

SECOND DIVISION

[G.R. Nos. 205904-06, October 17, 2018]

GWENDOLYN F. GARCIA, PETITIONER, V. HONORABLE SANDIGANBAYAN, AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.

DECISION

A. REYES, JR., J.:

This is a petition for *certiorari* filed by Gwendolyn F. Garcia (petitioner) assailing the Resolution^[1] dated January 2, 2013 and the three (3) Hold Departure Orders (HDOs)^[2] dated July 24, 2012 issued by the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0175 to 0177.

Factual Antecedents

Sometime in 1970, Luis Balili (Luis) acquired free patents over 10 parcels of land situated in Naga, Cebu, measuring 247,317 square meters (sq ms), more or less. In addition to the mentioned lots, he also made a claim over a parcel of land in Tina-an, Naga, Cebu, with an approximate area of 1,929 sq ms. These properties constitute the Balili Estate, more particularly described as follows:^[3]

TITLE/LEGAL DOCUMENT	LOT NUMBER	AREA (in sq. m.)
OCT-15311	1, SP-07-01-000062	5,825
OCT-15893	PSU-07-01-002299	2,484
OCT-58357	39-C-4-A	21,566
OCT-15313	2, SP-07-01-000062	26,231
OCT-15328	SP-07-01-000048	142,734
OCT-15012	1, SP-07-01-000047 2, SP-07-01-000047	9,914 27,737
OCT-15894	1, SP-07-01-002298 SP-07-01-002298	2,093 3,253
OCT-15312	2, SP-07-01-000063	5,480
		TOTAL

		247,317
TD 01-30-008592	Cad. Lot No. 6009	1,929

Upon Luis' death, Romeo Balili (Romeo), his nephew, was appointed as executor. As he was authorized to sell or dispose of the properties belonging to the estate of Luis, he engaged the services of several real estate brokers, one of them is Lumen Durano (Durano).^[4]

In 2006, Durano learned that the Provincial Government of Cebu was planning to put up an international seaport. He approached Juan Bolo (Bolo), a member of Sangguniang Panlalawigan of Cebu and the Chairman of the Committee on Provincial Properties, and offered to sell the Balili Estate. Bolo communicated the offer to the petitioner, then governor of Cebu, who thereafter instructed him to inquire on the selling price of the property and to have the same appraised by the Appraisal Committee.

In a Letter^[5] dated June 26, 2007, Bolo requested Engr. Anthony Sususco (Engr. Sususco) to appraise the fair market value of the Balili Estate. A team, which was headed by Assistant Provincial Assessor Mariflor Vera (Vera), together with Michelle Languido (Languido) and Roger Dumayac (Dumayac), was sent to the area to conduct an ocular inspection, appraise the property and gather opinion values.^[6]

On July 6, 2007, Languido and Dumayac submitted a report to Engr. Sususco, together with the following data and/or attachments: (1) Zonal valuation from the Office of the Bureau of Internal Revenue-South District; (2) Vicinity map; (3) Lot description; (4) Opinion values; (5) Tax declarations from the Office of the Municipal Assessor of Naga, and; (6) titles.^[7] The report noted that the property, consisting of an area of 24 hectares, more or less, has a generally flat topography, with a portion thereof being utilized as a fishpond. It also mentioned the existence of a non-operational resort on the property and a three-meter wide right-of-way by the seaside, adjacent to the port of APO Cement Corporation, which serves as an access road to the national highway.^[8]

On July 10, 2007, the Cebu Provincial Appraisal Committee headed by Engr. Sususco, with Roy Salubre (Salubre) and Elogio Pelayre (Pelayre) as members, issued Resolution No. 23,^[9] pegging the base unit market value of the subject property to P610.00 per sq m. On the basis of said resolution, Bolo authored Resolution No. 187-2008^[10] dated January 14, 2008, authorizing the petitioner to execute and sign, for and in behalf of the Province of Cebu, the Memorandum of Agreement (MOA) for the sale of ten parcels of land composing the Balili Estate, with the purchase price pegged at P434.00 per sq m. He justified the acquisition in that the subject property, which was classified under industrial/recreational category, will provide a good opportunity for the province to develop and cater to the needs of interested investors.^[11] The said resolution was duly attested by Vice Governor Gregorio Sanchez, Jr. (Vice Gov. Sanchez, Jr.) and approved on April 4, 2008.

