Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

THE HONORABLE OFFICE OF THE OMBUDSMAN,
Petitioner,

G.R. No. 209274

- versus -

ANGELINE A. ROJAS,
Respondent.
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JOSE PEPITO M. AMORES, M.D.,
Petitioner,

G.R. Nos. 209296-97

Present:

BERSAMIN,* *CJ.*,
LEONEN,
Acting Chairperson,
A. REYES, JR.,
HERNANDO, and
INTING, *JJ.*

- versus -

ANGELINE A. ROJAS and ALBILIO C. CANO,
Respondents.

Promulgated:

July 24, 2019

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* Designated additional Member, per raffle dated September 27, 2017.

DECISION

A. REYES, JR., *J.*:

These consolidated petitions for review filed by the Office of the Ombudsman[1] and Jose M. Amores[2] (Amores) challenge the March 26, 2013 Decision[3] and September 25, 2013 Resolution[4] of the Court of Appeals (CA) in CA-G.R. SP Nos. 113649 and 114495, through which the herein respondents, Angeline A. Rojas (Rojas) and Albilio C. Cano (Cano), were absolved of the charge of grave misconduct.

The Factual Antecedents

After a fire gutted the Lung Center of the Philippines (LCP), the Department of Health (DOH) realigned ₱73,258,377.00 for the hospital's rehabilitation. The realignment was approved by the Department of Budget and Management (DBM), and covered by Special Allotment Release Order (SARO) No. BMB-B-00-0192.[5]

On January 12, 2002, Cano, who was then LCP's Ancillary Department Manager, along with Fernando Melendres (Melendres), the hospital's Executive Director, wrote a letter[6] addressed to the Branch Manager of Land Bank of the Philippines West Triangle Branch, requesting the issuance of a manager's check covering the amount of the realigned funds.

Melendres then wrote another letter,[7] this time addressed to the Office of the Government Corporate Counsel (OGCC), attaching thereto a draft Investment Management Agreement (IMA) between LCP and the Philippine Veterans Bank (PVB). He requested an evaluation of the IMA, where the realigned funds would be deposited pending their utilization. However, without waiting for the OGCC's reply, LCP, through Melendres and Cano, sent the realigned funds to PVB with instructions to place the same under an IMA. The funds were consequently deposited with the bank for an initial period of 30 days, during which they earned interest at the rate of 7.25%.[8] After the period lapsed, LCP requested that the bank roll over a portion of the funds for another 30 days, albeit at a different interest rate.[9] The hospital repeatedly had the funds roll over under similar schemes on several

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1 *Rollo* (G.R. No. 209274), pp. 9-29.
2 *Rollo* (G.R. Nos. 209296-97), pp. 31-59.
3 Id. at 15-29. The assailed decision was penned by Associate Justice Francisco P. Acosta, with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring.
4 Id. at 12-13.
5 Id. at 16.
6 Id. at 182.
7 Id. at 183.
8 Id. at 190.
9 Id. at 197.

Reyes

occasions thereafter.[10] Notably, Rojas, who was then LCP's Budget and Accounting Division Chief and concurrently its Chief of Finance Services,[11] signed the roll-over requests.

Meanwhile, through a letter[12] dated May 3, 2002, the OGCC responded to Melendres's inquiry regarding the IMA. Without giving definitive advice as to whether LCP should place its funds in PVB, the OGCC requested that Melendres submit certain documents, stating that no conclusion could be reached on the basis of the attached IMA contract alone.

Despite receipt of the OGCC's response, LCP, through Melendres, Cano, and Rojas, continued to roll over the realigned funds.[13]

Through a letter[14] dated June 5, 2002, PVB requested Melendres to submit the following: (1) the document embodying the signed IMA; (2) an LCP board resolution authorizing the opening of said IMA; (3) an LCP board resolution authorizing a hospital representative to transact business with PVB relative to the IMA; and (4) signature specimens of the LCP's authorized representative. Melendres then referred the letter to the hospital's Cash Division with the following note:

> In view of the inability of the Board of Trustees to convene for the past few months, we could not immediately satisfy the requirements of PVB. Transfer our deposits to DBP PHC instead.[15]

On October 22, 2002, Amores, LCP's Deputy Director for Hospital Support Services, filed a complaint before the Ombudsman, alleging that Melendres, Cano, and Rojas, along with certain PVB officers, conspired to misappropriate the funds that were realigned for the hospital's rehabilitation. He also averred that they engaged in a scheme to conceal the anomaly, as the invested amount was not disclosed on the hospital's balance sheet. In addition, pointing to the OGCC's legal opinion, Amores maintained that the IMA was grossly disadvantageous to the government. This notwithstanding, he continued, Melendres, Cano, and Rojas repeatedly requested the roll-over of the realigned funds.[16]

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10 Id. at 141.
11 Id. at 16-17.
12 Id. at 201-203.
13 Id. at 42.
14 Id. at 211.
15 Id.
16 Id. at 142-143.

