

OSCAR ANGELES AND EMERITA ANGELES, PETITIONERS, VS. THE HON. SECRETARY OF JUSTICE AND FELINO MERCADO, RESPONDENTS.

G.R. No. 142612. July 29, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for certiorari[1] to annul the letter-resolution[2] dated 1 February 2000 of the Secretary of Justice in Resolution No. 155.[3] The Secretary of Justice affirmed the resolution[4] in I.S. No. 96-939 dated 28 February 1997 rendered by the Provincial Prosecution Office of the Department of Justice in Santa Cruz, Laguna ("Provincial Prosecution Office"). The Provincial Prosecution Office resolved to dismiss the complaint for estafa filed by petitioners Oscar and Emerita Angeles ("Angeles spouses") against respondent Felino Mercado ("Mercado").

Antecedent Facts

On 19 November 1996, the Angeles spouses filed a criminal complaint for estafa under Article 315 of the Revised Penal Code against Mercado before the Provincial Prosecution Office. Mercado is the brother-in-law of the Angeles spouses, being married to Emerita Angeles' sister Laura.

In their affidavits, the Angeles spouses claimed that in November 1992, Mercado convinced them to enter into a contract of antichresis,[5] colloquially known as sanglaang-perde, covering eight parcels of land ("subject land") planted with fruit-bearing lanzones trees located in Nagcarlan, Laguna and owned by Juana Suazo. The contract of antichresis was to last for five years with P210,000 as consideration. As the Angeles spouses stay in Manila during weekdays and go to Laguna only on weekends, the parties agreed that Mercado would administer the lands and complete the necessary paperwork.[6]

After three years, the Angeles spouses asked for an accounting from Mercado. Mercado explained that the subject land earned P46,210 in 1993, which he used to buy more lanzones trees. Mercado also reported that the trees bore no fruit in 1994. Mercado gave no accounting for 1995. The Angeles spouses claim that only after this demand for an accounting did they discover that Mercado had put the contract of sanglaang-perde over the subject land under Mercado and his spouse's names.[7] The relevant portions of the contract of sanglaang-perde, signed by Juana Suazo alone, read:

xxx

Na alang-alang sa halagang DALAWANG DAAN AT SAMPUNG LIBONG PISO (P210,000), salaping gastahin, na aking tinanggap sa mag[-]asawa nila G. AT GNG. FELINO MERCADO, mga nasa hustong gulang, Filipino, tumitira at may pahatirang sulat sa Bgy. Maravilla, bayan ng Nagcarlan, lalawigan ng Laguna, ay aking ipinagbili, iniliwat at isinalin sa naulit na halaga, sa nabanggit na mag[-] asawa nila G. AT

GNG. FELINO MERCADO[,] sa kanila ay magmamana, kahalili at ibang dapat pagliwatan ng kanilang karapatan, ang lahat na ibubunga ng lahat na puno ng lanzones, hindi kasama ang ibang halaman na napapalooban nito, ng nabanggit na WALONG (8) Lagay na Lupang Cocal-Lanzonal, sa takdang LIMA (5) NA [sic] TAON, magpapasimula sa taong 1993, at magtatapos sa taong 1997, kaya't pagkatapos ng lansonesan sa taong 1997, ang pamomosision at pakikinabang sa lahat na puno ng lanzones sa nabanggit na WALONG (8) Lagay na Lupang Cocal-Lanzonal ay manunumbalik sa akin, sa akin ay magmamana, kahalili at ibang dapat pagliwatan ng aking karapatan na ako ay walang ibabalik na ano pa mang halaga, sa mag[-] asawa nila G. AT GNG. FELINO MERCADO.

Na ako at ang mag[-]asawa nila G. AT GNG. FELINO MERCADO ay nagkasundo na ako ay bibigyan nila ng LIMA (5) na [sic] kaing na lanzones taon-taon sa loob ng LIMA (5) na [sic] taon ng aming kasunduang ito.

Na ako at ang mag[-]asawa nila G. AT GNG. FELINO MERCADO ay nagkasundo na silang mag[-]asawa nila G. AT GNG. FELINO MERCADO ang magpapaalis ng dapo sa puno ng lansones taon-taon [sic] sa loob ng LIMA (5) [sic] taonng [sic] aming kasunduang ito.[8]

In his counter-affidavit, Mercado denied the Angeles spouses' allegations. Mercado claimed that there exists an industrial partnership, colloquially known as *sosyo industrial*, between him and his spouse as industrial partners and the Angeles spouses as the financiers. This industrial partnership had existed since 1991, before the contract of antichresis over the subject land. As the years passed, Mercado used his and his spouse's earnings as part of the capital in the business transactions which he entered into in behalf of the Angeles spouses. It was their practice to enter into business transactions with other people under the name of Mercado because the Angeles spouses did not want to be identified as the financiers.

