SECOND DIVISION

G.R. No. 255250 - PEOPLE OF THE PHILIPPINES, *plaintiff-appellee* **v. ANTONIO R. FLOIRENDO, JR.,** *accused-appellant.*

Promulgated:

JAN 23 2023

x----------x

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

The Sandiganbayan did not err in finding accused-appellant Antonio R. Floirendo, Jr. (Floirendo, Jr.) guilty beyond reasonable doubt of violating Section 3(h) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act which provides:

> 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:
>
> . . . .
>
> (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The essential elements to prove violation of the provision are: (1) the accused is a public officer; (2) they have direct or indirect financial or pecuniary interest in any business, contract, or transaction; (3) they either: (a) intervene or take part in their official capacity in connection with such interest; or (b) are prohibited from having such interest by the Constitution or by any law.[1]

---

[1] *People v. Palabrica III,* G.R. Nos. 250590-91 (November 17, 2021) [Per J. Gaerlan, Second Division] p. 14. This refers to the pinpoint citation of the copy of the Decision uploaded in the Supreme Court website; *Teves v. Commission on Elections,* 604 Phil. 717, 726 (2009) [Per J. Ynares-Santiago, *En Banc*]; *Domingo v. Sandiganbayan,* 510 Phil. 691, 702 (2005) [Per J. Azcuna, First Division]; *Teves v. Sandiganbayan,* 488 Phil. 311, 326 (2004) [Per J. Davide, Jr., *En Banc*].

In several cases,[2] this Court consistently held that there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of Republic Act No. 3019. The *first mode*, or through unlawful intervention, is committed if in connection with their pecuniary interest, the public officer intervenes or takes part in their official capacity in any business, contract or transaction; while the *second mode,* or the possession of prohibited interest, is committed when they are prohibited from having such interest by the Constitution or any law.

The first mode patently requires that the public officer intervenes or takes part in the contract with, or in the franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof.

The second mode did not specify such requirement; it is enough that they are prohibited from having such interest—financial or pecuniary—by the Constitution or any law.

In *Domingo v. Sandiganbayan*,[3] this Court found petitioner guilty of violating Section 3(h) of Republic Act No. 3019 under the first mode and held that "what the law prohibits is the actual intervention by a public official in a transaction in which he has a financial or pecuniary interest, for the law aims to prevent the dominant use of influence, authority[,] and power."[4]

In *Caballero v. Sandiganbayan (Third Division)*,[5] this Court gave merit to petitioner's motion to quash the information upon finding that it failed to state the mode by which petitioner supposedly violated Section 3(h) of the Republic Act No. 3019, although it may be deduced that his indictment was *via* the first mode.[6]

In *People v. Palabrica III*,[7] this Court held that the third element of Section 3(h) of Republic Act No. 3019 under the first mode requires actual intervention in the transaction in which one has financial or pecuniary interest for liability to attach.

On the other hand, in *Teves v. Sandiganbayan*,[8] this Court convicted petitioner of violation of Section 3(h) of Republic Act No. 3019 under the

---

2 *People v. Palabrica III,* G.R. Nos. 250590-91 (November 17, 2021) [Per J. Gaerlan, Second Division] p. 14; *Teves v. Commission on Elections,* 604 Phil. 717, 727 (2009) [Per J. Ynares-Santiago, *En Banc*]; *Caballero v. Sandiganbayan (Third Division),* 560 Phil. 302, 318 [Per J. Garcia, First Division]; *Domingo v. Sandiganbayan,* 510 Phil. 691, 702–703 (2005) [Per J. Azcuna, First Division]; *Teves v. Sandiganbayan,* 488 Phil. 311, 326–327 (2004) [Per J. Davide, Jr., *En Banc*].

3 510 Phil. 691 (2005) [Per J. Azcuna, First Division].

4 Id. at 706. (Citations omitted)

5 560 Phil. 302 [Per J. Garcia, First Division].

6 Id. at 316–322.

7 G.R. Nos. 250590-91 (November 17, 2021) [Per J. Gaerlan, Second Division], p. 17.

8 488 Phil. 311 (2004) [Per J. Davide, Jr., *En Banc*].

second mode or for possession of pecuniary or financial interest in a cockpit, which is prohibited under Section 89(2) of the Local Government Code of 1991. The Court upheld the Sandiganbayan's conviction of petitioner under the second mode of committing Section 3(h) of Republic Act No. 3019, although the offense charged is the first mode of the committing Section 3(h):

