

## **THIRD DIVISION**

**[ G.R. No. 209274, July 24, 2019 ]**

**THE HONORABLE OFFICE OF THE OMBUDSMAN, PETITIONER, VS.  
ANGELINE A. ROJAS, RESPONDENT.**

**[G.R. NOS. 209296-97]**

**JOSE PEPITO M. AMORES, M.D., PETITIONER, VS. ANGELINE A.  
ROJAS AND ALBILIO C. CANO, RESPONDENTS.**

### **DECISION**

**REYES, A., JR., J.:**

These consolidated petitions for review filed by the Office of the Ombudsman<sup>[1]</sup> and Jose M. Amores<sup>[2]</sup> (Amores) challenge the March 26, 2013 Decision<sup>[3]</sup> and September 25, 2013 Resolution<sup>[4]</sup> of the Court of Appeals (CA) in CA-G.R. SP Nos. 113649 and 114495, through which the herein respondents, Angeline A. Rojas (Rojas) and Albilio C. Cano (Cano), were absolved of the charge of grave misconduct.

#### **The Factual Antecedents**

After a fire gutted the Lung Center of the Philippines (LCP), the Department of Health (DOH) realigned P73,258,377.00 for the hospital's rehabilitation. The realignment was approved by the Department of Budget and Management (DBM), and covered by Special Allotment Release Order (SARO) No. BMB-B-00-0192.<sup>[5]</sup>

On January 12, 2002, Cano, who was then LCP's Ancillary Department Manager, along with Fernando Melendres (Melendres), the hospital's Executive Director, wrote a letter<sup>[6]</sup> addressed to the Branch Manager of Land Bank of the Philippines West Triangle Branch, requesting the issuance of a manager's check covering the amount of the realigned funds.

Melendres then wrote another letter,<sup>[7]</sup> this time addressed to the Office of the Government Corporate Counsel (OGCC), attaching thereto a draft Investment Management Agreement (IMA) between LCP and the Philippine Veterans Bank (PVB). He requested an evaluation of the IMA, where the realigned funds would be deposited pending their utilization. However, without waiting for the OGCC's reply, LCP, through Melendres and Cano, sent the realigned funds to PVB with instructions to place the same under an IMA. The funds were consequently deposited with the bank for an initial period of 30 days, during which they earned interest at the rate of 7.25%.<sup>[8]</sup> After the period lapsed, LCP requested that the bank roll over a portion of the funds for another 30 days, albeit at a different interest rate.<sup>[9]</sup> The hospital

repeatedly had the funds roll over under similar schemes on several occasions thereafter.<sup>[10]</sup> Notably, Rojas, who was then LCP's Budget and Accounting Division Chief and concurrently its Chief of Finance Services,<sup>[11]</sup> signed the roll-over requests.

Meanwhile, through a letter<sup>[12]</sup> dated May 3, 2002, the OGCC responded to Melendres's inquiry regarding the IMA. Without giving definitive advice as to whether LCP should place its funds in PVB, the OGCC requested that Melendres submit certain documents, stating that no conclusion could be reached on the basis of the attached IMA contract alone.

Despite receipt of the OGCC's response, LCP, through Melendres, Cano, and Rojas, continued to roll over the realigned funds.<sup>[13]</sup>

Through a letter<sup>[14]</sup> dated June 5, 2002, PVB requested Melendres to submit the following: (1) the document embodying the signed IMA; (2) an LCP board resolution authorizing the opening of said IMA; (3) an LCP board resolution authorizing a hospital representative to transact business with PVB relative to the IMA; and (4) signature specimens of the LCP's authorized representative. Melendres then referred the letter to the hospital's Cash Division with the following note:

In view of the inability of the Board of Trustees to convene for the past few months, we could not immediately satisfy the requirements of PVB. Transfer our deposits to DBP PHC instead.<sup>[15]</sup>

On October 22, 2002, Amores, LCP's Deputy Director for Hospital Support Services, filed a complaint before the Ombudsman, alleging that Melendres, Cano, and Rojas, along with certain PVB officers, conspired to misappropriate the funds that were realigned for the hospital's rehabilitation. He also averred that they engaged in a scheme to conceal the anomaly, as the invested amount was not disclosed on the hospital's balance sheet. In addition, pointing to the OGCC's legal opinion, Amores maintained that the IMA was grossly disadvantageous to the government. This notwithstanding, he continued, Melendres, Cano, and Rojas repeatedly requested the roll-over of the realigned funds.<sup>[16]</sup>

### **The Ombudsman's Ruling**

On April 30, 2007, the Ombudsman rendered a Decision<sup>[17]</sup> absolving the PVB officers, but finding Melendres, Cano, and Rojas guilty of grave misconduct, and accordingly ordering their dismissal from the service. The decision relevantly reads:

Respondents Cano, Rojas and Melendres, however, cannot feign innocence. It was clear from the correspondence of the respondents with PVB officials that they intended to enter into an IMA. They jointly signed the orders to "roll-over" the funds deposited with PVB. This would not have been necessary if the funds were simply deposited in savings or

current account in the name of LCP.

Respondents Cano, Rojas and Melendres cannot also say that the Board Resolution allegedly issued by the LCP board on January 20, 2002 authorized them to invest the funds of [LCP] since the deposit of the funds with PVB was made prior to said date.<sup>[18]</sup>

The Ombudsman therefore disposed of the case, *viz.*:

**WHEREFORE**, respondents Chona Victoria Reyes-Guray and Ma. Milagros Campomaes-Yuhico are ABSOLVED of the administrative charge of Grave Misconduct. The instant complaint against them is hereby DISMISSED, with the admonition that they should be more circumspect in their actions as bank personnel to avoid the appearance of impropriety in their business dealings.

