



Republic of the Philippines

Sandiganbayan

Quezon City

SEVENTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-18-CRM-0152

- versus -

ISIDRO LEBRILLA HEMEDES, JR.,
Accused.

Present:

Gomez-Estoesta, J.
Chairperson

Trespeses, J.

Hidalgo, JJ.

Promulgated:

March 22, 2019 *ip*

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RESOLUTION

TRESPESSES, J.:

In its Decision dated 1 February 2019,¹ this Court found accused Isidro Lebrilla Hemedes (“accused”) guilty beyond reasonable doubt of violation of Section 3(h) of Republic Act No. 3019 (“R.A. No. 3019”) in relation to Presidential Decree No. 119 (“P.D. 119”). Now submitted for the Court’s resolution is accused’s motion for reconsideration,² as well as the prosecution’s comment.³

ACCUSED’S MOTION

In his motion, accused first argues that the plain meaning of P.D. 119 merely prohibits him from holding the position of director, officer, legal counsel or consultant in a private development bank, and not from holding pecuniary interest therein.

¹ Record, Vol. I, pp.470-489.

² Record, Vol. II, pp. 15-25.

³ Id. at 26-35.

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Accused admits that he owned or acquired seven common shares of Luzon Development Bank ("LDB"), with a total par value of ₱700.00, which is not prohibited by law, particularly by Republic Act No. 6713 ("R.A. No. 6713"). Accused contends that what R.A. No. 6713 only requires in Section 8⁴ thereof is that he disclose or declare the same in his Statement of Assets Liabilities and Net worth ("SALN").

Accused also admits that the minimal shares he owned allowed him to sit as one of the board of directors of LDB, which is prohibited by Section 1 of P.D. 119.⁵ However, he reasons that the said prohibition is directed to the

⁴ SECTION 8. Statements and Disclosure. — Public officials and employees have an obligation to accomplish and submit declarations under oath of, and the public has the right to know, their assets, liabilities, net worth and financial and business interests including those of their spouses and of unmarried children under eighteen (18) years of age living in their households.

(A) Statements of Assets and Liabilities and Financial Disclosure. — All public officials and employees, except those who serve in an honorary capacity, laborers and casual or temporary workers, shall file under oath their Statement of Assets, Liabilities and Net Worth and a Disclosure of Business Interests and Financial Connections and those of their spouses and unmarried children under eighteen (18) years of age living in their households.

The two documents shall contain information on the following:

- (a) real property, its improvements, acquisition costs, assessed value and current fair market value;
- (b) personal property and acquisition cost;
- (c) all other assets such as investments, cash on hand or in banks, stocks, bonds, and the like;
- (d) liabilities, and;
- (e) all business interests and financial connections.

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⁵ SECTION 1. Section four of Republic Act Numbered Four thousand ninety-three, as amended, is hereby amended to read as follows:

"Sec. 4. A private development bank shall be organized in the form of a stock corporation and its paid-up capital shall not be less than four million pesos for Class A, two million pesos for Class B, and one million pesos for Class C: Provided, That at least seventy per cent of the voting stock subscribed by the private sector shall be owned and held by citizens of the Philippines, except where a new bank is established as a result of the consolidation of existing private development banks in any of which there are foreign-owned voting stocks at the time of consolidation: Provided, however, That the Monetary Board may, with the approval of the President of the Philippines, reduce the required minimum percentage of Philippine ownership prescribed herein from seventy per cent (70%) to sixty per cent (60%): Provided, further, That if said subscription of private shareholders to the initial capitalization of a private development bank cannot be secured or is not available, the Development Bank of the Philippines on representation of the said private shareholders and with the approval of its Board of Governors shall, within thirty days from date of approval by the Board of Governors, and after compliance by the private stockholders with the conditions of said approval, subscribe to the capital stock of such development banks, which shall be paid in full at the time of subscription out of the trust fund provided in section three, paragraph three, of Republic Act Numbered Two thousand eighty-one, in an amount equal to the difference between the required paid-up capital and to the fully-paid subscribed capital of the private stockholders but not exceeding the latter: Provided, furthermore, That the Board of Governors shall act, on the representation made by the private shareholders within thirty days from the date it is filed: Provided, still further, That such shares of stock subscribed by the bank shall be preferred shares entitled to cumulative dividends at the yearly rate of one per cent during the first five years, two per cent during the following five years, and three per cent thereafter, shall be preferred as against common and other preferred stockholders in the

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officials of private development banks, in this case LDB. Hence, accused should not be faulted or penalized for being unaware of the said prohibition, especially considering that P.D. 119 itself does not provide a penalty in case of its violation.⁶ He adds that there was no conflict of interest when he accepted the LDB directorship and that he was able to faithfully discharge the duties of his office as Mayor.

