INSULAR LIFE ASSURANCE COMPANY, LIMITED, PETITIONER, VS. MANUEL M. SERRANO, RESPONDENT.

G.R. NO. 163255. June 22, 2007

Ponente: PUNO, C.J.

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PUNO, C.J.:

Before us is a petition for review of the October 9, 2003 decision[1] and April 15, 2004 resolution[2] of the Court of Appeals in CA-G.R. SP No. 76341.

First, the antecedent facts.

In June 1987 respondent Manuel M. Serrano bought from petitioner Insular Life Assurance Company, Limited, a life insurance policy called "Diamond Jubilee, Participating" on his understanding that he shall be paying premiums for seven (7) years only. Dividend accumulations and earned interests were to be applied to subsequent premium payments. Respondent obtained six Diamond Jubilee Life Insurance policies, and religiously paid the premiums.

In early 1996, respondent was informed by his accountant that he had been paying premiums on some of his policies even beyond the seven-year period of their effectivity. Consequently, respondent wrote a letter to Atty. Ernesto G. Montalban, petitioner's Senior Vice President, Sales Operations Group, requesting that the overpayments be applied as premium payments of his other policies which have not reached the seven-year period. The request was denied on the ground that the self-liquidating option of the policies was not guaranteed because it was based on dividends which vary. Atty. Montalban, however, assured respondent that some of his policies will self-liquidate but on the following dates, to wit:

Policy Number Issue Date
Date of Self-Liquidation

PN 2156675 June 9, 1987
June 9, 1997

PN 2160551 November 24, 1987 November 24, 1996

PN 2164830 December 23, 1987 December 23, 1997

PN 2168149 April 18, 1988
April 18, 1997

Insisting that petitioner's agents represented to him that the Diamond Jubilee Life Insurance policies are self-liquidating after 7 years, respondent repeatedly demanded that petitioner make good the representation, to no avail.

On October 8 and 11, 1996, respondent caused a notice to be published in the Manila Bulletin, viz:

URGENT NOTICE
TO ALL
INSULAR LIFE DIAMOND JUBILEE
POLICY-HOLDERS

> IF YOU ARE A VICTIM OF INSULAR LIFE ASSURANCE'S REFUSAL TO HONOR ITS REPRESENTATION THAT YOUR POLICY BECOMES SELF-LIQUIDATING AFTER A LAPSE OF SEVEN (7) YEARS, PLEASE ATTEND A SPECIAL MEETING OF SIMILARLY SITUATED POLICY HOLDERS AND CO-OWNERS OF INSULAR LIFE ON OCTOBER 16, 1996, 2:00 P.M. AT THE MAKATI SPORTS CLUB, ALFARO ST., SALCEDO VILLAGE, MAKATI, TO CONSIDER COLLECTIVE ACTION TO PROTECT YOUR INTERESTS. RSVP – CALL MRS. VILLAROYA OR MRS. CARIAGA AT 817-22-35 OR 816-25-64

In addition, respondent filed on December 11, 1996 a civil case for specific performance, sum of money, and damages before the Regional Trial Court of Makati City against petitioner, Atty. Montalban, Insurance Underwriter Mila Ramos, Agency Manager Portia Valdez, and District Sales Manager Alfredo Sta. Maria, docketed as Civil Case No. 96-2009.

In turn, petitioner filed in May 1997 a complaint for libel against respondent before the City Prosecution Office of Makati City.[3] The complaint alleged that the published notice was libelous as it depicted petitioner as having "victimized" or "conned" its policyholders by refusing to honor an alleged representation that its Diamond Jubilee Life Insurance policies were self-liquidating after 7 years. Petitioner maintained that the policies it issued bore no such representation. As a result of the libelous publication, petitioner allegedly suffered dishonor, discredit and damage in an amount not less than P100,000,000.00.

In his answer to the complaint, respondent contended that the word "victim" truthfully signified his situation as owner of six Diamond Jubilee Life Insurance policies which petitioner's agents represented to be self-liquidating after 7 years but which turned out to be not.

