

SECOND DIVISION

[G.R. No. 155996, June 27, 2012]

PCGG CHAIRMAN MAGDANGAL B. ELMA AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONERS, VS. REINER JACOBI, CRISPIN REYES, MA. MERCEDITAS N. GUTIERREZ, IN HER CAPACITY AS UNDERSECRETARY OF THE DEPARTMENT OF JUSTICE, RESPONDENTS.

DECISION

BRION, J.:

Before the Court is a petition for *certiorari* under Rule 65 filed by the Presidential Commission on Good Government (PCGG) and its former Chairman Magdangal Elma^[1] (*petitioners*) questioning the resolutions, dated July 17, 2002^[2] and September 20, 2002,^[3] of then Undersecretary of Justice Ma. Merceditas N. Gutierrez. The assailed resolutions dismissed the petitioners' petition for review, denied the petitioners' motion for reconsideration and ultimately ruled that no probable cause for falsification and use of falsified document existed against Atty. Crispin Reyes and Reiner Jacobi (*respondents*).

ANTECEDENTS

The records show that on two occasions - evidenced by the December 22, 1988 and May 6, 1991 letters^[4] - then PCGG Commissioner, and later Chairman, David M. Castro, purportedly acting for the PCGG, agreed to pay Jacobi a fee of ten percent (10%) of any amount actually recovered and legally turned over to the Republic of the Philippines from the ill-gotten wealth of Ferdinand E. Marcos and/or his family, associates, subordinates and cronies, based on the information and evidence that Jacobi would furnish the PCGG. Chairman Castro sent another letter dated December 19, 1991 to Jacobi confirming "that actual recovery [of] the Kloten gold account managed by Union Bank of Switzerland (UBS) subject of [Jacobi's] information and other efforts done will be properly compensated as previously committed."^[5] We shall collectively refer to these letters as "PCGG letters."

A few years later, a similar letter dated August 27, 1998 (*De Guzman letter*) was sent by the new PCGG Chairman, Felix M. de Guzman, to Jacobi, confirming the PCGG's promise (as contained in the PCGG letters) to pay Jacobi and his intelligence group a 10% fee for the US\$13.2 billion ill-gotten wealth of Former President Ferdinand E. Marcos, his family, trustee or fronts in UBS still/now being claimed and recovered by the Philippine Government. The De Guzman letter reads in full:^[6]

27 August 1998

Mr. Reiner Jacobi

c/o Business Center
JW Marriott Hotel, Hong Kong

Care: Counsel Crispin T. Reyes

Dear Mr. Jacobi:

I refer to the letters dated 22 December 1988, 6 May 1991 and 19 December 1991 addressed to you from Mr. David M. Castro, former Chairman of the PCGG, copy (sic) for ready reference.

I hereby confirm the agreement of the PCGG to pay you/your group a ten (10%) percent fee of the US\$13.2 Billions ill-gotten wealth, unexplained or hidden deposits/assets of former President Ferdinand E. Marcos, his family, trustees or fronts in Union Bank of Switzerland, still/nor being claimed and recovered by the Philippine government which is being assisted/facilitated/realized by their identification as a result of the findings, information and evidence supplied by you/your group to the PCGG that is otherwise not known to the Commission from other sources nor previously and voluntarily disclosed by the Marcoses, their trustees, associates or cronies.

Very truly yours,

FOR THE COMMISSION:

[Signed]

FELIX M. DE GUZMAN [Countersigned by Director Danilo Daniel]
Chairman

FMG/lai^[7]

d01^[8]

a. The Sandiganbayan petition

On March 8, 1999, the respondents filed with the Sandiganbayan a verified Petition for *Mandamus*, Prohibition and *Certiorari* (with Prayer for a Writ of Preliminary Mandatory and Prohibitory Injunction)^[9] (*Sandiganbayan petition*) against the petitioners (docketed as Civil Case No. 006). **Atty. Reyes acted as Jacobi's counsel. Jacobi did not sign or verify the petition.**

