



REPUBLIC OF THE PHILIPPINES

*Sandiganbayan*

Quezon City

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,  
*Plaintiff,*

CASE No. SB-16-CRM-0457

- versus -

Present:

DIOSDADO JOSE M. ALLADO,  
*Accused.*

DE LA CRUZ, J., *Chairperson*  
CRUZ, J.  
MUSNGI\*, J.

Promulgated on:

OCT 14 2016

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**RESOLUTION**

**DE LA CRUZ, J.**

This resolves the accused's *Motion to Suspend Proceedings Due to Prejudicial Question*, dated August 4, 2016, and the prosecution's *Comment/Opposition*, dated September 19, 2016, thereto.

In his motion, the accused seeks the suspension of the present proceedings on the ground of prejudicial question. He contends that prior to the filing of the instant Information against him, a petition to declare the nullity of contract was filed with Branch 85 of the Regional Trial Court of Quezon City, docketed as Civil Case No. R-QZN-15-07616-CV, entitled "*Metropolitan Waterworks and Sewerage System v. SM Prime Holdings, Inc.*," with issues related or similar to this criminal case. According to the accused, the resolution of the issues in the civil case before the RTC would be determinative of his guilt or innocence in the present criminal case.

\*Sitting as Special Member of the First Division as per Administrative Order No. 204-2016, dated June 29, 2016.

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The prosecution refutes the existence of prejudicial question to warrant suspension of the proceedings. It points out that during the preliminary investigation, accused Allado had also moved for the suspension of the proceedings on the same ground, but his motion was denied for the reason that whatever would be the final judgment in the civil action would have no consequence to his guilt or innocence. It insists that the issue in the criminal case is whether or not the accused is guilty of violation of Section 3(e) of Republic Act 3019 for awarding to SM Prime Holdings, Inc. (SPHI) the lease contract over a property owned by the Metropolitan Waterworks and Sewerage System (MWSS) without authority from its Board of Trustees (BOT), and without subjecting SPHI's unsolicited lease proposal to a competitive Swiss challenge as required by the BOT, while the issue in the civil case is whether or not the lease contract should be declared null and void.

At the outset, the Court is not bound by the resolution of the Office of the Ombudsman which denied the accused's similar motion to suspend proceedings ruling that there was no prejudicial question involved here. The Court views the matter differently and finds the accused's motion impressed with merit.

A prejudicial question is defined as that which arises in a case the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal. It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, *it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined.* It comes into play generally in a **situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue raised in the civil action is resolved**

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would be **determinative juris et de jure of the guilt or innocence of the accused in the criminal case.**<sup>1</sup>

The reason behind the principle of prejudicial question is to avoid two conflicting decisions. It has two essential elements: (a) the civil action involves an issue similar or intimately related to the issue raised in the criminal action; and (b) the resolution of such issue determines whether or not the criminal action may proceed.<sup>2</sup> These elements are clearly extant in the present case.

The Information charges that “accused DIOSDADO JOSE M. ALLADO, a high-ranking public officer, being then the Administrator of Metropolitan Waterworks and Sewerage System (MWSS) while in the performance of his official function, and acting with evident bad faith, manifest partiality or gross inexcusable negligence, did then and there willfully, unlawfully, and feloniously, give unwarranted benefit, advantage or preference to SM Prime Holdings, Inc. (SPHI), by awarding a Lease Contract over MWSS’s 1.417 hectare property located along Katipunan Avenue, Quezon City to SPHI **without authority from MWSS Board of Trustees (BOT) and without subjecting SPHI’s lease proposal to a Competitive Swiss Challenge as required by the BOT**, to the damage and prejudice of MWSS.”<sup>3</sup>

On the other hand, the civil case before the RTC is one seeking the declaration of nullity of the lease contract executed by MWSS, through accused Allado, and SPHI, allegedly because it was entered into without authority from the BOT of the MWSS, and without subjecting MWSS’s proposal to a Swiss challenge, which contention is challenged by SPHI claiming that the subject contract of lease is valid, having been entered into by the parties freely and voluntarily after all legal requirements had been complied with, including the Swiss challenge.