On October 6, 1997, the City Prosecutor of Makati dismissed petitioner's complaint for lack of probable cause, ruling that there was no defamatory imputation, and no malice in the publication.[4] Petitioner's motion for reconsideration was denied.[5]

Petitioner sought a review before the Secretary of Justice. On April 18, 2002,[6] the Secretary of Justice affirmed the dismissal of petitioner's complaint for lack of probable cause.

Petitioner assailed the ruling before the Court of Appeals via a petition for certiorari.[7] On October 9, 2003, the Court of Appeals dismissed the petition, finding no grave abuse of discretion on the part of the Secretary of Justice in affirming the dismissal of petitioner's complaint.[8] Petitioner's motion for reconsideration was denied.[9] Hence, this petition.

Petitioner assigns the following errors:

I.

> THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE INCORRECT FINDINGS OF THE DEPARTMENT OF JUSTICE INSOFAR AS IT CONCLUDED THAT THE ELEMENT OF DEFAMATORY IMPUTATION IS MISSING, HENCE, THE PUBLICATION, SUBJECT OF THE CRIMINAL COMPLAINT IS NOT LIBELOUS.
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> II.

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> THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE DEPARTMENT OF JUSTICE WHEN IT REFUSED TO FILE THE INFORMATION AGAINST RESPONDENT DESPITE THE PUBLICATION OF THE SUBJECT LIBELOUS NOTICE.

The general rule is that the courts do not interfere with the discretion of the public prosecutor in determining the specificity and adequacy of the averments in a criminal complaint.[10] The determination of probable cause for the purpose of filing an information in court is an executive function[11] which pertains at the first instance to the public prosecutor and then to the Secretary of Justice.[12] The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion.[13] Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.[14]

In the case at bar, the City Prosecutor dismissed petitioner's complaint for libel because two elements of the crime were missing, defamatory imputation and malice. Under Article 353 of the Revised Penal Code,[15] an accused may be held liable for the crime if the following elements concur, viz: (1) the allegation of a discreditable act or condition concerning another, (2) publication of the charge, (3) identity of the person defamed, and (4) existence of malice.[16]

It is not disputed that the second and third elements are present. The subject article was published in the October 8 and 11, 1996 issues of the Manila Bulletin, and alluded to petitioner's refusal to honor an alleged representation that its Diamond Jubilee Life Insurance policies were self-liquidating after 7 years. Determination of probable cause in the case at bar, therefore, hinged on the existence of the first and last elements.

In concluding that there was no defamatory imputation and that there was no attendant malice, the City Prosecutor explained:

> x x x [P]robable cause does not exist against respondent Manuel Serrano to warrant his indictment in Court for the crime of libel, considering that he did not act with malice in causing the publication of the notice in question in the issues of Manila Bulletin, on October 8 and 11, 1996, since he can be considered as a victim or was made to suffer from an act of the Insular Life Assurance Co. Ltd. in not honoring that his insurance policies will self-liquidate after paying premiums thereon for a period of seven (7) years. The notice in question did not portray Insular Life Assurance Co. Ltd. as a swindler but it merely notifies (sic) Diamond Jubilee policy holders similarly situated as himself to meet and consider collective action in order to protect their rights and interests which to the respondent's personal perception have been violated by the said insurance company for its refusal to honor the representation of its agents that his insurance policies will become self-liquidating after the lapse of seven (7) years. It must be noted that Serrano even filed a complaint before the Regional Trial Court of Makati, Branch 150, for Specific Performance, Sum of Money and Damages against the Insular Life Assurance Co. Ltd. and its agents in order to vindicate the wrong committed against him by the said insurance company and its agents.
>
> Furthermore, the fact that it took the complainant insurance company seven (7) months to file the case against herein respondent Serrano from the last day of the publication of the notice in question x x x certainly cast doubts (sic), [on] the veracity of the instant complaint.[17] (emphases ours)

Corroborating the City Prosecutor's conclusion, the Secretary of Justice added:

> x x x x It is our perception that respondent acted with utmost good faith and without malice when he caused the publication of the alleged libelous "urgent notice" to all those who may feel victim of Insular Life's refusal to honor its representation that their policy becomes self-liquidating after a lapse of seven (7) years. In the first place, we see nothing libelous in the published "urgent notice."

