

RAMON ALBERT, PETITIONER, VS. CELSO D. GANGAN, IN HIS CAPACITY AS CHAIRMAN, COMMISSION ON AUDIT, ROGELIO ESPIRITU, IN HIS CAPACITY AS COMMISSIONER, COMMISSION ON AUDIT, SOFRONIO...

G.R. No. 126557. March 06, 2001

Ponente: BUENA, J.

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BUENA, J.:

This petition for certiorari seeks to nullify Commission on Audit (COA) Decision No. 2700 dated February 19, 1993, finding petitioner, then President of the National Home Mortgage Finance Corporation (NHMFC), liable for the amount of P36,796,711.55 covering the payment of the loan proceeds for the lot acquired by the Alyansang Maka-Maralitang Asosasyon at Kapatirang Organisasyon (AMAKO) which was disallowed in audit.

The facts are undisputed:

The Housing and Urban Development Coordination Council (HUDCC) together with the Presidential Commission for Urban Poor (PCUP), NHMFC, and Home Insurance Guarantee Corporation (HIGC) formed an inter-agency committee to conceptualize and prepare the guidelines and procedures for the Community Mortgage Program (CMP),[1] a sub-program of the Unified Home Lending Program (UHLP). The CMP is an innovative scheme in mortgage financing where an undivided tract of land may be acquired by several beneficiaries through the concept of community ownership. It was adopted to assist residents of blighted or depressed areas to initially own the lots they occupy, and, eventually, to build a decent house thereon to the extent of their affordability within the concept of low-cost-home financing and after due compensation to the landowner. The beneficiaries of the financing shall then form or establish an association, or cooperative, duly registered with appropriate governmental agencies and accredited with the PCUP. Under the financing procedure of the CMP, an application of an association for a loan is coursed through duly accredited originators, such as the National Housing Authority (NHA), and Non-Government Organizations (NGOs).[2]

On August 20, 1988, the NHMFC Board issued Resolution No. 419, Series of 1988, approved the CMP.[3]

On December 19, 1988, Carlos P. Doble, then Vice President of HIGC, issued an appraisal policy for the CMP which was concurred in by the HIGC President, Federico Gonzales, herein petitioner, NHMFC OIC/EVP, and HUDC Teodoro Katigbak.[4] On the same date, Doble likewise issued to HIGC Technical Service Department personnel the Appraisal Policy for the CMP.[5]

On April 12, 1989, the NHMFC board issued Resolution No. 546, Series of 1989, approving the amended/expanded guidelines for CMP.[6]

On April 4, 1989, the Sapang Palay Community Development Foundation Inc., (Foundation) applied for accreditation with the NHMFC as originator of land and housing project through a Purchase Commitment Line. The application consists of sixteen (16) project sites situated in different parts of the country. Among these is the

AMAKO Project which was submitted for accreditation to the NHMFC by Nelson Concepcion, President of the Foundation. The AMAKO project refers to seventy-three (73) hectares of land located at Sta. Catalina, Angeles City, which was offered by Severino H. Gonzales, Jr. Construction, Co, Inc. (SHGCCCI), through its shareholder, Engineer Ceres Pajaron, to the members of AMAKO. Mr. Concepcion who was also the concurrent head of the PCUP's Housing and Settlement Division, delivered on September 7, 1989, to the CMP Unit - then under Mortgage Takeout Department (MROD)-HMFC - the project documents of AMAKO for pre-evaluation which were returned to the Foundation on September 22, 1989 by the CMP unit.

On October 4, 1989, Mr. Concepcion submitted an application for Purchase Commitment Line in the amount of P36,794,250.00, specifically for the AMAKO project together with an Information Sheet of the Foundation, the AMAKO project profile, and the Department of Agrarian Reform certification dated December 4, 1988. On the same day, Mr. Generozo Cruz, Foundation Vice President and PCUP Director, redelivered the documents to the CMP unit to discuss the Foundation's proposal on the AMAKO project.

On October 5, 1989, the Officer-in-charge of the Credit and Collection Group, NHMFC, recommended to petitioner the grant of an additional line in favor of Sapang Palay Community Development Foundation, Inc., in the total amount of P36,8000,000.00[7] - approved by the NHMFC Credit Committee on October 13, 1989 - subject, however, to the approval of the NHMFC Board.

