

**PREFERRED HOME SPECIALTIES, INC. AND EDWIN YU,
PETITIONERS, VS. COURT OF APPEALS (SEVENTH PROMULGATED:
DIVISION) AND HARLEY T. SY, RESPONDENTS.**

G.R. NO. 163593. December 16, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

This is a petition for certiorari under Rule 65 of the Revised Rules of Court for the nullification of the Decision[1] of the Court of Appeals (CA) in CA-G.R. No. 77493 granting the petition of Harley T. Sy for certiorari and prohibition, thus nullifying the Resolution of the Secretary of Justice in I.S. No. B-01-130 directing that an Information for estafa under Article 315, paragraph 2(a) of the Revised Penal Code be filed against Sy.

Edwin Yu is the president and majority stockholder of Preferred Home Specialties, Inc. (PHSI). On February 6, 2001, he filed a criminal complaint[2] for estafa under paragraph 2(a) of the Revised Penal Code against Sy, Rodolfo O. Cruz and Katharina Tolentino, chairperson, president and treasurer, respectively, of Specialty Oils, Inc. (SOI).

PHSI was engaged in the business of selling Fiesta Margarine, then being toll manufactured exclusively by A.D. Gothong Manufacturing of Cebu. The product was the only competitor of Star Margarine in the market.

The facilities of SOI and Oleo Marketing Corporation (OMC) were both located at the South Coast Industrial Estate, Bancal, Carmona, Cavite. OMC was engaged in the manufacture and packaging of margarine for industrial companies.[3] Cruz was also its president.

In his Complaint-Affidavit,[4] Yu claimed that sometime in August 1997, he had a series of conferences with Cruz in Carmona, Cavite. Cruz represented that SOI was "engaged in the business of supplying, on a private label basis, high quality margarine with equal if not better quality than Star Margarine," and that it had the capability to supply larger volume at lesser cost. Proposals were made for PHSI to provide raw materials and two filling machines for the manufacture and production of Fiesta Margarine; SOI, in turn, would toll manufacture the raw materials into the finished product. Cruz also assured Yu that deliveries would commence in October 1997, later reset to December 1997. Yu averred that the plant of SOI was still being constructed then.

To assure himself of Cruz's expertise, Yu inquired from his friends in the edible oil industry and learned that Cruz was highly regarded for his experience. He also learned that although Cruz had suffered some financial reverses, he had a new business partner, Harley Sy, the son of business tycoon Henry Sy. After carefully considering the proposal of Cruz and Tolentino, Yu agreed, as after all, he had been assured of the product's high quality at a lower cost.[5]

Yu decided to consummate his agreement with Cruz and delivered two filling machines to OMC, including the requisite raw and packing materials as agreed upon. Yu was dismayed when SOI was unable to make its initial delivery, and told Cruz sometime in the last week of January 1998, that he was having second thoughts about

continuing the agreement.

Alarmed, Cruz sought the intervention of Sy. On February 12, 1998, Sy hosted a luncheon for Yu at the Jade Garden, Greenbelt, Makati City, with Cruz and Tolentino in attendance.[6] Sy assured Yu that Cruz was a technical genius when it came to the business of margarine and other edible oil-based products. He assured Yu that SOI was the best in the market, and that the delivery of the margarine would no longer be delayed. Sy impressed upon Yu that his family owned the chain of SM shopping malls and that they had a good reputation in the business community.

Yu relented and agreed to continue with his business agreement with SOI, through Cruz. Thereafter, SOI delivered 4,199 cases of margarine in February 1998 covered by delivery receipts[7] signed by PHSI. By late March 1998, PHSI received complaints that the margarine it had distributed to its dealers/customers "turned white." When apprised thereof, Cruz explained that the discoloration was caused by the beta carotene ingredient which had either expired or iodized after opening.[8] PHSI received the margarine and returned the same to SOI.

Nevertheless, SOI transmitted to PHSI its statements of account.[9] PHSI drew and issued Chinabank Check No. B-0000758[10] dated May 8, 1998 and Check No. B-00007585[11] dated April 30, 1998, each in the amount of P541,438.65 payable to the order of SOI. The latter deposited the checks in the account of OMC with the Equitable Banking Corporation.[12]

SOI continued to provide and deliver margarine to PHSI from May to July 1998, covered by delivery receipts issued by SOI.[13] PHSI, again, received complaints from its dealers and customers that the margarine delivered by SOI had turned white. PHSI, again, recalled the commodities and complained to SOI. According to Cruz, the discoloration of the margarine was due to production parameters.[14] PHSI returned the commodities to SOI.[15]

Yu aired his complaints to Sy during a casual meeting at the Manila Polo Club sometime in August 1998. The latter assured Yu that he had instructed Cruz and Tolentino to deliver margarine that would not discolor. Sy expressed his displeasure at the "mestizo arrangement" between Yu and Cruz and decided that, henceforth, SOI would be responsible for all raw and packaging materials, labor and all the aspects of their business agreement.[16] Yu was delighted when the decision of Sy was implemented. The billing for a kilo of margarine delivered to PHSI after August 15, 1988 was P66.75 reflecting an "all-in price." [17] PHSI then placed an order for 15,000 cases of margarine for the Christmas season. SOI was able to deliver the order only in February 1999. The margarine delivered by SOI again turned white. Its dealers informed PHSI that the public no longer purchased Fiesta Margarine.[18] PHSI sustained P216,094,302.00 in losses, inclusive of potential income for five years at 75 per metric tons a month.[19]

