



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

MA. ANA CONSUELO A.S. G. R. No. 168903
MADRIGAL,

Petitioner,

Present:

- versus -

DEPARTMENT OF JUSTICE,
UNDERSECRETARY MA.
MERCEDITAS N. GUTIERREZ,
CELESTINO M. PALMA III, and
HELEN T. CHUA,

Respondents.

SERENO, *CJ*, Chairperson,
LEONARDO-DE CASTRO,
BERSAMIN,
VILLARAMA, JR., and
REYES, *JJ*.

Promulgated:

JUN 18 2014

x ----- x

DECISION

SERENO, *CJ*:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision¹ of the Court of Appeals (CA) dated 31 March 2005 in CA-G.R. SP No. 77111, which affirmed the Department of Justice (DOJ) Resolutions in I.S. No. 98B-06093 dated 7 September 2001² and 17 March 2003.³

THE FACTS

The antecedents of the case are as follows:

Petitioner is the president of Madrigal Transport, Inc. (MTI).

On the other hand, respondent Celestino M. Palma III (Palma) is the vice-president of Far East Bank and Trust Company (FEBTC), while respondent Helen T. Chua (Chua) is an account officer of FEBTC.

¹ *Rollo*, pp. 66-82; Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Japar B. Dimaampao concurring.

² *Id.* at 352-362.

³ *Id.* at 327-328.

Criminal Complaint

On 12 February 1998, petitioner filed with the Office of the City Prosecutor of Manila a Complaint-Affidavit⁴ charging respondent Palma with the crime of *estafa* under paragraphs 1(c),⁵ 2(a),⁶ 3(a) and 3(c)⁷ of Article 315 of the Revised Penal Code. Later on, respondent Chua was named as additional respondent.

It is undisputed that sometime in 1997, MTI obtained and was granted a loan in the amount of USD 10 million from FEBTC for the acquisition of the feeder vessel *M/V Alicia* (formerly the *M.V. Artemission*).

a) Petitioner's version

In her Complaint-Affidavit,⁸ petitioner alleged that, as president of MTI, she applied for a loan from FEBTC in the amount of USD 10.5 million to finance the acquisition of a feeder vessel, pursuant to a Joint Venture Agreement between MTI and the Lapanday Holdings Corporation. FEBTC sent her various documents, such as a Loan Agreement, a Comprehensive Surety Agreement, a Notice of Borrowing, a Promissory Note, a Certificate of Non-Default, Form of Opinion of Counsel to the Borrower, a Deed of Chattel Mortgage, and a Letter of Undertaking and Deed of Assignment. She signed the documents without the material entries and sent them back to FEBTC.

Thereafter, petitioner was advised by respondent Palma that FEBTC could only grant MTI a loan in the amount of USD 10 million because of a lower valuation of the vessel *M/V Alicia*. Thus, she reapplied for a loan for this reduced amount and signed a second set of loan documents, which included a Comprehensive Surety Agreement guaranteeing the USD 10 million loan, a Notice of Borrowing, a Promissory Note, a Certificate of Non-Default and a Borrowing Certificate. She was also requested to sign other documents, such as a Deed of Assignment over Charter Hires and a Chattel Mortgage.

⁴ Id. at 95-109.

⁵ ARTICLE 315 Swindling (Estafa). — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

1. With unfaithfulness or abuse of confidence, namely:

x x x x

(c) By taking undue advantage of the signature of the offended party in blank, and by writing any document above such signature in blank, to the prejudice of the offended party or any third person.

⁶2. 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.

⁷3. Through any of the following fraudulent means:

(a) By inducing another, by means of deceit, to sign any document.

x x x x

(c) By removing, concealing or destroying, in whole or in part, any court record, office files, document or any other papers.

⁸ *Rollo*, pp. 95-109.

Petitioner noticed that respondent Palma was imposing upon MTI additional obligations not originally contemplated, so she immediately referred the matter to MTI lawyers, who wrote FEBTC and requested copies of the documents to be signed in relation to the USD 10 million loan. To her surprise, respondent Palma insisted that petitioner was personally liable under the first Comprehensive Surety Agreement covering the USD 10.5 million loan despite the fact that all the documents pertaining to the said loan had all been “abandoned and considered torn.” As a result of the fraudulent act of imputing to her a “legally inexistent” obligation, she was allegedly compelled to disburse from her personal funds the total amount of Php5,903,172.30, which was paid to FEBTC, to protect her reputation.

b) Respondents’ version

On the other hand, respondent Palma averred that MTI had applied for a loan from FEBTC in the amount of USD 11 million to finance the purchase of a vessel named *M/V Artemission* (now the *M/V Alicia*). The purchase was for a joint venture with Lapanday and Macondray Company to be known as the MLM Logistics International, Incorporated. The joint venture would operate a vessel for the carriage of goods of Del Monte Philippines, Incorporated. In connection with its loan application, MTI was required by FEBTC to infuse acceptable equity into the acquisition of the vessel.

