

MOBILIA PRODUCTS, INC., PETITIONER, VS. HAJIME UMEZAWA, RESPONDENT.

G.R. NO. 149357. March 04, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court are two consolidated petitions: a petition for review on certiorari filed by the People of the Philippines, docketed as G.R. No. 149403 of the Resolution[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52440 which reversed its decision and granted the petition for certiorari, prohibition and mandamus filed by respondent Hajime Umezawa; and the petition for review on certiorari docketed as G.R. No. 149357 filed by petitioner Mobilia Products, Inc. (MPI), the intervenor in the CA, assailing the same Resolution of the appellate court.

The Antecedents

The antecedents were amply summarized by the Office of the Solicitor General (OSG) in the petition at bar, to wit:

Mobilia Products, Inc. is a corporation engaged in the manufacture and export of quality furniture which caters only to the purchase orders booked and placed through Mobilia Products Japan, the mother company which does all the marketing and booking. After orders from customers are booked at the mother company in Japan, the same are coursed through Mobilia Philippines for implementation and production, after which, the ordered items are shipped to Japan through the mother company.

Mobilia Products Japan sent Hajime Umezawa to the Philippines in order to head Mobilia Products, Inc. as President and General Manager. To qualify him as such and as a Board Director, he was entrusted with one nominal share of stock.

Sometime in the last week of January 1995, Umezawa, then the President and General Manager of Mobilia Products, Inc., organized another company with his wife Kimiko, and his sister, Mitsuyo Yaguchi, to be known as Astem Philippines Corporation, without the knowledge of the Chairman and Chief Executive Officer Susumo Kodaira and the other members of the Board of Directors of Mobilia.

The said company would be engaged in the same business as Mobilia. Spouses Umezawa recruited Justin Legaspi, former Production Manager of Mobilia, to act as Manager and one Yoshikazu Hayano of Phoenix Marble Corporation to serve as investors [sic].

Pending formal organization, Spouses Umezawa, Justin Legaspi and Yoshikazu Hayano wanted to accelerate the market potentials of Astem by participating in the International Furniture Fair 1995 held at the World Trade Centre of Singapore on March 6 to 10, 1995.

One of the requirements of such Fair was that the furniture exhibits must arrive and be received at Singapore not later than February 23, 1995. Pressed for time, with less than one month to prepare and while Astem had yet no equipment and machinery, no staff and no ready personnel, Umezawa, with grave abuse of the confidence reposed on him as President and General Manager of Mobilia Products, Inc., and in conspiracy

with his wife, his sister Mitsuyo Yaguchi, Yoshikazu Hayano and Justin Legaspi, all with intent to gain for themselves and for their company Astem Philippines Corporation, stole prototype furniture from petitioner Mobilia so that the said pieces of furniture would be presented and exhibited as belonging to Astem in the International Furniture Fair '95 in Singapore.

In order to avoid detection, Umezawa contacted Henry Chua, the owner of Dew Foam, one of the suppliers of Mobilia, for that the latter to load several pieces of prototype furniture into a Dew Foam truck and store them at the Dew Foam warehouse. The first batch of furniture was stolen on February 8, 1995, when Mr. Henry Chua, upon the request of respondent Umezawa, caused to be loaded into his Dew Foam truck two prototype sofa models worth P500,000.00, after which, the same were spirited from the Mobilia compound, then transported and stored in Henry Chua's warehouse.

Again, on February 18, 1995, Umezawa, with grave abuse of confidence and taking advantage of his position as President and General Manager, unlawfully stole expensive furniture from Mobilia's factory worth P2,964,875.00. In order to avoid detection, the said furniture were loaded in the truck belonging to Dew Foam, with respondent Umezawa personally supervising the loading, the carting and spiriting away of the said furniture. Thus, taking advantage of his position as General Manager, he managed to have the said furniture taken out of the company premises and passed the company guard without any problem and difficulty.

Further, on February 19, 1995, around 1 o'clock in the afternoon, respondent Umezawa again loaded into his motor vehicle, and took away from company premises under the same irregular and unlawful circumstances, an expensive three-seater sofa worth P255,000.00.

The taking out of the said furniture was effected in violation of the standard procedures established by petitioner corporation which requires that every shipment or taking out of the furniture be checked and reviewed by Mobilia's Production, Planning, Inventory Costing and Control (PPICC) Division. All the foregoing furniture were transported to and stored at Henry Chua's warehouse. After sometime, the foregoing furniture were photographed for slide photos at Photo Folio at the Reclamation Area, Cebu City and then finally catalogued for use in the Singapore Fair for the use of Astem and its supposed owners, namely: spouses Umezawa, Hayano and Legaspi. The foregoing furniture models were finally shipped for exhibition at the International Furniture Fair '95 in Singapore as furniture belonging to Astem Philippines Corporation.

Sometime in March 1995, based on orders booked for Astem, Umezawa, with unfaithfulness and abuse of confidence reposed on him as the President and General Manager of petitioner Mobilia, ordered and caused the manufacture of eighty-nine (89) pieces of furniture with a total value of P17,108,500.00. The said pieces of furniture were made with Mobilia supplies, materials and machineries, as well as with Mobilia time and personnel, all of which were under the administration and control of Umezawa as President and General Manager. The said materials and supplies, the time and labor, were supposed to be used for the manufacture and production of quality furniture for the EXCLUSIVE USE of Mobilia. However, Umezawa, in violation of his duty to apply the same for the use of Mobilia and the duty to account for the same, converted their use for the benefit of Astem or for the use and benefit of Umezawa, his wife and sister, Yoshikazu Hayano and Legaspi, much to the damage and prejudice of Mobilia Products.

