

REPUBLIC OF THE PHILIPPINES  
**SANDIGANBAYAN**  
QUEZON CITY

**SPECIAL THIRD DIVISION**

**PEOPLE OF THE PHILIPPINES,**  
*Plaintiff,*

**SB-15-CRM-0293**

For: Violation of Section 3(e) of R.A.  
No. 3019

- versus -

**SB-15-CRM-0294**

For: Violation of Section 3(h), R.A. No.  
3019

**AL SANCHEZ VITANGCOL III,  
ET AL.,**

**SB-15-CRM-0295**

For: Violation of Section 65 Par. C(1),  
in relation to Section 47 of R.A. No.  
9184

*Accused.*

*Present:*

**CABOTAJE-TANG, P.J.**

*Chairperson*

**FERNANDEZ, J. and**

**MIRANDA, J.\***

*Promulgated:*

JUNE 3, 2016

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**RESOLUTION**

**FERNANDEZ, J.:**

For resolution are the following Motions filed by  
accused Al Sanchez Vitangcol, III:

1. *Motion to Allow Production of Material Evidence and Admission by Adverse Party,<sup>1</sup> with attached Request for Admissions and Production of Material Evidence;<sup>2</sup> and,*

<sup>1</sup> Dated January 29, 2016; filed on February 1, 2016, Record, Vol. II, pp. 122-125.

<sup>2</sup> Dated January 29, 2016, Record, Vol. II, pp. 126-129.

\* Justice Miranda sits in lieu of Justice Martires per A.O. No. 075-2016 dated March 16, 2016.

2. *Motion to Issue Subpoena for Production of Evidence to Metro Rail Transit Corporation (Motion to Issue Subpoena).*<sup>3</sup>

In the *Motion to Allow Production of Evidence and Admission by Adverse Party*, accused Vitangcol asks this Court to:

a. Direct the Office of the Special Prosecutor to furnish him with authenticated copies of the Counter-Affidavits submitted by the following in Ombudsman Cases No. OMB-C-C-14-0309 and OMB-C-A-14-0263:

- i. Joseph Emilio Aguinaldo Abaya
- ii. Geronimo V. Quintos
- iii. Misael R. Narca, Joel R. Magbanua, Arnel R. Manresa, and Natividad P. Sansolis  
(Joint-Counter Affidavit)
- iv. Honorito D. Chaneco
- v. Ildefonso T. Patdu
- vi. Jose Perpetuo M. Lotilla
- vii. Rafael Antonio M. Santos
- viii. Rene K. Limcaoco
- ix. Dante M. Lantin
- x. Wilson T. De Vera<sup>4</sup>

