PHILIP S. YU, PETITIONER, VS. HERNAN G. LIM, RESPONDENT.

G.R. No. 182291. September 22, 2010

Ponente: PEREZ, J.

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PEREZ, J.:

The Case

In this Petition for Review[1] on Certiorari, petitioner Philip S. Yu seeks to set aside the Decision[2] dated 20 December 2007 and the Resolution[3] dated 18 March 2008 of the Court of Appeals in CA-G.R. SP No. 99893. The challenged Decision and Resolution granted respondent's petition for certiorari which sought the nullification of the Resolution[4] dated 4 September 2006 of the Secretary of Justice which, in turn, ordered the filing of an Information against respondent for the crime of Perjury.

The Antecedents

On 5 February 2004, respondent, as representative of HGL Development Corporation (HGL), filed before the Regional Trial Court (RTC) of Zamboanga City a "Petition to Declare New Owner's Duplicate of Transfer Certificate of Title Nos. T-107, 353, T-107,354, T-107,355, T-103,790 as Null and Void and to Revive the Old Owner's Duplicate."[5] This petition was docketed as Cadastral Case No. 04-09 before Branch 14 of said court.

It appears that petitioner and his co-owners of the aforementioned parcels of land sold the same to HGL by virtue of a Deed of Absolute Sale dated 19 August 2003.[6] HGL then sought the cancellation of the Transfer Certificate of Titles (TCTs) in the names of the vendors, and the issuance of new TCTs in its name, with the Register of Deeds of Zamboanga City. The latter, however, refused to do so on the ground that new owner's duplicate copies of the TCTs covering the subject parcels of land had been issued to the vendors by virtue of an order of RTC, Branch 16, Zamboanga City dated 7 July 1995.[7] Apparently, the vendors succeeded in having the TCTs in their possession cancelled, and new owner's duplicates thereof issued to them, by alleging the loss of their copies of the TCTs.[8] Hence, the refusal of the Register of Deeds of Zamboanga City to cancel the TCTs presented by HGL, it appearing that the same had already been cancelled as far back as 1995.

Demands were then made by respondent upon the vendors to surrender the new owner's duplicate copies of the TCTs to enable HGL to secure their cancellation and the issuance of new TCTs in its name, but the vendors unreasonably refused to comply with the demands.[9] Thus, the filing of Cadastral Case No. 04-09, wherein HGL, through herein respondent, prayed for the declaration as null and void of the new owner's duplicate TCTs and the revival of the original owner's duplicate TCTs in the possession of HGL.[10] The petition was dismissed by the trial court on 20 May 2004 for lack of merit.[11]

On 2 June 2004, HGL filed a complaint[12] before the Regional Trial Court of Caloocan City against some of the vendors, namely: Sy Pek Ha, Ricafort S. Yu, and herein petitioner Philip S. Yu, for "Specific Performance and Surrender of Owner's Duplicate Titles, Declaratory Relief or Reformation of Instrument, Cancellation and Issuance of New Titles, and Damages," praying, among others, that defendants be ordered to surrender to plaintiff

the new owner's duplicate TCTs and that the Register of Deeds of Zamboanga City be ordered to cancel all TCTs in the name of the vendors and new ones be issued to HGL. The complaint was docketed as Civil Case No. C-20899(04).

On 18 August 2005, petitioner filed before the Office of the City Prosecutor of Caloocan City a criminal complaint[13] for Perjury against respondent, alleging that as the representative of HGL, the latter made untruthful statements in the Verification and Certification Against Forum Shopping which he signed and attached to the above-mentioned civil complaint for specific performance. Petitioner claimed that respondent's statement that HGL has not commenced any other action or filed any claim involving the same issues in any other court, tribunal or quasi-judicial agency is absolutely false since the corporation had earlier filed Cadastral Case No. 04-09 with the RTC of Zamboanga City.[14]

The Ruling of the Office of the City Prosecutor of Caloocan City

In its Resolution[15] dated 15 February 2006, the Office of the Assistant City Prosecutor of Caloocan City dismissed, for lack of merit, petitioner's complaint for perjury. It found that while the Zamboanga case and the Caloocan case involve the same res, they do not involve the same parties and the same rights or relief prayed for. The causes of action in the two cases are likewise not the same, being founded on different acts. In other words, none of the requisites of forum shopping were satisfied. Hence, it concluded, it follows that respondent did not commit perjury when he made his representations in the Certificate of Non-Forum Shopping.[16]

