Republic of the Philippines
Supreme Court
Manila

**FIRST DIVISION**

**ANTONIO L. TAN, JR.,**
Petitioner,

**G.R. No. 179003**

- versus -

**YOSHITSUGU MATSUURA and CAROLINA TANJUTCO,**
Respondents.

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**ANTONIO L. TAN, JR.,**
Petitioner,

**G.R. No. 195816**

Present:

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

- versus -

**JULIE O. CUA,**
Respondent.

Promulgated:
JAN 09 2013

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**D E C I S I O N**

**REYES, *J.*:**

Before the Court are two consolidated Petitions for Review on *Certiorari* filed by petitioner Antonio L. Tan, Jr. (Tan) and docketed as:

(1) G.R. No. 179003 which assails the Court of Appeals' (CA) Decision[1] dated February 6, 2007 and Resolution[2] dated July 24, 2007 in CA-G.R. SP No. 89346, entitled *Yoshitsugu Matsuura & Carolina Tanjutco v. Hon. Raul Gonzales, in his capacity as Acting Secretary of the Department of Justice and Antonio L. Tan, Jr.*; and

(2) G.R. No. 195816 which assails the CA's Decision[3] dated August 17, 2010 and Resolution[4] dated February 23, 2011 in CA-G.R. SP No. 95263, entitled *Julie O. Cua v. Antonio L. Tan, Jr., Hon. Raul M. Gonzales, in his capacity as Secretary of the Department of Justice and Hon. Ernesto L. Pineda, in his capacity as Undersecretary of the Department of Justice.*

## The Factual Antecedents

On March 31, 1998, Tan filed with the Office of the City Prosecutor (OCP) of Makati City a Complaint-Affidavit[5] charging the respondents Yoshitsugu Matsuura (Matsuura), Atty. Carolina Tanjutco (Tanjutco) and Atty. Julie Cua (Cua) of the crime of falsification under the Revised Penal Code (RPC), allegedly committed as follows:

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1 Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Ruben T. Reyes (now retired) and Mariano C. Del Castillo (now a member of this Court), concurring; *rollo* (G.R. No. 179003), pp. 49-62.

2 Id. at 63.

3 Penned by Associate Justice Francisco P. Acosta, with Associate Justices Vicente S.E. Veloso and Michael P. Elbinias, concurring; *rollo* (G.R. No. 195816), pp. 43-54.

4 Id. at 55-56.

5 Docketed as I.S. No. 98-C15857-58; *rollo* (G.R. No. 179003), pp. 65-66.

> 2. On or about the period from 21 December 1996 to 09 January 1997, Mr. YOSHITSUGU MATSUURA, Ms. HIROKO MATSUURA and Mr. RUBEN JACINTO have had stolen company's properties and my personal belongings which were kept **"under lock and key"**. Among those stolen was my pre-signed DEED OF TRUST, whose date and number of shares, and the item witness were all in BLANK. As a result, Criminal Case No. 98-040 for Qualified Theft was filed against Mr. & Ms. Matsuura and Mr. Jacinto, and now pending before the Regional Trial Court (*of Makati City*) Branch 132;
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> 3. In the said "blank" Deed of Trust, the **entries** as to the number of shares and the date of the instrument were then inserted, that is, **28,500** as shares and **20**th day of January, and the **signatures** of Hiroko Matsuura and Lani C. Camba appeared in the item WITNESS, all without my participation whatsoever, or without my consent and authority. A copy of the "filled in" Deed of Trust is attached as Annex "A" and made part hereof;
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> 4. Sometime on 19 June 1997, the said Deed of Trust, was made to be notarized by JULIE O. CUA, a Notary Public for and in the City of Makati, and entered in her Notarial Register as Doc[.] No. 2; Page No. 1; Book No. 1 and Series of 1997, *WHEN IN TRUTH AND IN FACT I HAVE NEVER **APPEARED, SIGNED** OR **TOOK*** [*sic*] *MY OATH BEFORE THE SAID NOTARY PUBLIC AND ON THE SAID DATE OF NOTARIZATION* because the document (*Deed of Trust*) was stolen as earlier stated, and the relation between us (*Mr. and Ms. Matsuura, or Mr. Jacinto, and the undersigned*) had become hostile and irreconcilable. A copy of the notarized Deed of Trust is attached as Annex "B" and made part hereof.
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> 5. Both documents (*Annexes "A" and "B")* were/are in the possessions of Mr. Matsuura and/or his lawyer, CAROLINA TANJUTCO, who **used** these false documents in the cases involving us;
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> 6. Without prejudice to the filing of other charges in the proper venues, I am executing this affidavit for the purpose of charging Mr. YOSHITSUGU MATSUURA and ATTY. CAROLINA TANJUTCO for violation of Art. 172 (2) in relation to Art. 171 (6) of the Revised Penal Code with regard to Annex "A", and likewise charging MR. YOSHITSUGU MATSUURA and ATTYS. CAROLINA TANJUTCO and JULIE O. CUA for violation of Art. 172 (1) in relation to Art. 171 (2) of the Revised Penal Code, when through their concerted actions they FALSELY made it appeared [*sic*] that the undersigned had participated in notarization of the Deed of Trust (*Annex "B")* on 19 June 1997, and in both instances causing prejudice and damages to the undersigned.[6]

