

**RCL FEEDERS PTE., LTD., PETITIONER, VS. HON. HERNANDO PEREZ,
IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE
AND FELICIANO ZULUAGA, RESPONDENTS.**

G.R. No. 162126. December 09, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Petitioner RCL Feeders PTE., Ltd. (RCL) is a Singaporean company engaged in the business of operating ships that transport cargo throughout the Southeast Asia Pacific region. In 1990, it appointed South China Lines (Philippines) as its shipping agent in the country, followed by EDSA Shipping Agency, Inc. (EDSA) in 1995.

Sometime in the year 2000, petitioner through its president, Sumate Tanthuwani, instructed its consultant, Hartwig Schulze-Eckardt, to investigate its transactions with EDSA. Tanthuwani apparently noticed that EDSA's billings for reimbursement over the last five years were abnormally excessive.

Upon investigation, Eckardt discovered that EDSA, allegedly through its president – respondent Feliciano Zuluaga – had billed petitioner for services rendered by a non-existent entity known as North Harbor Services (NHS). The total sum paid to NHS over the course of the Agency Agreement amounted to P78,290,232.08.

When confronted, respondent admitted to Eckardt the fictitious character of NHS. However, respondent explained that this was part of a continuing arrangement with petitioner in order to ensure the smooth operation of its shipping business in the Philippines. Respondent told Eckardt that the arrangement was for him to receive the payments for and in behalf of a "Philippine Group". The latter would then ensure the flow of inbound and outbound cargo shipped on petitioner's vessels at the rate of US\$ 5.00 per twenty-foot equivalent (TEU) unit container. EDSA would pay NHS and subsequently invoice the payments to RCL. The latter would then reimburse the payments to EDSA.[1]

Petitioner disclaimed knowledge of any such arrangement. It maintained that its business activities in the Philippines were legitimate and that it need not pay anyone in order to maintain its operations. It thus accused respondent of defrauding it and demanded the accounting and return of the amount.[2]

When respondent failed to heed the demand, petitioner, through Eckardt, filed a complaint for estafa against respondent before the Office of the City Prosecutor of Makati City.[3]

In his complaint-affidavit[4] dated March 22, 2001, Eckardt alleged that:

...

- EDSA is a corporation that is controlled by Mr. Feliciano Zuluaga (hereinafter referred to as ZULUAGA), with postal address at Suite 1002, 10th Floor, Ayala Life-FGU Center, Mindanao Avenue, Cebu Business Park, 6000 Cebu, who has been its President since 1995 up to the present.

- Sometime last year, SUMATE instructed me to investigate the abnormal and excessive billings of EDSA to RCL

over the last five (5) years.

...

- As a result of my investigation, I was able to ascertain that from November 1995 up to July 2000, EDSA, through ZULUAGA, had billed RCL for services allegedly rendered by a firm called North Harbor Services, which RCL duly paid. I was also able to ascertain from my investigation that North Harbor Services is a non-existent entity and that the services allegedly rendered by it are non-existent.

- I confronted ZULUAGA about my aforesaid findings and he admitted to me that North Harbor Services is a non-existent entity, which did not render services at all. He told me that the payments made to North Harbor Services were payments, which he had personally received and encashed and subsequently remitted to a group in order to ensure that no operational problems would ensue in the operations of RCL in the Philippines. According to him, the arrangement was to give U.S. Five Dollars (\$5.00) per TEU (Twenty-Foot Equivalent Unit Container) for inbound and outbound cargoes of RCL vessels. He also told me that he was just continuing a previous arrangement that has been previously agreed upon. ZULUAGA reiterated his afore-mentioned admission in the E-mail, which he sent to me on September 29, 2000, a copy of which is herewith attached and made an integral part hereof as Annex "B".

...

- Under the circumstances, it is quite clear that ZULUAGA had defrauded RCL through false and fraudulent representations in the total amount of P78,290,232.08 to the latter's damage and prejudice.

...[5] (Underscoring Supplied)

In support of the foregoing allegations, petitioner submitted the following: (a) a copy of its Agency Agreement with South China Lines (Philippines); (b) an e-mail message sent by respondent to Eckardt in which the former described the supposed arrangement; (c) a schedule of the payments made by EDSA to NHS; and (d) copies of the check payments made by EDSA to NHS which were signed by RCL's representatives, Jesus Sedano and Aurelio Obillo.[6]

On May 28, 2001, respondent filed a counter-affidavit with motion to dismiss[7] together with the affidavit[8] of his witness, Carlos Marinas. He sought dismissal of the complaint on the ground that the acts complained of were acts of a corporate entity for which respondent cannot be held personally liable. Moreover, the allegations in the complaint are pure hearsay and there was no evidence of damage or prejudice to petitioner.