Respondent Palma maintains that FEBTC considered the immediate release of the proceeds of the loan, as accommodation to petitioner, provided that the latter, together with Luis P. Lorenzo, Jr. (the president of Lapanday Holdings Corporation), would execute “personal undertakings” as sureties for the loan of the MTI. To secure the immediate release of the proceeds of the loan, petitioner and Lorenzo, Jr. agreed to this condition and consequently executed a Comprehensive Surety Agreement as security for the release of the loan to MTI.

Respondent Palma further stressed that the FEBTC officers had several meetings with MTI officers for the purpose of assisting the latter in finding ways to repay MTI’s loan. Thus, it appears that the institution of the criminal complaint was merely a ploy resorted to by petitioner to question the due execution of the Comprehensive Surety Agreement to evade her personal liability for MTI’s loan.⁹

Respondent Chua corroborated respondent Palma’s allegations.

Initial finding of probable cause

The Resolution¹⁰ dated 16 October 1998 issued by Assistant City Prosecutor Ramon Carisma and approved by City Prosecutor Ramon Garcia,

⁹ DOJ Resolution dated 23 June 2000, id. at 189-191.

¹⁰ Id. at 184-187.

found probable cause for the filing of an Information¹¹ docketed as Criminal Case No. 98-16873 dated 29 October 1998 Regional Trial Court (RTC) of Manila, Branch 8, against respondents for the crime of *estafa* but only under paragraph 1(c), Article 315 of the Revised Penal Code.

Respondents thereafter filed a Motion to Suspend Arraignment and Further Proceedings in view of their appeal before the Department of Justice (DOJ). The RTC granted the motion on 2 June 1999.

On 23 June 2000, DOJ Secretary Artemio G. Tuquero (Sec. Tuquero) issued a Resolution¹² upholding the Resolution dated 16 October 1998 of the Manila Prosecutor's Office, with the modification that the charge against respondents should be for *estafa* under paragraph 3(c), Article 315 of the Revised Penal Code.

Respondents moved for a reconsideration of this last DOJ Resolution on 25 October 2000.

Reversal of the finding of probable cause

Subsequently, a Resolution dated 7 September 2001, then Undersecretary Merceditas Gutierrez (Usec. Gutierrez) reversed and set aside the Resolution dated 23 June 2000.¹³

Petitioner filed a Motion for Reconsideration of this reversed finding on 27 September 2001.

Meanwhile, pursuant to the 7 September 2001 DOJ Resolution, Assistant City Prosecutor Elseray Faith Noro filed a Motion to Withdraw the Information with the RTC on 8 January 2002.

On 17 March 2003, petitioner's Motion for Reconsideration was denied in a Resolution also signed by then Usec. Gutierrez.¹⁴

Petition for Certiorari with the CA

Consequently, petitioner filed a Petition for *Certiorari*¹⁵ with the CA under Rule 65 of the Revised Rules of Court. The Petition, docketed as CA-G.R. SP No. 77111, alleged that the DOJ committed grave abuse of discretion amounting to lack or excess of jurisdiction in setting aside the Resolution dated 23 June 2000.

¹¹ Id. at 448.

¹² Id. at 188-193.

¹³ CA *rollo*, pp. 25-35.

¹⁴ Id. at 36-37.

¹⁵ Id. at 2-24.

On 31 March 2005, the CA dismissed the Petition and affirmed the assailed Resolutions of the DOJ dated 7 September 2001 and 17 March 2003.

Petitioner's Motion for Reconsideration was likewise denied on 8 July 2005.

The CA ruled that there was no probable cause to warrant the filing of the Information for *estafa* under paragraph 1(c), Article 315 against respondents. It found that the indispensable element in the crime of *estafa* under paragraph 1(c) — that “the paper with the signature of the offended party must be blank” — was lacking. That an experienced businesswoman would thoughtlessly affix her signature to a blank document was considered incredible by the appellate court. It likewise found to be devoid of merit the assertion of petitioner that she did not sign the Comprehensive Surety Agreement in her personal capacity, and that the agreement referred to an “abandoned” loan application.

THE ISSUES

Unsatisfied with the ruling of the CA, petitioner assigns the following errors:

I

The Honorable Court of Appeals gravely erred when it ignored the fact that the crime at issue in the case at bar is for violation of Article 315 paragraph 3(c) and not Article 315 paragraph 1(c) of the Revised Penal Code, in clear disregard of the provisions of law and jurisprudence on the matter.

II

The Honorable Court of Appeals gravely erred when it brushed aside the fact that there exist two sets of loan documents that show respondents' ruse to deceive petitioner, thereby ignoring unmistakable evidence which abrogate petitioner's property rights.

