



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ELSA B. REYES,
Petitioner,

G.R. No. 148607

Present:

- versus -

VELASCO, JR., J., *Chairperson*,
PERALTA,
ABAD,
PEREZ,* and
MENDOZA, JJ.

SANDIGANBAYAN (4th Division) and
PEOPLE OF THE PHILIPPINES,
Respondents.

X ----- X

ARTEMIO C. MENDOZA,
Petitioner,

G.R. No. 167202

- versus -

SANDIGANBAYAN (4th Division) and
PEOPLE OF THE PHILIPPINES,
Respondents.

X ----- X

ELSA B. REYES,
Petitioner,

G.R. No. 167223

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

X ----- X

* Designated Acting Member, per Special Order 1299 dated August 28, 2012.

V

CARIDAD A. MIRANDA,
Petitioner,

G.R. No. 167271

- versus -

Promulgated:

PEOPLE OF THE PHILIPPINES,
Respondent.

05 September 2012

X

X

DECISION

ABAD, J.:

These cases pertain to the liability of public officers and private individuals for investing public funds through private investment companies without proper authorization.

The Facts and the Case

On May 27, 1982 the President of the Philippines issued Executive Order 806,¹ establishing the Instructional Materials Corporation (IMC), a government-owned and controlled corporation under the Department of Education, Culture, and Sports (DECS). IMC's task was to develop, produce, and distribute public school textbooks for elementary and high schools. Among others, IMC was empowered, with the approval of its Board of Directors, to invest its unscheduled funds pending their intended use.²

The present controversy arose when Senator Wigberto Tañada denounced alleged illegal investments that IMC made in Associated Bank from March 1989 to September 1990. Then DECS Secretary Isidro Cariño directed a special audit of IMC from December 6, 1990 to February 6, 1991

¹ Otherwise known as "Creating the Textbook Council and the Instructional Materials Corporation, Defining their Powers and Functions and for other purposes," dated May 27, 1982. By virtue of Executive Order 492 (November 29, 1991), IMC is now known as the Instructional Materials Development Center, an attached agency of DECS (now DepEd).

² Executive Order No. 806, Section 10 (b) (9).

covering the alleged illegal deposits. On August 20, 1991 the Special Audit Team³ reported a questionable investment of ₱231.56 million in a private bank of advances that IMC received from the government. Said the report:

- a. Of the ₱732 million advances including adjustments received by IMC from the different government entities during the period January 1, 1989 to September 30, 1990, only ₱209 million or 28.56% has been liquidated and used for the purpose intended. Advances amounting to ₱231.56 million was not deposited with authorized government depository bank but was instead used for unauthorized purchase of government securities from private brokers using Associated Bank as its conduit in violation of LOI 1302 dated March 25, 1983 and COA-MOF-MOB Joint Circular No. 9-81 dated October 19, 1981. In such placement, IMC incurred additional investment cost of ₱571,028.19 representing conduit fee paid to Associated Bank for services rendered to IMC and the Broker.
- b. Government securities amounting to ₱118.67 million could not be accounted for during the count conducted on December 6, 1990. Available documents showed that the private broker was allowed to take custody of these securities in violation of Section 101 of PD 1445. Of the amount, custody for securities with face value of ₱74.10 million was denied by the Philippine National Bank.
- c. Placement with private brokers were neither approved by the General Manager nor covered by a board resolution sanctioning such placements.⁴

Pending recovery of the unaccounted government securities worth ₱116 million mentioned above, the government filed criminal charges of violation of Section 3(e)⁵ of Republic Act (R.A.) 3019⁶ before the Sandiganbayan against petitioners Caridad Miranda (Miranda) and Artemio Mendoza (Mendoza), General Manager and Finance Division Chief of IMC, respectively. They were accused of investing IMC funds by buying government securities from Associated Bank, brokered by Eurotrust Capital Corporation (Eurotrust). It was alleged that the investment was with evident

³ Composed of Angelita Sison, Normita Ablao and Leticia Torres. Torres was replaced by Mary Adelino who testified before the Sandiganbayan about the findings.

