

THIRD DIVISION

[G.R. No. 134495, December 28, 1998]

**PERFECTO R. YASAY, JR., PETITIONER, VS. HONORABLE
OMBUDSMAN ANIANO A. DESIERTO AND THE FACT-FINDING
AND INVESTIGATION BUREAU, REPRESENTED BY ATTY. RIZALDE
F. LAUDENCIA, RESPONDENTS.**

R E S O L U T I O N

KAPUNAN, J.:

This is a petition for *certiorari*^[1] under Rule 65 of the Revised Rules of Court seeking: (1) the nullification of the Order dated July 22, 1998 of the respondent Ombudsman in OMB-ADM-0-98-0365 ("Fact-Finding and Investigation Bureau v. Perfecto R. Yasay, Jr.") where petitioner Perfecto R. Yasay, Jr. was placed under preventive suspension for a period of ninety (90) days without pay; and (2) the dismissal of the administrative charges filed against him.^[2]

Petitioner also filed an Urgent Omnibus Motion dated October 26, 1998 praying of this Court "(a) to lift or set aside the preventive suspension order and order extending the same, and (b) for resolution of the instant petition, with prayer for the issuance of temporary restraining order and/or writ of preliminary injunction" to enjoin the enforcement of the respondent Ombudsman's Extension Order dated October 23, 1998, extending the period of petitioner's preventive suspension for another ninety (90) days following the expiration of the original ninety-day period. We shall consider this Urgent Omnibus Motion as an integral part of the petition and regard it in consolidation with the petition.

We first consider the issues raised in the petition which are: (1) whether the respondent Ombudsman has jurisdiction over the subject matter of the administrative case against petitioner on his contention that what is involved is an "intra-membership dispute in a private condominium corporation and does not involve the exercise of a governmental duty or function;"^[3] (2) whether the respondent Ombudsman gravely abused his discretion in giving due course to the administrative charges against petitioner;^[4] and (3) whether the respondent Ombudsman gravely abused his discretion in issuing the order placing petitioner under preventive suspension.^[5]

The antecedents are as follows:

In a Complaint-Affidavit dated June 17, 1997 filed with the respondent Ombudsman, Donato Teodoro, Sr., as President and Chairman of the Board of Donsol Development & Commercial Corporation and D.B. Teodoro Securities, Inc., charged petitioner with Estafa under the Revised Penal Code and violation of Sec. 3 (e) of R.A. No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, which provides thus:

Sec. 3. Corrupt Practice 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

x x x

x x x

e. Causing any undue injury to any party, including the Government x x x x x x in the discharge of his official, administrative or judicial functions through bad faith or gross inexcusable negligence. x x x x x x

The complaint reads:

3. At all times, material thereto, DONSOL and D.B. TEODORO are the registered owners of condominium units designated as G-02 and G-03 located at the ground floor of the SEC Building, EDSA, Mandaluyong City, their titles over said units are evidenced by Condominium Certificate of Title Nos. 4074 and 1706 of the Registry of Deeds of Metro Manila, District II, issued in accordance with the provisions of Republic Act No. 47261 as early as 1982 x x x;

4. The condominium units designated as G-03 and portions of G-02 was leased, and occupied by one Mrs. Emily Mendoza, the latter used the area as coffee shop;

5. Before however, the lease of Mrs. Mendoza (on the premises) expired, respondent, acting in representation of the Securities and Exchange Commission and the SEC Building Condominium Corp. which entities he is the President and Chairman, intimated to me (being the President and Board Chairman of DONSOL and DB TEODORO) SEC and SBCC's intention to lease the premises; he represented to me that the premises (G-03 and portion of G-02) will be used exclusively as SEC and SBCC's "display" area;

6. Although problems cropped-up to transfer Mrs. Mendoza (whose lease in the premises has not yet expired) to other units within the building in order to accommodate the respondent, we were able to finally convince Mrs. Mendoza to transfer to unit 208 located at the second floor (of the building) at our expense;

7. Among the conditions of the lease which was agreed upon, are as follows:

7a. as to the period of lease - four (4) months to commence on September 1, 1996 up to December 31, 1996;

7b. as to the amounts of rentals - P14,000.00 every month to be shared by SEC and SBCC at P7,000.00 each;

7c. as to the use of the premises - exclusively for `display`;

It was further, agreed that after the expiration of the lease, the same

shall be continued until terminated by the parties;

8. After the premises was vacated by Mrs. Mendoza, respondent caused to demolish the structure (coffee shop) constructed by the former, and thereupon, entered, and occupied the premises.

