FERNANDO GO, PETITIONER, VS. THE COURT OF APPEALS, PILAR LIM AND HENRY LIM, RESPONDENTS.

G.R. No. 163745. August 24, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari seeking to nullify the Resolutions dated January 23, 2004[1] and May 26, 2004[2] of the Court of Appeals in CA-G.R. SP No. 81488. The appellate court dismissed petitioner's petition for certiorari assailing the Resolutions of the Department of Justice (DOJ), which directed the City Prosecutor of Quezon City to withdraw the information for estafa through falsification of public document against respondents.

On November 26, 2002, petitioner Fernando Go filed two complaint-affidavits[3] for estafa and falsification against respondents Pilar and Henry Lim, petitioner's sister and nephew, respectively. Petitioner alleged that his mother, Laureana Lu, possessed a parcel of land in Cotabato City for which she applied for a Miscellaneous Sales Patent. Since Laureana and Fernando resided elsewhere, Laureana allowed Pilar to occupy the property.[4]

On March 18, 1976, Original Certificate of Title (OCT) No. P-136 was issued to Laureana. Fernando claimed that Pilar received the title but did not turn it over to Laureana. Instead, Pilar made Laureana sign a Waiver of Rights on July 28, 1976 wherein Laureana waived her right to the application in favor of Henry. Then on August 6, 1976, Pilar made Fernando and his siblings execute a Waiver[5] where they waived their rights to Laureana's application and interposed no objection to her waiver in favor of Henry. Respondents also made Laureana sign a Last Will and Testament on September 14, 1976 where she bequeathed the property to Henry. Then on October 4, 1976, respondents made Laureana execute a Deed of Absolute Sale over the property in favor of Henry.

Fernando argued that the four documents were executed through deceit and manipulations. Respondents had deceived his siblings and him that Laureana's application could not be approved and the only way the property could be titled was to transfer it to Henry. Fernando also claimed that he learned of the issuance of OCT No. P-136 only on March 2, 1998 after the City Treasurer of Cotabato City informed him of the tax arrears. On January 15, 2001, title to the property was transferred to Henry.

In their defense, Pilar claimed that she occupied the property with the consent of Laureana and Fernando since 1957. She added that Fernando was fully aware of Laureana's application and even witnessed the execution of the Waiver of Rights which was notarized by Atty. Edward P. David. Clearly, it was impossible that Fernando learned of the issuance of OCT No. P-136 only in 1998. Respondents also presented Atty. David's affidavit where he affirmed the due execution of the Waiver of Rights, Waiver, and Last Will and Testament, as well as the sound mental condition of Laureana then. Respondents further asserted that Laureana voluntarily executed the Last Will and Testament and the Deed of Sale since she wanted Pilar and her family to have the property.[6]

After preliminary investigation, the City Prosecutor of Quezon City charged respondents with estafa through falsification of public document under Article 171, par. 3 of the Revised Penal Code, as follows:

> That on or about March 2, 1998, in Quezon City Philippines, the said accused, both private individuals, conspiring and confederating with one another, did then and there willfully, unlawfully and feloniously defraud Fernando Go in the manner following the said accused with intent to cause damage forged and falsified a Waiver dated August 6, 1976 involving a parcel of land located in Barrio Monday, Cotabato City more particularly described in OCT P-136 and registered in the name of Laureana Lu mother of said Fernando Go and accused Pilar Lim, said Waiver is notarized and entered in the Notarial Register of Edward P. David, a Notary Public of Quezon City, as Doc. No. 9361, Page 92, Book No. V, Series of 1976 and therefore a public document by then and there attributing to said Fernando Go that he consents to the transfer of said title in favor of accused Henry Lim when in truth and in fact as Pilar and Henry Lim knew such was not the case in that the document was caused to be prepared only to facilitate the processing of miscellaneous sales application numbered V-57816 in the Bureau of Lands; that once the said document was prepared Pilar and Henry Lim then falsely manifested and represented to the Register of Deeds of Cotabato City that OCT P-136 be cancelled and a new TCT No. T-41312 was issued in the name of accused Henry Lim who thereafter caused the property to be subdivided and sold to the damage and prejudice of the said Fernando Go.[7]

The case was docketed as Criminal Case No. 03-118643 and raffled to the Regional Trial Court of Quezon City, Branch 223. Respondents filed an Urgent Motion for Reinvestigation with Motion to Suspend Proceedings and to Hold the Issuance of Warrants of Arrests in Abeyance. The trial court denied the motion and found probable cause to issue warrants for respondents' arrest.

Respondents then moved for reconsideration of the City Prosecutor's resolution. As the motion remained unresolved, they appealed to the DOJ contending that the crime had prescribed, and that the finding of probable cause was contrary to law and the evidence on record.

