

CLAY & FEATHER INTERNATIONAL, INC., RAUL O. ARAMBULO, AND ADAM E. JIMENEZ III (FOR THEMSELVES AND FOR CLAY AND FEATHER INTL., INC., PETITIONERS, VS. ALEXANDER T. LICHAYTOO AND C...

G.R. No. 193105. May 30, 2011

Ponente: NACHURA, J.

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NACHURA, J.:

Before the Court is a petition for review on certiorari under Rule 45 of the Rules of Court, assailing the Decision[1] dated February 26, 2010 and the Resolution[2] dated July 21, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 111007.

The facts of the case are, as follows:

Petitioners Raul Arambulo (Arambulo) and Adam E. Jimenez III (Jimenez) and respondents Alexander T. Lichaytoo (Alexander) and Clifford Lichaytoo (Clifford) are stockholders and incorporators of Clay & Feather International, Inc. (CFII), a domestic corporation engaged in the business of marketing guns and ammunitions. Petitioner Arambulo is the President of CFII, while petitioner Jimenez is a member of the Board of Directors. On the other hand, respondent Alexander is the Corporate Secretary of CFII, while respondent Clifford is its Chief Finance Officer/Treasurer. Petitioners own fifty percent (50%) of the shares of stock of CFII, and respondents own the remaining 50%.[3]

In a complaint-affidavit dated April 4, 2008, petitioners charged respondents before the Office of the City Prosecutor of Makati with the crime of five (5) counts of Qualified Theft, defined and penalized under Article 310, in relation to Article 308, of the Revised Penal Code.[4]

Petitioners alleged that sometime in February 2006 to November 2007, respondents, by virtue of their positions in CFII and with grave abuse of confidence, intentionally, maliciously, and feloniously, with intent to gain and to profit thereby, took several firearms owned by CFII without the knowledge and consent of the corporation and its stockholders. The firearms taken are, as follows:

Source of Firearms

Kind

Make

Caliber

Serial No.

Date Taken

Amount

1. C & F

Shotgun

Beretta DT10 Skeet

12ga

AG0222B

February 2006

Euro 3,577.00

2. C & F

Shotgun

Beretta DT10 LTD Trap

12ga

AF9670B

February 2006

Euro 3,894.00

3. C & F

Shotgun

Beretta DT10L Trap

12ga

AF6715B

November 2007

Euro 5,091.00

4. C & F

Shotgun

Beretta

20ga

AA311917 AB315666

June 2007

Euro 590

5. C & F

Shotgun

Beretta

12ga

C15987B

November 2006

Euro 12,066.00

TOTAL AMOUNT

Euro 25,218.00*

*Philippine Currency equivalent is One Million Six Hundred Thirty Nine Thousand One Hundred Seventy Pesos (P1,639,170.00) at the rate of Sixty-Five Pesos per Euro (P65/Euro).[5]

In their counter-affidavit dated May 5, 2008, respondents sought the dismissal of the criminal complaint, and stressed that petitioners filed the same as a form of harassment intended to divest respondents of their interests in CFII, as well as in retaliation of the criminal complaint for Qualified Theft that they previously filed against petitioner Arambulo. They argued that there was no basis for petitioners to charge them with Qualified Theft, as the subject firearms were purchased by them, and were, in fact, already paid in full. They averred that since CFII does not maintain a Euro bank account, all foreign exchange payments for the company's purchases of guns and ammunitions were deposited in respondents' Euro bank accounts with Hongkong and Shanghai Bank. Like all corporate financial transactions of CFII, the payments for the subject firearms described in items 1, 2, and 5 were deposited in the Euro accounts of respondents. As payments for the firearms described in items 1 and 2, which cost Euro 3,577.00 and Euro 3,894.00, respectively, respondents deposited the total amount of Euro 7,471.00 in the Euro bank account under the name "Clifford/Alexander Lichaytoo." As to the firearm described in item 5, the amount of Euro 12,066.00 was debited from the Euro account under the name "Clifford/Melissa Lichaytoo." Respondents claimed that even petitioner Arambulo did this practice when he himself purchased guns from CFII.[6]

