

REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City

SECOND DIVISION

REPUBLIC  
PHILIPPINES,

OF THE

*Plaintiff,*

CIVIL CASE NOS. 0033-B and  
0033-D

- versus -

EDUARDO M. COJUANGCO,  
JR., et al.,

*Accused.*

Present:  
HERRERA, JR. Chairperson  
MUSNGI, Associate Justice  
\*TRESPESES, Associate Justice

May 9, 2017

Promulgated

**JOINT RESOLUTION**

**MUSNGI, J.:**

This Court resolves the following:

**Civil Case No. 33-B**

1. *Motion for Reconsideration*<sup>1</sup> filed by plaintiff Republic of the Philippines on 15 July 2016;
2. *Opposition*<sup>2</sup> filed by defendant Eduardo M. Cojuangco, Jr. on 01 August 2016; and
3. *Opposition*<sup>3</sup> filed by defendant Danilo S. Ursua on 22 August 2016.

**Civil Case No. 33-D**

1. *Motion for Reconsideration*<sup>4</sup> filed by plaintiff Republic of the Philippines on 15 July 2016;
2. *Opposition*<sup>5</sup> filed by defendant Eduardo M. Cojuangco, Jr. on 01 August 2016; and

\*Sitting as Special Member per Administrative Order No. 005-2017 dated 09 January 2017.

<sup>1</sup> Records, Civil Case No. 33-B, Vol. 13, pp. 140-163.

<sup>2</sup> *Ibid*, pp. 181-209.

<sup>3</sup> *Ibid*, pp. 213-216.

<sup>4</sup> Records, Civil Case No. 33-D, Vol. 8, pp. 24-45.

<sup>5</sup> *Ibid*, pp. 81-115.

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3. *Reply*<sup>6</sup> filed by plaintiff Republic of the Philippines on 09 September 2016.

On 02 June 2016, this Court issued a *Joint Resolution*<sup>7</sup> denying the *Motion for Partial Summary Judgment and/or Judgment on the Pleadings* filed by the plaintiff in Civil Case No. 33-B, as well as the *Motion for Partial Summary Judgment* in Civil Case No. 33-D, for lack of merit.

First, this Court found that the remedies of summary judgment and/or judgment on the pleadings are improper because the *Answers* of the defendants raised genuine issues which must be resolved after trial.

Second, this Court ruled that the plaintiff cannot rely on the case of *Republic of the Philippines v. COCOFED, et al.*<sup>8</sup> ("**Republic v. COCOFED**") to justify a summary judgment, ruling on reconveyance, or declaration of unconstitutionality of the decrees issued by former President Ferdinand Marcos. The Supreme Court ruled that the coconut levy funds are *prima facie* public funds. Since the funds are *prima facie* public funds, the same would always be subject to a rebuttal or contradictory evidence by the defendants. Therefore, the defendants may present evidence on trial to show whether the subject funds had already become legitimately private funds. In addition, the Supreme Court in that case merely ruled on the voting rights involving the subject shares of stock but did not make a determination as to ownership of the same.

Third, this Court ruled that the issue on whether the payments made under Republic Act No. 6260 ("R.A. No. 6260"), or the *Coconut Investment Act*, constitute valid legal grounds to claim ownership over COCOMARK and COCOLIFE (Civil Case No. 33-B), and UNICOM et al. (Civil Case No. 33-D) involves a question of fact, not a question of law. This Court held that the issue does not merely involve the application or interpretation of R.A. No. 6260, but a verification as to whether the payments made by the defendants in order to acquire said companies or the shares thereof, were made pursuant to and in accordance with R.A. No. 6260. Hence, the parties must present sufficient evidence in support of their claim of ownership. The weight and sufficiency of such evidence may only be resolved after trial.

Lastly, this Court did not rule on the constitutionality of Section 5, Article III of P.D. 961 and Section 5, Article III of P.D. No. 1468 because a

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<sup>6</sup> *Ibid*, pp. 121-127.

