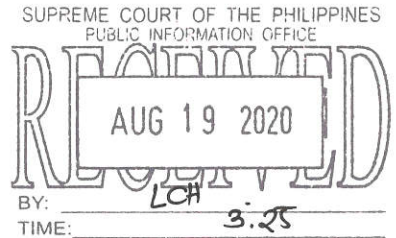




Republic of the Philippines
Supreme Court
Manila
FIRST DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated June 10, 2020 which reads as follows:

“G.R. No. 230323 – DOLOREICH A. DUMALUAN V. THE HON. SANDIGANBAYAN (THIRD DIVISION), AND PEOPLE OF THE PHILIPPINES, REPRESENTED BY THE OFFICE OF THE OMBUDSMAN

The Case

This Petition for Review on *Certiorari* assails the Decision¹ dated October 27, 2016 of the Sandiganbayan (Special Third Division) in Criminal Case No. SB-11-CRM-0029, convicting petitioner Doloreich A. Dumaluan for violation of Section 3(f), Republic Act No. 3019 (RA 3019).²

The Charge

Petitioner was charged with violation of Section 3(f), Republic Act No. 3019 (RA 3019), *viz.*:

That on or about the 25th day of May 2005, and for some time subsequent thereto, in the Municipality of Panglao, Province of Bohol Philippines and within the jurisdiction of this Honorable

- over – ten (10) pages ...

¹ *Rollo*, pp. 53-77.

² Republic Act 3019 otherwise known as “Anti-Graft and Corrupt Practices Act.”

Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

xxx.

WFA

Court, the above-named accused **DOLOREICH A. DUMALUAN**, a public officer, being the Municipal Mayor, Municipality of Panglao, Province of Bohol, in such capacity and committing the offense in relation to office, did then and there willfully, unlawfully, and criminally refuse, without sufficient justification, after due demand or request has been made on him, to sign and issue within a reasonable time the locational clearance, a requirement under the Zoning Ordinance and Land Use Plan of the Municipality of Panglao and a prerequisite to the issuance of a building permit for the construction of new buildings and facilities in Bohol Resort Development, Incorporated, owner and operator of Bohol Beach Club, a resort located in the said municipality, for the purpose of favoring his own interest in connection with his adverse claim over the land on which said construction would be undertaken, to the prejudice of said Bohol Resort Development, Incorporated, and detriment of public service and interest.

Contrary to law.³

When arraigned, petitioner pleaded not guilty.⁴

Prosecution's Version

Employees of complainant Bohol Resort Development Inc. *i.e.*, Assistant Food and Beverage Manager Edgar Millalos, Landholding Department Head Roger Lagumbay, and those of Municipality of Panglao, Bohol namely Municipal Planning Development Coordinator Jovencia Asilo, Waterworks Supervisor Florencio Bolabon, Municipal Engineer Rogelio Bunao, and Municipal Treasurer Rene Guivencan testified for the prosecution. Their testimonies may be summarized in this wise:

Bohol Resort Development Inc. was the owner and operator of Bohol Beach Club (BBC). On May 25, 2005, BBC through Millalos and Lagumbay applied for a locational clearance, a prerequisite for issuance of a building permit for construction of the resort's additional facilities.⁵ BBC paid the corresponding fees and submitted to the Municipal Planning and Development Office the required documents *i.e.*, sketch plan, site development plan, locational map, and indorsements from the Director of Panglao Tourism, the Officials of the Barangay, and Sangguniang Bayan, among others.⁶

Asilo, the Municipal Planning and Development Coordinator clarified that a locational clearance would be only issued if the

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³ *Rollo*, p. 54

⁴ *Id.* at 55.

⁵ *Id.* at 57.

⁶ *Id.* at 59.

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Municipality had a Comprehensive Land Use Plan (CLUP). At that time, the Municipality had no CLUP yet, so in lieu of a “locational clearance,” the local chief executive would only issue a “locational certification.”

Finding that BBC fully complied the requirements for issuance of a locational certification, Asilo endorsed its approval to petitioner Doloreich A. Dumaluan as the Municipality’s then local chief executive pursuant to Sections 16,⁷ 17,⁸ and 44⁹ of the Local Government Code. Petitioner Dumaluan, however, did not approve BBC’s application because he had an adverse claim on the property on which BBC sought to construct additional facilities.¹⁰

Petitioner did not have any sufficient justification not to approve the application as he was solely motivated by self-interest in violation of Section 3(f) of RA 3019.

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⁷ Section 16, RA 7160. *General Welfare*. - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

⁸ Section 17, RA 7160. *Basic Services and Facilities*. -

(a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provisions of the basic services and facilities enumerated herein.

