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FIRST DIVISION

[G.R. No. 159876. June 26, 2007]

DINO A. CRUCILLO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,** *respondents.*

[G.R. No. 159877. June 26, 2007]

JOSE R. TENGCO, JR., *petitioner, vs.* **HON. SIMEON V. MARCELO in his capacity as the OMBUDSMAN and the PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OFFICE OF THE OMBUDSMAN; RULE OF NON-INTERFERENCE; THE SUPREME COURT DOES NOT ORDINARILY INTERFERE WITH THE OMBUDSMAN'S FINDING AND CALL ON THE EXISTENCE OF PROBABLE CAUSE; EXCEPTION. — The Court does not ordinarily interfere with the Ombudsman's finding and call on the existence of a probable cause. Practical consideration as well as respect for the Constitution and R.A. No. 6770 which have endowed the OOMB with a wide latitude of investigatory and prosecutory prerogatives virtually free from legislative, executive or judicial intervention are the moving reasons for this rule. This rule of non-interference is, however, far from absolute. Case law has it that the Court will intervene upon proof of commission of grave abuse of discretion by the Ombudsman. In other words, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may exceptionally be invoked pursuant to Section 1, Article VIII of the Constitution. Accordingly, where grave abuse of discretion taints the Ombudsman's finding as to the existence of probable cause, the aggrieved party may file a petition for *certiorari* under Rule 65.

Supreme Court E-Library

2. REMEDIAL LAW; COURTS; INSTANCES WHERE THE COURTS MAY INTERFERE WITH THE INVESTIGATORY POWER OF FISCALS AND THE OMBUDSMAN. — In *Cabahug v. People,* the Court, citing *Brocka v. Enrile,* enumerated the circumstances where the courts may interfere with the investigatory power of fiscals and the Ombudsman and thus stay or altogether restrain criminal prosecutions. Among these are: (a) To afford protection to the constitutional rights of the accused; (b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (c) When double jeopardy is clearly apparent; (d) Where it is a case of persecution rather than prosecution; (e) Where there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; and (f) When manifest bad faith accompanies the filing of the criminal charge.

3. ID.; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; ABSOLUTE IDENTITY OF PARTIES IS NOT A CONDITION *SINE QUA NON* FOR *RES JUDICATA* TO APPLY. — Absolute identity of parties is not a condition *sine qua non* for *res judicata* to apply; substantial identity of parties would suffice. Privity or a shared identity of interest between a party in the first case and the party in the second case, as here, is sufficient to invoke the coverage of the principle.

4. ID.; ID.; ID.; ID.; NATURE. — *Res judicata,* according to Black, "refers to the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same demand or cause of action." *Res judicata* is, in fine, a rule of preclusion to the end that facts or issues settled by final judgment should not be tried anew. It has two aspects: 1) the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action; this is designated as "*bar by former judgment*"; and 2) precludes the relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action. This is the rule on "*conclusiveness of judgment.*"

5. ID.; ID.; ID.; ID.; APPLIES TO JUDICIAL AND QUASI-JUDICIAL ACTS OF PUBLIC, EXECUTIVE, OR ADMINISTRATIVE

OFFICERS AND BOARDS ACTING WITHIN THEIR JURISDICTION. — The suggestion that decisions or orders of the Ombudsman and other quasi-judicial bodies cannot attain the force of *res judicata* is simply specious. For, as jurisprudence teaches, public policy demands that, even at the risk of occasional errors, judgments of courts as well as administrative decisions should become final at some definite time fixed by law and that parties should not be permitted to litigate the same issues over again. This is the *raison d'etre* upon which the doctrine of *res judicata* rests. The rule of *non quieta movere* prescribes that what was already terminated should not be disturbed or altered at every step. And as we articulated in *Macailing v. Andrada*, citing a host of cases, the rule which forbids the reopening of a matter once judicially determined by competent authority "applies as well to the judicial and *quasi-judicial* acts of public, executive, or administrative officers and boards acting within their jurisdiction."

6. ID.; ID.; ID.; ID.; THE APPLICATION THEREOF CANNOT BE EVADED BY MERELY VARYING THE FORM OF THE ACTION OR ENGAGING A DIFFERENT METHOD OF PRESENTING THE ISSUE. — [T]he application of the *res judicata* doctrine cannot be evaded by merely varying the form of the action or engaging a different method of presenting the issue. Legal theories do not operate to constitute a cause of action; new legal theories do not amount to a new cause of action so as to defeat the application of the principle of *res judicata*.

7. CRIMINAL LAW; SECTION 3(G) OF REPUBLIC ACT NO. 3019; EXPLAINED. — The term "*manifest*" in the context of Section 3(g) of R.A. No. 3019 penalizing the act of entering, in behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, denotes something evident to the senses, obvious, or notorious, while "gross" means glaring, reprehensible, flagrant or shocking. A collateralized loan transaction payable in 7 to 12 years, in semi-annual amortization basis, and bearing the usual interest with provisions for penalty in case of default cannot be categorized as **grossly** and **manifestly** disadvantageous to DBP.

8. ID.; VIOLATION OF SECTION 3(E) OF REPUBLIC ACT NO. 3019; ELEMENTS. — [V]iolation of Section 3(e) of R.A.

Supreme Court E-Library

No. 3019, the elements of which are as follows: a) the accused is a public officer or a private person charged in conspiracy with the former; b) the public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions; c) that he or she causes undue injury to any party, whether the government or a private party; d) such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and, e) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect.

9. ID.; ID.; PROOF OF EVIDENT BAD FAITH OR MANIFEST PARTIALITY, REQUIRED. — [T]o make out a *prima facie* case for violation of Sec. 3(e) of R.A. No. 3019, proof of evident bad faith or manifest partiality will have to be adduced. Evident bad faith connotes more than a bad judgment; it implies a palpably dishonest purpose or some moral obliquity for some perverse motive or ill will. Manifest partiality, on the other hand, denotes a notorious or plain bent or predilection to favor one side rather than the other. Evident bad faith or manifest partiality cannot be deduced from the behest nature of a loan transaction, if indeed that be the case, for good faith and regularity of a business transaction are always presumed.

APPEARANCES OF COUNSEL

Ongkiko Kalaw Manhit and Acorda Law Offices for D.A. Crucillo.
Cruz Durian Alday and Cruz-Matters for J.R. Tengco, Jr.
The Solicitor General for public respondents.

D E C I S I O N

GARCIA, *J.*:

In these consolidated petitions for *certiorari* under Rule 65 of the Rules of Court, with prayer for injunctive relief, petitioners Dino A. Crucillo (Crucillo, for short) and Jose R. Tengco, Jr.[1] (Tengco, for short) seek the annulment and setting aside of the

[1] What petitioner Tengco actually interposed was a petition for *certiorari* and prohibition.

Supreme Court E-Library

Order/Resolution[2] dated March 10, 2003 of the Office of the Ombudsman (OOMB)[3] in *OMB Case No. 0-96-0794*, as reiterated in a Resolution[4] of July 21, 2003, finding probable cause to proceed against both petitioners for violation of Section 3(e) and (g)[5] of Republic Act (R.A.) No. 3019, as amended, otherwise known as the *Anti-Graft and Corrupt Practices Act*.

