

## FIRST DIVISION

**[ G.R. No. 139141-42, November 15, 2000 ]**

**MAMBURAO, INC. AND PETER H. MESSER, PETITIONERS, VS.  
OFFICE OF THE OMBUDSMAN, RODOLFO D. ABELLA, LYDIA P.  
FERNANDEZ AND NANNY P. GARCIA, RESPONDENTS.**

### D E C I S I O N

#### **GONZAGA-REYES, J.:**

At issue in this petition for *certiorari* under Rule 65 of the Rules of Court is whether the Ombudsman acted with grave abuse of discretion when he dismissed the criminal charges against private respondents.

The factual antecedents are undisputed. Sometime in October, 1994, Mamburao, Inc. (Mamburao), as represented by its general manager Peter H. Messer, applied for a P6 million loan with the Balagtas Branch of Landbank of the Philippines (Landbank) in order to finance the construction of a restaurant in Bocaue, Bulacan. According to petitioners, they were initially informed by the bank that, based upon an appraisal of their proposed collateral, a loan of about P5 million could be expected. Petitioners claim that sometime in February, 1995, the amount of the loan was subsequently reduced to P2 to 3 million because the newly appointed branch manager, respondent Rodolfo D. Abella, ordered the re-appraisal of their collateral. On 21 April 1995, Messer requested for another appraisal, but was turned down by Abella, resulting in a shouting match between the two. Consequently, by means of a letter dated 24 April 1995, petitioners withdrew their loan application from the Balagtas Branch.

Sometime in June, 1995, petitioners re-applied for a loan with the Landbank branch located in Baliuag, Bulacan. Petitioners contend that they were informed by the officers of the Baliuag Branch that a loan in the amount of P6.3 million could be expected provided the lessors of the construction site, spouses Felipe P. Mendoza and Maria G. Mendoza, signed a "Consent and Waiver" document prepared by the bank. On 13 June 1996, the Mendozas signed the waiver. However, instead of submitting the loan application of Mamburao to the board of directors of Landbank, respondent Lydia P. Fernandez, Head of the Northern and Central Luzon Banking Group, ordered the "rollback" of the loan application to the Provincial Lending Center (PLC) of the Baliuag Branch headed by respondent Nanny P. Garcia, who was appointed thereto by Fernandez on 18 June 1996, just five days after the Mendozas signed the "Consent and Waiver" document. Petitioners insist that the rollback of their loan application was instigated by Abella since the latter would be embarrassed if the Baliuag Branch accommodated petitioners with a P6.3 million loan after the Balagtas Branch had reduced the loan amount to P2 to 3 million.

The loan application of petitioner was formally denied by the Baliuag Branch in a letter dated 29 August 1996, prompting petitioners to file with the Office of the

Provincial Prosecutor of Bulacan the following complaints: (1) slander and libel against Garcia (I.S. Nos. 96-3724 to 3725); (2) falsification of documents against Abella and use of falsified documents against Garcia (I.S. No. 96-4307); and (3) perjury against Garcia and Abella (I.S. No. 97-77).<sup>[1]</sup>

On the charge for slander against Garcia, petitioners claimed that when Messer went to Garcia's office in the Baliuag Branch on 19 July 1996, Garcia commented that she will recommend the denial of their loan because Mamburao's management was establishing a "front for prostitution where the GROs are the main merchandise, [the] only attraction, where no decent ladies could go alone in a totally immoral area." Garcia allegedly made this statement in the presence of her employees, and of a certain Susan Esplana and Paul Nicolau. Petitioners submitted the affidavits of Esplana and Nicolau, who declared that they were with Messer at the time Garcia made the allegedly slanderous statement. In her counter-affidavit, Garcia denied having uttered the defamatory statement, claiming that the meeting with Messer was "cordial, official and interactive and ended on a professional and friendly manner." Garcia also declared that Paul Nicolau was not present during the 19 July 1996 meeting.