Petitioner filed an appeal from the Resolution of the city prosecutor dismissing his complaint. In his Petition for Review[17] before the Department of Justice, petitioner claimed that the city prosecutor of Caloocan City committed manifest and reversible error in dismissing the criminal complaint against respondent since all the elements of perjury are present in this case.[18] He thus prayed for the reversal and setting aside of the Resolution of the city prosecutor.[19]

The Ruling of the Department of Justice

In its Resolution[20] dated 4 September 2006, the Department of Justice granted the petition for review and directed the filing of an Information for Perjury against respondent. It held that Cadastral Case No. 04-09, filed in Zamboanga City, involved the same TCTs, the same relief for the declaration of nullity of the TCTs in the possession of the vendors, the same parties and essentially the same facts and issues as Civil Case No. 20899(04) pending in the RTC of Caloocan City.[21] Thus, it is clear that respondent should have disclosed in his Verification and Certification Against Forum Shopping the previous filing of Cadastral Case No. 04-09.[22]

Respondent filed a Motion for Reconsideration[23] dated 8 September 2006 praying for the reversal of the aforesaid Resolution but the same was denied in a Resolution dated 29 June 2007.[24]

As a result, respondent filed a Petition for Certiorari with an Urgent Application for a Temporary Restraining Order and Writ of Preliminary Injunction[25] with the Court of Appeals praying that the appellate court declare that no probable cause exists to indict him for perjury, that the criminal complaint be dismissed, and that a writ of preliminary injunction be issued directing the Secretary of Justice to cease and desist from implementing his assailed resolutions.[26] Respondent claimed that in issuing the questioned resolutions, the Secretary of the Department of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction. He maintained that there is absolutely no probable cause to indict him for perjury as he has not made any willful and deliberate assertion of a falsehood in his Verification and Certification Against Forum Shopping.[27]

The Ruling of the Court of Appeals

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In its Decision[28] dated 20 December 2007, the Court of Appeals granted respondent's petition, nullified and set aside the assailed resolutions, and prohibited the Secretary of Justice and the Office of the City Prosecutor of Caloocan and their agents from prosecuting respondent for perjury. The Court of Appeals held that the lack of probable cause against respondent herein is glaringly evident from the records; hence, the Secretary of Justice committed grave abuse of discretion amounting to excess or lack of jurisdiction when he issued the challenged resolutions.[29]

Petitioner filed a motion for reconsideration but the same was denied by the Court of Appeals in a Resolution dated 18 March 2008.[30]

Hence, this petition for review on certiorari.

The Issue

The lone issue for consideration in the case at bar is whether or not the Court of Appeals erred in modifying and setting aside the resolutions of the Department of Justice directing the filing of an Information for Perjury against respondent herein.

Petitioner claims that all the elements of perjury -

> (a) That the accused made a statement under oath or executed an affidavit upon a material matter;
>
> (b) That the statement or affidavit was made before a competent officer authorized to receive and administer oaths;
>
> (c) That in the statement or affidavit, the accused made a willful and deliberate assertion of a falsehood; and
>
> (d) That the sworn statement or affidavit containing the falsity is required by law or made for a legal purpose

-- are present in this case. The Verification and Certification Against Forum Shopping is a statement under oath, subscribed and sworn to before a duly commissioned notary public, in which respondent made a willful and deliberate assertion of a falsehood. The falsehood consists in respondent's pronouncement that the corporation which he represents has not commenced any other action or filed any claim, involving the same issues, in any other court, tribunal or quasi-judicial agency. Petitioner maintains that this statement is absolutely false considering the earlier act of respondent of filing a cadastral case in Zamboanga City involving substantially the same parties, facts, issues and reliefs prayed for.[31] According to petitioner, the two cases have one and the same legal objective: the cancellation of the new owner's duplicate copies of titles in the possession of the defendants (the vendors) in the Caloocan City case and the upholding of the owner's duplicate copies of titles in the corporation's possession. Thus, respondent had the legal obligation to disclose the previous filing and dismissal of the cadastral case.[32]

Petitioner further contends that the matter of whether the act of making a "false certification" should subject the offender to prosecution for perjury is to be tested not by the elements of forum shopping but by the elements of perjury. Consequently, regardless of whether or not respondent is guilty of forum shopping, what is at issue in the criminal complaint is whether respondent made a willful and deliberate assertion in a public document of a falsehood upon a material matter regarding which he had the legal obligation to state the truth. Petitioner submits that respondent had done so, making the latter liable for prosecution for the crime of perjury under Article 183 of the Revised Penal Code.[33]

Finally, petitioner asserts that concomitant with his authority and power to control the prosecution of criminal offenses, it is the public prosecutor who is vested with the discretionary power to determine whether a prima facie

case exists or not. Given this latitude and authority granted by law to the investigating prosecutor, the rule is that courts will not interfere with the conduct of preliminary investigations or the determination of what constitutes sufficient probable cause for the filing of the corresponding information against an offender. Courts are not empowered to substitute their own judgment for that of the executive branch. As a matter of whether to prosecute or not is purely discretionary on the part of the public prosecutor, his findings on the existence of probable cause are not subject to review by the courts, unless these are patently shown to have been made with grave abuse of discretion.[34]

The Ruling of the Court

At the outset, it must be stated that what the Court is essentially called upon to resolve in this case is the existence of probable cause sufficient to indict respondent for perjury.