The respondents filed their respective counter-affidavits.

Matsuura vehemently denied Tan's charges. He countered that the filing of the complaint was merely a scheme resorted to by Tan following

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[6] Id.

their dispute in TF Ventures, Inc., and after he had obtained a favorable resolution in a complaint for estafa against Tan. Matsuura further explained that the transfer of the shareholdings covered by the subject Deed of Trust[7] was a result of Tan's offer to compromise the intra-corporate dispute. He insisted that it was Tan who caused the notarization of the deed, as this was a condition for Matsuura's acceptance of the compromise.[8]

For her defense, Tanjutco argued that Tan's admission of having pre-signed the subject deed only proved that he had willingly assigned his shares in TF Ventures, Inc. to Matsuura. She also argued that Tan failed to present any proof of her participation in the deed's falsification, and explained that she had not yet known Matsuura at the time of the supposed notarization.[9]

For her part, Cua narrated that on June 19, 1997, a group that included a person who represented himself as Antonio Tan, Jr. approached her law office for the notarization of the subject deed. Tan presented his community tax certificate (CTC) as indicated in the subject deed of trust, then was sworn in by Cua as a notary public. Cua claimed to have conducted her duty in utmost good faith, with duplicate copies of the notarized deed reported to the Clerk of Court of Makati City. She denied having any business or interest whatsoever with the law offices of Tanjutco.[10]

**The Ruling of the City Prosecutor**

On July 13, 1998, the OCP issued a Resolution[11] dismissing for lack of probable cause the complaint against Matsuura and Tanjutco. It considered the fact that Tan had voluntarily signed the subject deed, and further noted that "[w]hether or not the same document is notarized, the

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7 Id. at 84.
8 Id. at 71-78.
9 Id. at 67-69.
10 *Rollo* (G.R. No. 195816), pp. 61-62.
11 Id. at 73-77.

[d]eed has the effect of a binding contract between the parties. The element of damage has not been sufficiently shown."[12]

The complaint against Cua was also dismissed. For the OCP, Tan failed to overturn the presumption of regularity attached to the notary public's performance of her official duty. Any irregularity attending the execution of the deed of trust required more than mere denial from Tan.[13]

Tan's motion for reconsideration was denied, prompting him to file a petition for review[14] with the Department of Justice (DOJ).

**The Ruling of the Secretary of Justice**

On April 4, 2003, then Secretary of Justice Simeon A. Datumanong issued a resolution[15] denying the petition. He ruled that no evidence was presented to show that the date, the number of shares and the witnesses' signatures appearing on the subject deed were merely inserted therein by the respondents. Tan's bare averments were insufficient to show the actual participation of the respondents in the alleged falsification.

Undaunted, Tan filed a motion for reconsideration, which was granted by then Acting Secretary of Justice Ma. Merceditas N. Gutierrez in a Resolution[16] dated July 1, 2004. In finding probable cause to indict the respondents for the crime of falsification, the DOJ noted that a copy of the deed of trust attached by Matsuura and Tanjutco to Matsuura's Answer dated October 30, 1997 in an intra-corporate dispute before the SEC was not yet notarized. Furthermore, the print and font of the deed's entries on its covered shares and date remarkably differed from the other portions of the document. The Secretary then held:

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12 Id. at 76.
13 Id.
14 Id. at 80-99.
15 Id. at 100-106.
16 Id. at 107-111.