The instant case turns on the charge filed by the respondent Presidential Commission on Good Government (PCGG) against the then board members/officers of both Phil-Asia Food Industries Corporation (PAFICO) and the Development Bank of the Philippines (DBP) for corrupt practices arising from the alleged "*behest*" loan DBP extended to PAFICO to finance the latter's soybeans processing plant project. Memorandum Circular (MC) No. 61,[6] series of 1992, lists several criteria to show the earmarks of a "*behest loan*." Among these are: (1) the loan was under collateralized; (2) the borrowing entity was undercapitalized; (3) endorsement by high government officials; and 4) unusual speed in releasing the loan proceeds.

At times material to this case, petitioner Crucillo was the Manager of the DBP's Agricultural Projects Department I (APD I). Petitioner Tengco, on the other hand, sat as member of DBP's Board of Governors. DBP's charter[7] at that time

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[2] *Rollo* (G.R. No. 159876), pp. 75 *et seq.*

[3] Then headed by Ombudsman Simeon V. Marcelo, now resigned.

[4] *Rollo* (G.R. No. 159876), pp. 95 *et seq.*

[5] Sec. 3 of RA No. 3019 declares as constituting corrupt practices of any public officer and as unlawful: "(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence"; and "(g) Entering on behalf of the Government into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby."

[6] Entitled "Broadening the Scope of the *Ad Hoc* Fact Finding Committee on Behest Loans Created Pursuant to [AO] No. 13, dated 8 October 1992"; *rollo* (G.R. No. 159876), pp. 563 *et seq.*

[7] R.A. No. 85, as amended by R.A. Nos. 2081 and 3147, among other laws.

Supreme Court E-Library

empowered the bank "to grant loans to [and] to purchase preferred redeemable shares of stock of any agricultural and/or industrial enterprises . . . to finance their fixed and operating capital requirements. All . . . loans shall be granted only under such terms, conditions and restrictions as the bank shall determine."

Records yield the following facts:

On March 13, 1996, Atty. Orlando L. Salvador, then PCGG Consultant of the Presidential *Ad Hoc* Committee on Behest Loans (the Behest Loan Committee, for short), filed with the OOMB a *Sworn Statement*[8] therein stating that, sometime in March 1979, PAFICO applied for — and later secured approval from the DBP under Board Resolution (B/R) 2826, s. of 1979 — foreign currency loans (the subject loan, hereinafter). At the then prevailing exchange rate of US$1: Php 7.50, the total peso equivalent of the loan was Php 151,999,995.00. As alleged in the sworn statement, forming part of the accommodation package was the investment the DBP had to put up in PAFICO preferred shares in the amount of Php 40 Million to cover part of PAFICO's pre-operating expenses and the working capital requirements. In all then, the approved loan was, per Atty. Salvador, in the aggregate amount of **Php 191,999,995.00** (₱151,999,995.00 + ₱40,000,000.00 = ₱191,999,995.00).[9] The *Sworn Statement* further alleged as follows:

c. The original loan was secured as follows (Annex 4, Evidence 11)

1. Existing Assets

x x x x x x x x x

Total existing assets ₱1,405,325

2. Assets to be acquired

x x x x x x x x x

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[8] *Rollo* (G.R. No. 159876), pp. 110 *et seq.*

[9] The figures are rounded up in certain documents and pleadings to ₱152 Million and ₱192 Million, respectively.

Supreme Court E-Library

Total assets to be acquired	₱	194,068,991
Grand Total	₱	195,474,316
% Loan Value 80%		

d) PAFICO's paid up capital as of March 14, 1979

(Annex 4, Evidence 14) - - - - - - - - - - - - ₱4.5 million

5. Said evidence show that the **loan was without sufficient collateral** whereby DBP had to put-up equity in the amount of ₱40 million to cover the collateral deficiency … and **PAFICO** itself had **no sufficient capital** to be entitled of the loan (sic), paid-up capital amounts to ₱4.5 million only.

6. PAFICO obtained additional concessions and/or benefits . . . and was approved by the DBP Board under B/R 1809 . . . such as:

a) The deletion of [PAFICO board members] . . . Antonio Tan, Miguel Gonzales and Federico Ballon as signatories of the loan . . .;

b) The exclusion of Messrs. Benedicto and Sabido as co-obligors;

c) x x x x x x x x x

x x x x x x x x x x.

(Emphasis and words in brackets added).

The *Sworn Statement*, docketed as *OMB Case No. 0-96-0794*, charged the following individuals from DBP, namely: Rafael A. Sison, Jose V. de Ocampo, **Tengco**, Recio M. Garcia and **Crucillo**; and the then members of the PAFICO Board, to wit: Roberto A. Benedicto (now deceased), and four others, with violation of Section 3(e) and (g) of R.A. No. 3019.

Some time after the filing of the *Sworn Statement*, the following events transpired:

1. In a Resolution[10] of April 20, 1999, as approved by then Ombudsman (Omb.) Aniano Desierto, Graft Investigation Officer (GIO) Fe Q. Palmiano-Salvador of the Evaluation and Preliminary

[10] *Rollo* (G.R. No. 159876), pp. 339 *et seq.*

Supreme Court E-Library

Investigation Bureau (EPIB) **dismissed the case** on the ground that the subject loan, being a developmental loan and sufficiently collateralized, is not behest.

2. After the PCGG's motion for reconsideration was denied, the case was referred to GIO Evangeline Grafil who, in her review-report, recommended **giving due course** to the PCGG's **motion for reconsideration**. GIO Grafil, however, recommended that those involved be charged only with violation of Sec. 3(e) R.A. No. 3019.[11]

Special Prosecution Officer (SPO) Victorio Tabanguil disagreed with GIO Grafil's recommendation and **concurred** with GIO Salvador's **resolution**.[12]

3. Owing to the conflicting positions taken by the reviewing officials, then Omb. Desierto referred the case to the Office of the Legal Affairs (OLA) for another review.

On February 19, 2001, the **OLA recommended** — and Omb. Desierto approved — the **indictment** of Tengco, Crucillo, *et al.* for violation of Sec. 3(e) of R.A. No. 3019.[13]

4. On March 23, 2001, an information[14] was filed with the Sandiganbayan against the petitioners and eight (8) others. The inculpatory statements in the information read:

> That during the period from December 7, 1979 to June 8, 1982, . . ., accused RAFAEL A. SISON, JOSE V. DE OCAMPO, JOSE R. TENGCO and RECIO M. GARCIA, all public officers, being the Board Members of the . . . (DBP) and DINO A. CRUCILLO, also a public officer, being then the Manager of the DBP, while in the performance of their official and administrative functions as such, taking advantage of the same, **conspiring together** and mutually helping with accused ROBERTO A. BENEDICTO, ROBERTO M. SABIDO, [*et al.*], private individuals and officials of the . . . (PAFICO), a private corporation engaged primarily in "Soybean Processing," with **evident bad faith and manifest partiality**, did then and there

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[11] *Id.* at 345 *et seq.*

[12] *Id.* at 354 *et seq.*

[13] *Id.* at 359 *et seq.*

[14] *Id.* at 107.

