

**LOURDES T. MARQUEZ, IN HER CAPACITY AS BRANCH MANAGER,
UNION BANK OF THE PHILIPPINES, PETITIONERS, VS. HON. ANIANO
A. DESIERTO, (IN HIS CAPACITY AS OMBUDSMAN, EVALUATION AND
PRE...**

G.R. No. 135882. June 27, 2001

Ponente: PARDO, J.

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PARDO, J.:

In the petition at bar, petitioner seeks to--

- a. Annul and set aside, for having been issued without or in excess of jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction, respondents' order dated September 7, 1998 in OMB-0-97-0411, In Re: Motion to Cite Lourdes T. Marquez for indirect contempt, received by counsel of September 9, 1998, and their order dated October 14, 1998, denying Marquez's motion for reconsideration dated September 10, 1998, received by counsel on October 20, 1998.
- b. Prohibit respondents from implementing their order dated October 14, 1998, in proceeding with the hearing of the motion to cite Marquez for indirect contempt, through the issuance by this Court of a temporary restraining order and/or preliminary injunction.[1]

The antecedent facts are as follows:

Sometime in May 1998, petitioner Marquez received an Order from the Ombudsman Aniano A. Desierto dated April 29, 1998, to produce several bank documents for purposes of inspection in camera relative to various accounts maintained at Union Bank of the Philippines, Julia Vargas Branch, where petitioner is the branch manager. The accounts to be inspected are Account Nos. 011-37270, 240-020718, 245-30317-3 and 245-30318-1, involved in a case pending with the Ombudsman entitled, Fact-Finding and Intelligence Bureau (FFIB) v. Amado Lagdameo, et. al. The order further states:

"It is worth mentioning that the power of the Ombudsman to investigate and to require the production and inspection of records and documents is sanctioned by the 1987 Philippine Constitution, Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989 and under existing jurisprudence on the matter. It must be noted that R. A. 6770 especially Section 15 thereof provides, among others, the following powers, functions and duties of the Ombudsman, to wit:

x x x

(8) Administer oaths, issue subpoena and subpoena duces tecum and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein.

Clearly, the specific provision of R.A. 6770, a later legislation, modifies the law on the Secrecy of Bank

Deposits (R.A. 1405) and places the office of the Ombudsman in the same footing as the courts of law in this regard.”[2]

The basis of the Ombudsman in ordering an in camera inspection of the accounts is a trail of managers checks purchased by one George Trivinio, a respondent in OMB-0-97-0411, pending with the office of the Ombudsman.

It would appear that Mr. George Trivinio, purchased fifty one (51) Managers Checks (MCs) for a total amount of P272.1 Million at Traders Royal Bank, United Nations Avenue branch, on May 2 and 3, 1995. Out of the 51 MCs, eleven (11) MCs

in the amount of P70.6 million, were deposited and credited to an account maintained at the Union Bank, Julia Vargas Branch.[3]

On May 26, 1998, the FFIB panel met in conference with petitioner Lourdes T. Marquez and Atty. Fe B. Macalino at the bank’s main office, Ayala Avenue, Makati City. The meeting was for the purpose of allowing petitioner and Atty. Macalino to view the checks furnished by Traders Royal Bank. After convincing themselves of the veracity of the checks, Atty. Macalino advised Ms. Marquez to comply with the order of the Ombudsman. Petitioner agreed to an in camera inspection set on June 3, 1998.[4]

However, on June 4, 1998, petitioner wrote the Ombudsman explaining to him that the accounts in question cannot readily be identified and asked for time to respond to the order. The reason forwarded by petitioner was that “despite diligent efforts and from the account numbers presented, we can not identify these accounts since the checks are issued in cash or bearer. We surmised that these accounts have long been dormant, hence are not covered by the new account number generated by the Union Bank system. We therefore have to verify from the Interbank records archives for the whereabouts of these accounts.”[5]

The Ombudsman, responding to the request of the petitioner for time to comply with the order, stated: “firstly, it must be emphasized that Union Bank, Julia Vargas Branch was the depositary bank of the subject Traders Royal Bank Manager’s Checks (MCs), as shown at its dorsal portion and as cleared by the Philippine Clearing House, not the International Corporate Bank.

