



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BENJAMIN A. UMIPIG,
Petitioner,

G.R. No. 171359

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

X-----X

RENATO B. PALOMO and
MARGIE C. MABITAD,
Petitioners,

G.R. No. 171755

-versus-

PEOPLE OF THE PHILIPPINES,
Respondent.

X-----X

CARMENCITA FONTANILLA-
PAYABYAB,
Petitioner,

G.R. No. 171776

Present:

BERSAMIN, J.,
Acting Chairperson,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,* and
PERLAS-BERNABE, JJ.**

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

18 JUL 2012

X-----X

* Designated Additional Member per Raffle dated July 4, 2012 vice Associate Justice Teresita J. Leonardo-De Castro who inhibited for being then the Presiding Justice of the Sandiganbayan.

** Designated Acting Member of the First Division per Special Order No. 1227 dated May 30, 2012.

DECISION

VILLARAMA, JR., J.:

Before us are consolidated appeals by certiorari under Rule 45 of the 1997 Rules on Civil Procedure, as amended, assailing the January 4, 2006 Decision¹ and January 30, 2006 and March 1, 2006 Resolutions² of the Sandiganbayan, Fourth Division finding petitioners Benjamin A. Umipig, Renato B. Palomo, Margie C. Mabitad and Carmencita Fontanilla-Payabyab guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019, or the Anti-Graft and Corrupt Practices Act, as amended.

Factual Background

The National Maritime Polytechnic (NMP) is an attached agency of the Department of Labor and Employment tasked to provide necessary training to seafarers in order to qualify them for employment.

Sometime in 1995, NMP undertook an expansion program. A pre-feasibility study conducted by the NMP identified Cavite as a possible site for the expansion as Cavite is close to the employment market for seafarers. Thus, NMP dispatched a team to look for a site in Cavite, and a suitable location consisting of two parcels of land was found at Sta. Cruz de Malabon Estate in Tanza, Cavite: Lots 1730-C and 1730-D, which are both covered by TCT No. T-97296-648 as part of a bigger parcel of land, Lot 1730.³

Petitioner Palomo, then NMP Executive Director, presented for approval to the NMP Board of Trustees the two parcels of land they identified. On August 21, 1995, the Board approved the proposal in principle

¹ *Rollo* (G.R. No. 171359), pp. 7-28. Penned by Associate Justice Jose R. Hernandez with Associate Justices Gregory S. Ong and Rodolfo A. Ponferrada concurring. The assailed decision was rendered in Criminal Case No. 27477.

² *Id.* at 30; *rollo* (G.R. No. 171776), pp. 74-80.

³ TSN, November 22, 2004, pp. 8-11; Exhibits "21" and "22".

and authorized Palomo “to start negotiations for the acquisition of the site in Cavite and if necessary to pay the earnest money.”⁴

Palomo thereafter began negotiations with Glenn Solis, a real estate broker, for the purchase of Lots 1730-C and 1730-D. Solis is the Attorney-in-Fact of the registered owners of said properties by virtue of a Special Power of Attorney (SPA) executed in his favor.

On November 9, 1995, Palomo, in a handwritten memorandum to petitioners Umipig, Fontanilla and Mabitad requested them to “cause the release of the sum of Five Hundred Thousand Pesos (₱500,000) x x x [as] EARNEST MONEY for the purchase/acquisition of [a] 5-hectare lot for NMP extension to Luzon—in favor of MR. GLEN[N] SOLIS, holder of authority documents of the lot owners—and thereby authorized to represent the owners on their behalf for this purpose.”⁵

On November 10, 1995, Disbursement Voucher No. 101-9511-1114 was prepared for the ₱500,000 earnest money with Glenn B. Solis as claimant. Umipig, then NMP Administrative Officer, after receiving the disbursement voucher and its supporting documents, issued a memorandum on even date to Palomo enumerating the infirmities of the supporting documents attached, to wit:

1. Contract to Sell dated January ___ 1995 for lot with TCT No. 97296 is between Eufrocina Sosa as Vendor and Nilda L. Ramos and six (6) others co-heir/vendor.
2. Yet the authority to sell dated November 8, 1995 was signed by Nilda I. Ramos (only) representing herself and her group.
3. The authority to sell is not notarized (dated November 8, 1995) at ₱370.00/sq. meter while the offer to NMP dated October 11, 1995 is for ₱350.00/sq.m.
4. Tax declaration No. 3908 and 3907 for TCT No. T-16279 and T-16356 are in the name of Eufrocina Raquero.
5. Xerox copy of TCT No. “97267”? is illegible, hence, one can not establish its relevance to the voucher.

⁴ Exhibit “18”, p. 7.

⁵ Exhibit “17”.

6. That the aforesaid documents are all photocopies/xerox, not certified as true xerox copies.
7. That the feasibility study being work out by the NEDA and the NMP for the expansion of NMP to Luzon, is yet to be submitted to the NMP Board of Trustees for approval.
8. The undersigned signs subject voucher with aforesaid infirmities with reservations and doubts as to its legality, in compliance with Management Memo. dated November 9, 1995 for us to release the voucher.⁶

Umipig attached to the disbursement voucher his memorandum to Palomo when he signed Box A thereof. Petitioner Fontanilla-Payabyab, then Budget Officer, stamped the words "Fund Availability," and signed the voucher with note "Subject to clarification as per attached note of AO dated 11/10/95." Petitioner Mabitad, then NMP Chief Accountant, signed Box B of the voucher, and noted "as per findings of AO per attach[ed] memo, with reservations as to [the] legality of the transaction per observations by AOV."⁷ Palomo signed Box C as approving officer.⁸

In response to Umipig's memorandum, Palomo instructed him to clear up said infirmities and authorized him to arrange a travel to Manila with their Finance Officer/Accountant "to clear these acts once and for all." Palomo further added that "[t]ime is of the essence and [they] might lose out in this transaction" and that "the cost of the lot per square meter has been set at ₱350 from the beginning."⁹

On December 10, 1995, a ₱2,000,000 partial payment was released for the purchase of Lots 1730-C and 1730-D through Disbursement Voucher No. 101-9512-082,¹⁰ again with Solis as claimant. Umipig signed Box A but noted "Subj. to submission of legal requirements as previously indicated on Nov[ember] 10, 1995 [Memorandum]." Mabitad signed Box B and noted "w/ reservations as to the legality of the transactions." Palomo signed Box C as approving officer.

⁶ *Rollo* (G.R. No. 171755), p. 156.

⁷ Exhibit "16-B".

⁸ Exhibit "16".

⁹ *Supra* note 6.

¹⁰ Exhibit "8".

On December 21, 1995, a Contract to Sell was executed between Palomo and Solis over Lots 1730-C and 1730-D with a combined area of 22,296 square meters and a total agreed purchase price of ₱7,803,600 or ₱350 per square meter. Said Contract to Sell eventually ripened into a consummated sale (referred hereinafter as “the first purchase”) as TCT No. T-936236¹¹ for Lot 1730-C and TCT No. T-936237¹² for Lot 1730-D are now registered in the name of NMP, such titles having been issued on November 21, 2000.

The foregoing sale transaction (“*first purchase*”) covering Lots 1730-C and 1730-D was the subject of Criminal Case No. 26512 filed in the Sandiganbayan against Umipig, Palomo and Mabitad on February 16, 2001. On August 6, 2004, the Sandiganbayan’s Fifth Division rendered a decision¹³ acquitting all three accused of the charge of violation of Section 3 (e) of R.A. No. 3019.