On December 14, 1989, the NHMFC, upon the recommendation of the CMP Task Force, together with the Certification of Mortgage Examinations,[8] issued a Letter of Guaranty in favor of SHGCCCI.[9] Thereafter, the disbursement voucher (No. 89F2-5732) was prepared by the CMP Task Force in favor of SHGCCCI.[10] Mr. Rogelio Olaguer, head of the CMP Task Force, likewise inspected the project site and assured petitioner that the project is above board and in accordance with the NHMFC-CMP guidelines. With this assurance, petitioner approved the payment to the SHGCCCI. Thus, on January 4, 1990, the amount of P36,796,711.55 under Philippine National Bank - Land Bank of the Philippines Check No. 362994, was released to Engineer Severino A. Gonzales, Jr. of the SHGCCCI.[11]

Sometime in June 1990, petitioner instructed the Community Mortgage Management Office (CMMO) to conduct a routine inspection of the AMAKO Project. Upon verification, it was discovered that the AMAKO project was three (3) months in arrears in their amortization. As a consequence, petitioner, sometime in July 1990, tasked the Committee on Evaluation of Originating Institutions to investigate the originators with respect to their compliance with corporate circulars, other rules and regulations issued by NHMFC regarding its lending programs. One of the originators investigated was the Foundation which was instrumental in the granting of the loan to the AMAKO Project.[12]

On September 3, 1990, the COA Resident Auditor of NHMFC disallowed the loan granted to the AMAKO Project for the following reasons: (a) non-submission of documentary requirements/non-complying or defective documents as required under NHMFC Corporate Circular No. CMP-001; and (b) irregular/excessive expenditures per COA Circular No. 85-55A dated September 8, 1985. The Auditor determined the following officers of NHMFC, as personally liable, viz.: petitioner as President; Fermin T. Arzaga, OIC, Finance, Corpan & Computer Services Group; Roger Olaguer, Head, CMP Task Force; Vivien Noble, Deputy Head, CMP Task Force; Ernesto Salvador, Executive Asst. CMP Task Force; Cynthia O. Alas, Div. Chief II, Budget and Irma Fuentes, COD, CMMO.[13]

On September 18, 1990, petitioner filed with the Ombudsman a letter-complaint against his subordinate employees who appeared to be responsible for the fraud with respect to the AMAKO loan transaction.[14] However, said complaint was withdrawn by petitioner's successor, Acting President Florentino Mauricio, and

re-filed with the Civil Service Commission on August 5, 1991. Petitioner also filed a civil case for sum of money, annulment, damages and attorney's fees with preliminary attachment, against SHGCCCI, AMAKO, Sapang Palay & Development Foundation, Inc., and other persons responsible for the misrepresentation, tortious and fraudulent acts in connection with the loan granted to AMAKO project.[15] The complaint was subsequently amended to include Rogelio Olaguer, Ernesto S. Salvador and Vivien Noble, who are employees of NHMFC, and Eugenio M. Cunanan, Jr. of HIGC.[16]

On October 19, 1990, petitioner requested for the lifting of the disallowance on the loan grant to AMAKO[17] which was denied on October 25, 1990. Petitioner moved for a reconsideration which was elevated to the COA Corporate Audit Office pursuant to Section 65 of PD 1445.[18]

On February 19, 1993, the COA rendered Decision No. 2700, finding petitioner as among the persons liable for the amount representing the payment of the loan proceeds obtained by AMAKO. COA disallowed the plan payment because it found the payment irregular and an excessive expenditure, and held petitioner primarily liable pursuant to Section 103 of P.D. 1445.[19]

Petitioner's motion for reconsideration of the above-mentioned decision was denied on August 29, 1996 per COA Decision No. 96-484,[20] excerpts of which reads:

"x x x x x x x x

"In a motion for reconsideration dated April 6, 1993, Mr. Albert, thru Counsel, contended that he (Mr. Albert) cannot and should not be held personally liable for the amount of the loan as he acted only in the performance of his official duties and that there was no clear showing of bad faith, malice or gross negligence on his part.

