OFFICE OF THE OMBUDSMAN, PETITIONER, VS. MA. NIMFA P. DE VILLA, RESPONDENT.

G.R. No. 208341. June 17, 2015

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a petition for review on certiorari seeking to reverse and set aside the March 27, 2013 Decision[1] and the July 15, 2013 Resolution[2] of the Court of Appeals (CA), in CA-G.R. SP No. 121648, which set aside the "Review"[3] of the Office of the Ombudsman (Ombudsman), dated December 28, 2009, in OMB-C-A-02-0451-1.

The Facts

Respondent Nimfa De Villa (De Villa), together with Corazon Chavez (Chavez), Delia dela Peña (dela Peña), Maribel Barba (Barba), Nimfa Miña (Miña), and Beatriz Meneses (Meneses), was charged with Dishonesty, Grave Misconduct, Conduct Unbecoming of a Public Official, and Conduct Prejudicial to the Best Interest of Service before the Ombudsman.

On June 28, 2001, Adelaida Villa (Villa), as seller, and spouses Neil and Erma Digman (Spouses Digman), as buyers, executed a deed of absolute sale (June 28 Deed) covering a parcel of land with an area of 250 square meters, located along Alabang, Zapote Road, Barangay Almanza Uno, Las Pinas City, for a consideration of P8,500,000.00. On the same date, the said document was entered in the Primary Entry Book of the Register of Deeds of Las Pinas (RD) and, thus, a new Transfer Certificate of Title (TCT) was issued in the name of Spouses Digman. It appeared, however, that the requisite Certificate Authorizing Registration (CAR) evidencing payment of the capital gains tax and the documentary stamp tax was issued by the Bureau of Internal Revenue (BIR) only later or on November 12, 2001.[4]

On March 6, 2002, an anonymous letter from a "concerned Las Pinas RD Employee," reporting the rampant anomalous practice in the RD, reached the Ombudsman.[5] Upon inquiry by the Ombudsman, through the Fact-Finding and Intelligence Bureau (FFIB), they found out that there was another deed of sale, dated June 7, 2001 (June 7 Deed), of the same property but covering 50,000 square meters, kept in the RD involving the same parties.[6] The amount of consideration stated in the June 7 Deed was P30,000,000.00.

Spouses Digman, as buyers, paid P142,500.00 for documentary stamp tax while Villa, as seller, paid P570,000.00 as capital gains tax, computed based on a zonal valuation for 250 sq.m. area of the said property. The FFIB contended that the total tax liability from the subject deed of sale should have been P95,850,000.00 as the land area consisted of 50,000 sq. m., not merely 250 sq. m.[7]

In her Counter-Affidavit,[8] De Villa outlined the procedure for the payment of the capital gains tax and the documentary stamp tax for land registration purposes, as follows:

> The seller of the property prepares the returns and files for capital gains tax (DGT) and documentary stamp tax (DST). He files the returns, with supporting documents, with the Bureau of Internal Revenue Office where the

> property is located. The supporting documents will include, among others, the certificate of title for the property, the tax declaration and the deed of sale. The documents are docketed in the Primary-Entry Book. Thereafter the returns and the supporting documents are referred to the Revenue District Officer who issues a Tax Verification Notice. The application is then assigned to a Revenue Officer for processing.
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> After the application is processed, the Revenue Officer prepares the Certification Authorizing Registration (CAR). The CAR is referred to a group supervisor for approval. After approval, the certificate is referred to the Revenue District Officer for final approval. The capital gains tax and documentary stamp tax are then paid and the certificate of title is released.[9]

The supporting documents of the June 28 Deed were referred to De Villa on November 9, 2001 as she was the acting revenue officer. She issued the tax verification notice and assigned the application to Mina for computation and evaluation of the taxes due. It was Mina who prepared the CAR, which showed the area of the land as 250 sq. m. with a zonal value of P9.5 M and a selling price of P8.5 M, and the computation of tax due. Meneses reviewed the computation and the audit report made by Mina, and thereafter, De Villa approved the computation.[10]

De Villa denied the averment that she had conspired with the others to defraud the government by computing the tax liabilities of a 50,000-sq.m. property based on the zonal value of a 250-sq.m. property. She asserted that the tampered CAR found in the RD was not the authentic copy of the original of the quadruplicate CAR found at the BIR office.[11]

