



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

CITIBANK N.A. AND THE  
CITIGROUP PRIVATE BANK,  
Petitioners,

G.R. No. 198444

- versus -

ESTER H. TANCO-GABALDON,  
ARSENIO TANCO & THE HEIRS OF  
KU TIONG LAM,  
Respondents.

X ----- X

CAROL LIM,

Petitioner,

G.R. No. 198469-70

Present:

SERENO, C.J.,  
*Chairperson,*  
BERSAMIN,  
VILLARAMA,  
REYES, and  
PERLAS-BERNABE,\* JJ.

- versus -

ESTER H. TANCO-GABALDON,  
ARSENIO TANCO & THE HEIRS OF  
KU TIONG LAM,  
Respondents.

Promulgated:

SEP 04 2013

X ----- X

DECISION

REYES, J.:

These consolidated cases arose from the same antecedent facts.

\* Acting member per Special Order No. 1529 dated August 29, 2013.

On September 21, 2007, Ester H. Tanco-Gabaldon (Gabaldon), Arsenio Tanco (Tanco) and the Heirs of Ku Tiong Lam (Lam) (respondents) filed with the Securities and Exchange Commission's Enforcement and Prosecution Department<sup>1</sup> (SEC-EPD) a complaint for violation of the Revised Securities Act (RSA) and the Securities Regulation Code (SRC) against petitioners Citibank N.A. (Citibank) and its officials,<sup>2</sup> Citigroup Private Bank (Citigroup) and its officials,<sup>3</sup> and petitioner Carol Lim (Lim), who is Citigroup's Vice-President and Director. In their Complaint,<sup>4</sup> the respondents alleged that Gabaldon, Tanco and Lam were joint account holders of petitioner Citigroup. Sometime in March 2000, the respondents met with petitioner Lim, who "induced" them into signing a subscription agreement for the purchase of USD 2,000,000.00 worth of Ceres II Finance Ltd. Income Notes. In September of the same year, they met again with Lim for another investment proposal, this time for the purchase of USD 500,000.00 worth of Aeries Finance II Ltd. Senior Subordinated Income Notes. In a January 2003 statement issued by the Citigroup, the respondents learned that their investments declined, until their account was totally wiped out. Upon verification with the SEC, they learned that the Ceres II Finance Ltd. Notes and the Aeries Finance II Ltd. Notes were not duly registered securities. They also learned that Ceres II Finance Ltd., Aeries Finance II Ltd. and the petitioners, among others, are not duly-registered security issuers, brokers, dealers or agents.

Hence, the respondents prayed in their complaint that: (1) the petitioners be held administratively liable;<sup>5</sup> (2) the petitioners be liable to pay an administrative fine pursuant to Section 54(ii), SRC; (3) the petitioners' existing registration/s or secondary license/s to act as a broker/dealer in securities, government securities eligible dealer, investment adviser of an investment house/underwriter of securities and transfer agent be revoked; and (4) criminal complaints against the petitioners be filed and endorsed to the Department of Justice (DOJ) for investigation.<sup>6</sup>

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<sup>1</sup> Formerly the Compliance and Enforcement Department.

<sup>2</sup> Included as respondents were Citibank's Country Manager Mark Jones and its Resident Agent Umesh Patel.

<sup>3</sup> Citigroup officials who were included as respondents were Citigroup's Hong Kong Investment Center head Sam Tse, Akbar A. Shah who is the Managing Director of Global Market Manager (Philippines) and Head of Citigroup's Philippines team, Vice-President and Citigroup's former Global Market Manager (Philippines) Pakorn Boonyakurkul, Vice-President and Citigroup's Country Manager Richard J. Smith.

<sup>4</sup> *Rollo* (G.R. No. 198444), pp. 146-187; *rollo* (G.R. Nos. 198469-70), pp. 134-175.