<sup>7</sup> Records, Civil Case No. 33-B, Vol. 13, pp. 82-103, and Records, Civil Case No. 33-D, Vol. 7, pp. 467-488.

<sup>8</sup> G.R. No. 147062 to 64, 14 December 2001.

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collateral attack on the validity of a law is not allowed. This Court held that this issue must be raised in an action expressly instituted for such purpose.

**Civil Case No. 33-B**

In its *Motion*, the plaintiff moves for reconsideration of the *Joint Resolution* dated 02 June 2016 based on the following grounds:

- a. That this Court erred in ruling that the affirmative defenses set forth by the defendants do not warrant partial judgment and/or partial summary judgment;
- b. That this Court erred in ruling that the pronouncement of the Supreme Court in the case of *Republic v. COCOFED* pertaining to the nature of the coconut levy funds is misplaced, considering that the Supreme Court declared said funds as merely *prima facie* public funds. However, pursuant to the more recent decisions of the Supreme Court, the coconut levy funds have now been categorically declared as public funds; and
- c. That the issue on the constitutionality of Section 5, Article III of P.D. No. 961 and Section 5, Article III of P.D. 1468 has already been mooted in view of the recent Supreme Court decision declaring the said provisions unconstitutional.

The plaintiff admits that its *Motion for Partial Summary Judgment and/or Judgment on the Pleadings* relied heavily on the ruling in *Republic v. COCOFED* where the Supreme Court declared that the coconut levy funds are *prima facie* public funds. However, plaintiff alleges in its *Motion* that the Supreme Court held in recent cases, namely, *Philippine Coconut Producers Federation v. Republic of the Philippines*,<sup>9</sup> *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*,<sup>10</sup> and *Presidential Commission on Good Government v. Dumayas*,<sup>11</sup> that the coconut levy funds are public funds of the government, and not only *prima facie* public funds. Accordingly, plaintiff argues that in view of this categorical declaration of the Supreme Court that the coconut levy funds are public funds, combined with the admissions by the defendants in their *Answers* that COCOMARK and COCOLIFE were funded and organized out of coconut levy funds, then these companies belong to the government.

<sup>9</sup> G.R. Nos. 177857-58, 24 January 2012.

<sup>10</sup> G.R. No. 180705, 27 November 2012.

<sup>11</sup> G.R. No. 209447 and 210901, 11 August 2015.

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The plaintiff also argues that the ruling in the assailed *Resolution* with regard to the unconstitutionality of Section 5, Article III of P.D. No. 961 and Section 5, Article III of P.D. 1468 has already been rendered moot given that these provisions had already been declared unconstitutional by the Supreme Court in the case of *COCOFED v. Republic of the Philippines*<sup>12</sup> ("**COCOFED v. Republic**"). Therefore, the filing of a separate action to declare the same as unconstitutional is unnecessary. In *COCOFED v. Republic*, the Supreme Court declared the provisions as unconstitutional since they allow the distribution of assets acquired with coconut levy funds to private persons when the same was considered public funds collected for a specific public purpose.

In his *Opposition*, defendant Eduardo M. Cojuangco, Jr. alleges the following grounds for opposition to the *Motion for Reconsideration*:

- a. That the grounds raised in the *Motion for Reconsideration* are mere reiterations of arguments already raised in the *Motion for Partial Judgment on the Pleadings and/or Partial Summary Judgement* dated 08 September 2002;
- b. That the *Judgment on the Pleadings and/or Summary Judgment* is improper considering the substantial issues of law and of fact evident from the allegations of the *Third Amended Complaint* (Subdivided) [Re: Formation of Companies out of Coco Levy Funds] dated 28 February 1995 and the *Answer to the Third Amended Complaint* (Subdivided) dated 23 June 1999;
- c. That the present character, whether public or private, of COCOMARK and COCOLIFE is an issue which must be resolved only after a trial on the merits;
- d. That a collateral attack against the constitutionality of any statute, regardless of pronouncements made thereon in another case, remains improper;
- e. That a judgment on the pleadings and/or summary judgment is improper, considering that the plaintiff's *Motion for Partial Judgment on the Pleadings* dated 08 September 2002 alleges a theory or purported causes of action different from those alleged in plaintiff's *Third Amended Complaint* (Subdivided) dated 28 February 2005; and

<sup>12</sup> G.R. Nos. 177857-58, 24 January 2012.

