

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.
HON. SECRETARY OF JUSTICE RAUL M. GONZALES, OLIVER T. YAO
AND DIANA T. YAO, RESPONDENTS.**

G.R. No. 180165. April 07, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on Certiorari under Rule 45 of the Revised Rules of Court filed by petitioner Metropolitan Bank and Trust Company, seeking to reverse and set aside the Decision[1] dated 30 March 2007 and the Resolution[2] dated 16 October 2007 of the Court of Appeals in CA-G.R. SP No. 91892. In its assailed Decision and Resolution, the appellate court affirmed the Resolution[3] of the Secretary of Justice directing the City Prosecutor of Manila to move for the withdrawal of the Informations for Estafa filed against private respondents Oliver T. Yao and Diana T. Yao.

The factual and procedural antecedents of this present petition are as follows:

Petitioner is a banking institution duly authorized to engage in the banking business under Philippine laws.

Private respondents were the duly authorized representatives of Visaland Inc. (Visaland), likewise a domestic corporation engaged in the real estate development business.

In order to finance the importation of materials necessary for the operations of its sister company, Titan Ikeda Construction and Development Corporation (TICDC), private respondents, on behalf of Visaland, applied with petitioner for 24 letters of credit, the aggregate amount of which reached the sum of P68,749,487.96. Simultaneous with the issuance of the letters of credit, private respondents signed trust receipts[4] in favor of petitioner. Private respondents bound themselves to sell the goods covered by the letters of credit and to remit the proceeds to petitioner, if sold, or to return the goods, if not sold, on or before their agreed maturity dates.

When the trust receipts matured, private respondents failed to return the goods to petitioner, or to return their value amounting to P68,749,487.96 despite demand. Thus, petitioner filed a criminal complaint[5] for estafa[6] against Visaland and private respondents with the Office of the City Prosecutor of Manila (City Prosecutor).[7]

In their Counter-Affidavit,[8] private respondents denied having entered into trust receipt transactions with petitioner. Instead, private respondents claimed that the contract entered into by the parties was a Contract of Loan secured by a Real Estate Mortgage over two parcels of land situated at Tagaytay City and registered under the name of the spouses Wilbert and Isabelita King (the spouses King).[9] According to private respondents, petitioner made them sign documents bearing fine prints without apprising them of the real nature of the transaction involved. Private respondents came to know of the trust receipt transaction only after they were served a copy of the Affidavit-Complaint of the petitioner.

After the requisite preliminary investigation, the City Prosecutor found that no probable cause existed and dismissed Information Sheet (I.S.) No. 02G-30918 in a Resolution[10] dated 23 January 2003. While the City

Prosecutor was not persuaded by the defense proffered by private respondents that no trust receipt transaction existed, it nonetheless, dismissed the case for lack of evidence that prior demand was made by petitioner. The City Prosecutor underscored that for a charge of estafa with grave abuse of confidence to prosper, previous demand is an indispensable requisite.

To prove that a demand was made prior to the institution of the criminal complaint, petitioner attached to its Motion for Reconsideration a copy of a letter-demand[11] dated 27 February 2001, addressed to private respondents.

After the element of prior demand was satisfied, the City Prosecutor issued a Resolution[12] dated 11 October 2004 finding probable cause for estafa under Article 315, paragraph 1(b)[13] of the Revised Penal Code, in relation to Presidential Decree No. 115.[14] Accordingly, 23 separate Informations[15] for estafa were filed before the Regional Trial Court (RTC) of Manila against private respondents. The cases were docketed as Criminal Cases No. 04231721-44 and raffled to Branch 17 of the said court.

In the interim, private respondents appealed the investigating prosecutor's Resolution to the Secretary of Justice. In a Resolution[16] dated 31 March 2005, the Secretary of Justice ruled that there was no probable cause to prosecute private respondents for estafa in relation to Presidential Decree No. 115. The Secretary of Justice declared that the legitimate transactional relationship between the parties being merely a contract of loan, violations of the terms thereunder were not covered by Presidential Decree No. 115. Thus, the Secretary of Justice directed the City Prosecutor of Manila to move for the withdrawal of the Informations. In a subsequent Resolution[17] dated 30 August 2005, the Secretary of Justice denied petitioner's Motion for Reconsideration, for the matters raised therein had already been passed upon in his prior resolution.