Respondents further claimed that the firearms described in items 3 and 4 were paid by way of offsetting against advances made by respondent Alexander for CFII's importation of 2,000 Beretta 92s pistols. They alleged that these transactions were fully accounted for and disclosed to the auditor, who was chosen by petitioners themselves, and that petitioner Arambulo was aware of the offsetting for the firearms described in items 3 and 4, since he was closely monitoring the payments made by CFII to respondent Alexander.[7]

On May 9, 2008, petitioners filed a reply-affidavit, refuting the arguments of respondents. They admitted that CFII does not have a Euro bank account in its name, and that the corporation uses the Euro bank accounts of respondents to send payments in Euros to their suppliers. However, petitioners stressed that respondents cannot claim ownership of the funds, which were sent to the suppliers of the firearms, since the foreign currency (Euro) was purchased from currency dealers using CFII funds generated from its corporate funds and orders paid in advance by its customers. Thus, petitioners argued that this fact does not indicate that the funds used and deposited by respondents in paying for the firearms under items 1, 2, and 5 were respondent Alexander's personal funds. In the same manner, the remittances to CFII suppliers withdrawn from the Euro bank accounts of petitioners do not show to which supplier and to what particular firearms the deposits and payments pertain. No concrete proof was shown that the firearms under items 3 and 4 were indeed the subject of offsetting from the advances made by respondent Alexander to CFII's purchase of the 2,000 Beretta 92s pistols. The petty cash vouchers attached to the counter-affidavit of respondents were too general, there being no particular breakdown and official receipts presented to correlate the same to the alleged offsetting.[8]

After the submission of the rejoinder-affidavit of respondents and of the sur-rejoinder affidavit of petitioners, and

after the requisite preliminary investigation, the Office of the City Prosecutor of Makati City issued a Resolution[9] on July 7, 2008, the fallo of which reads:

Foregoing considered, it is respectfully recommended that the complaint against respondents Clifford T. Lichaytoo and Alexander T. Lichaytoo for the crime of Qualified Theft be DISMISSED for insufficiency of evidence.[10]

Aggrieved, petitioners filed a petition for review before the Office of the Secretary of the Department of Justice. On June 2, 2009, the Secretary of Justice issued a resolution,[11] the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition is hereby GRANTED and the Resolution of the Office of the City Prosecutor of Makati dated July 7, 2008 is hereby REVERSED and SET ASIDE. The Office of the City Prosecutor of Makati is hereby ordered to file the necessary information/s against [respondents] Alexander and Clifford Lichaytoo and to report the action taken within ten (10) days from the receipt hereof.

SO ORDERED.[12]

Respondents filed a motion for reconsideration. However, the same was denied in a resolution[13] dated August 20, 2009. Respondents then filed a petition for certiorari with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction under Rule 65 of the Rules of Court before the CA. On February 26, 2010, the CA rendered a Decision,[14] the dispositive portion of which reads:

WHEREFORE, premises considered, the instant Petition for Certiorari is hereby GRANTED. The assailed Resolutions dated June 2, 2009 and August 20, 2009 of public respondent Secretary of Justice are ANNULLED. Accordingly, the Resolution dated July 7, 2008 of the Office of the City Prosecutor of Makati City dismissing the complaint for Qualified Theft is REINSTATED. The Regional Trial Court, Branch 150, Makati City is ORDERED to DISMISS and QUASH the Informations for Qualified Theft against [respondents].

SO ORDERED.[15]

Petitioners filed a motion for reconsideration. On July 21, 2010, the CA issued a Resolution[16] denying the said motion. Hence, the instant petition.

The sole issue for resolution is whether the CA committed reversible error in ordering the dismissal of the information for 5 counts of Qualified Theft against respondents. The resolution of the issue requires a determination of the existence of probable cause, in order to indict respondents for Qualified Theft.

We rule in favor of petitioners.

