCGG urged the latter also to apply the doctrine, with this misconception, the PCGG did not give the Court the chance, nor provide it with the evidentiary basis, to make use of the doctrine to arrive at any judicial decision based on that doctrine. The PCGG obviously did not understand that the Sandiganbayan and the Supreme Court cannot *judicially* avail of the doctrine, even as it had been availed of *administratively* by the PCGG, without any evidence having been presented to justify or support the application of the doctrine. The Sandiganbayan said in *Interco:*

> [r]espondent's [PCGG's] contention... that this Court should apply the doctrine of 'piercing the veil of corporate fiction' must be rejected for *lack of factual...basis*[95] (emphasis supplied)

It follows, therefore, that whether used as an administrative tool by the PCGG or as a judicial tool by a court, the application of the piercing doctrine must be based upon factual evidence. In other words, where the doctrine is alleged or invoked in or before the court, evidence must be presented to support its application by the court. It is to buttress this conclusion that

[94] PHILIPPINE CONST. art. VII sec. 8(2) (1973); PHILIPPINE CONST. art. VII sec. 7; Anti Graft and Corrupt Practices Act, Act No. 3019 (1960).

[95] *International Copra Export Corp., and Interco Manufacturing Corp. v.* PCGG, Sandiganbayan Civil Case No. 0086 at 16.

this paper extensively enumerated the evidence which the court assessed and evaluated by way of applying the piercing doctrine.

In the *Koppel* case, for instance, the following facts revealed that in the sales of Koppel U.S.A.) thru Koppel (Phils.), the latter was merely an agent of the former, and was therefore liable for the taxes on the basis of the profits earned by the principal, Koppel (U.S.A.):

(1) The amount of the share in the profits of Koppel (Phils.) was left to the sole unbridled control of Koppel (U.S.A.);

(2) Koppel (Phils.) was represented in the Philippines by Koppel (U.S.A.)'s resident Vice-President, which led to an inference that the local corporation had at least a Vice-President and President who were non-residents of the Philippines, but of the United States;

(3) Koppel (Phils.) bore not only all its own cable expenses but also those of its principal, Koppel (U.S.A.);

(4) The shares of stocks were all owned by Koppel (U.S.A.) except for the five needed for the board of directors' qualification;

(5) Where drafts were not paid by buyers, local banks were instructed not to protest them, but to refer them to Koppel (Phils.) which was given the authority by Koppel (U.S.A.) to instruct banks with regard to the disposition of the drafts.

The above mentioned facts led the court to sustain the administrative piercing of Koppel (Phils.) by the Commissioner for the purpose of assessing Koppel (Phils.) the correct amount of taxes.

In the PCGG sequestration cases, the PCGG makes use of piercing as an administrative tool to come up with a prima facie finding which is also its basis for issuing the writ. Among the PCGG's *prima facie* findings are shares of stock, the ownership of which are traceable to Marcos or his close friends.

Note that the presence of *prima facie* evidence is the minimum constitutional requirement for the issuance of the writ of sequestration. The relief sought by petitioner corporations in the *Interco* case (Civil Case No. 0086) is the lifting of the writ of sequestration. Instead of simply contending "that the court should apply the doctrine," the PCGG should have supported its contention or prayer with at least the *prima facie* evidence upon which it based its issuance of the writ of sequestration. In connection, the Sandiganbayan stated in *Interco:*

> [f]urthermore, the record will confirm the fact that respondent PCGG had been afforded all opportunities to demonstrate and produce... the *prima facie* factual justification for the issuance of the questioned writs of sequestration, which is, that petitioners are supposed to be beneficially held and/or controlled by the Marcos and Cojuangco spouses, defendants in Civil Case No. 0033 x x x.[96]

[96] *Id.* at 25.

These points explain that the *prima facie* evidence for the PCGG's administrative issuance of the writ as well as for PCGG's administrative piercing could have substantiated also a *judicial* application of the doctrine.

