

SECOND DIVISION

[G.R. No. 183161, December 03, 2014]

OFFICE OF THE OMBUDSMAN, PETITIONER, VS. AMALIO A. MALLARI, RESPONDENT.

D E C I S I O N

MENDOZA, J.:

This is a petition for review on *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure assailing the June 6, 2008 Decision^[1] of the Court of Appeals (CA) in CA-G.R. SP No. 92109, entitled "*Amalio A. Mallari v. Office of the Ombudsman*," exonerating respondent Amalio A. Mallari (*Mallari*) from the administrative offense of grave misconduct in Administrative Case No. OMB-ADM-0-00-0547.

The Antecedents:

On October 24, 1997, ECOBEL Land, Inc. (*ECOBEL*), represented by its Chairman, Josephine Edralin Boright (*Boright*), applied for a medium term financial facility loan with the Government Service Insurance System (*GSIS*) Finance Group for the construction of a 26-storey twin tower condominium building, ECOBEL Tower, along Taft Avenue in Ermita, Manila. The loan application was denied for the following reasons: insufficiency of collateral, ECOBEL did not have the needed track record in property development, and the loan was sought during the Asian financial crisis.^[2]

Subsequently, ECOBEL applied for a two-year surety bond with GSIS to guarantee payment of a Ten Million US Dollar (US\$10,000,000.00) loan with the Philippine Veterans Bank (*PVB*) acting as the obligee.^[3]

On December 10, 1997, the ECOBEL bond application was approved in principle "subject to analysis/evaluation of the project and the offered collaterals."^[4] After an evaluation by the GSIS Bond Reinsurance Treaty Underwriting Committee, then chaired by Leticia G. Bernardo (*Bernardo*), Manager of the Surety Department, General Insurance Group (*GIG*), the collateral offered was found to be a second mortgage. Accordingly, the Committee informed ECOBEL of the rejection of the collateral offered and requested for additional collateral.^[5]

Meanwhile, Alex M. Valencerina (*Valencerina*), then Vice-President for Marketing and Support Services, GIG, submitted the ECOBEL bond application through his Memorandum, dated January 27, 1998,^[6] for the evaluation and endorsement of the GSIS Investment Committee (*INCOM*). In the said Memorandum, Valencerina stated that the project was "viable" and the payment guarantee bond was "fully secured" by reinsurance and real estate collaterals. He also cited that the "funder has given the principal limited time to avail of the loan. Failure to submit and/or present the payment guarantee bond would lead to the cancellation of the 'booking'

of the funds.”^[7] The memorandum was coursed through Mallari, then Senior Vice-President of GSIS, GIG, addressed to the President and General Manager of GSIS. Mallari scribbled his own endorsement by stating "*Strongly reco. based on info and collaterals herein stated.*"^[8]

During a meeting on February 17, 1998, Mallari presented to the INCOM a proposal to grant the guarantee payment bond to ECOBEL. The INCOM, in turn, requested Mallari to look into the viability of the project of ECOBEL.^[9]

On March 10, 1998,^[10] the INCOM, through Resolution No. 07-4(8), approved the ECOBEL application.

The following day, March 11, 1998, the GSIS Surety Bond or G (16) GIF Bond No. 029132^[11] (*ECOBEL bond*) in the amount of Ten Million US Dollars (US\$10,000,000.00) was correspondingly issued in favor of ECOBEL with PVB as the obligee. The ECOBEL bond was signed by Mallari on behalf of the GSIS GIG to guarantee the repayment of the principal and interest on the loan granted to ECOBEL through the obligee to be used for the construction of its tower building.^[12]

Boright signed the corresponding Indemnity Agreement^[13] in favor of GSIS on February 11, 1998 or a month prior to the issuance of the ECOBEL bond. A billing statement, dated March 11, 1998,^[14] for US\$165,000.00 as ECOBEL's bond premium for one year was prepared by Mallari.

In the meantime, Mallari was reassigned to the Housing and Real Property Development Group pursuant to Office Order No. 73-98, dated July 27, 1998.