Accused asserts that he is only prohibited from practicing his profession under Section 90 of Republic Act No. 7160 ("R.A. No. 7160").⁷

Thereafter, accused avers that a plain reading of Section 1 of P.D. 119 indicates that said law prohibits him from only serving as an officer, director, legal counsel or consultant of any private development bank. He argues that there is allegedly no room for expanding the reach of the prohibition by interpreting the phrase "serving as director" as equivalent to "holding pecuniary interest."⁸

distribution of assets in the event of liquidation, and shall be entitled to voting privileges: Provided, finally, That such preferred shares of the bank may be sold at any time at par to private individuals who are citizens of the Philippines, and in the sale thereof, the qualified registered stockholders shall have the right of pre-emption within one year from the date of offer in proportion to their respective holdings, but in the absence of such buyers, preference shall be given to residents of the province or city where the development bank is located. All members of the board of directors of the private development bank shall be citizens of the Philippines: Provided, however, That no full-time appointive or elective public official shall at the same time serve as officer, director, legal counsel, or consultant of any private development bank, except in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled corporation to the bank: Provided, further, That, in case of merger or consolidation of private development banks duly approved by the Monetary Board, the limitation on the maximum number of corporate directors in a corporation, as provided for in section twenty-eight of the Corporation Law (Act No. 1459) shall not be applied so that membership in the new board may include up to the total number of directors provided for in the respective articles of incorporation of the merging or consolidation private development banks."

⁶ Record, Volume II, page. 18.

⁷ SECTION 90. Practice of Profession. — (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are also members of the Bar shall not:

- (1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;
- (2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office.
- (3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and
- (4) Use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.

(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That the officials concerned do not derive monetary compensation therefrom.

⁸ Record, Volume II, page 19.

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Accused expounds that, as may be gleaned from its preamble,⁹ P.D. 119's prohibition is intended to provide reforms to private development banks, and not to be an anti-graft measure. Accused posits that P.D. 119 prohibits public officers from becoming directors of private development banks so that the bank will remain private in character and not permeated with government intervention and control. He adds that the only instance where "government control or intervention" to a private development bank is allowed under P.D. 119 is "where such service is incident to financial assistance provided by the government or government-owned or controlled corporation to the bank."¹⁰

Accused also alleges that the prohibition from having interest in business is not the same as the prohibition from becoming an officer or director. This is because a public officer may be allowed to have an interest in business, but at the same time, may be prohibited by law from becoming an officer or director thereof. Accused concludes that because he is allowed to have business interest in the bank, there is no violation of Section 3(h) of R.A. No. 3019.¹¹

Finally, accused submits that since there is yet no jurisprudence directly and squarely interpreting the last phrase of Section 3(h) of R.A. No. 3019 in determining whether it is a law that prohibits pecuniary interest in any business, contract or transaction, all doubts should be resolved in his favor, in keeping with the constitutional guarantee of presumption of innocence.¹²

PROSECUTION'S COMMENT

In its comment, the prosecution emphasizes that the arguments raised by the accused in his motion are mere reiteration of those he had previously raised in his Memorandum. In turn, all these arguments have already been

⁹ The Preamble of P.D. 119 states:

WHEREAS, there were pending before Congress prior to the promulgation of Proclamation No. 1081, dated September 21, 1972, urgent banking measures proposing amendments to Republic Act No. 4093, as amended, otherwise known as "The Private Development Banks' Act," which are vital to the national development program of the Government;

WHEREAS, an extensive survey and study of the banking and credit system had been undertaken for the purpose of assessing its adequacy in Philippine economic growth, and of facilitating the savings-investment process in development.

WHEREAS, the result of the survey was an integrated set of recommendations which were accepted, with modifications by the monetary authorities, and made the basis for this Decree to effect reforms in the banking system, and to render monetary and credit policies more responsive to the requirements of economic development;

¹⁰ Record, Volume II, page 21.

