

FIRST DIVISION

[G.R. NO. 143169, January 21, 2005]

**JIMMY ANG, PETITIONER, VS. ELEANOR R. LUCERO, THE
HONORABLE SECRETARY OF JUSTICE, AND THE CITY
PROSECUTOR OF MAKATI CITY, RESPONDENTS.**

DECISION

CARPIO, J.:

The Case

This petition for review^[1] assails the 29 October 1999 Decision^[2] and 25 April 2000 Resolution of the Court of Appeals in CA-G.R. SP No. 44778. The Court of Appeals dismissed the petition for certiorari filed by petitioner Jimmy Ang and affirmed the Resolutions issued by former Secretary of Justice Teofisto T. Guingona, Jr.

The Antecedents

The present controversy stemmed from a criminal complaint for estafa through falsification of public documents filed by respondent Eleanor Lucero ("Lucero") against petitioner Jimmy Ang ("Ang") before the City Prosecution Office of Makati ("CPO Makati").

As summarized by then Secretary of Justice Teofisto T. Guingona, Jr. ("Secretary of Justice") and quoted by the Court of Appeals in the assailed decision, the antecedent facts are as follows:

The record shows that complainant [Lucero], an American citizen, is a businesswoman and a native of Pangasinan. On August 8, 1989, she entered into a memorandum of agreement with E. Ganzon, Inc. for the purchase of Condominium Unit 1512, Makati Cinema Square Tower located along Pasong Tamo, Makati for P2,417,655.00. As **she is a resident of Guam, she appointed by virtue of a Special Power of Attorney,^[3] Graciano P. Catenza, Jr.** as her attorney-in-fact on November 20, 1990 to manage and administer all her businesses and properties in the Philippines, including the condominium unit. Catenza, however, delegated his authority to the respondent.

Complainant claims that respondent [Ang] took advantage of the trust and confidence she reposed in him when he falsified two documents, namely: **letter of authorization^[4] dated July 6, 1992 by making it appear that she is authorizing E. Ganzon, Inc., the condominium developer and owner to register her condominium unit under his name; and Deed of Assignment^[5] dated June 22, 1992 wherein**

respondent made it appear that she is transferring to him the ownership of the condominium unit. She further claims that the falsification was made possible when the respondent typed the authority to transfer in a blank sheet of paper containing her signature which he previously requested for the purpose of securing permit from a government agency in connection with her bus service business prior to her departure for Guam. Moreover, she avers that her signature in the deed of assignment was forged by respondent. She adds that she was not in the Philippines when the document was allegedly signed by her on June 22, 1992 and notarized before Atty. Rene B. Betita on July 1, 1992.

Through the use of the aforementioned fictitious documents, her title was cancelled and in lieu thereof, condominium Certificate of Title No. 23578 was issued in the name of respondent by the Registry of Deeds of Makati City which title he used as a collateral to secure a loan in the amount of P2,000,000.00 from the Rizal Commercial Banking Corporation (RCBC). When she learned of the fraudulent transfer, she executed an affidavit of adverse claim and annotated it on the title on March 21, 1994. The day after the thirty-day effectivity period of the adverse claim lapsed, respondent, to add insult to injury, immediately secured an additional loan in the amount of P700,000.00 with the same bank (RCBC) using the same property as collateral even after the transport business he was managing for the complainant had ceased operation already. Respondent failed to act on complainant's demands for accounting and for the reconveyance to her of Condominium Unit No. 1512.

In his defense, respondent claims that the questioned documents were prepared with the prior knowledge of complainant and his authority was relayed by her through the telephone. The transfer of ownership and issuance of a new condominium title in his name were necessary since RCBC did not want to transact business with her because of her lack of track record and her citizenship. He avers that he had to do this since complainant failed to send money needed to support her business projects and to pay her outstanding obligations. As a proof of her knowledge, complainant gave him P500,000.00 on October 5, 1993 to pay the RCBC loan. To disprove the allegation that she never appeared before a notary public, he claims that complainant executed two (2) more documents and had them notarized after she left for Guam which she never questioned.

xxx^[6] (Emphasis supplied)

The CPO Makati referred the notarized Deed of Assignment dated 22 June 1992 and Authorization Letter dated 6 July 1992, both allegedly executed by Lucero in favor of Ang, to the National Bureau of Investigation ("NBI") for verification of signature.

On 16 January 1995, the NBI submitted its report to the CPO Makati. The NBI found the signature on the Deed of Assignment and Lucero's sample signatures to have been written by "one and the same person." However, the NBI found the signature on the Authorization Letter a "traced forgery."

After the preliminary investigation, Prosecutor Edgardo C. Bautista ("Prosecutor

Bautista”) of the CPO Makati issued a Resolution dated 17 April 1995 finding probable cause against Ang. Prosecutor Bautista recommended the filing of two (2) informations, (1) for *estafa* under Article 315, paragraph 1 (c) of the Revised Penal Code^[7] and (2) for *estafa* through falsification of public document.

Ang moved for a reinvestigation. Prosecutor Wilfredo Ong of the CPO Makati reconsidered Prosecutor Bautista’s resolution of 17 April 1995 and dismissed the complaint for insufficiency of evidence.

Lucero filed a motion for reconsideration which the CPO Makati denied on 11 October 1995.

Lucero appealed the dismissal of the complaint to the Department of Justice. The Secretary of Justice issued Letter-Resolution No. 106 Series of 1997 dated 18 February 1997 (“First Resolution”) disposing as follows:

WHEREFORE, your resolution is accordingly reversed. You are hereby directed to file the appropriate information for *estafa* through falsification of public document against respondent and to report the action taken within ten (10) days from receipt hereof.^[8]

Ang filed a motion for reconsideration which the Secretary of Justice denied in his Letter-Resolution dated 10 June 1997.

Ang filed with the Court of Appeals a petition for certiorari with prayer for the issuance of a writ of preliminary injunction and temporary restraining order.

On 16 October 1997, the Court of Appeals issued a Resolution granting Ang’s prayer for the issuance of a temporary restraining order. The Court of Appeals enjoined the CPO Makati from filing the information for *estafa* as the Secretary of Justice directed in his First Resolution, pending the proceedings before the Court of Appeals.

Thereafter, the CPO Makati filed a Manifestation stating that it already filed an information for *estafa* against Ang in Criminal Case No. 97-697 as early as 14 May 1997. Consequently, the Court of Appeals issued a Resolution dated 18 December 1997 enjoining the Secretary of Justice and the CPO Makati from proceeding with Criminal Case No. 97-697 pending before the Regional Trial Court of Makati, Branch 64.

On 29 October 1999, the Court of Appeals rendered a Decision dismissing the petition for certiorari and affirming the resolutions of the Secretary of Justice. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit, and the challenged Resolution No. 106 Series [of] 1997, dated February 18, 1997, and the Letter-Resolution dated June 10, 1997 of the public respondent Secretary of the Department of Justice are hereby **AFFIRMED**. The Resolution of this Court dated December 18, 1997 enjoining the respondents from proceedings (sic) with Criminal Case No. 97-697 pending before the Regional Trial Court of Makati City, Branch 64, is hereby **RECONSIDERED** and **SET ASIDE**. The said trial court is ordered to

continue with the proceedings with dispatch.

SO ORDERED.^[9]

Hence, this petition.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the Special Power of Attorney ("SPA")^[10] which Lucero granted to Graciano P. Catenza ("Catenza") pertains only to acts of administration and does not include acts of strict dominion. The SPA even prohibited Catenza from transferring Lucero's titles to real property by sale or gratuity to third persons without Lucero's prior written consent. Catenza allegedly delegated this power to Ang.

The Court of Appeals also found that Lucero granted Ang a ***general and not a special power of attorney***.^[11] The Court of Appeals added that even assuming Lucero granted Ang a special power of attorney to sell her Makati Cinema Square Tower Condominium Unit No. 1512 ("Property"), it does not include the power to mortgage the Property.

Assuming further that Lucero signed a blank sheet of paper that turned out to be a Deed of Assignment conveying to Ang all her rights and interest in the Property, such assignment was not Lucero's real intention.

The Court of Appeals pointed out that Ang relied heavily on the NBI's finding that the signature in the Deed of Assignment and Lucero's specimen signature were written by one and the same person. However, Ang ignored the NBI's finding that the signature appearing in the Authorization Letter is a "traced forgery."

The Issues

Ang seeks a reversal of the assailed decision by contending that:

I

THE COURT OF APPEALS HAD OVERLOOKED THE FACT THAT PETITIONER CAN ACTUALLY MORTGAGE THE PROPERTY SUBJECT MATTER OF THE INSTANT CASE.

II

THE COURT OF APPEALS HAD FAILED TO CONSIDER THE FACT THAT PRIVATE RESPONDENT IS ALREADY ESTOPPED FROM DISOWNING THE TRANSACTIONS THAT PETITIONER ENTERED INTO IN HER BEHALF.

III

THE COURT OF APPEALS HAD ERRED IN RULING THAT THE POWER OF ATTORNEY GIVEN TO PETITIONER DID NOT GRANT HIM MORE THAN ACTS OF ADMINISTRATION.^[12]

The Court's Ruling

The petition lacks merit.

The issue in this case is the propriety of the Secretary of Justice's finding of probable cause for *estafa*.

Ang insists that there is no probable cause to hold him liable for *estafa*. Ang contends that Lucero granted him the authority not only to sell but also to mortgage the Property. Ang insists that even assuming he is not authorized to sell the Property, he is nevertheless allowed to mortgage the Property if it is urgent and indispensable to preserve "the things under his administration." Ang further claims that he was justified in mortgaging the Property because the proceeds of the mortgage would be used for the needs and expenses of Lucero's business.

Ang also argues that Lucero's facsimile letter dated 29 December 1993 shows that Lucero is estopped from questioning the transactions entered on her behalf.

Ang claims that Lucero knowingly and voluntarily signed the documents and blank papers to further her business interests. Ang contends that "the nature and import of the pre-signed documents" show that Lucero ***impliedly*** authorized Ang to execute more than acts of administration.

Ang's contentions are untenable.

In a preliminary investigation, the public prosecutor merely determines whether there is probable cause or sufficient ground to engender a well-founded belief that a crime has been committed and that the respondent is ***probably*** guilty thereof, and should be held for trial.^[13] It does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits.^[14] As implied by the words themselves, "probable cause" is concerned with probability, not absolute or moral certainty.^[15] The complainant need not present at this stage proof beyond reasonable doubt. A preliminary investigation does not require a full and exhaustive presentation of the parties' evidence.^[16]

In this case, Ang calls on this Court to assume the function of a public prosecutor. Ang's arguments are essentially evidentiary matters that must be presented and heard during the trial. Whether Lucero granted Ang the authority to sell and mortgage the Property is a question which requires an examination of the parties' evidence.

The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function without any showing of grave abuse of discretion or manifest error in his findings. Ang miserably failed to show the presence of any of these exceptional circumstances to warrant an assessment of the parties' evidence presented thus far in the preliminary investigation.

Contrary to Ang's claims, Lucero sufficiently established the existence of probable cause for *estafa* in this case.