The Ombudsman's Ruling

On April 30, 2007, the Ombudsman rendered a Decision[17] absolving the PVB officers, but finding Melendres, Cano, and Rojas guilty of grave misconduct, and accordingly ordering their dismissal from the service. The decision relevantly reads:

> Respondents Cano, Rojas and Melendres, however, cannot feign innocence. It was clear from the correspondence of the respondents with PVB officials that they intended to enter into an IMA. They jointly signed the orders to "roll-over" the funds deposited with PVB. This would not have been necessary if the funds were simply deposited in savings or current account in the name of LCP.
>
> Respondents Cano, Rojas and Melendres cannot also say that the Board Resolution allegedly issued by the LCP board on January 20, 2002 authorized them to invest the funds of [LCP] since the deposit of the funds with PVB was made prior to said date.[18]

The Ombudsman therefore disposed of the case, *viz.*:

> **WHEREFORE**, respondents Chona Victoria Reyes-Guray and Ma. Milagros Campomaes-Yuhico are ABSOLVED of the administrative charge of Grave Misconduct. The instant complaint against them is hereby DISMISSED, with the admonition that they should be more circumspect in their actions as bank personnel to avoid the appearance of impropriety in their business dealings.
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> Respondents FERNANDO A. MELENDRES, ALBILIO C. CANO and ANGELINE A. ROJAS are hereby found GUILTY of GRAVE MISCONDUCT and are hereby meted the penalty of DISMISSAL FROM THE SERVICE with all its accessory penalties, pursuant to Section 52, Rule IV, Uniform Rules on Administrative Cases (CSC Resolution No. 991936), dated August 31, 1999.
>
> The Honorable Francisco Duque, Secretary of the Department of Health, is hereby directed to implement this decision in accordance with law and rules, and to forthwith inform this Office of the action taken.
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> SO RESOLVED.[19] (Emphasis in the original)

Aggrieved, Melendres, Cano, and Rojas filed separate appeals before the CA.

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17 Id. at 139-152.
18 Id. at 150.
19 Id. at 150-151.

The CA's Ruling

On March 26, 2013, the CA promulgated the herein assailed decision, reversing the Ombudsman's ruling, and dismissing Amores's complaint for lack of merit. The appellate court found that Melendres, Cano, and Rojas were not motivated by ill will in depositing the realigned funds with the PVB. Absent a showing of bad faith on their part, it was ruled that Amores failed to prove deliberate intent to misappropriate said funds.[20] Further, the CA held that the act of entering into the IMA was sanctioned by an LCP board resolution that authorized the investment of the hospital's unutilized funds with the PVB.[21] Lastly, anent the claim that the scheme was not disclosed on the hospital's balance sheet, the CA noted that the amount invested was listed under the sub-heading "Other Assets Miscellaneous & Deferred Charges," found on the second page of said balance sheet.[22] The *fallo* of the appellate court's decision reads:

> **WHEREFORE**, premises considered, the Decision dated April 30, 2007 and the Order dated 24 August 2009 of Respondent Ombudsman are hereby **REVERSED** and **SET ASIDE**. The Complaint filed by complainant Jose Pepito Amores is hereby **DISMISSED** for want of merit.
>
> **SO ORDERED**.[23]

Dissatisfied with the foregoing disquisition, Amores challenged via a Rule 45 petition the CA's decision insofar as Cano and Rojas were absolved, while the Ombudsman chose to assail only Rojas's exoneration.

Hence, these consolidated petitions.

