

THIRD DIVISION

[G.R. No. 168918, March 02, 2009]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HERMENEGILDO
DURLAO Y CASTILIANO AND EMILIO LA'O Y GONZALES,
RESPONDENTS.**

D E C I S I O N

CHICO-NAZARIO, J.:

On appeal is the Resolution^[1] of the Sandiganbayan in Criminal Case No. 16699 dated 14 July 2005 which granted the Motion to Dismiss/Quash of respondent Hermenegildo C. Dumlao and dismissed the case against him. The Sandiganbayan likewise ordered the case against respondent Emilio G. La'o archived. The dispositive portion of the resolution reads:

WHEREFORE, finding the Motion to Dismiss/Quash filed by accused Hermenegildo C. Dumlao to be meritorious this case as against him is hereby ordered DISMISSED.

The cash bond posted by him is hereby cancelled and accused Dumlao is allowed to withdraw the same from the Cashier's Office of this Court.

The hold departure order issued by this Court against herein accused Dumlao is lifted and set aside.

The Commissioner of the Bureau of Immigration and Deportation is ordered to cancel the name of accused Hermenegildo C. Dumlao from the Bureau's Hold Departure List.

This case as against Emilio La'o who is still at large is ordered archived.

[2]

On 19 July 1991, an Amended Information was filed before the Sandiganbayan charging respondents Dumlao and La'o, Aber P. Canlas, Jacobo C. Clave, Roman A. Cruz, Jr. and Fabian C. Ver with violation of Section 3(g) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The case was docketed as Criminal Case No. 16699. The accusatory portion of the information reads:

That on or about May 10, 1982, or for sometime prior or subsequent thereto, in Manila, Philippines, and within the jurisdiction of this Honorable Court, the accused Hermenegildo C. Dumlao, Aber Canlas, Jacobo C. Clave, Roman A. Cruz, Jr., and Fabian C. Ver, being then the members of the Board of Trustees of the Government Service Insurance System (GSIS) which is a government corporation and therefore all public officers, conspiring and confederating together and mutually

helping one another, while in the performance of their official functions, did then and there willfully, unlawfully and criminally enter into contract of lease-purchase with Emilio G. La'o, a private person whereby the GSIS agreed to sell to said Emilio G. La'o, a GSIS acquired property consisting of three parcels of land with an area of 821 square meters together with a 5-storey building situated at 1203 A. Mabini St., Ermita, Manila, known as the Government Counsel Centre for the sum of P2,000,000.00 with a down payment of P200,000.00 with the balance payable in fifteen years at 12% interest per annum compounded yearly, with a yearly amortization of P264,278.37 including principal and interest granting Emilio G. La'o the right to sub-lease the ground floor for his own account during the period of lease, from which he collected yearly rentals in excess of the yearly amortization which contract is manifestly and grossly disadvantageous to the government.^[3]

When arraigned on 9 November 2004, respondent Dumlao, with the assistance of counsel *de parte*, pleaded "not guilty" to the offense charged.^[4] As agreed upon by the prosecution and respondent Dumlao, a *Joint Stipulation of Facts and Admission of Exhibits* was submitted to the court on 10 January 2005.^[5] On the basis thereof, the court issued on 19 January 2005 the following Pre-Trial Order:

PRE-TRIAL ORDER

The Prosecution and Accused Hermenegildo C. Dumlao, as assisted by counsel, submitted their "JOINT STIPULATION OF FACTS AND ADMISSION OF EXHIBITS" dated December 21, 2004, quoted hereunder:

I. STIPULATION OF FACTS

The Prosecution and Accused Dumlao jointly stipulate on the following:

