

BANK OF FLORIDA, PETITIONER, VS. HON. JESUS C. SIMBULAN, IN HIS CAPACITY AS THE REGIONAL STATE PROSECUTOR, REMIGIO TUAZON AND ARVIN GUEVARRA, RESPONDENTS.

Ponente: ELBINIAS, J.

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ELBINIAS, J.:

For disposition is a Petition for Certiorari[1] filed under Rule 65 of the Rules of Court. The Petition assails the Resolution[2] dated May 8, 2009 of the Regional State Prosecutor of Pampanga (“public respondent” for brevity) in I.S. No. OCPSF-06-H-1630 for “Violation of Article 318 of RPC (Other Deceits)”. The Petition also questions public respondent's Resolution[3] dated November 10, 2009, which denied petitioner's eventual Motion for Reconsideration.[4]

The pertinent facts are those as stated in public respondent's first assailed Resolution[5] of May 8, 2009:

“The case arose from a complaint filed by GRACE CASTRO, an employee of the complainant Bank of Florida (petitioner Bank here) xxx, being the latter's former Area Head at the Area Business Center, Area I in 2003. Sometime on July 9, 2003, one Teresa P. Abanes purchased a house and lot from Manuel Dizon under a Deed of Absolute Sale with Assumption of Mortgage, which mortgage was existing with the Rural Bank of Angeles (RBA) Dau Branch. When the loan of Teresa Abanes was released on October 24, 2003 from the Bank of Florida, the outstanding obligation of Manuel Dizon from RBA-DAU has been paid. Under the rules of the Bank of Florida, the cancellation of the mortgage as well as the owner's duplicate of the title must be in its custody. It was however found out that the original title and real estate mortgage were not on Teresa Abanes' Borrower's Security File. Upon verification from the Registry of Deeds, it was found out that the title was not yet transferred in Abanes' name because Manuel Dizon threatened to sue the Register of Deeds if the title will be transferred because Teresa Abanes has not yet complied with her obligation to Dizon. xxx Affiant Grace Castro found out that the Credit Department headed by Tuazon and Guevarra (private respondents here) did not use the Deed of Absolute Sale with Assumption of Mortgage dated July 9, 2003 and instead used a different Deed of Absolute Sale dated September 30, 2003 which Manuel Dizon claimed to be forged. The said act of Dizon (sic) and Guevarra was the reason for the non-annotation of the real estate mortgage in favor of the Bank which cannot foreclose the property as a result.

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Denying the allegations in the complaint, respondent REMIGIO E. TUAZON xxx stated that it was Ryan Nucup who was directly handling the Abanes account and that Ryan was getting instruction[s] directly from the Legal Department and not from the Credit Department. xxx He pointed out that on the day of release of the loan on October 23, 2004, Atty. Laqui caused the filing of the Petition to Cancel Sec. 4 Rule 74 (sic) which only goes to show that Atty. Laqui knew that the subject property was still registered in the name of Manuel Dizon under TCT No. T-412789 even before the actual release of the loan. He explained that the failure to cause the cancellation of the title and the annotation thereon of the mortgage in favor of the Bank were never brought to his attention and are legal matters which should have been attended to by Atty. Laqui. He denied any knowledge or participation on the alleged 'forged' deed of absolute sale dated September 30, 2003. xxx He stated that the release of the loan proceeds without satisfaction of these conditions was already beyond his

control because his participation was merely 'recommendatory', as he was not the one who eventually approved the loan application and he had no participation in the release of the proceeds to Abanes. xxx

For his part, respondent ARVIN D. GUEVARRA likewise denied the allegations in the complaint and claimed that there was no insinuation of any wrongdoing against him in his capacity as assistant head of the bank's credit department. He averred that the mortgage of Dizon with the Rural Bank of Angeles appears to have been cancelled and the owner's duplicate copy of TCT No. 412789 appears to have been delivered to the Register of Deeds for the registration of the deed of sale based on the statements of Castro and Nucup. He denied any knowledge or participation in the alleged substitution of the deed of sale with assumption of mortgage with another deed of sale because the documentation and registration thereof were handled by other officers of the bank.”[6] (Emphasis supplied)

On April 25, 2007, the Office of the City Prosecutor (“City Prosecutor” for brevity) of San Fernando City, Pampanga issued a Resolution[7] dismissing petitioner Bank of Florida’s (“petitioner Bank” for brevity) Complaint[8] for “Violation of Article 318 of RPC (Other Deceits)” against private respondents Remegio Tuazon and Arvin Guevarra (“private respondents” for brevity), who were the Head and Assistant Head, respectively, of petitioner Bank’s Credit Department.

