Republic of the Philippines
Supreme Court
Manila
SECOND DIVISION

RALPH LITO W. LOPEZ,
Petitioner,

- versus -

PEOPLE OF THE PHILIPPINES,
Respondent.

G.R. No. 199294

Present:

CARPIO, *J.*, Chairperson,
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:
JUL 31 2013

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DECISION

CARPIO, *J.*:

The Case

We review[1] the ruling[2] of the Court of Appeals affirming petitioner's conviction for estafa.

The Facts

Petitioner Ralph Lito W. Lopez (petitioner) was President and Chief Executive Officer (CEO) of Primelink Properties and Development Corporation (Primelink), a real estate developer. On 4 July 1996, Primelink entered into a Joint Venture Agreement (Agreement) with Pamana Island Resort Hotel and Marina Club, Inc. (Pamana) to develop a ₱60 million exclusive residential resort with marina (Subic Island Residential Marina and Yacht Club [Club]), on a 15,000 square-meter portion of an island in

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Decision dated 31 January 2011 and Resolution denying reconsideration dated 9 November 2011, penned by Associate Justice Normandie B. Pizarro with Associate Justices Amelita G. Tolentino and Ruben C. Ayson, concurring.

Subic, Zambales (Club site).[3] Under the Agreement, Pamana, the Club site owner, undertook to keep the title over the island where the Club site is located free of encumbrances. Primelink, for its part, will provide capital and handle marketing concerns, among others.[4] The Club was slated for completion in July 1998. While promoting the Club locally[5] and abroad,[6] Primelink commenced selling membership shares as stipulated in the Agreement.

On 10 October 1996, private complainant Alfredo Sy (Sy), through one of Primelink's sales officers, Joy Ragonjan (Ragonjan), placed a reservation to purchase one Club share for ₱835,999.94 (payable in installments), executed the reservation agreement, and paid the reservation fee of ₱209,000. Sy fully paid the balance by 19 April 1998.

In March 2002, Sy filed a criminal complaint against petitioner and Ragonjan in the Pasig City Prosecutor's Office for estafa. The complaint was grounded on the fact that the Club remained undeveloped and Primelink failed to return Sy's payment despite demands to do so. Sy also discovered that Primelink had no license from the Securities and Exchange Commission (SEC) to sell securities.

The Pasig City Prosecutor found probable cause to indict petitioner and Ragonjan for violation of Article 315, paragraph 2(a) of the Revised Penal Code, as amended (Code)[7] and filed the Information[8] with the Regional Trial Court of Pasig City (trial court).[9] Ragonjan remained at large, leaving petitioner to face trial by himself.

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3 Referred to as Pamana Island, measuring 56,000 square meters. The Club will include a "Clubhouse, residential units composed of low rise condominiums and town houses, and other recreational facilities." *Rollo*, p. 164.

4 Id. at 166.

5 On 16 July 1996 at the Shangri La Hotel and on 11 February 1997 at the Manila Peninsula Hotel, both in Makati City. Id. at 105.

6 In an event in Singapore dubbed "Boat Asia '96." Id. at 57.

7 Act No. 3815.

8 Which alleged:

> On or about October 10, 1996, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and mutually helping and aiding one another, by means of deceit and false pretenses executed prior to or simultaneously with the commission of fraud, did, then and there willfully, unlawfully[,] and feloniously defraud the complainant, Alfredo P. Sy, in the following manner, to wit: the said accused convinced the complainant to purchase a Membership Share in a residential marina and yacht club known as Subic Island Residential Marina and Yacht Club (Subic Island) worth ₱835,999.94, the complainant relied on the representation made by the accused that [1] Subic Island would be developed by Primelink and that [2] the latter was duly authorized to sell membership certificates. Believing in the said representation, the complainant paid the purchase price of one Membership Certificate. However, it turn[ed] out that accused sold to the complainant an unregistered and non-existing membership certificate in an undeveloped marina and ya[ch]t club, and accused once in possession of said amount, misappropriated, misapplied[,] and converted the same to their own personal use and benefit, to the damage and prejudice of the complainant, Alfredo P. Sy[,] in the amount of ₱835, 999.94. (*Rollo*, p. 42)

9 Docketed as Criminal Case No. 123300 and raffled to Branch 155.

During trial, Sy testified that Ragonjan assured him that Primelink was licensed to sell Club shares.[10] On cross-examination, Sy admitted dealing exclusively with Ragonjan for his reservation and purchase of the Club share.[11]

The defense presented Atty. Jaime Santiago (Santiago), Primelink comptroller and drafter of the Agreement, to testify on the circumstances leading to the sale of Club shares and petitioner's role in Primelink's decision to do so.