On October 9, 2003, the DOJ ordered the City Prosecutor to move for the withdrawal of the information before the trial court.[8] It ruled that: first, the documents presented by respondents bore the presumption of genuineness and due execution since they were notarized. The notary public[9] affirmed their truthfulness and due execution while the National Bureau of Investigation (NBI)[10] confirmed that no alteration or intercalation was made thereon.

Second, the crime had prescribed. Petitioner's purported discovery of the deceit only in 1998 was unlikely since he participated in the execution of the documents. The DOJ also noted that the crime charged was punishable by reclusion temporal so that at the most, the prescriptive period is twenty years. The waivers and the title were executed in 1976; thus, the filing of the complaint-affidavits in 2002 was beyond the prescriptive period. Further, since Laureana passed away only in 1983, there was the possibility that she informed her children about the transfer of title while she was still alive.

The trial court allowed the withdrawal of the information on December 2, 2003.[11] Petitioner filed a petition for certiorari with the Court of Appeals, which was dismissed in this wise:

> As filed, the present petition for certiorari is infirmed with deficiencies, to wit:
>
> - Copies of the assailed Resolutions of the Department of Justice dated October 9, 2003 and November 21, 2003 and the Order of the Regional Trial Court dated December 2, 2003 attached to the petition are mere plain photocopies (Sec. 3, Rule 46, Rules of Court).
>
> - The verification and certification of non-forum shopping attached to the petition does not fully comply with Section 4 as amended by A.M. No. 00-2-10-SC, Rule 7, ibid., because it does not give the assurance that the allegations of the petition are true and correct based on authentic records.
>
> - No copy of the petition has been served on the Office of the Solicitor General which represents the Secretary of Justice on appeal.

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WHEREFORE, the petition is hereby DISMISSED.

SO ORDERED.[12]

Hence, this petition where petitioner alleges that the Court of Appeals erred when it:

I

... ILLEGALLY AMENDED, WITHOUT AUTHORITY, THE RULES OF COURT BY CHANGING THE WORD "OR" TO "AND" IN A.M. NO. 00-02-10-SC, SUBSTANTIALLY DEFEATING THE RIGHT OF HEREIN PETITIONER;

II

... ILLEGALLY AMENDED, WITHOUT AUTHORITY, SEC. 3, RULE 46 IN RELATION TO RULE 65, BY INSERTING ANOTHER REQUIREMENT NOT FOUND THEREIN;

III

... DISREGARDED JURISPRUDENCE WHEN IT DISMISSED PETITIONER'S PETITION;

IV

... DISREGARDED THE REQUIREMENT OF THE CONSTITUTION BY NOT STATING THE FACT AND THE LAW FROM WHICH THE DISMISSAL OF THE CASE IS BASED;

V

... CLOSED ITS EYES TO THE FACT THAT THE FINDING AND CONCLUSION OF THE QUEZON CITY PROSECUTOR'S OFFICE AND DOJ ARE CONTRADICTORY, WHICH REQUIRE A LITTLE MORE SCRUTINY;

VI

... DISREGARDED THE EVIDENCE ON RECORD.[13]

Simply stated, petitioner raises these issues: (1) Did the Court of Appeals err in dismissing his petition for certiorari on technical grounds? and (2) Is there probable cause to hold respondents liable for estafa through falsification of public document?

Petitioner maintains that the verification and certification of non-forum shopping is sufficient if it states that the allegations in the petition are true and correct of petitioner's personal knowledge or based on authentic records. He thus concludes that the Court of Appeals erred when it required the verification to state that the allegations were true and correct based on authentic records. He also contends that the appellate court erred when it required service of the petition on the Office of the Solicitor General (OSG). Petitioner insists that service is required only on the respondent and not upon his or its counsel. Petitioner finally argues that the appellate court should have liberally construed the Rules of Court since his failure to attach the certified true copies of the DOJ resolutions and trial court order was due to mere inadvertence. He admits that the certified true copies were attached instead to a duplicate copy that was never filed.

Petitioner's submissions are untenable. Petitioner signed the verification alleging that the contents of the petition were true and correct of his own personal knowledge and belief.[14] Under Section 4, Rule 7 of the Rules of Court, a pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.[15] Mere belief is insufficient basis and negates the verification which should be on the basis of personal knowledge or authentic records. Verification

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is required to secure an assurance that the allegations of the petition have been made in good faith, or are true and correct and not merely speculative.[16] While this Court has exercised leniency in cases where the lapse in observing the rules was committed when the rules have just recently taken effect, we cannot do so in this case. Petitioner's counsel admitted that until the petition was filed on February 6, 2004, he was not aware that the rules had been amended by A.M. No. 00-2-10-SC on May 1, 2000.[17] Counsel's error on this point binds his client.