Mercado attached bank receipts showing deposits in behalf of Emerita Angeles and contracts under his name for the Angeles spouses. Mercado also attached the minutes of the barangay conciliation proceedings held on 7 September 1996. During the barangay conciliation proceedings, Oscar Angeles stated that there was a written *sosyo industrial* agreement: capital would come from the Angeles spouses while the profit would be divided evenly between Mercado and the Angeles spouses.[9]

The Ruling of the Provincial Prosecution Office

On 3 January 1997, the Provincial Prosecution Office issued a resolution recommending the filing of criminal information for *estafa* against Mercado. This resolution, however, was issued without Mercado's counter-affidavit.

Meanwhile, Mercado filed his counter-affidavit on 2 January 1997. On receiving the 3 January 1997 resolution, Mercado moved for its reconsideration. Hence, on 26 February 1997, the Provincial Prosecution Office issued an amended resolution dismissing the Angeles spouses' complaint for *estafa* against Mercado.

The Provincial Prosecution Office stated thus:

The subject of the complaint hinges on a partnership gone sour. The partnership was initially unsaddled [with] problems. Management became the source of misunderstanding including the accounting of profits, which led to further misunderstanding until it was revealed that the contract with the orchard owner was only with the name of the respondent, without the names of the complainants.

The accusation of "*estafa*" here lacks enough credible evidentiary support to sustain a *prima facie* finding.

Premises considered, it is respectfully recommended that the complaint for *estafa* be dismissed.

RESPECTFULLY SUBMITTED.[10]

The Angeles spouses filed a motion for reconsideration, which the Provincial Prosecution Office denied in a

resolution dated 4 August 1997.

The Ruling of the Secretary of Justice

On appeal to the Secretary of Justice, the Angeles spouses emphasized that the document evidencing the contract of sanglaang-perde with Juana Suazo was executed in the name of the Mercado spouses, instead of the Angeles spouses. The Angeles spouses allege that this document alone proves Mercado's misappropriation of their P210,000.

The Secretary of Justice found otherwise. Thus:

Reviewing the records of the case, we are of the opinion that the indictment of [Mercado] for the crime of estafa cannot be sustained. [The Angeles spouses] failed to show sufficient proof that [Mercado] deliberately deceived them in the "sanglaang perde" transaction. The document alone, which was in the name of [Mercado and his spouse], failed to convince us that there was deceit or false representation on the part of [Mercado] that induced the [Angeles spouses] to part with their money. [Mercado] satisfactorily explained that the [Angeles spouses] do not want to be revealed as the financiers. Indeed, it is difficult to believe that the [Angeles spouses] would readily part with their money without holding on to some document to evidence the receipt of money, or at least to inspect the document involved in the said transaction. Under the circumstances, we are inclined to believe that [the Angeles spouses] knew from the very start that the questioned document was not really in their names.

In addition, we are convinced that a partnership truly existed between the [Angeles spouses] and [Mercado]. The formation of a partnership was clear from the fact that they contributed money to a common fund and divided the profits among themselves. Records would show that [Mercado] was able to make deposits for the account of the [Angeles spouses]. These deposits represented their share in the profits of their business venture. Although the [Angeles spouses] deny the existence of a partnership, they, however, never disputed that the deposits made by [Mercado] were indeed for their account.

The transcript of notes on the dialogue between the [Angeles spouses] and [Mercado] during the hearing of their barangay conciliation case reveals that the [Angeles spouses] acknowledged their joint business ventures with [Mercado] although they assailed the manner by which [Mercado] conducted the business and handled and distributed the funds. The veracity of this transcript was not raised in issued [sic] by [the Angeles spouses]. Although the legal formalities for the formation of a partnership were not adhered to, the partnership relationship of the [Angeles spouses] and [Mercado] is evident in this case. Consequently, there is no estafa where money is delivered by a partner to his co-partner on the latter's representation that the amount shall be applied to the business of their partnership. In case of misapplication or conversion of the money received, the co-partner's liability is civil in nature (*People v. Clarin*, 7 Phil. 504)

WHEREFORE, the appeal is hereby DISMISSED.[11]

Hence, this petition.

Issues

The Angeles spouses ask us to consider the following issues:

- Whether the Secretary of Justice committed grave abuse of discretion amounting to lack of jurisdiction in dismissing the appeal of the Angeles spouses;
- Whether a partnership existed between the Angeles spouses and Mercado even without any documentary proof to sustain its existence;
- Assuming that there was a partnership, whether there was misappropriation by Mercado of the proceeds of

the lanzones after the Angeles spouses demanded an accounting from him of the income at the office of the barangay authorities on 7 September 1996, and Mercado failed to do so and also failed to deliver the proceeds to the Angeles spouses;

- Whether the Secretary of Justice should order the filing of the information for estafa against Mercado.[12]

The Ruling of the Court

The petition has no merit.