The contents of the PCGG letters and the De Guzman letter, among others, were substantially reproduced in the Sandiganbayan petition and were attached as annexes. (**The De Guzman letter was attached as Annex E**). Likewise attached (as Annex G), was a June 24, 1998 letter from PCGG Chairman Magtanggol Gunigundo (*Gunigundo letter*), seeking judicial assistance from the Swiss Ministry of Justice and the Police of Switzerland regarding Marcos-related accounts in UBS.^[10]

The Sandiganbayan petition began with the alleged commitment of the PCGG to Jacobi (and his group, including Atty. Reyes^[11]) - as contained in the PCGG letters

and the De Guzman letter. It also cited the reports^[12] submitted by Jacobi's group to the PCGG detailing their ill-gotten- wealth-recovery efforts and services, as well as their follow-up letters^[13] to the government to press for the UBS account. They alleged that due to their persistence, the PCGG (through Chairman Gunigundo and Chairman De Guzman) made an official request^[14] to the Swiss Ministry of Justice to freeze the US\$13.2 billion UBS account (as of August 25, 1998^[15]) in the name of Irene Marcos Araneta, alias "I. Araneta" (*UBS account*).^[16] They claimed that the UBS itself admitted the existence of this account, and only denied that the account is owned in any way by the Marcoses.^[17]

The Sandiganbayan petition also strongly questioned^[18] Chairman Elma's appointment and reappointment of two Swiss "Trojan Horses" lawyers (Peter Cosandey and Martin Kurer) who had been allegedly blocking the government's efforts to recover the UBS account by secretly working for the UBS.^[19] It alleged that Chairman Elma was working with these Swiss lawyers to frustrate the PCGG and its recovery efforts. Specifically, it alleged that:

In not revoking the re-appointment of Martin Kurer as PCGG lawyer despite the honest and sincere suggestions, pleadings and demands by [Atty. Reyes]; in not pursuing the great efforts of the Philippine government through Ambassador Tomas T. Syquia to have the account frozen; in appointing, allowing and in fact abetting Martin Kurer who is associated (sic) and conspiring with Peter Cosandey in blocking the recovery of said account; [Chairman Elma] has shown beyond reasonable doubt that he has a personal agenda and is unusually interested in protecting [the UBS account] for another person or persons, other than the Filipino people.^[20]

The Sandiganbayan petition prayed:

AFTER NOTICE AND HEARING, to declare the re-appointment of Swiss lawyer Martin Kurer and Peter Cosandey as having been issued in grave abuse of discretion and highly prejudicial to the interests of the Philippine Government and the Filipino people and therefore null and void; to order [Chairman Elma and PCGG] to perform their mandated duty to recover [the UBS account] for the Filipino people; and to sentence [Chairman Elma] to pay [Atty. Reyes and Jacobi] actual damages that may be proved during the trial; xxx

On March 15, 1999, Atty. Reyes, through the Anti-Graft League of the Philippines, Inc. (*AGLP*), filed a complaint with a similar thrust against Chairman Elma with the Office of the Ombudsman (*Ombudsman complaint*).^[21] Atty. Reyes attached the Sandiganbayan petition (together with its annexes) to this complaint.^[22] Atty. Reyes alleged that Chairman Elma's (i) reappointment of Martin Kurer, despite official information that he had been secretly working for UBS, and (ii) failure to follow-up the PCGG's previous official requests to the Swiss authorities were obvious violations of the provisions of Republic Act No. 3019.^[23]

Later, Atty. Reyes filed an Urgent Manifestation^[24] with the Sandiganbayan, **withdrawing the De Guzman letter and the Gunigundo letter as annexes of the Sandiganbayan petition.** A similar manifestation was filed with the Office of the Ombudsman regarding the Ombudsman complaint.^[25] Atty. Reyes explained that he had been prompted to withdraw these letters after he learned of reports questioning the authenticity of these documents. **Atty. Reyes asserted that Jacobi had nothing to do with the preparation nor with the attachment of these letters** to the Sandiganbayan petition and to the Ombudsman complaint; thus -

Annex "E" of the [Sandiganbayan Petition] is [the De Guzman letter] which was previously shown to [Chairman de Guzman] by [Atty. Reyes] before it was used as an annex and he stated that the statements therein appear to be in the document he has signed. xxx

[Jacobi] had absolutely nothing to do about this Annex "E"

xxx

At any rate, this questionable document is merely a restatement of PCGG Chairman Castro's commitment to Mr. Jacobi which is still perfectly binding and enforceable xxx and, further, it is absolutely immaterial to the main issue in this case.