¹¹ Id. at 22.

¹² Id. at 22-23.

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considered and found without merit by the Court in its Decision dated 1 February 2019.

The prosecution counters that accused's theory on the intent of P.D. 119 is baseless. There is nothing in P.D. 119 which shows that the subject prohibition was meant to ensure that the private development bank's management will remain private and that it will be insulated from any government intervention or control.¹³

The prosecution stresses that contrary to accused's assertion, R.A. No. 4093 and P.D. 119 (which amended Sections 1, 5 and 7 of R.A. No. 4093) ensure the government's constant cooperation, if not interference, in the operation of private development banks. For instance, Section 2 of R.A. No. 4093¹⁴ (which subsists, not having been amended by P.D. 119) provides that the government shall encourage and assist in the establishment of a system of private development banks. It also encourages cooperation between the private development banks and various government entities such as the Development Bank of the Philippines ("DBP"), Philippine National Bank, Government Service Insurance System, Social Security System and other agencies, corporations, or instrumentalities of the government in order to provide adequate assistance in the form of savings deposits and technical know-how in agriculture and industry. Section 6 of the same law¹⁵ provides

¹³ Record, Volume II, page 28.

¹⁴ SECTION 2. It shall be the declared policy of Congress to promote and expand the economy of the country pursuant to the socio-economic program of the Government; to expand the industrial and agricultural growth; and to encourage the establishment of more private development banks in order to meet the needs for capital and to meet the demands for adequate investment credit or medium and long term loans for Filipino entrepreneurs. Toward this end, the Government shall encourage and assist in the establishment of a system of private development banks which will promote agriculture and industry and at the same time place within easy reach to the people the medium and long term credit facilities at reasonable cost. The Development Bank of the Philippines, the Philippine National Bank, the Government Service Insurance System, the Social Security System, the National Economic Council, the Department of Agriculture and Natural Resources, the Department of Commerce and Industry, and other appropriate agencies, corporations, or instrumentalities of the Government may, in cooperation with the private development banks, provide adequate assistance in the form of savings deposits, and technical know-how in agriculture and industry.

¹⁵ SECTION 6. For the purpose of attaining the objectives of this Act and the policy of Congress as provided for in Section 2 of this Act, the sum of ten million pesos may be appropriated yearly in case of need from the net profit of the Central Bank paid into the general fund of the government under Section Forty-one, Paragraph (d) of the Central Bank Act, which sum shall constitute a revolving fund to be made available to the Development Bank of the Philippines which shall be used, together with the funds already provided under paragraph 2 of Section 3 of Republic Act 2081, for the following purposes:

(a) To pay for its subscription to preferred shares of stock in said private development banks in the manner and subject to the terms and conditions prescribed in Section four hereof;

(b) To rediscount promissory notes and other credit instruments held by the private development bank under the following conditions and limitations:

(1) It shall charge such rediscount or interest rates as it may determine taking into account that the main objective of the private development bank is to engage in medium and long term loans for economic development. The determination of such rediscount or interest rates acceptable to the bank for the purpose of this provision shall be made by the said bank upon or immediately after the commencement of operations of a private development bank; and

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that the government may appropriate a certain amount to constitute a revolving fund made available to the DBP, to be used as payment for subscription to preferred shares of stock in private development banks.

Meanwhile, Section 8 of the law further provides that in order to augment and supplement the capital of any private development bank, the DBP is permitted to extend to the private development banks loans from time to time. In the same vein, Section 9¹⁶ provides that in an emergency or when a financial crisis is imminent, the Central Bank may give a loan to any private development bank against the latter's assets.

On the other hand, Section 1 of P.D. 119,¹⁷ contemplating a situation where a private shareholder of a private development bank fails to pay his subscription to the initial capitalization, provides that in such case, the DBP, on representation of the said private shareholder, may subscribe to the capital stock of a private development bank and participate in the management thereof. The law even allows full-time elective or appointive public officials to participate in the management of private development banks, where such service is incident to the financial assistance provided by the government or government-owned or controlled corporation to the bank.