⁴ *Rollo* (G.R. 167271), p. 13.

⁵ "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."

⁶ Also known as the "*Anti-Graft and Corrupt Practices Act*."

bad faith because Miranda and Mendoza did not secure prior authority from the IMC Board.

The government also indicted petitioner Elsa B. Reyes (Reyes), Eurotrust's president, for investing IMC funds by buying government securities or BF Homes Assets Privatization Certifications from Associated Bank. These certificates were then sold to IMC for a profit of ₱571,028.19. IMC also failed to collect from Reyes a balance of ₱116 million from investment instruments that matured.

The information alleged:

[A]ccused ARTEMIO MENDOZA, without authority, obtained from the IMC Cashier the following checks which were payable to and received by IMC from the Department of Education, Culture and Sports and the Educational Development Projects Implementing Task Force (EDPITAF) intended for the production and distribution of elementary textbooks and other instructional materials from (*sic*) the public schools, namely: x x x.

[T]hereafter accused ARTEMIO MENDOZA caused accused CARIDAD MIRANDA to sign and indorse the aforementioned checks in blank which accused CARIDAD MIRANDA did, notwithstanding the fact that their (*sic*) indorsement in blank was unnecessary since the aforesaid checks were all for deposit; then accused ARTEMIO MENDOZA, without any disbursement vouchers whatsoever, and instead of depositing the said checks to the account of IMC, delivered them to accused ELSA REYES who, without any authority from IMC, thereafter caused the IMC funds covered by the aforementioned checks to be invested in government securities such as Treasury Bills, Treasury Notes, Land Bank Bonds or BF Homes Assets Privatization Certificates purchased from Associated Bank, a private or non-government financial institution, in violation of P.D. No. 1115, if the required volume was available in the said bank, and if no such volume could be provided by Associated Bank, accused ELSA REYES sold the necessary volume to Associated Bank which in turn sold them to IMC, thereby causing IMC to pay an additional investment cost of ₱571,028.19; thereafter, upon termination or maturity dates of said investments, accused ARTEMIO MENDOZA and CARIDAD MIRANDA failed to demand the return of the funds from accused ELSA REYES who thereupon reinvested them or lent them to B.E. Ritz Mansion Investment Corporation (BERMIC) which, however, failed to pay its obligation in full, leaving an uncollected balance of ₱116,000,000.00, x x x.⁷

⁷ Rollo (G.R. 167271), pp. 9-11.

During the trial, the prosecution presented the findings of the Special Audit Team and the Committee on Investment headed by Mr. Melchor Tipace. Mary Adelino (Adelino), a member of the audit team testified that ₱118,666,655.48 in government securities were unaccounted for as of December 1990. She also testified that IMC incurred additional investment cost by way of conduit fee paid to Associated Bank in the amount of ₱571,028.19.

By way of defense, Miranda denied any involvement in the transactions with Eurotrust. She met Reyes for the first time only when the audit report was released to her. She also learned from Reyes that it was Mendoza whom she dealt with for the investments through Eurotrust.

Miranda also denied that she conspired with co-accused Mendoza when she signed and indorsed IMC checks to purchase securities from Eurotrust. She signed the checks as part of IMC's standard procedure, not knowing that Mendoza will use them to make the illegal investment.

Mendoza denied Miranda's claim. Mendoza said that, as finance officer, he can only determine what unscheduled funds IMC can invest. It was Miranda, he added, who authorized, when she signed the checks, to release the funds for investment through Eurotrust. Reyes, on the other hand, alleged that she did not know that Mendoza had no authority to invest IMC funds through Eurotrust.

After the prosecution ended the presentation of its evidence and filed a formal offer of its documentary exhibits, Reyes objected on the ground that witness Adelino's testimony covering the audit report was hearsay since she joined the audit team as a replacement member only in January 1991. She

also objected to the offer of documentary evidence that were not marked or made known to the parties during pre-trial.

