

**CRUZVALE, INC., PETITIONER, VS. JOSE ARMANDO L. EDUQUE,
PETER A. BINAMIRA, JEANETTE C. DELGADO AND MA. LETICIA R.
JOSON, RESPONDENTS.**

G.R. Nos. 172785-86. June 18, 2009

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is a petition for review on certiorari seeking the reversal of the Decision[1] dated March 1, 2006 of the Court of Appeals in CA-G.R. SP Nos. 81518 and 81526 and its Resolution[2] dated May 22, 2006, denying reconsideration. The appellate court ordered the dismissal of the criminal charge for estafa under Article 315(1)(b)[3] of the Revised Penal Code against respondents for lack of probable cause.

Petitioner is a client of East Asia (AEA) Capital Corporation (East Asia) which is a duly licensed Philippine investment house engaged in the buy and sell or trading of securities and commercial papers. As a practice, East Asia purchases Long Term Commercial Papers (LTCPs) for petitioner from various corporations the latter has chosen. These LTCPs are registered with the issuing corporations in the name of East Asia in trust for petitioner. In turn, East Asia issues Outright Sales Invoices and Custodian Receipts to petitioner. Once the LTCPs mature, petitioner instructs East Asia to re-invest or roll-over the principal amounts and accrued interests to other similar LTCPs.

Petitioner alleged that sometime in April 2000, it learned of East Asia's irregular transactions and precarious financial condition. Thus, it asked East Asia for an accounting of all its LTCPs. Meanwhile, petitioner conducted its own investigation and discovered that: (1) some of its outstanding LTCPs were sold or assigned to third parties; (2) the proceeds of such sale or assignment were covered by petitioner's alleged purchase of East Asia promissory notes; (3) the proceeds of its matured LTCPs were not used to purchase other similar LTCPs but covered instead petitioner's alleged purchase of East Asia promissory notes; and (4) interest payments from its LTCPs were received by East Asia and covered petitioner's alleged purchase of East Asia promissory notes. All these were done without petitioner's prior knowledge and consent.

Petitioner's representatives met with respondent Jose Armando L. Eduque, Chief Executive Officer and Director of East Asia, to confirm and discuss the foregoing. Eduque proposed to: (1) secure the East Asia promissory notes with collateral; and/or (2) dacion the LTCPs with East Asia real properties and shares of stock.[4]

On June 23, 2000, Eduque proposed the conversion of a part or all of petitioner's LTCPs into East Asia equity. Petitioner declined the proposal and made a final demand for the turn-over of the proceeds of its matured LTCPs and the delivery of its outstanding LTCPs, with interest payments accruing thereto.[5]

As the demand remained unheeded, petitioner filed a complaint-affidavit with the Office of the City Prosecutor of Makati charging respondents, as officers and/or directors of East Asia, with violation of Article 315(1)(b) and (2)(a)[6] of the Revised Penal Code.

On February 5, 2001, an Information for estafa under Article 315(1)(b) was filed against respondents. Joson filed a motion for reconsideration while Eduque, Binamira and Delgado filed a petition for review with the Department of Justice. In the meantime, the case was docketed as Criminal Case No. 01-328 and assigned to Judge Marissa M. Guillen of the Regional Trial Court of Makati City, Branch 61.

The Secretary of Justice granted the petition and directed the City Prosecutor of Makati to withdraw the information against respondents.[7] On the other hand, the City Prosecutor of Makati granted Joson's motion and recommended the dismissal of the charge against her.[8]

The City Prosecutor of Makati then filed a motion to withdraw information which was denied by Judge Guillen.[9] Joson filed a motion for reconsideration separate from the motion for reconsideration filed by Eduque, Binamira and Delgado.

Judge Romeo F. Barza, who took over as presiding judge, granted[10] Joson's motion but denied[11] that of Eduque, Binamira and Delgado. Thereafter, they were arraigned over their objections. They filed another motion for reconsideration. Petitioner also moved to reconsider the withdrawal of the information against Joson.

Due to Judge Barza's voluntary inhibition, the case was re-raffled and re-assigned to Judge Rebecca R. Mariano of the RTC of Makati City, Branch 134. Judge Mariano dismissed the criminal case against all respondents due to the absence of probable cause.[12]

Petitioner moved for partial reconsideration which Judge Mariano granted.[13] She also denied respondents' motion for reconsideration and ordered the pre-trial to proceed.[14]

Before the Court of Appeals, Joson filed a petition for review docketed as CA-G.R. SP No. 81518 while Eduque, Binamira and Delgado filed a petition for review docketed as CA-G.R. SP No. 81526.

