

FIRST DIVISION

[G.R. No. 174874, October 04, 2007]

**GILBERT G. GUY, PETITIONER, VS. ASIA UNITED BANK,
RESPONDENT.**

D E C I S I O N

GARCIA, J.:

In this appeal by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court, petitioner Gilbert G. Guy (Guy, for short) seeks to annul and set aside the Decision^[1] dated September 25, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 94361, reversing the Resolution^[2] dated April 20, 2006 of the Secretary of Justice^[3] in I.S. No. 05-01-00365 and I.S. No. 05-03-02371.

Undisputed are the following factual antecedents:

In 1993, herein respondent Asia United Bank (AUB) granted 3D Industries, Inc. (3D, hereafter) a loan in the form of stand-by letter of credit (L/C) in the amount of P30 million. To guarantee the loan accommodation, Guy, as then Vice President for Operations of 3D and a member of its Board of Directors, and then 3D President Paulino Delfin Pe (Pe) executed on March 23, 1999 a Continuing Guaranty in AUB's favor. Sometime between the months of July and September 2004, AUB issued several L/Cs for 3D's importations in the total amount of US\$216,391.26 or the peso equivalent of P11,287,264.00, more or less. For the import transactions, Pe signed several trust receipts in favor of AUB before the imported goods were released to 3D. As specifically provided in the trust receipts thus signed, 3D shall sell the goods for the account of, and, thereafter, remit the proceeds of the sale to, AUB not later than the fixed periods therein stated, or to account for the same, if unsold.^[4]

The succeeding relevant events are summarized in the assailed CA Decision, as follows:

However, 3D failed to comply with its obligation as expressly specified in the trust receipts. Consequently, [respondent] AUB sent [two] demand letters ... to 3D [and], to [petitioner] GUY, for the latter to remit the proceeds of the goods in the total amount of P12, 148,816.90 covered by the subject trust receipts. When said demands went unheeded, ... AUB filed with the Office of the City Prosecutor of Pasig City two (2) complaints against ... GUY, as majority and controlling stockholder [of 3D] and by virtue of his continuing guaranty, for estafa under Article 315 1(b) of the Revised Penal Code [RPC] in relation to P.D. No. 115 or the Trust Receipts Law, docketed as **I.S. No. 05-01-00365 and I.S. No. 05-03-02371**, respectively.

During the preliminary investigation, ... GUY alleged that PE, 3D's former

President, who executed and signed the subject trust receipts, should have been charged instead of him because it was PE who actively managed the business affairs of 3D at the time when the subject trust receipts were issued. He claimed that being the majority and controlling stockholder of 3D did not automatically make him liable for the offenses charged because he ... had no hand in the management of 3D. [Petitioner] GUY further alleged that the goods [covered by] the trust receipts ... were subsequently delivered [by 3D] to Northern Islands Company, Inc. (NICI), the exclusive distributor of 3D, for the sale and distribution thereof. Thus, when the said goods or the proceeds of the sale thereof were not accounted for by NICI after demands to account for the same were made by 3D, the latter filed several cases against NICI. This circumstance purportedly prevented 3D from complying with the terms and conditions provided for under the subject trust receipts.

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On October 13, 2005, the Investigating Prosecutor, Emmanuel L. Obungen, ... came out with the Joint Resolution, in I.S. No. 05-01-00365 and I.S. No. 05-03-02371, finding probable cause for the offenses charged. Accordingly, he filed with the Regional Trial Court (RTC), Branch 67, Pasig City two (2) Informations for estafa under Article 315 1(b) of the [RPC] in relation to P.D. No. 115, docketed as Criminal Case Nos. 131883 and 131884.

Aggrieved, [Guy] filed with the DOJ [Department of Justice] a Petition for Review, to which [AUB filed] a comment

On December 22, 2005, [DOJ Secretary Raul] GONZALES ... issued a Resolution, denying the petition for review

[Petitioner] GUY admittedly received a copy of the December 22, 2005 Resolution ... on December 28, 2005. On January 11, 2006, [he] ... filed a motion for reconsidered thereto.

[Respondent] AUB filed its ... its Comment/Manifestation [to the motion for reconsideration] on April 26, 2006.

