

JIMMY ANG, PETITIONER, VS. ELEANOR R. LUCERO, THE HONORABLE SECRETARY OF JUSTICE, AND THE CITY PROSECUTOR OF MAKATI CITY, RESPONDENTS.

G.R. NO. 143169. January 21, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 29 October 1999 Decision[2] and 25 April 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 44778. The Court of Appeals dismissed the petition for certiorari filed by petitioner Jimmy Ang and affirmed the Resolutions issued by former Secretary of Justice Teofisto T. Guingona, Jr.

The Antecedents

The present controversy stemmed from a criminal complaint for estafa through falsification of public documents filed by respondent Eleanor Lucero (“Lucero”) against petitioner Jimmy Ang (“Ang”) before the City Prosecution Office of Makati (“CPO Makati”).

As summarized by then Secretary of Justice Teofisto T. Guingona, Jr. (“Secretary of Justice”) and quoted by the Court of Appeals in the assailed decision, the antecedent facts are as follows:

The record shows that complainant [Lucero], an American citizen, is a businesswoman and a native of Pangasinan. On August 8, 1989, she entered into a memorandum of agreement with E. Ganzon, Inc. for the purchase of Condominium Unit 1512, Makati Cinema Square Tower located along Pasong Tamo, Makati for P2,417,655.00. As she is a resident of Guam, she appointed by virtue of a Special Power of Attorney,[3] Graciano P. Catenza, Jr. as her attorney-in-fact on November 20, 1990 to manage and administer all her businesses and properties in the Philippines, including the condominium unit. Catenza, however, delegated his authority to the respondent.

Complainant claims that respondent [Ang] took advantage of the trust and confidence she reposed in him when he falsified two documents, namely: letter of authorization[4] dated July 6, 1992 by making it appear that she is authorizing E. Ganzon, Inc., the condominium developer and owner to register her condominium unit under his name; and Deed of Assignment[5] dated June 22, 1992 wherein respondent made it appear that she is transferring to him the ownership of the condominium unit. She further claims that the falsification was made possible when the respondent typed the authority to transfer in a blank sheet of paper containing her signature which he previously requested for the purpose of securing permit from a government agency in connection with her bus service business prior to her departure for Guam. Moreover, she avers that her signature in the deed of assignment was forged by respondent. She adds that she was not in the Philippines when the document was allegedly signed by her on June 22, 1992 and notarized before Atty. Rene B. Betita on July 1, 1992.

Through the use of the aforementioned fictitious documents, her title was cancelled and in lieu thereof, condominium Certificate of Title No. 23578 was issued in the name of respondent by the Registry of Deeds of

Makati City which title he used as a collateral to secure a loan in the amount of P2,000,000.00 from the Rizal Commercial Banking Corporation (RCBC). When she learned of the fraudulent transfer, she executed an affidavit of adverse claim and annotated it on the title on March 21, 1994. The day after the thirty-day effectivity period of the adverse claim lapsed, respondent, to add insult to injury, immediately secured an additional loan in the amount of P700,000.00 with the same bank (RCBC) using the same property as collateral even after the transport business he was managing for the complainant had ceased operation already. Respondent failed to act on complainant's demands for accounting and for the reconveyance to her of Condominium Unit No. 1512.

In his defense, respondent claims that the questioned documents were prepared with the prior knowledge of complainant and his authority was relayed by her through the telephone. The transfer of ownership and issuance of a new condominium title in his name were necessary since RCBC did not want to transact business with her because of her lack of track record and her citizenship. He avers that he had to do this since complainant failed to send money needed to support her business projects and to pay her outstanding obligations. As a proof of her knowledge, complainant gave him P500,000.00 on October 5, 1993 to pay the RCBC loan. To disprove the allegation that she never appeared before a notary public, he claims that complainant executed two (2) more documents and had them notarized after she left for Guam which she never questioned.

xxx[6] (Emphasis supplied)

The CPO Makati referred the notarized Deed of Assignment dated 22 June 1992 and Authorization Letter dated 6 July 1992, both allegedly executed by Lucero in favor of Ang, to the National Bureau of Investigation ("NBI") for verification of signature.

