



SUPREME COURT OF THE PHILIPPINES
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**Republic of the Philippines
Supreme Court
Manila**

THIRD DIVISION

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, G.R. No. 193398

Petitioner,

Present:

-versus-

LEONEN, *J.*, *Acting Chairperson*,
REYES, A., JR.,
HERNANDO,
LAZARO-JAVIER,* and
INTING, *JJ.*

**HONORABLE OMBUDSMAN
MA. MERCEDITAS N.
GUTIERREZ, RAFAEL A. SISON,
JOSE R. TENCGO, JR., DONALD
G. DEE, DEWEY DEE, PEDRO
AGUIRRE, INOCENCIO
FERRER, YOSHIHINO
NAKAMURA, SADA O NAKANO,
KEN KIKUTANI, ICHIRO
UTAKE, EMIGDIO TANJUATCO,
CESAR RECTO, and JOHN/JANE
DOES,**

Respondents.

**Promulgated:
June 3, 2019**

Misdebat

X-----X

DECISION

LEONEN, *J.*:

The Office of the Ombudsman's determination of probable cause is accorded great respect in the absence of any grave abuse of discretion.

* Designated additional Member as per Raffle dated April 8, 2019.

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This Court resolves a Petition for Certiorari¹ seeking to reverse and set aside the Office of the Ombudsman's June 28, 2006 Resolution² and January 28, 2009 Order³ dismissing the Presidential Commission on Good Government's Affidavit-Complaint⁴ for lack of probable cause. The Office of the Ombudsman ruled that the various loans and guaranty accommodations granted by the Development Bank of the Philippines (Development Bank) to Continental Manufacturing Corporation (Continental Manufacturing) were not behest loans. It found no probable cause to charge respondents for violating Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.⁵

Development Bank had initially granted Continental Manufacturing a loan amounting to ₱43,586,693.93, with a collateral worth ₱43,063,077.08.⁶

On March 10, 1981, Development Bank granted Continental Manufacturing another credit facility amounting to ₱28 million. The credit facility was approved under Development Bank Resolution No. 864. Later, the credit facility was increased to ₱30 million.⁷

Allegedly, when this credit facility was granted, Continental Manufacturing had been undergoing financial problems.⁸

Later, Development Bank issued Board Resolution No. 1278, granting Continental Manufacturing an interim currency loan worth US\$2 million to pay its overdue obligations to its suppliers.⁹

In 1982, under Board Resolution No. 3144, Development Bank also guaranteed Continental Manufacturing's ₱25 million obligation to Citibank.¹⁰

¹ *Rollo*, pp. at 3–39. Filed under Rule 65 of the Rules of Court.

² *Id.* at 40–71. The Resolution was penned by Graft Investigation and Prosecution Officer II Marilou B. Ancheta-Mejica, reviewed by PIAB-D Acting Director Adoracion A. Agbada, and approved by Ombudsman Ma. Mercedes N. Gutierrez on October 14, 2008, with the recommendation of PAMO Assistant Ombudsman Pelagio S. Apostol.

³ *Id.* at 72–80. The Order was penned by Graft Investigation and Prosecution Officer II Rachel T. Cariaga-Favila, reviewed by PIAB-D Acting Director Marilou B. Ancheta-Mejica, and approved by Deputy Ombudsman for Luzon Mark E. Jalandoni on June 11, 2010, with the recommendation of PAMO Assistant Ombudsman Jose T. De Jesus, Jr.

⁴ *Id.* at 223–234.

⁵ *Id.* at 415–416. According to respondent Donald Dee in his Comment, Continental Manufacturing was founded in 1952. It started as a small thread winding company with an initial paid-up capital of ₱1,000.00, marketing the brands “Cococo” and “Lily” sewing threads. In 1964, the company started producing acrylic yarns after acquiring the exclusive right to manufacture it under the trade name “Vonnel” from Mitsubishi Rayon Company, Ltd. It established two (2) plants to manufacture the yarns. In 1971, Continental Manufacturing entered a joint venture with Japanese partners Mitsubishi Rayon Co. Ltd., Mitsubishi Corporation and Marubeni Corporation.

⁶ *Id.* at 42.

⁷ *Id.* at 42–43.

⁸ *Id.* at 42.

⁹ *Id.*

¹⁰ *Id.* at 43.

When the loans matured, Continental Manufacturing was unable to pay its obligations. Though Development Bank foreclosed the mortgages, the proceeds were still insufficient. As of the sheriff's sale on May 31, 1984, the collateral for Continental Manufacturing was appraised at ₱71,123,700.00, while its obligations with Development Bank totaled ₱260,722,218.00. As of September 30, 1985, Continental Manufacturing's obligations ballooned to ₱309,726,928.00.¹¹

On December 8, 1986, Proclamation No. 50 was issued to facilitate the rehabilitation of certain financial institutions. Following this, Development Bank transferred its rights, interests, and assets in Continental Manufacturing to the government through a Deed of Transfer dated February 27, 1987.¹²

On March 14, 1989, Development Bank bought back the Continental Manufacturing account from the government through a Deed of Reconveyance.¹³ The offer to retrieve was approved by the Asset Privatization Trust on March 25, 1988 and by the Committee on Privatization on June 23, 1988. Development Bank later remitted the total retrieval price of ₱198,399,177.00 to the Asset Privatization Trust.¹⁴

On October 8, 1992, Administrative Order No. 13 was issued, creating the Presidential Ad Hoc Fact-Finding Committee on Behest Loans (Committee on Behest Loans).¹⁵ It was tasked with making an inventory of behest loans, determining parties involved, and recommending the appropriate action that the government should take to recover the loans:¹⁶

1) the loan was undercollateralized; 2) the borrower corporation was undercapitalized; 3) a direct or indirect endorsement by a high government official, like the presence of marginal notes; 4) the stockholders, officers or agents of the borrower corporation were identified to be cronies; 5) a deviation of the loan from the purpose intended; 6) the use of corporate layering; 7) the non-feasibility of the project; and 8) an unusual speed in releasing the loan.¹⁷

After its investigation, the Committee on Behest Loans finished its 17th Fortnightly Report¹⁸ dated November 29, 1993, where it determined that

¹¹ Id. at 11 and 189.