Whether the Secretary of Justice Committed Grave Abuse of Discretion

An act of a court or tribunal may constitute grave abuse of discretion when the same is performed in a capricious or whimsical exercise of judgment amounting to lack of jurisdiction. The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty, or to a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or personal hostility.[13]

The Angeles spouses fail to convince us that the Secretary of Justice committed grave abuse of discretion when he dismissed their appeal. Moreover, the Angeles spouses committed an error in procedure when they failed to file a motion for reconsideration of the Secretary of Justice's resolution. A previous motion for reconsideration before the filing of a petition for certiorari is necessary unless: (1) the issue raised is one purely of law; (2) public interest is involved; (3) there is urgency; (4) a question of jurisdiction is squarely raised before and decided by the lower court; and (5) the order is a patent nullity.[14] The Angeles spouses failed to show that their case falls under any of the exceptions. In fact, this present petition for certiorari is dismissible for this reason alone.

Whether a Partnership Existed Between Mercado and the Angeles Spouses

The Angeles spouses allege that they had no partnership with Mercado. The Angeles spouses rely on Articles 1771 to 1773 of the Civil Code, which state that:

Art. 1771. A partnership may be constituted in any form, except where immovable property or real rights are contributed thereto, in which case a public instrument shall be necessary.

Art. 1772. Every contract of partnership having a capital of three thousand pesos or more, in money or property, shall appear in a public instrument, which must be recorded in the Office of the Securities and Exchange Commission.

Failure to comply with the requirements of the preceding paragraph shall not affect the liability of the partnership and the members thereof to third persons.

Art. 1773. A contract of partnership is void, whenever immovable property is contributed thereto, if an inventory of said property is not made, signed by the parties, and attached to the public instrument.

The Angeles spouses' position that there is no partnership because of the lack of a public instrument indicating the same and a lack of registration with the Securities and Exchange Commission ("SEC") holds no water. First, the Angeles spouses contributed money to the partnership and not immovable property. Second, mere failure to register the contract of partnership with the SEC does not invalidate a contract that has the essential requisites of a partnership. The purpose of registration of the contract of partnership is to give notice to third parties. Failure to register the contract of partnership does not affect the liability of the partnership and of the partners to third persons. Neither does such failure to register affect the partnership's juridical personality. A partnership may exist even if the partners do not use the words "partner" or "partnership."

Indeed, the Angeles spouses admit to facts that prove the existence of a partnership: a contract showing a sosyo industrial or industrial partnership, contribution of money and industry to a common fund, and division of profits between the Angeles spouses and Mercado.

Whether there was
Misappropriation by Mercado

The Secretary of Justice adequately explained the alleged misappropriation by Mercado: "The document alone, which was in the name of [Mercado and his spouse], failed to convince us that there was deceit or false representation on the part of [Mercado] that induced the [Angeles spouses] to part with their money. [Mercado] satisfactorily explained that the [Angeles spouses] do not want to be revealed as the financiers." [15]

Even Branch 26 of the Regional Trial Court of Santa Cruz, Laguna which decided the civil case for damages, injunction and restraining order filed by the Angeles spouses against Mercado and Leo Cerayban, stated:

xxx [I]t was the practice to have all the contracts of antichresis of their partnership secured in [Mercado's] name as [the Angeles spouses] are apprehensive that, if they come out into the open as financiers of said contracts, they might be kidnapped by the New People's Army or their business deals be questioned by the Bureau of Internal Revenue or worse, their assets and unexplained income be sequestered, as xxx Oscar Angeles was then working with the government.[16]

Furthermore, accounting of the proceeds is not a proper subject for the present case.

For these reasons, we hold that the Secretary of Justice did not abuse his discretion in dismissing the appeal of the Angeles spouses.

WHEREFORE, we AFFIRM the decision of the Secretary of Justice. The present petition for certiorari is DISMISSED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Under Rule 65 of the Rules of Court.

[2] Penned by Secretary of Justice Serafin R. Cuevas.

[3] Series of 2000.

[4] Penned by 4[th] Assistant Provincial Prosecutor Carlos I. Acain, recommended for approval by 1[st] Assistant Prosecutor Felipe L. Arcigal, Jr., and approved by Provincial Prosecutor George C. Dee.

[5] Article 2132 of the Civil Code provides: "By the contract of antichresis the creditor acquires the right to receive the fruits of an immovable of his debtor, with the obligation to apply them to the payment of the interest, if owing, and thereafter to the principal of his credit."

[6] Rollo, pp. 24, 26.

[7] Ibid., pp. 24, 26-27.

[8] Ibid., p. 75.

[9] Ibid., pp. 30-32.

[10] Ibid., p. 53.

[11] Ibid., pp. 21-22.

[12] See Rollo, p. 9.

[13] Intestate Estate of Carmen de Luna v. IAC, G.R. No. 72424, 13 February 1989, 170 SCRA 246 citing Litton Mills, Inc. v. Galleon Trader, Inc., No. L-40867, 26 July 1988, 163 SCRA 489.

[14] Justice Jose Y. Feria (Ret.) and Maria Concepcion S. Noche, 2 Civil Procedure Annotated, 473 (2001).

[15] Rollo, p. 21.

[16] Ibid., p. 125.

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