

SECOND DIVISION

[G.R. NO. 131397, January 31, 2006]

**REPUBLIC OF THE PHILIPPINES (THROUGH THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT) PETITIONER, VS. HON. ANIANO DESIERTO, OMBUDSMAN, IMELDA R. MARCOS, LUCIO C. TAN, HARRY C. TAN, BENJAMIN S. JIMENEZ, LEONCIO M. GIRON, FERMIN O. HEBRON AND JOEL C. IBAY (MEMBERS OF THE BOARD OF DIRECTORS, SIPALAY CORPORATION), DON M. FERRY (FORMER MEMBER OF THE BOARD OF GOVERNORS OF THE DEVELOPMENT BANK OF THE PHILIPPINES) AND ESTELA M. LADRIDO (THEN ACTING EXECUTIVE OFFICER OF DBP),
RESPONDENTS.**

DECISION

SANDOVAL-GUTIERREZ, J.:

For our resolution is the instant petition for *certiorari* and *mandamus* filed by the Republic of the Philippines, through the Presidential Commission on Good Government (PCGG), against the above-named private respondents. Petitioner alleged that the Ombudsman acted with grave abuse of discretion in issuing his Resolution dated September 5, 1997 dismissing its (petitioner's) complaint for violation of Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, against the above-named private respondents.

The facts of the case are not in dispute, thus:

In 1984, the Development Bank of the Philippines (DBP), a government-owned and controlled financial institution, found itself in dire financial straits. In order to address its liquidity problems, DBP decided to sell some of its assets. One of these was its equity holdings in the Maranao Hotel Resort Corporation (MHRC), which then owned the Century Park Sheraton Hotel in Manila. Accordingly, pursuant to its Resolution No. 1937 dated August 22, 1984, the DBP Board of Governors offered to sell the said shares for US\$8.33 million (or P150 million at the exchange rate then prevailing) either on a cash basis or upon a down payment of thirty percent (30%) of the selling price, the balance payable for a term not longer than five (5) years, with an interest rate of five percent (5%) per annum.

Upon the recommendation of private respondent Maria Estela M. Ladrido, then Acting Executive Officer of the DBP, the Board of Governors approved the sale of the said equity holdings to PCI Management Consultants, Inc. (PCI), acting for an undisclosed foreign buyer, for US\$8.4 million. However, the sale did not push through.

Meanwhile, Lucio Tan, one of the herein private respondents, wrote then President Ferdinand E. Marcos that he was interested in purchasing the equity holdings of DBP

in the MHRC. Tan's written offer was supposedly found by the PCGG among the documents left behind by the Marcoses in Malacañang Palace when they fled during the EDSA revolution.

Lucio Tan set up the Sipalay Trading Corporation (STC) for the purpose of acquiring the DBP equity in the MHRC. At the time of its formation, STC had an authorized capital stock of P5 million. The stockholders were Leoncio M. Giron, Fred V. Fontanilla, Benjamin S. Jimenez, Fermin O. Hebron and Joel C. Ibay, also private respondents herein.

On January 30, 1985, STC offered to buy the DBP shareholdings in the MHRC for US\$8.5 million. By that time, PCI, the former purchaser, had abandoned its negotiations with DBP.

On March 1, 1985, DBP accepted STC's offer to buy. STC then made a deposit of US\$1.7 million to be held in an escrow account. It was agreed that the balance would be payable within five (5) years. Eventually, STC paid the purchase price in full.

In charging herein private respondents with violation of R.A. No. 3019 (the Anti-Graft and Corrupt Practices Act), petitioner alleged that private respondents conspired and acted fraudulently in order to accumulate ill-gotten wealth to the prejudice of the government; and that they effected the sale of the P340.7 million equity holding of DBP in MHRC to STC, a newly-organized and undercapitalized firm, for only P150 million, a price grossly disadvantageous to the government.

In his counter-affidavit, Lucio Tan alleged that he has no participation in the negotiations with DBP for the purchase of its MHRC holdings nor in the execution of the contract; that it was STC which paid the agreed price; and that the new set of officials installed by the Aquino government in DBP found no deficiencies in the sale of its MHRC holdings.

For his part, private respondent Don M. Ferry alleged that it was the DBP Board of Governors which decided to sell its equity holdings to STC; that all the terms of the sale had been carefully studied by the bank's staff who acted in good faith and in accordance with sound business practices; and that he had no dealing with Lucio Tan or the Marcoses.

On September 5, 1997, the Ombudsman dismissed petitioner's complaint, finding that the acts of the DBP Board of Governors should "not be condemned as a crime but should even be lauded for their boldness in trying their very best to save not only Century Park Sheraton Hotel but DBP itself, and ultimately protected the interests of the government."^[1] The Ombudsman found no evidence of conspiracy among the private respondents and that the negotiations between STC and the DBP were aboveboard.

Hence, the instant petition anchored on this sole ground:

PETITIONER RESPECTFULLY SUBMITS THAT THE HON. ANIANO DESIERTO, OMBUDSMAN, COMMITTED GRAVE ABUSE OF DISCRETION AND ACTED WHIMSICALLY, CAPRICIOUSLY, ARBITRARILY AND OPPRESSIVELY IN DISMISSING THE COMPLAINT DESPITE CLEAR FACTS

INFERRING THAT RESPONDENTS ACTING IN CONSPIRACY CAUSED UNDUE INJURY TO THE GOVERNMENT THROUGH MANIFEST PARTIALITY, EVIDENT BAD FAITH OR GROSS INEXCUSIBLE NEGLIGENCE.^[2]

The only issue before us is whether the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in dismissing petitioner's complaint for lack of probable cause.

Section 3(e) of the Anti-Graft and Practices Act provides:

SEC. 3. Corrupt practices of public officers. - In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage, or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the crime charged are:

- (a) The accused is a public officer or a private person charged in conspiracy with the former;
- (b) The said public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public position;
- (c) That he or she causes undue injury to any party, whether the government or a private party;
- (d) Such undue injury is caused by giving unwarranted benefits, advantage, or preference to such parties; and
- (e) That the public officer has acted with manifest partiality, evident bad faith, or gross inexcusable negligence. ^[3]

From the foregoing, it may be inferred that there are two modes of committing the offense, thus: (1) the public officer caused any undue injury to any party, including the government; or (2) the public officer gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.^[4] An accused may be charged under either mode^[5] or under both should both modes concur.^[6]

There is no question that private respondents here are either officers of DBP, a government-owned and controlled financial institution, or private persons. But did the DBP cause injury to the Government or give a private party unwarranted benefits or preference in the discharge of its functions?