C. *The Doctrine Does Not Fully Address the Question of "Judicial Action"*

In interpreting the Constitutional provision by way of determining whether the Constitutional requirement of a "corresponding judicial action" has been met with respect to the sequestered corporations, the Sandiganbayan laid down the "impleading test," i.e., whether the corporation was impleaded as party-defendant. The formula or test is spelled out in *Interco:*

> ... the contemplated judicial action or proceeding must be directed at or against the sequestered firms or corporations[97]
>
> ... the mere inclusion of Enrique Luy, the ostensible majority stockholders of [the sequestered] corporations, as one of the defendants in Civil Case No. 0033 does not amount to their [the corporations'] being *impleaded* also as parties-defendants... since they have distinct and separate legal personalities from defendant Luy[98] (emphasis supplied)
>
> The writs of sequestration... are hereby declared to have been automatically lifted after the failure of the respondent to institute the corresponding judicial action or proceeding against petitioners... in accordance with... the 1987 Constitution.[99]

Affirming the foregoing test, the Supreme court in *Interco* stated:

> [t]o date, [PCGG] has not instituted the corresponding judicial action against private respondents herein [the sequestered corporations]. Perforce, the writs of sequestration... have ceased to be effective.[100]
>
> x x x x x x x x x
>
> ... While Enrique Luy, a principal stockholder... was *impleaded* party-defendant in Civil Case No. 0033, [the sequestered corporations] were not.[101] (emphasis supplied)

The above-mentioned test prescribed by the Supreme Court requires the PCGG to implead a party-in-interest in the court action before the six month deadline to satisfy the "corresponding judicial action" clause of the Constitution. The PCGG obviously has misperceived the court test to be one that

[97] *Id.* at 21.

[98] *Id.* at 21.

[99] *Id.* at 28.

[100] *PCGG v. International Copra Export Corp. et.al.*, G.R. No. 92755, Adv. Sh. at 3 (July 26, 1991).

[101] *Id.* at 4.

bears largely on the question of *legal identity or identities* of party or parties — i.e., whether two or more parties are separate and distinct. Precisely due to this misconception, the PCGG has urged upon the Court to apply the doctrine of piercing the corporate veil to settle the question of legal identity or identities of Mr. Enrique Luy on one hand, and the sequestered corporations on the other. In effect, the PCGG skirted the court test of whether a party or parties in interest, *regardless* of legal identities, have been *impleaded* in an action brought by the PCGG on or before the constitutional deadline. Under the court test, even if two parties have the same legal personality, impleading only one results in the absence of a judicial action against the other.

In other words, the PCGG failed to appreciate the court observation that the corporations have distinct and separate legal personalities.[102] This question of law is merely given legal premise upon which the test of *impleading* is made to apply. In applying its own test, the Sandiganbayan observed in *Interco:*

> ... as revealed by even a cursory reading of the Expanded Complaint in Civil Case No. 0033, petitioners [the sequestered corporations] are *not included* therein as parties-defendants...they appear only in Annex A thereof which lists the alleged 'Assets...[103] (emphasis supplied)
>
> ... the records in this Court confirm the lack of any action instituted by the PCGG *against* the petitioners [the sequestered corporation].[104] (emphasis supplied)

By invoking the doctrine of piercing the corporate veil, the PCGG in fact tacitly *admits* that it had failed to meet the test — that indeed the PCGG has *not impleaded* the sequestered corporations, but has impleaded only Mr. Luy as shown by the records of the Court.

In affirming the application of the test, the Supreme Court duly stated: "[b]ut while Enrique Luy, a principal stockholder of [the sequestered corporations] was *impleaded* [as] party-defendant in Civil Case No. 0033... [the corporations] were *not.*"[105] The PCGG does not deny this fact. It tacitly admits it when it invoked the piercing doctrine.

In sum, the piercing doctrine urged by PCGG does not squarely address the test laid down by the courts. Said doctrine may be regarded as a mere excuse for *not* observing or complying with the test. It is urged by the PCGG as an exemption from or exception to the applicability of the test of *impleading.*

The PCGG, however, does not seem to realize that the piercing doctrine may not be acceptable to the Court as an excuse for not meeting the test of impleading in all cases. While it may be gathered from the Sandiganbayan

[102] The Corporation Code of the Philippines, B.P. Blg. 68, sec. 2 (1980); The Civil Code of the Philippines, RA No. 386, as amended, art. 44 (1950).

[103] *International Copra Export Corp. et.al. v. PCGG*, Sandiganbayan Civil Case No. 0086 at 22.

[104] *Id.* at 26.