> Hence, we agree with the petitioners that the charge was for unlawful intervention in the issuance of the license to operate the Valencia Cockpit. There was no charge for possession of pecuniary interest prohibited by law.
>
> However, the evidence for the prosecution has established that petitioner Edgar Teves, then mayor of Valencia, Negros Oriental, owned the cockpit in question. In his sworn application for registration of cockpit filed on 26 September 1983 with the Philippine Gamefowl Commission, Cubao, Quezon City, as well as in his renewal application dated 6 January 1989 he stated that he is the owner and manager of the said cockpit. Absent any evidence that he divested himself of his ownership over the cockpit, his ownership thereof is rightly to be presumed because a thing once proved to exist continues as long as is usual with things of that nature. His affidavit dated 27 September 1990 declaring that effective January 1990 he "turned over the management of the cockpit to Mrs. Teresita Z. Teves for the reason that [he] could no longer devote a full time as manager of the said entity due to other work pressure" is not sufficient proof that he divested himself of his ownership over the cockpit. Only the management of the cockpit was transferred to Teresita Teves effective January 1990. Being the owner of the cockpit, his interest over it was direct.
>
> Even if the ownership of petitioner Edgar Teves over the cockpit were transferred to his wife, still he would have a direct interest thereon because, as correctly held by respondent Sandiganbayan, they remained married to each other from 1983 up to 1992, and as such their property relation can be presumed to be that of conjugal partnership of gains in the absence of evidence to the contrary. Article 160 of the Civil Code provides that all property of the marriage is presumed to belong to the conjugal partnership unless it be proved that it pertains exclusively to the husband or to the wife. And Section 143 of the Civil Code declares all the property of the conjugal partnership of gains to be owned in common by the husband and wife. Hence, his interest in the Valencia Cockpit is direct and is, therefore, prohibited under Section 89(2) of the LGC of 1991, which reads:
>
> > Section 89. *Prohibited Business and Pecuniary Interest.* — (a) *It shall be unlawful for any local government official* or employee, directly or indirectly, to:
> >
> > ... ...
> >
> > (2) *Hold such interests in any cockpit* or other games licensed by a local government unit. [Italics supplied].
>
> The offense proved, therefore, is the second mode of violation of Section 3(h) of the Anti-Graft Law, which is possession of a prohibited interest. But can the petitioners be convicted thereof, considering that it was not charged in the information?

> The answer is in the affirmative in view of the *variance doctrine* embodied in Section 4, in relation to Section 5, Rule 120, Rules of Criminal Procedure[.]
>
> ....
>
> *The elements of the offense charged in this case, which is unlawful intervention in the issuance of a cockpit license in violation of Section 3(h) of the Anti-Graft Law, are[:]*
>
> *1. The accused is a public officer;*
>
> *2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction, whether or not prohibited by law; and*
>
> *3. He intervenes or takes part in his official capacity in connection with such interest.*
>
> *On the other hand, the essential ingredients of the offense proved, which is possession of prohibited interest in violation of Section 3(h) of the Anti-Graft Law, are as follows:*
>
> *1. The accused is a public officer;*
>
> *2. He has a direct or indirect financial or pecuniary interest in any business, contract or transaction; and*
>
> *3. He is prohibited from having such interest by the Constitution or any law.*
>
> It is clear that the essential ingredients of the offense proved constitute or form part of those constituting the offense charged. Put differently, the first and second elements of the offense charged, as alleged in the information, constitute the offense proved. Hence, the offense proved is necessarily included in the offense charged, or the offense charged necessarily includes the offense proved. The *variance doctrine* thus finds application to this case, thereby warranting the conviction of petitioner Edgar Teves for the offense proved.[9] (Emphasis supplied, citations omitted)

Actual intervention is the third element under the first mode of committing Section 3(h) of Republic Act No. 3019, or unlawful intervention. This element need not be present in the violation of the second mode under Section 3(h) or the possession of prohibited interest—a separate and distinct mode from the first mode, considering that the provision used "or."

Here, Floirendo, Jr. is charged under the second mode, or the possession of prohibited interest under Article VI, Section 14 of the Constitution:

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

---

[9] Id. at 329–332.

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

Article VI, Section 14 of the Constitution enumerates the prohibition on a senator or member of House of Representatives relative to the practice of their profession.[10] Specifically, a senator or member of the House of Representatives is prohibited from:

> (1) under the *first* sentence, personal appearing as counsel before any court of justice, electoral tribunals, or quasi-judicial and other administrative bodies;
>
> (2) under the *second* sentence, being financially interested, directly or indirectly, in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, during their term of office; and,
>
> (3) under the *third* sentence, intervening in any matter before any office of the Government for their pecuniary benefit or where they may be called upon to act on account of their office.

