

JOSEPH ANTHONY M. ALEJANDRO, FIRDAUSI I.Y. ABBAS, CARMINA A. ABBAS AND MA. ELENA GO FRANCISCO, PETITIONERS, VS. ATTY. JOSE A. BERNAS, ATTY. MARIE LOURDES SIA-BERNAS, FERNANDO AM...

G.R. No. 179243. September 17, 2011

Ponente: PERALTA, J.

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PERALTA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated May 23, 2007 and Resolution[2] dated August 8, 2007 in CA-G.R. SP No. 94229.

The facts of the case follow.

Petitioner Joseph Anthony M. Alejandro (Alejandro) is the lessee-purchaser of condominium unit No. 2402 (the Unit), 4th Floor, Discovery Center Condominium in Pasig City under the Contract of Lease with Option to Purchase[3] with the lessor-seller Oakridge Properties, Inc. (OPI). On October 15, 2000, Alejandro sub-leased the Unit to the other petitioners Firdausi I.Y. Abbas (Firdausi), Carmina M. Alejandro-Abbas (Carmina) and Ma. Elena Go Francisco (Ma. Elena) to be used as a law office.[4] However, a defect in the air-conditioning unit prompted petitioners to suspend payments until the problem is fixed by the management.[5] Instead of addressing the defect, OPI instituted an action for ejectment before the Metropolitan Trial Court (MeTC) of Pasig City,[6] against Alejandro for the latter's failure to pay rentals. The case was docketed as Civil Case No. 9209. Alejandro, for his part, interposed the defense of justified suspension of payments.[7]

In the meantime, the Discovery Center Condominium Corporation (DCCC) was organized to administer the Discovery Center Condominium independent of OPI. Respondent Fernando Amor (Amor) was appointed as the Property Manager of DCCC.

During the pendency of the ejectment case or on June 10, 2004, OPI, allegedly through respondent Atty. Marie Lourdes Sia-Bernas (Sia-Bernas), ordered that the Unit be padlocked. In an Order[8] dated June 11, 2004 the MeTC directed OPI to remove the padlock of the Unit and discontinue the inventory of the properties. The order was reiterated when the MeTC issued a Temporary Restraining Order in favor of Alejandro. However, on August 11, 2004, at 8:00 in the evening, OPI, allegedly through respondent Atty. Jose Bernas, again padlocked the Unit. The padlocking was allegedly executed by Amor, as Property Manager and respondent Eduardo Aguilar (Aguilar) as head of the security unit, together with security officers John Doe and Peter Doe. Respondents, likewise, cut off the electricity, water and telephone facilities on August 16, 2004.[9]

On August 17, 2004, the MeTC rendered a Decision[10] in the ejectment case in favor of Alejandro and against OPI. The court found Alejandro's suspension of payment justified. The decision was, however, reversed and set aside by the Regional Trial Court[11] whose decision was in turn affirmed[12] by the CA.

On October 27, 2004, petitioners filed a criminal complaint[13] for grave coercion against respondents Bernas, Sia-Bernas, Amor, Aguilar, Peter Doe and John Doe with the Office of the City Prosecutor (OCP) of Pasig. The case was docketed as I.S. No. PSG 04-10-13650. In their Joint Affidavit-Complaint,[14] petitioners claimed that the padlocking of the Unit was illegal, felonious and unlawful which prevented them from entering the premises.[15] Petitioners also alleged that said padlocking and the cutting off of facilities had unduly prejudiced them and thus constituted grave coercion.[16]

In their Counter-Affidavit[17], Bernas and Sia-Bernas averred that the elements of grave coercion were not alleged and proven by petitioners. They also claimed that nowhere in petitioners' complaint was it alleged that respondents employed violence which is an essential element of grave coercion.

