

HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND, PETITIONER, VS. CHRISTINA SAGUN, RESPONDENT.

G.R. No. 205698. July 31, 2018

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

We hereby consider and resolve the following consolidated appeals by petition for review on certiorari,[1] namely:

(1) G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452 and 228730, whereby petitioners Department of Justice (DOJ), the People of the Philippines and the Home Development Mutual Fund (HDMF) assail the decisions[2] of the Court of Appeals (CA): (i) setting aside the August 10, 2011 Review Resolution of the DOJ insofar as Christina Sagun (Sagun) is concerned; and (ii) annulling the May 22, 2012 and August 22, 2012 resolutions of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga (Pampanga RTC), and quashing the warrants of arrest issued against Delfin Lee, Dexter Lee (Dexter), and Atty. Alex Alvarez (Atty. Alvarez) for lack of probable cause;

(2) G.R. No. 230680, whereby petitioner Cristina Salagan assails the decision of the CA dismissing her petition for certiorari and upholding the resolutions dated May 22, 2012 and January 29, 2014 of the Pampanga RTC insofar as finding probable cause for the crime of syndicated estafa and the issuance of a warrant of arrest against her were concerned;

(3) G.R. Nos. 208744 and 210095, whereby the DOJ challenges the resolutions of the CA dismissing its petition for certiorari for being filed out of time;[3] and

(4) G.R. No. 209424, whereby HDMF assails the decision promulgated on October 7, 2013,[4] whereby the CA found no grave abuse of discretion on the part of the Regional Trial Court, Branch 58, in Makati City (Makati RTC) in issuing its January 31, 2012 final resolution granting the motion for summary judgment of Globe Asiatique Realty Holdings, Corp. (Globe Asiatique) and Delfin Lee in Civil Case No. 10-1120 entitled Globe Asiatique Realty Holdings Corporation and Delfin Lee, in his capacity as President of the Corporation v. Home Development Mutual Fund (HDMF) or Pag-IBIG Fund, its Board of Trustees and Emma Linda Faria, Officer-in-Charge.

Salient Factual Antecedents

In 2008, Globe Asiatique, through its president Delfin Lee, entered into a Window I-Contract to Sell (CTS) Real Estate Mortgage (REM) with Buy-back Guaranty take out mechanism with the HDMF, also known as the Pag-Ibig Fund, for its Xevera Bacolor Project in Pampanga. Globe Asiatique and HDMF also executed various Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOAs).[5]

Under the FCAs, Delfin Lee warranted that the loan applicants that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, were existing buyers of its real estate and qualified to avail themselves

of loans from HDMF under the Pag-Ibig Fund; that all documents submitted to the HDMF in behalf of the applicants, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding and enforceable; that any person or agent employed by Globe Asiatique or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and that in the event of a default of the three-month payment on the amortizations by said members or any breach of warranties, Globe Asiatique would buy back the CTS/REM accounts during the first two years of the loan.[6]

The parties further agreed that Globe Asiatique would collect the monthly amortizations on the loans obtained by its buyers in the first two years of the loan agreements and remit the amounts collected to HDMF through a Collection Servicing Agreement (CSA). In this regard, Delfin Lee undertook to maintain at least 90% Performing Accounts Ratio (PAR) under the CSA.[7]

On June 10, 2008, Delfin Lee proposed the piloting of a Special Other Working Group (OWG) Membership Program for its Xevera Bacolor Project while the FCA was in effect. The OWG Membership Program would comprise of HDMF members who were not formally employed but derived income from non-formal sources (e.g., practicing professionals, self-employed members, Overseas Filipino Workers (OFWs), and entrepreneurs). Delfin Lee offered to extend the buy-back guarantee from two to five years to bolster his position that the project was viable. HDMF eventually entered into another agreement for this purpose.[8]

Corollary to the foregoing, the parties entered into a second FCA worth P200,000,000.00. Globe Asiatique likewise undertook that the PAR for all of its projects would be increased to at least 95%; that the buy-back guaranty for all accounts taken out from the Xevera Bacolor Project would be increased to five years; that it would assign all its housing loan proceeds from its other projects to HDMF to cover any unpaid obligations from the Xevera Project; and that the OWG borrowers, to be eligible for Pag-Ibig Membership, would be required to present their Income Tax Returns (ITRs) and affidavits of income.[9]

On July 13, 2009, the parties executed a MOA granting Globe Asiatique an additional P5,000,000,000.00 funding commitment line for its Xevera Projects in Pampanga on the condition that Globe Asiatique would maintain a 95% PAR, and that the housing loan take-outs would be covered by a buy-back guaranty of five years.[10] Section 9 of the MOA expressly stated, however, that the MOA "supersedes, amends and modifies provisions of all other previous and existing Agreements that are Inconsistent hereto." [11]

More FCAs were executed between the parties. According to HDMF, the aggregate amount of P7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to September 24, 2010, representing a total of 9,951 accounts.[12]

In the course of its regular validation of buyers' membership eligibilities for taking out loans for the Xevera Project, HDMF allegedly discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique, its owners, officers, directors, employees, and agents/representatives, in conspiracy with HDMF employees. HDMF invited the attention of Delfin Lee regarding some 351 buyers who surrendered or withdrew their loans and were no longer interested in pursuing the same, and requested Globe Asiatique to validate the 351 buyers. Delfin Lee replied that Globe Asiatique was actually monitoring about 1,000 suspicious buyers' accounts. Subsequently, HDMF ostensibly found out about an additional 350 buyers who either denied knowledge of having availed of loans or manifested their intention to terminate their account.[13]

As a result, HDMF revoked the authority of Globe Asiatique under the FCA; suspended all take-outs for new housing loans; required the buy-back of the 701 fraudulent accounts; and cancelled the release of funds to Globe Asiatique in August 2010.

About a month later, Globe Asiatique discontinued remitting the monthly amortization collections from all borrowers of Xevera.

Finally, HDMF terminated the CSA with Globe Asiatique on August 31, 2010.[14]

Meanwhile, HDMF continued its post take-out validation of the borrowers, and discovered that at least 644 supposed borrowers under the OWG Membership Program who were processed and approved by Globe Asiatique for the take-out by HDMF were not aware of the loans they had supposedly signed in relation to the Xevera Project; and assuming they were aware of the loan agreements, they had merely signed the same in consideration of money given to them by Globe Asiatique; that some borrowers were neither members of HDMF nor qualified to take out a housing loan from HDMF because they had insufficient or no income at all or they did not have the minimum number of contributions in HDMF; and that some of the borrowers did not live in the units they purchased.[15]

HDMF alleged that at least 805 borrowers could not be located or were unknown in the addresses they had provided in the loan agreements, or had indicated non-existent addresses therein; and that it incurred damages totalling P1.04 billion covering the loans of 644 fraudulent and 805 fake borrowers attributed to the fraudulent and criminal misrepresentations of Delfin Lee and Globe Asiatique's officials and employees.[16]

The Criminal Charges

Upon the recommendation of the National Bureau of Investigation (NBI), the DOJ conducted its preliminary investigation against Globe Asiatique, particularly its officers, namely: Delfin S. Lee, Dexter L. Lee, Ramon Palma Gil, Cristina Salagan, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Atty. Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguing, John Tungol and Atty. Alex Alvarez on the strength of the complaint-affidavit dated October 29, 2010 filed by Emma Linda B. Faria, then the officer-in-charge (OIC) of the HDMF. This first complaint alleged the commission of the crime of syndicated estafa constituting economic sabotage, as defined and penalized under Article 315(2)(a) of the Revised Penal Code, in relation to Presidential Decree No. 1689 (P.D. No. 1689).[17]

The DOJ formed a panel of prosecutors to investigate the complaint.

On December 10, 2010, the NBI Anti-Graft Division recommended the filing of a second complaint for syndicated estafa constituting economic sabotage under P.D. No. 1689, in relation to Article 315(2) of the Revised Penal Code against Delfin Lee and the others. This second complaint was precipitated by the complaints of supposed Globe Asiatique clients such as Evelyn Niebres, Catherine Bacani and Ronald San Nicolas, who were victims of double sale perpetrated by Globe Asiatique.[18]

Also, HDMF brought a complaint against Globe Asiatique and its officers for the fraudulent take-out of housing loans for bogus buyers.

Subsequently, the DOJ formed yet another panel of prosecutors to conduct another preliminary investigation.[19]

Upon learning of the filing of the second case in the DOJ, Delfin Lee filed a petition for the suspension of proceedings pending the outcome of the civil action for specific performance that he and Globe Asiatique had commenced in the Makati RTC, contending therein that the issue in the civil case constituted a prejudicial question vis-a-vis the second DOJ case.

On February 21, 2011, the DOJ panel of prosecutors issued an Omnibus Order denying Delfin Lee's prayer for suspension of proceedings.

After Delfin Lee's motion for reconsideration was denied on July 5, 2011, he filed his counter-affidavit ad

cautelam in the DOJ.[20]

On August 10, 2011, Prosecutor General Claro A. Arellano approved the Review Resolution of Senior Deputy State Prosecutor Theodore M. Villanueva, the Chairman of the DOJ's Task Force on Securities and Business Scam (SDSP Villanueva) pertaining to the first criminal complaint.[21] It is noted that the investigating prosecutors of the DOJ's Task Force on Securities and Business Scam had initially recommended the filing of charges for the crime of estafa defined and penalized under paragraph 2(a) of Article 315 of the Revised Penal Code, in relation to paragraph 2, Section 1 of PD No. 1689, against Delfin Lee, Sagun, and Cristina Salagan (Salagan). However, SDSP Villanueva recommended in the Review Resolution the inclusion of Atty. Alvarez and Dexter Lee in the estafa charge, thereby charging syndicated estafa, with no bail recommended.[22]

Consequently, Delfin Lee filed an amended petition on August 25, 2011 to enjoin the DOJ from filing the information for syndicated estafa in relation to the first DOJ case.[23]

On September 15, 2011, Sagun filed in the CA her petition for certiorari and prohibition with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to assail the August 10, 2011 Review Resolution of the DOJ (C.A.-G.R. SP No. 121346).[24]

On his part, Atty. Alvarez resorted to his own petition for review on October 3, 2011 of the same August 10, 2011 Review Resolution in the DOJ. However, on November 14, 2011, he withdrew his petition following his filing of a petition in the Manila RTC on October 10, 2011 assailing the same August 10, 2011 Review Resolution. He also filed a petition for certiorari with the CA on November 15, 2011 to enjoin the DOJ from filing the information in the first syndicated estafa case, but he subsequently withdrew the petition and filed on the same day a petition for injunction and prohibition in the Caloocan City RTC, Branch 125, to enjoin the DOJ from filing the information in the first syndicated estafa case and from conducting the preliminary investigation in the second case.[25]

Proceedings in the Pasig RTC

Prior to the DOJ's issuance of its August 10, 2011 Review Resolution, Delfin Lee initiated his action for injunction on July 28, 2011 in the Pasig RTC to enjoin the DOJ from proceeding with the second DOJ case, and reiterated therein that the civil case pending in the Makati RTC constituted a prejudicial question vis-a-vis the second DOJ case. The case was docketed as Civil Case No. 73115 entitled Delfin S. Lee v. Department of Justice.

The Pasig RTC, then presided by Judge Rolando Mislang, granted Delfin Lee's prayer for the issuance of the TROs on August 16, 2011, and admitted the amended petition on August 26, 2011.[26]

The Pasig RTC thereafter issued the writ of preliminary injunction under both the original and the amended petitions on September 5, 2011.[27]

Aggrieved, the DOJ filed a petition for certiorari on October 6, 2011 (C.A.-G.R. SP No. 121594), alleging that Judge Mislang had committed grave abuse of discretion in issuing the writ of preliminary injunction enjoining the filing of the information for syndicated estafa with respect to the first case and from proceeding with the preliminary investigation in the second case on the ground of the existence of a prejudicial question.[28]

On April 16, 2012, the CA granted the DOJ's petition for certiorari in C.A.-G.R. SP No. 121594, and ruled that the facts and issues in the civil case pending in the Makati RTC were not determinative of the guilt or innocence of Delfin Lee in the cases filed in the DOJ; hence, it annulled and set aside the writ of preliminary injunction issued by Judge Mislang.[29]

The adverse ruling in C.A.-G.R. SP No. 121594 was appealed by petition for review on certiorari. On July 4, 2012, the Court dismissed the appeal because of Delfin Lee's failure to show any reversible error on the part of the

CA in issuing the assailed decision. The dismissal became final and executory.[30]

Much later on, Delfin Lee learned of the third and fourth criminal complaints filed in the DOJ. Again, he sought the issuance of a TRO by the Pasig RTC.

On March 21, 2013, Judge Mislang issued the second TRO enjoining the preliminary investigation of the second, third and fourth criminal complaints.[31]

On April 10, 2013, Judge Mislang issued the writ of preliminary injunction in Civil Case No. 73115 enjoining the conduct of the preliminary investigation in the second, third and fourth criminal complaints.[32]

Consequently, the DOJ filed another petition for certiorari, docketed as C.A.-G.R. SP No. 130409, to annul the writ of preliminary injunction issued on April 10, 2013 by the Pasig RTC.

Proceedings in the Pampanga RTC

With the lifting of the first writ of preliminary injunction issued by the Pasig RTC, the DOJ filed a criminal case for syndicated estafa against Delfin Lee, Dexter Lee, Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex Alvarez (Atty. Alvarez) on April 30, 2012 in the Pampanga RTC. The case was docketed as Criminal Case No. 18480 entitled People of the Philippines v. Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez.[33]

The information in Criminal Case No. 18480 reads:

That sometime during the period from 10 June 2008 to 24 September 2010, or on dates prior and subsequent thereto, in the City of San Fernando, Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN[,] CRISTINA SALAGAN and ATTY. ALEX ALVAREZ, acting as a syndicate formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme of soliciting funds from the general public, each performing a particular act in furtherance of the common design, by way of take out on housing loans of supposed Pag-IBIG fund members through the use of fictitious buyers and/or "special buyers" conspiring, confederating and mutually helping one another, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud, did then and there wilfully, unlawfully and feloniously defraud the private complainant HOME DEVELOPMENT MUTUAL FUND, otherwise known as the Pag-IBIG Fund, in the following manner, to wit: accused Delfin S. Lee, being the president and chief executive officer of Globe Asiatique Realty Holdings Corporation (GA), a domestic corporation engaged in real estate development, did then and there willfully, unlawfully and knowingly enter into funding commitment agreements and other transactions with the private complainant, wherein said accused Delfin S. Lee made false and fraudulent representations to the latter that GA has interested buyers in its Xevera projects in Bacolor and Mabalacat, Pampanga when, in truth and in fact, said accused knew fully well that the corporation does not have such buyers, as in fact the said corporation, through accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, in conspiracy with one another, submitted names of fictitious buyers and documents to Pag-IBIG Fund as housing loan applicants/buyers of GA's Xevera projects in order to obtain, as in fact the said corporation obtained, through accused Delfin S. Lee, fund releases from HDMF by way of housing loan take-out of the said fictitious buyers. In addition, the said corporation, through accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, has also engaged in a "special buyers" scheme whereby it recruited persons who does not have any intention to buy its housing units in Xevera but, in exchange for a fee, said "special buyers" lent their names and Pag-IBIG membership to GA, so that the said corporation could use, as in fact it has used, the names and Pag-IBIG membership of the said "special buyers" in obtaining fund releases from HDMF, as the said corporation, through accused Delfin S. Lee, had in fact obtained fund releases from HDMF, by way of take-out of the supposed housing loans of the "special buyers", and by reason of the aforesaid false and fraudulent representations of accused Delfin S. Lee,

Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, HDMF was induced to release, through several funding commitment agreements, to Globe Asiatique Realty Holdings Corporation, through accused Delfin S. Lee, the total amount of P6,653,546,000.00, more or less, and upon receipt of the aforesaid amount, the above-named accused did then and there willfully, unlawfully and feloniously convert, misappropriate and misapply the same, and despite repeated demands, the above-named accused failed and refused to pay the same, to the damage and prejudice of the private complainant in the aforesaid amount.

As to the element of deceit, it was found that the documents submitted by GA concerning the existence and qualifications of its buyers are spurious and/or questionable. It was uncovered that at least 351 of the supposed buyers have already surrendered or withdrew their loans and/or are no longer interested in pursuing their loans, while the alleged buyers for additional 350 Xevera accounts have either denied availing of the loans or expressed their intention to cancel their respective accounts. Afterwards, documents obtained by HDMF through special audit conducted on the Xevera Projects disclose that out of the 8,230 loans taken out by Pag-IBIG, only 39% of the borrowers belong to the Other Working Group (OWG) category. On the other hand, out of the 10% of the OWG surveyed/audited, only 1.85% are actually living in the units they purchased, whereas, 83.38% of the acquired units remain unoccupied; 7.69% of the units are closed, 6.15% are being occupied by third parties; and lastly, 0.92% of the units are yet to be constructed. The same documents likewise show that: (a) from a random examination of the units taken out by Pag-IBIG and which are being occupied by third parties, 16 units are being occupied by in-house buyers - two of whom have fully paid their obligations with GA; 3 units were leased out by non-borrowers; 1 unit is being occupied by a replacement buyer; and 82% of the borrowers of the units have failed to submit their respective Income Tax Returns (ITR) which is a mandatory requirement for the approval of their loan applications, and (b) as a result of the post take-out validation conducted by HDMF, it was found that 644 borrowers endorsed by GA are not genuine buyers of Xevera homes while 802 are nowhere to be found; 3 buyers are already deceased; and 275 were not around during the visit, hence, establishing that all of them are fictitious buyers.

In connection with the "special buyers scheme," it was established that the people engaged as such have no intention of buying housing units from GA, but merely agreed to the same after GA's agents sought them out for a fee of P5,000.00. After being paid such fee, the aforementioned "special buyers" agreed to apply for membership with Pag-IBIG, on the condition that it is GA that pays for their 24 months installments, so that they can be qualified to apply for a Pag-IBIG housing loan. Thereafter, these "special buyers" are made to execute loan and other supporting documents, which are then submitted to HDMF for take-out of their housing loans for the Xevera projects. After take-out, GA pays the monthly amortizations of these "special buyers" to Pag-IBIG, using the payment made to it by Pag-IBIG on the housing loan of GA's Xevera project buyers. In this wise, GA's Performing Accounts Ratio (PAR) reached as high as 99.97%. However, when HDMF stopped fund releases to GA by way of housing loan take-outs of its buyers, or sometime August 2010, GA started to fail in remitting to HDMF Pampanga Branch office the monthly housing loan amortizations of its buyers of Xevera project. Thus, GA's almost 100% monthly collection/remittance rate dropped to 0% or no remittance at all when HDMF stopped its fund releases to GA, thereby establishing that the monthly amortizations of its borrowers were being paid by GA from the funds released by HDMF on the housing loans of its Xevera housing project borrowers.

That in carrying out the aforesaid conspiracy, accused Christina Sagun, head of the documentation department of Globe Asiatique Realty and Holdings Corp., did then and there unlawfully, feloniously and knowingly process and approve the housing loan applications of the said fictitious and "special buyers" of GA, in clear violation of the terms of conditions of the agreements entered into between HDMF and GA; accused Dexter L. Lee, did then and there, unlawfully, feloniously and knowingly order employees of GA to find and recruit "special buyers," and in fact found such special buyers, in accordance with the aforementioned illegal scheme, and in fact, is a co-signatory of the checks issued by GA in favor of the said "special buyers;" accused Atty. Alex Alvarez, did then and there unlawfully, feloniously and knowingly notarize crucial pieces of documents, consisting, among others, of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms.

Cristina Sagun) alleging compliance with the conditions set by HDMF, all of which are essential for the processing and approval of the purported transaction; and accused CRISTINA SALAGAN, being the head of GA's accounting department, did then and there unlawfully, feloniously and knowingly allow the release of the questionable amounts of P5,000.00 as payment to every fake/fictitious and/or "special buyer" applicant of GA despite knowledge of its unlawful and illegal nature, to the damage and prejudice of HDMF and/or its members.

CONTRARY TO LAW.[34]

In due course, the respondents separately moved to quash the information and to seek judicial determination of probable cause.[35]

On May 22, 2012, the Pampanga RTC found probable cause for syndicated estafa and for the issuance of warrants of arrest, to wit:

PREMISES GIVEN, the Court orders the following:

I. Probable cause for the crime of ESTAFA (ARTICLE 315 [2] [a] of the Revised Penal Code, in relation to Section 1 of P.D. 1689, as amended, is found against the Accused DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.

II. Issue Warrant of Arrest against DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.

III. There is NO BAIL RECOMMENDED for each of DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.

The setting (sic) on May 23 and 24, 2010 is (sic) CANCELLED.

SO ORDERED.[36]

Upon notice of the resolution, Delfin Lee filed a Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion.

On August 22, 2012, the Pampanga RTC denied Delfin Lee's Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion.[37]

Delfin Lee, Dexter and Salagan moved to reconsider the August 22, 2012 resolution of the Pampanga RTC.

Without waiting for the resolution of the motion, Delfin Lee filed a petition for certiorari with prayer for the issuance of a TRO and/or writ of preliminary injunction in the CA on November 26, 2012 to nullify the resolutions of the Pampanga RTC dated May 22, 2012 and August 22, 2012 (C.A.-G.R. SP No. 127553).[38]

Meanwhile, Atty. Alvarez also filed a motion for reconsideration of the May 22, 2012 resolution, but the Pampanga RTC denied the motion on August 22, 2012. Thereafter, he filed a petition for certiorari with the CA to nullify and set aside the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC. The petition was docketed as C.A.-G.R. SP No. 127690.

Dexter filed his own petition for certiorari in the CA to question the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC, Salagan likewise filed her own petition for certiorari in the CA alleging grave abuse of discretion on the part respondent Judge of the Pampanga RTC in issuing the May 22, 2012 resolution denying her second motion to quash information with prayer to re-determine probable cause and the January 29, 2014 resolution denying her motion for reconsideration.

The Civil Case

(Proceedings before the Makati RTC)

Globe Asiatique and Delfin Lee initiated the complaint for specific performance and damages against HDMF on November 15, 2010. Docketed as Civil Case No. 10-1120,[39] the case was assigned to Branch 58 of the Makati RTC. Globe Asiatique and Delfin Lee thereby sought to compel HDMF to accept the proposed replacements of the buyers/borrowers who had become delinquent in their amortizations, asserting that HDMF's inaction to accept the replacements had forced Globe Asiatique to default on its obligations under the MOA and FCAs.[40]

Globe Asiatique and Delfin Lee filed a Motion for Summary Judgment, which the Makati RTC, after due proceedings, resolved on January 30, 2012, disposing thusly:

WHEREFORE, premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiff (sic) have proven their case by preponderance of evidence. As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper.
2. Pursuant to the provisions of their MOA amending the continuing FCAs and CSAs, defendant HDMF is hereby ordered to comply faithfully and religiously with its obligation under the said contracts, including but not limited to the release of loan take-out proceeds of those accounts whose Deed[s] of Assignment with Special Power of Attorney have already been annotated in the corresponding Transfer Certificate of Title covering the houses and lots purchased by the Pag-IBIG member-borrowers from plaintiff GARHC as well as the evaluation of the loan applications of those who underwent or will undergo plaintiff GARHC's loan counselling and are qualified or PAG-IBIG FUND loans under the MOA and continuing FCAs and process the approval thereof only if qualified, under the Window 1 Facility as provided for in the MOA and continuing FCAs;
3. The unilateral cancellation by defendant HDMF of the continuing FCAs specifically the latest FCAs of December 15, 2009, January 5 and March 17, 2010 and CSA dated 10 February 2009, is hereby SET ASIDE[;]
4. Defendants are ordered to automatically off-set the balance of those listed in Annex "E" of the Motion for Summary Judgment against the retention money, escrow money, funding commitment fees, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;
5. Defendants are ordered to accept the replacement-buyers listed in Annex "F" of the Motion for Summary Judgment, which list is unopposed by defendants, without interest or penalty from the time of defendant HDMF's cancellation of the Collection Servicing Agreement (CSA) resulting to the refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;
6. Defendants are ordered to release the corresponding Transfer Certificate of Title[s] (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "E" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof.

Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled to on March 12, 2012 at 8:30 in the morning.

SO ORDERED.[41]

On December 11, 2012, the Makati RTC denied the motion for reconsideration of OIC Faria and Atty. Berberabe filed through the Yorac Arroyo Chua Caedo and Coronal Law Firm (the Yorac Law Firm). The trial court held that the Yorac Law Firm was not duly authorized to represent the HDMF; hence, it treated the motion for reconsideration as a mere scrap of paper and opined that its filing did not toll the running of the period to appeal.

As to the HDMF, the Makati RTC, noting with approval the manifestation of Globe Asiatique and Delfin Lee to the effect that the HDMF had not filed a motion for reconsideration or taken an appeal, deemed the summary judgment final and executory as to the HDMF.[42]

Aggrieved, the HDMF brought its petition for certiorari (C.A.-G.R. SP No. 128262).

Decisions of the CA

The CA promulgated the separate decisions now under review.

1.

C.A.-G.R. SP No. 130409

(DOJ petition assailing the April 10, 2013 writ of preliminary injunction issued by the Pasig RTC)

On June 18, 2013, the DOJ filed the intended petition for certiorari but inadvertently did not indicate therein the proper docket number for the case thereby causing the assignment by the CA of a new docket number, specifically C.A.-G.R. SP No. 130409. On June 26, 2013, the CA dismissed the DOJ's petition for certiorari in C.A.-G.R. SP No. 130409 on the ground that it had not received a motion for extension of time to file the petition.[43]

Meanwhile, on July 8, 2013, the CA issued its resolution in C.A.-G.R. SP No. 130404 denying the DOJ's motion for extension for failure of the DOJ to file the intended petition for certiorari.

Realizing its error later on, the DOJ immediately filed a manifestation with motion to admit petition for certiorari to clarify the mix-up and rectify its error. On August 14, 2013, the CA denied the DOJ's manifestation with motion to admit petition for certiorari.

Hence, the DOJ filed a petition docketed as G.R. No. 208744 to assail the resolution promulgated on July 8, 2013 in C.A.-G.R. SP No. 130404.[44] As to CA-G.R. SP No. 130409, the DOJ moved for reconsideration of the CA's resolution dated June 26, 2013, but the motion was denied on November 11, 2013.[45]

2.

C.A.-G.R. SP No. 128262

(HDMF Petition assailing the January 30, 2012 and December 11, 2012 resolutions of the Makati RTC in Civil Case No. 10-1120)

On October 7, 2013, the CA promulgated its decision dismissing the HDMF petition in C.A.-G.R. SP No. 128262,[46] to wit:

WHEREFORE, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in rendering the assailed Resolution dated January 30, 2012 containing the Summary Judgment and the Resolution dated December 11, 2012 denying HDMF, Faria and Atty. Berberabe's Motion for Reconsideration, the instant petition is hereby DISMISSED.

SO ORDERED.

The CA opined that the HDMF had availed itself of the wrong remedy to assail the January 30, 2012 summary judgment and the December 11, 2012 resolution of the Makati RTC; and that the certiorari petition did not further show that it had been filed under the authority of the Office of the Government Corporate Counsel, or by a private law firm with the necessary pre-requisite conformity of the Government Corporate Counsel and Commission on Audit.[47]

3.

C.A.-G.R. SP No. 121346

(Sagun Petition assailing the August 10, 2011 Review Resolution of the DOJ)

In C.A.-G.R. SP No. 121346, the CA opined that respondent Sagun's duties as the Documentation Head of Globe Asiatique were ministerial in nature and did not require the employment of much discretion. As the DOJ observed in its assailed Review Resolution, Sagun's functions were limited to the collation of the documents submitted by the borrowers/buyers through Globe Asiatique's Marketing Department, and to ensuring that such documents were complete and duly accomplished, and to the determination and verification from the HDMF through the submission of Membership Status Verification whether the borrowers/buyers were really HDMF members, or had updated contributions, or had no existing housing loans, and were thus qualified to apply for housing loans. The CA conceded that any errors or oversights, which could occur in the performance of Sagun's duties, should be attributed to her negligence, as concluded in the Review Resolution.

While the DOJ asserted that the fraud could have been averted had Sagun not been negligent, the CA explained that such negligence negated any intent to commit a crime; hence, Sagun could not have committed the crime of estafa charged. Moreover, the documents Sagun had reviewed were forwarded to the HDMF for evaluation and approval; hence, the HDMF had the opportunity and the ultimate prerogative and discretion on the documents.

Accordingly, the CA disposed in its assailed decision promulgated on October 5, 2012 in C.A.-G.R. SP No. 121346,[48] viz.:

WHEREFORE, premises considered, the Petition for Certiorari and Prohibition is hereby PARTIALLY GRANTED. Consequently, the subject Review Resolution dated August 10, 2011 issued by respondent DOJ is SET ASIDE and DISMISSED as against petitioner Christina Sagun.

SO ORDERED.[49]

4.

C.A.-G.R. SP No. 127553, C.A.-G.R. SP No.127554, and C.A.-G.R. SP No. 127690

(respectively, the Delfin Lee Petition, Dexter Lee Petition and Alvarez Petition assailing the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC)

On October 3, 2013, the CA promulgated its decision on the Alvarez petition (C.A.-G.R. SP No. 127690),[50] ruling that there was not enough evidence to implicate Atty. Alvarez; that the RTC had merely listed the documents submitted by the task force and had not conducted any evaluation of the evidence to determine whether or not Alvarez had participated in the alleged grand scheme to defraud the HDMF; and that the RTC had relied solely on the recommendation of the panel of prosecutors, which was insufficient under prevailing jurisprudence. The disposition was as follows:

WHEREFORE, in view of the foregoing premises, the Petition for Certiorari and the Supplemental Petition are PARTIALLY GRANTED and the assailed Resolutions dated May 22, 2012 and August 22, 2012 of the Regional Trial Court, Branch 42 of San Fernando City, Pampanga in so far as petitioner ALEX M. ALVAREZ is concerned are hereby annulled and set aside. Accordingly, the warrant of arrest issued against him is hereby LIFTED, QUASHED/RECALLED.

Meantime, since the evidence do not support the finding of probable cause against petitioner ALEX M. ALVAREZ, public respondent court is hereby enjoined from proceeding with Criminal Case No. 18480 as against said petitioner only.

SO ORDERED.[51]

On November 7, 2013, the CA promulgated its decision on Delfin Lee's petition (C.A.-G.R. SP No. 127553),[52]

decreeing:

WHEREFORE, in view of the foregoing, the instant petition is hereby PARTIALLY GRANTED. The assailed Resolutions dated May 22, 2012 and August 22, 2012 are hereby ANNULLED and SET ASIDE for the issuance thereof was attended with grave abuse of discretion on the part of public respondent Hon. Ma. Amifaith S. Fider-Reyes, in her capacity as the Presiding Judge of the San Fernando, Pampanga RTC - Branch 42. Consequently, the Warrant of Arrest issued against petitioner Delfin S. Lee is hereby QUASHED, RECALLED AND LIFTED. Afore-named public respondent judge is directed to CEASE and DESIST from further proceeding with Criminal Case No. 18480 insofar as petitioner Delfin S. Lee is concerned.

Furthermore, all government agencies tasked in the enforcement of the said warrant of arrest including but not limited to the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and the Bureau of Immigration (BI) are immediately ENJOINED from implementing the same.

SO ORDERED.[53]

The CA observed that the RTC gravely abused its discretion because its conclusion on finding probable cause to issue the arrest warrant was in the nature of speculation; that the RTC had merely relied on the information, the Review Resolution and the six boxes of documentary evidence to find and conclude that a huge amount of money had been transferred from the HDMF to Globe Asiatique through a complex scheme that could only have been attained through the sustained action of people in concert to commit their criminal intention; that such findings and conclusions were not based on hard facts and solid evidence as required by jurisprudence; that the report did not mention how many perpetrators had conspired against the HDMF; that the parts of Delfin Lee and his supposed cohorts in the supposed fraudulent acts committed against the HDMF had not been particularly identified; that the conversion of the recommendation from the filing of simple estafa to syndicated estafa had not been clearly explained in the Review Resolution; that the RTC had simply adopted such findings without justifying how the charge could be for syndicated instead of simple estafa; and that the RTC had also issued the resolution a day immediately after the six boxes of documentary evidence had come to its knowledge as the trial court.

The CA debunked the HDMF's argument that Delfin Lee had defrauded it into releasing a considerable sum of money to Globe Asiatique through a complex scheme involving fraudulent buyers. The CA noted that the Deed of Assignment with Contract to Sell and Special Power of Attorney executed between Globe Asiatique and the HDMF showed that the HDMF had been ultimately duty-bound to check the applications of prospective borrowers and to approve the same; that, consequently, whatever damage the HDMF had incurred could not be solely ascribed to Delfin Lee; that in fact the DOJ had also endorsed the Review Resolution to the Ombudsman for the investigation of the HDMF officers for violation of Republic Act No. 3019; and that it was confusing that Delfin Lee had been charged separately of another crime instead of being joined with the officers of the HDMF who had been referred to the Ombudsman for investigation.

