

MICHAEL SYIACO, PETITIONER, VS. EUGENE ONG, RESPONDENT.

G.R. Nos. 179282-83. December 01, 2010

Ponente: NACHURA, J.

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NACHURA, J.:

This is a petition for review on certiorari under Rule 45 of the Rules of Court filed by petitioner Michael Syiaco against respondent Eugene Ong, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated May 22, 2007 and Resolution[2] dated August 14, 2007 in CA-G.R. SP Nos. 86680 and 87253.

The factual and procedural antecedents are as follows:

Respondent was the President, while petitioner was the Chairman of the Board of Directors of Trans-Asia Securities, Inc. (Trans-Asia), a brokerage firm. Petitioner engaged the services of respondent, together with Trans-Asia's Chief Accountant Christina Dam (Dam), to purchase on his behalf 300,000,000 shares of stock of Palawan Oil and Gas Exploration (Palawan Oil), now iVantage, Equities, Inc. (iVantage), for P3,000,000.00 and 25,000 shares of stock of Equitable Banking Corporation (EBC) for P2,832,500.00. In payment of the purchase price, petitioner purportedly issued several checks made payable to the account of Trans-Asia, and drawn against Rizal Commercial Banking Corporation.[3] Despite full payment, respondent allegedly refused to deliver to petitioner the certificates of stock covering the same.[4]

In view of respondent's continued refusal to deliver the subject certificates despite demand, petitioner filed a criminal complaint against respondent and Dam for estafa through misappropriation or conversion under Article 315(1)(b) of the Revised Penal Code on March 9, 1998.[5] The case was docketed as I.S. No. 98C-10653.

In his defense, respondent claimed that he delivered the certificates of stock of Palawan Oil to petitioner's sister, Haling Chua (Chua), in her office at the Philippine Stock Exchange, as requested by petitioner. As to the EBC shares, respondent maintained that there were still matters about said shares that needed to be cleared. Dam, for her part, denied any participation in the commission of the alleged estafa. She claimed that she was a mere accountant of Trans-Asia and, as such, her duties did not involve the recording of stock transactions or the custody and delivery of its stock certificates.[6]

On July 15, 1998, the City Prosecutor of Manila dismissed the complaint against respondent and Dam. This was affirmed by the Department of Justice (DOJ) in a resolution dated October 26, 1998, and subsequently affirmed by the CA in a Decision[7] dated October 31, 2000 in CA-G.R. SP No. 55522. The CA held that the element of conversion or misappropriation was not duly proven by petitioner. The appellate court noted that the checks were issued for the account of Trans-Asia, and that there was no showing how the money was converted by respondent and Dam to their personal use. The CA Decision became final and executory.[8]

Notwithstanding the finality of the CA Decision, petitioner refiled the case by instituting two criminal complaints against respondent and Dam for estafa through misappropriation or conversion. The first complaint, filed on August 27, 2001 and docketed as I.S. No. 01H-34490, pertained to the transactions involving the Palawan Oil shares, while the second complaint, filed on January 7, 2003 and docketed as I.S. No. 03A-00194, involved the

EBC shares.[9] The refiling of the complaints was purportedly based on the following newly discovered evidence:

- 1) The letters issued by the Corporate Secretary and Stock and Transfer Agent of iVantage Equities, Inc. (formerly Palawan Oil) stating that complainant [petitioner herein] and his brother are not in the list of stockholders of iVantage Equities, Inc.
- 2) The Affidavit of Margarita dela Cruz, Trans-Asia's former Assistant Vice-President, stating that she does not remember having signed any check/s against Trans-Asia's account issued to and made payable to Palawan Oil or iVantage Securities or to Equitable Banking Corporation as payment for the shares of stocks bought for the private respondent.
- 3) The Minutes of Stockholders and Directors' Meeting of Trans-Asia, held on April 30, 1998, authorizing petitioner to sign all stock certificates and documents for any and all transactions consistent with the purpose of Trans-Asia Securities, Inc., so that according to private respondent, even if his money is still in the coffers of Trans-Asia, still, it is only petitioner who has access thereto considering that he has been designated as the sole signatory to all transactions of Trans-Asia.
- 4) The Affidavit of Haling Chua, denying receipt from [respondent] of any stock certificates of Palawan Oil Shares or any document representing the 300,000,000 Palawan Oil Shares bought by [petitioner].[10]

In a resolution[11] dated September 2, 2002, the Office of the Chief State Prosecutor (OCSF), in I.S. No. 01H-34490, involving the Palawan Oil shares, dismissed the complaint with respect to Dam, but found probable cause to indict respondent for estafa through misappropriation or conversion. On motion for reconsideration, the OCSF reversed and set aside its resolution on January 10, 2003. On appeal, however, the Secretary of Justice recommended that respondent be indicted for the crime of estafa involving the Palawan Oil shares.[12]

Meanwhile, in I.S. No. 03A-00194 involving the EBC shares, the OCSF dismissed the complaint in a Resolution dated January 15, 2004. The Prosecutor found that the pieces of evidence which petitioner presented were not newly discovered to warrant the reopening of the case. The resolution, however, was reversed by the DOJ, which recommended that respondent be likewise indicted for the crime of estafa involving the EBC shares.[13]

In view of the DOJ resolutions, respondent was constrained to institute petitions for certiorari before the CA, docketed as CA-G.R. SP No. 86680 and CA-G.R. SP No. 87253, which were later consolidated as they involved the same parties and issues.