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- f. That the affidavits, depositions, or admissions relied upon in support of the *Motion for Partial Judgment on the Pleadings* are inadmissible since the admissions made by Atty. Herbosa in another case do not bind defendant Cojuangco, when the former did not appear as counsel for defendant Cojuangco.

According to the defendant, a conveyance of COCOMARK and COCOLIFE to the government through a judgment on the pleadings or a summary judgment based on affidavits, depositions, or admissions of the parties made two (2) decades ago, would be tantamount to the deprivation of property without due process of law. The defendant argues that the factual issues of (1) whether COCOLIFE and COCOMARK were created and/or funded with coconut levy funds, and (2) whether defendant corporations are beneficially owned or controlled by defendant Eduardo M. Cojuangco, Jr. and/or the individual defendants, must be resolved after a full-blown trial wherein the defendant can be given sufficient opportunity to prove his claim through competent evidence.

Defendant Danilo S. Ursua also filed his *Opposition* alleging that the grounds in the subject *Motion* are mere reiterations of the same arguments and issues already thoroughly discussed by the parties. Defendant Ursua reiterates that the defendants have raised vital issues which call for the presentation of evidence in a full-blown trial in order to establish the ownership of the subject shares of stock.

#### **Civil Case No. 33-D**

In its *Motion*, the plaintiff moves for reconsideration of the *Joint Resolution* dated 02 June 2016 based on the following grounds:

- a. That the fact that the United Coconut Oil Mills ("UNICOM") and the subject 16 oil mill companies, their subsidiaries and affiliates were purchased, acquired, capitalized and funded by the coconut levy funds, through the Coconut Industry Investment Fund ("CIIF"), is undisputed, hence, pursuant to the more recent decisions of the Supreme Court, these funds are incontestably public funds; and
- b. That there being no real questions of fact in issue, summary judgment is warranted.

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Similar to Civil Case No. 33-B, the plaintiff alleges that its *Motion for Partial Summary Judgment* filed on 15 October 2002 also relied mainly on the case of *Republic v. COCOFED* where the Supreme Court declared that the coconut levy funds are *prima facie* public funds. In the subject *Motion*, however, the plaintiff claims that such declaration by the Supreme Court was only an *obiter* since the main issue in that case refers to the voting rights of the government on the shares of stock in San Miguel Corporation which were purchased using coconut levy funds. The plaintiff likewise cited *COCOFED v. Republic*,<sup>13</sup> *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*,<sup>14</sup> and *Presidential Commission on Good Government v. Dumayas*,<sup>15</sup> where the Supreme Court allegedly categorically ruled that the coconut levy funds are public funds and all properties purchased therefrom are for a public purpose. Hence, plaintiff concludes that the coconut levy funds are no longer considered merely *prima facie* public funds.

The plaintiff also argues that there are no questions of fact in issue in this case. Akin to its *Motion* in Civil Case No. 33-B, the plaintiff contends that the defendants admitted in their *Answers* that UNICOM and the sixteen (16) other oil mill companies were purchased using coconut levy funds, particularly from the Coconut Consumer Stabilization Fund ("CCSF"). Since the coconut levy funds used to purchase the oil mill companies are considered public funds, then these companies belong to the government.