On November 16, 2016, the CA promulgated its decision on Dexter's petition (C.A.-G.R. No. 127554), declaring that the Pampanga RTC had erred in its determination of probable cause against him;[54] that the Pampanga RTC had gravely abused its discretion when it based its assessment solely on the Review Resolution of the panel of prosecutors, the information, and the six boxes of documents presented as evidence by the Prosecution without making its independent assessment of the documents and other pieces of evidence to validate the issuance of the arrest warrant issued against Dexter.

The CA disposed thusly:

ACCORDINGLY, on the foregoing reasons, the petition is PARTIALLY GRANTED. The assailed

Resolutions dated May 22, 2012 and August 22, 2012 of Branch 42 of Regional Trial Court of Pampanga City (sic) are ANULLED and SET ASIDE. Thus, the Warrant of Arrest issued against petitioner Dexter L. Lee is hereby QUASHED, RECALLED and LIFTED. Furthermore, the Regional Trial Court, Branch 42 of San Fernando, Pampanga is directed to CEASE and DESIST from further proceeding with Criminal Case No. 18480 insofar as petitioner Dexter L. Lee is concerned.

Moreover, all government agencies tasked in the enforcement of the Warrant of Arrest including but not limited to the Philippine National Police, the National Bureau of Investigation and the Bureau of Immigration are immediately ENJOINED from implementing the said Warrant.

SO ORDERED.[55]

5.

C.A.-G.R. SP No. 134573

(Salagan Petition assailing the May 22, 2012 and January 29, 2014 resolutions of the Pampanga RTC)

Salagan claimed in C.A.-G.R. SP No. 134573 that there was no probable cause to charge her with the crime of syndicated estafa in view of the decisions promulgated in C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, and C.A.-G.R. SP No. 127690 finding that no probable cause existed against Sagun, Delfin Lee and Atty. Alvarez, respectively, for syndicated estafa.

The CA declared in C.A.-G.R. SP No. 134573, however, that the respondent Judge did not gravely abuse her discretion in finding probable cause against Salagan, and upheld the validity of the information filed in the Pampanga RTC against her; and that the warrant of arrest had been issued upon probable cause personally determined by the judge.[56] It ruled that the respondent Judge had properly denied Salagan's second motion to quash the information with prayer to re-determine probable cause based on a supervening event considering that Salagan had erroneously assumed that the separate decisions promulgated by the CA were supervening events that justified the re-determination of probable cause.[57]

The CA disposed on March 18, 2016 in C.A.-G.R. SP No. 134573:

WHEREFORE, in view of the foregoing, the Petition for Certiorari is DISMISSED. Accordingly, the Resolution dated May 22, 2012 and Resolution dated January 29, 2014 of the San Fernando, Pampanga RTC, Branch 42 are hereby AFFIRMED insofar as Accused Cristina Salagan is concerned.

SO ORDERED.[58]

Issues

We simplify the legal issues as follows:

(1)

Whether or not the HDMF availed itself of the proper remedy to assail the summary judgment rendered by the Makati RTC (G.R. No. 209424);

(2)

Whether or not there was probable cause for the filing of the information for syndicated estafa, and for the issuance of the warrants of arrest against the respondents for that crime (G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680); and

(3)

Whether or not the conduct of a preliminary investigation could be enjoined (G.R. Nos. 208744 and 210095).

On various dates, the Court issued TROs[59] to enjoin the implementation and enforcement of the assailed CA decisions and resolutions issued in C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554, and C.A.-G.R. SP No. 127690. Inasmuch as the warrants of arrest remained valid nonetheless, Delfin Lee was arrested by virtue thereof,[60] and was detained in the Pampanga Provincial Jail since his arrest until this time.[61] The other respondents have remained at large.

Ruling of the Court

We PARTIALLY GRANT the petitions in G.R. No. 205698, G.R. No. 205780, G.R. No. 209446, G.R. No. 209489, G.R. No. 209852, G.R. No. 210143, G.R. No. 228452, G.R. No. 228730 and G.R. No. 230680, and, accordingly, MODIFY the assailed decisions of the CA.

On the other hand, we GRANT the petitions in G.R. No. 209424, G.R. No. 208744, and G.R. No. 210095, and, accordingly, REVERSE the resolutions of the CA assailed therein.

1.

The January 30, 2012 summary judgment was an interlocutory judgment; hence, the HDMF correctly instituted a petition for certiorari instead of an appeal

The HDMF argues that it correctly instituted the special civil action for certiorari to assail the resolutions of the Makati RTC dated January 30, 2012 and December 11, 2012 issued in Civil Case No. 10-1120; that the Yorac Law Firm had lawful authority to represent the HDMF; and that the Makati RTC rendered the questioned resolutions with grave abuse of discretion amounting to lack or excess of jurisdiction.

The HDMF's arguments are partly meritorious.

1.a.

The January 30, 2012 summary judgment was an interlocutory order

In Civil Case No. 10-1120, Globe Asiatique and Delfin Lee specifically averred separate causes of action against the HDMF, including that for damages. Thus, they prayed for the following reliefs, to wit:

PRAYER

WHEREFORE, it is respectfully prayed that after due proceedings, a decision be rendered by the Honorable Court in favor of the plaintiffs and against the defendants, ordering the following:

- With respect to the First Cause of Action, for defendant PAG--IBIG to accept the replacement of the buyer/borrowers as offered by plaintiff GARHC contained in a list hereto attached as Annex "O" pursuant to the latter's exercise of this option under Section 3.7 of the latest Funding Commitment Agreement in relation to the buyback provision under the Memorandum of Agreement dated 13 July 2009;
- With respect to the Second Cause of Action, for defendant PAG-IBIG FUND to release the pending loan take-outs and amount of retention due plaintiff GARHC pursuant to the MOA and latest FCA and for all defendants to jointly and solidarily pay plaintiff GARHC the sum of Php6,562,500.00, representing interest and penalty payments;
- With respect to the Third Cause of Action, for defendant PAG--IBIG FUND to honor the provisions of its MOA the latest FCA and CSA, to set aside the cancellation of the FCA and CSA, and restore plaintiff GARHC to its rights under the MOA, latest FCA and CSA;
- With respect to the Fourth Cause of Action, for defendants to jointly and severally pay plaintiff GARHC the

sum of Php1 Million as and by way of attorney's fees, Php500,000.00 as and by way of litigation expenses, and cost of suit; and

- With respect to the Fifth Cause of Action, for defendants to pay exemplary damages in the amount of Php500,000.00.

Plaintiffs pray for such other reliefs and remedies that the Honorable Court may deem just and equitable in the premises.[62]

During the proceedings, Globe Asiatique and Delfin Lee filed the motion for summary judgment, stating the reliefs prayed for, as follows:

PRAYER

WHEREFORE, it is respectfully prayed that after due notice and hearing, an Order be issued granting the instant Motion for Summary Judgment and simultaneously therewith, to render the Summary Judgment prayed for, declaring and ordering the following:

- That plaintiffs have proven their case by preponderance of evidence and, therefore, are entitled to specific performance and right to damages as prayed for in the Complaint;

- That defendants HDMF should faithfully and religiously comply with the pertinent provisions of the FCAs and CSAs as amended by the MOA under the prevailing conditions prior to the precipitate unilateral termination thereof by defendant HDMF, including but not limited to the release of loan take-out proceeds of those accounts whose DOAs with SPAs have already been annotated in the corresponding TCTs as well as the evaluation and approval of the loan applications of those who underwent or will undergo plaintiff GARCH's loan counselling and are qualified for PAG-IBIG loans under the MOA and FCAs;

- That defendant HDMF's unilateral termination of the MOA, FCAs and CSA be declared illegal and be set aside;

- That defendants be ordered to automatically off-set the balance of those listed in Annex "E" hereof composed of fully-paid buyer-borrowers against the retention money, escrow money, funding commitment fees, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;

- That defendants be ordered to accept the replacement-buyers listed in Annex "F" hereof, without interest or penalty from the time of defendant HDMF's refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;

- That defendants be ordered to release the corresponding Transfer Certificate of Title(s) (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "e" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof, including that of complaint-intervenor Tessie G. Wang's titles;

Plaintiffs pray for such other reliefs and remedies that the Honorable Court may deem just and equitable in the premises.[63]

Globe Asiatique and Delfin Lee did not include the claim for damages among the reliefs prayed for by their motion for summary judgment.

Granting the motion for summary judgment, the Makati RTC ultimately disposed:

WHEREFORE, premises considered, a Summary Judgment is hereby rendered declaring that:

- Plaintiffs have proven their case by preponderance of evidence. As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper.

x x x x

Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled on March 12, 2012 at 8:30 in the morning.

SO ORDERED.[64] (Bold underscoring supplied)

As the foregoing shows, the Makati RTC set the case for the presentation of evidence to establish the other claims of Globe Asiatique and Delfin Lee stated in their complaint for specific performance, specifically those pertaining to the fourth and fifth causes of action. The claims related to damages, which, being still essential parts of the case, would still have to be established and adjudicated on their merits. Although the recovery of the damages was dependent on the determination that the HDMF had breached its contract with Globe Asiatique, it could not yet be said that the Makati RTC had fully disposed of the case through the summary judgment considering that there were still other reliefs sought by Globe Asiatique and Delfin Lee yet to be tried and determined either way. Under the circumstances, the summary judgment was, properly speaking, but an interlocutory judgment of the Makati RTC.

In this connection, the rule on separate judgments - Section 5, Rule 36 of the Rules of Court - is relevant. The rule requires the action to proceed as to the remaining but unresolved claims, to wit:

SEC. 5. Separate judgments. - When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims. In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and may prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor the judgment is rendered. (Bold underscoring supplied for emphasis)

A partial summary judgment like that rendered on January 30, 2012 by the Makati RTC was in the category of a separate judgment. Such judgment did not adjudicate damages, and still directed that further proceedings be had in order to determine the damages to which Globe Asiatique and Delfin Lee could be entitled. Section 4, Rule 35 of the Rules of Court thus came into operation. Section 4 states:

SEC. 4. Case not fully adjudicated on motion. - If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly. (Bold underscoring supplied for emphasis)

Worthy to emphasize is that the rendition of a summary judgment does not always result in the full adjudication of all the issues raised in a case.[65] In such event, a partial summary judgment is rendered in the context of Section 4, *supra*. Clearly, such a partial summary judgment - because it does not put an end to the action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for - cannot be considered a final judgment. It remains to be an interlocutory judgment or order, instead of a final judgment, and

is not to be dealt with and resolved separately from the other aspects of the case.

In *Pahila-Garrido v. Tortogo*,^[66] the distinctions between final and interlocutory orders were delineated thusly:

The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: does the order or judgment leave something to be done in the trial court with respect to the merits of the case? If it does, the order or judgment is interlocutory; otherwise, it is final.

What was the proper recourse against the partial summary judgment?

Considering that the January 30, 2012 partial summary judgment was interlocutory, the remedy could not be an appeal, for only a final judgment or order could be appealed. Section 1, Rule 41 of the Rules of Court makes this clear enough by expressly forbidding an appeal from being taken from such interlocutory judgment or order, to wit:

Section 1. Subject of appeal. - An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x

(f) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

x x x x

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

Consequently, the interlocutory January 30, 2012 summary judgment could be assailed only through certiorari under Rule 65 of the Rules of Court. Thus, the HDMF properly instituted the special civil action for certiorari to assail and set aside the resolutions dated January 30, 2012 and December 11, 2012 of the Makati RTC.

1.b.

The Yorac Law Firm had no authority to file the HDMF's motion for reconsideration of the January 30, 2012 summary judgment rendered by the Makati RTC

The HDMF is a government-owned and -controlled corporation (GOCC) performing proprietary functions with original charter or created by special law, specifically Presidential Decree (P.D.) No. 1752, amending P.D. No. 1530.^[67] As a GOCC, the HDMF's legal matters are to be handled by the Office of the Government Corporate Counsel (OGCC),^[68] save for some extraordinary or exceptional circumstances when it is allowed to engage the services of private counsels, provided such engagement is with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the Commission on Audit (COA).^[69]

In *Phividec Industrial Authority v. Capitol Steel Corporation*,^[70] the Court underscored that the best evidence to prove the COA's concurrence with the engagement of a private lawyer or law firm was the written concurrence from the COA itself, viz.:

Petitioners primarily rely on a certified true copy of an Indorsement issued by COA Regional Office No. 10 as proof of written concurrence on the part of the COA. All that it contains is a second-hand claim that the COA General Counsel had allegedly concurred in the retainer contract between PHIVIDEC and Atty. Adaza. The written concurrence itself which may be the best evidence of the alleged concurrence was not presented. It is also worth noting that the said Indorsement was dated 4 June 2002, or approximately two years after the filing of the expropriation case by Atty. Adaza.

The records reveal that although the OGCC authorized the HDMF to engage the services of the Yorac Law Firm, the HDMF did not sufficiently prove that the written concurrence of the COA had been obtained.

To substantiate its claim of the COA's concurrence with the engagement of the Yorac Law Firm's legal services, the HDMF presented the certification dated January 10, 2013,[71] viz.:

CERTIFICATION

This is to certify that the Commission on Audit (COA) has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac, Arroyo, Chua, Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection with the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents, and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues.

This certification is issued to attest to the truth of the foregoing and for whatever legal purposes it may serve.

10 January 2013

(signed)

ATTY. FIDELA M. TAN

Corporate Auditor

It is immediately discernible, however, that the certification was merely the attestation by Atty. Tan that COA had concurred in the retainer agreement entered into by and between the HDMF and the Yorac Law Firm. Such attestation did not establish the written concurrence of the COA on the engagement of the Yorac Law Firm because it did not state that the copy was a correct copy of the original considering that no copy of COA's written concurrence was actually attached to the January 10, 2013 certification. Also, it did not thereby appear that Atty. Tan was the custodian of the records of COA. As the Makati RTC further observed, the attestation had not been made under the official seal of COA but printed only on the joint letterhead of the HDMF and COA, with the latter's address being indicated to be in Mandaluyong City when the COA's office was actually located in Commonwealth Avenue, Quezon City.[72]

Atty. Tan's attestation of the COA's purported concurrence had no evidentiary value due to its non-conformity with the requirements of Section 24 and Section 25, Rule 132 of the Rules of Court for presenting the record of a public document, to wit:

Section 24. Proof of official record. - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. x x x

Section 25. What attestation of copy must state. - Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.(26a)

The foregoing bolstered the fact that the attestation, being at best the second-hand opinion of Atty. Tan as a corporate auditor who did not have the copy of the supposed COA concurrence, could not stand as the written concurrence of the COA contemplated by law for the purpose.

Nonetheless, even if the January 10, 2013 certification was to be regarded as the written concurrence of the COA, the fact that it was issued and presented after the Yorac Law Firm had entered its appearance on June 17, 2011 as counsel of the HDMF should not go unnoticed.[73] Records reveal that as of December 7, 2011, the COA was still in the process of evaluating the request for the concurrence on the hiring by the HDMF of the Yorac Law Firm.[74] This forthwith contravened the specific requirement that the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the written concurrence of the COA should first be secured prior to the hiring or employment of the private lawyer or law firm.[75]

In view of the HDMF's failure to secure the written concurrence of the COA, the Yorac Law Firm could not have been considered as authorized to represent the HDMF. With the filing of the HDMF's motion for reconsideration vis-a-vis the January 30, 2012 summary judgment of the Makati RTC being unauthorized, the CA did not err in upholding the Makati RTC's treatment of the HDMF's motion as a mere scrap of paper.

1.c

The broader interest of justice and the peculiar legal and equitable circumstances herein justified the relaxation of technical rules

The import of failing to file the motion for reconsideration on the part of the HDMF meant that the 60-day period to initiate the petition for certiorari should be reckoned from its receipt of the assailed January 30, 2012 summary judgment. Since the HDMF actually filed the petition for certiorari on January 18, 2013, and thus went beyond the reglementary period, the petition should be dismissed for being filed out of time.

There are instances, however, when the rigidity of the rule requiring the petition for certiorari to be filed within 60 days from the receipt of the judgment, order, or resolution sought to be thereby assailed has been relaxed, such as: (1) when the most persuasive and weighty reasons obtain; (2) when it is necessary to do so in order to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) in case of the good faith of the defaulting party by immediately paying within a reasonable time of the default; (4) when special or compelling circumstances exist; (5) when the merits of the case so demand; (6) when the cause of the delay was not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) when there is no showing that the review sought is merely frivolous and dilatory; (8) when the other party will not be unjustly prejudiced thereby; (9) in case of fraud, accident, mistake or excusable negligence without the appellant's fault; (10) when the peculiar legal and equitable circumstances attendant to each case so require; (11) when substantial justice and fair play are thereby served; (12) when the importance of the issues involved call for the relaxation; (13) in the exercise of sound discretion by the court guided by all the attendant circumstances and (14) when the exceptional nature of the case and strong public interest so demand.[76]

Herein, the broader interest of justice and the attendant peculiar legal and equitable circumstances dictated that the HDMF's petition for certiorari be resolved on its merits despite its filing beyond the reglementary period. The HDMF believed in good faith that it had duly filed the motion for reconsideration vis-a-vis the January 30, 2012 summary judgment. Although the Makati RTC noted the HDMF's failure to secure the COA's concurrence, and resolved to treat the HDMF's motion for reconsideration as a mere scrap of paper, the reglementary period to file the petition for certiorari had already lapsed, such failure to file on time was not entirely attributable to the fault or negligence of the HDMF.

2.

There was no probable cause for the filing of the information for syndicated estafa and for the issuance of the warrants of arrest for syndicated estafa against respondents

Delfin Lee, Dexter, Sagun and Alvarez were charged with syndicated estafa, along with Cristina Salagan, on the basis of the findings of the DOJ that Globe Asiatique had violated its warranties under the FCAs and the July 13, 2009 MOA; that Globe Asiatique had submitted spurious and questionable documents concerning the qualifications of its buyers; that Globe Asiatique had employed fictitious buyers to obtain funds from the HDMF; and that Globe Asiatique had failed to remit to the HDMF the monthly housing loan amortizations of its buyers in the Xevera Project in Pampanga.[77]

The DOJ concluded thusly:

Given the foregoing the above-named respondents may be charged with the crime of "syndicated estafa" as they fall within the legal definition of a syndicate. A syndicate is defined as consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association, or of funds solicited by corporations/associations from the general public. (Paragraph 1, Section 1, P.D. No. 1689; *People of the Philippines v. Vicente Menil*, G.R. Nos. 115054-66, September 12, 2009).

x x x x

Having earlier established respondents' commission of estafa, it is pristine clear that the 1[st] and 2[nd] elements of the offense of syndicated estafa has already been satisfied in the instant case. Relative to the 3[rd] element, we believe that HDMF falls under the entities listed in P.D. 1689 that can be victimized under such law, as the provision specifically includes entities which solicited funds from the general public. x x x

It is our considered view that HDMF is, in all respect, a corporation that solicited funds from the general public, which respondents defrauded through the execution of their illegal scheme. We find as childish respondents' Delfin and Dexter Lee's argument that the Pag-Ibig fund is a mandatory contribution and does not fall under the term "solicited funds from the public." It bears to highlight that P.D. 1689 does not distinguish whether the solicited fund is a voluntary or mandatory contribution. Rather, the essential point is that the funds used by HDMF came from the general public.[78]

On its part, the Pampanga RTC found probable cause for the issuance of warrants of arrest against the respondents only because -

The records would show a huge amount of money that was transferred from the coffers of the PAG-IBIG FUND and released to the GLOBE ASIATIQUE through a complex scheme involving fraudulent buyers at a scale and over a period of time that could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective. Hence, the Court finds probable cause for the existence of a syndicated estafa.[79]

The crucial questions before us relate to: (1) the DOJ's finding of probable cause for the filing of the information against Sagun; and (2) the Pampanga RTC's judicial determination of probable cause for the issuance of the warrant of arrest against the respondents.

The concept of probable cause has been discussed in *Napoles v. De Lima*[80] as follows:

x x x During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is sufficient ground 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." At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that "no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]" This requirement of personal evaluation by the judge is reaffirmed in Rule 112, Section 5 (a) of the Rules on Criminal Procedure:

SEC. 5. When warrant of arrest may issue. -

(a) By the Regional Trial Court. - Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis supplied)

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires jurisdiction and "any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."

While the courts are generally not permitted to substitute their own judgments for that of the Executive Branch in the discharge of its function of determining the existence of probable cause during the preliminary investigation,[81] the intervention of the courts may be permitted should there be grave abuse of discretion in determining the existence of probable cause on the part of the investigating prosecutor or the Secretary of Justice.

Thus, in order to settle whether or not the CA correctly reversed the August 10, 2011 Review Resolution of the DOJ insofar as it found probable cause to charge Sagun with syndicated estafa, and whether or not the warrants of arrest issued against the respondents should be quashed, it is imperative to discuss the nature of syndicated estafa.

Section 1 of P.D. No. 1689 defines syndicated estafa in the following manner:

SECTION 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders or members of rural banks, cooperative, "samahang nayon(s)", or farmer's association, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.

P.D. No. 1689 seeks to impose a harsher penalty on certain forms of swindling, more particularly, syndicated estafa. The preamble of the decree recites:

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon(s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such

rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public.

P.D. No. 1689 condemns the taking by fraud or deceit of funds contributed by members of rural banks, cooperatives, samahang nayon or farmers' associations, or of funds solicited by corporations or associations from the general public as such taking poses a serious threat to the general public. The elements of syndicated estafa are: (a) estafa or other forms of swindling, as defined in Articles 315 and 316 of the Revised Penal Code, is committed; (b) the estafa or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by the stockholders, or members of rural banks, cooperative, samahang nayon(s), or farmers' associations, or of funds solicited by corporations/associations from the general public.[82]

In relation thereto, Article 315(2)(a) of the Revised Penal Code specifies that:

Art. 315. Swindling (estafa). - Any person who shall defraud another by any means mentioned herein below shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions; or by means of other similar deceptions.

x x x x

The elements of estafa by means of deceit under Article 315(2)(a) of the Revised Penal Code are, namely: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that as a result thereof, the offended party suffered damage.[83]

Based on the foregoing elements of syndicated estafa, the Court holds that the CA did not err in reversing the August 10, 2011 Review Resolution of the DOJ insofar as Sagun was concerned and in quashing the warrants of arrest issued against the respondents. In the same manner, we find and so hold that the CA erred in upholding the propriety of the issuance of the warrant of arrest against Salagan.

2.a

In the case of the respondents, there was no syndicate as defined under P.D. No. 1689

A syndicate is defined by P.D. No. 1689 as consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme.[84] The Court has clarified in *Remo v. Devanadera*[85] that in order for any group to be considered a syndicate under P.D. No. 1689 -

x x x [T]he perpetrators of an estafa must not only be comprised of at least five individuals but must have also used the association that they formed or managed to defraud its own stockholders, members or depositors. Thus:

On review of the cases applying the law, we note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated estafa. x x x. (Emphasis supplied).

x x x x

Dissecting the pronouncement in Galvez for our present purposes, however, we are able to come up with the following standards by which a group of purported swindlers may be considered as a syndicate under PO No. 1689:

- They must be at least five (5) in number;
- They must have formed or managed a rural bank, cooperative, "samahang nayon," farmer's association or any other corporation or association that solicits funds from the general public.
- They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme i.e., they used the very association that they formed or managed as the means to defraud its own stockholders, members and depositors.

None of the three abovementioned standards for determining the existence of a syndicate was present.

Delfin Lee, Dexter, Sagun, and Salagan were, respectively, the President/Chief Operating Officer, Executive Vice-President, Head of the Documentation Department, and Head of the Accounting/Finance Department of Globe Asiatique.[86] In view of their number being under five, the original charge brought against them was only for simple estafa. It was only in the assailed Review Resolution of August 10, 2011 that SDSP Villanueva recommended the filing of the charge for syndicated estafa due to the addition of Atty. Alvarez as a co-respondent, thereby increasing the number of the respondents to at least five. But Atty. Alvarez was the Manager of the HDMF's Foreclosure Department[87] whose only connection with Globe Asiatique was by reason of his having rendered notarial services for the latter.[88] If Atty. Alvarez was not related to Globe Asiatique either by employment or by ownership, he could not be considered as part of the syndicate supposedly formed or managed to defraud its stockholders, members, depositors or the public. This alone immediately removed the respondents' supposed association from being found and considered as a syndicate in the context of P.D. No. 1689.

Even assuming that Atty. Alvarez was juridically connected with Globe Asiatique in the context of P.D. No. 1689, the association of the respondents did not solicit funds from the general public. Globe Asiatique was incorporated in 1994 as a legitimate real-estate developer "to acquire by purchase, lease, donation or otherwise, to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether improve, manage, or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances." [89] It is quite notable, too, that there was no allegation about Globe Asiatique having been incorporated to defraud its stockholders or members. In fact, the HDMF, the only complainant in the estafa charges, was not itself a stockholder or member of Globe Asiatique.

Moreover, the DOJ concluded that it was the HDMF itself, not Globe Asiatique, that had solicited funds from the public, to wit:

x x x HDMF falls under the entities listed in PD 1689 that can be victimized under such law, as the provisions specifically includes entities which solicited funds from the general public. x x x

x x x x

It is our considered view that HDMF is, in all respect, a corporation that solicited funds from the general public, which respondents defrauded through the execution of their illegal scheme.

We find as childish respondents' Delfin and Dexter Lee's argument that the Pag-ibig fund is a mandatory contribution and does not fall under the term "solicited funds from the public." It bears to highlight that P.D. 1689 does not distinguish whether the solicited fund is voluntary or mandatory contribution. Rather, the essential point is that the funds used by HDMF came from the general public.[90]

The funds solicited by HDMF from the public were in the nature of their contributions as members of HDMF and had nothing to do with their being a stockholder or member of Globe Asiatique.

It is further worth noting that the funds supposedly misappropriated did not belong to Globe Asiatique's stockholders or members, or to the general public, but to the HDMF. The pecuniary damage pertained to the FCLs extended to Globe Asiatique through ostensibly fictitious buyers and unremitted monthly housing loan amortizations for the Xevera Project in Pampanga that were supposedly collected by Globe Asiatique in behalf of the HDMF pursuant to the FCLs and MOA.

Based on the established circumstances, therefore, it becomes inevitable for the Court to affirm the CA's following conclusion that:

x x x [T]he statement made by public respondent that there is probable cause because "x x x a huge amount of money was transferred from the coffers of respondent HDMF and released to GA through a complex scheme x x x that could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective," to be in the nature of a speculation only and carries no weight in the determination of probable cause. Jurisprudence dictates that in the determination of probable cause, the same should be based on hard facts and solid evidence and not dwell on possibilities, suspicion and speculation. From the afore-quoted paragraph alone, petitioner's (Delfin Lee) participation, if there was any, in the offense for which he was indicted, was not established or ascertained. Worse, petitioner was not even named either were his cohorts in the alleged defrauding of respondent HDMF.

Petitioner Lee and his co-accused were charged with syndicated estafa. For estafa to have been committed by a syndicate, the act must be committed by five or more persons. A considered scrutiny of the assailed Resolution by public respondent which found probable cause to issue a warrant of arrest against petitioner Lee and his co-accused, shows that there was no mention that the acts constituting estafa were done by five or more persons. The resolution merely mentioned "could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective." Moreover, the amount of damage incurred by respondent HDMF was not ascertained. It goes without saying that public respondent did not take it upon herself to determine, based on the evidence submitted, the exact amount of damage incurred by respondent HDMF. Public respondent merely made a sweeping statement that a huge amount of money was transferred from the coffers of the PAG-IBIG Fund to GA.

Under the canons of statutory construction, indeed, the determination of the purpose of the law is a step in the process of ascertaining the intent or meaning of the enactment, because the reason for the enactment must necessarily shed considerable light on "the law of the statute," i.e., the intent; hence, the enactment should be construed with reference to its intended scope and purpose, and the courts should seek to carry out this purpose rather than to defeat it.[91] Given the rationale and purpose behind the enactment of P.D. No. 1689, it becomes inevitable to conclude that the crime of syndicated estafa can only be committed by the enumerated groups

created for the sole purpose of defrauding its members through misappropriating the funds solicited from and contributed by them. Evidently, the evil sought to be prevented by P.D. No. 1689 does not exist in this case.

2.b

Notwithstanding the absence of a syndicate, the respondents made false representations that gave rise to probable cause for simple estafa against them

In *Galvez v. Court of Appeals*,^[92] the Court has emphasized that swindling may fall within the ambit of P.D. No. 1689 if it is committed through an association. On the other hand, Article 315(2)(a) of the Revised Penal Code applies regardless of the number of the accused when: (a) the entity soliciting funds from the general public is the victim and not the means through which the estafa is committed, or (b) the offenders are not owners or employees who used the association to perpetrate the crime.

Having shown that the alleged misappropriation was not committed through *Globe Asiatique*, we now address whether or not the acts of the respondents gave rise to probable cause for simple estafa under Article 315(2)(a) of the Revised Penal Code.

An examination of the records reveals that there is sufficient basis to support a reasonable belief that the respondents were probably guilty of simple estafa. The first three elements of estafa under Article 315(2)(a) of the Revised Penal Code - (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; and (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property - obtained in this case.

The nature and character of deceit or fraud were explained in *Lateo v. People*,^[93] to wit:

[F]raud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

The first two elements of estafa under Article 315(2)(a) of the Revised Penal Code are satisfied if the false pretense or fraudulent act is committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive that induces the offended party to part with his money.^[94]

In this connection, the DOJ underscored in its assailed Review Resolution that the fraudulent scheme employed by the respondents involved the "special buyers" arrangement. According to the *sinumpaang salaysay* of witnesses Francisco de la Cruz and Veniza Santos Panem, former employees of *Globe Asiatique*, the "special buyers" arrangement required:

x x x those who are not yet members of Pag-ibig Fund but who are paid by GA to apply for, and become members of the Fund in exchange of P5,000.00 so that their names/membership can be used to take out a housing loan from Pag-ibig of units from housing projects of GA. They assert that these special buyers have really no intention to buy housing units from GA projects but merely lend their Pag-ibig Fund membership to

GA for a fee on condition that they will not apply for a loan with Pag-Ibig for a period of two (2) years. The agents/employees of GA are the ones who recruit these "special buyers" also for a commission. They explain that once recruited, these "special buyers" are told to sign loan documents for Pag-Ibig but they will not occupy the housing units for which they applied for a housing loan. These units taken out by Pag-Ibig for GA's "special buyers" are then sold to real buyers who buy direct from GA. Whenever real buyers complaint that the units they bought had not yet been taken-out, they are made to execute an Affidavit of Undertaking that they are willing to assume the balance on the loan of the "special buyer" and GA will make it appear to Pag-Ibig that the "special buyer" has changed his mind so that the property could then be transferred to the real buyer. They further claim that there are more than "special buyers" than real buyers of GA and that its owners, respondents Delfin and Dexter Lee, themselves ordered the employees to recruit "special buyers".

Witness Panem also asserted in her Sinumpaang Salaysay that "special buyers" are also employed by GA in its transactions with banks, like the RCBC and PNB. One of the enticement for these "special buyers", aside from the P5,000.00 fee, is that they are assured that they will not pay for the housing loan they applied for with Pag-Ibig as in fact it is GA that pays for their housing loans. She also alleged that GA's employees sometimes use fictitious names as "special buyers".[95]

Allegedly using the "special buyers" scheme, Globe Asiatique entered into the FCAs with the HDMF during the period from August 12, 2008 to July 10, 2009 wherein Globe Asiatique represented that: (a) the buyers of its real estate projects were members of Pag-Ibig, hence, qualified to apply for the takeout loans under the Pag-Ibig Housing Loan Program; (b) the members-borrowers and their respective housing loan applications had been properly evaluated and approved in accordance with the applicable guidelines of the Pag-Ibig Housing Loan Program prior to their endorsement to the Pag-Ibig Fund; (c) that all documents submitted to the Pag-Ibig Fund, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding, and enforceable in all other respects that they purported to be; (d) that any person or agent employed or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and (e) that all pertinent laws, rules and regulations had been complied with, among others.[96] As the result thereof, the HDMF extended the FCLs in favor of Globe Asiatique amounting to P2.9 billion.

On July 13, 2009, the MOA was forged between the HDMF and Globe Asiatique for the latter to again avail of a loan takeout from the HDMF. Accordingly, additional FCAs were extended to Globe Asiatique totaling P3.55 billion. While the MOA did not contain the same representations made in the previous FCAs, it nevertheless required Globe Asiatique to undertake the following corrective measures in case defects in the HDMF membership and housing loan eligibilities of the buyers should arise, namely:

- 1) Require the borrower to complete the required number of contributions, in case the required 24 monthly contributions is not met;
- 2) Require the borrower to update membership contributions, in case the membership status is inactive;
- 3) Require the borrower to update any existing Multi-Purpose Loan (MPL) if its in arrears or pay in full if the same has lapsed;
- 4) Buyback the account in case the member has a HDMF housing loan that is outstanding, cancelled, bought back, foreclosed or subject of dacion-en-pago.[97]

Had Globe Asiatique, through the respondents, not made the foregoing representations and undertaking, the HDMF would not have entered into the FCAs and granted the loan takeouts to Globe Asiatique to its damage and prejudice.

We next determine the individual participation of the respondents in the "special buyers" scheme.