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof, and should be held for trial. Probable cause is meant such set of facts and circumstances, which would lead a reasonably discreet and prudent man to believe that the offense charged in the Information, or any offense included therein, has been committed by the person sought to be arrested. In determining probable cause, the average person weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than bare suspicion, but it requires less than evidence that would justify a conviction.[17]

A finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. It is enough that the act or omission complained of constitutes the offense charged.[18] The term does

not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. A trial is intended precisely for the reception of prosecution evidence in support of the charge. The court is tasked to determine guilt beyond reasonable doubt based on the evidence presented by the parties at a trial on the merits.[19]

To constitute the crime of Theft, defined and penalized under Article 308[20] of the Revised Penal Code, the following elements must be established that: (1) there be taking of personal property; (2) said property belongs to another; (3) the taking be done with intent to gain; (4) the taking be done without the consent of the owner; and (5) the taking be accomplished without use of violence against or intimidation of persons or force upon things.[21]

Theft is qualified under Article 310[22] of the Revised Penal Code under the following circumstances: (1) if the theft is committed by a domestic servant; (2) if the theft is committed with grave abuse of confidence; (3) if the property stolen is a (a) motor vehicle, (b) mail matter, or (c) large cattle; (4) if the property stolen consists of coconuts taken from the premises of a plantation; (5) if the property is fish taken from a fishpond or fishery; or (6) if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance.

In the instant case, the affidavit-complaint and the pleadings petitioners filed with the Office of the City Prosecutor sufficiently show all the elements of theft. The evidence on hand sufficiently shows that, more likely than not, the crime of Qualified Theft has been committed and the same was committed by respondents. There was unlawful taking by respondents of the subject firearms that incontestably belonged to CFII. The taking was without the consent of the owner CFII and was accomplished without the use of violence against or intimidation of persons or force upon things. Furthermore, the subject firearms were taken with grave abuse of confidence in as much as respondents could not have taken the subject firearms if not for the positions that they held in the company. This last circumstance qualifies the offense charged. However, our pronouncement as to the existence of probable cause does not delve into the merits of the case; neither do we pronounce that the evidence is sufficient to secure a conviction.

The counter-allegations of respondents essentially delve on evidentiary matters that are best passed upon in a full-blown trial. The issues upon which the charges are built pertain to factual matters that cannot be threshed out conclusively during the preliminary stage of the case. Precisely, there is a trial for the presentation of prosecution's evidence in support of the charge.[23] The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. The validity and merits of a party's defense or accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[24]

WHEREFORE, in view of the foregoing, the instant petition is GRANTED. The Decision dated February 26, 2010 and the Resolution dated July 21, 2010 of the Court of Appeals in CA-G.R. SP No. 111007 are hereby REVERSED and SET ASIDE. The Resolution of the Secretary of Justice dated June 2, 2009 is hereby REINSTATED.

SO ORDERED.

Carpio, (Chairperson), Peralta, Abad, and Mendoza, JJ., concur.

[1] Penned by Associate Justice Ramon R. Garcia, with Associate Justices Rosalinda Asuncion-Vicente and Franchito N. Diamante, concurring; rollo, pp. 52-74.

[2] Penned by Associate Justice Ramon C. Garcia, with Associate Justices Mariflor P. Punzalan Castillo and Franchito N. Diamante, concurring; id. at 77-78.

[3] Id. at 53.

[4] Id. at 54.

[5] Id.

[6] Id. at 55-56.

[7] Id. at 56.

[8] Id. at 57.

[9] Penned by Assistant City Prosecutor Edna J. Conde, with the approval of City Prosecutor Feliciano Aspi; id. at 217-221.

[10] Id. at 221.

[11] Penned by Secretary Raul M. Gonzalez; id. at 129-137.

[12] Id. at 136.

[13] Penned by Acting Secretary Agnes VST Devanadera; id. at 138-139.

[14] Supra note 1.

[15] Id. at 74.

[16] Supra note 2.

[17] *Sarigumba v. Sandiganbayan*, 491 Phil. 704-705, 719-720 (2005).

[18] *Atty. Rison v. Hon. Desierto*, 484 Phil. 63, 71 (2004).

[19] Id.

[20] Art. 308. Who are liable for theft.-; Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

Theft is likewise committed by:

1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
3. Any person who shall enter an inclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.

[21] *Valenzuela v. People of the Philippines*, G. R. No. 160188, June 21, 2007, 525 SCRA 308, 324; *Tan v. People*, 372 Phil. 96,105 (1999); *United States v. De Vera*, 43 Phil. 1000 (1922).

[22] Art. 310. Qualified Theft. - The crime of theft shall be punished by the penalties next higher by two degrees

than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consist of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

[23] Quiambao v. Desierto, G.R. No. 149069, September 20, 2004, 438 SCRA 496-497, 508.

[24] Andres v. Cuevas, G.R. No. 150869, June 9, 2005, 460 SCRA 40, 52.

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