Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

CAMP JOHN HAY DEVELOPMENT CORPORATION, REPRESENTED BY MANUEL T. UBARRA, JR., Petitioner, -versus- **OFFICE OF THE OMBUDSMAN, ARNEL PACIANO D. CASANOVA, FELICITO C. PAYUMO, ZORAYDA AMELIA C. ALONZO, TERESITA A. DESIERTO, MA. AURORA GEOTINA-GARCIA, FERDINAND S. GOLEZ, ELMAR M. GOMEZ AND MAXIMO L. SANGIL,** Respondents.	**G.R. No. 225565** Present: LEONEN, *J.*, *Chairperson,* HERNANDO, INTING, DELOS SANTOS, and ROSARIO*, *JJ.* **Promulgated:** January 13, 2021 MisOccBat

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DECISION

LEONEN, *J.*:

The stipulations of a contract are binding on the parties. A lessor cannot be compelled to accept the lessee's requests which are inconsistent with the terms of the contract.

* On leave.

Further, the intentional inaction or deliberate refusal for an improper purpose must be established by the person charging a public officer with a violation of Section 3(f) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act.

This Court resolves a Petition for Certiorari[1] assailing the Office of the Ombudsman's Joint Resolution[2] and Joint Order[3] dismissing the Complaint-Affidavit filed by Camp John Hay Development Corporation (CJH Development) against officials of the Bases Conversion Development Authority (BCDA) for violation of Section 3(e) and (f) of Republic Act No. 3019[4] and Sections 4(c) and 5(a) of Republic Act. No. 6713.

On October 19, 1996, CJH Development entered into a Lease Agreement[5] with BCDA for the lease of 246.99 hectares of land within the John Hay Special Economic Zone. The term of the Lease Agreement was for a period of 25 years and was renewable for another 25 years.[6] Under the Lease Agreement, CJH Development had the obligation to develop the leased area into a family-oriented complex for tourism in exchange for its enjoyment of a preferential tax rate of 5% on gross income.[7] However, in *John Hay People's Alternative Coalition v. Lim*,[8] this Court invalidated Section 3 of Proclamation No. 420 which conferred to CJH the incentives of a Special Economic Zone. This led to CJH Development being assessed the normal tax rate of 32% which allegedly resulted in losses and standstill for some of its projects.[9]

On July 14, 2000, the parties executed a Memorandum of Agreement (2000 MOA) where CJH Development adjusted the initial lease period from 1998 to 1999. Moreover, the fixed rental payments were made payable in installments.[10] Similarly, on July 18, 2003, another Memorandum of Agreement (2003 MOA) was executed which revised CJH Development's installment payments for the years 1999 and 2000 and restructuring its obligations for 2001 and 2002.[11]

Finally, on July 1, 2008, the parties entered into a Restructuring Memorandum of Agreement (RMOA),[12] where CJH Development

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1 *Rollo*, pp. 3–25.
2 Id. at 26–33. The January 15, 2016 Joint Resolution was issued by Graft Investigation and Prosecution Officer I Marianne M. Macayra and approved by Ombudsman Conchita Carpio Morales.
3 Id. at 35–39. The April 13, 2016 Joint Order was also issued by Graft Investigation and Prosecution Officer II Marianne M. Macayra and approved by Ombudsman Conchita Carpio Morales.
4 Anti-Graft and Corrupt Practices Act.
5 Id. at 70–95.
6 Id. at 7.
7 Id. at 28.
8 460 Phil. 530 (2005) [Per J. Carpio Morales, En Banc].
9 *Rollo*, p. 28.
10 Id. at 642. *See also* 2000 MOA at *rollo*, pp. 758–763.
11 Id. at 643. *See also* 2003 MOA at *rollo*, pp. 764–774.
12 Id. at 96–120.

acknowledged its prior rental obligations amounting to ₱2,686,481,644.00.[13] Under the RMOA, CJH Development was obliged to pay this amount by: (1) payment of ₱100,000,000.00 upon the execution of the RMOA; (2) *dacion* of its properties amounting to ₱180,341,118.00; and (3) annual installment payments of the remaining balance of ₱2,406,140,525.00 plus 3% interest for 15 years.[14] The BCDA, in turn, promised to maintain a One-Stop Action Center (OSAC) to expedite the issuance of all business, building and other developmental permits, certificates and licenses from all government agencies within 30 days from complete submission of all required documents.[15]

CJH Development allegedly failed to pay its rental obligations starting October 2009 despite BCDA's repeated demands.[16] However, CJH Development countered that BCDA's failure to set up a fully functioning OSAC caused the long delays in its project implementation, which prejudiced its operations.[17]

CJH Development sent several letters to BCDA, calling for the creation of a joint committee to settle the dispute between them and to restructure its rental obligations.[18] BCDA denied these requests, finding no compelling reason to accede.[19]

On May 16, 2012, BCDA sent a notice to CJH Development terminating the 1996 Lease Agreement and the 2008 RMOA due to CJH Development's failure to pay its outstanding rental obligations amounting to ₱3,007,712,654.00, and "other incurable breaches of contractual obligations:"[20]

> 1. Failure and refusal to pay the annual rent due;
> 2. Failure to open an escrow account and deposit fifty percent (50%) of the Common Usage Services Assessment ("CUSA");
> 3. Fraudulent *dacion* to BCDA to property previously sold to another;
> 4. Operation of Camp John Hay Suites in violation of fire safety laws and regulations;
> 5. Unlawful occupation and squatting of your security agency on a portion of the leased property;
> 6. The assignment of subcontracting of your rights or obligations under the RMOA without BCDA's consent, including the operation of the water source and distribution facilities by a third party without BCDA's consent;
> 7. Violation of the obligation to keep the leased property clean, safe, sanitary, and environmentally sound; and

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13 Id. at 100.
14 Id. at 100–101.
15 Id. at 106.
16 Id. at 644.
17 Id. at 9.
18 Id. *See also* the Letter dated December 29, 2009, *rollo*, pp. 121–126.
19 Id. at 29. *See also* the Letter dated March 1, 2010, *rollo*, pp. 127–128.
20 Id. at 644–645 and 776–773.

> 8. Concealment and misrepresentation of the true state of your finances to avoid payment of your financial obligations, including your refusal to open your books for inspection, and failure to file audited financial statements with the Securities and Exchange Commission ("SEC") since 2003.[21]

On July 4, 2012, CJH Development filed a Complaint-Affidavit against BCDA officials[22] for violations of Section 3(e) and (f) of Republic Act No. 3019,[23] Sections 4(c) and 5(a) of Republic Act No. 6713,[24] misconduct, and neglect of duty[25] before the Ombudsman.

It claimed that BCDA failed and/or unjustly refused to perform its obligations under the RMOA, particularly those relating to the OSAC, and that BCDA continues to ignore CJH Development's requests.[26]

CJH Development further alleged that BCDA ignored its requests to settle its monetary obligations and filed a baseless complaint for estafa before the Department of Justice against CJH Development officers arising from the double sale of a log house to BCDA and another party. CJH Development also claims that BCDA published malicious statements against it and its officers in a two-page spread in the Philippine Daily Inquirer, prompting CJH Development to file a complaint for libel.[27]

In their Joint Counter-Affidavit, BCDA Officials Arnel Paciano D. Casanova, Felicito C. Payumo, Zorayda Amelia C. Alonzo, Ma. Aurora Geotina-Garcia, Ferdinand S. Golez, Elmar M. Gomez, and Maximo L. Sangil (Casanova, *et al.*) aver that the OSAC has been in operation as early as June 2005 and that the delay in the issuance of CJH Development's permits, clearances, and licenses was due to its own failure to submit the required documents.[28]

Aside from its default, CJH Development also allegedly committed several breaches of contract, such as selling a log house in 2009 to a certain Winston Sy, despite it being the subject of the *dacion en pago* under the 2008 RMOA. This prompted BCDA to file an estafa complaint against the officers of CJH Development[29] They also alleged that CJH Development was engaged in questionable business practices for failing to turnover Camp

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21 Id. at 776–777.

22 Arnel Paciano Dimaculangan Casanova, Felicito Cruz Payumo, Zorayda Amelia Capistrano Alonzo, Teresita Alferez Desierto, Ma. Aurora Geotina Garcia, Ferdinand Solis Golez, Elmar Macahilig Gomez, and Maximo Lumanlan Sangil.

