



REPUBLIC OF THE PHILIPPINES  
SANDIGANBAYAN  
Quezon City  
**THIRD DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

*Plaintiff,*

-versus-

**CYNTHIA GO MORENO,  
PEPITO A. MAGUILIMOTAN,  
NONELA N. VILLEGAS,  
MARILYN P. FLORDELIZA,  
GERTRUDES D. ABABON,  
EVANGELINE D. MANIGOS,**

*Accused.*

Crim. Case No.

**SB-17-CRM-2397**

*Violation of Sec. 3(e) of  
R.A. No. 3019, as  
amended*

**PEOPLE OF THE  
PHILIPPINES,**

*Plaintiff,*

-versus-

**AUGUSTUS CAESAR LIM  
MORENO, PEPITO A.  
MAGUILIMOTAN, NONELA  
N. VILLEGAS, MARILYN P.  
FLORDELIZA, GERTRUDES  
D. ABABON, EVANGELINE  
D. MANIGOS,**

*Accused.*

Crim. Case No.

**SB-17-CRM-2398**

*Violation of Sec. 3(e) of  
R.A. No. 3019, as  
amended*

**PEOPLE OF THE  
PHILIPPINES,**

*Plaintiff,*

-versus-

**AUGUSTUS CAESAR LIM  
MORENO, PEPITO A.  
MAGUILIMOTAN, NONELA  
N. VILLEGAS, MARILYN P.  
FLORDELIZA, GERTRUDES  
D. ABABON, EVANGELINE  
D. MANIGOS,**

*Accused.*

Crim. Case No.

**SB-17-CRM-2399**

*Violation of Sec. 3(h) of  
R.A. No. 3019, as  
amended*

**CYNTHIA GO MORENO,**  
*Accused.*

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

-versus-

Crim. Case No.  
**SB-17-CRM-2400**  
*Violation of Sec. 3(h) of  
R.A. No. 3019, as  
amended*

**AUGUSTUS CAESAR LIM  
MORENO,**  
*Accused.*

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

-versus-

Crim. Case No.  
**SB-17-CRM-2401**  
*For: Violation of Sec. 9 in  
Relation to Sec. 11, R.A.  
No. 6713*

**CYNTHIA GO MORENO,**  
*Accused.*

Present:  
**Cabotaje-Tang, A.M., P.J.,**  
Chairperson  
**Fernandez, B.R., J. and  
Moreno, R.B., J.**

PROMULGATED:  
MAY 22, 2022

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## RESOLUTION

**Moreno, J.:**

For resolution is the *Motion for Reconsideration (of the Decision Promulgated on February 22, 2022)*<sup>1</sup> filed by accused Augustus Caesar Lim Moreno and Evangeline D. Manigos, which seeks reconsideration of the *Decision*<sup>2</sup> finding them guilty beyond reasonable doubt for violation of Republic Act (R.A.) No. 3019, as amended. Accused Moreno is found guilty for violation of Sections 3(e) and 3(h) of R.A. No. 3019 in Criminal Case Nos. SB-17-CRM-2398 and SB-17-CRM-2400, respectively, while

<sup>1</sup> Records, Vol. IV, pp. 198-263.

<sup>2</sup> *Id.* at pp. 109-146.

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Criminal Case Nos. SB-17-CRM-2397-2401

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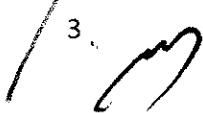
accused Manigos is found guilty for violation of Section 3(e) of R.A. No. 3019 in Criminal Case Nos. SB-17-CRM-2397 and SB-17-CRM-2398.

In their *Motion for Reconsideration*, accused Moreno maintains that the owner of AVG Bakeshop is Lyn Tojeno, as evidenced by the Deed of Absolute Sale (*Exhibit 2*) executed on May 10, 2007 between Cynthia G. Moreno and the former. The Notarial Register (*Exhibit 2-A*), the Certification dated December 14, 2020 (*Exhibit 2-B*) and the Certificate of Authority for a Notarial Act (*Exhibit 2-C*) prove that the Deed of Sale is true. Moreno attached in the instant motion an affidavit executed by Tojeno detailing on how she acquired ownership of AVG Bakeshop, her use of receipts in the name of Cynthia G. Moreno after taking over the business, and the business permits issued to her registered in the Business Permit and Licensing Office of LGU Aloguinsan. He also attached the Sworn Statement of Assets, Liabilities, and Net Worth Disclosure of Business Interest and Financial Connection and Identification of Relative in the Government Service as of December 31, 2007 and December 31, 2008, showing that AVG Bakeshop is not listed as one of the properties of Cynthia G. Moreno.