Petitioner correctly pointed out that this Court will not ordinarily interfere with the conduct of preliminary investigation and leave to the investigating prosecutor adequate latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against an offender.[35] Nonetheless, as petitioner himself admitted, the rule applies unless such determination is patently shown to have been made with grave abuse of discretion. Thus, as an exception, this Court may inquire into the determination of probable cause during preliminary investigation if, based on the records, the prosecutor committed grave abuse of discretion.[36]

The exception to the rule finds application here. As properly found by the Court of Appeals, the Secretary of Justice manifestly acted with or in excess of his authority when he ordered the filing of an information for perjury against respondent despite the absence of probable cause against him.[37]

Petitioner insists that the existence - or absence - of perjury should be defined by its own elements, and not those of forum shopping. Hence, petitioner argued, even if the elements of forum shopping may not all be present, such fact does not relieve the affiant from liability for perjury if all the elements of this latter offense are otherwise present.[38]

What this argument failed to consider, however, is that since perjury requires a willful and deliberate assertion of a falsehood in a statement under oath or in an affidavit, and the statement or affidavit in question here is respondent's verification and certification against forum shopping, it then becomes necessary to consider the elements of forum shopping to determine whether or not respondent has committed perjury. In other words, since the act of respondent allegedly constituting perjury consists in the statement under oath which he made in the certification of non-forum shopping, the existence of perjury should be determined vis-à-vis the elements of forum shopping.

It is significant to note that, notwithstanding his protests and insistence against the application of the elements of forum shopping in deciding whether or not perjury exists, petitioner himself, in his petition, utilized the elements of forum shopping to support his argument that the statement of respondent that "the corporation has not commenced any other action or filed any claim involving the same issues in any other court" is "absolutely false". Thus, petitioner claimed that:

> "(a) As to the principal party. HGL Development Corporation is the petitioner in both cases. x x x. The fact that in the civil case, x x x the parties involved are HGL and private respondent, among others, is of no moment. It is apparent that the parties are substantially identical, if not the same. x x x.
>
> "(b) As to the essential facts. In both cases HGL Development Corporation is asserting legal ownership of five parcels of land located at Zamboanga City x x x.

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> "(c) As to the essential issues. The essential issues are identical in both cases. These issues refer to (a) the legal ownership of the subject parcels of land; (b) who between the parties are validly entitled to the owner's duplicate copies of the titles; and (c) which of the titles - the ones in the corporation's possession or in the other parties' possession - should be declared valid. In both the cadastral case in Zamboanga City and the civil case in Caloocan City, HGL Development Corporation prayed for the upholding of its right of ownership over the properties and of the validity of the owner's duplicate copies of titles in its possession and, inevitably, the cancellation or declaration as null and void of contrary owner's duplicate copies of titles over the same properties.
>
> "(d) As to the relief prayed for. In both cases, the corporation prayed for the declaration as null and void of the new owner's duplicate copies and for the revival or restoration of the original duplicate copies in its possession. x x x."[39]

The foregoing is explicit acknowledgement of the necessity of determining first whether or not the elements of forum shopping are present in order to finally resolve the issue of perjury.

Forum shopping exists when the elements of litis pendentia are present or where a final judgment in one case will amount to res judicata in another. Litis pendentia requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to res judicata in the other case.[40]

What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[41]

Based on the foregoing considerations, respondent did not have the legal obligation to disclose the previous filing and subsequent dismissal of the cadastral case in Zamboanga City.