> [I]t would appear that the subject deed of trust was indeed never notarized. If the said document was purportedly notarized on June 19, 1997, the same notarized copy should have been presented by respondent Matsuura. After all, his Answer filed before the SEC was made with the assistance of respondent Atty. Tanjutco. There being none, it may be concluded that the notarization of the subject deed of trust was indeed made under doubtful circumstances.[17]

The Secretary also held that Cua should have been alerted by the variance in the deed's print styles, and the fact that the document was presented for notarization almost five months from the date of its purported execution. The dispositive portion of the Secretary's resolution then reads:

> **WHEREFORE,** the motion for reconsideration is hereby GRANTED. Resolution No. 189 (Series of 2003) is hereby SET ASIDE. The City Prosecutor of Makati City is directed to file an information against respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco for violation of Art. 172 (2) in relation to Art. 171 (6), RPC; and another information for violation of Art. 171 (2), RPC against respondents Yoshitsugu Matsuura, Atty. Carolina Tanjutco and Atty. Julie Cua.
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> **SO ORDERED.**[18]

The respondents moved for reconsideration. On April 4, 2005, then DOJ Undersecretary Ernesto L. Pineda, signing on behalf of the Secretary of Justice, issued a resolution[19] affirming the presence of probable cause against Matsuura and Tanjutco, but ordering the exclusion of Cua from the filing of information. He ruled that Cua had exercised due diligence as a notary public by requiring from the person who appeared before her a proof of his identification. The resolution's decretal portion provides:

> Premises considered, the Resolution dated July 1, 2004 is hereby **MODIFIED** accordingly. The City Prosecutor of Makati City is directed to move for the exclusion of respondent Julie Cua from the information for violation of Art. 171 (2), Revised Penal Code, if any has been filed, and to report the action taken within ten (10) days from receipt hereof. The motion for reconsideration filed by respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco is hereby **DENIED**.

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17 Id. at 109-110.
18 Id. at 110.
19 Id. at 120-122.

**SO ORDERED**.[20]

At this point, Matsuura and Tanjutco filed with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 89346. The DOJ's review of its resolution on Cua's case continued with Tan's filing of a motion for partial reconsideration. Finding merit in the motion, the DOJ again reversed itself and issued on December 12, 2005 a Resolution[21] with dispositive portion that reads:

> **WHEREFORE**, in view of the foregoing, the motion for partial reconsideration is **GRANTED** and resolution dated April 4, 2005 is **SET ASIDE**. The City Prosecutor of Makati City is hereby directed to include Atty. Julie O. [Cua] in the information for violation of Article 171 (2) of the Revised Penal Code filed against respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco and report to this Office the action taken within ten (10) days from receipt hereof.
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> SO ORDERED.[22]

Cua's motion for reconsideration was denied, prompting her to file with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 95263.

## The Ruling of the CA

The CA granted both petitions questioning the Secretary of Justice's resolutions.

In CA-G.R. SP No. 89346, the CA held that given the elements of the crime, the actual participation of respondents Matsuura and Tanjutco was not sufficiently alleged, and the element of damage was not sufficiently shown. The dispositive portion of its Decision[23] dated February 6, 2007 reads:

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20 Id. at 121.
21 Id. at 138-140.
22 Id. 139-140.
23 Supra note 1.

> WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Resolution of the DOJ dated April 4, 2005 and July 1, 2004 are **SET ASIDE**. The Resolution of the City Prosecutor, Makati City dated July 13, 1998 in I.S. No. 98-C-15857-58 affirmed by the DOJ through Secretary Datumanong on April 4, 2003 **STANDS**.
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> SO ORDERED.[24]

Tan's motion for reconsideration was denied.