The appellate court granted the petitions on the following grounds: First, petitioner's motion for partial reconsideration was a prohibited pleading which Judge Mariano should not have taken cognizance of. It was a second motion for reconsideration with regard to the dismissal of the criminal charge for estafa under Article 315(1)(b) against Joson. Second, there was no sufficient evidence to warrant Joson's indictment since petitioner failed to show that she participated in the alleged conversion of the LTCPs and conspired with the other respondents in committing the same. Third, the Supreme Court ruled in *Sesbreño v. Court of Appeals*[15] that a money market transaction partakes of a nature of a loan and therefore, the non-payment thereof would not give rise to criminal liability for estafa through misappropriation or conversion.[16] East Asia did not receive money in trust, or on commission or for administration, or under any other obligation to make delivery of or to return the same. It did not become a trustee of petitioner, nor was any fiduciary relationship created. Thus, the appellate court ordered the dismissal of the criminal charge for estafa under Article 315(1)(b) against respondents for lack of probable cause:

ALL THE FOREGOING CONSIDERED, the instant consolidated petition (CA-G.R. SP No. 81518 and CA-G.R. SP No. 81526) is hereby GRANTED. Accordingly, the assailed ORDERS dated 26 May 2003, 25 September 2003 and 29 December 2003, issued by public respondent are hereby REVERSED and SET ASIDE and the Order dated 13 December 2002 is hereby REINSTATED.

SO ORDERED.[17]

Petitioner submits these issues for our consideration:

I.

WHETHER OR NOT THE COURT OF APPEALS ACTED CONTRARY TO AND SUBSTANTIALLY

DEPARTED FROM LAW AND SETTLED JURISPRUDENCE WHEN IT RULED THAT SESBRE[Ñ]O V. COURT OF APPEALS IS APPLICABLE IN THE INSTANT CASE.

II.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND ACTED CONTRARY TO LAW AND SETTLED JURISPRUDENCE WHEN IT RULED THAT SOME OF THE ELEMENTS OF ESTAFA WITH UNFAITHFULNESS OR ABUSE OF CONFIDENCE UNDER ARTICLE 315(1)(b) ARE ABSENT IN THE INSTANT CASE, THEREBY WARRANTING THE DISMISSAL OF THE CHARGES AGAINST THE RESPONDENTS FOR LACK OF PROBABLE CAUSE.

III.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR AND ACTED CONTRARY TO SETTLED JURISPRUDENCE WHEN IT HELD THAT PETITIONER CRUZVALE'S MOTION FOR PARTIAL RECONSIDERATION DATED 27 JANUARY 2003 IS A SECOND MOTION FOR RECONSIDERATION WHICH IS NOT ALLOWED UNDER THE LAW.[18]

Essentially, we are asked to resolve whether the Court of Appeals erred in: (1) applying *Sesbreño v. Court of Appeals*; (2) ruling that some of the elements of estafa under Article 315(1)(b) are absent; and (3) holding that petitioner's motion for partial reconsideration is a second motion for reconsideration which is a prohibited pleading.

Petitioner avers that the instant case is different from *Sesbreño* for the following reasons. First, respondents are charged not with the simple failure to return petitioner's investments, but rather, with: (1) the violation of their fiduciary obligation under the Custodian Receipts when they sold or assigned petitioner's outstanding LTCPs to third parties without its prior knowledge and consent; (2) the misrepresentation that they still had custody of these LTCPs despite the double sale to third parties; (3) the violation of their fiduciary obligation as middleman to remit and account for the interests and proceeds of petitioner's investments after the corporate borrowers have paid the same; (4) the misappropriation of these proceeds; and (5) the unilateral conversion of petitioner's investments in LTCPs into East Asia promissory notes without its knowledge and consent. Second, East Asia is not only the middleman but also the custodian of the LTCPs it purchased in behalf of petitioner as evidenced by the Custodian Receipts. As such, East Asia became a trustee who has the unconditional obligation to deliver the LTCPs to petitioner who is the beneficiary-placer. Its failure to deliver the LTCPs to petitioner amounts to conversion or unlawful deprivation. By selling the LTCPs to third parties and unilaterally replacing them with East Asia promissory notes without petitioner's knowledge and consent, East Asia breached its obligation to hold the same in trust for petitioner's account. Petitioner adds that the characterization of the transactions between the parties as akin to a loan is misplaced and contrary to *Fontanilla v. People*.^[19] In *Fontanilla*, the Court ruled that a fiduciary relationship exists between an investor and the person to whom he entrusts money for the purpose of investment.^[20] In the instant case, the Outright Sales Invoices and Custodian Receipts show that petitioner turned over money to East Asia for the purchase of LTCPs. The criminal charge against respondents constitutes estafa through misappropriation or conversion under Article 315(1)(b).