<sup>5</sup> For violation of the following: (1) Section 4(a), RSA and Section 8(8.1), SRC for offering and selling unregistered securities; (2) Section 19, RSA and Section 28(28.1) and (28.2), SRC for engaging in the business of selling securities in the Philippines, as broker or dealer, without being registered and for employing unregistered salesmen or agents; (3) Section 13 (a)(2), RSA and Section 57(57.1)(b), SRC for offering and selling unregistered and worthless securities by means of written/oral communication, which include untrue statements/omitting material facts; (4) Section 29, RSA and Section 26, SRC for offering and selling unregistered and worthless securities through fraudulent means; (5) Section 44, RSA and Section 51(51.1), (51.2), (51.4) and (51.5), SRC for aiding and abetting the sale of unregistered and worthless securities in the Philippines; and (6) Section 23, RSA and Section 48, SRC for extending credits beyond the margin established by law. *Rollo* (G.R. No. 198444), p. 186; *rollo* (G.R. No. 198469-70), p. 173.

<sup>6</sup> *Rollo* (G.R. No. 198444), pp. 186-187; *rollo* (G.R. Nos. 198469-70), pp. 173-174.

Petitioners Citibank and Citigroup claimed that they did not receive a copy of the complaint and it was only after the *Bangko Sentral ng Pilipinas* (BSP) wrote them on October 26, 2007 that they were furnished a copy. They replied to the BSP disclaiming any participation by the Citibank or its officers on the transactions and products complained of. Citibank and Citigroup furnished a copy of its letter to the SEC-EPD and the respondents' counsel.

On August 1, 2008, the SEC-EPD asked from the petitioners certain documents to be submitted during a scheduled conference, to which they complied. The petitioners, however, reiterated its position that they are not submitting to the jurisdiction of the SEC. The petitioners were also required to submit other documents.<sup>6,a</sup>

Thereafter, in an order dated December 8, 2008, the SEC-EPD terminated its investigation on the ground that the respondents' action has already prescribed.<sup>7</sup> According to the SEC-EPD, "[t]he aforesaid complaint was filed before the [SEC-EPD] on 21 September 2007 while a similar complaint was lodged before the [DOJ] on October 2005. Seven (7) years had lapsed before the filing of the action before the SEC while the complaint instituted before the DOJ was filed one month after the expiration of the allowable period."<sup>8</sup> It appears that on October 24, 2005,<sup>9</sup> the respondents had already filed with the Mandaluyong City Prosecutor's Office a complaint for violation of the RSA and SRC but it was referred to the SEC pursuant to *Baviera v. Prosecutor Paglinawan*.<sup>10</sup>

In 2009, petitioners Citibank and Citigroup received a copy of the respondents' Notice of Appeal and Memorandum of Appeals but the officials did not, as according to them, the latter were not connected with them. Citibank also alleged that they did not receive any order to file a Reply Memorandum, in contravention of Section 11-5, Rule XI of the 2006 SEC Rules of Procedure. It turned out, however, that an order was issued by the SEC, dated February 26, 2009, requiring the petitioners to file their reply.<sup>11</sup>

On November 6, 2009, petitioners Citibank and Citigroup received the SEC *en banc* Decision<sup>12</sup> dated October 15, 2009 reinstating the complaint and ordering the immediate investigation of the case. Petitioner Lim, who was then based in Hong Kong, learned of the rendition of the SEC decision

<sup>6,a</sup> *Rollo* (G.R. No. 198444), pp. 194-195; *rollo* (G.R. No. 198469-70), pp. 208-209.

<sup>7</sup> *Rollo* (G.R. No. 198444), pp. 247-248.

<sup>8</sup> *Id.* at 248.

<sup>9</sup> *Id.* at 163-164.

<sup>10</sup> *Baviera* ruled that all complaints for any violation of the SRC and its implementing rules and regulations should be filed with the SEC; where the complaint is criminal in nature, the SEC shall indorse the complaint to the DOJ for preliminary investigation and prosecution as provided in Section 53.1 of the SRC; 544 Phil. 107, 119 (2007).

<sup>11</sup> *Rollo* (G.R. No. 198444), p. 252.