Thus, there are three distinct and separate prohibited acts under Article VI, Section 14 of the Constitution.

As aptly pointed out by the Sandiganbayan: "[a]ctual intervention, although undoubtedly prohibited under the third sentence of the same provision, is not required under the second sentence."[11]

From its plain text, the second sentence of the Article VI, Section 14 of the Constitution explicitly prohibit a senator or member of the House of Representatives from:

(a) directly, or indirectly,
(b) being interested financially,
(c) in any contract with, or in any franchise or special privilege granted by

---

[10] JOAQUIN G. BERNAS, S.J., THE 1987 PHILIPPINE CONSTITUTION: A COMPREHENSIVE REVIEWER 235 (2011).

[11] *Rollo*, p. 18.

(d) the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary
(e) during their term of office.

Conflict of interest is likewise not specifically required. The members of the constitutional convention are fully conscious of the significance of words used in crafting each provision of the Constitution. Thus, it could have easily indicated actual intervention or conflict of interest if they intended it to be included as an element of the second sentence under Article VI, Section 14.

The third sentence of the same constitutional provision should not be interpreted as qualifying the second sentence of the same. There is nothing in the second or third sentence stating that the third sentence shall qualify the second sentence. Each sentence under Article VI, Section 14 of the Constitution identify a prohibited act independent of each other.

In *Pangilinan v. Cayetano*,[12] the Court only discussed the first sentence of Article VI, Section 14 of the Constitution, or the prohibition of "Senator[s] or Member[s] of the House of Representatives [from] personally appear[ing] *as counsel*" without any reference to the second sentence or third sentence of the said constitutional provision.

Furthermore, the provisions of the Constitution should be understood based on its plain meaning or how it is understood by the people adopting it. When the meaning of the constitutional provision is clear, there is no need to look at the intent from the deliberations of the constitutional convention. Thus, in finding the Executive Order allowing cabinet members to hold multiple offices or positions in the government unconstitutional, the Court in *Civil Liberties Union v. Executive Secretary*[13] gave primacy over the Constitution's manifest intent and the people's understanding of it:

> While it is permissible in this jurisdiction to consult the debates and proceedings of the constitutional convention in order to arrive at the reason and purpose of the resulting Constitution, resort thereto may be had only when other guides fail as said proceedings are powerless to vary the terms of the Constitution when the meaning is clear. *Debates in the constitutional convention "are of value as showing the views of the individual members, and as indicating the reasons for their votes, but they give us no light as to the views of the large majority who did not talk, much less of the mass of our fellow citizens whose votes at the polls gave that instrument the force of fundamental law. We think it safer to construe the constitution from what appears upon its face." The proper interpretation therefore depends more on how it was understood by the people adopting it than in the framers' understanding thereof.*

---

[12] G.R. No. 238875 (Notice), August 7, 2018 [*En Banc*].
[13] 272 Phil. 147 (1991) [Per J. Fernan, *En Banc*].

> It being clear, as it was in fact one of its best selling points, that the 1987 Constitution seeks to prohibit the President, Vice-President, members of the Cabinet, their deputies or assistants from holding during their tenure multiple offices or employment in the government, except in those cases specified in the Constitution itself and as above clarified with respect to posts held without additional compensation in an *ex-officio* capacity as provided by law and as required by the primary functions of their office, the citation of Cabinet members (then called Ministers) as examples during the debate and deliberation on the general rule laid down for all appointive officials should be considered as mere personal opinions which cannot override the constitution's manifest intent and the people's understanding thereof.[14] (Emphasis supplied, citations omitted)

Thus, a constitutional convention member's view should not be made basis in interpreting that "the second sentence of Article VI, Section 14 of the Constitution would have to take into consideration the third sentence[.]"[15] Moreso, when the meaning of the words used in the Constitution is clear.

Accordingly, the elements of Republic Act No. 3019, Section 3(h) under the second mode or for possession of pecuniary or financial interest, in relation to Article VI, Section 14 of Constitution, are:

(1) The accused is a public officer;
(2) They have direct or indirect financial or pecuniary interest in any business, contract, or transaction;
(3) They are prohibited from having such interest by the Constitution, such as under Article VI, Section 14 of Constitution:

(a) They are either senators or members of the House of Representatives;
(b) They are directly, or indirectly, interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, including any government-owned or controlled corporation, or its subsidiary, and
(c) This is during their term of their office.

Here, the Sandiganbayan held that prosecution was able to prove the presence of all the elements of Republic Act No. 3019, Section 3(h) under the second mode or for possession of pecuniary or financial interest prohibited under the second sentence of Article VI, Section 14 of Constitution, thus:

---

[14] Id. at 169–170.
[15] *Ponencia*, p. 11.