Petitioner also took the stand, testifying that the Club was a legitimate project of Primelink and Pamana but whose completion was rendered impossible by Pamana's breach of the Agreement, by, among others, mortgaging the Club site to Wesmont Bank. As a result, Primelink sued Pamana in the Regional Trial Court of Makati (Branch 59) for damages for breach of the Agreement.[12]

Petitioner admitted that Primelink sold unregistered shares. He invoked the Agreement as basis for the undertaking, adding that such is also an "industry practice."[13] On Ragonjan's dealings with Sy, petitioner stated that Primelink's sales agents were instructed to be "honest and candid" with prospective buyers on the status of the project and on Primelink's lack of license to sell Club shares.[14]

The Ruling of the Trial Court

The trial court found petitioner guilty as charged, sentenced him to four years, two months and one day of *prision correccional* to twenty years of *reclusion temporal* and to indemnify Sy the amount of ₱835,999.94.[15] In the trial court's evaluation –

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10 TSN (Alfredo Sy), 12 December 2003, p. 8.

11 TSN (Alfredo Sy), 27 February 2004, pp. 7-8.

12 TSN (Ralph Lopez), 8 December 2006, pp. 14, 18-26. The case was docketed as Civil Case No. 02-418. In its Decision dated 16 March 2006, the trial court ruled for Primelink and ordered Pamana to pay a total of ₱41 million as damages. On appeal, the Court of Appeals (CA G.R. CV No. 88775) affirmed the trial court with modification.

13 TSN (Ralph Lopez), 13 December 2007, pp. 17-21.

14 Id. at 27, 30.

15 The dispositive portion of the Decision, dated 24 August 2009, provides:

> WHEREFORE, finding accused RALPH LITO W. LOPEZ GUILTY beyond reasonable doubt of the crime of Estafa under Article 315, par. 2(a) of the Revised Penal Code, he is sentenced to an indeterminate prison term of four (4) years, two (2) months and one (1) day of *prison correccional*, as minimum, to twenty (20) years of *reclusion temporal* as maximum. He is further ordered to indemnify the private complainant Alfredo Pe Sy the sum of Php835,999.94, with interest of twelve percent (12%) per annum from the date of filing of the Information in this case until the same is fully paid.
>
> Meanwhile, considering that accused Joy Ragonjan remains at large, let an alias warrant against her issue forthwith. (*Rollo*, p. 68)

> [t]he evidence on record indubitably shows that the elements of the subject offense are present in the case. Accused fraudulently offered to sell to private complainant a share over Subic Island [Club], while concealing from the former the material fact that x x x accused has yet to secure the requisite licenses and registration with the SEC to sell shares of the project and from the DENR and HLURB to develop and construct the same. Relying on the accused's misrepresentations, private complainant paid him the total amount of Php835,999.94, as consideration but he was never able to gain possession of a Certificate of Membership given accused's continued failure to proceed with the project. x x x.
>
> x x x x
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> [T]he act of deliberately misrepresenting to the private complainant that Primelink had the necessary authority or license to pre[-] sell shares in Subic Island [Club], and the act of collecting money from private complainant only to renege on the promise to turn over said share[] and for failure to return the money collected from the private complainant, despite several demands, are clearly acts attributable to herein accused Lopez and amount to estafa punishable under Article 315, paragraph 2(a), of the Revised Penal Code.[16]

Petitioner appealed to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the trial court's ruling *in toto*. According to the Court of Appeals -

> [t]he RTC correctly found that the Accused-Appellant is guilty beyond reasonable doubt of Estafa as all [its] elements are present. The Accused-Appellant made false representations, through his marketing officer, Ragonjan, by making Sy believe that the necessary license to sell or permit from the government agencies has been obtained by their company, Primelink, to sell membership shares in the [Club]. Sy, highly trusting of the misrepresentations of the Accused-Appellant and Ragonjan, willingly parted with his money and bought a membership share in the same. x x x.
>
> x x x x
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> [Were] it not for the Accused-Appellant's fraudulent machinations and false representations, Sy would not have parted with his money and would not be ripped-off of his hard-earned money in the amount of ₱835,999.94. x x x. It is also peculiar that no refund was made to the latter from the start of the trial until this time.[17]

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16 Id. at 73-74.
17 Id. at 21, 24.