In CA-G.R. SP No. 95263, the CA held that Tan also failed to discharge the burden of proving probable cause against Cua. For the appellate court, there was nothing on record that was sufficient to overcome the presumption of regularity ascribed to both the subject deed as a public document and to Cua's discharge of her official functions as a notary public. The dispositive portion of its Decision[25] dated August 17, 2010 reads:

> **WHEREFORE**, the instant Petition is **GRANTED**. The assailed Resolutions of the Secretary of Justice dated 12 December 2005 and 8 May 2006 are REVERSED and SET ASIDE. The Resolution of the Secretary of Justice dated 4 April 2003 affirming the findings of the City Prosecutor is hereby UPHELD.
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> **SO ORDERED**.[26]

Tan's motion for reconsideration was denied in a Resolution[27] dated February 23, 2011.

## The Present Petitions

Unsatisfied, Tan separately filed with this Court two petitions for review. G.R. No. 179003 assails the CA's disposition of Matsuura and Tanjutco's petition, while G.R. No. 195816 assails the CA's decision in the petition filed by Cua. From these petitions are two main issues for this Court's resolution:

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24 Id. at 61.
25 Supra note 3.
26 Id. at 53.
27 Supra note 4.

(a) whether or not the CA erred in taking cognizance of the two petitions filed before it, assuming the role of a reviewing authority of the Secretary of Justice; and

(b) whether or not the CA erred in upholding the finding of the OCP that there exists no probable cause to indict Matsuura, Tanjutco and Cua for the crime of falsification.

## This Court's Ruling

We emphasize that on February 13, 2012, this Court had already issued in G.R. No. 195816 a resolution[28] **denying** the petition, on the following bases:

> Considering the allegations, issues and arguments adduced in the petition for review on certiorari assailing the Decision dated 17 August 2010 and Resolution dated 23 February 2011 of the Court of Appeals, Manila, in CA-G.R. SP No. 95263, the Court resolves to **DENY** the petition for raising substantially factual issues and for failure to sufficiently show any reversible error in the assailed judgment to warrant the exercise of this Court's discretionary appellate jurisdiction.[29]
> (Underscoring supplied, emphasis in the original)

Thus, the only pending incident in G.R. No. 195816 is Tan's motion for reconsideration of the Court's denial of his petition. In his motion, Tan reiterates the arguments he presented in the petition, yet argues for the first time that the CA erred in granting Cua's motion for an additional period of thirty (30) days within which to file her petition in CA-G.R. SP No. 95263. This allegedly violated the provisions of A.M. 00-2-03-SC that amended Section 4, Rule 65[30] of the Rules of Court.

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[28] Id. at 174.

[29] Id.

[30] Section 4, Rule 65 of the Rules of Court previously read:

Sec. 4. *When and where petition filed*. – The petition shall be filed not later than sixty (60) days from notice of the judgment or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate

Tan also moved to consolidate G.R. No. 1958156 with G.R. No. 179003, which motion was allowed by the Court.

Before ruling on the main issues, we address Tan's argument that the CA erred in granting Cua's motion for extension of time to file her petition in CA-G.R. SP No. 95263.

In *Vallejo v. Court of Appeals,*[31] we emphasized that the Court has allowed some meritorious cases to proceed despite inherent procedural defects and lapses. This is in keeping with the principle that rules of procedure are mere tools designed to facilitate the attainment of justice and that the strict and rigid application of rules which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided. It is a far better and more prudent cause of action for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties.[32] Thus, we allowed the petition in *Vallejo* to proceed even if it was filed almost four (4) months beyond the prescribed reglementary period under the rules.

Pursuant to the foregoing doctrine, in the interest of substantial justice, and given the merit that was ascribed by the CA to Cua's petition, we sustain the appellate court's ruling on Cua's motion for extension of time to file her petition for *certiorari*.

***Courts possess the power to review findings of prosecutors in preliminary investigations.***

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jurisdiction. If it involves the acts or omissions of a quasi-judicial agency, and unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

**No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding 15 days**. (Emphasis ours)

[31] 471 Phil. 670 (2004).

[32] Id. at 684.

On the first main issue, the petitioner contends that the CA should not have taken cognizance of the petitions for *certiorari* filed before it because criminal proceedings shall not be restrained once probable cause has been determined and the corresponding information has been filed in courts. Citing jurisprudence, Tan argues that the institution of a criminal action in court depends upon the sound discretion of the prosecutor.