In addition to the above defenses, Amor and Aguilar maintained that petitioners did not allege that the former actually prevented the latter to enter the Unit. They added that petitioners in fact gained access to the Unit by forcibly destroying the padlock.[18]

On March 22, 2005, the OCP issued a Resolution,[19] the pertinent portion of which reads:

Wherefore, respondents Fernando Amor and Eduardo Aguilar are charged with unjust vexation and the attached information be filed with the Metropolitan Trial Court of Pasig City. Bail is not necessary unless required by the Court.

The charges against respondents Jose Bernas and Marie Lourdes Sia-Bernas is dismissed for insufficiency of evidence.[20]

The OCP held that respondents could not be charged with grave coercion as no violence was employed by the latter. In padlocking the leased premises and cutting off of facilities, respondents Amor and Aguilar were found to be probably guilty of the crime of unjust vexation.[21]

Aggrieved, petitioners appealed to the Secretary of the Department of Justice (DOJ) but the appeal was dismissed[22] for their failure to comply with Section 12, paragraph (b) of Department Circular No. 70. The DOJ Secretary, acting through Undersecretary Ernesto L. Pineda, explained that petitioners failed to submit a legible true copy of the joint counter-affidavit of some of the respondents. Petitioners' motion for reconsideration[23] was likewise denied in a Resolution[24] dated April 3, 2006. He denied the motion after a careful re-evaluation of the record of the case vis-à-vis the issues and arguments raised by petitioners.

Undaunted, petitioners elevated the matter to the CA that rendered the assailed decision[25] on May 23, 2007. The appellate court recognized the DOJ's authority to dismiss the petition on technicality pursuant to its rules of procedure. The CA explained that while the DOJ dismissed the petition on mere technicality, it re-evaluated the merits of the case when petitioners filed their motion for reconsideration. On whether or not there was probable cause for the crime of grave coercion, the CA answered in the negative. It held that the mere presence of the security guards was insufficient to cause intimidation.[26] The CA likewise denied petitioners' motion for reconsideration on August 8, 2007.[27]

Hence, this petition based on the following grounds:

WHETHER OR NOT THE RULING IN THE CASE OF SY VS. DEPARTMENT OF JUSTICE (G.R. NO. 166315, DECEMBER 14, 2006), WHEREIN THE HIGHEST COURT OF THE LAND DEVIATED FROM THE NON-INTERFERENCE POLICY WITH THE PROSECUTORIAL ARM OF THE GOVERNMENT BY HOLDING THAT THERE IS GRAVE ABUSE OF DISCRETION IF THE RECORDS CLEARLY SHOW PRIMA FACIE EVIDENCE OF THE CRIME CHARGED, IS APPLICABLE TO INSTANT CASE,

- given that there is more than ample evidence of the padlocking;

- the padlocking has been admitted in no uncertain terms by Respondents;
- the padlock was ordered removed by the court

WHETHER OR NOT THERE WAS GRAVE ABUSE OF DISCRETION, TANTAMOUNT [TO] LACK OF OR EXCESS OF JURISDICTION WHEN THE COURT OF APPEALS DENIED THE PETITION DESPITE SHOWING OF PRIMA FACIE CASE OF GRAVE COERCION.

WHETHER OR NOT SUBJECT RESOLUTION OF THE DOJ IS ANOMALOUS BECAUSE THE GROUND OF DISMISSAL WAS FABRICATED WHICH NECESSITATES A JUDICIAL REVIEW OF SAID RESOLUTION.

WHETHER OR NOT GRAVE COERCION CAN BE COMMITTED THROUGH INTIMIDATION ALONE WITHOUT VIOLENCE.[28]

Petitioners claim that there is sufficient evidence on record to prove the fact of padlocking and cutting off of facilities thereat.[29] They insist that the allegations and evidence presented in the Joint Affidavit-Complaint are sufficient to sustain a finding of probable cause for grave coercion irrespective of any defense that may be put up by respondents.[30] Finally, petitioners maintain that although violence was not present during the commission of the acts complained of, there was sufficient intimidation by the mere presence of the security guards.[31]

In their Comment,[32] respondents aver that petitioners raise issues of grave abuse of discretion which are improper in a petition for review on certiorari under Rule 45. They also argue that the CA aptly held that petitioners failed to establish probable cause to hold them liable for grave coercion. They do not agree with petitioners that the mere presence of security guards constituted intimidation amounting to grave coercion. Finally, they insist that there is no legal impediment to cause the padlocking and repossession of the Unit as a valid exercise of proprietary right under the contract of lease.