Acting on the directive of the Secretary of Justice, the City Prosecutor moved for the withdrawal of the Informations which was granted by the RTC in an Order[18] dated 29 July 2005. Consequently, Criminal Cases No. 04-231721 to No. 04231744 were withdrawn. The RTC refused to reconsider its earlier resolution in an Order[19] dated 3 February 2006, thereby denying petitioner's Motion for Reconsideration.

From the adverse Resolutions of the Secretary of Justice, petitioner elevated its case before the Court of Appeals by filing a Petition for Certiorari,[20] which was docketed as CA-G.R. SP No. 91892. Petitioner averred in its Petition that the Secretary of Justice abused his discretion in ignoring the established facts and legal principles when he ruled that probable cause for the crime of estafa was absent.

The Court of Appeals, however, in its Decision[21] dated 30 March 2007, dismissed petitioner's Petition for Certiorari after finding that the Secretary of Justice committed no grave abuse of discretion in ruling against the existence of probable cause to prosecute private respondents. In arriving at its assailed decision, the appellate court recognized the authority of the Secretary of Justice to control and supervise the prosecutors, which includes the power to reverse or modify their decisions without committing grave abuse of discretion.

Similarly ill-fated was Petitioner's Motion for Reconsideration in a Resolution[22] dated 16 October 2007.

Unfazed by the turn of events, petitioner now comes before this Court urging us to reverse the Court of Appeals Decision and Resolution and to direct the filing of Informations against private respondents. For the disposition of this Court is the sole issue of:

WHETHER OR NOT PROBABLE CAUSE EXISTS FOR THE PROSECUTION OF PRIVATE RESPONDENTS FOR THE CRIME OF ESTAFA IN RELATION TO P.D. NO. 115.

Petitioner impugns the findings of the appellate court sustaining the non-existence of probable cause as found by the Secretary of Justice. Petitioner insists that the allegations in its complaint, together with the pieces of evidence

appended thereon, are sufficient to sustain a finding of probable cause in preliminary investigation.

Asserting their innocence, private respondents continue to argue that the agreement contracted by parties is one of loan, and not of trust receipt. To buttress their contention, private respondents aver that a contract of mortgage was executed by the spouses King to secure private respondents' loan obligation with petitioner, the proceeds of which were the ones utilized to finance the importation of materials.[23] Private respondents likewise defend the assailed Court of Appeals Decision and assert that the Secretary of Justice was justified in overruling the investigating prosecutor's findings, as sanctioned by Section 12 of DOJ Department Order No. 70.[24]

The present petition bears impressive merits.

Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on 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.[25] The term does not mean "actual or positive cause" nor does it import absolute certainty. It is merely based on 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.[26]

To determine the existence of probable cause, there is need to conduct preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.[27] Its purpose is 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.[28] It is a means of discovering which person or persons may be reasonably charged with a crime.

The conduct of preliminary investigation is executive in nature. The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function unless there is a showing of grave abuse of discretion or manifest error in his findings.[29] Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack or excess of jurisdiction.[30] The exercise of power must have been done in an arbitrary or a despotic manner by reason of passion or personal hostility. It must have been so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[31]

In the present case, the abuse of discretion is patent in the act of the Secretary of Justice holding that the contractual relationship forged by the parties was a simple loan, for in so doing, the Secretary of Justice assumed the function of the trial judge of calibrating the evidence on record, done only after a full-blown trial on the merits. The fact of existence or non-existence of a trust receipt transaction is evidentiary in nature, the veracity of which can best be passed upon after trial on the merits, for it is virtually impossible to ascertain the real nature of the transaction involved based solely on the self-serving allegations contained in the opposing parties' pleadings. Clearly, the Secretary of Justice is not in a competent position to pass judgment on substantive matters. The bases of a party's accusation and defenses are better ventilated at the trial proper than at the preliminary investigation.

We need not overemphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and

exhaustive presentation of the parties' evidence.[32] Precisely, there is a trial to allow the reception of evidence for both parties to substantiate their respective claims.

