Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

REPUBLIC OF THE PHILIPPINES,
Petitioner,

- versus -

ALFREDO R. DE BORJA,
Respondent.

G.R. No. 187448

Present:

SERENO, *C.J.*, Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

Promulgated:
JAN 09 2017

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DECISION

CAGUIOA, *J.*:

Before this Court is an Appeal by *Certiorari*[1] filed under Rule 45 of the Rules of Court (Petition), seeking review of the Resolutions dated July 31, 2008[2] and March 25, 2009[3] issued by the Sandiganbayan (SB) - First Division in Civil Case No. 0003.[4] The Resolution dated July 31, 2008 granted respondent Alfredo De Borja's (De Borja) Demurrer to Evidence dated April 15, 2005[5] (Demurrer to Evidence), while the Resolution dated March 25, 2009 denied petitioner Republic of the Philippines' (Republic) Motion for Reconsideration dated August 15, 2008[6] of the Resolution dated July 31, 2008.

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1 *Rollo*, pp. 11-32.
2 Id. at 54-63. Penned by Presiding Justice Diosdado M. Peralta (now a Member of this Court), with Associate Justices Rodolfo A. Ponferrada and Efren N. De La Cruz concurring.
3 Id. at 49-52. Penned by Associate Justice Norberto Y. Geraldez, with Associate Justices Efren N. De La Cruz and Rodolfo A. Ponferrada concurring.
4 Entitled "*Republic of the Philippines v. Geronimo Z. Velasco, Ferdinand E. Marcos, Imelda R. Marcos, Alfredo R. De Borja, Epifanio Verano, Gervel Inc., Telin Development Corporation, Republic Glass Corporation, Nobel (Phils.) Inc., ACI Philippines, Inc., Private Investments Co. for Asia, Central Azucarera De Danao, Malaganas Coal Mining Corporation, S.A. (Panama), Decision Research Management (Hongkong), Atlantic Management Corp. (USA)*".
5 *Rollo*, pp. 484-508.
6 Id. at 68-74.

The Factual Antecedents

The case stems from a Complaint[7] filed by petitioner Republic, represented by the Presidential Commission on Good Government, for "Accounting, Reconveyance, Forfeiture, Restitution, and Damages" (Complaint) before the SB (Civil Case No. 0003) for the recovery of ill-gotten assets allegedly amassed by the individual respondents therein, singly or collectively, during the administration of the late President Ferdinand E. Marcos.[8]

Geronimo Z. Velasco (Velasco), one of the defendants in Civil Case No. 0003, was the President and Chairman of the Board of Directors of the Philippine National Oil Company (PNOC).[9] Herein respondent De Borja is Velasco's nephew.[10]

It appears from the records that PNOC, in the exercise of its functions, would regularly enter into charter agreements with vessels and, pursuant to industry practice, vessel owners would pay "address commissions" to PNOC as charterer, amounting to five percent (5%) of the total freight.[11] Allegedly, during the tenure of Velasco, no address commissions were remitted to PNOC.[12]

Instead, starting 1979, the percentage of the address commission no longer appeared in the charter contracts and the words "as agreed upon" were substituted therefor, per instructions of Velasco.[13] As a result, the supposed address commissions were remitted to the account of Decision Research Management Company (DRMC), one of the defendant corporations in Civil Case No. 0003 and the alleged conduit for address commissions.[14] Velasco was likewise alleged to have diverted government funds by entering into several transactions involving the purchase of crude oil tankers and by reason of which he received bribes, kickbacks, or commissions in exchange for the granting of permits, licenses, and/or charters to oil tankers to service PNOC.[15]

Given the foregoing, petitioner Republic claimed that it was De Borja who collected these address commissions in behalf of Velasco, basing its allegation on the testimony of Epifanio F. Verano[16] (Verano), a witness for

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7 Third Amended Complaint dated September 20, 1991 (id. at 188-213). The Third Amended Complaint was admitted by the SB in its Resolution promulgated on January 28, 1992 (id. at 214-219).