Ruling of the Ombudsman

In its Resolution,[12] dated July 5, 2005, the Ombudsman held that only Chavez of the Register of Deeds was administratively liable while the complaint against De Villa and the others should be dismissed. The dispositive portion of the resolution reads:

> WHEREFORE, respondent CORAZON C. CHAVEZ is hereby found guilty of Grave Misconduct and is hereby meted the penalty of DISMISSAL FROM THE SERVICE. The complaint against respondents DELIA DELA PENA, MARIBEL B. BARBA, NIMFA N. MINA, BEATRIZ M. MENESES and MA. NIMFA P. DE VILLA is hereby DISMISSED.
>
> SO ORDERED.[13]

The Ombudsman noted that there were two titles bearing the same TCT No. 58620 and covering the same parcel of land but with different land areas. The first title, indicating an area of 250 sq. m., was submitted to the BIR. The second title, with an area of 50,000 sq. m., was submitted to the RD. Also, a comparison of the two copies of CAR revealed that the original copy kept by the RD bore erasures in the entries or boxes for the area and the location while the quadruplicate copy was clean. This created doubt as to the correct measurement of the area and location stated in the original copy kept by the RD.[14]

The participation of De Villa, Mina and Meneses was considered by the Ombudsman to be in the lawful performance of their official duties because they based their computation on TCT No. 58620 which reflected an area of 250 sq.m. They could not be faulted for the issuance of the new TCT without the required CAR because the June 28 Deed was not presented to them. It was only on November 9, 2001 that the parties in the said transaction applied for the issuance of CAR.[15]

In its Review,[16] dated January 24, 2006, however, the Ombudsman modified its previous ruling and found De Villa, Mina and Meneses also guilty of the charges against them. It explained that Chavez and De Villa allowed the registration of the June 28 Deed and issued the new TCT No. T-79109 in the name of Spouses Digman on the same date without the requisite CAR attached to the said deed of sale. The Ombudsman found that the illegal

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registration of the subject parcel of land would not have been consummated without the direct participation of Chavez, as the Register of Deeds; and De Villa, Mina and Meneses, as Revenue District Officers. It, however, found no evidence to show the direct participation of Barba and Dela Pena. The dispositive portion reads:

> WHEREFORE, in view of the foregoing, it is respectfully recommended that the Resolution dated July 5, 2005, be modified.
>
> Accordingly, respondents CORAZON C. CHAVEZ, NIMFA N. MIÑA, BEATRIZ M. MENESES and NIMFA P. DE VILLA are hereby found guilty of Dishonesty, Grave Misconduct and Conduct prejudicial to the best interest of the service. Consequently, they are hereby recommended to be DISMISSED from service, with forfeiture of all benefits and with prejudice to re-employment in any branch of the government or any of its agencies, including government owned or controlled corporations.
>
> It is likewise recommended that the case against respondents MARIBEL BARBA and DELIA DELA PEÑA be DISMISSED for lack of substantial evidence.[17]

Aggrieved, Meneses, De Villa and Chavez filed their motion for reconsideration but the Ombudsman denied the same in its Order, dated December 28, 2009,[18] for lack of merit.

De Villa then filed a petition for review before the CA under Rule 43 of the 1997 Rules of Civil Procedure assailing the (1) Review of the Ombudsman, dated January 24, 2006, which modified its July 5, 2005 Resolution; and (2) its December 28, 2009 Order which denied the motion for reconsideration of De Villa, Meneses and Chavez.

Ruling of the Court of Appeals

In its assailed decision, the CA granted the petition and reinstated the July 5, 2005 Resolution of the Ombudsman, the dispositive portion of which reads:

> WHEREFORE, the petition is granted. The subject "Review" dated January 24, 2006 and Order dated December 28, 2009 of respondent are set aside. The Decision dated July 5, 2005 of GIPO Ma. Isabel A. Alcantara is reinstated.
>
> SO ORDERED.[19]

The CA stated that there was no substantial evidence to show that, as Revenue District Officer, De Villa had any direct participation in the registration of the June 28 Deed and the issuance of the new title as these functions pertained to the Office of the RD.[20] Also, the CA did not find any proof of conspiracy between De Villa and the others.

The Ombudsman filed a motion for reconsideration but the same was denied in the assailed CA resolution, dated July 15, 2013.[21]

Hence, this petition.

