



REPUBLIC OF THE PHILIPPINES

Sandiganbayan

Quezon City

SIXTH DIVISION

PEOPLE OF THE PHILIPPINES, **SB-18-CRM-0101**
Plaintiff, For: Violation of Sec. 3(h)
of Republic Act No. 3019

Present

- versus -

FERNANDEZ, SJ, J.,
Chairperson
MIRANDA, J. and
VIVERO, J.
ANTONIO R. FLOIRENDO, JR.,
Accused.

Promulgated:

AUG 07 2018

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RESOLUTION

FERNANDEZ, SJ, J.

This resolves accused Antonio R. Floirendo, Jr.'s *Motion to Quash The Information*.¹

In his Motion, the accused prays that this Court quash the Information and dismiss the present case. He avers:

1. Under Rule 117, Sec. 9 of the Rules of Court, the accused may, even after entering a plea, file a motion to quash on the ground that the facts charged do not constitute an offense.
2. To secure a conviction under Section 3(h) of Republic Act No. 3019 (R.A. No. 3019), the prosecution must establish the following:
 - a. The accused is a public officer;

¹Included in his *Opposition to the Motion to Suspend the Accused and Motion to Quash the Information* dated June 27, 2018; Record, Vol. 2, pp. 137-157

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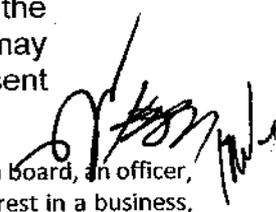
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- b. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
 - c. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.
3. The Constitution, R.A. No. 3019 and Republic Act No. 6713 (R.A. No. 6713), when read together and harmonized, supports the conclusion that what is sought to be avoided is conflict of interest.
- a. Conflict of interest was defined in Sec. 3(i)² of R.A. No. 6713. Said law was intended to implement Article VI, Sec. 14 of the Constitution.
 - b. The intent of the legislature in the enactment of R.A. No. 3019, and in particular, Sec. 3(h) thereof, is "to avoid the creation of conflict of interest between a public official and interest in a private enterprise." An examination of the deliberations in the Senate would reveal that it was not the intent of the law to encompass insubstantial shareholdings.
4. Public officials, including Members of the House of Representatives, are required to divest their shareholdings and interests only when a conflict of interest arises.
5. Conflict of interest could not have arisen in the present case because his interest in TADECO was a mere 0.89% of its outstanding capital stock. Furthermore, ANFLOCOR was not a party to the 2003 Joint Venture Agreement (JVA).
6. The allegations in the Information are insufficient because there are no additional factual allegations that tend to establish how his stockholdings in TADECO created a conflict of interest within the parameters of R.A. No. 6713.
7. The defect in the Information cannot be cured by mere amendment
- a. As a general rule, a defect pertaining to the failure of the allegations in the Information to charge an offense may be corrected by an amendment. However, in the present

² Sec. 3. (i) "Conflict of interest" arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.



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case, the facts alleged in the Information will never constitute an offense. The Information will still suffer from the same defect even if amended.

- b. After the accused has entered a plea, only formal amendments to the Information may be allowed.

In its *Comment/Opposition (To the Motion to Quash Information dated 27 June 2018)*,³ the prosecution counters:

1. The test in appreciating a motion to quash on the ground invoked by the accused is whether the facts alleged, if hypothetically admitted, would establish the essential elements of the offense as defined by law, without considering matters *aliunde*.
2. The two (2) modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract or transaction may commit the offense are: (a) by intervening or taking part, in his or her official capacity, in connection with such financial or pecuniary interest, in any business, contract or transaction; and (b) when the public officer is prohibited from having such interest by the Constitution or by law.
3. A simple reading of the Information would show that the facts alleged in the Information, if hypothetically admitted, will establish all the elements of violation, under the second mode, of Sec. 3(h) of R.A. No. 3019.
4. The indictment under the second mode of violation of Sec. 3(h) of R.A. No. 3019 is not based on conflict of interest, as defined in R.A. No. 6713, but on the proscription imposed under Art. VI, Sec. 14 of the Constitution.
5. A perusal of the constitutional deliberations reveals that an actual conflict of interest is not required for the prohibition under Art. VI, Sec. 14 of the Constitution to apply. What is sought to be avoided is the use of influence by a Member of the House of Representatives for his or her own interest.
6. Art. VI, Sec. 14 of the Constitution is a self-executing provision. R.A. No. 6713 was not enacted to implement said constitutional provision, but to expound on the mandate imposed on public officers and employees under Art. XI, Sec. 1⁴ of the Constitution.

