WILSON P. CHAM, PETITIONER, VS. HON. RAUL M. GONZALEZ IN HIS CAPACITY AS THE SECRETARY OF JUSTICE AND RODOLFO S. SANDEL, ALEXIS D. SANDEL AND KATHERINE D. SANDEL, RESPONDENTS.

Ponente: COSICO, J.

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COSICO, J.:

This Decision resolves petitioner Wilson P. Cham's petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, which seeks to annul and set aside the resolutions dated May 16, 2005 and October 27, 2005 issued by public respondent Secretary of Justice in DOJ I.S. No. 01-8284.

The Facts

In June 2001, herein petitioner Wilson Cham filed a complaint-affidavit[1] with the Office of the City Prosecutor of Quezon City docketed as I.S. No. 01-8284, accusing private respondents Rodolfo Sandel, Alexis Sandel and Katherine Sandel of the crime of estafa under Article 315, par. 2 (a) of the Revised Penal Code, allegedly committed as follows—

> "2. That sometime in the month of September 1996, in Quezon City, and within the jurisdiction of this Honorable Office, respondents Rodolfo Sandel, Alexis D. Sandel and Katherine D. Sandel, conspiring and confederating with each other, by means of false pretense, deceit and fraudulent act, represented to me that they absolutely own a parcel of land containing an area of 27,098 square meters located in Bulac, Sta. Maria, Bulacan, for which reason, said respondents were able to convince and induce me to buy their said property with an alleged land area of 27,098 square meters. Henceforth, a Contract to Sell dated January 28, 1997 had been executed between me and the respondents, a true photocopy of said Contract to Sell is attached hereto and made an integral part hereof as Annex 'A';
>
> 3. That I was able to pay respondents Rodolfo Sandel, Alexis D. Sandel and Katherine D. Sandel a total amount of P2,709,800.00 representing 50% downpayment of the agreed purchase price based on the aforesaid Contract to Sell as evidenced by various checks hereto marked and made integral part hereof as Annexes 'B' to 'B-4'; and cash in the amount of P135,490.00 duly received as evidenced by voucher dated November 24, 1996 hereto marked and made integral part hereof as Annex 'B-5'.
>
> 4. That I came to know afterwards that respondents Rodolfo Sandel, Alexis D. Sandel and Katherine D. Sandel only own a portion of the property which said respondents sold to me and not the whole lot. The truth of the matter is that said respondents only own 1 ¼ hectares or around 12,500 square meters of the subject property as shown on page 4, par. 5 of a document denominated as Kasulatan ng Bilihang Tuluyan dated July 26, 1972 executed by spouses Ulpiano M. Diaz and Cornelia Mateo in favor of Remedios Diaz (wife of respondent Rodolfo S. Sandel) from whom the subject property came from. A true photocopy of said document of sale is attached hereto and made an integral part hereof as Annex 'C'. However, respondents Rodolfo S. Sandel, Alexis D. Sandel and Katherine D. Sandel fraudulently represented to me that they absolutely own the whole 27,098 square meters of the subject land. Had it not been for this fraudulent representation, I would not have agreed to buy the subject property from the respondents and I would not have paid them the total amount of

> P2,709,800.00 as evidenced by the checks (Annexes 'B' to 'B-4' hereof) I issued to them;
>
> 5. That I have asked the respondents to return the money which I paid to them, but despite repeated demands, the respondents failed and refused and continue to fail and refuse to return the money which they got from me by means of false pretense, deceit and fraudulent representation to my extreme damage and prejudice in the amount of P2,709,800.00. A true photocopy of the Demand letter dated January 22, 2001 which my lawyer sent to the respondents is attached hereto and marked Annex 'D' hereof."[2]

The Ruling of the City Prosecutor

On October 15, 2001, the Office of the City Prosecutor of Quezon City issued a resolution[3] dismissing I.S. No. 01-8284. The resolution reads in part—

> "Considering that the evidence shows that the parties have entered into a civil transaction in that this is a case of sales by installment, remedies provided by the civil code is available to complainant, this is not a criminal case but a civil one.
>
> Premises Considered, this case is dismissed."