The same furniture could also have been taken out of the company premises by Umezawa and cohorts for shipment and delivery to Astem customers had it not been for the timely discovery of the previous theft. ...[2]

The Board of Directors of MPI, consisting of its Chairman Susumo Kodaira and members Yasushi Kato and Rolando Nonato, approved a Resolution on May 2, 1995 authorizing the filing of a complaint against Umezawa for two counts of qualified theft allegedly committed on February 18 and 19, 1995. Attached to the complaint was the Joint Affidavit of Danilo Lallaban, George del Rio and Yasushi Kato. The case was docketed as I.S. No. 95-275.

On May 15, 1995, the public prosecutor filed an Information for qualified theft against Umezawa with the Regional Trial Court (RTC) of Lapu-Lapu City. The accusatory portion of the Information, docketed as Criminal Case No. 013231-L, reads:

That during or about the period comprised between the 18th and 19th day of February 1995, in the City of Lapu-Lapu, Philippines, within the jurisdiction of this Honorable Court, the accused, while being then the President and General Manager of Mobilia Products, Inc., a corporation engaged in the manufacture and export of furniture, holding office and doing business in the Mactan Export Processing Zone, Lapu-Lapu City, with grave abuse of the confidence reposed upon him by his employer, with intent to gain, did then and there willfully, unlawfully and feloniously take, steal and carry away from the corporation's factory in Mactan Export Processing Zone, Lapu-Lapu City, expensive pieces of furniture, to wit:

1) 1 set, Model No. 3, 2-seater

German leather sofa, worth - - - - - P 208,125.00

2) 1 set, Model No. 8, 2-seater

German leather sofa, worth - - - - - P 315,000.00

3) 1 set, Model No. 5, 2-seater

German leather sofa, worth - - - - - P 108,000.00

4) 1 set, Model No. 4, 2-seater

German leather sofa, worth - - - - - P 277,500.00

5) 1 set, Model No. 6, 1-seater

German leather sofa, worth - - - - - P 146,250.00

6) 1 set, Model No. 2, 2-seater

German leather sofa, worth - - - - - P 225,000.00

7) 1 set, Model No. 1, 2-seater

German leather sofa, worth - - - - - P 275,000.00

8) 1 piece, Model Table No. 2,

Italian marble table, worth - - - - - P 93,750.00

9) 1 piece, Model Table No. 4,

Italian marble table, worth - - - - - P 105,000.00

10) 2 pieces, Model Pedestal

No. 6, Italian marble pedestal, worth - - - - - P 150,000.00

11) 1 piece, Model Column

Standard No. 11, Italian marble worth - - - - - P 93,750.00

12) 1 piece, Model Table No. 1,

Italian marble table, worth - - - - - P 105,000.00

13) 1 piece, Model High Table

No. 10, Italian marble, worth ----- P 187,500.00

14) 1 piece, Model Table No. 8,

Italian marble table, worth ----- P 187,500.00

15) 1 piece, Model Table No. 7

Italian marble table, worth ----- P 187,500.00

16) 1 piece, Model Table No. 5

Italian marble table, worth ----- P 112,500.00

17) 1 piece, Model Table No. 9,

Italian marble table, worth ----- P 187,500.00

18) 3-seater sofa, worth----- P 255,000.00

with an aggregate value of P3,219,875.00, Philippine currency, without the consent of his employer, to the damage and prejudice of Mobilia Products, Inc., in the said amount of P3,219,875.00.

Contrary to law.[3]

On motion of the prosecution, the trial court issued a writ of preliminary attachment covering the properties of Umezawa.

Umezawa then filed an Omnibus Motion to quash the information filed against him, the discharge of the writ of attachment issued by the trial court, and to set the case for preliminary investigation. MPI, the private complainant therein, opposed the motion.

In the meantime on July 21, 1995, MPI filed another criminal complaint for qualified theft against Umezawa, his wife Kimiko Umezawa, Mitsuyo Yaguchi, Justin Legaspi, Yoshikazu Hayano and Henry Chua allegedly committed in March 1995, with the Office of the City Prosecutor. The case was docketed as I.S. No. 95-442.

On July 25, 1995, the trial court issued an Order in Criminal Case No. 013231-L denying the omnibus motion. On joint motion of Umezawa and the public prosecutor, the trial court ordered a reinvestigation of the case. Conformably, the public prosecutor conducted a reinvestigation of Criminal Case No. 013231-L jointly with I.S. No. 95-442.

On September 25, 1995, Umezawa filed a petition with the Securities and Exchange Commission (SEC), docketed as SEC Case No. 002919, for the nullification of the Resolution issued by the three alleged members of MPI Board of Directors, authorizing the filing of criminal complaints against him in behalf of the corporation.

On January 3, 1996, the public prosecutor issued a Joint Resolution finding probable cause for qualified theft and one count of estafa against Umezawa, and dismissing the case against the other accused. The Prosecutor maintained his finding of probable cause against Umezawa in Criminal Case No. 013231-L.

