



Republic of the Philippines  
 Supreme Court  
 Manila

SECOND DIVISION

VIRGINIA DE LOS SANTOS-  
 DIO, as authorized representative  
 of H.S. EQUITIES, LTD., and  
 WESTDALE ASSETS, LTD.,  
 Petitioner,

G.R. No. 178947

- versus -

THE HONORABLE COURT OF  
 APPEALS, JUDGE RAMON S.  
 CAGUIOA, in his capacity as  
 Presiding Judge of Branch 74,  
 Regional Trial Court, Olongapo  
 City, and TIMOTHY J.  
 DESMOND,

Respondents.

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PEOPLE OF THE  
 PHILIPPINES,  
 Petitioner,

G.R. No. 179079

- versus -

TIMOTHY J. DESMOND,  
 Respondent.

Present:

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

Promulgated:

JUN 26 2013 *[Signature]*

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DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on *certiorari*<sup>1</sup> assailing the November 8, 2006 Decision<sup>2</sup> and July 19, 2007 Resolution<sup>3</sup> of the Court of Appeals (CA) in CA-G.R. SP No. 88285, upholding the validity of the trial court's dismissal of separate criminal informations for *estafa* against private respondent Timothy J. Desmond (Desmond) due to lack of probable cause.

### The Facts

In 2001, petitioner Virginia De Los Santos-Dio (Dio), the majority stockholder of H.S. Equities, Ltd. (HS Equities) and authorized representative of Westdale Assets, Ltd. (Westdale),<sup>4</sup> was introduced to Desmond, the Chairman and Chief Executive Officer (CEO) of the Subic Bay Marine Exploratorium, Inc. (SBMEI), and the authorized representative of Active Environments, Inc. and JV China, Inc. (JV China), the majority shareholder of SBMEI.<sup>5</sup> After some discussion on possible business ventures, Dio, on behalf of HS Equities, decided to invest a total of US\$1,150,000.00<sup>6</sup> in SBMEI's Ocean Adventure Marine Park (Ocean Adventure), a theme park to be constructed at the Subic Bay Freeport Zone which, when operational, would showcase live performances of false-killer whales and sea lions. In this relation, Dio claimed that Desmond led her to believe that SBMEI had a capital of US\$5,500,000.00, inclusive of the value of the marine mammals to be used in Ocean Adventure,<sup>7</sup> and also guaranteed substantial returns on investment.<sup>8</sup> Desmond even presented a Business Plan, indicating that: (a) Ocean Adventure's "attendance will rise from 271,192 in 2001 to just over 386,728 in 2006, with revenues rising from US\$4,420,000.00 million to US\$7,290,000.00 million in the same time frame"; (b) "[e]arly investors are expected to reap an annual return of 23% in 2001, rising to 51% in 2006"; and (c) "[f]ully priced shares [would yield a 19% return] in 2001, rising to 42% in 2006."<sup>9</sup> Thus, on January 18, 2002, a Subscription Agreement<sup>10</sup> was executed by Desmond, as representative of SBMEI and JV China, and Dio, as representative of HS Equities.

While no Certificate of Stock was issued either to HS Equities or to Dio, HS Equities was expressly granted minority protection rights in a subsequent Subscription and Shareholders Agreement<sup>11</sup> dated March 12, 2002, stating that there shall be "a nominee of [the] Subscriber to be elected

<sup>1</sup> *Rollo* (G.R. No. 178947), pp. 54-87; *rollo* (G.R. No. 179079), pp. 9-33.

<sup>2</sup> *Rollo* (G.R. No. 178947), pp. 96-110; *rollo* (G.R. No. 179079), pp. 36-50. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Edgardo F. Sundiam and Celia C. Librea-Leagogo, concurring.

<sup>3</sup> *Rollo* (G.R. No. 178947), pp. 112-117; *rollo* (G.R. No. 179079), pp. 51-56.

<sup>4</sup> HS Equities and Westdale are both foreign companies organized and registered under the laws of the British Virgin Islands. *Rollo* (G.R. No. 178947), p. 57.

<sup>5</sup> *Rollo* (G.R. No. 179079), pp. 87-90.

<sup>6</sup> *Id.* at 91-93.

<sup>7</sup> *Id.* at 81, 87-90.

<sup>8</sup> See Complaint-Affidavit in I.S. No. 04-M-992, *id.* at 79-84.

<sup>9</sup> *Rollo* (G.R. No. 178947), p. 141; *rollo* (G.R. No. 179079), p. 86.

<sup>10</sup> *Rollo* (G.R. No. 178947), pp. 145-147.