In *Ching v. Secretary of Justice*,^[98] the Court declared that corporate officers or employees through whose act, default or omission the corporation commits a crime were themselves individually guilty of the crime. The Court expounded why:

The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

The DOJ aptly noted that the following acts of the respondents rendered them criminally accountable for perpetrating the "special buyers" scheme and causing pecuniary damage to the HDMF: Delfin Lee, for signing the FCAs and MOA in behalf of Globe Asiatique, and the checks issued by Globe Asiatique to the "special buyers" and the HDMF;^[99] Dexter, for giving the orders to recruit "special buyers" and co-signing those checks issued to the special buyers and HDMF;^[100] Sagun, head of Globe Asiatique's Documentation Department, for collating the documents submitted by the borrowers/buyers, checking if the same are complete and duly accomplished, and for verifying whether or not said borrowers/buyers are indeed Pag-Ibig members with updated contributions or existing housing loans^[101] and Salagan, head of Globe Asiatique's Accounting/Finance Department, for reviewing all requests for payment from on-site projects and preparing the corresponding checks ensuring that all loan takeouts are duly recorded, and that amortizations are timely remitted to HDMF.^[102]

We agree that the concerted acts of the respondents could manifest a common criminal design to make it appear that Globe Asiatique had numerous qualified borrowers/buyers that would satisfy the HDMF's conditions for the loan takeouts. Their acts, taken collectively, would probably support a charge of conspiracy, and suggest that they participated in the transactions with a view to furthering the common design and purpose.^[103]

As for Atty. Alvarez, we do not subscribe to the CA's view that his act of notarizing various documents, consisting of the individual buyer's affidavit of income, promissory note and developer's affidavit, which were material for the processing and approval of the transactions,^[104] was insufficient to establish his having been part of the conspiracy in the execution of the "special buyers" scheme. In our view, the DOJ had reasonable basis to hold against him thusly:

x x x Atty. Alvarez knew, participated and consented to the illegal scheme perpetrated by respondents Delfin and Dexter Lee, Christina Sagun and Cristina Salagan. It should be underscored that Atty. Alvarez notarized crucial pieces of documents, consisting of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by HDMF, all of which are essential for the processing and approval of the purported transaction. We also find the defense of Atty. Alvarez as self-serving, to say the least, considering that part of his job as a notary public is to ascertain the identity of the affiant appearing before him. As it turns out, a large number of the said affiants are either fictitious and/or non-existing, thereby enabling the execution of the grand scheme of his co-respondents. It bears to note that his actions, apart from evidencing his conspiracy, assent and/or cooperation in the accomplishment of the fraud, also constitutes a clear violation of Section 7, Paragraph B (2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees.^[105]

In view of the foregoing, the amendment of the information to charge simple estafa is warranted pursuant to *Hao v. People*,^[106] to wit:

With our conclusion that probable cause existed for the crime of simple estafa and that the petitioners have probably committed it, it follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of

arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

Moreover, we note that simple estafa and syndicated estafa are not two entirely different crimes. Simple estafa is a crime necessarily included in syndicated estafa. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple estafa.

3.

The conduct of the preliminary investigation by the DOJ was invalidly enjoined

In support of its move to reverse and set aside the adverse resolutions of the CA, the DOJ argues in C.A.-G.R. No. 208744 and C.A.-G.R. No. 210095 that the CA should not have dismissed its petition for certiorari for being allegedly filed out of time because there existed special and compelling reasons to justify the relaxation of the procedural rules. Worthy to note is that the CA had denied petitioner's motion for special extension of time to file the petition for certiorari because there was no compelling reason to extend the period for doing so.

Under Section 4,[107] Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, any aggrieved party has a non-extendible period of 60 days from receipt of the assailed decision, order or resolution within which to file the petition for certiorari. The period is non-extendible to avoid causing any unreasonable delay that would violate the constitutional rights of parties to the speedy disposition of the case.[108] Regrettably, when the DOJ finally filed the petition for certiorari during the extended period sought, the petition lacked the proper docket number due to inadvertence, which prompted the CA to assign a new docket number to the petition. This move on the part of the CA resulted in the outright dismissal of the petition for having been filed beyond the reglementary period.

In view of the obtaining circumstances, we find merit in the DOJ's argument.

In *Vallejo v. Court of Appeals*,[109] the Court allowed the petition filed almost four months beyond the reglementary period to proceed. We emphasized therein that meritorious cases should be allowed to proceed despite their inherent procedural defects and lapses in keeping with the principle that the rules of procedure were but tools designed to facilitate the attainment of justice, and that the strict and rigid application of rules that would allow technicalities to frustrate rather than promote substantial justice must always be avoided. The Court explained that excusing a technical lapse and affording the parties a review of the case to attain the ends of justice, instead of disposing of the case on technicality and thereby causing grave injustice to the parties, would be a far better and more prudent course of action.

Time and again, the Court, in resolving the OSG's requests for extension, has taken cognizance of the heavy workload of that office. It should not be any different now. Worthy to note is that the OSG, representing the DOJ, offered suitable explanations and apologies, like the associate solicitor in charge of filing the petition having been rushed to the hospital and thus being denied the opportunity to supervise or see to the filing of the intended petition. Also, the omission of the docket number from the petition that was ultimately filed did not look as if it was aimed either to delay the proceedings or to confuse the CA. The explanation for the delay in the filing of the petition in the CA tendered by the OSG thereon, coupled with its invocation of liberality or the relaxation of the rules, was fully acceptable. As such, the petition should be allowed to proceed. We further find that the CA's dismissal of the petition was disproportionate to the inadvertence committed considering the substantial merits of the DOJ's case. Verily, the petition deserves to be given due course and resolved in view of the fact that the

injunction issued by the RTC against the DOJ on the conduct of the preliminary investigation was a patent nullity on its very face.

We now go to the merits of the petitions in C.A.-G.R. No. 208744 and C.A.-G.R. No. 210095.

The Pasig RTC issued the assailed April 10, 2013 order enjoining the DOJ from proceeding with the preliminary investigation of the second, third, and fourth complaints for syndicated estafa against Globe Asiatique, et al. because of its impression that the summary judgment rendered by the Makati RTC in favor of Globe Asiatique had effectively removed the indispensable element of damage from the criminal complaints.[110] The Pasig RTC undeniably gravely abused its discretion in issuing the writ of preliminary injunction.

It is an established judicial policy that injunction cannot be used as a tool to thwart criminal prosecutions because investigating the criminal acts and prosecuting their perpetrators right away have always been in the interest of the public. Such policy is intended to protect the public from criminal acts. The Pasig RTC could not feign ignorance of such policy, especially considering that the CA's previous ruling against its issuance of a writ of preliminary injunction had been affirmed by this Court with finality. The CA also observed then:

[I]njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected (sic) for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ. Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.[111]

We emphasize yet again that the conduct of a preliminary investigation, being executive in nature, was vested in the DOJ. As such, the injunction issued by the Pasig RTC inexcusably interfered with the DOJ's mandate under Section 3(2), Chapter 1, Title III, Book IV of the Administrative Code of 1987 to investigate the commission of crimes and to prosecute the offenders.

Equally worthy of emphasis is that the ruling of the CA in C.A.-G.R. SP No. 121594 attained finality after the Court reviewed such ruling in G.R. No. 201360. Considering that the petitions against the DOJ arose from the same factual milieu and sought the same relief, which was to restrain the DOJ from conducting preliminary investigations against Globe Asiatique and its officers and employees upon the complaints filed before the DOJ, and considering further that the cases involved the same parties and reprised the arguments, the doctrine of the law of the case certainly applied to bar a different outcome. At the very least, the Pasig RTC should have been very well instructed thereby, and should have avoided the incongruous situation of ignoring what was already the clear law of the case.

The doctrine of the law of the case precludes departure in a subsequent proceeding essentially involving the same case from a rule previously made by an appellate court. Applying this doctrine, the Court in *Land Bank of the Philippines v. Suntay*[112] held that:

We underscore that *Land Bank v. Suntay* (G.R. No. 157903) was the appropriate case for the determination of the issue of the finality of the assailed RARAD Decision by virtue of its originating from Land Bank's filing on April 20, 2001 of its petition for judicial determination of just compensation against Suntay and RARAD Miñas in the RTC sitting as a Special Agrarian Court. Therein, Suntay filed a motion to dismiss mainly on the ground that the petition had been filed beyond the 15-day reglementary period as required by Section 11, Rule XIII of the Rules of Procedure of DARAB. After the RTC granted the motion to dismiss, Land Bank appealed to the CA, which sustained the dismissal. As a result, Land Bank came to the Court (G.R. No. 157903), and the

Court then defined the decisive issue to be: "whether the RTC erred in dismissing the Land Bank's petition for the determination of just compensation."

The Court ruled in favor of Land Bank. For both Land Bank and Suntay (including his assignee Lubrica), the holding in *Land Bank v. Suntay* (G.R. No. 157903) became the law of the case that now controlled the course of subsequent proceedings in the RTC as a Special Agrarian Court. In *Cucueco v. Court of Appeals*, the Court defined law of the case as "the opinion delivered on a former appeal." Law of the case is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. With the pronouncement in G.R. No. 157903 having undeniably become the law of the case between the parties, we cannot pass upon and rule again on the same legal issue between the same parties.[113]

Indeed, the issue submitted for the Pasig RTC's determination had been resolved by the CA in CA-G.R. SP No. 121594 to the effect that the Pasig RTC could not enjoin the DOJ from proceeding with the preliminary investigation of the second complaint. As far as the parties were concerned, therefore, the propriety of the DOJ's conduct of the preliminary investigation was no longer an unresolved issue. But by issuing the writ of preliminary injunction yet again to prevent the preliminary investigation of the second and subsequent complaints by the DOJ, the Pasig RTC acted with manifest whimsicality that amounted to gross and patent abuse of discretion. Such action was void and ineffectual.

WHEREFORE, the Court GRANTS:

(1) The petition for review on certiorari in G.R. No. 209424 and, accordingly, ANNULS and SETS ASIDE the decision promulgated on October 7, 2013 by the Court of Appeals in C.A.-G.R. SP No. 128262; REVERSES the resolution of December 11, 2012 issued in Civil Case No. 10-1120 by the Regional Trial Court, Branch 58, in Makati City declaring the partial summary judgment rendered on January 30, 2012 final and executory; PRONOUNCES that the partial summary judgment rendered on January 30, 2012 may still be appealed by the aggrieved party upon rendition of the final judgment in Civil Case No. 10-1120; and DIRECTS the Regional Trial Court, Branch 58, in Makati City to conduct further proceedings in Civil Case No. 10-1120 with dispatch; and

(2) The petitions for review on certiorari in G.R. No. 208744 and G.R. No. 210095 and, accordingly, REVERSES and SETS ASIDE the resolution promulgated on July 8, 2013 in C.A.-G.R. SP No. 130404 denying the motion for extension of the Department of Justice, and the resolution promulgated on August 14, 2013 denying the motion to admit petition for certiorari filed by the Department of Justice; LIFTS and QUASHES the writ of preliminary injunction issued on April 10, 2013 by the Regional Trial Court, Branch 167, in Pasig City enjoining the preliminary investigation for the second, third and fourth criminal complaints filed against the respondents on the ground that such writ of preliminary injunction was issued with grave abuse of discretion amounting to lack of jurisdiction; DECLARES that the Department of Justice may now resume the preliminary investigation of the remaining criminal complaints against the respondents for simple estafa under Article 315(2)(a) of the Revised Penal Code; and ORDERS the Regional Trial Court, Branch 167, in Pasig City to dismiss Civil Case No. 73115 entitled *Delfin S. Lee v. Department of Justice*.

The Court PARTIALLY GRANTS the petitions for review on certiorari in G.R. No. 205698, G.R. No. 205780, G.R. No. 209446, G.R. No. 209489, G.R. No. 209852, G.R. No. 210143, G.R. No. 228452, G.R. No. 228730 and G.R. No. 230680 and, accordingly:

(1) DIRECTS the DEPARTMENT OF JUSTICE to amend the information in Criminal Case No. 18480 entitled

People of the Philippines v. Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez of the Regional Trial Court Branch 42, in San Fernando City, Pampanga to charge respondents DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ALEX M. ALVAREZ with simple estafa under Article 315(2)(a) of the Revised Penal Code; and

(2) ORDERS the Presiding Judge of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga to suspend proceedings in Criminal Case No. 18480 pending the filing by the DEPARTMENT OF JUSTICE of the amended information as directed herein, and to try the respondents as the accused in Criminal Case No. 18480 in accordance therewith, without prejudice to acting on any matter incidental to the conduct of the trial of a criminal case, including applications for bail.

No pronouncement on costs of suit.

SO ORDERED.

Carpio, Acting C. J., See Dissenting Opinion.

Velasco, Jr., J., concur.

Leonardo-De Castro, J., I join the dissent of Justice Carpio.

Peralta, J., No part.

Del Castillo, J., I join J. Bernabe's separate concurring opinion.

Perlas-Bernabe, J., Please see separate opinion.

Leonen, J., I dissent. See separate opinion.

Jardeleza, [**] J., No part. No part prior OSG.

Caguioa, J., See separate concurring opinion.

Martires, J., I join the dissenting opinion of J. Carpio.

Tijam, J., Please see separate concurring opinion.

A. Reyes, Jr., J., I join Justice Carpio's dissenting opinion.

Gesmundo, J., I join Justice Bernabe's separate concurring opinion.

[**] No part, due to prior participation as Solicitor General.

[1] Rollo, G.R. No. 210143, pp. 4885A-4885B; it is to be noted that on June 7, 2017, the Court issued a Resolution consolidating G.R. Nos. 228452 and 228730 with the other related cases.

[2] In C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554 and C.A.-G.R. SP No. 127690.

[3] In C.A.-G.R. SP No. 130409.

[4] In C.A.-G.R. SP No. 128262.

[5] Rollo (G.R. No. 205698), Vol. I, p. 26.

[6] Id. at 16.

[7] Id.

[8] Id. at 28.

[9] Rollo (G.R. No. 209852), Vol. I, p. 17.

[10] Rollo (G.R. No. 209424), Vol. II, pp. 598, 600.

[11] Id. at 601.

[12] Rollo (G.R. No. 205698), Vol. I, p. 30.

[13] Id. at 30-31.

[14] Id. at 31.

[15] Rollo (G.R. No. 209852), Vol. I, p. 18.

[16] Id. at 19.

[17] Docketed as I.S. No. XVI-INV-10J-00319 entitled National Bureau of Investigation (NBI)/Home Development Mutual Fund (HDMF) vs. Globe Asiatique Realty Holdings Corp., et al.

[18] Rollo (G.R. No. 209852), Vol. I, p. 20.

[19] The case was docketed as NPS No. XV-05-INV-10L-00363 entitled National Bureau of investigation (NBI)/Evelyn B. Niebres, et al. vs. Globe Asiatique Realty Holdings, Corp./Delfin S. Lee, et al.

[20] Rollo (G.R. No. 209852), Vol. I, p. 21.

[21] Id.

[22] Rollo (G.R. No. 209446), Vol. I, p. 165.

[23] Rollo (G.R. No. 209852), Vol. I, p. 21.

[24] Sagun later on impleaded the Pampanga RTC in view of the eventual filing of the information against her in the RTC of Pampanga on April 30, 2012.

[25] Rollo (G.R. No. 209446), Vol. I, p. 15-16.

[26] On August 25, 2011, Delfin Lee filed an Amended Petition in the Pasig RTC to enjoin the filing of the Information for the first syndicated estafa case based on the August 10, 2011 Review Resolution.

[27] Rollo (G.R. No. 209852), Vol. I, p. 22.

[28] Id.

[29] Id. at 23-24.

[30] Id. at 24.

[31] Rollo (G.R. No. 208744), Vol. I, p. 59

[32] Id. at 61-62.

[33] Rollo (G.R. No. 209852), Vol. I, p. 24.

[34] Id. at 24-27.

[35] Id. at 27-29.

[36] Id. at 28-29.

[37] Id. at 30.

[38] Id. at 30-31.

[39] Id. at 19.

[40] Id. at 20.

[41] Id. at 22-23.

[42] Rollo (G.R. No. 209424), Vol. I, p. 26.

[43] Id. at 64-65.

[44] Id. at 65-66.

[45] Rollo (G.R. No. 210095), Vol. I, pp. 75-76.

[46] Rollo (G.R. No. 209424), Vol. I, pp. 14-34; penned by Associate Justice Stephen C. Cruz with the concurrence of Associate Justice Elihu A. Ybanez, and Associate Justice Danton Q. Bueser, while Associate Justice Magdangal M. De Leon and Associate Justice Myra V. Garcia Fernandez dissented.

[47] Id. at 32.

[48] Rollo (G.R. No. 205698), Vol. I, pp. 24-57; penned by Associate Justice Angelita Gacutan with the concurrence of Associate Justice Mariflor Punzalan Castillo and Associate Justice Francisco P. Acosta.

[49] Id. at 56-57.

[50] Rollo (G.R. No. 209446), Vol. I, pp. 12-32; penned by Associate Justice Edwin D. Sorongon with the concurrence of Associate Justice Hakim S. Abdulwahid and Associate Justice Marlene Gonzales-Sison.

[51] Id. at 31-32.

[52] Rollo (G.R. No. 209852), Vol. I, pp. 15-43; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justice Agnes Reyes-Carpio and Associate Justice Melchor Q.C. Sadang.

[53] Id. at 42-43.

[54] Rollo (G.R. No. 228730), Vol. I, p. 108.

[55] Id. at 112-113.

[56] Rollo (G.R. No. 230680), Vol. I, p. 358.

[57] Id. at 362.

[58] Id. at 365.

[59] Rollo (G.R. No. 209446), Vol. VI, pp. 2484-2485, 2754-2755; Rollo (G.R. No. 210143), Vol. X, pp. 4756-4758; Rollo (G.R. No. 228452), Vol. V, pp. 2261.

[60] Rollo (G.R. No. 210143), Vol. X, p. 4932.

[61] Id. at 5217.

[62] Rollo (G.R. No. 209424), Vol. II, pp. 770-773.

[63] Rollo (G.R. No. 209424), Vol. III, pp. 1139-1141.

[64] Id. at 451-452.

[65] Philippine Business Bank v. Chua, G.R. No. 178899, November 15, 2010, 634 SCRA 635, 646-649.

[66] G.R. No. 156358, August 17, 2011, 655 SCRA 553.

[67] See *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 142297, June 15, 2004, 432 SCRA 126, 132.

[68] Administrative Code of 1987, Book IV, Title III, Chapter 3, Section 10 provides:

SECTION 10. Office of the Government Corporate Counsel. - The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government--owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

x x x x

[69] See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, G.R. No. 185544, January 13, 2015, 745 SCRA 269, 286-289.

[70] G.R. No. 155692, October 23, 2003, 414 SCRA 327, 335.

[71] *Rollo* (G.R. No. 209424), Vol. III, p. 1493.

[72] *Rollo* (G.R. No. 209424), Vol. II, p. 455.

[73] *Rollo* (G.R. No. 209424), Vol. III, p. 1037.

[74] *Id.* at 1225.

[75] *Oñate v. Commission on Audit*, G.R. No. 213660, July 5, 2016, 795 SCRA 661, 666-667.

[76] *Republic v. St. Vincent De Paul Colleges, Inc.*, G.R. No. 192908, August 22, 2012, 678 SCRA 738, 747-750.

[77] *Rollo* (G.R. No. 209852). Vol. I, pp. 411-414.

[78] *Id.* at 420-421.

[79] *Id.* at 236.

[80] G.R. No. 213529, July 13, 2016, 797 SCRA 1, 16-18.

[81] *Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 197.

[82] *People v. Tibayan*, G.R. No. 209655-60, January 24, 2015, 746 SCRA 259, 269.

[83] *Id.* at 268.

[84] *Catiis v. Court of Appeals*, G.R. No. 153979, February 9, 2006, 482 SCRA 71, 81.

[85] G.R. No. 192925, December 9, 2016, 813 SCRA 610, 633.

[86] *Rollo* (G.R. No. 209852), Vol. I, p. 381.

[87] *Id.* at 402.

[88] *Id.* at 402.

[89] *Rollo* (G.R. No. 209424), Vol. II, p. 754.

[90] Rollo (G.R. No. 209852), Vol. I, pp. 420-421.

[91] De Castro v. Judicial and Bar Council (JBC), G.R. Nos. 191002, 191032, 191057, 191149, 191342, 191420 and A.M. No. 10-2-5-SC, March 17, 2010, 615 SCRA 666, 742-743.

[92] G.R. No. 187919, 187979, 188030, February 20, 2013, 691 SCRA 445, 469.

[93] G.R. No. 161651, June 8, 2011, 651 SCRA 262, 275, citing Alcantara v. Court of Appeals, G.R. No. 147259, November 24, 2003, 416 SCRA 418, 430.

[94] Aricheta v. People, G.R. No. 172500, September 21, 2007, 533 SCRA 695, 704.

[95] Rollo (G.R. No. 209852), Vol. I, p. 393.

[96] Id. at 411-412.

[97] Rollo (G.R. No.209424), Vol. II, p. 599.

[98] G.R. No. 164317, February 6, 2006, 481 SCRA 609, 636-637.

[99] Rollo (G.R. No. 209852), Vol. I, p. 417.

[100] Id. at 418.

[101] Id.

[102] Id.

[103] See Zapanta v. People, G.R. Nos. 192698-99, April 22, 2015, 757 SCRA 172, 190-191.

[104] Rollo (G.R. No. 209852), Vol. I, p. 419.

[105] Id. at 419-420.

[106] G.R. No. 183345, September 17, 2014, 735 SCRA 312, 329-330.

[107] Section 4. When and where to file the petition. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion. (Emphasis ours)

[108] Manila Electric Company v. N.E. Magno Construction, Inc., G.R. No. 208181, August 31, 2016, 802 SCRA 51, 59.

[109] G.R. No. 156413, April 14, 2004, 427 SCRA 658, 668.

[110] Rollo (G.R. No. 208744), Vol. I, p. 62.

[111] Rollo (G.R. No. 208744), Vol. II, p. 652.

[112] G.R. No. 188376, December 14, 2011, 662 SCRA 614.

[113] Id. at 643-644.

DISSENTING OPINION

CARPIO, J.:

This case involves the resolution of this issue: Is the taking of some P6.6 billion from the PAG-IBIG Fund, through the use of over one thousand fictitious borrowers, applied for by a private corporation through its corporate officers, simple estafa or syndicated estafa? The PAG-IBIG Fund, administered by a government corporation, is sourced from contributions by millions of public and private employees.

The majority holds that this mind-boggling taking of funds is a case of simple estafa. I dissent for obviously this is a case of syndicated estafa.

Before this Court are consolidated petitions for review filed under Rule 45 of the Rules of Court. The consolidated cases stemmed from the housing loan accounts taken out from Home Development Mutual Fund (HDMF) by Globe Asiatique Realty Holdings Corporation (Globe Asiatique) for its housing projects in Pampanga.

The Facts

In 2008, Globe Asiatique, represented by its president, Delfin S. Lee, negotiated with HDMF for a Window-1 Contract to Sell/Real Estate Mortgage (CTS-REM) with Buyback Guaranty take out mechanism for its Xevera Bacolor Project in Pampanga. Pursuant thereto, Globe Asiatique entered into Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOA) with HDMF.

On 10 September 2010, then HDMF Officer-in-Charge (OIC) Emma Faria (Faria) wrote a letter to the Director of the National Bureau of Investigation (NBI), requesting assistance in the investigation by HDMF on the housing loan accounts taken out by Globe Asiatique for Xevera and Sameera projects in Pampanga. In her letter, Faria stated that HDMF's own validation of Globe Asiatique's accounts revealed that hundreds of them have been taken out by spurious borrowers while about a thousand more could not be located.

The NBI conducted its own investigation. On 29 October 2010, the NBI forwarded to the Department of Justice (DOJ) a letter recommending that a preliminary investigation be conducted against Delfin S. Lee and others for the crime of syndicated estafa constituting economic sabotage. The DOJ formed a panel of prosecutors to investigate the complaint which was docketed as NPS Docket XVI-INV-IOJ-00319, entitled National Bureau of Investigation (NBI)/Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corp., Delfin S. Lee, et al. (First Criminal Complaint).

On 15 November 2010, Globe Asiatique and Delfin S. Lee filed before the Makati RTC a complaint for Specific Performance and Damages against HDMF, its Board of Trustees and OIC Faria (Makati Civil Case). The Complaint was docketed as Civil Case No. 10-1120, entitled Globe Asiatique Realty Corp., et al. v. The Home Development Mutual Fund or PAG-IBIG Fund, et al. and raffled to Makati RTC Branch 58. The complaint sought to compel HDMF to accept the replacements Globe Asiatique had proposed to take the place of buyers/borrowers who have become delinquents in their payments of their loan amortizations.

Meanwhile, on 10 December 2010, the NBI forwarded to the DOJ another letter recommending the conduct of preliminary investigation against Delfin S. Lee and others for syndicated estafa based on the complaints of HDMF and Globe Asiatique clients Evelyn Niebres, Catherine Bacani, and Ronald San Nicolas. Acting on the NBI recommendation, the DOJ formed a panel of prosecutors to handle the preliminary investigation of the complaint, which was docketed as NPS Docket No. XVI-INV-10L-00363, entitled National Bureau of Investigation/Evelyn B. Niebres, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al. (Second Criminal Complaint). On 18

February 2011, the third criminal complaint for syndicated estafa was filed, docketed as NPS Docket No. XVI-INV-11B-00063, entitled National Bureau of Investigation/Jennifer Gloria, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al. (Third Criminal Complaint). The fourth criminal complaint for syndicated estafa, docketed as NPS Docket No. XVI-INV-11C-00138, entitled National Bureau of Investigation/Maria Fatima Kayonas, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al. (Fourth Criminal Complaint) was filed on 25 March 2011. Delfin S. Lee filed a petition to suspend the proceedings, which the DOJ denied.

Without awaiting the outcome of the pending DOJ cases, Delfin S. Lee tiled a Petition for Injunction dated 27 July 2011 before the Pasig RTC to enjoin the DOJ from continuing with the preliminary investigation in the Second Criminal Complaint. The case was docketed as Civil Case No. 73115-PSG and raffled to Branch 167 of the Pasig RTC, presided by Judge Rolando Misláng (Judge Misláng). In his petition, Delfin S. Lee argued that the Makati Civil Case poses a prejudicial question to the determination of the Second Criminal Complaint, and thus prayed for the suspension of the proceedings in the latter case.

In an Order dated 16 August 2011, Judge Misláng of the Pasig RTC granted Delfin S. Lee's application for TRO, and enjoined the DOJ from continuing with the preliminary investigation in the Second Criminal Complaint. In its Order dated 26 August 2011, the Pasig RTC likewise granted Delfin S. Lee's application for TRO to enjoin the DOJ from filing an Information for syndicated estafa in connection with the First Criminal Complaint. Thereafter, in its Order dated 5 September 2011, the Pasig RTC issued a Writ of Preliminary Injunction, restraining the DOJ from filing the Information in the First Criminal Complaint and from proceeding with the preliminary investigation in the Second Criminal Complaint.

In a petition docketed as CA-G.R. SP No. 121594, the DOJ assailed the Pasig RTC's Order dated 5 September 2011. In its Decision dated 16 April 2012, the Court of Appeals (CA) ruled that no prejudicial question exists and thus annulled the 5 September 2011 Order of the Pasig RTC. On appeal, this Court in its 4 July 2012 Resolution in G.R. No. 201360 affirmed the CA Decision, and thereafter denied Delfin S. Lee's Motion for Reconsideration. The CA Decision in CA-G.R. SP No. 121594 dated 16 April 2012 became final and executory on 2 January 2013.

In September 2011, HDMF filed before the Pasig RTC a Motion to Inhibit and Leave to File Motion in Intervention. The DOJ also filed a Motion to Inhibit. In its Order dated 27 January 2012, the Pasig RTC allowed HDMF to intervene but denied the motions to inhibit.

In the meantime, the DOJ Task Force on Securities and Business Scam issued a Review Resolution dated 10 August 2011, finding probable cause for syndicated estafa (NPS Docket No. XVI-INV-10J-00319) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez.

On the Makati Civil Case, the Makati RTC issued a Resolution dated 30 January 2012, granting Delfin S. Lee's Motion for Summary Judgment, ruling that Globe Asiatique was entitled to specific performance and damages, except that the exact amount of damages will have to be determined during the trial proper. In its Resolution dated 11 December 2012, the Makati RTC denied the Motion for Reconsideration filed by HDMF President and Chief Executive Officer Atty. Darlene Marie Berberabe (Atty. Berberabe) and Faria, and ruled that the Summary Judgment declared in Civil Case No. 10-1120 is already final and executory against HDMF. HDMF filed a Petition for Certiorari before the CA, docketed as CA-G.R. SP No. 128262. In its Decision dated 7 October 2013, the CA dismissed HDMF's petition, finding no grave abuse of discretion and ruling that HDMF availed of the wrong remedy to assail the Makati RTC Resolutions and that there was no showing that the petition was filed under the authority of the Office of the Government Corporate Counsel (OGCC).

In the meantime, Delfin S. Lee filed before the Pasig RTC a Supplemental Petition dated 11 June 2012, seeking to enjoin the DOJ from proceeding with the Third and Fourth Criminal Complaints, citing the 30 January 2012

Resolution of the Makati RTC in the Makati Civil Case. On 21 March 2013, the Pasig RTC issued a TRO against the DOJ, enjoining the latter from proceeding with the preliminary investigation of the Second, Third, and Fourth Criminal Complaints. Thereafter, in its Order dated 10 April 2013, the Pasig RTC issued the Writ of Preliminary Injunction, enjoining the DOJ from continuing with the preliminary investigation of the Second, Third, and Fourth Criminal Complaints.

On 7 June 2013, the DOJ filed a Motion for Special Extension of Time to File Petition for Certiorari before the CA (CA-G.R. SP No. 130404). Thereafter, the DOJ filed on 18 June 2013 the Petition for Certiorari, assailing the Pasig RTC Order dated 10 April 2013. Unfortunately, the petition was inadvertently filed without a docket number, resulting in the petition being given a new docket number (CA-G.R. SP No. 130409) and raffled to another ponente and division.

On 8 July 2013, the CA issued a Resolution in CA-G.R. SP No. 130404, denying the DOJ's Motion for Special Extension of Time to File Petition for Certiorari, stating that the requested period has lapsed without the petition having been filed. DOJ filed a Manifestation with Motion to Admit Petition for Certiorari dated 16 July 2013, which sought reconsideration of the CA's Resolution dated 8 July 2013, and prayed for the admission of the attached petition. In the Resolution dated 14 August 2013, the CA denied the motion for being filed out of time.

As regards CA-G.R. SP No. 130409, the CA, in its 26 June 2013 Resolution, dismissed the Petition for Certiorari filed by the DOJ on 18 June 2013 for being filed out of time. The CA denied the DOJ's Motion for Reconsideration in the Resolution dated 11 November 2013.

In the meantime, on 30 April 2012, the criminal information for syndicated estafa against Delfin S. Lee, Dexter Lee, Atty. Alex Alvarez, Christina Sagun, and Cristina Salagan was raffled to Pampanga RTC, Branch 42, presided by Judge Maria Amifait S. Fider-Reyes. The case was docketed as Criminal Case No. 18480 entitled "People of the Philippines v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez."

On 22 May 2012, the Pampanga RTC issued a Resolution, finding probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued a warrant of arrest against them with no bail recommended.

In the Resolution dated 22 August 2012, the Pampanga RTC denied the: (1) Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending the Resolution of the Motion filed by Delfin S. Lee and Dexter L. Lee; and (2) Motion to Quash Warrant of Arrest filed by Cristina Salagan.

On 29 January 2014, the Pampanga RTC issued a Resolution denying Christina Salagan's Second Motion to Quash Information with Prayer to Re-Determine Probable Cause Based on Supervening Event.

The Cases

The Court consolidated these cases which involve common questions of law and fact, and the reliefs sought are intertwined.

G.R. No. 205698

(Home Development Mutual Fund (HDMF) PAG-IBIG Fund, v. Christina Sagun)

This petition for review on certiorari assails the 5 October 2012 Decision and the 11 February 2013 Resolution of the CA in CA-G.R. SP No. 121346. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the Petition for Certiorari and Prohibition is hereby PARTIALLY GRANTED. Consequently, the subject Review Resolution dated August 10, 2011 issued by respondent DOJ is SET ASIDE and DISMISSED as against petitioner Christina Sagun.

SO ORDERED.[1]

The 10 August 2011 DOJ Review Resolution found probable cause against Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez for the crime of syndicated estafa in the First Criminal Complaint and recommended the filing of the corresponding information against them. The dispositive portion of the DOJ Review Resolution reads:

WHEREFORE, premises considered, it is most respectfully recommended that this resolution, finding probable cause against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez for the crime of syndicated estafa, as defined and penalized under paragraph 2(a) of Article 315 of the Revised Penal Code, in relation to Section 1 of Presidential Decree No. 1689, be APPROVED and that the corresponding information against them be filed in court WITH NO BAIL RECOMMENDED. It is likewise respectfully recommended that the complaint against Ramon P. Palma Gil, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguiling and John Tungol, be DISMISSED for lack or insufficiency of evidence and that this Resolution be referred to the Office of the Ombudsman so that the appropriate investigation be conducted against the former and present officers of HDMF (Pag-Ibig Fund).