Notwithstanding the fact that the checks were payable to cash or bearer, nonetheless, the name of the depositor(s) could easily be identified since the account numbers x x x where said checks were deposited are identified in the order.

Even assuming that the accounts xxx were already classified as “dormant accounts,” the bank is still required to preserve the records pertaining to the accounts within a certain period of time as required by existing banking rules and regulations.

And finally, the in camera inspection was already extended twice from May 13, 1998 to June 3, 1998, thereby giving the bank enough time within which to sufficiently comply with the order.”[6]

Thus, on June 16, 1998, the Ombudsman issued an order directing petitioner to produce the bank documents relative to the accounts in issue. The order states:

Viewed from the foregoing, your persistent refusal to comply with Ombudsman’s order is unjustified, and is merely intended to delay the investigation of the case. Your act constitutes disobedience of or resistance to a lawful order issued by this office and is punishable as Indirect Contempt under Section 3(b) of R.A. 6770. The same may also constitute obstruction in the lawful exercise of the functions of the Ombudsman which is punishable under Section 36 of R.A. 6770.[7]

On July 10, 1998, petitioner together with Union Bank of the Philippines, filed a petition for declaratory relief,

prohibition and injunction[8] with the Regional Trial Court, Makati City, against the Ombudsman.

The petition was intended to clear the rights and duties of petitioner. Thus, petitioner sought a declaration of her rights from the court due to the clear conflict between R. A. No. 6770, Section 15 and R. A. No. 1405, Sections 2 and 3.

Petitioner prayed for a temporary restraining order (TRO) because the Ombudsman and other persons acting under his authority were continuously harassing her to produce the bank documents relative to the accounts in question. Moreover, on June 16, 1998, the Ombudsman issued another order stating that unless petitioner appeared before the FFIB with the documents requested, petitioner manager would be charged with indirect contempt and obstruction of justice.

In the meantime,[9] on July 14, 1998, the lower court denied petitioner's prayer for a temporary restraining order and stated thus:

"After hearing the arguments of the parties, the court finds the application for a Temporary Restraining Order to be without merit.

"Since the application prays for the restraint of the respondent, in the exercise of his contempt powers under Section 15 (9) in relation to paragraph (8) of R.A. 6770, known as "The Ombudsman Act of 1989", there is no great or irreparable injury from which petitioners may suffer, if respondent is not so restrained. Respondent should he decide to exercise his contempt powers would still have to apply with the court. x x x Anyone who, without lawful excuse x x x refuses to produce documents for inspection, when thereunto lawfully required shall be subject to discipline as in case of contempt of Court and upon application of the individual or body exercising the power in question shall be dealt with by the Judge of the First Instance (now RTC) having jurisdiction of the case in a manner provided by law (section 580 of the Revised Administrative Code). Under the present Constitution only judges may issue warrants, hence, respondent should apply with the Court for the issuance of the warrant needed for the enforcement of his contempt orders. It is in these proceedings where petitioners may question the propriety of respondent's exercise of his contempt powers. Petitioners are not therefore left without any adequate remedy.

"The questioned orders were issued with the investigation of the case of Fact-Finding and Intelligence Bureau vs. Amado Lagdameo, et. el., OMB-0-97-0411, for violation of R.A. 3019. Since petitioner failed to show prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman, no writ of injunction may be issued by this Court to delay this investigation pursuant to Section 14 of the Ombudsman Act of 1989." [10]

On July 20, 1998, petitioner filed a motion for reconsideration based on the following grounds:

- Petitioners' application for Temporary Restraining Order is not only to restrain the Ombudsman from exercising his contempt powers, but to stop him from implementing his Orders dated April 29, 1998 and June 16, 1998; and
- The subject matter of the investigation being conducted by the Ombudsman at petitioners' premises is outside his jurisdiction. [11]

