

**VIRGINIA A. ZAMORA, PETITIONER, VS. JOSE ARMANDO L. EDUQUE,
ROY TANG CHEE HENG, PETER A. BINAMIRA, GILDA A. DE JESUS,
ESTELA C. MADRIDEJOS, CELIA J. ZUNO, JEANETTE C. DELGADO,
M...**

G.R. No. 174005. January 25, 2012

Ponente: ABAD, J.

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ABAD, J.:

Respondents Jose Armando L. Eduque, Peter A. Binamira, Roy Tang Chee Heng, Gilda A. De Jesus, Estela C. Madridejos, Celia J. Zuno, Jeanette C. Delgado, Ma. Leticia R. Joson, and Remicar Uy held the positions of officers or directors or both of East Asia Capital Corporation (East Asia), a licensed investment company, that dealt in securities and commercial papers.[1]

Petitioner Virginia Zamora claims that she gave East Asia sums in July 1999 to buy for her certain commercial papers that Metro Pacific Corporation (MPC) had issued. In turn, East Asia gave her an outright sale invoice for each transaction, which served to confirm its purchase of MPC's Series B2 commercial papers for her account. East Asia also gave her a Custodian Receipt, indicating that it was keeping the commercial papers for her.[2] Once these papers matured, East Asia was to either roll-over the investments or have the papers redeemed, depending on Zamora's instruction.

Sometime in 2000 Zamora became suspicious of her dealings with East Asia when she discovered that some of the new commercial papers it bought for her carried the same serial numbers as some of the commercial papers it also previously bought for her. Further, East Asia reinvested the proceeds of her matured commercial papers without consulting her and gave her unofficial and unsigned invoices and receipts covering their transactions. When she requested East Asia for a breakdown of her account, it gave her a report that lacked specific details.

Because of apprehensions, Zamora wrote East Asia's Joson and Uy, requesting redemption of her matured and "on demand" placements.[3] East Asia told her, however, that it did not have enough funds to comply with her request. When she subsequently met with Eduque, Heng, and Delgado, they assured her that East Asia was merely experiencing temporary problems with its financing and accounting records and that these would all be resolved by the entry of a new investor. East Asia then issued to her, through Madridejos, documents acknowledging her outstanding placements.[4]

Meanwhile, Zamora queried MPC regarding the status of the commercial papers that East Asia got for her. She learned that MPC had already paid East Asia for these papers and that most of the papers that matured were not in her name but in those of other persons.[5] When Zamora finally got a copy of her Statement of Account[6] from East Asia, it showed that what she had in her account were East Asia's promissory notes rather than MPC commercial papers.

When Zamora met with Eduque, the latter admitted to her that East Asia had no money to pay her and could only

propose that it secure its promissory notes with collateral or substitute the commercial papers with East Asia-owned real property and shares of stock. Zamora declined both offers. Still, East Asia made several payments to Zamora and issued to her a certificate which acknowledged and pegged her remaining placements at P37,330,749.53.

On January 7, 2002 Zamora wrote East Asia demanding payment. Since the demand went unheeded, on January 11, 2002 Zamora filed a Complaint-Affidavit[7] with the Office of the City Prosecutor of Makati, charging East Asia's officers with estafa under Art. 315 (1)(b) of the penal code. She alleged that they received her money as agents or trustees with a duty to buy MPC commercial papers for her and subsequently turn over the proceeds of these papers to her. But they instead misappropriated her money and its incomes.[8] Zamora claimed that Eduque, Madridejos, Delgado, Joson, and Uy would not have been able to misappropriate the money without the indispensable assistance of Heng, Binamira, De Jesus, and Zuno. Eduque, Delgado, Joson and Uy cajoled and sweet-talked their company's clients while Heng, Benamira, De Jesus, Madridejos and Zuno worked within East Asia.[9]

But respondent East Asia officers countered, citing *Sesbreno v. Court of Appeals*,[10] that they did not commit estafa since Zamora actually made money-market placements with East Asia. Since these transactions were in the nature of loans to the company, their non-payment would give rise only to civil liability. Respondent officers further claimed that they could not be held personally liable for East Asia's corporate acts and that, moreover, Zamora failed to allege overt acts that would make them liable as co-conspirators.

On September 4, 2002 the Office of the City Prosecutor issued a resolution,[11] recommending the filing of an information for estafa against East Asia's officers considering their failure to show that their transactions with Zamora's transactions were similar to those involved in the *Sesbreno* case. At any rate, the City Prosecutor said that respondents' defenses presented issues of fact and law that were proper for trial. Additionally, the City Prosecutor found that respondents received money from Zamora with an obligation to buy MPC commercial papers but they did not. The City Prosecutor cited 42 MPC commercial papers that East Asia supposedly bought for Zamora's account but were not registered in her name. Respondent East Asia officers also acted with malice and bad faith when they covered up their fraudulent acts. And these would not have been possible without the indispensable cooperation of all of them.[12]

On motion for reconsideration, however, the City Prosecutor issued another resolution dated November 7, 2002,[13] reversing its previous one. It now held that Zamora's transactions with East Asia "are undeniably money market placements which the Supreme Court has ruled to be in the nature of a loan." East Asia and respondent officers had no obligation to return the very same money that she delivered to it. She is merely entitled to a return of the amount invested plus the interests agreed on. Since there was no obligation to return the exact same thing delivered, no probable cause for estafa can be said to exist.

