

**DAVID YU HUA MING, PETITIONER, VS. HON. RAUL M. GONZALEZ, IN HIS CAPACITY AS SECRETARY OF JUSTICE, GEORGE S. K. TY, ANTONIO S. ABACAN, JR. AND HENRY M. SUN, RESPONDENTS.**

Ponente: SALAZAR-FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/31eb99b9a91f/>

---

**SALAZAR-FERNANDO, J.:**

Before this Court is a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the Resolutions dated October 17, 2005 and January 2, 2006 of the Secretary of Justice in I.S. No. 03-1-26455 entitled, “David Yu Hua Ming, Complainant, vs. George S.K. Ty, et al., Respondents, the dispositive portions of which read:

Resolution dated October 17, 2005[1]:

“WHEREFORE, the resolution of the City Prosecutor of Manila is hereby AFFIRMED in toto. He is directed to report the action taken hereon within ten (10) days from receipt hereof.

SO ORDERED.”

Resolution dated January 2, 2006[2]:

“WHEREFORE, the motion for reconsideration is hereby DENIED.

SO ORDERED.”

The facts are:

On September 18, 2003, petitioner David Yu Hua Ming filed a Complaint Affidavit[3] before the Office of the City Prosecutor of Manila alleging that: he is the president of Junction Manufacturing Co., Inc. (JUNCTION), which is an affiliate company of Juan Yutingco Corporation (YUTINGCO); JUNCTION is the registered owner of a parcel of land located in Novaliches, Quezon City with an area of 15,310 square meters under Transfer Certificate of Title No. RT-108266 (313118) PR-27191 of the Registry of Deeds of Quezon City; the said parcel of land was mortgaged by JUNCTION in favor of Metropolitan Bank and Trust Company (METROBANK) to guarantee a loan, among other loans, obtained by YUTINGCO from METROBANK, San Nicolas Center, Tondo, Manila up to a maximum amount of Php 40,000,000.00 only; in granting the said loans, METROBANK adopted an unusual procedure; whenever YUTINGCO requested for loan accommodations from METROBANK, the latter just sent numerous promissory notes and real estate mortgages blank forms to YUTINGCO for his signature; upon receipt, he affixed his signature in his office; the real estate mortgages and promissory notes do not contain the principal amount loaned, interest and penalty charges to be imposed and the maturity dates; YUTINGCO retained several copies of the blank promissory notes as its representatives were able to photocopy the same before sending them back to METROBANK; when the mortgage documents with his signature were transmitted to METROBANK, the latter just filled up the blank spaces and had them notarized before a notary public even without his presence as signatory; despite several demands, METROBANK refused to furnish JUNCTION and YUTINGCO copies of the signed documents, such as the mortgage contracts and promissory notes; for unknown

reasons, all copies of the subject documents were retained by METROBANK; when the notes matured, METROBANK just debited the account of YUTINGCO with them and provided the latter with debit memos; the records of YUTINGCO and JUNCTION show that they have paid a total of Php 59,133,000.85 for the loan amounting to Php 55,000,000.00 only; YUTINGCO requested METROBANK several times to furnish them with copies of the real estate mortgage and promissory notes in order for them to reconcile their financial records but their numerous requests fell on deaf ears; YUTINGCO and JUNCTION were surprised to receive a notice from the private respondents that they have faulted in the payment of the loans; YUTINGCO wrote several letters to METROBANK requesting for copies of the loan and other related documents to determine the veracity of METROBANK's claim which the latter totally ignored and proceeded to foreclose the mortgages, including the said parcel of land.

