



Republic of the Philippines  
**Supreme Court**  
Manila

SPECIAL SECOND DIVISION

RAFAEL H. GALVEZ and  
KATHERINE L. GUY,  
Petitioners,

G.R. No. 187919

-versus-

HON. COURT OF APPEALS AND  
ASIA UNITED BANK,  
Respondents.

X ----- X

ASIA UNITED BANK,  
Petitioner,

G.R. No. 187979

-versus-

GILBERT G. GUY, PHILIP  
LEUNG, KATHERINE L. GUY,  
RAFAEL H. GALVEZ and  
EUGENIO H. GALVEZ, JR.,  
Respondents.

X ----- X

**GILBERT G. GUY, PHILIP  
LEUNG and EUGENIO H.  
GALVEZ, JR.,**

Petitioners,

**G.R. No. 188030**

Present:

SERENO, C.J.,

BRION, J.,

Acting Chairperson,

DEL CASTILLO,\*

PEREZ, and

REYES, JJ.

-versus-

**ASIA UNITED BANK,**

Respondent.

Promulgated:  
FEB 20 2013

X

X

## RESOLUTION

**PEREZ, J.:**

We resolve the Motion for Reconsideration filed by petitioner-movants, Rafael H. Galvez and Katherine L. Guy in G.R. No. 187919,<sup>1</sup> and, Gilbert G. Guy, Philip Leung and Eugenio H. Galvez, Jr. in G.R. No. 188030<sup>2</sup> addressed to our consolidated Decision dated 25 April 2012<sup>3</sup> finding probable cause to charge petitioners of the crime of **SYNDICATED ESTAFRA** under Article 315 (2)(a) in relation to Presidential Decree No. 1689.

Our consolidated decision read:

**WHEREFORE**, the Decision of the Court of Appeals dated 27 June 2008 in CA-G.R. SP No. 97160 is hereby **AFFIRMED** with

\* Associate Justice Mariano C. Del Castillo was designated as additional member in lieu of Associate Justice Antonio T. Carpio per Raffle dated 13 February 2013.

<sup>1</sup> Rollo in G.R. No. 187979, pp. 716-763.

<sup>2</sup> Rollo in G.R. No. 188030, pp. 736-783.

<sup>3</sup> *Rafael H. Galvez and Katherine L. Guy v. Court of Appeals and Asia United Bank* (G.R. No. 187919); *Asia United Bank v. Gilbert G. Guy, Philip Leung, Katherine L. Guy, Rafael H. Galvez and Eugenio H. Galvez, Jr.* (G.R. No. 187979); *Gilbert G. Guy, Philip Leung and Eugenio H. Galvez, Jr. v. Asia United Bank* (G.R. No. 188030). Penned by Associate Justice Jose Portugal Perez with Associate Justices Antonio T. Carpio, Arturo D. Brion, now Chief Justice Maria Lourdes P. A. Sereno and Bienvenido L. Reyes, concurring. Rollo in G.R. No. 188030, pp. 714-735; Rollo in G.R. No. 187919, pp. 696-715; Rollo in G.R. No. 187979, pp. 678-696.

**MODIFICATION** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr. be charged for **SYNDICATED ESTAFA** under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689.<sup>4</sup>

### **The Motion for Reconsideration**

In the main, petitioners submit the following arguments in support of their motion for reconsideration:

*First*, the petitioners cannot be charged for *estafa* whether simple or syndicated for the element of deceit was absent in the transactions that transpired between the petitioners and respondent. This is a case of collection of sum of money, hence, civil in nature.

*Second*, the petitioners cannot be charged for syndicated *estafa* defined in Presidential Decree No. 1689 because they did not solicit funds from the general public, an indispensable element for syndicated *estafa* to prosper.<sup>5</sup>

In our 25 April 2012 Decision, we have more than amply discussed the petitioners' arguments, specifically, as to the first issue whether deceit was present in the transaction as to warrant prosecution for the crime of *estafa*. If only to emphatically write *finis* to this aspect of the case, we examine again the petitioners' arguments *vis-à-vis* this Court's ruling.