Zamora appealed the City Prosecutor's resolution to the Secretary of Justice who dismissed the same on September 3, 2003.[14] Undaunted, she challenged the Secretary's ruling before the Court of Appeals (CA) by special civil action of certiorari under Rule 65. But the CA dismissed her petition in a decision dated June 2, 2006.[15] The appellate court held that based on the nomenclature of the certificate issued by East Asia, i.e., Outright Sale Invoice, its transaction with Zamora is beyond doubt a sale or loan of money.

Upon denial of Zamora's motion for reconsideration by the appellate court, she filed this petition for review under Rule 45. The issues to be resolved are the following:

(1) Whether or not Zamora's transaction with East Asia was a sale or loan of money; and

(2) Whether or not there is probable cause to charge respondents with estafa under Article 315(1)(b) of the Revised Penal Code.

ONE. Zamora asserts that the CA erred in characterizing her transaction with East Asia as a sale or loan of money, where ownership of the money changed hands. Zamora insists that her relationship with East Asia was that of principal and agent and that its officers received her money in trust with an obligation to acquire with it commercial papers that MPC had issued. When these papers matured, East Asia also received the proceeds which they had the obligation to deliver to her. But respondents neither bought MPC commercial papers for her nor delivered to her the proceeds that MPC paid to East Asia.

This is not the first time that Eduque, Binamira, Delgado, and Joson have been sued for estafa under the same circumstances. In *Cruzvale, Inc. v. Eduque*,^[16] the CA caused the dismissal of the same charge for lack of probable cause upon a finding that the transaction was a loan that could not give rise to estafa by misappropriation. The CA ruled that East Asia did not receive Cruzvale's money in trust for it. On appeal to this Court, however, it reversed the CA ruling. The Court held that *Sesbreno* was not applicable because that case involved a money market placement under a short-term credit instrument, not commercial papers. *Sesbreno* also dealt with the liability of respondent, not as middleman or dealer, but as petitioner's debtor.

The Court thus concluded that East Asia had a fiduciary obligation to Cruzvale, Inc., both as middleman or dealer of commercial papers and custodian of the same for the latter's account. For simultaneously acting as middleman or dealer and custodian, East Asia was obliged to turn over to its client the proceeds of the matured commercial papers and deliver the outstanding ones to it together with accrued interests.^[17]

Zamora's transaction with East Asia in this case is no different. East Asia acted as dealer of commercial papers and custodian of the same on Zamora's behalf. This is clear from the terms of its sale invoice and custodian receipt. East Asia acquired the commercial papers in trust and was obliged to deliver them and their proceeds to Zamora, failing which, its responsible officers could be prosecuted for estafa. Consequently, the CA erred in characterizing Zamora's transaction with East Asia as a sale or loan of money based only on the nomenclature of the invoice it issued.

TWO. Notwithstanding the foregoing, however, the Court finds no probable cause to charge the respondents with estafa. As the Secretary of Justice found, Zamora failed to identify the particular officers of East Asia who were responsible for the misappropriation or conversion of her funds.^[18] She simply assumed that since she had been communicating with them in connection with her investments, they all had part in misappropriating her money or converting them to their use. Many of them were evidently mere employees doing work for East Asia. She did not submit proof of their specific criminal role in the transactions she assailed. It is settled that only corporate officers who actually had part in the crime may be held liable for it.^[19]

WHEREFORE, the decision of the Court of Appeals in CA-G.R. SP 92330 dated June 2, 2006 and its resolution dated August 8, 2006 denying reconsideration are AFFIRMED, without prejudice to the subsequent filing of charges against the responsible persons as the evidence may warrant.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Mendoza, and Perlas-Bernabe, JJ., concur.

[1] Respondents respectively held the following positions: Chief Executive Officer and Director, Executive Director and Treasurer (1999), Executive Director (2000), Assistant Vice-President (1999) and Treasurer (2000),

Vice-President for Accounting, Assistant Vice-President (1999-2000) and Chief Accountant (2000), Manager for Treasury Operations, Vice-President for Trade.

[2] Rollo, pp. 171-172.

[3] Id. at 200.

[4] Id. at 201-204.

[5] Id. at 205-215.

[6] Id. at 227.

[7] Id. at 262.

[8] Id. at 268-269.

[9] Id. at 268.

[10] 310 Phil. 671 (1995).

[11] Rollo, pp. 400-407.

[12] Id. at 404-405.

[13] Id. at 522-526.

[14] Id. at 676-680.

[15] Id. at 79-91.

[16] G.R. Nos. 172785-86, June 18, 2009, 589 SCRA 534.

[17] Id. at 544.

[18] Rollo, p. 679.

[19] Supra note 16, at 546.

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