On February 20, 1996, the public prosecutor filed an Information for qualified theft with the RTC of Lapu-Lapu City against Umezawa, docketed as Criminal Case No. 013423-L. The accusatory portion reads:

That on the 8th day of February 1995, in the City of Lapu-Lapu, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, while being the President and General Manager of Mobilia

Products, Inc., a corporation engaged in the manufacture and export of quality furniture, whose principal place of business is at the Mactan Export Processing Zone, Lapu-Lapu City, with intent to gain, without the consent of his employer, and with grave abuse of confidence, did then and there willfully, unlawfully and feloniously take, steal and carry away from the corporation's factory the following expensive pieces of furniture, to wit:

1) 1 set, Model No. 2, 2-seater German

leather sofa, all valued at P 225,000.00

2) 1 set, Model No. 1, 2-seater German

leather sofa, all valued at P 275,000.00

with an aggregate value of P500,000.00 Philippine Currency, to the damage and prejudice of Mobilia Products, Inc.

CONTRARY TO LAW.[4]

Another Information for estafa was thereafter filed against the same accused, docketed as Criminal Case No. 013424-L. The accusatory portion reads:

That sometime in March 1995, in the City of Lapu-Lapu, Philippines, within the jurisdiction of this Honorable Court, the above-named accused, by means of unfaithfulness and abuse of confidence reposed upon him as the President and General Manager of Mobilia Products, Inc., did then and there willfully, unlawfully and feloniously misappropriate and convert to his own personal use and benefit the amount of Seventeen Million One Hundred Eight Thousand Five Hundred (P17,108,500.00) Pesos, Philippine Currency, which was the total value of the furnitures ordered and manufactured by the accused or at his instance using Mobilia supplies, materials and machineries, as well as time and personnel which were supposed to be for the exclusive use of Mobilia Products, Inc. but were converted for the use and benefit of the accused and Astem Philippines Corporation, a company or firm engaged in the same business as that of Mobilia Products, Inc., which is, [in] the manufacture and production of quality furniture for export, owned by the accused, to the damage and prejudice of Mobilia Products, Inc.

CONTRARY TO LAW.[5]

On April 25, 1996, Umezawa filed a motion for the suspension of the proceedings on the ground of the pendency of his petition with the SEC in Case No. 002919. The trial court, however, issued an Order on May 21, 1996, denying the said motion. It held that the filing and the pendency of a petition before the SEC did not warrant a suspension of the criminal cases.

On September 25, 1998, Umezawa was arraigned and pleaded not guilty.

On September 30, 1998, Umezawa filed anew a Joint Motion to Quash the Informations in Criminal Cases Nos. 013231-L and 013423-L, on the ground that the facts alleged therein did not constitute the felony of qualified theft. Umezawa claimed that based on the Joint Affidavit of the witnesses for the prosecution submitted during the preliminary investigation, Yasushi Kato and George del Rio, MPI Vice-President and the head of the Upholstery Department, respectively, the appropriate charge should be estafa and not qualified theft. Umezawa further claimed that for their failure to object to and resist his alleged delictual acts, the said witnesses were as guilty as he was and should have been included in the Information. He also asserted that there was, likewise, no allegation in the Informations as to who was the owner of the articles stolen; hence, there was no offended party. He noted that the Informations merely alleged that MPI was his employer. He further posited that there was no valid charge against him because the resolution authorizing the filing of the cases against him was approved by a mere minority of the members of the MPI Board of Directors.[6]

Umezawa, likewise, filed a Motion to Quash[7] the Information in Criminal Case No. 013424-L on the ground that the facts alleged in the Information did not constitute the felony of estafa. He posited that the Information did not contain any allegation that any demand was made for him to return the goods. Furthermore, the owner of the said articles was not specified. He noted that as gleaned from the Joint Affidavit of the witnesses for the prosecution, there was no lawful private complainant. He reiterated that the MPI board resolution authorizing the filing of the charge against him was not approved by the majority of the members of its board of directors. Umezawa also alleged that the charge for estafa with abuse of confidence was already included in the charge for qualified theft, where it was alleged that he committed theft with abuse of confidence; hence, the charge for estafa should be quashed, otherwise, he would be placed in double jeopardy. The motion was duly opposed by the prosecution.

On January 29, 1999, the trial court issued a Joint Order[8] dismissing the cases for lack of jurisdiction. It held that the dispute between the private complainant and the accused over the ownership of the properties subject of the charges is intra-corporate in nature, and was within the exclusive jurisdiction of the SEC. It ruled that Umezawa, as a member of the board of directors and president of MPI, was also a stockholder thereof. While Umezawa claimed to be the bona fide owner of the properties subject of the Informations which he appropriated for himself, the private complainant disputes the same; hence, according to the trial court, the conflicting claims of the parties should be resolved by the SEC. The private and public prosecutors received their respective copies of the Joint Order on February 2, 1999.

The MPI, through the private prosecutor, filed a motion for reconsideration of the joint order of the court and for the reinstatement of the cases on February 15, 1999. The MPI relied on the following grounds:

- The Honorable Court has jurisdiction and must exercise it over these cases;
- The above-entitled case is not an intra-corporate controversy; and
- The accused could not claim ownership nor co-ownership of the properties of private complainant corporation.[9]

The MPI maintained that the trial court had jurisdiction over the cases and cited Section 5 of Presidential Decree (P.D.) No. 902-A, which provides the rules on cases over which the SEC has original and exclusive jurisdiction. A copy of the motion was served on the public prosecutor for his approval. However, the public prosecutor did not affix his conformity to the motion, and instead opted to appear before the trial court during the hearing of the same. During the hearing, both the public and private prosecutors appeared. In support of his motion, the private prosecutor argued that the trial of the case must be done in the presence of and under the control and supervision of the public prosecutor.[10]

The trial court denied the motion in an Order dated April 19, 1999. It held that the SEC, not the trial court, had jurisdiction over intra-corporate controversies. It also ruled that the motion of the private complainant was pro forma, it appearing that the public prosecutor had not approved the same.