After consummating the first purchase, Palomo again negotiated with Solis for the purchase of two more parcels of land adjacent to the lots subject of the first purchase: Lot 1731 which was covered by TCT No. 16356¹⁴ and registered in the name of the late Eufrocina Raqueño, married to the late Leoncio Jimenez, and Lot 1732 covered by TCT No. 35812¹⁵ and registered in the name of the late Francisco Jimenez, son of Eufrocina Raqueño and Leoncio Jimenez. Solis this time was armed with two Special Power of Attorneys (SPAs): one dated April 15, 1996 appearing to have been executed by the Jimenez heirs, all residents of California, U.S.A., authorizing Teresita Jimenez-Trinidad to sell Lots 1731 and 1732 and to receive consideration;¹⁶ and another dated July 12, 1996 executed by Trinidad authorizing Solis to sell Lots 1731 and 1732 and to receive consideration.¹⁷

¹¹ Exhibit “21”.

¹² Exhibit “22”.

¹³ *Rollo* (G.R. No. 171755), pp. 85-118.

¹⁴ Exhibit “N”.

¹⁵ Exhibit “O”.

¹⁶ Exhibit “C” & “C-1”.

¹⁷ Exhibit “B” & “B-1”.

On August 1, 1996, Palomo and Solis executed a Contract to Sell¹⁸ over Lots 1731 and 1732. It specified a total purchase price of ₱11,517,100 to be paid as follows:

- 4.1 ₱6,910,260 downpayment upon [signing] of [the Contract to Sell].
- 4.2 Balance after fifteen (15) days upon receipt of approve[d] Extra-judicial partition of Estate, location plan, reconstitution of owner's copy and signing of Deed of Sale.¹⁹

On even date, Disbursement Voucher No. 101-9608-787²⁰ was prepared for the downpayment of ₱6,910,260 with Solis as payee. Fontanilla-Payabyab stamped the words "FUND AVAILABILITY" and signed the voucher. Umipig signed Box A. Mabitad signed Box B, while Palomo signed Box C as approving officer.

Also on August 1, 1996, a Request for Obligation of Allotments²¹ was prepared by Fontanilla-Payabyab for the ₱6,910,260 down payment. Mabitad certified "that unobligated allotments are available for the obligation" and affixed her signature thereon. On August 2, 1996, NMP issued Development Bank of the Philippines (DBP) Check No. 0001584295²² in the amount of ₱6,910,260 payable to Solis. The signatories to the check were Umipig²³ and Palomo.²⁴

On December 27, 1996, Disbursement Voucher No. 101-9612-1524 was prepared for ₱3,303,600 with Solis as payee. Of said amount, ₱1,303,600 was for the full payment of the lots under the first purchase while the remaining ₱2,000,000 was partial payment of the balance for Lots 1731 and 1732.²⁵ Fontanilla-Payabyab stamped the words "FUND AVAILABILITY" and signed the voucher. Umipig signed Box A. Mabitad signed Box B, while Palomo signed Box C as approving officer. On even

¹⁸ Exhibit "A".

¹⁹ Exhibit "A-1".

²⁰ Exhibit "D".

²¹ Exhibit "E".

²² Exhibit "F".

²³ Exhibit "F-2".

²⁴ Exhibit "F-1".

²⁵ Records (Crim. Case No. 27477), Volume I, p. 308; Exhibit "12".

date, NMP issued DBP Check No. 0001752005²⁶ in the amount of ₱3,303,600 payable to Solis. The signatories to the check were Umipig²⁷ and Palomo.²⁸

The total payments made for the “*second purchase*” covering Lots 1731 and 1732 was **₱8,910,260.00**, which is the subject of the present controversy. After receiving these payments, Solis disappeared and never showed up again at the NMP. Palomo even sent Solis three letters dated March 4, 1998,²⁹ August 11, 1998,³⁰ and September 30, 1998,³¹ to follow up the approved extrajudicial partition of estate, location and/or subdivision plan, reconstitution of owners’ copy and signing of Deed of Absolute Sale. Under the Contract to Sell, the submission of said documents was made a condition for payment of the balance, being necessary for the transfer and registration of said properties in the name of NMP.

As no reply was received from Solis, Palomo sought the assistance of the Office of the Solicitor General (OSG) and informed the latter of the inability to locate Solis. The OSG then inquired with the Philippine Consulate General in Los Angeles, California as to the genuineness and authenticity of the SPA that was executed by Urbano Jimenez, et al. authorizing Teresita Trinidad to sell Lots 1731 and 1732. In a letter³² dated June 11, 1999, Vice Consul Bello stated that the SPA executed by Urbano Jimenez, et al. and shown to NMP was **fake**. According to Vice Consul Bello, when the Consulate searched its files for 1996, they found an SPA authorizing the sale of Lots 1731 and 1732 but it was not the same as the instrument given to NMP. The genuine SPA³³ for said properties, bearing the same date, O.R. No., Service No., Document No. and Page No. but without wet seal, was executed by Gloria Potente, Marylu Lupisan and Susan Abundo authorizing

²⁶ Exhibit “H”.

²⁷ Exhibit “H-2”.

²⁸ Exhibit “H-1”.

²⁹ Exhibit “J”.

³⁰ Exhibit “K”.

³¹ Exhibit “L”.

³² Exhibit “I”.

³³ Exhibit “M”.

Presbitero J.Velasco, Jr. as attorney-in-fact. The OSG reported the Consulate's findings to Palomo in a letter³⁴ dated June 17, 1999.

On July 19, 1999, Palomo filed an Affidavit-Complaint³⁵ against Solis before the Tacloban City Prosecutor's Office for estafa through falsification of public documents. Upon the request of the Tacloban City Prosecutor's Office, the Commission on Audit (COA) conducted a special audit on the transactions subject of the complaint filed by Palomo.

Atty. Felix M. Basallaje Jr., State Auditor III of the COA and Resident Auditor at the NMP, set forth his findings in his Special Audit Report, to wit:

1. Disbursement in the amount of P8,910,260.00 in favor of Mr. Glenn Solis for the purchase of two lots covered by TCT No. 16356 and TCT No. 35812 was not supported by a Torrens Title or such other document that title is vested in the government (NMP) in violation of Sec. 449 of GAAM Vol. I.³⁶
2. The contract to sell entered between NMP and Mr. Glenn Solis is tainted with irregularities the parties to the contract not being authorized as required in Sec. 5 of P.D. 1369 and pertinent provisions of the Civil Code of the Philippines.³⁷

In the same report, the following persons were considered responsible for the subject transactions:

1. Mr. Glenn Solis -	For acting as vendor of the above subject property (TCT Nos. 16356 and 35812) without authority from the owner thereof;
2. Ms. Teresita Jimenez - Trinidad	Formis[re]presentation/conspiring with Mr. Glenn Solis by issuing a Special Power of Attorney to sell the above property without authority from the owner.
3. Mr. Renato B. Palomo- Executive Director	For entering into a contract to sell without authority from the NMP Board of Directors and by signing Box "C" approving of the voucher as payment.

³⁴ Exhibit "7".

³⁵ Exhibits "6" and "6-a".

³⁶ Exhibit "L-1".

³⁷ Exhibit "L-2".