In their Reply,[33] petitioners assail the propriety of the dismissal of their appeal before the DOJ Secretary on technicality.

The petition must fail.

The propriety of the dismissal of petitioners' appeal before the DOJ Secretary has been thoroughly explained by the CA. We quote with approval the CA ratiocination in this wise:

It was also incorrect for petitioners to claim that the dismissal was on mere technicality, and that the Department of Justice no longer studied the appeal on the merits. The motion for reconsideration shows that the records were carefully re-evaluated. However, the same conclusion was reached, which was the dismissal of the appeal. The first resolution was a dismissal on technicality but the motion for reconsideration delved on the merits of the case, albeit no lengthy explanation of the DOJ's dismissal of the appeal was inked on the resolution. It was already a demonstration of the DOJ's finding that no probable cause exists x x x[34]

Besides, petitioners' failure to attach the required documents in accordance with the DOJ rules renders the appeal insufficient in form and can thus be dismissed outright.[35] Moreover, when the case was elevated to the CA, the latter ruled not only on the procedural aspect of the case but also on the merit of the determination of probable cause.

The next question then is whether the CA correctly sustained the DOJ's conclusion that there was no probable cause to indict respondents of grave coercion. We answer in the affirmative.

It is settled that the determination of whether probable cause exists to warrant the prosecution in court of an accused should be consigned and entrusted to the DOJ, as reviewer of the findings of public prosecutors.[36] To

accord respect to the discretion granted to the prosecutor and for reasons of practicality, this Court, as a rule, does not interfere with the prosecutor's determination of probable cause for otherwise, courts would be swamped with petitions to review the prosecutor's findings in such investigations.[37] The court's duty in an appropriate case is confined to the determination of whether the assailed executive or judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion amounting to want of jurisdiction.[38]

Probable cause for purposes of filing a criminal information is defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.[39] As held in *Sy v. Secretary of Justice*,[40] citing *Villanueva v. Secretary of Justice*:[41]

[Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause"; nor does it import absolute certainty. It is merely based in opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.[42]

For grave coercion to lie, the following elements must be present:

- that a person is prevented by another from doing something not prohibited by law, or compelled to do something against his will, be it right or wrong;
- that the prevention or compulsion is effected by violence, threats or intimidation; and
- that the person who restrains the will and liberty of another has no right to do so, or in other words, that the restraint is not made under authority of law or in the exercise of any lawful right.[43]

Admittedly, respondents padlocked the Unit and cut off the electricity, water and telephone facilities. Petitioners were thus prevented from occupying the Unit and using it for the purpose for which it was intended, that is, to be used as a law office. At the time of the padlocking and cutting off of facilities, there was already a case for the determination of the rights and obligations of both Alejandro, as lessee and OPI as lessor, pending before the MeTC. There was in fact an order for the respondents to remove the padlock. Thus, in performing the acts complained of, Amor and Aguilar had no right to do so.

The problem, however, lies on the second element. A perusal of petitioners' Joint Affidavit-Complaint shows that petitioners merely alleged the fact of padlocking and cutting off of facilities to prevent the petitioners from entering the Unit. For petitioners, the commission of these acts is sufficient to indict respondents of grave coercion. It was never alleged that the acts were effected by violence, threat or intimidation. Petitioners belatedly alleged that they were intimidated by the presence of security guards during the questioned incident.

We find that the mere presence of the security guards is insufficient to cause intimidation to the petitioners.