Helen L. Tan in her counter-affidavit[4] denied that she violated any of the provisions of the Truth in Lending Act; she claimed, among others, that: according to the existing records, YUTINGCO had been a client of METROBANK since 1977 and had several credit lines with the San Nicolas Center from which it drew loans; METROBANK's Executive Committee usually approved the credit line applications of the petitioner upon the recommendation by the San Nicolas Center; it was petitioner David Yu Hua Ming who requested that all his transactions with METROBANK be done over the phone because of the frequency of his need to obtain loans; thus, if he needed loans, he would just call the San Nicolas Center to give the amount of the loans he needed and if there were documents that needed to be signed, the petitioner would just send his secretary to get the documents and return them soon after he had signed them; as YUTINGCO was a valued client, METROBANK naturally agreed with the arrangement in order not to inconvenience petitioner; it must be noted that before the Complaint-Affidavit was filed, or about two years ago, JUNCTION and YUTINGCO each filed a civil action against METROBANK for the purpose of preventing the latter from foreclosing the mortgages securing the payment of YUTINGCO's loans; these cases are Civil Case No. Q-01-45092 pending with Branch 217 of the Regional Trial Court of Quezon City initiated by JUNCTION, and Civil Case No. 216-V-01 pending with Branch 75 of the Regional Trial Court of Valenzuela City initiated by YUTINGCO; both JUNCTION and YUTINGCO questioned the loans because METROBANK did not furnish them Promissory Notes and other related documents to inform them about the loan charges imposed by METROBANK; in other words, both corporations are in effect already accusing METROBANK of violating the Truth in Lending Act; there is thus a prejudicial question on whether or not METROBANK indeed did not furnish therein plaintiffs that needed to be resolved first before a criminal case may continue or be instituted; as the records of Civil Case No. Q-01-45092 would show, during the application for the issuance of a Writ of Preliminary Injunction, petitioner was shown copies of forty-one (41) duly filed Promissory Notes and forty-one (41) Disclosure Statements attached to the Promissory Notes, and admitted that his signatures thereon are indeed his; petitioner also confirmed that he personally received copies of certain filled-up Promissory Notes and Disclosure Statements that he signed; petitioner cannot claim that he does not have copies of the Promissory Notes and that he does not know how much he or YUTINGCO borrowed from METROBANK as the Promissory Notes clearly indicate the amount of the loans to be paid on due dates and the rate of the interests to be paid; petitioner's secretary, Sandra Lim, even produced notebooks during the above-mentioned hearing where she recorded the amount of the loans that YUTINGCO obtained from METROBANK, the due dates of their repayment and the interests that were supposed to be paid; petitioner was in fact furnished copies of the Promissory Notes, Disclosure Statements and mortgage contract soon after they were signed and filled up; petitioner never demanded copies of the said documents before the loans became past due; it was only after YUTINGCO defaulted in the payment of its loan and METROBANK began demanding payment of the outstanding loans that petitioner demanded copies of the loan documents notwithstanding the fact that he already has copies of the same; petitioner refused to go or even send his secretary to San Nicolas Center to get copies of the documents which were readily available, after he demanded that he be so furnished; the total

principal loans of YUTINGCO is more than P80,000,000.00 while the payments made on the principal is only P7,418,530.61, and on the interest, P7,297,343.74; it is clear that respondents George S.K. Ty, Antonio S. Abacan and Henry M. Sun, who all maintain the offices at METROBANK's Head Office in Makati City, have no participation in or knowledge of the loan transactions between YUTINGCO and METROBANK's San Nicolas Center, from the time the credit lines were approved up to the time METROBANK began demanding payment of the outstanding loans; while respondents Abacan and Sun may have been members of the Executive Committee at the time the credit line applications were approved, their participation in or knowledge of the loans of YUTINGCO is limited to the approval of the credit line applications; as the loans were applied with and obtained from METROBANK's San Nicolas Center, the Branch Manager is the one who has the task of furnishing copies of the Promissory Notes and Disclosure Statements which contain the information required to be disclosed by the Truth in Lending Act.

Private respondents Henry M. Sun, Antonio S. Acaban Jr. and George S. K. Ty, in their respective counter-affidavit[5], uniformly argued that they do not directly transact with clients regarding loans and documentation of said loans. Therefore, they have no personal knowledge of the alleged violation of the Truth in Lending Act as the METROBANK's branches handle loan transactions. It is not their job to furnish METROBANK's borrowers with informations relating to the loans that they may have obtained.

After the parties submitted their respective pleadings,[6] the Office of the City Prosecutor issued a resolution[7] dated August 16, 2004 recommending the filing of the criminal case against Helen Tan while recommending at the same time the dropping of charges against the private respondents. The dispositive portion of the said resolution reads:

“Accordingly, it is respectfully recommended that respondent Helen Tan be indicted as charged. However, with respect to respondents George S.K. Ty, Antonio S. Acaban Jr. and Henry Sun, it is recommended that the charges against them be dismissed for lack of merit.”