8 Id. at 189.

9 Id. at 201.

10 Id. at 192.

11 Id. at 203.

12 See id.

13 Id.

14 Id.

15 Id. at 200-201.

16 Vice President of PNOC and allegedly acted as negotiator for PNOC with respect to the chartered vessels (id. at 203). While originally, Epifanio F. Verano was a defendant, in the SB's Resolution dated March 21, 1995, the PCGG granted him full immunity from criminal prosecution in exchange for his testimony in connection with Civil Case No. 0003 (See *rollo*, p. 379).

petitioner Republic. De Borja was further alleged to have acted as Velasco's dummy, nominee, and/or agent for corporations he owned and/or controlled, such as DRMC.[17]

After the filing of the parties' responsive pleadings, trial on the merits ensued. Subsequently, upon the conclusion of its presentation of evidence, petitioner Republic submitted its Formal Offer of Evidence dated March 6, 1995.[18]

On April 15, 2005, respondent De Borja filed his Demurrer to Evidence of even date, stating therein, among others: (i) that Verano, on two (2) occasions, testified that he delivered an envelope to Velasco who, in turn, instructed him to deliver the same to De Borja; (ii) that Verano admitted that the envelope was sealed; (iii) that Verano did not open the envelope and therefore had no knowledge of the contents thereof; (iv) that Verano did not deliver the envelope personally to De Borja; and (v) that Verano did not confirm whether De Borja in fact received the said envelope.[19]

In turn, petitioner Republic filed a Comment/Opposition dated May 9, 2005,[20] to which respondent De Borja filed a Reply dated June 2, 2005.[21]

Ruling of the SB

In its Resolution dated July 31, 2008, the SB found that the evidence presented was insufficient to support a claim for damages against De Borja, thereby granting respondent De Borja's Demurrer to Evidence. In the said Resolution, the SB ratiocinated:

> After an assessment of the arguments raised by defendant De Borja and the comments thereto of plaintiff, **this Court finds that the plaintiff has failed to present sufficient evidence to prove that defendant De Borja is liable for damages as averred in the complaint.**
>
> Among the witnesses presented by plaintiff, the Court focused on the testimony of the witness for plaintiff Epifanio F. Verano, who was presented to prove that on two occasions, defendant Velasco instructed Verano to deliver to defendant De Borja envelopes containing money which constituted commissions given by ship brokers.
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> Upon cross-examination, however, **witness Verano admitted that although he was instructed to deliver two envelopes to the office of De Borja, he did not know for a fact that De Borja actually received them. Moreover, witness Verano testified that after he delivered the envelopes, he did not receive any word that they did reach De Borja, nor did Verano confirm De Borja's receipt of them.**

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17 Id. at 203.
18 Id. at 328-352.
19 Id. at 487-488.
20 Id. at 509-525.
21 Id. at 22.

x x x x

> Plaintiff also sought to prove defendant De Borja's participation in the alleged utilization of public funds by the affidavit executed by Jose M. Reyes. However, the affiant Jose M. Reyes never testified in open court, as he had a heart attack two days before he was scheduled to take the witness stand. x x x
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> x x x In this case, **where the plaintiff's evidence against defendant De Borja consists only of Verano's testimony and Reyes' affidavit, no preponderance of evidence has been satisfactorily established.**[22] (Emphasis supplied)

Petitioner Republic then filed its Motion for Reconsideration dated August 15, 2008,[23] which was denied by the SB in the Resolution March 25, 2009.

Hence, petitioner Republic filed the instant Petition solely with respect to the liability of respondent De Borja, claiming that the SB erred in granting the Demurrer to Evidence and in denying its Motion for Reconsideration dated August 15, 2008.

In a Resolution dated July 15, 2009,[24] the Court required respondent De Borja to file a Comment. In compliance with the Court's directive, respondent De Borja filed his Comment dated September 11, 2009,[25] reiterating the insufficiency of the evidence adduced before the SB (*e.g.*, testimony of Verano, affidavit of deceased Jose M. Reyes).

Petitioner Republic then filed its Reply dated June 10, 2010[26] in due course. A Motion for Early Resolution dated June 7, 2011[27] was thereafter filed by respondent De Borja, which was noted by the Court in its Resolution dated August 10, 2011.[28]

Parenthetically, on June 16, 2011, the SB rendered a Decision dismissing Civil Case No. 0003 with respect to the remaining respondents therein. This, in turn, was subject of an appeal before this Court[29] and docketed as G.R. No. 199323, entitled "Republic of the Philippines vs. Geronimo Z. Velasco, et al". On July 28, 2014, the Court rendered a Resolution, denying the appeal. Thereafter, an Entry of Judgment was made with respect to G.R. No. 199323. Subsequently, on December 6, 2016, respondent De Borja filed a Motion to Dismiss dated December 2, 2016,[30] on the ground that the Petition had been rendered moot and academic by

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22 Id. at 60-62.
23 Id. at 68-74.
24 Id. at 527-528.
25 Id. at 545-583.
26 Id. at 645-654.
27 Id. at 659-662.
28 Id. at 665.
29 First Division.
30 *Rollo*, pp. 667-678.

reason of the said Entry of Judgment, which affirmed the June 16, 2011 Decision and November 15, 2011 Resolution of the SB that dismissed Civil Case No. 0003.