The public prosecutor received a copy of the Order on April 20, 1999. On April 26, 1999, the People of the Philippines, through the OSG, filed a petition for certiorari and mandamus with the CA against Presiding Judge Rumuldo R. Fernandez and Umezawa, docketed as CA-G.R. SP No. 52440. The CA allowed the MPI to intervene as petitioner, and admitted its petition- in-intervention.

The People of the Philippines, as the petitioner therein, raised the following issues:

I

WHETHER OR NOT IT IS THE LEGAL AND MINISTERIAL DUTY OF THE REGIONAL TRIAL COURT TO TAKE COGNIZANCE AND JURISDICTION OF THESE SUBJECT CRIMINAL CASES;

II

WHETHER OR NOT THE SECURITIES AND EXCHANGE COMMISSION HAS JURISDICTION OVER THE CRIMINAL CASES AGAINST RESPONDENT HAJIME UMEZAWA;

III

WHETHER OR NOT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN DISMISSING THE CRIMINAL CASES AND DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[11]

The People asserted that the controversy involving the criminal cases was not between Umezawa and the other stockholders of MPI, but one between him as the accused therein and the People of the Philippines. It averred that under Section 20(b) of Batas Pambansa (B.P.) Blg. 129, the RTC has exclusive jurisdiction over the cases against Umezawa. It also alleged that in dismissing the criminal cases against Umezawa on the ground that it had no jurisdiction over the crimes charged, the RTC committed grave abuse of its discretion amounting to excess or lack of jurisdiction.

On September 2, 1999, the CA rendered judgment granting the petition and nullifying the assailed Orders of the RTC. It ruled that the issue of ownership of the properties subject of the Informations was not an intra-corporate dispute. It held that Umezawa, although president and general manager of the MPI and a stockholder thereof, was not a joint owner or co-owner of the personal properties subject of the charges. It also held that the dispute between a private corporation and any of its stockholders relative to the ownership of properties does not ipso facto negate the jurisdiction of the RTC over the criminal cases under B.P. Blg. 129, as amended. It also declared that the material averments of the Informations sufficiently charged qualified theft and estafa.

Umezawa filed a motion for the reconsideration of the decision of the CA. In a complete volte face, the appellate court issued a Resolution on August 8, 2001, granting the motion and reversing its decision. It affirmed the ruling of the RTC that the dispute between Umezawa and the other stockholders and officers over the implementation of the MPI's standard procedure is intra-corporate in nature; hence, within the exclusive jurisdiction of the SEC. Citing Section 5(a)(b) of P.D. No. 902-A, and the ruling of this Court in *Alleje v. Court of Appeals*,^[12] the appellate court ruled that based on the material allegations of the Solicitor General in the petition before the CA, the SEC had exclusive jurisdiction over the conflicting claims of the parties. It likewise affirmed the ruling of the RTC that the absence of any allegation in the Information that the MPI was the owner of the properties subject of the Information is fatal.

The petitioner MPI filed the instant petition for review on certiorari, raising the following issues:

I

WHETHER OR NOT THE SECURITIES AND EXCHANGE COMMISSION HAS JURISDICTION OVER THE CRIMINAL CASES AGAINST UMEZAWA.

II

WHETHER OR NOT ALL THE NECESSARY ELEMENTS OF THE CRIMES OF QUALIFIED THEFT AND ESTAFA ARE SUFFICIENTLY ALLEGED IN THE INFORMATIONS.

III

EVEN ASSUMING ARGUENDO THAT THE FACTS ALLEGED DO NOT CONSTITUTE AN OFFENSE THE CORRECT RULING IS NOT TO DISMISS THE CASE BUT TO ORDER AMENDMENT.

IV

WHETHER OR NOT THE STATE HS LOST ITS RIGHT TO APPEAL.

V

WHETHER OR NOT THE MOTION FOR RECONSIDERATION OF UMEZAWA IS PRO FORMA.[13]

The People of the Philippines filed a separate petition for review on certiorari, contending that:

- THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW AND GRAVE ABUSE OF DISCRETION IN FINDING THAT THE PETITION FOR MANDAMUS, CERTIORARI AND INJUNCTION WAS FILED OUT OF TIME AND THAT PETITIONER HAS LOST ITS RIGHT TO APPEAL;
- THE COURT OF APEALS COMMITTED SERIOUS ERRORS OF LAW IN RULING THAT NOT ALL THE ELEMENTS OF QUALIFIED THEFT AND ESTAFA ARE PRESENT;
- THE COURT OF APPEALS COMMITTED BLATANT AND SERIOUS ERRORS OF LAW IN FINDING THAT THE SECURITIES AND EXCHANGE COMMISSION (SEC) HAS JURISDICTION OVER THE SUBJECT CRIMINAL CASES;
- THE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW AND GRAVE ABUSE OF DISCRETION IN GIVING DUE COURSE TO THE PRO-FORMA MOTION FOR RECONSIDERATION OF UMEZAWA.[14]

The two petitions were consolidated in the Second Division of the Court.

The threshold issues for resolution are the following: (a) whether or not the petition for certiorari of the People of the Philippines in the CA assailing the January 29, 1999 Joint Order of the trial court was time-barred; (b) whether the RTC has jurisdiction over the crimes charged in the said Informations; (c) whether the Informations sufficiently charge the felonies of qualified theft and estafa; and (d) if in the affirmative, whether all the elements of qualified theft and estafa are alleged in the Informations.