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On **April 20, 2006**, [DOJ Secretary] GONZALEZ, issued the assailed Resolution, in I.S. No. 05-01-00365 and I.S. No. 05-03-02371, this time, granting the petition for review and reversing his December 22, 2005 Resolution, [disposing] ... as follows:

WHEREFORE, the Petition for Review filed by respondent-appellant Gilbert G. Guy is hereby **GRANTED**, and the assailed Resolution dated October 13, 2005 of the Pasig City Prosecutor's Office is hereby **REVERSED** and **SET ASIDE**, and both complaints against respondent-appellant Gilbert G. Guy are hereby **DISMISSED**. Further, the City Prosecutor of Pasig is hereby ordered to file the corresponding motion to withdraw

the Informations in the instant cases for the crime of Estafa under Article 315 (b) of the [RPC] in relation to P.D. 115, and report the action taken thereon within five (5) days from receipt hereof

SO ORDERED. (Words in brackets added.)

In gist, the Secretary of Justice predicated his reversal order on the absence of evidence to prove (a) the actual and direct participation of Guy in the trust receipts transactions; (b) Guy's receipt of the goods covered by the trust receipts; and (c) finally Guy's misappropriation or conversion of the goods subject of the trust receipts and/or the proceeds of the sale thereof.

On May 8, 2006, AUB went to the CA on a petition for *certiorari* under Rule 65 of the Rules of Court with a prayer for preliminary injunctive relief. Docketed as *CA-G.R. SP No. 94361*, the petition ascribed grave abuse of discretion on the part of the Department of Justice (DOJ) Secretary in issuing his resolution of April 20, 2006, it being AUB's main posture that the former had already lost jurisdiction over Guy's motion for reconsideration subject of the resolution. AUB, as petitioner *a quo*, invoked two other grounds for allowing *certiorari*.

By Resolution^[5] dated May 10, 2006, the CA directed Guy to file his comment and, at the same time, issued a temporary restraining order to enjoin the enforcement of the DOJ's April 20, 2006 resolution. On May 19, 2006, Guy sought the inhibition of CA Associate Justices Vicente Q. Roxas and Juan Q. Enriquez on grounds, *inter alia*, of alleged bias and prejudice against Guy as purportedly manifested by their ruling, with Justice Roxas as *ponente*, in the related case, *i.e.*, CA G.R. SP No. 87104, involving NICI, Guy and the trust receipts-covered goods imported by 3D and subject of the estafa case adverted to above.^[6]

Eventually, on September 25, 2006, the former First Division of the CA rendered its assailed Decision^[7] reversing the April 20, 2006 Resolution^[8] of the Secretary of Justice. The decretal portion of said decision reads:

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The April 20, 2006 Resolution of the Secretary of Justice is hereby **REVERSED** and **SET ASIDE**. The October 13, 2005 Joint Resolution of the Office of the City Prosecutor of Pasig City, which found probable cause for estafa against [petitioner Guy], and the December 22, 2005 Resolution of the Department of Justice, which denied [Guy's] petition for review, are hereby **REINSTATED**.

SO ORDERED. (Words in brackets added; emphasis in the original.)

The CA confined and predicated its reversal action on the lone issue of loss of jurisdiction, as reflected on the ensuing statements embodied in its challenged decision:

This decision is purely about the [DOJ Secretary's] loss of jurisdiction. It is basic that all [his] Resolutions are void after his loss of jurisdiction. There is no weighing evidence nor any discretion at all when loss of jurisdiction is the issue. The law is explicit ... that Resolutions

rendered without jurisdiction produce no legal effect whatsoever.

In this case, Secretary of Justice GONZALES acted without jurisdiction in issuing the April 20, 2006 Resolution which was issued long after his first ... December 22, 2005 Resolution that held that there was probable cause against accused, had already become final and executory when no motion for reconsideration or appeal filed thereto within the reglementary period of appeal. **When ... GONZALES issued his second April 20, 2006 Resolution** that reversed his earlier finding and held that there was no probable cause against accused, **the DOJ had already lost jurisdiction over the case because [of the finality of the December 22, 2005 Resolution]**.... Emphasis and words in brackets added.)

Hence, the instant petition for review on three (3) grounds. Under the second and what easily is his main submission, petitioner alleged that the CA committed a grave error in finding that the DOJ Resolution dated December 22, 2005 was already final and executory and that the Secretary of Justice, having meanwhile lost jurisdiction over the case, is precluded from recalling or setting aside such resolution, and directing the withdrawal of the Informations in question for estafa, as his April 20, 2006 resolution did.