4. Benjamin A. Umipig- Administrative Officer	For signing Box "A" in certifying the payment as lawful.
5. Margie C. Mabitad - Chief Accountant	For signing Box "B" certifying as to availability of funds, that expenditure are proper and supported by documents.
6. Carmencita Fontanilla - Budget Officer	For signing in the voucher for fund control and in the ROA for requesting obligation of the above transactions. ³⁸

Atty. Basallajethus made the following recommendations:

1. Disallow in audit all transaction[s] covering payments made to Mr. Glenn Solis under Voucher No. 101-9608-787 and Voucher No. 101-9612-1524 with a total amount of P8,910,260.00.
2. Require Mr. Glenn Solis and his principal, Teresita Jimenez Trinidad to restitute the amount received plus damages by filing a separate civil suit against the vendor.
3. Institute the filing of appropriate case against parties involved, if evidence warrants.³⁹

After preliminary investigation, the Tacloban City Prosecutor's Office issued a Resolution⁴⁰ dated January 25, 2001 finding a *prima facie case* of malversation of public funds committed in conspiracy by Solis, Jimenez-Trinidad, Palomo, Fontanilla-Payabyab, Umipig and Mabitad. Upon review, the Deputy Ombudsman for the Visayas approved with modification the resolution of the Tacloban City Prosecutor's Office and recommended instead the prosecution of petitioners for violation of Section 3(e) of R.A. No. 3019, as amended, or the Anti-Graft and Corrupt Practices Act and the filing of a separate Information for Falsification against Solis.⁴¹

On May 20, 2002, petitioners were charged with violation of Section 3(e), R.A. No. 3019, under the following Information:

³⁸ Exhibit "L-4".

³⁹ Exhibit "L-5".

⁴⁰ *Rollo* (G.R. No. 171755), pp. 75-79.

⁴¹ *Id.* at 80-84.

That on or about the 1st day of August 1996, and for sometime prior or subsequent thereto, at Tacloban City, Province of Leyte, Philippines, and within the jurisdiction of this Honorable Court, abovenamed accused RENATO B. PALOMO, BENJAMIN A. UMIPIG, MARGIE C. MABITAD and CARMENCITA FONTANILLA-PAYABYAB, public officers, being the Executive Director, Administrative Officer, Chief Accountant and Budget Officer, respectively, of the National Maritime Polytechnic, stationed at Cabalawan, Tacloban City, in such capacity committing the offense in relation to office, conniving, confederating and mutually helping with each other and with GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD, private individuals, with deliberate intent, with manifest partiality, evident bad faith and/or gross inexcusable negligence, did then and there willfully, unlawfully and feloniously enter into a Contract to Sell with accused GLENN [B.] SOLIS, for the acquisition of two (2) parcels of land denominated as Lot Nos. 1731 and 1732 covered with Transfer Certificate of Title Nos. 16356 and 35812, located at Tanza, Cavite, with an area of 32,906 sq. meters more or less, for a consideration in the amount of EIGHT MILLION, NINE HUNDRED TEN THOUSAND, TWO HUNDRED SIXTY PESOS (P8,910,260.00), Philippine Currency, and consequently in payment thereof issued Development Bank of the Philippines (DBP) Check Nos. 1584295 dated August 2, 1996, in the amount of SIX MILLION, NINE HUNDRED TEN THOUSAND, TWO HUNDRED SIXTY PESOS (P6,910,260.00) Philippine Currency and 1752005, dated December 27, 1996, in the amount of THREE MILLION, THREE HUNDRED THREE THOUSAND, SIX HUNDRED PESOS, (P3,303,600.00) Philippine Currency, respectively, through Voucher Nos. 1019608-787 and 101-9612-1524, respectively, despite the absence of a copy of a Torrens Title of the land in the name of the National Maritime Polytechnic (NMP) or any document showing that the title is already vested in the name of the government, as mandated under Section 449 of the Government Accounting and Auditing Manual, Volume I, and despite the lack of authority on the part of the accused GLENN B. SOLIS to sell the said lands not being the real or registered owner and the fictitious/falsified Special Power of Attorney allegedly issued by accused TERESITA JIMENEZ-TRINIDAD, resulting to the non-acquisition of the land by the NMP, thus, accused public officers, in the course of the performance of their official functions had given unwarranted benefits to accused private individuals GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD and to the damage and prejudice of the government particularly, the National Maritime Polytechnic in the amount aforestated.

CONTRARY TO LAW.⁴²

Palomo and Mabitad were arraigned on July 22, 2002.⁴³ Umipig and Fontanilla-Payabyab were arraigned on September 23, 2002⁴⁴ and January

⁴² Records (Crim. Case No. 27477), Volume I, pp. 1-2.

⁴³ Id. at 60-61.

20, 2004,⁴⁵ respectively. They all pleaded not guilty. Solis and Jimenez-Trinidad remained at large.

In the Sandiganbayan's Pre-Trial Order⁴⁶ dated January 20, 2004, all the parties agreed that the following factual and legal issues would be resolved in the case:

1. Whether or not the act of accused Executive Director Renato Palomo y Bermes in entering, in behalf of the NMP, into a Contract to Sell with accused Glenn Solis required prior authority and/or approval from the Board of Trustees of NMP; and,
2. Whether or not all of the accused conspired and violated Section 3(e) of R.A. 3019, as amended.⁴⁷

At the trial, the prosecution presented two witnesses: Atty. Basallaje, Jr. and Emerita T. Gomez, State Auditor I, also of the COA.

Atty. Basallaje testified on the audit investigation which the COA Regional Director instructed him to conduct on NMP regarding the transaction involving Lots 1731 and 1732. He likewise identified the Special Audit Report he prepared after the investigation, as well as the documents he had evaluated-- only those documents which were attached to the endorsement letter from the COA Regional Director and those on file with him as resident auditor of NMP.⁴⁸ He also testified that he informed the management of NMP regarding the audit only after it was terminated. He admitted that he did not read or ask for a copy of the minutes of the August 21, 1995 NMP Board of Trustees meeting which the NMP Management cites as the source of authority for entering the subject transaction. Atty. Basallaje opined that it was incumbent upon the NMP management to support their claim that proper authority existed so he did not ask for a copy.⁴⁹

⁴⁴ Id. at 115.

⁴⁵ Id. at 310.

⁴⁶ Id. at 303-309.

⁴⁷ Id. at 308.

⁴⁸ TSN, June 16, 2004, p. 54.

⁴⁹ Id. at 47-49.

Emerita Gomez testified that she was assigned at the NMP as auditor from the COA from November 17, 1985 until October 5, 2003. In the course of her duties, she recalled having received documents pertaining to the purchase of Lots 1731 and 1732. Said documents, which she identified in court, are: (1) Disbursement Voucher No. 101-9608-787 dated August 1, 1996 for partial payment to Glenn Solis of the amount of ₱6,910,260 to which a Request for Obligation of Allotments was attached; (2) a certified true copy of Check No. 0001584295 dated August 2, 1996 in the amount of ₱6,910,260 paid to the order of Glenn B. Solis; (3) Contract to Sell; (4) Special Power of Attorney executed by Teresita Jimenez-Trinidad in favor of Glenn Solis; (5) Special Power of Attorney purportedly executed by Urbano Jimenez, et al. in favor of Teresita Jimenez-Trinidad; (6) a certified true copy of Disbursement Voucher No. 101-9612-1524 dated December 27, 1996 for payment of parcels of land covered by TCT Nos. 16356 and 35812 in the amount of ₱3,303,600 to Glenn Solis; (7) a certified true copy of Check No. 001752005 dated December 27, 1996 in the amount of ₱3,303,600 paid to the order of Glenn Solis; (8) a letter dated June 11, 1999 by Vice Consul Bello addressed to Atty. Carlos Ortega, Assistant Solicitor General; (9) TCT No. 16356 RT-1245 in the name of Eufrocina Raqueno; (10) TCT No. T-35812 in the name of Francisco Jimenez; and (11) Declaration of Real Property in the name of Eufrocina Raqueño.