Issue

The issue presented for the Court's resolution is whether or not the SB committed reversible error in granting respondent De Borja's Demurrer to Evidence.

The Court's Ruling

Before proceeding to the substantive issue in this case, and for the guidance of the bench and bar, the Court finds it proper to first discuss procedural matters.

A demurrer to evidence is a motion to dismiss on the ground of insufficiency of evidence. It is a remedy available to the defendant, to the effect that the evidence produced by the plaintiff is insufficient in point of law, whether true or not, to make out a case or sustain an issue.[31] The question in a demurrer to evidence is whether the plaintiff, by his evidence in chief, had been able to establish a *prima facie* case.[32]

In *Felipe v. MGM Motor Trading Corp.*,[33] wherein the propriety of the trial court's granting of a demurrer to evidence was the crux of the controversy, we held that a review of the dismissal of the complaint naturally entailed a calibration of the evidence on record to properly determine whether the material allegations of the complaint were amply supported by evidence. This being so, where the resolution of a question requires an examination of the evidence, the credibility of the witnesses, the existence and the relevance of surrounding circumstances, and the probability of specific situations, the same involves a question of fact.[34]

In this regard, the Court emphasizes that factual questions are not the proper subject of a petition for review under Rule 45, the same being limited only to questions of law.[35] Not being a trier of facts, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below.[36] For such reasons, the Court has consistently deferred to the factual findings of the trial court, in light of the unique opportunity afforded them to observe the demeanor and spontaneity of the witness in assessing the credibility of their testimony.[37]

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31 See *Felipe v. MGM Motor Trading Corp.*, G.R. No. 191849, September 23, 2015, p. 5.
32 *Spouses Condes v. Court of Appeals*, 555 Phil. 311, 323 (2007).
33 *Felipe v. MGM Motor Trading Corp.*, supra note 31, at 5-6.
34 *Zoleta v. Sandiganbayan (Fourth Division)*, G.R. No. 185224, July 29, 2015, 764 SCRA 110, 121.
35 Section 1, Rule 45, RULES OF COURT.
36 *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).
37 See *People v. Gahi*, 727 Phil. 642, 658 (2014).

Further, in his Comment dated September 11, 2009, respondent De Borja points out the inadvertence of petitioner Republic, through the Office of the Solicitor General, to submit proof of service on the Sandiganbayan of a copy of the instant Petition and the preceding Motion for Extension of Time to File Petition for Review dated April 29, 2009.[38] In this regard, the failure of petitioner Republic to strictly comply with Section 5(d), Rule 56 of the Rules of Court already renders its Petition dismissible.[39]

Nevertheless, considering that rules of procedure are subservient to substantive rights, and in order to finally write *finis* to this prolonged litigation, the Court hereby dispenses with the foregoing lapses in the broader interest of justice. The Court has repeatedly favored the resolution of disputes on the merits, rather than on procedural defects.

Further, anent the claim of respondent De Borja that the Petition had already been rendered moot and academic due to the dismissal of Civil Case No. 0003 by the SB, the Court finds the same lacking in merit. It is axiomatic that a dismissal on the basis of a demurrer to evidence is similar to a judgment; it is a final order ruling on the merits of a case.[40] Hence, when petitioner Republic brought the instant appeal before this Court, the same was limited to respondent De Borja's liability alone. In this regard, the propriety of the SB's granting of respondent De Borja's Demurrer to Evidence, which is the subject matter of this case, is separate and distinct from the subject matter of the appeal in G.R. No. 199323, *i.e.*, liability of Velasco, et al.

Thus, respondent De Borja's claim in his Motion to Dismiss that "the complaint against [him] was dismissed not only once – but twice" is inaccurate and legally flawed. Perforce, it is of no moment that the SB dismissed Civil Case No. 0003 as the same was merely with respect to the respondents other than respondent De Borja who, by then, was already confronted with the instant appeal brought by petitioner Republic.

The singular question for the Court now is this: whether petitioner Republic was able to adduce sufficient evidence to prove the alleged complicity of respondent De Borja with the required quantum of evidence.