<sup>11</sup> *Id.* at 148-167.

as Treasurer/Chief Financial Officer, who may not be removed by the Board of Directors without the affirmative vote of the Subscriber.”<sup>12</sup> Accordingly, Dio was elected as a member of SBMEI’s Board of Directors and further appointed as its Treasurer.<sup>13</sup> The parties later executed two (2) Investor’s Convertible Promissory Notes – one dated April 4, 2001<sup>14</sup> and another dated May 8, 2001<sup>15</sup> – covering HS Equities’ infusion of a total of US\$1,000,000.00 for the purpose of purchasing machinery, equipment, accessories, and materials to be used for the construction of Ocean Adventure.

In June 2002, Dio, this time on behalf of Westdale, invested another US\$1,000,000.00<sup>16</sup> in a separate business venture, called the Miracle Beach Hotel Project (Miracle Beach), which involved the development of a resort owned by Desmond adjoining Ocean Adventure. They agreed that the said investment would be used to settle SBMEI’s ₱40,000,000.00 loan obligation to First Metro Investment Corporation and for the construction of 48 lodging units/cabanas.<sup>17</sup> However, when the corresponding subscription agreement was presented to Dio by SBMEI for approval, it contained a clause stating that the “funds in the Subscription Bank Account” were also to be used for the “[f]unding of Ocean Adventure’s Negative Cash Flow not exceeding [US\$200,000.00].”<sup>18</sup> This was in conflict with the exclusive purpose and intent of Westdale’s investment in Miracle Beach and as such, Dio refused to sign the subscription agreement.

Dio further claimed that she found out that, contrary to Desmond’s representations, SBMEI actually had no capacity to deliver on its guarantees, and that in fact, as of 2001, it was incurring losses amounting to ₱62,595,216.00.<sup>19</sup> She likewise claimed to have discovered false entries in the company’s books and financial statements – specifically, its overvaluation of the marine animals and its non-disclosure of the true amount of JV China’s investment<sup>20</sup> – which prompted her to call for an audit investigation. Consequently, Dio discovered that, without her knowledge and consent, Desmond made certain disbursements from Westdale’s special account, meant only for Miracle Beach expenditures (special account), and diverted a total of US\$72,362.78 therein for the operating expenses of Ocean Adventure.<sup>21</sup> When Desmond refused to execute an undertaking to return the diverted funds, Dio, in her capacity as Treasurer of SBMEI, suspended the release of the remaining funds in the aforesaid special account.<sup>22</sup>

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<sup>12</sup> Id. at 156.

<sup>13</sup> See Minutes of Annual Stockholders Meeting and Minutes of Organizational Meeting of the Board of Directors, id. at 172 & 175.

<sup>14</sup> Id. at 176-177.

<sup>15</sup> Id. at 178-179.

<sup>16</sup> *Rollo* (G.R. No. 178947), p. 180; *rollo* (G.R. No. 179079), p. 114.

<sup>17</sup> *Rollo* (G.R. No. 178947), p. 220; *rollo* (G.R. No. 179079), p. 111.

<sup>18</sup> *Rollo* (G.R. No. 178947), p. 184.

<sup>19</sup> *Rollo* (G.R. No. 179079), p. 125.

<sup>20</sup> See Complaint-Affidavit (I.S. No. 04-M-993), id. at 109-113.

<sup>21</sup> *Rollo* (G. R. No. 179079), pp. 115-118.

<sup>22</sup> Id. at 112 & 120.

Eventually, after Dio was ousted as Director and Treasurer of SBMEI,<sup>23</sup> she filed, on April 19, 2004, two (2) criminal complaints<sup>24</sup> (subject criminal complaints) for *estafa* (a) through false pretenses under Article 315(1)(b)<sup>25</sup> of the Revised Penal Code<sup>26</sup> (RPC); and (b) with unfaithfulness or abuse of confidence through misappropriation or conversion under Article 315(2)(a)<sup>27</sup> of the RPC, both against Desmond before the Olongapo City Prosecutor's Office (City Prosecutor's Office), docketed as IS Nos. 04-M-992 and 04-M-993.