23 Anti-Graft and Corrupt Practices Act.

24 Code of Conduct and Ethical Standards for Public Officials and Employees.

25 *Rollo*, p. 27.

26 Id. at 28.

27 Id. at 29.

28 Id. at 30.

29 Id. at170-181. The complaint for estafa was entitled "*Bases Conversion Development Authority v. Robert John Sobrepeña, et al.*" and was docketed as NPS XVI-12C-00136.

John Hay Suites units despite receiving payment.[30]

The Housing and Land Use Regulatory Board also issued a Notice of Violation against CJH Development for operating Camp John Hay Suites in violation of the safety regulations and the National Building Code.[31]

On January 15, 2016, the Ombudsman issued the Joint Resolution dismissing CJH Development's complaint, finding that it failed to prove the elements for violation of Section 3(e)[32] of Republic Act No. 3019. The Ombudsman also held that there was no proof that the alleged delay in the issuance of its permits and clearances was due to BCDA's palpable intention to favor another party, or that it was motivated by ill will to secure personal and/or pecuniary benefits.[33]

The Ombudsman likewise found that there was no proof to support the allegation of violation of Section 3(f)[34] of Republic Act No. 3019. Even assuming there was delay or that BCDA refused to perform an act, there was no showing that the same was unjustified or for the purpose of securing material or pecuniary benefits and/or to discriminate against CJH Development.[35] The Ombudsman noted that BCDA's obligation under the RMOA has been in existence even before respondents assumed office.[36]

CJH Development moved for reconsideration but the Ombudsman denied its motion on April 13, 2016..[37]

Hence, on July 18, 2016, CJH Development filed this Petition for Certiorari.[38]

In the September 21, 2016 Resolution, this Court required the

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30 Id. at 646.

31 Id. at 645–646.

32 Republic Act No. 3019 (1960), sec. 3 states:
SECTION 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer are hereby declared to be unlawful: ...
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

33 *Rollo*, pp. 31–32.

34 Republic Act No. 3019 (1960), sec. 3 states:
(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

35 *Rollo*, p. 32.

36 Id. at 33.

37 Id. at 35–39.

38 Id. at 3–25.

respondents to file their respective comments.[39]

On November 14, 2016, respondent Desierto filed her Comment.[40]

On January 11, 2017, petitioner filed its Reply[41] to respondent Desierto's Comment.

Respondents Casanova, Payumo, Alonzo, Geotina-Garcia, Golez, Gomez, and Sangil jointly filed their Comment on December 8, 2016,[42] to which petitioner filed its Reply on January 19, 2017.[43]

On December 13, 2016, respondent Ombudsman also filed its Comment.[44]

Petitioner assails the Ombudsman's dismissal of its Complaint-Affidavit for lack of probable cause. It contends that the failure of respondent BCDA officials to comply with their obligation under the Article V, Section 1 of the RMOA constitutes a clear violation of Section 3(e) and (f) of Republic Act No. 3019. Specifically, respondents failed to comply with the 30-day guarantee of the OSAC to issue licenses and permits, which in turn delayed the implementation of its projects.[45]

Due to respondents' unjust refusal to comply with their obligations, petitioner allegedly suffered undue injury by paying pursuant to the RMOA and having "great amounts of unrealized profits."[46] Such refusal was allegedly done in evident bad faith and gross inexcusable negligence, making it punishable under Section 3(e) of Republic Act No. 3019.[47]

Petitioner asserts that in order to aggravate the dispute and further antagonize the company, respondents also filed a complaint for estafa against its officers.[48] Aside from this, BCDA, through the respondents, also published a two-page advertisement in the Philippine Daily Inquirer containing malicious statements against the officers and affiliates of petitioner[49] which prompted it to file a complaint for libel against the responsible officers of BCDA and Philippine Daily Inquirer.[50]

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39 Id. at 997.
40 Id. at 607–632.
41 Id. at 1006–1014.
42 Id. at 640–670.
43 Id. at 1021–1044.
44 Id. at 1085–1110.
45 Id. at 9.
46 Id. at 14–15.
47 Id. at 15.
48 Id. at 10. The case was docketed as Criminal Case No. R-PSY-14-08408-CR in the Regional Trial Court of Pasay City, Branch 19.
49 Id.
50 Id. at 11.

Petitioner also alleges that respondents engaged in oppressive acts against it by unlawfully interfering with its contractual relations with third parties. This was allegedly done when respondents published two separate Notices to the Public directing unit owners, sub-lessees, and locators in Camp John Hay "to register their interests and investments in the John Hay Special Economic Zone (JHSEZ) with the BCDA[.]"[51]

Moreover, it claims that respondents' failure to reply to its letters within the 15-day period required under Section 5(a) of Republic Act No. 6713,[52] supposedly showed their malicious intent to increase petitioner's rental arrears without complying with their obligations under the RMOA.[53] In addition, it alleges that the filing of the baseless estafa complaint, the publication of malicious statements, and the notices to the public show respondent's discrimination and antagonism towards petitioner.[54] These acts are supposedly in clear violation of Section 3(f) of Republic Act No. 3019 in relation to Section 5(a) of Republic Act No. 6713.

Meanwhile, respondents contend that the petition should be dismissed outright for petitioner's failure to attach material portions of the records such as its Complaint-Affidavit and respondents' Counter-Affidavits filed before the Ombudsman.[55] Moreover, they argue that the Petition lacks merit because petitioner failed to prove why this Court should interfere with the Ombudsman's correct exercise of discretion in dismissing the Complaint-Affidavit.[56]

Respondent Desierto denies liability stating that she only became a member of BCDA's Board of Directors from November 2010 to December 2012. She claims that petitioner failed to prove her responsibility for the alleged failure to set up the OSAC. She also claims that she is not privy to the day-to-day affairs of the BCDA.[57] In addition, she also claims to have no participation in any of the letters petitioner sent to BCDA,[58] the filing of the estafa complaint, or the publication of articles and notices of BCDA.[59]

Meanwhile, respondents Casanova, *et al.* allege that petitioner's vague

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51 Id.

52 Republic Act No. 6713 (1989), sec. 5(a) states:
SECTION 5. *Duties of Public Officials and Employees.* — In the performance of their duties, all public officials and employees are under obligation to:
(a) *Act promptly on letters and requests.* — All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

53 *Rollo*, p. 17.

54 Id. at 17–18.

55 Id. at 608 and 659–660.

56 Id. at 609–610.

57 Id. at 610.

58 Id. at 612.

59 Id. at 614.

allegations of damage and delay in the issuance of permits and clearances failed to establish that it suffered undue injury.[60] They allege that petitioner failed to cite the specific permits and clearances that BCDA failed to issue timely, which supposedly prejudiced its operations.[61] In addition, they point out that petitioner did not present any evidence that BCDA delayed or refused to perform its obligations under the RMOA.[62] They claim that petitioner's payment of ₱2,686,481,644.00 under the RMOA cannot be considered loss or damage considering that it is an acknowledged obligation which it incurred before the RMOA was executed in 2008.[63]

They also refute that BCDA did not act on petitioner's request in the December 29, 2009 letter as it expressly denied the request after finding that there exists no compelling need to form a joint committee as BCDA has not been remiss in its obligations under the RMOA. Precisely, they emphasize that the delay was caused by the incomplete and incorrect documentary requirements submitted by petitioner, its subsidiaries, and locators.[64] Moreover, they maintain that they are not duty bound to act on petitioner's proposal for settlement because petitioner's obligations were already due and demandable.[65] Further, heeding petitioner's requests were also not to the government's best interest.[66]

Finally, respondents Casanova *et al.* claim that the Petition should have been filed before the Court of Appeals. They cited *Morales v. Court of Appeals*[67] and said that the ruling therein is not only applicable in administrative cases but also in orders and resolutions of the Ombudsman in criminal cases.[68]

Public respondent Ombudsman asserts that petitioner failed to establish that it gravely abused its discretion in dismissing the Complaint-Affidavit.[69] It points out that there was no proof that it acted in manifest partiality, evident bad faith, or gross inexcusable negligence, nor proof that it caused undue injury to petitioner. Thus, petitioner failed to prove that there was probable cause for violation of Section 3 (e) of Republic Act No. 3019. It also emphasizes records which show that the OSAC has been established as the John Hay Management Corporation as early as 2005.[70]