There is intimidation when one of the parties is compelled by a reasonable and well-grounded fear of an imminent and grave evil upon his person or property, or upon the person or property of his spouse, descendants or ascendants, to give his consent. [44] Material violence is not indispensable for there to be intimidation. Intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient.[45]

In this case, petitioners claim that respondents padlocked the Unit and cut off the facilities in the presence of security guards. As aptly held by the CA, it was not alleged that the security guards committed anything to intimidate petitioners, nor was it alleged that the guards were not customarily stationed there and that they produced fear on the part of petitioners. To determine the degree of the intimidation, the age, sex and condition of

the person shall be borne in mind.[46] Here, the petitioners who were allegedly intimidated by the guards are all lawyers who presumably know their rights. The presence of the guards in fact was not found by petitioners to be significant because they failed to mention it in their Joint Affidavit-Complaint. What they insist is that, the mere padlocking of the Unit prevented them from using it for the purpose for which it was intended. This, according to the petitioners, is grave coercion on the part of respondents.

The case of *Sy v. Secretary of Justice*,[47] cited by petitioners is not applicable in the present case. In *Sy*, the respondents therein, together with several men armed with hammers, ropes, axes, crowbars and other tools arrived at the complainants' residence and ordered them to vacate the building because they were going to demolish it. Intimidated by respondents and their demolition team, complainants were prevented from peacefully occupying their residence and were compelled to leave against their will. Thus, respondents succeeded in implementing the demolition while complainants watched helplessly as their building was torn down. The Court thus found that there was *prima facie* showing that complainants were intimidated and that there was probable cause for the crime of grave coercion.

On the contrary, the case of *Barbasa v. Tuquero*[48] applies. In *Barbasa*, the lessor, together with the head of security and several armed guards, disconnected the electricity in the stalls occupied by the complainants-lessees because of the latter's failure to pay the back rentals. The Court held that there was no violence, force or the display of it as would produce intimidation upon the lessees' employees when the cutting off of electricity was effected. On the contrary, the Court found that it was done peacefully and that the guards were there not to intimidate them but to prevent any untoward or violent event from occurring in the exercise of the lessor's right under the contract. We reach the same conclusion in this case.

In the crime of grave coercion, violence through material force or such a display of it as would produce intimidation and, consequently, control over the will of the offended party is an essential ingredient.[49]

Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[50] 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, 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.[51] It is, therefore, imperative upon the prosecutor to relieve the accused from the pain of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.[52]

A preliminary investigation is conducted for the purpose of securing the innocent against hasty, malicious and oppressive prosecution, and to protect him from an open and public accusation of a crime, from the trouble, expense and anxiety of a public trial.[53]

Notwithstanding the DOJ's conclusion that respondents cannot be charged with grave coercion, it ordered the filing of information for unjust vexation against Amor, the Property Manager of DCCC and Aguilar as head of the security division. We find the same to be in order.

Petitioners' Joint Affidavit-Complaint adequately alleged the elements of unjust vexation. The second paragraph of Article 287 of the Revised Penal Code which defines and provides for the penalty of unjust vexation is broad enough to include any human conduct which, although not productive of some physical or material harm, could unjustifiably annoy or vex an innocent person.[54] Nevertheless, Amor and Aguilar may disprove petitioners' charges but such matters may only be determined in a full-blown trial on the merits where the presence or absence of the elements of the crime may be thoroughly passed upon.[55]

WHEREFORE, premises considered, the petition is DENIED for lack of merit. The Court of Appeals Decision dated May 23, 2007 and Resolution dated August 8, 2007 in CA-G.R. SP No. 94229, are AFFIRMED.

SO ORDERED.

Corona,[*] C.J., Leonardo-De Castro,**] Abad, and Villarama, Jr.,***] JJ., concur.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated July 19, 2010.

**] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr., per Raffle dated August 31, 2011.

***] Designated as an additional member in lieu of Associate Justice Maria Lourdes P. A. Sereno, per Special Order No. 1076 dated September 6, 2011.

[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose Catral Mendoza (now a member of this Court) and Ramon M. Bato, Jr., concurring; rollo, pp. 36-48.