Petitioner HDMF's Motion for Reconsideration was denied by the CA in its Resolution dated 11 February 2013.

G.R. No. 205780

(Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun)

This petition for review on certiorari filed by the DOJ and NBI likewise seeks to reverse and set aside the 5 October 2012 Decision and the 11 February 2013 Resolution of the CA in CA-G.R. SP No. 121346.

G.R. No. 208744

(Department of Justice v. Delfin S. Lee)

This petition for review on certiorari assails the CA Resolutions dated 8 July 2013[2] and 14 August 2013[3] in CA-G.R. SP No. 130404.

On 7 June 2013, the DOJ filed with the CA a Motion for Special Extension of Time to File Petition for Certiorari, praying for an additional period of ten days from 9 June 2013, or until 19 June 2013 to file the intended petition. On 18 June 2013, the DOJ filed the petition, assailing the 10 April 2013 Order of the Pasig RTC (Branch 167) in Civil Case No. 73115 which granted Delfin S. Lee's application for the issuance of a writ of preliminary injunction. The assailed Order enjoined the DOJ from continuing with the preliminary investigation of the Second, Third and Fourth Criminal Complaints, thus:

WHEREFORE, let a writ of preliminary injunction issue enjoining Department of Justice and any other person or panel under its supervision from continuing with the preliminary investigation of NPS Docket No. XVI-INV-10L-00363, the Second Criminal Complaint, NPS Docket No. XVI-INV-11B-00063, the Third Criminal Complaint, and NPS Docket No. XVI-INV-11C-00138, the Fourth Criminal Complaint.

Petitioner is directed to post a bond in the amount of Php2,000,000.00.[4]

Unfortunately, the petition filed on 18 June 2013 was without a docket number, which resulted in the petition being given another docket number, namely CA-G.R. SP No. 130409 (instead of CA-G.R. SP No. 130404), and

the same was raffled to another ponente and division.

On 8 July 2013, the CA issued a Resolution in CA-G.R. SP No. 130404, denying the DOJ's Motion for Extension of Time to File Petition for Certiorari, stating that the requested period has lapsed without the petition having been filed. The DOJ filed a Manifestation with Motion to Admit Petition for Certiorari dated 16 July 2013, which sought reconsideration of the CA's Resolution dated 8 July 2013, and prayed for the admission of the attached petition. In the Resolution dated 14 August 2013, the CA denied the motion for being filed out of time. The CA did not consider the petition as filed on 18 June 2013 since the inexcusable inadvertence of the DOJ in filing the petition without a docket number resulted in the petition being considered as a freshly filed petition and given the latest docket number, namely, CA-G.R. SP No. 130409. Furthermore, the CA found no compelling reason to reconsider the 8 July 2013 Resolution denying the DOJ's Motion for Extension.

G.R. No. 209424

(Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the Corporation, and Tessie G. Wang)

This petition for review on certiorari assails the CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262,[5] which upheld the Resolutions dated 30 January 2012 and 11 December 2012 of the Makati RTC in Civil Case No. 10-1120.[6] The dispositive portion of the CA Decision reads:

WHEREFORE, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in rendering the assailed Resolution dated January 30, 2012 containing the Summary Judgment and the Resolution dated December 11, 2012 denying the HDMF, Faria and Atty. Berberabe's Motion for Reconsideration, the instant petition is hereby DISMISSED.

SO ORDERED.[7]

The Makati RTC Resolution dated 30 January 2012 granted the Motion for Summary Judgment filed by Globe Asiatique and Delfin S. Lee.

HDMF and Faria filed a Motion for Reconsideration through private counsel, the Yorac Arroyo Chua Caedo & Coronel Law Firm. However, the Makati RTC held that the Motion for Reconsideration filed by the private counsel in behalf of HDMF is unauthorized. Atty. Berberabe likewise filed a Motion for Reconsideration. In a Resolution dated 11 December 2012, the Makati RTC denied the motions for reconsiderations filed by Faria and Atty. Berberabe for lack of merit. The Makati RTC further held that the 30 January 2012 Resolution containing the Summary Judgment has become final, executory, and immutable as to HDMF.

G.R. No. 209446

(People of the Philippines v. Alex M. Alvarez)

This petition for review on certiorari assails the CA Decision dated 3 October 2013 in CA-G.R. SP No. 127690, the dispositive portion of which reads:

WHEREFORE, in view of the foregoing premises, the Petition for Certiorari and the Supplemental Petition are PARTIALLY GRANTED and the assailed Resolutions dated May 22, 2012 and August 22, 2012 of the Regional Trial Court, Branch 42 of San Fernando City, Pampanga in so far as petitioner ALEX M. ALVAREZ is concerned are hereby annulled and set aside. Accordingly, the warrant of arrest issued against him is hereby LIFTED, QUASHED/RECALLED.

Meantime, since the evidence do not support the finding of probable cause against petitioner ALEX M. ALVAREZ, public respondent court is hereby enjoined from proceeding with Criminal Case No. 18480 as against said petitioner only.

SO ORDERED.[8]

The 22 May 2012 Resolution of the Pampanga RTC found probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued a warrant of arrest against them with no bail recommended.

In the Resolution dated 22 August 2012, the Pampanga RTC denied the: (1) Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending the Resolution of the Motion filed by Delfin S. Lee and Dexter L. Lee; and (2) Motion to Quash Warrant of Arrest filed by Cristina Salagan.

G.R. No. 209489

(Home Development Mutual Fund v. Atty. Alex M. Alvarez)

This petition for review on certiorari filed by HDMF likewise assails the CA Decision dated 3 October 2013 in CA-G.R. SP No. 127690.

G.R. No. 209852

(Home Development Mutual Fund (HDMF) v. Delfin S. Lee)

This petition for review on certiorari assails the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553,[9] which partially granted respondent Delfin S. Lee's Petition for Certiorari assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480.[10] The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the instant petition is hereby PARTIALLY GRANTED. The assailed Resolutions dated May 22, 2012 and August 22, 2012 are hereby ANNULLED and SET ASIDE for the issuance thereof was attended with grave abuse of discretion on the part of public respondent Hon. Ma. Amifait S. Fider-Reyes, in her capacity as the Presiding Judge of the San Fernando, Pampanga RTC - Branch 42. Consequently, the Warrant of Arrest issued against petitioner Delfin S. Lee is hereby QUASHED, RECALLED AND LIFTED. Afore- named public respondent judge is directed to CEASE and DESIST from further proceeding with Criminal Case No. 18480 insofar as petitioner Delfin S. Lee is concerned.

Furthermore, all government agencies tasked in the enforcement of the said warrant of arrest including but not limited to the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and the Bureau of Immigration (BI) are immediately ENJOINED from implementing the same.

SO ORDERED.[11]

G.R. No. 210095

(Department of Justice v. Delfin S. Lee)

This petition for review on certiorari assails the CA Resolutions dated 26 June 2013 and 11 November 2013 in CA-G.R. SP No. 130409. The 26 June 2013 Resolution dismissed the Petition for Certiorari filed by the DOJ on 18 June 2013 for being filed out of time. The CA denied the DOJ's Motion for Reconsideration in the Resolution dated 11 November 2013.

The Petition for Certiorari was filed by the DOJ before the CA to nullify the Order dated 10 April 2013 of Judge Mislang of the Pasig RTC (Branch 167) in Civil Case No. 73115, enjoining the DOJ from continuing with the preliminary investigation of the second, third, and fourth criminal complaints against Delfin S. Lee.

G.R. No. 210143

(People of the Philippines v. Delfin S. Lee)

This petition for review on certiorari assails the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553,[12] which partially granted respondent Delfin S. Lee's Petition for Certiorari, assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. I8480. This case is related to the case entitled Home Development Mutual Fund (HDMF) v. Delfin S. Lee (G.R. No. 209852) which likewise seeks to reverse and set aside the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553.

G.R. No. 228452

(Home Development Mutual Fund (HDMF) v. Dexter L. Lee)

This petition for review on certiorari assails the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554,[13] partially granting respondent Dexter L. Lee's Petition for Certiorari assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480.[14] The dispositive portion of the CA Decision reads:

ACCORDINGLY, on the foregoing reasons, the petition is PARTIALLY GRANTED. The assailed Resolutions dated May 22, 2012 and August 22, 2012 of Branch 42 of Regional Trial Court of Pampanga City are ANNULLED and SET ASIDE. Thus, the Warrant of Arrest issued against petitioner Dexter L. Lee is hereby QUASHED, RECALLED and LIFTED. Furthermore, the Regional Trial Court, Branch 42 of San Fernando Pampanga is directed to CEASE and DESIST from further proceeding with Criminal Case No. 18480 insofar as petitioner Dexter L. Lee is concerned.

Moreover, all government agencies tasked in the enforcement of the Warrant of Arrest including but not limited to the Philippine National Police, the National Bureau of Investigation and the Bureau of Immigration are immediately ENJOINED from implementing the said Warrant.

SO ORDERED.[15]

G.R. No. 228730

(People of the Philippines v. Dexter L. Lee)

This petition for review on certiorari likewise assails the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554, partially granting respondent Dexter L. Lee's Petition for Certiorari assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480. This case is related to the immediately preceding case entitled Home Development Mutual Fund (HDMF) v. Dexter L. Lee (G.R. No. 228452) which also seeks to reverse and set aside the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554.

G.R. No. 230680

(Cristina Salagan v. People of the Philippines and Home Development Mutual Fund ([HDMF]))

This petition for review on certiorari assails the CA Decision dated 18 March 2016 in CA-G.R. SP No. 134573, affirming the Resolutions dated 22 May 2012 and 29 January 2014 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480 insofar as accused Salagan is concerned. The dispositive portion of the CA Decision reads:

WHEREFORE, in view of the foregoing, the Petition for Certiorari is DISMISSED. Accordingly, the Resolution dated May 22, 2012 and Resolution dated January 29, 2014 of the San Fernando, Pampanga RTC, Branch 42 are hereby AFFIRMED insofar as Accused Cristina Salagan is concerned.

SO ORDERED.[16]

For clarity, the cases are discussed jointly in accordance with the resolutions or orders being ultimately assailed, thus:

I. DOJ Review Resolution dated 10 August 2011

- G.R. No. 205698 - Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun
- G.R. No. 205780 - Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun

II. Pampanga RTC Resolutions dated 22 May 2012, 22 August 2012, and 29 January 2014

- G.R. No. 209446 - People of the Philippines v. Alex M. Alvarez
- G.R. No. 209489 - Home Development Mutual Fund v. Atty. Alex M. Alvarez
- G.R. No. 209852 - Home Development Mutual Fund (HDMF) v. Delfin S. Lee
- G.R. No. 210143 - People of the Philippines v. Delfin S. Lee
- G.R. No. 228452 - Home Development Mutual Fund (HDMF) v. Dexter L. Lee
- G.R. No. 228730 - People of the Philippines v. Dexter L. Lee
- G.R. No. 230680 - Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)

III. Pasig RTC Order dated 10 April 2013

- G.R. No. 208744 - Department of Justice v. Delfin S. Lee
- G.R. No. 210095 - Department of Justice v. Delfin S. Lee

IV. Makati RTC Resolutions dated 30 January 2012 and 11 December 2012

- G.R. No. 209424 - Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang

The Issues

- Whether the CA erred in setting aside the DOJ Review Resolution dated 10 August 2011 as against Christina Sagun; (G.R. Nos. 205698 and 205780)
- A. Whether the CA erred in finding no probable cause for syndicated estafa and for the issuance of arrest warrants against Delfin S. Lee, Dexter L. Lee, and Atty. Alex M. Alvarez; (G.R. Nos. 209446, 209489, 209852, 210143, 228452, and 228730)
- B. Whether the CA (CA-G.R. SP No. 134573) erred in upholding the validity of the information for syndicated estafa as against Cristina Salagan and the issuance of the warrant of arrest against her. (G.R. No. 230680)
- A. Whether the CA erred in dismissing the Petition for Certiorari, assailing the Pasig RTC Order in Civil Case No. 73115, for being filed out of time; and
- B. Whether the Pasig RTC erred in enjoining the DOJ from continuing with the preliminary investigation of the second, third and fourth criminal complaints; (G.R. Nos. 208744 and 210095)
- A. Whether the CA erred in dismissing the Petition for Certiorari for being the wrong remedy to assail the

Summary Judgment; and

B. Whether the Makati RTC erred in issuing the Summary Judgment in Civil Case No. 10-1120. (G.R. No. 209424)

I.

- G.R. No. 205698 - Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun

- G.R. No. 205780 - Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun

G.R. Nos. 205698 and 205780 both question the propriety of the CA's ruling on Sagun's petition. The petition before the CA questioned the Review Resolution, and not the issuance of the Information and the trial court's subsequent finding of probable cause. The issues before this Court in these two cases may be limited to the following: (1) whether Christina Sagun followed proper procedure, and (2) whether the CA was correct in proceeding to rule on the validity of the Information and of the issuance of the warrants of arrest.

I rule for petitioners HDMF and DOJ on both issues. The ponencia did not address the first issue. There was no mention of Sagun's direct resort to the CA after the release of the Review Resolution. The ponencia immediately ruled on the second issue and concluded that there was no probable cause for the filing of the Information for syndicated estafa and for the issuance of warrants of arrest against respondents Delfin S. Lee, Dexter Lee, Christina Sagun, Atty. Alex Alvarez, and Cristina Salagan.

Christina Sagun failed to exhaust administrative remedies

Aggrieved parties may appeal from resolutions of prosecutors by filing a verified petition for review before the Secretary of Justice. The pertinent portions of the rule governing appeals from resolutions of prosecutors in the National Prosecution Service, otherwise known as the 2000 NPS Rule on Appeal,[17] provide:

SECTION 1. Scope. - This Rule shall apply to appeals from resolutions of the Chief State Prosecutor, Regional State Prosecutors and Provincial/City Prosecutors in cases subject of preliminary investigation/ reinvestigation.

SECTION 2. Where to appeal. An appeal may be brought to the Secretary of Justice within the period and in the manner herein provided.

SECTION 3. Period to appeal. The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

SECTION 4. How appeal taken. An aggrieved party may appeal by filing a verified petition for review with the Office of the Secretary, Department of Justice, and by furnishing copies thereof to the adverse party and the Prosecution Office issuing the appealed resolution.

The exception to the general rule will apply only when there is a clear showing of grave abuse of discretion by the public prosecutor amounting to lack or excess of jurisdiction. Absent such showing, the courts do not have the power to substitute their judgment for that of the Secretary of Justice.

In the DOJ's Review Resolution, Christina Sagun's defense is summarized as follows:

Respondent Christina Sagun, for her part, admits that she is the former head of the Documentation Department of GA since 2007. She asserts that the evidence against her in the above-entitled complaint is insufficient inasmuch as the complaint failed to specifically indicate her participation in the alleged crime. She stresses that

the enumeration of her specific participation is an essential requirement of due process and is necessary for her to effectively prepare her defense and respond to the charges made against her. She believes that her inclusion in the instant case was in relation to the alleged second buyers of a property who availed of the loan privileges under the Window-1 - CTS-REM with buyback guaranty takeout mechanism granted by the HDMF to GA, namely: Girlie Santos Espanillo, Lerma Cariaga Villaflores, Emily Pagdato Bandillo, Jennifer Fernando and Marissa Quizon.

She also emphasizes that the function of the Documentation Department in relation to Window- 1 - CTS-REM with buyback guaranty takeout mechanism of HDMF is ministerial in nature such as receiving, collating and checking loan documents if they are complete or not and verifying from Pag-IBIG if buyers/borrowers of GA are Pag-IBIG members with updated contribution and if they are qualified for a housing loan. In short, her office does not exercise discretion but merely perfunctory and strictly ministerial power. She maintains that she had not participated in any transactions with private complainants Evelyn Niebres, Catherine Bacani and Ronald San Nicolas. Neither had she made any false statement nor representation to the HDMF.[18]

The DOJ Review Resolution also stated that Christina Sagun prepared the developer's affidavits that Atty. Alex Alvarez notarized.[19]

The same DOJ Review Resolution set aside Christina Sagun's defense as follows:

By the same token, we hereby thrust aside the defenses raised by Christina Sagun x x x since, as shown by the Records, they are in the nature of denial which is "an intrinsically weak defense and which must be buttressed with strong evidence of non-culpability to merit credibility." Besides, it was clearly established by the evidence that Christina Sagun, being the head of the Documentation Department, is responsible for (a) collating and checking if the documents submitted by the borrowers/buyers, through GA's Marketing Department, are complete and duly accomplished, and (b) determine and verify from Pag-IBIG, through the submission of Membership Status Verification, whether or not said borrowers/buyers are indeed Pag-IBIG members, or with updated contributions, or [have] no existing housing loans, and thus are qualified to apply for housing loans. x x x. Verily, by the nature of their functions, Christina Sagun x x x could have prevented the commission of the herein fraud if only they exercised their functions diligently and in a prudent manner. But they failed and in fact they participated in the fraudulent scheme. x x x.

In the words of the Court, the rationale for making such officers responsible for the offense is that, they are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law. And this principle applies "[W]hether [sic] or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative act."

x x x x

Record also shows that during the Board Meeting held on June 20, 2008 wherein the piloting of the OWG membership program in GA's Xevera Project was discussed, then CEO Atty. Romero Quimbo admitted the difficulty of monitoring the sources of income of this group because many of them do not declare their actual earnings such that a credit investigation will be conducted to verify the authenticity of their income. However, during the actual implementation of the program, the conduct of such credit investigation was delegated to GA. In fact, the Agreements subsequently entered into between HDMF and GA have practically given the latter blanket authority in determining membership and housing loan eligibility and capacity to pay of its buyers. It

was also given the authority to evaluate, pre-process and approve housing loan applications. The only control mechanism put in place by HDMF being the post take-out audit or validation within thirty (30) days after loan take-out. However, the Special Audit Report dated July 26, 2010 (Annex "Q" of the Complaint) clearly established that there was non-validation or delayed post take-out on the part of HDMF San Fernando, Pampanga Branch, thus, exposing the Fund to probable loss of some financial investments.[20]

The prerequisite for Sagun's resort to the CA is a clear showing of grave abuse of discretion by the public prosecutors. Under the present circumstances, however, Sagun failed to show that the investigating prosecutors abused their discretion, much less gravely abused their discretion. Sagun, in contrast to her co-respondents in I.S. No. XVIINV-10J-00319, immediately resorted to judicial review before the CA. Delfin S. Lee, Dexter Lee, Cristina Salagan, and Atty. Alex Alvarez all filed appeals before the Secretary of Justice. Unlike Sagun, and despite her protestations about the utterances pre-judging the case made by the Secretary of Justice, that "time was of the essence," and that there was "no plain, speedy and adequate remedy in the ordinary course of law," her co-respondents saw that it was procedurally proper to have the Secretary of Justice re-examine the Review Resolution.

Sagun employed the wrong remedy in assailing the investigating prosecutor's Review Resolution, and Sagun never filed an appeal before the Secretary of Justice. Sagun was never able to validly question the Review Resolution. Thus, both the findings and conclusion in the Review Resolution, as well as the consequent filing of the Information against stand. The CA erred in considering Sagun's petition and ruling in her favor. Sagun's immediate filing of a petition before the CA is a procedural shortcut that merits a dismissal.

The CA erred in proceeding to rule on the validity of the Information and of the issuance of the warrant of arrest

The CA wrongfully asserted that when it reviews the DOJ's determination of probable cause, it makes a judicial determination of probable cause which binds the trial court.

Petitioners have done right in relying on *Alcaraz v. Gonzalez*:[21]

It bears stressing that in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice. Courts are not empowered to substitute their own judgment for that of the executive branch.

The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for certiorari under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.

It bears stressing that the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final. Under the 1993 Revised Rules on Appeals (now the 2000 National Prosecution Service Rules on Appeals), resolutions in preliminary investigations or reinvestigations from the Justice Secretary's resolution, except the aggrieved party, has no more remedy of appeal to file a motion for reconsideration of the said resolution of such motion if it is denied by the said Secretary. The remedy of the aggrieved party is to file a petition for certiorari under Rule 65 of the Rules of Court since there is no more appeal or other remedy available in the ordinary course of law.

Reyes v. Pearlbank Securities, Inc.[22] defines probable cause in the following manner, and further explains why the courts generally do not review the findings made by the Secretary of Justice:

Probable cause, for the purpose 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. The term does not mean "actual and positive cause" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. 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.

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man 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. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power, which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice. And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.

For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

The reasons put forward by the CA to justify its substitution of the Pampanga RTC's determination of probable cause do not amount to grave abuse of discretion. The Pampanga RTC's determination of probable cause, although in accord with the findings of the DOJ, did not necessarily rely on the DOJ's resolution alone. Hence, in the absence of grave abuse of discretion, there is no reason to disturb the Pampanga RTC's determination of probable cause.

II.

- G.R. No. 209446 - People of the Philippines v. Alex M. Alvarez
- G.R. No. 209489 - Home Development Mutual Fund v. Atty. Alex M. Alvarez
- G.R. No. 209852 - Home Development Mutual Fund (HDMF) v. Delfin S. Lee
- G.R. No. 210143 - People of the Philippines v. Delfin S. Lee
- G.R. No. 228452 - Home Development Mutual Fund (HDMF) v. Dexter L. Lee

- G.R. No. 228730 - People of the Philippines v. Dexter L. Lee

- G.R. No. 230680 - Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)

Delfin S. Lee and Dexter Lee failed to follow proper procedure

Delfin S. Lee and Dexter Lee's contumacious attitude to our rules of procedure is demonstrated by the following:

- (1) failing to file a motion for reconsideration of the 22 May 2012 resolution of the San Fernando RTC prior to filing a petition for certiorari before the CA;
- (2) filing a petition for certiorari before the CA without waiting for the decision of the San Fernando RTC on his motions for reconsideration of the 22 August 2012 resolution;
- (3) failing to file within the reglementary period a petition for certiorari to assail the 22 May 2012 resolution of the San Fernando RTC; and
- (4) repeated instances of forum-shopping.

On 22 May 2012, the San Fernando RTC issued a Resolution which found probable cause to issue warrants of arrest against Delfin S. Lee and Dexter Lee, among others. On 23 May 2012, Delfin S. Lee and Dexter Lee filed a "Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion." This Motion to Quash raised the following grounds: lack of jurisdiction of the San Fernando RTC due to non-payment of filing fees; judicial interference of the San Fernando RTC with the civil case filed before the Makati RTC; and lack of probable cause for the crime of syndicated estafa.

Delfin S. Lee and Dexter Lee filed another Motion to Quash dated 3 June 2012. This second Motion to Quash raised the following grounds: the facts charged in the Information do not constitute an offense; there is no syndicated estafa because the facts stated in the Information do not state conspiracy; and judicial interference of the San Fernando RTC with the civil case filed before the Makati RTC.

The San Fernando RTC denied Delfin S. Lee and Dexter Lee's Motion in a Resolution dated 22 August 2012. Delfin S. Lee and Dexter Lee filed two Motions for Reconsideration of the 22 August 2012 Resolution: the first on 8 October 2012, and the second on 13 October 2012. Delfin S. Lee and Dexter Lee then separately filed a special civil action for certiorari before the CA (CA-G.R. SP No. 127553 for Delfin S. Lee and CA-G.R. SP No. 127554 for Dexter Lee) without waiting for any resolution from the San Fernando RTC. The CA, in its 7 November 2013 Decision in CA-G.R. SP No. 127553, even stated this deviation from procedure:

On 26 November 2012, without waiting for the resolution of the above-mentioned Motion, petitioner Lee filed a Petition for Certiorari (With Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction) before this Court directed against the Resolutions dated May 22, 2012 and August 22, 2012 issued by public respondent x x x.

As for Dexter Lee, the CA stated in its 16 November 2016 Decision:

Pending the resolution of the motion before the RTC of Pampanga, petitioner filed a Petition for Certiorari with prayer of a TRO and/or Writ of Preliminary Injunction before this Court assailing the May 22, 2012 and August 22, 2012 Resolutions of RTC Pampanga.

It is hornbook doctrine that a motion for reconsideration must first be filed with the lower court before resorting to the extraordinary writ of certiorari. A motion for reconsideration gives the lower court an opportunity to correct the errors imputed to it. Moreover, the special civil action for certiorari will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the course of law. In the present case, Delfin S. Lee arrogated to himself the determination of whether the filing of a motion for reconsideration is necessary. However, Delfin S. Lee failed to show any compelling reason for his non-filing of a motion for reconsideration and his immediate

recourse to a special civil action for certiorari before the CA.

Assuming *arguendo* that a petition for certiorari was an available remedy to Delfin S. Lee, he was unable to file the petition within the reglementary period. Delfin S. Lee received the 22 May 2012 Resolution on 23 May 2012. Pursuant to Section 4 of Rule 65, he had 60 days, or until 22 July 2012, to file a petition. Delfin S. Lee, however, filed his petition before the CA only on 26 November 2012, or 127 days after the lapse of the 60-day deadline. No reason was given for the inordinate delay.

In similar manner, Dexter Lee received the 22 May 2012 Resolution on 23 May 2012. Pursuant to Section 4 of Rule 65, he had 60 days, or until 22 July 2012, to file a petition. Dexter Lee, however, filed his petition before the CA only on 23 November 2012, or 124 days after the lapse of the 60-day deadline. Dexter Lee also gave no reason for the inordinate delay.

With their immediate, yet separate, resort to a special civil action for certiorari, Delfin S. Lee and Dexter Lee have asked, successively and simultaneously, for judicial relief in different courts, particularly the San Fernando RTC and the CA, with the same end in mind: the dismissal of the syndicated estafa case filed against them.

Atty. Alex Alvarez engaged in forum-shopping

Among all respondents, it is Atty. Alex Alvarez who was most brazen in flouting our rules against forum-shopping. Consider the following:

1. Atty. Alvarez filed a Petition for Review before the Secretary of Justice on 3 October 2011 to assail the DOJ's Review Resolution dated 10 August 2011.
2. While the Petition for Review before the Secretary of Justice was pending, Atty. Alvarez filed a Petition (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Manila RTC.
3. Atty. Alvarez withdrew the Petition for Review before the Secretary of Justice only on 14 November 2011. The Secretary of Justice has yet to rule upon his withdrawal.
4. On 15 November 2011, Atty. Alvarez filed a petition before the CA docketed as CA-G.R. SP No. 122076. He prayed that the DOJ cease and desist from filing the Information in NPS Docket No. XVI-INV-10J-00319 and that he be excluded from the Information that may be filed in the case.
5. On 23 April 2012, Atty. Alvarez filed a Notice of Withdrawal of Petition in CA-G.R. SP No. 122076.
6. Still on 23 April 2012, Atty. Alvarez filed a Petition for Injunction and Prohibition (With Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Caloocan City RTC.
7. Atty. Alvarez filed an undated second petition before the CA, docketed as CA-G.R. SP No. 127690. He prayed that the Pampanga RTC cease from conducting further proceedings and that the warrant of arrest issued against him be lifted and suspended.

Throughout his numerous filings, Atty. Alvarez has sought only one end: the dismissal of the criminal case filed against him. Atty. Alvarez likewise submitted inaccurate certifications on non-forum shopping in CA--G.R. SP No. 122076, CA-G.R. SP No. 127690, and before the Caloocan City RTC.

Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for certiorari. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. For it to exist, there should be (a)

identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration.[23] The acts of Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez that were enumerated in the preceding paragraphs satisfy all these conditions.

The CA exceeded its certiorari jurisdiction

The CA quashed, recalled, and lifted the warrants of arrest against Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez. In doing so, the CA reviewed and weighed the evidence submitted before the trial court and tried the facts presented before it. It would do well for the CA to recall that its certiorari jurisdiction is limited to errors of jurisdiction and not errors of judgment. As we stated in *Leviste v. Alameda*:^[24]

In a petition for certiorari, like that filed by petitioner before the appellate court, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment. The court's duty in the pertinent case is confined to determining whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of certiorari, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.

It is premature for the CA to rule on the merits of the case prior to the trial on the merits.

Atty. Alex Alvarez's indispensable participation in the crime of syndicated estafa

To emphasize the extent of Atty. Alvarez's participation in this scheme, we quote from the transcript of the clarificatory questioning of Veniza Santos Panem, an employee of Globe Asiatique:

Prosecutor Lao

x x x Kilala mo ba si Atty. Alvarez?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Sino si Atty. Alvarez?

Veniza Santos Panem

Siya po ang nagnonotaryo ng mga dokumento sa Globe Asiatique.

Prosecutor Lao

San sya nag-o-opisina?

Veniza Santos Panem

Sa Globe Asiatique po.

Prosecutor Lao

Head office ba?

Veniza Santos Panem

Head office po.

Prosecutor Lao

So siya yung notary public.

Regular employee? Lagi mo ba syang nakikita don? Ano sa pagkakaalam mo?

Veniza Santos Panem

Lagi ko po syang nakikita doon.

Prosecutor Lao

So regular employee siya ng Globe Asiatique?

Veniza Santos Panem

Hindi ko po sure pero lagi ko siyang nakikita.

Prosecutor Lao

Doon mo siya nakikita sa Globe Asiatique.

Doon sya nag-o-opisina?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Anong year?

Veniza Santos Panem

Hindi ko po sigurado yung year.

Prosecutor Lao

Sa loob ng employment mo sa Globe Asiatique, sinong nauna sa inyo doon bilang empleyado ng Globe Asiatique?

Veniza Santos Panem

Ako po.

Prosecutor Lao

Ikaw. So gaano katagal? Mga one year after? Two years after or bago pumasok si Atty. Alvarez?

Veniza Santos Panem

Hindi ko po sure kung 2007 or 2008 po siya.

Prosecutor Lao

Sabi mo siya yung notaryo?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Saan siya nag-o-office?

Veniza Santos Panem

Sa amin po.

Prosecutor Lao

Doon sa inyo? May opisina siya doon?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

May sarili siyang kwarto doon?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Lagi mo siyang makikita doon?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

8:00 to 5:00? Whole day?

Veniza Santos Panem

Hindi naman po whole day.

Prosecutor Lao

Mga anong oras? Example Monday to Friday ... lagi ba siyang nandoon?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

So hindi siya pala-absent?

Veniza Santos Panem

Minsan naman po wala naman po siya.

Prosecutor Lao

Pero minsan lang, absent siya minsan, kasi nagnonotaryo siya ng mga documents.

Veniza Santos Panem

Meron po siyang secretary na nagno-notaryo.

Prosecutor Lao

Secretary niya nagno-notaryo?

Veniza Santos Panem

Opo.

Prosecutor Lao

Sino yung secretary nya?

Veniza Santos Panem

Si Imelda Saulo po.

Prosecutor Lao

Kapag wala si Atty. Alvarez, si Imelda ang nagno-notaryo?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Attorney ba si Imelda?

Veniza Santos Panem

Hindi po.

Prosecutor Lao

Ano siya?

Veniza Santos Panem

Hindi ko po alam e.

Prosecutor Lao

Ano ang tawag sa opisina nila?

Veniza Santos Panem

Legal department po.

Prosecutor Lao

Sila sa Legal department sila ni Atty. Alvarez at Imelda Saulo.

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Yung Legal department malapit sa office nyo?

Veniza Santos Panem

Magkatapat po yung room.

Prosecutor Lao

So kapag pumapasok si Atty. Alvarez, makikita mo?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Araw-araw ba doon? Madalas mo ba siya [makita] doon?

Veniza Santos Panem

Yes, madalas po.

Prosecutor Lao

Example pumasok siya ngayong Monday, 8 to 5 nandun siya? Kapag pumapasok siya, usually nandun lang siya sa office?

Veniza Santos Panem

Yes, your Honor.

Prosecutor Lao

Nagtatagal ba siya doon?

Veniza Santos Panem

Hindi po. Mga halfday po.

Prosecutor Lao

Halfday. Ano usually morning or afternoon?

Veniza Santos Panem

Morning po.

Prosecutor Lao

So pag lunchtime umaalis na yan. Tapos babalik bukas na.