On 16 January 1995, the NBI submitted its report to the CPO Makati. The NBI found the signature on the Deed of Assignment and Lucero's sample signatures to have been written by "one and the same person." However, the NBI found the signature on the Authorization Letter a "traced forgery."

After the preliminary investigation, Prosecutor Edgardo C. Bautista ("Prosecutor Bautista") of the CPO Makati issued a Resolution dated 17 April 1995 finding probable cause against Ang. Prosecutor Bautista recommended the filing of two (2) informations, (1) for estafa under Article 315, paragraph 1 (c) of the Revised Penal Code[7] and (2) for estafa through falsification of public document.

Ang moved for a reinvestigation. Prosecutor Wilfredo Ong of the CPO Makati reconsidered Prosecutor Bautista's resolution of 17 April 1995 and dismissed the complaint for insufficiency of evidence.

Lucero filed a motion for reconsideration which the CPO Makati denied on 11 October 1995.

Lucero appealed the dismissal of the complaint to the Department of Justice. The Secretary of Justice issued Letter-Resolution No. 106 Series of 1997 dated 18 February 1997 ("First Resolution") disposing as follows:

WHEREFORE, your resolution is accordingly reversed. You are hereby directed to file the appropriate information for estafa through falsification of public document against respondent and to report the action taken within ten (10) days from receipt hereof.[8]

Ang filed a motion for reconsideration which the Secretary of Justice denied in his Letter-Resolution dated 10 June 1997.

Ang filed with the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and temporary restraining order.

On 16 October 1997, the Court of Appeals issued a Resolution granting Ang's prayer for the issuance of a

temporary restraining order. The Court of Appeals enjoined the CPO Makati from filing the information for estafa as the Secretary of Justice directed in his First Resolution, pending the proceedings before the Court of Appeals.

Thereafter, the CPO Makati filed a Manifestation stating that it already filed an information for estafa against Ang in Criminal Case No. 97-697 as early as 14 May 1997. Consequently, the Court of Appeals issued a Resolution dated 18 December 1997 enjoining the Secretary of Justice and the CPO Makati from proceeding with Criminal Case No. 97-697 pending before the Regional Trial Court of Makati, Branch 64.

On 29 October 1999, the Court of Appeals rendered a Decision dismissing the petition for certiorari and affirming the resolutions of the Secretary of Justice. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit, and the challenged Resolution No. 106 Series [of] 1997, dated February 18, 1997, and the Letter-Resolution dated June 10, 1997 of the public respondent Secretary of the Department of Justice are hereby AFFIRMED. The Resolution of this Court dated December 18, 1997 enjoining the respondents from proceedings (sic) with Criminal Case No. 97-697 pending before the Regional Trial Court of Makati City, Branch 64, is hereby RECONSIDERED and SET ASIDE. The said trial court is ordered to continue with the proceedings with dispatch.

SO ORDERED.[9]

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the Special Power of Attorney (“SPA”)[10] which Lucero granted to Graciano P. Catenza (“Catenza”) pertains only to acts of administration and does not include acts of strict dominion. The SPA even prohibited Catenza from transferring Lucero’s titles to real property by sale or gratuity to third persons without Lucero’s prior written consent. Catenza allegedly delegated this power to Ang.

The Court of Appeals also found that Lucero granted Ang a general and not a special power of attorney.[11] The Court of Appeals added that even assuming Lucero granted Ang a special power of attorney to sell her Makati Cinema Square Tower Condominium Unit No. 1512 (“Property”), it does not include the power to mortgage the Property.

Assuming further that Lucero signed a blank sheet of paper that turned out to be a Deed of Assignment conveying to Ang all her rights and interest in the Property, such assignment was not Lucero’s real intention.

The Court of Appeals pointed out that Ang relied heavily on the NBI’s finding that the signature in the Deed of Assignment and Lucero’s specimen signature were written by one and the same person. However, Ang ignored the NBI’s finding that the signature appearing in the Authorization Letter is a “traced forgery.”