> GROUNDS
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> I
> THE COURT OF APPEALS SERIOUSLY ERRED IN RULING THAT RESPONDENT NIMFA DE VILLA IS NOT ADMINISTRATIVELY LIABLE BECAUSE "SHE WAS NOT THE ONE WHO ALLOWED THE REGISTRATION OF THE DEED OF SALE DATED JUNE 28, 2001 IN THE NAME OF SPOUSES DIGMAN WITHOUT THE REQUISITE CERTIFICATE AUTHORIZING REGISTRATION ATTACHED TO SUCH DEED;"

II
THE COURT OF APPEALS SERIOUSLY ERRED IN REINSTATING THE "DECISION DATED 05 JULY 2005" CONTAINING THE RECOMMENDATION OF GRAFT INVESTIGATION AND PROSECUTION OFFICER MA. ISABEL A. ALCANTARA CONSIDERING THAT THE SAME HAD BEEN DISAPPROVED.

III
THE COURT OF APPEALS SERIOUSLY ERRED IN SETTING ASIDE THE OFFICE OF THE OMBUDSMAN'S ASSAILED REVIEW DATED 24 JANUARY 2006, FINDING RESPONDENT MA. NIMFA DE VILLA GUILTY OF DISHONESTY, GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE, CONSIDERING THAT THERE IS SUBSTANTIAL EVIDENCE TO HOLD RESPONDENT ADMINISTRATIVELY LIABLE.[22]

The Ombudsman contended that the CA erred when it concluded that De Villa was not the one who allowed the registration of the June 28 Deed. She pointed out that the portion of the assailed Review, describing De Villa as land registration examiner, was clearly a typographical error.[23]

The Ombudsman also claimed that the July 5, 2005 Decision was merely a recommendation which had been disapproved. In the marginal notes, Assistant Ombudsman Apostol wrote, "Please see separate 'Review' of GIPO Ma. Theresa D. Wu, dated 1-24-06." The findings in the Review became the basis of the Ombudsman in adjudging De Villa guilty of Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of Service.[24]

The Ombudsman averred that De Villa had been remiss in her responsibility as Acting Revenue District Officer as she failed to see to it that all the documents submitted to her were in order before signing and certifying that the documentary stamp tax and the capital gains tax had been paid. Had De Villa been more circumspect in her duty, she would have learned that the subject property was actually 50,000 sq.m. and not merely 250 sq.m. The other revenue officers verified the said documents and reviewed the computation of the documentary stamp tax in the amount of P142,500.00 and the capital gains tax in the amount of P570,000.00 based on the zonal valuation of a 250 sq.m. area which De Villa eventually approved. The Ombudsman, thus, concluded that De Villa must have been aware of the anomaly.[25]

Position of De Villa

In her Comment,[26] De Villa argued that the issues raised by the Ombudsman were purely questions of fact and not of law. At any rate, she contended that the obligation of the BIR Commissioner or his representative was simply to certify that the transfer was reported and that the capital gains tax or creditable withholding tax, if any, had been paid. She explained that even assuming that it was she who should indicate the data as allegedly provided under Section 58(e) of the NIRC,[27] her failure to do so did not constitute grave misconduct warranting the penalty of dismissal from the service. The Ombudsman insisted that there was conspiracy but failed to cite specific personal acts committed by her together with the personnel of the RD.

Moreover, De Villa countered that the unexplained delay of the Ombudsman in acting on the case was a ground for its dismissal as the decision of the Ombudsman was rendered on July 5, 2005, reviewed on January 24, 2006, and affirmed only on December 28, 2009.[28]

Reply of the Ombudsman

In its Reply,[29] the Ombudsman argued that its July 5, 2005 Decision was a mere scrap of paper and that it could not be reinstated by the CA as this would effectively absolve Mina and Meneses despite the fact that only De Villa appealed.

The Ombudsman asserted that when De Villa received the June 28 Deed on November 9, 2001, the latter had full knowledge and information that the said deed was already registered in the RD. The Ombudsman then concluded that De Villa intentionally disregarded such patent irregularity and allowed the unlawful practice to continue unnoticed until the anonymous letter reached the Ombudsman.

The Court's Ruling

The petition is without merit.