On the first issue, the CA held that the Public Prosecutor failed to file a motion for the reconsideration of the trial court's January 29, 1999 Joint Order dismissing the cases, that is, within fifteen days from receipt of a copy of the said order on February 2, 1999; neither did the People appeal the said Order within the period therefor. Thus, according to the CA, the People filed its petition for certiorari, prohibition and mandamus assailing the January 29, 1999 Joint Order of the trial court only on April 26, 1999, well beyond the 60-day period therefor. The appellate court, likewise, held that the filing of the motion for reconsideration of the said Joint Order by the private prosecutor without the conformity of the Public Prosecutor did not toll the period for the People to file its motion for reconsideration thereof, or to appeal therefrom, or to file a petition for certiorari, prohibition or mandamus. It ruled that, having lost its right to appeal in due course, the People was proscribed from filing a petition for certiorari, prohibition or mandamus. The CA declared that the motion for reconsideration filed by petitioner MPI of the Joint Order of the RTC is pro forma, the public prosecutor not having signified his written conformity thereto.

On the other hand, the petitioner People of the Philippines insists that while the public prosecutor did not expressly conform to the motion for reconsideration of the January 29, 1999 Joint Order of the trial court filed by

the private prosecutor, through the public prosecutor's presence during the hearing of the said motion, his supervision and control over the private prosecutor during the said hearing, he in effect adopted and conformed to the said motion for reconsideration.

In his comment on the petitions, respondent Umezawa maintains that the motion for reconsideration of the joint order of the trial court filed by the private prosecutor did not interrupt the period within which the People could appeal, citing the ruling of this Court in *Cabral v. Puno*.^[15] The respondent posits that the finding of the trial court, which was affirmed by the CA, that the public prosecutor did not conform to the motion for reconsideration of the private prosecutor, is binding on this Court. The respondent also avers that the petitioner has no personality to file the petition. Moreover, he insists that whether the public prosecutor conformed to the private prosecutor's motion for reconsideration is a question of fact which is not proper in a petition for review on certiorari.

The Court's Ruling

The contention of the petitioner People of the Philippines is not correct. All criminal actions commenced by complaint or information shall be prosecuted under the direction and control of the public prosecutor.^[16] When the civil action for civil liability is instituted in the criminal action pursuant to Rule 111 of the Rules on Criminal Procedure, the offended party may intervene, by counsel, in the prosecution of the offense.^[17] In *Ramiscal, Jr. v. Sandiganbayan*,^[18] we held that under Section 16, Rule 110 of the Rules of Criminal Procedure, the offended party may intervene in the criminal action personally or by counsel, who will then act as private prosecutor for the protection of his interests and in the interest of the speedy and inexpensive administration of justice. A separate action for the purpose would only prove to be costly, burdensome and time-consuming for both parties and further delay the final disposition of the case. The multiplicity of suits must be avoided. With the implied institution of the civil action in the criminal action, the two actions are merged into one composite proceeding, with the criminal action predominating the civil. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.^[19]

The intervention of the private offended party, through counsel, and his prosecution of the case shall be under the control and supervision of the public prosecutor until the final termination of the case. A public prosecutor who has been entrusted by law with the prosecution of criminal cases is duty-bound to take charge thereof until its final termination, for under the law, he assumes full responsibility for his failure or success since he is the one more adequately prepared to pursue it to its termination.^[20] The prosecution of offenses is a public function. Indeed, the sole purpose of the civil action is the resolution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the delictual or felonious act of the accused. ^[21] Under Article 104 of the Revised Penal Code, the following are the civil liabilities of the accused:

ART. 104. What is included in civil liability.— The civil liability established in Articles 100, 101, 102 and 103 of this Code includes:

- Restitution;
- Reparation of the damage caused;
- Indemnification for consequential damages.

Thus, when the offended party, through counsel, has asserted his right to intervene in the proceedings, it is error to consider his appearance merely as a matter of tolerance.^[22]

The public prosecutor may turn over the actual prosecution of the criminal case, in the exercise of his discretion, but he may, at any time, take over the actual conduct of the trial. However, it is necessary that the public

prosecutor be present at the trial until the final termination of the case; otherwise, if he is absent, it cannot be gainsaid that the trial is under his supervision and control.[23]

In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case.[24] However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.[25] In so doing, the private complainant or offended party need not secure the conformity of the public prosecutor. If the court denies his motion for reconsideration, the private complainant or offended party may appeal or file a petition for certiorari or mandamus, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or given an adequate remedy in the ordinary course of law.

The public and private prosecutors are not precluded, whenever feasible, from filing a joint motion for the reconsideration of the dismissal of the case or the acquittal of the accused, on the criminal and civil aspects of the cases.

In the present case, only petitioner MPI, through counsel, filed a motion for the reconsideration of the trial court's Joint Order dated January 29, 1999, praying for the reinstatement of the cases insofar as the civil aspect thereof is concerned. The public prosecutor did not approve nor conform to the said motion. Although petitioner MPI provided ample space for the said conformity of the public prosecutor, the latter did not do so; he merely appeared during the hearing of the said motion with the private prosecutor when the latter presented his oral arguments in support of the said motion.

The fact that the public prosecutor did not conform to the said motion, however, does not mean that the same is pro forma. It must be stressed that the propriety and efficacy of the motion, insofar as the civil aspect of the cases is concerned, is not dependent upon the conformity of the public prosecutor. Hence, the filing of the joint motion for reconsideration effectively suspended the running of the period for petitioner MPI to assail the joint order in the CA via an appeal or a special civil action for certiorari or mandamus under Rule 65 of the Rules of Court.

However, since the public prosecutor did not file any motion for the reconsideration of the joint order nor conform to the motion of petitioner MPI, insofar as the criminal aspect of the cases is concerned, the period for the State to assail the said joint order was not suspended. Only the motion for reconsideration filed by the public prosecutor of the joint order of dismissal of the cases could have tolled the period within which the State could appeal, insofar as the criminal aspect of the cases was concerned. The bare fact that the public prosecutor appeared for the State during the hearing of the motion for reconsideration of petitioner MPI does not amount to or constitute his adoption of the said motion as that of the State. As ruled by this Court in *Cabral v. Puno*: [26]

While it is true that the offended party, Silvino San Diego, through the private prosecutor, filed a motion for reconsideration within the reglementary fifteen-day period, such move did not stop the running of the period for appeal. He did not have the legal personality to appeal or file the motion for reconsideration on his behalf. The prosecution in a criminal case through the private prosecutor is under the direction and control of the Fiscal, and only the motion for reconsideration or appeal filed by the Fiscal could have interrupted the period for appeal.[27]

We agree with the ruling of the CA that the petition for certiorari filed by the petitioner People of the Philippines

with the CA on April 26, 1999 was filed beyond the 60-day period as provided in Section 4, Rule 65 of the Rules of Court,[28] it appearing that the public prosecutor received a copy of the joint order of the trial court on February 2, 1999, and, thus, had only until April 3, 1999 within which to file the said petition.

Even then, the Court still holds that the CA erred in dismissing the petition of the People of the Philippines simply because the public prosecutor erred in not himself filing a motion for reconsideration of the joint order of the trial court, on his perception that by being present during the hearing of the motion for reconsideration of petitioner MPI, he thereby adopted the said motion as that of the State's. The settled rule is that the State is not estopped by the mistakes of its officers and employees. Indeed, in *Cruz, Jr. v. Court of Appeals*,[29] the Court declared:

... Estoppel does not lie against the government because of the supposedly mistaken acts or omissions of its agents. As we declared in *People v. Castañeda*, "there is the long familiar rule that erroneous application and enforcement of the law by public officers do not block subsequent correct application of the statute and that the government is never estopped by mistake or error on the part of its agents."

The Court also held in *Chua v. Court of Appeals*:[30]

... While ordinarily, certiorari is unavailing where the appeal period has lapsed, there are exceptions. Among them are (a) when public welfare and the advancement of public policy dictates; (b) when the broader interest of justice so requires; (c) when the writs issued are null and void; or (d) when the questioned order amounts to an oppressive exercise of judicial authority. ...[31]

On the second issue, the petitioners assert that the CA erred in holding that the dispute between it and the respondent is intra-corporate in nature; hence, within the exclusive jurisdiction of the SEC. As gleaned from the material allegations of the Informations, the RTC had exclusive jurisdiction over the crimes charged. Petitioner MPI further avers that even if there is no allegation in the Informations identifying it as the owner of the personal properties described in the Informations, its ownership of the properties can be inferred from the other allegations. The petitioners maintain that even if the Informations are deficient, the remedy is the amendment of the Informations and not the dismissal of the cases.

For his part, the respondent avers that the assailed Resolution of the CA is correct, and that it is the appellate court's decision which is erroneous.

We agree with the petitioners.

According to Section 20 of B.P. Blg. 129 –

SEC. 20. Jurisdiction in criminal cases.— Regional Trial Courts shall exercise exclusive original jurisdiction in all criminal cases not within the exclusive jurisdiction of any court, tribunal or body, except those now falling under the exclusive and concurrent jurisdiction of the Sandiganbayan which shall hereafter be exclusively taken cognizance of by the latter.

Section 32 thereof was later amended by Section 2 of Republic Act No. 7691, as follows:

Sec. 32. Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Criminal Cases. – Except in cases falling within the exclusive original jurisdiction of the Regional Trial Court and of the Sandiganbayan, the Metropolitan Trial Courts, and Municipal Circuit Trial Courts shall exercise:

- (1) Exclusive original jurisdiction over all violations of city or municipal ordinances committed within their respective territorial jurisdiction; and
- (2) Exclusive original jurisdiction over all offenses punishable with imprisonment not exceeding six (6) years

irrespective of the amount of fine, and regardless of other imposable accessory or other penalties, including the civil liability arising from such offenses or predicated thereon, irrespective of kind, nature, value or amount thereof: Provided, however, That in offenses involving damage to property through criminal negligence, they shall have exclusive original jurisdiction thereof.

Case law has it that in order to determine the jurisdiction of the court in criminal cases, the complaint or Information must be examined for the purpose of ascertaining whether or not the facts set out therein and the prescribed period provided for by law are within the jurisdiction of the court, and where the said Information or complaint is filed. It is settled that the jurisdiction of the court in criminal cases is determined by the allegations of the complaint or Information and not by the findings based on the evidence of the court after trial.[32] Jurisdiction is conferred only by the Constitution or by the law in force at the time of the filing of the Information or complaint. Once jurisdiction is vested in the court, it is retained up to the end of the litigation. Indeed, in *People v. Purisima*,[33] this Court held that:

In criminal prosecutions, it is settled that the jurisdiction of the court is not determined by what may be meted out to the offender after trial or even by the result of the evidence that would be presented at the trial, but by the extent of the penalty which the law imposes for the misdemeanor, crime or violation charged in the complaint. If the facts recited in the complaint and the punishment provided for by law are sufficient to show that the court in which the complaint is presented has jurisdiction, that court must assume jurisdiction.