¹² Id. at 11.

¹³ Id. at 219-222.

¹⁴ Id. at 44.

¹⁵ Id. at 43.

¹⁶ Id. at 1140.

¹⁷ Id. at 62. Memorandum Order No. 61 (1992), sec. 1. Broadening the Scope of the Ad-Hoc Fact Finding Committee on Behest Loans Created Pursuant to Administrative Order No. 13, Dated 8 October 1992.

¹⁸ Id. at 86-95.

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the accommodations granted to Continental Manufacturing were behest loans.¹⁹

The 17th Fortnightly Report read:

A. Based on the criteria set by the Ad Hoc Committee, the following corporations were found to possess positive characteristics of behest loans:

....

5. CONTINENTAL MANUFACTURING CORPORATION

....

A preliminary investigation should be conducted to determine the existence of a probable cause to prosecute administratively and criminally the government officials and private individuals who participated in the grant of the irregular loans. . . .

....

An Executive Summary on each of the above accounts is hereto attached for immediate reference.²⁰

The Executive Summary of the 17th Fortnightly Report read:

A. CORPORATIONS WITH POSITIVE FINDINGS:

....

5. CONTINENTAL MANUFACTURING CORPORATION

The loan account was undercapitalized on the 12th loan in 1981 and undercollateralized on the 13th loan in 1985. Mr. Dewee (*sic*) Dee, President and General Manager of the company is a known crony of the Marcos administration. The account was retrieved by DBP in March 14, 1989 being a performing asset.²¹

On November 28, 2003, the Presidential Commission on Good Government filed before the Office of the Ombudsman an Affidavit-Complaint²² for violation of Section 3(e)²³ and (g)²⁴ of the Anti-Graft and

¹⁹ Id. at 43–44.

²⁰ Id. at 86–88.

²¹ Id. at 89.

²² Id. at 223–234.

²³ Republic Act No. 3019 (1960), sec. 3(e) provides:

(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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Corrupt Practices Act, as amended.

The Affidavit-Complaint was filed against Development Bank's high-ranking officials, including: (1) Acting Chairman Rafael E. Sison (Sison); (2) Executive Officer Rodolfo D. Manalo (Manalo); and (3) Governor Jose R. Tengco (Tengco), as well as John/Jane Does. Also included as respondents were Continental Manufacturing's officers and directors, namely: (1) Rufino E. Deeunhong (Deeunhong); (2) Dewey Dee (Dewey); (3) Donald Dee (Donald); (4) Pedro Aguirre (Aguirre); (5) Inocencio Ferrer (Ferrer); (6) Yoshihino Nakamura (Nakamura); (7) Sadao Nakano (Nakano); (8) Ken Kikutani (Kikutani); (9) Ichiro Utake (Utake); (10) Emigdio Tanjuatco (Tanjuatco); and (11) Cesar Recto (Recto).²⁵

Citing the 17th Fortnightly Report, the Presidential Commission on Good Government alleged that when the initial loan of ₱43,586,696.93 was granted, Continental Manufacturing's total loan obligation from its creditors became ₱635.8 million, while its total assets only amounted to ₱314 million. It also claimed that the collateral for the loan with Development Bank was only ₱43,063,077.00. Despite Continental Manufacturing's poor financial standing and already undercollateralized existing loan, Development Bank again issued in its favor an additional ₱28 million worth of credit facility, and again an interim currency loan of US\$ 2 million.²⁶

Of the respondents, only Manalo, Tanjuatco, Tengco, and Donald filed Counter-Affidavits.²⁷

In its June 28, 2006 Resolution,²⁸ the Office of the Ombudsman dismissed the Complaint for lack of probable cause.

Convinced that the credit facility and guaranty granted to Continental Manufacturing were not behest loans,²⁹ the Office of the Ombudsman found that the 17th Fortnightly Report only made sweeping generalizations that the loans were undercollateralized and that the government was unduly injured when Development Bank failed to recover the entire obligation after foreclosure.³⁰

The Office of the Ombudsman lent credence to Development Bank's explanation that the loan accommodations were granted to Continental

²⁴ Republic Act No. 3019 (1960), sec. 3(g) provides:

(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.

²⁵ *Rollo*, p. 41.

²⁶ *Id.* at 226-227.

²⁷ *Id.* at 45 and 1146.

²⁸ *Id.* at 40-71.

²⁹ *Id.* at 62-63.

³⁰ *Id.* at 63.

Manufacturing to allow it to recover from a financial crisis after its then president, Dewey, left on January 9, 1981.³¹ It found that Development Bank granted the credit facilities for Continental Manufacturing to be able to sustain its operations and prevent the dislocation of its employees. It noted that the capital requirements were to be endorsed under the Emergency Rehabilitation Fund of the Central Bank.³² It also noted that Development Bank's guaranty of Continental Manufacturing's obligation to Citibank was conditioned on Citibank's mortgage of properties in favor of Development Bank. Thus, it found that the loans could not have been undercollateralized.³³

Moreover, the Office of the Ombudsman held that there was no proof to substantiate the allegation that respondents were granted accommodations because they had close ties with then President Ferdinand Marcos (Marcos).³⁴

The Office of the Ombudsman also held that Continental Manufacturing's request for loan accommodations had been subjected to intensive studies and evaluation. It noted that the securities were identified and the terms and conditions of the loan accommodations were clearly stated in the Development Bank's Office Correspondences. It concluded that respondents exercised sound business judgment and their acts were in accordance with acceptable banking practices.³⁵

The Office of the Ombudsman further determined that there was no indication of any criminal design or collusion to cause undue injury to the government. It held that there was no evidence of any unwarranted benefit granted in favor of Continental Manufacturing or of any transaction that is illegal, irregular, or grossly disadvantageous to the government.³⁶

Finally, the Office of the Ombudsman noted that Development Bank's charter under Republic Act No. 85 mandates it to grant credit facilities for the rehabilitation of agriculture and industry. Thus, it is presumed to have performed its duties regularly. In any case, the Office of the Ombudsman held that Continental Manufacturing's account was fully paid.³⁷

The Presidential Commission on Good Government moved for reconsideration, but its Motion was denied by the Office of the Ombudsman's January 28, 2009 Order.³⁸ Hence, it filed this Petition,³⁹

³¹ Id. at 64.