After a judicious review of the records and the submissions of the parties, the Court rules in the negative.

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38 *Rollo*, pp. 547-548.

39 SEC. 5. *Grounds for dismissal of appeal.* – The appeal may be dismissed *motu proprio* or on motion of the respondent on the following grounds:

x x x x

(d) Failure to comply with the requirements regarding proof of service and contents of and the documents which should accompany the petition;

40 *Republic v. Gimenez*, G.R. No. 174673, January 11, 2016, p. 2.

Case law has defined "burden of proof" as the duty to establish the truth of a given proposition or issue by such quantum of evidence as the law demands in the case at which the issue arises.[41] In civil cases, the burden of proof is on the plaintiff to establish his case by preponderance of evidence, *i.e.*, superior weight of evidence on the issues involved.[42] "Preponderance of evidence" means evidence which is of greater weight, or more convincing than that which is offered in opposition to it.[43]

In a demurrer to evidence, however, it is premature to speak of "preponderance of evidence" because it is filed *prior* to the defendant's presentation of evidence; it is precisely the office of a demurrer to evidence to expeditiously terminate the case *without the need* of the defendant's evidence.[44] Hence, what is crucial is the determination as to whether the plaintiff's evidence entitles it to the relief sought.

Specifically, the inquiry in this case is confined to resolving whether petitioner Republic is entitled to "Accounting, Reconveyance, Forfeiture, Restitution, and Damages" based on the evidence it has presented.

As repeatedly stressed by respondent De Borja, the only evidence presented with respect to his liability is the testimony of Verano and the affidavit of one Jose M. Reyes, as summarized below:

(i) Affidavit of Jose M. Reyes

With respect to the affidavit of Jose M. Reyes, his non-appearance before the SB due to his untimely demise rendered the same inadmissible in evidence for being hearsay, as correctly observed by the SB.[45]

(ii) Testimony of Verano

Verano was presented to prove that on two (2) occasions, Velasco had instructed him to deliver to De Borja envelopes allegedly containing the "address commissions".[46]

SOL URETA

Q: Could you tell us about, if you know, any particular instance any payment by address commission to PNOC?

A: I begly (sic) recall. A broker coming to the house handing me a brown envelope for delivery to the Minister.

Q: Who is the Minister?

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41 *Far East Bank & Trust Company v. Chante*, 719 Phil. 221, 233 (2013).
42 Section 1, Rule 133, RULES OF COURT.
43 *Spouses Condes v. Court of Appeals*, supra note 32.
44 Id. at 323-324.
45 See *rollo*, p. 61.
46 Id. at 60.

A: Minister Velasco.

x x x x

Q: **Do you know the contents of that envelope, Mr. witness?**

A: **It was sealed. Since it is for somebody else I did not open it.**

Q: What did he say at that time he handed to you that envelope?

A: He said that is from "X-C".

x x x x

Q: Would you tell us what was your understanding as to the contents of that particular envelope?

ATTY. MENDOZA

Objection, your Honor please, it calls for an opinion.

PJ GA[R]CHITORENA

Lay the basis…

SOL URETA

Q: Mr. witness, according to you the envelope was given to you and for what purpose again?

ATTY. MENDOZA

Already answered. He said it was to be delivered.

PJ GA[R]CHITORENA

Q: **And he did not know the contents because it was a sealed envelope.**

SOL URETA

Q: **Were there any indication from Mr. Heger at that time as to what that particular envelope contained?**

A: **No, he did not say so.**

Q: But then could you tell us what was your impression…

PJ GA[R]CHITORENA

Impression as to what?

SOL URETA

As to the nature of delivery.

ATTY. MENDOZA

Objection, that calls for an opinion.

x x x x

PJ GA[R]CHITORENA

> **It could contain shirt, it could contain pieces of paper, it could contain clippings. You must show that you have basis for that question. But in fact he said, he do (*sic*) not know. He did (*sic*) know what contents was (*sic*). Any question along that line will be a guess.** He is not expert at feelings (*sic*) things in coming out with a result... We know which was you want (*sic*) to go and for that very reason Mr. Mendoza is objecting because you give us the false.

Q: What did you do with that envelope for heaven's sake?

A: I brought it to him. What will I do with it it's not mine. I was told to give it to the Minister.

SOL URETA

Q: What happened when you weren't (*sic*) to the Minister?

A: To bring it to the office of Mr. de Borja.

x x x x

Q: What did Mr. Velasco say with respect to that envelope.

A: He told me to bring it to Mr. de Borja.