The Issues

Ang seeks a reversal of the assailed decision by contending that:

I

THE COURT OF APPEALS HAD OVERLOOKED THE FACT THAT PETITIONER CAN ACTUALLY MORTGAGE THE PROPERTY SUBJECT MATTER OF THE INSTANT CASE.

II

THE COURT OF APPEALS HAD FAILED TO CONSIDER THE FACT THAT PRIVATE RESPONDENT

IS ALREADY ESTOPPED FROM DISOWNING THE TRANSACTIONS THAT PETITIONER ENTERED INTO IN HER BEHALF.

III

THE COURT OF APPEALS HAD ERRED IN RULING THAT THE POWER OF ATTORNEY GIVEN TO PETITIONER DID NOT GRANT HIM MORE THAN ACTS OF ADMINISTRATION.[12]

The Court's Ruling

The petition lacks merit.

The issue in this case is the propriety of the Secretary of Justice's finding of probable cause for estafa.

Ang insists that there is no probable cause to hold him liable for estafa. Ang contends that Lucero granted him the authority not only to sell but also to mortgage the Property. Ang insists that even assuming he is not authorized to sell the Property, he is nevertheless allowed to mortgage the Property if it is urgent and indispensable to preserve "the things under his administration." Ang further claims that he was justified in mortgaging the Property because the proceeds of the mortgage would be used for the needs and expenses of Lucero's business.

Ang also argues that Lucero's facsimile letter dated 29 December 1993 shows that Lucero is estopped from questioning the transactions entered on her behalf.

Ang claims that Lucero knowingly and voluntarily signed the documents and blank papers to further her business interests. Ang contends that "the nature and import of the pre-signed documents" show that Lucero impliedly authorized Ang to execute more than acts of administration.

Ang's contentions are untenable.

In a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is probably guilty thereof, and should be held for trial.[13] It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.[14] As implied by the words themselves, "probable cause" is concerned with probability, not absolute or moral certainty.[15] The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.[16]

In this case, Ang calls on this Court to assume the function of a public prosecutor. Ang's arguments are essentially evidentiary matters that must be presented and heard during the trial. Whether Lucero granted Ang the authority to sell and mortgage the Property is a question which requires an examination of the parties' evidence.

The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function without any showing of grave abuse of discretion or manifest error in his findings. Ang miserably failed to show the presence of any of these exceptional circumstances to warrant an assessment of the parties' evidence presented thus far in the preliminary investigation.

Contrary to Ang's claims, Lucero sufficiently established the existence of probable cause for estafa in this case.

First, the SPA Lucero executed in Catenza's favor is clear. Paragraph 7 of the SPA provides:

xxx

7. To make, sign, execute and deliver contracts, documents, agreements and other writings of whatever nature or kind, involving the administration of my business(es), with any and all third persons, concerns or entities,

upon terms and conditions acceptable to my said attorney, including agreements, whether or not they be urgent and indispensable for the preservation of my property under his administration; Provided, however, that contracts by which ownership of any immovable owned by me is transmitted or acquired either gratuitously or for valuable consideration shall not be entered into by my said attorney-in-fact without my prior written consent.

xxx[17] (Emphasis supplied)

The provision clearly shows that Catenza is not allowed to enter into any contract for the transfer or acquisition of Lucero's real property without her prior written approval. The same prohibition applies to Ang. There is no showing that Catenza validly delegated his authority under the SPA to Ang. Even assuming there was a valid delegation, Ang merely stepped into the shoes of Catenza and could not exercise more power than what Catenza had under the SPA. Thus, the prohibition on Catenza applied to Ang, assuming there was a valid delegation.

Second, the NBI found the signature on the Authorization Letter a traced forgery.

Third, Ang obtained a loan from Rizal Commercial Banking Corporation ("RCBC") using the Property as collateral. There is no showing how Ang applied the loan proceeds.

Fourth, Ang obtained an additional loan[18] of P700,000 from RCBC with the Property as collateral after Lucero annotated an adverse claim on the Property's certificate of title which was already in Ang's name. The adverse claim clearly indicates Lucero's objection to the registration of the title to Ang. However, Ang inexplicably ignored the adverse claim and proceeded with the loan.