Petitioner's motion for reconsideration was denied via a resolution[4] dated April 11, 2002. Feeling aggrieved, petitioner appealed from the resolutions of the Office of the City Prosecutor to the Secretary of Justice.

The Ruling of the Secretary of Justice

On December 15, 2004, Secretary of Justice Raul M. Gonzalez issued a resolution[5] reversing the resolution of the Office of the City Prosecutor. The Secretary of Justice ruled that the false representation employed by herein private respondents constitutes estafa under Article 315, paragraph 2(a) of the Revised Penal Code. Thus, the dispositive portion of his resolution states—

> "WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Quezon City is directed to file an information for estafa under Article 315 par. 2[a] of the Revised Penal Code against respondents Rodolfo Sandel, Alexis Sandel and Katherine Sandel and to report the action thereon within ten (10) days from receipt hereof."

Private respondents' motion for reconsideration of the resolution dated December 15, 2004 was granted by the Secretary of Justice via the assailed resolution[6] dated May 16, 2005. The resolution reads in part –

> "Respondents premise their motion upon new matters and evidence sufficient to overturn the resolution sought to be reconsidered. Among others, they adduce a document called 'Partihang Labas Sa Hukuman Na May Pagtatakwil Ng Karapatan' that was executed by all the brothers and sisters or co-heirs of Remedios Diaz Sandel in her favor on May 9, 1976. This was the initial basis of the representation made by the respondents that they, having inherited from Remedios Diaz Sandel, were the real owners of the whole parcel of land they sold to complainant.
>
> Respondents likewise adduce all the pertaining tax declarations chronologically issued from the year 1951 up to the year 2000 stating thereon the total land area covered and the corresponding persons paying the tax and claiming as owners/possessors thereof. It is shown that Tax Declaration No. 18161 issued for 1977 initially in the name of Remedios Diaz Sandel was the initial offshoot from the execution of the foregoing document vesting exclusive ownership of the whole area solely to her and to the exclusion of the other heirs who therein waived their respective rights. All of these sufficiently belie complainant's claim that, by executing the Contract to Sell dated January 28, 1997, respondents falsely pretended as owners of the whole 27,098-square-meter property he bought."

Thus, the dispositive portion reads—

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> "WHEREFORE, subject motion for reconsideration is GRANTED. The assailed resolution dated December 15, 2004 is RECONSIDERED and SET-ASIDE. The City Prosecutor of Quezon City is directed to cause the withdrawal of any information he filed in court pursuant to the assailed resolution and make a report of the action taken thereon within ten (10) days from receipt hereof."

Petitioner's motion for reconsideration was denied in a resolution[7] dated October 27, 2005. Hence, the instant petition for certiorari.

The Issue

The issue for this Court's resolution is: Whether or not public respondent Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in setting aside his earlier resolution directing the filing of an information for estafa against herein private respondents.

This Court's Ruling

Petitioner argues that the document denominated as "Partihang Labas Sa Hukuman Na May Pagtatakwil ng Karapatan" referred to by the public respondent in his resolution dated May 16, 2005 is a mere forgery, inasmuch as Oscar Cruz who purportedly signed the said instrument denied having participated in the execution thereof.[8] Petitioner likewise invokes the existence of tax declarations later issued in the names of Yolanda Cruz, Jesusa Castillo and Julieta Castillo.[9] Moreover, he contends that private respondents were in actual, peaceful, continuous and open possession of the subject property.

After due study, this Court finds the instant petition bereft of merit.

It bears emphasizing that the preliminary investigation proper, i.e., the determination of whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be subjected to the expense, rigors and embarrassment of trial, is the function of the prosecution.[10] In the absence of a clear showing that the investigating officer acted with grave abuse of discretion in the conduct of his functions, courts will not interfere with the officer's findings. By "grave abuse of discretion" is meant such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or where the power is exercised 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 invasion of positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[11]

The Secretary of Justice did not act in such manner; instead, factual and legal bases support his ruling. Under the class of estafa defined in Article 315(2)(a), the element of deceit is indispensable, which deceit consists of the false statements or fraudulent representation of the accused, made prior to, or at least simultaneously with, the delivery of the thing by the victim, it being essential that such false statement or fraudulent representation constitutes the very cause or the only motive that induces the complainant to part with the thing of value.[12] Fraud in its general sense is deemed to comprise anything calculated to deceive including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another.