According to Amores and the Ombudsman, Cano and Rojas should be held liable for grave misconduct. First, it was pointed out that SARO No. BMB-B-00-0192 sanctioned neither the investment of the LCP's funds nor the roll over thereof. All that was authorized was the realignment of ₱73,258,377.00 from the DOH's "Maintenance and Other Operating Expenses savings" to its "Building and Structures Outlay."[24] Second, Amores and the Ombudsman maintain that the CA erred in relying on the LCP board resolution that allegedly allowed the hospital to enter into an IMA. Contrary to the appellate court's findings, they argue that said resolution clearly stated that the realigned funds should only be invested in treasury bills or deposited with authorized government banks, not placed in an IMA.[25] Third, Amores and the Ombudsman submit that bad faith on the

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20 Id. at 20.
21 Id. at 21-22.
22 Id. at 25-26.
23 Id. at 28.
24 Id. at 49.
25 Id.

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part of Cano and Rojas is evident since the IMA was entered into before receipt of the OGCC's opinion on the matter. Moreover, the fact that the funds were rolled over each time the IMA expired further shows ill motive, as this was done in blatant disregard of the OGCC's advice.[26] Lastly, Amores claims that Rojas attempted to conceal the investment by making it appear on LCP's balance sheet that the hospital only had ₱7,800.00 in investments during the period pertinent to this case.[27] For these reasons, Amores and the Ombudsman argue that the CA's decision should be revisited.

The Issue

Whether or not the CA erred in dismissing the charges against Cano and Rojas[28]

The Court's Ruling

The petition is partly meritorious.

Since the Court is not ordinarily a trier of facts,[29] it must accept as binding the factual findings of the lower tribunal that was afforded a prior opportunity to adjudicate the case under review. In administrative cases initially brought before the Ombudsman, the findings of fact of that agency are usually afforded great weight and respect, and, when supported by substantial evidence, are accepted as conclusive by the courts.[30] It is relevant to state that substantial evidence is more than a mere scintilla. Where the complaint charges grave misconduct, "[t]he standard of substantial evidence is satisfied when there is reasonable ground to believe that a person is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant."[31]

Jurisprudence, however, abounds with exceptions to the rule that the Court is not a trier of facts. These were enumerated in *De Castro v. Field Investigation Office*,[32] *viz.*

> (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the [CA] went

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26 Id.
27 Id. at 50.
28 Id. at 46.
29 *Carbonell v. Carbonell-Mendes*, 762 Phil. 529, 536 (2015).
30 *Miro v. Vda. de Erederos*, et al. 721 Phil. 772, 784 (2013).
31 *The Office of the Ombudsman v. P/Supt. Brillantes, et al.*, 796 Phil. 162, 173 (2016).
32 810 Phil. 31 (2017).

> beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the [CA] manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[33] (Citation omitted)

In this case, since the Ombudsman and CA differed as to their appreciation of the agreement between LCP and PVB, a review of the facts is in order. For its part, the Ombudsman found that the hospital and the bank entered into an IMA, or that they at least intended to,[34] while the CA ruled that the realigned funds were simply placed in a "special savings deposit account."[35] There is a need to determine the nature of the arrangement between LCP and PVB because of a Board Resolution dated January 30, 2002, enacted by the hospital's Board of Trustees, sanctioning the deposit of savings and other funds with certain government banks, *viz.*:

> NOW, THEREFORE, RESOLVED, that pending utilization, the savings and other funds of LCP be invested in treasury bills or deposited with the LBP, DBP, PNB or PVB, whichever of the aforementioned banks shall offer the highest yield or interest income for LCP[.][36]

After a meticulous scrutiny of the record, the Court finds that the realigned funds were not deposited in accordance with the terms of the above-quoted board resolution. As aptly observed by the Ombudsman,[37] the various correspondences between the LCP officials and PVB representatives disclose that the hospital's funds were never placed in a regular savings or current account. In fact, Melendres and Cano, in the very first letter they sent to the bank, already gave instructions to deposit the funds in an IMA. In response, PVB spelled out the particulars of the investment, such as its term and interest rate. Verily, it is undisputed that LCP's investment earned the interest so stipulated. Further, Rojas, on multiple occasions, requested the roll-over of the realigned funds each time the purported agreement between the hospital and the bank expired. These findings are inconsistent with the conclusion that the funds were simply deposited with PVB. Certainly, there would be no need to ask for roll-overs or to fix a term for the investment if the hospital deposited its funds in a regular savings account, as authorized by the January 30, 2002 Board Resolution. Thus, regardless of whether LCP and PVB entered into an IMA or "special savings deposit account," it cannot be said that the same was sanctioned by the hospital's Board of Trustees.

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33 Id. at 44-45.
34 *Rollo* (G.R. No. 209274), p. 61.
35 Id. at 41.
36 Id. at 38.
37 Id. at 61.