In a Letter[20] dated September 20, 1999, Yu wrote Sy, Cruz and Tolentino suggesting that the matter be submitted to a panel of arbiters composed of "mutually known and respected friends." However, Yu learned that on December 29, 1998, Tolentino filed an Affidavit of Non-Operation[21] with the Securities and Exchange Commission (SEC), reporting that SOI had not been engaged in business and had not been operating since its incorporation in 1996; as well as an Affidavit of Non-Holding of Annual Meeting[22] of stockholders in 1996, 1997, 1998. This prompted Yu to refer the matter to counsel, who, in a Letter[23] dated March 6, 2000, informed Sy, Cruz, Tolentino, SOI and OMC that they had acted fraudulently and in bad faith in their business dealings with PHSI relative to the manufacture and delivery of margarine. Demands to settle with PHSI were also made. Cruz responded in a Letter[24] dated March 15, 2000, where he rejected the demands of PHSI, to wit:

In view of the above, it is very obvious that OMC never tried to persuade Mr. Yu into toll manufacturing Fiesta. In fact, Mr. Yu rushed up to OMC to produce Fiesta for the 1997 holiday season. Mr. Harley Sy was never involved in the toll manufacturing arrangements with PHSI. In fact, Mr. Sy was only able to meet Mr.

Yu after PHSI began the toll arrangement. OMC never asked Mr. Yu to exclusively toll the Fiesta brand. He could have continued toll manufacturing with Gothong if he did not feel comfortable with OMC.

In the matter of Oleo Manufacturing Corp. (OMC), and Specialty Oils, Inc. (SOI), SOI tried to enter into the toll manufacturing agreement with PHSI in 1998 instead of OMC but SOI never received any payment from PHSI and no formal agreement was ever entered between SOI and PHSI. SOI only started having sales in late 1999. Thus, SOI never had an operation before 1999. PHSI made only one payment, and that was to OMC.[25]

In his Counter-Affidavit,[26] Sy denied that he had any business dealings with PHSI and Yu. He admitted that he, Cruz, Tolentino and Yu had a luncheon on February 12, 1998 at the Jade Garden, but it was purely a social meeting and no business matters were discussed. He averred that Yu had been dealing with OMC and not with SOI, and that he was neither a stockholder nor an officer of OMC. He declared that Tolentino had executed the two affidavits in good faith.

For his part, Cruz admitted in his Counter-Affidavit[27] that he and Yu (PHSI) had business negotiations relative to the manufacture/production of margarine, but averred that he did so in his capacity as OMC president and not of SOI. He alleged that, contrary to Yu's claim, it was PHSI, through its manager Monching Macasinag, who proposed the toll manufacture of margarine. Moreover, he accepted the proposal on the condition that PHSI would provide the raw materials which consisted of coconut oil, hydrogenated palm oil and packaging materials; PHSI would provide four filling machines, labor and supervision for the margarine filling line, and OMC in turn would manufacture and supply palm oil and other additives for the blending and processing of margarine. It was also agreed upon that PHSI would pick up the finished product from the facilities of OMC. Cruz averred that PHSI delivered only two filling machines with the capacity equivalent to one-half the minimum capacity of the OMC plant. Since the composition did not match, half of the products were sent back by PHSI to the plant for remaking and reprocessing, and as a result, the recycled portion was lighter. To remedy the situation, he suggested to Yu that additional filling machines be delivered. PHSI delivered an additional but unfinished filling machine to the OMC plant.

Cruz denied having committed to deliver the finished products by October or December 1997 and having made representations as to the quality and volume of deliveries. As proof that PHSI had business arrangements with OMC and not with SOI, Cruz submitted copies of "Authority to Withdraw"[28] for the period of February 10, 1998 to March 21, 1998 signed by Yu, addressed to OMC. As proof that Yu was aware that the facilities of SOI were still under construction as he visited the compound of SOI and OMC in Carmona, Cavite, Cruz submitted Requisitions/Purchase Orders[29] for materials and labor for the construction of the facilities of SOI. As proof that PHSI delivered an unfinished filling machine to OMC and that a filling room was being installed in the said plant, Cruz submitted photographs of the machine and room.[30]

Cruz admitted, however, that the delivery receipts of finished products and statements of account were those of SOI and not of OMC, and that the checks were drawn and issued to SOI but were deposited in the account of OMC. Cruz maintained that SOI was just starting its sales operations and was in the process of building its customer data base. As proof that the two checks paid by PHSI were deposited in the account of OMC, Cruz submitted deposit slips[31] thereon. Cruz insisted that the defects of the margarine were due to PHSI's failure to comply with its promise to deliver the additional two filling machines.