In a Resolution dated February 21, 2001, the Sandiganbayan set aside Reyes' objection and admitted the prosecution's evidence. It denied her motion for reconsideration on April 6, 2001, prompting her to file a motion for leave to file a demurrer. But the court denied this, too, for having been filed out of time since the 5-day period within which to file such leave was to be counted from Reyes' receipt of the February 21, 2001 Resolution.

In her motion for reconsideration, Reyes claimed that the 5-day period should rather be counted from her receipt of the denial of her motion for reconsideration of the Order admitting the prosecution's evidence. But the Sandiganbayan rejected this view, prompting Reyes to file a petition for *certiorari* before this Court in G.R. 148607 for alleged grave abuse of discretion. Meanwhile, trial in the case proceeded.

On September 22, 2004 the Sandiganbayan Fourth Division, voting 3-2, rendered a Decision⁸ finding Mendoza and Miranda guilty beyond reasonable doubt of the charge against them and imposing on them the penalty of imprisonment of 6 years and 1 month as minimum up to 10 years as maximum and perpetual disqualification from public office. They were also ordered, by way of restitution, to return the missing government securities amounting to ₱118,666,655.48 or pay their cash equivalent.

The majority in the court found that Miranda and Mendoza conspired with Reyes in the investment of IMC funds with Eurotrust absent authorization from the IMC Board. By using their positions as General Manager and Finance Officer, respectively, Miranda and Mendoza caused undue injury to the government when the securities bought with IMC funds

⁸ Penned by Justice Norberto Y. Goraldez with the concurrence of Justices Gregory S. Ong and Jose R. Hernandez. Justices Roland B. Jurado and Efren N. De la Cruz dissented.

were not recovered. Furthermore, Miranda and Mendoza were fully aware of their lack of authority, yet they proceeded with the investment. For the majority, this constituted evident bad faith.

The Justices who dissented claimed, on the other hand, that the prosecution failed to establish Miranda's active participation in the investment made through Eurotrust. That she signed blank checks without knowing where the funds will be deposited (and these were ultimately used by Mendoza to pay Eurotrust for the securities) may indicate incompetence or negligence but not bad faith.

Petitioners filed their respective motions for reconsideration which were denied by Resolution dated February 22, 2005. This led to the filing of separate petitions for review on *certiorari* by Mendoza in G.R. 167202, Reyes in G.R. 167223 and Miranda in G.R. 167271 before the Court. By Resolution of April 17, 2006, the Court consolidated the four petitions since they arose from the same criminal case that involved the same parties and raised substantially similar or closely related issues.

The Issues Presented

These cases present the following issues:

1. In G.R. 148607 instituted by Reyes, whether the Sandiganbayan committed grave abuse of discretion in not counting the 5-day period to file a motion for leave to file demurrer, not from its denial of her opposition to the order admitting the prosecution's documentary evidence, but from its rejection of her motion for reconsideration of that denial order.

2. In G.R. 167202, 167223 and 167271 separately filed by petitioners, whether or not the Sandiganbayan erred in finding them guilty of causing undue injury to the government by using IMC funds for the purchase of investment securities through third parties in violation of section 3(e) of R.A. 3019.

The Court's Rulings

The information alleged that petitioners Miranda and Mendoza acted with evident bad faith in connection with the subject investment transactions. The majority in the Sandiganbayan found that they acted with evident bad faith when they pursued the investment despite want of authority from the IMC Board.

Bad faith connotes, not only bad judgment or negligence, but also a dishonest purpose or conscious wrongdoing.⁹ But bad faith alone on the part of the accused is not sufficient. Such bad faith must be evident.¹⁰

Nothing in the record shows that corrupt motive spurred Miranda in her actions or that she received some material benefit for signing the checks that moved the funds out of IMC. All that can be proved against her is the fact that she indorsed the IMC checks subject of the case. But this does not prove a dishonest purpose. She testified that it was a standard practice for the General Manager to sign the dorsal portion of checks for deposit. Indeed, Miranda presented similar checks with her indorsement which were deposited into IMC's accounts with government depositaries. The prosecution did not rebut this.

