# ROLANDO TAN, ELENA TAN AND LAMBERTO TAN, PETITIONERS, VS. THE HONORABLE COURT OF APPEALS, HON. HERMES B. MONTERO, IN HIS CAPACITY AS ASSISTANT PROVINCIAL PROSECUTOR, AND THE PEO...

*G.R. No. 164966. June 08, 2007*

Ponente: YNARES-SANTIAGO, J.

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**YNARES-SANTIAGO, J.:**

This is a petition for review on certiorari assailing the November 24, 2003 Decision[1] of the Court of Appeals in CA-G.R. SP No. 74450 dismissing the petition for prohibition and injunction, which sought to enjoin the Presiding Judge of the Regional Trial Court of Cebu City, Branch 5, from further proceeding with Crim. Case Nos. 64381, 64383, 64385, 64386 and 64387; and the July 14, 2004 Resolution[2] denying petitioners' motion for reconsideration.

In a Letter-Complaint dated June 26, 2002, James L. King (King) charged Roderick Lim-Go, Lucy Go, Nelson Go, John Doe and Peter Doe with violation of Batas Pambansa Bilang 22 (B.P. 22) and Estafa involving two checks both dated June 21, 2002, to wit: (1) United Overseas Bank Philippines (UOB) Check No. 00082597 in the amount of P20 Million; and (2) UOB Check No. 00082599 in the amount of P7.9 Million.

Subsequently or on July 10, 2002, King filed a Supplemental Complaint-Affidavit involving five additional checks, to wit: (1) UOB Check No. 0000082596 dated June 21, 2002 in the amount of P7 Million; (2) UOB Check No. 0000082598 dated June 21, 2002 in the amount of P26.68 Million; (3) UOB Check No. 0000082434 dated June 23, 2002 in the amount of P2.6 Million; (4) UOB Check No. 0000082495 dated June 24, 2002 in the amount of P7 Million; and (5) UOB Check No. 0000082494 dated June 24, 2002 in the amount of P18 Million. The complaints were docketed as I.S. Nos. 02-5997-5999-F, 02-0827-B, 02-0827-C, 02-0827-D, 02-0827-E and 02-0827-F, respectively.

On August 1, 2002, King filed a Second Supplemental Complaint-Affidavit for Estafa impleading Grace Tan-Go, and herein petitioners Rolando Tan, Elena Tan, and Lamberto Tan, as additional respondents.

King averred that in February 2002, the spouses Roderick Lim Go and Grace Tan-Go (spouses Go) proposed to him a business transaction wherein the spouses Go would borrow cash from King in exchange for which Roderick Go would issue postdated checks corresponding to the amount borrowed plus interest. Roderick Go's parents, Go Tong Go and Lucy Go, and brother, Nelson Go, assured King that whatever checks Roderick Go would issue would be funded on their due dates and that the checking account at the United Overseas Bank, Carbon Branch, Cebu City is their joint account. King agreed to the business proposal. Thereafter, Roderick Go started issuing checks, inclusive of interest, in exchange for the cash given by King. The checks when presented for encashment were initially honored by the drawee bank; consequently, King reposed his trust and confidence in spouses Go.

On March 22, 2002, the spouses Go, together with herein petitioners Rolando Tan (father of Grace Tan-Go),

Elena Tan (mother of Grace Tan-Go), asked P100 Million from King allegedly for the renovation of their movie houses in Butuan City. However, King could only accommodate P40 Million, in exchange for which, Roderick Go issued several checks to King in the amount of P61.28 Million, inclusive of the interest for three months.

At first, the checks issued by Go were honored by the drawee bank when presented. However, on June 24, 2002, when several of the checks he issued were about to fall due, Roderick Go requested King for a meeting. While at the agreed meeting place, Roderick Go allegedly attacked King with a box cutter and told him that all the checks that he issued would be dishonored and for this reason he had to injure, kidnap and kill him. This incident is the subject of a separate criminal case. Thereafter, all the checks dated June 21, 23 and 24, 2002 issued by Roderick Go were dishonored for having been drawn against insufficient funds. Despite repeated demands, no payment was made; hence, King filed a complaint for violation of BP Blg. 22 and Estafa.

All the accused, except Roderick Go, submitted their counter-affidavits. In their Joint Counter-Affidavit[3] dated August 8, 2002, petitioners denied meeting King on March 22, 2002; that only Roderick Go could be held liable for the bouncing checks considering that he alone issued the same; that King's first supplemental complaint-affidavit contradicted his second supplemental complaint-affidavit. In the first supplemental complaint-affidavit, Roderick Go, Lucy Go, Nelson Go, John Doe and Peter Doe were made respondents as co-conspirators relative to the issuance of the bouncing checks, while in the second supplemental complaint-affidavit, petitioners were made co-conspirators over the same checks but under totally different circumstances. Thus, petitioners claim that the criminal cases filed against them were an afterthought and prayed that the same be dismissed.

The preliminary investigation of the subject criminal cases was initially assigned to 1st Assistant Provincial Prosecutor/Officer-in-Charge Cesar Tajanlangit who voluntarily inhibited himself. On October 10, 2002, then Secretary of Justice Hernando B. Perez issued Department Order (D.O.) No. 369,[4] designating public respondent 3rd Assistant Provincial Prosecutor Hermes Montero (Montero) to continue with the preliminary investigation of these cases, and, if the evidence warranted, to file the appropriate informations in court.

In a Joint Resolution[5] dated November 8, 2002, public respondent Montero found probable cause for the following crimes:

> WHEREFORE, in the light of the foregoing, the following criminal Informations shall be filed against:
>
> (1) Roderick L. Go, alias "Edu Ting", for violation of B.P. 22 on seven (7) counts;
>
> (2) Roderick L. Go, Grace Tan-Go, Go Tong Go, Lucy Go and Nelson Go, for estafa on two (2) counts anent (a) UOB Check No. 00082597 dated June 21, 2002 in the amount of P20,000,000.00; and (b) UOB Check No. 00082599 dated June 21, 2002 in the amount of P7,800,000.00;
>
> (3) Roderick L. Go, Grace Tan-Go, Go Tong Go, Lucy Go, Nelson Go, [petitioners] Rolando Tan, Elena Tan and Lamberto Tan, for estafa on five (5) counts anent (c) UOB Check No. 0000082596 dated June 21, 2002, in the amount of P7,000,000.00, (d) UOB Check No. 0000082598 dated June 21, 2002, in the amount of P26,680,000.00, (e) UOB Check No. 0000082434 dated June 23, 2002, in the amount of P2,600,000.00, (f) UOB Check No. 0000082495 dated June 24, 2002, in the amount of P7,000,000.00, and (g) UOB Check No. 0000082494 dated June 24, 2002, in the amount of P18,000,000.00.[6]

On November 11, 2002, five informations for estafa under Article 315, 2(a) of the Revised Penal Code were filed against Roderick L. Go, Grace Tan-Go, Go Tong Go, Lucy Go, Nelson Go, and herein petitioners, docketed as Criminal Case Nos. CBU- 64381, 64383, 64385, 64386, and 64387 and raffled to the Regional Trial Court, Branch 5 of Cebu City. From the above-quoted adverse Resolution of public respondent Montero, only Roderick Go and Grace Tan-Go separately appealed to the Secretary of Justice.


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On November 18, 2002, before any warrant of arrest could be issued, petitioners posted bail. The following day or on November 19, 2002, they were arraigned and pleaded not guilty.

On December 17, 2002, petitioners filed a Petition for Prohibition and Injunction with Preliminary Injunction and Prayer for Temporary Restraining Order[7] before the Court of Appeals. They sought to restrain the trial court from proceeding with the subject criminal cases against them and prayed that the same be dismissed.

On November 24, 2003, the Court of Appeals issued the assailed Decision dismissing the petition for lack of merit. It found that (1) petitioners failed to avail themselves of other plain, speedy and adequate remedies to challenge the public prosecutor's finding of probable cause; (2) the petition failed to establish that it falls under any of the exceptions to the general rule that the court will not issue writs of prohibition or injunction, preliminary or final, to enjoin or restrain a criminal prosecution; (3) public respondent Montero was duly authorized by the Secretary of Justice to conduct the preliminary investigation and, if the evidence so warranted, to file the corresponding informations relative to the subject criminal cases; (4) petitioners failed to prove that public respondents acted with grave abuse of discretion; and (5) petitioners' claims contesting the public prosecutor's finding of probable cause are matters of defense that should be threshed out during the trial of the criminal cases and not through the extraordinary remedy of prohibition.

After their motion for reconsideration was denied, petitioners interposed the instant petition raising nine issues[8] revolving around the factual and legal bases of the finding of probable cause for estafa against them as well as the authority of public respondent Montero to file the subject criminal cases with the trial court.

At the outset, it must be stressed that petitioners are asking us to review the Decision of the Court of Appeals which dismissed their petition for prohibition. Therefore, the principal issue is whether resort to the extraordinary remedy of prohibition was proper.

We rule in the negative.

Basic is the rule that the writ of prohibition is an extraordinary remedy to prevent the unlawful and oppressive exercise of legal authority and to provide for a fair and orderly administration of justice.[9] It is available only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law, and when the proceedings are done without or in excess of jurisdiction or with grave abuse of discretion. The petitioner must allege in his petition and establish facts to show that any other existing remedy is not speedy or adequate.[10] A remedy is plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of that judgment and the acts of the tribunal or inferior court.[11] Further, the writ will not lie to correct errors of judgment but only errors of jurisdiction. As long as the tribunal acts within its jurisdiction, any alleged errors committed in the exercise of its discretion will amount to nothing more than mere errors of judgment which are correctible by a timely appeal.[12] In determining whether a tribunal acted in grave abuse of discretion, mere abuse of discretion is not enough. There must be grave abuse of discretion as where the tribunal exercised its power in an arbitrary or despotic manner, by reason of passion or personal hostility, and it must be so patent or gross as would amount to an evasion, or virtual refusal to perform the duty enjoined, or to act in contemplation of law.[13]

In the case at bar, petitioners contend that there was no appeal or other plain, speedy or adequate remedy available in the ordinary course of law because they were prevented by the trial court from appealing public respondent Montero's Joint Resolution dated November 8, 2002 which found, among others, probable cause for estafa against them. They claim that the trial court "forced arraigned" them on November 19, 2002. This was allegedly done in order to prevent them from appealing the Joint Resolution dated November 8, 2002 to the Secretary of Justice as a consequence of paragraph 2, section 7 of DOJ Circular No. 70[14] ("2000 National Prosecution Service Rule on

Appeal") which provides in part that "[i]f an information has been filed in court pursuant to the appealed resolution, the petition shall not be given due course if the accused has already been arraigned x x x."

We are not persuaded.

Petitioners admit[15] that they received a copy of the Joint Resolution dated November 8, 2002 as early as November 13, 2002. However, from the time they received the copy of the aforesaid Resolution to the time they were arraigned on November 19, 2002, petitioners did not take steps to move for reconsideration, or appeal the aforesaid Resolution to the Secretary of Justice. More importantly, the Court of Appeals observed that there is no evidence on record to support petitioners' claim that they were "forced arraigned." In fact, the arraignment of petitioners proceeded without objections on the part of petitioners or their counsel.[16] Absent proof of force or intimidation, the trial judge enjoys the presumption of regularity in the performance of his functions.[17] We also note that petitioners' other co-accused, Roderick Lim Go and Grace Tan-Go, were able to timely appeal the Joint Resolution dated November 8, 2002 to the Secretary of Justice while petitioners failed to appeal the same before their arraignment.

In fine, the arguments raised in their petition for prohibition ineluctably shows that petitioners are principally questioning the factual and legal bases of the finding of probable cause against them. This is but a veiled attempt to litigate issues which should have been timely appealed to the Secretary of Justice via a petition for review. However, petitioners, through their own fault, failed to avail themselves of this remedy. Countless times we have ruled that the extraordinary remedy of certiorari or prohibition is not a substitute for a lost appeal.[18] This case is no different.

There is another equally important reason why the instant petition should be denied outright. After the Court of Appeals issued the assailed Decision dated November 24, 2003 which dismissed petitioners' petition for prohibition, several supervening events took place.

As earlier noted, petitioners failed to appeal from the Joint Resolution dated November 8, 2002 issued by public respondent Montero which found, among others, probable cause against them for estafa. Only co-accused Grace Tan-Go and Roderick Go separately and timely appealed to the Secretary of Justice. Then Secretary of Justice Simeon A. Datumanong subsequently issued a Resolution[19] dated December 23, 2003 granting Grace Tan-Go's petition for review. The aforesaid Resolution was, likewise, favorable to petitioners' cause and ordered, among others, the withdrawal of the informations for estafa against them:

> WHEREFORE, the assailed Joint Resolution is hereby SET ASIDE and, conformably with Department Order No. 473, dated December 8, 2003, which recalls and supersedes Department Order No. 369 previously authorizing Provincial Prosecutor Cezar Tajanlangit to conduct the preliminary investigation and prosecution of the foregoing cases, the City Prosecutor of Cebu, is hereby directed to–
>
> (1) To withdraw the informations filed in Court against all the respondents for Estafa.
>
> (2) To file the corresponding Informations in Court against RODERICK LIM GO only, for violations of BP 22 on eight (8) counts and proceed with the prosecution thereof; and
>
> (3) To submit to this Office, within ten (10) days from receipt of this Resolution, the appropriate action or actions taken.
>
> SO ORDERED.[20]

When King moved for reconsideration of the above Resolution, petitioners participated in the proceedings before the Secretary of Justice by opposing the same together with Grace Tan-Go.[21] In a Resolution[22] dated February 11, 2004, then Acting Secretary of Justice Merceditas N. Guitierrez granted King's motion for

reconsideration and reinstated public respondent Montero's Joint Resolution dated November 8, 2002. Grace Tan-Go then filed a motion for reconsideration which was joined by petitioners through their motion for leave to join the motion for reconsideration.[23] However, Acting Secretary Guiterrez denied the same in a Resolution dated August 18, 2004. Thereafter, Grace Tan-Go filed a motion to resolve the second ground raised in her motion for reconsideration. In a Resolution[24] dated December 17, 2004, Secretary of Justice Raul M. Gonzalez reversed and set aside the February 11, 2004 and August 18, 2004 Resolutions of Acting Secretary Gutierrez, and reinstated former Secretary Datumanong's Resolution dated December 23, 2003. Consequently, a motion to withdraw informations[25] was filed by the prosecution before the trial court.

By participating in the proceedings before the Secretary of Justice, petitioners have actively litigated the issues regarding the factual and legal bases of the finding of probable cause against them as well as the authority of public respondent Montero to file the subject criminal informations. This is clearly borne by the tenor of the Resolution dated December 17, 2004 issued by the Secretary of Justice. Yet, these issues are exactly the same issues being raised by petitioners before this Court through the instant petition which is separate and distinct from the proceedings before the Secretary of Justice whose aforesaid Resolution is not the one before us for review. To reiterate, what is before us for review is the Decision of the Court of Appeals which dismissed the petition for prohibition filed by petitioners to restrain the trial court from proceeding with the criminal cases against them.

In effect, by taking these two distinct courses of actions, petitioners have pursued the same or related causes, prayed for the same or substantially the same reliefs, and, in the process, have created the possibility of conflicting decisions being rendered by the different fora upon the same issues which is precisely the evil that the rule on forum-shopping seeks to prevent.[26] Doubtless, they have engaged in a form of forum-shopping. Their attempt to trifle with the courts and abuse their processes must not be countenanced. As a consequence of petitioners' violation of the rule against forum-shopping and in order to preserve the laudable objectives of the rule against forum-shopping, the dismissal of the petition for prohibition should be upheld.[27]

WHEREFORE, the petition is DENIED. The Decision of the Court of Appeals dated November 24, 2003 in CA-G.R. SP No. 74450 dismissing petitioners' petition for prohibition, and the Resolution dated July 14, 2004 denying reconsideration thereof, are AFFIRMED.

Costs against petitioners.