The prosecution concludes that, clearly, it is the nature of the business of a private development bank to require constant financial interaction with the government. P.D. 119's prohibition against a full-time appointive or elective public official from concurrently serving as officer, director, legal counsel, or consultant of any private development bank was intended to address actual or potential conflict of interest on the part of public officials, which is likewise prohibited under Section 3(h) of R.A. No. 3019.¹⁸

As for accused's contention that P.D. 119 should be interpreted in his favor pursuant to the principle of *in dubio pro reo*, the prosecution quotes a portion of the Court's 1 February 2019 Decision that when the law speaks in clear and categorical language, there is no room for interpretation, only for application.

OUR RULING

We **DENY** accused's motion for lack of merit.

(2) Funds so acquired shall be used only to finance the establishment and operation of projects within the development program of the National Economic Council or along such projects and activities as the National Economic Council may, from time to time, approve.

¹⁶ SECTION 9. In an emergency or when a financial crisis is imminent, the Central Bank may give a loan to any private development bank against the assets of the private development bank which may be considered acceptable by a concurrent vote of the members of the Monetary Board.

¹⁷ *Supra* at note 5.

¹⁸ Record, Volume II, page 31.

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Accused's reasoning that he should not be faulted or penalized for being unaware of the prohibition under P.D. 119 plainly lacks legal basis. He cannot hide behind the cloak of ignorance or lack of familiarity with the law. It is a basic legal tenet that ignorance of the law excuses no one from compliance therewith.¹⁹

Accused's insistence that there was no conflict of interest when he accepted the LDB directorship and that he was able to faithfully discharge the duties of his office as Mayor is not a valid defense. As held in our 1 February 2019 Decision:

As accused is being charged under the second mode, it is not necessary to show that he intervened in his official capacity in connection with the business, contract or transaction. Accordingly, there is little value in accused's assertion that there was never a transaction between the LDB and the City of Cabuyao throughout the years when he was concurrently occupying the position of city mayor and LDB director.²⁰

Accused argues next that P.D. No. 119 does not fall within the purview of Section 3(h) of R.A. No. 3019 because what Section 1 of P.D. 119 prohibits is the holding of position as director, officer, legal counsel or consultant of a private development bank, rather than the possession of pecuniary interest therein, as required by R.A. No. 3019, Section 3(h).

Accused's reasoning is untenable as it unjustifiably and irrationally constricts the scope and application of Section 3(h) of R.A. No. 3019. It is simply not reasonable to assume that the legislature requires the prohibitive constitutional provision or law referenced therein to precisely mirror the breadth and scope, much less mimic the exact same phrase, of Section 3(h) of R.A. No. 3019. Otherwise, Section 3(h) would be a redundancy.

Meanwhile, it has been held that "a construction should, if possible, be avoided if the result would be an apparent inconsistency in legislative intent, as has been determined by the judicial decisions, or which would result in futility, redundancy, or a conclusion not contemplated by the legislature; and the court should adopt that construction which will be the least likely to produce mischief. Unless plainly shown to have been the intention of the legislature, an interpretation which would render the requirements of the statute uncertain and vague is to be avoided, and the court will not ascribe to the legislature an intent to confer an illusory right."²¹

Thus, P.D. 119's limited prohibition on some public officers (i.e., "full-time appointive and elective public official") from having a particular kind of pecuniary interest (i.e., those holding the position of "director, officer,

¹⁹ *Office of the Deputy Ombudsman for Luzon v. Dionisio*, G.R. No. 220700, 10 July 2017.

²⁰ Record, Vol. I, p. 484.

²¹ *Moy Ya Lim Yao v. Commissioner of Immigration*, 148-B Phil. 773-877 (1971), quoting 82 C.J.S., Statutes, sec. 326, pp. 623-632.

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legal counsel or consultant”) in a specific business (i.e., “private development bank”) clearly falls within the extensive ambit of Section 3(h) of R.A. No. 3019, which penalizes a public officer’s act of “(d)irectly or indirectly having financial or pecuniary interest in any business, contract or transaction xxx in which he is prohibited xxx by any law from having any interest.”

We likewise find feeble accused’s assertion that the Decision should be reconsidered because the subject prohibition contained in P.D. 119 is not an anti-graft measure, but was crafted only for the purpose of ensuring that private development banks will remain private in character and not permeated with government intervention.

Contrary to accused’s notion, and as discussed at length by the prosecution, the preamble²² and provisions²³ of P.D. 119 show that the amendments introduced to R.A. No. 4093 were meant to ensure the government’s constant cooperation and assistance in the running of private development banks. Thus, the prohibition on public officers holding key positions in private development banks appears to address problems that may arise from the confluence of control in both the banking business and the government unit by individual public officers, rather than by the government as an institution.