Veniza Santos Panem

Yes, your Honor.[25]

Furthermore, the NBI report dated 29 October 2010 stated that:

Upon initial investigation of the sampling of loan folders submitted by Mr. DELFIN LEE for Globe Asiatique, it was discovered that majority of the fake and/or fraudulent loan documents were notarized by ATTY. ALEX ALVAREZ, an employee of Pag-IBIG assigned in its Legal Department and holding office in the HDMF head office. When invited for questioning by the NBI, ATTY. ALVAREZ admitted that he receives a monthly

salary of P30,000 from Globe Asiatique in exchange for notarizing its documents (regardless of [illegible]). [Illegible] the borrowers to personally appear before him as the documents are brought to him for such notarization in batches. He claimed during the interview that he is not required to secure special permission from the President of Pag-IBIG to undertake limited practice of law (which includes notarizing documents) because only those with Salary Grade 23 or lower are required to secure such permission, and there is no specific provision governing someone like him with Salary Grade 24.[26]

I cannot countenance Atty. Alvarez's actuations as that of a "mere" notary public. Atty. Alvarez was the Manager of HDMF's Foreclosure Department with Salary Grade 24. Despite being Manager of HDMF's Foreclosure Department, Atty. Alvarez ignored the glaring conflict of interest when he notarized loan applications with HDMF at the office of Globe Asiatique where he held office part-time, moonlighting as head of the legal department of Globe Asiatique. Worse, Atty. Alvarez notarized the loan applications without the personal appearance of the loan applicants. As Manager of HDMF's Foreclosure Department, he would be foreclosing on loans with fictitious borrowers based on mortgage documents that he himself notarized. Atty. Alvarez probably thought that the fictitious loan applicants would never be discovered since as Manager of HDMF's Foreclosure Department he had control of the foreclosures, and he could just expeditiously foreclose the mortgages without disclosing the fictitious mortgagees. For a monthly salary of P30,000 from Globe Asiatique, Atty. Alvarez made wholesale guarantees that the loan documents and supporting papers were submitted to him by persons who "personally appeared before him." Any agreement between Globe Asiatique and HDMF would not have materialized if it were not for Globe Asiatique's submission of mortgage documents notarized by Atty. Alvarez. Atty. Alvarez's participation in the entire scheme was a crucial and necessary step in Globe Asiatique's inducement of HDMF to release the loan proceeds to Globe Asiatique.

Syndicated Estafa

The 22 May 2012 Resolution of the Pampanga RTC found probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued warrants of arrest against them with no bail recommended.

Article 315(2)(a) of the RPC reads:

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

x x x x

(2) By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

PD 1689, which increased the penalty for estafa, if committed by a syndicate provides:

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)," or farmers association, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to

reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.

Under Section 1 of PD 1689, the elements of syndicated estafa are: (1) estafa or other forms of swindling as defined in Articles 315 and 316 of the RPC are committed; (2) the estafa or swindling is committed by a syndicate of five or more persons; and (3) the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)," or farmers' associations or of funds solicited by corporations/associations from the general public.[27]

Under PD 1689, syndicated estafa includes cases where fraud results in the misappropriation of funds solicited by corporations/associations from the general public. Thus, the law does not require that the perpetrator or the accused corporation/association be the one to solicit the funds from the public. The law merely requires that the "defraudation results in the misappropriation of money x x x or of funds solicited by corporations/associations from the general public."

The alleged fraud perpetrated resulted in the misappropriation of funds of the HDMF or PAG-IBIG Fund which is undisputedly a provident fund of the general public. The PAG-IBIG Fund consists of mandatory contributions solicited by HDMF from all employees in the public and private sectors. The PAG-IBIG Fund includes the mandatory contributions of the approximately 28,000 employees of the Judiciary whose contributions were part of the P2.9 Billion loan proceeds received by Globe Asiatique from HDMF through the nine (9) FCAs executed by Globe Asiatique with HDMF. These nine FCAs dated 12 August 2008 (P500 Million), 11 December 2008 (P100 Million), 9 January 2009 (P500 Million), 20 February 2009 (P500 Million), 23 April 2009 (P100 Million), 28 April 2009 (P300 Million), 18 May 2009 (P300 Million), 16 June 2009 (P300 Million), and 10 July 2009 (P300 Million), were executed prior to the execution of the MOA on 13 July 2009.[28] Thus, even before the execution of the MOA dated 13 July 2009, which Globe Asiatique contends relieves it of its warranties, estafa was already consummated.

After the MOA dated 13 July 2009, eight more FCAs were executed between Globe Asiatique and HDMF totaling P3.55 Billion: 13 July 2009 (P500 Million), 24 September 2009 (P500 Million), 22 October 2009 (P700 Million), 15 December 2009 (P250 Million), 5 January 2010 (P500 Million), 17 March 2010 (P500 Million), 19 March 2010 (P500 Million), and 12 May 2010 (P100 Million).[29] On 24 May 2010, HDMF issued a Notice to Delfin S. Lee for Globe Asiatique to validate the 351 buyers which were discovered by HDMF to have either surrendered or withdrawn their loans. In response to the Notice, Delfin S. Lee admitted that they are monitoring about 1,000 accounts which are suspected to be from questionable buyers, and that these accounts remain current with PAG-IBIG because Globe Asiatique had been paying for them.[30] Clearly, Globe Asiatique tried to cover-up or conceal the defaulting questionable buyers by paying on their behalf, thus keeping their accounts current. Globe Asiatique is the instrument used to defraud the HDMF of the PAG-IBIG Fund.

In short, the PAG-IBIG Fund consists of monetary contributions solicited from the general public by HDMF, which is indisputably a corporate entity. Under Section 13 of Republic Act No. 7679, "the Fund (HDMF) shall have the powers and functions specified in this Act and the usual corporate powers." Under Section 14 of the same law, the "corporate powers and functions of the Fund shall be vested in and exercised by the Board of Trustees appointed by the President of the Philippines." The PAG--IBIG Fund is the fund that was defrauded by Delfin S. Lee and his four (4) co-accused through the use, and submission to HDMF, of loan applications and mortgage documents of fictitious loan applicants.

No grave abuse of discretion in trial court's determination of probable cause

The Pampanga RTC's determination of probable cause, which was in accord with the findings of the DOJ, shows no grave abuse of discretion. Hence, the claim of Cristina Salagan that there was no probable cause to charge her

with syndicated estafa deserves scant consideration.

III. 1. G.R. No. 208744 - Department of Justice v. Delfin S. Lee

2. G.R. No. 210095 - Department of Justice v. Delfin S. Lee

Procedural rules may be relaxed under exceptional circumstances

I agree with the ponencia that the CA should not have dismissed the petitions for being filed out of time because there existed special and compelling reasons for the relaxation of procedural rules.

Rules of procedure are indispensable to facilitate the orderly and speedy adjudication of cases. Courts are constrained to adhere to procedural rules under the Rules of Court. Nevertheless, under Section 6 of Rule 1, courts are granted the leeway in interpreting and applying the rules:

Sec. 6. Construction. - These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

However, courts are not given carte blanche authority to interpret rules liberally and the resort to liberal application of procedural rules remains as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.[31]

Section 4 of Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, provides for the period for filing petitions for certiorari:

SECTION 4. When and Where to File the Petition. - The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.

x x x x

Although the provision on motion for extension[32] has been deleted in the amended Section 4, such omission does not automatically mean that a motion for extension is already prohibited. As held in *Domdom v. Third & Fifth Divisions of the Sandiganbayan*: [33]

That no mention is made in the x x x amended Section 4 of Rule 65 of a motion for extension, unlike in the previous formulation, does not make the filing of such pleading absolutely prohibited. If such were the intention, the deleted portion could just have simply been reworded to state that "no extension of time to file the petition shall be granted." Absent such prohibition, motions for extension are allowed, subject to the Court's sound discretion.

The 18 June 2013 Petition for Certiorari was filed before the CA within the extended period requested by petitioner. However, due to the unintended omission of the docket number (CA-G.R. SP No. 130404), the petition was assigned a new docket number (CA-G.R. SP No. 130409) and raffled to another ponente and division. This resulted in the dismissal of the petition for being filed out of time. As explained by petitioner DOJ, the procedural lapse was due to inadvertence and not intended to delay the proceedings. Considering the merits of the petition and having been filed within the extended period requested, albeit lacking the proper docket number, the CA should have applied the rules liberally and excused the belated filing.[34] It is more prudent for the court to excuse a technical lapse to avoid causing grave injustice not commensurate with the party's failure to comply with the prescribed procedure.[35] Furthermore, the merits of the case may be considered as a special or compelling reason for the relaxation of procedural rules.[36]

The Pasig RTC disregarded a prior CA and SC ruling on the same issue when it issued the writ of preliminary

injunction

The Petition for Certiorari filed with the CA assailed the 10 April 2013 Order of the Pasig RTC enjoining the continuation of the preliminary investigation by the DOJ of the Second, Third, and Fourth Criminal Complaints. The Pasig RTC held that the Summary Judgment dated 30 January 2012 in Civil Case No. 10-1120 (Makati Civil Case) issued by the Makati RTC eliminates the element of damage in the criminal complaints against Delfin S. Lee, which is an integral condition for an estafa case to prosper against the latter. The Pasig RTC explained:

The Court premised its issuance of the TRO based on the Makati RTC Branch 58 Summary Judgment dated 30 January 2012 and Order dated 11 December 2012 declaring the same to be final and executory.

The resolution of the Makati Court required intervenor HDMF to honor the terms and conditions of the Funding Commitment Agreement and other contracts entered into between the parties. Clearly thus, intervenor HDMF's performance of its obligations under the Funding Commitment Agreement, Collection Service Agreement and Memorandum of Agreement eliminates the element of damage in the criminal complaints against petitioner which is a condition sine qua non for an estafa case to prosper against it [sic]. Note further that although the Court of Appeals ("CA") Decision dissolving the Writ of Preliminary Injunction issued by this Court in restraining the second criminal complaint had been affirmed via a petition for review on certiorari, the subsequent rendition of the Summary Judgment by the Makati RTC 58 constitutes a supervening event to enjoin anew the proceedings in the second criminal complaint as the rendition of which and its eventual finality was clearly not yet extant and could not have been considered by the CA decision when the same was penned. Furthermore, the CA decision refers only to the injunction order issued by the Court and not to the Makati RTC 58 case which is still pending at the time. Reliance therefore on the CA decision as per second criminal complaint can no longer be made in light of the summary judgment and its finality. In the same vein, the injunction order should likewise extend to the third and fourth criminal complaints lodged against herein petitioner for compliance with the Summary Judgment by intervenor HDMF is concomitant with that of petitioner's compliance with his own obligations to the buyers considering that the titles of the private complainants which are presently in the possession of intervenor HDMF ought to be released and delivered to them, negating the breach being cited by the private complainants as the underlying premise for the criminal complaints against petitioner.

In essence, the summary judgment held that there can be no fraud and damages, an essential element for the crime of estafa, because it is HDMF that approved the Pag-Ibig membership and loan applications of the private complainants.

x x x x

In the case at bar, grave and irreparable damage would be caused to petitioner because he will most likely be indicted for another non-bailable offense despite the fact that the RTC Makati 58 already held that he committed no fraud against the private complainants. And to expose petitioner to unnecessary trauma, hardship, inconvenience, anxiety, and fear associated with a criminal prosecution amounts to grave and irreparable injury which must be prevented.

Premises considered, and without prejudice to the final outcome of the certiorari proceeding pending against the assailed Summary Judgment of the Makati RTC 58 on the issue of the existence or non-existence of fraud committed by the respondent herein against intervenor HDMF and/or private complainants, the Court finds at this point in time that petitioner has an existing and valid right to be protected necessitating the issuance of an injunctive relief in its favor.

WHEREFORE, let a writ of preliminary injunction issue enjoining the Department of Justice and any other person or panel under its supervision from continuing with the preliminary investigation of NPS Docket No. XVI-INV-10L-00363, the Second Criminal Complaint, NPS Docket No. XVI-INV-11B-00063, the Third Criminal Complaint, and NPS Docket No. XVI-INV-11C-00138, the Fourth Criminal Complaint.

Petitioner is directed to post a bond in the amount of Php2,000,000.00.[37]

As stated in this 10 April 2013 Order of the Pasig RTC, there was already a prior CA Decision dated 16 April 2012 in CA-G.R. SP No. 121594 which lifted the previous writ of preliminary injunction issued by the Pasig RTC in its Order dated 5 September 2011, restraining the DOJ from proceeding with the preliminary investigation of the Second Criminal Complaint. The CA ruling annulling the 5 September 2011 Order of the Pasig RTC for having been issued with grave abuse of discretion was affirmed by this Court in a Resolution dated 4 July 2012 in G.R. No. 201360. Clearly, the issue of whether the preliminary investigation of the criminal complaints can be enjoined has already been ruled upon with finality by this Court, which affirmed the ruling of the CA in CA-G.R. SP No. 121594, and which decision became final and executory on 2 January 2013. As ruled by the CA in its Decision dated 16 April 2012 in CA-G.R. SP No. 121594:

Anent the second DOJ case, the resolution of whether GA is entitled to replace the defaulting buyers/borrowers would not determine the guilt of Lee as the gravamen of the complaint for estafa filed by Niebres and Bacani against GA and Lee was the failure of GA to release to them the title to the respective property which they already paid in full because it turned out that the properties sold to them were subject of loans under the name of other persons. In the case of San Nicolas, on the other hand, he was paying for a property that was also a subject of a loan by another person.

Contrary to public respondent Judge's finding, the acceptance by HDMF of the replacement buyers that GA is offering will not in any way affect Lee's liability to Niebres, Bacani, and San Nicolas in selling to them units which were already sold to other buyers. x x x.

x x x x

What is clear in the second DOJ case is that the properties bought by complainants were subjects of double sale. The sale by GA of the units, already paid in full by Niebres, Bacani and still being paid for by San Nicolas, to other individuals created a temporary disturbance in the rights of the latter as property owners. Even if the Makati RTC would rule in favor of Lee, Niebres, Bacani and San Nicolas would not qualify as replacement buyers. Hence, the preemptive resolution of the civil case before the DOJ could conduct a preliminary investigation in the second DOJ case would not affect the determination of guilt or innocence of Lee for estafa.

To reiterate, injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected [sic] for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of prejudicial question. However, this Court finds that the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ. Verily, public respondent Judge committed grave abuse of discretion amounting to lack or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information for estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.[38] (Emphasis supplied)

Unfortunately, the Pasig RTC chose to ignore this ruling and issued again an Order for another writ of preliminary injunction, enjoining the DOJ from continuing with the Second, Third, and Fourth Criminal Complaints. It should be stressed that the private complainants in the Second, Third, and Fourth Criminal Complaints are similarly situated: all of them are alleged victims of double sales by Globe Asiatique and Delfin S. Lee. Clearly, the issuance of another writ of preliminary injunction by the Pasig RTC in its 10 April 2013 Order is a blatant disregard of the decision of this Court (which affirmed the CA Decision dated 16 April 2012 in CA-G.R. SP No. 121594). The Summary Judgment rendered by the Makati RTC does not determine the criminal liability of Delfin S. Lee for syndicated estafa in the Second, Third, and Fourth Criminal Complaints which involve double sales.

Besides, the Summary Judgment merely orders the HDMF to comply with its obligations under the MOA with Globe Asiatique, including the acceptance of replacement buyers. The acceptance of replacement buyers contemplates defaulting buyers/borrowers of their loan and not double sales. The double sales allegedly perpetuated by Globe Asiatique and Delfin S. Lee in the Second, Third, and Fourth Criminal Complaints, were never an issue in the Makati Civil Case. In fact, the private complainants in the Second, Third, and Fourth Criminal Complaints are not parties to the Makati Civil Case, which was filed by Globe Asiatique and Delfin S. Lee against HDMF, its Board of Trustees, and OIC Faria. Clearly, the 10 April 2013 Order of the Pasig RTC is void for having been issued with grave abuse of discretion.

At this juncture, it bears stressing that the general rule is that criminal prosecution may not be restrained or stayed by injunction or prohibition[39] because public interest requires the immediate and speedy investigation and prosecution of criminal acts for the protection of society.[40] With more reason will injunction not lie when the case is still at the preliminary investigation stage.[41] As the court held in *Atty. Paderanga v. Drilon*: [42]

Preliminary investigation is generally inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the person against whom it is taken in jeopardy.

The institution of a criminal action depends upon the sound discretion of the fiscal. He has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. Hence, the general rule is that an injunction will not be granted to restrain a criminal prosecution.

However, there are exceptions to this rule, such as:

- To afford adequate protection to the constitutional rights of the accused;
- When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
- When there is a prejudicial question which is sub judice;
- When the acts of the officer are without or in excess of authority;
- Where the prosecution is under an invalid law, ordinance or regulation;
- When double jeopardy is clearly apparent;
- Where the court has no jurisdiction over the offense;
- Where there is a case of persecution rather than prosecution;
- Where the charges are manifestly false and motivated by the lust for vengeance;
- When there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied;
- Preliminary injunction has been granted by the Supreme Court to prevent the threatened unlawful arrest of petitioners.[43]

The Pasig RTC case does not fall under any of these exceptions. Thus, Judge Mislang of the Pasig RTC should not have issued the writ of preliminary injunction.

To underscore the wrongful actuations of Judge Mislang in handling the HDMF cases before his sala, this Court dismissed Judge Mislang from the service on 26 July 2016.[44] The pertinent portions of our per curiam decision

read:

Judge Misláng issued two (2) TROs, a writ of preliminary injunction and a status quo order, both of which did not satisfy the legal requisites for their issuance, in gross violation of clearly established laws and procedures which every judge has the duty and obligation to be familiar with. The antecedent incidents of the case brought before Judge Misláng were clear and simple, as well as the applicable rules. Unfortunately, he miserably failed to properly apply the principles and rules on three (3) points, i.e., the prematurity of the petition, the inapplicability of the prejudicial question, and the lack of jurisdiction of the court. His persistent disregard of well-known elementary rules in favor of Lee clearly reflects his bad faith and partiality.

x x x x

WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Misláng, Regional Trial Court, Pasig City, Branch 167, GUILTY of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and ORDERS his DISMISSAL from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.[45]

IV. G.R. No. 209424 - Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang

Petition for certiorari is the proper remedy

In its Decision dated 7 October 2013 in CA-G.R. SP No. 128262, the CA held that a summary judgment is a final judgment and that the proper remedy for petitioner HDMF was to file an ordinary appeal under Rule 41 and not a petition for certiorari under Rule 65. The CA noted that the petition filed by HDMF lacks: (1) a written authorization from the OGCC that the Yorac Arroyo Chua Caedo & Coronel Law Firm or the HDMF Office of the Legal and General Counsel Group is duly authorized to file the petition; and (2) the written concurrence of the COA for the OGCC to delegate its duty to represent HDMF to file the petition. The CA ruled that the HDMF Office of the Legal and General Counsel Group and the Yorac Arroyo Chua Caedo & Coronel Law Firm had no authority to file the petition for certiorari. Thus, the CA dismissed the petition for certiorari mainly on technical grounds.

The CA did not rule on the propriety of the summary judgment, thus:

As to the issue on whether the Summary Judgment as contained in the first assailed Resolution was rendered in accordance with the law, particularly Rule 35 of the Rules of Court, and as to the wisdom and correctness of the Summary Judgment, thereby treating the instant petition as one of appeal, considering that the case involves paramount public interest, We refuse to dwell on the matter as the same, as elucidated above, is clearly not the proper subject of the instant petition for certiorari which only province is the determination of lack or excess of jurisdiction, or grave abuse of discretion amounting to lack or excess of jurisdiction.[46]

It should be noted that in its 11 December 2012 Resolution, the Makati RTC held that the Motion for Reconsideration filed by the Yorac Arroyo Chua Caedo & Coronel Law Firm on behalf of HDMF is unauthorized and may be deemed a mere scrap of paper which does not toll the running of the period of appeal. The Makati RTC held that for failure of HDMF to file a valid motion for reconsideration or appeal of the Resolution dated 30 January 2012 containing the summary judgment, such has become "final, executory, and immutable" insofar as HDMF is concerned.

The dispositive portion of the 11 December 2012 Resolution reads:

WHEREFORE, premises considered, the Court hereby resolves to:

1. DENY the motions for reconsideration of the January 30, 2012 Resolution of this Court filed by defendants Faria and Atty. Berberabe for lack of merit; and
2. NOTE with approval the Manifestation filed by plaintiffs in connection with the failure of defendant Home Development Mutual Fund (HDMF) to file a motion for reconsideration or appeal from the January 30, 2012 Resolution of this Court containing the Summary Judgment which, except as to the exact amount of damages the plaintiffs are entitled, finally disposes of this case, rendering the summary judgment herein final, executory, and immutable as to defendant HDMF.

SO ORDERED.[47]

Clearly, the finality of the judgment as against HDMF necessitates the filing of a petition for certiorari since a notice of appeal is barred where the judgment sought to be appealed is already final and executory. As held in *Victory Liner, Inc. v. Malinias*:[48]

Thus, the MTC judgment became final and executory despite the filing of the Motion for Reconsideration thereto, as said motion did not toll the period for filing an appeal therefrom. Yet that did not mean that petitioner was left bereft of further remedies under our Rules. For one, petitioner could have assailed the MTC's denial of the Motion for Reconsideration through a special civil action for certiorari under Rule 65 alleging grave abuse of discretion amounting to lack of jurisdiction on the part of the MTC in denying the motion. If that remedy were successful, the effect would have been to void the MTC's denial of the Motion for Reconsideration, thus allowing petitioner to again pursue such motion as a means towards the filing of a timely appeal.

x x x x

On the other hand, a notice of appeal pursued even with a prior pronouncement by the trial court that the judgment sought to be appealed was already final is either misconceived or downright obtuse. It may have been a different matter if the notice of appeal was undertaken without there being any prior express ruling from the trial court that the appealed judgment was already final and that statement was instead expressed at the time the trial court denies the notice of appeal, for at least in that case, the appellant proceeded with the appeal with the comfort that the trial court had not yet said that the appeal was barred. However, as in this case, where the trial court already notified would be appellant that the judgment was already final, executory and thus beyond appeal, appellant should suffer the consequences if the notice of appeal is nonetheless stubbornly pursued.

Similarly, in this case, the Motion for Reconsideration filed by HDMF was held unauthorized by the Makati RTC and deemed a mere scrap of paper which did not toll the running of the period of appeal. Thus, compared to Faria and Atty. Berberabe whose motions for reconsideration were denied for lack of merit, the Makati RTC ruled that the summary judgment is "final, executory, and immutable as to defendant HDMF." In light of this ruling, HDMF had to file a petition for certiorari, while Faria and Atty. Berberabe filed their notice of appeal.

Furthermore, where there is absolutely no legal basis for the rendition of a summary judgment, a petition for certiorari is the appropriate, adequate, and speedy remedy to nullify the assailed judgment to prevent irreparable damage and injury to a party. As held in *Cadirao v. Judge Estenzo*:[49]

Anent the propriety of the remedy availed of by the petitioners, suffice it to state, that although appeal was technically available to them, certiorari still lies since such appeal does not prove to be a speedy and adequate remedy. Where the remedy of appeal cannot afford an adequate and expeditious relief, certiorari can be allowed as a mode of redress to prevent irreparable damage and injury to a party. Certiorari is a more speedy and efficacious remedy of nullifying the assailed summary judgment there being absolutely no legal basis for its issuance. Moreover, the records show that private respondent had already moved for the issuance of a writ

of execution and that respondent Judge merely held in abeyance resolution of the same pending resolution by this Court of the instant petition. Clearly then, even if appeal was available to the petitioners, it is no longer speedy and adequate.

The propriety of certiorari as the more speedy and adequate remedy is underscored by the fact that respondents Globe Asiatique and Delfin S. Lee have already filed a Motion for Execution[50] dated 19 March 2013 against HDMF. HDMF contends that if the motion is granted, HDMF will be required to release hundreds of millions or billions of pesos, money which came from the hard-earned contributions of HDMF members, in favor of Globe Asiatique. Moreover, HDMF posits that it will also be compelled to accept the replacement buyers offered by Globe Asiatique, whose accounts may be equally spurious as those of the original buyers whose applications were approved by Globe Asiatique.[51]

On the alleged unauthorized representation of the Yorac Arroyo Chua Caedo & Coronel Law Firm on behalf of HDMF, the records show that the OGCC in fact authorized HDMF to engage the services of the said private law firm as evidenced by the letters dated 28 December 2010[52] and 5 December 2011[53] signed by Government Corporate Counsel Raoul C. Creencia. Furthermore, in the COA Certification dated 10 January 2013,[54] COA Corporate Auditor Atty. Fidela M. Tan attested that the COA has concurred in the retainer agreement between HDMF and the Yorac Arroyo Chua Caedo & Coronel Law Firm. Clearly, the Yorac Arroyo Chua Caedo & Coronel Law Firm is vested with the proper authority to represent HDMF, and was in fact authorized to file the Motion for Reconsideration dated 17 February 2012 on behalf of HDMF.

Summary Judgment is not proper because there are genuine issues of material facts

The Makati RTC Resolution dated 30 January 2012 granted the Motion for Summary Judgment filed by Globe Asiatique and Delfin S. Lee against HDMF, and ordered the latter to comply with its obligations under the MOA, FCAs, and CSAs. The dispositive portion of the resolution states:

WHEREFORE, premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiffs have proven their case by preponderance of evidence. As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper[;]
2. Pursuant to the provisions of their MOA amending the continuing FCAs and CSAs, defendant HDMF is hereby ordered to comply faithfully and religiously with its obligations under the said contracts, including but not limited to the release of loan take-out proceeds of those accounts whose Deed[s] of Assignment with Special Power of Attorney have already been annotated in the corresponding Transfer Certificate of Title covering the houses and lots purchased by the PAG-IBIG member--borrowers from plaintiff GARHC as well as the evaluation of the loan applications of those who underwent or will undergo plaintiff GARHC's loan counseling and are qualified for PAG-IBIG FUND loans under the MOA and continuing FCAs and process the approval thereof only if qualified, under the Window 1 Facility as provided for in the MOA and continuing FCAs;
3. The unilateral cancellation by defendant HDMF of the continuing FCAs specifically the latest FCAs of December 15, 2009, January 5 and March 17, 2010 and CSA dated 10 February 2009, is hereby SET ASIDE[;]
4. Defendants are ordered to automatically off-set the balance of those listed in Annex "E" of the Motion for Summary Judgment against the retention money, escrow money, funding commitment fee, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;
5. Defendants are ordered to accept the replacement-buyers listed in Annex "F" of the Motion for Summary

Judgment, which list is unopposed by defendants, without interest or penalty from the time of defendant HDMF's cancellation of the Collection Servicing Agreement (CSA) resulting to the refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;

6. Defendants are ordered to release the corresponding Transfer Certificate of Title[s] (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "E" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof.

Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled on March 12, 2012 at 8:30 in the morning.

SO ORDERED.[55]

A summary judgment is a procedural technique designed to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record.[56] The purpose of summary judgment is to grant immediate relief in cases where no genuine triable issue of fact is raised, and thus avoid needless trials and delays. Summary judgment should not be granted unless the records show with certainty that there is no disputable issue as to any material fact which would prevent recovery from the party presenting the motion for summary judgment if a full-blown trial is conducted. The party who moves for summary judgment has the burden of proving the absence of any genuine issue as to any material fact or that the issue posed is patently unsubstantial and does not constitute a genuine issue for trial.[57]

Summary judgment is provided under Rule 35 of the 1997 Rules of Civil Procedure. Sections 1 and 3 of Rule 35 read:

Section 1. Summary judgment for claimant. - A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Section 3. Motion and proceedings thereon. - The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Section 3 of Rule 35 provides two requisites for the grant of a summary judgment: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Thus, where the pleadings tender a genuine issue which requires the presentation of evidence, the rendition of a summary judgment is not proper. A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived, or false claim.[58]

Contrary to the ruling of the Makati RTC, the pleadings of the parties show the existence of genuine issues of material facts, rendering the summary judgment improper.

In its Complaint dated 13 November 2010,[59] Globe Asiatique claims that: (1) Globe Asiatique has the right to replace the buyers/borrowers who have been delinquent for whatever reason and that the refusal of Pag-IBIG Fund [HDMF] to accept the replacements violated Globe Asiatique's rights to exercise the remedies available to it under the provisions of the MOA and FCA; (2) Pag-IBIG Fund's precipitate cancellation of the latest FCA and

its refusal to release the collectibles/loan take-outs to which Globe Asiatique is entitled caused the latter's failure to comply with its obligations under the MOA and FCA; and (3) Pag-IBIG Fund's cancellation of the latest FCA and CSA was intended to cause Globe Asiatique to fail to comply with its obligations under the MOA and as a consequence lose its incentives for its good performance for the past years and the potential to earn under the agreements.

On the other hand, in its Answer with Compulsory Counterclaim dated 8 December 2010,[60] HDMF refutes Globe Asiatique's claims, thus: (1) HDMF has the right to terminate the agreements because of Globe Asiatique's "grand fraudulent scheme through the creation of ghost buyers and fabrication of loan documents" which violates the 13 July 2008 MOA and the 5 January 2010 FCA; (2) the alleged defaulting buyers/borrowers sought to be replaced by Globe Asiatique are in fact fake and fictitious buyers/borrowers; (3) under Section 3.7 (Buyback of Accounts) of the FCA, the remedy of buyback of accounts can only be availed of after receipt of the Notice of Buyback, which Pag-IBIG Fund did not issue for the 400 accounts mentioned by Globe Asiatique in its Complaint, which Globe Asiatique unilaterally canceled; (4) Section 3.7 of the FCA applies only in case of default and not when the cause for buyback is fraud or breach by Globe Asiatique of any of its warranties; (5) the CSA was canceled due to Globe Asiatique's failure to remit the amortization collections for the periods covering August 2-6, 2010 and August 9-13, 2010; (6) Pag-IBIG Fund canceled the 15 September 2010 FCA because of Globe Asiatique's failure to: a) buyback CTS accounts, other than the 400 accounts mentioned in Globe Asiatique's Complaint which Globe Asiatique unilaterally canceled and which were not subjected to Notices of Buyback by Pag-IBIG Fund; and b) remit the collection covering monthly installment payments of housing loan accounts under the CSA; and (7) Globe Asiatique violated its undertaking and warranty under Sections 3.1[61] and 7.1[62] of the FCA when it approved loan applications which were not eligible under the Pag-IBIG Housing Loan Program.

It is very apparent from the allegations in the parties' respective pleadings that there exist relevant genuine issues which require the presentation of evidence and which need to be resolved in a full-blown trial. Summary judgment cannot take the place of trial since the facts as pleaded by Globe Asiatique are categorically disputed and contradicted by HDMF.

Thus, the CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262 should be reversed and the 30 January 2012 and 11 December 2012 Resolutions of the Makati RTC in Civil Case No. 10-1120 should be annulled and set aside. The case should be remanded to the Makati RTC for trial on the merits.

For the orderly disposition of these cases, my vote is summarized as follows:

I. DOJ Review Resolution dated 10 August 2011

- G.R. No. 205698 - Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun

- G.R. No. 205780 - Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun

The petitions filed by HDMF and DOJ should be GRANTED. The 5 October 2012 Decision and the 11 February 2013 Resolution in CA-G.R. SP No. 121346 should be REVERSED. The Warrant of Arrest issued in Criminal Case No. 18480 before RTC Branch 42 of San Fernando, Pampanga against Christina Sagun should be REINSTATED.

II. Pampanga RTC Resolutions dated 22 May 2012 and 22 August 2012

- G.R. No. 209446 - People of the Philippines v. Alex M. Alvarez
- G.R. No. 209489 - Home Development Mutual Fund v. Atty. Alex M. Alvarez
- G.R. No. 209852 - Home Development Mutual Fund (HDMF) v. Delfin S. Lee
- G.R. No. 210143 - People the Philippines v. Delfin S. Lee
- G.R. No. 228452 - Home Development Mutual Fund (HDMF) v. Dexter L. Lee
- G.R. No. 228730 - People of the Philippines v. Dexter L. Lee
- G.R. No. 230680 - Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)

The petitions filed by HDMF and OSG should be GRANTED. The 3 October 2013 Decision in CA-G.R. SP No. 127690, the 7 November 2013 Decision in CA-G.R. SP No. 127553, and the 16 November 2016 Decision in CA-G.R. SP No. 127554 should be REVERSED. The Warrants of Arrest issued in Criminal Case No. 18480 before RTC, Branch 42 of San Fernando, Pampanga against Delfin S. Lee, Dexter L. Lee, and Atty. Alex M. Alvarez should be REINSTATED. The petition filed by Cristina Salagan should be DISMISSED, and the Decision dated 18 March 2016 in CA-G.R. SP No. 134573 should be AFFIRMED.

III. Pasig RTC Order dated 10 April 2013

- G.R. No. 208744 - Department of Justice v. Delfin S. Lee
- G.R. No. 210095 - Department of Justice v. Delfin S. Lee

The CA Resolutions dated 14 August 2013 in CA-G.R. SP No. 130404 and the CA Resolution dated 26 June 2013 in CA-G.R. SP No. 130409 should be REVERSED. The Order dated 10 April 2013 of the Pasig RTC in Civil Case No. 73115-PSG, issuing the writ of preliminary injunction enjoining the DOJ from continuing the preliminary investigation of the Second, Third, and Fourth Criminal Complaints should be ANNULLED and SET ASIDE.

IV. Makati RTC Resolutions dated 30 January 2012 and 11 December 2012

- G.R. No. 209424 - Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang

The CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262 should be REVERSED and the 30 January 2012 and 11 December 2012 Resolutions of the Makati RTC in Civil Case No. 10-1120 should be ANNULLED and SET ASIDE. The case should be REMANDED to the Makati RTC for trial on the merits.

[1] Rollo (G.R. No. 205698), Vol. I, pp. 56-57.

[2] Rollo (G.R. No. 208744), p. 122.

[3] Id. at 118-121.

[4] Id. at 198.

[5] Home Development Mutual Fund v. The Hon. Eugene S. Paras, in his official capacity as the Presiding Judge of Branch 58 of the Regional Trial Court of Makati, Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as President of the corporation and Tessie G. Wang.

