

## THIRD DIVISION

[ G.R. Nos. 232724-27, February 15, 2021 ]

**REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE ANTI-MONEY LAUNDERING COUNCIL, PETITIONER, VS. THE SANDIGANBAYAN AND OFFICE OF THE OMBUDSMAN, REPRESENTED BY THE OFFICE OF THE SPECIAL PROSECUTOR, RESPONDENTS.**

### DECISION

**LEONEN, J.:**

The Anti-Money Laundering Council is not merely a repository of reports and information on covered and suspicious transactions. It was created precisely to investigate and institute charges against those suspected to commit money laundering activities.

The criminal prosecution of such offenses would be unduly hampered if it were to be prohibited from disclosing such information. For the Anti-Money Laundering Council to refuse disclosing the information required of it would be to go against its own functions under the law.

This Court resolves a Petition for Certiorari<sup>[1]</sup> assailing the Resolution<sup>[2]</sup> and Order<sup>[3]</sup> of the Sandiganbayan, which denied the Anti-Money Laundering Council's Motion to Quash the Subpoena *Duces Tecum* and *Ad Testificandum* and its subsequent Motion for Reconsideration.<sup>[4]</sup>

This Petition is an offshoot of a criminal case, *People v. P/Dir. General Jesus Versoza*. In *Versoza*, the Office of the Special Prosecutor charged former First Gentleman Jose Miguel T. Arroyo (Arroyo) with, among others, plunder for his involvement in the Philippine National Police's anomalous purchase of two secondhand helicopters.<sup>[5]</sup>

The seller, Lionair, Inc. (Lionair), sold the helicopters as brand new, as required by law, even if they were already used.<sup>[6]</sup> Lionair's president Archibald L. Po (Po), however, testified that Arroyo was the helicopters' real owner. He alleged that Lionair imported the helicopters from the United States and sold it to Arroyo, who, in turn, deposited partial payment to Lionair's account with the Union Bank.<sup>[7]</sup>

Lionair's savings account passbook reflected the following deposits:

Teller	Date	Transaction	Amount (USD)
S733	02/27/04	Credit Memo	408,067.06
S733	02/27/04	Credit Memo	509,065.41
T731	03/01/04	Cash	148,217.53 <sup>[8]</sup>

To verify the source of the deposits, the Office of the Special Prosecutor presented Katrina Cruz-Dizon (Cruz-Dizon), the manager of the Union Bank branch where the account was maintained. Cruz-Dizon testified that the account was closed on March 6, 2006, and as five years had lapsed since, the bank has already disposed the account records. She suggested that the Bangko Sentral ng Pilipinas or the Anti-Money Laundering Council (Council) may have reports on the transactions, as banks are required to report covered transactions.<sup>[9]</sup>

Thus, the Sandiganbayan, upon the Office of the Special Prosecutor's request, issued a Subpoena *Duces Tecum* and *Ad Testificandum* directing Executive Director Julia C. Bacay-Abad, then Secretariat of the Council, to testify and to produce Lionair's bank records.<sup>[10]</sup>

The Council moved to quash the Subpoena, arguing that whatever information it has on Lionair's bank account is confidential under Republic Act No. 9160, or the Anti-Money Laundering Act.<sup>[11]</sup> However, on March 28, 2017, the Sandiganbayan issued a Resolution<sup>[12]</sup> denying the Motion to Quash, disposing thus:

WHEREFORE, in view of the foregoing, the AMLC's Motion to Quash (Subpoena *Duces Tecum* and *Ad Testificandum* dated 10 October 2016) is DENIED for lack of merit.

SO ORDERED.<sup>[13]</sup>

The Sandiganbayan ruled that the Council's misgivings on the disclosure of the bank records were outweighed by the importance of these documents.<sup>[14]</sup>

The Council moved for reconsideration, but it was likewise denied.<sup>[15]</sup> The Sandiganbayan noted that the Council was not present during the hearing of the Motion for Reconsideration, and that the accused and their counsels were not furnished copies of the pleading.<sup>[16]</sup>

Thus, the Council, representing the Republic of the Philippines, filed this Petition for Certiorari.<sup>[17]</sup> It mainly argues that it is prohibited by law to disclose the relevant bank records of Lionair.