Accused’s claim that no jurisprudence directly and squarely interprets the last phrase of Section 3(h) of R.A. No. 3019 is not accurate. In *Teves v. Sandiganbayan*,²⁴ the Supreme Court convicted the accused under the second mode of Section 3(h) of R.A. No. 3019 for having pecuniary or financial interest in a cockpit, which is prohibited under Sec. 89 (2) of the Local Government Code of 1991.

Similarly, the Court is not persuaded by accused’s claim that the assailed Decision should be reconsidered because all doubts in the interpretation of P.D. 119 as it applies to R.A. No. 3019 should be resolved in favor of the accused. This contention is a mere rehash of an issue that has already been sufficiently passed upon in the assailed Decision in this manner:

As expressly stated, P.D. No. 119 prohibits full-time appointive or elective public officials from concurrently serving as officer, director, legal counsel, or consultant of any private development bank. Meanwhile, as established in the preceding section, LDB is a private development bank and accused can be considered to have direct financial or pecuniary interest therein as a member of its board of directors.

²² *Supra* at note 7.

²³ *Supra* at notes 9, 10 11 and 12.

²⁴ 488 Phil. 311-349 (2004).

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A presidential decree like P.D. No. 119 is considered a law that was “promulgated by the President in the exercise of legislative powers whenever the same are validly delegated by the legislature or, at present, directly conferred by the Constitution.”

The law is clear and thus, we interpret it according to its plain meaning. In *Republic v. Lacap*, we are guided by the plain meaning rule in interpreting statutes:

The "plain meaning rule" or *verba legis* in statutory construction is that if the statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without interpretation. This rule derived from the maxim *Index animi sermo est* (speech is the index of intention) rests on the valid presumption that the words employed by the legislature in a statute correctly express its intention or will and preclude the court from construing it differently. The legislature is presumed to know the meaning of the words, to have used words advisedly, and to have expressed its intent by use of such words as are found in the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. (Italics in the original.)

Hence, P.D. No. 119 is a law prohibiting public officers from having direct or indirect financial or pecuniary interest in a business, contract or transaction.²⁵ (Footnotes omitted.)

In fine, we are not convinced by accused’s attempt at obfuscating a fairly simple case.

To reiterate, the Information charges him with committing the offense under the second mode of Section 3(h) of R.A. No. 3019. This offense has three elements: (1) that respondent is a public officer; (2) that he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and (3) and that he is prohibited from having such interest by the Constitution or by any law.²⁶

The first element is satisfied by the parties’ stipulation that accused is a public officer, having been the municipal/city mayor of Cabuyao, Laguna during the pertinent period. The second element is likewise satisfied by the common exhibits showing accused’s ownership of shares and directorship in LDB, a private development bank. Finally, the third element is also satisfied, considering that Section 1 of P.D. 119 mandates that “no full-time appointive or elective public official shall at the same time serve as officer, director, legal counsel, or consultant of any private development bank, except in cases where such service is incident to financial assistance provided by the government or a government-owned or controlled corporation to the bank.”

²⁵ Record, Vol. I, p.486.

²⁶ *Teves v. Commission on Elections*, 604 Phil. 717-752 (2009).

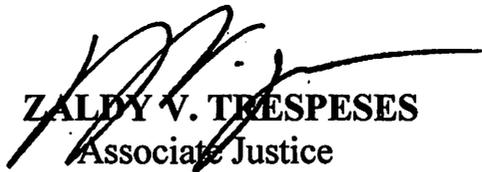
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In sum, accused has not proffered any new argument that would rebut the established facts and conclusions of law made by the Court. He merely anchored his motion on rehashed arguments that had already been sufficiently passed upon and which do not warrant the reversal of the Court's assailed Decision.

WHEREFORE, in view of the foregoing, the motion for reconsideration of accused **ISIDRO LEBRILLA HEMEDES, JR.** is **DENIED** for lack of merit.

SO ORDERED.


ZALDY V. TRESPESSES
Associate Justice

WE CONCUR:


MA. THERESA DOLORES C. GOMEZ-ESTOESTA
Associate Justice, Chairperson


GEORGINA D. HIDALGO
Associate Justice