Tolentino adopted the material allegations of the counter-affidavit of Cruz and denied, for lack of knowledge or information sufficient to form a belief, the truth of Yu's claim that she executed and filed with the SEC two affidavits on December 29, 1998.[32]

In his Reply/Affidavit,[33] Yu declared that he signed the authority to withdraw addressed to OMC and not to

SOI only because Cruz requested him to do so. SOI was actually using the plant of OMC because SOI was still in the process of constructing its own plant.[34] He averred that PHSI entered into an agreement for the supply of high quality margarine with SOI, not with OMC. Cruz offered formulas with a 20% mark-up in favor of SOI for the toll manufacture of high quality margarine, and Yu chose the most expensive formula. He accepted Cruz's proposal under the impression that as early as 1997, SOI was a financially liquid company.[35]

After the requisite preliminary investigation, the Assistant Provincial Prosecutor issued a Resolution[36] on August 31, 2001 finding no probable cause against the respondents and ordering the dismissal of the complaint. The Provincial Prosecutor declared that Yu, the complainant, failed to prove that fraud or deceit was employed by the respondents in their dealings. He ruled that Yu failed to present evidence to show that at the time he entered into an agreement with respect to the toll manufacturing of Fiesta Margarine, the respondents had no intention of rendering the services required of them. There was, in fact, evidence to the contrary, since the complainant admitted that there were actual deliveries of margarine; and although there were delays and issues on the quality of the margarine delivered, this was not equivalent to deprivation of property, right or interest. The Prosecutor further explained that the respondents' performance of their obligation negated fraud and deceit, and that the issues of delay and quality of the margarine could only give rise to civil liability.

The Prosecutor further declared that the complainant, likewise, failed to show that the representation of Cruz that SOI was engaged in the business of toll manufacturing high quality margarine induced PHSI to part with its money. Although the margarine delivered by SOI was substandard, the complainant failed to prove that the respondents had no intention to deliver high quality margarine when Cruz and Sy agreed to the arrangement. It was pointed out that the complainant himself alleged that background inquiries on respondent Cruz revealed that the latter was well-regarded for his expertise. The Prosecutor emphasized that Yu never made any investigation on the background or reputation of SOI; neither did he ask Cruz to produce an authorization or board resolution showing his authority to enter into a contract or agreement with PHSI.

Yu appealed the Resolution to the Department of Justice (DOJ). On March 12, 2003, the Secretary of Justice issued a Resolution[37] reversing that of the Provincial Prosecutor, finding probable cause against all the respondents therein. The Provincial Prosecutor was directed to file the necessary Information for estafa against all the respondents. According to the Justice Secretary, PHSI did business with SOI for the production and supply of the former's margarine requirements on the respondents' representations that SOI was actually engaged in the business of producing margarine and that it was the best in the market. Such representations were simply false, as SOI had not, in fact, commenced business operations since its incorporation in 1996, as evidenced by the Affidavit of Non-Operation and Affidavit of Non-Holding of Annual Meeting dated December 8, 1998, executed by Tolentino and filed with the SEC. Certainly, the Justice Secretary concluded, PHSI would not have dealt with the SOI for the manufacture and supply of its margarine product had not respondents made such false representations; hence, they must be prosecuted for estafa under Article 315 paragraph 2(a) of the Revised Penal Code.

The Provincial Prosecutor thereafter filed the Information with the Regional Trial Court on March 17, 2003.[38] The accusatory portion reads:

That on or about the period of August 1997 to July 1999, in the Municipality of Carmona, Province of Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating, and mutually helping one another, with deceit, and by means of false pretenses and fraudulent acts executed prior to or simultaneous with the commission of the fraud, did, then and there willfully, unlawfully and feloniously, defraud PREFERRED HOME SPECIALITIES, INC. (PHSI) represented by its President, EDWIN YU, in the following manner, to wit: The above-named accused, as Chairman, President and Treasurer, respectively, of SPECIALITY OIL, INC. (SOI), represented SOI to be a corporation engaged in

the business of manufacturing/supplying high quality margarine and induced PHSI, through EDWIN YU, to produce margarine from SOI and to provide for the machines and materials needed for the production/supply of said margarine when in truth and in fact it has no capacity to produce the margarine needed as it had not commenced its business operation from the time of its incorporation in 1996, to the damage and prejudice of PHSI in the amount of TWO HUNDRED SIXTEEN MILLION PESOS (P216,000,000.00), Philippine Currency.

CONTRARY TO LAW.[39]

Sy filed a petition for certiorari and prohibition in the CA for the nullification of the DOJ Resolution, alleging that the Justice Secretary committed grave abuse of discretion amounting to excess or lack of jurisdiction in finding probable cause against him for estafa.[40]

On December 2, 2003, the CA rendered judgment[41] granting the petition and reversing the DOJ Resolution. The fallo of the decision reads:

WHEREFORE, the instant petition is hereby GRANTED. The assailed Resolutions dated March 12, 2003 and May 19, 2003 directing that an Information for Estafa be filed against petitioner are hereby REVERSED and SET ASIDE. The Secretary of Justice and the Provincial Prosecutor of the Province of Cavite are hereby ordered to dismiss the complaint and withdraw the Information for estafa against Harley Sy.

SO ORDERED.[42]

The CA ruled that there was no probable cause for estafa under Article 315, paragraph 2(a) of the Revised Penal Code, as Yu and PHSI failed to adduce evidence that Sy employed deceit and pretended to possess business or imaginary transactions with SOI. In fact, the appellate court declared, PHSI and Yu adduced evidence that SOI, through Cruz and Sy, concluded a business transaction with PHSI for the delivery of high quality margarine, and that SOI delivered the commodities to PHSI albeit on a delayed basis. If, at all, the appellate court ruled, the liability of SOI is not ex delicto but only civil, based on breach of contract. Moreover, the appellate court ruled, Sy made the representations after the contract had been perfected and after the deliveries had already been made for which PHSI paid SOI.