First element

The first element of Violation of Sec. 3(h) of R.A. No. 3019 is present. During the pre-trial, the parties stipulated that the accused was a public officer during the time material to the present case, being then a Member of the House of Representatives, representing the 2nd District of Davao del Norte.

Second and third elements

The second element is present if the accused has a direct or indirect financial or pecuniary interest in any business, contract or transaction. On the other hand, under the second mode of Violation of Sec. 3(h) of R.A. No. 3019, the third element is present if the accused is prohibited from having such interest by the Constitution or by law.

The accused is charged with committing Violation of Sec. 3(h) of R.A. No. 3019 under the second mode, in particular, by having direct or indirect financial interest in the 2003 JVA, such interest being prohibited under Sec. 14, Art. VI of the Constitution.

Sec. 14, Art. VI of the Constitution prohibits Members of the House of Representatives from having direct or indirect financial interest in contracts with the Government, any of its subdivisions, agencies or instrumentalities. The provision reads:

....

As gleaned from the second sentence of the aforequoted provision, the general rule is that Members of the House of Representatives are not prohibited from having direct or indirect financial interests *per se. They are, however, specifically prohibited from having direct or indirect financial interest in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency, or instrumentality thereof, during the Representative's term of office.*

Here, the prosecution proved that the accused had indirect financial interest in the 2003 JVA during his term of office as the Representative of the 2nd District of Davao del Norte.

As shown by the 2003 JVA's provisions on production and profit sharing, TADECO and the BuCor entered into the agreement with the objective of obtaining profits therefrom. At the time, the accused owned 75,000 shares in TADECO and 537,950 shares in ANFLOCOR, which owned around 56% of TADECO. Because TADECO and ANFLOCOR have personalities separate from that of the accused, the accused' pecuniary or financial interest in the 2003 JVA is indirect.

The accused never denied that he had indirect financial interest in said 2003 JVA.[16] (Emphasis supplied)

---

[16] *Rollo*, pp. 15–17.

The general rule is that the factual findings of the Sandiganbayan are conclusive upon the Supreme Court.[17] The Sandiganbayan's finding of Floreindo, Jr.'s guilt is sufficiently based on the following undisputed facts:

> On May 21, 2003, the BuCor and TADECO renewed the September 26, 1979 agreement for another 25 years. Under the 2003 JVA, the BuCor allowed TADECO to utilize specific areas within the Davao Prison and Penal Farm. TADECO was to develop said areas into a banana plantation and utilize the inmates, whom the BuCor may recommend, as laborers. In turn, BuCor would receive a guaranteed annual production share and a share in TADECO's profits based on the annual export volume.
>
> At the time of the execution of the 2003 JVA, Floirendo, Jr. was a representative of the 2nd District of Davao del Norte in the 12th Congress, from 2001 to 2004, and 13th Congress, from 2004 to 2007. He owned 75,000 common shares of TADECO, or equivalent to 0.89% of its outstanding capital stock, and 537,950 common shares of Anflo Management and Investment Corporation (*ANFLOCOR*), a corporation owned by the Floirendos that was engaged in investing and managing the operations of the Anflo Group of Companies, which included TADECO. ANFLOCOR owned 56% of the shares of stock of TADECO. Floirendo, Jr. acquired the foregoing shares from 1977 to 1996, prior to being elected as a member of the House of Representatives. Yet, when the 2003 JVA was executed, Floirendo, Jr. was neither a member of TADECO's Board nor an officer of TADECO.[18]

Since Floirendo, Jr. was a member of the House of Representatives when the 2003 Joint Venture Agreement was executed between Tagum Agricultural Development Co., Inc. and Anflo Management and Investment Corporation, where he is a shareholder, and a government agency, or the Bureau of Corrections, the Sandiganbayan did not err in convicting him of the second mode of violation of Section 3(h) of Republic Act No. 3019, specifically possession of pecuniary or financial interest prohibited under the second sentence of Article VI, Section 14 of Constitution.

In *Puyat v. De Guzman, Jr.*,[19] this Court held that the intervention of a representative in a Securities and Exchange Commission case on the ground of legal interest in the matter under litigation after having acquired a mere 10 shares out of 262,843 outstanding shares, falls within the ambit of the prohibition contained in Article VIII, Section 11[20] of the 1973 Constitution:

---

17 *Domingo v. Sandiganbayan*, 510 Phil. 691, 706 (2005) [Per J. Azcuna, First Division].

18 *Ponencia*, pp. 2–3.

19 198 Phil. 420 (1982) [Per J. Melencio-Herrera, *En Banc*].