Petitioner also argues that the elements of estafa with unfaithfulness or abuse of confidence under Article 315(1)(b) are present in the instant case. The subject of the misappropriation was not the funds invested by petitioner per se but the LTCPs themselves and the interests and proceeds of petitioner's investments after the corporate borrowers have paid the same. It is not always essential for estafa that the complainant seek the return of the very same thing delivered under trust or for administration. Further, East Asia's failure to account for the unremitted portion of the investments, after demand was made, necessarily leads to the conclusion that the same were misappropriated or converted into personal use.

Finally, petitioner contends that its motion for partial reconsideration is not a second motion for reconsideration which is a prohibited pleading. The motions questioned the dismissal of the criminal charge against Joson on two different grounds.

Respondents counter that the instant case involves a money market placement in which an investor delivers money to an investment house for the purpose of investing it in different securities in the hope of realizing profit. Whatever stocks, certificate or other documents that may be issued from these transactions are merely evidence of the money market placement. The transaction partakes of the nature of a loan and therefore nonpayment thereof would not give rise to any criminal liability for estafa through misappropriation or conversion. Respondents add that petitioner has not adduced any evidence to show that they actually participated in any act of misappropriation or conversion constituting estafa. Respondents also maintain that the prohibition against second motions for reconsideration does not provide as an exception the inclusion of new or additional grounds.

The petition is partly meritorious.

In *Sesbreño v. Court of Appeals*,^[21] Sesbreño made a money market placement of P300,000 with Philfinance for a term of 32 days at 20% interest. Philfinance then sold to him a share in Delta Motors Corporation Promissory No. 2731 which was payable to Philfinance but was in the custody of Pilipinas Bank. Unknown to Sesbreño, Philfinance and Delta agreed to set-off Promissory No. 2731 with Philfinance's Promissory Note No. 143-A which was payable to Delta. As a result, Delta's liability under Promissory No. 2731 was extinguished. Later, Philfinance failed to pay the maturity value of Sesbreño's investment when it became due. Sesbreño demanded payment from Delta and asked for the physical delivery of the promissory note from Pilipinas Bank. The two refused. Sesbreño then filed (1) a civil action for damages against Delta and Pilipinas Bank (1993 Sesbreño case),^[22] and (2) a criminal case for estafa against the officers of Philfinance (1995 Sesbreño case).^[23]

In the 1993 Sesbreño case, this Court ruled that Philfinance and Delta were mutually debtors and creditors of each other by virtue of the promissory notes they issued. But when they agreed to set-off the promissory notes, Philfinance stepped into the shoes of Delta and became Sesbreño's debtor. This Court also found that a fiduciary relationship was created between Sesbreño and Pilipinas Bank. Thus, Pilipinas Bank was obliged to return the promissory note upon Sesbreño's demand.

In the 1995 Sesbreño case, Sesbreño sought the return of his investment from Philfinance not in its capacity as middleman or dealer but as debtor. We cannot therefore sweepingly apply our pronouncement therein that a money market transaction partakes of the nature of a loan and that nonpayment thereof would not give rise to criminal liability for estafa through misappropriation or conversion^[24] for the following reasons: first, the 1995 Sesbreño case involved a money market placement which dealt with a short-term credit instrument^[25] and not long term commercial papers as in this case. Second, the 1995 Sesbreño case dealt with the liability of Philfinance not as middleman or dealer but as debtor unlike the liability of East Asia as middleman or dealer and custodian as obtaining here.

On the other hand, we conclude that a fiduciary relationship was created between petitioner and East Asia. For simultaneously acting as middleman or dealer and custodian, East Asia was obliged to turn-over the proceeds of the matured LTCPs and to deliver the outstanding LTCPs to petitioner, with interest payments accruing thereto.