Hence, this appeal under Rule 45.

Petitioner seeks a re-appraisal of the Court of Appeals' factual findings, pointing to facts allegedly overlooked which, if considered, would alter the case's disposition. He also assails the Court of Appeals' appreciation of conspiracy between him and Ragonjan as speculative, grounded on mere assumptions.[18]

The Office of the Solicitor General (OSG) prays for the denial of the petition. As a threshold objection, the OSG contests the propriety of reviewing questions of fact, considering that the office of a Rule 45 petition is limited to the review of questions of law only. On the merits, the OSG prays for affirmance of the Court of Appeals' ruling.

The Issue

The question is whether the Court of Appeals erred in affirming petitioner's conviction for estafa under Article 315, paragraph 2(a) of the Code.

The Court's Ruling

We hold that the Court of Appeals committed no error in affirming petitioner's conviction for estafa.

Review of Questions of Fact Improper

We first resolve the threshold issue of the propriety of passing upon questions of fact in this review. The narrow ambit of review prescribed under Section 1 of Rule 45,[19] limiting the scope of our inquiry to questions of law only enforces our ordinary certiorari jurisdiction efficiently. By sparing the Court from the task of parsing through factual questions, we are able to swiftly dispose of such appeals. This rule, of course, admits of exceptions applicable to those rare petitions whose peculiar factual milieu justifies relaxation of the Rules such as when the Court of Appeals made erroneous inferences, arrived at a conclusion based on speculation or conjectures, or overlooked undisputed facts which, if duly considered, lead to a different conclusion.[20] As shown in the discussion below, however, none of these grounds obtain here. We thus proceed with our review without

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18 Id. at 53-55.

19 "*Filing of petition with Supreme Court*. A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. The petition shall raise only questions of law which must be distinctly set forth."

20 *Eugenio v. People*, G.R. No. 168163, 26 March 2008, 549 SCRA 433; *The Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004, 428 SCRA 79.

disturbing the Court of Appeals' factual findings.

Elements of Estafa Under Article 315, paragraph 2(a)

The Code defines estafa under Article 315, paragraph 2(a), the offense for which petitioner and Ragonjan stand accused, as follows:

> *Swindling* (*estafa*). — Any person who shall defraud another 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 fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

This provision lays on the prosecution the burden of proving beyond reasonable doubt each of the following constitutive elements:

(1) The accused used fictitious name or false pretense that he possesses (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or (h) imaginary transaction, or other similar deceits;

(2) The accused used such deceitful means prior to or simultaneous with the execution of the fraud;

(3) The offended party relied on such deceitful means to part with his money or property; and

(4) The offended party suffered damage.

Elements of Use of, and Reliance on, False Pretenses by Petitioner and Sy, Respectively

The Information filed against petitioner and Ragonjan alleges that they conspired to use two false pretenses on Sy to defraud him on 10 October 1996, namely, that "[1] Subic Island [Club] would be developed by Primelink and that [2] the latter was duly authorized to sell membership certificates." We find merit in petitioner's contention that the prosecution failed to prove the element of use of false pretense regarding the first allegation. Nevertheless, we find the evidence sufficient to prove the use of false pretense on the second allegation.

Allegation on the Club's Development not "False"

It is impossible to determine from the records the category of false pretense the prosecution wished the first allegation to belong. Undoubtedly, it concerns Primelink's *capability* to develop the Club. Use of false pretense of *capability* is, however, not penalized under Section 2(a) of Article 315. The category approximating the allegation in question is false pretense of *power* (to develop the Club). We proceed with our analysis using such category as frame of reference.[21]

Without need of passing upon the question whether Ragonjan's representations to Sy on 10 October 1996 bind petitioner, we resolve the threshold question whether her alleged statement that the Club will be finished by July 1998 was in the first place *false*. The Court of Appeals grounded its affirmative answer on the fact that the Club remained unfinished even after the lapse of its target completion date in July 1998. Section 2(a) of Article 315, however, requires that the false pretense be used "prior to or simultaneous with the execution of the fraud," that is, on 10 October 1996. The crux of this issue then, is whether before or at that time, Primelink possessed *no power* (capability) to develop the Club, rendering Ragonjan's statement false.