Supreme Court E-Library

> willfully, unlawfully and criminally give unwarranted benefit, advantage, or preference to PAFICO by facilitating and granting a loan to the said PAFICO in the total sum ₱207,159,148.42 . . ., despite the fact that at the time of the grant thereof, **PAFICO had no adequate collateral to offer and was also undercapitalized**, thus causing undue injury to the government in the aforestated amount of the loan.
>
> CONTRARY TO LAW. (Emphasis and words in brackets added)

5. On May 4, 2001, the Sandiganbayan Fifth Division, to which the case, docketed as *Crim. Case No. 26539,* was raffled, ordered the OOMB to conduct a preliminary investigation insofar as the petitioners and accused Rafael Sison were concerned, they not having been accorded the benefit of a preliminary investigation.

Following the submission by those concerned of their counter-affidavits and countervailing evidence, the EPIB, through GIO Myrna A. Corral, *via* a Resolution[15] dated **June 3, 2002**, **recommended the dismissal** of this case on the ground of *res judicata*, disposing as follows:

> WHEREFORE, in view of the foregoing, it is hereby recommended that the charges against respondents Rafael A. Sison, Jose V. De Ocampo . . . Jose R. Tengco, [*et al.*] for violation of Section 3(e) and (g) of [R.A.] No. 3019 be DISMISSED, the same having been **previously resolved with finality on May 18, 1992 by this Office in TBP No. 87-02383** entitled *DBP v. Phil-Asia Food Industries Corporation (PAFICO).*
>
> SO RESOLVED (Words in bracket and emphasis added.)

On **July 5, 2002**, Omb. Desierto **approved** GIO Corral's recommendation. In time, the PCGG filed a *Motion for Reconsideration*, followed by a *Supplement to Motion for Reconsideration*,[16] upon the **ground** that **TBP Case No. 87-02388 is different from the present case.**

Then came the appointment of respondent Simeon V. Marcelo as Ombudsman.

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[15] *Id.* at 436-462.

[16] *Id.* at 470 *et seq.*

Supreme Court E-Library

On March 10, 2003, Omb. Marcelo, acting on the PCGG's motion to reconsider GIO Corral's resolution, issued the herein assailed *Order/Resolution*,[17] disposing as follows:

> IN VIEW OF THE FOREGOING, the . . . said Motion for Reconsideration dated 23 July 2002 filed by the [PCGG] is hereby **PARTIALLY GRANTED**. As against respondents **Rafael A. Sison**, **Jose R. Tengco** and **Dino A. Crucillo**, this Office finds probable cause for violation of Section 3 (e) and (g) of [R.A.] No. 3019 and hence, there is no justification for the withdrawal of the Information against them in Crim. Case No. 26539. As to respondents **Miguel V. Gonzales, Antonio L. Tan** and **Federico B. Ballon**, . . ., the instant criminal case against them is dismissed. The Office of the Special Prosecutor is hereby ordered to cause the amendment of the Information for the exclusion of respondents **Miguel V. Gonzales, Antonio L. Tan** and **Federico B. Ballon** from Criminal Case No. 26539.
>
> SO ORDERED. (Emphasis in the original; Words in brackets added.)

The petitioners' motion for reconsideration was denied in a resolution[18] of July 21, 2003.

Hence, these consolidated petitions. In a Resolution[19] of January 26, 2004 in *G.R. No. 159876*, the Court issued a Temporary Restraining Order enjoining the Sandiganbayan from proceeding with the hearing of Criminal Case No. 26539 (OMB Case No. 0-96-0794).

It is the petitioners' common contention that the instant case is barred by *res judicata,* petitioner Tengco submitting, in addition, that his liability, if there be any, was extinguished by the compromise agreement entered into by and between the Republic of the Philippines (RP), through the PCGG, and Benedicto wherein the latter ceded the PAFICO complex to the PCGG which then sold it to the General Milling Corporation, through

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[17] *Supra* note 2.

[18] *Supra* note 4.

[19] *Rollo* (G.R. No. 159876), pp. 634-635.

Supreme Court E-Library

the Asset Privatization Trust, for Php 330 million.[20] This sale, petitioner Tengco would claim, argues against the idea of the government incurring damages or placed at a disadvantage as a consequence to the alleged behest loan grant.

The other grounds petitioner Tengco advanced for the allowance of his petition are as follows:

4. THE MANIFESTLY ERRONEOUS FINDINGS OF RESPONDENT OMBUDSMAN THAT THE ₱40M EXTENDED TO PAFICO WAS ALLEGEDLY A "LOAN" AND NOT EQUITY INVESTMENT; THAT THE EQUITY ARRANGEMENT WAS ALLEGEDLY "A MERE SUBTERFUGE TO 'DRESS UP' THE VALUE OF PAFICO'S COLLATERALS"; OR ALLEGEDLY "TO FRAUDULENTLY SHOW THAT PAFICO HAD MORE THAN ENOUGH COLLATERAL TO SECURE ITS OBLIGATIONS" AND THAT THE LOANS ARE "UNDER-COLLATERALIZED" ARE COMPLETELY NOT JUSTIFIED AS THEY ARE SQUARELY NEGATED AND CATEGORICALLY DISPROVED BY EVIDENCE.

5. THE FINDINGS OF RESPONDENT OMBUDSMAN THAT PAFICO WAS UNDER-CAPITALIZED AND THAT "THE ₱40 MILLION EQUITY INFUSION BY DBP WAS USED TO INCREASE THE ₱70 MILLION CAPITAL REQUIREMENT OF PAFICO" ARE ALSO SQUARELY NEGATED AND CATEGORICALLY DISPROVED BY THE RECORDS; AGAIN RESPONDENT OMBUDSMAN COMMITTED GRAVE ABUSE OF DISCRETION IN MAKING CONCLUSIONS THAT ARE COMPLETELY BASELESS AND DIRECTLY DISPROVED BY THE EVIDENCE.

The issues in the instant petitions can be summed up into whether respondent OOMB, through then Omb. Marcelo, committed grave abuse of discretion amounting to lack of jurisdiction when it issued the assailed resolutions which would pave the way for the continued prosecution of the petitioners.

To the petitioners, respondent OOMB gravely abused its discretion in coming up with the assailed resolutions. For, in so

[20] *Id.* at 190-194.

Supreme Court E-Library

doing, it veritably reversed its own resolutions previously rendered by then Omb. Conrado Vasquez and then Omb. Desierto who, between them, thrice dismissed the same complaint for alleged violation of Sec. 3(e) and (g) of R.A. No. 3019 lodged against the herein petitioners and the PAFICO group impleaded as respondents in OMB Case No. 0-96-0794 and as accused in Criminal Case No. 26539.

In particular relation to the invocation of the *res judicata* principle and the RP-Benedicto compromise agreement, three (3) factual premises need at the outset to be established or underscored.

First, the OOMB had indeed previously passed upon the issue of whether the subject loan partakes of a behest loan accommodation. The OOMB, particularly during the watch of Omb. Vasquez, had dismissed with finality a case involving the same subject matter and parties.

The case adverted to is **TBP Case No. 87-02388**[21] **(**also denominated as TBP Case No. 87-02383 in certain documents and pleadings), a suit instituted by the "*post Edsa I*" DBP management against PAFICO involving what the former considered to be a "behest" loan approved by its former board in favor of PAFICO. In its *Complaint*[22] in TBP Case No. 87-02388, DBP prayed, in gist, that appropriate civil and/or criminal proceedings be instituted against all those involved in the grant of the subject loan.[23]

In the Resolution[24] of **October 4, 1991** and approved in **July 1992,** Omb. Vasquez (the Vasquez Resolution) dismissed TBP Case No. 87-02388.

