

## SECOND DIVISION

[ G.R. Nos. 218709-10, November 14, 2018 ]

**LIBERTY B. TIONGCO, PETITIONER, V. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

Before the Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by Liberty B. Tiongco (Tiongco) assailing the Decision<sup>[2]</sup> dated 18 February 2015 and the Resolution<sup>[3]</sup> dated 18 June 2015 of the Sandiganbayan in Case Nos. SB-08-CRM-0414 and SB-08-CRM-0415. The Sandiganbayan found Tiongco guilty of (1) Usurpation of Official Functions, or violation of Article 177 of the Revised Penal Code; and (2) violation of Section 3(e) of Republic Act No. 3019 (R.A. 3019), otherwise known as the *Anti-Graft and Corrupt Practices Act*.

#### The Facts

Tiongco is a former Vice President of the Philippine Crop Insurance Corporation (PCIC), a government-owned and controlled corporation. Following the retirement of Benito F. Estacio, Jr. (Estacio) as PCIC president, Lamberto R. Barbin (Barbin) assumed the post on 21 April 2006.<sup>[4]</sup>

#### *Tiongco's Version*

According to Tiongco, on the day Barbin assumed office, Barbin called all the officers and employees of PCIC for a meeting. After that meeting, Barbin asked Tiongco, Nilo Mordeno (Mordeno), and Jaime Padilla (Padilla) to stay. Barbin then asked the three to help him manage the office since he was still new to its operations. Tiongco and Mordeno asked for authorization to help him with all the aspects of PCIC's operations. Said authorization came on 24 April 2006 in the form of Special Order No. 06-008<sup>[5]</sup> where Tiongco was designated as Acting Senior Vice President.

On 25 April 2006, Tiongco received Estacio's Request for Clearance for her signature. Said request already contained the signatures of the pertinent department heads, including the head of the Office of the General Counsel, Atty. Francisco Cantre.<sup>[6]</sup> Tiongco averred that she signed the clearance on the basis of the department heads' signatures, thinking that they were the most knowledgeable of his accountabilities and liabilities. She then forwarded the request to the Administrative Department.<sup>[7]</sup>

On 28 April 2006, PCIC's Board of Directors approved<sup>[8]</sup> the application for Estacio's retirement in Board Resolution No. 2006-012, which states:

RESOLVED to approve, as it hereby approves the application for retirement of Mr. BENITO F. ESTACIO, JR. former PCIC President, effective the close of office hours of April 20, 2006 under RA 1616, subject to the submission of clearance from money and property accountabilities from the PCIC, clearance from the GSIS, submission of statement of assets and liabilities in accordance with the Anti-Graft and Corrupt Practices Act and clearance from the Office of the Ombudsman.

[9]

On 3 May 2006, Tiongco signed the disbursement voucher and check representing Estacio's retirement gratuity. According to her, she based her authority to sign on PCIC's Codified Approving and Signing Authorities (CASA)<sup>[10]</sup> which provides, among others, that in the absence of the president or in urgent matters, any two Class "A" signatories may sign for the agency.<sup>[11]</sup> Since she falls under a Class "A" signatory, Tiongco, together with Acting Assistant Vice President Mordeno, signed the disbursement voucher and check because, according to her, Barbin was "always absent." She claimed that, as far as she knew, Barbin would only come to work early in the morning and then leave immediately after because he was still working on his clearance from Malacañang.<sup>[12]</sup>

She further claimed that she informed Barbin of her actions and the latter did not voice any objections at that time. It was only when she failed to give her assent to Barbin's "questionable acts" that the latter turned sour on her.<sup>[13]</sup>

#### *Complaints Before the Office of the Ombudsman*

In a Memorandum<sup>[14]</sup> dated 4 July 2006, PCIC Corporate Secretary Mario A. Encinareal (Encinareal) informed the Board of Directors of the violations committed by Tiongco, Mordeno, Combatir, and Padilla, specifically, "the payment of the retirement gratuity and terminal leave of [Estacio] xxx without the knowledge and without the authority of the President, without Ombudsman Clearance and without the required Certification that the payee/retiree has no pending criminal or administrative case."<sup>[15]</sup> The concerned officers were given 90 days to explain.