A review of the records compels a negative answer. When Sy reserved to buy a Club share on 10 October 1996, barely three months had passed after Primelink, a duly incorporated real estate developer, signed the Agreement with Pamana, another real estate developer, to develop the Club. Four months after Sy bought a Club share, Primelink promoted the Club here and abroad and continued selling Club shares.[22] All the while, Primelink released funds to finance the project's initial expenses, a portion of which Pamana was ordered to repay by a Makati court after the project was aborted.[23]

These facts negate the conclusion that on or before 10 October 1996, petitioner and Ragonjan *knew* that the Club was a bogus project. At that time, the Project was on-course as far as Primelink was concerned. It was only after 10 October 1996 that Primelink encountered problems with Pamana, rendering impossible the Club's completion.[24]

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21 The alleged false pretense could not pertain to Primelink's *business* as Primelink is a duly incorporated entity authorized to engage in real estate development. (*Rollo*, p. 38). See also *Primelink Properties and Development Corporation v. Lazatin-Magat*, 526 Phil. 394 (2006).

22 See notes 5 and 6.

23 See note 12.

24 Petitioner testified that Primelink learned for the first time of the Club site's mortgage to Westmont Bank only in 1999 (TSN [Ralph Lopez], 8 December 2006, p. 22).

False Pretense on Primelink's Qualification to Pre-sell Club Shares Proven Beyond Reasonable Doubt

There is no mistaking that the claim made by Ragonjan to Sy that Primelink was authorized to sell membership shares is false - Primelink held no license to sell securities at the time Sy bought a Club share on 10 October 1996 or afterwards. Such alleged false representation, which Sy relied upon to buy the share, belongs to the category of false pretense of *qualification* (to sell securities) under Section 2(a) of Article 315.

Petitioner seeks exculpation for the use of such false pretense by raising the following arguments: (1) Ragonjan's representation to Sy does not bind him for lack of proof that he conspired with Ragonjan;[25] (2) the contract Sy entered into with Primelink was not a sale of a Club share but a reservation to buy one;[26] (3) even if the contract involved the sale of a Club share, petitioner is not liable because (a) Ragonjan's representation amounted to a warranty which, not having been reduced in writing as required in the reservation agreement, does not bind Primelink,[27] and (b) at the time Sy bought the Club share, there was no law requiring Primelink to obtain a license from the SEC to sell Club shares.[28]

These contentions lack merit.

First. Petitioner was no bystander in Primelink's sale of unregistered shares. Santiago, Primelink's comptroller and drafter of the Agreement, testified as witness for petitioner that after Primelink's Board of Directors approved the sale of the unregistered Club shares, petitioner "encouraged and instructed" the sale of "many shares,"[29] no doubt to raise as much capital

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25 *Rollo*, pp. 53, 54.

26 Id. at 50.

27 Id.

28 Id. at 49-54.

29 The relevant portions of his testimony read:

> Q - Mr. Witness, this case involves the sale to the Private Complainant of a membership share. Now, will you please tell us why did your company, Primelink through the accused Lopez, [sell] this membership share to the Private Complainant and what was the basis for such sale, if you know?
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> A - The JVA provides for the co-developer, Primelink Properties, and it is authorize[d] by the land owner to pre-sell certain condominium units and membership share[s] to preferred buyer[s] and I think this is embodied in the JVA, sir.
>
> Q - You also mentioned earlier that you had a hand in the preparation of this JVA because one of your duties, among others, was to involve yourself also in the preparation of contracts regarding the project being undertaken by your company. Now, will you please tell us, if you know, the meaning of the word pre-selling under Article 10 of the JVA.
>
> x x x x
>
> A - Pre-selling as the word connotes is the industry practice of peculiarity in the real estate business wherein membership shares and condominium units are offered to sell [sic] to the public to a preferred buyer prior to the registration of the project and issuance of the license to sell. x x x.
>
> x x x x
>
> Q - You were the one who drafted the JVA?

for the Club as possible. This was the context of Sy's purchase of a Club share from Primelink.