³² Id. at 65.

³³ Id. at 66.

³⁴ Id.

³⁵ Id. at 66-67.

³⁶ Id. at 67.

³⁷ Id. at 67-69.

³⁸ Id. at 72-80.



including the Office of the Ombudsman as a respondent.

After requiring the parties to file their respective Comments and Reply, this Court directed them to file their Memoranda.⁴⁰

Petitioner questions public respondent's dismissal of its Complaint, insisting that the accommodations granted to Continental Manufacturing are behest loans.⁴¹ It reiterates that the evidence and reports showed that the loans were approved, facilitated, and released despite being undercollateralized.⁴²

Petitioner further claims that public respondent only considered the Executive Summary of the 17th Fortnightly Report but disregarded the other documents that it submitted, including the Committee on Behest Loans' Terminal Report and the Development Bank's Board Resolutions.⁴³

Petitioner contends that public respondent gravely abused its discretion in ignoring the Committee on Behest Loans' recommendations. It argues that the Committee's findings deserve credence and respect, as it was formed precisely to determine the existence of behest loans. As such, public respondent should not have substituted its own judgment over matters that the law has entrusted to the Committee's technical training and knowledge. Petitioner argues that the Committee's findings should have been conclusive and not subjected to judicial review absent any showing of fraud, imposition or mistake, or error of judgment.⁴⁴

Moreover, petitioner argues that it has established a well-founded belief that the transactions were grossly disadvantageous to the government. Despite this, public respondent allegedly required it to present proof of guilt beyond reasonable doubt, which is tantamount to grave abuse of discretion.⁴⁵ Public respondent, petitioner claims, acted as a judge and a trier of facts in evaluating the evidence and probative value of the reports before trial on the merits.⁴⁶

Petitioner further notes that public respondent manifested bias in respondents' favor when it affirmed their defenses despite not having appended or presented documents to support their claims.⁴⁷

³⁹ Id. at 3-39.

⁴⁰ *Rollo*, p. 1070. While this case is pending, respondent Tanjuatco died.

⁴¹ *Rollo*, p. 1155.

⁴² Id. at 1158.

⁴³ Id. at 1156.

⁴⁴ Id. at 1157-1158.

⁴⁵ Id. at 1159-1161.

⁴⁶ Id. at 1158.

⁴⁷ Id. at 1156.

Respondents, on the other hand, insist on the Complaint's dismissal.⁴⁸

Public respondent argues that petitioner failed to show that it committed grave abuse of discretion in issuing the assailed Resolution and Order.⁴⁹ Moreover, it claims that in insisting on the findings of the Committee on Behest Loans, petitioner raises questions of fact improper in a petition for certiorari, where a party can only raise errors of jurisdiction or allege grave abuse of discretion.⁵⁰

Public respondent further asserts that there was no sufficient basis to characterize the loans and accommodations granted to Continental Manufacturing as behest loans.⁵¹

Public respondent reiterates that the only evidence presented by petitioner was the 17th Fortnightly Report, which only made sweeping generalizations that: (1) the loans were undercollateralized; (2) there was undue injury to the government when Development Bank failed to recover the entire obligation after foreclosure; and (3) Continental Manufacturing was given unwarranted benefits and accommodations disadvantageous to the government. Public respondent maintains that there is no evidence to prove these allegations, or that the transactions were irregular or illegal.⁵²

Public respondent also claims that according to records, Continental Manufacturing requested loans for rehabilitation after having suffered a financial crisis in January 1981, around the time that its then President Dewey left the company.⁵³

Public respondent denies that it usurped the functions of the Sandiganbayan in dismissing the Complaint. It posits that it is constitutionally mandated to exercise its investigatory and prosecutorial powers, which can only be done by examining the parties' allegations and their supporting evidence. It claims that the correctness of its determination is not a matter that the trial court may pass upon.⁵⁴

Insisting on its broad discretion to determine the existence of probable cause, public respondent cites this Court's policy not to interfere with its finding of probable cause without good and compelling reasons for finding of grave abuse of discretion.⁵⁵ It maintains that without grave abuse of

⁴⁸ Id. at 1073, 1223, and 1194.

⁴⁹ Id. at 1225.

⁵⁰ Id. at 1224.

⁵¹ Id. at 1226.

⁵² Id.

⁵³ Id. at 1227. Executive Summary pertaining to the account of Continental Manufacturing and Development Bank's recommendations for approval of the credit facilities and financing.

⁵⁴ Id. at 1228-1230.