While it is true that Miranda did not have to acknowledge the checks in order for them to be deposited, her indorsements were superfluous. They did not alter the nature of the checks as payable to IMC since Miranda did not have clear authority to indorse its checks for renegotiation. Her signing authority was limited to only ₱400,000.00 and under IMC Office Order 11, s. 1987, two signatures to IMC checks were required for this. Her indorsement of the checks in question may be regarded as laxity but it does not amount to a criminal design. That the checks in question were not

⁹ *Spiegel v. Beacon Participations*, 8 NE 2nd Series, 895, 1007.

¹⁰ *Dugayon v. People*, 479 Phil. 930, 942 (2004).

deposited but were instead renegotiated after Miranda indorsed them should not be taken against her but against the individuals who managed to do so and the banks that allowed the unauthorized withdrawal of those funds.

There is likewise no proof that Miranda acted with perceptible bias in favor of Reyes. They both deny ever knowing each other prior to the questioned transactions. Reyes dealt exclusively with Mendoza who was IMC's Finance Division Chief. Miranda was unaware that IMC funds were being diverted to unauthorized investments instead of being deposited in its accounts.

The prosecution cited Miranda's approval and submission of IMC's annual report for 1989 as proof that she connived with Mendoza. The investment of more than ₱123 million of IMC funds with Eurotrust had been included in the balance sheet appearing on that report.

But the Office of the General Manager, headed by Miranda, had the duty to submit an annual report to the Board within 30 days after the close of the calendar year.¹¹ This means putting together in one report all the annual summaries prepared by each of the operating divisions or departments of IMC, including that from its Finance Division, headed by Mendoza. Miranda cannot be presumed to have personal knowledge of all the transactions that made up the financial summaries that Mendoza's unit submitted. As Finance Division Chief, it was Mendoza who gave technical advice to management on financial matters and directed, coordinated, and supervised the proper recording and accounting of financial transactions.¹² Admittedly, it was Mendoza who took part in preparing the balance sheet that became part of IMC's 1989 annual report.¹³

¹¹ MECS Order 64, Series of 1985, "Implementing the details for the Organization and Operationalization of the Instructional Materials Council and the Instructional Materials Corporation, Section 13(c).

¹² Exhibit "17" (Miranda).

¹³ TSN, May 22, 2003, p. 8.

In *Arias v. Sandiganbayan*,¹⁴ the Court held that it would not do to take a shotgun approach when evaluating evidence in corruption cases. Liability must be pinpointed.

We would be setting a bad precedent if a head of office plagued by all too common problems — dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception, and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

x x x x

x x x All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. x x x There has to be some added reason why he should examine each voucher in such detail. Any executive head of even *small* government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.¹⁵

Quite telling are the contents of Mendoza's memorandum of October 15, 1990 to Miranda and Commission on Audit (COA) Resident Auditor Narcisa D. Joaquin.¹⁶ Mendoza wrote:

We bought the certificates thru this bank (Associated Bank) because it is easier to transact with. Besides, mere presentation of check payments by DECS and other agencies to IMC is acceptable. With this, IMC is generating earnings for a period of at least five (5) days more than what IMC earns if the securities are purchased thru PNB. Also, we are encountering difficulty transacting with PNB which usually result in delays.

x x x x

As to the name of Elsa Reyes, President of Eurotrust Capital Corporation in the anonymous letter, it is true that she is our link with the bank. However, in all IMC transactions and documentations, nowhere in the records you can find her name but the authorized signatories of the bank. Though there exist a certain technicality in her entering into the

¹⁴ 259 Phil. 794 (1989).

¹⁵ Id. at 801-802.

