

## **FIRST DIVISION**

**[ G.R. No. 171359, July 18, 2012 ]**

**BENJAMIN A. UMIPIG, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

**[G.R. NO. 171755]**

**RENATO B. PALOMO AND MARGIE C. MABITAD, PETITIONERS,  
VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.**

**[G.R. NO. 171776]**

**CARMENCITA FONTANILLA-PAYABYAB, PETITIONER, VS. PEOPLE  
OF THE PHILIPPINES, RESPONDENT.**

### **D E C I S I O N**

**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 Decision<sup>[1]</sup> and January 30, 2006 and March 1, 2006 Resolutions<sup>[2]</sup> 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.<sup>[3]</sup>

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 and authorized Palomo "to start negotiations for the acquisition of the site in Cavite and if necessary to pay the earnest money."<sup>[4]</sup>

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 (P500,000) 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."<sup>[5]</sup>

On November 10, 1995, Disbursement Voucher No. 101-9511-1114 was prepared for the P500,000 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 P370.00/sq. meter while the offer to NMP dated October 11, 1995 is for P350.00/sq.m.
4. Tax declaration No. 3908 and 3907 for TCT No. T-16279 and T16356 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
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.<sup>[6]</sup>

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."<sup>[7]</sup> Palomo signed Box C as approving officer.<sup>[8]</sup>

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 P350 from the beginning."<sup>[9]</sup>

On December 10, 1995, a P2,000,000 partial payment was released for the purchase of Lots 1730-C and 1730-D through Disbursement Voucher No. 101-9512-082,<sup>[10]</sup> 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.

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 P7,803,600 or P350 per square meter. Said Contract to Sell eventually ripened into a consummated sale (referred hereinafter as "the first purchase") as TCT No. T-936236<sup>[11]</sup> for Lot 1730-C and TCT No. T-936237<sup>[12]</sup> 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 1730C 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 decision<sup>[13]</sup> 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. 16356<sup>[14]</sup> and registered in the name of the late Eufrocina Raqueño, married to the late Leoncio Jimenez, and Lot 1732 covered by TCT No. 35812<sup>[15]</sup> 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;<sup>[16]</sup> and another dated July 12, 1996 executed by Trinidad authorizing Solis to sell Lots 1731 and 1732 and to receive consideration.<sup>[17]</sup>

On August 1, 1996, Palomo and Solis executed a Contract to Sell<sup>[18]</sup> over Lots 1731 and 1732. It specified a total purchase price of P11,517,100 to be paid as follows:

4.1 P6,910,260 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.<sup>[19]</sup>

On even date, Disbursement Voucher No. 101-9608-787<sup>[20]</sup> was prepared for the downpayment of P6,910,260 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 Allotments<sup>[21]</sup> was prepared by Fontanilla-Payabyab for the P6,910,260 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. 0001584295<sup>[22]</sup> in the amount of P6,910,260 payable to Solis. The signatories to the check were Umipig<sup>[23]</sup> and Palomo.<sup>[24]</sup>

On December 27, 1996, Disbursement Voucher No. 101-9612-1524 was prepared for P3,303,600 with Solis as payee. Of said amount, P1,303,600 was for the full payment of the lots under the first purchase while the remaining P2,000,000 was partial payment of the balance for Lots 1731 and 1732.<sup>[25]</sup> 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 date, NMP issued DBP Check No. 0001752005<sup>[26]</sup> in the amount of P3,303,600 payable to Solis. The signatories to the check were Umipig<sup>[27]</sup> and Palomo.<sup>[28]</sup>

The total payments made for the "**second purchase**" covering Lots 1731 and 1732 was **P8,910,260.00**, 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,<sup>[29]</sup> August 11, 1998,<sup>[30]</sup> and September 30, 1998,<sup>[31]</sup> 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 letter<sup>[32]</sup> 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 SPA<sup>[33]</sup> 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

Presbitero J. Velasco, Jr. as attorney-in-fact. The OSG reported the Consulate's findings to Palomo in a letter<sup>[34]</sup> dated June 17, 1999.

On July 19, 1999, Palomo filed an Affidavit-Complaint<sup>[35]</sup> 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.<sup>[36]</sup>
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.<sup>[37]</sup>

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.
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. <sup>[38]</sup>

Atty. Basallaje thus 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.