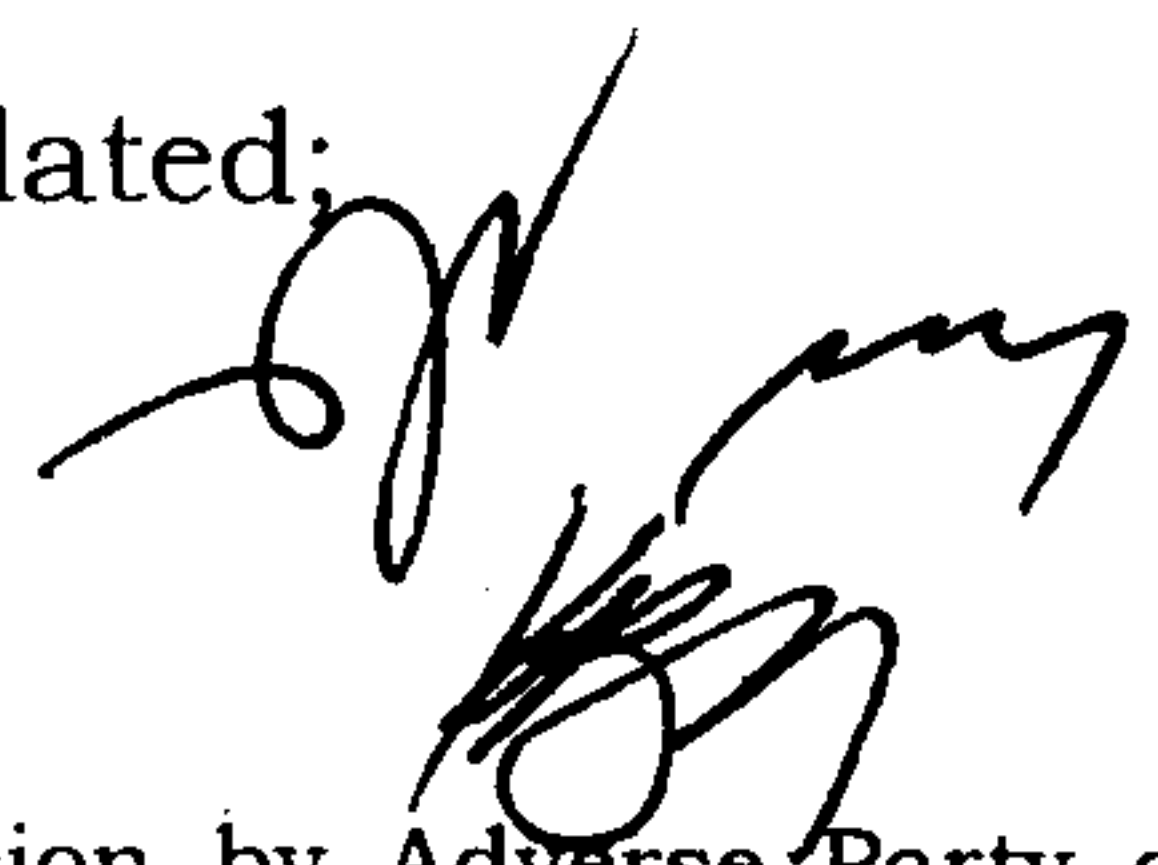
b. Direct the Office of the Special Prosecutor to admit under oath the following statements made by his co-respondents in their counter-affidavits:

- i. Secretary Abaya:
  - (a) The MRT *Interim Maintenance Contract* was above board;
  - (b) He did not conspire with anyone in signing the same;
  - (c) He signed the *Notice of Award*;
  - (d) DOTC and MRT3 had no choice but to enter into a negotiated procurement;
  - (e) The BAC and the Negotiating Team followed the proper procedure and complied with all the requirements under the appropriate rules; and

<sup>3</sup> Dated February 9, 2016; filed February 9, 2016, Record, Vol. II, pp. 183-185.

<sup>4</sup> Motion to Allow Production of Material Evidence and Admission by Adverse Party dated January 29, 2016, p. 3, Record, Vol. II, p. 124 and Request for Admissions and Production of Material Evidence dated January 29, 2016, pp. 1-2, Record, Vol. II, pp. 126-127.

- (f) No law was violated when the award was made to PH Trams CB&T JV.<sup>5</sup>
  
- ii. Quintos:
  - (a) The Negotiating Team was created pursuant to Resolution No. P-GS-AMP-2012-196 issued by the DOTC-BAC; and,
  - (b) Vitangcol did not dictate the composition of the Negotiating Team.
  
- iii. Narca, Magbanua, Manresa and Sansolis:
  - (a) The Task Force was created through a *Memorandum* dated 28 September 2012 issued by Undersecretary Rene K. Limcaoco;
  - (b) Vitangcol had no hand in the said Task Force creation;
  - (c) They submitted their recommendations embodied in *Memorandum* dated 08 October 2012 as a collegial body; and,
  - (d) No unwarranted benefits were given to PH Trams and CB&T JV.
  
- iv. Chaneco:
  - (a) He signed the *BAC Resolution* and *Notice of Award* on the extension contract for the provision of interim maintenance services for MRT3; and,
  - (b) Vitangcol never signed the said documents.
  
- v. Patdu:
  - (a) The PH Trams CB&T JV was found compliant with the technical, legal, and financial eligibility requirements.<sup>6</sup>
  
- vi. Lotilla:
  - (a) No procurement law was violated;



<sup>5</sup> Motion to Allow Production of Material Evidence and Admission by Adverse Party dated January 29, 2016, p. 3, Record, Vol. II, p. 124 and Request for Admissions and Production of Material Evidence dated January 29, 2016, pp. 2-3, Record, Vol. II, pp. 127-128.