Petitioner filed his Partial Motion for Reconsideration[8] of the above-quoted resolution but the same was denied in a resolution[9] dated January 26, 2005.

Feeling aggrieved, petitioner filed a Petition for Review[10] with the Office of the Secretary of Justice. However, in the assailed resolution[11] dated October 17, 2005, the Secretary of Justice affirmed in toto the resolution of the City Prosecutor of Manila and directed the latter to report the action taken hereon within ten (10) days from receipt hereof.

Petitioner filed a Motion for Reconsideration[12] of the October 17, 2005 resolution of the Secretary of Justice but the same was denied in the resolution[13] dated January 2, 2006.

Hence, this Petition for Certiorari anchored on the following argument, to wit:

“Public respondent has acted without or in excess of his jurisdiction amounting to lack or excess of jurisdiction in affirming in toto the resolutions of the City Prosecutor of Manila which dismissed petitioner's complaint as against private respondents George S.K. Ty, Antonio S. Acaban, Jr. and Henry M. Sun for Violation of Republic Act 3765 (Truth in Lending Act)”

The petition lacks merit.

Creditor, as defined under Republic Act No. 3765 means any person engaged in the business of extending credit (including any person who as a regular business practice make loans or sells or rents property or services on a time, credit, or installment basis, either as principal or as agent) who requires as an incident to the extension of credit, the payment of a finance charge. Person, on the other hand, means any individual, corporation, partnership,

association, or other organized group of persons, or the legal successor or representative of the foregoing, and includes the Philippine Government or any agency thereof, or any other government, or any of its political subdivisions, or any agency of the foregoing. While it can be said that creditors are persons within the meaning of R.A. No. 3765, not all persons mentioned under Section 3 (5) of the said law are creditors. The law limits the meaning of the word creditor only to persons engaged in the business of extending credit who requires as an incident to the extension of credit, the payment of a finance charge.

The distinction between the word “creditor” and “person” may at first glance appear inconsequential in this case. However, upon deeper consideration, especially when viewed in the light of Section 6 of R.A. No. 3765, said distinction is vital and determinative of the issue at hand. Paragraphs (a) and (c), Section 6 thereof read:

“(a) Any creditor who in connection with any credit transaction fails to disclose to any person any information in violation of this Act or any regulation issued thereunder shall be liable to such person in the amount of P100 or in an amount equal to twice the finance charged required by such creditor in connection with such transaction, whichever is the greater, except that such liability shall not exceed P2,000 on any credit transaction. Action to recover such penalty may be brought by such person within one year from the date of the occurrence of the violation, in any court of competent jurisdiction. In any action under this subsection in which any person is entitled to a recovery, the creditor shall be liable for reasonable attorney’s fees and court costs as determined by the court.”

“(c) Any person who willfully violates any provision of this Act or any regulation issued thereunder shall be fined by not less than P1,000 or more than P5,000 or imprisonment for not less than 6 months, nor more than one year or both.”

Notably, R.A. No. 3765 does not only provide separate penalties for “creditors” and “persons” in cases of violation of its provisions or any of the issued regulations thereunder, but more significantly requires that for a person to be made criminally liable under Section 6 (c) thereof, the person should have “willfully violated” the same. The same mental disposition is not required under Section 6 (a) where the violator is the “creditor”. For creditors, like the METROBANK, to become liable, all that must be established is the fact that said creditor failed to disclose to any person any information in violation of R.A. No. 3765 or any regulation issued thereunder.

Attention must further be directed towards the penalties imposed under Section 6, paragraphs (a) and (c). The penalty imposed on creditors under Section 6 (a) is only the payment to the person entitled to the information required to be disclosed under R.A. No. 3765 the amount of P100 or equal to twice the finance charged required by such creditor in connection with the transaction, whichever is greater, except that such liability shall not exceed P2,000 on any credit transaction. However, in Section 6 (c) the penalty imposed is a fine of not less than P1,000 or more that P5,000 or imprisonment for not less than 6 months, nor more than one year or both. Thus, unmistakably the penalty imposable upon persons who willfully violate the law is more stringent than that of the creditors.

Indeed, the provision of R.A. No. 3765 mandating banks to provide the borrower with copies of the documents relative to his loan transactions is designed precisely to ensure a transparent and sound banking practice for the protection of the general public. To extract compliance from the creditors, which are mostly juridical persons, R.A. No. 3765 imposes the penalty under Section 6 (a) regardless of whether or not the violation was willfully made. Liability automatically attaches once it is proven that the creditor failed to furnish any of its borrower the information enumerated under Section 4 of R.A. No. 3765.