As correctly put by the Assistant City Prosecutor of Caloocan City in his Resolution dismissing petitioner's complaint for perjury:

> "A perusal of the two cases would show that while it involves the same res, it does not involve the same parties or rights or relief prayed for. In sum, none of the requisites [of forum shopping were] satisfied.
>
> "The case in Caloocan was of course founded upon the complainants' failure to comply with its obligations as vendor, and therefore, it cannot be gainsaid that the rights asserted (by respondent as buyer and relief sought therein i.e., specific performance contract of sale) were entirely different from those asserted in Zamboanga (revival of the old owner's duplicate that had been thought to be lost). The latter case stemmed from the finding of the old certificates, leading to respondent's filing a petition to declare the new certificates null and void and to revive the old owner's duplicate. The former case arose from the deed of absolute sale and the failure of the complainant to fulfill its obligation under the contract of sale between the parties herein.
>
> "The causes of action in the two cases are not the same: they are founded on different acts; the rights violated are different; and the relief sought is also different. The res judicata test when applied to the two cases in question shows that regardless of whoever will ultimately prevail in the Zamboanga case, the final judgment therein-whether granting or denying the petition-will not be conclusive between the parties in the Caloocan case, and vice versa. x x x."[42]

Moreover, in the Zamboanga case, what was invoked was the court's cadastral or administrative authority, the

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issue being administrative in nature, involving as it does the correction of a wrongful issuance of duplicate titles. There were no judicial issues that required resolution.

In the Caloocan case, on the other hand, the issues are civil in nature, concerning the rights and responsibilities of the parties under the Deed of Absolute Sale which they executed. Hence, in this case, the Caloocan court is called upon to exercise its judicial powers.

Clearly, it cannot be said that respondent committed perjury when he failed to disclose in his Certification Against Forum Shopping the previous filing of the cadastral case.

More importantly, it must be emphasized that perjury is the willful and corrupt assertion of a falsehood under oath or affirmation administered by authority of law on a material matter. Thus, a mere assertion of a false objective fact or a falsehood is not enough. The assertion must be deliberate and willful.[43]

In the case at bar, even assuming that respondent was required to disclose the Zamboanga case, petitioner failed to establish that respondent's failure to do so was willful and deliberate. Thus, an essential element of the crime of perjury is absent. As a result, there is no reason to disturb the ruling of the Court of Appeals.

WHEREFORE, the instant petition is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 99893 dated 20 December 2007 and 18 March 2008, respectively, are hereby AFFIRMED. Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Carpio Morales,[*] Velasco, Jr., and Abad,[**] JJ., concur.

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[*] Additional member in lieu of Associate Justice Teresita J. Leonardo-de Castro per Special Order No. 884 dated 1 September 2010.

[**] Designated additional member per Raffle dated 1 July 2010.

[1] Rollo, pp. 28-48.

[2] Penned by Associate Justice Mariano C. Del Castillo with Associate Justices Lucas P. Bersamin (now a member of this Court) and Romeo F. Barza, concurring; rollo, pp. 7-23.

[3] Id. at 25-26.

[4] CA rollo, pp. 31-36.

[5] Id. at 64-67.

[6] Id. at 49-51.

[7] Rollo, p. 75.

[8] Id. at 123.

[9] Id. at 75.

[10] Id. at 119.

[11] Id. at 151.

[12] Id. at 71-82.

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[13] Id. at 336-337.

[14] CA rollo, p. 90.

[15] Rollo, pp. 349-354.

[16] Id. at 353-354.

[17] Id. at 355-367.

[18] Id. at 361.

[19] Id. at 367.

[20] CA rollo supra note 4.

[21] Id. at 34.

[22] Id. at 35.

[23] Id. at 140-150.

[24] Id. at 29.

[25] Id. at 2-26.

[26] Id. at 24-25.

[27] Id. at 12.

[28] Rollo, pp. 7-23.

[29] Id. at 22.

[30] Id. at 25.

[31] Id. at 37-38.

[32] Id. at 40-41.

[33] Id. at 43.

[34] Id. at 44-46.

[35] Monfort III vs. Salvatierra, G.R. No. 168301, 5 March 2007, 517 SCRA 447, 463, citing Punzalan vs. Dela Peña, G.R. No. 158543, 21 July 2004, 434 SCRA 601, 611.

[36] Id. citing Filadams Pharma, Inc. vs. Court of Appeals, G.R. No. 132422, 30 March 2004, 426 SCRA 460, 470.

[37] Rollo, p. 15.

[38] Id. at 565.

[39] Id. at 38-39.

[40] Lim vs. Vianzon, G.R. No. 137187, 3 August 2006, 497 SCRA 482, 494-495, citing Rudecon Management Corporation vs. Singson, G.R. No. 150798, 31 March 2005, 454 SCRA 612, 632- 633.

[41] Id. at 495.

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[42] Rollo, pp. 353-354.

[43] Villanueva vs. Secretary of Justice, G.R. No. 162187, 18 November 2005, 475 SCRA 495, 513, citing U.S. vs. Estraña, 16 Phil. 520 (1910) and Padua vs. Paz, A.M. No. P-00-1445, 30 April 2003, 402 SCRA 21.

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