[105] *PCGG v. International Copra Export Corp. et.al.*, G.R. No. 92755 (July 26, 1991); emphasis supplied.

decision that the exemption would have been granted had there been evidence presented to substantiate the doctrine's application, the PCGG meets a dead-end in its thrust to meet the court test in cases where there is a failure to present substantial evidence. In these situations, where the doctrine as a legal excuse for not impleading fails in applicability, the PCGG obviously fails to meet the court test of "impleading."

More importantly, where the doctrine fails in applicability due to failure in evidence to substantiate the application of the piercing doctrine, the sequestered corporation that was not impleaded would obviously be deprived of its "day in court." Due process would not have been addressed in the Sandiganbayan ruling.

D. Interco: An Equity Case of Piercing

Had there been sufficient factual basis presented for PCGG's piercing of the corporate veil, the *Interco* case could have been classified as a fraud case of piercing. The complaint would have alleged fraud of the public with respect to the use of public funds. Alternatively, *Interco* could have been classified as an alter ego case because of the allegation that Enrique Luy is a mere dummy, nominee or front of Eduardo Cojuangco, Jr.

There being no factual basis for the Court's piercing of the corporate veil, could equity be a basis for piercing? This is the subject of the following discussion.

In *Interco*, the Supreme Court once more respected the separate juridical personality of a corporation as in the case of *Stockholders of F. Guanzon and Sons* and *Manila Gas*. In the absence of sufficient factual basis for piercing, the Court has been very consistent in upholding the main doctrine. Piercing is only a remedy of last resort. It is only ancillary to the doctrine of separate juridical personality.

It is important to note that the ancillary doctrine of piercing has been applied only to commercial transanctions and corporations. In the *Interco* case, the PCGG wanted to use the piercing doctrine not for an ordinary commercial transaction, but for a case involving public policy and public interest. The recovery of alleged stolen wealth of the nation, as well as its preservation or conservation under sequestration, was at stake.

In equity cases, the Court, upon mere technicality, will pierce the corporate veil. This is evident in the *Emilio Cano*[106] case where the Court *motu propio* pierced the veil of Emilio Cano Enterprises, Inc., a juridical person not a party to the case in the lower court. The Supreme Court held it directly liable to Honorata Cruz for backwages and reinstatement. Instead of remanding the case to the lower court to let the corporation be impleaded as a party-defendant, the Supreme Court side-stepped this procedural technicality in order to do justice to Honorata Cruz. The Court disregarded the corporation's invocation of separate juridical personality in order to do quick justice to the employee Honorata.

[106] 13 SCRA 290 (1965).

As shown above, the Court brushed aside mere procedural technicalities and motu propio pierced the corporate veil for equity reasons. Why did the Court not pierce the veil in *Interco* for the same reason, given that this involves public interest and the urgent recovery of "ill-gotten wealth?" Why did the Court not pierce when a corporation is a mere creature of the State, and the State can revoke the fiction of its separate juridical personality for reasons involving public policy?

Assuming that the Court in *Interco motu propio* pierced the corporate veil for equity reasons as was done in *Emilio Cano*, the writs of sequestration over the Interco corporations would not have been declared lifted. Under a subsisting sequestration, the PCGG can continue with its conservatory measures with respect to the administration or operations of the sequestered corporations. Pending ultimate judicial decision in Civil Case No. 0033 on whether the corporations are "ill-gotten", the PCGG "fiscal agents" or "asset monitors" could counter-sign the issuance of company checks, oversee contracts entered into by the corporation, or otherwise "monitor" the business operations or transactions of the corporations. This is for the purpose of preventing the disappearance or transfers of company funds or assets, or other clandestine acts of asset "dissipation" undertaken by the alleged owners or stockholders for their own personal gain.

In other words, with the lifting of the writs of sequestration, the PCGG is rendered without authority to put in place in the corporations its conservatory measures. Without the PCGG's knowledge, company motor vehicles, aircrafts, buildings, parcels of land, funds or other assets could be disposed of through some means by the alleged owners of the corporations for their personal benefit.

Why then did the Court not pierce *motu propio* based on the above considerations?

The answer seems to be that as against such equity considerations, the Court found more need to protect private property as was stressed in *BASECO*. Pending final judicial determination involving corporations as well as their corporate assets, the Court seems to maintain that owners or stockholders have the right to the full and lawful use or disposition of the corporations and their funds and assets.

Moreover, with the lifting of the writs, the Court is aware that it is not deciding Civil Case No. 0033 on the merits. The lifting does not leave the State or the PCGG without any other legal remedy to recover the "ill-gotten" assets. The PCGG has other remedies available to it in the pursuit of its mandated tasks and objectives. Without any writ of sequestration issued, the PCGG may file an independent civil action pursuant to Executive Order No. 14 against he corporations to recover the same or their assets.[107] Sequestration merely allows the PCGG to take conservatory measures with respect to the operations and transactions of the corporation or over corporate assets. Without

[107] *International Copra Export Corp., et.al. v. PCGG*, Sandiganbayan Civil Case No. 0086 at 16-18, citing *Philippine International Corporation v. PCGG*, Civil Case No. 0089.

the writ, the Government has not lost anything yet. This is more so if the ultimate judicial decision declares that, contrary to the *prima facie* claim of the PCGG, the corporations and their assets are not "ill-gotten" after all.

In sum, even if the case involves public policy and may therefore be classified as an equity case for piercing, the Supreme Court will respect the separate juridical personality when nothing is substantially lost. The lifting of the writs of sequestration is not an end in itself.

CONCLUSION AND RECOMMENDATION

The *Interco* case has reaffirmed what has been a constant ruling of the Supreme Court — piercing is only applicable when supported with factual basis. Factual basis, however, need only be presented in fraud or alter ego cases. The Supreme Court demonstrated in *Emilio Cano* that even without factual basis, piercing may be resorted to for equitable reasons.

And yet in the case of *Interco*, which involves national welfare and prosperity, the Supreme Court did not pierce. Why?

This is because the State, with the lifting of the writs of sequestration in *Interco*, has not substantially lost anything. While the PCGG may no longer "preserve" or otherwise "monitor" the property, the lifting of the writs is not an adjudication on the merits. The court has not yet finally decided the ownership of the property. The case against the alleged owners can continue, until final judicial determination of whether the property is "ill-gotten." The alleged owners may be later held liable for accounting and actual damages equivalent to the value of the corporation. The PCGG can file a new case against the corporations without the benefit of the writs.

The *Interco* case demonstrates what we have learned about piercing in the commercial sense. Piercing is a remedy of last resort. *Umali* demonstrates that the Courts will not pierce if other remedies are available. It will always respect the separate juridical personality, even in a case involving national interests as in *Interco*.

Interco also paid respects to what the Court said in *BASECO*. Even with the PCGG's great powers and noble aims, the court shall respect the Constitutional mandate of due process. If a remedy is still available to the PCGG, piercing is not resorted to even in equity cases. We may grieve for the Government, but we would grieve more for any flagrant violation of due process.

In the future, it is recommended that the PCGG implead the sequestered corporation as party-defendants. This is because of the doctrine of separate juridical personality where the corporation is granted a separate personality from its owners. Should the PCGG avail of piercing in a judicial action, it should have factual basis. If the court allows piercing, then any judgment of the court will bind the corporation, even if it is treated merely as the res.

POSTSCRIPT

While this paper was being written, the Supreme Court was already in the process of adding a new dimension to its topic. Truly, jurisprudence with respect to the issues and the analysis pursued in this paper is still evolving. The Supreme Court recently handed down the decision in *Republic of the Philippines v. Sandiganbayan, et al., Eduardo Cojuangco, Jr., Movant Intervenor,*[108] which adds fresh insights into this paper's analysis.

These are the facts.

The case involves the sequestered shares of stock of majority stockholder Eduardo Cojuangco, Jr. in United Coconut Planter's Bank (UCPB). On March 3, 1992, relying on *BASECO*, the Supreme Court ordered the holding of the elections of the members of the Board of Directors of UCPB and to allow the registered stockholders of the sequestered shares, or stockholders of record, to vote the same, either in person or by proxy. Incorporated in said resolution of March 3, 1992 were certain "safeguards," e.g., the comptroller and board secretary shall be chosen or nominated by the PCGG. The Government, through the Solicitor General, filed a "Clarification/Manifesto with Motion" which prayed, inter-alia, that the Court hear the UCPB and Central Bank (CB) as to the applicability of the "safeguards" incorporated in the March 3, 1992 resolution to a universal banking institution like UCPB.

As required by the Courts, UCPB and the CB filed their respective comments. From said comments, it was made clear in no uncertain terms by UCPB and the CB that the aforementioned safeguards were neither necessary nor feasible in a universal banking institution like UCPB.

The issue posted by the "Clarification/Manifestation with Motion," as relevant to this paper, is whether the lifting of the sequestration of the majority stock of UCPB had the effect of empowering the majority stockholders of record, as well as the other persons and entities now holding UCPB stock who had some connection, directly or indirectly, with the coconut levy funds, to vote at the stockholders' meetings.

The Court answered in the negative. In its analysis, the Court posted the following relevant questions with respect to the public interest involved in this coconut case:

> (1) Assuming, however, for purposes of argument merely, the lifting of sequestration to be correct, may it also be assumed that x x x lifting of sequestration removed the character of the coconut levy companies of being affected with public interest, so that they and their stocks and assets may now be considered to be of private ownership?

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[108] G.R. No. 96073 (February 16, 1993); hereinafter refered to as the "coconut case."

(2) May it be assumed that the lifting of sequestration operated to relieve the holders of stock in the coconut levy companies — affected with public interest — of the obligation of proving how that stock had been legitimately transferred to private ownership, x x x ?[109]

The Court said "No", thus virtually reversing its March 3, 1992 resolution on the right of stockholders of record to vote as owners of the sequestered shares. The lifting of sequestration, according to the Court, has no relevance to the nature of the "coconut-levy companies" or their stock or property, or to the legality of the acquisition by private persons of their interest therein, or tot he latter's capacity or disqualification to acquire stock in the companies or any property.

This being so, the Court denied the alleged "owner's right" of the majority stockholders of record to vote the stocks in their names, even if the sequestration thereon had been lifted. That right, according to the Court, has to be established before the Sandiganbayan. "Until that is done, they cannot be deemed legitimate owners of UCPB stocks and cannot be accorded the right to vote them."[110]

This development in jurisprudence is relevant to this paper insofar as the equity aspects of PCGG sequestration are concerned. The new jurisprudence has affirmed the PCGG's takeover or control of UCPB through the voting rights of the majority of the stocks of UCPB, even with the lifting of the writs of sequestration over the shares.

The author would like to venture that this latest development in jurisprudence rests on "equity considerations." The coconut case involves coconut levy funds belonging to the humble tillers of the soil — the millions of coconut farmers. The coconut case became highly affected with public interest because the coconut farmers whose meager contributions to the coconut levy fund became a vast source of wealth of the Marcos cronies.

The realization of the Supreme Court's role in furthering the mandated tasks of the PCGG to recover "ill-gotten wealth" and to preserve the same pending judicial determination of ownership still remains to be seen. Jurisprudence has not yet exhausted all the space available in the PCGG horizon. But jurisprudential equity arguments in this paper have finally seen a little of the dawn in the coconut case.

[109] *Republic of the Philippines v. Sandiganbayan*, et.al., G.R. No. 96073, Adv. Sh. at 5 (February 10, 1993).

[110] *Id.* at 5 - 6.

A BATTLE NOT WON: FORGING THE FILIPINO WORLD WAR II VETERANS' CLAIM FOR BENEFITS AGAINST THE UNITED STATES OF AMERICA

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Some fifty years ago, the Filipinos, as citizens of an unincorporated territory of the United States, fought in an American war. By virtue of the United States Constitution and later enactments, they were called into active service by the U.S. President and promised the same benefits given and to be given their American comrades-in-arms. But these promises were not only forgotten. They were altogether abandoned with the enactment of the U.S. Rescission Act of 1946. The latter explicitly provided that the Filipino veterans were deemed not to have been in the active service of the United States and, therefore, were not eligible for benefits under U.S. laws.

Then, in 1990, the US Immigration Act was amended to provide for the American naturalization of Filipino World War II veterans. Nevertheless, no veterans' benefits were granted.

The case of the Filipino World War II veterans had existed for half a century now, but it is, unfortunately, alien to many. The present plight of these war heroes necessitate action on the part of the Philippine government to afford adequate protection to the veterans who availed or would avail of the naturalization grant, and also, to once and for all call for the possible resolution of their claim for veterans' benefits against the United States.

INTRODUCTION

None can speak more eloquently for peace than those who have fought in war. The voices of war veterans are a reflection of the longing for peace of people the world over who within a generation have twice suffered the unspeakable catastrophy of world war. Humanity has earned the right to peace. Without hope, man is lost.

– UN Undersecretary Ralph Bunche

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