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[21] Entitled "*Development Bank of the Philippines v. Phil-Asia Food Industries Corporation.*"

[22] *Rollo* (G.R. No. 159876), p. 544.

[23] *Id*. at 555.

[24] *Id*. at 557 *et seq*.; Issued by SPO III Teresita Diaz-Valdoz, concurred in by Deputy Special Prosecutor Jose De Ferrer and then Special Prosecutor Desierto and approved on July 24, 1992.

Supreme Court E-Library

Second, *via* a Resolution[25] of June 3, 2002, as approved by Omb. Desierto under date **July 5, 2002**, the EPIB dismissed OMB Case No. 0-96-0794. As is noted, the June 3, 2002 Resolution referred to and in fact reproduced in its entirety the Vasquez Resolution in TBP Case No. 87-02388.

Thereafter, on the basis of the EPIB Resolution, OOMB Prosecutor Jesus A. Michael filed in Criminal Case No. 26539 a *Motion to Withdraw Information*.

It is this EPIB Resolution of which respondent PCGG sought reconsideration. The PCGG's motion for reconsideration, in turn, was what the OOMB, this time under Omb. Marcelo, granted *via* the assailed *Order/Resolution* of March 10, 2003.

Third, in *Republic v. Benedicto*,[26] involving, among other things, the subject PAFICO loan, the Court declared as valid the RP-Benedicto *Compromise Agreement* executed on November 3, 1990 and which the Sandiganbayan approved in its Civil Case No. 0034. Pursuant thereto, Benedicto and his group-controlled corporations assigned or transferred all their rights and interests over PAFICO, among other corporate assets.[27] As trade off, the RP/PCGG, *inter alia*, extended absolute immunity to Benedicto, members of his family, and officers/employees of the listed corporations, such that there would be no criminal investigation or prosecution for acts or omissions prior to February 25, 1986 that may be alleged to have violated penal laws including R.A. No. 3019, in relation to the acquisition of the assets under the agreement.

It is the petitioners' threshold posture that the dismissal of TBP Case No. 87-02388 and the initial dismissal of OMB Case No. 0-96-0794, which was rooted on the dismissal of TBP Case No. 87-02388, bar the continued prosecution of OMB Case No. 0-96-0794 against them.

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[25] *Supra* note 15.

[26] G.R. No. 108292, September 10, 1993, 226 SCRA 314.

[27] Page 6 of the Resolution in TBP Case No. 87-02388.

Supreme Court E-Library

Respondent OOMB, represented by the Office of the Special Prosecutor (OSP), counters that the dismissal of TBP Case No. 87-02388 cannot plausibly be set up, pursuant to the *res judicata* principle, as basis for dismissing OMB Case No. 0-96-0794. As argued, the resolutions involved were not, for one, rendered by the courts. For another, there is no identity of parties in the two cases, TBP Case No. 87-02388 being a suit filed by DBP against PAFICO, whereas the Committee on Behest Loan is the complainant in OMB Case No. 0-96-0794. Pressing the point on identity, respondent OOMB alleged that the petitioners were neither named respondents in TBP Case No. 87-02388 nor did they have interests similar with that of the bank. As further alleged, the cause of action in OMB Case No. 0-96-0794 pivots on the issue of whether the loan extended by DBP to PAFICO falls under the category of a behest loan which, if so, would render the herein petitioners liable under R.A. No. 3019 for giving unwarranted benefits to PAFICO to the prejudice of the Government. TBP Case No. 87-02388, on the other hand, touched on the favored treatment given by the DBP to PAFICO.

We are inclined to grant the petitions.

The Court does not ordinarily interfere with the Ombudsman's finding and call on the existence of a probable cause.[28] Practical consideration as well as respect for the Constitution and R.A. No. 6770[29] which have endowed the OOMB with a wide latitude of investigatory and prosecutory prerogatives virtually free from legislative, executive or judicial intervention are the moving reasons for this rule.[30]

This rule of non-interference is, however, far from absolute. Case law has it that the Court will intervene upon proof of

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[28] *Fuentes, Jr. v. Ombudsman*, G.R. No. 164865, November 11, 2005, 474 SCRA 779; *Venus v. Desierto*, G.R. No. 130319, October 21, 1998, 298 SCRA 196.

[29] The Ombudsman Act of 1989.

[30] *Loquias v. Office of the Ombudsman*, G.R. No. 139396, August 15, 2000, 338 SCRA 62, citing cases.

Supreme Court E-Library

commission of grave abuse of discretion by the Ombudsman.[31] In other words, the Court is not precluded from reviewing the Ombudsman's action when there is grave abuse of discretion, in which case the *certiorari* jurisdiction of the Court may exceptionally be invoked pursuant to Section 1, Article VIII of the Constitution.[32] Accordingly, where grave abuse of discretion taints the Ombudsman's finding as to the existence of probable cause, the aggrieved party may file a petition for *certiorari* under Rule 65.[33] In *Cabahug v. People*,[34] the Court, citing *Brocka v. Enrile*,[35] enumerated the circumstances where the courts may interfere with the investigatory power of fiscals and the Ombudsman and thus stay or altogether restrain criminal prosecutions. Among these are:

(a) To afford protection to the constitutional rights of the accused;

(b) When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;

(c) When double jeopardy is clearly apparent;

(d) Where it is a case of persecution rather than prosecution;

(e) Where there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; and

(f) When manifest bad faith accompanies the filing of the criminal charge.

The issue here is whether the petitioners may validly invoke any or a mix of the foregoing exceptions.

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[31] *Soria v. Desierto*, G.R. Nos. 153524-25, January 31, 2005, 450 SCRA 2005; *Peralta v. Desierto*, G.R. No. 153152, October 19, 2005, 473 SCRA 322.

[32] *Espinosa v. Office of the Ombudsman*, G.R. No. 135775, October 19, 2000, 343 SCRA 744; *Acuna v. Office of the Ombudsman*, G.R. No. 144692, January 31, 2005, 450 SCRA 232.

[33] *Garcia-Rueda v. Pascasio*, G.R. No. 118141, September 5, 1997, 278 SCRA 769, cited in *Tirol v. del Rosario*, G.R. No. 135913, November 4, 1999, 317 SCRA 779.

[34] G.R. No. 132816, February 5, 2002, 376 SCRA 113.

[35] G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183.

Supreme Court E-Library

There is more to the arguments on *res judicata* that calls for the Court's exercise of its authority to restrain the prosecution of the petitioners. As things stand, the OOMB no less had determined that no *prima facie* case against herein petitioners obtains which would warrant their prosecution. As can be readily observed, the averments in the *Sworn Statement*[36] of Atty. Salvador indisputably relate to the same PAFICO loan already resolved with finality in the Resolution in TBP Case No. 87-02388.

Significantly, during the proceedings after the filing of the *Sworn Statement*, the OOMB struggled on the matter of the existence of a *prima facie* case to justify the filing of an anti-graft case against the petitioners and their alleged co-conspirators. To be precise, the OOMB did flip-flopping acts on its findings and conclusion respecting the behest nature of the subject loan and, with it, the propriety of filing an anti-graft law violation against the petitioners, *et al*. And there can hardly be any dispute that respondent OOMB, thru Omb. Marcelo, ignored previous dismissals of a similar case involving the same transaction and practically the same personalities.