Petitioner argues that it cannot disclose Lionair's bank records because they are confidential.<sup>[18]</sup> It avers that the disclosure of reports on covered and suspicious transactions is prohibited under Section 9(c) of the Anti-Money Laundering Act.<sup>[19]</sup> It explains that Section 9(c) adheres to international standards, which recommend that financial institutions and their officers be prohibited from disclosing covered and suspicious transaction reports, or "tipping-off" that a case is being filed.<sup>[20]</sup>

Further, petitioner explains that the transactions are made confidential to encourage those persons covered to report transactions "without fear of reprisal from their customers, or fear of losing the confidence of their clientele[.]"<sup>[21]</sup> It adds that the confidentiality requirement keeps "suspected money launderers oblivious of the fact that their financial transactions are being monitored and reported by the covered person to [petitioner]."<sup>[22]</sup> If confidential reports were divulged, it says, money

laundrying investigations and prevention would be impeded.<sup>[23]</sup>

Then, petitioner avers that Section 9(c) covers it, and not only financial institutions. To prohibit financial institutions from disclosing reports but allow petitioner to divulge the same reports would be absurd, it says, pointing out that such act would be indirectly doing what cannot be done directly.<sup>[24]</sup>

Aside from the law, petitioner cites its Revised Implementing Rules and Regulations, which states that petitioner and its secretariat are prohibited from revealing any information related to the transactions.<sup>[25]</sup>

Petitioner likewise argues that respondent failed to reasonably describe the documents subpoenaed, saying that the description falls short of the requirement under the Rules of Court because the electronic database contains millions of reports from millions of entities. Without a specific description, petitioner says it would be difficult to trace the records demanded.<sup>[26]</sup>

Petitioner points out that it is not required to furnish the accused or their counsels a copy of its Motion for Reconsideration, because it is only a nominal party. Thus, it argues that the Sandiganbayan committed grave abuse of discretion in denying its Motion on this ground.<sup>[27]</sup>

Lastly, petitioner prays for the issuance of a temporary restraining order and/or writ of preliminary injunction, claiming that it is bound to suffer great and irreparable injury should respondent implement the Subpoena.<sup>[28]</sup>

In its Comment,<sup>[29]</sup> respondent Office of the Ombudsman argues that the Sandiganbayan did not abuse its discretion when it denied petitioner's Motions.<sup>[30]</sup> It says the prohibition on disclosure under Section 9(c) of the Anti-Money Laundering Act only applies to covered persons-such as financial institutions, dealers, and company service providers-which do not at all include petitioner.<sup>[31]</sup>

Respondent avers that while the Anti-Money Laundering Act does intend to preserve the confidentiality of bank transactions, its fundamental objective remains to prohibit money laundering through the reporting of covered and suspicious transactions.<sup>[32]</sup>

Besides, respondent says that Lionair has waived its rights to confidentiality through a written permission, and granted the prosecution access to its bank account under the Foreign Currency Deposit Act.<sup>[33]</sup> In any case, respondent asserts that petitioner's contentions are outweighed by the need to materialize the objectives of the Anti-Money Laundering Act and to enforce the principles of public accountability.<sup>[34]</sup>

Respondent further argues that the Subpoena complies with the requirements laid down by the Rules of Court,<sup>[35]</sup> as it readily identifies the documents requested from petitioner, namely: (1) the reports; (2) identification documents; (3) statement of accounts; and (4) other transaction documents which pertain to the three specific transactions of Lionair's Union Bank Account No. 13133-000119-3.<sup>[36]</sup>

Contrary to petitioner's claim, respondent contends that it would be easy to retrieve the specific records from their pool of transactions, as these are electronically processed and may be searched within seconds or minutes.<sup>[37]</sup>