Petitioner attempts to distance himself from the transaction between Ragonjan and Sy by claiming that Ragonjan violated standing company policy to be "candid" to buyers by disclosing Primelink's lack of license. We find this unpersuasive. In the first place, petitioner failed to present independent proof of such company policy, putting in serious doubt the veracity of his claim. Secondly, it is improbable for Ragonjan to take it upon herself to fabricate the serious claim that Primelink was a licensed securities dealer in violation of company policy, in the process risking her employment. It is more consistent with logic and common sense to hold that Ragonjan followed company policy in giving assurances to Sy that Primelink was licensed to sell Club shares. After all, Primelink stood to attract more investments if it presented itself to the public as a licensed securities dealer. Indeed, Sy was emphatic in his claim that he bought a Club share for ₱0.8 million because he was "convinced that there was a license to

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A - I assisted in the preparation.
Q - You assisted in the drafting of JVA upon the Instruction of Primelink Board of Directors and accused as President and CEO?
A - Yes, sir.
Q - Considering, Mr. Witness, that you are supposed to invest substantial sums on this project, the stipulations that were contained in the JVA were reached after careful study and consultation with the Board and with the accused?
A - Yes, sir.
Q - Mr. Witness, you were careful in the drafting of the JVA since your purpose is to see to it that the interest of Primelink is protected?
A - Yes, sir.
Q - And, having finalized and completed the JVA, you were assured that the terms and conditions thereof were supposed to protect Primelink's interest?
A - Yes, sir.
Q - And, you also assured the Board of Directors of Primelink and the accused Mr. Lopez that the JVA is in order?
A - Yes, sir.
Q - On the part of Mr. Lopez before he affix[ed] his signature on the JVA he readily understood the terms and conditions of the JVA?
A - Yes, sir.
Q - So, Mr. Lopez is aware of the concept of pre-selling?
A - Yes, sir.
Q - So, when the JVA was signed and implemented, Primelink through the Board of Directors, and the accused as Primelink's CEO made its part [sic] to sell as many shares of the subdivision units under the concept of pre-selling as embodied in the JVA?
A - Yes, sir.
Q - In fact, Mr. Lopez, the accused, encouraged and instructed the selling of many shares under the concept of pre-selling?
A - Yes, sir.
Q - And, so it is under these conditions, Mr. Witness, that the complainant was sold with a one share, the subject share in this case?
A - Yes, sir.
x x x x
Q - As a lawyer, Mr. Witness, you are of course aware that you have first to secure the pertinent licenses and registration with the HLURB and SEC before you undertake the project and to sell the project?
A - Yes, sir. (TSN [Jaime B. Santiago], 16 September 2005, pp. 13, 15, 16; 2 March 2006, pp. 8-10, 14) (emphasis supplied).

sell."[30]

Petitioner's direct hand in the unlicensed selling of Club shares, coupled with Ragonjan's position in Primelink's organizational and sales structure, suffices to prove petitioner's liability under the allegation of use of false pretense of qualification. With Santiago's testimony on petitioner's central role in the sale of unregistered Primelink shares, further proof of conspiracy between petitioner and Ragonjan is superfluous.

Second. There is no merit in the argument that Ragonjan's assurance to Sy of Primelink's status as a licensed securities dealer amounts to a warranty, and thus required, under the warranty clause of the reservation agreement, to be reduced in writing. The warranty clause, which provides -

> Any representation or warranty made by the agent who handled this sale not embodied herein shall not bind the company, unless reduced in writing and confirmed by the President or the Chairman of the Board.[31]

refers to warranties on the terms of the share sold, not to the capacity of Primelink to sell Club shares. Indeed, the fact that "the seller has the right to sell the thing at the time when ownership is to pass," is implied in sales,[32] dispensing with the need to expressly state such in the contract. Further, the clause operates to shield Primelink from claims of violation of unwritten warranties, not its officers from criminal liability for making fraudulent representation on Primelink's authority to sell Club shares.

Third. It is futile for petitioner to recast, at this late stage of the proceedings, the nature of the contract between Primelink and Sy as a "reservation agreement" and not a contract of sale. At no time during the trial did the defense present any evidence to support this theory, having consistently characterized the contract as a "pre-selling" of Club share.[33] Indeed, the very warranty clause in the reservation agreement petitioner invokes to exculpate himself refers to the transaction as "sale."