1. That at the time material to this case, the following were members of the Board of Trustees of the Government Service Insurance System (GSIS):
 - a. Hermenegildo C. Dumlao
 - b. Aber P. Canlas
 - c. Jacobo C. Clave
 - d. Roman A. Cruz
 - e. Fabian C. Ver
 - f. Leonilo M. Ocampo and
 - g. Benjamin C. Morales;
2. That Emilio Gonzales La'o is a private person;
3. That GSIS was the owner of a property consisting of three (3) parcels of land with an area of 821 square meters, together with a 5-storey building situated as 1203 A. Mabini Street, Ermita, Manila known as the Government Counsel Centre;
4. That on June 22, 1978, the GSIS entered into a Lease-Purchase Agreement with the Republic of the Philippines through the Office of

the Government Corporate Counsel (OGCC) involving the property described under paragraph 3 above, for a consideration of P1.5 million payable in equal yearly amortizations for a period of fifteen (15) years with zero interest. The period should commence after the GSIS shall have renovated the building according to the specification of the OGCC;

5. That in accordance with the June 22, 1978 Lease-Purchase Agreement, the 5-storey building was renovated. Thereafter, the OGCC occupied the same;
6. That Ferdinand E. Marcos was, at all-times material hereto, the President of the Republic of the Philippines;
7. That then President was at all times material hereto, legislating through the issuance of Presidential Decrees, Executive Orders and the like;
8. That among the three Members of the Board who signed the Minutes only accused Dumlao was charged in this case;
9. That there are only seven (7) members of the Board of Trustees of the GSIS present during the board meeting held on April 23, 1982;
10. Exhibit "A" and "1" entitled Agreement was signed by Luis A. Javellana, for and in behalf of the GSIS, Felipe S. Aldaña, for and [in] behalf of the Republic of the Philippines thru Government Corporate Counsel, and Emilio Gonzales La'o, as buyer.

II. DOCUMENTARY EVIDENCE

The Prosecution and Accused Dumlao admitted the authenticity and due execution of the following documentary evidence:

EXHIBITS		DESCRIPTION
"A" (also Exhibit "1" for accused Dumlao)		The Agreement executed by and among the GSIS, the Republic of the Philippines, through OGCC and accused Emilio Gonzales La'o on May 10, 1982, consisting of 11 pages;
"B" (also Exhibit "2" for accused Dumlao)		The pertinent portion, including the signature page, of Minutes of Meeting No. 14 of the GSIS Board of Trustees held on April 23, 1982, specifically containing item no. 326 regarding the approval of the proposed Agreement by and among the GSIS, the Republic of the

	Philippines through the OGCC and accused Emilio Gonzales La'o, consisting of 5 pages.
--	---

III. RESERVATION

The Prosecution and Accused Dumlao reserve the right to mark and offer in evidence the documents mentioned in their respective Pre-Trial Briefs, as well as to present the witnesses listed therein.

IV. ISSUE

Whether or not accused Dumlao is liable for violation of Section 3(g), RA 3019.

WHEREFORE, with the submission by the parties of their Joint Stipulation of Facts, the pre-trial is deemed terminated. Let the above-mentioned joint stipulation as recited in this pre-trial order bind the parties, limit the trial to matters not disposed of, and control the course of the proceedings in this case unless modified by the Court to prevent manifest injustice.^[6]

On 21 February 2005, respondent Dumlao filed a Motion to Dismiss/Quash on the ground that the facts charged do not constitute an offense.^[7] He stated that the prosecution's main thrust against him was the alleged approval by the Government Service Insurance System (GSIS) Board of Trustees -- of which he was a member -- of the Lease-Purchase Agreement entered into by and among the GSIS, the Office of the Government Corporate Counsel (OGCC) and respondent La'o. He argued that the allegedly approved Board Resolution was not in fact approved by the GSIS Board of Trustees, contrary to the allegations in the information. Since the signatures of Fabian Ver, Roman Cruz, Aber Canlas and Jacobo Clave did not appear in the minutes of the meeting held on 23 April 1982, he said it was safe to conclude that these people did not participate in the alleged approval of the Lease-Purchase Agreement. This being the case, he maintained that there was no quorum of the board to approve the supposed resolution authorizing the sale of the GSIS property. There being no approval by the majority of the Board of Trustees, there can be no resolution approving the Lease-Purchase Agreement. The unapproved resolution, he added, proved his innocence. He further contended that the person to be charged should be Atty. Luis Javellana, who sold the subject property to respondent La'o without the proper authority. He likewise wondered why he alone was charged without including the other two signatories in the minutes of the meeting held on 23 April 1982.