[6] Globe Asiatique Realty Holdings Corporation and Delfin S. Lee, in his capacity as President of the

corporation v. Home Development Mutual Fund (HDMF) or PAG-IBIG Fund, its Board of Trustees and Emma Linda Faria, Officer-in-Charge.

[7] Rollo (G.R. No. 209424), Vol. I, pp. 14-34.

[8] Rollo (G.R. No. 209446), Vol. I, pp. 31-32.

[9] Delfin Lee v. Ma. Amifaith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF).

[10] People v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, docketed as Criminal Case No. 18480 for syndicated estafa under Article 315(2)(a) of the RPC in relation to Section 1 of PD 1689, as amended.

[11] Rollo (G.R. No. 209852), Vol. I, pp. 42-43.

[12] Delfin S. Lee v. Ma. Amifaith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF).

[13] Dexter L. Lee v. Ma. Amifaith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF).

[14] People of the Philippines v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, docketed as Criminal Case No. 18480 for syndicated estafa under Article 315(2)(a) of the RPC in relation to Section 1 of PD 1689, as amended.

[15] Rollo (G.R. No. 228730), pp. 32-33.

[16] Rollo (G.R. No. 230680), Vol. I, p. 365.

[17] DOJ Department Circular No. 70 dated 6 July 2000.

[18] Review Resolution, pp. 19-20.

[19] *Id.* at 41.

[20] *Id.* at 40-41, 44-45. Boldfacing in the original.

[21] 533 Phil. 796, 807-808 (2006). Italicization in the original.

[22] 582 Phil. 505, 518-520 (2008)

[23] Santos v. COMELEC, 447 Phil. 760 (2003).

[24] 640 Phil. 620, 650-651 (2010).

[25] Rollo (G.R. No. 209446), pp. 2550-2563.

[26] *Id.* at 722.

[27] Belita v. Sy, 788 Phil. 581, 588-589 (2016); People v. Tibayan, 750 Phil. 910, 920 (2015).

[28] Rollo (G.R. No. 209424), p. 810.

[29] *Id.* at 812.

[30] *Id.* at 814.

[31] *People v. Espinosa*, 731 Phil. 615, 627-628 (2014), citing *Building Care Corp./Leopard Security & Investigation Agency v. Macaraeg*, 700 Phil. 749, 755 (2012).

[32] Prior to its deletion in the amendment, Section 4 of Rule 65 provides that "No extension of time to file the petition shall be granted except for the most compelling reason and in no case exceeding fifteen (15) days."

[33] 627 Phil. 341, 347-348 (2010).

[34] In *Castells v. Saudi Arabian Airlines*, 716 Phil. 667, 673-674 (2013), the Court cited the case of *Labao v. Flores*, 649 Phil. 213, 222-223 (2010), for the list of exceptions to the strict application of procedural rules, thus:

- (1) most persuasive and weighty reasons;
- (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure;
- (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of default;
- (4) the existence of special or compelling circumstances; (5) the merits of the case;
- (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;
- (7) a lack of any showing that the review sought is merely frivolous or dilatory;
- (8) the other party will not be unjustly prejudiced thereby;
- (9) fraud, accident, mistake or excusable negligence without appellant's fault;
- (10) peculiar legal and equitable circumstances attendant to each case;
- (11) in the name of substantial justice and fair play;
- (12) importance of the issues involved; and
- (13) exercise of sound discretion by the judge guided by all the attendant circumstances.

[35] *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 218901, 15 February 2017, 818 SCRA 68, citing *Tanenglisan v. Lorenzo*, 573 Phil. 472 (2008).

[36] *Bases Conversion Dev't. Authority v. Reyes*, 711 Phil. 631, 643 (2013), citing *Twin Towers Condominium Corp. v. Court of Appeals*, 446 Phil. 280, 298-299 (2003).

[37] *Rollo* (G.R. No. 208744), pp. 196-198.

[38] *Id.* at 650-652.

[39] *Camanag v. Guerrero*, 335 Phil. 945 (1997); *Atty. Paderanga v. Hon. Drilon*, 273 Phil. 290 (1991).

[40] *Domingo v. Sandiganbayan*, 379 Phil. 708 (2000).

[41] *Samson v. Secretary Guingona, Jr.*, 401 Phil. 167 (2000); *Guingona v. The City Fiscal of Manila*, 222 Phil. 119 (1985).

[42] 273 Phil. 290, 296 (1991).

[43] *People v. Grey*, 639 Phil. 535, 551 (2010), citing *Brocka v. Ponce Enrile*, 270 Phil. 271, 276-277 (1990). (Citations omitted)

[44] Department of Justice v. Mislang, 791 Phil. 219 (2016).

[45] Id. at 228-229, 232.

[46] Rollo (G.R. No. 209424), p. 32.

[47] Id. at 459.

[48] 551 Phil. 273, 290-292 (2007).

[49] 217 Phil. 93, 102 (1984).

[50] Rollo (G.R. No. 209424), pp. 1868-1882.

[51] Id. at 271.

[52] Id. at 1494-1495. The letter dated 28 December 2010 states:

This refers to your request for authority to engage the services of external counsel who will handle the cases filed by or against Globe Asiatique Holdings Corp.

In view thereof, and pursuant to Office of the Government Corporate Counsel (OGCC) Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, Home Development Mutual Fund (HDMF) is hereby authorized to engage the services of Raquel Wealth A. Taguian and Yorac Arroyo Chua Caedo & Coronel Law Firm to handle the aforesaid cases, subject to the control and supervision of the OGCC. This authority does not amount to an endorsement of the compensation of the lawyers to be engaged, which we leave to the sound discretion of management mindful of Commission on Audit rules and regulations.

x x x x

[53] Id. at 1496-1497. The letter dated 28 December 2010 states:

This confirms and ratifies the engagement of external counsel for the handling of the cases filed by or against the Globe Asiatique Holdings Corporation, and such other cases that arose out of or in relation to the Globe Asiatique Corporation issues.

In view thereof, and pursuant to this Office's Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, we confirm and ratify the engagement of Yorac Arroyo Chua Caedo & Coronel Law Firm to handle such cases, subject to the control and supervision of this Office. This authority does not amount to an endorsement of the compensation of the lawyers to be engaged, which we leave to the sound discretion of management mindful of Commission on Audit rules and regulations.

x x x x

[54] Id. at 1493. The COA Certification states:

This is to certify that the Commission on Audit (COA) has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac Arroyo Chua Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection with the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents, and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues.

[55] Id. at 451-452.

[56] Phil. Countryside Rural Bank (Liloan, Cebu), Inc. v. Taring, 603 Phil. 203 (2009).

[57] YKR Corporation v. Philippine Agri-Business Center Corp., 745 Phil. 666, 685-686 (2014), citing *Viajar v. Judge Estenzo*, 178 Phil. 561, 573 (1979).

[58] Phil. Countryside Rural Bank (Liloan, Cebu), Inc. v. Toring, *supra* note 56; *Nocom v. Camerino*, 598 Phil. 214 (2009).

[59] *Rollo* (G.R. No. 209424), pp. 753-774.

[60] *Id.* at 776-831.

[61] Section 3.1. The DEVELOPER shall receive, evaluate, process and approve the housing loan applications of its member-buyers in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program. The DEVELOPER shall likewise be responsible for the annotation of the Deeds of Assignment with Special Power of Attorney (DOA with SPA)/Loan and Mortgage Agreement (LMA) for accounts covered by the CTS and REM respectively, on the Individual Certificates of Title covering the house and lot units subject of the loan with the appropriate Register of Deeds (RD), and shall deliver the complete mortgage folders to Pag-IBIG Fund.

[62] Section 7.1. LOAN EVALUATION - The DEVELOPER warrants that the member-borrowers and their respective housing loan applications have been properly evaluated and approved in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program prior to their endorsement to Pag-IBIG Fund.

SEPARATE OPINION

PERLAS-BERNABE, J.:

I. G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680.

These petitions commonly relate to the determination of probable cause against herein respondents Delfin S. Lee (Delfin Lee), Dexter L. Lee (Dexter Lee), Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex M. Alvarez (Alvarez; collectively respondents). In particular:

(a) The petitions in G.R. Nos. 205698[1] and 205780[2] were respectively filed by petitioners, the Home Development Mutual Fund (HDMF; also known as Pag-IBIG) and the Department of Justice (DOJ), to assail the Court of Appeals' (CA) Rulings[3] in CA-G.R. SP No. 121346 which set aside the DOJ's Review Resolution[4] dated August 10, 2011 finding probable cause to indict Sagun, among others, for the crime of syndicated estafa, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against her;

(b) The petitions in G.R. Nos. 209446[5] and 209489[6] were respectively filed by petitioners, the People of the Philippines (People) and HDMF, to assail the CA's Ruling[7] in CA-G.R. SP No. 127690 which annulled and set aside the Regional Trial Court (RTC) of Pampanga, Branch 42's (Pampanga- RTC) May 22, 2012 Resolution[8] and August 22, 2012 Resolution[9] judicially finding probable cause against Alvarez, *inter alia*, for the same crime of syndicated estafa, and hence, ordered the dismissal of the case and the quashal of the warrant of arrest issued against him;

(c) The petitions in G.R. Nos. 209852[10] and 210143[11] were respectively filed by HDMF and the People to assail the CA's ruling[12] in CA-G.R. SP No. 127553 which also annulled and set aside the aforesaid Pampanga-RTC's May 22, 2012 Resolution[13] and August 22, 2012 Resolution[14] judicially finding probable cause against Delfin Lee, *inter alia*, for the same crime of syndicated estafa, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against him;

(d) The petitions in G.R. Nos. 228452[15] and 228730[16] were respectively filed by HDMF and the People to assail the CA's Ruling[17] in CA--G.R. SP No. 127554 which also annulled and set aside the Pampanga-RTC Resolutions[18] judicially finding probable cause against Dexter Lee, inter alia, for the same crime of syndicated estafa, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against him; and

(e) The petition in G.R. No. 230680[19] filed by Salagan assails the CA's March 18, 2016 Decision[20] and March 16, 2017 Resolution[21] in CA-G.R. SP No. 134573 which affirmed the Pampanga-RTC's May 22, 2012 Resolution[22] and January 29, 2014 Resolution,[23] and accordingly, upheld the latter court's finding of probable cause for syndicated estafa and issuance of warrant of arrest insofar as Salagan is concerned.

These cases stemmed from the HDMF's filing of a Complaint--Affidavit[24] for syndicated estafa, as defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC) in relation to Presidential Decree No. (PD) 1689,[25] and the National Bureau of Investigation's (NBI) referral letter dated October 29, 2010,[26] by virtue of which, the DOJ conducted a preliminary investigation[27] against respondents, along with several others. In brief, it was alleged that Delfin Lee, as the President and Chief Executive Officer of petitioner Globe Asiatique Realty Holdings Corporation (GA), entered into funding commitment agreements and other transactions with HDMF wherein he made false and fraudulent representations to HDMF that GA had interested buyers in its Xevera projects in Bacolor and Mabalacat, Pampanga, when in truth, Delfin Lee knew fully well that the corporation did not have such buyers.[28] The fraud against HDMF was allegedly perpetrated by the submission by GA of names of fictitious buyers and documents to HDMF as part of certain housing loan applications that led to fund releases by HDMF in favor of GA.[29] In addition, GA purportedly employed a "special buyers" scheme whereby it recruited persons who did not have any intention to buy its housing units in Xevera, but, in exchange for a fee, lent their names and Pag-IBIG membership to GA so that the said corporation could use the same in obtaining fund releases from HDMF.[30] As stated in the Information, Delfin Lee, together with Dexter Lee, Sagun, and Salagan, in their respective capacities as Executive Vice-President/Chief Finance Officer/Treasurer, Documentation Department Head, and Accounting/Finance Department Head of GA,[31] as well as Alvarez, as Foreclosure Department Manager of HDMF,[32] acted as a syndicate formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme of soliciting funds from the general public, each performing a particular act in furtherance of the common design.

After due proceedings, the DOJ issued a Review Resolution[33] dated August 10, 2011 (DOJ Review Resolution) finding probable cause to indict respondents for the crime complained of. The DOJ found that the elements of syndicated estafa are present in the instant case, considering that: (a) GA entered into various Funding Commitment Agreements (FCAs)[34] and a Memorandum of Agreement (MOA)[35] with HDMF whereby the former warranted, inter alia, that the borrowers are bonafide Pag-IBIG members who had been properly evaluated and approved in accordance with the guidelines of Pag-IBIG Housing Loan Program; (b) by virtue of the said FCAs and MOA, HDMF was induced to release to GA the aggregate amount of P7,007,806,000.00; (c) GA had reneged on said warranties as it, among others, employed fictitious buyers to be able to obtain said funds from HDMF; (d) when HDMF discovered such irregularities and stopped its fund releases to GA, the latter's almost 100% monthly collection/remittance stopped as well, thereby strongly indicating that the monthly amortizations being remitted by GA were being paid from the fund releases it was receiving from HDMF; and (e) HDMF was prejudiced in the amount of P6,653,546,000.00 which has yet to be returned by GA.[36]

Accordingly, the Information[37] for syndicated estafa was filed before the Pampanga-RTC.[38] Later, the said court, in a Resolution[39] dated May 22, 2012, judicially determined the existence of probable cause against respondents, and consequently, ordered the issuance of warrants of arrest against them. Through various proceedings in different fora, respondents assailed the finding of probable cause against them, and eventually,

such issue was raised before the Court through the aforesaid petitions.

The ponencia partially granted the petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 in that it found probable cause to prosecute Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez for simple estafa only, as defined and penalized under Article 315 (2) (a) of the RPC, and accordingly, directed the DOJ to amend the respondents' Information to reflect such indictment. The ponencia ruled that there is sufficient basis to support a reasonable belief that respondents, namely: Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez were probably guilty of simple estafa. It ratiocinated that through the representations and undertakings made by GA in its "special buyers" scheme, these respondents were able to induce HDMF in entering into the various FCAs to the latter's damage and prejudice. The ponencia went on to particularize the respondents' individual acts which made them criminally accountable for perpetrating the "special buyers" scheme, as follows: (a) Delfin Lee, for signing the FCAs and MOA in behalf of GA, and the checks issued by GA to the "special buyers" and HDMF; (b) Dexter Lee, for giving the orders to recruit "special buyers" and co-signing those checks issued to the "special buyers" and HDMF; (c) Sagun, as head of GA's Documentation Department, for collating the documents submitted by the borrowers/buyers, checking if the same are complete and duly accomplished, and verifying whether or not the said borrowers/buyers are indeed Pag-IBIG members with updated contributions or existing housing loans; (d) Salagan, as head of GA's Accounting/Finance Department, for reviewing all requests for payment from on-site projects and preparing the corresponding checks, ensuring that all loan takeouts are duly recorded, and that amortizations are timely remitted to HDMF; and (e) Alvarez, for notarizing crucial pieces of documents purportedly from affiants who turned out to be fictitious and/or non-existing, which directly led to HDMF releasing its funds to GA.[40]

However, the ponencia held that respondents cannot be indicted for syndicated estafa, pointing out that the association of the said respondents did not solicit funds from the general public as there was no allegation that GA had been incorporated to defraud its stockholders or members, and that in fact, the only complainant in the estafa charges is a single juridical entity, i.e., HDMF, which is not a stockholder or member of GA.[41]

Stripped of its technicalities[42] and as will be explained hereunder, I agree with the ponencia in: (a) finding probable cause to indict respondents Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez for simple estafa only, and not syndicated estafa; and (b) directing the DOJ to amend the Information against them accordingly.

Article 315 (2) (a) of the RPC reads:

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

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of estafa as contemplated in this provision are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.[43]

In relation thereto, Section 1 of PD 1689 states that syndicated estafa is committed as follows:

Section I. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)," or farmers' association, or funds solicited by corporations/associations from the general public.

Thus, the elements of syndicated estafa are: (a) estafa or other forms of swindling, as defined in Articles 315 and 316 of the RPC, is committed; (b) the estafa or swindling is committed by a syndicate of five (5) or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)," or farmers' association, or of funds solicited by corporations/associations from the general public.[44]

With these in mind, it is my opinion that there is probable cause to believe that estafa under Article 315 (2) (a) of the RPC was committed by all of the respondents, considering that HDMF was induced to enter into various FCAs and a MOA with GA based on its understanding that GA would only process the applications of bona fide Pag-IBIG members who have been properly evaluated and approved in accordance with the program's housing guidelines. Because of the execution of such FCAs and MOA, HDMF released funds to GA via numerous loan takeouts for the latter's Xevera Project. However, unknown to HDMF, GA implemented fraudulent designs, such as the "special buyers" scheme, to make it appear that it had various buyers/borrowers for the Xevera Project, when in truth, most of such buyers/borrowers were fictitious, not qualified to avail of such loans, or even persons who merely signed documents in exchange for money offered to them by GA. Case law states that:

Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[45]

In this case, HDMF was evidently prejudiced by the scheme employed by GA, through its officers and agents, as HDMF unduly released public funds to GA, which it had yet to recover. In fact, as soon as HDMF stopped its fund releases to GA, the latter's Performing Accounts Ratio for the Xevera Project went from 95% to 0%.

Notably, the foregoing is based on either undisputed facts or the audit findings conducted by HDMF functionaries. Anent the latter, the audit conducted by HDMF was made pursuant to its investigatory powers which is incidental to its power "[t]o ensure the collection and recovery of all indebtedness, liabilities and/or accountabilities, including unpaid contributions in favor of the Fund arising from any cause or source or whatsoever, due from all obligors, whether public or private x x x" under Section 13 (q) of Republic Act No. (RA) 9679,[46] known as "Home Development Mutual Fund Law of 2009, otherwise known as Pag-IBIG (Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industriya at Gobyerno) Fund." Therefore, it cannot be denied that the audit was an official function, which hence, must be accorded the presumption of regularity. Case law states that "[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intentment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness."[47]

In an attempt to shift the "blame" on HDMF for not properly verifying the borrowers/buyers submitted by GA, it has been contended that upon the execution of the MOA, GA was already relieved of its warranties: (a) on the proper evaluation and approval of loans of the borrowers/buyers; and (b) against misrepresentation of its

agents/employees for loan accounts evaluated and approved by GA.

However, this contention is untenable, considering the inescapable fact that at the time of the execution of the MOA on July 13, 2009, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less P2.9 Billion for the purpose. As such, the crime of estafa was, in all reasonable likelihood, already consummated even before the execution of the MOA.

Furthermore, even assuming *arguendo* that the provisions of the MOA indeed superseded GA's aforesaid warranties and that the obligation to evaluate and approve the loan applications of the borrowers/buyers of the Xevera Project was already with HDMF, GA remains bound to undertake corrective measures to address any defects regarding the membership and housing loan eligibility of its buyers:

In cases where defects in HDMF membership and housing loan eligibility of the buyer are found, the DEVELOPER shall undertake the following corrective measures to address the same:

1)

Require the borrower to complete the required number of contributions, in case the required 24 monthly contributions is not met;

2)

Require the borrower to update membership contributions, in case the membership status is inactive;

3)

Require the borrower to update any existing Multi-Purpose Loan (MPL) if [it] is in arrears or pay in full if the same has lapsed;

4)

Buyback the account in case the member has a HDMF housing loan that is outstanding, cancelled, bought back, foreclosed or subject to [dacion en pago].[48]

Aside from these obligations, it goes without saying that the GA is obliged to only provide and process the applications of legitimate buyers. Verily, it would be nonsensical to suppose that HDMF would release funds to GA had it known that the list of borrowers/buyers and the accompanying documents submitted to it by the latter were fraudulent or fictitious.

Moreover, the HDMF's failure to prevent the fraudulent maneuverings allegedly employed by GA - whether through the negligence of its staff or otherwise - does not negate the fact that fraud was committed against the former. The scheme's discovery is already after the fact and hence, does not discount the posterior commission of fraud. At any rate, it should be highlighted that HDMF, is a government-owned and controlled corporation (GOCC)[49] and hence, an instrumentality of the State. Thus, the rule that the State is not bound by the omission, mistake or error of its officials or agents[50] applies.

As for the respondents' respective roles in the fraudulent scheme establishing the existence of probable cause against them, I fully agree with - and thus, need not repeat - the ponencia's findings. In light of the foregoing, it is my submission that there is probable cause to believe that all respondents, i.e., Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez, conspired and confederated with one another in order to commit the fraudulent acts against HDMF. In this regard, jurisprudence instructs that "in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is

determinative is proof establishing that the accused were animated by one and the same purpose." [51]

That it was GA and HDMF - both corporate entities - which dealt with each other, and not respondents in their personal capacities, does not eliminate the latter's criminal liabilities in this case, if so established after trial. Jurisprudence provides that "if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons responsible for the offense. The penalty referred to is imprisonment, the duration of which would depend on the amount of the fraud as provided for in Article 315 of the [RPC]. The reason for this is obvious: corporation, partnership, association or other juridical entities cannot be put in jail. However, it is these entities which are made liable for the civil liabilities arising from the criminal offense. This is the import of the clause 'without prejudice to the civil liabilities arising from the criminal offense.'" [52]

Also, it deserves pointing out that while respondents do not deny the existence of fictitious/non-existent buyers and that loan documents were falsified/simulated, they disclaim knowledge of the fraudulent scheme committed against HDMF, as it was allegedly its rogue agents which actually defrauded GA. Clearly, the foregoing constitutes denial and as such, is a matter of defense, the merits of which are better threshed out during trial. [53]

Finally, it is important to elucidate that the RTC of Makati City, Branch 58's (Makati-RTC) January 30, 2012 Resolution in Civil Case No. 10-1120 granting GA and Delfin Lee's motion for summary judgment, and consequently, its complaint for specific performance and damages against HDMF has no bearing, considering its fundamental disparities with the present case. In particular, Civil Case No. 10-1120 involves a cause of action arising from the contractual relations of GAI Delfin Lee and HDMF, which is adjudged under the evidentiary threshold of preponderance of evidence. On the contrary, this case (stemming from Criminal Case No. 18480) only seeks to determine whether probable cause exists to file a criminal case in court against the accused. The ruling in the former cannot be thus binding on the latter. At any rate, the ruling in Civil Case No. 10-1120 was premised on the fact that the July 13, 2009 MOA supposedly superseded, amended, and modified the provisions of the FCAs in that the power to approve the housing applications had already been removed from GA and in turn, was relegated to only loan counseling. Therefore, HDMF cannot renege on the performance of their contract on the ground that the defaulting buyers were fictitious and spurious.

As previously stated, the MOA was executed on July 13, 2009, and at that time, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less P2.9 Billion for the purpose. [54] Thus, even prior to the said amendment, the commission of fraud and the resulting damage to HDMF had, in all reasonable likelihood, already existed, which, in turn, means that the crime of estafa had already been probably consummated. The probable consummation of the crime is not erased by the succeeding partial novation [55] of the contract between the parties. Case law dictates that criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party. [56] A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense. [57]

In light of the foregoing, the first element of syndicated estafa has been shown to be present. Correlatively, as the estafa was allegedly committed by at least five (5) individuals, there exists a "syndicate" within the purview of PD 1689, and thus, the second element of syndicated estafa is likewise present. However, the third and last element of syndicated estafa, as discussed by the ponencia, [58] is not present in this case.

As earlier stated, the third element of syndicated estafa is that the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)," or farmers'

association, or of funds solicited by corporations/associations from the general public. Essentially, the wide-scale defraudation of the public through the use of corporations/associations is the gravamen of syndicated estafa. This is clearly inferred from the "Whereas Clauses" of PD 1689 which read:

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon(s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", and farmers' [association], or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", and farmers' [association] or corporations/associations operating on funds solicited from the general public[.][59]

After a careful study of this case, I find the third element to be lacking. Based on the allegations of the complaint, it is apparent that the thrust thereof is respondents' purported defraudation of HDMF which induced it to release funds. This is not a criminal case filed by members of the general public, such as buyers of the Xevera Project, claiming that rural banks, cooperatives, "samahang nayon(s)," and farmers' association or corporations/associations solicited funds from them, but later on resulted into them being defrauded. To be sure, the fact that the funds released by HDMF are in the nature of public funds does not mean that syndicated estafa was committed. The operative factor is whether or not the fraud was committed against the general public. On this point, the case of *Galvez v. CA*[60] illumines, among others, that PD 1689 does not apply when, regardless of the number of the accused, (a) the entity soliciting funds from the general public is the victim and not the means through which the estafa is committed, or (b) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies:

In sum and substance and by precedential guidelines, we hold that, first, Presidential Decree No. 1689 also covers commercial banks; second, to be within the ambit of the Decree, the swindling must be committed through the association, the bank in this case, which operate on funds solicited from the general public; third, when the number of the accused are five or more, the crime is syndicated estafa under paragraph 1 of the Decree; fourth, if the number of accused is less than five but the defining element of the crime under the Decree is present, the second paragraph of the Decree applies; x x x fifth, the Decree does not apply regardless of the number of the accused, when, (a) the entity soliciting funds from the general public is the victim and not the means through which the estafa is committed, or (b) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies.[61]

In so far as this case is concerned, it is undoubted that the private complainant is HDMF; not the general public who claim to have been defrauded through the use of any juridical entity. Therefore, respondents cannot be indicted for syndicated estafa. Instead, they can be indicted only for simple estafa under Article 315 (2) (a) of the RPC for the reasons above -explained.

Although the Information filed before the RTC and the consequent warrants of arrest issued against respondents were for the crime of syndicated estafa, and not for simple estafa, the case of *Spouses Hao v. People*[62] teaches that said issuances remain valid but a formal amendment of the Information should be made:

With our conclusion that probable cause existed for the crime of simple estafa and that the petitioners have probably committed it, it follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

Moreover, we note that simple estafa and syndicated estafa are not two entirely different crimes. Simple estafa is a crime necessarily included in syndicated estafa. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple estafa.[63] (Emphases and underscoring supplied)

Accordingly, it is my position that respondents should instead be indicted for simple estafa only. For this purpose, the DOJ should be directed to amend the Information so as to charge respondents accordingly. Meanwhile, the warrants of arrest issued against them must stand.

II.G.R. No. 209424.

The petition in G.R. No. 209424[64] was filed by HDMF against GA, Delfin Lee, and respondent Tessie G. Wang (Wang; a purported fully-paid buyer of 22 houses and lots in GA's Xevera Project)[65] assailing the CA's ruling[66] in CA-G.R. SP No. 128262. In the said case, the CA upheld the Makati-RTC's January 30, 2012 Resolution[67] in Civil Case No. 10-1120 granting the motion for summary judgment filed by GA, et al. and thereby, ordered HDMF to comply with its obligations under the MOA, FCAs, and Collection Servicing Agreements. Dissatisfied, HDMF filed a motion for reconsideration,[68] which was, however, denied by the Makati-RTC in a December 11, 2012 Resolution[69] on the ground that the same was filed by HDMF's engaged private counsel, Yorac Arroyo Chua Caedo & Coronel Law Firm (Yorac Law), without, however, the requisite approval of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit

(COA); hence, the RTC treated the motion as a mere scrap of paper which did not toll the running of the period of appeal.[70] Consequently, HDMF filed a petition for certiorari[71] before the CA, which was dismissed mainly on the following grounds: (a) the certiorari petition is not the proper remedy, considering that the Makati-RTC's ruling was in the nature of a final judgment and hence, subject to an ordinary appeal under Rule 41 of the Rules of Court;[72] and (b) the Makati-RTC did not gravely abuse its discretion in dismissing HDMF's motion for reconsideration as it failed to comply with the rules, among others, the requisite authorization from the OGCC and the COA.[73]

In ruling for the grant of G.R. No. 209424, the ponencia prefatorily held that the Resolution[74] dated January 30, 2012 of the Makati-RTC which granted summary judgment in GA, et al.'s favor is, strictly speaking, only a partial summary judgment rendered in the context of Section 4, Rule 35[75] of the Rules of Court. It then explained that such Resolution only resolved the issue of whether or not GA, et al. were entitled to specific performance, and explicitly stated that the issue on the proper amount of damages to be awarded to them shall still be subject to a presentation of evidence. Since there is still a matter to be resolved by the Makati-RTC, such Resolution partakes of the nature of an interlocutory order. As such, HDMF correctly availed of the remedy of filing a petition for certiorari before the CA.[76]

The ponencia further found that Yorac Law Firm failed to sufficiently prove that it had the authority to represent HDMF in the proceedings before the Makati-RTC. In this regard, it pointed out that since HDMF is a GOCC, it may only engage private counsels with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the COA. Unfortunately, however, Yorac Law Firm was only

able to provide a Certification[77] dated January 10, 2013 signed by the Office of the Supervising Auditor, COA Corporate Auditor Atty. Fidela M. Tan (Atty. Tan), stating that the COA purportedly authorized HDMF to engage Yorac Law Firm as private counsel. According to the ponencia, this cannot be given evidentiary weight not only because it is merely an attestation that the COA supposedly concurred in the HDMF's retainer agreement with Yorac Law Firm, but also because it failed to comply with Sections 24 and 25, Rule 132[78] of the Rules of Court.[79]

Finally, the ponencia recognized that since Yorac Law Firm was not authorized to appear on behalf of HDMF before the Makati-RTC proceedings, the motion for reconsideration it filed before such court did not toll the reglementary period for the filing of a petition for certiorari before the CA. Ordinarily, such petition filed by HDMF before the CA should be dismissed for being filed out of time. However, the ponencia held that in the broader interest of justice, as well as the peculiar legal and equitable circumstances in this case, the petition for certiorari before the CA should not be dismissed outright due to strict adherence to technical rules of procedure, but must be resolved on its merits. Hence, the ponencia ordered the remand of the case to the CA for the determination of the propriety of the Makati-RTC's issuance of a partial summary judgment.[80]

While I concur with the ponencia insofar as it found that HDMF correctly availed of the remedy of certiorari before the CA, I respectfully disagree with its ruling that Yorac Law Firm had no authority to act as counsel on HDMF's behalf, and that the Makati-RTC must be directed to conduct further proceedings in Civil Case No. 10-1120 with dispatch so that the aggrieved party may appeal the Makati-RTC's issuance of a partial summary judgment in said case.

The general rule is that GOCCs, such as HDMF, are enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. However, in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm.[81]

In this case, these written authorizations were complied with by HDMF. Records show that Atty. Tan issued a Certification[82] that the COA concurred in the engagement by HDMF of Yorac Law Firm as its private counsel.[83] The said certification is presumed to have been issued by the said officer in the regular performance of her duties and hence, should be deemed valid, absent any showing to the contrary. Besides, as pointed out by one of the dissenting justices before the CA, if the Makati-RTC was uncertain about the authority of private counsel to represent HDMF, "fairness and prudence dictate that the [same] be given a chance to provide the form of proof acceptable to the RTC,"[84] especially considering the public interest involved in this case. To note, records show that the only party who objected to Yorac Law Firm's representation of HDMF was respondent Wang, who filed a motion to expunge[85] on the sole ground of lack of COA conformity. This motion was never resolved by the Makati-RTC,[86] hence, leaving HDMF in the dark on the merits of the motion to expunge and on the necessity to submit further proof of the COA's authorization. Meanwhile, anent the approval of the OGCC, records disclose that the same was procured through the letters dated December 28, 2010[87] and December 5, 2011[88] signed by Government Corporate Counsel Raoul C. Creencia.[89] In fine, it was grave error for the Makati-RTC to deny the HDMF's motion for reconsideration.

In light of the foregoing submissions and under ordinary circumstances, court procedure dictates that the case be remanded for a resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had - as in this case, considering the copies of various pleadings and documents already in the possession of the Court the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice.[90] Thus, I hereby submit that the Court may already resolve the issue of the propriety of the Makati-RTC 's issuance of a

partial summary judgment in this case.

Jurisprudence is clear that "[s]ummary judgment is not warranted when there are genuine issues which call for a full blown trial. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial." [91]

A perusal of the pleadings filed by the parties in Civil Case No. 10-1120 would show that genuine issues of fact were raised, [92] and thus, negated the remedy of summary judgment. As encapsulated in the dissent before the CA, these genuine issues are: (a) whether GA was limited to conduct loan counseling instead of loan approval under the agreements; (b) whether GA, in fact, conducted loan approvals instead of mere loan counseling; (c) whether HDMF may buyback accounts despite the absence of a notice to buyback from HDMF; (d) whether HDMF refused to release collectibles under the agreements; (e) whether GA is guilty of fraud; (f) whether HDMF had factual basis to cancel the CSAs and FCAs; and (g) whether GA's acts were constitutive of breach of its warranties under the agreements. [93] Clearly, the Makati-RTC could not turn a blind eye on these triable material factual issues by the mere expedient of saving that the July 13, 2009 MOA superseded the provisions of the FCAs and thus, relegated GA's authority to mere loan counseling, and therefore, rendered it unaccountable (or the defaulting buyers, who turned out to be fictitious and spurious. Surely, the alleged shift of GA's authority to mere loan counseling - assuming the same to be true still does not definitively settle the foregoing issues and hence, cannot be the sole consideration to grant GA, et al.'s complaint for specific performance. [94] As such, the Makati-RTC's rulings were evidently tainted with grave abuse of discretion, and hence, correctly assailed by HDMF through a petition for certiorari.