As regards the violation of Section 3(f) of Republic Act No. 3019, the Ombudsman affirmed that BCDA has already complied with its obligations

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60 Id. at 654.
61 Id. at 653–654.
62 Id. at 656.
63 Id. at 654.
64 Id. at 657–658.
65 Id. at 658–659.
66 Id. at 659.
67 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].
68 *Rollo*, pp. 665–667.
69 Id. at 1090–1091.
70 Id. at 1091–1093.

under the RMOA even before the respondents assumed office.[71] There was also no compelling need to suspend payment of obligations and create a joint committee. Assuming there was delay in respondents' reply to petitioner's letters, there was "no showing that it was unjustified or for the purpose of securing material or pecuniary benefits from interested parties and/or to discriminate petitioner."[72] Consistent with the policy of non-interference of the Court in its exercise of investigatory and prosecutory powers, it claims that its findings must be upheld.[73]

In reply to respondent Desierto, petitioner alleges that its petition is sufficient as the Complaint-Affidavit and Counter-Affidavits are not indispensable parts of the records that are required to be attached to its Petition.[74]

Petitioner also contends that respondent Desierto cannot disclaim liability because as a member of the Board of Directors, she is charged with helping in corporate business policies and decisions.[75] The resolution of the dispute between BCDA and petitioner was within her functions under Section 4(e) of Republic Act No. 7227.[76]

Meanwhile, in reply to respondents Casanova *et al.*, petitioner emphasizes documented delays attributable to BCDA, such as its delay in demolishing structures, in issuing an Environmental Compliance Certificate, the delay caused by pending litigations it filed in different courts, and its delay in the issuance of implementing rules, memorandum of agreement, and Custom Administrative Order.[77] It also highlights BCDA's unreasonable and oppressive moves in ignoring its request which were not consistent with the objective of the government in developing a tourism complex within the Camp John Hay facility.[78]

Petitioner likewise denies the double sale of the log house. It offers the affidavit of Winston Sy, who stated that his offer to buy was totally rescinded and abandoned.[79] Petitioner insists that the *estafa* complaint was filed out of vindictive and oppressive design to harass and vex it.[80] Finally, petitioner denies that there was a pronouncement in *Morales* stating that petitions for certiorari should only be filed before the Court of Appeals. Thus, it avers that its Petition was correctly filed before this Court.[81]

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71 Id. at 1093.
72 Id. at 1094.
73 Id. at 1094–1096.
74 Id. at 1008.
75 Id. at 1009–1010.
76 Id. at 1010.
77 Id. at 1022–1024.
78 Id. at 1024.
79 Id. at 1024–1026.
80 Id. at 1028.
81 Id. at 1039.

This Court is now tasked to resolve the issues of (1) whether or not the Petition for Certiorari was correctly filed before this Court; and (2) whether or not the Ombudsman gravely abused its discretion in dismissing petitioner's Complaint-Affidavit against the BCDA officials for violations of Section 3(e) and (f) of Republic Act No. 3019 and Section 5(a) of Republic Act No. 6713 for lack of probable cause.

We deny the Petition.

I

The remedy in assailing the Ombudsman's finding of probable cause is a petition for certiorari under Rule 65, Section 1 of the Rules of Court:

> SECTION 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
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> The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46. (1a)

It is settled that this Court has jurisdiction to resolve petitions for certiorari assailing an Ombudsman order or resolution in criminal cases:

> In *Tirol, Jr. v. del Rosario*, we held that although as a consequence of the decision in *Fabian v. Desierto* appeals from the orders, directives, or decisions of the Ombudsman in administrative cases are now cognizable by the Court of Appeals, nevertheless in cases in which it is alleged that the Ombudsman has acted with grave abuse of discretion amounting to lack or excess of jurisdiction, a special civil action of *certiorari* under Rule 65 may be filed in this Court to set aside the Ombudsman's order or resolution. In *Kuizon v. Desierto*, we again held that this Court has jurisdiction over petitions for *certiorari* questioning resolutions or orders of the Office of the Ombudsman in criminal cases.[82] (Citations omitted)

Respondents Casanova *et al.* argue that petitioner should have filed this case before the Court of Appeals. Citing *Morales v. Court of Appeals*,[83]

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[82] *Mendoza-Arce v. Ombudsman*, 430 Phil. 101, 112 (2002) [Per J. Mendoza, Second Division].
[83] 772 Phil. 672 (2015) [Per J. Perlas-Bernabe, En Banc].

they conclude that the invalidation of Section 14(2) of Republic Act No. 6770 resulted in the Court of Appeals obtaining subject matter jurisdiction under Section 9(1) of Batas Pambansa Blg. 129.[84] They insist that *Morales* should not only apply in administrative cases but also in criminal cases investigated by the Ombudsman.[85]

Respondents fail to convince.

In *Gatchalian v. Ombudsman*,[86] this Court clarified that the ruling in *Morales* is applicable only in assailing the Ombudsman's ruling in administrative cases. The Court did not overturn the string of cases expounding on the procedure in assailing orders and decisions of the Ombudsman for criminal cases:

> Gatchalian argues that the consequence of the foregoing is that all orders, directives, and decisions of the Ombudsman — whether it be an incident of an administrative or criminal case — are now reviewable by the CA.
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> The contention is untenable.
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> The Court agrees with the CA that the *Morales* decision should be read and viewed in its proper context. The Court in *Morales* held that the CA had subject matter jurisdiction over the petition for certiorari under Rule 65 filed therein because what was assailed in the said petition was a preventive suspension order, which was an interlocutory order and thus unappealable, issued by the Ombudsman. Consistent with the rationale of *Estrada*, the Court held that a petition for certiorari under Rule 65 was proper as R.A. 6770 did not provide for an appeal procedure for interlocutory orders issued by the Ombudsman. The Court also held that it was correctly filed with the CA because the preventive suspension order was an incident of an administrative case. The Court in *Morales* was thus applying only what was already well established in jurisprudence.
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> It must likewise be pointed out that the Court, in arriving at the decision in *Morales*, cited and was guided by the case of *Office of the Ombudsman v. Capulong*. In *Capulong*, a preventive suspension order issued by the Ombudsman was questioned through a petition for certiorari under Rule 65 filed with the CA. The Court in *Capulong* held that:
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> > [t]he preventive suspension order is interlocutory in character and not a final order on the merits of the case. The aggrieved party may then seek redress from the courts through a petition for certiorari under Section 1, Rule 65 of the 1997 Rules of Court. x x x There being a finding of grave abuse of discretion on the part of the Ombudsman, it

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84 *Rollo*, p. 666. Batas Pambansa Blg. 129 (1981), sec. 9 states:
SECTION 9. *Jurisdiction.* – The Court of Appeals shall exercise:
1. Original jurisdiction to issue writs of mandamus, prohibition, certiorari, habeas corpus, and quo warranto, and auxiliary writs or processes, whether or not in aid of its appellate jurisdiction[.]

85 Id. at 667.

86 G.R. No. 229288, August 1, 2018, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/64561> [Per J. Caguioa, Second Division].

> was certainly imperative for the CA to grant incidental reliefs, as sanctioned by Section 1 of Rule 65.

Also, as aptly pointed out by the CA in its assailed Resolution, "the Supreme Court never mentioned the proper remedy to be taken from the Ombudsman's orders in non-administrative cases or criminal cases, such as the finding of probable cause. In fact, this matter was not even alluded to in the Morales decision."

A thorough reading of the Morales decision, therefore, would reveal that it was limited in its application — that it was meant to cover only decisions or orders of the Ombudsman in administrative cases. The Court never intimated, much less categorically stated, that it was abandoning its rulings in *Kuizon* and *Estrada* and the distinction made therein between the appellate recourse for decisions or orders of the Ombudsman in administrative and non-administrative cases. Bearing in mind that *Morales* dealt with an interlocutory order in an administrative case, it cannot thus be read to apply to decisions or orders of the Ombudsman in non-administrative or criminal cases.