According to Moreno, saying that the sole proprietorship belongs to Cynthia G. Moreno is contrary to DTI Department Order No. 10-01, Series of 2010. Section 25 thereof allows the transfer, sale or assignment of business name which is accompanied with substantially all of the business or substantially all of the fixtures and equipment used in and about the business of the registrant. He claims that it is the duty of Tojeno, the applicant-transferee, to execute and submit an affidavit stating that the transfer is for the purpose of acquiring the business name only and such transfer is not intended to defraud the creditors of the registrant-transferor.

He also stresses that the COA neither issued a Notice of Suspension nor a Notice of Disallowance as preliminary to filing the charges against him. It simply recommended that "the municipal mayor and vice-mayor are advised to refrain from doing the prohibited acts of government officials to avoid liability for sanctions that may be imposed under existing laws."

Moreno further argues that the Deed of Sale with certifications of proof of legitimacy and validity, as well as other evidence for the defense, were brushed aside by the Court. He avers that trial should not have started had his counter-affidavit

   
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with the attached Deed of Sale was not overlooked in the early stages of investigation.

Accused Manigos, for her part, contends that no proof was shown that she, as member of the BAC, acted as conspirator in exhibiting manifest partiality or evident bad faith in the discharge of her duties. She claims no knowledge or participation in the preparation of the disbursement vouchers.

Both accused argue that their right to speedy disposition of cases under the Constitution was violated. The complaint docketed as CPL-V-12-0298 was filed on April 27, 2012 and the Joint Resolution was approved by the Ombudsman on November 28, 2016, or more than four (4) years. They insist that the length of delay is very evident, reckoned from the time the investigation was initiated up to the filing of Information in Court in 2018.

The prosecution in its *Consolidated Opposition*<sup>3</sup> counters that the annexes in the instant motion should not be considered pursuant to Section 34, Rule 132 of the Revised Rules of Court. It emphasizes that the affidavit of Tojeno is hearsay evidence and should not be accorded any evidentiary weight.

It further contends that there is no evidence presented showing compliance with the requirements under Section 25 of DTI DAO No. 01, s. 2010. Accused Moreno has presented neither a DTI-issued Certificate of Registration of Bulk Sales nor an affidavit from Tojeno stating that the transfer is not intended to defraud the creditors of the sole proprietorship. Moreno failed to present evidence showing that the Certificate of Business Name Registration in the name of his spouse had been cancelled prior to the purported transfer of AVG Bakeshop to Tojeno in May 2007.

As to the argument of accused Moreno that he could not be held criminally liable since the COA did not issue a Notice of Suspension or a Notice of Disallowance, the prosecution argues that the proceedings before the COA only pertain to the civil liability and accountability of an offending government official.

On the argument that these cases would not have proceeded to trial had accused Moreno's Counter-Affidavit with attached Deed of Sale been considered in the early stages of the investigation, the prosecution emphasizes that the fact-finding

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<sup>3</sup> *Id.* at pp. 287-300.



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investigation conducted by Graft Investigation and Prosecution Officer is different from the preliminary investigation which resulted in his indictment before the Honorable Court. The prosecution explains that fact-finding investigations conducted by Ombudsman investigators for case build-up are non-adversarial. If the result of the fact-finding investigation supports a finding of *prima facie* case, a complaint is then filed before the offices of the OMB responsible for conducting preliminary investigations. It is during the preliminary investigation that the respondent is directed to submit a counter-affidavit and supporting evidence. If after due consideration of the complaint, counter-affidavits and evidence submitted by the parties, the investigating officer finds probable cause to charge the respondent before the courts, the appropriate Information/s will be filed. As may be gleaned from the OMB's Joint Resolution, accused Moreno's counter-affidavit was given due consideration. However, after careful consideration of the evidence presented by the parties, including the Deed of Sale attached to his counter-affidavit, the OMB found probable cause to indict him and his co-accused before the Honorable Court.

With respect to the contention that the Deed of Sale was accompanied by proof of legitimacy and validity, the prosecution points out that the Certificate of Authority for a Notarial Act does not mention the supposed Deed of Sale of AVG Bakeshop, and does not mention the period within which the notary public was authorized to notarize.

On Manigos' contention that there is no proof that she conspired with her co-accused, the prosecution reiterates the findings of the Court that the contracts could not have been awarded to AVG Bakeshop without her participation in signing the Abstracts of Canvass.