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> To say in public that Insular Life Assurance refused to honor its representation that the policy issued becomes self-liquidating after a lapse of seven (7) years does not amount to an imputation of a "crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance that tends to cause the dishonor, discredit or contempt of the person defamed." x x x But if it is [at] all defamatory, it is qualified privileged communication made on an occasion of privilege without actual malice. Through the published "urgent notice," respondent apparently made in good faith a communication on a subject matter in which he has an interest or in reference to which he has duty of reaching out to other persons having corresponding interest or duty, although it may contain matters which, without this privilege would be actionable, and although the duty is not a legal one but only a moral or social duty of imperfect obligation. Circumstances exist or are reasonably believed to exist which cast upon respondent the duty of making a communication to certain third persons in the performance of such duty or where the person [is] so situated that it becomes right in the interest of society that he should tell third persons certain facts which he, in good faith, proceeds to do (People v. Cantos [CA] 51 O.G. 2995; 33 Am. Jur. 124-125).[18] (emphases ours)

In determining whether there was prima facie case for libel against respondent, the City Prosecutor and the Secretary of Justice viewed the subject article in its entirety, and considered the same as a mere notice of meeting addressed to Diamond Jubilee policyholders. The words "victim" and "refusal to honor its representation," although used in the notice, were dismissed as not defamatory per se. Mere assertion that a person failed or refused to perform a contractual obligation does not, in and of itself, injure that person's business reputation or deprive him of public confidence.[19] Whatever defamatory interpretation of which the subject notice may have been susceptible of was considered debunked by the good faith that motivated the respondent in causing the publication of the notice, i.e., to redress what he considered to be a violation of his rights and those of others similarly situated as himself. Respondent's action was considered inconsistent with "malice" which is characterized by a reckless disregard of the truth or falsity of one's remarks.[20]

In arriving at their unanimous conclusion–that no probable cause for libel exists–the public prosecutor and the Secretary of Justice had deliberated on the factual and legal backdrops of the case. Their shared conclusion was arrived at neither whimsically nor capriciously as to be correctable by certiorari. Grave abuse of discretion is familiarly defined as a capricious and whimsical exercise of judgment that is so patent and gross as to amount to an evasion or a virtual refusal to perform a duty enjoined by law or to act at all in contemplation of law, as when the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[21] Such grave abuse of discretion was not shown in the case at bar, as correctly ruled by the Court of Appeals. Even assuming that the Secretary of Justice may have erred in considering the subject publication as qualifiedly privileged,[22] the error does not appear to be so grave or malevolent as to be correctable by certiorari. A reading of the Justice Secretary's resolution dated April 18, 2002 shows that his supposition as to the privileged character of the subject notice was merely his riposte to the assumption that the notice was defamatory. At any rate, not every erroneous conclusion of law or fact is an abuse of discretion.[23] Erroneous inferences of fact or conclusions of law are correctable by certiorari only if they are of such a degree as to amount to a clear case of abuse of discretion of the grave and malevolent kind.[24]

Considering the foregoing, application of the Court's policy of non-interference in the conduct of preliminary investigations[25] is warranted. The Court will not interfere with the executive determination of probable cause for the purpose of filing an information in court, in the absence of grave abuse of discretion. We reiterate:

> The institution of a criminal action depends upon the sound discretion of the [prosecutor]. He may or may not file the complaint or information, follow or not follow that presented by the offended party, according to whether the evidence in his opinion, is sufficient or not to establish the guilt of the accused beyond reasonable doubt. The reason for placing the criminal prosecution under the direction and control of the [prosecutor] is to prevent malicious or unfounded prosecution by private persons. x x x Prosecuting officers under the power