III

The Honorable Court of Appeals gravely erred when it ruled that respondents did not commit fraudulent acts when they concealed documents from petitioner, notwithstanding stark evidence to the contrary.

IV

The Honorable Court of Appeals gravely erred when it ruled that respondents did not take advantage of petitioner's signature in blank, despite evidence showing they actually did.

V

The Honorable Court of Appeals gravely erred when it failed to address the issue of whether respondent Undersecretary had the power and authority to reverse and set aside a resolution of the secretary of justice,

thereby nullifying numerous case law on the matter stating that acts of the Secretary of Justice cannot be abrogated by his subordinate.¹⁶

The foregoing issues boil down to two: (1) whether probable cause exists to hold private respondents liable for *estafa* under paragraph 1(c) or 3(c) of Article 315 of the Revised Penal Code; and (2) whether the Undersecretary of the DOJ had the authority to reverse a Resolution of its Secretary.

THE COURT'S RULING

We find no merit in the Petition.

On the issue of existence of probable cause

At the outset, the CA found that the DOJ did not commit grave abuse of discretion when it found no probable cause to hold private respondents liable for *estafa* under paragraph 1(c) of Article 315 of the Revised Penal Code.

The CA did not make an express finding upholding the DOJ finding of no probable cause to hold private respondents liable for *estafa* under paragraph 3(c) perhaps because the Information filed in Court is for *estafa* under paragraph 1(c).

The elements of *estafa* in general are:¹⁷

- 1) That the accused defrauded another (a) by *abuse of confidence*, or (b) by means of *deceit*; and
- 2) That *damage* or *prejudice* capable of pecuniary estimation is caused to the offended party or third person.

The first element covers the following ways of committing *estafa*:¹⁸

- 1) with unfaithfulness or abuse of confidence;
- 2) by means of false pretenses or fraudulent acts; or
- 3) through fraudulent means.

The first way of committing *estafa* is known as *estafa* with abuse of confidence, while the second and the third ways cover *estafa* by means of deceit.

This Court finds that the present case does not constitute *estafa* in either form.

¹⁶ *Rollo*, pp. 32-33; Petition for Review on Certiorari, pp. 10-11.

¹⁷ Luis B. Reyes, *The Revised Penal Code: Criminal Law*, Book Two, p.780 (18th ed. 2012).

¹⁸ *Id.* at 781.

***1) That the accused defrauded another
(a) by abuse of confidence, or
(b) by means of deceit***

As regards the first element, we find that there was neither abuse of confidence nor deceit in this case.

It is the main contention of petitioner that she was defrauded through the use of her signature in blank and through the use of the first set of document she signed, which has supposedly been abandoned. Petitioner is being held personally liable for the loan of MTI by virtue of the Comprehensive Surety Agreement (CSA) she signed in her personal capacity for the initial application for the USD10.5 million loan from FEBTC. Petitioner alleges that since the second application for USD 10 million loans was the one granted by FEBTC, the second set of documents supporting that loan should be controlling. In that second application, petitioner signed the CSA in her capacity as president of MLM Logistics International.

On the charge of abuse of confidence, we find that there is no evidence that could possibly lead to a conclusion that respondents committed abuse of confidence in dealing with petitioner.

First, a perusal of the evidence reveals that petitioner did not sign a blank document nor was she deceived by respondents regarding the terms of the CSA. On its face, the CSA was a standard preprinted form. A plain reading thereof shows that the signatory guarantees the punctual payment of indebtedness that may have been due or owed by the borrower. Petitioner ought to have read the terms of the CSA before she signed it.

Second, considering the accountability of the signatory upon signing the CSA, petitioner must have observed prudence in order to protect her interests. Hence, she should have personally indicated her own terms in the CSA — whether she was signing as a representative, a surety, or a witness. It is unlikely that FEBTC officers would make it appear that she was personally liable as surety of a loan without her knowledge and authority. Petitioner failed to overcome the presumption in favor of respondents that the ordinary course of business has been followed. Further, the CA aptly found as follows:

Furthermore, it is downright incredible for the petitioner, who is evidently intelligent, and a businesswoman of experience to boot, to affix her signature thoughtlessly on a blank instrument or document, whose material particulars are lacking. At the very least, her business instinct must impel her to first examine the contents of the document and obtain full knowledge of its import before affixing her signature thereto, -- especially in this case, where a huge sum of money (in the several millions of dollars at that) is involved.

On the contrary, considering further that the loan of USD10 million was approved and released to petitioner prior to the execution of the second set of documents, it is more sensible to believe that ¶ given her financial status and capability to recompense the loan ¶ the bank approved the loan upon her personal guarantee and execution of the first CSA.