⁵⁵ Id. at 1230.

discretion, its dismissal of the Complaint for lack of probable cause should be respected.⁵⁶

Respondents Donald and Tengco raise similar arguments. They stress that in the absence of grave abuse of discretion,⁵⁷ public respondent's exercise of its independent discretion in determining probable cause should be respected.⁵⁸ Similarly, they argue that there is no good and compelling reason for this Court to interfere with public respondent's findings.⁵⁹

Respondent Donald further insists that public respondent "fairly, equitably, correctly[,] and objectively evaluated the evidence[.]"⁶⁰ He claims that weighing the evidence is necessary in preliminary investigations and is part of public respondent's functions to determine a *prima facie* case before filing a case in court.⁶¹ He further points out that petitioner contradicts itself in arguing that public respondent should not have evaluated the evidence, but at the same time asserting that it failed to consider the evidence it adduced.⁶² Private respondent Tengco adds that petitioner failed to substantiate its claim that public respondent ignored the supporting documents attached to its Affidavit-Complaint.⁶³

Citing public respondent's finding, respondent Tengco insists that the allegations for the crime charged are too general and sweeping,⁶⁴ with no supporting evidence other than the 17th Fortnightly Report, which only stated that the loans were undercollateralized and that the government was unduly injured.⁶⁵ Respondents Donald and Tengco insist that "sufficient properties were required as collateral to guarantee the . . . loans and guaranty[.]"⁶⁶

Moreover, Respondents Donald and Tengco assert that petitioner failed to substantiate all the elements of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act.⁶⁷

For Section 3(e), they claim that petitioner did not show evidence that the loan grant unduly favored Continental Manufacturing or its stockholders or officials.⁶⁸ Respondent Tengco points out that evident bad faith, manifest partiality, or gross inexcusable negligence was not specifically averred or

⁵⁶ Id. at 1231.

⁵⁷ Id. at 1076 and 1205–1206.

⁵⁸ Id. at 1075, 1081, and 1201–1202.

⁵⁹ Id. at 1107.

⁶⁰ Id. at 1207.

⁶¹ Id. at 1205–1206.

⁶² Id. at 1206.

⁶³ Id. at 1096.

⁶⁴ Id. at 1107.

⁶⁵ Id. at 1083.

⁶⁶ Id. at 1097.

⁶⁷ Id. at 1208–1210.

⁶⁸ Id. at 1082, 1102, and 1210.

proven.⁶⁹ They further assert that no injury exists since Development Bank's account with Continental Manufacturing has been fully paid and settled.⁷⁰

Respondents Dee and Tengco further claim that petitioner allegedly failed to prove that Continental Manufacturing performed acts that unduly influenced Development Bank.⁷¹ Additionally, there was no proof that the accommodation had been granted because of Marcos,⁷² pointing out that the parties close or associated with the former president or his family were not specified.⁷³

Respondents Dee and Tengco claim that petitioner itself has admitted that Continental Manufacturing had settled its obligations to Development Bank. They state that in 1989, the corporation fully paid the bank ₱198,399,177.00, after which the Asset Privatization Trust then transferred back to Development Bank all its rights to and titles and interests in the account of Continental Manufacturing.⁷⁴ This was evidenced by the: (1) Deed of Conveyance dated March 14, 1989 between Asset Privatization Trust and Development Bank;⁷⁵ and (2) the Deed of Transfer dated March 15, 1989, where both parties expressly agreed that due to the transfer, Continental Manufacturing's obligation to Development Bank was deemed settled and paid.⁷⁶

Respondent Tengco further argues that the obligation Continental Manufacturing transferred to the national government in February 1987 was only ₱183,074,000.00, and the Deed of Reconveyance dated March 14, 1989 reveals that this account was fully paid and settled in the amount of ₱198,399,177.00. This shows that Development Bank even earned ₱2,210,000.00 as an investment banker. Thus, there could not have been any loss, damage, or injury caused to it.⁷⁷

For Section 3(g), respondents Dee and Tengco assert that petitioner did not substantiate its claim that the loans or any contract was grossly

⁶⁹ Id. at 1085 and 1097.

⁷⁰ Id. at 1074, 1083, 1102, and 1210–1211.

⁷¹ Id. at 1082 and 1210.

⁷² Id. at 1088, 1091, and 1210.

⁷³ Id. at 1091.

⁷⁴ Id. at 1086 and 1199.

⁷⁵ Id. at 1086; and 1199.

It states that APT has "irrevocably and unconditionally forever waived and relinquished all its rights, title and interest in and to the CMC account and acknowledged and confirmed that the reconveyance of the CMC account herein made (to and in favor of DBP) is deemed a complete satisfaction and settlement of the CMC Account with APT."

⁷⁶ Id. at 368–370 and 1087.

The Deed of Transfer states: 3. For and in consideration of the services rendered by DBP as investment banker/broker in connection with the retrieval of the CMC Account from APT, YVRI (Donald Dee) paid DBP on April 18, 1988 the amount of TWO MILLION TWO HUNDRED TEN THOUSAND PESOS (₱2,210,000.00) which DBP acknowledged receipt hereof[.]

⁷⁷ Id. at 1092.

disadvantageous to the government.⁷⁸ They maintain that there was no proof of criminal design, conspiracy, connivance, or collusion to cause injury.⁷⁹

Respondent Tengco claims that petitioner failed to specify Development Bank's exact participation in committing the alleged crimes.⁸⁰ He points out that it was not specifically alleged which among the bank's Board of Governors were present in the meetings that approved the loans and accommodations in Continental Manufacturing's favor.⁸¹

Moreover, respondents Donald and Tengco posit that the loans were granted after due evaluation, with sound business judgment, and in accordance with its mandate, official functions, and acceptable banking practice.⁸² Petitioner, they claim, failed to prove otherwise.⁸³

Respondent Donald explains that he sought loans and accommodations from Development Bank to continue Continental Manufacturing's operations, meet its client's requirements, and prevent its employees' dislocation.⁸⁴ Respondent Tengco claims that the accommodations are forms of emergency rescue assistance granted after considering the following circumstances: (1) several business enterprises and industries' dependence on Continental Manufacturing's acrylic yarn; (2) the business enterprises and industries' capacity to generate foreign exchange earnings; and (3) the stoppage of Continental Manufacturing's operations, which will cause the dislocation of 27,000 workers.⁸⁵

Respondent Donald alleges that in exchange for the loan accommodations, he offered Development Bank the management of Continental Manufacturing and the assignment of export proceeds for the servicing of the loans.⁸⁶ Furthermore, he claims that before the loans were approved, the studies and evaluation had been exhaustive and intensive, with sound recommendations to ensure that Development Bank's interests were protected.⁸⁷ These may allegedly be seen in Development Bank's Office Correspondences,⁸⁸ which laid out the terms and conditions of the loans and specifically identified the securities.⁸⁹

Respondent Donald further claims that per Development Bank's

⁷⁸ Id. at 1083, 1085, 1102, and 1207.