Fifth, Ang admitted that Lucero signed blank sheets of paper. Ang typed the Deed of Assignment in one of these sheets of paper with Lucero's signature.[19] Lucero, however, denies authorizing Ang to type any deed of assignment involving the Property over her signature. Instead, Lucero claims that Ang requested her signature to secure a permit for her bus service business.

Lastly, Ang refused to render an accounting of his alleged transactions on Lucero's behalf despite the latter's repeated demands. If Ang merely performed his duties as Lucero's agent in connection with the latter's businesses, then there is certainly no reason to evade Lucero's valid requests.

Considering these circumstances, there is indeed probable cause to hold Ang liable for estafa in this case. Estafa or swindling is committed by defrauding another through any of the means enumerated in Article 315 of the Revised Penal Code.

Under Article 315, paragraph 1(c), estafa is committed by taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person. In this case, Ang admitted typing the Deed of Assignment over Lucero's signature in blank. Thereafter, Ang used the Deed of Assignment to transfer the ownership of the Property from Lucero to him. Lucero claims that she was prejudiced by virtue of the Deed of Assignment. However, whether Ang took advantage of Lucero's signature is a question that should be presented and resolved during the trial.

There is also probable cause that Ang committed estafa by falsification of public document. The Deed of Assignment is a public document since it is notarized.[20] Lucero claims that the Deed of Assignment was falsified because she was out of the country when it was executed. Moreover, though the signature in the Deed of Assignment appears to be her signature, it was not Lucero's intention to transfer the Property to Ang.

WHEREFORE, we DENY the petition. We AFFIRM the Decision of the Court of Appeals dated 29 October 1999 and its Resolution dated 25 April 2000 in CA-G.R. SP No. 44778. Costs against petitioner.

SO ORDERED.

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

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Penned by Associate Justice B.A. Adefuin-dela Cruz, with Associate Justices Eloy R. Bello, Jr. and Presbitero J. Velasco, Jr. concurring.

[3] Rollo, pp. 50-53. The pertinent provisions of the Special Power of Attorney in favor of Graciano P. Catenza, Jr. read:

SPECIAL POWER OF ATTORNEY**KNOW ALL MEN BY THESE PRESENTS:**

I, ELEANOR R. LUCERO, of legal age and residing at No. 392 A. P. Reyes corner J. P. Rizal Streets, Makati, Metro Manila, do hereby name, appoint and constitute NR (sic), MR. GRACIANO P. CATENZA, JR., of legal age, Filipino citizen, and residing at 4342 Rosemallow Road, Sunvalley Subdivision, Parañaque, Metro Manila, to be my true and lawful ATTORNEY-IN-FACT, for me and in my name, place and stead, to do and perform the following acts and deeds, to wit:

- To manage and administer all my business affairs in the Philippines, including the operation of EAR LUCERO BUS SERVICE located at No. 9 San Roque Bagong-Ilog, Pasig, Metro Manila. xxx

- xxx

- To sign and execute any paper, document, voucher and check in connection with daily operation of my business, including those pertaining to the disbursement of expenses and payments due from operation of the bus service business;

- xxx

- xxx

- xxx

- To make, sign, execute and deliver contracts, documents, agreements and other writings of whatever nature or kind, involving the administration of my business(es), with any and all third persons, concerns or entities, upon terms and conditions acceptable to my said attorney, including agreements, whether or not they be urgent and indispensable for the preservation of my property under his administration; Provided, however, that contracts by which ownership of any immovable owned by me is transmitted or acquired either gratuitously or for valuable consideration shall not be entered into by my said attorney-in-fact without my prior written consent.