<sup>6</sup> Motion to Allow Production of Material Evidence and Admission by Adverse Party dated January 29, 2016, p. 3, Record, Vol. II, p. 124 and Request for Admissions and Production of Material Evidence dated January 29, 2016, p. 3, Record, Vol. II, p. 128.

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- (b) The BAC even requested offers from three capable contractors, notwithstanding the leeway in the IRR of RA 9184;
- (c) In case of negotiated procurement the procuring entity is authorized to negotiate directly with only one technically, legally, and financially capable contractor; and,
- (d) The award of the contract to PH Trams CB&T JV did not cause undue injury to the government.<sup>7</sup>

vii. Santos:

- (a) The approval of the contract was done after consultation with the DOTC's legal service and procurement service, which construed the situation as an emergency case contemplated under Section 53 of the Revised IRR of RA 9184; and,
- (b) No unwarranted benefits were given to PH Trams CB&T JV.<sup>8</sup>

- c. Defer the Pre-trial of the instant case until the prosecution responds to accused Vitangcol's *Request for Admissions and Production of Material Evidence*.<sup>9</sup>

In the *Motion to Issue Subpoena*, accused Vitangcol asks the Court to:

- a. Direct Metro Rail Transit Corporation to produce and submit to the Court, within ten (10) days from receipt of the order, authenticated copies of:
  - i. MRTC Chairman Tomas T. De Leon's Letter dated July 25, 2012 addressed to Secretary Manuel A. Roxas II;
  - ii. PH Trams-CB&T's Letter dated August 31, 2012 addressed to Chairman De Leon;

<sup>7</sup> Motion to Allow Production of Material Evidence and Admission by Adverse Party dated January 29, 2016, p. 3, Record, Vol. II, p. 124 and Request for Admissions and Production of Material Evidence dated January 29, 2016, pp. 3-4, Record, Vol. II, pp. 128-129.

<sup>8</sup> Motion to Allow Production of Material Evidence and Admission by Adverse Party dated January 29, 2016, p. 3, Record, Vol. II, p. 124 and Request for Admissions and Production of Material Evidence dated January 29, 2016, p. 4, Record, Vol. II, p. 129.

<sup>9</sup> Motion to Allow Production of Material Evidence and Admission by Adverse Party dated January 29, 2015, p. 3, Record, Vol. II, p. 124.

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- iii. Chairman De Leon's Letter dated June 3, 2013 addressed to Secretary Joseph Emilio Aguinaldo Abaya; and
- iv. All other letters sent by Chairman De Leon to the Secretary of the DOTC relative to the procurement of maintenance services for the MRT3, between July 2012 to October 2013.<sup>10</sup>

On February 15, 2016, the prosecution filed its *Comment and/or Opposition (To Accused Al Sanchez Vitangcol, III's Motion to Allow Production of Material Evidence and Admissions by Adverse Party dated 29 January 2016)*.<sup>11</sup> It argued:

- a. Accused Vitangcol failed to comply with the requirements for the production or inspection of material evidence under Section 10, Rule 116 of the Rules of Court,
  - a.1. No good cause for the production of the documents requested by accused Vitangcol was shown,
  - a.2. The documents requested are not material to the present case, and,
  - a.3. Section 10, Rule 116 of the Rules of Court only pertains to "written statement given by the complainant and other witnesses"; it does not include counter-affidavits executed by accused' co-respondents.<sup>12</sup>
- b. Some of the statements proposed for admission by the adverse party: (1) pertain to matters of law, conclusions or opinions, and, (2) are not material nor relevant to the instant case.<sup>13</sup>

The prosecution did not file any comment or opposition to accused Vitangcol's *Motion to Issue Subpoena*.

<sup>10</sup> Motion to Issue Subpoena for Production of Evidence to Metro Rail Transit Corporation dated February 9, 2016, p. 2, Record, Vol. II, p. 184.

<sup>11</sup> Dated February 12, 2016, Record, Vol. II, pp. 207-211.

<sup>12</sup> Comment/or Opposition dated February 12, 2016, p. 2, Record, Vol. II, p. 208.

<sup>13</sup> Comment/or Opposition dated February 12, 2016, pp. 2-3, Record, Vol. II, p. 208-209.