Moreover, respondent belies petitioner's claim that it was not required to furnish copies of the Motion for Reconsideration for being a nominal party. Citing the Rules of Court,<sup>[38]</sup> respondent argues that proof of service of the Motion is required, in line with the requirements of due process.<sup>[39]</sup>

Respondent points out that even the Office of the Solicitor General agrees that the bank documents may be subpoenaed, and that Lionair has waived confidentiality through a Secretary's Certificate.<sup>[40]</sup>

Lastly, respondent asserts that the temporary restraining order and/or writ of preliminary injunction should not be issued considering that petitioner failed to prove having a clear and existing right enforceable by law,<sup>[41]</sup> and any material or substantial invasion of that right.<sup>[42]</sup>

On June 19, 2018, absent a temporary restraining order or writ of preliminary injunction, petitioner, through Jerry L. Leal, acting director of the Financial Analysis Group, testified.<sup>[43]</sup> Nevertheless, petitioner still addressed respondent's contention in this case.<sup>[44]</sup>

In its Reply,<sup>[45]</sup> petitioner reiterates that although Section 9(c) of the law does not explicitly say so, the prohibition on disclosure extends to petitioner, it having been mandated to keep such reports confidential. Otherwise, it says, the confidentiality requirement would be for naught.<sup>[46]</sup>

Petitioner adds that the reports are pieces of financial intelligence information that should not be used as evidence because they are merely leads in the investigation of money laundering activities.<sup>[47]</sup> To use these reports as evidence, Section 11 of the Anti-Money Laundering Act authorizes petitioner to inquire into the transaction but only upon the Court of Appeals' order.<sup>[48]</sup> Thus, petitioner says the disclosure of reports directed by the Subpoena will only bypass the bank inquiry process laid down by law.<sup>[49]</sup>

Moreover, petitioner argues that Lionair's written permission cannot allow the disclosure of the transactions because the subpoena will necessarily include the counterpart transactions from which the funds originated. In this case, petitioner notes, the originating account is owned by another person who has not executed a similar waiver.<sup>[50]</sup>

The main issue for this Court's resolution is whether or not the Sandiganbayan gravely abused its discretion in denying the Motion to Quash and Motion for Reconsideration of petitioner Anti-Money Laundering Council. To answer this, the following issues must first be resolved:

First, whether or not petitioner Anti-Money Laundering Council is required to furnish

the respondent a copy of the Motion for Reconsideration;

Second, whether or not Section 9(c) of the Anti-Money Laundering Act prohibits petitioner Anti-Money Laundering Council from disclosing confidential and suspicious transaction reports;

Third, whether or not the written permission of Lionair, Inc. is sufficient to disclose the transaction reports; and

Finally, whether or not the Subpoena failed to reasonably describe the documents sought to be produced.

## **I**

Rule 15 of the Rules of Court lays down the basic rules on the filing and hearing of a motion:

SECTION 4. Hearing of motion. - Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SECTION 5. Notice of hearing. - The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SECTION 6. Proof of service necessary. - No written motion set for hearing shall be acted upon by the court without proof of service thereof.

Under Rule 15, Section 4, every written motion must be set for hearing by the applicant, except when the court deems it prejudicial to the other party. The motion shall then be served together with its notice of hearing in a manner that would ensure receipt by the other party at least three days before the date of hearing, unless the court, for good cause, sets the hearing on shorter notice.

Sections 5 and 6 state that the notice of hearing shall be addressed to the parties concerned and shall specify the time and date of the hearing. No motion shall be acted upon by the court without proof of service of its notice, except when the court is satisfied that the adverse party's rights are not affected.

In *Valderrama v. People*,<sup>[51]</sup> this Court emphasized that these requirements are mandatory. While there may be motions which the court may resolve without prejudice to the opposing party, the general rule holds that all motions must set a hearing, including motions for reconsideration. These rules are in place to satisfy the requirements of due process: