

## BIENVENIDO GOMBA, PETITIONER, VS. THE PEOPLE OF THE PHILIPPINES, RESPONDENT.

*G.R. No. 150536. September 17, 2008*

Ponente: CORONA, J.

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### CORONA, J.:

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Bienvenido Gomba assails the October 15, 2001 decision[2] of the Court of Appeals (CA) convicting him of estafa through misappropriation under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC).

Gomba was the common area administrator of MRB-NGCP Phase 1 homeowners association (association) from April 16 to December 18, 1998.[3] His primary task was to see to it that the residents of MRB-NGCP Phase 1 had clean surroundings and a constant water supply. His other tasks included the collection of association dues and water bills and the remittance of these collections on a daily basis to the association.[4]

Gomba allegedly failed to remit his collections for the months of July, September and October 1998. This matter was reported by the association's treasurer to its board of directors. The association, through external auditors, performed audits to investigate the alleged anomaly. In two separate memoranda,[5] Gomba was ordered to produce and turn over various documents in his possession. He was likewise required to explain why he failed to remit his water bill collections. Gomba, for unexplained reasons, refused to receive these memoranda prompting the association to take further action. Ultimately, it was reported that Gomba's unremitted collections amounted to P237,996.44.

The association filed a complaint before the Lupong Tagapamayapa of Barangay Commonwealth. In the proceedings before the Lupon, Gomba offered to settle his unremitted collections.[6] However, he reneged on his promise.

A criminal complaint was therefore filed against Gomba. After preliminary investigation, an Information for estafa under Article 315, paragraph 1 (b) of the RPC was lodged against him in the Regional Trial Court (RTC), Branch 95, Quezon City.

Gomba pleaded not guilty when arraigned. During trial, he denied the allegations that he failed to remit the amounts he collected. He claimed to have faithfully performed his duties as administrator by receiving daily collections and remitting them to the administration treasurer, less expenses incurred every month.[7]

After trial on the merits, Gomba was found guilty beyond reasonable doubt of the crime charged. He was sentenced to suffer an indeterminate penalty of six years, eight months and 21 days of prision mayor to twenty years of reclusion temporal. He was also ordered to return or pay the amount of P237,996.44 to the association with legal interest computed from June 16, 1999 until fully paid.

On appeal, the CA affirmed the RTC decision.

In this petition for review on certiorari, Gomba contests the findings of the RTC and the CA that there was misappropriation. He also questions the appreciation of various pieces of evidence against him.[8]

We deny the petition.

Gomba was convicted of estafa with abuse of confidence through misappropriation under Article 315, paragraph 1 (b) of the RPC.[9] Its elements are:

- That money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
- That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
- That such misappropriation or conversion or denial is to the prejudice of another; and
- That there is a demand made by the offended party to the offender.[10]

Gomba asserts that misappropriation, the second element, is absent.

Misappropriation is defined as:

[A]n act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. To "misappropriate" a thing of value for one's own use or benefit [includes] not only conversion to one's personal advantage but also every attempt to dispose of the property of another without a right.[11]

The demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation.[12] In this case, Gomba, as common area administrator, received the collections in trust for the association. The association made a demand upon Gomba to remit his collections. He failed to do so, despite several opportunities given to him. This was evidence that he misappropriated the money, bolstered by the fact that he merely submitted reports without the corresponding remittances on various occasions.[13]

In the face of positive evidence to the contrary, Gomba's claim that he incurred no shortages (without submitting a detailed accounting of the collections and alleged expenses[14]) deserves scant consideration. Although Gomba enjoyed the presumption of innocence and that the duty to prove misappropriation belonged to the prosecution, the latter was able to effectively discharge that burden, as already discussed.

Denial is the weakest form of defense. Gomba's outright denial of misappropriation was not sufficient to prove his innocence because unsubstantiated denial carries no evidentiary weight. It is negative and self-serving evidence. In *People v. Magbanua*,[15] we held:

It is elementary that denial, if unsubstantiated by clear and convincing evidence, is a negative and self-serving evidence which has far less evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

With respect to the issue of whether the RTC, as affirmed by the CA, erred in appreciating certain evidence against Gomba, we rule in the negative. It is a settled rule that factual findings of the trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect, specially when affirmed by the CA.[16] Without any cogent or compelling proof that the lower courts committed reversible error in their decisions, we shall not deviate from the rule.[17] We therefore affirm the findings of both the RTC and the CA that Gomba committed estafa punishable under Article 315, paragraph 1 (b) of the RPC.

WHEREFORE, the petition is hereby DENIED. The October 15, 2001 decision of the Court of Appeals is AFFIRMED. Petitioner Bienvenido Gomba is hereby found GUILTY beyond reasonable doubt of estafa defined in and penalized by Article 315, paragraph 1 (b) of the Revised Penal Code and sentenced to suffer the indeterminate penalty of imprisonment from six years, eight months and 21 days of prision mayor to 20 years of reclusion temporal.

He is further ordered to return or pay the amount of P237,996.44 to MRB-NGCP Phase 1 homeowners association, represented by Natividad Martinez, at the legal rate of interest computed from June 16, 1999 until fully paid.

Costs against petitioner.

**SO ORDERED.**

Puno, C.J., (Chairperson), Carpio Morales,[\*] Azcuna, and Leonardo-De Castro, JJ., concur.

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[\*] As replacement of Justice Antonio T. Carpio who is on official leave per Special Order No. 515.

[1] The Court of Appeals was originally impleaded as a respondent but the Court excluded it pursuant to Section 4, Rule 45 of the Rules of Court.

[2] Penned by Associate Justice (now Associate Justice of the Supreme Court) Ruben T. Reyes and concurred in by Associate Justices Mercedes Gozo-Dadole (retired) and Juan O. Enriquez, Jr. of the Special Eleventh Division of the Court of Appeals. Rollo, pp. 49-66.

[3] Rollo, p. 76.

[4] TSN, 16 November 1999, p. 4.

[5] Dated November 30, 1998 and December 14, 1998.

[6] By way of a Kasunduang Tagapamayapa. RTC Records, p. 11.

[7] These expenses include honoraria, office supplies, MERALCO bills, borrowings of other directors and other miscellaneous expenses.

[8] The other issues raised by Gomba were: (a) whether or not the refusal of the petitioner to submit to

the investigation and finding of the Audit Committee was an implied objection to the admissibility and competency of its audit report; (b) whether or not a mere cursory inspection of the document is enough to determine the authenticity of the handwriting of petitioner; and (c) whether or not the vouchers/promissory notes presented by petitioner were valid deductions to the amount he was supposed to remit.

[9] Article 315, paragraph 1 (b) provides: By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[10] Reyes, Luis B., THE REVISED PENAL CODE, BOOK TWO, ARTICLES 114-367, Sixteenth Edition (2006), Rex Book Store, Inc., p. 742.

[11] Lee v. People of the Philippines, G.R. No. 157781, 11 April 2005, 455 SCRA 256, 267.

[12] *Filadams Pharma, Inc. v. CA*, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 468.

[13] TSN, 7 April 2000, p. 4.

[14] Rollo, p. 84.

[15] G.R. No. 133004, 20 May 2004, 428 SCRA 617, 630.

[16] *Perez v. People of the Philippines*, G.R. No. 150443, 20 January 2006, 479 SCRA 209, 219-220.

[17] *Pascual v. People of the Philippines*, G.R. No. 160540, 22 March 2007.

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