Yu filed a motion for reconsideration of the decision, which the appellate court denied, hence, the instant petition.

Petitioners aver that based on the evidence on record and as ruled by the Secretary of Justice, there is a prima facie case for estafa under Article 315, paragraph 2(a) of the Revised Penal Code against private respondent. Thus, in substituting its findings for those of the Secretary of Justice, the CA acted beyond its competence in the certiorari proceedings under Rule 65 of the Revised Rules of Court.

Petitioners point out that the only issue in the petition below was whether the Secretary of Justice acted with grave abuse of discretion amounting to excess or lack of jurisdiction in finding probable cause against the respondents therein. The error committed by the Secretary of Justice, if any, on his appreciation of the evidence on record and its probative weight, are mere errors of judgment and not of jurisdiction. According to petitioners, the remedy of private respondent, after posting bail, was to proceed to trial and file a demurrer to evidence in due course, and, in case his motion was denied, to proceed in adducing evidence. They argue that the CA acted beyond its authority in ordering the Provincial Prosecutor to dismiss the complaint and withdraw the Information for estafa against private respondent, considering case law that writs of prohibition and injunction will not issue to enjoin criminal prosecution.

Petitioners assert that the first element of estafa under Article 315, paragraph 2(a) of the Revised Penal Code was sufficiently established in the evidence and documents submitted. Private respondent Sy, as chairman and

majority shareholder of SOI, together with Cruz and Tolentino, personally met with petitioner Yu on February 12, 1998 at the Jade Garden Restaurant, during which Sy made the following representations to Yu: SOI, was the best in the market; they would no longer incur delay in the delivery of the margarine; SOI was actually engaged in the business of supplying high quality margarine which could rival, if not surpass, the quality of Star Margarine; and Cruz was a technical genius when it came to the business of margarine and other edible-oil based products. Sy also stated that, since his family owned SM shopping malls, it would be unethical for him to sell his own brand of consumer products, thus, the policy of SOI to supply, on a private label basis, existing brands owned by third parties like the Fiesta Margarine of PHSI. Sy, with Cruz and Tolentino, presented a proposal showing three formulas for margarine; the margarine that SOI initially supplied to PHSI was based on the first formula containing Stearin which, though expensive, made the margarine top quality and well worth the price. Sy also intimated to Yu that it was his policy to meet major customers like him, and even boasted that his family has a good reputation in the business community, known to be honorable and fair in its business dealings.

Petitioner Yu insists that private respondent made these representations notwithstanding the latter's knowledge that SOI had not been in operation from the time of its incorporation in 1996 until 1998.

Petitioners, likewise, posit that the second element of the crime of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, is also present in this case. The actual defraudation of the petitioners came after private respondent made false pretenses and fraudulent representations on February 12, 1998, that SOI was among the best in the market and was actually engaged in the business of supplying high quality margarine. Moreover, such representations were made prior to the commission of the fraud against the petitioners and that PHSI was subsequently led to part with its money by issuing two Chinabank checks in the aggregate sum of P1,082,877.30. Petitioners assert that they would not have parted with their money without such assurances and representations. Private respondent's concealment of the material fact that SOI was not in operation was committed prior to the actual defraudation of petitioner PHSI. Moreover, subsequent to the meeting between private respondent and petitioner Yu, several statements of account were sent by SOI to PHSI for the collection of payments. The timely intervention of Sy was deliberately undertaken at a time when the petitioners were about to terminate the failed toll manufacturing agreement due to the unexplained delay and defective character of the margarine products produced by SOI. Private respondent's false pretenses and fraudulent representations were but a part of a grand scheme, consisting of a series of continuous acts with a common design and purpose, in conspiracy with Cruz and Tolentino, with no other purpose but to defraud petitioner PHSI.

Likewise present, the petitioners aver, is the third element of estafa under Article 315, paragraph 2(a) of the Revised Penal Code. The actual defraudation of the petitioners was a direct result of the false pretenses and fraudulent representations of private respondent, Cruz and Tolentino. Petitioners aver that from the start, they relied heavily on the representations and assurances of private respondent that his family was well-known in the business community, which resulted in renewed dealings and transactions, ultimately leading to the issuance of the two checks. As such, the false pretenses and fraudulent representations employed by Sy on February 1998 was the direct cause of the defraudation of petitioners. The petitioners posit that had they not relied on Sy's false pretenses and fraudulent representations, they would not have proceeded with their transactions and dealings with SOI, and such check payments would not have been made.

Finally, petitioners insist that the last element of estafa under Article 315, paragraph 2(a) of the Revised Penal Code is also present because private respondent's false pretenses and fraudulent representations resulted in damage to PHSI when it was inveigled to part with its P1,082,877.30. As a direct consequence of the fraud committed by private respondent and his co-accused, a total of three nationwide recalls of Fiesta Margarine were made on March 1998, July 1998 and February 1999, after delayed deliveries and numerous complaints from

distributors and customers regarding the defective character of the product. This resulted in grave and irreparable damage to the business name and reputation of PHSI, leading to its subsequent closure.

