



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

BURGUNDY
CORPORATION,

REALTY

G.R. No. 181021

Petitioner,

Present:

- versus -

BRION,^{*}
PERALTA, J., Acting Chairperson,^{**}
ABAD,
MENDOZA, and
LEONEN, JJ.

JOSEFA "JING" C. REYES and
SECRETARY RAUL
GONZALEZ of the
DEPARTMENT OF JUSTICE,

Promulgated:

Respondents.

10 December 2012

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DECISION

PERALTA, J.:

For resolution of this Court is the Petition for Review on *Certiorari*, dated February 13, 2008, of petitioner Burgundy Realty Corporation, seeking to annul and set aside the Decision¹ and Resolution of the Court of Appeals (CA), dated September 14, 2007 and December 20, 2007, respectively.

The facts follow.

^{*} Designated Acting Member, in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 1395 dated December 6, 2012.

^{**} Per Special Order No. 1394 dated December 6, 2012.

¹ Penned by Associate Justice Bienvenido L. Reyes (now a member of the Supreme Court), with Associate Justices Aurora Santiago Lagman and Apolinario D. Bruselas, Jr., concurring; *rollo*, pp. 72-81.

Private respondent Josefa “Jing” C. Reyes (Reyes), sometime in 1996, offered her services to petitioner as the latter's real estate agent in buying parcels of land in Calamba, Laguna, which are to be developed into a golf course. She informed petitioner that more or less ten (10) lot owners are her clients who were willing to sell their properties. Convinced of her representations, petitioner released the amount of ₱23,423,327.50 in her favor to be used in buying those parcels of land. Reyes, instead of buying those parcels of land, converted and misappropriated the money given by petitioner to her personal use and benefit. Petitioner sent a formal demand for Reyes to return the amount of ₱23,423,327.50, to no avail despite her receipt of the said demand. As such, petitioner filed a complaint for the crime of Estafa against Reyes before the Assistant City Prosecutor's Office of Makati City.

Reyes, while admitting that she acted as a real estate agent for petitioner, denied having converted or misappropriated the involved amount of money. She claimed that the said amount was used solely for the intended purpose and that it was petitioner who requested her services in procuring the lots. According to her, it was upon the petitioner's prodding that she was constrained to contact her friends who were also into the real estate business, including one named Mateo Elejorde. She alleged that prior to the venture, Mateo Elejorde submitted to her copies of certificates of title, vicinity plans, cadastral maps and other identifying marks covering the properties being offered for sale and that after validating and confirming the prices as well as the terms and conditions attendant to the projected sale, petitioner instructed her to proceed with the release of the funds. Thus, she paid down payments to the landowners during the months of February, March, July, August, September and October of 1996. Reyes also insisted that petitioner knew that the initial or down payment for each lot represented only 50% of the purchase price such that the remaining balance had to be paid within a period of thirty (30) days from the date of receipt of the initial payment.

She added that she reminded petitioner, after several months, about the matter of unpaid balances still owing to the lot owners, but due to lack of funds and non-infusion of additional capital from other investors, petitioner failed to pay the landowners of their remaining unpaid balances. Meanwhile, Reyes received information that her sub-broker Mateo Elejorde had been depositing the involved money entrusted to him under his personal account. On March 28, 2000, through a board resolution, petitioner allegedly authorized Reyes to institute, proceed, pursue and continue with whatever criminal or civil action against Mateo Elejorde, or such person to whom she may have delivered or entrusted the money she had received in trust from the firm, for the purpose of recovering such money. Thus, Reyes filed a complaint for the crime of estafa against Mateo Elejorde before the City Prosecutor's Office of Makati City docketed as I.S. No. 98-B-5916-22, and on March 30, 2001, Mateo Elejorde was indicted for estafa.