As a final point, it must be pointed out that subsequent to the Morales decision, the Court — likewise sitting En Banc — decided the case of *Information Technology Foundation of the Philippines, et al. v. Commission on Elections*, where it again upheld the difference of appellate procedure between orders or decisions of the Ombudsman in administrative and non[-]administrative cases. Thus:

> As a preliminary procedural matter, we observe that while the petition asks this Court to set aside the Supplemental Resolution, which dismissed both administrative and criminal complaints, it is clear from the allegations therein that what petitioners are questioning is the criminal aspect of the assailed resolution, i.e., the Ombudsman's finding that there is no probable cause to indict the respondents in the Ombudsman cases. Movants in G.R. No. 159139 similarly question this conclusion by the Ombudsman and accordingly pray that the Ombudsman be directed to file an information with the Sandiganbayan against the responsible COMELEC officials and conspiring private individuals.
>
> In *Kuizon v. Desierto* and *Mendoza-Arce v. Office of the Ombudsman*, we held that this Court has jurisdiction over petitions for certiorari questioning resolutions or orders of the Ombudsman in criminal cases. For administrative cases, however, we declared in the case of *Dagan v. Office of the Ombudsman* (Visayas) that the petition should be filed with the Court of Appeals in observance of the doctrine of hierarchy of courts. The Dagan ruling homogenized the procedural rule with respect to administrative cases falling within the jurisdiction of the Ombudsman — first enunciated in *Fabian v. Desierto* — that is, all remedies involving the orders, directives, or decisions of the Ombudsman in administrative cases, whether by an appeal under Rule 43 or a petition for certiorari under Rule 65, must be filed with the Court of Appeals.

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> The Ombudsman's determination of probable cause may only be assailed through certiorari proceedings before this Court on the ground that such determination is tainted with grave abuse of discretion. Not every error in the proceedings or every erroneous conclusion of law or fact, however, constitutes grave abuse of discretion. It has been stated that the Ombudsman may err or even abuse the discretion lodged in her by law, but such error or abuse alone does not render her act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of another constitutional body, the petitioner must clearly show that the Ombudsman committed grave abuse of discretion amounting to lack or excess of jurisdiction in making her determination and in arriving at the conclusion she reached. For there to be a finding of grave abuse of discretion, it must be shown that the discretionary power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and the abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act in contemplation of law. . . .

It is thus clear that the Morales decision never intended to disturb the well-established distinction between the appellate remedies for orders, directives, and decisions arising from administrative cases and those arising from non-administrative or criminal cases.

Gatchalian's contention that the unconstitutionality of Section 14 of R.A. 6770 declared in *Morales* equally applies to both administrative and criminal cases — and thus the CA from then on had jurisdiction to entertain petitions for certiorari under Rule 65 to question orders and decisions arising from criminal cases — is simply misplaced. Section 14 of R.A. 6770 was declared unconstitutional because it trampled on the rule-making powers of the Court by 1) prescribing the mode of appeal, which was by Rule 45 of the Rules of Court, for all cases whether final or not; and 2) rendering nugatory the certiorari jurisdiction of the CA over incidents arising from administrative cases.

The unconstitutionality of Section 14 of R.A. 6770, therefore, did not necessarily have an effect over the appellate procedure for orders and decisions arising from criminal cases precisely because the said procedure was not prescribed by the aforementioned section. *To recall, the rule that decisions or orders of the Ombudsman finding the existence of probable cause (or the lack thereof) should be questioned through a petition for certiorari under Rule 65 filed with the Supreme Court was laid down by the Court itself in the cases of Kuizon, Tirol Jr., Mendoza-Arce v. Ombudsman, Estrada, and subsequent cases affirming the said rule. The rule was, therefore, not anchored on Section 14 of R.A. 6770, but was instead a rule prescribed by the Court in the exercise of its rule-making powers.* The declaration of unconstitutionality of Section 14 of R.A. 6770 was therefore immaterial insofar as the appellate procedure for orders and

> decisions by the Ombudsman in criminal cases is concerned.[87] (Emphasis supplied, citations omitted)

In this case, the assailed Ombudsman orders refer to its finding of lack of probable cause in a Complaint-Affidavit for violations of Section 3(e) and (f) of Republic Act No. 3019, and Section 5(a) of Republic Act No. 6713. Thus, the proper remedy to correct grave abuse of discretion of the Ombudsman, if any, is a petition for certiorari filed before this Court.

II (A)

Ordinarily, this Court will not interfere with the Ombudsman's exercise of its investigatory and prosecutorial powers, without a showing of grave abuse of discretion. This policy of non-interference recognizes the wide latitude that the Constitution has bestowed on the Ombudsman in the exercise of its powers:

> The Constitution and R.A. No. 6770 endowed the Office of the Ombudsman with wide latitude, in the exercise of its investigatory and prosecutory powers, to pass upon criminal complaints involving public officials and employees. Specifically, the determination of whether probable cause exists is a function that belongs to the Office of the Ombudsman. Whether a criminal case, given its attendant facts and circumstances, should be filed or not is basically its call.
>
> As a general rule, the Court does not interfere with the Office of the Ombudsman's exercise of its investigative and prosecutorial powers, and respects the initiative and independence inherent in the Office of the Ombudsman which, "beholden to no one, acts as the champion of the people and the preserver of the integrity of the public service." While the Ombudsman's findings as to whether probable cause exists are generally not reviewable by this Court, where there is an allegation of grave abuse of discretion, the Ombudsman's act cannot escape judicial scrutiny under the Court's own constitutional power and duty "to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[88] (Citations omitted)

In addition, the finding of probable cause is an executive determination and a highly factual inquiry which the Ombudsman is best suited to make:

> ". . . [Ombudsman] has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.
>
> The executive determination of probable cause is a highly factual

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87 Id.

88 *Casing v. Ombudsman*, 687 Phil. 468, 475–476 (2012) [Per J. Brion, Second Division].

> matter. It requires probing into the "existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he [or she] was prosecuted."
>
> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.
>
> Practicality also leads this Court to exercise restraint in interfering with the Office of the Ombudsman's finding of probable cause. *Republic v. Ombudsman Desierto* explains:
>
> > [T]he functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[89] (Citations omitted)

For certiorari to prosper, mere disagreement with the findings of the Ombudsman is not sufficient. There must be a clear showing of grave abuse of discretion:

> To assail the Ombudsman's determination of probable cause, an allegation of grave abuse of discretion must be substantiated. "Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law[.]" To justify the issuance of the writ of certiorari on the ground of abuse of discretion, the abuse must be grave and it must be so patent as to be equivalent to having acted without jurisdiction.[90] (Citations omitted)

It must be shown that the Ombudsman conducted the preliminary investigation in "virtual refusal to perform a duty under the law."[91] In this case, however, petitioner failed to discharge this burden. The Ombudsman did not commit grave abuse of discretion in dismissing the Complaint-Affidavit for lack of probable cause.

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89 *Dichaves v. Ombudsman*, 802 Phil. 564, 590–591 (2016) [Per J. Leonen, Second Division].

90 *Arroyo v. Hon. Sandiganbayan, Fifth Division*, G.R. No. 210488, January 27, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66176> [Per J. Leonen, Third Division].

91 *Republic v. Ombudsman*, G.R. No. 198366, June 26, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65315> [Per J. Leonen, Third Division] citing *Reyes v. Ombudsman*, 810 Phil. 106 (2017) [Per J. Leonen, Second Division].

II (B)

Probable cause is defined in *Arroyo v. Sandiganbayan*:[92]

> Probable cause is defined as 'the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.'" In *Ganaden v. Ombudsman*, this Court explained the nature of a finding of probable cause, thus:
>
> > [A] finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed and there is enough reason to believe that it was committed by the accused. It need not be based on clear and convincing evidence of guilt, neither on evidence establishing absolute certainty of guilt. A finding of probable cause merely binds over the suspect to stand trial. It is not a pronouncement of guilt.
> >
> > The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. . . . Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. . . .
>
> The Ombudsman's finding of probable cause does not rule on the issue of guilt or innocence of the accused. The Ombudsman is mandated to only evaluate the evidence presented by the prosecution and the accused, and then determine if there is enough reason to believe that a crime has been committed and that the accused is probably guilty of committing the crime.[93] (Citations omitted)

A finding of probable cause is determined in relation to the elements of the offense charged.[94] We agree with the Ombudsman that petitioner failed to establish the elements of violations of Section 3(e) and (f) of Republic Act No. 3019.