Fourth. Contrary to petitioner's submission, there was a law effective at the time Sy bought the Club share on 10 October 1996, requiring sellers of securities such as the non-proprietary membership certificate sold by Primelink to Sy[34] to register with the SEC the sale of such security and obtain a permit to sell. Relevant portions of Batas Pambansa Blg. 178 (BP 178), which took effect on 22 November 1982 and superseded by Republic Act No. 8799 only on 8 August 2000, provide:

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30 TSN (Alfredo Sy), 12 December 2003, p. 8.
31 Records, p. 171.
32 CIVIL CODE, Article 1547(1).
33 TSN (Ralph Lopez), 8 December 2006, p. 17-18; 13 December 2007, pp. 17-21; TSN (Jaime Santiago), 16 September 2005, pp. 13-14, 16-17.
34 TSN (Ralph Lopez), 28 May 2009, pp. 14-15.

> Sec. 4. *Requirement of registration of securities*. — (a) No securities, x x x, shall be sold or offered for sale or distribution to the public within the Philippines unless such securities shall have been registered and permitted to be sold as hereinafter provided.
>
> x x x x
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> Sec. 8. *Procedure for registration*. — (a) All securities required to be registered under subsection (a) of Section four of this Act shall be registered through the filing by the issuer or by any dealer or underwriter interested in the sale thereof, in the office of the Commission, of a sworn registration statement with respect to such securities x x x.
>
> x x x x
>
> If after the completion of the aforesaid publication, the Commission finds that the registration statement together with all the other papers and documents attached thereto, is on its face complete and that the requirements and conditions for the protection of the investors have been complied with, x x x, *it shall as soon as feasible enter an order making the registration effective, and issue to the registrant a permit* reciting that such person, its brokers or agents, are entitled to offer the securities named in said certificate, with such terms and conditions as it may impose in the public interest and for the protection of investors. (Emphasis supplied)

The registration requirement under BP 178 applies to all sales of securities "includ[ing] every contract of sale or disposition of a security,"[35] regardless of the stage of development of the project on which the securities are based. No amount of "industry practice" works to amend these provisions on pre-sale registration.

Nor can petitioner rely on *G.G. Sportswear Mfg. Corp. v. World Class Properties, Inc*.[36] to evade criminal liability. That case involved an action for rescission and refund filed before the Housing and Land Use Regulatory Board (HLURB) by a condominium buyer against the developer for breach contract. The HLURB Arbiter rescinded the contract for lack of license of the developer to sell condominium units. The HLURB Board of Commissioners modified the Arbiter's ruling by denying rescission, holding, among others, that the developer's acquisition of license before the filing of the complaint mooted the prayer for rescission. On appeal, this Court affirmed. Here, Primelink never acquired a license to sell from the SEC, unlike in *G.G. Sportswear.* Thus, *G.G. Sportswear* is clearly not applicable to the present case.

On the Element of Damage Sustained by Sy

Petitioner contends that Sy sustained damage only for ₱209,000, the amount he paid upon signing the reservation agreement on 10 October 1996

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35 Section 1(c), BP 178.

36 G.R. No. 182720, 2 March 2010, 614 SCRA 75.

as alleged in the Information, and not ₱835,999.94, the price of the Club share. Alternatively, petitioner argues that he neither received nor profited from the payments made by Sy. Petitioner's contention would hold water if Sy did not buy a Club share. Sy, however, not only paid the reservation fee, which constituted five percent (5%) of the share price,[37] he also paid the balance in installments, evidenced by receipts the prosecution presented during trial.

Lastly, unlike estafa under paragraph 1(b) of Article 315 of the Code, estafa under paragraph 2(a) of that provision does not require as an element of the crime proof that the accused misappropriated or converted the swindled money or property. All that is required is proof of pecuniary damage sustained by the complainant arising from his reliance on the fraudulent representation. The prosecution in this case discharged its evidentiary burden by presenting the receipts of the installment payments made by Sy on the purchase price for the Club share.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 31 January 2011 and the Resolution dated 9 November 2011 of the Court of Appeals.

SO ORDERED.

ANTONIO T. CARPIO
Associate Justice

WE CONCUR:

ARTURO D. BRION
Associate Justice

[37] Records, p. 171.

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

ATTESTATION

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

ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision 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