As may be recalled, GIO Fe Salvador, in her Resolution of April 20, 1999, dismissed on the merits OMB Case No. 0-96-0794 and later denied the PCGG's motion for reconsideration. GIO Grafil, however, would find the PCGG's motion deserving of merit. But SPO Tabanguil, on review, disagreed with GIO Grafil's disposition, finding as he did GIO Salvador's ruling correct. When the Sandiganbayan, following the filing of the Information, referred the case back to the Ombudsman for the requisite preliminary investigation insofar as the petitioners were concerned, GIO Myrna A. Corral, after due proceedings, recommended the dismissal of OMB Case No. 0-96-0794. Omb. Desierto concurred with the Corral recommendation and accordingly dismissed the case.

There is no dispute that both TBP Case No. 87-02388 and OMB Case No. 0-96-0794 involve the very same loan transaction

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[36] *Supra* note 8.

Supreme Court E-Library

granted by DBP to PAFICO. And it bears reiterating that the Vasquez Resolution in TBP Case No. 87-02388 answered in the negative the question of whether the subject loan is a behest loan. Not only that. The same Vasquez Resolution categorically declared that the loan transaction was not entered into with manifest partiality or evident bad faith so as to make out a charge for violation of Section 3(e) of R.A. No. 3019.

The May 1992 Vasquez Resolution was doubtless a final dismissal on the merits of TBP Case No. 87-02388. As it were, no motion for reconsideration of the same resolution was taken, nor was it challenged before, let alone reversed by, the proper authority. By the terms of the dismissal, the criminal prosecution of the members of the DBP Board of Governors as well as the incorporators of PAFICO was effectively enjoined, thus:

> This case involves one of the so-called behest loans granted by complainant [DBP] in favor of . . . PAFICO.
>
> x x x x x x x x x
>
> In this regard, there can be no basis for indicting the individual members of the **[DBP] Board of Governors** who acted collectively on the aforesaid resolutions principally because there is no reason to assume that they acted to favor PAFICO or any of its directors or stockholders. In case the [DBP] suffered undue injury through the non-payment by PAFICO of its loans or the insufficiency of the collaterals that it presented, responsibility therefor cannot be pinned on them because as previously stated, **they did not perform any act of manifest partiality or evident bad faith. Thus, prosecution under [R.A.] No. 3019 is untenable.**
>
> x x x x x x x x x
>
> (Emphasis and words in bracket added.)

Not to be overlooked is the fact that Omb. Desierto, when he approved the dismissal of OMB Case No. 0-96-0794 pursuant to a resolution dated June 3, 2002, took into account the involvement of the ***same*** subject loan, ***same*** bank transactions, and virtually the ***same*** parties as those in TBP Case No. 87-02388.

Supreme Court E-Library

The following excerpts from the said June 3, 2002 resolution[37] cannot be any clearer:

> After going over the different claims and contentions of respondents Sison [*et al.*] . . ., we find the third defense averred by the other respondents to be very significant to be overlooked, particularly the previous Ombudsman's [Vasquez's] findings supporting the dismissal of the charges against the respondents in TBP No. 87-02383 *(sic)*. This issue was only brought into light when the respondents were given a chance to ventilate their defenses in this preliminary investigation. Records show that an Information for violation of Section 3 (e) of R.A. No. 3019 was filed with the Sandiganbayan by this Office against the herein respondents without the benefit of preliminary investigation, a procedural lapse . . .
>
> A perusal of the records of this Office in TBP No. 87-02383 *(sic)* shows that said case **involves the same parties and the same cause of action over the same bank transactions as the case now before us. Though it appears therefrom that the complainant is the [DBP], it is the same case now filed before us by the Fact Finding Committee on Behest Loans (FFCBL). The case before us now is based on the technical report of the Technical Working Group of the different government financing institutions, one of the members of which is the [DBP**].
>
> Records show that TBP No. 87-02383 *(sic)* was filed in 1987 while the [Behest Loan Committee] was only organized in October 1992 . . . For this considerable length of time, we cannot fault the [Behest Loan Committee] for failing to notice that this case involving foreign currency loan availed of from the DBP by . . . (PAFICO) had already been resolved and dismissed by the Office of the Special Prosecutor, the Office then principally tasked to conduct the preliminary investigation on the anti-graft cases filed before it. As borne by the records, it was no less than Ombudsman Aniano A. Desierto himself, who was then yet a Special Prosecutor, who concurred with the findings and recommendation of Special Prosecutor Teresita V. Diaz-Baldos and which resolution was subsequently approved to be dismissed by the then Ombudsman Conrado M. Vasquez . . . On review, this resolution was also upheld by [SPO] . . . Reynaldo Mendoza in his Memorandum dated 18 May 1992 and approved with finality by OMB Vasquez (p. 661, Records).

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[37] *Supra* note 15.

Supreme Court E-Library

x x x a party cannot by varying the form of action or adopting a different method of presenting his case, escape the operation of the principle that one and the same causes of action shall not twice be litigated between the same parties and their privies.

WHEREFORE, in view of the foregoing, it is hereby recommended that the charges against respondents . . . violation of Section 3 (e) and (g) of [R.A.] No. 3019 be DISMISSED, **the same having been previously resolved with finality on May 18, 1992 by this Office in TBP No. 87-02383** (sic) entitled "*DBP vs. Phil-Asia Food Industries Corporation (PAFICO)*.[38] (Emphasis and words in brackets added.)

In a bid to bar the application of the *res judicata*[39] rule, respondent OOMB invokes the absence of the element of identity of parties, its point being that neither of the herein petitioners is a party in TBP Case No. 87-02388.

The Court disagrees.

Absolute identity of parties is not a condition *sine qua non* for *res judicata* to apply; substantial identity of parties would suffice. Privity or a shared identity of interest between a party in the first case and the party in the second case, as here, is sufficient to invoke the coverage of the principle.[40]

It cannot seriously be disputed that, during the period material, the petitioners, being then officers of the DBP who had key participation in the processing or approval of the subject PAFICO loan, had a community of interest in the parties in TBP Case No. 87-02388. They are in a real sense privy to DBP and PAFICO respecting the subject loan transaction.

[38] The name of petitioner Crucillo was inadvertently omitted in the dispositive portion; a supplemental resolution dated August 5, 2002 would address the non-inclusion of Crucillo's name.

[39] The elements constituting *res judicata* are: (a) There must be a final judgment or order rendered by a court which had jurisdiction over the subject matter; (b) the prior judgment must be a judgment or order on the merits; and (c) there must be, between the two (2) cases, identity of parties, subject matter and causes of action.

[40] *Lanuza v. Court of Appeals*, G.R. No. 131394, March 28, 2005, 454 SCRA 54.

Supreme Court E-Library

As it were, the DBP prayed in TBP Case No. 87-02388 that the "*appropriate civil and/or criminal case/s be filed against those who may appear liable [in the grant of the behest loan]*." Doubtless, the *Complaint* sought not only the **criminal prosecution** of erring PAFICO officers, but all those who may be liable for anti-graft, inclusive of the loan evaluating/approving DBP officials. To our mind, then, respondent Ombudsman committed grave abuse of discretion by denying both petitioners the benefits of *res judicata* because they were not parties specifically named in TBP Case No. 87-02388.