Having said the foregoing, this Court now proceeds to determine whether probable cause exists for holding private respondents liable for estafa in relation to Presidential Decree No. 115.

Trust receipt transactions are governed by the provisions of Presidential Decree No. 115 which defines such a transaction as follows:

Section 4. What constitutes a trust receipt transaction. - A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as the trustee, whereby the entruster, who owns or holds absolute title or security interests over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the trustee binds himself to hold the designated goods, documents or instruments in trust for the entruster and to sell or otherwise dispose of the goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt, or for other purposes substantially equivalent to any one of the following:

- In the case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale: Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the trustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or transship or otherwise deal with them in a manner preliminary or necessary to their sale; or

- In the case of instruments, a) to sell or procure their sale or exchange; or b) to deliver them to a principal; or c) to effect the consummation of some transactions involving delivery to a depository or register; or d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

An trustee is one having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person for the purpose of payment specified in the trust receipt agreement. The trustee is obliged to (1) hold the goods, documents or instruments in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipt; (2) receive the proceeds in trust for the entruster and turn over the same to the entruster to the extent of the amount owed to the entruster or as appears on the trust receipt; (3) insure the goods for their total value against loss from fire, theft, pilferage or other casualties; (4) keep said goods or the proceeds therefrom whether in money or whatever form, separate and capable of identification as property of the entruster; (5) return the goods, documents or instruments in the event of non-sale or upon demand of the entruster; and (6) observe all other terms and conditions of the trust receipt not contrary to the provisions of the decree.[33]

The entruster shall be entitled to the proceeds from the sale of the goods, documents or instruments released under a trust receipt to the trustee to the extent of the amount owed to the entruster or as appears in the trust receipt; or

to the return of the goods, documents or instruments in case of non-sale; and to the enforcement of all other rights conferred on him in the trust receipt, provided these are not contrary to the provisions of the document.[34] A violation of any of these undertakings constitutes estafa defined under Article 315(1)(b) of the Revised Penal Code, as provided by Section 13 of Presidential Decree No. 115 viz:

Section 13. Penalty Clause. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.

Apropos thereto, Article 315(1)(b) of the Revised Penal Code punishes estafa committed as follows:

ARTICLE 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of prision correccional in its maximum period to prision mayor in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos, and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such case, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed prision mayor to reclusion temporal, as the case may be.

2nd. The penalty of prision correccional in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of arresto mayor in its maximum period to prision correccional in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By arresto mayor in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means; x x x.

As found in the Complaint-Affidavit of petitioner, private respondents were charged with failing to account for or turn over to petitioner the merchandise or goods covered by the trust receipts or the proceeds of the sale thereof in payment of their obligations thereunder. The following pieces of evidence adduced from the affidavits and documents submitted before the City Prosecutor are sufficient to establish the existence of probable cause, to wit:

First, the trust receipts[35] bearing the genuine signatures of private respondents; second, the demand letter[36] of petitioner addressed to respondents; and third, the initial admission by private respondents of the receipt of the imported goods from petitioner.[37]

Prescinding from the foregoing, we conclude that there is ample evidence on record to warrant a finding that there is a probable cause to warrant the prosecution of private respondents for estafa. It must be once again stressed that 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.

That private respondents did not sell the goods under the trust receipt but allowed it to be used by their sister company is of no moment. The offense punished under Presidential Decree No. 115 is in the nature of malum

prohibitum. A mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes a criminal offense that causes prejudice not only to another, but more to the public interest.[38] Even more incredible is the contention of private respondents that they did not give much significance to the documents they signed, considering the enormous value of the transaction involved. Thus, it is highly improbable to mistake trust receipt documents for a contract of loan when the heading thereon printed in bold and legible letters reads: "Trust Receipts." We are not prejudging this case on the merits. However, by merely glancing at the documents submitted by petitioner entitled "Trust Receipts" and the arguments advanced by private respondents, we are convinced that there is probable cause to file the case and to hold them for trial.