After a preliminary investigation was conducted against Reyes, the Assistant Prosecutor of Makati City issued a Resolution² dated April 27, 2005, the dispositive portion of which reads:

In view thereof, it is most respectfully recommended that respondent be indicted of the crime of Estafa defined and penalized under the Revised Penal Code. It could not be said that she has violated the provision of PD 1689 for it was not shown that the money allegedly given to her were funds solicited from the public. Let the attached information be approved for filing in court. Bail recommendation at Php40,000.00.³

Thereafter, an Information for the crime of Estafa under Article 315, par. 1 (b) of the Revised Penal Code (RPC) was filed against Reyes and raffled before the RTC, Branch 149, Makati City.

Undeterred, Reyes filed a petition for review before the Department of Justice (DOJ), but it was dismissed by the Secretary of Justice through State Prosecutor Jovencito Zuño on June 1, 2006.

² *Rollo*, pp. 58-59.

³ *Id.* at 59.

Aggrieved, Reyes filed a motion for reconsideration, and in a Resolution⁴ dated July 20, 2006, the said motion was granted. The decretal text of the resolution reads:

Finding the grounds relied upon in the motion to be meritorious and in the interest of justice, our Resolution of June 1, 2006 is hereby RECONSIDERED and SET ASIDE. Accordingly, the petition for review filed by respondent-appellant Josefa Reyes is hereby given due course and will be reviewed on the merits and the corresponding resolution will be issued in due time.

SO ORDERED.

On September 22, 2006, Secretary of Justice Raul Gonzalez issued a Resolution⁵ granting the petition for review of Reyes, the fallo of which reads:

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Makati City is directed to cause the withdrawal of the information for estafa filed in court against respondent Josefa “Jing” C. Reyes and to report the action taken within five (5) days from receipt hereof.

SO ORDERED.⁶

Petitioner filed a motion for reconsideration, but was denied by the Secretary of Justice in a Resolution dated December 14, 2006. Eventually, petitioner filed a petition for *certiorari* under Rule 65 of the Rules of Court with the CA. The latter, however, affirmed the questioned Resolutions of the Secretary of Justice. The dispositive portion of the Decision dated September 14, 2007 reads:

WHEREFORE, premises considered, the assailed Resolutions[,] dated 22 September 2006 and 14 December 2006[,] both rendered by public respondent Secretary of Justice[,] are hereby AFFIRMED in toto.

SO ORDERED.⁷

⁴ *Id.* at 63.

⁵ *Id.* at 65-69.

⁶ *Id.* at 69.

⁷ *Id.* at 80.

Its motion for reconsideration having been denied by the CA in a Resolution dated December 20, 2007, petitioner filed the present petition and the following are the assigned errors:

I

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE DOJ SECRETARY, RAUL GONZALEZ, CAPRICIOUSLY, ARBITRARILY AND WHIMSICALLY DISREGARDED THE EVIDENCE ON RECORD SHOWING THE [EXISTENCE] OF PROBABLE CAUSE AGAINST PRIVATE RESPONDENT FOR ESTAFA UNDER ARTICLE 315 1(b) OF THE REVISED PENAL CODE.

II

THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT FINDING BUT INSTEAD CONCURRED IN WITH THE DOJ SECRETARY, RAUL GONZALEZ, WHO BY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION HELD THAT NOT ALL OF THE ELEMENTS OF ESTAFA UNDER ARTICLE 315 1 (b), PARTICULARLY THE ELEMENT OF MISAPPROPRIATION, WERE NOT SUFFICIENTLY ESTABLISHED IN THIS CASE.

III

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT FINDING THAT THE DOJ SECRETARY, RAUL GONZALEZ, ACTED WITH GRAVE ABUSE OF DISCRETION IN ACCEPTING AS TRUTH WHAT WERE MATTERS OF DEFENSE BY PRIVATE RESPONDENT IN HER COUNTER-AFFIDAVIT WHICH SHOULD HAVE BEEN PROVEN AT THE TRIAL ON THE MERITS.⁸

The petition is meritorious.