⁷⁹ Id. at 1083, 1207, and 1209-1210.

⁸⁰ Id. at 1082 and 1102.

⁸¹ Id. at 1074.

⁸² Id. at 1082, 1085, 1098, 1102, and 1207.

⁸³ Id. at 1083 and 1102.

⁸⁴ Id. at 1196.

⁸⁵ Id. at 1090.

⁸⁶ Id. at 1196.

⁸⁷ Id. at 1097 and 1207.

⁸⁸ These correspondences were dated March 10, 1981, March 18, 1981, and October 6, 1982.

⁸⁹ *Rollo*, p. 1207.

Office Correspondence dated October 6, 1982, Development Bank guaranteed Continental Manufacturing's loan with Citibank. This was because Citibank manifested that it was willing to hold foreclosing the mortgaged assets if Development Bank would issue a guaranty to restructure Continental Manufacturing's outstanding principal obligations.

Thus, Development Bank allegedly agreed to the guaranty because: (1) its collateral position on its financial exposures to Continental Manufacturing will improve by ₱19.1 million because of Citibank's surrender of the mortgaged properties amounting to ₱44.1 million and the loan of ₱25 million; (2) Development Bank's liability is only contingent on its books against hard assets, which had values sufficient to back up the guaranty liability making it a paper transaction with no immediate cash outlay from Development Bank; and (3) Development Bank also gained control over Continental Manufacturing's subsidiaries in issuing the guaranty.⁹⁰

Respondent Tengco also argued that the loans and guaranty were also audited and found regular by the Central Bank of the Philippines (now BSP) and the Commission on Audit.⁹¹ He explains that petitioner's figures on Continental Manufacturing's obligations to Development Bank were increased because of the peso devaluation,⁹² which was not within the latter's control.⁹³ Moreover, respondents Dee and Tengco claim that when Development Bank granted the loans and accommodations, it managed Continental Manufacturing, and thus, controlled the latter's Board of Directors, Management, and Executive Committee.⁹⁴ It also developed a rehabilitation plan with third parties.⁹⁵

Finally, respondent Tengco argues that without contrary evidence, the presumption of regularity in the performance of duties should apply.⁹⁶ Thus, their acts should be presumed regular and performed in good faith.⁹⁷ He further argues that directors who act in good faith and within the scope of authority on behalf of the corporation do not become personally liable for the corporation's acts.⁹⁸ In any case, since there was no injury caused, petitioner is left with no cause to file its Complaint.⁹⁹

For this Court's resolution is the issue of whether or not public respondent Office of the Ombudsman gravely abused its discretion when it

⁹⁰ Id. at 1198–1199.

⁹¹ Id. at 1097–1098.

⁹² From ₱7.50/US\$1.00 to ₱18.65/US\$1.00.

⁹³ *Rollo*, p. 1091.

⁹⁴ Id. at 1091 and 1196.

⁹⁵ Id. at 1197.

⁹⁶ Id. at 1085.

⁹⁷ Id. at 1098.

⁹⁸ Id. at 1099.

⁹⁹ Id. at 1087.

found that the loans granted to Continental Manufacturing Corporation were not behest loans, thus finding no probable cause to charge respondents with violating the Anti-Graft and Corrupt Practices Act.

This Court dismisses the Petition. Public respondent's finding of probable cause is entitled to great respect.

The Office of the Ombudsman is given a wide latitude of discretion when exercising its prosecutorial powers. Thus, this Court avoids intruding on its determination of probable cause. In *Ramiscal, Jr. v. Sandiganbayan*:¹⁰⁰

As the final word on the matter, the decision of the panel of prosecutors finding probable cause against petitioner prevails. This Court does not ordinarily interfere with the Ombudsman's finding of probable cause. The Ombudsman is endowed with a wide latitude of investigatory and prosecutory prerogatives in the exercise of its power to pass upon criminal complaints. As this Court succinctly stated in *Alba v. Hon. Nitorreda*:

Moreover, this Court has consistently refrained from interfering with the exercise by the Ombudsman of his constitutionally mandated investigatory and prosecutory powers. Otherwise stated, it is beyond the ambit of this Court to review the exercise of discretion of the Ombudsman in prosecuting or dismissing a complaint filed before it. Such initiative and independence are inherent in the Ombudsman who, beholden to no one, acts as the champion of the people and preserver of the integrity of the public service.

In *Ocampo, IV v. Ombudsman*, the Court explained the rationale behind this policy, thus:

The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.¹⁰¹ (Citations omitted)

Only when tainted with grave abuse of discretion will this Court

¹⁰⁰ 645 Phil. 69 (2010) [Per J. Carpio, Second Division].

¹⁰¹ Id. at 81-82.

reverse the Office of the Ombudsman's finding of probable cause.

Here, grave abuse of discretion means that public respondent's exercise of judgment or power was so capricious and whimsical, or arbitrary and despotic, as to amount to a lack or excess of jurisdiction. Its act must have been "so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law."¹⁰² This Court has explained:

Ordinarily, the Court does not interfere with the Ombudsman's determination of the existence or non-existence of probable cause. The rule, however, does not apply if there is grave abuse of discretion, or if the action is done in a manner contrary to the dictates of the Constitution, law or jurisprudence. In these exceptional cases, the Ombudsman's action becomes subject to judicial review.

The Ombudsman, in dismissing a complaint — whether for want of palpable merit or after the conduct of a preliminary investigation — carries the duty of explaining the basis for his action; he must determine that the complainant had failed to establish probable cause.