One month after, or on 8 August 2006, Encinareal filed a Complaint<sup>[16]</sup> before the Office of the Ombudsman accusing Tiongco and Mordeno of Usurpation of Official Functions, and violation of Section 3(e) and (f) of R.A. 3019.<sup>[17]</sup>

On 3 April 2007, former PCIC employee Doroteo Celis III (Celis), who was terminated from the service by Tiongco for "poor performance and fraudulent practices," also filed a complaint before the Office of the Ombudsman against Tiongco and Mordeno for the same charges and based on the same circumstances.<sup>[18]</sup>

#### *Resolution of the Office of the Ombudsman*

In its Resolution dated 15 October 2007, the Office of the Ombudsman found probable cause against Tiongco, Mordeno, Combatir, and Padilla and recommended the filing of an Information for Usurpation of Authority or Official Function against Tiongco and Mordeno; Falsification of Public Documents against Combatir and Padilla; and violation of Section 3(e) of R.A. 3019 against the four accused.<sup>[19]</sup>

#### *Trial*

Shortly after the filing of the Information, Tiongco filed a Motion for Reinvestigation in Case No. SB-08-CRM-0415, praying for an opportunity to move for the reconsideration of the resolution of the Office of the Ombudsman. The motion was denied in a Resolution dated 2 March 2009.<sup>[20]</sup> Tiongco then filed an Urgent Motion to Quash in Case No. SB-08-CRM-0414, arguing that said case violated her right against double jeopardy because of the pendency of a purportedly identical case for violation of Section 3(e) of R.A. 3019. Meanwhile, she also filed a Motion to Dismiss in Case No. SB-08-CRM-0415 alleging that there is a separate pending case involving the same transaction.

The Sandiganbayan's Fifth Division denied Tiongco's Urgent Motion to Quash, while the First Division denied her Motion to Dismiss.<sup>[21]</sup> Meanwhile, Tiongco, Combatir, and Padilla voluntarily appeared before the Sandiganbayan. Mordeno remained at large. On 19 May 2014, Padilla died, and the cases against him were dismissed.<sup>[22]</sup>

On 18 January 2010, Tiongco filed a Motion to Consolidate the two cases against her, conceding that the charges arose from the same transaction. The motion was granted and joint trial ensued before the Sandiganbayan's Fifth Division.<sup>[23]</sup>

During pre-trial, the parties stipulated, among others, on the following:

1.) The identity of the accused as the same persons charged in the Information;

2.) Accused Liberty [B]. Tiongco occupied the position of Acting Senior Vice President for Regional Management Group of the [PCIC] with the corresponding Salary Grade 27 at the time of the commission of the crime stated in the Information;

x x x x

5.) On April 20, 2006, Benito T. Estacio retired from his position as PCIC President and he was replaced by Lamberto R. Barbin, who assumed office on April 21, 2006.

6.) Disbursement Voucher No. 05-06-05-461 with the following particulars: the amount of One Million Five Hundred Twenty Two Thousand and Eight Hundred Forty Nine Pesos and 48/100 (Php1,522,849.48) representing the payment of Retirement Benefits of Benito Estacio signed and approved by Liberty Tiongco and Noel Mordeno.

(Not admitted by accused Combatir & Padilla) (Admitted by accused Tiongco with qualification that the approval of payment of benefits was made by the Board of Directors)

7.) Landbank Edsa Greenhills Branch Check No. 0000318783 dated May 3, 2006 pay to the order of Benito F. Estacio Jr. in the amount of Php 1,522,849.48 signed by Liberty Tiongco and Noel Mordeno.<sup>[24]</sup>

During the trial, the prosecution presented Celis. Claiming to be one of PCIC's "pioneer employees" familiar with its internal procedures, he said he took it upon himself to secure documents from the Commission on Audit where he allegedly noticed the anomalies in Estacio's application for retirement.<sup>[25]</sup> Based on these

documents, Celis pointed out that Tiongco signed Estacio's Request for Clearance as approving authority even though she was not the head of the agency.<sup>[26]</sup> Celis further opined that Tiongco violated PCIC's Manual on Systems and Procedures in issuing the clearance because the Certification from the Office of the Ombudsman submitted by Estacio is not the clearance required under said Manual.<sup>[27]</sup>

The Sandiganbayan also heard testimony from Barbin. He claimed that he was always at the office even when he was newly appointed. He also maintained that he never saw the documents pertaining to Estacio's retirement and only later learned that the latter's retirement gratuity had already been paid. He later received a Memorandum signed by Tiongco, Mordeno, Padilla, and Combatir which, among others, informed him of the same fact. The Corporate Secretary later informed him of the irregularity in this, which prompted him to form a committee to investigate. The result of said investigation was referred to the Office of the Government Corporate Counsel for proper action.<sup>[28]</sup>