<sup>12</sup> *Rollo* (G.R. Nos. 198469-70), pp. 897-907.

on November 20, 2009 through a teleconference with petitioner Citibank's counsel.<sup>13</sup> Thus, petitioners Citibank and Citigroup filed a petition for review with the Court of Appeals (CA), docketed as CA-G.R. SP No. 111501. Petitioner Lim filed her own petition for review with the CA, docketed as CA-G.R. SP No. 112309. These two petitions were then consolidated.

Finally, the CA rendered the Decision<sup>14</sup> dated October 5, 2010, which provides for the following dispositive portion:

**WHEREFORE**, the foregoing premises considered, the petition is partly **GRANTED**. The writ of injunction is hereby **DISSOLVED**. The Securities and Exchange Commission-Enforcement and Prosecution Department is ordered to proceed with its investigation with dispatch and with due regard to the parties' right to notice and hearing.

**SO ORDERED.**<sup>15</sup>

The petitioners filed a motion for reconsideration, which was denied by the CA in its Resolution<sup>16</sup> dated August 31, 2011. The petitioners then filed the present consolidated petitions for review under Rule 45 of the Rules of Court.

The issues raised in these petitions are: (1) whether the criminal action for offenses punished under the SRC filed by the respondents against the petitioners has already prescribed; and (2) whether the filing of the action for the petitioners' administrative liability is barred by laches.

It was the CA's view that since the SRC has no specific provision on prescription of criminal offenses, the applicable law is Act No. 3326.<sup>17</sup> Under the SRC, imprisonment of more than six (6) years is the imposable penalty for the offenses with which the petitioners were charged, and applying Act No. 3326, the prescriptive period for the filing of an action is twelve (12) years, reckoned from the time of commission or discovery of the offense.<sup>18</sup> The respondents' filing of the complaint with the SEC, therefore, was within the prescriptive period.

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<sup>13</sup> Id. at 60.

<sup>14</sup> Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Ricardo R. Rosario and Manuel M. Barrios, concurring; *rollo* (G.R. No. 198444), pp. 94-121; *rollo*, id. at 93-120.

<sup>15</sup> *Rollo* (G.R. No. 198444), p. 120; *rollo* (G.R. Nos. 198469-70), p. 119.

<sup>16</sup> *Rollo* (G.R. No. 198444), pp. 124-135; *rollo* (G.R. Nos. 198469-70), pp. 38-49.

<sup>17</sup> An Act to Establish Prescription for Violations of Special Acts and Municipal Ordinances and to Provide When Prescription Shall Begin.

<sup>18</sup> *Rollo* (G.R. No. 198444), p. 110; *rollo* (G.R. Nos. 198469-70), p. 109.

In **G.R. Nos. 198469-70**, petitioner Lim share the view of petitioners Citibank and Citigroup that Act No. 3326 is not applicable and the SRC provides for its own prescriptive period.<sup>19</sup> Meanwhile, in **G.R. No. 198444**, petitioners Citibank and Citigroup maintain that the CA committed an error in applying Act No. 3326. According to the petitioners, Section 62.2 of the SRC applies to both civil and criminal liability. The petitioners also insist that laches bar the investigation of the respondents' complaint against the petitioners. On the other hand, the respondents assert, among others, the applicability of Act No. 3326.<sup>20</sup>

### **Ruling of the Court**

Resolution of the issue raised by the petitioners call for an examination of the pertinent provisions of the SRC, particularly Section 62, which states:

*SEC. 62. Limitation of Actions. –*

62.1. No action shall be maintained to enforce any liability created under Section 56 or 57 of this Code unless brought within two (2) years after the discovery of the untrue statement or the omission, or, if the action is to enforce a liability created under Subsection 57.1(a), unless brought within two (2) years after the violation upon which it is based. In no event shall any such action be brought to enforce a liability created under Section 56 or Subsection 57.1(a) more than five (5) years after the security was *bona fide* offered to the public, or under Subsection 57.1(b) more than five (5) years after the sale.

62.2. No action shall be maintained to enforce any liability created under any other provision of this Code unless brought within two (2) years after the discovery of the facts constituting the cause of action and within five (5) years after such cause of action accrued.