9. However, despite the occupancy of the premises, respondent as Chairman and President of SEC and SBCC did not only fail to execute the lease contract with DONSOL and DB SECURITIES, but he also miserably failed and refused to pay the monthly rentals of the premises without justifiable reason and despite verbal and written demands made upon him;

10. DONSOL and DB SECURITIES referred the respondents' failure above-stated to their lawyer who addressed him a letter dated April 11, 1997. In the said letter, the demand for him to execute the lease contract of the premises, and to pay the rentals for the periods, October to December 1996 at P14,000.00 every month, and the rentals for the periods, January to March 1997 to P16,000.00 (20% increase) per month was reiterated x x x;

11. However, instead of complying with the demands, respondent addressed us a letter through our lawyer dated April 24, 1997. In his said letter, he stated that SEC and SBCC will not enter into such contract of lease because allegedly, the premises is a common area. He further stated that the appropriation of the premises to any unit owners is in violation of the Condominium Act x x x;

12. Amazed of the respondent's stand (on our demands), our lawyer addressed him a letter dated May 13, 1997 informing him of DONSOL and DB SECURITIES's title(s) over the premises issued by the Registry of Deeds of the Province of Rizal in accordance with the provisions of the Condominium Acts as early as 1982. We informed him of the conclusiveness, and finality of our title(s), and his failure to question the same within the prescriptive period, copy of said letter is hereto attached and made part hereof, Annex, 'D';

13. Despite knowledge of the validity, conclusiveness, and finality of DONSOL and DB SECURITIES titles over the premises, respondent with grave abuse of confidence and in bad faith, failed and refused and continue to fail and refuse to heed and/or comply with the demand(s) to the damage and prejudice of DONSOL and DB SECURITIES.^[6]

The complaint-affidavit was referred to the Evaluation and Preliminary Investigation Bureau, which required petitioner to file his counter-affidavit.

Petitioner filed his counter-affidavit on October 15, 1997 where he alleged the following, *inter alia*:

4. The truth of the matter is that the area referred to as unit G-03 and portion of G-02 by the complainant, Mr. Teodoro, and which used to be a canteen/coffee shop, is a part of the ground floor lobby/hallway which is

held in common by all the condominium unit owners of the SEC Building. The operator/owner of the said canteen at the ground floor lobby, Ms. Melisa Mendoza, was repeatedly directed by the SEC and the SBCC to vacate the premises because of the findings of the Mandaluyong City Fire Department that the structure serving as a canteen is a fire hazard and poses serious and imminent threat to the unit owners of the building and the public in general considering that the majority or a substantial portion of the building is being occupied by the Securities and Exchange Commission (SEC). When said Mrs. Mendoza persistently refused to vacate the premises and remove the illegal structure built therein, the herein affiant, acting in his capacity as Chairman and President of SEC and SBCC, respectively, wrote an official letter requiring Mrs. Mendoza to immediately vacate the premises, as the illegal structure (canteen) built therein was a serious threat to the large number of the people or the public who come and go to the SEC, not to mention the unit owners occupying their respective units. A copy of the said letter is hereto attached and marked as Annex 'C' and made part hereof.

5. The said letter clearly indicates the stand of the SEC and SBCC - that the illegal structure which is being used as a canteen dangerously impedes the egress of the public from the building and that the premises intended as a common area for the comfort and safety of the public. It would therefore be absurd and sheer illogic for herein affiant to 'intimate' to Mr. Teodoro, as the latter would claim, the commission of the illegal act like the lease of the said premises, knowing that the area is part of the ground floor hallway which is held in common by all the units owners of the SEC Building, and such intimation is contrary to law (National Building Code), morals, good custom and public policy.