For these reasons, it is my view that since it is already apparent from the records that the Makati-RTC erroneously rendered a partial summary judgment, it is but proper to order a remand of the case to the same court for the conduct of trial on the merits.

III. G.R. Nos. 208744 and 210095.

To recount, the petition in G.R. No. 208744 [95] was filed by the DOJ against Delfin Lee to assail the CA's July 8, 2013 [96] and August 14, 2013 [97] Resolutions in CA-G.R. SP No. 130404 which essentially disallowed the DOJ's petition for certiorari for being filed out of time. In this case, the DOJ sought to nullify the Order [98] dated April 10, 2013 of the Regional Trial Court of Pasig City, Branch 167 (Pasig-RTC) in Civil Case No. 73115 enjoining the DOJ's preliminary investigation in the criminal cases entitled "National Bureau of Investigation/Evelyn B. Niebres, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al." (NPS Docket No. XVI-INV-10L-00363; Niebres Complaint), "National Bureau of Investigation/Jennifer Gloria (Gloria), et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al. (NPS Docket No. XVI-INV-11B-00063), and National Bureau of Investigation/Maria Fatima Kayona (Kayona), et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al." (NPS Docket No. XVI-INV-11C-00138) for syndicated estafa. [99]

On the other hand, the petition in G.R. No. 210095 [100] was filed by the DOJ also against Delfin Lee to assail the CA's June 26, 2013 [101] and November 11, 2013 [102] Resolutions in CA-G.R. SP No. 130409 which likewise dismissed the DOJ's petition for certiorari for being filed out of time. The petition docketed as CA-G.R. SP No. 130409 is the same petition as that in CA-G.R. SP No. 130404, which was its initial docket number. The problem arose when the petition in CA-G.R. SP No. 130404 was filed by the DOJ without indicating the proper docket number by inadvertence. This prompted the CA to assign a new docket number to the petition, i.e., CA-G.R. SP

No. 130409, and the raffling thereof to another ponente and division.[103] Eventually, the petition was dismissed outright for having been filed out of time.[104]

Verily, I agree with the ponencia's holding in G.R. Nos. 208744 and 210095, considering that it is clear that the DOJ never intended to flout the rules nor employ any dilatory or underhanded tactic as its failure to state the initial docket number to its certiorari petition was by sheer inadvertence. As such, the CA should have relaxed the rules and allowed the filing of said petition, following case law which states that "[l]apses in the literal observance of a rule of procedure will be overlooked when they arose from an honest mistake, [and] when they have not prejudiced the adverse party." [105]

More importantly, the Pasig-RTC gravely abused its discretion in enjoining[106] the preliminary investigation of the aforesaid criminal cases mainly on the basis of Makati-RTC's ruling in Civil Case No. 10-1120 - which, as already adverted to, should be subject to re-evaluation. Clearly, the Pasig-RTC's reliance on such basis is misplaced because such civil case involves a cause of action arising from the contractual relations of GA/Delfin Lee and HDMF; whereas the preliminary investigation proceedings in the aforementioned criminal cases seek to determine whether probable cause exists to file criminal cases in court against the accused, this time based on the alleged double sales fraudulently perpetrated against the home-buyers/private complainants Niebres, Gloria, and Kayona, et al. Given the unmistakable variance in issues, and considering too that the evidentiary thresholds applied in civil cases are different from criminal cases, the ruling in the former would not be binding on the latter.

Thus, for these reasons, I agree with the ponencia's ruling that the April 10, 2013 writ of preliminary injunction of the Pasig-RTC should be lifted and quashed. The conduct of preliminary investigation in the three other (3) criminal complaints against Delfin Lee, among others, docketed as NPS Docket No. XVI-INV-10L-00363, NPS Docket No. XVI-INV-11B-00063, and NPS Docket No. XVI-INV-11C-00138 for syndicated estafa should not have been enjoined. As such, the rulings of the Pasig-RTC and the CA regarding this matter should be rectified.

CONCLUSION

In conclusion, I hereby vote as follows:

(a)

The petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 should be PARTLY GRANTED. For the reasons discussed in this Opinion, the public prosecutor should be DIRECTED to amend the Information in Criminal Case No. 18480 so as to charge respondents Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex M. Alvarez only for simple estafa, and not syndicated estafa. Meanwhile, the warrants of arrest issued against them STAND;

(b)

The petition in G.R. No. 209424 should be GRANTED. The Decision dated October 7, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 128262, affirming the Resolutions dated January 30, 2012 and December 11, 2012 of the Regional Trial Court of Makati, Branch 58 (Makati-RTC) in Civil Case No. 10-1120, should be REVERSED and SET ASIDE. A new one should be ENTERED directing the REMAND of the case to the Makati-RTC for the conduct of a full-blown trial on the merits; and

(c)

The petitions in G.R. Nos. 208744 and 210095 should be GRANTED. The Resolution dated August 14, 2013 in CA-G.R. SP No. 130404 and the Resolution dated June 26, 2013 in CA-G.R. SP No. 130409 of the CA, affirming the Resolution dated April 10, 2013 of the Regional Trial Court of Pasig City, Branch 167 in Civil Case No.

73115, should be REVERSED and SET ASIDE. Consequently, the April 10, 2013 writ of preliminary injunction issued by the said court should be LIFTED and QUASHED. The Department of Justice should be allowed to proceed with the preliminary investigation of the three (3) criminal complaints against Delfin S. Lee, among others, docketed as NPS Docket No. XVI-INV-10L-00363, NPS Docket No. XVI-INV-11B-00063, and NPS Docket No. XVI-INV-11C-00138.

[1] Rollo (G.R. No. 205698), Vol. I, pp. 111-198.

[2] Rollo (G.R. No. 205780), Vol. I, pp. 8-82.

[3] See CA Decision dated October 5, 2012 and CA Resolution dated February 11, 2013, both penned by Associate Justice Angelita A. Gacutan with Associate Justices Mariflor Punzalan Castillo and Francisco P. Acosta concurring. Rollo (G.R. No. 205698), Vol. I, pp. 24-57 and 59-74.

[4] Id. at 405-451. Penned by OIC, Senior Deputy State Prosecutor Theodore M. Villanueva and approved by Prosecutor General Claro A. Arellano.

[5] Rollo (G.R. No. 209446), Vol. I, pp. 42-148.

[6] Rollo (G.R. No. 209489), Vol. I, pp. 36-150.

[7] Rollo (G.R. No. 209446), Vol. I, pp. 153-173. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring.

[8] Id. at 237-255. Penned by Judge Maria Amifaith S. Fider-Reyes.

[9] This resolves the motion for reconsideration of Alvarez only. Id. at 256-260.

[10] Rollo (G.R. No. 209852), Vol. I, pp. 45-135.

[11] Rollo (G.R. No. 210143), Vol. I, pp. 49-161.

[12] See CA Decision dated November 7, 2013 penned by Associate Justice Franchito N. Diamante with Associate Justices Agnes Reyes Carpio and Melchor Q. C. Sadang concurring. Rollo (G.R. No. 209852), Vol. I, pp. 192-220.

[13] Id. at 254-272.

[14] This resolves the motions of Delfin Lee and Dexter Lee. Id. at 273-285.

[15] Rollo (G.R. No. 228452), Vol. I, pp. 3-120.

[16] Rollo (G.R. No. 228730), Vol. I, pp. 36-148.

[17] See CA Decision dated November 16, 2016 penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz concurring. Rollo (G.R. No. 228452), Vol. I, pp. 144-164.

[18] Id. at 209-227 and 228-240.

[19] Rollo (G.R. No. 230680) Vol. I, pp. 3-92.

[20] Id. at 343-369. Penned by Associate Justice Ramon A. Cruz with Associate Justices Rodil V. Zalameda and Henri Jean Paul B. Inting concurring.

[21] Id. at 370-372.

[22] Id. at 114-132.

[23] See id. at 22.

[24] The Complaint-Affidavit dated October 29, 2010 was filed by the Officer-in-Charge of HDMF, Emma Linda B. Farria; rollo (G.R. No. 205698), Vol. I, pp. 339-350.

[25] Entitled "INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA" (April 6, 1980).

[26] See preliminary investigation report dated October 29, 2010; rollo (G.R. No. 205698), Vol. I, pp. 330-338.

[27] See report dated December 10, 2010; id. at 400-404.

[28] See rollo (G.R. No. 205698), Vol. II, p. 613.

[29] See id.

[30] See id. at 614.

[31] Rollo (G.R. No. 205698), Vol. I, p. 407.

[32] Id. at 428.

[33] Id. at 405-451.

[34] See id. at 414.

[35] Dated July 13, 2009. Rollo (G.R. No. 205698), Vol. IV, pp. 2055-2060.

[36] See rollo (G.R. No. 205698), Vol. I, pp. 436-441.

[37] Dated August 25, 2011. Rollo (G.R. No. 205698), Vol. II, pp. 612-616.

[38] Docketed as Criminal Case No. 18480.

[39] Rollo (G.R. No. 209466), Vol. I, pp. 237-255.

[40] See ponencia, pp. 43-44.

[41] See id. at 36-40.

[42] The procedural flaws in the petitions filed by Sagun, Delfin Lee, Dexter Lee, and Alvarez in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 have been adequately addressed by Senior Associate Justice Antonio T. Carpio in his Dissenting Opinion (see pp. 14-23), which discussion I fully subscribe to.

[43] *People v. Tibayan*, 750 Phil. 910, 919 (2015), citing *People v. Chua*, 695 Phil. 16, 32 (2012).

[44] Id. at 269, citing *Galvez v. CA*, 704 Phil. 463, 472 (2013).

[45] *Galvez v. CA*, id. at 470; citation omitted.

[46] Entitled "AN ACT FURTHER STRENGTHENING THE HOME DEVELOPMENT MUTUAL FUND, AND FOR OTHER PURPOSES," approved on July 21, 2009.

[47] *Bustillo v. People*, 634 Phil. 547, 556 (2010).

[48] See Section 3 (c) of the July 13, 2009 MOA; rollo (G.R. No. 205698), Vol. IV, p. 2057.

[49] See RA 9679.

[50] *China Banking Corp. v. Commission of Internal Revenue*, G.R. No. 172509, February 4, 2015, 749 SCRA 525, 539.

[51] *People v. Gerero*, G.R. No. 213601, July 27, 2016, 798 SCRA 702, 707, citing *Quidet v. People*, 632 Phil. 1, 11-12 (2010).

[52] *Ong v. CA*, 449 Phil. 691, 710 (2003); emphasis and underscoring supplied.

[53] See *Shu v. Dee*, 734 Phil. 204, 216-217 (2014).

[54] See rollo (G.R. No. 205698), Vol. I, p. 414.

[55] "[T]he effect of novation may be partial or total. There is partial novation when there is only a modification or change in some principal conditions of the obligation. It is total, when the obligation is completely extinguished." (*Ong v. Bogñalbal*, 533 Phil. 139, 156 [2006]).

[56] See *Metropolitan Bank and Trust Company v. Reynando*, 641 Phil. 208, 220 (2010).

[57] *People v. Gervacio*, 102 Phil. 687, 688 (1957).

[58] See ponencia, pp. 36-39.

[59] Emphases and underscoring supplied.

[60] See *supra* note 44.

[61] *Id.* at 474-475; citations omitted, emphasis and underscoring supplied.

[62] 743 Phil. 204 (2014).

[63] *Id.* at 219-220; citations omitted.

[64] Rollo (G.R. No. 209424), Vol. I, pp. 143-283.

[65] See *id.* at 299.

[66] See Decision dated October 7, 2013, penned by Associate Justice Stephen C. Cruz (*id.* at 14-34). Associate Justices Elihu A. Ybañez and Danton Q. Bueser issued their respective Separate Concurring Opinions (*id.* at 37-40 and 35-36); while Associate Justices Magdangal M. De Leon and Myra V. Garcia--Fernandez issued separate Dissenting Opinions (*id.* at 41-63 and 64-68).

[67] Rollo (G.R. No. 209424), Vol. II, pp. 433-452. Rollo (G.R. No. 209852), Vol. I, pp. 296-315. Penned by Presiding Judge Eugene C. Paras.

[68] Dated February 24, 2012. Rollo (G.R. No. 209424), Vol. III, pp. 1264-1296.

[69] Rollo (G.R. No. 209424), Vol. II, pp. 453-459.

[70] See *id.* at 455-457.

[71] Dated January 14, 2013. Rollo (G.R. No. 209424), Vol. I, pp. 347-431.

[72] See *id.* at 306-308 and 311.

[73] See *id.* at 310.

[74] Rollo (G.R. No. 209424), Vol. II, pp. 433-452. Rollo (G.R. No. 209852), Vol. I, pp. 296-315. Penned by Presiding Judge Eugene C. Paras.

[75] Section 4, Rule 35 of the Rules of Court reads:

Section 4. Case not fully adjudicated on motion. - If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly.

[76] See *ponencia*, pp. 23-27.

[77] Rollo (G.R. No. 209424), Vol. IV., p. 1493.

[78] Sections 24 and 25, Rule 132 of the Rules of Court read:

Section 24. Proof of official record. - The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Section 25. What attestation of copy must state. - Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

[79] See *ponencia*, pp. 28-31.

[80] See *id.* at 31-32 and 49.

[81] See *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 503 (2003), citing Memorandum Circular No. 9 dated August 27, 1998.

[82] Rollo (G.R. No. 209424), Vol. IV, p. 1493.

[83] Pertinent portions of the January 10, 2013 Certification read:

This is to certify that the Commission on Audit (COA), has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac, Arroyo, Chua, Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues.

This certification is issued to attest to the truth of the foregoing and for whatever legal purposes it may serve. (Id.)

[84] Rollo (G.R. No. 209424), Vol. I, p. 51.

[85] Dated December 9, 2011. Rollo (G.R. No. 209424), Vol. III, pp. 1214-1224.

[86] Rollo (G.R. No. 209424), Vol. I, p. 206.

[87] Rollo (G.R. No. 209424), Vol. III, pp. 1494-1495.

[88] *Id.* at 1496-1497.

[89] See *id.* at 1494 and 1496. Pertinent portions of the December 28, 2010 and December 5, 2011 letters read:

December 28, 2010 letter

This refers to your request for authority to engage the services of external counsel who will handle the cases filed by or against the Globe Asiatique Holdings Corp.

In view thereof, and pursuant to Office of the Government Corporate Counsel (OGCC) Memorandum Circular I, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated August 29, 1998, Home Development Mutual Fund (HDMF) is hereby authorized to engage the services of x x x Yorac Arroyo Chua Caedo & Coronel Law Firm to handle the aforesaid cases, subject to the control and supervision of the OGCC.

December 5, 2011 letter

This confirms and ratifies the engagement of external counsel for the handling of the cases filed by or against the Globe Asiatique Holding Corporation, and such other cases that arose out of or in relation to the Globe Asiatique Corporation Issues.

In view thereof, and pursuant to the Office's Memorandum Circular I, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, we confirm and ratify the engagement of Yorac Arroyo Chua Caedo & Coronel Law Firm to handle such cases and the submissions of the law firm in connection therewith, subject to the control and supervision of the OGCC.

[90] See *Jolo's Kiddie Cars/Fun4Kids/Marlo U. Cabili v. Caballa*, G.R. No. 230682, November 29, 2017, citing *Sy-Vargas v. The Estate of Rolando Ogsos, Sr.*, G.R. No. 221062, October 5, 2016, 805 SCRA 438, 448.

[91] *Nocom v. Camerino*, 598 Phil. 214, 233-234 (2009).

[92] See rollo (G.R. No. 209424), Vol. I, pp. 56-59.

[93] See Dissenting Opinion of CA Justice Magdangal M. De Leon; *id.* at 59.

[94] Dated November 13, 2010. Rollo (G.R. No. 209424), Vol. II, pp. 753-774.

[95] Rollo (G.R. No. 208744). Vol. I, pp. 28-87.

[96] See CA Minute Resolution issued by Executive Clerk of Court III Caroline G. Ocampo-Peralta, MNSA; *id.* at 122.

[97] *Id.* at 118-121. Penned by Associate Justice Francisco P. Acosta with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring.

[98] *Id.* at 195-198. Penned by Judge Rolando G. Misleng.

[99] See *id.* at 33.

[100] Rollo (G.R. No. 210095). Vol. I, pp. 35-131.

[101] *Id.* at 136-137. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia

and Danton Q. Bueser concurring.

[102] Id. at 139-142.

[103] See id. at 139-140.

[104] Id. at 137.

[105] *Aguam v. CA*, 388 Phil. 587, 595 (2000).

[106] While case law in *Samson v. Guingona* (401 Phil. 167, 172 [2000]) provides that criminal cases may be enjoined in the following instances: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is subjudice; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the Court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no prima facie case against the accused and a motion to quash on that ground has been denied; none of these are applicable in the instant case.

DISSENTING OPINION

LEONEN, J.:

I join Senior Associate Justice Antonio T. Carpio in his dissent. I write separately to contribute to a more exhaustive understanding of syndicated estafa as defined by Presidential Decree No. 1689.

There was probable cause to file informations for syndicated estafa and to issue corresponding warrants of arrest against Delfin S. Lee (Delfin), Dexter L. Lee (Dexter), Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex M. Alvarez (Atty. Alvarez). Hence, it was error for the Court of Appeals to set aside the August 10, 2011 Review Resolution of the Department of Justice, to annul and set aside the May 22, 2012 and August 22, 2012 Resolutions penned by Judge Ma. Amifaith S. Fider-Reyes (Judge Fider-Reyes) of Branch 42, Regional Trial Court, San Fernando City, Pampanga in Criminal Case No. 18480, and, lastly, to lift, quash, and recall the warrants of arrest issued pursuant to Judge Fider-Reyes' resolutions.

I

I take exception to the ponencia's emphasis on the number of individuals who can be charged and how this number is supposedly determinative of the offense committed by Delfin, Dexter, Sagun, and Salagan. The ponencia explains how Atty. Alvarez should supposedly be excluded from the charge of estafa,[1] as "his act of notarizing various documents, . . . that were material for the processing and approval of the transactions, was insufficient to establish his having been part of the conspiracy."[2] The ponencia notes that with Atty. Alvarez's exclusion, only four (4) individuals remain to be charged. It maintains that a case for syndicated estafa may not be prosecuted considering that those who remain could not be considered as a syndicate.[3]

Articles 315 and 316 of the Revised Penal Code penalize estafa and other forms of swindling, respectively.[4] Presidential Decree No. 1689 deals with heavier penalties when the acts penalized by Articles 315 and 316 are "committed by a syndicate":

Section 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Article

315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers' association, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.[5]

Thus, syndicated estafa exists if the following elements are present:

1) [E]stafa or other forms of swindling as defined in Articles 315 and 316 of the [Revised Penal Code] was committed; 2) the estafa or swindling was committed by a syndicate of five or more persons; and 3) the fraud resulted in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon[s]," or farmers associations or of funds solicited by corporations/associations from the general public.[6]

The recital of elements demonstrates that two (2) additional elements qualify swindling into syndicated estafa. The first is "commi[ssion] by a syndicate." The second is misappropriation. The object of this misappropriation, in turn, can be either of two (2) categories of funds. The first category is "moneys contributed by stockholders, or members of rural banks, cooperatives, 'samahang nayon(s)', or farmers['] associations." The second category is "funds solicited by corporations/associations from the general public."

Concerning the first additional element of "commi[ssion] by a syndicate," Section 1 of Presidential Decree No. 1689 proceeds to identify when a syndicate exists. There is a syndicate when there is a collective of five (5) or more individuals, the intent of which is the "carrying out [of] the unlawful or illegal act, transaction, enterprise or scheme."

While Section 1 specifies a minimum number of individuals acting out of a common design to defraud so that a syndicate may be deemed to exist, it does not specify the number of individuals who must be charged for syndicated estafa at any given time. At no point does Section 1 require a minimum of five (5) individuals to stand trial for syndicated estafa. Likewise, it does not state that, failing in any such threshold, prosecution cannot prosper.

Indeed, contingencies may make it so that even if five (5) or more individuals acted in concert to defraud, not everyone involved in the common scheme can stand trial. While some may have been brought into custody, others may remain at large. Some individuals who were part of the scheme may have predeceased the institution of a criminal action. Likewise, some conspirators may remain unidentified even when acts attributable to them have been pinpointed. Exigencies such as these cannot frustrate prosecution under Presidential Decree No. 1689. To hold otherwise would be to render Presidential Decree No. 1689 impotent. Prosecution can then be conveniently undermined by a numerical lacuna that is not the essence of an offense otherwise demonstrably committed.

What is critical is not the number of individuals actually available for or identified to stand trial, but a showing that a deceit mentioned in Articles 315 and/or 316 of the Revised Penal Code was committed by five (5) or more individuals acting in concert. For as long as this is shown, coupled with the requisite misappropriation, prosecution and conviction can proceed.

The primary task of investigators and prosecutors, then, is to demonstrate the fraudulent scheme employed by five (5) or more individuals. Once this is established, it is their task to demonstrate how an individual accused took part in effecting that scheme. When an individual's participation is ascertained, he or she may be penalized for syndicated estafa independently of his or her collaborators. Thus, an information may conceivably be brought

against even just a single individual for as long that information makes averments on the scheme perpetrated by that person with at least four (4) other collaborators, as well as the nature of that person's participation in the scheme.

It is also not essential that an accused be formally named or identified as an affiliate such as by being a director, trustee, officer, stockholder, employee, functionary, member, or associate of the corporation or association used as an artifice for the fraudulent scheme. As with the inordinate fixation on the number of individuals being prosecuted, insisting on such an affiliation can also conveniently frustrate the ends of justice. A cabal of scammers can then nominally exclude one (1) of their ilk from their organized vehicle and already be beyond Presidential Decree No. 1689's reach, regardless of the excluded collaborator's actual participation in their fraudulent designs.

Presidential Decree No. 1689 contemplates not only corporations but also associations as avenues for misappropriation. Affiliation with corporations whether as a director, trustee, officer, stockholder, or member is carefully delineated by law. In contrast, associations and affiliations with them are amorphous. Any number of individuals can organize themselves into a collective. Their very act of coming together with an understanding to pursue a shared purpose suffices to make them an association. A regulatory body's official recognition of their juridical existence and their collective's competence to act as its own person is irrelevant.

Presidential Decree No. 1689's similar treatment of associations with corporations rebuffs the need for an accused's formally designated relationship with the organization which was used to facilitate the fraudulent scheme. The statutory inclusion of the term "association," which is without a specific restrictive legal definition unlike the term "corporation," manifests the law's intent to make as inclusive as practicable its application. It exhibits the law's intent to not otherwise be strangled by prohibitive technicalities on organizational membership.

II

Senior Associate Justice Carpio's dissent details how Atty. Alvarez should not be considered a mere notary public so detached from the fraudulent scheme that is subject of these consolidated petitions. Indeed, it would be foolhardy to discount the gravity of the offense committed by dwelling on Atty. Alvarez's nominal lack of "relat[ion] to Globe Asiatique either by employment or by ownership." [7]

The ponencia acknowledges that Atty. Alvarez was not affiliated with Globe Asiatique Realty Holdings Corporation (Globe Asiatique) as he was Home Development Mutual Fund's employee and not Globe Asiatique's employee or stockholder. Specifically, he was the Manager of Home Development Mutual Fund's Foreclosure Department. [8] As Senior Associate Justice Carpio emphasizes, Atty. Alvarez's position at Home Development Mutual Fund and his simultaneous "moonlighting as head of the legal department of Globe Asiatique," [9] at whose headquarters he even held office, incriminates, rather than exonerates, him.

Evidently, with his continuing employment at Home Development Mutual Fund, Atty. Alvarez could not be simultaneously employed by Globe Asiatique, let alone be formally declared the head of its legal department. This anomaly should not frustrate his liability alongside Delfin, Dexter, Sagun, and Salagan. If at all, it should aggravate his liability because knowing fully well that he was in no position to render services for Globe Asiatique, and that doing so amounted to a conflict of interest, Atty. Alvarez went ahead and did so anyway. His knowing notarization of documents concerning mortgages which he may himself foreclose shows malicious intent. Worse, his services for Globe Asiatique did not amount to innocuous, run of the mill tasks but were an integral component of the overarching fraudulent scheme. In Senior Associate Justice Carpio's words:

Any agreement between Globe Asiatique and HDMF would not have materialized if it were not for Globe

Asiatique's submission of mortgage documents notarized by Atty. Alvarez. Atty. Alvarez's participation in the entire scheme was a crucial and necessary step in Globe Asiatique's inducement of HDMF to release the loan proceeds to Globe Asiatique.[10]

The ponencia's emphasis on how Atty. Alvarez should be segregated from Delfin, Dexter, Sagun, and Salagan is misplaced. His circumstances should not be used to reduce the persons accused to a number short of the threshold maintained by the ponencia. The absurdity of Atty. Alvarez's personal condition cannot conveniently deter prosecution for syndicated estafa.

III

Granting that Atty. Alvarez cannot be held liable as an integral cog to the uncovered fraudulent apparatus, his exclusion does not ipso facto negate the existence of a syndicate of at least five (5) individuals who worked to carry out an illegal scheme through which funds solicited from the general public were misappropriated. Even Atty. Alvarez's hypothetical exclusion does not negate syndicated estafa.

The fraudulent scheme uncovered in this case did not merely involve Delfin, Dexter, Sagun, Salagan, and Atty. Alvarez. A defining feature of the scheme was the use of "special buyers" who were induced by a fee to enlist for a Home Development Mutual Fund membership and then to lend their names and memberships to Globe Asiatique. It was Globe Asiatique's use of these spurious members' names and memberships which enabled it to siphon funds from Home Development Mutual Fund through fund releases by way of take-out of the special buyers' supposed housing loans.[11]

Such an elaborate machination could not have been exclusively carried out by four (4) individuals. The plot's basic design demanded the involvement of persons other than Delfin and Dexter and high-level executives Sagun and Salagan. At the lowest rungs of the mechanism to effect the plot to involve special buyers were agents who recruited, paid, and induced each of the special buyers to enlist for Home Development Mutual Fund membership, and to allow their names and memberships to be used. At an intermediate level were officers who oversaw the operational aspects of the scheme.

Apart from the plot's basic configuration, the sheer scale to which it appears to have been effected also belies the exclusive involvement of four (4) individuals. As the information subject of Criminal Case No. 18480 underscored, "644 borrowers endorsed by [Globe Asiatique] are not genuine buyers of Xevera [H]omes while 802 are nowhere to be found; 3 buyers are already deceased; and 275 were not around during the visit, hence, establishing that all of them are fictitious buyers." [12] The carrying out of the scheme was simply too broad to have merely been the result of four (4) persons' exclusive handiwork.

The fraudulent scheme where at least five (5) individuals collaborated is clear to see. Atty. Alvarez's convenient dislocation from the ranks of Globe Asiatique's employees is too far-fetched to be indulged. But even if he were to be excluded, the operation of a fraudulent syndicate cannot be discounted. This Court should not render itself blind and condone a miscarriage of justice merely on account of a numerical artifice. Five (5) persons accused, minus one (1) absurdly discharged, do not erase the elaborate stratagem by a syndicate wherein Delfin, Dexter, Sagun, and Salagan are, thus far, the ones identified to have been on top, but which also indispensably involved many others.

IV

I also cannot agree to the assertion that there could not be syndicated estafa because "the association of respondents did not solicit funds from the general public" [13] and that "it was . . . not Globe Asiatique, that

solicited funds from the public."[14]

The ponencia reasons that it was not Globe Asiatique but Home Development Mutual Fund that solicited funds from the public.[15] It adds that "[t]he funds solicited by [Home Development Mutual Fund] from the public were in the nature of their contributions as members of [Home Development Mutual Fund], and had nothing to do with their being a stockholder or member of Globe Asiatique." [16] Thus, "the funds supposedly misappropriated did not belong to Globe Asiatique's stockholders or members, or to the general public, but to [Home Development Mutual Fund]."[17]

The ponencia overemphasizes the technicality of Home Development Mutual Fund's separate and distinct juridical personality at the expense of a proper appreciation of the gravity of the offense involved.

Republic Act No. 9679, or the Home Development Mutual Fund Law of 2009, emphasizes the "provident character" of the Home Development Mutual Fund, thus:

Section 10. Provident Character. - The Fund shall be private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit. All the personal and employer contributions shall be fully credited to each member, accounted for individually and transferable in case of change of employment. They shall earn dividends as may be provided for in the implementing rules. The said amounts shall constitute the provident fund of each member, to be paid to him, his estate or beneficiaries upon termination of membership, or from which peripheral benefits for the member may be drawn.

As a provident fund, Home Development Mutual Fund relies on the required remittance of savings by its members. Membership is either mandated or voluntary. Its mandated membership consists of all private individuals covered by the Social Security System, all public employees covered by the Government Service Insurance System, uniformed personnel in the Armed Forces of the Philippines, the Philippine National Police, the Bureau of Jail Management and Penology, the Bureau of Fire Protection, and all Filipinos employed by foreign employers regardless of their place of deployment.[18] Voluntary membership is open to Filipinos aged 18 to 65.[19]

It is true that Home Development Mutual Fund has a personality distinct and separate from its members and exercises competencies independently of them. However, considering its provident character and its membership base, it is incorrect to say that the misappropriated funds in this case are Home Development Mutual Fund's alone and not the general public's. By Republic Act No. 9679's express language and Home Development Mutual Fund's membership base, that is, practically the same as the general public, it is erroneous to insulate Globe Asiatique from the general public by hyperbolizing Home Development Mutual Fund's role as an intervening layer between them.

In asserting that Globe Asiatique neither solicited funds from the general public nor committed misappropriation, the ponencia similarly fails to account for how Globe Asiatique used and manipulated Home Development Mutual Fund. While it is true that the funds collected, and eventually misappropriated, from Home Development Mutual Fund members were in the nature of their contributions which did not accrue to Globe Asiatique, the essence of the fraudulent scheme was that Globe Asiatique used Home Development Mutual Fund as a medium for its pilferage.

The fraudulent scheme could not have been effected had Globe Asiatique not been enabled to act for and on behalf of Home Development Mutual Fund. The ponencia's own recital of facts acknowledges that under the Funding Commitment Agreements, Globe Asiatique pre-processed housing loans and even collected monthly amortizations on the loans obtained by its buyers.[20] Under its special buyers scheme, it even enticed non-members of Home Development Mutual Fund to avail of its membership.

Globe Asiatique's commission by Home Development Mutual Fund is precisely what enabled its fraudulent scheme. The machination of Delfin and his compatriots turned on Globe Asiatique's delegation to act for Home Development Mutual Fund. The ponencia ignores this devious agency and insists on Home Development Mutual Fund's distinct identity. As with its emphasis on the number of individuals charged, it again places a primacy on technicality at the expense of the essence of Presidential Decree No. 1689. Such disregard compels me to differ from its conclusions on the existence of probable cause to indict for syndicated estafa and to issue corresponding warrants of arrest for Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Sa1agan, and Atty. Alex M. Alvarez.

ACCORDINGLY, I vote to GRANT the petitions subject of G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, and 228730.

The October 5, 2012 Decision and February 11, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 121346, the October 3, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 127690, the November 7, 2013 Decision of the Court of Appeals in CA-G.R. SP No. 127553, and the November 16, 2016 Decision of the Court of Appeals in CA-G.R. SP No. 127554 must be REVERSED.

The warrants of arrest issued by Branch 42, Regional Trial Court, San Fernando City, Pampanga against Christina Sagun, Delfin S. Lee, Dexter L. Lee, and Atty. Alex Alvarez must be REINSTATED.

[1] Ponencia, p. 38 and 44-45.

[2] Id. at 44.

[3] Id. at 36-40.

[4] REV. PEN. CODE, arts. 315 and 316.

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 cases, 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 or 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:

- With unfaithfulness or abuse of confidence, namely:

(a)

By altering the substance, quantity, or quality of anything of value which the offender shall deliver by virtue of an obligation to do so, even though such obligation be based on an immoral or illegal consideration.

(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.

(c)

By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.

- By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a)

By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceptions.

(b)

By altering the quality, fineness or weight of anything pertaining to his art or business.

(c)

By pretending to have bribed any Government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender. In this case, the offender shall be punished by the maximum period of the penalty.

(d)

By postdating a check, or issuing a check in payment of an obligation when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act. (As amended by R.A. 4885, approved June 17, 1967.)

(e)

By obtaining any food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house and the like, without paying therefor, with intent to defraud the proprietor or manager thereof, or by obtaining credit at a hotel, inn, restaurant, boarding house, lodging house or apartment house by the use of any false pretense, or by abandoning or surreptitiously removing any part of his baggage from a hotel, inn, restaurant, boarding house, lodging house, or apartment house after obtaining credit, food, refreshment, or accommodation therein without paying for his food, refreshment or accommodation. (As amended by Com. Act No. 157, enacted November 9, 1936.)

- Through any of the following fraudulent means:

(a)

By inducing another, by means of deceit, to sign any document.

(b)

By resorting to some fraudulent practice to insure success in a gambling game.

(c)

By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

Article 316. Other forms of swindling. - The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

- Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage the same.
- Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.
- The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person.
- Any person who, to the prejudice of another, shall execute any fictitious contract.
- Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor.
- Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner, encumber the real property or properties with which he guaranteed the fulfillment of such obligation.