Section 62 provides for two different prescriptive periods.

Section 62.1 specifically sets out the prescriptive period for the liabilities created under Sections 56, 57, 57.1(a) and 57.1(b). Section 56 refers to Civil Liabilities on Account of False Registration Statement while Section 57 pertains to Civil Liabilities on Arising in Connection with Prospectus, Communications and Reports. Under these provisions, enforcement of the civil liability must be brought within two (2) years or five (5) years, as the case may be.

On the other hand, Section 62.2 provides for the prescriptive period to enforce **any liability** created under the SRC. It is the interpretation of the phrase “any liability” that creates the uncertainty. Does it include both civil and criminal liability? Or does it pertain solely to civil liability?

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<sup>19</sup> *Rollo* (G.R. Nos. 198469-70), pp. 63-81.

<sup>20</sup> *Rollo* (G.R. No. 198444), pp. 595-607; *id.* at 743-757.

In order to put said phrase in its proper perspective, reference must be made to the rule of statutory construction that every part of the statute must be interpreted with reference to the context, *i.e.*, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.<sup>21</sup> Section 62.2 should not be read in isolation of the other provision included in Section 62, particularly Section 62.1, which provides for the prescriptive period for the enforcement of civil liability in cases of violations of Sections 56, 57, 57.1(a) and 57.1(b).

Moreover, it should be noted that the civil liabilities provided in the SRC are not limited to Sections 56 and 57. Section 58 provides for Civil Liability For Fraud in Connection With Securities Transactions; Section 59 – Civil Liability For Manipulation of Security Prices; Section 60 – Civil Liability With Respect to Commodity Future Contracts and Pre-need Plans; and Section 61 – Civil Liability on Account of Insider Trading. Thus, bearing in mind that Section 62.1 merely addressed the prescriptive period for the civil liability provided in Sections 56, 57, 57.1(a) and 57.1(b), then it reasonably follows that the other sub-provision, Section 62.2, deals with the other civil liabilities that were not covered by Section 62.1, namely Sections 59, 60 and 61. This conclusion is further supported by the fact that the subsequent provision, Section 63, explicitly pertains to the amount of damages recoverable under Sections 56, 57, 58, 59, 60 and 61,<sup>22</sup> the trial court having jurisdiction over such actions,<sup>23</sup> the persons liable<sup>24</sup> and the extent of their liability<sup>25</sup>. Clearly, the intent is to encompass in Section 62 the prescriptive periods only of the civil liability in cases of violations of the SRC.

The CA, therefore, did not commit any error when it ruled that “the phrase ‘any liability’ in subsection 62.2 can only refer to other liabilities that are also civil in nature. The phrase could not have suddenly intended to mean criminal liability for this would go beyond the context of the other provisions among which it is found.”<sup>26</sup>

Given the absence of a prescriptive period for the enforcement of the criminal liability in violations of the SRC, Act No. 3326 now comes into play. *Panaguiton, Jr. v. Department of Justice*<sup>27</sup> expressly ruled that **Act No. 3326 is the law applicable to offenses under special laws which do not provide their own prescriptive periods.**<sup>28</sup>

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<sup>21</sup> *Garcia v. Social Security Commission Legal and Collection, Social Security System*, 565 Phil. 193, 206 (2007).

<sup>22</sup> R.A. No. 8799, Sec. 63.1.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*, Sec. 63.2.

<sup>25</sup> *Id.*, Sec. 63.3.

<sup>26</sup> *Rollo* (G.R. Nos. 198469-70), pp. 108-109.

<sup>27</sup> G.R. No. 167571, November 25, 2008, 571 SCRA 549.

<sup>28</sup> *Id.* at 558.