### **The facts**

In 1999, Radio Marine Network Inc. (RMSI) claiming to do business under the name Smartnet Philippines<sup>6</sup> and/or Smartnet Philippines, Inc. (SPI),<sup>7</sup> applied for an Omnibus Credit Line for various credit facilities with Asia United Bank (AUB). To induce AUB to extend the Omnibus Credit Line, RMSI, through its directors and officers, presented its Articles of Incorporation with its 400-peso million capitalization and its congressional telecom franchise. RMSI was represented by the following officers and directors occupying the following positions:

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<sup>4</sup> *Rollo* in G.R. No. 188030, pp. 733-734.

<sup>5</sup> *Id.* at 742-743.

<sup>6</sup> *Id.* at 111.

<sup>7</sup> In Civil Case No. 68366, RMSI filed a complaint, claiming that it was doing business under the name Smartnet Philippines **and Smartnet Philippines, Inc.** *Id.* at 486.

Gilbert Guy	-	Exec. V-Pres./Director
Philip Leung	-	Managing Director
Katherine Guy	-	Treasurer
Rafael Galvez	-	Executive Officer
Eugenio Galvez, Jr.	-	Chief Financial Officer/Comptroller

Satisfied with the credit worthiness of RMSI, AUB granted it a ₱250 Million Omnibus Credit Line, under the name of Smartnet Philippines, RMSI’s Division. On 1 February 2000, the credit line was increased to ₱452 Million pesos after a third-party real estate mortgage by Goodland Company, Inc., an affiliate of Guy Group of Companies, in favor of Smartnet Philippines, was offered to the bank. Simultaneous to the increase of the Omnibus Credit Line, RMSI submitted a proof of authority to open the Omnibus Credit Line and peso and dollar accounts in the name of Smartnet Philippines, Inc., which Gilbert Guy, *et al.*, represented as a division of RMSI, as evidenced by the letterhead used in its formal correspondences with the bank and the financial audit made by SGV & Co., an independent accounting firm. Attached to this authority was the Amended Articles of Incorporation of RMSI, doing business under the name of Smartnet Philippines, and the Secretary’s Certificate of SPI authorizing its directors, Gilbert Guy and Philip Leung to transact with AUB.<sup>8</sup> Prior to this major transaction, however, and, unknown to AUB, while RMSI was doing business under the name of Smartnet Philippines, and that there was a division under the name Smartnet Philippines, Gilbert Guy, *et al.* formed a subsidiary corporation, the SPI with a paid-up capital of only ₱62,500.00.

Believing that SPI is the same as Smartnet Philippines - the division of RMSI - AUB granted to it, among others, Irrevocable Letter of Credit No. 990361 in the total sum of \$29,300.00 in favor of Rohde & Schwarz Support Centre Asia Ptd. Ltd., which is the subject of these consolidated petitions. To cover the liability of this Irrevocable Letter of Credit, Gilbert Guy executed Promissory Note No. 010445 in behalf of SPI in favor of AUB. This promissory note was renewed twice, once, in the name of SPI (Promissory Note No. 011686), and last, in the name of Smartnet Philippines under Promissory Note No. 136131, bolstering AUB’s belief that RMSI’s directors and officers consistently treated this letter of credit, among others, as obligations of RMSI.

When RMSI’s obligations remained unpaid, AUB sent letters demanding payments. RMSI denied liability contending that the transaction

<sup>8</sup> Id. at 472.

was incurred solely by SPI, a corporation which belongs to the Guy Group of Companies, but which has a separate and distinct personality from RMSI. RMSI further claimed that while Smartnet Philippines is an RMSI division, SPI, is a subsidiary of RMSI, and hence, is a separate entity.

Aggrieved, AUB filed a case of syndicated *estafa* under Article 315 (2)(a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689 against the interlocking directors of RMSI and SPI, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr., before the Office of the City Prosecutor of Pasig City.

AUB alleged that the directors of RMSI deceived it into believing that SPI was a division of RMSI, only to insist on its separate juridical personality later on to escape from its liabilities with AUB. AUB contended that had it not been for the fraudulent scheme employed by Gilbert Guy, *et al.*, AUB would not have parted with its money, which, including the controversy subject of this petition, amounted to hundreds of millions of pesos.

### Our Ruling

We already emphasized in the 25 April 2012 Decision that “this controversy could have been just a simple case for collection of sum of money had it not been for the sophisticated fraudulent scheme which Gilbert Guy, *et al.*, employed in inducing AUB to part with its money.”<sup>9</sup> Our Decision meticulously discussed how we found probable cause, a finding affirming that of the prosecutor and the Court of Appeals, to indict petitioners for the crime of *estafa* under Article 315 (2)(a) of the Revised Penal Code.<sup>10</sup> We noted there and we now reiterate that it was neither the petitioners’ act of borrowing money and not paying it, nor their denial

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<sup>9</sup> Id. at 723.