On the matter of service, Section 1, Rule 65 in relation to Section 3, Rule 46 of the Rules of Court, clearly states that in a petition filed originally in the Court of Appeals, the petitioner is required to serve a copy of the petition on the adverse party before its filing.[18] If the adverse party appears by counsel, service shall be made on such counsel pursuant to Section 2, Rule 13. Since the OSG represents the Republic of the Philippines once the case is brought before this Court or the Court of Appeals, then service of the petition should be made on that office.[19]

Finally, we cannot accept petitioner's explanation that it was by mere inadvertence that he failed to attach the certified true copies of the DOJ resolutions and the trial court order. We have ruled that the requirement of providing appellate courts with certified true copies of the judgments or final orders that are the subjects of review is necessary to aid them in resolving whether or not to give due course to petitions.[20] Hence, this requirement cannot be perfunctorily ignored, much less violated.[21]

On the merits, petitioner submits that the Court of Appeals erred when it did not scrutinize the evidence on record although the findings and conclusions of the City Prosecutor and the DOJ on the presence of probable cause were contradictory. While this question is essentially factual, we shall resolve the same since the absence of probable cause is evident from the records.

Respondents were charged with estafa through falsification of public document under Article 171, par. 3 of the Revised Penal Code.[22] They allegedly falsified the Waiver dated August 6, 1976 by making it appear that petitioner waived his right to Laureana's application and interposed no objection to Laureana's waiver in favor of Henry.

Contrary to petitioner's claim that he was induced to sign the Waiver on respondents' representations that Laureana's application could not be approved and the Waiver would facilitate its approval, the records show that he knew exactly what he was waiving.

First, petitioner admitted in his complaint-affidavit that Pilar informed him on June 29, 1970 that Laureana's application had already been approved. Hence, at the time he and his siblings signed the Waiver on August 6, 1976, they were just waiting for the title's issuance and not the application's approval. This is contrary to his subsequent allegations that he was merely induced to sign the Waiver to facilitate Laureana's application.

Second, the words and meaning of the Waiver are clear - petitioner and his siblings were waiving their rights to OCT No. P-136. Since petitioner knew that the application had already been approved in 1970, it is clear, as the document itself shows, that what he and his siblings intended to waive were their rights to the title and nothing else. Assuming they intended the Waiver to facilitate Laureana's application, then petitioner or any of his siblings could have changed the document's language or designation to accurately reflect such intent.

Third, as properly observed by the DOJ, the Waiver was notarized. It therefore carried with it the presumption of genuineness and due execution. In fact, no less than the notary public and the NBI affirmed its truthfulness and due execution as well as confirmed that no alteration or intercalation was made thereon.

Consequently, the Court of Appeals correctly held that the DOJ did not err in ordering the City Prosecutor to move for the withdrawal of the information before the trial court. The complaint-affidavits as well as the supporting documents do not show that respondents attributed to petitioner statements other than those in fact

made by him in the Waiver dated August 6, 1976, as to constitute a prima facie case for estafa through falsification of public document under Article 171, par. 3 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, no such evidence exists in the present case that would engender a well-founded belief that estafa through falsification of a public document was in fact committed by respondents.[23]

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. 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' resolutions.[24]

WHEREFORE, the instant petition is DENIED. The Resolutions dated January 23, 2004 and May 26, 2004 of the Court of Appeals in CA-G.R. SP No. 81488 are AFFIRMED.

Costs against the petitioner.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and Velasco, Jr., JJ., concur.

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[1] Rollo, p. 7.

[2] Id. at 9-10.

[3] Id. at 48-52 and 54-57.

[4] Id. at 35.

[5] Id. at 271-272.

[6] Id. at 355-367.

[7] Id. at 63.

[8] Id. at 132-136.

[9] Id. at 371.

[10] Id. at 380-382.

[11] Id. at 246-247.

[12] Id. at 7.

[13] Id. at 20-21.

[14] Id. at 223.

[15] LDP Marketing, Inc. v. Monter, G.R. No. 159653, January 25, 2006, 480 SCRA 137, 141.

[16] Id. at 144.

[17] Rollo, p. 228.

[18] New Ever Marketing, Inc. v. Court of Appeals, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 294.

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[19] Metropolitan Bank and Trust Company v. Tonda, G.R. No. 134436, August 16, 2000, 338 SCRA 254, 265.

[20] Barcenas v. Tomas, G.R. No. 150321, March 31, 2005, 454 SCRA 593, 605.

[21] Id.

[22] ART. 171. Falsification by public officer, employee or notary or ecclesiastic minister. - x x x

- Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

x x x x

[23] RCL Feeders PTE., Ltd. v. Perez, G.R. No. 162126, December 9, 2004, 445 SCRA 696, 705.

[24] Id. at 705-706.

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