In defense, Desmond maintained that his representation of himself as Chairman and CEO of SBMEI was not a sham and that Dio has not even proven that he did not have the expertise and qualifications to double her investment. Among others, he also denied having been fired from Beijing Landa Aquarium Co. Ltd. for his supposed incompetence and mismanagement. He further asserted that it was not deceitful to value the marine mammals at US\$3,720,000.00 as equity contribution of JV China in SBMEI, notwithstanding the fact that two (2) false killer whales had already perished before the company could start operations. This is because the said valuation, in any case, would be based on the collective income-earning capacity of the entire animal operating system derived from revenues generated by marine park attendance and admission fees.<sup>28</sup>

In reply, Dio insisted that SBMEI, at the outset, never had sufficient assets or resources of its own because, contrary to Desmond's claims, the total amount of US\$2,300,000.00 it purportedly invested in buildings and equipment actually came from the investments Dio's company made in SBMEI.<sup>29</sup>

<sup>23</sup> *Rollo* (G.R. No. 178947), p. 216; *rollo* (G.R. No. 179079), p. 83.

<sup>24</sup> *Rollo* (G.R. No. 178947), pp. 212-217 & 218-222; *rollo* (G.R. No. 179079), pp. 79-84 & 109-113.

<sup>25</sup> ART. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished

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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 a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

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<sup>26</sup> Act No. 3815, as amended.

<sup>27</sup> ART. 315. *Swindling (estafa)*. - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished

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1. With unfaithfulness or abuse of confidence, namely:

x 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;

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<sup>28</sup> See Counter-Affidavit, *rollo* (G.R. No. 178947), pp. 223-244.

<sup>29</sup> See Reply-Affidavit, *id.* at 245-250.

After the preliminary investigation, the City Prosecutor issued a Resolution<sup>30</sup> dated August 26, 2004, finding probable cause against Desmond for the abovementioned crimes, to wit:

The foregoing clearly applies in the instant two (2) cases as borne out by the following facts, to wit [sic]: (1) Desmond, as the Chairman and Chief Executive Office of SBMEI and in order to persuade Dio to invest, represented that he possessed the necessary influence, expertise and resources (in terms of credit and property) for the project knowing the same to be false as he never had the capital for the project as borne out by his correspondences with Dio; and (2) Dio fell for these misrepresentations and the lure of profit offered by Desmond, thereby being induced to invest the amounts of \$1,150,000.00 and \$1,000,000.00 to the damage and prejudice of her company.

The elements of the crimes charged were thus established in these cases, namely Dio parted with her money upon the prodding and enticement of respondent on the false pretense that he had the capacity and resources for the proposed project. In the end, Dio was not able to get her money back, thus causing her damage and prejudice. Moreover, such defraudation or misappropriation having been committed by Desmond through his company SBMEI involving funds solicited from Dio as a member of the general public in contravention of the public interest, the probable cause clearly exists to indict Desmond for the crime of Estafa under Article 315 (1)(b) and (2)(a) of the Revised Penal Code in relation to PD No. 1689.<sup>31</sup>

In view of the foregoing, corresponding criminal informations<sup>32</sup> (subject informations) were filed with the Regional Trial Court of Olongapo City, Branch 74 (RTC), docketed as Criminal Case Nos. 516-2004 and 515-2004. The accusatory portions thereof read as follows:

**Criminal Case No. 516-2004<sup>33</sup>**

That in or about and sometime in early 2001, in Olongapo City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being the officer of Subic Bay Marine Exploration, Inc. (SBMEI), acting as a syndicate and by means of deceit, did then and there, wilfully, unlawfully and feloniously defraud H.S. EQUITIES LIMITED, represented in this case by Virginia S. Delos Santos-Dio in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he made to said Virginia S. Delos Santos-Dio to the effect that he had the expertise and qualifications, as well as the resources, influence, credit and business transaction with the Subic Bay Metropolitan Authority (SBMA) and other financing institutions to ensure the viability of the Subic Bay Marine Exploration Ocean Adventure Project (SBMEOA), which he represented to be a qualified and legally existing investment enterprise with capacity to solicit

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<sup>30</sup> *Rollo* (G.R. No. 178947), pp. 251-254; *rollo* (G.R. No. 179079), pp. 135-138. Penned by City Prosecutor Prudencio B. Jalandoni.

<sup>31</sup> *Id.* at 253-254.

<sup>32</sup> *Rollo* (G.R. No. 178947), pp. 255-256 & 257-258; *rollo* (G.R. No. 179079), pp. 139-140 & 141-142.

<sup>33</sup> *Rollo* (G.R. No. 178947), pp. 255-256; *rollo* (G.R. No. 179079), pp. 139-140.

investment from the general public, by submitting documents for the purpose, which representations he knew to be false and fraudulent and the supporting documents are similarly spurious and were only made in order to induce said Virginia S. Delos Santos-Dio to invest and deliver as in fact she invested and delivered a total amount of One Million One Hundred Fifty Thousand US Dollars (\$1,150,000.00) to the said accused on the strength of said manifestations and representations and supporting documents, and said accused, once in possession of the said amount, misapplied, converted and misappropriated the same to his own personal use and benefit, to the damage and prejudice of H.S. Equities Limited in the amount of US \$1,150,000.00 or Php57,500,000.00 Pesos, the dollar computed at the rate of Php 50.00 to [US]\$1.00 which was the prevailing rate of exchange of a dollar to peso at the time of the commission of the offense.