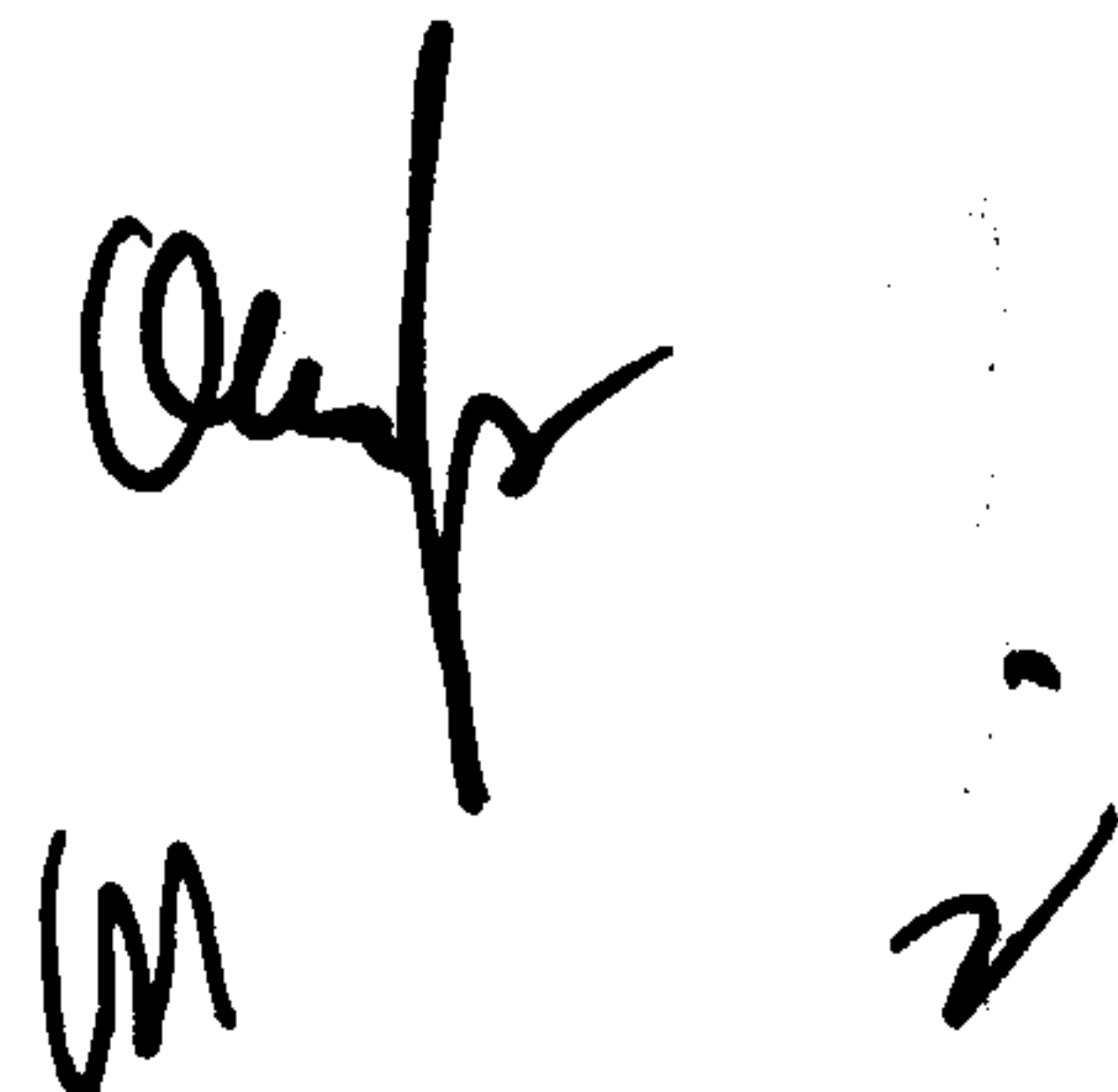
The plaintiff also points out that the individual and corporate defendants did not claim ownership over UNICOM and the oil mill companies. Moreover, the plaintiff rejects the claim of the defendants in their *Answers* that the coconut farmers who were represented by COCOFED are the beneficial owners of the subject properties. Plaintiff cites the ruling in *COCOFED v. Republic* where the Supreme Court held that "the conversion of special funds into a private fund for the benefit of private individuals cannot be allowed even if these private individuals belong to the coconut industry." Thus, any property, such as shares of stock, purchased with special public funds cannot be distributed freely to private individuals since public funds can only be used for a public purpose.