- To delegate in whole or in part any of the power herein granted or conferred, by means of an instrument in writing, in favor of any third person or persons whom my said attorney may select upon my prior written consent.

xxx (Emphasis supplied)

[4] Ibid., p. 54. The Authorization Letter reads:

July 6, 1992

E. Ganzon, Inc.
EGI Homes Condominium
Mola corner Primo Rivera Sts.
Makati, Metro Manila

Attention of Mr. Alex Guda

Head, Realty Services Division

Re : Condominium Unit No. 1512
Makati Cinema Square Tower Condominium

Gentlemen:

This is to authorize you to register under the name of JIMMY Y. ANG, of legal age, Filipino, single, and a resident of #9 A. Labrador Street, B.F. Homes, Quezon City, the above-described condominium unit, of which I was the original buyer and which full payment of the purchase price was made by Jimmy Y. Ang, and to deliver to him the corresponding condominium certificate of title (CCT) covering the aforementioned unit.

Very truly yours,

(signed)
ELEANOR R. LUCERO

[5] Ibid., pp. 55-56. The Deed of Assignment reads:

DEED OF ASSIGNMENT

KNOW ALL MEN BY THESE PRESENTS:

This Deed of Assignment, executed this 22[nd] day of June, 1992 at Makati, Metro Manila, by and between:

ELEANOR R. LUCERO, of legal age, Filipino, and with residence address at Unit 1512 Makati Cinema Square Tower, Pasong Tamo Street, Makati, Metro Manila, hereinafter called the “ASSIGNOR”

-and-

JIMMY Y. ANG, of legal age, Filipino, and with residence address at #9 Alejo Labrador Street, B.F. Homes, Quezon City, hereinafter called the “ASSIGNEE”.

WITNESSETH, That

WHEREAS, ASSIGNOR is a party to the Memorandum of Agreement dated August 8, 1989, executed by and between ASSIGNOR and E. Ganzon, Inc. the developer and owner, for the reservation of Unit No. 1512 of the MAKATI CINEMA SQUARE TOWER located at Pasong Tamo, Makati, Metro Manila, with Parking Space No. 135 situated at the Lower Basement of the Makati Cinema Square Commercial Complex;

WHEREAS, ASSIGNOR is desirous of assigning all of her rights, title and interest in and to said condominium unit under said Memorandum of Agreement, and ASSIGNEE is ready, willing and able to accept the Assignment thereof;

NOW, THEREFORE, for and in consideration of the above premises and the mutual covenants hereinafter set forth; the ASSIGNOR hereby assigns, transfers, and convey[s], absolutely unto ASSIGNEE, his heirs, successors and assigns, all of her rights, title and interest over the condominium unit, containing an area of 149.70 square

meters located at the Fifteenth Floor of the Makati Cinema Square Tower as specifically described in the Memorandum of Agreement.

IN WITNESS WHEREOF, the parties have hereunto affixed their hands this 22nd day of June, 1992 at Makati, Metro Manila.

(signed) (signed)

ELEANOR R. LUCERO JIMMY Y. ANG

Assignor Assignee

[6] Ibid., pp. 264-265.

[7] Paragraph 1 (c), Article 315 of the Revised Penal Code states:

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.

[8] Rollo, p. 268.

[9] Ibid., p. 36.

[10] Ibid., pp. 50-53.

[11] Ibid., pp. 115-116. The pertinent provisions of the Power of Attorney state:

xxx

- To manage and administer the operations of my businesses in the Philippines;
- To make, execute, sign and deliver contracts, documents, agreements and writings of whatever nature or kind with any agency, institution and/or other parties and concerns under such terms and conditions acceptable to him in relation to the affairs of the said business;
- To negotiate, execute, sign and deliver other pertinent papers, contracts and documents for and in my personal behalf;
- To disburse and receive any amount that maybe required and/or due me or my company/ies.

xxx

[12] Ibid., p. 14.

[13] People v. CA, 361 Phil. 401 (1999).

[14] Microsoft Corporation, et al. v. Maxicorp, Inc., G.R. No. 140946, 13 September 2004.

[15] Ibid.

[16] Supra note 13 citing Ledesma v. CA, 344 Phil. 207 (1997).

[17] Rollo, p. 52.

[18] The first loan was for P2,000,000.

[19] Rollo, p. 72.

[20] Section 19, Rule 132 of the Rules on Evidence provides:

xxx

Public documents are:

xxx

(b) Documents acknowledged before a notary public except last wills and testaments; and

xxx

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