Lastly, it contends that the Court has already ruled that proceedings before the OMB did not suffer from inordinate delay that would warrant a dismissal of the instant cases.

**THE COURT'S RULING**

The subject motion seeks for the reversal of the *Decision* which convicted accused Moreno and Manigos of the offenses charged against them. After due consideration, the Court is not persuaded by the arguments raised by the accused.




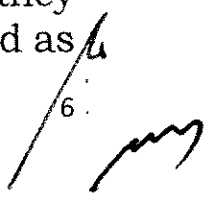
Accused Moreno maintains that his spouse, Cynthia G. Moreno, already sold AVG Bakeshop in May 2007 to Lyn Tojeno. However, despite the alleged sale, the DTI and BIR records, as well as the cash slips, show that AVG Bakeshop was still registered under the name of Cynthia G. Moreno at the time of the procurement transactions. As ruminated by the Court in its assailed *Decision*:

As previously discussed, based on the DTI and BIR records, AVG Bakeshop was owned by and registered under Cynthia G. Moreno at the time of the procurement of the food supplies. Accused Augustus Moreno claimed that his spouse, Cynthia G. Moreno, has already sold the bakeshop as early as May 10, 2007 to a certain Lyn Tojeno. However, despite the alleged sale to Tejano, the cash slips issued by AVG Bakeshop during the subject transactions show that Cynthia G. Moreno was the sole proprietor thereof. The TIN in the said cash slips also shows that AVG Bakeshop was owned by Cynthia G. Moreno. This is confirmed by BIR Chief Revenue Officer II Samuel Capada that Cynthia G. Moreno is the holder of the TIN registration of AVG Bakeshop and that there is no other TIN assigned to her.

Based on the foregoing, it can be inferred that the ownership of AVG Bakeshop was not completely transferred to Tejano and that Cynthia G. Moreno still has pecuniary interest therein.

Accused Moreno additionally introduced in the present *Motion for Reconsideration* an affidavit of Tojeno, detailing on how she acquired ownership of AVG Bakeshop, her use of receipts in the name of Cynthia G. Moreno after taking over the business, and the business permits issued to her registered in the Business Permit and Licensing Office of LGU Aloguinsan. The Sworn Statement of Assets, Liabilities, and Net Worth Disclosure of Business Interest and Financial Connection and Identification of Relative in the Government Service as of December 31, 2007 and December 31, 2008 showing that AVG Bakeshop is not listed as one of the properties of Cynthia G. Moreno was also attached in the instant motion.

However, it bears stressing that the affidavit of Tojeno and the other annexes attached to the instant motion were not presented during trial and thus, cannot be considered by the Court. For these documents to be considered by the court, they should have been presented during trial and formally offered as

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evidence; otherwise, they are excluded and rejected.<sup>4</sup> Not having formally offered, these annexes do not form part of evidence on record and should not be considered and accorded any probative weight.

Accused Moreno further cites DTI Department Order No. 10-01, Series of 2010, arguing that it is contrary to Section 25 of the said Order to say that the sole proprietorship belongs to Cynthia G. Moreno. He claims that it is the duty of Tojeno, as the applicant-transferee, to execute and submit an affidavit stating that the transfer is for the purpose of acquiring the business name only and such transfer is not intended to defraud the creditors of the registrant-transferor.

It must be noted that DTI Department Order No. 10-01, Series of 2010 invoked by Moreno was enacted three years after the alleged sale. At any rate, Section 25 thereof states:

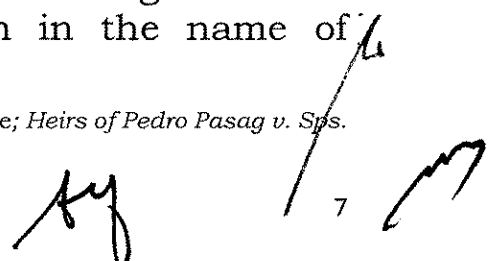
Transfer, sale or assignment of the BN which is accompanied with substantially all of the business or substantially all of the fixtures and equipment used in and about the business of the registrant falling under Act No. 3952 (Bulk Sales Law) shall be supported by a DTI-issued Certificate of Registration of Bulk Sales. Otherwise, the applicant-transferee shall be required to execute and submit an affidavit stating that the transfer is for the purpose of acquiring the BN only and such transfer is not intended to defraud the creditors of the registrant-transferor. In both cases, the cancellation of the Certificate of BN Registration under the latter's name shall be required prior to such transfer.