On May 22, 2007, the CA rendered a Decision in favor of respondent, the dispositive portion of which reads:

WHEREFORE, the Petitions for Certiorari in CA-G.R. SP No. 86680 and CA-G.R. SP No. 87253 are GRANTED. The assailed Resolutions dated May 5, 2004, July 5, 2004, July 28, 2004 and August 27, 2004, issued by public respondent Department of Justice in I.S. No. 01H-34490 and I.S. No. 03A-00194, respectively, are declared NULL AND VOID. The criminal complaints filed against petitioner subject of the said Resolutions, are ordered DISMISSED.

SO ORDERED.[14]

The CA focused on the determination of whether the pieces of evidence might be regarded as newly discovered, and found that they were not. It explained that the alleged newly discovered pieces of evidence were already existing and could have been easily produced by petitioner. It added that petitioner failed to show that he exercised reasonable diligence in procuring the subject pieces of evidence. Therefore, they could not qualify as newly discovered and, thus, will not justify the filing of new criminal cases against respondent. In that light, the CA concluded that the DOJ gravely abused its discretion in allowing the refiling of the estafa cases against respondent on the basis of the subject newly discovered pieces of evidence.[15] The CA later denied petitioner's

motion for reconsideration for lack of merit.

Aggrieved, petitioner comes before the Court in this Petition for Review on Certiorari, raising the following issues:

First. The Court of Appeals [Former Twelfth Division] gravely erred when it applied the rule on "newly discovered evidence" as enunciated in the case of *Amarillo v. Sandiganbayan* [396 SCRA 434] [2003] which rules would apply only for the purpose of reopening a case and granting new trial.

Second. The Court of Appeals [Former Twelfth Division] gravely erred in finding that Petitioner Syiaco did not exercise reasonable diligence in procuring the subject pieces of evidence before or during the trial of the first Estafa case.

Third. The Court of Appeals [Former Twelfth Division] gravely erred in finding that the Department of Justice acted with grave abuse of discretion amounting to lack of or excess of jurisdiction when it allowed the re-filing of the Estafa cases against Respondent Ong on the basis of the subject evidence.[16]

Petitioner faults the CA for applying the requisites of "newly discovered evidence" laid down in *Amarillo v. Sandiganbayan*, [17] as the doctrine allegedly applies only to the reopening of a case and to the granting of a prayer for a new trial.[18] He adds that, in nullifying the DOJ resolutions, the CA usurped the investigatory and prosecutory powers granted to the executive branch of the government.[19] Lastly, petitioner states that, contrary to the findings of the CA, he exercised reasonable diligence in procuring the subject pieces of evidence before and during the pendency of the first estafa case.[20]

We find no merit in the petition.

The petition focuses on the issue of whether the pieces of evidence presented by petitioner to support the filing of the new estafa cases are newly discovered. The question of whether the pieces of evidence are newly discovered has two aspects: a temporal one, i.e., when the evidence was discovered, and a predictive one, i.e., when should or could it have been discovered.[21]

Under the Rules of Court, the requisites for "newly discovered evidence" are: 1) the evidence was discovered after trial (in this case, after investigation); 2) such evidence could not have been discovered and produced during the trial even with the exercise of reasonable diligence; and 3) it is material, not merely cumulative, corroborative, or impeaching, and is of such weight that, if admitted, will probably change the judgment.[22]

In the case at bar, the foregoing requisites are not present. Although the letter of iVantage and the affidavits of Chua and Margarita dela Cruz (Dela Cruz) were dated after the investigation in the first estafa case, still, they do not qualify as newly discovered. In order that a particular piece of evidence may be properly appreciated as newly discovered, what is essential is not so much the time when the evidence first came into existence or the time when it first came to the knowledge of the party now submitting it. What is essential is that the offering party had exercised reasonable diligence in trying to locate such evidence before or during trial (or investigation), but had nonetheless failed to secure it.[23] The Rules does not contain an exact definition of due diligence. It is often equated with "reasonable promptness to avoid prejudice to the defendant." It has both a time component and a good faith component. It contemplates a situation where the party acts reasonably and in good faith to obtain evidence, in light of the totality of the circumstances and the facts known to him.[24] Applying the foregoing tests, we find that petitioner's purported pieces of evidence do not qualify as newly discovered.