Res judicata, according to Black, "refers to the rule that a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies and, as to them, constitutes an absolute bar to a subsequent action involving the same demand or cause of action."[41] *Res judicata* is, in fine, a rule of preclusion to the end that facts or issues settled by final judgment should not be tried anew.[42] It has two aspects: 1) the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action; this is designated as "*bar by former judgment*"; and 2) precludes the relitigation of a particular fact or issues in another action between the same parties on a different claim or cause of action. This is the rule on "*conclusiveness of judgment.*"[43]

Respondent OOMB also urges the rejection of the rule on *res judicata* owing not only to the fact that the resolution in the first case, *i.e.*, TBP Case No. 87-02388, is not the result of a court proceedings, but because the causes of action between TBP Case No. 87-02388 and OMB Case No. 0-96-0794 differ. And anent the second instance, respondent OOMB adds, there is a difference since the "*DBP directors/officers are commonly*

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[41] *Black's Dictionary*, 6th Ed., p. 1305, cited in *Gutierrez v. CA*, 193 SCRA 437.

[42] *Allied Bank v. CA*, G.R. No. 108089, January 10, 1994, 229 SCRA 252.

[43] *Calalang v. Register of Deeds*, G.R. No. 76265, March 11, 1994, 231 SCRA 88.

Supreme Court E-Library

charged as conspirators, a cause of action and prosecution theory that did not obtain in the previous case of TBP No. 02388,"[44] TBP Case No. 87-02388, respondent OOMB states, focused on the highly favored treatment given to PAFICO.

The Court is not convinced.

The suggestion that decisions or orders of the Ombudsman and other quasi-judicial bodies cannot attain the force of *res judicata* is simply specious. For, as jurisprudence teaches, public policy demands that, even at the risk of occasional errors, judgments of courts as well as administrative decisions should become final at some definite time fixed by law and that parties should not be permitted to litigate the same issues over again.[45] This is the *raison d'etre* upon which the doctrine of *res judicata* rests.[46] The rule of *non quieta movere* prescribes that what was already terminated should not be disturbed or altered at every step. And as we articulated in *Macailing v. Andrada*,[47] citing a host of cases, the rule which forbids the reopening of a matter once judicially determined by competent authority "applies as well to the judicial and *quasi-judicial* acts of public, executive, or administrative officers and boards acting within their jurisdiction."

On the matter of identity of causes of action, the Court holds that there is such identity between TBP Case No. 87-02388 and the instant case, which is the grant of the alleged behest loan. For perspective, however, a slightly different reasons are given in both cases for characterizing the subject loan as behest. The alleged "*special treatment*" given to PAFICO and the "*questionable viability*" of its soy beans processing projects are the reasons given in the first case, whereas reference to

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[44] Page 17 of the assailed Order/Resolution (*Supra* note 3); cited in the Memorandum for the respondent OOMB; *Rollo* (G.R. No. 159876), p. 1308.

[45] *Antique Sawmills, Inc. v. Zayco*, G.R. No. L-20051, May 30, 1966, 17 SCRA 316, citing *Meralco v. PSC*, 61 Phil. 456.

[46] *Allied Banking Corporation v. CA, supra,* citing cases.

[47] G.R. No. L-21607, January 30, 1970, 31 SCRA 126, citing cases.

Supreme Court E-Library

"*under collateralization*" and "*under capitalization*" is mentioned in the present case. But then, the application of the *res judicata* doctrine cannot be evaded by merely varying the form of the action or engaging a different method of presenting the issue.[48] Legal theories do not operate to constitute a cause of action; new legal theories do not amount to a new cause of action so as to defeat the application of the principle of *res judicata*.[49]

At any rate, assuming *arguendo* the dissimilarity in the causes of action or the prosecution theory insisted upon, the second concept of *res judicata*, the principle of conclusiveness of judgment, would still preclude the relitigation of the behest loan issue in another action between the same parties based on a different claim or cause of action. As explained by the Court —

> x x x where a right, question or fact is distinctly put in issue and directly determined by a court . . . in a first case, between the same parties or their privies, the former adjudication of that fact, right or question is binding on the parties or their privies in a second suit irrespective of whether the causes of action are the same. x x x[50]

It bears to reiterate that the question of whether or not the subject loan partakes of a behest loan had since 1992 been passed upon by in the Vasquez Resolution in TBP Case No. 87-02388. And without equivocation, it said that **it is not**. To be sure, then Omb. Vasquez did not arrive at his conclusion haphazardly. His resolution speaks for itself: [51]

> Going over the evidence submitted by the complainant [DBP], we note that the application for the loan, which was made by [the] President of PAFICO, appears to be complete and regular in that it outlined the loan portfolio needed and the principal features of the project such as its principal objectives, the nature of the business, [*etc*] . . .
>
> It appears that the loan application was subsequently evaluated by the [APD] I and then submitted for review as regards the IBRD

[48] *Esperas v. CA*, G.R. No. 121182, October 2, 2000, 341 SCRA 583.

[49] *Perez v. CA*, G.R. No. 157616, July 22, 2005, 464 SCRA 89.

[50] *Id*. at 112.

[51] *Supra* note 24.

Supreme Court E-Library

requirement to the Executive Officer of IPD-1. Even in the case of [B/Rs] 2826, 3849, 863 and 097, it appears that the proper studies and recommendations were conducted by the departments concerned before they were taken up in the respective meetings of the Board of Governors. Thus, whatever the Board of Governors approved was based on evaluation previously undertaken by the technical staff of complainant bank.

In this regard, x x x there is no reason to assume that [the individual members of the Board of Governors] acted to favor PAFICO or any of its directors or stockholders. x x x they did not perform any act or manifest partiality or evident bad faith. Thus prosecution under [R.A.] Act No. 3019 is untenable.

It cannot likewise be said that they succumbed to any pressure because in the entire length and breadth of the records of the case, there is nothing to betray either an indorsement from then President Marcos or any request for his intercession made by any of the directors of PAFICO which motivated the Board of Governors to act favorably on PAFICO's loan applications. (Words in brackets added.)

The final Vasquez pronouncement, as subsequently adopted by Omb. Desierto, notwithstanding, then OMB Marcelo insisted on the behest nature of the loan on the basis of the capitalization and collateralization *criteria* set forth in MC No. 61.[52] Taking off from where Omb. Marcelo left off, the OSP, for respondent OOMB, presently argues that the subject loan is "behest" since PAFICO incurred the same when it was undercapitalized, having a paid-up capital of only Php 4.5 million and that the Php 192 Million loan was not adequately secured.

Going over the pleadings and the documents pertaining to the subject loan, respondent OOMB's behest loan theory and the premises holding it together do not commend themselves for concurrence. While PAFICO's paid-up capital indeed only stood at Php 4.5 Million at the time it contracted the loan, records indubitably show that one of the loan approval conditions, as recommended by the APD I,[53] was the increase during the

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[52] *Supra* note 6.

[53] Per *SUMMARY AND REPORT* on PAFICO Loan Application; *rollo* (G.R. No. 159876), pp. 244-273.