20 SECTION 11. No Member of the Batasang Pambansa shall appear as counsel before any court without appellate jurisdiction, before any court in any civil case wherein the Government, or any subdivision, agency, or instrumentality thereof is the adverse party, or in any criminal case wherein any officer or employee of the Government is accused of an offense committed in relation to his office, or before any administrative body. Neither shall he, directly or indirectly be interested financially in any contract with, or in any franchise or special privilege granted by the Government, or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation, during his term of office. He shall not accept employment to intervene in any cause or matter where he may be called to act on account of his office.

> A ruling upholding the "intervention" would make the constitutional provision ineffective. All an Assemblyman need do, if he wants to influence an administrative body is to acquire a minimal participation in the "interest" of the client and then "intervene" in the proceedings. That which the Constitution directly prohibits may not be done by indirection or by a general legislative act which is intended to accomplish the objects specifically or impliedly prohibited.[21] (Citation omitted)

Similarly, it is inconsequential that Floirendo, Jr. only owns a mere 0.89% of its outstanding capital stock in the corporation or a "nominal shareholding," according to the *ponencia*. Despite the seemingly insignificant value of his shares, it remains that he has financial interest on the contract, as he stands to gain profit, through his ownership of shares, in the implementation of the contract. As the *ponencia* stated:

> [T]he prosecution only proved that: (1) Floirendo, Jr. acquired shareholdings of 75,000 in TADECO from 1977 to 1996 through gifts from Floirendo, Jr.'s father; (2) he was already a shareholder of TADECO when he assumed office as representative of the 2nd District of Davao del Norte during the 12th Congress; (3) he was a member of the Board of Directors of ANFLOCOR from 2002 to 2005; (4) he was the Vice-President of ANFLOCOR from 2002 to 2003; (5) he was a shareholder ANFLOCOR from 2002 to 2005; (6) from 2002 to 2005, he owned 537,950 shares of ANFLOCOR; (7) his father subscribed to the authorized capital stock of ANFLOCOR on his behalf; (8) ANFLOCOR owns 56% of TADECO; (9) his father, mother, uncle, sisters, and brother were shareholders of ANFLOCOR since 2012; (10) ANFLOCOR is a family corporation owned by the Floirendos; (11) TADECO and ANFLOCOR are stock corporations operating for profit; and (12) when TADECO earns profit from a transaction with the BuCor, its stockholders will ultimately earn through dividends.[22]

Moreover, Floirendo, Jr. himself never denied that he had indirect financial interest in the Joint Venture Agreement.[23] Because of this financial interest, Floirendo, Jr., while being a member of the House of Representatives, is prohibited from executing any contract, including the 2003 Joint Venture Agreement, with the government, as it "aims to prevent the dominant use of influence, authority and power"[24] although the exercise of these may not appear obvious.

It must also be pointed out that Floirendo, Jr. admitted that Anflo Management and Investment Corporation is a family corporation owned by the Floirendos.

---

21 *Puyat v. De Guzman*, 198 Phil. 420, 426–427 (1982) [Per J. Melencio-Herrera, *En Banc*].
22 *Ponencia*, p. 22.
23 *Rollo*, p. 17.
24 *Domingo v. Sandiganbayan*, 510 Phil. 691, 706 (2005) [Per J. Azcuna, First Division].

In *Republic v. Tuvera*,[25] the Court held that the fact that the principal stockholder of the corporation was respondent's own son establishes respondent's indirect pecuniary interest in the transaction between the corporation and the government, and thus he appears to have intervened in as a public officer.

Also, I submitted in *People v. Sandiganbayan*[26] that although the prosecution did not provide evidence showing respondent's pecuniary interest in her sister's company, there is a disputable presumption that they indirectly benefit from each other's financial successes because of their relationship as siblings.

For these reasons, I vote to deny the Appeal. The August 26, 2020 Decision and January 22, 2021 Resolution of the Sandiganbayan in SB-18-CRM-0101 should be affirmed. Accused-appellant Antonio R. Floirendo, Jr. should be held guilty of violation of Section 3(h) of Republic Act No. 3019 under the second mode.

MARVIC M.V.F. LEONEN
Senior Associate Justice

---

[25] 545 Phil. 21, 56 (2007) [Per J. Tinga, Second Division].

[26] J. Leonen, Dissenting Opinion in *People v. Sandiganbayan (Second Division)*, G.R. Nos. 233280-92, September 18, 2019 [Per J. Peralta, Third Division], pp. 2–3. This refers to the pinpoint citation of the Dissenting Opinion uploaded in the Supreme Court website.