This issue is brought out by the Petition filed by MWSS against SPHI and the Answer of SPHI to the said petition. Thus, MWSS alleges in its Petition:

<sup>1</sup> People v. Sandiganbayan, 485 SCRA 473, 492-493, citing Tuanda v. Sandiganbayan, 249 SCRA 342, 351

<sup>2</sup> Beltran v. People, 334 SCRA 106, 110; Sy Tiong Shiou v. Sy Chim, 582 SCRA 517, 529

<sup>3</sup> Boldface supplied.

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3. On 4 September 2009, the MWSS Board of Trustees (BOT) passed Resolution 2009-178 authorizing the lease of MWSS' 1.4 hectare property along Katipunan Avenue.

4. On 16 October 2009, SPHI submitted an unsolicited proposal to lease a portion of the MWSS property along Katipunan Avenue, which it intends to develop into a community-based, multi-level, fully air-conditioned and fully integrated shopping, dining and leisure complex. The 14,170 square meter property (Property) subject of the unsolicited proposal is merely a portion of a lot covered by Transfer Certificate of Title 80123 that has an aggregate area of 576,226 square meters.

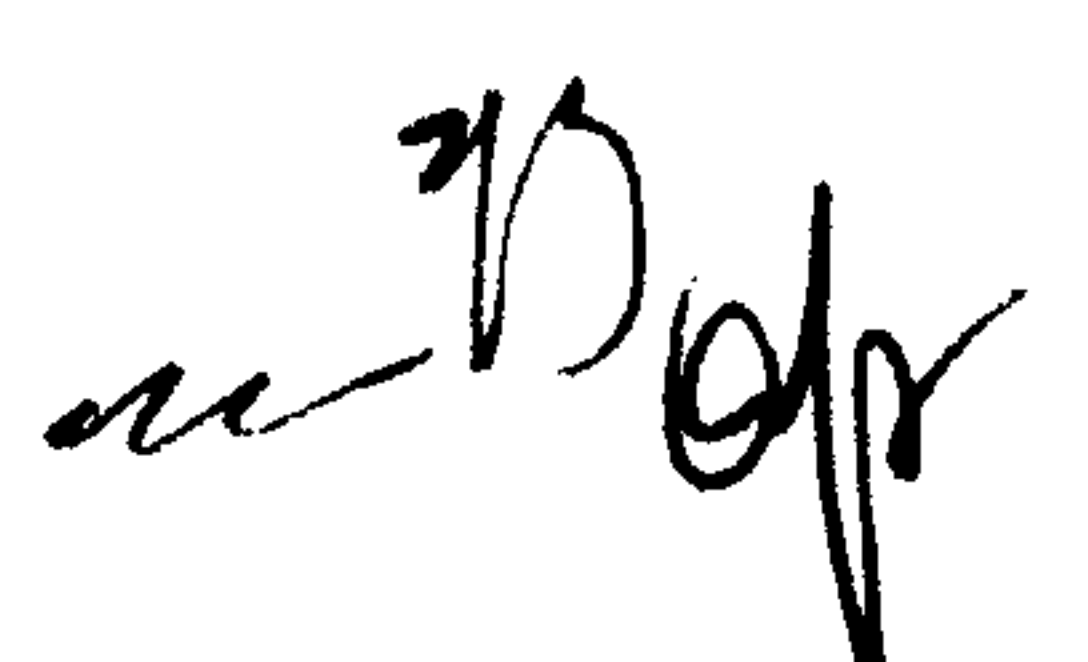
5. MWSS referred SPHI's unsolicited proposal to its statutory counsel (its counsel *de parte* here) for opinion. Particularly, it inquired on whether MWSS can grant the lease to SPHI pursuant to a Swiss challenge and the procedure to be observed under this method.