6. Emily S. Mendoza, in her letter to the SEC dated October 11, 1996, clearly acknowledged that the area she occupied and used as a canteen/coffee shop is part of the ground floor lobby/hallway, as she later on willingly complied with the order to vacate. A copy of the said letter is hereto attached and marked as Annex 'D' and made part hereof.

7. There is no truth to the allegation that there was a contract of lease agreed upon between the corporations of Mr. Teodoro as one party and the SEC and SBCC as the other party. This claim is a bald-face lie and manifestly false in that Mr. Teodoro is evidently imagining a fact that does not exist, as he could not even make up his mind as to the terms of the alleged contract of lease. Prior to the filing of the civil complaint before the Metropolitan Trial Court, he sent to SEC and SBCC for signing an alleged contract of lease purportedly embodying the agreement of the parties. The preparation of the contract and its transmission to the SEC and SBCC was a subterfuge, a devious scheme to lend semblance to the existence of an alleged fact which does not exist and, per se, illegal. A copy of the said document is hereto attached and marked as Annex 'E' and made part hereof. The said document stated in paragraph 1 of the alleged terms and conditions the monthly rental of that they call unit G-03 which is P14,000.00, to be shared by the lessees as follows: SEC "P9,800.00 and SBCC - P4,200.00.

8. Compare this with paragraph 7 of the Complaint-Affidavit where it was alleged that monthly rental agreed upon the parties was P14,000.00 to be shared by SEC and SBCC at P7,000.00 each. This glaring discrepancy as to the rental sharing in the alleged contract of lease and the allegation in the complaint-affidavit filed before this Honorable Court is an eloquent proof that there was really no agreement to lease the premises and the alleged contract of lease is just a malicious concoction of a scheming mind. In other words, there is no contract to speak of in the first place.

9. The area where the canteen used to be situated is now being used as a passageway/lobby by the unit owners and their visitors and the public who come and transact business with the SEC. Needless to say, SEC and SBCC is under no obligation to pay any rent, as it is not occupying the area in the first place, and secondly, the area is held in common by all the unit owners of the condominium and, as aforesaid, being used by the public.

10. Mr. Teodoro's claim that 'respondent (has) misappropriated and converted to his own personal use and benefit the amount(s) of rentals due to DONSOL and DB SECURITIES', hence the 'provisions of the Revised Penal Code on Estafa x x x was committed by respondent,' are wild conjectures, speculations and conclusions of law without any factual basis, as the complaint never specified the necessary relevant facts supportive of such very liberal inference. Nowhere in the Complaint-Affidavit was there any narration of facts that proves or even remotely points to any misappropriation or conversion of the monthly rentals. The acts constituting misappropriation or conversion must be clearly alleged, otherwise the complaint must necessarily fall. The refusal to execute the alleged contract of lease, for the reasons aforesaid, cannot even be remotely construed as misappropriation or conversion such refusal was in accord with the law and/or public policy.

11. Sec. 3(e) of RA 3019 cited by complainant does not also apply to herein affiant. Affiant, in the discharge of his official functions, never gave any unwarranted benefit, advantage or preference to any private party. His refusal to sign the alleged contract of lease cannot possibly be construed as bad faith or malice or even gross inexcusable negligence on his part. For one, affiant never misrepresented himself. His stand, as well as that of SEC and SBCC, is consistent from the very start - that the illegal structure at the ground floor lobby must be removed as it is sitting on a common area and is dangerously impeding the egress of the public from the building. Such a structure is a fire hazard and poses serious threat to the unit owners and the public in general. For another, there was really no lease agreement to speak of.^[7]

Thereafter, the Fact-Finding and Intelligence Bureau submitted a Report dated June 10, 1998 where the investigators recommended the filing of criminal charges against petitioner for violation of Section 3 (e) of R.A. No. 3019 and administrative charges of dishonesty, gross misconduct, abuse of authority and conduct unbecoming of a public official. The investigators further recommended the preventive suspension of petitioner.^[8]