This notwithstanding, we find no reason to depart from the recommendations of the City Prosecutor of Makati and the Secretary of Justice, which were affirmed by the appellate court, to dismiss the criminal charge against respondents for lack of probable cause.

It bears stressing that the determination of probable cause for the filing of an information in court is an executive

function which pertains at the first instance to the public prosecutor and then to the Secretary of Justice.[26] Courts are not empowered to substitute their own judgment for that of the executive branch.[27]

To be held liable for estafa under Article 315(1)(b) of the Revised Penal Code, the following elements must concur: (1) that money, goods, or other personal properties are 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; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.[28]

While East Asia acted as custodian of the LTCs and was obliged to turn-over the proceeds of the matured LTCs and to deliver the outstanding LTCs to petitioner, with interest payments accruing thereto, there was no showing that respondents misappropriated or converted the same. East Asia periodically remitted the proceeds and interest payments to petitioner even before petitioner filed its complaint-affidavit. Moreover, apart from its sweeping allegation that respondents misappropriated or converted its money placements, petitioner failed to establish the particular role or actual participation of each respondent in the criminal act. Neither was it shown that they assented to its commission. It is basic that only corporate officers shown to have participated in the alleged anomalous acts may be held criminally liable.

Finally, petitioner's motion for partial reconsideration was a second motion for reconsideration with regard to the dismissal of the criminal charge for estafa under Article 315(1)(b) against Joson. Although it assailed two different orders of two different judges, the matter being questioned was the same. We reiterate that the propriety or acceptability of a second motion for reconsideration is not contingent upon the averment of "new" grounds to assail the judgment.[29]

WHEREFORE, the Decision dated March 1, 2006 of the Court of Appeals in CA-G.R. SP Nos. 81518 and 81526 and its Resolution dated May 22, 2006, denying reconsideration, are AFFIRMED.

SO ORDERED.

Ynares-Santiago,[*] Chico-Nazario,**] Leonardo-De Castro,[***] and Brion, JJ., concur.

[*] Designated member of the Second Division per Special Order No. 645 in place of Associate Justice Conchita Carpio Morales who is on official leave.

**] Designated member of the Second Division per Special Order No. 658.

***] Designated member of the Second Division per Special Order No. 635 in view of the retirement of Associate Dante O. Tinga.

[1] Rollo, pp. 85-109. Penned by Associate Justice Arturo G. Tayag, with Associate Justices Jose L. Sabio, Jr., and Fernanda Lampas Peralta concurring.

[2] Id. at 111-113.

[3] 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

- With unfaithfulness or abuse of confidence, namely:

x x x x

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

[4] Rollo, p. 164.

[5] Id. at 165-166.

[6] 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

- 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.

[7] Rollo, pp. 233-238.

[8] Id. at 239-241.

[9] Id. at 306-307.

[10] Id. at 326-327.

[11] Id. at 324-325.

[12] Id. at 361-372.

[13] Id. at 429-438.

[14] Id. at 492-494.

[15] G.R. No. 84096, January 26, 1995, 240 SCRA 606.

[16] Id. at 613.

[17] Rollo, p. 108.

[18] Id. at 43.

[19] G.R. No. 120949, July 5, 1996, 258 SCRA 460.

[20] Id. at 470.

[21] G.R. No. 89252, May 24, 1993, 222 SCRA 466.

[22] Id. at 468-471.

[23] *Sesbreño v. Court of Appeals*, supra note 15, at 609.

[24] Id. at 613.

[25] *Cebu International Finance Corp. v. Court of Appeals*, G.R. No. 123031, October 12, 1999, 316 SCRA 488,

497; See *Perez v. Court of Appeals*, No. L-56101, February 20, 1984, 127 SCRA 636, 645.

[26] *Insular Life Assurance Company, Limited v. Serrano*, G.R. No. 163255, June 22, 2007, 525 SCRA 400, 405-406; *First Women's Credit Corporation v. Perez*, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[27] *Baviera v. Paglinawan*, G.R. Nos. 168380 & 170602, February 8, 2007, 515 SCRA 170, 184; *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[28] *Libuit v. People*, G.R. No. 154363, September 13, 2005, 469 SCRA 610, 616.

[29] *Zarate v. Maybank Philippines, Inc.*, G.R. No. 160976, June 8, 2005, 459 SCRA 785, 795, citing *Ortigas and Company Limited Partnership v. Velasco*, G.R. Nos. 109645 & 112564, March 4, 1996, 254 SCRA 234, 240.

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