The Court remains mindful of the established principle that the determination of probable cause is essentially an executive function that is lodged with the public prosecutor and the Secretary of Justice. However, equally settled is the rule that courts retain the power to review findings of prosecutors in preliminary investigations, although in a mere few exceptional cases showing grave abuse of discretion.

Judicial power under Section 1, Article VIII of the 1987 Constitution covers the courts' power to determine whether there has been grave abuse of discretion amounting to lack or excess of jurisdiction committed by any branch or instrumentality of the government in the discharge of its functions. Although policy considerations call for the widest latitude of deference to the prosecutors' findings, courts should not shirk from exercising their power, when the circumstances warrant, to determine whether the prosecutors' findings are supported by the facts or by the law. In so doing, courts do not act as prosecutors but as organs of the judiciary that are exercising their mandate under the Constitution, relevant statutes, and remedial rules to settle cases and controversies. Indeed, the exercise of the courts' review power ensures that, on the one hand, probable criminals are prosecuted and, on the other hand, the innocent are spared from baseless prosecution.[33]

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[33] *Social Security System v. Department of Justice*, G.R. No. 158131, August 8, 2007, 529 SCRA 426, 442; see also *Miller v. Perez*, G.R. No. 165412, May 30, 2011, 649 SCRA 158.

We then ruled in *Tan v. Ballena*[34] that while the findings of prosecutors are reviewable by the DOJ, this does not preclude courts from intervening and exercising our own powers of review with respect to the DOJ's findings. In the exceptional case in which grave abuse of discretion is committed, as when a clear sufficiency or insufficiency of evidence to support a finding of probable cause is ignored, the CA may take cognizance of the case *via* a petition under Rule 65 of the Rules of Court.[35]

Based on the grounds raised by the respondents in their petitions with the CA, the appellate court's exercise of its power to review was also the proper and most prudent course to take after the Secretary had successively issued several resolutions with varying findings of fact and conclusions of law on the existence of probable cause, even contrary to the own findings of the OCP that conducted the preliminary investigation. Although by itself, such circumstance was not indicative of grave abuse of discretion, there was a clear issue on the Secretary of Justice's appreciation of facts, which commanded a review by the court to determine if grave abuse of discretion attended the discharge of his functions.

**There is no probable cause for falsification against Matsuura, Tanjutco and Cua.**

The Court agrees with the CA that the Secretary of Justice committed grave abuse of discretion when the latter ruled in favor of Tan, in his complaint against the respondents. Again, while the courts generally accord respect upon the prosecutor's or the DOJ's discretion in the determination of probable cause in preliminary investigations, the courts may, as an exception, set aside the prosecutor's or DOJ's conclusions to prevent the

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34 G.R. No. 168111, July 4, 2008, 557 SCRA 229.
35 Id. at 252-253.

misuse of the strong arm of the law or to protect the orderly administration of justice.[36]

We emphasize the nature, purpose and amount of evidence that is required to support a finding of probable cause in preliminary investigations. Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that the accused is probably guilty thereof. It is 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 is to be prosecuted. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused.[37]

While probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[38]

**G.R. No. 179003**

The Court affirms the CA's finding of grave abuse of discretion on the part of the Secretary of Justice in reversing the rulings of the OCP that favored Matsuura and Tanjutco.

In the Resolutions dated July 1, 2004 and April 4, 2005, the Secretary of Justice directed the filing in court of **two informations** against Matsuura

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36 *Borlongan, Jr. v. Peña*, G.R. No. 143591, November 23, 2007, 538 SCRA 221, 237.
37 Id. at 236.
38 *Ching v. The Secretary of Justice*, 517 Phil. 151, 171 (2006).

and Tanjutco: one information for the crime of falsification under Article 172 (2), in relation to Article 171 (6) of the RPC, and another information for a violation of Article 171 (2) of the RPC. These penal provisions read:

> **Art. 171.** ***Falsification by public officer, employee or notary or ecclesiastic minister***. – The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
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> x x x x
>
> (2) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate.
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> x x x x
>
> (6) Making any alteration or intercalation in a genuine document which changes its meaning.
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> x x x x
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> **Art. 172.** ***Falsification by private individuals and use of falsified documents***. – The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:
>
> x x x x
>
> (2) Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.
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> x x x x

In **the first information**, the charge was under Article 172 (2), in relation to Article 171 (6), for the alleged insertions in the deed of trust on its number of covered shares, its date and the witnesses to the instrument's execution. In *Garcia v. Court of Appeals*,[39] we identified the elements of falsification under Article 171 (6) of the RPC, to wit:

> (1) that there be an alteration (change) or intercalation (insertion) on a document;

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[39] 513 Phil. 547 (2005).