Gomez said she was the one who supplied the documents to Atty. Basallaje when the latter conducted an audit investigation. She was also tasked to encode the Special Audit Report. Gomez likewise identified the signatures of petitioners Umipig, Fontanilla, Mabitad and Palomo appearing on the disbursement vouchers and checks she had previously identified, and claimed that she was familiar with their signatures.⁵⁰

On the other hand, petitioners testified on their respective defenses, as follows:

⁵⁰ TSN, September 6, 2004, pp. 6-22.

Petitioner Palomo related the circumstances surrounding the transaction involving Lots 1731 and 1732. He testified that his authority for the negotiation and payment of earnest money to Glenn Solis came from the Board of Trustees as reflected in the minutes of its August 21, 1995 meeting. He also admitted that it was Solis who prepared the Contract to Sell and that he did not try to meet the owner of the property. When the titles were presented to them, they believed that on their face value, they were in order. Palomo also said that the adjoining lots were being sold for ₱1,000 to ₱2,000 per square meter while the selling price of the subject lots was only ₱350 per square meter. On cross-examination, Palomo admitted that none of the registered owners are signatories to the SPAs which Solis presented to him and that it was only when they could not anymore contact Solis, after the latter received the payments, that he panicked and tried to check if the documents shown to him were proper and authentic. He further disclosed that he did not consider Section 449 of the Government Accounting and Auditing Manual, Volume I when he transacted with Solis over the lots purchased by NMP.⁵¹

Petitioner Umipig testified on his duties as NMP Administrative Officer and the circumstances relating to the payments made in connection with the subject lots. He stated that by signing Disbursement Voucher No. 101-9612-1524 dated December 27, 1996, it means that the correct procedure was followed and the voucher was prepared, typed and supported by complete documents as required. He likewise admitted that before he signed the voucher, he presumed that everything was in order because said document had already passed through several offices.

On cross-examination, Umipig said that he made objections, as evidenced by a memorandum, to the payments made for the first purchase but did not anymore object on the payments pertaining to the second purchase because the Board of Trustees already gave a go signal for their

⁵¹ TSN, November 22, 2004, pp. 11-20, 41-55.

purchase. He also cited an alleged COA regulation stating that if the subordinate objects in writing, he will be exonerated if he is later proven correct.⁵²

Petitioner Mabitad, meanwhile testified on her duties and responsibilities as Accountant of NMP and identified several documents pertaining to the subject lots. She stated that when she signed Box B of the disbursement vouchers, she certified that funds are available for the purpose and the supporting documents duly certified in Box A are attached. Like Umipig, she also made reservations but she only expressed them in those vouchers pertaining to the first purchase. Mabitad cited Section 106 of the Government Auditing Code of the Philippines (P.D. No. 1445) which she claims relieves her from liability when she made her reservations. She also testified that her only participation in the subject transaction was to certify that the funds for it are available. She likewise stated that she did not make any notations in the disbursements for the second purchase because the first purchase was successful and titles to the lots acquired have been registered in the name of NMP.⁵³

Petitioner Fontanilla-Payabyab, for her part, testified on her duties and responsibilities as Budget Officer of NMP. She explained that as budget officer, she is not required to sign vouchers. She nonetheless signed Disbursement Voucher Nos. 101-9608-787 and 101-9612-1524 for her own purpose because she was the one who followed up the release of funds from the Department of Budget and Management (DBM) so she can track the available cash balance of NMP as it was her duty to follow up with the DBM the release of the agency's budget. She further clarified that her signature does not have the effect of validating or invalidating the voucher. She also claimed that even if she is Head of Finance, she cannot influence the

⁵² TSN, March 8, 2005, pp. 12-18, 23-42.

⁵³ TSN, May 23, 2005, pp. 6-36.

decisions of her subordinates like Mabitad because they have specific jobs under the COA rules and under other laws.⁵⁴

On January 4, 2006, the Fourth Division of the Sandiganbayan issued the assailed decision, the *falloof* which reads:

ACCORDINGLY, accused RENATO B. PALOMO, BENJAMIN A. UMIPIG, MARGIE A. MABITAD and CARMENCITA FONTANILLA-PAYABYAB, are found guilty beyond reasonable doubt of having violated RA 3019, Sec. 3(e) and are sentenced to suffer the indeterminate penalty of SIX (6) YEARS AND ONE (1) MONTH AS MINIMUM AND NINE (9) YEARS AS MAXIMUM, perpetual disqualification from public office, and to indemnify jointly and severally the Government of the Republic of the Philippines in the amount of EIGHT MILLION NINE HUNDRED TEN THOUSAND AND TWO HUNDRED SIXTY PESOS (Php8,910,260).

Since the Court did not acquire jurisdiction over the person of accused GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD, let the cases against them be, in the meantime, archived, the same to be revived upon their arrest. Let an alias warrant of arrest be then issued against accused GLENN B. SOLIS and TERESITA JIMENEZ-TRINIDAD.

SO ORDERED.⁵⁵

The Sandiganbayan's Ruling

In convicting petitioners, the Sandiganbayan ruled that the evidence on record clearly shows that petitioners acted with evident bad faith and gross inexcusable negligence in entering into the Contract to Sell dated August 1, 1996 with Solis and in disbursing the amount of ₱8,910,260 for the second purchase. Said court held that petitioners violated Section 449 of the Government Accounting and Auditing Manual since the Contract to Sell does not suffice to prove that title is vested in the Government and even contravenes the requirement that proof of title must support the vouchers.

The Sandiganbayan faulted Palomo for breaking the law and acting with evident bad faith when he entered into a deal that gave no guarantee that ownership would be transferred to the Government and that such was

⁵⁴ Id. at 72-90.

⁵⁵ *Rollo* (G.R. No. 171359), pp. 26-27.

obviously disadvantageous to the government. The other petitioners likewise violated the law when they signed the disbursement vouchers in the absence of any document that would prove ownership by the Government. The Sandiganbayan said petitioners cannot claim that they only followed the terms of the Contract to Sell because they also violated its provisions, the last disbursement voucher for ₱2,000,000 having been issued without legal basis. It pointed out that the Contract to Sell provided that a downpayment of ₱6,910,260 must be given upon its signing and the payment of the balance must be paid 15 days *after* receipt of several specified documents. Petitioners, however, released a portion of the balance even without receiving any of the said documents.

The Sandiganbayan further noted that despite being apprised of Umipig's reservations on the legality of the transactions with Solis, petitioners deliberately proceeded to sign the disbursement vouchers and made possible the release of the money to Solis. Petitioners thus acted with gross inexcusable negligence when they did not verify the authenticity of the SPAs executed by Solis and Trinidad, and released the ₱2,000,000 for no valid reason.

The Sandiganbayan also ruled that the third element – undue injury to the Government as well as giving unwarranted benefits to a private party – was duly proven. Petitioners' acts unmistakably resulted in the Government's loss of ₱8,910,260 when Solis disappeared after receiving said amount and also gave Solis unwarranted benefits.

Finally, the Sandiganbayan held that the facts established conspiracy among the petitioners because the unlawful disbursements could not have been made had they not affixed their signatures on the disbursement vouchers and checks. When petitioners thus signed the vouchers, they made it appear that disbursements were valid when, in fact, they were not. Since each of the petitioners contributed to attain the end goal, it can be concluded

that their acts, taken collectively, satisfactorily prove the existence of conspiracy among them.