Supreme Court E-Library

loan implementation of PAFICO paid-up common equity to at least Php 65 Million and that the 70:30 debt/equity ratio is maintained at all times - meaning that the maximum amount of loan possible was 70% of the project cost and that the minimum counterpart from the borrower is 30% of the project. Both conditions were approved by the DBP Board of Governors and incorporated in the approving B/R 2826 and in compliance therewith, PAFICO in fact hiked its paid-up capital to the required level.[54]

If slow-tracking of actual release is an argument against the behest nature of the subject loan, it may be stated also at this juncture that, as posited by petitioner Crucillo without denial from either of the respondents, there were 41 releases — averaging less than Php 4 Million per release — that took 27 months to complete.[55] DPB B/R 1212, s. of 1979,[56] provides for a release period of 18 months from the date of the first release, while B/R 2826 exacts that all loan releases shall be in accordance with verified project development and shall be covered by the loan value of all assets securing the loan.[57]

Anent the subject loan being allegedly under collateralized, respondent OOMB arrived at this postulate because the PCGG treated the Php 40 Million infused by DBP as preferred shares as part of the loan amount to plug the alleged collateral deficiency of PAFICO. To respondent OOMB, the infusion has the earmark of a loan for PAFICO promised a 16% annual yield, adding that the conspirators resorted to the equity investment scheme as "*a mere subterfuge to 'dress up' the value of [PAFICO's] collaterals (by lowering the amount of the loan) or fraudulently show that PAFICO has more than enough collaterals to secure the obligation*."

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[54] Memorandum of October 10, 1980 of the then DBP Vice-Chairman, *Rollo* (G.R. No. 159876), pp. 217-221.

[55] *Rollo* (G.R. No. 159876), p. 70.

[56] Omnibus Resolution of All Conditions Pertaining to Agricultural Loans and Specific Matters; *Id.* at 565 *et seq.*

[57] *Rollo*, (G.R. No. 159876), p. 335.

Supreme Court E-Library

We are not persuaded.

The approving board resolution, *i.e.*, B/R 2826, speaks only of a Php 152 Million loan and at that level was fully collateralized as the security put up had, as indicated in the *Sworn Statement*, a total value of Php 195.47 Million.[58] As against the Php 152 Million loan, the figure Php 195.47 Million represents a collateral ratio of 77.7% which is within the 80% threshold adopted by the bank and surely consistent with its lending policy. Under Res. No. 116, s. of 1974, — *the DBP Guidelines for Agricultural Lending* — under the heading: *LOANABLE VALUES "[F]ixed assets and real estate properties shall have a maximum loan value of 85%*."[59]

Contrary to what respondent OOMB insists, the preferred share of Php 40 Million was not a loan, but an equity investment which the DBP, under its charter,[60] is authorized to make. As an investment, no collateral is needed therefor. Preferred shares take a multiplicity of forms. There are preferred shares with priority over some other class or classes of shareholding as to dividends or distribution of assets.[61] Preferred shares as to dividends may be cumulative. Payment of dividends of preferred shares depends on the ability and willingness by the board of directors on the bases of performance, profits and availability of funds. The DBP preferred share investment was governed by the PAFICO-DBP Memorandum of Agreement, which set out preferred shares features, such as, but not limited to, par value, dividends voting rights, redemption, and convertibility.[62] Definitely, these particulars are not peculiar to, and are not found in, ordinary loans.

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[58] *Supra* note 7.

[59] Annex "I" of Petition in G.R. No. 159876, *Rollo* (G.R. No. 159876), pp. 289 *et seq*., 316.

[60] R.A. No. 85, as amended, Sec. 2 of which provides: The [DBP] shall have the power; x x x (b) To purchase preferred redeemable shares of stock securities.

[61] Lopez, *The Corporation Code of the Philippines*, Vol. I, p. 107.

[62] See *Rollo* (G.R. No. 159876), pp. 272-273.

Supreme Court E-Library

The 16% annual yield guarantee for the Php 40 Million infusion of DBP does not necessarily make the transaction one of loan that makes such guarantee payable regardless of profits from operations, as respondent OOMB held. The guaranteed yield — contextually a cumulative dividend[63] — becomes payable only when there are unrestricted retained earnings whence dividends shall be derived, as provided under Section 43[64] of the Corporation Code. Without unrestricted retained earnings or surplus profits, the 16% yield, even if guaranteed, cannot be paid without violating the law. Hence, it is incorrect for respondent OOMB to consider the guaranteed yield as an obligation or indebtedness of PAFICO that arises regardless of the financial performance of PAFICO.

Given PAFICO's eventual failed venture, the subject loan grant may well be considered, in hindsight, as an unsound business proposition. Yet, the respondent OOMB has not pointed out to circumstances indicating that either of the herein petitioners, in whatever role they played in the transaction in question, perverted their respective offices or deviated from pre-set DBP's lending policy, practice or rules for some consideration less than honest. What at bottom the bank had agreed to does not appear to be a scandalously one-sided loan accommodation in favor of PAFICO or grossly and manifestly disadvantageous to the DBP. The term "*manifest*" in the context of Section 3(g) of R.A. No. 3019 penalizing the act of entering, in behalf of the government, into any contract or transaction manifestly and grossly disadvantageous to the same, denotes something evident to the senses, obvious, or notorious, while "gross" means glaring, reprehensible, flagrant or shocking.[65] A collateralized loan transaction payable in 7 to 12 years, in semi-annual amortization basis, and bearing the usual interest with provisions for penalty

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[63] A cumulative preferred share entitles the owner thereof to payment of current dividends as dividends in arrears.

[64] Section 43 of the Code requires that dividends must be declared and paid out of unrestricted retained earnings.

[65] *Sajul v. Sandigabayan*, G.R. No. 135294, November 20, 2000, 345 SCRA 248.

Supreme Court E-Library

in case of default cannot be categorized as **grossly** and **manifestly** disadvantageous to DBP.

PAFICO's inability to pay its loan obligation in the regular course of business, if that be the case, was a risk that the DBP had to contend with. Indeed, it would be regrettable if every government bank officer is put in a state of indecision for fear he would be called to task every time the bank's client defaults in the payment of his loan obligations. To be sure, neither Atty. Salvador's "*Sworn Statement*" nor respondent OOMB's impugned *Order/Resolution* mentioned about misuse of the loan proceeds as the cause for PAFICO's failure to pay.

Given the above perspective, the imputation of criminal design to either petitioner, acting individually or in concert with other parties to cause undue injury to the government by giving unwarranted benefits to PAFICO ought to be rejected. In this regard, we note that the *Information* against the petitioners, *et al*., specified manifest partiality and evident bad faith as the modalities in the commission of the offense, *i.e.*, violation of Section 3(e) of R.A. No. 3019, the elements of which are as follows: a) the accused is a public officer or a private person charged in conspiracy with the former; b) the public officer commits the prohibited acts during the performance of his or her official duties or in relation to his or her public functions; c) that he or she causes undue injury to any party, whether the government or a private party; d) such undue injury is caused by giving unwarranted benefits, advantage or preference to such parties; and, e) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable neglect.

An examination of the information as well as the assailed *Order/Resolution* confirms that the charge against both petitioners stem from their having acted in conspiracy with the members of the PAFICO and DBP board in the granting of the subject loan notwithstanding, as alleged, the fact that the undercapitalized borrower had no adequate collateral to offer. Clearly then, respondent OOMB tied up the petitioners' criminal liability, either as individuals or conspirators, for violation of Sec. 3(e)

Supreme Court E-Library

of R.A. No. 3019 with the behest character of the subject loan accommodation.