The petition has no merit.

The petition for certiorari under Rule 65 of the Rules of Court, as amended, filed with this Court is inappropriate. The proper remedy from the CA decision is a petition for review on certiorari under Rule 45. This is so because (a) the CA had jurisdiction on the petition for certiorari filed by respondent Sy, the petitioner therein; and (b) a petition under Rule 45 of the Rules of Court is a speedy, inexpensive and adequate remedy in the ordinary course of law.

On the merits of the petition, we find and so rule that the CA did not commit grave abuse of its discretion amounting to excess or lack of jurisdiction in taking cognizance of and granting the petition of respondent Sy.

It bears stressing that a writ of certiorari is of the highest utility and importance for curbing excessive jurisdiction and correcting errors and most essential to the safety of the people and the public welfare. Its scope has been broadened and extended, and is now one of the recognized modes for the correction of errors by this Court. The cases in which it will lie cannot be defined. To do so would be to destroy its comprehensiveness and limit its usefulness.[43]

The appropriate function of a certiorari writ is to relieve aggrieved parties from the injustice arising from errors of law committed in proceedings affecting justiciable rights when no other means for an adequate and speedy relief is open. It is founded upon a sense of justice, to release against wrongs otherwise irreconcilable, wrongs which go unredressed because of want of adequate remedy which would be a grave reproach to any system of jurisprudence.

The finding of a quasi-judicial officer may be nullified by a writ of certiorari if such finding resulted from an application of an erroneous legal standard.[44] In resolving the issue of whether the Secretary of Justice acted contrary to the 2000 Rules of Criminal Procedure, or without or in excess of his authority, the Court has to delve into and review the evidence on record. The Court can and has to consider the evidence submitted to the Investigating Prosecutor for the sole purpose of determining whether such officer exceeded his jurisdiction or acted illegally or arbitrarily.[45] Indeed, in *Prendergast v. Retirement Board of Firemen's Annuity and Benefit Fund of Chicago*,[46] the appellate court of Illinois declared:

The law is well settled that on a common law writ of certiorari, the only province of the trial court is to consider the record and ascertain whether the board had jurisdiction, whether it exceeded its jurisdiction, whether it proceeded according to law and acted on evidence, and whether there is anything on record which fairly tends to sustain the action of the board; and where the inferior tribunal is not arbitrary in its finding and there is evidence in the record of its proceedings which fairly tends to support the finding, a reviewing court is not justified in substituting its judgment for the discretion and judgment of the inferior tribunal.[47]

The need for the respondent herein to seek a cert writ from the CA was imperative because of the frontal inconsistency between the findings and conclusion of the Provincial Prosecutor who received the evidence of the parties, and those of the Secretary of Justice who reinstated the Resolution of the Provincial Prosecutor on appeal.

In *Mendoza-Arce v. Office of the Ombudsman (Visayas)*,[48] this Court held that the acts of a quasi-judicial officer may be assailed by the aggrieved party via a petition for certiorari and enjoined (a) when necessary to afford adequate protection to the constitutional rights of the accused; (b) when necessary for the orderly administration of justice; (c) when the acts of the officer are without or in excess of authority; (d) where the charges are manifestly false and motivated by the lust for vengeance; and (e) when there is clearly no prima facie

case against the accused. The Court declared that, if the officer conducting a preliminary investigation acts without or in excess of his authority and resolves to file the Information despite the absence of probable cause, such act may be nullified by a writ of certiorari. Indeed, under Rule 112, Section 4 of the 2000 Rules of Criminal Procedure, the Information shall be prepared by the Investigating Prosecutor against the respondent only if there is a finding of probable cause to hold the latter for trial. The Investigating Prosecutor acts without or in excess of authority under the Rule if he files an Information against the respondent despite absence of evidence showing probable cause therefor.[49] If the Secretary of Justice finds no probable cause and reverses the Resolution of the Investigating Prosecutor based on the evidence on record, and orders the latter to file an Information against the respondent therein despite the absence of probable cause, the Secretary of Justice acts contrary to law, without or in excess of authority. Such ruling may be nullified in a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure.[50]

A preliminary investigation is designed to secure the respondent involved against hasty, malicious and oppressive prosecution. A preliminary investigation is an inquiry to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof. It is a means of discovering the person or persons who may be reasonably charged with a crime. Probable cause need not be based on clear and convincing evidence of guilt. The investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed by the suspect.[51]

However, while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play,[52] and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[53]

The petitioner charged the respondent, Cruz and Tolentino of estafa under Article 315, paragraph 2(a) of the Revised Penal Code, which penalizes a person who defrauds another

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

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

Petitioner PHSI, as the complainant below, was burdened to adduce evidence to prove the following elements of estafa under Article 315 (2(a) of the Revised Penal Code:

- That there must be a false pretense, fraudulent act or fraudulent means

- (1) by using fictitious name;

- (2) falsely pretending to possess (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or imaginary transactions; or

- (3) means of other similar deceits.

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- That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.
- That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.
- That as a result thereof, the offended party suffered damage.[54]

In order for estafa to exist under Article 315(2)(a) of the Revised Penal Code, it is essential that the false pretense or fraudulent representation be made prior to or at least simultaneously with the delivery of the thing or property, it being essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money.[55] In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution of estafa under the said provision.