³ Dated July 17, 2018; Record, Vol. 2, pp. 170-181

⁴ Sec. 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

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- 7. R.A. No. 6713 and Art. VI, Sec. 14 of the Constitution are entirely independent of each other. Members of the House of Representatives should comply with both.
- 8. Contrary to the accused' claim, Rule 117, Sec. 4 of the Rules of Court expressly provides that if the motion to quash is based on the ground that the facts charged do not constitute an offense, the court should allow the prosecution to correct the defect by amendment.

THE COURT'S RULING

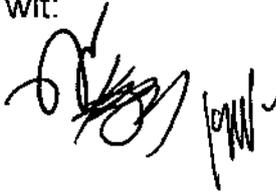
Under Rule 117, Sec. 9, of the Rules of Court, the failure of an accused to assert any ground of a motion to quash before entering a plea is deemed a waiver of any objections to the Information. As one of the exceptions, a motion to quash on the ground that the facts charged do not constitute an offense⁵ may be filed even after the accused has entered a plea.

Thus, even after the accused entered his plea of "Not Guilty" during his arraignment on May 25, 2018,⁶ he is not deemed to have waived his right to assail the Information on the ground that the facts charged therein do not constitute an offense. Nonetheless, this Court resolves to deny his *Motion to Quash*.

In resolving a motion to quash on the ground that the facts charged do not constitute an offense, which assails the sufficiency of the Information, the Court need not go beyond the allegations of the Information whose truth and veracity are hypothetically admitted. In *People v. Sandiganbayan*,⁷ it was held that courts must look into the following matters:

x x x (1) what must be alleged in a valid information; (2) what the elements of the crime charged are; and (3) whether these elements are sufficiently stated in the Information.

Rule 110, Sec. 6 of the Rules of Court provides for the contents of a sufficient Information. To wit:



⁵ *Rules of Court*, Rule 117, Sec. 3(a)

⁶ *Record*, Vol. 2, pp. 39-42

⁷ G.R. No. 160619, September 9, 2015

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Sec. 6. Sufficiency of complaint or information. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

(underscoring supplied)

The accused is charged with violation of Sec. 3(h) of R.A. No. 3019, the elements of which are as follows:

1. The accused is a public officer;
2. The accused has a direct or indirect financial or pecuniary interest in any business, contract or transaction;
3. The accused either: (a) intervenes or takes part in his or her official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by law.⁸

On the other hand, the Information in the present case alleges:

1. x x x accused **ANTONIO DEL ROSARIO FLOIRENDO, JR.**, a high-ranking public officer, being then the Representative of the 2nd District of Davao del Norte, x x x
2. x x x. did then and there willfully, unlawfully and criminally have direct and/or indirect financial interest in the 21 May 2003 Agreement between the Bureau of Corrections and Tagum Agricultural Development Company, Inc. (TADECO), in which company he then owned seventy-five thousand shares of stocks worth Seven Million and Five Hundred Thousand Pesos, and which company's (TADECO) majority stocks were in turn owned by and under the control of accused's family through Anfio Management and Investment Corporation, x x x
3. x x x, despite being prohibited by Article VI, Section 14⁹ of the 1987 Constitution from having such financial interest

⁸ *Domingo v. Sandiganbayan*, G.R. Nos. 149175 and 149406, October 25, 2005; *Teves v. Commission on Elections*, G.R. No. 180363, April 28, 2009

⁹ **Sec. 14.** No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or

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At this point, there is no need to look into matters beyond the four corners of the information. This Court finds that the facts charged in the Information sufficiently allege the essential elements of the second mode of violation of Sec. 3(h) of R.A. No. 3019.

The other arguments of the accused are matters of defense which are better threshed out during the trial on the merits.

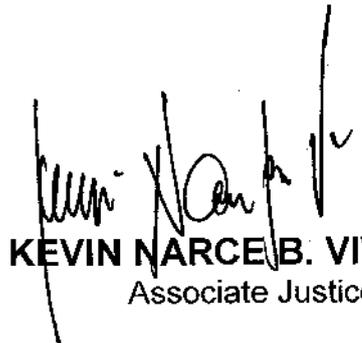
WHEREFORE, the Motion to Quash of the accused is hereby DENIED for lack of merit.

SO ORDERED.


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson

We Concur:


KARL B. MIRANDA
Associate Justice


KEVIN NARCEB. VIVERO
Associate Justice

special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the Government for his pecuniary benefit or where he may be called upon to act on account of his office. (underscoring supplied)