CONTRARY TO LAW.

**Criminal Case No. 515-2004<sup>34</sup>**

That in or about and sometime during the period from June 2002 to July 2002, in Olongapo City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously defraud Westdale Assets, Limited represented in this case by Virginia S. Delos Santos-Dio in the following manner to wit: the said accused received in trust and for administration from the said Virginia S. Delos Santos-Dio the amount of One Million US Dollars (\$1,000,000.00) under the express obligation of using the same to pay the loan facility of the Subic Bay Marine Exploration, Inc. (SBMEI) with First Metro Investment Corporation and to fund the construction and development of the Miracle Beach Project but the said accused, once in possession of the said amount, with grave abuse of confidence and with intent to defraud, misapplied, misappropriated and converted the same for his own use and benefit by devoting it to a purpose or use different from that agreed upon and despite repeated demands made upon him to account for and to return the said amount, he failed and refused and still fails and refuses to do so, to the damage and prejudice of the said Westdale Assets, Limited in the amount of US \$1,000,000.00 or its equivalent to FIFTY MILLION (Php 50,000,000.00) Pesos, Philippine Currency, the dollar being computed at the rate of Php50.00 to \$ 1.00 which was the prevailing rate of exchange at the commission of the offense, to the damage and prejudice of the latter in the aforementioned amount.

CONTRARY TO LAW.

Aggrieved, Desmond filed a Motion for Reconsideration,<sup>35</sup> as well as a Motion to Withdraw Filed Informations.<sup>36</sup> He also filed before the RTC a Motion to Defer Further Proceedings and to Defer Issuance of Warrant of Arrest<sup>37</sup> but subsequently withdrew the same and filed, instead, a Motion for Judicial Determination of Probable Cause.<sup>38</sup>

<sup>34</sup> *Rollo* (G.R. No. 178947), pp. 257-258; *rollo* (G.R. No. 179079), pp. 141-142.

<sup>35</sup> *Rollo* (G.R. No. 178947), pp. 259-271; *rollo* (G.R. No. 179079), pp. 143-155.

<sup>36</sup> *Rollo* (G.R. No. 178947), pp. 274-276; *rollo* (G.R. No. 179079), pp. 156-158.

<sup>37</sup> *Rollo* (G.R. No. 178947), pp. 277-284; *rollo* (G.R. No. 179079), pp. 159-167.

<sup>38</sup> *Rollo* (G.R. No. 178947), pp. 286-291; *rollo* (G.R. No. 179079), pp. 168-173.

### The RTC Ruling

In an Order<sup>39</sup> dated October 21, 2004, the RTC ruled in favor of Desmond and declared that no probable cause exists for the crimes charged against him since the elements of *estafa* were not all present, to wit:

First, the element of misrepresentation or deceit found in par. 2 (a) Article 315 of the Revised Penal Code is absent. It must be emphasized that the promises allegedly made to the complainant by the accused that her company's investment will significantly increase, clearly appeared in the Subic Bay Marine Exploration, Inc.'s ("SBMEI", for brevity) printed business plan dated January 12, 2001 (Annex "A", Complaint-Affidavit dated 19 April 2004). Verily, this is SBMEI's representation or "come on" to would-be investors and not a personal assurance of the accused. The fact that accused was the company's Chief Executive Officer and Chairman of the Board of Directors is of no moment in the absence of any evidence to show that accused personally prepared the business plan thereby making the alleged "rosy picture" his own personal enticements to the complainant. Therefore, there being a dearth of evidence pointing to the accused as author of the SBMEI's business plan, any misrepresentation or deceit committed cannot be personally attributed to him.

Furthermore, the court cannot find any sufficient evidence that the accused personally assured the complainant about his so-called power, influence and credit with the SBMA and other financial institutions that would supposedly insure the viability and profitability of the project. Note that nowhere in the Complaint-Affidavit of the private complainant are there specific factual allegations that would show that the accused had personal business meetings with the SBMA and said financial institutions. As to how and in what manner and scope accused exercised such alleged power, influence and credit over these juridical entities remain a bare and self-serving averment in the absence of any factual detail or account.