Lastly, the plaintiff also maintains that the refusal of this Court to declare Section 5, Article III of P.D. 961 and Section 5, Article III of P.D. No. 1468 as unconstitutional has been rendered moot by the pronouncement of the Supreme Court in *COCOFED v. Republic* where the Supreme Court declared the provisions as violative of the 1987 Constitution.

<sup>13</sup> G.R. Nos. 177857-58, 24 January 2012.

<sup>14</sup> G.R. No. 180705, 27 November 2012.

<sup>15</sup> G.R. No. 209447 and 210901, 11 August 2015.

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In his *Opposition*, defendant Eduardo M. Cojuangco, Jr. alleges the following grounds for opposition to the *Motion for Reconsideration*:

- a. That the grounds raised in the *Motion for Reconsideration* are mere reiterations of arguments already raised in the *Motion for Partial Summary Judgment* dated 09 October 2002;
- b. That a summary judgment is improper considering the substantial issues of law and of fact evident from the allegations of the *Third Amended Complaint* (Subdivided) [Re: Disadvantageous Purchases and Settlement of the Accounts of Oil Mills our of Coconut Levy Funds] dated 12 May 1995 and the *Answer to the Third Amended Complaint* (Subdivided) dated 23 June 1999;
- c. That the following issues of fact preclude the issuance of a summary judgment:
  - i. Whether UNICOM was established or funded with coconut levy funds;
  - ii. Whether UNICOM is "held and controlled by defendant Eduardo Cojuangco, Jr.;"
  - iii. Whether UNICOM "bought sixteen (16) certain competing and/or some non-operating oil mills at exorbitant prices xxx then moth-balled them in order to control the prices of copra and other coconut products;"
  - iv. Whether a "coconut monopoly" was established, and
  - v. Whether defendants "drew up a scheme of payment to settle the accounts of MINCOCO and other UNICOM-acquired mills with their respective creditors;"
- d. That the present character, whether public or private, of the subject oil mills is an issue which must be resolved only after a trial on the merits;
- e. That a collateral attack against the constitutionality of any statute, regardless of pronouncements made thereon in another case, remains improper;

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- f. That a judgment on the pleadings and/or summary judgment is improper, considering that the plaintiff's *Motion for Partial Judgment on the Pleadings* dated 08 September 2002 alleges a theory or purported causes of action different from those alleged in plaintiff's *Third Amended Complaint* (Subdivided) dated 28 February 2005; and
- g. That the affidavits, depositions, or admissions relied upon in support of the *Motion for Partial Judgment on the Pleadings* are inadmissible since admissions made by Atty. Lim in another case do not bind defendant Cojuangco since the former did not appear as the latter's counsel.

The defendant avers that a summary judgment is improper. He claims that "even assuming that said corporations were, at the time of establishment, funded with coconut levy funds, it must further be proven that said corporations have not, since that time, been validly privatized." Defendant posits that privatization of the subject corporations is possible considering that twenty-nine (29) years have elapsed since this case originated.

The defendant also disagrees with the claim of the plaintiff that since the Supreme Court in *COCOFED v. Republic* ruled that the subject CIIF companies therein are owned by the government, then UNICOM and the sixteen (16) oil mills are likewise owned by the government. Defendant counters that the case of *COCOFED v. Republic* pertains to the *Partial Summary Judgment* in Civil Case No. 33-F, which is separate and distinct from the instant case. Moreover, defendant claims that a genuine issue exists as to the nature of UNICOM and the sixteen (16) oil mills. Therefore, summary judgment must be precluded, and the parties must be given sufficient opportunity to prove their respective claims in a full-blown trial.