It is not disputed that decisions or resolutions of prosecutors are subject to appeal to the Secretary of Justice who, under the Revised Administrative Code,⁹ exercises the power of direct control and supervision over said prosecutors; and who may thus affirm, nullify, reverse or modify their rulings. Review as an act of supervision and control by the justice secretary over the fiscals and prosecutors finds basis in the doctrine of exhaustion of administrative remedies which holds that mistakes, abuses or negligence committed in the initial steps of an administrative activity or by

⁸ *Id.* at 19-20.

⁹ The 1987 Revised Administrative Code, Executive Order No. 292.

an administrative agency should be corrected by higher administrative authorities, and not directly by courts.¹⁰

In the present case, after review and reconsideration, the Secretary of Justice reversed the investigating prosecutor's finding of probable cause that all the elements of the crime of estafa are present. Estafa, under Article 315 (1) (b) of the Revised Penal Code, is committed by –

ART. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow:

x x x x

1. With unfaithfulness or abuse of confidence, namely:

(a) x x x

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

The elements are:

1) that money, goods or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

2) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

3) that such misappropriation or conversion or denial is to the prejudice of another; and

4) that there is demand made by the offended party on the offender.¹¹

¹⁰ *Solar Team Entertainment, Inc. v. Hon. Rolando How*, G.R. No. 140863, August 22, 2000, 338 SCRA 511, 517; 393 Phil. 172, 179-180 (2000). (Citation omitted)

¹¹ *Reyes, Revised Penal Code of the Philippines*, p. 716; *Manahan, Jr. v. Court of Appeals*, G.R. No. 111656, March 20, 1996, 255 SCRA 202, 213; 325 Phil. 484, 492-493 (1996).

The essence of estafa under Article 315, par. 1 (b) is the appropriation or conversion of money or property received to the prejudice of the owner. The words "convert" and "misappropriate" connote an act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.¹²

In reversing the finding of probable cause that the crime of estafa has been committed, the Secretary of Justice reasoned out that, [the] theory of conversion or misappropriation is difficult to sustain and that under the crime of estafa with grave abuse of confidence, the presumption is that the thing has been devoted to a purpose or is different from that for which it was intended but did not take place in this case. The CA, in sustaining the questioned resolutions of the Secretary of Justice, ruled that the element of misappropriation or conversion is wanting. It further ratiocinated that the demand for the return of the thing delivered in trust and the failure of the accused to account for it, are circumstantial evidence of misappropriation, however, the said presumption is rebuttable and if the accused is able to satisfactorily explain his failure to produce the thing delivered in trust, he may not be held liable for estafa.

It must be remembered that the finding of probable cause was made after conducting a preliminary investigation. A preliminary investigation constitutes a realistic judicial appraisal of the merits of a case.¹³ Its purpose is to determine whether (a) a crime has been committed; and (b) whether there is a probable cause to believe that the accused is guilty thereof.¹⁴

¹² *Amorsolo v. People*, G.R. No. L-76647, September 30, 1987, 154 SCRA 556, 563; 238 Phil. 557, 564 (1987); citing *U.S. v. Ramirez*, 9 Phil. 67 (1907) and *U.S. v. Panes*, 37 Phil. 118 (1917).

¹³ *Villanueva v. Ople*, G.R. No. 165125, November 18, 2005, 475 SCRA 539, 553; 512 Phil. 187, 204 (2005).

¹⁴ *Gonzalez v. Hongkong & Shanghai Banking Corporation*, G.R. No. 164904, October 19, 2007, 537 SCRA 255, 269.