Section 1 of Act No. 3326 provides:

Violations penalized by special acts shall, unless otherwise provided in such acts, prescribe in accordance with the following rules: (a) after a year for offenses punished only by a fine or by imprisonment for not more than one month, or both; (b) after four years for those punished by imprisonment for more than one month, but less than two years; (c) after eight years for those punished by imprisonment for two years or more, but less than six years; and (d) **after twelve years for any other offense punished by imprisonment for six years or more**, except the crime of treason, which shall prescribe after twenty years. Violations penalized by municipal ordinances shall prescribe after two months. (Emphasis ours)

Under Section 73 of the SRC, violation of its provisions or the rules and regulations is punishable with imprisonment of not less than seven (7) years nor more than twenty-one (21) years. Applying Section 1 of Act No. 3326, a criminal prosecution for violations of the SRC shall, therefore, prescribe in twelve (12) years.

Hand in hand with Section 1, Section 2 of Act No. 3326 states that “prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment.” In *Republic v. Cojuangco, Jr.*<sup>29</sup> the Court ruled that Section 2 provides two rules for determining when the prescriptive period shall begin to run: *first*, from the day of the commission of the violation of the law, **if such commission is known**; and *second*, from its discovery, **if not then known**, and the institution of judicial proceedings for its investigation and punishment.<sup>30</sup>

The respondents alleged in their complaint that the transactions occurred between September 2000, when they purchased the Subscription Agreement for the purchase of USD 2,000,000.00 worth of Ceres II Finance Ltd. Income Notes, and July 31, 2003, when their Ceres II Finance Ltd. account was totally wiped out. Nevertheless, it was only sometime in November 2004 that the respondents discovered that the securities they purchased were actually worthless. Thereafter, the respondents filed on October 23, 2005 with the Mandaluyong City Prosecutor’s Office a complaint for violation of the RSA and SRC. In Resolution dated July 18, 2007, however, the prosecutor’s office referred the complaint to the SEC.<sup>31</sup> Finally, the respondents filed the complaint with the SEC on September 21, 2007. Based on the foregoing antecedents, only seven (7) years lapsed since the respondents invested their funds with the petitioners, and three (3) years

<sup>29</sup> G.R. No. 139930, June 26, 2012, 674 SCRA 492.

<sup>30</sup> Id. at 505, citing *Presidential Commission on Good Government v. Desierto*, 484 Phil. 53, 60 (2004).

<sup>31</sup> Included in the complaint were charges for Estafa under Article 315, paragraph 3(a) of the Revised Penal Code, which the Mandaluyong City Prosecutor’s Office retained for preliminary investigation.

since the respondents' discovery of the alleged offenses, that the complaint was correctly filed with the SEC for investigation. Hence, the respondents' complaint was filed well within the twelve (12)-year prescriptive period provided by Section 1 of Act No. 3326.

On the issue of laches.

Petitioner Lim contends that the CA committed an error when it did not apply the principle of laches *vis-à-vis* the petitioners' administrative liability.<sup>32</sup>

Laches has been defined as the failure or neglect for an unreasonable and unexplained length of time to do that which, by exercising due diligence, could or should have been done earlier, thus, giving rise to a presumption that the party entitled to assert it either has abandoned or declined to assert it.<sup>33</sup>

Section 54 of the SRC provides for the administrative sanctions to be imposed against persons or entities violating the Code, its rules or SEC orders.<sup>34</sup> Just as the SRC did not provide a prescriptive period for the filing of criminal actions, it likewise omitted to provide for the period until when complaints for administrative liability under the law should be initiated. On this score, it is a well-settled principle of law that laches is a recourse in equity, which is, applied only in the absence of statutory law.<sup>35</sup> And though

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<sup>32</sup> *Rollo* (G.R. No. 198444), p. 33.

<sup>33</sup> *Insurance of the Philippine Island Corporation v. Gregorio*, G.R. No. 174104, February 14, 2011, 642 SCRA 685, 691.

<sup>34</sup> Sec. 54. *Administrative Sanctions*.

