

## THIRD DIVISION

[ G.R. No. 187794, November 28, 2018 ]

**PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,  
PETITIONER, VS. OFFICE OF THE OMBUDSMAN, JOSE G.  
CUAYCONG, SIMPLICIO CIOCON, LUIS HOFIÑEÑA, JR., EVA  
YAPTINCHAY-LICHAUCO, LERRY PADLAN, THELMO SOLIVAN,  
ALFONSO CASAS, HORACIO YAPTINCHAY, COL. CESAR PIO DE  
RODA, G.S. LICAROS, ALICIA LL. REYES, JULIO V. MACUJA,  
LEONIDES S. VIRATA, RAFAEL A. SISON, PLACIDO MAPA, JR.,  
JOSE TENGCO, JR., LEON O. TY, AND RUBEN ANCHETA,<sup>[1]</sup>  
RESPONDENTS.**

### DECISION

#### LEONEN, J.:

The Office of the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.

This resolves the Petition for Certiorari<sup>[2]</sup> filed by the Presidential Commission on Good Government assailing the Office of the Ombudsman's August 15, 2006 Resolution<sup>[3]</sup> and May 16, 2008 Order<sup>[4]</sup> in OMB-C-C-03-0508-I. The assailed judgments dismissed the Presidential Commission on Good Government's complaint against Luis S. Hofiñeña, Sr. (Luis), Alberto A. Yaptinchay (Alberto),<sup>[5]</sup> Jose G. Cuaycong, Simplicio Ciocon, Carolina Yaptinchay-Hofiñeña (Carolina), Luis Hofiñeña, Jr., Eva Yaptinchay-Lichauco, Lerry Padlan, Thelmo Solivan, Alfonso Casas (Casas), Quirino Apacible (Apacible), Horacio Yaptinchay (Horacio), Col. Cesar Pio De Roda, G.S. Licaros, Alicia Ll. Reyes (Reyes), Julio V. Macuja, Leonides S. Virata, Rafael A. Sison (Sison), Placido Mapa, Jr. (Mapa), Jose Tengco, Jr. (Tengco), Alejandro A. Melchor (Melchor), Leon O. Ty, Vicente Paterno (Paterno), and Ruben Ancheta for insufficiency of evidence.

Pioneer Glass Manufacturing Corporation (Pioneer Glass) is a domestic corporation engaged in the business of mining silica and producing glass products from silica.<sup>[6]</sup>

It was incorporated on July 15, 1958 by Luis, Alberto, Casas, Apacible, Horacio, Fe Y. Quisumbing, and Ramon Lichauco. It had an initial authorized capital stock of P2,000,000.00, P20,000.00 of which was subscribed and P5,000.00 of which was paid up by its incorporators.<sup>[7]</sup>

On January 15, 1962, Pioneer Glass applied<sup>[8]</sup> for an industrial loan of P999,368.99 with Development Bank of the Philippines (Development Bank). This loan was for the purchase of machinery and construction of a building and warehouse for its silica

processing business.<sup>[9]</sup>

From 1963 to 1977, Development Bank and Pioneer Glass entered into a total of 12 industrial loan and guarantee agreements, summarized as follows:<sup>[10]</sup>

Amount	Purpose	Board Resolution under which the loan was approved
P597,000	Industrial Loan a. Payment of obligation b. Building construction c. Purchase of machinery and equipment	B.R. # 2328 dated March 26, 1963
P3,900,000 (DM3.9M [or] \$1M)	Guarantee – to finance 80% of the glass manufacturing plant	B.R. # 9141 dated December 04, 1967
P9,750,000 (\$2,500,000.00)	Guarantee – to construct glass plant and office buildings; full liquidation of DBP Industrial Loan; acquisition of quarry glass plant & transportation machinery & equipment; for working capital	B.R. # 7873 dated October 04, 1968
P500,000	Interim Guarantee – Bancom – for construction works	B.R. # 5786 dated December 03, 1970
P7,700,000	Industrial Loan – for the completion of the plant	B.R. # 246 dated January 15, 1975
P4,660,000 (\$720,000)	Long-Term Guarantee – for the completion of the plant	B.R. # 3379 dated June 27, 1973
P3,000,000	Industrial Loans – for capital expenditures and for payment of interests and charges due DBP	B.R. # 4847 dated December 17, 1975
P2,300,000	Industrial Loan – to fund the fixed asset requirements of the project	B.R. # 2012 dated June 19, 1976
a) P4,500,000 b) P2,000,000	DBP Guarantee Discounting Line – a) to liquidate current liabilities; operating capital; to meet debt servicing requirements b) to cover purchase of raw materials and supplies	B.R. # 1036 dated March 30, 1977
P366,615 (US\$48,882)	Direct Foreign Currency Loan – to finance the importation of molds	B.R. # 2942 dated September 28, 1977

P2,000,000	Guarantee for a short-term discounting line – to cover working capital requirements	B.R. # 3103 dated October 12, 1977 <sup>[11]</sup>
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By January 31, 1978, Pioneer Glass' obligations to Development Bank reached P55,602,884.44, with P7,600,000.00 already past due. Furthermore, Development Bank expected Pioneer Glass' arrears to only increase since its sales proceeds could not cover its operational expenses.<sup>[12]</sup>

On February 22, 1978, Development Bank's Board of Governors issued Board Resolution No. 342<sup>[13]</sup> agreeing to a *dacion en pago* arrangement with Pioneer Glass for the full settlement of its account. Board Resolution No. 342 also authorized the sale<sup>[14]</sup> of Pioneer Glass to Union Glass and Container Corporation (Union Glass) for P100,920,000.00.

On March 31, 1978, Pioneer Glass and Hofileña Agricultural Corporation executed Deed of Cession of Property in Payment of Obligation (Dacion en Pago)<sup>[15]</sup> with Development Bank.