**SO ORDERED.**

Austria-Martinez, Chico-Nazario, and Nachura, JJ., concur.

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[1] Rollo, pp. 82-92. Penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices B.A. Adefuin-De La Cruz and Eliezer R. De Los Santos.

[2] Id. at 93-94. Penned by Associate Justice Jose Catral Mendoza and concurred in by Associate Justices Edgardo P. Cruz and Eliezer R. De Los Santos.

[3] Id. at 170-182.

[4] CA rollo, p. 77.

[5] Rollo, pp. 353-366.

[6] Id. at 365-366.

[7] CA rollo, pp. 2-37.


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[8] Petitioners phrase the issues for our resolution thusly:

> First
>
> The Court of Appeals committed a reversible error when it held that the informations for estafa filed by Respondent Montero, a mere 3[rd] Assistant Provincial Prosecutor, did not violate Section 4, Rule 112 of the Rules of Court.
>
> Second
>
> With due respect, in refusing to rule on the issue of the legality, propriety, and validity of the present informations for Estafa notwithstanding Section 5, BP Blg. 22, the Court of Appeals has committed a reversible error and has violated its constitutional duty "to settle actual controversies involving rights which are legally demandable and enforceable."
>
> Third
>
> With due respect, the Court of Appeals committed a reversible error when it failed to rule that 3[rd] Assist. Prosecutor Montero gravely abused his discretion amounting to lack of jurisdiction in subverting Section 5, B.P. Blg. 22, by finding a case for estafa against the Tans for the bouncing checks of Roderick L. Go pursuant to Article 315 2(a), Revised Penal Code.
>
> Fourth
>
> With due respect, the Court of Appeals committed a reversible error when it failed to rule that as there is absolutely no evidence that the Petitioners ever received a single centavo out of any transaction involving the alleged five (5) checks of Roderick L. Go then no estafa lies against them absolutely.
>
> Fifth
>
> With due respect, the Court of Appeals committed a reversible error when it failed to rule that the ostensible prima facie finding of Respondent Montero on the alleged conspiratorial deceitful acts of the Tans because Montero believes James King's uncorroborated affidavits more than what the Tans submitted as tantamount to estafa under Article 315 2(a), Revised Penal Code, is definitely wrong and out of kilter.
>
> Sixth
>
> With due respect, the Court of Appeals committed a reversible error in not finding that there is no criminal case as the relationship, if any, is that of lender and borrower and only between King and Roderick Go.
>
> Seventh
>
> Besides, as the bouncing checks cases are deemed dismissed for King's failure to pay filing fees therefor then no prosecution for estafa is sustainable in light of Section 5 of B.P. Blg. 22.
>
> Eighth
>
> Besides too, and modesty aside, the Petitioners' assets are over P100 Million.
>
> Ninth
>
> With due respect, the Court of Appeals committed a reversible error when it failed to rule that there was no conspiracy from the Tans in the issuance of the checks by Roderick L. Go.

[9] Vergara v. Rugue, G.R. No. L-32984, August 26, 1977, 78 SCRA 312, 323.

[10] Lee v. People, G.R. No. 159288, October 19, 2004, 440 SCRA 662, 677.

[11] Id. at 678.

[12] People v. Court of Appeals, G.R. No. 128986, June 21, 1999, 308 SCRA 687, 699.

[13] Vergara v. Rugue, supra note 9.

[14] Effective July 3, 2000.

[15] CA rollo, p. 12.

[16] Id. at 76.

[17] RULES OF COURT, Rule 131, Section 3(m).

[18] Salva v. Court of Appeals, 364 Phil. 281, 298 (1999).

[19] Rollo, pp. 75-80.

[20] Id. at 79-80.

[21] Id. at 246.

[22] Id. at 394-401.

[23] Id. at 246-247.

[24] Id. at 246-256.

[25] Id. at 794.

[26] Top Rate Construction & General Services, Inc. v. Paxton Development Corporation, 457 Phil. 740, 748 (2003).

[27] Guaranteed Hotels, Inc. v. Baltao, G.R. No. 164338, January 17, 2005, 448 SCRA 738, 746.


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