On November 19, 1998, a Memorandum^[15] was issued by Federico Pascual, President and General Manager of GSIS, ordering the suspension of the processing and issuance of guarantee payment bonds.^[16]

Despite the directive, Valencerina and Fernando U. Campana (*Campana*), then Vice-President of the London Representative Office (LRO), International Operations, GIG, issued a Certification, dated January 14, 1999, stating that ECOBEL bond "is genuine, authentic, valid and binding obligation of GSIS and may be transferred to Bear, Stearns International Ltd., and any of its assignees and Aon Financial Products, Inc. and any of its assignees within the period commencing at the date above. GSIS has no counterclaim, defense or right of set-off with respect to the surety bond provided that DRAWING CONDITIONS have been satisfied."^[17]

On February 9, 1999, almost a year from the issuance of the ECOBEL bond, Valencerina received from Boright the premium payment for the bond in the amount of ₱12,731,520.00, in FEBTC check, post-dated February 26, 1999 as a one-year premium for the period, March 11, 1998 to March 11, 1999.^[18]

Thereafter, Transfer Certificate of Title (TCT) No. 66289 covering the land located in Lipa City, Batangas, consisting of 205,520 square meters, submitted as collateral, turned out to be "not genuine" or spurious. The said land, with an appraised value of ₱202,437,200.00, was the major collateral for the issuance of the ECOBEL bond. The

land was titled in the name of Vicente Yupangco who did not appear to hold any interest in ECOBEL, either as officer or stockholder.^[19]

Thus, on February 12, 1999, the ECOBEL bond was cancelled by GSIS, through Atty. Saldares of the Underwriting Department II. On the same day, Valencerina informed Boright that the bond was invalid and unenforceable and that the FEBTC check, postdated February 26, 1999, was disregarded by GSIS.^[20]

On February 19, 1999, despite the notice of the bond cancellation, ECOBEL was granted a loan by Bear and Stearns International Ltd. (*BSIL*) in the face amount of US\$10,000,000.00 using the ECOBEL bond. The amount actually drawn and received by ECOBEL was US\$9,307,000.00. After the drawdown, Campaña at the LRO received the surety bond premium check payments, dated April 1, 1999 and April 15, 1999, in the total amount of US\$200,629.00. The said checks were remitted to GSIS Manila on May 10, 1999.^[21]

On March 7, 2000, a Notice of Default on Payment^[22] was issued against ECOBEL which placed GSIS under threat of a suit. GSIS was furnished with a copy of the said notice and was similarly advised on March 9, 2000.^[23]

In a Certification, dated March 20, 2000,^[24] PVB stated that it did not accept the proposal for it to be named "obligee" in the ECOBEL bond, as there was no contract or agreement executed between ECOBEL and PVB.

Ruling of the Ombudsman

Hence, an investigation was conducted relative to the matter of issuance of the ECOBEL bond. On this basis, the Fact-Finding and Intelligence Bureau (FFIB) of petitioner Office of the Ombudsman (*Ombudsman*) filed criminal and administrative complaints against Mallari, along with Bernardo, Campaña^[25] and Valencerina, before the Evaluation and Preliminary Investigation Bureau (*EPIB*) and the Administrative Adjudication Bureau (*AAB*) for violation of Section 3(e) and (g) of Republic Act (*R.A.*) No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, docketed as OMB-0-001135, and for violation of Section 22(b), (p), Rule XIV of the Omnibus Rules implementing Book V of Executive Order No. 292, also known as the Administrative Code of 1987, docketed as OMB-ADM-0-00-0547.^[26]

OMB-ADM-0-00-0547 is the subject of the present petition.

In an Order, dated January 10, 2002, the AAB directed Mallari to file his counter-affidavit and controverting evidence. Mallari complied and submitted his Counter-Affidavit^[27] on January 25, 2002.

On May 30, 2002, the case was set for preliminary conference on June 14, 2002. Before the scheduled date, Mallari filed a Manifestation that he was willing to submit the administrative case for resolution/decision on the basis of the evidence on record, thereby waiving his right to be present in the said preliminary conference.

On January 27, 2005, the FFIB rendered a Decision^[28] finding Mallari liable for

simple neglect of duty, inefficiency and incompetence in the performance of his official duties when he affixed his signature on the bond despite the deficiencies apparent on its face. The FFIB observed that there being a finding of positive violation of Section 3(e) of R.A. No. 3019, the corresponding administrative liability also attached.

Consequently, Mallari was meted out the penalty of one-year suspension without pay in accordance with Section 55 of the Uniform Rules on Administrative Cases.

In its Order,^[29] dated June 8, 2005 and signed on June 9, 2005, the Ombudsman approved with modifications the January 27, 2005 Decision. It found that there was more than substantial evidence on record to hold Mallari administratively liable. Thus, the Ombudsman adjudged him guilty of grave misconduct and imposed upon him the penalty of dismissal from service.