Following the approval of Resolution No. No. 187-2008, the MOA for the Sale of Eleven Parcels of Land was executed on April 21, 2008.^[12] Noticeably, however, the memorandum pertained to the purchase of eleven parcels of land at P400.00 per sq

m, including the untitled lot being claimed by Luis, even when Resolution No. 187-2008 authorized only the purchase of ten parcels of land. Despite the discrepancy, the memorandum was signed by Garcia, in behalf of the Province of Cebu, and the representatives of the Balili Estate.^[13]

To remedy the discrepancy, Bolo authored Resolution No. 1781-2008^[14] dated April 21, 2008, proposing to amend Resolution No. 187-2008 specifically to authorize the petitioner to purchase eleven parcels of land, instead of only ten, to include the untitled parcel of land over which Luis also had a claim of ownership. This is to make the petitioner's authority conform to the signed MOA dated April 21, 2008 which pertained to the acquisition of eleven lots by the Province of Cebu.

As stipulated in the MOA, the Province of Cebu tendered the first installment payment of P49,849,200.00 thru Landbank of the Philippines Check No. 218470 dated April 28, 2008,^[15] with Romeo as payee.^[16] On June 11, 2008, a Deed of Absolute Sale^[17] was executed, transferring the ownership of the eleven parcels of land, including one untitled lot, to the Province of Cebu. Subsequently, transfer certificates of title pertaining to the ten titled properties were issued in the name of the Province of Cebu. Thereafter, the second installment in the amount of P49,077,600.00 was settled, again with Romeo, not the estate of Luis, as payee. Significantly, the payments made by the Province of Cebu were taken out of the treasury of the provincial government without any resolution effecting appropriation and payment of the purchase price.^[18] Further, there was discrepancy in the two (2) disbursement vouchers for the installment payments as the first one stated that it pertained to "50% of payment of eleven parcels of land situated in Naga City, Cebu, with a total area of 249,246 sq. meters,"^[19] while the second one stated that it is in "full payment of ten parcels of land situated in Naga City, Cebu, with a total area of 247,317 sq. meters."^[20]

The transaction attracted media attention which prompted the provincial government to conduct a survey of the subject property. It was discovered by the provincial surveyor that a large portion of the property, more or less 80,124 sq ms, was submerged in water and that another portion thereof, approximately 14,402 sq ms; was a mangrove area. Thus, the Officer-in-Charge of the Cebu Provincial Legal Office, Marino E. Martinquilla, wrote a Letter^[21] dated August 14, 2009 to Romeo, informing him of the facts gathered during the survey and telling him that a sizable portion of the Balili Estate was beyond the commerce of man. He also demanded, in behalf of the Province of Cebu, for a reimbursement of the amount of P37,810,400.00, pertaining to the amount paid for submerged and mangrove areas, plus legal interest computed from the time of payment.

Following the controversial transaction, the Public Assistance and Corruption Prevention Office – Visayas (PACPO-Visayas) conducted a fact-finding investigation on the matter. On September 2-3, 2009, representatives from the Department of Environment and Natural Resources (DENR) and the Office of the Ombudsman-Visayas (OMB-Visayas) conducted a verification survey on the area. The team discovered that 202,456-sq m portion of the 247,317-sq m property was classified as timberland. Further, 196,696-sq m portion thereof was underwater.^[22]

It was likewise discovered that the appropriation for the purchase of the lots was classified as "Site Development and Housing Program" but no item enumerated

thereon included site/land acquisition. Apart from this irregularity, it was learned that there was also a question on the legality of Luis' acquisition of ownership over the subject lots and that the DENR proposed that they be subjected to reversion proceedings.^[23]

Subsequently, the OMB-Visayas, through PACPO-Visayas initiated the filing of criminal and administrative charges against the accountable public officials and employees pursuant to a letter of complaint from an anonymous letter-sender, to wit:

- 1) Criminal Complaint for Violation of Section 3(g) of Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act," against the petitioner, as governor of the Province of Cebu;
- 2) Criminal Complaint for Violation of Section 3(e) of R.A. No. 3019 against Bolo, as Provincial Board Member, and the members of the Provincial Appraisal Committee, namely, Engr. Sususco, Salubre and Pelayre; Members of the Technical Working Group, namely, Vero, Languido, Dumayac and Pilar Yburan (Yburan), and; Romeo and Amparo Balili, for conspiring and confederating with each other in the purchase of a property, with an area of 202,456 sq ms classified as timberland and another portion measuring 196,696 sq ms submerged in water, thereby causing undue injury to the government in the amount of P80,982,400.00 and P78,678,400.00, respectively;
- 3) Criminal Case for Violation of Section 3(e) of R.A. No. 3019 against the petitioner, Vice Gov. Sanchez, Jr., members of the provincial board, among others, for gross inexcusable negligence in immediately approving the purchase of the property in question; and,
- 4) Administrative Complaint for Grave Misconduct as defined under Rules IV, Section 52(a)(3) of the Civil Service Commission Uniform Rules on Administrative Cases (CSC Resolution No. 991936) against Engr. Sususco, Salubre, Pelayre, Vero, Languido, Dumayac, Yburan and Emme Gingoyon (Gingoyon).^[24]

Thereafter, another Letter-Complaint dated December 23, 2010 was filed by a certain Manuel T. Manuel, questioning the provincial government's purchase of the Balili Estate and requesting that the concerned officials be investigated for violation of the Section 3(a) of R.A. No. 3019.^[25]

This was followed by Letter-Complaint dated December 8, 2010 filed by Crisologo V. Saavedra, likewise assailing as illegal the provincial government's purchase of the Balili Estate and requesting that the petitioner be investigated for the commission of the crime of plunder and violations of Section 3(e) and (g) of R.A. No. 3019.^[26]

In a Resolution dated August 26, 2011,^[27] the OMB-Office of the Overall Deputy Ombudsman found probable cause to indict the petitioner for violation of Sections 3(e) and 3(g) of R.A. No. 3019, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, we found the following respondents, namely: GWENDOLYN F. GARCIA, JUAN V. BOLO, ANTHONY D. SUSUSCO, ROY G. SALUBRE, EULOGIO B. PELAYRE and EMME T. GINGOYON together with private respondents ROMEO J. BALILI and AMPARO G. BALILI, probably guilty of violation of Section 3(e) of Republic Act 3019. We likewise found GWENDOLYN F. GARCIA probably guilty of violation of Section 3(g) of Republic Act 3019.

The charges of Plunder (Republic Act 7080) and Violation of Section 3(a) of Republic Act 3019 against the respondents are hereby dismissed for insufficiency of evidence.

The charges against respondents: MARIFLOR D. VERO, PILAR C. YBURAN, MICHELLE V. LANGUIDO, ROGER L. DUMAYAC, VICTOR A. MAAMBONG, JULIAN DAAN, AGNES A. MAGPALE, JOSE MARIA S. GASTARDO, WILFREDO CAMINERO, PETER JOHN CALDERON, JOVEN MONDIGO JR., TERESITA D. CELES, ROSEMARIE D. DURANO, WENCESLAO GAKIT, ALFRED FRANCIS M. OUANO, AND BEA MERCEDS A. CALDERON are hereby dismissed for insufficiency of evidence. The charges against GREGORIO SANCHEZ JR., on account of his death, are hereby DISMISSED.

Let the herein appended Information for Violation of Section 3(e) of Republic Act 3019 and the Information for Violation of Section 3(g) of Republic Act 3019 against the above-named respondents be filed before the Sandiganbayan.

x x x x

SO ORDERED.^[28]

In an Addendum to the Resolution^[29] dated July 10, 2012, then Ombudsman Conchita Carpio Morales held that, in addition to the disposition in the Resolution dated August 26, 2011, there is also evidence to engender a well-founded belief that the petitioner committed or is probably guilty of the crime of Technical Malversation, defined and penalized under Article 220 of the Revised Penal Code (RPC). She pointed out that the petitioner used the funds specifically appropriated for Site Development and Housing Program in the amount of P50,000,000.00 provided under Appropriation Ordinance No. 2007-15 in order to settle the first installment payment of the Balili Estate in the amount of P49,849,200.00, when the said fund was exclusively intended for acquisition and development of real property for the furtherance of the province's housing program. In view of said circumstance, an information for the commission of technical malversation was likewise ordered to be filed against the petitioner.

On July 19, 2012, informations^[30] charging Garcia, among others, for violation of Sections 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the RPC were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB12 CRM 0175, SB12 CRM 0176 and SB12 CRM 0177, respectively.