Meanwhile, the subject matter of the complaint for libel is a letter dated 15 August 1996, signed by Garcia in her capacity as head of the PLC of Landbank-Bulacan, and addressed to Guillermo Gutierrez, the president of Mamburao, informing the latter of the reasons for the denial of Mamburao's loan application. The letter is set out herein in its entirety:

Provincial Lending Center  
Baliuag, Bulacan

August 15, 1996

Mr. Guillermo Gutierrez  
President  
Mamburao Management Development Corp.  
415 San Jose, Tumana St., Baliuag, Bulacan

Sir:

This is to inform you that your proposed restaurant project was recommended for denial due to the following reasons:

1. Not passing the risk analysis criteria which include assessment of management capabilities, ownership, quality, financial condition, collateral position and industry profile.
2. Very weak collateral position. The waiver of rights signed by Mr. Mendoza does not supercede the par. 4 of the lease contract which states that default in payment for four consecutive months is a ground to cancel the contract.

3. Adverse result of credit/background investigation. An updated credit/background investigation to supplement the previous investigation was conducted.

It was understood however at the onset that the Bank is not liable for time spent in filing your loan application and complying to [sic] basic requirements.

Thank you for considering Land Bank.

Very truly yours,

NANNY P. GARCIA  
Head, Bulacan PLC

Garcia admitted having written the abovequoted letter after she was informed that her recommendation for denial of Mamburao's loan application was approved. She maintained that the letter did not contain any malicious, derogatory, or insulting words. Moreover, Garcia asserted that the letter was sent by means of registered mail, not ordinary mail as claimed by petitioners.

Allegedly constituting the crime of falsification and use of falsified documents filed against Garcia and Abella, is a letter dated 20 February 1996 signed by Abella and addressed to the Northern and Central Banking Group, informing the latter about the previous denial of Mamburao's loan application. Petitioners claimed that such letter, which was submitted by Garcia in I.S. Nos. 96-3724 and 96-3725 together with her counter-affidavit, was fabricated by Abella.

With regard to the crime of perjury, petitioners alleged that Garcia and Abella made several false statements in their counter-affidavits filed with the Office of the Prosecutor of Malolos, Bulacan in I.S. Nos. 96-3724, 96-3725, and 96-4307. According to the allegations made in petitioners' affidavit-complaint, perjury was committed when -

- 1) Garcia and Abella claimed that the Balagtas Branch denied Mamburao's loan application;
- 2) Garcia claimed that the denial of the loan application of Mamburao was due to or happened per letter of denial dated 20 February 1996;
- 3) Garcia claimed that Mamburao is not qualified as a borrower;
- 4) Garcia created the false impression that she "collated and evaluated" other adverse / derogatory reports / informations about Mamburao;
- 5) Garcia claimed that she is not aware of a letter of Atty. Venustiano Roxas dated 22 July 1996 suggesting that Garcia be immediately relieved from the Mamburao, Inc. Project; and
- 6) Garcia and Abella stated that they are seeking the assistance of an "outside" lawyer for the criminal proceedings against them, when they

were in fact represented by Atty. Dominador Reyes - an employee of Landbank.<sup>[2]</sup>

Except for the complaint for slander against Garcia, all the complaints were dismissed by Assistant Provincial Prosecutors Pelagia J. Joaquin and Victoria Fernandez Bernardo for want of probable cause (Resolutions dated 24 February 1997 and 25 April 1997).<sup>[3]</sup> The motions for reconsideration filed by petitioners were similarly denied (Resolutions dated 28 April 1997 and 4 June 1997).<sup>[4]</sup>

On 14 July 1997, petitioners filed three separate petitions for review with the Department of Justice (DOJ). In an indorsement dated 12 September 1997, the Assistant Chief State Prosecutor of the DOJ, Apolinario G. Exevea, referred to the Office of the Ombudsman the petition for review filed by petitioners from the Resolutions dated 25 April 1997 and 4 June 1997 of the Provincial Prosecutor of Bulacan dismissing the complaint against Garcia and Abella for perjury in I.S. No. 97-77. In a second indorsement dated 14 November 1997, the DOJ Regional State Prosecutor, Region III, referred to the Office of the Ombudsman the petitions for review filed by petitioners from the Resolutions of the Provincial Prosecutor dated 24 February 1997 and 28 April 1997 recommending the filing of an information for slander against Garcia in I.S. No. 96-3724; dismissing petitioners' complaints against Garcia for libel in I.S. No. 96-3725; and recommending the filing of an information against Garcia and Abella for falsification of documents and/or use of falsified documents in I.S. No. 96-4307.<sup>[5]</sup> The indorsements to the Office of the Ombudsman were made pursuant to OMB-DOJ Joint Circular No. 95-001,<sup>[6]</sup> which provides in part:

1. Preliminary investigation and prosecution of offenses committed by public officers and employees in relation to office whether cognizable by the Sandiganbayan or the regular courts, and whether filed with the Office of the Ombudsman or with the Office of the Provincial / City Prosecutor shall be under the control and supervision of the Office of the Ombudsman.

The three petitions for review were docketed singly as OMB-1-97-2413. This case was consolidated with OMB-1-97-1465 - a complaint filed originally with the Office of the Ombudsman by Mamburao, charging Abella, Garcia, and Fernandez with slander, libel, perjury, falsification, use of falsified documents, and violation of section 3 (e) of Republic Act No. 3019 (RA 3019).<sup>[7]</sup>

On 24 August 1998, the Office of the Deputy Ombudsman for Luzon denied the petitions for review,<sup>[8]</sup> and on 16 February 1999, the motion for reconsideration of petitioners was also similarly denied.<sup>[9]</sup> The Ombudsman explained its decision in this wise:

Perusal of the case records will show that there is no evidence that would indicate that Respondents exercised partiality evident bad faith or gross inexcusable negligence in the discharge of their official function so that

the loan application of Complainant would not materialize. As correctly pointed out by respondent Nanny Garcia in her counter-affidavit, "the giving of a loan is a consensual contract and banks cannot be dictated to give a loan when in its analysis the borrower is not qualified in its lending program." (p. 57, records). Complainant's claim that the consent and waiver document signed by the Mendoza spouses was the last requirement for its loan approval was not true because in the counter-affidavit of respondent Garcia he clarified that it was merely one of the requirements for the processing of the loan application (p. 103, records). Respondent Garcia further clarified that the letter of Elizabeth S. Olaviaga requesting for the submission of the consent and waiver does not necessarily mean that the loan will be approved because such document is merely one of the requirements for the processing of the loan at the PLC level and the same has to be approved by the Regional Head, Area Head, reviewed by the Branch Credit Management Department, approved by the Banking Sector Head as well as the President of the Bank.

Acting on the Petition for Review (OMB-1-97-2413) filed by Complainant, he pointed out three errors with respect to the dismissal of his criminal complaints by alleging the following:

1. In particular, the Prosecutor erred in law and in fact and/or gravely abused its discretion amounting to lack of jurisdiction in applying the presumption of "regularity of performance of official functions" by Respondents and disregarding the entire chain of Petitioner's evidence proving that Respondents were not acting in good faith (p. 17, records).
2. In particular, the Prosecutor erred in law and in fact and/or gravely abused its discretion amounting to lack of jurisdiction for failing to act upon Abella's failure/defiance to prove the authenticity of the letter/report in complete disregard of the rules of evidence and its jurisprudence (p. 28, records).
3. In particular, the Prosecutor erred in law and in fact and/or gravely [a]bused its discretion amounting to lack of jurisdiction in not trying to establish the truth, but only the winnability of the case in court (p. 30, records).
4. In particular, the Prosecutor erred in law and in fact and/or gravely abused its discretion amounting to lack of jurisdiction in virtually insisting the Petitioners had to prove their case beyond reasonable doubts already in the preliminary investigation.

As a backgrounder, it is to be recalled that in I.S. No. 96-3724 for Slander against respondent N. Garcia, the subject matter of this case was an incident on July 19, 1996 whereby respondent N. Garcia allegedly stated that she will recommend the denial of the loan applied for by Complainant because Mamburao, Inc.'s Management is establishing a