## DISCUSSION

### Production of Material Evidence

Accused Vitangcol claims that the requested counter-affidavits were deliberately and maliciously withheld by the Office of the Ombudsman during the preliminary investigation. According to accused Vitangcol, the statements contained in said affidavits would show his innocence and negate the wrongful accusations against him.<sup>14</sup>

The *Motion to Allow Production of Material Evidence* is without merit. Nonetheless, the Court orders the prosecution to provide accused Vitangcol with copies of the counter-affidavits requested.

Accused Vitangcol's Motion failed to comply with the requirements under Section 10, Rule 116 of the Rules of Court.<sup>15</sup>

First, he failed to show that the counter-affidavits pertain to the complainants and the other witnesses in the investigation conducted by the Office of the Ombudsman. It appears that the requested counter-affidavits pertain to those of his co-respondents.

Second, his conclusion that "[S]aid affidavits would show the innocence of accused Vitangcol and negate the wrongful accusations of the Ombudsman"<sup>16</sup> is not sufficient. He failed to establish that the counter-affidavits contain

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<sup>14</sup> Motion to Allow Production of Material Evidence and Admissions by Adverse Party dated January 29, 2016, pp. 1-2, Record. Vol. II, pp. 122-123.

<sup>15</sup> Section 10. *Production or inspection of material evidence in possession of prosecution.* — Upon motion of the accused showing good cause and with notice to the parties, the court, in order to prevent surprise, suppression, or alteration, may order the prosecution to produce and permit the inspection and copying or photographing of any written statement given by the complainant and other witnesses in any investigation of the offense conducted by the prosecution or other investigating officers, as well as any designated documents, papers, books, accounts, letters, photographs, objects or tangible things not otherwise privileged, which constitute or contain evidence material to any matter involved in the case and which are in the possession or under the control of the prosecution, police, or other law investigating agencies. (Emphasis and underscoring supplied.)

<sup>16</sup> Motion to Allow Production of Material Evidence and Admissions by Adverse Party dated January 29, 2016, p. 2, Record. Vol. II, p. 123.

evidence material to his defense or to any matter involved in the case. The production and inspection of documents is said to be for a "good cause" when their production would enable the accused to intelligently prepare his defenses, and where the subject documents are necessary for the determination of the issues raised in the case.<sup>17</sup>

Further, accused Vitangcol was not entitled to a copy of the counter-affidavits of his co-respondents during preliminary investigation. In *Reyes vs. Ombudsman*,<sup>18</sup> the Supreme Court, reiterating its ruling in *Estrada vs. Office of the Ombudsman*,<sup>19</sup> held that under both Rule 112 of the Rules of Criminal Procedure and Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman, a respondent to a preliminary investigation proceeding is only entitled to the evidence submitted by the complainants, and not to those submitted by a co-respondent.

Nonetheless, in *Estrada*, the Supreme Court noted that the denial of said request during the preliminary investigation does not prevent therein petitioner from requesting a copy of the counter-affidavits of his co-respondents during the pre-trial or even during the trial.<sup>20</sup> The Court notes that accused Vitangcol, in his *Motion*, did not allege that after the Informations were filed before this Court or during the preliminary conference, he asked the prosecution to furnish him with copies of the requested counter-affidavits and that such request was denied by the prosecution. The request of accused Vitangcol, thus, appears to be premature.

Nonetheless, in accordance with *Estrada vs. Ombudsman*, the Court resolves to order the Office of the Special Prosecutor to provide accused Vitangcol with copies of the counter-affidavits of (1) Joseph Emilio Aguinaldo Abaya, (2) Geronimo V. Quintos, (3) Misael R. Narca, Joel R. Magbanua, Arnel R. Manresa, and Natividad P. Sansolis [Joint Counter-Affidavit], (4) Honorito D. Chaneco, (5) Ildefonso T. Patdu, (6) Jose Perpetuo M. Lotilla, (7) Rafael

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<sup>17</sup> See *Security Bank Corporation vs. Court of Appeals*, 323 SCRA 330 [2000].

<sup>18</sup> G.R. Nos. 212593-94, 213163-78, 213540-41, 213542-43, 215880-94 & 213475-76, March 15, 2016.

<sup>19</sup> 748 SCRA 1 [2015].

<sup>20</sup> *Id.*, at p. 38.

Antonio M. Santos, (8) Rene K. Limcaoco, (9) Dante M. Lantin, and (10) Wilson T. De Vera.