Recognizing, however, the principle that only natural person can commit criminal act and that the corporation acts and can act only by and through its human agents,[14] R.A. No. 3765 further imposes criminal liability on “any person” who willfully violates any of its provisions or any regulation issued thereunder. The framers of the law

took notice of the fact that most of these creditors are juridical entities and therefore act through their officers who are not and cannot be technically be punished under Section 6 (a) in view of principle that they possess distinct and separate personality from the corporation. Thus, to check the possible circumvention of the Truth in Lending Act, its framers brought within the ambit of said law all “persons,” who are not necessarily the creditor but have willfully caused the violation thereof. However, unlike the creditors being punished under Section 6 (a), it is imperative that the “person” sought to be punished under Section 6 (c) should have willfully violated the provision of the Truth in Lending Act. Obviously, the person referred to in Section 6 (c) is being made criminally liable not because he is a creditor but because he has personal knowledge of the transaction and has willfully violated the provisions of R.A. No. 3765.

Based on the above observations, it is crystal clear that there is no merit in the petitioner’s argument that actual participation in the processing of the loan document is irrelevant in the determination of whether or not bank officers are liable for violation of R.A. No. 3765.

There is no protestation that the creditor in this case is the METROBANK. It alone, as an entity separate and distinct from its officers and stockholders, that can be made liable under Section 6 (a) where knowledge of the transaction or intent to violate the Truth in Lending Act is immaterial. All that must be established is the fact that METROBANK failed to provide petitioner with the information required to be furnished under R.A. No. 3765. Unfortunately, since this case was brought against the private respondents who are mere officers of the creditor METROBANK, the elements under Section 6 (c) must be present. The allegations in the Complaint-Affidavit, assuming that they are true, must show that private respondents have personal knowledge of the transaction or at least could have willfully violated the provisions of R.A. No. 3765.

The public respondent Secretary correctly made the following observation:

“In the case at bar, we find no express provision in Republic Act 3765 finding the corporate officers, namely: respondents George S.K. Ty, Henry M. Sun and Antonio S. Abacan, Jr. liable in the event of violation of the provisions thereof. Accordingly, the general principles must be applied that only persons against whom the evidence of direct participation, in this case, Respondent Helen Tan, may be held liable for the offense charged.”

Time and again, grave abuse of discretion is defined as capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. It is such exercise of one’s power in an arbitrary or despotic manner by reason of passion or personal hostility which must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[15] Contrary to the posture adopted by petitioner, the public respondent Secretary of Justice did not issue the subject resolutions in an arbitrary and despotic manner by reason of passion or personal hostility but merely applied the provisions of the law and jurisprudence, as he is duty bound to do. There is nothing in the record that could suggest that the findings of the public respondent amounts to an evasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

WHEREFORE, in view of the foregoing, the petition is hereby DENIED for lack of merit and correspondingly DISMISSED.

**SO ORDERED.**

Tijam and Castillo, JJ., concur.

---

[1] Rollo, pp. 342-346

- [2] Rollo, p. 362
- [3] Rollo, pp. 37-39
- [4] Rollo, pp. 57-62
- [5] Rollo, pp. 212-213; 214-215; 216-217
- [6] Rollo, pp. 218-248
- [7] Rollo, pp. 249-257
- [8] Rollo, pp. 258-267
- [9] Rollo, p. 268
- [10] Rollo, pp. 269-292
- [11] Rollo, pp. 342-346
- [12] Rollo, pp. 347-360
- [13] Rollo, p. 362
- [14] Pople vs. Chowdury, 325 SCRA 572
- [15] Benito vs. COMELEC, 349 SCRA 705

**ABOUT BATAS.ORG**

# Study smarter at BATAS.org

*The Philippine bar review and law-school companion built around how your brain actually remembers.*

**The complete Philippine law library - free for everyone.**

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

**Audio case-brief lectures.**

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

**Bar review built on the science of memory.**

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

**The full law-school curriculum.**

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

**Mock exams that tell you where you stand.**

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

**A study planner that keeps you on pace.**

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

**Start free at <https://batas.org>**

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.