[5] Pres. Decree No. 1689 (1980), sec. 1.

[6] *Belita v. Sy*, 788 Phil. 580, 589 (2016) [Per J. Perez, Third Division], citing *Hao v. People*, 743 Phil. 204 [Per J. Brion, Second Division].

[7] *Ponencia*, p. 38.

[8] *Id.*

[9] Dissenting Opinion, J. Carpio, p. 27.

[10] *Id.*

[11] *Ponencia*, pp. 11-13.

[12] *Id.* at 12.

[13] *Id.* at 38.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 39.

[17] Id.

[18] Per Home Development Mutual Fund's official website <<http://www.pagibigfund.gov.ph>>, mandatory membership is for:

- All employees who are or ought to be covered by the Social Security System (SSS), provided that actual membership in the SSS shall not be a condition precedent to the mandatory coverage in the Fund. It shall include, but are not limited to:
- A private employee, whether permanent, temporary, or provisional who is not over sixty (60) years old;
- A household helper earning at least P1,000.00 a month. A household helper is any person who renders domestic services exclusively to a household such as a driver, gardener, cook, governess, and other similar occupations;
- A Filipino seafarer upon the signing of the standard contract of employment between the seafarer and the manning agency, which together with the foreign ship owner, acts as the employer;
- A self-employed person regardless of trade, business or occupation, with an income of at least P1,000.00 a month and not over sixty (60) years old;
- An expatriate who is not more than sixty (60) years old and is compulsorily covered by the Social Security System (SSS), regardless of citizenship, nature and duration of employment, and the manner by which the compensation is paid. In the absence of an explicit exemption from SSS coverage, the said expatriate, upon assumption of office, shall be covered by the Fund.
- An expatriate shall refer to a citizen of another country who is living and working in the Philippines.
- All employees, who are subject to mandatory coverage by the Government Service Insurance System (GSIS) regardless of their status of appointment, including members of the Judiciary and constitutional commissions;
- Uniformed members of the Armed Forces of the Philippines, the Bureau of Fire Protection, the Bureau of Jail Management and Penology, and the Philippine National Police;
- Filipinos employed by foreign-based employers, whether they are deployed here or abroad or a combination thereof.

[19] Per Home Development Mutual Fund's official website <<http://www.pagibigfund.gov.ph>>, voluntary membership is for:

An individual at least 18 years old but not more than 65 years old may register with the Fund under voluntary membership. However, said individual shall be required to comply with the set of rules and regulations for Pag-IBIG members including the amount of contribution and schedule of payment. In addition, they shall be subject to the eligibility requirements in the event of availment of loans and other programs/benefits offered by the Fund.

The following shall be allowed to apply for voluntary membership:

- Non-working spouses who devote full time to managing the household and family affairs, unless they also engage in another vocation or employment which is subject to mandatory coverage, provided the employed

spouse is a registered Pag-IBIG member and consents to the Fund membership of the non-working spouse;

- Filipino employees of foreign government or international organization, or their wholly-owned instrumentality based in the Philippines, in the absence of an administrative agreement with the Fund;
- Employees of an employer who is granted a waiver or suspension of coverage by the Fund under RA 9679;
- Leaders and members of religious groups;
- A member separated from employment, local or abroad, or ceased to be self-employed but would like to continue paying his/her personal contribution. Such member may be a pensioner, investor, or any other individual with passive income or allowances;
- Public officials or employees, who are not covered by the GSIS such as Barangay Officials, including Barangay Chairmen, Barangay Council Members, Chairmen of the Barangay Sangguniang Kabataan, and Barangay Secretaries and Treasurers;
- Such other earning individuals/groups as may be determined by the Board by rules and regulation.

[20] Ponencia, p. 5.

SEPARATE CONCURRING OPINION

CAGUIOA, J.:

I concur with the ponencia insofar as it finds no probable cause to charge and arrest respondents Delfin S. Lee (Delfin Lee), Dexter L. Lee (Dexter Lee), Christina Sagun (Sagun), Atty. Alex M. Alvarez (Alvarez) and Cristina Salagan (Salagan) for the crime of syndicated estafa penalized under Presidential Decree 1689 (PD 1689).[1] I share the ponencia's view that respondents do not qualify as a syndicate as defined in PD 1689.

Under the Revised Penal Code (RPC), any person who shall defraud another by any of the means set forth in Articles 315 and 316 shall be liable for estafa.

On April 6, 1980, President Ferdinand E. Marcos issued PD 1689 which treats the crime of syndicated estafa. Section 1 thereof, which incorporates Articles 315 and 316 by reference, reads:

SECTION 1. Any person or persons who shall commit estafa or other forms of swindling as defined in Articles 315 and 316 of the [RPC], as amended, shall be punished by life imprisonment to death if the swindling (estafa) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty imposable shall be reclusion temporal to reclusion perpetua if the amount of the fraud exceeds 100,000 pesos.

Hence, to sustain a charge for syndicated estafa, the following elements must be established: (i) estafa or other forms of swindling as defined in Articles 315 and 316 of the RPC is committed; (ii) the estafa or swindling is committed by a syndicate of five or more persons; and (iii) defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperatives, "samahang nayon(s)," or farmers' associations or of funds solicited by corporations/associations from the general public.[2]

The resolution of the Petition requires the examination of the second and third elements.

Second Element

In concurrence with the ponencia, and with the separate opinions of Senior Associate Justice Antonio T. Carpio and Associate Justice Estela M. Perlas-Bernabe, I find that the evidence presented against Alvarez establish his participation as the fifth conspirator in the fraudulent scheme subject of the charge.

To note, the Information in Criminal Case No. 18480 charging respondents with syndicated estafa, implicates Alvarez under the following terms:

x x x x

That in carrying out the aforesaid conspiracy x x x accused x x x Alvarez, did then and there unlawfully, feloniously and knowingly notarize crucial pieces of documents, consisting, among others, of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by [Home Development Mutual Fund (HDMF)], all of which are essential for the processing and approval of the purported transaction; x x x.[3]

As aptly explained by Justice Carpio, Alvarez admitted during the course of investigation that he notarized documents[4] for Globe Asiatique Realty Holdings Corporation (GA) in exchange for a fixed monthly fee even as he was employed as manager of HDMF's Foreclosure Department,[5] and that he often notarized these documents in GA's head office during the same period.[6]

Notably, these acts became subject of the case entitled *Alex M. Alvarez v. Civil Service Commission and Home Development Fund*, docketed as G.R. No. 224371.[7] Therein, the Court found Alvarez liable for grave misconduct, dishonesty and conduct prejudicial to the best interest of the service, and thus, dismissed Alvarez from service with finality.[8]

Again, as Justice Carpio astutely observes, Alvarez, being the manager of HDMF's Foreclosure Department, evidently knew that the documents he was notarizing for GA (e.g., Affidavits of Income, Contracts to Sell and promissory notes, among others) were essential for the processing and approval of the housing loans in question. In the words of Justice Carpio, this glaring conflict of interest, coupled with the NBI's finding that majority of the documents corresponding to the fictitious accounts had been notarized by Alvarez,[9] show that he had knowledge of the fraudulent scheme perpetrated by GA, and had actively participated therein.

In this connection, Associate Justice Leonen opines that Section 1 of PD 1689 does not specify the number of individuals who must be charged for an act of fraud to qualify as syndicated estafa, but requires only that the number of individuals acting out of a common design to defraud be at least five,[10] since certain contingencies may prevent all individuals involved from standing trial.[11] Hence, he stresses that the primary task of investigators and prosecutors in such cases is to "demonstrate the fraudulent scheme employed by five or more individuals,"[12] and, thereafter, "to demonstrate how an individual accused took part in effecting that scheme." [13]

Justice Leonen's observations are well-taken. Indeed, the identification of the individuals involved in the perpetration of syndicated estafa and the determination of the nature of their participation are tasks that lie with investigators and prosecutors. Indeed, it is possible to demonstrate the existence of a fraudulent scheme employed by five or more individuals without having to bring each of them to trial. However, it bears emphasis that at the point when the identity and participation of the individual perpetrators are determined to the extent sufficient to demonstrate the fraudulent scheme, investigators and prosecutors are left with no reason to drop said individuals from the criminal charge and exclude them from trial. And should the investigators and prosecutors fail, or decide not to include these known malefactors in the charge of syndicated estafa, then the Court is left with no alternative

but to determine the sufficiency of the said charge only on the basis of the number of malefactors so included as accused - this number going into the very definition of the law as to what constitutes syndicated estafa.

In any case, I submit that the second element of syndicated estafa is already satisfied in view of Alvarez's participation in the fraudulent scheme, as discussed.

Third Element

Considering that the fraudulent scheme in question was perpetrated by an entity which does not solicit funds from the general public, I find that the third element of syndicated estafa is absent. Thus, I likewise concur with the ponencia in this respect.

In *Galvez v. Court of Appeals*[14] (*Galvez*), Asia United Bank (AUB) charged private respondents therein with syndicated estafa for having deceived AUB into granting their corporation, Radio Marine Network Smartnet, Inc. (RMSI), a P250-million Omnibus Credit Line based on the misrepresentation that RMSI had sufficient capital and assets to secure the financial accommodation. Resolving the case, the Court ruled that fraud only qualifies as syndicated estafa under PD 1689 when the corporation or association through which it is committed is an entity which receives contributions from the general public:

On review of the cases applying the law, we note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of [PD] 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed and manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated estafa.

[Respondents], however, are not in any way related either by employment or ownership to AUB. They are outsiders who, by their cunning moves were able to defraud an association, which is the AUB. Theirs would have been a different story, had they been managers or owners of AUB who used the bank to defraud the public depositors.

This brings to fore the difference between the case of *Gilbert Guy, et al.*, and that of *People v. Balasa*, *People v. Romero*, and *People v. Menil, Jr.*

In *People v. Balasa*, the accused formed the Panata Foundation of the Philippines, Inc., a non-stock/non-profit corporation and the accused managed its affairs, solicited deposits from the public and misappropriated the same funds.

We clarified in *Balasa* that although, the entity involved, the Panata Foundation, was not a rural bank, cooperative, samahang nayon or farmers' association, it being a corporation, does not take the case out of the coverage of [PD] 1689. [PD] 1689's third "whereas clause" states that it also applies to other "corporations/associations operating on funds solicited from the general public." It is this pronouncement about the coverage of "corporations/associations" that led us to the ruling in our [April 25, 2012] Decision that a commercial bank falls within the coverage of [PD] 1689. We have to note though, as we do now, that the *Balasa* case, differs from the present petition because while in *Balasa*, the offenders were insiders, i.e., owners and employees who used their position to defraud the public, in the present petition, the offenders were not at all related to the bank. In other words, while in *Balasa* the offenders used the corporation as the means to defraud the public, in the present case, the corporation or the bank is the very victim of the offenders.

Balasa has been reiterated in *People v. Romero*, where the accused Martin Romero and Ernesto Rodriguez were the General Manager and Operation Manager, respectively, of Surigao San Andres Industrial Development Corporation, a corporation engaged in marketing which later engaged in soliciting funds and investments from the public.

A similar reiteration was by *People v. Menil, Jr.*, where the accused Vicente Menil, Jr. and his wife were proprietors of a business operating under the name ABM Appliance and Upholstery. Through ushers and sales executives, the accused solicited investments from the general public and thereafter, misappropriated the same.[15] (Emphasis supplied)

Based on the foregoing, I find that the third element of syndicated estafa does not obtain. To recall, the misappropriated funds in this case pertain to HDMF. While such funds were undoubtedly solicited from the general public, it bears emphasizing that HDMF was not the corporate vehicle used to perpetrate the fraud. Rather, HDMF was the subject of the fraudulent scheme perpetrated by GA. These facts, taken together, place the present case beyond the scope of PD 1689.

Justice Carpio is of the position that PD 1689 does not require that the perpetrator or the accused corporation/association be the one to solicit funds from the public, so long as the defraudation results in the misappropriation of money or of funds solicited by corporations/associations from the general public.[16] With all due respect, I disagree. The limited scope of PD 1689 is discernable from its "whereas clauses":

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon(s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public[.] (Emphasis supplied)

The "whereas clauses" are clear - PD 1689 is intended to cover swindling and other forms of frauds involving corporations or associations operating on funds solicited from the general public. To relax the third element of syndicated estafa in the present case is to adopt a liberal interpretation of PD 1689 to respondents' detriment; this cannot be done without doing violence to the well-established rule on the interpretation of criminal and penal statutes.

The early case of *People v. Garcia*[17] lends guidance:

x x x "Criminal and penal statutes must be strictly construed, that is, they cannot be enlarged or extended by intendment, implication, or by any equitable considerations. In other words, the language cannot be enlarged beyond the ordinary meaning of its terms in order to carry into effect the general purpose for which the statute was enacted. Only those persons, offenses, and penalties, clearly included, beyond any reasonable doubt, will be considered within the statute's operation. They must come clearly within both the spirit and the letter of the statute, and where there is any reasonable doubt, it must be resolved in favor of the person accused of violating the statute; that is, all questions in doubt will be resolved in favor of those from whom the penalty is sought." x x x[18] (Emphasis supplied)

The absence of the third element takes GA's fraudulent scheme outside of the scope of PD 1689. Nevertheless, such absence does not have the effect of absolving respondents herein of criminal liability, as the fraudulent scheme remains punishable under Article 315 of the RPC.

I find that the allegations in the Information, coupled with the evidence offered thus far, establish the existence of probable cause to charge and try respondents for the crime of simple estafa under the RPC, particularly under Article 315(2)(a)[19] thereof due to respondents' involvement in the implementation of GA's "Special Other Working Group Membership Program" (SOWG).[20]

Respondents insist that GA's duty to warrant the veracity of its buyer--borrowers' qualifications had been rendered inexistent by the Memorandum of Agreement dated July 13, 2009 (MOA), owing to the summary judgment rendered by the Regional Trial Court (RTC) of Makati in Civil Case No. 10-1120[21] which provides, in part:

The MOA dated [July 13, 2009] entered into between [GA] and defendant HDMF which was duly approved by the Board of Trustees of the latter, without any doubt, effectively superseded, amended, and modified the provisions of the continuing [Funding Commitment Agreements (FCAs)] and [Collection Servicing Agreements] which are inconsistent with its provisions specifically in the following areas of concern:

- Warranty of the developer on the approval of loan applications of [HDMF] member-borrowers who bought houses and lots from the Xevera Bacolor and Mabalacat projects of [GA] considering that under the MOA, [GA] is limited to loan counseling;
- Warranty against any misrepresentation of the employees or agents of [GA] in connection with the latter's evaluation and approval of loan accounts due to the fact that under the MOA, [GA] is limited to loan counseling; and
- Right to unilateral termination of the contracts because under the MOA, the contracts can only be terminated upon mutual consent of both parties.[22]

Respondents posit that GA could not have made any false representations which would have impelled HDMF to approve the loan applications of its buyer-borrowers, so as to render them liable for simple estafa under Article 315(2)(a) of the RPC.

I disagree. I find, as do the majority, that GA's systematic endorsement of fictitious and unqualified buyer-borrowers serves as sufficient basis to hold the respondents liable for simple estafa - which liability stands regardless of whether GA's warranties under the Funding Commitment Agreements (FCAs) remained in effect.

To recall, the elements of simple estafa under Article 315(2)(a) are: (i) there must be a false pretense or fraudulent representation as to the offender's power, influence, qualifications, property, credit, agency, business or imaginary transactions; (ii) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (iii) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (iv) that, as a result thereof, the offended party suffered damage.[23] In order for simple estafa of this kind to exist, the false pretense or fraudulent representation must be made prior to, or at least simultaneous with, the delivery of the thing subject of the fraud, it being essential that such false statement or representation constitutes the very cause or motive which induces the victim to part with his/her money.[24]

With respect to the element of false pretense or fraudulent representation, the Court's ruling in *Preferred Home Specialties Inc. v. Court of Appeals*[25] is instructive:

A "representation" is anything which proceeds from the action or conduct of the party charged and which is sufficient to create upon the mind a distinct impression of fact conducive to action. "False" may mean untrue, or designedly untrue, implying an intention to deceive, as where it is applied to the representations of one inducing another to act to its own injury. "Fraudulent" representations are those proceeding from, as characterized by fraud, the purpose of which is to deceive. "False pretense" means any trick or device whereby

the property of another is obtained.[26]

To be sure, there is nothing in Article 315 which requires that the matter falsely represented be the subject of an obligation or warranty on the part of the offender. It is sufficient that the false representation made by the offender had served as the driving force in the victim's defraudation.

On this score, it bears stressing that HDMF agreed to adopt GA's proposed SOWG on the basis of Delfin Lee's representations that a significant number of buyers had expressed interest in purchasing units in its Xevera Projects. In fact, after having secured billions of pesos under the first nine (9) FCAs executed between August 12, 2008 and July 10, 2009, Delfin Lee sought to further secure, as he did secure, additional funding commitment lines through an accelerated loan take-out process, under the guise of a "rapid and notable increase in the number of buyers" for GA's Xevera Projects.

However, as was later admitted by Delfin Lee himself, at least one thousand (1,000) of the buyer-borrowers which GA had endorsed to HDMF were questionable. Worse, Delfin Lee likewise admitted that these questionable accounts were kept current not by the buyer-borrowers on record, but by GA itself.[27] In turn, the subsequent audit conducted by HDMF revealed that: (i) only 1.85% of the sampled accounts under the SOWG category were actually occupied by their corresponding buyer--borrowers; (ii) 83.38% of acquired units under the SOWG category were unoccupied; and (iii) 7.69% of accounts under the SOWG category had been closed. These figures account for at least 296 anomalous SOWG accounts out of the 320 accounts HDMF sampled during the audit, which, in turn, constitutes 10% of the total number of SOWG accounts booked by GA.[28] What is even more telling is the fact that GA's remittance rate immediately fell from 100% to 0% a month after HDMF suspended loan take-outs in favor of GA's buyers due to its alarming findings.[29]

The sheer volume of anomalous SOWG accounts is indicative of willful and fraudulent misrepresentation on the part of GA, for while the endorsement of a handful of fictitious and/or inexistent buyer-borrowers may reasonably result from negligence or even mere oversight, the endorsement such accounts in the hundreds clearly shows the employment of an elaborate scheme to defraud, and assumes the nature and character of fraud and deceit constitutive of simple estafa under Article 315(2)(a):

[F]raud, in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.[30] (Emphasis supplied)

To my mind, this elaborate scheme could not have been possible without the complicity of the respondents, given the volume of transactions and amount of money involved in its perpetration. Hence, the respondents should accordingly be charged and made to stand trial.

Moreover, Justice Perlas-Bernabe correctly notes that even if it is assumed, *arguendo*, that the MOA had the effect of negating GA's warranties under the FCAs anent its buyer-borrowers' qualifications, no less than nine (9) FCAs implementing the SOWG arrangement had nevertheless been executed prior to the execution of the MOA. Accordingly, the offense of simple estafa had already been consummated in respect of these nine (9) FCAs, which account for the staggering amount of Two Billion Nine Hundred Million Pesos (P2,900,000,000.00) in loan proceeds.

On the basis of the foregoing, I vote that the petitions docketed as G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680 be GRANTED IN PART, and that the public prosecutor be directed to amend the Information to reflect the correct charge of simple estafa, under Article 315(2)(a) of the RPC. Let the warrants of arrest against respondents Delfin S. Lee, Dexter L. Lee, Christina Sagun, and Cristina Salagan STAND, and the warrant of arrest against Atty. Alex M. Alvarez be deemed REINSTATED.

I concur with the ponencia insofar as it GRANTS the petition docketed as G.R. No. 209424, and DIRECT the remand of Civil Case No. 10-1120 entitled Globe Asiatique Realty Holdings, Corp. et al. v. The Home Development Mutual Fund or Pag-Ibig Fund, et al. to the Regional Trial Court of Makati City, Branch 58 for further proceedings.

Finally, I concur with the ponencia insofar as it GRANTS the petitions docketed as G.R. Nos. 208744 and 210095, and LIFTS the Writ of Preliminary Injunction dated April 10, 2013 issued by the Regional Trial Court of Pasig City, Branch 167.

[1] In relation to Article 315 of the RPC.

[2] Galvez v. Court of Appeals, 704 Phil. 463, 472 (2013) [Per J. Perez, Special Second Division].

[3] As quoted in the ponencia, p. 13.

[4] Including, among others, Affidavits of Income, Contracts to Sell, promissory notes, Deeds of Assignment and Certificates of Acceptance.

[5] Based on the NBI Report dated October 29, 2010, see J. Carpio, Dissenting Opinion, p. 25, citing rollo (G.R. No. 209446), Vol. II, p. 722.

[6] Based on the transcript of clarificatory questioning of Ms. Veniza Santos Panem, see J. Carpio, Dissenting Opinion, id. at 23-25, citing rollo, Vol. VI (G.R. No. 209446), pp. 2550-2563.

[7] G.R. No. 224371, September 19, 2016 (Unsigned Resolution).

[8] Id.

[9] See J. Carpio, Dissenting Opinion, pp. 25-26.

[10] See J. Leonen, Dissenting Opinion, p. 4.

[11] Id. at 5.

[12] Id.

[13] Id.

[14] Supra note 2.

[15] Id. at 473-474.

[16] See J. Carpio, Dissenting Opinion, p. 27.

[17] 85 Phil. 651 (1950) [Per J. Tuason, En Banc].

[18] Id. at 656.

[19] RPC, Article 315(2)(a) provides:

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

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

[20] See ponencia, p. 40.

[21] Entitled Globe Asiatique Realty Holdings Corporation and Delfin Lee (in his capacity as President of the Corporation) v. Home Development Mutual Fund (HDMF) or Pag-Ibig Fund, its Board of Trustees and Emma Linda Faria, Officer in Charge, for Specific Performance and Damages.

[22] Rollo (G.R. No. 209424), Vol. II, p. 447.

[23] People v. Baladjay, G.R. No. 220458, July 26, 2017, p. 7 [Per J. Velasco, Jr., Third Division].

[24] See Preferred Home Specialties Inc. v. Court of Appeals, 514 Phil. 574, 597-598 (2005) [Per J. Callejo, Sr., Second Division].

[25] Id.

[26] Id. at 598-599.

[27] Rollo (G.R. No. 205698), Vol. I, p. 334.

[28] Figures culled from the results of the HDMF special audit, as narrated by the NBI in its Preliminary Investigation Report dated October 29, 2010 (see rollo [G.R. No. 205698], Vol. I, p. 334).

[29] Rollo (G.R. No. 205698), Vol. I, p. 334.

[30] Lateo v. People, 666 Phil. 260, 273-274 (2011) [Per J. Nachura, Second Division] cited in the ponencia, p. 40; see also Republic v. Mega Pacific eSolutions. Inc., 788 Phil. 160, 196-197 (2016) [Per C.J. Sereno, First Division].

SEPARATE OPINION

TIJAM, J.:

In 2008, Globe Asiatique Realty Holdings Corporation (GA), through its president Delfin Lee, entered into Funding Commitment Agreements (FCA) with Home Development Mutual Fund (HDMF) wherein it represented having interested buyers in its Xevera Projects in Pampanga. Under the arrangement, GA's supposedly existing buyers would be the loan applicants. GA will pre-process the loan applications and in case of default in the amortization, GA would buy back the loan accounts. This was followed by a second FCA, where the borrowers would be composed of Special Other Working Group (OWG) or those HDMF members who are not formally employed. In 2009, GA and HDMF executed a Memorandum of Agreement (MOA) for an additional funding commitment line. More FCAs were executed, reaching an aggregate amount of P7,007,806,000.00 released to GA.

HDMF subsequently discovered that some supposed borrowers under the OWG were not aware of the loans they supposedly obtained and that some borrowers were neither members of HDMF nor qualified to avail of housing loan. Consequently, HDMF revoked the authority of GA under the FCA, suspended all take-outs for new housing loans, required the buy-back of the 701 fraudulent accounts, and cancelled the release of fund to GA.

These events led to:

(a) In October 2010, HDMF, through its officer-in-charge Faria, filed a complaint for syndicated estafa against GA's officers Delfin Lee and several others [1st] DOJ Complaint].

(b) In November 2010, GA and Delfin Lee filed a complaint for specific performance against HDMF before Regional Trial Court (RTC) of Makati [Civil Case]. They sought to compel HDMF to accept the replacements they proposed in lieu of the buyers who became delinquent in their amortizations.

(c) 2nd, 3rd and 4th Department of Justice (DOJ) criminal complaints against respondents were filed.

1st DOJ Complaint:

The DOJ issued its Review Resolution recommending the filing of estafa against Delfin Lee, Christina Sagun (Sagun), Christina Salagan (Salagan), Dexter Lee and Atty. Alex M. Alvarez (Atty. Alvarez) with no bail.

Sagun filed a certiorari petition with the Court of Appeals (CA) while Atty. Alvarez filed his injunction petition with RTC Caloocan to enjoin DOJ from filing the information.

The CA partially granted Sagun's petition. It held that Sagun's functions were limited to collation of documents. It dismissed the complaint as against Sagun and ordered the quashal of the arrest warrant issued against her.

On the other hand, GA clients, claiming to be victims of double sale made by GA, also filed a complaint for syndicated estafa against respondents. [2nd] DOJ Complaint]

Delfin Lee filed an injunction petition with RTC Pasig to enjoin the DOJ from proceeding with the 2nd DOJ Complaint on the ground that the Civil Case for specific performance case constitutes a prejudicial question.

The RTC Pasig issued Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI). DOJ filed a certiorari petition with CA. CA granted DOJ certiorari petition. Delfin Lee appealed to Us. We denied appeal which became final.

DOJ thus filed criminal case for syndicated estafa against Delfin Lee, Dexter Lee, Sagun, Salagan and Atty. Alvarez with the RTC Pampanga.

The RTC Pampanga found probable cause for syndicated estafa and ordered the issuance of warrants of arrest.

Delfin Lee, Dexter Lee and Salagan moved for reconsideration. Atty. Alvarez also moved for reconsideration.

Pending resolution of his motion for reconsideration, Delfin Lee filed a certiorari petition with the CA. Atty. Alvarez, Dexter Lee and Salagan also filed their respective certiorari petitions with the CA.

The CA partially granted Delfin Lee's and Atty. Alvarez's petition and quashed the arrest warrants issued against them. The CA dismissed Salagan's petition.

Hence, the petitions (People v. Alvarez, G.R. No. 209446; HDMF v. Alvarez, G.R. No. 209489; HDMF v. Delfin Lee, G.R. No. 209852; People v. Delfin Lee, G.R. No. 210143; People v. Dexter Lee, G.R. No. 228730; HDMF v. Dexter Lee, G.R. No. 228452; and Salagan v. People and HDMF, G.R. No. 230680).

Civil Case for specific performance:

GA and Delfin Lee filed a complaint for specific performance and damages, seeking to compel HDMF to accept the replacements they had proposed in lieu of the buyers/borrowers who had become delinquent in their amortization and asserting that HDMF's inaction to accept the replacement forced GA to default on its obligations under the MOA and FCAs, against HDMF.

The RTC Makati rendered a summary judgment in favor of GA and Delfin Lee.

Faria and Atty. Berberabe's motion for reconsideration filed by the Yorac Law Firm was denied due to the latter's lack of authority from HDMF. Supposedly, HDMF itself did not moved for reconsideration.

HDMF filed its certiorari petition with the CA.

The CA dismissed HDMF petition. In ruling so, the CA held that HDMF availed of the wrong remedy to assail a summary judgment and that the certiorari petition was not filed under the authority of the OGCC.

Hence, the petition (HDMF v. GA, G.R. No. 209424).

2[nd], 3[rd] and 4[th] DOJ complaints:

To enjoin the 2[nd], 3[rd], and 4[th] DOJ complaints, Delfin Lee prayed for the issuance of a TRO with the RTC Pasig.

The RTC Pasig issued TRO and WPI against the conduct of the preliminary investigation in the 2[nd], 3[rd] and 4[th] DOJ Complaints. It held that the summary judgment rendered by the RTC Makati effectively removed the element of damage in the criminal complaints.

DOJ filed certiorari petition with the CA, but denied the petition for having been filed out of time.

Hence, the petitions (DOJ v. Delfin Lee, G.R. No. 208744; DOJ v. Delfin Lee, G.R. No. 210095).

I concur with the ponencia ordering the formal amendment of the Information from syndicated estafa to simple estafa and that the arrest warrants remain valid.

To determine if the first paragraph of Section 1 of Presidential Decree (P.D.) No. 1689 applies, two questions must be determined: first, whether HDMF funds may be the subject of syndicated estafa; and second, whether respondents, as GA officials, fall under the definition of who may commit syndicated estafa.

As to the first question, the HDMF funds may be the subject of syndicated estafa.

Under paragraph 1 of Section 1, P.D. No. 1689, the funds misappropriated must be:

1)

moneys contributed by stockholders or members of rural banks, cooperative, samahang nayons or farmers' associations, or

2)

funds solicited from the general public.

Section 10 of Republic Act (R.A) No. 9679 or the HDMF Law of 2009 describes the HDMF fund as "private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit." The personal and employer contributions are to be fully credited to each member and shall earn dividends. The fund also constitutes as a provident fund of each member, to be paid upon termination of membership. In other words, HDMF funds are funds held in trust for the member and are provident funds to be paid to the member, or his

estate or beneficiaries, upon termination of his membership. As in the nature of provident funds, the HDMF funds operate as a savings scheme consisting of contributions from the members in monetary form which, in turn, earns dividends, may be used as a loan facility and provides supplementary welfare benefit to members. It is akin to funds held by banks, which is still wholly owned by the depositor but is loaned to the bank which the latter may use/invest and thus earns interest for the depositor. In other words, HDMF funds may thus properly be regarded as moneys contributed by HDMF members which may be the subject of syndicated estafa.

Nevertheless, as to the second question, the respondents GA officials do not fall under the definition of who may commit syndicated estafa. Jurisprudence, as it stands, particularly in *Galvez, et al. v. Court of Appeals, et al.*,^[1] requires that the syndicate must have used the association that they manage to defraud the general public of the funds contributed to the association, to wit:

[W]e note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated estafa.^[2]

Otherwise stated, the syndicate must have used the rural banks, cooperative, samahang nayons or farmers' associations they formed, owned, or managed to misappropriate the moneys contributed by their stockholders or members, or the syndicate must have used the corporation or association they formed, owned, or managed to misappropriate the funds it solicited from the general public.

Here, the GA officials admittedly did not form, own or manage HDMF. It was neither alleged in the Information that the GA officials used HDMF to defraud the general public. Since it was HDMF (the "association" holding the moneys contributed by its members) which is the victim and the juridical person used by the syndicate to defraud, P.D. No. 1689 does not apply.

Finally, independently of whether the threshold number of accused, i.e., five, is met (on whether Atty. Alvarez should properly be included or not), the fact remains that four out of the five accused are neither owners nor employees of HDMF. This places the instant case outside the scope of P.D. No. 1689.

Since the elements of simple estafa appear to be present, respondents, including Atty. Alvarez of the HDMF, should be charged of simple estafa. The arrest warrants against them stand, and if quashed, should be reinstated.

I concur with ponencia reversing the CA Decision denying HDMF's certiorari petition against RTC Makati's summary judgment but, instead, of remanding to CA, the case should be remanded to RTC Makati for disposition on the merits.

The RTC Makati gravely abused its discretion when it rendered a summary judgment in the Civil Case for specific performance when it actually deemed that the issue as to damages necessitates further proceedings.

As suggested by Justice Estela M. Perlas-Bernabe, there is no need to remand the case to the CA to determine if the RTC Makati gravely abused its discretion especially so when proper evaluation of the merits may be had as when copies of various pleadings and documents are in possession of the Court. Instead, the case should be remanded to RTC Makati for further proceedings.

The Court's ruling charging respondents of simple estafa and affirming the validity of the arrest warrants does not pre-empt nor render moot the Civil Case for specific performance. Suffice to say that the instant petitions deal with the determination of the probable guilt of respondents for the crime of simple estafa; while the Civil Case

simply determines contractual breach.

Under these premises, I vote as follows:

(1)

The petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680 should be PARTIALLY GRANTED in that the Department of Justice is DIRECTED to amend the Information in Criminal Case No. 18480 so as to charge respondents for simple estafa. The warrants of arrest issued REMAIN VALID;

(2)

The petition in G.R. No. 209424 should be GRANTED. The Decision dated October 7, 2013 of the Court of Appeals in CA--G.R. SP No. 128262, affirming the Resolutions dated January 30, 2012 and December 11, 2012 of the Regional Trial Court of Makati, Branch 58 in Civil Case No. 10-1120 should be REVERSED and SET ASIDE. A new one should be entered directing the REMAND of the case to RTC Makati for disposition on the merits;

(3)

The petitions in G.R. Nos. 208744 and 210095 should be GRANTED, since the writ of preliminary injunction issued by the Regional Trial Court of Pasig City, Branch 167, which enjoined the preliminary investigation for the second, third and fourth criminal complaints filed against respondents was tainted with grave abuse of discretion amounting to lack of jurisdiction.

[1] 704 Phil. 463 (2013).

[2] Id. at 473.

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