"This Commission finds the explanation or justification devoid of merit. It is significant to note that Mr. Albert himself was the final approving authority of the transaction in question and that the officers/employees who processed the same were directly under his supervision. The CMP Task Force created in his very own office provides a situation where he could have conclusively determined the validity of a transaction involving such large amount as P36,796,711.55.

"Likewise, this Commission cannot with expediency exculpate Mr. Albert from liability by accepting his claim of good faith and exercise of due diligence, otherwise this principle would be rendered worthless. Good faith and exercise of due diligence are disputable presumptions, and these presumptions are overcome by evidence of specific acts constituting an offense, as where there exists the fact that loss of government funds resulted from official action. Besides, Section 3 (9) of R.A. 3019 (Anti-Graft Law) declares to be unlawful the act of `entering, in behalf of the Government, into contract or transaction manifestly or grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.'"

Aggrieved, petitioner now comes to this Court contending that he cannot be held personally liable for the amount of P36,796,11.55 representing the loan proceeds to AMAKO, because the questioned COA decisions do not have any findings that he has knowingly participated in the alleged fraudulent transaction. He claims that there is no clear showing that he acted in bad faith, with malice, or gross negligence when he approved the loan transaction. The approval of the loan was based on the certification of the duly authorized officers of the Community Mortgage Program Task Force.

While the petition is pending, NHMFC filed a petition for extra-judicial foreclosure of real estate mortgage against AMAKO which was represented by its president, Mr. Mario J. Mamawan, before the Regional Trial Court of Angeles City docketed as FC Case No. 98-10.

On March 31, 1998, the property was sold at public auction with NHMFC as the highest bidder. A Certificate of Sale was subsequently issued in favor of NHMFC.[21]

The AMAKO property was then published and offered for sale three times in April 1999, and once in May 1999, but with no bidder. The property was then offered under the negotiated sale of rights over foreclosed property offer of which was published in June 1999.

In response to the published offer, VIVE EAGLE LAND, INC. (VIVE) offered to purchase the property for P40,000,000.00.

On October 21, 1999, the Board of Directors of the NHMFC approved the sale[22] in favor of VIVE per its Resolution No. 2998 Series of 1999.[23] The sale was confirmed on November 18, 1999.[24]

We find the petition meritorious.

The mere fact that a public officer is the head of an agency does not necessarily mean that he is the party ultimately liable in case of disallowance of expenses for questionable transactions of his agency. Petitioner, as head of the agency, cannot be held personally liable for the disallowance simply because he was the final approving authority of the transaction in question and that the officers/employees who processed the same were directly under his supervision.[25] Though not impossible, it would be improbable for him to check all the details and conduct physical inspection and verification of the application of AMAKO considering the voluminous paperwork attendant to his office. He has to rely mainly on the certifications, recommendations and memoranda of his subordinates in approving the loan. The processing, review and evaluation of the loan application passed through the responsible and authorized officers of the CMP Task Force. As admitted by the Director of the Corporate Audit Office, Emma M. Espina, the officers of the CMP Task Force erred in discharging these assigned duties.[26] Moreover, the high appraisal of the subject property cannot be attributed to herein petitioner because the valuation of the said property is undertaken by the HIGC,[27] an entity separate and distinct from the NHMFC and over which petitioner exercises no control or supervision.

We have consistently held that every person who signs or initials documents in the course of transit through standard operating procedures does not automatically become a conspirator in a crime which transpired at a stage where he had no participation. His knowledge of the conspiracy and his active and knowing participation therein must be proved by positive evidence. The fact that such officer signs or initials a voucher as it is going the rounds does not necessarily follow that the said person becomes part of a conspiracy in an illegal scheme. The guilt beyond reasonable doubt of each supposed conspirator must be established.[28] Thus, in *Pareño vs. Sandiganbayan*[29] we held that:

"It is rather apparent that under the Sandiganbayan's decision, a department secretary, bureau chief, commission chairman, agency head, department head or chief of office would be equally culpable of every crime arising from transactions or held guilty of conspiracy simply because he was the last of a long line of officials or employees who acted upon or affixed their signatures to a transaction. We cannot allow this because guilt must be premised on a more knowing personal and deliberate participation of each individual who is charged with others as part of a conspiracy. There must be more convincing proof which in this case is wanting." (Underscoring Supplied)