(b) Such basic services and facilities include, but are not limited to, the following:

xxx

(2) For a Municipality:

(xi) Tourism facilities and other tourist attractions, including the acquisition of equipment, regulation and supervision of business concessions, and security services for such facilities;

xxx

⁹ Section 444, RA 7160. *The Chief Executive: Powers, Duties, Functions and Compensation*. -

(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

xxx

(ii) Direct the formulation of the municipal development plan, with the assistance of the municipal development council, and upon approval thereof by the sangguniang bayan, implement the same;

¹⁰ *Rollo*, p. 60.

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Meantime, the Office of the Ombudsman ordered petitioner's preventive suspension pending investigation of the case subsequently filed by BBC against him for violation of Section 3(f), RA 3019.¹¹

For the duration of then Mayor Dumaluan's preventive suspension, Acting Mayor Pedro Fuertes took over and approve the issuance of BBC's locational certification and later a building permit was issued.¹²

After BBC had completed its project, it applied for a business permit with petitioner following the expiration of the latter's preventive suspension. He granted the permit but excluded from its coverage BBC's newly constructed expansion facilities.¹³

The Defense's Version

Petitioner countered that he had no authority to issue a locational clearance/locational certification.¹⁴ He, nonetheless, admitted that he withheld the issuance of a locational clearance/locational certification because he owned the property subject of BBC's application.¹⁵

Felix Lorejo testified that he was the illegitimate son of Juan Dumaluan, the original owner of the property. When Juan died, Felix and his siblings sold the property to petitioner.¹⁶

The Sandiganbayan's Ruling

By Decision¹⁷ dated October 27, 2016, the Sandiganbayan rendered a verdict of conviction. It held that all the elements of Section 3(f), RA 3019 were duly established by the prosecution.

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¹¹ *Id.*

¹² *Id.* at 62.

¹³ *Id.* at 58.

¹⁴ *Id.* at 65.

¹⁵ *Id.* at 67.

¹⁶ *Id.*

¹⁷ *Id.* at 53-77.

The fallo reads:

WHEREFORE, the Court finds accused **DOLOREICH A. DUMALUAN GUILTY** beyond reasonable doubt of violation of Section 3(f) of Republic Act No. 3019, and is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.

SO ORDERED.

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It noted that there was no difference between the purpose for issuance of a locational certification and that for issuance of a locational clearance. A clearance or certification was needed to ensure that the project was within the Panglao Island Tourism Estate (PITE).¹⁸ It is a prerequisite to the issuance of a building permit. Although the Municipality of Panglao at that time had no land use plan as yet, a local certification meantime was devised to take its place.¹⁹

The Sandiganbayan found that BBC had a certificate of title on subject property and the same remained valid until nullified by a court of competent jurisdiction. Petitioner, therefore, cannot defeat the legal operative effects of BBC's title based on his adverse claim alone.

The Sandiganbayan further emphasized that petitioner admitted he had a claim over the property subject of BBC's application for locational certification. His refusal to approve the issuance of locational certification was only to protect his self-interest.²⁰

Petitioner's motion for reconsideration was denied under Resolution²¹ dated March 2, 2017 for lack of merit.

The Present Petition

Petitioner now assails the dispositions of the Sandiganbayan *via* Rule 45 of the Rules of Court.

Petitioner avers that: a) the Sandiganbayan erred when it held that the locational clearance and locational certification are one and the same;²² b) the dissenting opinion of one of the members of the Special Third Division casts serious doubt on the verdict of conviction; and c) it was unjust to convict him for violation of Section 3(f), RA 3019 as he was only defending his proprietary rights.²³

For its part, the People, through the Office of the Ombudsman, countered that all the elements of violation of Section 3(f) of RA 3019 were duly proved.²⁴

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¹⁸ *Id.* at 73.

¹⁹ *Id.*

²⁰ *Id.* at 75.

²¹ *Id.* at 113-123.

²² *Id.* at 37.

²³ *Id.* at 42.

²⁴ *Id.* at 185.

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Issue

Did the Sandiganbayan err when it convicted petitioner of violation of Section 3(f) of RA 3019?

Ruling

Section 3(f) of RA 3019 provides:

Section 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

xxx

(f) Neglecting or **refusing, after due demand or request, without sufficient justification**, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or **for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.** (Emphasis supplied)

Violation of Section 3(f) of Republic Act No. 3019 is committed when the following elements exist:

- 1) The offender is a public officer;
- 2) The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;
- 3) Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and
- 4) Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.²⁵

These elements are all present here.

One. The first element is not disputed. At the time of the commission of the offense charged, petitioner was a public officer, being then the chief local executive of Panglao, Bohol.

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²⁵ See *Corazon Lacap v. Sandiganbayan and the People of the Philippines*, 811 Phil. 441, 453 (2017).