54.1. If, after due notice and hearing, the Commission finds that: (a) There is a violation of this Code, its rules, or its orders; (b) Any registered broker or dealer, associated person thereof has failed reasonably to supervise, with a view to preventing violations, another person subject to supervision who commits any such violation; (c) Any registrant or other person has, in a registration statement or in other reports, applications, accounts, records or documents required by law or rules to be filed with the Commission, made any untrue statement of a material fact, or omitted to state any material fact required to be stated therein or necessary to make the statements therein not misleading; or, in the case of an underwriter, has failed to conduct an inquiry with reasonable diligence to insure that a registration statement is accurate and complete in all material respects; or (d) Any person has refused to permit any lawful examinations into its affairs, it shall, in its discretion, and subject only to the limitations hereinafter prescribed, impose any or all of the following sanctions as may be appropriate in light of the facts and circumstances:

(i) Suspension, or revocation of any registration for the offering of securities;

(ii) A fine of no less than Ten Thousand pesos (₱10,000.00) nor more than One Million pesos (₱1,000,000.00) plus not more than Two Thousand pesos (₱2,000.00) for each day of continuing violation;

(iii) In the case of a violation of Sections 19.2, 20, 24, 26 and 27, disqualification from being an officer, member of the Board of Directors, or person performing similar functions, of an issuer required to file reports under Section 17 of this Code or any other act, rule or regulation administered by the Commission;

(iv) In the case of a violation of Section 34, a fine of no more than three (3) times the profit gained or loss avoided as a result of the purchase, sale or communication proscribed by such Section; and

(v) Other penalties within the power of the Commission to impose.

<sup>35</sup> *See Bank of the Philippine Islands v. Royeca*, G.R. No. 176664, July 21, 2008, 559 SCRA 207, 219.




laches applies even to imprescriptible actions, its elements must be proved positively.<sup>36</sup> Ultimately, the question of laches is addressed to the sound discretion of the court and, being an equitable doctrine, its application is controlled by equitable considerations.<sup>37</sup>

In this case, records bear that immediately after the respondents discovered in 2004 that the securities they invested in were actually worthless, they filed on October 23, 2005 a complaint for violation of the RSA and SRC with the Mandaluyong City Prosecutor's Office. It took the prosecutor three (3) years to resolve the complaint and refer the case to the SEC,<sup>38</sup> in conformity with the Court's pronouncement in *Baviera*<sup>39</sup> that all complaints for any violation of the SRC and its implementing rules and regulations should be filed with the SEC. Clearly, the filing of the complaint with the SEC on September 21, 2007 is not barred by laches as the respondents' judicious actions reveal otherwise.

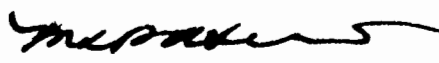
**WHEREFORE**, the petitions are **DENIED** for lack of merit.

**SO ORDERED.**



**BIENVENIDO L. REYES**  
Associate Justice

**WE CONCUR:**



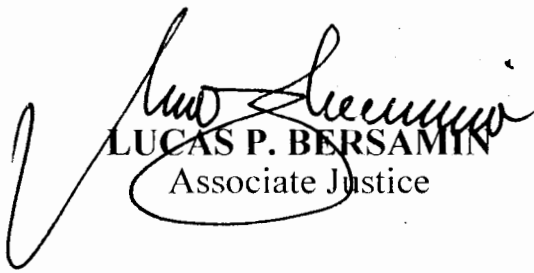
**MARIA LOURDES P. A. SERENO**  
Chief Justice  
Chairperson

<sup>36</sup> *Abadiano v. Martir*, G.R. No. 156310, July 31, 2008, 560 SCRA 676, 695.

<sup>37</sup> *Id.* at 694-695.

<sup>38</sup> Included in the complaint were charges for Estafa under Article 315, paragraph 3(a) of the Revised Penal Code, which the Mandaluyong City Prosecutor's Office retained for preliminary investigation.

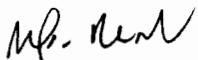
<sup>39</sup> *Supra* note 10.



**LUCAS P. BERSAMIN**  
Associate Justice




**MARTIN S. VILLARAMA, JR.**  
Associate Justice



**ESTELA M. PERLAS-BERNABE**  
Associate Justice

### **CERTIFICATION**

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



**MARIA LOURDES P. A. SERENO**  
Chief Justice