### Request for Admissions

Accused Vitangcol, invoking Section 1, Rule 26 of the Rules of Court, requests the prosecution to admit that his co-respondents in the preliminary investigation before the Office of the Ombudsman made certain statements in their Counter-Affidavits. The statements pertain to:

- a. DOTC Secretary Joseph Emilio Aguinaldo Abaya,
- b. Geronimo V. Quintos (Member, Negotiating Team),
- c. Honorito D. Chaneco (Administrator, LRTA),
- d. Ildefonso T. Patdu (Member, BAC),
- e. Jose Perpetuo M. Lotilla (Chairman, BAC),
- f. Rafael Antonio M. Santos (Acting DOTC Secretary),
- g. Misael R. Narca, Joel R. Magbanua, Arnel R. Manresa and Natividad P. Sansolis (Members, Task Force and Negotiating Team).

This Court denies accused Vitangcol's *Request for Admissions*. The statements proposed for admission are not the proper subject of a request for admission.

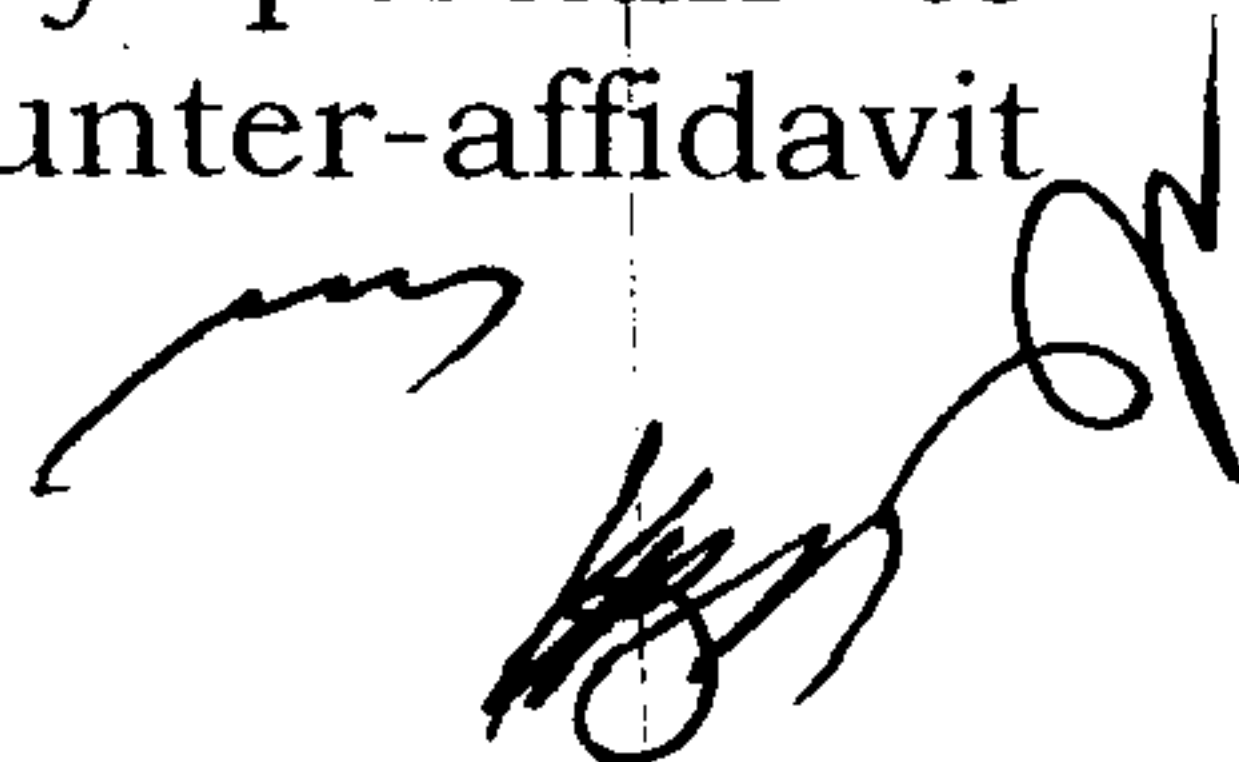
Section 1, Rule 26 provides:

**Section 1. Request for admission.** — At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.<sup>21</sup>

The Rules allow parties to request for the admission of the, a) genuineness of any material and relevant document, and b) truth of any material and relevant matter of fact set forth in the request.