In the instant case, private respondents were able to present during the preliminary investigation documents which negate the accusation that they actually intended to deceive herein petitioner. Petitioner's reliance on the Kasulatan ng Bilihang Tuluyan dated July 26, 1972 is misplaced. First, there is a document denominated as "Partihang Labas Sa Hukuman Na May Pagtatakwil Ng Karapatan"[13], executed by the co-heirs of Remedios Diaz Sandel before Notary Public Jacinto Jose, Jr. on May 9, 1976, whereby they relinquished their rights over the subject property in Sandel's favor. A copy of the said document was duly filed with the Records Management

and Archives Office, National Archives, as shown by a certification[14] issued by the Archives Division of the Office on November 19, 2004. Notably, such document is a public document that carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.[15] The lone affidavit of Oscar C. Cruz executed only on August 19, 2005 stating that his signature in the Partihan was a forgery is clearly insufficient to overthrow the presumption of regularity that is attached to the notarized Partihan. Incidentally, the other parties to the said Partihan did not assail the validity of their signatures on the said document.

Public respondent Secretary of Justice also correctly referred to the tax declarations from the year 1951 to 2000 covering the subject property. Starting 1977, the tax declarations were issued in the name of Remedios Diaz Sandel[16], clearly in accord with the execution of the Partihan in 1976. The tax declarations likewise covered the entire 27,098 square-meter property. The two (2) tax declarations[17] subsequently issued in the names of Yolanda C. Cruz, Jesusa Castillo and Julieta Castillo being invoked by the petitioner are worthy of little probative value because of their deficiencies. The said tax declarations are not signed by the supposed approving authority, and the dates thereof are not clearly indicated.

All told, it appears that private respondents were of the honest belief that they had a real right over the entire subject property, barring the conclusion that they were actuated by an ill-motive or desire to defraud in selling the parcel of land to the petitioner. Bad faith and fraud are allegations of fact that demand clear and convincing proof.[18] Herein petitioner failed to show such circumstances that would have justified the finding of probable cause and the filing of information against the private respondents. Therefore, public respondent Secretary of Justice did not commit grave abuse of discretion in directing the withdrawal of any information filed against the private respondents. A preliminary investigation is intended to protect the individual from the inconvenience, expense and burden of defending himself in a formal trial unless the reasonable probability of his guilt shall have been first ascertained in a fairly summary proceeding by a competent officer. It is also intended to protect the state from having to conduct useless and expensive trials.[19]

WHEREFORE, in view of the foregoing, the instant petition for certiorari is hereby DISMISSED.

SO ORDERED.

Sundiam, and Librea-Leagogo, JJ., concur.

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[1] Rollo, p. 41.

[2] Id. at 41-42.

[3] Id. at 54.

[4] Id. at 68.

[5] Id. at 123.

[6] Id. at 24.

[7] Id. at 28.

[8] See Affidavit of Oscar Cruz; Rollo, p. 160.

[9] Rollo, pp. 162-163.

[10] Sistoza v. Desierto, 388 SCRA 307 (2002).

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[11] Santos v. Commission on Elections, 399 SCRA 611 (2003).

[12] People v. Olermo, 406 SCRA 412 (2003).

[13] Rollo, p. 225.

[14] Id. at 224.

[15] Santos, Sr. v. Beltran, 418 SCRA 17 (2003).

[16] Annex “8”, Annex “M” of the Petition; Rollo, p. 140.

[17] Supra.

[18] Cathay Pacific Airways, Ltd. v. Vasquez, 399 SCRA 207 (2003).

[19] Tandoc v. Resultan, 175 SCRA 37 (1989).

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