Petitioner Bank filed a Motion for Reconsideration[9] of the City Prosecutor’s Resolution[10] dated April 25, 2007, but which Motion was denied by the City Prosecutor in its undated Resolution.[11]

On October 25, 2007, petitioner Bank filed before public respondent, a Petition for Review[12] of the City Prosecutor’s Resolution[13] dated April 25, 2007.

Eventually, public respondent issued its first assailed Resolution[14] dated May 8, 2009 affirming the Resolution[15] of the City Prosecutor dated April 25, 2007.

After petitioner Bank’s Motion for Reconsideration[16] was denied by the public respondent in its other assailed Resolution[17] dated November 10, 2009, petitioner Bank filed the Petition[18] at bench, praying for the following:

“WHEREFORE, it is most respectfully prayed of this Honorable Court that the public respondent Regional State Prosecutor’s Resolutions dated May 8, 2009 and November 10, 2009 be annulled and set aside, and judgment be rendered finding probable cause for the crime of Other Deceit against the private respondents Tuazon and Guevarra and directing/ordering the Regional State Prosecutor to cause the filing of the corresponding Information in Court against the private respondents for violation of Article 318 of the Revised Penal Code.

Other reliefs, just and equitable, are likewise prayed for.”[19]

Petitioner Bank raised this sole ground:

“PUBLIC RESPONDENT GRAVELY ABUSED HIS DISCRETION WHEN HE IGNORED AND DISREGARDED THE EXISTENCE OF PROBABLE CAUSE FOR THE OFFENSE OF OTHER DECEIT AGAINST PRIVATE RESPONDENTS WHICH WAS DULY ESTABLISHED”[20] (Emphasis was made in the original)

Contrary to petitioner Bank’s allegation in its sole ground, the pieces of evidence and the facts showed that no probable cause existed - which absence of probable cause had also been found by the City Prosecutor and which finding had been affirmed by public respondent - to warrant the prosecution of private respondents for violation of Article 318[21] of the Revised Penal Code.

Petitioner Bank had argued that:

“A perusal of the Affidavit of affiant Ryan B. Nucup dated May 29, 2006 categorically stated that he brought the matter of the letter-complaint of Mr. Dizon's lawyer dated August 31, 2004 regarding the forged Deed of Sale to respondents Guevarra and Tuazon (who are the superiors of Mr. Nucup) but the respondents categorically directed their subordinate Ryan B. Nucup to remedy the Abanes account (par. 11) to the damage and prejudice of the petitioner. xxx

Private respondent Tuazon failed to refute and controvert his deceitful and damaging instructions to affiant Ryan B. Nucup.

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Private respondents Tuazon and Guevarra failed to refute and controvert the fact that they handed the forged Deed of Sale and improper papers to affiant Nucup.

Contrary to the public respondent's baseless and erroneous claim in his Resolution dated May 8, 2009, private respondents knew about the forged September 30, 2003 Deed of Absolute Sale and they deceitfully used this document to the damage and prejudice of the petitioner. xxx

Indeed, the mere fact of private respondents' non-disclosure of the letter regarding the registered owner's claim that the Deed of Absolute Sale was falsified had already caused damage to the petitioner bank since it could not have the mortgage annotated on the title and thus, it could not protect its interest.

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The private respondents have deceived and defrauded the petitioner bank when they deliberately failed to use the proper document which is the Deed of Sale with Assumption of Mortgage xxx.

xxx

Private respondents had acted in bad faith when they did not disclose to the petitioner bank the use of the forged Deed of Absolute Sale dated September 20, 2003 and when they did not use the proper document which is the Deed of Sale with Assumption of Mortgage.

xxx

Clearly, private respondent Tuazon's recommendation of approval of the Abanes account was deceitful and done in bad faith and to the damage and prejudice of the petitioner bank.