The representor must have knowledge of the falsity of his representation or his ignorance of the truth. He must have the intention that his false representation be acted upon by the representee and in the manner reasonably contemplated. The representee must be ignorant of the falsity of the representations, must have relied on the truth thereof, and as a consequence, must have sustained injury.

Material injury, however, is not essential in the crime of estafa. It is enough that there is disturbance of personal rights.[56] There must be damage although it is not required that it be susceptible of determination.[57] The gravamen of the felony is an intent to deceive, or fraudulent intent. Intent, being a state of the mind, may be proved by words or by the conduct of the accused before, during and after the transaction, subject of the case, independent of and distinct from the non-compliance of the promise or representation of the accused.[58]

A "representation" is anything which proceeds from the action or conduct of the party charged and which is sufficient to create upon the mind a distinct impression of fact conducive to action.[59] "False" may mean untrue, or designedly untrue, implying an intention to deceive, as where it is applied to the representations of one inducing another to act to its own injury.[60] "Fraudulent" representations are those proceeding from, as characterized by fraud, the purpose of which is to deceive.[61] "False pretense" means any trick or device whereby the property of another is obtained.[62]

The Secretary of Justice committed grave abuse of discretion amounting to excess of his jurisdiction in finding probable cause for estafa against respondent Sy, as principal, on his unsubstantiated finding that he conspired and confederated with Cruz and Tolentino in defrauding PHSI.

The ruling of the Secretary of Justice that PHSI had no business transaction with SOI was based solely on Tolentino's affidavits filed with the SEC where she stated that SOI had no business transactions since 1996. The Secretary of Justice assumed that the contents of the affidavit were true, and ignored the admissions made by Yu which were corroborated by the petitioners' documentary evidence on record. The ruling of the Secretary of Justice amounts to grave abuse of discretion. The admissions and documentary evidence of the petitioners must prevail over Tolentino's affidavit.

The Secretary of Justice unequivocally declared, in his assailed resolution, that PHSI did business with SOI for the production of high quality margarine. The evidence relied upon were the delivery receipts SOI issued covering margarine toll manufactured and delivered to PHSI; it was also stated that PHSI made payments to SOI for the margarine delivered to it. In his complaint-affidavit, petitioner Yu even admitted that in a series of conferences with himself, Cruz and Tolentino in August 1997, they reached an agreement wherein SOI obliged itself to process raw materials supplied by PHSI, and to toll manufacture the same into high quality margarine with

machines supplied by PHSI. The latter, in fact, delivered raw materials and machines to SOI; the said materials were processed and margarine was manufactured with the machines supplied by PHSI from January to February 10, 1998. PHSI acknowledged receipt of the finished product via delivery receipts. In Yu and his counsel's letter to Sy, they insisted that SOI had concluded a business transaction with PHSI, but the respondent alleged that SOI had reneged on its agreement.[63]

The Court agrees with the petitioner's contention that the luncheon hosted by respondent Sy on February 12, 1998 at the Jade Garden Restaurant was not merely a social affair. Cruz and Tolentino had arranged the luncheon to be hosted by respondent Sy to persuade and convince Yu to continue with the toll manufacturing agreement between PHSI and SOI. PHSI had lost business during the 1997 Christmas season when SOI reneged on its commitment to deliver margarine in October 1997 and December 1997. Respondent Sy was the chairman of the Board of Directors of SOI and the son of Henry Sy, the business tycoon. Yu had to be reassured that the delivery of margarine to PHSI would no longer be delayed.

The Court is also inclined to agree with the petitioner's contention that respondent Sy made the following representations during the luncheon: (a) SOI was the best in the market; (b) Cruz was a technical genius when it came to the business of margarine and other edible-oil based products; (c) SOI was actually engaged in the business of supplying high quality margarine with the use of "Stearin" formula which could rival, if not surpass, the quality of Star Margarine; and (d) there would be no more delay in the delivery of high quality margarine to PHSI. However, the Secretary of Justice did not consider said representations of respondent Sy in finding probable cause against him.

The finding of the Secretary of Justice that Sy conspired with Cruz and Tolentino to commit estafa is not supported by any evidence on record and must, likewise, be discarded.

Under Article 8 of the Revised Penal Code, there is conspiracy if two or more persons agree to commit a felony and decide to commit it. Conspiracy must be proven on the same quantum of evidence as the felony subject of the agreement of the parties. Conspiracy may be proved by direct or circumstantial evidence consisting of acts, words, or conduct of the alleged conspirators before, during and after the commission of the felony to achieve a common design or purpose.