On July 23, 1998, the Ombudsman filed a motion to dismiss the petition for declaratory relief [12] on the ground that the Regional Trial Court has no jurisdiction to hear a petition for relief from the findings and orders of the Ombudsman, citing R. A. No. 6770, Sections 14 and 27. On August 7, 1998, the Ombudsman filed an opposition to petitioner's motion for reconsideration dated July 20, 1998. [13]

On August 19, 1998, the lower court denied petitioner's motion for reconsideration, [14] and also the Ombudsman's motion to dismiss. [15]

On August 21, 1998, petitioner received a copy of the motion to cite her for contempt, filed with the Office of the Ombudsman by Agapito B. Rosales, Director, Fact Finding and Intelligence Bureau (FFIB).[16]

On August 31, 1998, petitioner filed with the Ombudsman an opposition to the motion to cite her in contempt on the ground that the filing thereof was premature due to the petition pending in the lower court.[17] Petitioner likewise reiterated that she had no intention to disobey the orders of the Ombudsman. However, she wanted to be clarified as to how she would comply with the orders without her breaking any law, particularly R. A. No. 1405.[18]

Respondent Ombudsman panel set the incident for hearing on September 7, 1998.[19] After hearing, the panel issued an order dated September 7, 1998, ordering petitioner and counsel to appear for a continuation of the hearing of the contempt charges against her.[20]

On September 10, 1998, petitioner filed with the Ombudsman a motion for reconsideration of the above order.[21] Her motion was premised on the fact that there was a pending case with the Regional Trial Court, Makati City,[22] which would determine whether obeying the orders of the Ombudsman to produce bank documents would not violate any law.

The FFIB opposed the motion,[23] and on October 14, 1998, the Ombudsman denied the motion by order the dispositive portion of which reads:

“Wherefore, respondent Lourdes T. Marquez’s motion for reconsideration is hereby DENIED, for lack of merit. Let the hearing of the motion of the Fact Finding Intelligence Bureau (FFIB) to cite her for indirect contempt be intransferrably set to 29 October 1998 at 2:00 o’clock p.m. at which date and time she should appear personally to submit her additional evidence. Failure to do so shall be deemed a waiver thereof.”[24]

Hence, the present petition.[25]

The issue is whether petitioner may be cited for indirect contempt for her failure to produce the documents requested by the Ombudsman. And whether the order of the Ombudsman to have an in camera inspection of the questioned account is allowed as an exception to the law on secrecy of bank deposits (R. A. No. 1405).

An examination of the secrecy of bank deposits law (R. A. No. 1405) would reveal the following exceptions:

- Where the depositor consents in writing;
- Impeachment case;
- By court order in bribery or dereliction of duty cases against public officials;
- Deposit is subject of litigation;
- Sec. 8, R. A. No. 3019, in cases of unexplained wealth as held in the case of PNB vs. Gancayco[26]

The order of the Ombudsman to produce for in camera inspection the subject accounts with the Union Bank of the Philippines, Julia Vargas Branch, is based on a pending investigation at the Office of the Ombudsman against Amado Lagdameo, et. al. for violation of R. A. No. 3019, Sec. 3 (e) and (g) relative to the Joint Venture Agreement between the Public Estates Authority and AMARI.

We rule that before an in camera inspection may be allowed, there must be a pending case before a court of competent jurisdiction. Further, the account must be clearly identified, the inspection limited to the subject matter of the pending case before the court of competent jurisdiction. The bank personnel and the account holder must be notified to be present during the inspection, and such inspection may cover only the account identified in the

pending case.