II (C)

Section 3(e) of Republic Act No. 3019 states:

> SECTION 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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92 G.R. No. 210488, January 27, 2020, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66176> [Per J. Leonen, Third Division].

93 Id.

94 *Reynes v. Ombudsman*, G.R. No. 223405, February 20, 2019, <https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65054> [Per J. Leonen, Third Division].

. . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

Its elements are as follows:

1. The accused must be a public officer discharging administrative, judicial or official functions;

2. He [or she] must have acted with manifest partiality, evident bad faith or [gross] inexcusable negligence;

3. That his [or her] action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[95]

As to the second element, there are three modalities for violating Section 3(e) of Republic Act No. 3019. These are "manifest partiality," "evident bad faith," and "gross inexcusable negligence." These modalities are defined in *Fonacier v. Sandiganbayan*:[96]

"Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud." "Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but wilfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property. These definitions prove all too well that the three modes are distinct and different from each other. Proof of the existence of any of these modes in connection with the prohibited acts under Section 3(e) should suffice to warrant conviction.

The use of the three phrases "manifest partiality," "evident bad faith" and "gross inexcusable negligence" in the same information does not mean that the indictment charges three distinct offenses but only implies that the offense charged may have been committed through any of the modes provided by the law.[97] (Citations omitted)

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95 *Abubakar v. People*, G.R. Nos. 202408, 202409, and 202412, June 27, 2018, 868 SCRA 489, 529 [Per J. Leonen, Third Division].

96 308 Phil. 660 (1994) [Per J. Vitug, En Banc].

97 Id. at 694–695.

On the third element, there are two separate component acts which may be committed: "causing undue injury to any party, including the Government" or "giving any private party any unwarranted benefit, advantage or preference." As explained in *Coloma, Jr. v. Sandiganbayan*:[98]

> In a catena of cases, the Court has held that there are two ways by which a public official violates Section 3 (e) of R.A. No. 3019 in the performance of his functions, namely: (1) by causing undue injury to any party, including the Government; or (2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged under either mode or both. The disjunctive term "or" connotes that either act qualifies as a violation of Section 3 (e) of R.A. No. 3019. In other words, the presence of one would suffice for conviction. Further, the term "undue injury" in the context of Section 3 (e) of the R.A. No. 3019 punishing the act of "causing undue injury to any party," has a meaning akin to that civil law concept of "actual damage." Actual damage, in the context of these definitions, is akin to that in civil law.[99] (Citations omitted)

In addition, undue injury cannot be merely presumed but must be alleged with specificity and proven with competent evidence:

> In *Santos v. People*, the Court equated undue injury — in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of "causing undue injury to any party — with that civil law concept of "actual damage". As the Court elaborated in *Llorente v. Sandiganbayan*, to wit:
>
> > . . . Unlike in actions for torts, undue injury in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of the crime. In fact, the causing of undue injury, or the giving of any unwarranted benefits, advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty.
> >
> > In jurisprudence, "undue injury" is consistently interpreted as "actual damage." Undue has been defined as "more than necessary, not proper, [or] illegal"; and injury as "any wrong or damage done to another, either in his person, rights, reputation or property [that is, the] invasion of any legally protected interest of another". Actual damage, in the context of these definitions, is akin to that in civil law.
>
> In turn, actual or compensatory damages is defined by Article 2199

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98 744 Phil. 214 (2014) [Per J. Mendoza, Second Division].

99 Id. at 231–232.

of the Civil Code as follows:

> Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

It naturally follows that the rule that should likewise be applied in determining undue injury is that in determining actual damages, *the court cannot rely on mere assertions, speculations, conjectures or guesswork, but must depend on competent proof and on the best evidence obtainable regarding specific facts that could afford some basis for measuring compensatory or actual damage.*

The foregoing rule is made more concrete in *Llorente v. Sandiganbayan.* Therein respondent Leticia Fuertes (Fuertes) accused therein petitioner Cresente Llorente (Llorente) of causing her undue injury by delaying the release of salaries and allowances. The Sandiganbayan convicted Llorente based, among others, on the testimony of Fuertes on the distress caused to her family by the delay in the release of her salary. Reversing the conviction of Llorente, the Court held:

> Complainant's testimony regarding her family's financial stress was inadequate and largely speculative. Without giving specific details, she made only vague references to the fact that her four children were all going to school and that she was the breadwinner in the family. She, however, did not say that she was unable to pay their tuition fees and the specific damage brought by such nonpayment. The fact that the "injury" to her family was unspecified or unquantified does not satisfy the element of undue injury, as akin to actual damages. As in civil cases, actual damages, if not supported by evidence on record, cannot be considered.[100] (Emphasis supplied, citations omitted)

The Ombudsman is correct that the crux of the controversy is the alleged default in the obligations under the RMOA and the party responsible for it.[101] Petitioner anchors its charge of violation of Section 3(e) of Republic Act No. 3019 on respondents' failure to comply with their obligations under the RMOA. It also cites respondents' evident bad faith and gross inexcusable negligence in complying with their obligations, which unduly injured petitioner.

There is no question as to the existence of the first element. Respondents are being charged in the performance of their official functions as members of the Board of Directors of BCDA, a government instrumentality. There is doubt, however, as to the second and third elements of the offense charged.

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[100] *Soriano v. Ombudsman*, 597 Phil. 308, 317–319 (2009) [Per J. Austria-Martinez, Third Division].
[101] *Rollo*, p. 32.

We agree with the Ombudsman that petitioner failed to establish with moral certainty that respondent acted with manifest partiality, evident bad faith or gross inexcusable negligence. Other than bare allegations, petitioner did not present evidence to prove that the BCDA, through the respondents, was not compliant with its obligations in the RMOA. The Ombudsman's finding that the OSAC has been operational since 2005 is supported by evidence on record:

> There is no proof the respondents acted with manifest partiality, evident bad faith, or gross inexcusable negligence. BCDA has already established the OSAC, also known as the John Hay Management Corporation (JHMC), as evidenced by the Affidavit of the Manager Zaldy A. Bello, of the Special Economic Zone; and the Memorandum dated 23 May 2005 of the JHMC circulating a copy of the approved policy for accreditation.[102] (Citations omitted)

The affidavit of OSAC officer Zaldy A. Bello states:

> 1. I am the One Stop Action Center (OSAC) Officer, now Special Economic Zone (SEZ) Manager of John Hay Management Corporation (JHMC);
>
> 2. The OSAC is located in a building that it shares with the Customs Clearance Area of JHMC beside the Intercontinental Hotel Group Building in Ordoño Drive, Camp John Hay, Baguio City;
>
> . . . .
>
> 6. By virtue of Memorandum Circular No. 2005-05-001 dated May 23, 2005, which took effect June 1, 2005, it shall be mandatory for all enterprises doing business inside the John Hay Special Economic Zone to seek accreditation with JHMC, hereto attached as Annex "A", thus, said enterprises will file and secure their Permit to Operate with the ONE STOP ACTION CENTER of JHMC in lieu of the Business Permit issued by the City Government of Baguio as provided under the policy guideline and procedure on the accreditation policy, to wit:
>
> "1.3 The application shall be approved upon favourable recommendation of OSAC and subsequent approval of the Vice President and Chief Operating Officer.", hereto attached as Annex "B" and Series.[103]

Petitioner did not present any evidence to prove its assertion that the OSAC was not compliant with the RMOA. It did not even allege the specific permits and licenses that the OSAC supposedly failed to issue beyond the guaranteed 30-day period in the RMOA. In lieu of competent proof, petitioner merely reiterated Article V, Section 1 of the RMOA and that the necessary permits and clearances were not acted upon by the OSAC

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[102] Id. at 31.
[103] Id. at 1158.

within the 30-day period to the prejudice of petitioner.[104]

Petitioner forgets that the issuance of permits, certificates and licenses within 30 days is not an absolute obligation of BCDA. Their issuance is still premised on the complete submission of required documents by CJHDC, its locators, concessionaires, contractors or buyers:

> ARTICLE V
> LESSOR'S OBLIGATIONS AND WARRANT[I]ES
>
> Section 1. Permits and Licenses. In order to facilitate the implementation of the Project, the LESSOR through the Administrator, shall maintain the operation of OSAC with full authority to process and issue all the business, building and other developmental permits, certificates and licenses, local and national, from all government agencies necessary to facilitate construction and commercial operation in Camp John Hay for the implementation of the Revised Camp John Hay Master Development Plan and the Project which are applicable in the JHSEZ.
>
> LESSOR hereby acknowledges that the OSAC's issuance of these permits and licenses for the LESSEE is essential to the fulfillment of the developmental and financial commitments made by LESSEE herein and therefore warrants that the OSAC *shall issue said business, building and other developmental permits, certificates and licenses within thirty (30) days from compliance with the provisions of Sections 3, 4, and 5, Article IV hereof and complete submission of all required documents* by the LESSEE, its sub-locators, concessionaires, contractors or buyers as specified in Article IV, Section 3.[105] (Emphasis supplied)

Aside from the submission of complete requirements, Article IV, Sections 3 to 5 of the RMOA must likewise be complied with:

> ARTICLE IV
> JHSEZ ADMINISTRATOR
>
> . . . .
>
> Section 3. One Stop Action Center. The One Stop Action Center ("OSAC") shall facilitate the registration, licensing and issuance of permits within the JHSEZ with full authority to process and issue all the business, building and other developmental permits, certificates and licenses, local, and national, from all government agencies to facilitate construction and commercial operations in Camp John Hay. The appropriate government agencies (ie. DTI, LGU, BIR and BOC) shall assign their respective representatives in the OSAC for this purpose. . . .
>
> In relation thereto, the PARTIES shall complete the following actions and deliver the following documents to the OSAC on or before the following specified dates:

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[104] Id. at 14.
[105] Id. at 107.

a. At least thirty (30) days prior to construction of a particular component or building, the LESSEE, its sub-locators, concessionaires, contractors or buyers, shall submit to the OSAC an application for the issuance of the development and business permit/s supported by detailed engineering and structural plans, and such other documents as may be required in compliance with all the requirements of the government of the Republic of the Philippines such as five (5) sets of documents for the Contract Drawings/Documents Phase signed and sealed by a duly licensed Architect, Civil, Structural, Electrical, and or Mechanical Engineer. Submission of design development documents for specific features shall be in accordance with the Revised Project Implementation Plan Schedule.

b. The OSAC shall review contract drawings/documents and issue the development and business permit/s within thirty (30) days from the complete submission of all required documents of the LESSEE, its sub-locators, concessionaires, contractors or buyers;

c. All physical infrastructure plans shall conform to the approved Revised Camp John Hay Master Development Plan. No deviation from the Revised Camp John Hay Master Development Plan shall be allowed without the prior written consent of the LESSOR.

d. At least thirty (30) days prior to the start of the commercial operations of each facility, the LESSEE, its sub-locators, concessionaires, contractors or buyers shall submit to the OSAC one (1) original and one (1) duplicate copy of the as-built drawings and/or plans for all structures. The OSAC shall review the as-built drawings and/or plans and issue the relevant occupancy permit/s. business permit/s, and/or permit/s to operate within thirty (30) days from complete submission of all required documents of the LESSEE, its sub-locators, concessionaires, contractors or buyers.

Section 4. JHSEZ rules and regulations. The implementing rules and regulations and operating manual of the JHSEZ formulated in coordination with concerned government agencies by the LESSOR and/or the ADMINISTRATOR and LESSEE shall be made an integral part of this Agreement.

Section 5. Compliance with JHSEZ rules and regulations. LESSEE hereby expressly acknowledges the jurisdiction, power and authority of the ADMINISTRATOR to enforce the rules and regulations governing the JHSEZ. The LESSEE agrees to abide by all the rules and regulations of the JHSEZ. Any material violation of such rules and regulations and the failure to remedy such violation within sixty (60) days from receipt of written notice thereof shall be a cause for the termination of this Agreement.[106]

The Petition is bereft of any allegations that petitioner submitted all

[106] Id. at 106–107.

the requirements and complied with Article IV, Sections 3 to 5 of the RMOA. Equally telling is petitioner's failure to refute respondents' material allegation that the delay in the issuance of petitioner's permits, clearances, and licenses, was due to its failure to submit complete requirements.[107] As petitioner failed refute this material allegation, it is effectively admitted. Hence, without its submission of complete documentary requirements, petitioner had no right to demand the issuance of permits, clearances, and licenses within 30 days. There being no established violation of the RMOA, petitioner's alleged undue injury has no leg to stand on.

Assuming a violation of the RMOA has been established, We agree with the Ombudsman that petitioner failed to establish the undue injury from the acts of respondent.[108]

Petitioner asserts that it suffered undue injury when it assumed the consideration of the RMOA amounting to ₱2,686,481,644.00 without respondents' issuance of permits and clearances, in violation of the RMOA.[109] In addition, it claims that it lost "great amounts of unrealized profits" because of respondents' inaction to its letter requests.[110]

However, the allegation of "great amounts of unrealized profits" is based on conjectures and speculation. Petitioner did not submit competent proof which could have allowed the Ombudsman to determine and measure the actual damage it supposedly suffered.

Neither is petitioner's assumption of the ₱2,686,481,644.00 consideration of the RMOA sufficient to establish undue injury. Records show that such amount represents petitioner's unpaid rental obligations under the 1996 Lease Agreement and subsequent Agreements with BCDA. Petitioner expressly acknowledged this in Section 3 of the RMOA:

> Section 3. Acknowledgement and Settlement by LESSEE of prior obligations under the 19 October 1996 Lease Agreement, the 14 July 2000 MOA, and the 18 July 2003 MOA. LESSEE hereby acknowledges its obligations under the 19 October 1996 Lease Agreement, the 14 July 2000 MOA, and the 18 July 2003 MOA for the years 1999 to 30 June 2008 amounting to Pesos: Two Billion Six Hundred Eighty Six Million Four Hundred Eighty One Thousand Six Hundred Forty Four (PHP 2,686,481,644.00) inclusive of interest as summarized in Annex A hereof and subject to the provisions of Sections 4 and 6, Article I hereof, PARTIES have mutually agreed to settle the acknowledged obligations under the preceding paragraph[.][111]

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107 Id. at 657–658.
108 Id. at 32.
109 Id. at 14.
110 Id. at 14.
111 Id. at 100.

In agreeing to pay its due and demandable obligations, petitioner did not suffer any undue injury. The RMOA was executed for the benefit of both parties to continue the lease and restructure payments of petitioner's rental arrears. There being no sufficient allegation and proof of undue injury, petitioners failed to establish the third element for violation of Section 3(e) of Republic Act No. 3019.

Thus, the Ombudsman did not gravely abuse its discretion in finding no probable cause for violation of Section 3 (e) of Republic Act No. 3019 due to petitioner failure to prove that respondents acted in evident bad faith and gross negligence resulting in undue injury.

II (D)

Meanwhile, Section 3(f) of Republic Act No. 3019 states:

> (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

The violation of this provision has the following elements:

> [1.] The offender is a public officer;
>
> [2.] The said officer has neglected or has refused to act without sufficient justification after due demand or request has been made on him;
>
> [3.] Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him; and
>
> [4.] Such failure to so act is for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage in favor of an interested party, or discriminating against another.[112]

Petitioner alleges that respondents neglected to respond to its December 29, 2009 letter within the 15-day period required by law. According to petitioner's, this demonstrates respondents' malicious intent in increasing petitioner's rental arrears.[113] Moreover, respondents' refusal to heed petitioner's requests to alter the schedule of its unpaid rental obligations, and refusal to create a Joint Committee, were unreasonable and

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[112] *Lacap v. Sandiganbayan*, 811 Phil. 441, 453 (2017) [Per J. Caguioa, First Division] citing *Coronado v. Sandiganbayan*, 296-A Phil. 414, 419 (1993) [Per J. Vitug, En Banc].

[113] *Rollo*, p. 17.

oppressive acts which failed to give effect to the objective of the lease.[114]

We are not convinced.

The alleged delay in responding to petitioner's letter beyond the 15-day period under Section 5(a) of Republic Act No. 6713, by itself, is not sufficient to establish malice. There must be intentional inaction or deliberate refusal to act on the part of the public officer to do what is incumbent upon him or her. Moreover, the inaction or refusal to act must be unjustified.