The motions for reconsideration filed by Palomo, Payabyab and Mabitad were denied by the Sandiganbayan in its Resolution dated March 1, 2006. Umipig's motion for reconsideration was likewise denied under the Resolution dated January 30, 2006.

These consolidated petitions were filed by Umipig (G.R. No. 171359), Payabyab (G.R. No. 171776), Palomo and Mabitad (G.R. No. 171755).

Petitioners' Arguments

Petitioners question the application of Section 449 of the Government Accounting and Auditing Manual as said provision does not categorically say that disbursement vouchers for the acquisition of land may not be signed unless title to the land is already in the name of Republic of the Philippines, or unless there is another document showing that title is already vested in the Government. They argue that the provision rather contemplates a situation where the evidence of ownership comes after the purchase or when the transaction has been consummated. They likewise contend that even if they were not charged under the Government Accounting and Auditing Manual, it is the regulation on which the finding of guilt was based and upon which they were held to have acted with evident bad faith and gross inexcusable negligence.

Umipig, Palomo and Mabitad also assert that no law, rule or regulation requires them to exercise a higher degree of diligence other than that of a good father of the family. Umipig adds that while his failure to repeat his reservations might be construed as an omission of duties, such omission cannot by any stretch of imagination be construed as negligence characterized by "the want of even the slightest care," or "omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally" He further contends that he treated the first purchase and

the subject contract as one single transaction as both were for one expansion program of the NMP and the lands subject of said acquisitions were contiguous. Thus, he did not see the need to repeat his written reservations. He also argues that there is no evidence that he and his co-petitioners acted in conspiracy as there was no proof of a chain of circumstances showing that each acted as a part of a complete whole.

Palomo and Mabitad, meanwhile assert that the SPAs in favor of Solis and Trinidad appeared to be in order and Palomo had no reason to doubt their authenticity. Accordingly, Palomo cannot be considered negligent or in bad faith, and should instead be presumed to have acted in good faith in the performance of his official duty. As with Mabitad, it is argued that she signed the vouchers as Chief Accountant whose signature is required by Section 86 of the State Audit Code which concerns the certification of the proper accounting official of the agency concerned that the funds have been duly appropriated for the purpose and the amount necessary to cover the proposed contract is available for expenditure and account thereof, subject to verification by the auditor concerned. Thus in signing the voucher, she merely certified as to the availability of funds which is a ministerial duty on her part. She also cites Section 106 of the Government Auditing Code of the Philippines since she made a prior reservation on the vouchers pertaining to the first purchase. Palomo and Mabitad further submit that they have no prior knowledge of perceived infirmities contrary to what was found by the Sandiganbayan, pointing out that in Umipig's Memorandum, there was no mention that the SPAs could possibly be fake. They contend that it was the falsified SPAs that resulted in the filing of charges against them so the determination of conspiracy should revolve around the acts of falsification committed by Solis and Trinidad; hence, it was petitioners who were the victims of said conspirators.

Finally, Fontanilla-Payabyab reiterates that her signature on the subject vouchers was not a requirement for the disbursement as it was only a tracking or monitoring entry on the current cash position of NMP so that she

can follow up the next cash allocation release from the DBM. She insists that the disbursement could have been made even without her signature. She also questions the finding of gross negligence on her part since it was not within her competence to determine the legality or illegality of a transaction. Further, she argues that even assuming she was indeed negligent, such finding precludes a ruling of conspiracy since the latter requires intentional participation.

Our Ruling

Petitioners were charged with violation of Section 3(e) of R.A. No. 3019 or the Anti-Graft and Corrupt Practices Act, as amended, which reads:

Section 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 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.

x x x x

The essential elements of Section 3(e) of R.A.No. 3019, as amended, are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;
2. He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and
3. His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions.⁵⁶

⁵⁶ *Albert v. Sandiganbayan*, G.R. No. 164015, February 26, 2009, 580 SCRA 279, 289-290.

The Court finds it no longer necessary to discuss at length the first element as it is not disputed, having been stipulated by the parties during pre-trial that during the material time and date alleged in the Information, Palomo was the Executive Director, Umipig was the Administrative Officer, Mabitad was Chief Accountant and Fontanilla-Payabyab was the Budget Officer of NMP. The third element of undue injury to the Government is likewise a non-issue since it was likewise stipulated during pre-trial that after payments totaling ₱8,910,260 were made to Solis for the subject lots, the latter disappeared and the SPAs he showed to NMP were found to be fake. Clearly, this is a quantifiable loss for the Government since NMP was not able to acquire title over the subject lots. Thus, the controversy lies in the second element of the crime charged.

Palomo acted with evident bad faith and gross inexcusable negligence; Umipig and Mabitad were grossly negligent in the performance of their duties

The second element provides the different modes by which the crime may be committed, that is, through “manifest partiality,” “evident bad faith,” or “gross inexcusable negligence.” There is “manifest partiality” when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.⁵⁷ “Evident bad faith” connotes not only bad judgment but also palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.⁵⁸ “Evident bad faith” contemplates a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purposes.⁵⁹ “Gross inexcusable negligence” refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently

⁵⁷ Id. at 290, citing *Alvizo v. Sandiganbayan*, 454 Phil. 34, 72 (2003).

⁵⁸ Id., citing *Sistoza v. Desierto*, 437 Phil. 117, 132 (2002).

⁵⁹ Id., citing *Air France v. Carrascoso, et al.*, 124 Phil. 722, 737 (1966).

but willfully and intentionally, with conscious indifference to consequences insofar as other persons may be affected.⁶⁰ These three modes are distinct and different from each other. Proof of the existence of any of these modes would suffice.⁶¹

We sustain the Sandiganbayan's finding of evident bad faith on the part of Palomo who had no authority to effect substantial payments -- ₱8,910,260.00 out of the total consideration of ₱11,517,100.00 -- for the lots to be purchased by NMP. The Minutes of the NMP Board meeting of August 21, 1995, which was cited by Palomo, states:

The chairman after consulting the members of the board indicated that the presentation was approved in principle. The chairman indicated that Mr. Palomo is authorized to start negotiations for the acquisition of the site in Cavite and **if necessary to pay the earnest money.**⁶²

Article 1482 of the Civil Code states that: "Whenever earnest money is given in a contract of sale, it shall be considered as part of the price and as proof of the perfection of the contract." The earnest money forms part of the consideration only if the sale is consummated upon full payment of the purchase price. Hence, there must first be a perfected contract of sale before we can speak of earnest money.⁶³

Palomo requested for the release of down payment in the amount of ₱6,910,260.00 notwithstanding that no contract of sale had yet been consummated, as only a contract to sell was executed by the supposed attorney-in-fact of the vendors, Solis. As earlier mentioned, the Contract to Sell over Lots 1731 and 1732 stipulated that the balance of the total consideration is to be paid 15 days after receipt of the approved "[e]xtra-judicial partition of Estate, location plan, reconstitution of owner's copy and signing of [the] Deed of Sale." This clearly indicates that the parties agreed to execute the contract of sale only after the full payment of the purchase

⁶⁰ Id.

⁶¹ *Sorriquez v. Sandiganbayan*, G.R. No. 153526, October 25, 2005, 474 SCRA 222, 229.

⁶² Exhibit "R-1".