The probable cause that a complainant has to establish need not be based on clear and convincing evidence of guilt or evidence of guilt beyond reasonable doubt. It simply implies probability of guilt and requires more than a bare suspicion but less than evidence that would justify a conviction. A finding of probable cause need only rest on evidence showing that more likely than not, a crime has been committed and was committed by the suspects.¹⁰³ (Citations omitted)

In the past, this Court has reversed the Office of the Ombudsman's finding of probable cause and found that it gravely abused its discretion when it required more than the required quantum of evidence to find probable cause. In the 2009 case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,¹⁰⁴ this Court noted that the conflicting accounts of the parties will be better ventilated in a full-blown trial:

The duty of the Ombudsman in the conduct of a preliminary investigation is to establish whether there exists probable cause to file an information in court against the accused. Considering the quantum of evidence needed to support a finding of probable cause, the Court holds that the Ombudsman gravely abused his discretion when he found such to be lacking here.

Preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of

¹⁰² *Domondon v. Sandiganbayan*, 384 Phil. 848, 857 (2000) [Per J. Buena, Second Division].

¹⁰³ *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 650 Phil 22, 32-33 (2010) [Per J. Brion, Third Division].

¹⁰⁴ 603 Phil. 18 (2009) [Per J. Carpio Morales, Second Division].

such evidence only as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty thereof. The validity and merits of a party's accusation or defense, as well as admissibility of testimonies and evidence, are better ventilated during the trial proper.

In the proceedings before the Ombudsman, the Committee and spouses Romualdez presented conflicting accounts. . . . Clearly, these conflicting claims of the parties should be resolved in a full-blown trial.

....

It bears stressing that a finding of probable cause needs only to rest on evidence showing that more likely than not, a crime was committed and was committed by the suspects.¹⁰⁵ (Citations omitted)

In the same case, this Court also ruled that the findings of the Committee on Behest Loans are entitled to great weight and respect:

It behooves the Ombudsman, while he asks the Court to respect his findings, to also accord a proper modicum of respect towards the expertise of the Committee, which was formed precisely to determine the existence of behest loans. Considering the membership of the Committee — representatives from the Department of Finance, the Philippine National Bank, the Asset Privatization Trust, the Philippine Export and Foreign Loan Guarantee Corporation and even DBP itself — its recommendation should be given great weight. No doubt, the members of the Committee are experts in the field of banking. On account of their special knowledge and expertise, they are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan. Absent a substantial showing that their findings were made from an erroneous estimation of the evidence presented, they are conclusive and, in the interest of stability of the governmental structure, should not be disturbed.¹⁰⁶ (Citations omitted)

However, in the 2010 case of *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*,¹⁰⁷ the Office of the Ombudsman was found to have gravely abused its discretion for immediately dismissing the Complaint with only one (1) paragraph despite voluminous exhibits. There, the Office of the Ombudsman took against the petitioner its failure to provide copies of the resolutions approved by the bank officers and directors, which showed that they were responsible for the processing and approval of the loans.¹⁰⁸ It did not discuss whether the questioned transactions bore the characteristics of a behest loan and whether the respondents were guilty of violating Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act. The elements of the offenses were not

¹⁰⁵ Id. at 35–37.

¹⁰⁶ Id. at 36.

¹⁰⁷ 650 Phil. 22 (2010) [Per J. Brion, Third Division].

¹⁰⁸ Id. at 39–40.

examined.¹⁰⁹

Here, however, public respondent did not act with grave abuse of discretion in finding no probable cause.

Public respondent found no probable cause in this case, lending more credence to Development Bank's explanation that the loans were granted in the exercise of sound business judgment and subjected to intensive studies and evaluation. This was allegedly evidenced by Development Bank's Office Correspondences, which laid out the terms and conditions of each loan accommodation. Public respondent also ruled that there was no indication of any criminal design or collusion to cause undue injury to the government. It held that there was no evidence of any unwarranted benefit granted in favor of Continental Manufacturing or of any transaction that is illegal, irregular, or grossly disadvantageous to the government.¹¹⁰

Respondents do not deny the numbers alleged as to the capital and obligations of Continental Manufacturing. However, they insist that petitioner failed to dispute¹¹¹ that the loans were granted after due evaluation, in light of sound business judgment, and in accordance with its mandate, official functions, and acceptable banking practice.¹¹²

This Court finds that Development Bank's Office Correspondences indeed show that the grant of the questioned loans had been subject to extensive evaluations, several terms and conditions, and the capacity of Continental Manufacturing to earn.

The reasons for the grant of the ₱28 million credit facility in favor of Continental Manufacturing are found in Development Bank's Office Correspondence dated March 10, 1981, which provides:

IV. Recent Developments and Comments

Cognizant of the fact that several business enterprises and industries are dependent on CMC for their acrylic yarn requirements and considering that *these industries are capable of generating foreign exchange earnings of about \$250 million annually*, DBP has to take a very active part in sustaining CMC's . . . operations.

It is for this reason that as an initial step for the rehabilitation of CMC and RTMC after the two (2) companies experienced financial setbacks following the departure of Mr. Dewey Dee from the country, DBP took over the management of these two firms on January 1981 and

¹⁰⁹ Id. at 33.

¹¹⁰ *Rollo*, p. 67.

¹¹¹ Id. at 1083 and 1102.

¹¹² Id. at 1082, 1085, 1098, 1102, and 1207.

instituted the following program of action:

1. Reorganized firm's Board of Directors by electing six DBP representatives thereto:
....
2. Elected a new set of corporate officers to actively handle/manage the affairs of the company:
....
3. Created an Executive Committee which will meet in between meetings of the Board of Directors and will exercise the powers of the Board of Directors, provided that all matters acted upon by the Executive Committee will be submitted to the Board for ratification.
....
4. Hired SGV & Company as external auditors to conduct an audit of CMC's and RTMC's accounting/financial records to have the new management informed of the accurate financial condition of the two companies as of December 31, 1980.
5. Engaged the services of Asian Appraisal Phils., Inc. to re-appraise the assets of CMC and RTMC.
6. Opened a savings deposit account with DBP to take care of day-to-day collections, and a current account with PNB for daily disbursements, in the name of DBP-CMC-RTMC to avoid any possible garnishment of cash.