<sup>10</sup> Article 315 (2)(a) of the Revised Penal Code provides:

**Art. 315. Swindling (*estafa*).** – any person who shall defraud another by any of the means mentioned herein below x x x:

x x x x

2. By means of any of the following **false pretenses or fraudulent acts executed prior to or simultaneous 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.** (Emphasis supplied)

thereof, but their very act of deceiving AUB in order for the latter to part with its money that is sought to be penalized. Thus:

x x x As early as the Penal Code of Spain, which was enforced in the Philippines as early as 1887 until it was replaced by the Revised Penal Code in 1932, the act of fraud through false pretenses or similar deceit was already being punished. Article 335 of the Penal code of Spain punished a person who defrauded another ‘by falsely pretending to possess any power, influence, qualification, property, credit, agency or business, or by means of similar deceit.’<sup>11</sup>

Under Article 315 (2)(a) of the Revised Penal Code, *estafa* is committed by any person who shall defraud another by, among others, false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud, *i.e.*, by using a fictitious name, falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceptions.

Underscoring the aforesaid discussion, we found that:

*First*, Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez and Eugene Galvez, Jr., interlocking directors of RMSI and SPI, represented to AUB in their transactions that Smartnet Philippines and SPI were one and the same entity. While Eugene Galvez, Jr. was not a director of SPI, he actively dealt with AUB in his capacity as RMSI’s Chief Financial Officer/Comptroller by falsely representing that SPI and RMSI were the same entity. Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez, and Eugene Galvez, Jr. used the business names Smartnet Philippines, RMSI, and SPI interchangeably and without any distinction. They successfully did this by using the confusing similarity of RMSI’s business name, *i.e.*, Smartnet Philippines – its division, and, Smartnet Philippines, Inc. – the subsidiary corporation. Further, they were able to hide the identity of SPI, by having almost the same directors as that of RMSI. In order to let it appear that SPI is the same as that of Smartnet Philippines, they submitted in their application documents of RMSI, including its Amended Articles of Incorporation, third-party real estate mortgage of Goodland Company in favor of Smartnet Philippines, and audited annual financial statement of SGV & Co. Gilbert Guy, *et al.* also used RMSI letterhead in their official communications with the bank and the contents of these official communications conclusively pointed to RMSI as the one which transacted with the bank.

**These circumstances are all *indicia* of deceit.** 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

<sup>11</sup> *Rollo* in G.R. No. 188030, p. 692. *See Lozano v. Martinez*, G.R. No. 63419, 18 December 1986, 146 SCRA 323, 332.

disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. [Citation omitted]

*Second*, the intent to deceive AUB was manifest from the start. Gilbert Guy *et al.*[,] laid down first all the necessary materials they need for this deception before defrauding the bank by first establishing Smartnet Philippines as a division of Radio Marine under which Radio Marine Network Inc. operated its business. Then it organized a subsidiary corporation, the SPI, with a capital of only ₱62,000.00. Later, it changed the corporate name of Radio Marine Network Inc. into RMSI.

Undoubtedly, deceit here was conceived in relation to Gilbert Guy, *et al.*'s transaction with AUB. There was a plan, documented in corporation's papers, that led to the defraudation of the bank. The circumstances of the directors' and officers' acts in inserting in Radio Marine the name of Smartnet; the creation of its division – Smartnet Philippines; and its registration as business name as Smartnet Philippines with the Department of Trade and Industry, together with the incorporation of its subsidiary, the SPI, are *indicia* of a pre-conceived scheme to create this elaborate fraud, victimizing a banking institution, which perhaps, is the first of a kind in Philippine business.

x x x x

*Third*, AUB would not have granted the Irrevocable Letter of Credit No. 990361, among others, had it known that SPI which had only ₱62,500.00 paid-up capital and no assets, is a separate entity and not the division or business name of RMSI. x x x.

x x x x

It is true that ordinarily, in a letter of credit transaction, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers, who in turn promises to pay the bank the amount of funds mentioned in the letters of credit plus credit or commitments fees mutually agreed upon. Once the issuing bank shall have paid the beneficiary after the latter's compliance with the terms of the letter of credit, the issuing bank is entitled to reimbursement for the amount it paid under the letter of credit. [Citation omitted]