Accused Vitangcol's request does not pertain to material and relevant matters of fact. They pertain to whether a statement was made in the counter-affidavit

<sup>21</sup> Underscoring supplied.





during the preliminary investigation. The best evidence that the statements were made would be the document itself. When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself.<sup>22</sup>

Since the statements proposed for admission are contained in the respective Counter-Affidavits of the public officials, the original copy of said documents are the best evidence of the truth of their contents.

Nonetheless, the parties may, if they are willing, enter into stipulations on the matters requested during the pre-trial.

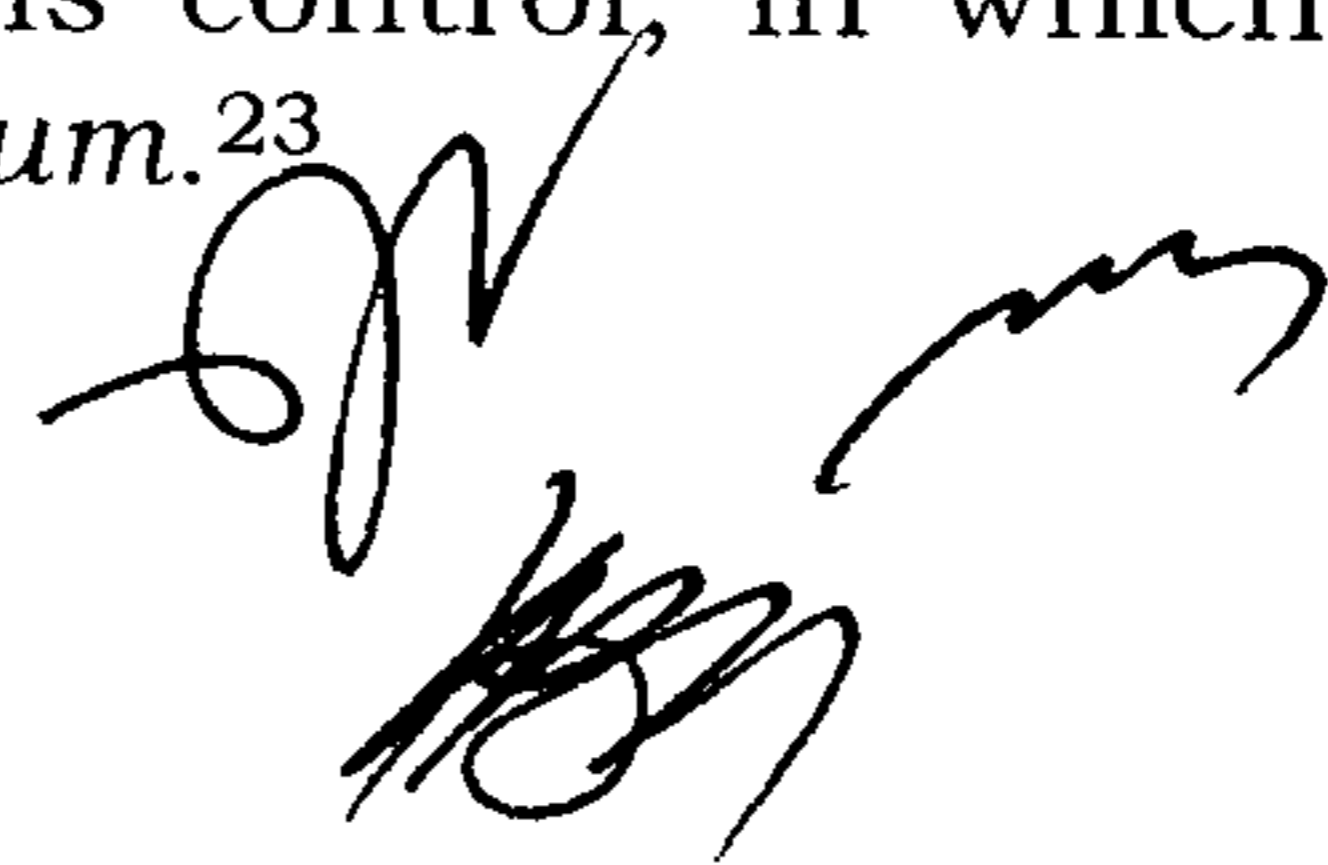
#### Issuance of Subpoena to Metro Rail Transit Corporation

The Court denies the request for the issuance of subpoena directing Metro Rail Transit Corporation to produce letters received by said corporation within ten (10) days from notice of the order of this Court, for being premature.