Hence, the Court must now resolve whether Cano and Rojas may be held administratively liable based on the following established facts:

1. LCP, through Melendres and Cano, placed ₱73,258,377.00 in PVB despite SARO No. BMB-B-00-0192 stating that the amount was to be transferred from the DOH's savings under its "Maintenance and Other Operating Expenses" to its "Building and Structures Outlay";

2. The realigned funds were rolled over several times, pursuant to requests signed by Rojas, noted by Cano, and approved by Melendres; and

3. The January 30, 2002 Board Resolution of the LCP's Board of Trustees did not sanction the placement of the hospital's funds in an IMA or in a "special savings deposit account."

Misconduct has generally been defined as "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer."[38] It is an offense performed in connection with official duties and implies deliberate or intentional wrongdoing.[39] As an administrative offense, it may be classified as either simple or grave.[40] For an act to constitute grave misconduct and carry with it the penalty of dismissal from the service, the elements of corruption, flagrant disregard of an established rule, or willful intent to violate the law must be proved by substantial evidence.[41] Otherwise, if none of these elements are present, the act amounts only to simple misconduct.[42]

At this juncture, it is apropos to state that corruption, as an element of grave misconduct, exists when a public official or employee unlawfully or wrongfully uses his or her position to serve personal interests.[43] On the other hand, there is flagrant disregard of an established rule or, analogously, willful intent to violate the law when the public official or employee concerned, through culpable acts or omission, clearly manifests a pernicious tendency to ignore the law or rules.[44]

The elements of grave misconduct do not obtain in this case.

First, nothing on the record tends to show that LCP's placement and roll-over of the realigned funds was tainted with any sort of corrupt motive.

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38 *Office of the Ombudsman-Visayas, et al. v. Castro*, 759 Phil. 68, 78 (2015).
39 *Office of the Ombudsman, et al. v. PS/Supt. Espina*, 807 Phil. 529, 541 (2017).
40 Id.
41 *De Guzman v. Office of the Ombudsman*, 846 SCRA 531, 553 (2017).
42 Supra note 39.
43 *Fajardo v. Corral*, 813 Phil. 149, 158 (2017).
44 *Field Investigation Office of the Office of the Ombudsman v. Castillo*, 794 Phil. 53, 62-63 (2016).

For one, it was neither alleged nor proved that Melendres and Cano were moved by a desire to further their own personal interests in placing the realigned funds in PVB. The same can be said of Rojas as regards the several roll over requests she signed. To be sure, the record is bereft of any indication that Cano and Rojas intended to benefit, or that they actually benefited, from their acts. In fact, it is undeniable that the realigned funds were eventually put to their intended use, which was LCP's rehabilitation. Moreover, as correctly pointed out by the CA,[45] the lack of corrupt intent is buttressed by the fact that the OGCC was consulted. If Melendres, Cano, and Rojas indeed planned to wrongfully use their high-ranking positions in LCP for an iniquitous purpose, they would not have made their intentions known to another government agency.

Further, the claim that Rojas attempted to conceal LCP's investment is belied by the CA's finding[46] that the placement of the realigned funds was reported under the heading "Other Assets, Miscellaneous & Deferred Charges," found on the second page of the hospital's balance sheet.

These settled facts negate any suspicion of corruption on the part of Cano and Rojas.

Second, neither can be said that LCP placed its funds in PVB in flagrant disregard of an established rule or with willful intent to violate the law.

To be sure, neither SARO No. BMB-B-00-0192 nor the January 30, 2002 Board Resolution sanctioned the placement of ₱73,258,377.00 in an IMA or a "special savings deposit account." The purpose of the SARO was to realign said amount from the DOH's "Maintenance and Other Operating Expenses" to its "Building and Structures Outlay,"[47] while the resolution authorized the investment of LCP's funds in treasury bills or the deposit thereof in authorized government banks.[48]

However, the SARO and board resolution are not law or rules, as contemplated by the elements of grave misconduct. A SARO has been defined as "[a] specific authority issued to identified agencies to incur obligations not exceeding a given amount during a specified period for the purpose indicated."[49] It is an issuance approved by the DBM that evinces the existence of an obligation.[50] On the other hand, a board resolution is the means through which a corporation delegates its "corporate powers or functions to a representative, subject to limitations under the law and the

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45 *Rollo* (G.R. Nos. 209296-97), p. 82.
46 Id. at 83.
47 Id. at 181.
48 Id. at 252.
49 *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., et al.* 721 Phil. 416, 577-578 (2013).
50 Id. at 578.

corporation's articles of incorporation."[51] Hence, despite there being no mention of an IMA or "special savings deposit account" in the SARO and board resolution, the Court, pursuant to the foregoing definitions, cannot conclude that Cano and Rojas acted in flagrant disregard of established rules or with willful intent to violate the law.