It is a common design which is the essence of conspiracy. The conspirators may act separately or together by commission on different manner but always leading to the same unlawful result.[64] The character and effect of a conspiracy are not to be judged by dismembering it and viewing its separate parts but only by looking at it as a whole.[65] Acts done to give effect to the conspiracy may be, in fact, wholly innocent acts. Yet, if they are parts of the sum of the acts which are relied upon to effectuate the conspiracy which the law forbids, they lose that character. Such acts become a public wrong if the result is harmful to the public or to the individual against whom the concerted action is directed.[66]

The evidence of the petitioners is that, only Cruz and Tolentino represented SOI during their conferences with petitioner Yu in August 1997. Respondent Sy was not present during said conferences. Neither is there evidence that respondent Sy was privy to said conferences or to any agreement that Cruz and Tolentino had with petitioner Yu for the toll manufacturing of margarine for petitioner PHSI; or that said respondent conformed to or ratified any scheme or plan of Cruz and Tolentino to defraud petitioner PHSI. Actual or even constructive notice of such scheme or plan may not be imputed to respondent Sy simply because he was the chairman of the board of directors of SOI. The Court subscribes to the view that

Imputed or constructive notice cannot be relied on to support a charge of direct, personal conspiracy to defraud. It is not unlike a case where actual notice is imputed to a principal because of the mental condition of

his agent. "Actual notice," said the court in *Reisan v. Mott*, 42 Minn. 49, 43 N.W. 691, implies a wrongful "purpose or intent in the mind of the person whose conduct is in question. It is not to be conclusively presumed or legally imputed to him merely because of the mental condition or the knowledge of the same, or be a participant therein. He cannot enter into a combination of two or more persons to accomplish by concerted action some demand or unlawful purpose, or to accomplish some purpose, not criminal or unlawful in itself, by criminal or unlawful means, simply and solely because of the mental condition or physical acts of his agent.[67]

In this case, respondent Sy is not criminally liable for estafa, as principal, even if, *gratia arguendi*, he made false representations to Yu on February 12, 1998. By law, the felony of estafa purportedly committed by Cruz and Tolentino had already been consummated when PHSI delivered raw materials to SOI which the latter processed and toll manufactured into margarine, which, in turn, were delivered to PHSI sometime in the last week of January 1998. The delivery by PHSI of raw materials after February 12, 1998 and the payment of P1,082,877.30 by PHSI on April 30, 1998 and May 8, 1998 do not negate the consummation of the felony, but merely aggravated the injury already sustained by PHSI and increased the damage it suffered.

Case law has it that one who joins a conspiracy while the felony subject thereof is being committed or before the said felony is committed and performs overt acts to achieve the common design or purpose, is criminally liable for said felony.[68] On the other hand, one who joins a conspiracy after the felony subject of the conspiracy has been completed or consummated is not criminally liable as a conspirator. There can be no *ex post facto* conspiracy to do that which has already been done and consummated.[69] When a crime has been fully committed, one not already guilty is too late to be a sharer in it, though if it is a felony, he or she may become an accessory under Article 19 of the Revised Penal Code.

The issue of whether there is probable cause for estafa against respondent Sy as an accessory was not raised in the Department of Justice, the CA, or even in this Court. Nevertheless, since the issue is interrelated to the issue of whether or not there is probable cause for estafa against the respondent, as principal, the Court shall resolve the issue if only to write *finis* to this case.

The petitioner failed to adduce evidence that the respondent knew, as of February 12, 1998, that Cruz and Tolentino had committed estafa relative to the toll manufacturing of high quality margarine to PHSI. The only complaint of Yu, at that point, was the delay in the delivery of the commodity. Neither is there evidence, direct or circumstantial, that respondent Sy profited from the business transaction between the petitioner and SOI. The facts are as follows:

First. Yu admitted in his Reply-Affidavit that, as early as 1997, he came to know from the industry that respondent Sy and Cruz had ventured into a "new company." He agreed to negotiate with SOI for processing raw materials supplied by PHSI, to be manufactured into high quality margarine with the use of machines also supplied by PHSI "knowing that he was dealing with a financially liquid company." Yu was assured that SOI was using the facilities of OMC.[70] Yu could not have been deceived by the representations of the respondent that SOI was the best in the market.

Second. Even before meeting respondent Sy on February 12, 1998, Yu had made inquiries from his friends in the edible oil industry and learned that Cruz was "well-regarded for his experience." In fact, Yu was already convinced of the capability of Cruz and his group to supply margarine of better quality than the margarine toll manufactured for PHSI by Gothong in larger volumes and at lesser cost.[71] The glowing description of respondent Sy of the technical capability of Cruz was thus not a surprise to Yu. He had already confirmed the technical capabilities of Cruz to deliver even before respondent Sy declared Cruz as a "technical genius." If, contrary to the results of his inquiries, Yu discovered that Cruz was not, after all, a technical genius because the

margarine delivered by SOI turned out to be defective or substandard or not of high quality than Star Margarine, then Yu has nobody but himself to blame. When the representee undertakes his independent investigation, he is ordinarily chargeable with knowledge of all the facts which such an investigation should disclose and has no right to rely on the representor's statements.[72]

Third. Petitioner PHSI paid P1,082,866.30 for margarine already delivered by SOI before the meeting by respondent Sy and petitioner Yu on February 1, 1998. There is no showing in the records that respondent Sy knew or came to know after May 1998 of said payment. Indeed, respondent Sy could not have learned of said payment because the checks were forthwith endorsed by Cruz to OMC of which respondent Sy was not even a stockholder or an officer.

Fourth. When respondent Sy was informed by petitioner Yu that the margarine delivered by SOI turned white, the former was apologetic. Indeed, in a casual meeting with respondent Sy in August 1998 at the Polo Club, respondent Sy told Yu that SOI would assume responsibility for all raw materials, packing materials, labor and all aspects of the business venture and that the billing for a kilo of margarine delivered after August 15, 1998 was P66.75 reflecting an "all-in" price as prescribed by respondent Sy.[73] Petitioner Yu was even delighted.