From the foregoing provision, a DTI-issued Certificate of Registration of Bulk Sales or an affidavit by the applicant-transferee stating that the transfer is for the purpose of acquiring the business name only and such transfer is not intended to defraud the creditors of the registrant-transferor is indispensable in the sale of business name when accompanied with the sale of substantially all of the business or its fixtures and equipment.

The defense did not present any of the above-mentioned documents. It did not present evidence showing that the Certificate of Business Name Registration in the name of

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<sup>4</sup> Rule 132, 2019 Amendments to the 1989 Revised Rules on Evidence; *Heirs of Pedro Pasag v. Sps. Parocha, et al.*, G.R. No. 155483, April 27, 2007.

Handwritten signatures and a circled number 7.

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Cynthia G. Moreno had been cancelled prior to the alleged transfer of AVG Bakeshop to Tojeno in May 2007. Hence, it cannot be said that there is a complete transfer of the business to Tojeno. This only strengthens the position of the prosecution that the alleged sale did not result in the complete divestment of Cynthia Moreno's ownership of the AVG Bakeshop.

On accused Moreno's contention that there was neither a Notice of Suspension nor a Notice of Disallowance issued by the COA as preliminary to filing the charges against him, such is not a prerequisite to charge him before the court. It is within the jurisdiction of the Office of the Ombudsman to determine probable cause to hold the accused for trial. The findings of the COA does not preclude the Office of the Ombudsman from conducting an independent investigation of the existence of probable cause to hold him for trial.<sup>5</sup>

Neither a Notice of Suspension nor a Notice of Disallowance determines whether the accused is guilty of the crimes charged against him. The Office of the Ombudsman is given the power to investigate on its own an illegal act or omission of a public official,<sup>6</sup> and for the court to adjudge his culpability.

The Court also finds unmeritorious the argument of Moreno that the Deed of Sale and other evidence were brushed aside. He claims that trial should not have started had his counter-affidavit with the attached Deed of Sale was not disregarded in the early stages of the investigation.

Contrary to his claim, as can be gleaned from the *Joint Resolution* of the Office of the Ombudsman,<sup>7</sup> his counter-affidavit and the Deed of Sale attached thereto were taken into consideration. However, after consideration of the evidence presented by the parties, the Office of the Ombudsman found probable cause to charge the accused before this Court.

As for Manigos' contention that there is no proof that she acted as conspirator, her signatures on the Abstracts of Canvass were a clear manifestation of her assent and participation or complicity to the procurement transactions. This facilitated the procurement of food supplies from AVG Bakeshop. As held in the Court's *Decision*:

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<sup>5</sup> *Dimayuga v. Office of the Ombudsman*, G.R. NO. 129099, July 20, 2006.

<sup>6</sup> *Aguinaldo vs. Sandiganbayan*, G.R. No. 124471, November 28, 1996.

<sup>7</sup> *Records*, Vol. 1, pp. 7-28.



Manigos even confirmed that prior to recommending the award of the contract to a particular supplier, the BAC must first validate or verify that the supplier is technically, financially, and legally capable. Notwithstanding this function, the BAC still allowed AVG Bakeshop to be included in the canvass and signed the Abstracts of Canvass, which became the basis for the award of transactions to the said business. It bears reiterating that as a BAC member, Manigos is duty-bound to ensure that the standards set forth by R.A. No. 9184 and its IRR are faithfully observed. In affixing her signature in the Abstracts of Canvass and in recommending the resort to the alternative mode of shopping in disregard of the laws, Manigos, as BAC member, clearly acted with manifest partiality in favor of AVG Bakeshop.

On the alleged violation of accused's constitutional right to speedy disposition of cases, it must be pointed out that this has already been exhaustively discussed by the Court in its Resolutions promulgated on April 17, 2018<sup>8</sup> and June 27, 2018.<sup>9</sup> Hence, this issue is already moot at this point.

In fine, the Court finds no compelling reason to warrant a reversal of the assailed *Decision*.

**WHEREFORE**, in light of all the foregoing, the *Motion for Reconsideration* filed by accused Augustus Caesar Lim Moreno and Evangeline D. Manigos is **DENIED** for lack of merit.

**SO ORDERED.**

Quezon City, Metro Manila, Philippines.

  
**RONALD B. MORENO**  
Associate Justice

WE CONCUR:

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

  
**BERNELITO R. FERNANDEZ**  
Associate Justice

<sup>8</sup> *Id* at pp. 345-356.

<sup>9</sup> *Id* at pp. 427-441.