For the defense, Tiongco testified on her own behalf. She claimed that when she received Estacio's Request for Clearance, she noticed that the concerned department heads had already signed, including Office of the General Counsel head Atty. Cantre. While she may have seen the notation "no pending cases except OMB-0-00-0898, 0-00-1697,"<sup>[29]</sup> she still signed the request knowing that the department heads were more knowledgeable of Estacio's pending accountability and liabilities. She also assumed that since Atty. Cantre had signed on the request, his department had cleared Estacio for retirement.<sup>[30]</sup> She made no further inquiries and did not impose any safeguards to ensure restitution in case Estacio would be found guilty in his pending cases. She maintained that she had authority to sign based on the PCIC CASA. As Acting Senior Vice President, she is classified as a Class "A" signatory. Since she knew Barbin was not around at that time because he was busy fixing his clearance and appointment documents, she did not ask his office if he was coming in.<sup>[31]</sup> She insisted that signing was within the authority delegated to her by Barbin in Special Order No. 06-008.<sup>[32]</sup> She further pointed out that Barbin was later informed of the retirement payment to Estacio and he did not object to the same.<sup>[33]</sup>

Meanwhile, Estacio also testified on the propriety of Tiongco's action. According to him, former PCIC officials have had their retirement pay approved despite having pending cases. He also pointed out that COA's post-audit investigation showed that it found payment of his retirement benefits in order.<sup>[34]</sup> He also supported Tiongco's claim of authority to sign his Request for Clearance, arguing that the same was already signed by the proper heads of pertinent departments.<sup>[35]</sup>

### **The Decision of the Sandiganbayan**

In its 18 February 2015 Decision, the Sandiganbayan found Tiongco guilty of Usurpation of Official Functions and violation of Section 3(e) of R.A. 3019:

WHEREFORE, in Criminal Case No. SB-08-CRM-0414, this Court finds accused LIBERTY TIONGCO y BACCAY *GUILTY* beyond reasonable doubt x x x of Usurpation of Official Functions defined and penalized under Article 177 of the Revised Penal Code. Considering the Indeterminate Sentence Law, and where no aggravating nor mitigating circumstance was proven, accused is imposed the indeterminate penalty of SIX (6) MONTHS of

*arresto mayor* in its maximum period as minimum to TWO (2) YEARS, ELEVEN (11) MONTHS and TEN (10) DAYS of *prision correccional* in its medium p[er]iod as maximum.

In Criminal Case No. SB-08-CRM-0415, this Court finds accused LIBERTY TIONGCO y BACCAY *GUILTY* beyond reasonable doubt of a violation of Section 3(e) of Republic Act No. 3019, otherwise known as The Anti-Graft and Corrupt Practices Act and is sentenced to suffer an indeterminate penalty of IMPRISONMENT of SIX (6) YEARS and ONE (1) MONTH as minimum to TEN (10) YEARS as maximum, with perpetual disqualification to hold public office.

x x x x<sup>[36]</sup>

The Sandiganbayan held that all the elements of the crime of Usurpation of Official Functions were present in this case.<sup>[37]</sup> *First*, Tiongco is concededly a public officer at the time of the commission of the crime.

*Second*, the Sandiganbayan held that the specific duties for Tiongco's position, as laid down in BC-CSC Form No. 1 (Revised 23 June 1976), do not include the authority to determine the release of retirement benefits to a prospective retiree. Likewise, based on her own testimony, Tiongco believed signing the Request for Clearance was merely ministerial after all the department heads had already affixed their signature. However, the Sandiganbayan ruled that, under Ombudsman Memorandum Circular No. 10 (OMB MC No. 10),<sup>[38]</sup> said authority is not ministerial but discretionary.<sup>[39]</sup> The Sandiganbayan also ruled that discretion to release retirement benefits was not included in the authority delegated by Barbin.<sup>[40]</sup>

*Third*, the Sandiganbayan held that it is the payment and release of Estacio's retirement gratuity that is the essence of the crime since the authority for this exclusively pertains to the head of the agency. In this case, Barbin was even "left in the dark" on the release of Estacio's retirement benefits.<sup>[41]</sup>

*Fourth*, the Sandiganbayan brushed aside Tiongco's argument that Section 20.4 of the PCIC CASA granted her the power to allow the disbursement of Estacio's retirement gratuity. The Sandiganbayan held that this provision speaks only of the **absence** of the president. Barbin may have been out of the office most of the time but he was expected to come in albeit at odd hours. It was still physically possible for Tiongco to consult with Barbin and give him the discretion on the release of Estacio's retirement pay, the Sandiganbayan ruled.<sup>[42]</sup>

The Sandiganbayan further held that Tiongco cannot use good faith as a defense since she "certainly knew at the outset that it was possible that the payment of Estacio's retirement gratuity and terminal leave benefits may be delayed if the 'head' of the agency, being then [Barbin], would otherwise determine that he would *not* release such payment."<sup>[43]</sup> It also emphasized that payment of retirement benefits did not qualify as an "urgent/quick action" that would justify overriding the need for the PCIC president's signature given the tedious procedure the same has to go through before the same can be approved.<sup>[44]</sup>

As to the charge for violation of Section 3(e) of R.A. 3019, the Sandiganbayan emphasized Tiongco's act of approving the payment and release of Estacio's