This Court need not overemphasize that in a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed, and that the respondent is probably guilty thereof and should be held for trial. It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.¹⁵ The complainant need not present at this stage proof beyond reasonable doubt.¹⁶ A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.¹⁷ Precisely, there is a trial to allow the reception of evidence for both parties to substantiate their respective claims.¹⁸

A review of the records would show that the investigating prosecutor was correct in finding the existence of all the elements of the crime of estafa. Reyes did not dispute that she received in trust the amount of ₱23,423,327.50 from petitioner as proven by the checks and vouchers to be used in purchasing the parcels of land. Petitioner wrote a demand letter for Reyes to return the same amount but was not heeded. Hence, the failure of Reyes to deliver the titles or to return the entrusted money, despite demand and the duty to do so, constituted *prima facie* evidence of misappropriation. The words convert and misappropriate connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon.¹⁹ To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.²⁰ In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the

¹⁵ *Metropolitan Bank & Trust Company v. Gonzalez*, G.R. No. 180165, April 7, 2009, 584 SCRA 631, 642.

¹⁶ *Id.*

¹⁷ *Ang v. Lucero*, G.R. No. 143169, January 21, 2005, 449 SCRA 157, 169; 490 Phil. 60, 71 (2005).

¹⁸ *Metropolitan Bank & Trust Company v. Gonzalez*, *supra* note 15.

¹⁹ *Serona v. Court of Appeals*, 440 Phil. 508, 518 (2000).

²⁰ *Id.*

sale or to return the items to be sold and fails to give an account of their whereabouts.²¹ Thus, the mere presumption of misappropriation or conversion is enough to conclude that a probable cause exists for the indictment of Reyes for Estafa. As to whether the presumption can be rebutted by Reyes is already a matter of defense that can be best presented or offered during a full-blown trial.

To reiterate, probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.²² Probable cause is a reasonable ground of presumption that a matter is, or may be, well founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so.²³ **The term does not mean "actual or positive cause" nor does it import absolute certainty.**²⁴ **It is merely based on opinion and reasonable belief.**²⁵ **Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction.**²⁶ **It is enough that it is believed that the act or omission complained of constitutes the offense charged.**²⁷

WHEREFORE, premises considered, the present Petition is hereby **GRANTED** and, accordingly, the Decision and Resolution of the Court of Appeals, dated September 14, 2007 and December 20, 2007, respectively, are hereby **REVERSED** and **SET ASIDE**. Consequently, the Regional Trial Court, Branch 149, Makati City, where the Information was filed against private respondent Josefa “Jing” C. Reyes, is hereby **DIRECTED** to proceed with her arraignment.

²¹ *U.S. v. Rosario de Guzman*, 1 Phil. 138, 139 (1902).

²² *Metropolitan Bank & Trust Company v. Gonzales*, *supra* note 15, at 640.

²³ *Id.*, citing *Yu v. Sandiganbayan*, 410 Phil. 619, 627 (2001).

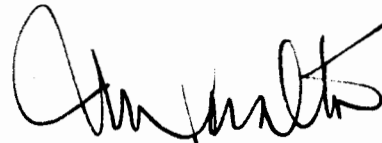
²⁴ *Id.* at 640-641.

²⁵ *Id.* at 641.

²⁶ *Id.*

²⁷ *Id.*

SO ORDERED.



DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



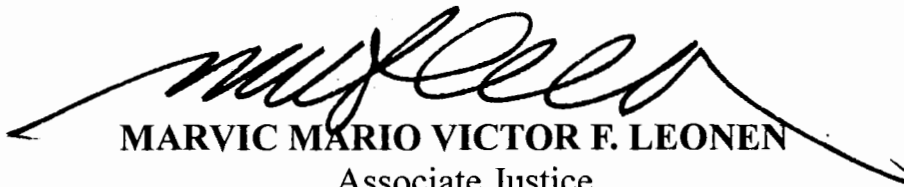
ARTURO D. BRION
Associate Justice



ROBERTO A. ABAD
Associate Justice



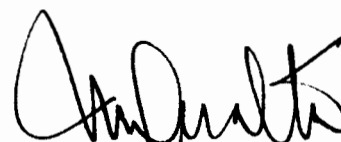
JOSE CATRAL MENDOZA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

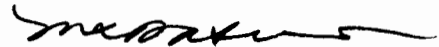
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



DIOSDADO M. PERALTA
Associate Justice
Acting Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Acting 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