Supreme Court not a trier of

facts; Exceptions

In a petition for review under Rule 45 of the Rules of Court, only questions of law can be raised. A question of law arises when there is doubt as to what the law is on a certain state of facts while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the question posted is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise it is a question of fact.[30]

Applying the test cited above, the question here is one of fact because the Ombudsman assails the appreciation of evidence by the CA. Settled is the rule that the Court is not a trier of facts. Exceptions to which are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by parties, which, if properly considered, would justify a different conclusion.[31]

Here, the Ombudsman concluded that it was De Villa who caused the registration of the June 28 Deed absent the necessary CAR while the CA ruled that she had no hand in the illegal registration as the same was within the province of the RD. The Ombudsman further held that there was sufficient proof to establish conspiracy to defraud the government through the wrong computation of tax liability, but the CA held that she acted in the lawful performance of her duties as she based her computation on the documents submitted to her. Considering the conflicting factual findings warranting the examination of evidence, the Court will entertain the factual issues.

Respondent has no power to

effect the registration of the

deed of absolute sale

The Court agrees with the CA that it was not within De Villa's power and office to effect the registration of any deed of sale with the RD.

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The Ombudsman contended that the illegal registration of the subject parcel of land on June 28, 2001 would not have been consummated without the direct participation of De Villa, Chavez, Mina, and Meneses. It bears stressing, however, that the illegal registration was already accomplished even without the involvement of De Villa.

It was only on November 9, 2001 that De Villa learned about the June 28 Deed when it was presented to her. Thus, she could not be faulted for the registration of the June 28 Deed five months before the CAR was issued. Further, the fact that the new TCT was issued without the necessary CAR shows that the transaction did not pass the BIR or De Villa, as the latter had the duty to verify the same first. It was Chavez of the RD who caused the registration as she opined that the CAR was unnecessary because the capital gains tax return and the documentary stamp tax return presented by the parties were already sufficient.

Respondent did not commit

any misconduct; a

presumption is not sufficient

substantial evidence to

sustain a finding of

administrative liability

There were two acts of De Villa that the Ombudsman claimed to have constituted Grave Misconduct: First, when De Villa allegedly allowed the illegal registration of the June 28 Deed despite the absence of the requisite CAR; and Second, when De Villa computed the tax liability based on the 250 sq.m area in the June 28 Deed even though the June 7 Deed stated an area of 50,000 sq.m.

Misconduct has been defined as "a transgression of some established and definite rule of action, more particularly unlawful behavior or gross negligence by a public office."[32] Misconduct becomes grave if it involves any of the additional elements of corruption, wilful intent to violate the law or to disregard established rules, which must be established by substantial evidence.[33] Substantial evidence is such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[34]

In the case at bench, this Court finds no substantial evidence to prove that De Villa had a hand in the registration of the June 28 Deed. There was no showing that she knew about the June 7 Deed. To stress, the June 7 Deed was not even one of those submitted to her.[35]

The computation of the tax liability that De Villa approved was based on the documents submitted to her on November 9, 2001. Thus, she could not have caused the registration of the deed on June 28, 2001 as she had no knowledge of the transaction yet. She could not have known that the area was actually 50,000 sq. m. as the technical description of the property was not attached to the June 28 Deed.

A comparison of the two copies of CAR even revealed that the original copy kept by the RD bore erasures in the entries for the areas. As such, the Ombudsman in its July 5, 2005 Decision, opined that this created doubt as to the correct measurement of the area and the location as stated in the original copy of the CAR. The Ombudsman, however, stated that it could not be pointed out with certainty who the author of the erasures was.[36]

It cannot be said that De Villa's performance of her duty constituted wilful intent to violate the law. Corruption, as an element of Grave Misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty

and the rights of others.[37] No evidence was ever presented by the Ombudsman to show corruption on her part. A presumption or conjecture is not sufficient substantial evidence to sustain a finding of administrative liability.

No conspiracy to defraud government

The Ombudsman alleges conspiracy to defraud the government as De Villa, Miña and Meneses purportedly knew that the land area involved was 50,000 sq. m., not merely 250 sq. m.

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[38] Although direct proof is not essential to establish conspiracy, it must be established by positive and conclusive evidence.[39] Proof, not mere conjectures or assumptions, should be preferred to indicate that the accused had taken part in it.[40] Mere allegation and speculation is not evidence, and is not equivalent to proof.[41] In this case, there was no evidence to warrant the allegation of conspiracy.