In *Lacap v. Sandiganbayan*,[115] the mayor of Masantol, Pampanga was convicted for violation of Section 3(f) of Republic Act No. 3019 because of her intentional inaction or deliberate refusal to act on an application for mayor's permit despite submission of complete requirements. *Lacap* rule that the mayor's refusal to act on the application was unjustified and was motivated by her personal grudges against and political rivalry with the applicant:

> The Constitution mandates that: "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." Thus, "[they] are called upon to act expeditiously on matters pending before them. For only in acting thereon either by signifying approval or disapproval may the [public] continue on to the next step of the bureaucratic process. On the other hand, official inaction brings to a standstill the administrative process and the [public] is left in the darkness of uncertainty."
>
> In an application for a mayor's permit or license to do business in a municipality or city, the procedure is fairly standard and uncomplicated. It requires the submission of the required documents and the payment of the assessed business taxes and fees. In case of failure to comply with the requirements, the application deserves to be disapproved. If the application is compliant, then approval is the action to be taken. An inaction or refusal to act is a course of action anathema to public service with utmost responsibility and efficiency. If the deliberate refusal to act or intentional inaction on an application for mayor's permit is motivated by personal conflicts and political considerations, it thus becomes discriminatory, and constitutes a violation of the Anti-Graft and Corrupt Practices Act.[116] (Citations omitted)

In this case, the Ombudsman found no proof of the alleged delay and/or refusal of respondents to perform their obligations under RMOA:

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[114] Id. at 1024.
[115] 811 Phil. 441 (2017) [Per J. Caguioa, First Division].
[116] Id. at 459.

> *There is no proof of the alleged delay and/or refusal of respondents to perform their obligations under RMOA.* Records show that the parties' dispute hinges on who actually defaulted in their contractual obligations. Even assuming that there was a delay or refusal to perform an act/s on the part of respondents, there is no showing that the same was unjustified or for the purpose of securing material or pecuniary benefits from interested parties and/or to discriminate complainant.
>
> To note, BCDA's obligation under the RMOA has been in existence prior to the assumption of office of herein respondents, as shown by the letter-reply of BCDA signed by its then President and CEO Narciso Abaya, which letter-reply complainant claims was sent only after 60 days from the time it sent its letter request.[117] (Emphasis supplied)

In addition, petitioner failed to show that respondents' refusal to create a joint committee to settle a dispute was unjustified. Records show that respondents have previously denied the creation of a joint committee and suspension of payments as it found no compelling reason to grant petitioner's requests:

> This refers to your letter dated December 29, 2009, which is a response to BCDA's demand letter of December 2, 2009.
>
> . . . .
>
> We reiterated our position on the matter contained in our December 2, 2009 letter. The OSAC has been fully established and functional the way it was envisioned in all other special economic zones (SEZs). Per the report submitted by JHMC/OSAC, the causes of delay in the processing of permits are not attributable to OSAC's failure to fulfill its duties in the timely issuance and/or endorsement of permits to appropriate agencies but to the incomplete and incorrect submission of documentary requirements by CJHDC, its subsidiaries and its locators. It is clear in the report of JHMC that the OSAC is not remiss in reminding CJHDC, its subsidiaries and its locators through constant follow-ups, written or thru telephone calls, to submit a complete application for the permits to be processed. JHMC even allowed your locators to operate their business within the JSHEZ while their permits are being processed. With this kind of accommodation we cannot think of how CJHDC can justify that it was unable to internally generate revenues from sale of its inventory because of alleged delays of issuance of permits by the OSAC.
>
> We maintain that BCDA and the JHMC/OSAC is compliant to the provisions of the RMOA more particularly the provisions under Article IV, Section 3 and Article V on the establishment of the OSAC, and that, there is no more compelling reason for CJHDC to suspend payment and to convene a joint committee to resolve this alleged dispute.[118]

As previously discussed, petitioner did not even dispute its failure to submit complete requirements for its applications for permits and licenses. Unlike in *Lacap*, there is no discriminatory motive that this Court can infer

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[117] *Rollo*, pp. 32-33.
[118] Id. at 127.

from respondents alleged non-issuance of permits and clearances because its duty did not even arise. Mere delay in replying to the December 29, 2009 letter of petitioner is not indicative of respondents' malice. It must be shown that such delay is for the purpose of (1) "obtaining . . . from any person interested in the matter some pecuniary or material benefit," or (2) gaining "advantage in favor of an interested party," or (3) "discriminating against another."[119]

Petitioner attempts to prove BCDA's discrimination and antagonism against it through the following acts: (1) filing of a complaint for estafa against the officers of CJHDC; (2) publication of malicious advertisements against CJHDC, its officers and affiliates; and (3) publication of notice to the public which allegedly shows tortious interference with its third party contracts.[120] These acts were supposedly calculated to discredit and destroy petitioner's reputation and shows a pattern of deceit and fraud by respondents to evade from complying with their contractual obligations.[121]

We fail to see how these acts are discriminatory against petitioner and violative of Section 3(f) of Republic Act No. 3019. Respondents admitted the foregoing acts and explained the context behind them:

> 14. Apart from and in addition to CJH DevCo's breach of its financial obligations, BCDA also discovered that CJH DevCo committed other material and incurable breaches of its contractual obligations by undertaking several activities that were not only fraudulent, but also threatened the viability and efficient functioning of Camp John Hay. For instance, BCDA discovered that one of the properties that CJH DevCo *dacioned* to it under the 2008 RMOA had been previously sold in 1999 to a third person, Wilson Sy.
>
> 15. Consequently, BCDA filed a complaint for estafa with the National Prosecution Service of the Department of Justice, asking what CJH DevCo's responsible officers be prosecuted for estafa for having falsely pretended to own VOA Loghome No. 9 and to possess the power and right to transfer it to BCDA when in reality, CJH DevCo had already sold and transferred the ownership of the property to Wilson Sy as early as July 27, 1999. The case, entitled "*Bases Conversion and Development Authority v. Robert John Sobrepena, et al.*," was docketed as NPS No. XVI-12C-00136.
>
> 16. Moreover, it appears that the Housing and Land Use Regulatory Board (HLURB) wrote a letter dated March 14, 2012 to CJH DevCo, notifying it of its violation of Presidential Decree No. 957 with respect to the then Camp John Hay Suites[.]
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> . . . .
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> 17. BCDA also received reports about questionable business

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[119] Republic Act No. 3019 (1960), sec. 3(f).
[120] *Rollo*, pp. 17–18.
[121] Id. at 4.

> practices of CJH DevCo. For instance, Kim Sung Hwan, a Korean national who bought a unit in the Camp John Hay Suites from CJH DevCo, informed BCDA that, contrary to the clear provisions of the 1996 Lease Agreement, CJH DevCo misled and misrepresented to him and his family that its lease with BCDA had a guaranteed term of fifty (50) years. Moreover, Kim Sung Hwan disclosed that, contrary to CJH DevCo's promises to him and his family, CJH DevCo failed to deliver the unit despite the full payment of the purchase price.
>
> 18. Under these factual circumstances, BCDA caused the publication of a Notice in the April 10, 2012 issue of the Philippine Daily Inquirer. In furtherance of the public trust reposed in Respondents' public offices, BCDA informed the public of the foregoing events involving the properties in Camp John Hay[.]
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> . . . .
>
> 19. Subsequently, on June 7 and 8, 2012, BCDA caused the publication of another Notice to inform the public that BCDA had terminated its lease with CJH DevCo. BCDA also requested all unit owners, sub-lessees, and locators in Camp John Hay "to register their interest and investments in the John Hay Special Economic Zone (JHSEZ) with the BCDA."[122] (Citation omitted)

While this Court does not rule on the veracity of these factual allegations, We cannot infer that these acts were pursued to defraud and discredit petitioner. Instead, these acts were committed in response to petitioner's alleged breach of obligations. Any assertion of right against another necessarily opposes and competes with each other. Unless there is a clear showing of abuse of right, this Court will not infer malicious intent based on the exercise and protection of one's rights.