Q: Who is Mr. de Borja?

A: At that time he was connected with Gerver.

Q: **What happened when you brought it to the office of Mr. de Borja?**

A: **I brought it to the office of Mr. de Borja and he wasn't there, so I just left it.**

x x x x

SOL URETA

Q: Were there other occasions when envelope (*sic*) was given to you by a broker?

A: I recall once in early 80's.

Q: Who was the particular broker that brought to you the envelope?

A: Mr. David Reynolds.

Q: Will you tell us the circumstance of that delivery?

A: Well, he just came to the office I thought he was going there for a cup of coffee and then he said give this to Mr. Velasco, that's it.

Q: Did you know where that envelope that (*sic*) particular time?

A: I brought it over to Makati because I was holding office along Roxas Blvd.

Q: To whom did you bring that envelope?

A: To the office of Mr. Velasco.

Q: What happened afterwards when you brought the envelope to Mr. Velasco?

A: Again he told me to bring it over to Gerver.

Q: Did you bring it to Gerver?

A: I left it there.

PJ GA[R]CHITORENA

Q: To whom did you left (*sic*) it?

A: **Supposed to be for Mr. de Borja, but Mr. de Borja was not around.**

x x x x

Q: The first one, when was it more or less, when somebody called, Mr. Heger?

A: Late '70's, your Honor. [t.s.n. pp. 114-123, March 1995-Verano on Direct.][47] (Additional emphasis supplied)

Moreover, during Verano's cross-examination, it was revealed that he was not knowledgeable of the contents of the envelopes and that he also never confirmed whether respondent De Borja had actually received them:

Q: Referring to this envelope which you mentioned in your direct testimony, both the envelopes delivered by Mr. Hagar to you and Mr. Reynolds. They were sealed?

A: **Right.**

Q: You did not open them?

A: **No, sir.**

Q: When you brought to the Office of Mr. Velasco they remained sealed?

A: **They remained sealed.**

Q: **And when you brought them to the Office of Mr. De Borja...**

A: **They remained sealed** [t.s.n., p. 162 March 1995-Verano on Cross].

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[47] Id. at 555-561.

PJ GA[R]CHITORENA

Q: Regarding these two envelopes, you said that you delivered these envelopes in the Office of Mr. de Borja?

A: Yes, your Honor.

Q: But de Borja was not around at that time?

A: **That is right.**

PJ GA[R]CHITORENA

Q: **After delivery did you receive any word that the envelopes did not reach Mr. de Borja?**

WITNESS

A: **I did not receive any report.**

Q: From anybody?

A: From anybody.

Q: Did you meet Mr. de Borja anytime before the delivery?

A: No, sir.

Q: Subsequently did you meet Mr. de Borja?

A: Yes.

Q: Did you bring the matter of the envelope?

A: No, sir.

Q: Did he bring the matter with you?

A: No, sir. [t.s.n., pp. 21-22, 2 March 1995 – Verano, Questions from the Court].[48]

In the face of the foregoing testimony, the insinuations of petitioner Republic in the instant Petition can best be described as speculative, conjectural, and inconclusive at best. Nothing in the testimony of Verano reasonably points, or even alludes, to the conclusion that De Borja acted as a dummy or conduit of Velasco in receiving address commissions from vessel owners.

The Court joins and concurs in the SB's observations pertaining to Verano's want of knowledge with respect to the contents of the envelopes allegedly delivered to respondent De Borja's office, which remained sealed the entire time it was in Verano's possession. As admitted by Verano himself, he did not and could not have known what was inside the envelopes when they were purportedly entrusted to him for delivery. In the same vein,

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[48] Id. at 573-574.

Verano did not even confirm respondent De Borja's receipt of the envelopes, despite numerous opportunities to do so. Relatedly, it was further revealed during the cross-examination of Verano that in the first place, Velasco did not even deal directly with brokers.[49]

All told, the Court finds that the evidence adduced is wholly insufficient to support the allegations of the Complaint before the SB. Thus, for failure of petitioner Republic to show any right to the relief sought, the Court affirms the SB in granting the Demurrer to Evidence.

WHEREFORE, premises considered, the Petition is **DENIED** and the Resolutions dated July 31, 2008 and March 25, 2009 of the Sandiganbayan - First Division in Civil Case No. 0003 are hereby **AFFIRMED**.

SO ORDERED.

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

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[49] Id. at 577-578.

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

MARIA LOURDES P. A. SERENO
Chief Justice