Thus, Cano and Rojas cannot be held liable for grave misconduct.

Nevertheless, viewing the totality of the circumstances surrounding the investment of LCP's funds, the Court cannot completely absolve Cano and Rojas.

There is no doubt that Melendres, Cano, and Rojas handled LCP's funds in a manner that was not authorized by the hospital's Board of Trustees. They were unable to present: (1) a specific authority allowing them to place the amount of ₱73,258,377.00 in either an IMA or a "special savings deposit account;" or (2) anything that sanctioned the roll-over of that amount in case the funds were placed in a limited-term investment. Moreover, there is no indication on record of any agreement setting forth the details of PVB's treatment of realigned funds, or the distribution of profits between the hospital and the bank. These, taken together, show that LCP's funds were handled with negligence, contrary to the standard expected of public officers. It is worth reiterating that public officers must exercise ordinary care and prudence when dealing with public funds.[52] "Public funds, after all, are the property of the people and must be used prudently at all times with a view to prevent dissipation and waste."[53]

Further, Cano and Rojas cannot escape liability on the ground that they were simply acting pursuant to the orders of their superior, Melendres. At the relevant time, Cano and Rojas occupied positions that were not merely clerical, but required the use of discretion and independent judgment. The record reveals that they, along with Melendres, worked side by side to bring about the placement of LCP's funds in PVB. Surely, Cano and Rojas cannot just shift the blame to their superior. As Administrative and Ancillary Department Manager and Chief of Finance Services, respectively, they were charged with ensuring that LCP's funds were dealt with in a lawful manner, and pursuant to the orders of the hospital's Board of Trustees. It cannot be gainsaid that Cano and Rojas, because of their positions, shared a responsibility with Melendres to see to it that they possessed the proper authority to invest the realigned funds.

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51 *University of Mindanao, Inc. v. Bangko Sentral ng Pilipinas, et al.*, 776 Phil. 401, 441 (2016).

52 *Josie Castillo-Co v. Sandiganbayan, (Second Division) and People of the Philippines* G.R. No. 184766, August 15, 2018.

53 Id.

Taking the foregoing into consideration, Cano and Rojas are liable for simple misconduct. The unsettlingly negligent manner with which LCP's funds were handled, coupled with the failure to establish the elements that qualify the offense as grave, support this conclusion.

Since simple misconduct is punishable by suspension for one (1) month and one (1) day to six (6) months for the first offense, and because no aggravating or mitigating circumstances apply to Cano or Rojas, a three (3)-month suspension without pay is the appropriate penalty in this case.[54] This is consistent with the Court's ruling in G.R. No. 194346,[55] where Melendres was also held liable for simple misconduct, and was meted out with the same penalty for his involvement in the act complained of herein.

WHEREFORE, the March 26, 2013 Decision and September 25, 2013 Resolution of the Court of Appeals in CA-G.R. SP Nos. 113649 and 114495 are **REVERSED** and **SET ASIDE**. Respondents Angeline A. Rojas and Albilio C. Cano are hereby found **GUILTY** of simple misconduct and thus **SUSPENDED** from the service for three (3) months without pay. In case the penalty of suspension can no longer be meted out, they shall be **FINED** with an amount equivalent to three (3) months of their latest respective salaries.

SO ORDERED.

ANDRES B. REYES, JR.
Associate Justice

WE CONCUR:

LUCAS P. BERSAMIN
Chief Justice

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54 *Seville v. Commission on Audit*, 699 Phil. 27, 33 (2012).

55 *Fernando A. Melendres v. Ombudsman Ma. Merceditas N. Gutierrez and Jose Pepito M. Amores, M.D.* G.R. No. 194346, June 18, 2018.

MARVIC M.V.F. LEONEN
Acting Chairperson

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARVIC M.V.F. LEONEN
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LUCAS P. BERSAMIN
Chief Justice

CERTIFIED TRUE COPY

MISAEL DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
Third Division

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