Under Section 1, Rule 21 of the Rules of Court, a subpoena may issue to compel a person to attend and to testify at the hearing or the trial of the case, or, at any investigation conducted by authorized persons. The court may also issue a *subpoena duces tecum* to require a person to bring with him books, documents, or other things under his control, *viz*:

**Section 1. Subpoena and subpoena duces tecum.**

— Subpoena is a process directed to a person requiring him to attend and to testify at the hearing or the trial of an action, or at any investigation conducted by competent authority, or for the taking of his deposition. It may also require him to bring with him any books, documents, or other things under his control, in which case it is called a subpoena *duces tecum*.<sup>23</sup>



<sup>22</sup> The *Best Evidence Rule* under Section 3, Rule 130 of the Rules of Court

<sup>23</sup> Underscoring supplied.

In *Chan vs. Chan*,<sup>24</sup> the Supreme Court ruled that a request for *subpoena duces tecum* during pre-trial is premature. The Supreme Court said that the movant will have to wait for trial to begin before making a request for the issuance of a *subpoena duces tecum* covering the requested records.<sup>25</sup>

Therefore, since the instant case is still in the preliminary conference stage, this Court finds the *Motion to Issue Subpoena* unwarranted for being premature.

This Court cannot treat the *Motion to Issue Subpoena* as a motion for production of documents under Section 1,<sup>26</sup> Rule 27 of the Rules of Civil Procedure because Metro Rail Transport Corporation is not a party to the case. Thus, this Court has no recourse but to deny the *Motion to Issue Subpoena*.

**WHEREFORE**, the Court disposes of the Motions filed by accused Al Sanchez Vitangcol as follows:

a. The *Motion to Allow Production of Material Evidence*<sup>27</sup> is **DENIED**. However, the Office of the Special Prosecutor is ordered to provide accused Vitangcol with copies of the counter-affidavits of:

- (1) Joseph Emilio Aguinaldo Abaya,
- (2) Geronimo V. Quintos,
- (3) Misael R. Narca, Joel R. Magbanua, Arnel R. Manresa, and Natividad P. Sansolis,  
(Joint Counter-Affidavit)

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<sup>24</sup> 702 SCRA 76 [2013].

<sup>25</sup> *Id.*, at p. 83.

<sup>26</sup> Section 1. Motion for production or inspection; order. — Upon motion of any party showing good cause therefor, the court in which an action is pending may (a) order **any party** to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody or control; or (b) order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon. The order shall specify the time, place and manner of making the inspection and taking copies and photographs, and may prescribe such terms and conditions as are just. (Emphasis supplied)

<sup>27</sup> Dated January 29, 2016.

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- (4) Honorito D. Chaneco,
- (5) Ildefonso T. Patdu,
- (6) Jose Perpetuo M. Lotilla,
- (7) Rafael Antonio M. Santos,
- (8) Rene K. Limcaoco,
- (9) Dante M. Lantin, and,
- (10) Wilson T. De Vera;


b. The *Request for Admission*<sup>28</sup> is **DENIED** for lack of merit;

c. The *Motion to Issue Subpoena for Production of Evidence to Metro Rail Transit Corporation*<sup>29</sup> is **DENIED** for being premature and for lack of merit;

d. The Motion to Defer the Pre-trial (until the prosecution responds to accused Vitangcol's *Request for Admissions and Production of Material Evidence*) is **DENIED** in view of the above disposition, without prejudice to this Court's Order dated April 7, 2016 which deferred the preliminary conference in this case until the Court shall have resolved with finality all the pending incidents in the case.

SO ORDERED.

Quezon City, Metro Manila.

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice

**WE CONCUR:**

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice  
Chairperson

  
**KARL B. MIRANDA**  
Associate Justice

<sup>28</sup> Dated January 29, 2016.

<sup>29</sup> Dated February 9, 2016.