¹⁶ Exhibit "39-A" (Miranda).

scheme, this system is accepted practice and also being done by other government corporations. x x x (Underscoring supplied)

That Associated Bank was lenient in allowing checks payable to IMC to be renegotiated and used for buying government securities, explains how banking rules were skirted. It was, therefore, not because of Miranda's signature that the irregularity was committed but because of some irregular banking practice.

As for Mendoza, the Court agrees with the majority in the Sandiganbayan that he acted with evident bad faith. His above memorandum shows that the renegotiation of IMC checks was his initiative, purportedly to increase its earnings from idle funds. It can even be deduced from his memorandum that an effort was taken to conceal Reyes' part in those investments. He knew that IMC cannot make a deal with private investment companies such as that headed by Reyes, since such investments could be coursed only through government institutions.¹⁷ Further, Mendoza admitted telling Reyes that the investments had been authorized when in fact the IMC Board issued no resolution regarding it.¹⁸

That the IMC had not recovered all of its investments is a fact supported by the records. Some attempts were made to negotiate payment of Eurotrust's liabilities to IMC but there is no evidence of record that these had taken place. Consequently, it may be assumed that the government suffered injury by reason of the transactions in question.

Besides, Letter of Instruction 1302¹⁹ categorically provides that government-owned or controlled corporations shall transact their purchases or sales of government securities only with Central Bank or government financial institutions including banks that are wholly owned or controlled by

¹⁷ TSN, May 21, 2003, p. 51.

¹⁸ TSN, May 22, 2003, pp. 12-13.

¹⁹ Issued on March 25, 1983.

them. Here, Mendoza admittedly dealt with Reyes instead. In doing so, he gave unwarranted benefit and advantage to her, earning for her company a conduit fee of ₱571,028.19 paid through Associated Bank.

As to Reyes, she chose instead of testifying, to adopt as her own evidence some documents that Miranda and Mendoza submitted to the court below. Reyes believed that the evidence given against her was insufficient to overcome the presumption of innocence that the Constitution grants her. In the main, she challenged the admissibility and weight of the COA Report and testimony of audit team member Adelino.

Section 56(3)(c) of Presidential Decree 1445²⁰ requires adequate evidentiary support in the audit working papers of findings contained in audit reports. Since the general proposition²¹ is that this requirement of law has been obeyed, the burden shifted to Reyes to disprove the correctness of the audit report in this case.²² She did not.

In any event, COA's special audit appears in order. Its scope was clearly defined; it specified the documents that it examined. An exit conference between IMC and the audit team was held so the IMC and those involved could controvert the findings. The IMC management's comments on those findings were included in the report together with the audit team's rejoinder.

As to the testimony of audit team member Adelino, the same is admissible. While her designation in the team took effect only on January 3, 1991, she had one month after the audit team turned over to her the documents that formed part of its working paper within which to examine and validate them. And she was involved in the exit conference with IMC officials on June 4, 1991. She also took part in preparing the audit report

²⁰ Otherwise known as "Ordaining and Instituting a Government Auditing Code of the Philippines."

²¹ RULES OF COURT, Rule 131, Section 3(ff).

²² Id. at Section 3.

submitted on August 20, 1991. She certainly was qualified to testify on the contents of that report, contrary to Reyes' assertion.

On the merits of her case, the Court holds that the Sandiganbayan did not err in convicting Reyes. Clearly, she was at the receiving end of the benefits that resulted from Mendoza's unauthorized diversion of IMC funds to Associated Bank. That her company, Eurotrust, had not been accredited by the Central Bank as seller or buyer of securities for investors is evidence that she conspired with Mendoza to divert IMC funds through her company to Associated Bank.

The Court will now go into the question of whether or not the Sandiganbayan gravely abused its discretion in counting the period to file a motion for leave to file demurrer from the receipt of the Order admitting the prosecution's formal offer of evidence.

Section 23, Rule 119 of the Rules of Criminal Procedure provides that a "motion for leave of court to file demurrer to evidence shall specifically state its grounds and shall be filed within a non-extendible period of five (5) days after the prosecution rests its case." This period runs, according to *Cabador v. People*,²³ only after the court shall have ruled on the prosecution's formal offer for that is when it can be deemed to have rested its case.