The rationale behind this ruling is best enunciated in the early case of *Arias vs. Sandiganbayan*[30] where we emphatically ruled:

"We would be setting a bad precedent if a head of office plagued by all too common problems- dishonest or negligent subordinates, overwork, multiple assignments or positions, or plain incompetence- is suddenly swept into a conspiracy conviction simply because he did not personally examine every single detail, painstakingly trace every step from inception and investigate the motives of every person involved in a transaction before affixing his signature as the final approving authority.

"x x x x x x x x

"We can, in retrospect, argue that Arias should have probed records, inspected documents, received procedures and questioned persons. It is doubtful if any auditor for a fairly sized office could personally do all these things in all vouchers presented for his signature. The Court would be asking for the impossible. All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. If a department secretary entertains important visitors, the auditor is not ordinarily expected to call the restaurant about the amount of the bill, question each guest whether he was present at the luncheon, inquire whether the correct amount of food was served, and otherwise personally look into the reimbursement voucher's accuracy, propriety and sufficiency. There has to be some added reason why he should examine each voucher in such detail. Any executive head of even small government agencies or commissions can attest to the volume of papers that must be signed. There are hundreds of documents, letters, memoranda, vouchers, and supporting papers that routinely pass through his hands. The number in bigger offices or departments is even more appalling.

"There should be other grounds than the mere signature or approval appearing on a voucher to sustain a conspiracy charge and conviction." (Underscoring Supplied)

Additionally, the assailed decision failed to mention petitioner's direct participation in the fraudulent scheme. It merely held that petitioner be immediately and primarily held responsible for the disallowance, for the simple reason that, as the approving officer, any transaction presented to him for approval is subject to his discretion. His reliance on the supposed review and evaluation done by his subordinates is also discretionary on his part. The COA concluded that whatever misrepresentation and/or abuse in the performance of their duties made by the subordinates make petitioner, as head of the agency, also liable, considering that these people acted on his behalf and with his approval.[31] Such reasoning is non-sequitur.

Section 103 of Presidential Decree No. 1445,[32] which was the basis of petitioner's liability for the disallowance, expressly provides:

"Sec. 103 General liability for unauthorized expenditures. -- expenditures of government funds or uses of government property in violation of law or regulations shall be a personal liability of the official or employee found to be directly responsible therefor." (Underscoring Ours)

Under the said provision, an official or employee shall be personally liable for unauthorized expenditures if the following requisites are present, to wit: (a) there must be an expenditure of government funds or use of government property; (b) the expenditure is in violation of law or regulation; and (c) the official is found directly responsible therefor.

There is no evidence on record to show that petitioner had knowledge of the fraudulent scheme perpetrated by some employees of the NHMFC. In fact, petitioner immediately filed a complaint before the Ombudsman against the subordinate employees who appeared to be responsible for the fraud. He also directed the filing of a civil case against the originator and other persons responsible for misrepresentation. All these acts are indicative that he had no knowledge of the fraudulent scheme perpetrated by certain officials or employees of his agency. No less than Lakambini Q. Razon, State Auditor IV of the Commission on Audit, in her letter dated January 8, 1991 to the Director of the Corporate Audit Office, wrote that:

"In the said memorandum, we informed Mr. Albert that we had considered his participation in the AMAKO transaction, but we cannot lift his liability as head of the Corporation pursuant to the provisions of Section 2, P.D. 1445 and Section 32 of the Manual on Certificate of Settlement and Balances. This prompted Mr. Albert to request for reconsideration on the action taken by this Office on the appeal submitted previously.