Finally, it cannot be gainsaid [*sic*] that accused was the one who personally valued the marine mammals contributed by JV China Incorporated to the Subic Bay Marine Exploration, Inc. as capital amounting to US\$3.724 Million. Evidence clearly point to an independent valuation done by a third party namely Beijing Landa Aquarium that valued the marine mammals under the Buy-Out Agreement dated September 9, 1998. Needless to state, the onus is on complainant to controvert this valuation. Again, however, no adequate proof was adduced along this line.

Second, the element of personal misappropriation by the accused under par. 1(b) Article 315 of the Revised Penal Code is likewise not present. While it may be conceded that there was money utilized to pay salaries of expatriates and staff as well as the cost of utilities amounting to US\$72,272.00 complainant failed to show that said money was taken from her companies' investments in SBMEI. It must be pointed out that other than complainant's bare allegation, there was no document presented categorically stating that the investment of complainant's companies were

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<sup>39</sup> *Rollo* (G.R. No. 178947), pp. 307-309; *rollo* (G.R. No. 179079), pp. 190-192. Penned by Executive Judge Ramon S. Caguioa.

earmark for a particular payment or project. Hence, when the investment entered SBMEI's financial coffers, the same presumably were co-mingled with other monies of the corporation.

Moreover and more revealing, is the fact that again there was no showing that it was accused who personally caused the payment of these expenses allegedly in violation of the objective of the investment. It must be noted that SBMEI is a corporation and not a single proprietorship. Being a corporation, expenses paid of such a kind as utilities and salaries are not authorized personally and solely by the President nor the Chief Executive Officer nor even by the Chairman of the Board for that matter. These are corporate acts that are passed through board resolutions. Hence, these corporate acts can in no way be considered personal acts of the accused. Yet, he was singled out among all 5 members of the Board of Directors who presumably, in the ordinary course of business, approved by resolution the payments of such utilities and salaries. Consequently, there is again insufficiency of evidence that the accused alone caused the payment of these salaries and utilities for the sole purpose of pocketing the money thereby using the same for personal gain.<sup>40</sup>

Consequently, the RTC denied the issuance of a warrant of arrest and hold departure order against Desmond and ordered the dismissal of the cases against him:

**WHEREFORE**, foregoing considered, the subject motion for judicial determination of probable cause is favorably granted. There being no probable cause, the cases against the accused must be dismissed as they are hereby **DISMISSED**. The motions to issue warrant of arrest and Hold Departure Order as well as the prayer for provisional remedy are necessarily **DENIED**.

**SO ORDERED.**<sup>41</sup>

Given the RTC's dismissal of the foregoing criminal cases, the City Prosecutor's Office filed motion for reconsideration which was, however, denied. As such, it filed a petition for *certiorari* and *mandamus*<sup>42</sup> before the CA on the ground of grave abuse of discretion. Relatedly, Dio also filed a petition-in-intervention<sup>43</sup> before the CA, praying for the reinstatement of the subject criminal complaints.

### **The CA Ruling**

In its November 8, 2006 Decision,<sup>44</sup> the CA upheld the RTC's authority to dismiss a criminal case if in the process of determining probable cause for issuing a warrant of arrest, it also finds the evidence on record insufficient to establish probable cause. It explained that such dismissal is an

<sup>40</sup> *Rollo* (G.R. No. 178947), pp. 307-308; *rollo* (G.R. No. 179079), pp. 190-191.

<sup>41</sup> *Rollo* (G.R. No. 178947), p. 309; *rollo* (G.R. No. 179079), p. 192.

<sup>42</sup> *Rollo* (G.R. No. 178947), pp. 320-343; *rollo* (G.R. No. 179079), pp. 194-217.

<sup>43</sup> *Rollo* (G.R. No. 178947), pp. 350-393.

<sup>44</sup> *Rollo* (G.R. No. 178947), pp. 96-110; *rollo* (G.R. No. 179079), pp. 36-50.

exercise of judicial discretion sanctioned under Section 6(a), Rule 112 of the Revised Rules of Criminal Procedure. On this score, the CA evaluated the evidence presented and agreed with the RTC's conclusions that there was no sufficient basis showing that Desmond committed *estafa* by means of false pretenses. Neither was it established that the money sourced from petitioner Dio was converted by respondent Desmond for some other purpose other than that for which it was intended. Pertinent portions of the CA Decision restated the RTC's observations in this wise:

In the instant case, the alleged false representations by Desmond which allegedly induced private complainants H.S. Equities, Ltd. ("H.S. Equities") and Dio, to part with their money are not supported by the facts on record. First, the alleged false representation employed by Desmond with respect to his expertise and qualifications in the form of influence, credit and business transactions with the Subic Bay Metropolitan Authority (SBMA) and financial institutions and such resources to enable private complainants to double its investment with SBMEI has not been shown to be false.