Fifth. The margarine delivered by SOI turned white because the beta carotene used was either expired or had iodized after opening and due to production parameters.[74] When Yu complained to respondent Sy, the latter told him that he had instructed Cruz not to release the margarine again unless he was 100% sure that the margarine would not discolor.[75]

IN LIGHT OF ALL THE FOREGOING, the petition is DISMISSED. The assailed Decision and Resolution of the Court of Appeals in CA-G.R. No. 77493 are AFFIRMED. Costs against the petitioners.

SO ORDERED.

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

[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Ruben T. Reyes and Edgardo P. Cruz, concurring.

[2] Rollo, p. 139.

[3] Id. at 195.

[4] Id. at 140-150.

[5] Rollo, p. 142.

[6] Id. at 169-170.

[7] Id. at 154-156.

[8] Id. at 170.

[9] Id. at 155-157.

[10] Id. at 300.

[11] Id.

[12] Rollo, p. 301.

[13] Id. at 160, 162, 164.

[14] Id. at 170.

[15] Id. at 145.

[16] Id.

[17] Id. at 146.

[18] Id. at 145-146.

[19] Id. at 282.

[20] Id. at 169-171.

[21] Rollo, p. 172.

[22] Id. at 173.

[23] Id. at 174-176.

[24] Id. at 177-178.

[25] Id. at 178.

[26] Id. at 262-264.

[27] Id. at 194-205.

[28] Id. at 206-218.

[29] Rollo, pp. 220-222.

[30] Id. at 219, 224, 225.

[31] Id. at 226.

[32] Id. at 230-238.

[33] Id. at 566-579.

[34] Id. at 569.

[35] Id. at 571.

[36] Id. at 544-554.

[37] Rollo, pp. 119-123.

[38] Id. at 126-127.

[39] Id.

[40] Id. at 809-810.

[41] Id. at 803-809.

[42] Id. at 818.

[43] Tennessee Cent. R. Co. v. Campbell, 75 S.W. 1012 (1903).

[44] See Reed v. Gaylord, 216 N.W. 2d 327 (1974) and Reisner v. Board of Trustees, 203 N.W. 2d 812 (1973).

- [45] *People's Bank v. Bryan*, 797 S.W. 2d 461 (1965).
- [46] 325 Ill. App. 638, 60 N.E.2d 768 (1945).
- [47] *Id.* at 773.
- [48] 430 Phil. 101 (2002).
- [49] *Enemecio v. Office of the Ombudsman*, G.R. No. 146731, 13 January 2004, 419 SCRA 82; *Dr. Baylon v. Ombudsman*, 423 Phil. 705 (2001).
- [50] *Nava v. Commission on Audit*, 419 Phil. 544 (2001).
- [51] *Webb v. De Leon*, 317 Phil. 758 (1995).
- [52] *Drilon v. Court of Appeals*, 327 Phil. 916 (1996).
- [53] *People v. Court of Appeals*, 361 Phil. 401 (1999).
- [54] L.B. Reyes, *THE REVISED PENAL CODE*, Book II, 14[th] ed. (1998), 763-764.
- [55] G.B. Guevara, *COMMENTARIES ON THE REVISED PENAL CODE*, 5[th] ed. (1957), 471.
- [56] *Id.* at 472, citing *U.S. v. Goyenechea*, 8 Phil. 117 and *U.S. v. Malong*, 36 Phil. 821.
- [57] M.A. Albert, *THE REVISED PENAL CODE*, 1946 ed., 744.
- [58] *Supra* at note 54, 471-472.
- [59] *Pocatello Security Trust Co. v. Henry*, 206 P. 175 (1922).
- [60] *Monahan v. Mutual Life Ins. Co.*, 212 N.W. 269 (1927).
- [61] *De Vall v. Strunk*, 96 S.W. 2d 245 (1936).
- [62] *Downey v. Finucane*, 98 N.E. 391 (1912).
- [63] *Rollo*, pp. 169-172, 174-176.
- [64] *U.S. v. Harrison*, 121 F.2d 930 (1941).
- [65] *United States v. Patten*, 226 U.S. 525 (1913); *American Tobacco Co. v. U. S.*, 147 F.2d. 93 (1945).
- [66] *Grenada Lumber Co. v. Mississippi*, 217 U.S. 433 (1910).
- [67] *Benton v. Minneapolis Tailoring & Manufacturing Co.*, 76 N.W. 265 (1898).
- [68] *State v. Sears*, 103 P. 2d. 337 (1940); *Keithler v. State of Mississippi* 18 Miss. 192; 1848 WL (1977).
- [69] *Popielarski v. Jacobson*, N.W.2d 45 (1953).
- [70] *Rollo*, p. 270.
- [71] *Rollo*, p. 141.
- [72] *Carpenter v. Hamilton*, 62 P. 2d, 1397, 18 Cal. App. 2d. 69 (1936); *Blomquist v. Runkel*, 298 P. 458, 162 Wash. 362.
- [73] *Rollo*, p. 146.

[74] Id. at 170.

[75] Rollo, p. 170.

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