Mallari filed his motion for reconsideration^[30] of the said decision and order praying for his exoneration of any liability. In its Order,^[31] dated September 1, 2005, the Ombudsman denied his motion for reconsideration.

The Ombudsman did not give credence to his contention that the case had no legal basis in view of his retirement from GSIS effective February 1, 2004. The Ombudsman said that, contrary to his assertion, its disciplinary authority extended to him pursuant to Section 21 of Republic Act No. 6770,^[32] considering that when the complaint was filed on June 30, 2000, and when the acts complained of were committed, he was actively in government service. More importantly, according to the Ombudsman, "the corresponding disabilities and accessories to administrative penalties provided for in Sections 57 to 58 of the Uniform Rules on Administrative Cases which are: cancellation of eligibility and perpetual disqualification for reemployment in the government service still attach."^[33]

Ruling of the CA

Aggrieved, Mallari filed with the CA a petition for review seeking to annul the aforementioned January 27, 2005 Decision of the Ombudsman and its June 8, 2005 and September 1, 2005 Orders.

On June 6, 2008, the CA rendered the assailed decision exonerating Mallari of the administrative offense of grave misconduct. The CA explained that the Ombudsman did not exert efforts to explain the facts and to show the evidence to support its finding of guilt against Mallari for grave misconduct justifying his dismissal from the service, which contravened Section 14, Article VIII of the 1987 Constitution.

The CA ruled that there was no substantial evidence to hold Mallari administratively liable for grave misconduct warranting the imposition of the supreme penalty of dismissal. Mallari affixed his signature in the proposed bond after the GSIS INCOM approved the ECOBEL bond for the payment guarantee bond. It added that the proposed bond signed by him did not legally come into existence because PVB did not agree to be the obligee of the ECOBEL bond. Hence, it could never be the source of any right or obligation. The CA believed that it was the certifications as to the validity and authenticity issued by Campaña and Valencerina that gave life to the bond, and enabled ECOBEL to make the drawdown. It found no iota of evidence

linking Mallari to the subsequent use of the bond as he was transferred from the GIG to the HRPDG on August 1, 1998. As the decision had nothing to support itself, the cardinal rights of Mallari as laid down in *Ang Tibay v. CIR*^[34] dictated that the said decision was a nullity. It concluded that the quantum of proof which was substantial evidence needed in the rendition of an adverse decision in the administrative case against Mallari had not been met. The CA disposed as follows:

WHEREFORE, premises considered, the Order dated June 9, 2005 of respondent Office of the Ombudsman finding petitioner herein guilty of Grave Misconduct and ordering his dismissal from the service is hereby SET ASIDE and in its stead, petitioner is hereby EXONERATED from the administrative charges against him in OMB-ADM-0-00-0547.

SO ORDERED.^[35]

Hence, this petition anchored on the following

GROUND

I

THE DECISION OF THE COURT OF APPEALS COMPLETELY EXONERATING RESPONDENT OF ANY ADMINISTRATIVE LIABILITY IS NOT IN CONFORMITY WITH THE FACTS OF THE CASE, APPLICABLE LAWS AND JURISPRUDENCE.

II

AS FOUND BY THE OFFICE OF THE OMBUDSMAN, THERE WAS MORE THAN SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT WARRANTING HIS DISMISSAL FROM THE GSIS; HENCE, THE RULING OF THE COURT OF APPEALS TO THE CONTRARY IS A GLARING NULLITY.

III

THE COURT OF APPEALS ERRED IN NOT APPLYING THE WELL SETTLED RULE THAT AS LONG AS SUBSTANTIAL EVIDENCE SUPPORTS THE OMBUDSMAN'S RULING HIS DECISION WILL NOT BE OVERTURNED.

IV

THE DECISION OF THE OFFICE OF THE OMBUDSMAN FINDING RESPONDENT ADMINISTRATIVELY LIABLE FOR GRAVE MISCONDUCT AS WELL AS THE ORDER DENYING HIS MOTION FOR RECONSIDERATION THEREOF COMPLIED WITH THE CONSTITUTIONAL REQUIREMENTS THAT THEY SHOULD STATE CLEARLY AND DISTINCTLY THE FACTS AND THE LAW UPON WHICH THEY ARE BASED, AND THE RULING OF THE COURT OF APPEALS TO THE CONTRARY IS A PATENT NULLITY.^[36]