How the CA arrived at its conclusion that the DOJ resolution - the December 22, 2005 Resolution^[9] - became final and executory and, hence, beyond the jurisdiction of the Secretary of Justice to set aside, is made simple by a consideration of the following premises excerpted from the assailed CA decision, thus:

1. Petitioner Guy received a copy of the one-paged DOJ Resolution dated December 22, 2005 finding a *prima facie* case against him for estafa on **December 28, 2005**.
2. Fourteen (14) days from such receipt, or on **January 11, 2006**, petitioner moved for reconsideration;
3. Section 13 of the DOJ Circular No. 70, series of 2000, on the subject: *National Prosecution Service (NPS) Rule on Appeal*, gives a party aggrieved by the decision of the DOJ Secretary in criminal investigation cases **ten (10) days** from notice within which to file a motion for reconsideration; and
4. The motion of the petitioner for reconsideration was filed beyond the ten-day reglementary period prescribed under the *NPS Rule on Appeal* and thus concluded that when Secretary Gonzales issued the April 20, 2006 Resolution "**the DOJ had already lost jurisdiction over the case because the December 22, 2005 Resolution of the DOJ had already become final and executory and therefore the loss of jurisdiction wrote finis to the case.**"

Petitioner admits to the belated filing, due to an inadvertent miscalculation of and misapprehension on the period of filing, of his motion for reconsideration. Among others, he argues, however, that it was proper for, and within the jurisdictional discretion of, the DOJ Secretary to resolve the motion for reconsideration on the

merits and set aside technicalities in the higher interest of justice.

Respondent counters that the DOJ Secretary's Resolution of April 20, 2006 is indeed void for the reason set forth in the assailed CA decision. Furthermore, respondent would have the Court deny this petition owing to what it perceives to be the formal defects thereof, such as lack of proper verification and false certification against forum shopping. It is further alleged that the petition raises matters of facts which are not proper in a review proceedings under Rule 45 of the Rules of Court.

The petition is impressed with merit.

First off, it should be stressed that the determination of probable cause to warrant prosecution in court is, under our criminal justice system, entrusted at the first instance to public prosecutors and finally to the Secretary of Justice as reviewer of the findings and resolutions of the prosecutors in preliminary investigation cases. [10] In this regard, the authority of the Secretary of Justice to review and order the withdrawal of an information in instances where he finds the absence of a *prima facie* case is not time-barred, albeit subject to the approval of the court if its jurisdiction over the accused has meanwhile attached. [11] And it is not prudent or even permissible for a court to compel the Secretary of Justice or the fiscal, as the case may be, to prosecute a proceeding originally initiated by him on an information, if he finds that the evidence relied upon by him is insufficient for conviction. [12] Now, then, if the Secretary of Justice possesses sufficient latitude of discretion in his determination of what constitutes probable cause and can legally order a reinvestigation even in those extreme instances where an information has already been filed in court, is it not just logical and valid to assume that he can take cognizance of and competently act on a motion for reconsideration, belatedly filed it might have been, dealing with probable cause? And is it not a grievous error on the part of the CA if it virtually orders the filing of an information, as here, despite a categorical statement from the Secretary of Justice about the lack of evidence to proceed with the prosecution of the petitioner? The answer to both posers should be in the affirmative. As we said in *Santos v. Go*: [13]

[C]ourts cannot interfere with the discretion of the public prosecutor in evaluating the offense charged. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance, or without any ground. Or, he may proceed with the investigation if the complaint in his view is sufficient and in proper form. The decision whether to dismiss a complaint or not, is dependent upon the sound discretion of the prosecuting fiscal and, ultimately, that of the Secretary of Justice. Findings of the Secretary of Justice are not subject to review unless made with grave abuse of discretion.

There can be no quibbling that the motion interposed by the petitioner for reconsideration of the December 22, 2005 DOJ Resolution was filed beyond the 10-day reglementary period, or four days late to be precise, prescribed by the *NPS Rule on Appeal* (DOJ Circular No. 70, s. of 2000) which pertinently provides:

SEC. 13. *Motion for reconsideration.*- The aggrieved party may file a motion for reconsideration within a non-extendible period of ten (10) days from receipt of the resolution on appeal with [the Secretary of