A careful reading of the reply submitted by the Ombudsman shows that it based De Villa's liability solely on the assumption that the latter had knowledge of the previous registration of the June 28 Deed. Allegedly, she created a legal cover, semblance or appearance so as to allow the unlawful practice to remain unnoticed. True enough, the unlawful registration was overlooked until the FFIB conducted its investigation. Aside from such bare conjecture, however, the Ombudsman had nothing to show that indeed she connived with the others to defraud the government. To stress, there was no proof that she knew about the earlier June 7 Deed when the tax liability was computed.

WHEREFORE, the petition is DENIED.

SO ORDERED.

Carpio, (Chairperson), Brion, Del Castillo, and Jardeleza,[*] JJ., concur.

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[*] Designated Acting Member in lieu of Associate Justice Marvic M.V.F. Leonen, per Special Order No. 2056, dated June 10, 2015.

[1] Penned by Associate Justice Fernanda Lampas-Peralta with Associate Justice Francisco P. Acosta and Associate Justice Angelita A. Gacutan of the Court of Appeals, Tenth Division; rollo, pp. 38-55.

[2] Id. at 57-59.

[3] Id. at 301-326.

[4] Id.

[5] Id. at 148.

[6] Id. at 195-196.

[7] Id. at 61.

[8] Id. at 147-158.

[9] Id. at 149-150.

[10] Id. at 150-151.

[11] Id. at 153-154.

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[12] Id. at 186-222. Penned by Graft Investigation and Prosecution Officer Ma. Isabel Alcantara.

[13] Id. at 219-220.

[14] Id. at 213-214.

[15] Id. at 219-220

[16] Id. at 223-235. Penned by GIPO Ma. Theresa Wu.

[17] Id. at 234-235.

[18] Id. at 236-248.

[19] Id. at 53.

[20] Id. at 51-52.

[21] Id. at 57-59.

[22] Id. at 18-19.

[23] Id. at 23.

[24] Id. at 24.

[25] Id. at 27-30.

[26] Id. at 451-468.

[27] SECTION 58 (E) No registration of any document transferring real property shall be effected by the Register of Deeds unless the Commissioner or his duly authorized representative has certified that such transfer has been reported, and the captital gains or creditable withholding tax, if any, has been paid: Provided, however, That Information as may be required by rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, shall be annotated by the Register of Deeds in the Transfer Certificate of Title or Condominium Certificate of Title: Provided, further, That in cases of transfer of property to a corporation, pursuant to a merger, consolidation or reorganization and where the law allows deferred recognition of income in accordance with Section 40, the information as may be required by rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, shall be annotated by the Register of Deeds at the back of the Transfer Certificate of Title or Condominium Certificate of Title of the real property involved: Provided, finally, That any violation of this provision by the Register of Deeds shall be subject to the penalties imposed under Section 269 of this Code.

[28] Rollo, p. 465.

[29] Id. at 481-493.

[30] Republic v. Malabanm, G.R. No. 169067, October 6, 2010, 646 SCRA 631, 637-638.

[31] Insular Life Assurance v. Court of Appeals, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 85-86.

[32] Ombudsman v. Apolonio, G.R. No. 165132, March 7, 2012, 667 SCRA 583, 600-601, citing Civil Service Commission v. Ledesma, 508 Phil. 569, 579 (2005), citing Bureau of Internal Revenue v. Organo, 468 Phil. 113, 118 (2004); and Castelo v. Florendo, 459 Phil. 581, 597 (2003).

[33] Id., citing Civil Service Commission v. Ledesma, 508 Phil. 569, 579 (2005); citing Civil Service Comission

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v. Lucas, 361 Phil. 486 (1999); and Landrito v. Civil Service Commission, G.R. Nos. 104304-05, June 22, 1993, 223 SCRA 564, 567.

[34] Lepanto Consolidated Mining Company v. Dumapis, 584 Phil. 100 (2008).

[35] Rollo, pp. 201-202.

[36] Id. at 214-218.

[37] Salazar vs. Barriga, 550 Phil. 45, 49 (2007).

[38] Article 8, Revised Penal Code.

[39] People v. Carpio Vda. De Quijano, G.R. No. 102045, March 17, 1993, 220 SCRA 66, 72.

[40] Sabiniano v. Court of Appeals, 319 Phil. 92, 98 (1995).

[41] Navarro v. Clerk of Court Cerezo, 492 Phil. 19, 22 (2002).

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