As to the letter of iVantage saying that petitioner was not included in the list of its stockholders, petitioner failed to explain why no such verification was done at the first opportunity. Considering that the subject certificates of stock could not be located, it would have been prudent to immediately verify from the company where the stocks

were purportedly acquired. Clearly, petitioner was remiss in exercising reasonable diligence to secure the document.

More importantly, petitioner failed to sufficiently explain why Chua and Dela Cruz belatedly executed their affidavits. Chua is petitioner's sister, while Dela Cruz is one of the officers of Trans-Asia. We cannot fathom why it took petitioner such a long time before he could make them execute their sworn statements. There was no showing of Chua's and Dela Cruz's unavailability at the time of the investigation of the first estafa case. As aptly held by the CA, petitioner did not exercise reasonable diligence in discovering and producing the above documents. Hence, the documents are not "newly discovered pieces of evidence."

Assuming that the documents could not have been reasonably produced during the investigation, still, they will not qualify as newly discovered pieces of evidence because they were not material to the issue. It was admitted by petitioner that the checks (allegedly intended for the payment of the purchased stocks) were issued for the account of Trans-Asia and not for the account of respondent. It is likewise undisputed that any two signatures of either petitioner, respondent, or Dela Cruz were needed for any of Trans-Asia's transactions. Dela Cruz's affidavit even strengthened respondent's claim that it was impossible for the latter to misappropriate the funds, as his signature was not sufficient to withdraw the amount from Trans-Asia's account.

Not even the Minutes of the Stockholders' meeting of Trans-Asia, designating respondent as the sole signatory, altered the court's conclusion in the first estafa case that there was no misappropriation or conversion. The fact remains that the checks were issued by petitioner for the account of Trans-Asia, and no withdrawal could be made by respondent alone because two signatures were required to effect any withdrawal. The Minutes actually shows that the stockholders' action was made long after the alleged acts of misappropriation or conversion. Petitioner would insinuate that, even if the claimed amounts are still in Trans-Asia's account, it is possible for respondent to convert them to his personal use because he was designated as the sole signatory to the company's transactions. This expresses merely a possibility and does not show any act of conversion or misappropriation that would constitute the crime of estafa. At most, it only shows a speculation or conjecture, which carries no weight in the determination of the existence of probable cause.

Based on the foregoing, the CA did not err in nullifying the DOJ resolutions allowing the refiling of the two estafa cases. While it is true that in reviewing the findings of the DOJ, the settled rule is that the determination of probable cause is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice.[25] For this reason, the Court leaves the DOJ ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders.[26] Courts are not empowered to substitute their judgment for that of the executive branch; they may, however, look into the question of whether such exercise has been made in grave abuse of discretion.[27] In looking into the records of the case, the CA found and concluded that the DOJ gravely abused its discretion in allowing the refiling of the case. We find no reason to depart from such conclusion.

WHEREFORE, premises considered, the petition is DENIED. The Court of Appeals Decision dated May 22, 2007 and Resolution dated August 14, 2007 in CA-G.R. SP Nos. 86680 and 87253 are AFFIRMED.

SO ORDERED.

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

[1] Penned by Associate Justice Aurora Santiago-Lagman, with Associate Justices Bienvenido L. Reyes and Apolinario D. Bruselas, Jr., concurring; rollo, pp. 547-557.

[2] Id. at 594-598.

[3] Id. at 548-549.

[4] Id. at 242.

[5] Id. at 549.

[6] Id.

[7] Penned by Associate Justice Angelina Sandoval Gutierrez (now a retired member of this Court), with Associate Justices Portia Aliño-Hormachuelos and Elvi John S. Asuncion, concurring; id. at 192-202.

[8] Id. at 550.

[9] Id.

[10] Id. at 551.

[11] Id. at 241-251.

[12] Id. at 552.

[13] Id.

[14] Id. at 556-557.

[15] Id. at 555-556.

[16] Id. at 30.

[17] 444 Phil. 487 (2003).

[18] Rollo, pp. 31-34.

[19] Id. at 38-42.

[20] Id. at 38.

[21] Dinglasan, Jr. v. Court of Appeals, G.R. No. 145420, September 19, 2006, 502 SCRA 253, 268; Brig. Gen. Custodio v. Sandiganbayan, 493 Phil. 194, 206 (2005).

[22] Quintin B. Saludaga and SPO2 Fiel E. Genio v. The Honorable Sandiganbayan, 4th Division, and the People of the Philippines, G.R. No. 184537, April 23, 2010; Amarillo v. Sandiganbayan, *supra* note 17, at 497.

[23] Custodio v. Sandiganbayan, *supra* note 21, at 206.

[24] Id.

[25] United Coconut Planters Bank v. Looyuko, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 330.

[26] First Women's Credit Corporation v. Perez, G.R. No. 169026, June 15, 2006, 490 SCRA 774, 777.

[27] United Coconut Planters Bank v. Looyuko, *supra* note 25, at 331.

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