On May 3, 1978, some minority stockholders of Pioneer Glass wrote to then First Lady Imelda Marcos (Marcos) asking for assistance and reconsideration of Development Bank's sale of Pioneer Glass to Union Glass since their deal was supposedly inferior to the one being offered by San Miguel Corporation.<sup>[16]</sup>

Marcos sent the letter from Pioneer Glass' minority stockholders to Mapa, then Development Bank's Chairman, with the marginal note:

Dear Chairman P. Mapa,

This group of people is asking for justice in the name of the New Society.  
Please give to them their due. Thank you.

(signed)  
Imelda Marcos  
May 15, 1978<sup>[17]</sup>

Sometime in April 1982, Union Glass shut down the Cavite glass plant due to low sales and financial difficulties. On June 28, 1984, Union Glass returned ownership of this glass plant to Development Bank, which it accepted on September 15, 1984.<sup>[18]</sup>

On February 27, 1987, as part of the government's program to rehabilitate select government financial institutions, Development Bank transferred some of its assets and liabilities to the National Government through a Deed of Transfer.<sup>[19]</sup> Pioneer Glass was one (1) of the 283 non-performing accounts included in the transfer. It was listed as an acquired asset with a booked exposure of P64,602,000.00.<sup>[20]</sup>

On October 8, 1992, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 13<sup>[21]</sup> creating the Presidential Ad-Hoc Fact-Finding Committee on Behest Loans (Committee), which was tasked to:

Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;

Identify the borrowers who were granted "friendly waivers", as well as the government officials who granted these waivers; determine the validity of these waivers;

Determine the courses of action that the government should take to recover these loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.<sup>[22]</sup>

The Committee was headed by the Chair of the Presidential Commission on Good Government as chairperson and the Solicitor General as vice-chair. The Committee members were representatives from the Office of the Executive Secretary, Department of Finance, Department of Justice, Development Bank, Philippine National Bank, Asset Privatization Trust, the Government Corporate Counsel, and Philippine Export and Foreign Loan Guarantee Corporation.<sup>[23]</sup>

On November 9, 1992, President Ramos issued Memorandum Order No. 61,<sup>[24]</sup> which broadened the Committee's scope by also including non-behest loans within its investigative power. Memorandum Order No. 61 gave the following criteria to determine if a loan is behest:

1. It is undercollateralized.
2. The borrower corporation is undercapitalized.
3. Direct or indirect endorsement by high government officials like presence of marginal notes.
4. Stockholders, officers or agents of the borrower corporation are identified as cronies.
5. Deviation of use of loan proceeds from the purpose intended.
6. Use of corporate layering.
7. Non-feasibility of the project for which financing is being sought.
8. Extra-ordinary speed in which the loan release was made.<sup>[25]</sup>

On April 4, 1994, the Committee sent President Ramos its Terminal Report,<sup>[26]</sup> which was a summary of its inventory and review of the loan accounts transferred by government financial institutions<sup>[27]</sup> to Asset Privatization Trust. It included Pioneer Glass<sup>[28]</sup> among the 130 companies or accounts with behest loans.<sup>[29]</sup> It explained that a loan account was classified as positive or behest "if at least two (2)

or more attributes of a 'behest' loan are present in the loan account."<sup>[30]</sup>

On August 13, 2003, Presidential Commission on Good Government Legal Consultant Rene B. Gorospe filed an Affidavit-Complaint<sup>[31]</sup> against several officials of Pioneer Glass and Development Bank for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.<sup>[32]</sup>

The Affidavit-Complaint alleged that "[t]he undue and undeserved accommodation of [Pioneer Glass] as shown by [Development Bank's] grant and approval of loan [was] grossly disadvantageous to the government and the Filipino people warrant the prosecution of those responsible therefor."<sup>[33]</sup>

On August 15, 2006, the Office of the Ombudsman dismissed<sup>[34]</sup> the complaint for insufficiency of evidence.

The Office of the Ombudsman found nothing questionable or irregular with Development Bank's approval of Pioneer Glass' loan applications or its guarantees in favor of Pioneer Glass because the loans and guarantees were backed by numerous properties as collateral.<sup>[35]</sup> It also noted that the guarantees and transactions between Pioneer Glass and Development Bank were audited by the Central Bank of the Philippines, now Bangko Sentral ng Pilipinas, which found them to be above-board.<sup>[36]</sup> The *fallo* of the Office of the Ombudsman August 15, 2006 Resolution read:

**WHEREFORE,** premises considered, it is most respectfully recommended that the instant complaint against herein respondents for violation of Section 3 (e) and (g) [of] Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act be DISMISSED for insufficiency of evidence.<sup>[37]</sup>

The Presidential Commission on Good Government moved for the reconsideration<sup>[38]</sup> of the Office of the Ombudsman's Resolution, asserting that the bulk of Pioneer Glass' security for the approved loans and guarantees were depreciating assets like buildings and improvements, transportation equipment, and office equipment. Thus, by the time the loans would have matured, the value of the depreciable assets would have greatly diminished, leaving virtually no security for Pioneer Glass' loan obligations and Development Bank's guarantees.<sup>[39]</sup>

The Presidential Commission on Good Government reiterated that Pioneer Glass was undercapitalized and that its loan and guarantee agreements were undercollateralized, leading to the damage and prejudice of the government.<sup>[40]</sup>

On May 16, 2008, the Office of the Ombudsman denied<sup>[41]</sup> the motion. It stated that the proffered evidence proves the claim of Development Bank officials that they exercised sound business judgment and that they followed the established banking practices in dealing with Pioneer Glass. Furthermore, the Office of the Ombudsman emphasized that there was no evidence presented to support the allegation that