In *Union Bank of the Philippines v. Court of Appeals*, we held that “Section 2 of the Law on Secrecy of Bank Deposits, as amended, declares bank deposits to be “absolutely confidential” except:

(1)

In an examination made in the course of a special or general examination of a bank that is specifically authorized by the Monetary Board after being satisfied that there is reasonable ground to believe that a bank fraud or serious irregularity has been or is being committed and that it is necessary to look into the deposit to establish such fraud or irregularity,

(2)

In an examination made by an independent auditor hired by the bank to conduct its regular audit provided that the examination is for audit purposes only and the results thereof shall be for the exclusive use of the bank,

(3)

Upon written permission of the depositor,

(4)

In cases of impeachment,

(5)

Upon order of a competent court in cases of bribery or dereliction of duty of public officials, or

(6)

In cases where the money deposited or invested is the subject matter of the litigation”[27]

In the case at bar, there is yet no pending litigation before any court of competent authority. What is existing is an investigation by the office of the Ombudsman. In short, what the Office of the Ombudsman would wish to do is to fish for additional evidence to formally charge Amado Lagdameo, et. al., with the Sandiganbayan. Clearly, there was no pending case in court which would warrant the opening of the bank account for inspection.

Zones of privacy are recognized and protected in our laws. The Civil Code provides that “[e]very person shall respect the dignity, personality, privacy and peace of mind of his neighbors and other persons” and punishes as actionable torts several acts for meddling and prying into the privacy of another. It also holds a public officer or employee or any private individual liable for damages for any violation of the rights and liberties of another person, and recognizes the privacy of letters and other private communications. The Revised Penal Code makes a crime of the violation of secrets by an officer, the revelation of trade and industrial secrets, and trespass to dwelling. Invasion of privacy is an offense in special laws like the Anti-Wiretapping Law, the Secrecy of Bank Deposits Act, and the Intellectual Property Code.[28]

IN VIEW WHEREOF, we GRANT the petition. We order the Ombudsman to cease and desist from requiring Union Bank Manager Lourdes T. Marquez, or anyone in her place to comply with the order dated October 14, 1998, and similar orders. No costs.

SO ORDERED.

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

[1] Petition, Rollo, pp. 8-29.

[2] Ibid., p. 10.

[3] Ibid.

[4] Motion to Cite LOURDES T. MARQUEZ, Union Bank Julia Vargas Branch Manager for Indirect Contempt, Rollo, pp. 79-80, at p. 80.

[5] Petition, Annex “D”, Letter of Ms. Lourdes Marquez, Rollo, pp. 39-40.

[6] Ibid., Annex “E”, Order, pp. 41-42.

[7] Ibid., at p. 42.

[8] Docketed as Civil Case No. 98-1585, Union Bank of the Philippines and Lourdes T. Marquez vs. Hon. Aniano A. Desierto, in his capacity as Ombudsman.

[9] Petition, Annex “G”, Order dated July 14, 1998 in Civil Case No. 98-1585 Rollo, pp. 54-55.

[10] Ibid., p.12.

[11] Petition, Annex “H”, Rollo, pp. 56-65.

[12] Ibid., Annex “I”, Rollo, pp. 66-70.

[13] Ibid., Annex “J”, Rollo, pp. 71-76.

[14] Ibid., Annex “K”, Rollo, p. 77.

[15] Ibid., Annex “L”, Rollo, p. 78.

[16] Ibid., Rollo, p. 13.

[17] In Civil Case No. 98-1585.

[18] Ibid., Rollo, p. 13.

[19] Ibid., Rollo, p. 14.

[20] Petition, Annex “A”, Rollo, pp. 30-32.

[21] Petition, Annex “O”, Rollo, pp. 88-92.

[22] In Civil Case No. 98-1585.

[23] Petition, Annex “P”, Rollo, pp. 93-97.

[24] Petition, Annex “B”, Rollo, pp. 33-34.

[25] Filed on October 28, 1998, Petition, Rollo, pp. 8-26. On November 16, 1998, we required respondents to comment on the petition (Rollo, p. 98).

On March 26, 1999, respondents filed their comment (Rollo, pp. 116-132). We now give due course to the petition.

[26] Philippine National Bank vs. Gancayco, 122 Phil. 503, 508 [1965].

[27] Union Bank of the Philippines vs. Court of Appeals, 321 SCRA 563, 564-565 [1999].

[28] Ople vs. Torres, 354 Phil. 948, 973-974 [1998].

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