Indeed, nowhere in the documentary evidence presented by private complainants that allegedly contained the above false representations does it show that it was private respondent himself who made such representation. Notably, the SBMEI's Business Plan dated January 12, 2001 to which private complainants anchor such allegation does not indicate that the representations made therein came personally from Desmond. In addition, neither does it appear from such document that the statements therein were used as a form of a personal assurance coming from Desmond that private complainants would indeed double the amount they had invested with SBMEI. If at all, we agree with the trial court that statements made in the said business plan were merely a form of enticement to encourage would-be investors from [*sic*] investing in such kind of business undertaking.

Moreover, we likewise agree with the trial court that no factual allegations were made by private complainants as to how such false pretense of power and influence was made upon them by Desmond and which convinced private complainants to part with their money. It bears stressing that the allegations of false pretense of power and influence in a case of *estafa* are mere conclusions of law which must be substantiated at the very least by circumstances which would show that the person accused of committing *estafa* did indeed commit acts of false representations. As the records show, there was no misrepresentation on the part of Desmond that he is the Chairman and Chief Executive Officer of SBMEI which is a corporation engaged in the business of developing marine parks. Significantly, the records likewise show that SBMEI did indeed build and develop a marine park in Subic Bay (Ocean Adventure) for the purposes stated in its business plan and had entered into a long-term lease agreement with SBMA. Documentary evidence in the form of the Report of Independent Auditors to SBMEI shows the amount of investment the corporation had invested in the said business undertaking. For instance, the corporation had invested the amount of ₱106,788,219.00 in buildings and equipment alone. It has also assets consisting of marine mammals which are necessary for the operation of the marine park. In this respect, we cannot subscribe to private complainants' contention that there was misrepresentation on the part of private respondent that he had overvalued the worth of the marine mammals it had purchased from Beijing Landa

Aquarium Co., Ltd. of the Republic of China. This claim of private complainants of the deceitful acts employed by Desmond in overpricing the value of the marine animals for US\$3.724 Million when in fact the sea animals were only valued for one U.S. dollar was not corroborated by the evidence on hand.

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In the same manner, the facts in the case at bar that would allegedly constitute a criminal charge of estafa under par. 1(b) are wanting. Be it noted that under the said paragraph, estafa with unfaithfulness or abuse of confidence through misappropriation or conversion of the money, goods or any other personal property must be received in trust, on commission, for administration, or under any other obligation which involves the duty to make delivery thereof or to return the same. It is not amiss to note that a perusal of private complainants' Complaint-Affidavit shows that subject money in the amount of US\$1,000,000.00 to be used for the Miracle Beach Project was placed in a special account with Equitable-PCI Bank. As the records show, the said funds were placed by Dio under the control of Fatima Paglicawan, an employee of Westdale, such that, no money can be withdrawn from the special account without the signature of the said employee, Desmond and a certain John Corcoran. Therefore, at such time, it cannot be said that the funds were received for administration or already under the juridical possession of Desmond. Meanwhile, we would like to emphasize that to constitute conversion, it presupposes that the thing has been devoted to a purpose or use different from that agreed upon. Verily, a facial examination of the Journal Voucher and Check Voucher pertaining to the withdrawals made on such account clearly shows that the disbursements were not only authorized by Paglicawan but likewise indicated that the purpose for such withdrawals was to cover payments for BIR taxes and the salaries of local employees and expatriates.

To repeat, these withdrawals as well as the purpose thereof were known to Paglicawan when [*sic*] she authorized the disbursements. Paglicawan, who was designated by private complainant Dio to control the release of the said funds is presumed to have acted under the latter's authority. Such miscommunication between Dio and Paglicawan with respect to the purpose of the funds does not make out a case of estafa there being no abuse of confidence or conversion to speak of taking into account that the said funds were released under the presumed authority of private complainants through Paglicawan, and which were indeed used for the purpose for which it was withdrawn. That being the case, there can be no damage or prejudice to Westdale and Dio as there was no disturbance in the property rights of Westdale and Dio in the said funds since the same were used for the purpose for which it was disbursed.

Then again, we agree with the trial court that there is no sufficient evidence adduced to support the criminal charges of estafa against Desmond. As pointed out by the trial court, while private respondent is the Chairman and Chief Executive Officer of SBMEI, there is no showing that he had personally and solely authorized the application of the above funds for the payment of expenses not directly connected with the Miracle Beach Project. Nor does it appear that as Chairman and Chief Executive

Officer, Desmond has been appointed to execute, on his own, such corporate acts.<sup>45</sup> (Citations omitted)

The City Prosecutor and Dio filed their respective motions for reconsideration which were both denied in a Resolution<sup>46</sup> dated July 19, 2007.