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Private respondents have deceived and misled the petitioner's other officials in the processing of the Abanes account and they have admitted their conspiracy in their fraudulent and deceitful handling of the Abanes account to the damage and prejudice of the petitioner.”[22] (Emphasis supplied)

Defeating petitioner Bank's allegations however, is that petitioner Bank failed to provide any proof that would show that private respondents committed any deceitful acts in the release of the loan in favor of Teresa Abanes (“Abanes” for brevity), which release according to petitioner Bank caused damage to petitioner Bank. Records likewise revealed that private respondents were not shown by petitioner Bank to have had any knowledge or participation in the alleged forgery or substitution of the Deed of Absolute Sale. All of these were as also found by public respondent in its assailed Resolution dated May 8, 2009, as follows:

“The Bank claims to have been deceived by the respondents-appellees for using the allegedly forged September 30, 2003 deed of absolute sale instead of the July 9, 2003 deed of absolute sale with assumption of mortgage. There is however no evidence to prove that respondents-appellees knew that the September 30, 2003 deed of absolute sale is a forged one as the Bank merely stated that respondents-appellees used the same

instead of the July 9, 2003 deed of absolute sale. In fact, there is no evidence on record to show that the September 30, 2003 deed of absolute sale is a forged one since it was merely claimed by Manuel Dizon to be a falsified document but no complaint was shown to have been filed by him nor was there proof to show that it was indeed a forgery. There was even no reason provided for by the Bank for the respondents-appellees to make such 'substitution' of deed of sale. For indeed, any concern as to the falsity of these documents should have been addressed to the legal department of the Bank.”[23] (Emphasis supplied)

Similarly, private respondents were not properly shown to have committed any deceitful acts that were to the supposed prejudice of petitioner Bank when private respondents recommended for approval Abanes' loan application. The reason is that private respondents made the recommendation for the approval of Abanes' loan application with conditions, which conditions were made for the protection of petitioner Bank. Such conditions were also known and consented to by petitioner Bank's “approving authorities” when they approved Abanes' loan application, which loan application in turn incorporated such conditions. All of these were as similarly found by the public respondent, to wit:

“The undisputed fact is that respondent-appellee Tuazon's duty was to recommend the approval of the loan transactions of the Bank. This, he promptly did by recommending the approval of the Abanes account subject to the condition that the title of the land will be transferred in the name of Abanes and that the real estate mortgage of the Bank be annotated thereon. Such condition was in fact affirmed by witness Ryan Nucup. The Bank merely claims damage because of the approval of the loan and the consequent release of its proceeds without the title having been transferred in the name of Abanes which is now the reason why it cannot foreclose the subject property. However, it is quite clear that none of the respondents-appellees were the approving authority for the loan since they could merely recommend its approval. The approval of the loan was therefore not for respondents-appellees to decide.

Respondent-appellee Tuazon was able to point out that Atty. Laqui of the Bank's legal department knew of the fact that the title was still in the name of Manuel Dizon when she caused the annotation of the petition to cancel Sec. 4 Rule 74 of the New Rules of Court dated October 24, 2003 notarized by her. This only goes to show that the legal department was already aware of the status of the title at the time the loan proceeds were released, yet they did not do anything about it. It was only when the Bank could not foreclose the property that the approval of the loan caused its apprehension.