⁶³ *Government Service Insurance System v. Lopez*, G.R. No. 165568, July 13, 2009, 592 SCRA 456, 469, citing *Serrano v. Caguiat* G.R. No. 139173, February 28, 2007, 517 SCRA 57, 66.

price by the buyer and the corresponding submission by the seller of the documents necessary for the transfer of registration of the lots sold. We have held that where the vendor promises to execute a deed of absolute sale upon the completion by the vendee of the payment of the price, the contract is only a contract to sell. Such stipulation shows that the vendor reserved title to the subject property until full payment of the purchase price.⁶⁴

There being no perfected contract of sale, Palomo had no authority to effect substantial payments for the second purchase. That partial payments on the first purchase was similarly made upon a mere contract to sell, is of no moment; it must be noted that such contract to sell (first purchase) eventually ripened into a consummated sale and titles over Lots 1730-C and 1730-D have been actually transferred in the name of NMP. The second purchase transaction, however, was not consummated despite the unauthorized down payment of ₱6,910,260.00. Even worse, funds were disbursed to pay for the balance despite non-receipt of the specified transfer documents.

Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage.⁶⁵ Mere bad faith or partiality and negligence *per se* are not enough for one to be held liable under the law since the act of bad faith or partiality must in the first place be evident or manifest, respectively, while the negligent deed should both be gross and inexcusable.⁶⁶ Negligence consists in the disregard of some duty imposed by law; a failure to comply with some duty of care owed by one to another.⁶⁷ Negligence is want of care required by the circumstances. It is a relative or comparative, not an absolute term and its application depends upon the

⁶⁴ *Nabus v. Pacson*, G.R. No. 161318, November 25, 2009, 605 SCRA 334, 352.

⁶⁵ *Reyes v. Atienza*, G.R. No. 152243, September 23, 2005, 470 SCRA 670, 683.

⁶⁶ *Constantino v. Sandiganbayan (First Division)*, G.R. Nos. 140656 & 184482, September 13, 2007, 533 SCRA 205, 222, citing *Sistoza v. Desierto*, 437 Phil. 117, 130 (2002).

⁶⁷ F.S. Tantuico, Jr., *State Audit Code Philippines Annotated*, First Ed., p. 529, citing *Murillo v. Mendoza*, 66 Phil. 689, 699 (1938); 28 R.C.L., pp. 752, 753; Moreno; *Santos v. Rustia*, 90 Phil. 358, 362 (1951); and *Corpus Juris*, Vol. 45, Sec. 582.

situation of the parties, and the degree of care and vigilance which the circumstances reasonably impose.⁶⁸

Palomo's bad faith was evident not only in the disbursement of substantial payment upon a mere contract to sell -- whereas the NMP Board granted him express authority only to start negotiations and pay earnest money if needed -- but also in the disbursement of ₱1,000,000.00 partial balance despite non-submission by Solis of the specified transfer documents. As correctly observed by the Sandiganbayan, Palomo failed to give a satisfactory explanation on the matter during cross-examination, thus:

PROS. CORESIS

Q In the contract to sell which I have shown to you earlier it is stated here that the balance is to be paid fifteen (15) days upon receipt of the approved extra judicial partition of the estate, location plan, reconstitution of owner's copy and signing of the deed of sale, do you confirm this?

A Yes, sir.

Q **At the time that you paid the second payment** which was amounting to P3 million and part of that was for the contract to sell, **there was no deed of sale executed by Glenn B. Solis in favor of National Maritime Polytechnic, am I correct?** On December 27 there was none?

A **I cannot recall.**

Q **You cannot recall because there was in fact none, am I correct?**

A **It could be, sir.**

x x x x

Q And the balance is supposed to be paid 15 days upon receipt of the extra-judicial partition and the signing of the deed of sale, is that correct?

A Yes, sir.⁶⁹ (Emphasis supplied.)

Palomo also committed gross inexcusable negligence in failing to protect the interest of the government in causing the release of substantial sums to Solis despite legal infirmities in the documents presented by the said

⁶⁸ Id. at 529-530, citing *U.S. v. Juanillo*, 23 Phil. 212, 223 (1912); Moreno.

⁶⁹ *Rollo* (G.R. No. 171359), pp. 19-20.

broker. He cannot seek exoneration by arguing that he merely followed the stipulated terms of payment in the contract to sell. Applicable provisions of existing laws are deemed written and incorporated in every government contract, hence it is the contractual stipulations which must conform to and not contravene the law and not the other way around. By entering into a contract that does not guarantee the transfer of ownership to the Government, petitioner violated Sec. 449 of the Government Accounting and Auditing Manual (GAAM) which provides:

Section 449. *Purchase of land.* – Land purchased by agencies of the Government shall be evidenced by a Torrens Title drawn in the name of the Republic of the Philippines, or such other document satisfactory to the President of the Philippines that the title is vested in the Government.

These titles and documents shall accompany the vouchers covering the purchase of land, after which they shall be forwarded to the Records Management and Archives Office.

The above rule requires public officers authorized to transact with private landowners not only to ensure that lands to be purchased by Government are covered by a Torrens title, but also that the sellers are the registered owners or their *duly authorized representatives*. For otherwise, there can be no assurance that title would be vested in the Government by virtue of the purchase. Thus, while the provision does not require a title already issued in the name of the Government at the time of the actual purchase, accountable officers should, at the very least, exercise such reasonable diligence so that the titles and documents accompanying the vouchers are genuine and authentic, and the private parties to the contract had the legal right to transmit ownership of the land being bought by the Government. In accordance with sound accounting rules and practice therefore, it is mandatory for such purchase of land by the government agency or instrumentality to be evidenced by a Torrens title in the name of the Government, or such other document that is satisfactory to the President of the Philippines, to show that the title is vested in the Government.

Petitioners' act of disbursing funds in the absence of documents sufficient to vest title in NMP, the government instrumentality buying the subject lots, failed to comply with the above statutory requirement. The authenticity of the SPAs supposedly showing the authority of the alleged attorney-in-fact, Jimenez-Trinidad, and the latter's sub-agent, Solis, had not been properly verified. The purchase by NMP, which already made substantial or almost full payment of the price, was evidenced only by a contract to sell executed by Solis who was later discovered lacking authority to do so, the SPA in favor of Jimenez-Trinidad being a fake document.

The settled rule is that, persons dealing with an assumed agent are bound at their peril, and if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of authority.⁷⁰ In this case, Palomo dealt with Solis who was a mere *sub-agent* of the alleged attorney-in-fact of the registered owners, a certain Jimenez-Trinidad, under an SPA which was notarized abroad. At the very least, therefore, Palomo should have exercised reasonable diligence by ascertaining such fact of agency and sub-agency, knowing that he is dealing with a mere broker and not the registered owners themselves who are residents of a foreign country. As noted by the Sandiganbayan, it took only a letter-query sent by the OSG to Consul Bello to verify the authenticity of the SPA document shown by Solis, purportedly executed by the registered owners in favor of Jimenez-Trinidad who in turn executed another SPA in favor of Solis. This was the prudent course for Palomo considering that in the first purchase transaction, Umipig had already noted legal infirmities in the documents presented by Solis. It must also be stressed that at the time Palomo transacted again with Solis for the second purchase in April 1996, the first purchase had not yet resulted in the transfer of title to NMP of Lots 1730-C and 1730-D which took place only later in the year 2000. As it turned out, the SPA for Jimenez-Trinidad presented by Solis was found to be fake. Palomo was indeed grossly negligent in failing to verify the authority of the alleged

⁷⁰ See *Litonjua, Jr. v. Eternit Corporation*, G.R. No. 144805, June 8, 2006, 490 SCRA 204, 224.

attorney-in-fact, Jimenez-Trinidad, and simply relied on the representations of Solis who was not directly authorized by the registered owners.