(2) that it was made on a genuine document;

(3) that the alteration or intercalation has changed the meaning of the document; and

(4) that the changes made the document speak something false.[40]

When these are committed by a private individual on a private document, the violation would fall under paragraph 2, Article 172 of the same code, but there must be, in addition to the aforesaid elements, independent evidence of damage or intention to cause the same to a third person.[41]

Logically, affidavits and evidence presented during a preliminary investigation must at least show these elements of the crime and the particular participation of each of the respondents in its commission. Otherwise, there would be no basis for a well-founded belief that a crime has been committed, and that the persons being charged are probably guilty thereof. Probable cause can only find support in facts and circumstances that would lead a reasonable mind to believe that the person being charged warrants a prosecution. Upon the Court's review, we affirm the ruling that Tan had failed to adequately show during the preliminary investigation all the aforementioned elements of the offense.

Petitioner Tan was not able to establish when and how the alleged unauthorized insertions in the subject document were effected, and that Matsuura and Tanjutco should be held liable therefor. To warrant an indictment for falsification, it is necessary to show during the preliminary investigation that the persons to be charged are responsible for the acts that define the crime. Contrary to this, however, there were no sufficient allegations and evidence presented on the specific acts attributed to Matsuura and Tanjutco that would show their respective actual participation in the alleged alteration or intercalation. Tan's broad statement that the deed

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40 Id. at 555.

41 Id.

was falsified after it was stolen by Matsuura merits no consideration in finding probable cause, especially after the following findings of the OCP in his Resolution dated July 13, 1998:

> Any alleged irregularity attending the execution of such a voluntary Deed requires more than mere denial. Criminal Case [N]o. [9]8-040 (I.S. No. 97-20720) concerning Qualified Theft of Condominium Certificate of Title, pre[-]signed checks and other personal belongings of complainant [herein petitioner], has already been recommended for dismissal by the Department of Justice on May 25, 1998, directing the withdrawal of the information in the aforesaid Criminal Case No. 98-040. In said recommendation, the principal subject matter is the alleged loss of condominium titles, and it appears that after the implementation of the search warrant, only title[s] and the pre[-]signed checks were not recovered. There is no mention of a missing Deed of Trust as claimed by complainant.[42]

Tan also sought to support his falsification charge by the alleged intercalations on the covered number of shares and date of the deed, asking the OCP and Secretary of Justice to take notice that the print, font style and size of these entries differed from the other portions of the document. However, it is not unusual, as it is as a common practice, for parties to prepare and print instruments or contractual agreements with specific details that are yet to be filled up upon the deed's execution. We are bound to believe that such was the situation in Tan's case, i.e., the document had blanks when printed but was already complete in details at the time Tan signed it to give effect thereto, especially with the legal presumption that a person takes ordinary care of his concerns. Otherwise, Tan would not have voluntarily affixed his signature in the subject deed. In *Allied Banking Corporation v. Court of Appeals*,[43] we ruled:

> Under Section 3 (d), Rule 131 of the Rules of Court, **it is presumed that a person takes ordinary care of his concerns. Hence, the natural presumption is that one does not sign a document without first informing himself of its contents and consequences**. Said presumption acquires greater force in the case at bar where not only one document but several documents were executed at different times and at different places

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42 *Rollo* (G.R. No. 179003), p. 88.

43 527 Phil. 46 (2006).

> by the herein respondent guarantors and sureties.[44] (Citation omitted and emphasis supplied)

While the presumption can be disputed by sufficient evidence, Tan failed in this respect. We even find no merit in his claim that the incomplete document was merely intended to convince Japanese friends of Matsuura to extend credit to TF Ventures, Inc., as he failed to establish any connection between the deed of trust and the credit sought.