In the instant case, there is no positive and direct evidence that the petitioners acted in conspiracy with other implicated individuals. It is sheer speculation to ascribe corrupt intent and conspiracy of wrongdoing on petitioner Tengco simply because he took part in the passage of the resolution approving the subject loan. Petitioner Crucillo, on the other hand, did not even have loan-approving authority. His role in the whole drama was to study/ evaluate the loan application, present arguments for and against its approval and propose terms and conditions since approval is the board's decision. As we have consistently held, evidence of guilt must be premised upon a more knowing, personal and deliberate participation of each individual who is charged with others as part of a conspiracy.[66] And if only to highlight the feebleness of the conspiracy angle, no less than Omb. Marcelo ordered the exclusion from the information in Criminal Case No. 26539 three (3) of the original ten (10) accused. Then, too, respondent PCGG saw fit to grant Mr. Benedicto immunity from criminal prosecution for acts committed in relation with the subject PAFICO loan.

At any rate, to make out a *prima facie* case for violation of Sec. 3(e) of R.A. No. 3019, proof of evident bad faith or manifest partiality will have to be adduced. Evident bad faith connotes more than a bad judgment; it implies a palpably dishonest purpose or some moral obliquity for some perverse motive or ill will.[67] Manifest partiality, on the other hand, denotes a notorious or plain bent or predilection to favor one side rather than the other.[68]

Evident bad faith or manifest partiality cannot be deduced from the behest nature of a loan transaction, if indeed that be

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[66] *Sistoza v. Desierto*, G.R. No. 144784, September 3, 2002, 388 SCRA 307.

[67] *Llorente v. Sandiganbayan*, G.R. No. 122166, March 11, 1998, 287 SCRA 282.

[68] *Marcelo v. Sandiganbayan*, G.R. No. 69983, May 14, 1990, 346 SCRA 346.

the case, for good faith and regularity of a business transaction are always presumed.

Before manifest partiality or evident bad faith may even be considered, the OOMB should have had determined with certainty the facts indicative of manifest partiality or evident bad faith as modalities of committing a transgression of the statute.[69] Simply alleging one or both modes would not suffice to establish probable cause, for it is well settled that allegation does not amount to proof. The facts themselves must demonstrate *evident* bad faith, which, as earlier stated, connotes a palpably fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill-will. Parenthetically, not once did the assailed Order/Resolution advert to the bad faith or manifest partiality of the petitioners, albeit reference is made to their having extended "*unwarranted concession to PAFICO*."

To establish then a *prima facie* case against the petitioners for violation of Sec. 3(e) of R.A. No. 3019, it behooved the OOMB not only to convincingly show the matter of insufficient collateral and undercapitalization since it anchors, in the first place, its case on the behest character of the loan. It must also prove that *evident* bad faith or *manifest* partiality attended the loan grant, such as, for instance, signing the loan documents with indecent haste, fully aware of the non-viability of the project and the one-sidedness of the transaction such that recovery of the amount lent would be unlikely. But, as it were, the PAFICO soybean processing project and its loan application were the subject of a multi-aspect feasibility and comprehensive evaluation study. The results of the study, embodied in the *SUMMARY AND RECOMMENDATION*[70] prepared by petitioner Crucillo passed from one review table to another before the report the DBP's Board finally acted on it. The summary-recommendation report detailed the pros and cons in the consideration of the subject loan application, set out proposed terms and conditions calculated to ensure profit for the bank or otherwise protect the

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[69] *Sistoza v. Desierto, supra*.

[70] *Rollo* (G.R. No. 159876), p. 244.

Supreme Court E-Library

bank's interest. And for the most part, the DBP Board accepted the proposals which, among other things, set out terms and conditions calculated to ensure repayment of the loan including the submission by PAFICO of additional assets necessary to cover the collateral deficiency. On the face of the agreement, the DBP stood to earn income for the accommodation it gives in terms of 14% per annum interest with the corresponding penalty it has imposed in case of late payments of amortization and arrears.

In *PCGG v. Desierto*,[71] a case set against a similar backdrop, the Court left undisturbed the ensuing disposition of the OMB which ruled out evident bad faith and rejected the theory of criminal liability on the part of DBP officers where the terms and conditions of the DBP loan guarantee were calculated to insure payment and profit, thus:

> As regards the alleged violation of Section 3 (e) of RA 3019, the complainant did not give specific details that would show the element of evident bad faith [or] manifest partiality . . . x x x Granting that the guarantee loan was under collateralized and the company undercapitalized, this does not *ipso facto* make the named respondents liable for violation under Section 3(e) of R.A. No. 3019, or make their acts criminal. As earlier pointed out, the Alice Reyes Memorandum . . . had set terms and conditions to insure repayment of the guarantee loan, including the submission by [borrower] PCFC of additional assets necessary to cover the collateral deficiency of ₱17,725,000.00 x x x It was not a one-sided contract in favor of PCFC, DBP will also earn income for the accommodation it gives in terms of interest rates with the corresponding penalties it has imposed in case of late payments of amortizations and arrears. That although the PCFC failed pay . . . this is one risk that the DBP has to face in this kind of financing business x x x. The complainant did not mention anything about misuse of PCFC's loan proceeds by a particular person or group of persons for their personal benefit and not for the purpose it was intended x x x. (Words in brackets and emphasis added)

In all, the Court holds that proceeding with the prosecution of the herein petitioners is unwarranted. This is not only because

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[71] G.R. No. 140358, December 8, 2000, 347 SCRA 561.

Supreme Court E-Library

the OOMB had once ascertained — and correctly at that, that the subject loan does not fall under the category of a behest transaction. But over and beyond this determination is the reality that the key element of evident bad faith or manifest partiality does not obtain in this case to sustain a *prima facie* case for violation of Section 3(e) of the anti-graft law or to form a sufficient belief as to the guilt of the accused therefor.[72] Hence, any further prosecution of the petitioners under the information thus filed would be oppressive or a case of simple harassment. Accordingly, it is imperative that they be spared from the anguish and trauma of having to go to trial on such a baseless information.

Upon the foregoing disquisitions, the Court need not delve on the beneficial effect, or the lack of it, of the RP/PCGG — Benedicto compromise agreement, *supra*, on the herein petitioners, even if PCGG, in OMB Case No. 0-96-0794, relied on the theory of alleged conspiracy between the petitioners and the PAFICO officials.

IN VIEW WHEREOF, the instant petitions are *GRANTED*. The assailed Ombudsman Order dated March 10, 2003 and Resolution dated July 21, 2003 in *OMB Case No. 0-96-0794* are *REVERSED* and *SET ASIDE*. The Temporary Restraining Order issued by the Court on January 26, 2004 enjoining the Sandiganbayan and the respondents Ombudsman and PCGG from proceeding with the hearing of *Criminal Case No. 26539* is hereby made *PERMANENT* and the respondent Ombudsman is *ORDERED* to immediately file the necessary pleading for the *WITHDRAWAL* of the Information in said Criminal Case No. 26539 against the herein petitioners.

No costs.

SO ORDERED.

Puno, C.J. (Chairperson), Sandoval-Gutierrez, Corona, and *Azcuna, JJ.,* concur.

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[72] *Cabahug v. People, supra,* citing *Salonga v. Cruz-Paño,* G.R. No. 59524, February 18, 1985, 134 SCRA 438.