Witness Ryan Nucup maintained that respondents-appellees gave him the deed of absolute sale dated September 30, 2003 instead of the deed of sale with assumption of mortgage dated July 9, 2003 which was the reason why he was not able to transfer the title in the name of Abanes and annotate the real estate mortgage in favor of the Bank of Florida. Other than this allegation, no other participation was attributed to respondent-appellees. Such allegation nonetheless does not change the undeniable fact that respondents-appellees gave a favorable recommendation on the loan subject to the condition that the title will be transferred in the name of Abanes. This condition should have caused the approving authorities to be wary of the approval of the loan and more importantly, the release of the proceeds of the loan. xxx”[24] (Emphasis supplied)

Besides, the entrenched rule is that the investigating prosecutor, such as public respondent here, has the discretion to determine whether or not to dismiss the criminal complaint against private respondents. This being so is pursuant to the pronouncement of the Supreme Court in *Heirs of Late Nestor Tria v. Atty. Epifanio*, G.R. No. 175887, November 24, 2010, to wit:

“A prosecutor, by the nature of his office, is under no compulsion to file a particular criminal information where he is not convinced that he has evidence to prop up its averments, or that the evidence at hand points to a different conclusion. The decision whether or not to dismiss the criminal complaint against respondent is necessarily dependent on the sound discretion of the investigating prosecutor and ultimately, that of the

Secretary of Justice.” (Emphasis supplied)

The courts will not interfere with the investigating prosecutor's determination of probable cause in the absence of grave abuse of discretion, as was the case here. This was as held by the Supreme Court in *Metropolitan Bank & Trust Co. vs. Tobias*, G.R. No. 177780, January 25, 2012, to wit:

“Under the doctrine of separation of powers, the courts have no right to directly decide matters over which full discretionary authority has been delegated to the Executive Branch of the Government, or to substitute their own judgments for that of the Executive Branch, represented in this case by the Department of Justice. The settled policy is that the courts will not interfere with the executive determination of probable cause for the purpose of filing an information, in the absence of grave abuse of discretion. That abuse of discretion must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, such as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.” (Emphasis supplied)

Given all these, no cogent reason was therefore shown to justify any deviation from the following findings of the public respondent, which were supported by the facts and the law:

“xxx The Bank cannot now claim deceit on respondents-appellees for their recommendation under the unsubstantiated claim of substitution of a deed of absolute sale. There is no evidence that the only deed of sale submitted and existing on the Abanes account was the July 9, 2003 document and that the same was substituted by another. Deceit is defined as the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury (*Pablo vs. People*, 442 SCRA 146). Complainant failed to prove through convincing evidence that respondent-appellees employed deceit in the release of the loan. Their allegations were merely based on conjectures and surmises. The presumption of innocence imposes a rule of evidence, a degree of proof that demands no less than compliance (*People vs. Castillo*, 425 SCRA 136). The court in criminal prosecution is always guided by evidence that is tangible, verifiable and in harmony with the usual course of human experience and not by mere surmises (*People vs. Torrecampo*, 423 SCRA 433). It is hornbook doctrine that suspicions and speculations can never be the basis of conviction in a criminal case (*People vs. Ador*, 423 SCRA 1). In fine, no deceit can be attributed to the respondents-appellees that ought to be penalized.”[25] (Emphasis supplied)

After careful consideration of all the facts, arguments, and issues appearing on the records, as well as of the pertinent laws and jurisprudence, and, in accordance with what is best determined to be proper under the circumstances, the following disposition is therefore made on these matters.

GIVEN ALL THESE, the Petition is DENIED.

SO ORDERED.

Didican, and Paredes, JJ., concur.

[1] Rollo, pp. 4-28.

[2] Rollo, pp. 110-121.

[3] Rollo, pp. 142-144.

[4] Rollo, pp. 122-130.

[5] Rollo, pp. 110-121.

[6] Rollo, pp. 110-115.

[7] Rollo, pp. 82-85.

[8] Rollo, pp. 33-39.

[9] Rollo, pp. 86-91.

[10] Rollo, pp. 82-85.

[11] Rollo, p. 92.

[12] Rollo, pp. 93-109.

[13] Rollo, pp. 82-85.

[14] Rollo, pp. 110-121.

[15] Rollo, pp. 82-85.

[16] Rollo, pp. 122-130.

[17] Rollo, pp. 142-144.

[18] Rollo, pp. 4-28.

[19] Rollo, p. 27.

[20] Rollo, p. 16.

[21] ART. 318. Other deceits. – The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding of this chapter. xxx

[22] Rollo, pp. 18-25.

[23] Rollo, p. 119.

[24] Rollo, pp. 119-120.

[25] Rollo, pp. 120-121.

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