In Criminal Case No. 013231-L, the value of the properties subject of qualified theft is P3,219,875.00, while in Criminal Case No. 013423-L, the value of the property was pegged at P255,000.00. Under Article 309 of the Revised Penal Code, the penalty for theft when the value of the stolen property exceeds P22,000.00 is as follows:

- The penalty of prision mayor in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 20,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph and one year of each additional ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

Article 310 of the Revised Penal Code further provides for the penalty for qualified theft:

Art. 310. Qualified theft. – The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

On the other hand, in Criminal Case No. 013424-L for estafa, the amount of the fraud involved is P500,000.00, and under Article 315 of the Revised Penal Code, the penalty for such crime is –

1[st]. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor or reclusion temporal, as the case may be.

Patently, then, based on the material allegations of the Informations in the three cases, the court a quo had exclusive jurisdiction over the crimes charged.

The bare fact that the respondent was the president and general manager of the petitioner corporation when the crimes charged were allegedly committed and was then a stockholder thereof does not in itself deprive the court a quo of its exclusive jurisdiction over the crimes charged. The property of the corporation is not the property of the stockholders or members or of its officers who are stockholders. [34] As the Court held in an avuncular case:[35]

... Properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members. While shares of stock constitute personal property, they do not represent property of the corporation. The corporation has property of its own which consists chiefly of real estate (Nelson v. Owen, 113 Ala., 372, 21 So. 75; Morrow v. Gould, 145 Iowa, 1, 123 N.W. 743). A share of stock only typifies an aliquot part of the corporation's property, or the right to share in its proceeds to that extent when distributed according to law and equity (Hall & Faley v. Alabama Terminal, 173 Ala., 398, 56 So. 235), but its holder is not the owner of any part of the capital of the corporation (Bradley v. Bauder, 36 Ohio St., 28). Nor is he entitled to the possession of any definite portion of its property or assets (Gottfried v. Miller, 104 U.S., 521; Jones v. Davis, 35 Ohio St., 474). The stockholder is not a co-owner or tenant in common of the corporate property (Harton v. Johnston, 166 Ala., 317, 51 So., 992) ..."[36]

As early as the case of Fisher v. Trinidad,[37] the Court already declared that "[t]he distinction between the title of a corporation, and the interest of its members or stockholders in the property of the corporation, is familiar and well-settled. The ownership of that property is in the corporation, and not in the holders of shares of its stock. The interest of each stockholder consists in the right to a proportionate part of the profits whenever dividends are declared by the corporation, during its existence, under its charter, and to a like proportion of the property remaining, upon the termination or dissolution of the corporation, after payment of its debts."[38]

We also agree with the ruling of the CA in its decision that the SEC (now the Regional Trial Court) had no jurisdiction over the cases filed in the court a quo. The appellate court's reliance in the assailed Resolution issued by the Board of Directors of the petitioner corporation, on Section 5(b) of P.D. No. 902, has no factual and legal basis.

Section 5 of P.D. No. 902-A provides that the SEC[39] shall have original and exclusive jurisdiction to hear and decide cases involving the following:

- (a) devices or schemes employed by, or any acts of, the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of association or organizations registered with the Commission, and
- (b) controversies arising out of intra-corporate or partnership relations, between and among stockholders, members or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively.

In *Fabia v. Court of Appeals*,[40] the Court explained that Section 5 of P.D. No. 902-A should be taken in conjunction with Section 6 of the law. It then proceeded to explain:

In synthesis, Sec. 5 of PD 902-A mandates that cases involving fraudulent actions and devices which are detrimental to the interest of stockholders, members or associates and directors of the corporation are within the original and exclusive jurisdiction of the SEC. Taken in conjunction with Sec. 6 of the same law, it will be gathered that the fraudulent acts/schemes which the SEC shall exclusively investigate and prosecute are those "in violation of any law or rules and regulations administered and enforced by the Commission" alone. This investigative and prosecutorial powers of the SEC are further "without prejudice to any liability for violation

of any provision of The Revised Penal Code.”

From the foregoing, it can thus be concluded that the filing of the civil/intra-corporate case before the SEC does not preclude the simultaneous and concomitant filing of a criminal action before the regular courts; such that, a fraudulent act may give rise to liability for violation of the rules and regulations of the SEC cognizable by the SEC itself, as well as criminal liability for violation of the Revised Penal Code cognizable by the regular courts, both charges to be filed and proceeded independently, and may be simultaneously with the other.[41]

Thus, the filing of a petition in the SEC for the nullification of the Resolution of May 2, 1995 issued by the Chairman and two members of the Board of Directors of petitioner MPI, which authorized the filing of criminal cases against respondent Umezawa, was not a bar to his prosecution for estafa and qualified theft for his alleged fraudulent and delictual acts. The relationship of the party-litigants with each other or the position held by petitioner as a corporate officer in respondent MPI during the time he committed the crime becomes merely incidental and holds no bearing on jurisdiction. What is essential is that the fraudulent acts are likewise of a criminal nature and hence cognizable by the regular courts.[42] Thus, notwithstanding the fact that respondent Umezawa was the president and general manager of petitioner MPI and a stockholder thereof, the latter may still be prosecuted for the crimes charged. The alleged fraudulent acts of respondent Umezawa in this case constitute the element of abuse of confidence, deceit or fraudulent means, and damage under Article 315 of the Revised Penal Code on estafa.[43]

We agree with the encompassing disquisitions of the CA in its decision, to wit:

... A dispute involving the corporation and its stockholders is not necessarily an intra-corporate dispute cognizable only by the Securities and Exchange Commission. Nor does it ipso facto negate the jurisdiction of the Regional Trial Court over the subject cases. The Supreme Court citing the case of *Viray v. Court of Appeals* (G.R. No. 92481, 191 SCRA 308 [1990]) in *Torio v. Court of Appeals* (G.R. No. 107293, March 2, 1994, 230 SCRA 626) held:

“It should be obvious that not every conflict between a corporation and its stockholders involves corporate matters that only the SEC can resolve in the exercise of its adjudicatory or quasi-judicial powers.”