> vested in them by law, not only have the authority but also the duty of prosecuting persons who, according to the evidence received from the complainant, are shown to be guilty of a crime committed within the jurisdiction of their office. They have equally the legal duty not to prosecute when after an investigation they become convinced that the evidence adduced is not sufficient to establish a prima facie case.
>
> x x x The Courts cannot interfere with the [prosecutor]'s discretion and control of the criminal prosecution. It is not prudent or even permissible for a Court to compel the [prosecutor] to prosecute a proceeding originally initiated by him on an information, if he finds that the evidence relied upon by him is insufficient for conviction. Neither has the Court any power to order a [prosecutor] to prosecute or file an information within a certain period of time, since this would interfere with the [prosecutor]'s discretion and control of criminal prosecutions. x x x In a clash of views between a judge who did not investigate and the [prosecutor] who did, or between the [prosecutor] and the offended party or the defendant, those of the [prosecutor]'s should normally prevail. x x x[26]

IN VIEW WHEREOF, the petition is DENIED. The assailed Decision dated October 9, 2003 and Resolution dated April 15, 2004 of the Court of Appeals in CA-G.R. SP No. 76341 are AFFIRMED.

SO ORDERED.

Sandoval-Gutierrez, Corona, Azcuna, and Garcia, JJ., concur.

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[1] Rollo, pp. 9-16.

[2] Id. at 28.

[3] Docketed as I.S. No. 97-18522.

[4] Resolution dated October 6, 1997; rollo, pp. 122-127.

[5] Order dated November 3, 1997; id. at 128.

[6] Resolution dated April 18, 2002; id. at 99-101.

[7] Docketed as CA-G.R. SP No. 76341.

[8] Supra note 1.

[9] Supra note 2.

[10] Ocampo, IV v. Ombudsman, G.R. No. 105214, August 30, 1993, 225 SCRA 731.

[11] Hegerty v. Court of Appeals, 456 Phil. 542 (2003).

[12] First Women's Credit Corporation v. Perez, G.R. No. 169026, June 15, 2006, 490 SCRA 774.

[13] D. M. Consunji, Inc. v. Esguerra, 328 Phil. 1168 (1996) citing Roberts, Jr. v. Court of Appeals,

324 Phil. 568 (1996).

[14] Joaquin, Jr. v. Drilon, 361 Phil. 900 (1999).

[15] Art. 353. Definition of libel.– A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

[16] Brillante v. Court of Appeals, G.R. Nos. 118757 & 121571, October 19, 2004, 440 SCRA 541, 566; Vasquez

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v. Court of Appeals, 373 Phil. 238 (1999); Vicario v. Court of Appeals, 373 Phil. 238 (1999) citing Daez v. Court of Appeals, G.R. No. 47971, October 31, 1990, 191 SCRA 61, 67.

[17] Rollo, pp. 126-127.

[18] Id. at 100-101.

[19] Makofsky v. Cunnigham, 576 F2d 1223 (1978).

[20] See New York Times v. Sullivan, 376 U.S. 254 (1964) cited in Brillante v. Court of Appeals, supra note 16; and Vasquez v. Court of Appeals, 373 Phil. 238 (1999).

[21] Estrada v. Desierto, G.R. No. 156160, December 9, 2004, 445 SCRA 655.

[22] See Brillante v. Court of Appeals, supra note 16, citing United States v. Bustos, 13 Phil. 690 (1909) and United States v. Cañete, 38 Phil. 253 (1918).

[23] Estrada v. Desierto, supra note 19.

[24] First Women's Credit Corporation v. Perez, supra note 12.

[25] See Camanag v. Guerrero, 335 Phil. 945 (1997).

[26] Crespo v. Mogul, No. L-53373, June 30, 1987, 151 SCRA 462, 467-470.

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