In the present case, however, no reimbursement was made outright, precisely because the letter of credit was secured by a promissory note executed by SPI. The bank would have not agreed to this transaction had it not been deceived by Gilbert Guy, *et al.* into believing the RMSI and SPI were one and the same entity. Guy and his cohorts' acts in (1) securing the letter of credit guaranteed by a promissory note in behalf of SPI; and, (2) their act of representing SPI as RMSI's Division, were *indicia* of fraudulent acts because they fully well know, even before transacting with the bank, that: (a) SPI was a separate entity from Smartnet Philippines, the RMSI's Division, which has the Omnibus Credit Line; and (b) despite this knowledge, they misrepresented to the bank that SPI is RMSI's division. Had it not [been] for this false representation, AUB would [not] have

granted SPI's letter of credit to be secured with a promissory note because SPI as a corporation has no credit line with AUB and SPI by its own, has no credit standing.

*Fourth*, it is not in dispute that the bank suffered damage, which, including this controversy, amounted to hundreds of millions of pesos.<sup>12</sup> (Emphasis supplied)

We revisit, however, our ruling as to the second issue, *i.e.*, whether or not the petitioners may be charged and tried for syndicated *estafa* under Presidential Decree No. 1689.

While this case is all about finding probable cause to hold the petitioners for trial for syndicated *estafa*, and, while, without doubt, a commercial bank is covered by Presidential Decree No. 1689, as deduced from our pronouncements in *People v. Balasa*,<sup>13</sup> *People v. Romero*,<sup>14</sup> and *People v. Menil, Jr.*,<sup>15</sup> cases where the accused used the legitimacy of the entities/corporations to perpetrate their unlawful and illegal acts, a careful re-evaluation of the issues indicate that while we had ample reason to look into whether funds from commercial bank may be subject of syndicated *estafa*, the issue of who may commit the crime should likewise be considered.

Section 1 of Presidential Decree No. 1689 provides:

**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 moneys 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.

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.

Thus, the elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code is

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<sup>12</sup> *Rollo* in G.R. No. 188030, pp. 724-728.

<sup>13</sup> 356 Phil. 362 (1998).

<sup>14</sup> 365 Phil. 531 (1999).

<sup>15</sup> 394 Phil. 433 (2000).



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 stockholders, or members of rural banks, cooperatives, “*samahang nayon(s)*,” or farmers’ associations or of funds solicited by corporations/associations 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 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 and manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*.

Gilbert Guy, *et al.*, 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 Presidential Decree No. 1689. Presidential Decree No. 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 25 April 2012 Decision that a commercial bank falls within the coverage of Presidential Decree No. 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.

The rulings in *Romero* and *Menil, Jr.* further guide us in the present case. Notably, *Romero* and *Menil, Jr.* applied the second paragraph of Section 1 of Presidential Decree No. 1689 because the number of the accused was below five, the minimum needed to form the syndicate.

The second paragraph, Section 1 of Presidential Decree No. 1689 states:

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

Effectively, *Romero* and *Menil, Jr.* read as written the phrase “when not committed by a syndicate as above defined,” such that, for the second paragraph of Section 1 to apply the definition of swindling in the first paragraph must be satisfied: the offenders should have used the association they formed, own or manage to misappropriate the funds solicited from the public.

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 (*People v. Romero*, *People v. Balasa*); *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.

The present petition involves an *estafa* case filed by a commercial bank as the offended party against the accused who, as clients, defrauded the bank.

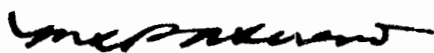
**WHEREFORE**, we **MODIFY** our 25 April 2012 Decision and **RULE** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr., be charged for **SIMPLE ESTAFA** under Article 315 (2)(a) of the Revised Penal Code.

**SO ORDERED.**

  
**JOSE PORTUGALDEZ**  
Associate Justice

WE CONCUR:

  
**ARTURO D. BRION**  
Associate Justice  
Acting Chairperson



**MARIA LOURDES P. A. SERENO**  
Chief Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



**BIENVENIDO L. REYES**  
Associate Justice

#### ATTESTATION

I attest that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ARTURO D. BRION**  
Associate Justice  
Acting Chairperson, Special Second Division

#### CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**MARIA LOURDES P. A. SERENO**  
Chief Justice