In the implementation of above action program, it would be necessary to develop a workable rehabilitation program for CMC and RTMC, set up the appropriate financial plans therefor, and have the balance sheets of the two companies reconstructed. These are currently being worked out by DBP, SGV and the creditors of the two companies. Since it may take some time before the financial plans for the two (2) companies may be finalized, we believe it would be justified for DBP to favorably consider meantime firm's request for interim credit facilities. . . .

DBP's favorable consideration of this request will enable CMC and RTMC [to] sustain their operations for at least the next three (3) months and thereby forestall employment dislocation for about 27,000 employees of CMC and its downstream companies, along with the other economic benefits now accruing from the operations of the two (2) companies.

It is however understood that DBP shall complete its studies for the financial rehabilitation of CMC and RTMC aimed principally at restoring the viability of the two (2) firms, the studies to be subsequently submitted to the Board for its consideration.¹¹³ (Emphasis supplied)

The approval of the same ₱28 million credit facility was subject to the

¹¹³ Id. at 160-162.


following conditions:

1. Implementation of the proposed accommodation shall be subject to the signing by DBP, CMC and CMC's creditors of the Memorandum of Agreement . . . covering the recovery payment priority of CMC's obligations.
2. Above DBP guarantees shall be secured as follows:
 - a. By a first mortgage on the assets mentioned under Item II.1 above.
 - b. By the joint and several signatures with CMC of Messrs. Donald Dee and Rufino Dee Un Hong; . . .
 - c. Assignment to DBP of the companies' . . . export sales proceeds in amounts sufficient to meet the firm's yearly amortization on the loans.
 - d. By pledge and/or open end mortgage on inventory worth not less than 40 million (P28 million for CMC and 12 million . . . for RTMC), consisting of finished goods and raw materials. The inventories will have to be maintained at above level and shall be kept in warehouses to be guarded whenever necessary by DBP's own security guards and/or DBP designated security agencies whose compensation shall be borne by CMC and RTMC. For control purposes, CMC and RTMC shall undertake a yearly physical count of all inventory and shall submit to DBP not later than the 30th day of each succeeding year an annual inventory list duly certified by their respective external auditors. DBP shall also have the option to conduct its own physical inventory count if and when necessary.
3. CMC and RTMC shall pay DBP non-refundable processing fees of P28,000 and P12,000, respectively.
4. All other terms and conditions of previous DBP Board Resolutions approving various accommodations granted to CMC and RTMC not herein affected shall remain in full force and effect.
5. All such positive and negative covenants which may legally be imposed on CMC and RTMC for the protection of DBP shall be included by the Legal Department in the financing agreement.¹¹⁴

On the other hand, the US\$2 million credit facility was discussed in Office Correspondence dated March 18, 1981, which states:

DBP may once more favorably consider CMC's requested interim financing of \$2 million to enable it to continue and sustain operations up to June 1981 meanwhile that a workable rehabilitation plan is being worked out by DBP, Bancom and Trigon, Inc., the capital requirements

¹¹⁴ Id. at 163-164.



therefor to be endorsed under the Emergency Rehabilitation Fund of the Central Bank. We were made to understand that if the matured . . . and those which will mature in March are not properly paid, CMC will lose its network of suppliers or vital raw materials.

To relieve firm of its present financial predicament and at the same time sustain its operations, we are also proposing that in line with DBP's general restructuring program for its problematic accounts, the conversion into 16% preferred shares CMC's past due obligations totalling P 689, 741.95 as of February 28, 1981, this to be eventually absorbed and covered under the financial plan to be developed and adopted by DBP for CMC. It is believed that with above financial assistance, CMC will be in a better position to enjoin its other creditors to accept and finally sign the repayment priorities called for in the proposed Memorandum of Agreement to be executed among CMC, DBP and CMC's creditors.¹¹⁵

The conditions and securities for the grant of this interim currency loan are listed in *six (6) pages* of Development Bank's Office Correspondence.¹¹⁶

Meanwhile, the guaranty of Continental Manufacturing's loan from Citibank was explained in the Office Correspondence dated October 6, 1982:

Owing to the delayed implementation of the financial rehabilitation plan of CMC, Mr. Omar Byron T. Mier, Vice President of Citibank, N.A. in his letter of October 1, 1982 . . . informed us that they have referred their P25 million claims against the subject firm to their lawyers to institute foreclosure action if the loan obligations of CMC to them are not settled on or before October 15, 1982.

Under the same letter, Mr. Mier informed us also that Citibank is willing to hold off the foreclosure move if DBP agrees to issue a guaranty for the restructuring of the outstanding principal obligations. In exchange, Citibank will surrender all mortgaged properties to the DBP. In essence, this would be tantamount to an assumption of mortgages through guaranty issuance.

....

Comments

....

2. The settlement scheme desired by Citibank was taken up by the Executive Committee of CMC on its meeting yesterday afternoon and it was decided that the position of Citibank will be considered favorably provided that the term of restructuring the principal loan obligations of CMC to Citibank shall not be less than seven (7) years including two (2) years grace period on principal and interest. Furthermore, the repayment of the obligations as restructured shall be shared by CMC and its

¹¹⁵ Id. at 167.

¹¹⁶ Id. at 170-176.

subsidiaries.

....

The decision of the Executive Committee on the position of Citibank was based on the following considerations:

- a. The collateral positions of DBP on its financial exposures to CMC will be improved by P19.1 million, computed as follows:

....

- b. The proposed debt settlement scheme will only result to the creation of a contingent liability in the books of DBP against hard assets with values more than sufficient to back-up the guaranty liability. It is a paper transaction involving no immediate cash outlay on the part of DBP.