It is then the Court's view that the petitioner had voluntarily executed the subject Deed of Trust, with the intention of giving effect thereto. Even granting that there were insertions in the deed after it was signed by the petitioner, no sufficient allegation indicates that the alleged insertions had changed the meaning of the document, or that their details differed from those intended by the petitioner at the time that he signed it. The petitioner's bare allegation that "the change was without [his] consent and authority"[45] does not equate with the necessary allegation that the insertions were false or had changed the intended meaning of the document. Again, a violation of Article 172 (2), in relation to Article 171 (6), of the RPC requires, as one of its elements, that "the alteration or intercalation has changed the meaning of the document.[46]

Neither was there sufficient evidence to support the element of damage that was purportedly suffered by Tan by reason of the alleged falsification. As correctly observed by the OCP:

> By his voluntary act of signing the Deed of Trust in favor of Matsuura, it can be safely inferred that the document speaks for itself. Whether or not the same document is notarized, the Deed has the effect of a binding contract between the parties. The element of damage has not been sufficiently shown.[47]

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44 Id. at 56.
45 *Rollo* (G.R. No. 179003), p. 65.
46 Supra note 39, at 555.
47 *Rollo* (G.R. No. 195816), p. 76.

The Court emphasizes that the element of damage is crucial in the charge because the Secretary of Justice directed the filing of the first information for an alleged falsification of a private document.

From the foregoing, it is clear that the Secretary of Justice's finding of probable cause against Matsuura and Tanjutco was based solely on surmises and conjectures, wholly unsupported by legal and factual bases. The CA then correctly nullified, on the ground of grave abuse of discretion, the resolutions that were assailed before it. There is grave abuse of discretion when the respondent acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of his judgment, as when the assailed order is bereft of any factual and legal justification.[48]

True, a finding of probable cause need not be based on clear and convincing evidence, or on evidence beyond reasonable doubt. It does not require that the evidence would justify conviction. Nonetheless, although the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion. And while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play, and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges. It is, therefore, imperative for the prosecutor to relieve the accused from the pain and inconvenience of going through a trial once it is ascertained that no probable cause exists to form a sufficient belief as to the guilt of the accused.[49]

The Secretary of Justice's directive upon the prosecutor to file **the second information** against Matsuura and Tanjutco also lacked basis. It

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[48] *The Senate Blue Ribbon Committee v. Hon. Majaducon*, 455 Phil. 61, 71 (2003), *citing Flores v. Office of the Ombudsman*, 437 Phil. 684, 691 (2002).

[49] Supra note 36, at 240.

was premised on an alleged violation of Article 171(2) of the RPC, by making it appear that Tan participated in an act or proceeding when as he claimed, he did not in fact so participate. The elements of this crime are as follows:

(1) that the offender is a public officer, employee or notary public;
(2) that he takes advantage of his official position;
(3) that he falsifies a document by causing it to appear that a person or persons have participated in any act or proceeding when they did not in fact so participate.[50]

Since Matsuura and Tanjutco are both private individuals, they can be indicted for the offense only if it is shown that they conspired with Cua, as a notary public, in the commission thereof.

Contrary to this requirement, however, the Secretary of Justice ordered in its Resolution dated April 4, 2005 the filing of the second information against Matsuura and Tanjutco, notwithstanding the order in the same resolution to exclude Cua in the case. Such ruling evidently amounts to a grave abuse of discretion because as correctly held by the CA:

> Article 171, RPC refers to falsification committed by a public officer, employee, notary or ecclesiastical minister who[,] taking advantage of his official position[,] shall falsify a document, in this case, by causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate. **Herein petitioners [herein respondents Matsuura and Tanjutco], not being included in said enumeration cannot, on their own, be held liable for aforesaid violation. They can be held liable therefor only in conspiracy with one who is a public officer, employee, notary or ecclesiastical minister who, taking advantage of his official position, falsified a document.** On account of the exclusion of Atty. Julie Cua from said charge, herein petitioners cannot be held liable for the charge**. It is settled that there is grave abuse of discretion when an act is done contrary to the Constitution, the law or jurisprudence, or when executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias.** x x x.[51] (Emphasis ours)

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50 *Bernardino v. People*, 536 Phil. 961, 970 (2006).
51 *Rollo* (G.R. No. 179003), pp. 60-61.