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Two. Records show that BBC fully complied with the requirements for issuance of a locational certification. Petitioner, however, adamantly refused to approve the same on the basis of his adverse claim on the property where BBC's additional facilities will be built. He never disputes the fact that his refusal was hinged on this ground.

He, nonetheless, asserts that he cannot be made liable for unjustifiably refusing to approve the issuance of a locational certification because what Executive Order No. 72 Series of 1993 (EO 72)²⁶ required of him was the issuance of a locational clearance, not issuance of a locational certification.

On this score, We quote with concurrence the Sandiganbayan's disquisition, *viz.*:

xxx a locational certification is issued by the municipal mayor certifying that the project is appropriate for the land use plan. A locational clearance, on the other hand, is issued only when the municipality has a comprehensive land use plan (CLUP). xxx Since the municipality has no CLUP yet at that time, the mayor issues a locational certification.

xxx

The Court finds there is no difference insofar as the purpose of the issuance of a locational certification and locational clearance is concerned. Both are issued to certify that a project is within the PITE and is appropriate for the land use plan of the municipality. Since the municipality of Panglao at that time had no land use plan, then the accused, as the municipal mayor, had the authority to issue a locational certification instead.²⁷

Indeed, EO 72 devolved the power to issue locational clearances for local projects to cities and municipalities with approved comprehensive land use plans (CLUP).²⁸ As aptly found by the Sandiganbayan, petitioner cannot, to negate liability, harp on a mere nomenclature variance between a locational clearance and locational certification. As it was, the Municipal Development Planning Coordinator determined that the requirements for approval of a locational certification have been satisfied. BBC's application for the same, should have been approved by petitioner were it not for his own vested interest in the property in question.

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²⁶ Providing for the Preparation and Implementation of the Comprehensive Land Use Plans of Local Government Units Pursuant to the Local Government Code of 1991 and other Pertinent Laws.

²⁷ *Rollo*, pp. 72-73.

²⁸ See *Cordillera Global Network v. Paje*, G.R. No. 215988, April 10, 2019.

WTA

Three. BBC submitted its application sometime in May 2005 and was able to fully comply with all the requirements as of September 2005. The Municipal Planning Development Coordinator found these requirements to be in order, hence, she endorsed the approval of the application for locational certification to petitioner in his then capacity as Mayor of Panglao. As it was though, he failed to act on BBC's application and the recommendation of the Municipal Planning Development Coordinator because he had a personal interest in the property.

Four. A public officer's failure to act must not only be without justification but such omission was motivated by any gain or benefit for himself or for the purpose of favoring an interested party or discriminating against another.²⁹

In his counter-affidavit, petitioner did admit that his claim of title and ownership over the property will be affected should he approve the locational clearance/certification, thus:

Respondent's claim of title and ownership over the land where the expansion project of Bohol Beach Club was constructed **is his justification** that he withheld the issuance of the locational clearance **as his claim of title and ownership may be legally affected and put to naught.**³⁰ (Emphasis supplied)

On this score, *Alfelor v. Halasan*³¹ is apropos:

A judicial admission removes an admitted fact from the field of controversy. Consequently, an admission made in the pleadings cannot be controverted by the party making such admission and are **conclusive as to such party, and all proofs to the contrary or inconsistent therewith should be ignored, whether objection is interposed by the party or not.** The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. **A party cannot subsequently take a position contrary of or inconsistent with what was pleaded.** (Emphasis supplied)

Petitioner's judicial admission, therefore, is sufficient evidence to sustain his conviction for violation of Section 3(f) of RA 3019.³²

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²⁹ See *Lacap v. Sandiganbayan and People of the Philippines*, G.R. No. 198162, June 21, 2017.

³⁰ *Rollo*, p. 146.

³¹ 520 Phil. 982, 991 (2006).

³² See *Leynes v. People*, 795 Phil. 927, 936 (2016).

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Going now to the dissenting opinion of one of the members of the Special Third Division which resolved the case in the Sandiganbayan, suffice it to state that a dissenting opinion is not the decision of the Sandiganbayan which disposed of the case on the merits. It is an opinion and that is all.³³

Be that as it may, an application for a locational clearance/certification requires a fair and uncomplicated procedure. The applicant only needs to submit pertinent documents and pay the corresponding fees. Otherwise, the application deserves to be disapproved. If the application is compliant, as in this case, then approval is the action to be taken. There is no question that petitioner's deliberate refusal to approve BBC's application is motivated by personal conflict and proves no other than a violation of Section 3(f), RA 3019.

WHEREFORE, the petition is **DENIED**. The Decision dated October 27, 2016, **AFFIRMED**.

SO ORDERED."

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court 

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³³ See *Coca-Cola Bottlers Phil. Inc. Sales Force Union v. Coca-Cola Bottlers Phil. Inc.*, 502 Phil. 748-758 (2005).

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