Any intent to deceive through concealment was also negated when the FEBTC officers, herein respondents, willingly presented the documents pertaining to the loan upon the request of petitioner. In fact, a communication letter¹⁹ she had sent the bank reveals that she knew all along and acknowledged the obligation that she, together with Luis P. Lorenzo of Lapanday Holdings Corp., had acted as a surety of MTI's loan.

The existence of two (2) documents is irrelevant in this case as the original intention of the parties is evident – that petitioner and Luis P. Lorenzo, in their personal capacities are co-sureties of MTI's loan. Pursuant to Article 2047 of the Civil Code, a surety undertakes to be bound solidarily with the principal debtor to assure the fulfillment of the obligation.²⁰ It would therefore be absurd to conclude that petitioner signed the CSA in her capacity as president of MTI considering that the principle behind suretyship will be negated. Otherwise stated, the borrower cannot at the same time be a guarantor/surety to assure the fulfillment of its own loan application. Moreover, the CSA is a continuing guarantee that petitioner, upon executing the said document, bound herself to the contract “until the full and due payment and performance of all the obligations of the borrower.”²¹ Undisputedly, there was only one loan transaction, and FEBTC does not intend to collect from both loan documents. Thus, we find no abuse of confidence or deceit committed by respondents in the foregoing circumstances.

2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person

As a consequence, even if petitioner paid the amount of Php5,903,172.30, we find that it was legally paid pursuant to a valid and existing agreement which petitioner voluntarily entered into. Therefore, the payment did not constitute damage or prejudice to petitioner.

On the issue of the authority of the DOJ Undersecretary

Petitioner further contends that Usec. Gutierrez did not have the power or authority to overturn a Resolution of her superior, Sec. Tuquero.

¹⁹ Rollo, pp. 581-582; Letter dated 28 October 1997.

²⁰ *Philippine Charter Insurance Corporation v. Central Colleges Of The Philippines And Dynamic Planners And Construction Corporation*, G.R. Nos. 180631-33, 22 February 2012.

²¹ Rollo, pp. 169-170; Comprehensive Surety Agreement dated 15 April 1997.

It bears stressing that when Usec. Gutierrez issued the first assailed Resolution on 7 September 2001, Sec. Tuquero was no longer the DOJ Secretary.²² Similarly, at the time Usec. Gutierrez issued the Resolution on petitioner's Motion for Reconsideration on 17 March 2003, she was acting "for the Secretary" who was then Secretary Simeon A. Datumanong.²³

The assailed Resolutions were issued by Usec. Gutierrez for two different Secretaries of Justice on two different occasions by virtue of a delegated authority. "Absent any allegation and proof of any acquired vested right, the discretion exercised by a former alter-ego cannot tie the hands of their successors in office, since cabinet secretaries are mere projections of the Chief Executive himself."²⁴

"In the same vein, the presumption, disputable though it may be, that an official duty has been regularly performed applies in favor of [respondent Usec. Gutierrez.] *Omnia praesumuntur rite et solemniter esse acta*. (All things are presumed to be correctly and solemnly done). It is petitioner's burden to overcome this *juris tantum* presumption."²⁵ This, petitioner failed to do. Mere allegations will not suffice without proof that Usec. Gutierrez did not have the authority at the time she issued the assailed Resolution.

In the light of the foregoing, we find no evidence that would constitute a *prima facie* case for *estafa* against respondents. It is true that a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and was committed by the accused. In the present case, however, no such evidence exists that would engender a well-founded belief that *estafa* was in fact committed by respondents.²⁶

In fine, "[c]ourts are not empowered to substitute their judgment for that of the Secretary of Justice, save only when it was rendered with grave abuse of discretion amounting to lack or excess of jurisdiction. In this case, we find no abuse, much less grave abuse of discretion, on the part of the Secretary of Justice, [acting through Usec. Gutierrez], as to warrant a reversal of the CA Decision."²⁷

WHEREFORE, premises considered, the instant Petition is hereby **DENIED**. Accordingly, the Decision dated 31 March 2005 and Resolution dated 8 July 2005 of the Court of Appeals in CA-G.R. SP No. 77111 is **AFFIRMED**.

²²DOJ Ministers and Secretaries, <<http://doj.gov.ph/ministers-and-secretaries.html>> (visited 10 October 2012).

²³ Id.

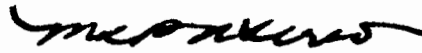
²⁴ *PCGG v. Jacobi*, G.R. No. 155996, 27 June 2012, citing *Malayan Integrated Industries Corp. v. Court of Appeals*, 213 SCRA 640, 651 (1992).

²⁵ *Farolan v. Solmac Marketing Corporation*, G.R. No. 83589, 13 March 1991, 195 SCRA 168, 178-179.

²⁶ *RCL Feeders PTE., Ltd. v. Perez*, 487 Phil. 211, 222-223 (2004).

²⁷ Id. at 223.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



BIENVENIDO L. REYES
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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