Hence, the instant petitions.

### **The Issue Before the Court**

The primordial issue in this case is whether or not the CA erred in finding no grave abuse of discretion on the part of the RTC when it dismissed the subject informations for lack of probable cause.

### **The Court's Ruling**

The petitions are meritorious.

Determination of probable cause may be either executive or judicial.

The first is made by the public prosecutor, during a preliminary investigation, where he is given broad discretion to determine whether probable cause exists for the purpose of filing a criminal information in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.<sup>47</sup>

The second is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. In this respect, the judge must satisfy himself that, on the basis of the evidence submitted, there is a necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge, therefore, finds no probable cause, the judge cannot be forced to issue the arrest warrant.<sup>48</sup> Notably, since the judge is already duty-bound to determine the existence or non-existence of probable cause for the arrest of the accused immediately upon the filing of the information, the filing of a motion for judicial determination of probable cause becomes a mere superfluity,<sup>49</sup> if not a deliberate attempt to cut short

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<sup>45</sup> *Rollo* (G.R. No. 178947), pp. 105-109; *rollo* (G.R. No. 179079), pp. 45-49.

<sup>46</sup> *Rollo* (G.R. No. 178947), pp. 112-117; *rollo* (G.R. No. 179079), pp. 51-56.

<sup>47</sup> *People v. Castillo*, G.R. No. 171188, June 19, 2009, 590 SCRA 95, 105-106.

<sup>48</sup> *Id.* at 106.

<sup>49</sup> *Leviste v. Alameda*, G.R. No. 182677, August 3, 2010, 626 SCRA 575, 609.

the process by asking the judge to weigh in on the evidence without a full-blown trial.

In the case of *Co v. Republic*,<sup>50</sup> the Court emphasized the settled distinction between an executive and a judicial determination of probable cause, *viz.*<sup>51</sup>

We reiterate that preliminary investigation should be distinguished as to whether it is an investigation for the determination of a sufficient ground for the filing of the information or it is an investigation for the determination of a probable cause for the issuance of a warrant of arrest. The first kind of preliminary investigation is executive in nature. It is part of the prosecution's job. The second kind of preliminary investigation which is more properly called preliminary examination is judicial in nature and is lodged with the judge.

On this score, it bears to stress that a judge is not bound by the resolution of the public prosecutor who conducted the preliminary investigation and must himself ascertain from the latter's findings and supporting documents whether probable cause exists for the purpose of issuing a warrant of arrest. This prerogative is granted by no less than the Constitution which provides that "no warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce."<sup>52</sup>

While a judge's determination of probable cause is generally confined to the limited purpose of issuing arrest warrants, Section 5(a),<sup>53</sup> Rule 112 of the Revised Rules of Criminal Procedure explicitly states that a judge may immediately dismiss a case if the evidence on record clearly fails to establish probable cause,<sup>54</sup> *viz.*:

SEC. 5. *When warrant of arrest may issue.* – (a) By the Regional Trial Court. – Within ten (10) days from the filing of the complaint or information, the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence. **He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause.** If he finds probable cause, he shall issue a warrant of arrest, or a commitment order if the accused had already been arrested, pursuant to a warrant issued by the judge who conducted preliminary investigation or when the complaint or information was filed pursuant to Section 7 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days

<sup>50</sup> G.R. No. 168811, November 28, 2007, 539 SCRA 147.

<sup>51</sup> Id. at 157, citing *People v. Inting*, G.R. No. 88919, July 25, 1990, 187 SCRA 788, 794. See also *AAA v. Carbonell*, G.R. No. 171465, 8 June 2007, 524 SCRA 496.

<sup>52</sup> 1987 PHILIPPINE CONSTITUTION, Article III, Section 2.

<sup>53</sup> Formerly Section 6(a) of Rule 112. The deletion of Section 5 concerning the power of MTC judges to conduct preliminary investigation through the issuance of Administrative Matter No. 05-8-26-SC dated August 30, 2005 caused a renumbering of the subsequent sections beginning with Section 6.