Respondents FERNANDO A. MELENDRES, ALBILIO C. CANO and ANGELINE A. ROJAS are hereby found GUILTY of GRAVE MISCONDUCT and are hereby meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, pursuant to Section 52, Rule IV, Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999.

The Honorable Francisco Duque, Secretary of the Department of Health, is hereby directed to implement this decision in accordance with law and rules, and to forthwith inform this Office of the action taken.

SO RESOLVED.<sup>[19]</sup> (Emphasis in the original)

Aggrieved, Melendres, Cano, and Rojas filed separate appeals before the CA.

### **The CA's Ruling**

On March 26, 2013, the CA promulgated the herein assailed decision, reversing the Ombudsman's ruling, and dismissing Amores's complaint for lack of merit. The appellate court found that Melendres, Cano, and Rojas were not motivated by ill will in depositing the realigned funds with the PVB. Absent a showing of bad faith on their part, it was ruled that Amores failed to prove deliberate intent to misappropriate said funds.<sup>[20]</sup> Further, the CA held that the act of entering into the IMA was sanctioned by an LCP board resolution that authorized the investment of the hospital's unutilized funds with the PVB.<sup>[21]</sup> Lastly, anent the claim that the scheme was not disclosed on the hospital's balance sheet, the CA noted that the amount invested was listed under the sub-heading "Other Assets Miscellaneous & Deferred Charges," found on the second page of said balance sheet.<sup>[22]</sup> The *fallo* of the appellate court's decision reads:

**WHEREFORE**, premises considered, the Decision dated April 30, 2007 and the Order dated 24 August 2009 of Respondent Ombudsman are hereby **REVERSED** and **SET ASIDE**. The Complaint filed by complainant Jose Pepito Amores is hereby **DISMISSED** for want of merit.

**SO ORDERED.**<sup>[23]</sup>

Dissatisfied with the foregoing disquisition, Amores challenged via a Rule 45 petition the CA's decision insofar as Cano and Rojas were absolved, while the Ombudsman chose to assail only Rojas's exoneration.

Hence, these consolidated petitions.

According to Amores and the Ombudsman, Cano and Rojas should be held liable for grave misconduct. First, it was pointed out that SARO No. BMB-B-00-0192 sanctioned neither the investment of the LCP's funds nor the roll over thereof. All that was authorized was the realignment of P73,258,377.00 from the DOH's "Maintenance and Other Operating Expenses savings" to its "Building and Structures Outlay."<sup>[24]</sup> Second, Amores and the Ombudsman maintain that the CA erred in relying on the LCP board resolution that allegedly allowed the hospital to enter into an IMA. Contrary to the appellate court's findings, they argue that said resolution clearly stated that the realigned funds should only be invested in treasury bills or deposited with authorized government banks, not placed in an IMA.<sup>[25]</sup> Third, Amores and the Ombudsman submit that bad faith on the part of Cano and Rojas is evident since the IMA was entered into before receipt of the OGCC's opinion on the matter. Moreover, the fact that the funds were rolled over each time the IMA expired further shows ill motive, as this was done in blatant disregard of the OGCC's advice.<sup>[26]</sup> Lastly, Amores claims that Rojas attempted to conceal the investment by making it appear on LCP's balance sheet that the hospital only had P7,800.00 in investments during the period pertinent to this case.<sup>[27]</sup> For these reasons, Amores and the Ombudsman argue that the CA's decision should be revisited.

### **The Issue**

Whether or not the CA erred in dismissing the charges against Cano and Rojas<sup>[28]</sup>

### **The Court's Ruling**

The petition is partly meritorious.

Since the Court is not ordinarily a trier of facts,<sup>[29]</sup> it must accept as binding the factual findings of the lower tribunal that was afforded a prior opportunity to adjudicate the case under review. In administrative cases initially brought before the Ombudsman, the findings of fact of that agency are usually afforded great weight and respect, and, when supported by substantial evidence, are accepted as conclusive by the courts.<sup>[30]</sup> It is relevant to state that substantial evidence is more

than a mere scintilla. Where the complaint charges grave misconduct, "[t]he standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."<sup>[31]</sup>

Jurisprudence, however, abounds with exceptions to the rule that the Court is not a trier of facts. These were enumerated in *De Castro v. Field Investigation Office*,<sup>[32]</sup> viz.

(1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the [CA] went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.<sup>[33]</sup>  
(Citation omitted)

In this case, since the Ombudsman and CA differed as to their appreciation of the agreement between LCP and PVB, a review of the facts is in order. For its part, the Ombudsman found that the hospital and the bank entered into an IMA, or that they at least intended to,<sup>[34]</sup> while the CA ruled that the realigned funds were simply placed in a "special savings deposit account."<sup>[35]</sup> There is a need to determine the nature of the arrangement between LCP and PVB because of a Board Resolution dated January 30, 2002, enacted by the hospital's Board of Trustees, sanctioning the deposit of savings and other funds with certain government banks, viz.:

NOW, THEREFORE, RESOLVED, that pending utilization, the savings and other funds of LCP be invested in treasury bills or deposited with the LBP, DBP, PNB or PVB, whichever of the aforementioned banks shall offer the highest yield or interest income for LCP[.]<sup>[36]</sup>

After a meticulous scrutiny of the record, the Court finds that the realigned funds were not deposited in accordance with the terms of the above-quoted board resolution. As aptly observed by the Ombudsman,<sup>[37]</sup> the various correspondences between the LCP officials and PVB representatives disclose that the hospital's funds were never placed in a regular savings or current account. In fact, Melendres and Cano, in the very first letter they sent to the bank, already gave instructions to