Another ground put forth by the defendant is that the plaintiff's *Motion for Partial Summary Judgment* alleges a theory or purported causes of action different from those alleged in plaintiff's *Third Amended Complaint*. Defendant states that a judgment "must be in accordance with the theory of action upon which the complaint was framed and the case was tried" in order to comply with the requirements of due process. Hence, defendant reckons that a summary judgment, without considering the abovementioned modification of the theory of the case and the reliefs prayed for by the plaintiff, would violate the defendant's right to due process.

Lastly, the defendant maintains that the affidavit of plaintiff's counsel Derek Anthony P. Lim, which was relied upon in support of the *Motion for Partial Judgment* is inadmissible. Defendant claims that the affidavit does

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not contain proof of facts, but merely conclusions, which were derived by the affiant from an examination of seventy (70) affidavits submitted by defendants Lobregat, et al., and not by defendant Cojuangco. Hence, the defendant submits that these affidavits should not bind him.

In its *Reply*, the plaintiff refutes the claim of the defendant that the issues raised in its *Motion* are a mere rehash of the issues raised in the *Motion for Summary Judgment*. According to the plaintiff, the assailed *Resolution* of this Court has been overtaken by recent Supreme Court rulings which acknowledged the coconut levy funds as simply public funds. Therefore, since the Supreme Court treated the coconut levy funds as public funds without any qualification or distinctions, and that the defendants admitted in their *Answers* that the oil mill corporations were acquired using coconut levy funds, then there is no need to prove the public character of the said oil mill corporations.

With regard to defendant's suggestion that the determination of the issue regarding the public character of the oil mill corporations can only be resolved after trial, plaintiff reiterates that pursuant to the recent Supreme Court decisions, the coconut levy funds partakes the nature of a tax that is intended for a specific public purpose, that is, for the protection of the coconut industry. Consequently, since coconut levy funds are now treated as public funds, it necessarily follows that UNICOM and the other oil mill corporations acquired using coco levy funds are owned by the government.

### Ruling

This Court resolves to deny the instant motions for lack of merit.

The plaintiff raised in its motions that the rulings in the more recent cases of *COCOFED v. Republic*,<sup>16</sup> *Eduardo M. Cojuangco, Jr. v. Republic of the Philippines*,<sup>17</sup> and *Presidential Commission on Good Government v. Dumayas*<sup>18</sup> are enough to warrant the remedies of summary judgment and/or judgment on the pleadings. According to the plaintiff, the Supreme Court in these cases already categorically ruled that the coconut levy funds are simply public funds and not just merely *prima facie* public funds. Thus, with the alleged admissions of the defendants in their *Answers* that COCOMARK and COCOLIFE (Civil Case No. 33-B), as well as UNICOM and the sixteen (16) other oil companies (Civil Case No. 33-D), were funded/purchased with the use of coconut levy funds, then it may be inferred that these companies

<sup>16</sup> G.R. Nos. 177857-58, 24 January 2012.

<sup>17</sup> G.R. No. 180705, 27 November 2012.

<sup>18</sup> G.R. No. 209447 and 210901, 11 August 2015.

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actually belong to the government. Accordingly, these properties should be reconveyed to the government by virtue of a summary judgment and/or judgment on the pleadings.

However, the abovementioned recent rulings of the Supreme Court did not overturn its previous finding that the coconut levy funds are *prima facie* public funds. The classification of coconut levy funds as special public funds of the government has not been changed. In fact, *COCOFED v. Republic*<sup>19</sup> reiterated its ruling in *Republic v. COCOFED*<sup>20</sup> as follows:

Plainly enough, the coconut levy funds are public funds. We have ruled in *Republic v. COCOFED* that the coconut levy funds are not only affected with public interest; they are *prima facie* public funds. In fact, this pronouncement that the levies are government funds was admitted and recognized by respondents, COCOFED, et al., in G.R. No. 147062-64.<sup>21</sup>

Thus, the argument of the plaintiff with regard to the public nature of the coconut levy funds appears to be a mere rehash of the matter already passed upon by this Court. Since the coconut levy funds remain to be *prima facie* public funds, the same is subject to a rebuttal or contradictory evidence. Even if the coconut levy funds are classified as simply public funds, this will not automatically result in the reconveyance of the subject companies to the government when the defendants made denials of the plaintiff's material allegations and correspondingly raised genuine issues on the matter.

As thoroughly discussed by this Court in the assailed *Joint Resolution*, the remedies of summary judgment and/or judgment on the pleadings are improper because the defendants raised several arguments in their *Answers* which tender issues that can only be resolved in a full-blown trial. In the case of a summary judgment, the plaintiff in these cases failed to show the "absence of any genuine issue of fact, or that the issue posed in the complaint is so patently unsubstantial as not to constitute a genuine issue for trial."<sup>22</sup> As regards a judgment on the pleadings, the plaintiff likewise failed to demonstrate that the *Answers* failed to tender an issue or otherwise admitted the material allegations in the complaint.

To reiterate, the remedies of summary judgment and judgment on the pleadings are described by the Supreme Court in the following manner:

"There are instances, however, when trial may be dispensed with. Under Rule 35 of the 1997 Rules of Civil Procedure, a trial court may dispense

<sup>19</sup> G.R. Nos. 177857-58, 24 January 2012.

<sup>20</sup> G.R. No. 147062 to 64, 14 December 2001.

<sup>21</sup> *Ibid.*

<sup>22</sup> *Culaquib vs. Republic*, G.R. No. 170658, 22 June 2011/

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with trial and proceed to decide a case if from the pleadings, affidavits, depositions, and other papers on file, there is no genuine issue as to any material fact. In such a case, the judgment issued is called a summary judgment.

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“An issue of material fact exists if the answer or responsive pleading filed specifically denies the material allegations of fact set forth in the complaint or pleading. If the issue of fact “requires the presentation of evidence, it is a genuine issue of fact.” However, if the issue “could be resolved judicially by plain resort” to the pleadings, affidavits, depositions, and other papers on file, the issue of fact raised is sham, and the trial court may resolve the action through summary judgment.

“A summary judgment is usually distinguished from a judgment on the pleadings. Under Rule 34 of the 1997 Rules of Civil Procedure, trial may likewise be dispensed with and a case decided through judgment on the pleadings if the answer filed fails to tender an issue or otherwise admits the material allegations of the claimant’s pleading.

“Judgment on the pleadings is proper when the answer filed fails to tender any issue, or otherwise admits the material allegations in the complaint. On the other hand, in a summary judgment, the answer filed tenders issues as specific denials and affirmative defenses are pleaded, but the issues raised are sham, fictitious, or otherwise not genuine.”<sup>23</sup>

With respect to the subject *Motions* and *Oppositions*, this Court finds that defendant Cojuangco correctly tendered factual issues which can only be resolved after a full-blown trial. For Civil Case No. 33-B, defendant Cojuangco raised the factual issues of (1) whether COCOLIFE and COCOMARK were created and/or funded with coconut levy funds, and (2) whether defendant corporations are beneficially owned or controlled by defendant Eduardo M. Cojuangco, Jr. and/or the individual defendants. For Civil Case No. 33-D, defendant Cojuangco also raised the factual issues of (1) whether UNICOM was established or funded with coconut levy funds, (2) whether UNICOM is “held and controlled by defendant Eduardo Cojuangco, Jr.,” (3) whether UNICOM “bought sixteen (16) certain competing and/or some non-operating oil mills at exorbitant prices xxx then moth-balled them in order to control the prices of copra and other coconut products,” (4) whether a “coconut monopoly” was established, and (5) whether defendants “drew up a scheme of payment to settle the accounts of MINCOCO and other UNICOM-acquired mills with their respective creditors.”

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<sup>23</sup> *Olivarez Realty Corporation and Dr. Pablo R. Olivarez vs. Benjamin Castillo*, G.R. No. 196251, 09 July 2014.

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