Hence, this document marked Annex "E" of the [Sandiganbayan Petition] should be withdrawn, as it is now hereby withdrawn xxx, from the records of this case.

Further, [Atty.] Reyes has also carefully examined... Annex "G" of the [Sandiganbayan] Petition. He asked first for a copy of this document sent to Ambassador Syquia in Switzerland but he was informed that there is no copy in PCGG records. Afterwards, a copy of the document was provided by a PCGG insider and this is now marked as Annex "G"... *Again, [Jacobi] had nothing to do with this document marked as Annex "G".*

[Atty.] Reyes has also carefully examined this document and found that while the statements therein appear authentic, however, upon closer examination, it seems that the signature thereunder is not the signature in the original signed by [Chairman Gunigundo] xxx.

Hence, this Annex "G" should be likewise withdrawn...

xxx

If [respondents], particularly counsel Reyes, had known from the very beginning that these documents are questionable and not trustworthy, of course, they will never use them in this case for purposes of recovering Marcos UBS account of \$13.2 Billions (sic) by PCGG for the people of the Philippines.

And whenever there is anything wrong or questionable, [respondents] will not hesitate to and will immediately inform the [Sandiganbayan] accordingly, as, in fact, they are doing now, and it is their desire to deal with all candor, fairly and honestly, with [the Sandiganbayan] and all courts of the land. [italics in the original]

b. The PCGG's reaction

The attachment, as annexes, of the De Guzman letter to the Sandiganbayan petition and to the Ombudsman complaint elicited a legal response from the PCGG. Based on the affidavits executed by Chairman De Guzman, Director Danilo Daniel^[26] of the Finance and Administration Department of the PCGG,^[27] and Lilia Yanga,^[28] what appears as their signatures and initials at the bottom of the De Guzman letter actually pertain to their signatures and initials affixed to *another* letter (dated August 25, 1998) sent by Chairman De Guzman to the Philippine Ambassador to Switzerland, Tomas Syquia.^[29] This August 25, 1998 letter, however, had nothing to do with any contingency agreement with Jacobi and/or Atty. Reyes. Lourdes Magno,^[30] a Records Officer, and Sisa Lopez^[31] also executed affidavits stating that the PCGG has no record of the De Guzman letter. All of these affiants were then PCGG employees.

In a March 17, 1999 resolution (PCGG resolution),^[32] the PCGG stated that the De Guzman letter does not exist in its records.^[33] Chairman De Guzman himself denied any participation in the preparation of this letter, and said:^[34]

In connection with Civil Case No. 006 xxx the declaration of Director Danilo R.B. Daniel that **the contents [of the De Guzman letter] is not authentic is hereby confirmed it appearing that the records of the PCGG** bearing on the alleged letter indicates that the signature of the undersigned and the initials of Dir. Daniel written thereof refers to a letter addressed to Ambassador Tomas Syquia dated August 25, 1998 and not to the [De Guzman letter addressed] to Mr. Jacobi. [emphasis added]

The PCGG resolution also stated that a Swiss official^[35] already denied the existence of the US\$13.2 billion UBS account claimed by Jacobi. Ultimately, the PCGG resolved to (i) declare Jacobi's arrangement with then Chairman Castro as non-binding and inexistent, and (ii) authorize Chairman Elma to file appropriate civil and criminal charges against the respondents.^[36]

In a March 16, 1999 report of the National Bureau of Investigation (NBI), the latter confirmed that the De Guzman letter was a falsified document as the questioned signatures and entries therein "were lifted/extracted probably from the original and/or xerox copy"^[37] of the August 25, 1998 letter addressed to Ambassador Syquia.

c. Criminal Complaint