We also concur with the Sandiganbayan's finding that Umipig and Mabitad are guilty of gross inexcusable negligence in the performance of their duties.

The GAAM provides for the basic requirements applicable to all classes of disbursements that shall be complied with,⁷¹ to wit:

- a) Certificate of Availability of Fund.—Existence of lawful appropriation, the unexpended balance of which, free from other obligations, is sufficient to cover the expenditure, certified as available by an accounting officer or any other official required to accomplish the certificate.

Use of moneys appropriated solely for the specific purpose for which appropriated, and for no other, except when authorized by law or by a corresponding appropriating body.

- b) Approval of claim or expenditure by head of office or his duly authorized representative.
- c) **Documents to establish validity of claim. – Submission of documents and other evidences to establish the validity and correctness of the claim for payment.**
- d) Conformity of the expenditure to existing laws and regulations.
- e) Proper accounting treatment.⁷²

Pursuant to COA Circular No. 92-389⁷³ dated November 3, 1992, Box A shall be signed by “the responsible Officer having direct supervision and knowledge of the facts of the transaction.”⁷⁴

Umipig, as signatory to Box A of Disbursement Voucher Nos. 101-9608-787 and 101-9612-1524 caused the release of ₱8,910,260 to Solis, certifying that “Expenses, Cash Advance necessary, lawful and incurred under [his] direct supervision.” By making such certification, Umipig

⁷¹ See *Lucman v. Malawi*, G.R. No. 159794, December 19, 2006, 511 SCRA 268, 282.

⁷² GOVERNMENT ACCOUNTING AND AUDITING MANUAL, Sec. 168.

⁷³ Restating with modifications COA Circular No. 81-55, dated February 23, 1981, and prescribing the use of the Disbursement Voucher, General Form No. 5(A).

⁷⁴ *Id.*, 2 (I).

atteststo the transactions' legality and regularity, which signifies that he had checked all the supporting documents before affixing his signature. If he had indeed exercised reasonable diligence, he should have known that Palomo exceeded the authority granted to him by the Board, and that the SPAs presented by Solis needed further verification as to its authenticity since his authority to sell was given not by the registered owners themselves but by another person (Jimenez-Trinidad) claiming to be the attorney-in-fact of the owners.

Had Umipig made the proper inquiries, NMP would have discovered earlier that the SPA in favor of Jimenez-Trinidad was fake and the unlawful disbursement of the ₱8,910,260 would have been prevented. Such nonchalant stance of Umipig who admitted to have simply presumed everything to be in order in the second purchase and failed to scrutinize the documents presented by Solis in violation of the accounting rules including Sec. 449 of the GAAM, constitutes gross negligence. His reliance on the earlier written reservations/objections he submitted to Palomo during the first purchase will not excuse his negligent acts. The second purchase was a separate and distinct transaction from the first purchase, involving different parcels of land and registered owners. The infirmities he had already observed in the first purchase should have made Umipig more circumspect in giving his approval for the disbursements in the second purchase. Additionally, the limited authority granted by the NMP Board to Palomo should have impelled Umipig to be more prudent in the second purchase, as it might expose the government to even greater damage or loss if the expenditure is later proved to have no legal basis.

As for Mabitad, she signed Box B attesting that “[a]dequate available funds/budgetary allotment in the amount x x x; expenditure properly certified; supported by documents marked (x) per checklist x x x; account codes proper; previous cash advance liquidated/accounted for.” Box B is

accomplished by the Accountant or other equivalent officials in the government-owned or controlled corporation.⁷⁵

At the trial, Mabitad affirmed that her signature in Box B means that the expenditure is certified. She however admitted having merely relied on Umipig's certification that the transactions were legal. Mabitad further asserted that with respect to disbursement vouchers, her responsibilities are merely certifying that funds are available for the purpose and check if the supporting documents which were duly certified in Box A are attached to the voucher. But contrary to her statement suggesting that her act of signing the disbursement voucher was ministerial, as signatory to the said document she is not precluded from raising questions on the legality or regularity of the transaction involved, thus:

3. Document Checklist at the Back of the Voucher

The checklist at the back of the voucher enumerates the mandatory minimum supporting documents for the selected transactions.

It should be clear, however, that the submission of the supporting documents enumerated under each type of transaction does not preclude reasonable questions on the funding, legality, regularity, necessity or economy of the expenditure or transaction. **Such questions may be raised by any of the signatories to the voucher.**

The demand for additional documents or equivalents should be in writing. A blank space is provided for additional requirements, if any, and if authorized by any law or regulation. If the space is insufficient, separate check may be used and attached to the voucher.⁷⁶ (Emphasis supplied.)

It bears stressing that Umipig and Mabitad are accountable officers, the nature of their accountability under the Government Auditing Code of the Philippines (P.D. No. 1445) was described as follows:

Accountable. (a) Having responsibility or liability for cash or other property held in trust or under some other relationship with another. (b) [government accounting] **Personally liable for improper payments; said of a certifying or disbursing officer.** (c) Requiring entry on the books of account; said of a transaction not yet recorded, often with reference to its timing. (d) Responsible.

⁷⁵ Id., 2 (J).

⁷⁶ Id., 3.

Accountable officer. An officer who, by reason of the duties of his office, is accountable for public funds or property.⁷⁷ (Emphasis and underscoring supplied.)

As such accountable officers, Umipig and Mabitad are cognizant of the requirement in Sec. 449 of the GAAM that purchase of land shall be evidenced by titles or such document of transfer of ownership in favor of the government. The Court cannot uphold their own interpretation of said provision which would require evidence of title or transfer of ownership to Government merely for archiving and recording purposes, as the requirement is intended to protect the interest of the government. By approving the release of payment under disbursement vouchers supported only by a contract to sell executed by a mere sub-agent, Umipig and Mabitag committed gross negligence resulting in the loss of millions of pesos paid to a bogus land broker. The Sandiganbayan therefore did not err in convicting them under Section 3 (e) of R.A. No. 3019.

Umipig and Mabitad nevertheless tried to seek refuge in Sec. 106 of P.D. No. 1445 or the Government Auditing Code of the Philippines, which provides:

Section 106. *Liability for acts done by direction of superior officer.*
– Noaccountable officer shall be relieved from liability by reason of his having acted under the direction of a superior officer in paying out, applying, or disposing of the funds or property with which he is chargeable, unless prior to that act, he notified the superior officer in writing of the illegality of the payment, application, or disposition. The officer directing any illegal payment or disposition of the funds or property shall be primarily liable for the loss, while the accountable officer who fails to serve the required notice shall be secondarily liable.

But as already explained, the written reservations made by Umipig and Mabitad were done only for the first purchase and not the second purchase subject of this case. There was clearly no written notice to Palomo regarding their questions on the legality of payments for the second purchase, either in the voucher itself or in a separate letter/memorandum. Umipig's defense that he had treated the first and second purchases as a

⁷⁷ F.S. Tantuico, Jr., State Audit Code Philippines Annotated, p. 529.

single transaction and thus his previous written objections still stand, deserves scant consideration. His certification as the accountable officer having knowledge of facts of the subject transaction is required each time a disbursement voucher is processed. The reason is that an accountable officer is charged with due diligence to ensure that every expenditure is justified and followed the proper procedure.

The negligent acts of Palomo, Umipig and Mabitad thus rendered them personally liable for the loss incurred by the Government in the failed transaction, in accordance with Section 105 of P.D. No. 1445 which provides that “[e]very officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.”