All told, the evidentiary measure for the propriety of filing criminal charges has been reduced and liberalized to a mere probable cause. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or moral certainty.[39]

WHEREFORE, premises considered, the instant Petition is GRANTED. The Decision dated 30 March 2007 and the Resolution dated 16 October 2007 of the Court of Appeals in CA-G.R. SP No. 91892 are REVERSED and SET ASIDE. The Secretary of Justice is hereby ORDERED to direct the Office of the City Prosecutor of Manila to forthwith FILE Informations for estafa against private respondents Oliver T. Yao and Diana T. Yao before the appropriate court.

SO ORDERED.

Ynares-Santiago, (Chairperson), Corona,[*] Carpio Morales,**]and Nachura, JJ., concur.

[*] Associate Justice Renato C. Corona was designated to sit as additional member replacing Associate Justice Diosdado M. Peralta per Raffle dated 16 March 2008.

**] Per Special Order No. 602, dated 20 March 2009, signed by Chief Justice Reynato S. Puno, designating Associate Justice Conchita Carpio Morales to replace Associate Justice Ma. Alicia Austria-Martinez, who is on official leave.

[1] Penned by Associate Justice Normandie B. Pizzaro with Associate Justices Edgardo P. Cruz and Fernanda Lampas-Peralta, concurring. Rollo, pp. 61-70.

[2] Id. at 59-60.

[3] Records, pp. 268-274.

[4] Rollo, pp. 119-142. A commercial document whereby the bank releases the goods in the possession of the entrustee but retains ownership thereof while the entrustee shall sell the goods and apply the proceeds for the full payment of his liability with the bank. (Villanueva, Commercial Law Review [2004 Edition].)

[5] Records, pp. 102-128.

[6] Under Article 315 (1)(b) of the Revised Penal Code.

[7] Under Section 13 of Presidential Decree No. 115 (Trust Receipts Law), the failure of the entrustee to return the goods covered by the trust receipt or the proceeds from the sale thereof shall constitute the crime of estafa.

[8] Records, 117-128.

[9] The records do not show how the spouses King are related to private respondents or to Visaland.

[10] Rollo, pp. 271-278.

[11] Id. at 186-188.

[12] Id. at 204.

[13] 1. With unfaithfulness or abuse of confidence, namely:

x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

[14] Otherwise known as the Trust Receipts Law.

[15] Rollo, pp. 205-252.

[16] Records, pp. 268-274.

[17] Id. at 301-302.

[18] Id. at 288.

[19] Id. at 360.

[20] CA rollo, pp. 1-28.

[21] Rollo, pp. 61-70.

[22] Id. at 59-60.

[23] A copy of the alleged Real Estate Mortgage, however, is not found in the records.

[24] Section 12 - Disposition of the appeal - The Secretary may reverse, affirm or modify the resolution. He may, motu proprio or upon motion, dismiss the petition for review on any of the following grounds:

À¾ That the petition was filed beyond the period prescribed in Section 3 hereof;

À¾ That the procedure or any of the requirements herein provided has not been complied with; x x x.

[25] Yu v. Sandiganbayan, 410 Phil. 619, 627 (2001).

[26] Pilapil v. Sandiganbayan, G.R. No. 101978, 7 April 1993, 221 SCRA 349, 360.

[27] Villanueva v. Ople, G.R. No. 165125, 18 November 2005, 475 SCRA 539, 553.

[28] Gonzalez v. Hongkong & Shanghai Banking Corporation, G.R. No. 164904, 19 October 2007, 537 SCRA 255, 269.

[29] Ang v. Lucero, G.R. No. 143169, 21 January 2005, 449 SCRA 157, 168.

[30] Soria v. Desierto, G.R. Nos. 153524-25, 31 January 2005, 450 SCRA 339, 345.

[31] Id.

[32] Ang v. Lucero, supra note 29.

[33] Ching v. Secretary of Justice, G.R. No. 164317, 6 February 2006, 481 SCRA 609, 631.

[34] Id.

[35] Rollo, pp. 119-142.

[36] Id. at 186-188.

[37] Paragraph h, Counter-Affidavit; CA rollo, p. 146.

[38] Kilosbayan, Inc. v. Commission on Elections, 345 Phil. 1141, 1174 (1997).

[39] Galario v. Office of the Ombudsman (Mindanao), G.R. No. 166797, 10 July 2007, 527 SCRA 190, 204.

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