<sup>54</sup> See also *Ong v. Genio*, G.R. No. 182336, December 23, 2009, 609 SCRA 188, 196-197.

from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis and underscoring supplied)

In this regard, so as not to transgress the public prosecutor's authority, it must be stressed **that the judge's dismissal of a case must be done only in clear-cut cases when the evidence on record plainly fails to establish probable cause – that is when the records readily show uncontroverted, and thus, established facts which unmistakably negate the existence of the elements of the crime charged.** On the contrary, if the evidence on record shows that, more likely than not, the crime charged has been committed and that respondent is probably guilty of the same, the judge should not dismiss the case and thereon, order the parties to proceed to trial. In doubtful cases, however, the appropriate course of action would be to order the presentation of additional evidence.<sup>55</sup>

In other words, once the information is filed with the court and the judge proceeds with his primordial task of evaluating the evidence on record, he may either: (a) issue a warrant of arrest, if he finds probable cause; (b) immediately dismiss the case, if the evidence on record clearly fails to establish probable cause; and (c) order the prosecutor to submit additional evidence, in case he doubts the existence of probable cause.<sup>56</sup>

Applying these principles, the Court finds that the RTC's immediate dismissal, as affirmed by the CA, was improper as the standard of clear lack of probable cause was not observed. In this case, records show that certain essential facts – namely, (a) whether or not Desmond committed false representations that induced Dio to invest in Ocean Adventure; and (b) whether or not Desmond utilized the funds invested by Dio solely for the Miracle Beach Project for purposes different from what was agreed upon – remain controverted. As such, it cannot be said that the absence of the elements of the crime of *estafa* under Article 315(2)(a)<sup>57</sup> and 315(1)(b)<sup>58</sup> of the RPC had already been established, thereby rendering the RTC's immediate dismissal of the case highly improper.

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<sup>55</sup> SEC. 5(a), Rule 112, Revised Rules of Criminal Procedure, as amended by A. M. No. 05-8-26-SC.

<sup>56</sup> RIANO, W.B., Criminal Procedure (The Bar Lecture Series), 2011 Ed., p. 190.

<sup>57</sup> The elements of *estafa* through false pretenses under Article 315, paragraph 2(a) of the RPC are: (1) that the accused made false pretenses or fraudulent representations as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (2) that the false pretenses or fraudulent representations were made prior to or simultaneous with the commission of the fraud; (3) that the false pretenses or fraudulent representations constitute the very cause which induced the offended party to part with his money or property; (4) that as a result thereof, the offended party suffered damage. See *Ansaldo v. People*, G.R. No. 159381, March 26, 2010, 616 SCRA 556, 564.

<sup>58</sup> The elements of *estafa* with abuse of confidence through misappropriation or conversion under Article 315 1(b) of the RPC 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. See *Burgundy Realty Corporation v. Reyes*, G.R. No. 181021, December 10, 2012, 687 SCRA 524, 532-533.

Lest it be misconceived, trial judges will do well to remember that when a perceived gap in the evidence leads to a “neither this nor that” conclusion, a purposeful resolution of the ambiguity is preferable over a doubtful dismissal of the case. Verily, a judge’s discretion to dismiss a case immediately after the filing of the information in court is appropriate only when the failure to establish probable cause can be clearly inferred from the evidence presented and not when its existence is simply doubtful. After all, it cannot be expected that upon the filing of the information in court the prosecutor would have already presented all the evidence necessary to secure a conviction of the accused, the objective of a previously-conducted preliminary investigation being merely to determine whether there is 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.<sup>59</sup> In this light, given that the lack of probable cause had not been clearly established in this case, the CA erred, and the RTC gravely abused its discretion, by ruling to dismiss Criminal Case Nos. 515-2004 and 516-2004. Indeed, these cases must stand the muster of a full-blown trial where the parties could be given, as they should be given, the opportunity to ventilate their respective claims and defenses, on the basis of which the court *a quo* can properly resolve the factual disputes therein.

**WHEREFORE**, the petitions are **GRANTED**. The November 8, 2006 Decision and July 19, 2007 Resolution of the Court of Appeals in CA-G.R. SP No. 88285 which affirmed the October 21, 2004 Order of Dismissal issued by the Regional Trial Court of Olongapo City, Branch 74 are **SET ASIDE**. The two (2) criminal informations for *estafa* against respondent Timothy J. Desmond in Criminal Case Nos. 515-2004 and 516-2004 are hereby **REINSTATED**. Accordingly, the trial court is directed to proceed with the arraignment of the accused and the trial of the case with dispatch.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

<sup>59</sup> *People v. CA*, G.R. No. 126005, January 21, 1999, 301 SCRA 475, 488.



**ARTURO D. BRION**  
Associate Justice



**MARIANO C. DEL CASTILLO**  
Associate Justice



**JOSE PORTUGAL BEREZ**  
Associate Justice

### ATTESTATION

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



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson, Second Division

### CERTIFICATION

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



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