Conspiracy Proven

In *Alvizo v. Sandiganbayan*,⁷⁸ this Court said:

Direct proof is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. The existence of the assent of minds which is involved in a conspiracy may be, and from the secrecy of the crime, usually must be, inferred by the court from proof of facts and circumstances which, taken together, apparently indicate that they are merely parts of some complete whole. If it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiments, then a conspiracy may be inferred though no actual meeting among them to concert means is proved. Thus, **the proof of conspiracy**, which is essentially hatched under cover and out of view of others than those directly concerned, **is perhaps most frequently made by evidence of a chain of circumstances only.** (Emphasis supplied.)

Although a conspiracy may be deduced from the mode and manner by which the offense was perpetrated, it must, like the crime itself, be proven

⁷⁸ G.R. Nos. 98494-98692, etc., July 17, 2003, 406 SCRA 311, 374-375.

beyond reasonable doubt.⁷⁹ Mere knowledge, acquiescence or approval is not enough without a showing that the participation was intentional and with a view of furthering a common criminal design or purpose.⁸⁰

In this case, the evidence on record clearly supports the finding of conspiracy among petitioners Umipig, Mabitad and Palomo who all authorized the payments on the second purchase in utter disregard of the requirement in Section 449 of the GAAM, and with gross negligence in failing to ascertain the authority of Solis to sell the same. The damage or injury to the government would have been prevented, had Umipig, Mabitad and Palomo exercised reasonable diligence in transacting with Solis and examining the supporting documents before approving the disbursements in payment of the purchase price of Lots 1731 and 1732. Indeed, the fraudulent transaction would not have succeeded without the cooperation of all the petitioners whose signatures on the corresponding vouchers made possible the release of payments to Solis despite legal infirmities in the supporting documents he submitted.

Umipig and Mabitad deliberately disregarded the rules, the limited authority granted by the NMP Board to Palomo, and the fact that Solis had earlier submitted questionable documents in the first purchase. Umipig and Mabitad cannot justify their laxity in the second purchase simply because the first sale of Lots 1730-C and 1730-D was eventually consummated and titles thereto had been transferred to NMP. It must be noted that NMP secured titles to the said lots under the first purchase only in November 2000, long after Umipig and Mabitad gave their approval for subsequent disbursements for Lots 1731 and 1732 for which Solis submitted a fake SPA. Their participation thus went beyond mere knowledge and acquiescence to the illegal disbursements in the second purchase. Umipig and Mabitad even

⁷⁹ *Grefalde v. Sandiganbayan*, G.R. Nos. 136502 & 136505, December 15, 2000, 348 SCRA 367, 389, citing *De la Peña v. Sandiganbayan*, G.R. Nos. 89700-22, October 1, 1999, 316 SCRA 25, 36 and *People v. Marquita*, G.R. Nos. 119958-62, March 1, 2000, 327 SCRA 41, 51.

⁸⁰ *Id.*

signed as instrumental witnesses in the Contract to Sell covering Lots 1731 and 1732.

Umipig and Mabitad further authorized the release of partial balance in the amount of ₱1,000,000.00 also approved by Palomo, notwithstanding that the required transfer documents were not submitted by Solis as stipulated in the Contract to Sell. Hence, aside from causing damage or injury to the Government, Umipig, Palomo and Mabitad also gave unwarranted benefits to Solis who -- assuming he had the requisite authority from the owners to sell Lots 1731 and 1732 – had no right to receive any portion of the balance until his submission of the required transfer documents to the buyer, NMP.

***Fontanilla-Payabyab
not liable under
Sec. 3 (e) of R.A. No. 3019***

As to Fontanilla-Payabyab, her signature appears on the questioned vouchers above her name which was stamped on the vouchers together with the statement “FUND AVAILABILITY,” and not in Boxes A, B or C. Such signature, however, neither validates nor invalidates the vouchers and this was not disputed by Mabitad who testified that Fontanilla-Payabyab’s signature as budget officer on the disbursement vouchers is not considered part of standard operating procedure.

Although Fontanilla-Payabyab was the Head of Finance with Mabitad as one of her subordinates, the prosecution failed to establish that her responsibilities include reviewing her subordinate’s certifications in disbursement vouchers. As Fontanilla-Payabyab’s signature on the voucher was a mere superfluity, it is unnecessary for this Court to make a determination of negligence on her part. Her purpose in doing so, *i.e.*, to monitor the budget allocated and utilized/disbursed, is likewise immaterial considering that her act of signing the voucher did not directly cause the

damage or injury. Consequently, there is no basis to hold her liable under Section 3 (e) of R.A. No. 3019.

***Penalty for Violation
of Section 3 (e), R.A. No. 3019***

The penalty for violation of Section 3(e) of R.A. No. 3019 is “imprisonment for not less than six years and one month nor more than fifteen years, and perpetual disqualification from public office.” Under the Indeterminate Sentence Law, if the offense is punishable by a special law, as in the present case, an indeterminate penalty shall be imposed on the accused, the maximum term of which shall not exceed the maximum fixed by the law, and the minimum not less than the minimum prescribed therein.

There being no aggravating and mitigating circumstances in this case, the Sandiganbayan correctly imposed the indeterminate prison term of six (6) years and one (1) month, as minimum, to ten (10) years and one (1) day, as maximum, with perpetual disqualification from public office.

Civil Liability

An offense as a general rule causes two classes of injuries: the first is the social injury produced by the criminal act which is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime, which injury is sought to be compensated through indemnity, which is civil in nature.⁸¹ Having caused injury or loss to the Government by their gross inexcusable negligence and evident bad faith, petitioners Palomo, Mabitad and Umipig are thus liable to restitute the amount of ₱8,910,260 that was paid to Solis.

WHEREFORE, the Decision dated January 4, 2006 and Resolutions dated January 30, 2006 and March 1, 2006 of the Sandiganbayan, Fourth

⁸¹ *Shafer v. Judge, RTC of Olongapo City, Br. 75, No. L-78848, November 14, 1988, 167 SCRA 386, 392.*

Division in Criminal Case No. 27477 are hereby **AFFIRMED** with **MODIFICATION**. The conviction of petitioners Benjamin A. Umipig, Margie C. Mabitad and Renato B. Palomo under Section 3 (e) of R.A. No. 3019 is **UPHELD** while the conviction of petitioner Carmencita Fontanilla-Payabyab is **REVERSED** as she is hereby **ACQUITTED** of the said charge.

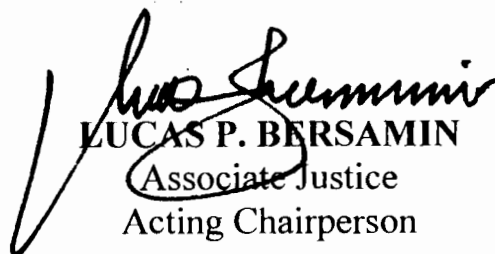
With costs against petitioners Benjamin A. Umipig in G.R. No. 171359 and Renato B. Palomo and Margie C. Mabitad in G.R. No. 171755.


Costs *de officio* in G.R. No. 171776.

SO ORDERED.



MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson



MARIANO C. DEL CASTILLO
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

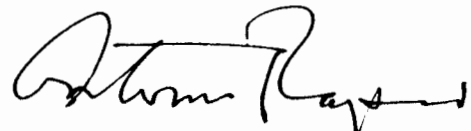
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



LUCAS P. BERSAMIN
Associate Justice
Acting Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, R.A. 296,
The Judiciary Act of 1948, as amended)