"Considering the reasons given and circumstances surrounding the case, we believe that the President cannot

determine the irregularities committed in this transaction. As a matter of fact, an administrative case was filed by the President of NHMFC against several officials of the Corporation and other government agencies to the office of the Ombudsman on October 1, 1990. x x x"[33]

The actions taken by petitioner involved the very functions he had to discharge in the performance of official duties. He cannot, therefore, be held civilly liable for such acts unless there is a clear showing of bad faith, malice or gross negligence.[34] Inasmuch as no evidence was presented to show that petitioner acted in bad faith and with gross negligence in the performance of his official duty, he is presumed to have acted in the regular performance of his official duty. Similarly, it is a basic tenet of due process that the decision of a government agency must state the facts and the law on which the decision is based. The COA decision merely stated conclusions of law. Facts and circumstances, as well as the why's, the what's and the how's of the disallowance, were patently missing, inaccurate or incomplete. The COA cannot just perform its constitutional function of disallowing expenditures of government funds at sheer discretion. There has to be factual basis why the expenditure is alleged to be fraudulent or why was there a misrepresentation. Liability depends upon the wrong committed and not solely by reason of being the head of a government agency. The COA even mentioned the anti-graft law which imputes liability for a grossly disadvantageous contract entered into by a government functionary. But as to why and how the disbursement of funds in this case was considered disadvantageous must be duly supported by findings of facts.

Consequently, respondent COA committed a grave abuse of its discretion when it held petitioner personally liable for the subject disallowance.

WHEREFORE, the assailed Decision and Resolution of the respondent Commission on Audit are hereby REVERSED and SET ASIDE, insofar as they refer to petitioner.

SO ORDERED.

Davide, Jr. C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Pardo, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., and Sandoval-Gutierrez, JJ., concur.

[1] Office Order No. 09, Series of 1988 dated August 31, 1988. Annex "C."

[2] Annex "E", p. 34, Rollo.

[3] Annex "D", p. 33, Ibid.

[4] Annex "G", p. 42, Ibid.

[5] Annex "H", pp. 43-44, Ibid.

[6] Annexes "I" and "J", pp. 45-48, Ibid.

[7] Annex "K", pp. 49-52, Record.

[8] Annex "M", p. 55, Rollo.

[9] Annex "L", p. 54, Ibid.

[10] Annex "N", p. 56, Ibid.

[11] p. 57, Ibid.

[12] Annex "O", pp. 60-63, Ibid.

- [13] Annex "P", pp. 64-66, Ibid.
- [14] Annex "Q", pp. 67-75, Ibid.
- [15] Annex "S", pp. 80-92, Rollo.
- [16] Annex "T", pp. 93-94, Ibid.
- [17] Annex "U", pp. 115-118, Ibid.
- [18] Annex "V", pp. 119-120, Ibid.
- [19] Annex "A", p. 23, Ibid.
- [20] Annex "B", pp. 27-29, Ibid.
- [21] Annex "A" of Manifestation, pp. 962-963, Rollo.
- [22] Annex "D" of Manifestation, pp. 969-974, Rollo.
- [23] Annex "B" of Manifestation, pp. 964-966, Ibid.
- [24] Resolution No. 3018, Series of 1999 Confirmation of Deed of Sale of Rights, Interests and Participation of NHMFC and VIVE EAGLE LAND INC. over Foreclosed AMAKO Property, Annex "C" of Manifestation, pp. 967-968, Rollo.
- [25] See COA Decision.
- [26] Memorandum for the Director, Legal Division, COA from Emma M. Espina, Director Corporate Audit Office, p. 150, Records.
- [27] NHMFC Corporate Circular No. CMP-001, Section 9-
- "Appraisal of the property shall be undertaken by the Home Insurance and Guarantee Corporation (HIGC). No appraisal fees shall be paid either by the originator or the Community Association/Cooperative. An appraisal fee however, shall be paid by the NHMFC directly to HIGC based on Community Mortgages taken out."
- [28] Gomez vs. Intermediate Appellate Court, 135 SCRA 620 [1985]; Macadangdang vs Sandiganbayan,. 170 SCRA 308, 326 [1989].

[29] 256 SCRA 242, 272 [1996].

[30] 180 SCRA 309. 315-316 [1989].

- [31] COA Decision No. 96-484, pp. 2-3.
- [32] Ordaining and Instituting a Government Auditing Code of the Philippines.
- [33] Records, pp. 286-287.
- [34] Paragraph (1), Section 38, Chapter 9, Book 1 of the Administrative Code of 1987.

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