- c. At present, DBP controls only CMC. By issuing the guaranty to Citibank, DBP will also gain control of CMC's subsidiaries thus having a complete control of the entire yarn manufacturing process of CMC. This control aspect is very important if DBP will opt for foreclosure. As such, it will be easier for DBP to sell the plants of CMC and its subsidiaries since they comprise one entire operation.

- d. As discussed and pointed out, there are no better alternatives except the proposal of Citibank, hence the decision of the Executive Committee of CMC to indorse the matter to the DBP.¹¹⁷

Development Bank agreed to provide a guaranty for the obligation to Citibank, provided that it will be restructured for a seven (7)-year period, with a two (2)-year grace period on principal and interest. Likewise, the repayment of the restructured obligation would be shared by Continental Manufacturing and its subsidiary companies on a sharing ratio to be imposed later by Development Bank. Furthermore, the properties Citibank would surrender in exchange for the guaranty shall be mortgaged in favor of Development Bank.¹¹⁸

For these transactions, respondents were charged with a violation of Section 3(e) and (g) of the Anti-Graft and Corrupt Practices Act, which state:

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:

....

¹¹⁷ Id. at 177-180.

¹¹⁸ Id. at 179-181.

- (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. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.
- ...
- (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.

The respective elements of the two (2) offenses are:

The elements of the offense in Section 3(e) are: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they cause undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.

On the other hand, the elements of the offense in Section 3(g), are: (1) that the accused is a public officer; (2) that he entered into a contract or transaction on behalf of the Government; and (3) that such contract or transaction is grossly and manifestly disadvantageous to the Government.¹¹⁹

In *Presidential Commission on Good Government v. Office of the Ombudsman*,¹²⁰ this Court held that there is no element of manifest partiality, evident bad faith, or gross inexcusable negligence when the questioned loans were approved after a careful evaluation and study:

Respondent Reyes did not act with manifest partiality, evident bad faith, or inexcusable gross negligence when she made her recommendations because they were arrived at only after considering Pioneer Glass' capability to pay the loan obligations. Moreover, she also carefully considered how to best protect Development Bank's interests with the appropriate securities from Pioneer Glass to guarantee the loans. In the same manner, Development Bank's board members who relied on her report and recommendation in approving the loan applications also did

¹¹⁹ *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 603 Phil. 18, 33–34 (2009) [Per J. Carpio Morales, Second Division].

¹²⁰ G.R. No. 187794, November 28, 2018, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64814>> [Per J. Leonen, Third Division].

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not act with manifest partiality, evident bad faith, or inexcusable negligence.

....

This finds basis in *Presidential Commission on Good Government*, which ruled that Development Bank's careful study and evaluation of the loan application negated the existence of manifest partiality, gross inexcusable negligence, or evident bad faith in the eventual approval of the loan application:

It is clear from the records that private respondents studied and evaluated the loan applications of Bagumbayan before approving them. There is no showing that the DBP Board of Governors did not exercise sound business judgment in approving the loans, or that the approval was contrary to acceptable banking practices at that time. No manifest partiality, evident bad faith, or gross inexcusable negligence can, therefore, be attributed to private respondents in approving the loans.¹²¹

This Court also held that not only must the losses be proved, but must have also been unavoidable:¹²²

Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.

Thus, Section 3(e) requires “manifest partiality, evident bad faith or gross inexcusable negligence” and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of “undue injury” to the government. Section 3(g), on the other hand, requires a showing of a “contract or transaction manifestly and grossly disadvantageous to the [government].”

Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable. Public respondent's findings did not transgress these requirements.¹²³ (Emphasis supplied)

Here, the Office Correspondences show that these loans were granted for an envisioned rehabilitation of Continental Manufacturing.

Thus, there is no showing that respondents acted with manifest

¹²¹ Id.

¹²² Id.


¹²³ Id.

partiality, evidence bad faith, or gross inexcusable negligence. The loans were approved and granted after the consideration of the financial situation, extensive evaluation of the terms and conditions, and several securities for the accommodation requested. They were granted in the exercise of sound business discretion.


Public respondent considered all the evidence in determining whether there is probable cause to charge respondents with violating the Anti-Graft and Corrupt Practices Act. It did not act whimsically or capriciously so as to amount to grave abuse of discretion. Hence, this Court affords great respect to and will not interfere with its finding of probable cause.


WHEREFORE, the Petition is **DENIED**. Public respondent Office of the Ombudsman's June 28, 2006 Resolution and January 28, 2009 Order, which dismissed the Presidential Commission on Good Government's Affidavit-Complaint for lack of probable cause, are **AFFIRMED**.

SO ORDERED.


MARVIC M. V. F. LEONEN
Associate Justice

WE CONCUR:


ANDRES B. REYES, JR.
Associate Justice

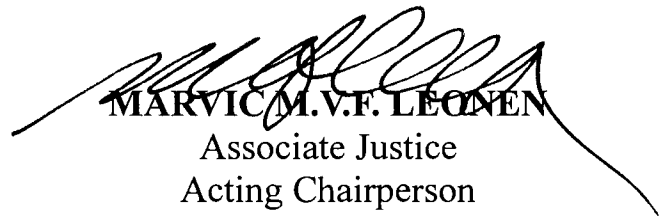

RAMON PAUL L. HERNANDO
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

ATTESTATION

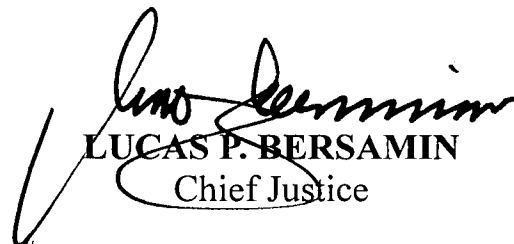
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC M.V.F. LEONEN
Associate Justice
Acting Chairperson

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