[2] Rollo, p. 50.

[3] Records, pp. 129-151.

[4] Id. at 125.

[5] CA rollo, p. 439.

[6] Branch 69.

[7] Records, p. 153.

[8] Id. at 166.

[9] Id. at 126-127.

[10] Id. at 153-163.

[11] Branch 268, Pasig City. The case was docketed as Civil Case No. 2712. The decision was embodied in an Omnibus Order dated June 27, 2007; rollo, pp. 580-587

[12] The case was docketed as CA-G.R. SP No. 95241. The CA rendered the Decision on September 29, 2008; id. at 591-617.

[13] Embodied in a Joint Affidavit-Complaint, records, pp. 125-128.

[14] Records, pp. 125-128.

[15] Id. at 87.

[16] Id. at 388-389.

[17] Id. at 77-87.

[18] Id. at 170-174.

[19] Id. at 119-124.

- [20] Id. at 124.
- [21] Id. at 123.
- [22] Embodied in a Resolution dated December 15, 2005, id. at 263-264.
- [23] Records, pp. 231-233.
- [24] Id. at 266-267.
- [25] Supra note 1.
- [26] Rollo, pp. 42-48.
- [27] Supra note 2.
- [28] Rollo, p. 17.
- [29] Id. at 21.
- [30] Id. at 22-23.
- [31] Id. at 29.
- [32] Id. at 453-501.
- [33] Id. at 516-523.
- [34] Id. at 45.
- [35] Id. at 43-44.
- [36] First Women's Credit Corporation v. Baybay, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 644.
- [37] Ladlad v. Velasco, G.R. Nos. 172070-72, June 1, 2007, ___ SCRA ___.
- [38] First Women's Credit Corporation v. Baybay, supra note 36, at 644-645.
- [39] Sy v. Secretary of Justice, G.R. No. 166315, December 14, 2006, 511 SCRA 92, 96; Navarra v. Office of the Ombudsman, G.R. No. 176291, December 4, 2009, 607 SCRA 355, 363.
- [40] G.R. No. 166315, December 14, 2006, 511 SCRA 92.
- [41] G.R. No. 162187, November 18, 2005, 475 SCRA 495.
- [42] Sy v. Secretary of Justice, supra note 39, at 96-97.
- [43] Navarra v. Office of the Ombudsman, supra note 39; Sy v. Secretary of Justice, supra note 39.
- [44] Lee v. Court of Appeals, G.R. No. 90423, September 6, 1991, 201 SCRA 405, 408. Civil Code, Art. 1335.
- [45] People v. Alfeche, Jr., G.R. No. 102070, July 23, 1992, 211 SCRA 770, 779.
- [46] Lee v. Court of Appeals, G.R. No. 90423, September 6, 1991, 201 SCRA 405, 408. Civil Code, Art. 1335.
- [47] Supra note 39.
- [48] G.R. No. 163898, December 23, 2008, 575 SCRA 102.
- [49] Id. at 109; People v. Alfeche, Jr., supra note 45, at 780.

[50] Borlongan, Jr. v. Peña, G.R. No. 143591, May 5, 2010, 620 SCRA 106, 130; Baltazar v. People, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 294.

[51] Ching v. Secretary of Justice, G.R. No. 164317, February 6, 2006, 481 SCRA 609, 629-630; Preferred Home Specialties, Inc. v. Court of Appeals, G.R. No. 163593, December 16, 2005, 478 SCRA 387, 410.

[52] R.R. Paredes v. Calilung, G.R. No. 156055, March 5, 2007, 517 SCRA 369, 395.

[53] Okabe v. Hon. Gutierrez, 473 Phil 758, 780 (2004); Baltazar v. People, supra note 50, at 292-293.

[54] Maderazo v. People, G.R. No. 165065, September 26, 2006, 503 SCRA 234, 247.

[55] Sy vs. Secretary of Justice, supra note 39, at 99.

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