On 14 July 2005, the Sandiganbayan issued the assailed resolution. It ruled:

The Court finds the motion meritorious. The minutes of the meeting held on April 23, 1982 of the Board of Trustees of GSIS shows that the Board failed to approve the Lease-Purchase Agreement in question. As stipulated upon by both parties out of the seven (7) members of GSIS Board of Trustees only three (3) members signed the minutes, the others did not. In order to validly pass a resolution at least a majority of four (4) members of the Board of Trustees must sign and approve the same.

No amount of evidence can change the fact that Resolution dated April 23, 1982 was not validly passed by the Board of Trustees of GSIS since it was only signed by three (3) members of the Board. Thus, it never had the force and effect of a valid resolution and did not in effect approve the Lease and Purchase Agreement subject matter hereof. Therefore, the prosecution has no cause of action against herein movant-accused Hermenegildo C. Dumlao.^[8]

On 2 September 2005, the People of the Philippines, represented by the Office of the Ombudsman, thru the Office of the Special Prosecutor, filed a petition for *certiorari*^[9] under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Sandiganbayan Resolution dismissing the case against respondent Dumlao. Petitioner raises the following issues:

I) WHETHER OR NOT THE COURT A QUO ACTED IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT RESOLVED TO DISMISS CRIMINAL CASE NO. 16699 AS AGAINST RESPONDENT DURLAO AFTER THE PRE-TRIAL AND BEFORE THE PETITIONER COULD PRESENT ITS WITNESSES AND FORMALLY OFFER ITS EXHIBITS.

II) WHETHER OR NOT THE SIGNATURES OF THE MAJORITY OF THE GSIS BOARD OF TRUSTEES ARE NECESSARY ON THE MINUTES OF MEETING NO. 14 DATED 23 APRIL 1982 TO GIVE FORCE AND EFFECT TO RESOLUTION NO. 326 APPROVING THE PROPOSED AGREEMENT BY AND AMONG THE GSIS, THE OGCC AND RESPONDENT EMILIO LA'O.

III) WHETHER OR NOT THE VALIDITY OF THE CONTRACT IS AN ESSENTIAL ELEMENT OF VIOLATION OF SECTION 3(G), RA 3019.

IV) WHETHER OR NOT THE COURT A QUO ACTED IN ACCORDANCE WITH LAW AND JURISPRUDENCE WHEN IT RESOLVED TO ARCHIVE THE CASE AGAINST RESPONDENT LA'O.

On the other hand, respondent Dumlao proffers the following grounds to support the dismissal of the case against him:

1. TO GIVE DUE COURSE TO THE OMBUDSMAN'S PETITION IS TO PLACE DURLAO IN DOUBLE JEOPARDY, IN VIOLATION OF HIS CONSTITUTIONAL RIGHTS;
2. THE SANDIGANBAYAN COULD NOT BE SAID TO HAVE GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF JURISDICTION BECAUSE IT MERELY FOLLOWED THE RULE ON PRE-TRIAL AND DECIDED THE CASE ON THE BASIS OF THE FACTS STIPULATED IN THE PRE-TRIAL;
3. THE FACTS AS AGREE (SIC) BY THE PROSECUTION AND RESPONDENT DURLAO IN THEIR PRE-TRIAL STIPULATION AND AS APPROVED BY THE SANDIGANBAYAN SHOWED THAT HE DID NOT COMMIT ANY CRIME; AND