The subsequent resolution of the Secretary of Justice to include Cua in the information, following a separate motion for reconsideration by Tan and, we emphasize, only after CA-G.R. SP No. 89346 had already been filed, was inconsequential to the grave abuse of discretion already committed by the Secretary of Justice in its final disposition of the case against Matsuura and Tanjutco. The CA was tasked in CA-G.R. SP No. 89346 to determine the issue of whether or not the Secretary of Justice had committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed resolutions, in light of the rulings, findings and the bases used by the Secretary. In addition, even the CA later declared in CA-G.R. SP No. 96263 that the Secretary of Justice's order to pursue the case against Cua amounted to a grave abuse of discretion.

**G.R. No. 195816**

We now rule on the petitioner's motion for reconsideration of the Court's denial of the petition docketed as G.R. No. 195816. After review, the Court affirms its earlier denial of the petition, given Tan's failure to show any reversible error committed by the CA. As correctly held by the appellate court, no probable cause was established to support a falsification case against Cua.

We are bound to adhere to the presumption of regularity in Cua's performance of her official duty, and to the presumption of regularity that is attached to the subject deed of trust as a public document. As held by the OCP, even "[t]he records of the Notarial Division of the Clerk of Court, Makati City faithfully reflects the duplicate copy of the subject Deed of Trust 'made and entered on June 19, 1997 executed by Antonio L. Tan, Jr.', as certified by Atty. Corazon Cecilia Pineda."[52] It needed more than a bare

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52 *Rollo* (G.R. No. 195816), p. 75.

denial from Tan to overthrow these presumptions. Adequate supporting evidence should have been presented to support his assertions.

Tan's denial that he personally appeared before Cua on June 19, 1997 deserved no weight in the determination of probable cause. He failed to present any plausible explanation as to why it was impossible for him to be at the notary public's office on said date. Neither did he deny that the CTC indicated in the deed's jurat as evidence of identity actually belonged to him. The mere circumstance that his relationship with Matsuura was already strained at the time of the deed's notarization miserably failed to substantiate the claim that he could not have appeared before Cua. Matsuura had precisely explained that the transfer of the shares of stock was part of an attempt to compromise a dispute that existed between them. In addition, we have explained that the alleged theft of the document by Matsuura was sufficiently rebutted during the preliminary investigation.

On the basis of the foregoing, the reasonable probability of the respondents' participation in the commission of the crime of falsification was not sufficiently established during the preliminary investigation. Even the failure of Matsuura and Tanjutco to attach a notarized copy of the deed to their pleading filed with the SEC fails to support a finding of probable cause. On the contrary, the circumstance that an unnotarized copy of the deed was submitted to the SEC weakens the argument that the alleged falsification and wrongful notarization was resorted to by the respondents to suit their interests. It showed that the respondents believed in the value of the deed to their case even if it was not notarized. We then affirm the CA's ruling in CA-G.R. SP No. 96263 that the Secretary of Justice committed grave abuse of discretion, by gross misapprehension of facts, when it ordered the filing of the information against Cua. Although Tan assails the CA's grant of the petition on such basis, jurisprudence provides that grave abuse of discretion refers not merely to palpable errors of jurisdiction; or to violations of the Constitution, the law and jurisprudence. It also refers to

cases in which, for various reasons, there has been a gross misapprehension of facts.[53]

**WHEREFORE,** the Court rules as follows:

(1) In **G.R. No. 179003**, the petition for review is **DENIED**. The Court of Appeals' Decision dated February 6, 2007 and Resolution dated July 24, 2007 in CA-G.R. SP No. 89346 are **AFFIRMED**.

(2) In **G.R. No. 195816**, petitioner Tan's motion for reconsideration is **DENIED**.

**SO ORDERED.**

**BIENVENIDO L. REYES**
Associate Justice

**WE CONCUR:**

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

**TERESITA J. LEONARDO-DE CASTRO**
Associate Justice

**LUCAS P. BERSAMIN**
Associate Justice

[53] *United Coconut Planters Bank v. Looyuko*, G.R. No. 156337, September 28, 2007, 534 SCRA 322, 331.

**MARTIN S. VILLARAMA, JR.**
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