As the Supreme Court further ruled in the *Torio* case that “a contrary interpretation would distort the meaning and intent of P.D. 902-A, the law re-organizing the Securities and Exchange Commission. The better policy in determining which body has jurisdiction over a case would be to consider not only the relationship of the parties but also the nature of the questions raised in the subject of the controversy.[44]

On the last issue, we find and so hold that the Informations state all the essential elements of estafa and qualified theft. It was adequately alleged that respondent Umezawa, being the President and General Manager of petitioner MPI, stole and misappropriated the properties of his employer, more specifically, petitioner MPI. As expostulated by the CA in its decision:

... In any event, the allegations in the informations, if hypothetically admitted, are sufficient to bind Umezawa to the charges of qualified theft and estafa. As aptly ruled by the court a quo in its Order of July 25, 1995, all the elements of the offense of qualified theft are present. There is no basis for claiming otherwise. Furthermore, the private offended party, as well as the subject matter of the felonious taking and the ownership thereof, have been adequately indicated or identified leaving no room for any doubt on these matters. Considering that the motions to quash of September 30, 1998 are fundamentally rehash of the motion to quash filed on May 29, 1995 and the culpable acts subject of the new informations are virtually the same as the first information filed against Umezawa, there is no conceivable reason why the court a quo abandoned its previous stand and controverted itself in regard the sufficiency of the informations.

In our considered view, and as the court a quo had correctly held in its Order of May 26, 1996, “even a SEC

ruling voiding the resolution authorizing the filing of criminal charges versus the accused Hajime Umezawa can have no bearing on the validity of the informations filed in these three criminal cases as pointed out by private complainant, the public offenses of qualified theft and estafa can [be] prosecuted de officio.” The resolution of the office of the prosecutor on the preliminary investigation as well as the re-investigation conducted on the letter-complaint filed by private complainant company sufficiently established prima facie case against the accused and the legality or illegality of the constitution of the board which authorized the filing of the complaint does not materially affect either the informations filed against Umezawa or the pending criminal proceedings. As petitioners contend, the action is now between the People of the Philippines and herein private respondent.[45]

IN LIGHT OF ALL THE FOREGOING, the petitions are GRANTED. The Resolution of the Court of Appeals in CA-G.R. SP No. 52440 dated August 8, 2001 is REVERSED and SET ASIDE. The Decision of the Court of Appeals dated September 2, 1999 is AFFIRMED.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Bernardo P. Abesamis (retired), with Associate Justices Teodoro P. Regino (retired) and Presbitero J. Velasco, Jr. (now Court Administrator), concurring.

[2] Rollo, pp. 12-17 (G.R. No. 149403).

[3] Id. at 83-85.

[4] Id. at 87-88.

[5] Id. at 90-91.

[6] Id. at 93-104.

[7] Id. at 105-115.

[8] Id. at 116-120.

[9] Id. at 121-122.

[10] Id. at 128.

[11] Id. at 149.

[12] 204 SCRA 495 (1995).

[13] Rollo, p. 30. (G.R. No. 149357)

[14] Rollo, p. 27. (G.R. No. 149403)

[15] 70 SCRA 606 (1976).

[16] Section 5, Rule 110 of the Rules on Criminal Procedure.

[17] Id., Section 16.

[18] G.R. Nos. 140576-99, December 13, 2004.

[19] Ibid.

[20] *People v. Beriales*, 70 SCRA 361 (1976).

[21] *Ramiscal, Jr. v. Sandiganbayan*, *supra*.

[22] *Id.*

[23] *Id.*

[24] *Neplum, Inc. v. Orbeso*, 384 SCRA 466 (2002).

[25] *Ibid.*

[26] *Supra* note 13.

[27] *Id.* at 610.

[28] The Rule has been amended by the Resolution of the Court in A.M. No. 00-2-03-SC promulgated on August 1, 2000.

[29] 194 SCRA 145 (1991).

[30] 344 SCRA 136 (2000).

[31] *Id.* at 147-148.

[32] *Buaya v. Polo*, 169 SCRA 471 (1989).

[33] 69 SCRA 341 (1976).

[34] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, 296 SCRA 631 (1998).

[35] *Boyer-Roxas v. Court of Appeals*, 211 SCRA 470 (1992), citing *Stockholders of F. Guanzon and Sons, Inc. v. Register of Deeds of Manila*, 6 SCRA 373 (1962).

[36] *Id.* at 485.

[37] 43 Phil. 973 (1922).

[38] *Id.* at 986, citing Mr. Justice Gray in *Gibbons v. Mahon*, 136 U.S. 549.

[39] P.D. 902-A has been repealed by Republic Act No. 8799, which provides in Sec. 5.2 thereof that the jurisdiction of the SEC under Section 5 of P.D. 902-A has been transferred to the appropriate RTC.

[40] 388 SCRA 574 (2002).

[41] *Id.* at 579.

[42] *Id.* at 580-581.

[43] *Id.*

[44] Rollo, p. 77. (G.R. No. 149357)

[45] *Id.* at 75-77.

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