In *Barons Marketing Corporation v. Court of Appeals*,[123] no abuse of right was imputed on a creditor exercising its right under Article 1248 of the Civil Code to refuse the debtor's proposal to pay in installments. The burden of proving bad faith in the exercise of rights falls on the party alleging the same:

> Both parties agree that to constitute an abuse of rights under Article 19 the defendant must act with bad faith or intent to prejudice the plaintiff. They cite the following comments of Tolentino as their authority:
>
> > Test of Abuse of Right. — Modern jurisprudence does not permit acts which, although not unlawful, are anti-social. *There is undoubtedly an abuse of right when it is exercised for the only purpose of prejudicing or injuring another. When the objective of the actor is illegitimate, the illicit act cannot be concealed under the guise of exercising a right.* The principle does not permit acts which, without

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[122] Id. at 645–647.

[123] 349 Phil. 769 (1998) [Per J. Kapunan, Third Division].

> utility or legitimate purpose cause damage to another, because they violate the concept of social solidarity which considers law as rational and just. *Hence, every abnormal exercise of a right, contrary to its socio-economic purpose, is an abuse that will give rise to liability.* The exercise of a right must be in accordance with the purpose for which it was established, and must not be excessive or unduly harsh; there must be no intention to injure another. Ultimately, however, and in practice, courts, in the sound exercise of their discretion, will have to determine all the facts and circumstances when the exercise of a right is unjust, or when there has been an abuse of right.

The question, therefore, is whether private respondent intended to prejudice or injure petitioner when it rejected petitioner's offer and filed the action for collection.

We hold in the negative. *It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same.* In the case at bar, petitioner has failed to prove bad faith on the part of private respondent. Petitioner's allegation that private respondent was motivated by a desire to terminate its agency relationship with petitioner so that private respondent itself may deal directly with Meralco is simply not supported by the evidence. At most, such supposition is merely speculative.

Moreover, we find that private respondent was driven by very legitimate reasons for rejecting petitioner's offer and instituting the action for collection before the trial court. As pointed out by private respondent, the corporation had its own "cash position to protect in order for it to pay its own obligations." This is not such "a lame and poor rationalization" as petitioner purports it to be. For if private respondent were to be required to accept petitioner's offer, there would be no reason for the latter to reject similar offers from its other debtors. Clearly, this would be inimical to the interests of any enterprise, especially a profit-oriented one like private respondent. It is plain to see that what we have here is a mere exercise of rights, not an abuse thereof. Under these circumstances, we do not deem private respondent to have acted in a manner contrary to morals, good customs or public policy as to violate the provisions of Article 21 of the Civil Code.

. . . .

It may not be amiss to state that petitioner's contract with private respondent has the force of law between them. Petitioner is thus bound to fulfill what has been expressly stipulated therein. ***In the absence of any abuse of right, private respondent cannot be allowed to perform its obligation under such contract in parts.*** Otherwise, private respondent's right under Article 1248 will be negated, the sanctity of its contract with petitioner defiled. The principle of autonomy of contracts must be respected [124] (Emphasis supplied, citations omitted)

In *Barons*, this Court held that parties are bound by the express stipulations in the contract, and the refusal of a creditor to accept payment of

[124] Id. at 777–779.

due and demandable obligation in parts is not an abuse of its rights.

Much like in *Barons*, petitioner in this case cannot compel BCDA to restructure the payment of its due and demandable obligation or to unilaterally suspend payments. Petitioner fails to cite any provision in the RMOA which compels the BCDA to agree to Camp John Hay Development's proposed payment schemes. Hence, BCDA, as the lessor, cannot be compelled to receive in instalment payments of petitioner's due and demandable rental.

Article 1248 of the Civil Code states:

> ARTICLE 1248. Unless there is an express stipulation to that effect, the creditor cannot be compelled partially to receive the prestations in which the obligation consists. Neither may the debtor be required to make partial payments.
>
> However, when the debt is in part liquidated and in part unliquidated, the creditor may demand and the debtor may effect the payment of the former without waiting for the liquidation of the latter. (1169a)

Here, the parties are bound by the terms of payment in the RMOA:

> a. LESSEE shall, upon signing of this Agreement and without further need of demand, pay LESSOR Pesos: One Hundred Mullion (Php100,000,000.00) in cash.
>
> b. LESSEE shall pay LESSOR Pesos: One Hundred Eight Mullion Three Hundred Forty One Thousand One Hundred Eighteen (Php180,341,118.00) by way of *dacion en pago* of various properties as detailed in Annex "B".
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> . . . .
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> c. LESSEE shall pay LESSOR the remaining balance of Pesos: Two Billion Four Hundred Six Million One Hundred Forty Thousand Five Hundred Twenty Five (Php2,406,140,525.00), plus three percent (3%) interest on a diminishing balance basis, without further need of demand, after application of cash and property payments under Paragraphs (a) and (b) of this Section for a period of fifteen (15) years with three (3) years moratorium on the principal.
>
> c.1. For calendar years 1 July 2008 to 30 June 2011, the three percent (3%) interest due on the remaining balance during the three (3) year moratorium shall be payable every 30th of June.
>
> c.2. For calendar years 1 July 2011 to 30 June 2023, the principal of the remaining balance shall be paid in twelve equal yearly installments plus three percent (3%) interest per annum on a diminishing balance basis every 30th of June.

> However, for the period 1 July 2011 to 30 June 2013, the annual principal due for the period shall be paid in twelve equal monthly installments plus three percent (3%) interest per annum on a diminishing balance basis every end of the month.
>
> If LESSEE fails to pay any amortization, a surcharge of 3% per annum shall be imposed on the principal and the LESSOR can automatically terminate this Agreement pursuant to Article VIII below.[125]

However, in its letters to respondents, petitioner proposed a different payment scheme contrary to the schedule of payments stipulated in the RMOA.[126] Moreover, it imposed a condition on its proposed settlement:

> The Board of Directors of CJHDevCo resolved to condition the above settlement scheme on the BCDA's commitment to issue, within a thirty (30)-day period from the submission of all pertinent documentary requirements, all business, building and other developmental permits, certificates and licenses, local and national, from all government agencies to facilitate construction and commercial operations in Camp John Hay. It is understood that where by law, a permit, license, certificate may not directly be issued by the BCDA, as envisioned in the RMOA, to cause the issuance of all such permits, licenses, and certificates. It shall not be sufficient to simply endorse the applications therefore to some government agency in that the BCDA/JHMC shall remain contractually bound to see the timely and actual issuance of all permits, licenses, and certificate applied for by CJHDevCo and its locators.[127]

Respondents denied these proposals for being prejudicial to the best interest of the government and opted to exercise its right to demand the full payment of the rental obligations due under the RMOA:

> 43. BCDA did reject CJH DevCo's proposals, and legitimately so. After due deliberation, it was decided that it would not be to the best interest of Government if BCDA were to accept CJH DevCo's offer of settlement by paying only the amount of ₱428,948.913.00, the full payment of which was even conditional. Hence on December 6, 2011, Respondent Casanova, on behalf of BCDA, wrote a letter to CJH DevCo to demand the payment of its current obligation of ₱581,504,590.00.[128]

All considered, it cannot be said that respondents had any obligation to grant the proposed restructuring of petitioner's obligations. Thus, there is no unjust refusal to act that can be imputed to respondents' denial of the creation of a joint committee and suspension of due rental payments as petitioner is bound by the schedule of payment stipulated in the RMOA. One party cannot unilaterally change the terms of the contract. Hence, the

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[125] Id. at 100–101.
[126] Id. at 133–136.
[127] Id. at 134.
[128] Id. at 659.

Ombudsman was correct in dismissing the complaint for lack of probable cause for violation of Section 3(e) and (f) of Republic Act No. 3019.

WHEREFORE, the Joint Resolution dated January 15, 2016 and the Joint Order dated April 13, 2016 of the Ombudsman dismissing OMB-C-C-12-0287-G and OMB-C-A-12-0308-G for lack of probable cause are **AFFIRMED**.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

RAMON PAUL L. HERNANDO
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

EDGARDO L. DELOS SANTOS
Associate Justice

On leave
RICARDO R. ROSARIO
Associate Justice

ATTESTATION

I attest 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.

MARVIC M.V.F. LEONEN
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, 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.

DIOSDADO M. PERALTA
Chief Justice