Here, Reyes filed a timely motion for reconsideration of the Sandiganbayan's ruling on the prosecution's formal offer, which is allowed,²⁴ thus preventing the prosecution from resting its case. When the Sandiganbayan denied Reyes' motion for reconsideration, she filed with it,

²³ G.R. No. 186001, October 2, 2009, 602 SCRA 760, 768.

²⁴ *PAL Employees Savings and Loan Association, Inc. v. National Labor Relations Commission*, 329 Phil. 581, 593 (1996), citing *Zapata v. National Labor Relations Commission*, 256 Phil. 507, 512 (1989).

within the required five days of her receipt of the order of denial, her motion for leave to file demurrer to evidence.

Still, the Sandiganbayan's error in not allowing Reyes to ask for leave to file a demurrer to the evidence cannot be regarded as capricious and whimsical as to constitute grave abuse of discretion.²⁵ Courts have wide latitude for denying the filing of demurrers to evidence.²⁶ Indeed, an order denying a motion for leave of court to file demurrer to evidence or the demurrer itself is not subject to appeal or *certiorari* action before judgment.²⁷ The remedy is to assign the order of denial as an error on appeal after judgment.²⁸

At any rate, the Court has in fact dealt with the issue concerning the timeliness of Reyes' motion for leave to file a demurrer to evidence, finding that it had been filed on time. But the Sandiganbayan's error in that regard did not amount to a denial of her right to be heard on her defense. She just had to bear with not knowing sooner if the evidence the prosecution adduced against her thus far was insufficient to prove her guilt. She later had the chance to question the sufficiency of that evidence. But the Court, evaluating the same, agrees with the majority in the Sandiganbayan that the evidence is sufficient.

WHEREFORE, the Court **DISMISSES** the petition in G.R. 148607 for failure to show that the Sandiganbayan committed grave abuse of discretion in denying for having been filed out of time petitioner Elsa B. Reyes' motion for leave to file demurrer to evidence.

Further, the Court **DENIES** the petitions filed by petitioners Artemio C. Mendoza and Elsa B. Reyes in G.R. 167202 and 167223, respectively, and entirely **AFFIRMS** the decision of the Sandiganbayan against them

²⁵ *Tan v. Antazo*, G.R. No. 187208, February 23, 2011, 644 SCRA 337, 342.

²⁶ *Alarilla v. Sandiganbayan*, 393 Phil. 143, 154 (2000).

²⁷ RULES OF COURT, Rule 119, Section 23.

²⁸ *Tadeo v. People*, 360 Phil. 914, 919 (1998).

dated September 22, 2004. They are to pay, jointly and solidarily, the financial liability imposed by the Sandiganbayan for the offense. The Court, however, **GRANTS** the petition filed by petitioner Caridad Miranda in G.R. 167271, **SETS ASIDE** that Sandiganbayan decision insofar as she is concerned, and **ACQUITS** her of the charge.

SO ORDERED.

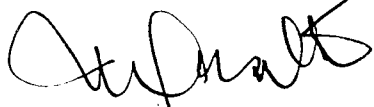


ROBERTO A. ABAD
Associate Justice

WE CONCUR:



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson



DIOSDADO M. PERALTA
Associate Justice



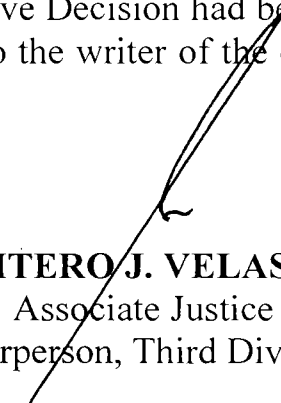
JOSE PORTUGAL PEREZ
Associate Justice



JOSE CATRAL MENDOZA
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.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division 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.



MARIA LOURDES P. A. SERENO
Chief Justice