Petitioner filed a reply-affidavit[9] dated June 13, 2001 contending that the grounds relied upon by petitioner for the dismissal of the complaint are evidentiary and should be proved during the trial on the merits and not during preliminary investigation.

On June 21, 2001, respondent submitted a rejoinder-affidavit[10] reiterating his previous averments.

Thereafter, the Investigating Prosecutor issued a resolution[11] on June 28, 2001 recommending the filing of an information for estafa against respondent under Article 315, par. 2 (a) of the Revised Penal Code. The City Prosecutor approved the recommendation and forthwith filed the information before the Regional Trial Court of Makati City (RTC-Makati City) where it was docketed as Criminal Case No. 01-1796 and raffled to Branch 64.

In the meantime, respondent filed a motion for reconsideration[12] of the resolution of the City Prosecutor which was denied in an order[13] dated September 28, 2001. Respondent thus filed a petition for review with the Department of Justice (DOJ) assailing the aforementioned resolution and order of the City Prosecutor.

On April 11, 2002, then Secretary of Justice Hernando B. Perez issued a resolution[14] ordering the City Prosecutor to move for the withdrawal of the information before the trial court because “there is no clear and categorical showing of any act, omission or concealment personally employed by respondent to deceive complainant (petitioner) into parting with its money.”[15]

Petitioner filed a motion for reconsideration of the said DOJ resolution on April 16, 2002, but the same was denied.[16] Consequently, petitioner filed a petition for certiorari before the Court of Appeals under Rule 65, where it was docketed as CA-G.R. SP No. 72033.

Meanwhile, per directive of the DOJ Secretary, the prosecution moved for the withdrawal of the information filed against respondent before Branch 64 of the RTC-Makati City. In an order dated June 18, 2002, the trial court granted the motion and dismissed Criminal Case No. 01-1796.[17]

On June 5, 2003, the Court of Appeals rendered a decision[18] upholding the findings of the Secretary of Justice. Petitioner moved for reconsideration of the appellate court’s decision which, however, was denied for lack of merit.[19] Hence, this petition under Rule 45 based on the following grounds:

- THE COURT OF APPEALS PATENTLY ERRED IN NOT RULING THAT THE DEPARTMENT OF JUSTICE, THROUGH HONORABLE HERNANDO PEREZ COMMITTED GRAVE ABUSE OF DISCRETION OR IN EXCESS OF JURISDICTION WHEN HE ORDERED THE CITY PROSECUTOR OF MAKATI CITY TO WITHDRAW THE INFORMATION IN CRIMINAL CASE NO. 01-1796 BEFORE THE REGIONAL TRIAL COURT OF MAKATI CITY AGAINST RESPONDENT.

- THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT THERE IS NO PROBABLE CAUSE TO WARRANT THE FILING OF ESTAFA UNDER ARTICLE 315 PAR. 2(A) OF THE REVISED PENAL CODE, AS AMENDED, AGAINST RESPONDENT WHEN IT IS SETTLED THAT PETITIONER WAS MADE TO PAY BY RESPONDENT LARGE SUMS OF MONEY TO A NON-EXISTENT ENTITY.[20]

Petitioner asserts that contrary to the findings of both the appellate court and the Secretary of Justice, it has established a prima facie case for estafa through false pretense against respondent under Article 315, par. 2(a) of the Revised Penal Code. The fraud perpetrated by respondent consists of his act of representing to RCL that it has to pay NHS for services, when in truth and in fact, no such entity exists and no services were rendered. This, according to petitioner, is very clear from the complaint-affidavit as well as the other documents submitted in support thereof.

We do not agree.

A close scrutiny of the complaint-affidavit would show that petitioner did not allege any specific act of fraud attributable to respondent. All that was alleged therein is that EDSA excessively billed RCL for services rendered by NHS, an entity which Eckardt discovered was non-existent. To explain the payments made to NHS, respondent described the arrangement whereby payments were made to a Philippine group that would ensure the smooth flow of cargo in and from petitioner’s vessels. Other than these allegations, there was no averment of any personal act of misrepresentation or deceit committed by respondent which induced petitioner to make the payments.

Article 315, par. 2(a) of the Revised Penal Code penalizes fraud or deceit when committed as follows:

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

The elements of the crime of estafa under the foregoing provision are: (1) there must be a false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act or fraudulent means and was thus induced to part with his money or property; and (4) as a result thereof, the offended party suffered damage.[21]

In other words, to sustain a charge and subsequent conviction for estafa under the aforecited provision, respondent must be alleged to have actually made fraudulent representations which, in turn, caused petitioner to part with its money. It is not enough that such fraudulent acts be presumed from either respondent's admission of knowledge about the alleged fraud or his relation to the company.

The fraud must be alleged to have been personally committed by respondent prior to or simultaneously with the payment or delivery of money. If there be no such prior or simultaneous false statement or fraudulent representation, any subsequent act of the accused, however fraudulent or suspicious it may appear, cannot serve as basis for prosecution for that class of estafa.[22]

Moreover, apart from the alleged admission of respondent, there was no other evidence on record that would personally connect respondent to the alleged fraud and spurious payments. The checks given by petitioner as evidentiary support for its complaint were all crossed checks drawn against the account of EDSA with NHS as payee.[23] Meanwhile, the authorized signatories of the checks were Sedano and Obillo, who were representatives of petitioner in the management of EDSA. Except for Eckardt's allegations, respondent does not appear to have any personal participation in issuing the checks, or in personally collecting the amounts thereof. Neither was there evidence that it was respondent who caused the payments to be invoiced for reimbursement to petitioner.

We further note that it was actually EDSA that billed RCL for the services rendered by NHS. As averred in the complaint-affidavit, petitioner is attributing the acts of EDSA to respondent by virtue of the latter's position as president and controlling stockholder of the company and for no other reason. However, as correctly held by the appellate court, the acts of the corporation cannot automatically be presumed to be the personal acts of its officers. This is in accordance with the basic principle that a corporation is legally vested with a personality distinct from that of its stockholders and officers who manage and run its affairs.[24]

Thus, we find no merit in petitioner's contention that respondent was charged for personally representing to petitioner that NHS rendered services when, in fact, it did not. The only personal act that could be ascribed to respondent on the basis of the evidence on record was his alleged admission that he knew of the previous arrangement with the Philippine group and that he acted accordingly. There was no allegation of any fraudulent personal representation made by respondent prior to or simultaneous with the payments. If he personally committed any false pretense or fraudulent act at all, the same was not extant in the allegations of the complaint-affidavit or any of the documentary evidence submitted in support thereof.

Consequently, the Court of Appeals correctly held that no grave abuse of discretion was committed by the Secretary of Justice in ordering the City Prosecutor to move for withdrawal of the information before the RTC-Makati City. The complaint-affidavit as well as the supporting documents do not attribute any overt act of deceit against respondent, as to constitute a prima facie case for estafa under Article 315, par. 2(a) of the Revised Penal Code. Although it is true that a finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed and was committed by the accused,[25] no such evidence exists in the present case that would engender a well-founded belief that estafa was in fact committed by respondent pursuant to the aforementioned provision of the Revised Penal Code.

Courts are not empowered to substitute their judgment for that of the Secretary of Justice save only when the same was rendered with grave abuse of discretion amounting to lack or excess of jurisdiction.[26] In the instant case, we find no such abuse, much less grave abuse of discretion on the part of the Secretary of Justice, as to warrant a reversal of the Court of Appeals' decision.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP No. 72033 is AFFIRMED and the instant petition DISMISSED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 16-19.

[2] Id. at 123.

[3] The case was docketed as I.S. No. 01-D-8368.

[4] Supra, note 1 at 78.

[5] Id. at 78-79.

[6] Id. at 82-122.

[7] Id. at 124-138.

[8] Id. at 170-171.

[9] Id. at 172-174.

[10] Id. at 175-180.

[11] Id. at 181-184.

[12] Id. at 185-193.

[13] Id. at 210-211.

[14] Id. at 69-74.

[15] Id. at 72.

[16] Id. at 75.

[17] The order of the RTC-Makati City, Branch 64, dismissing Criminal Case No. 01-1796 was quoted verbatim in respondent's comment to the petition. However, a copy of the order was not attached to any of the pleadings filed by either party both in this Court and the Court of Appeals. Petitioner nonetheless admits the fact of dismissal in its reply to respondent's comment.

[18] Supra, note 1 at 32-37.

[19] Id. at 38-39.

[20] Id. at 21.

[21] See *Montano v. People*, 423 Phil. 141, 147 (2001), citing *People v. Juego*, 358 Phil. 499 (1998).

[22] *People v. Olermo*, G.R. No. 127848, 17 July 2003, 406 SCRA 412, 429.

[23] CA Rollo, pp. 40-55.

[24] See *Land Bank of the Philippines v. Court of Appeals*, 416 Phil. 774, 782 (2001), citing *Yutivo Sons Hardware Company v. Court of Tax Appeals*, 110 Phil. 751 (1961) and *Francisco Motors Corporation v. CA*, 368 Phil. 374 (1999).

[25] *Webb v. De Leon*, 317 Phil. 758, 789 (1995).

[26] See *Metropolitan Bank & Trust Co. v. Tonda*, 392 Phil. 797, 814 (2000), citing *Roberts, Jr. v. Court of Appeals*, 324 Phil. 568 (1996). See also *Public Utilities Department, Olongapo City v. Guingona, Jr.*, G.R. No. 130399, 20 September 2001, 365 SCRA 467, 474, citing *DM Consunji, Inc. v. Esguerra*, 328 Phil. 1168 (1996).

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