6. In response, the Government Corporate Counsel sent MWSS through its former Administrator, lawyer Diosdado Allado, a letter noting that a Swiss challenge is not required under Executive Order 301, but MWSS may nevertheless require it to be undertaken as a measure of prudence. The simplified and abbreviated Swiss challenge was as follows:

- Publication/posting
- Pre-selection conference
- Procedure for the conduct of competitive challenge
- Submission of comparative proposals
- Review
- MWSS management recommendation
- MWSS BOT decision
- Issuance of Notice of Award
- Counsel's review of the lease contract
- Contract signing

7. At its first meeting held on 19 February 2010, the BOT's Executive Committee passed Resolution 2010-029(E) approving the lease of the property but subject to competitive Swiss challenge. The BOT also approved this at its regular meeting on 24 February 2010, subject also to the observance of Swiss challenge procedure.

8. Without complying with the BOT condition that SPHI's proposal shall be subject to a Swiss challenge, the parties went on to execute on 27 May 2010 a Lease Contract (Contract) with former Administrator Allado purportedly representing MWSS in such contract.





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On the other hand, the pertinent allegations in SPHI's Answer to the Petition read:

In support of its Denials and Affirmative Allegations, SM Prime respectfully states:

X X X

3. There is a valid lease contract between MWSS and SM Prime covering the Property, which the parties entered into freely and voluntarily after all legal requirements had been complied with, including the simplified Swiss challenge as outlined in the Agra Opinion.

X X X

From the foregoing, it is clear that the pivotal issue in both criminal and civil cases is the presence or absence of the authority of the BOT to enter into the subject lease contract, and the presence or absence of Swiss challenge prior to the execution thereof.

Indeed, the nullity or validity of the lease contract is primarily dependent on the RTC's assessment of the BOT's "authority" to the lease contract in the context of the surrounding circumstances, and which consent likewise largely revolves around the question of whether or not a Swiss challenge was actually conducted in consonance with the condition set by the BOT. Similarly, the criminal case before this Court against the accused weighs heavily on the presence or absence of the authority of the accused from the BOT to execute the lease contract, and the Swiss challenge. In the event that the RTC rules that the lease contract is valid, having been entered into with the authority of the BOT and the presence of Swiss challenge, this criminal case against the accused would have no leg to stand on. Conversely, should the RTC rule that the BOT did not authorize the lease contract and that there is no Swiss challenge, this Court should proceed with the criminal proceedings to determine whether accused Allado violated Section 3(e) of RA 3019.

Prescinding from the foregoing and pursuant to Section 6, Rule 111 of the Revised Rules of Criminal Procedure,<sup>4</sup> this Court

<sup>4</sup> SEC. 6. *Suspension by reason of prejudicial question.* – A petition for suspension of the criminal action based upon the pendency of a prejudicial question in a civil action may be filed in the office of the prosecutor or the court conducting the preliminary investigation. When the criminal action has been filed

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must give way to the RTC to resolve the core issue and await its disposal decisive of the fate of the present criminal proceedings. Otherwise, two conflicting decisions may possibly arise.

**WHEREFORE**, the accused's *Motion To Suspend Proceedings Due to Prejudicial Question*, dated August 4, 2016, of accused Diosdado Jose M. Allado is hereby **GRANTED**.

Let the proceedings in this case be suspended pending final resolution of Civil Case No. R-QZN-15-07616-CV, entitled "*Metropolitan Waterworks and Sewerage System v. SM Prime Holdings, Inc.*," before Branch 85 of the Regional Trial Court of Quezon City. In the meanwhile, the instant case is hereby ordered **ARCHIVED**.

**SO ORDERED.**

  
**EFREN N. DE LA CRUZ**  
Chairperson/Associate Justice

**WE CONCUR:**

  
**REYNALDO P. CRUZ**  
Associate Justice

  
**MICHAEL FREDERICK L. MUSNGI**  
Associate Justice

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in court for trial, the petition to suspend shall be filed in the same criminal action at any time before the prosecution rests.