

## SECOND DIVISION

[ G.R. No. 230923, July 08, 2019 ]

**BDO UNIBANK, INC., PETITIONER, V. FRANCISCO PUA,  
RESPONDENT.**

### DECISION

**CARPIO, J.:**

#### The Case

For resolution is a petition for review on certiorari<sup>[1]</sup> dated 18 May 2017 filed by BDO Unibank, Inc.<sup>[2]</sup> (petitioner) assailing the Decision<sup>[3]</sup> dated 26 September 2016 and the Resolution<sup>[4]</sup> dated 5 April 2017 of the Court of Appeals in CA-G.R. CR No. 36696.

#### The Facts

Petitioner is a domestic expanded commercial bank duly organized and authorized to perform trust or agency functions and services as an investment manager through its Trust Department. On the other hand, Francisco Pua (respondent) is a client of petitioner and is engaged in business under the trade name and style of "Trends & Innovation Marketing."<sup>[5]</sup>

On 20 January 1993, petitioner entered into an Investment Management Agreement (IMA) with Ernesto Ang (Ernesto). In the IMA, petitioner is tasked to act as the agent and investment manager for the money of Ernesto. Petitioner likewise executed an IMA with Edgard Ang (Edgard)<sup>[6]</sup> on 31 August 1993, Trilogy Properties Corporation (TPC) on 12 December 1996, and Lucia and/or Sharlene Po (Lucia and Sharlene, respectively) on 28 February 1997 for the same purpose.<sup>[7]</sup>

Thereafter, respondent, through petitioner, borrowed the sum of P41,500,000.00 from the funds invested by Ernesto, Edgard, TPC, Lucia, and Sharlene (collectively, Original Funders). Pursuant to the specific directive and authority to lend and invest signed by the Original Funders authorizing the release of the loan in favor of respondent, petitioner released the amount of P41,500,000.00 to respondent.<sup>[8]</sup>

On 7 May 1997, respondent informed petitioner of his intention to change the Original Funders of the loan. Two days thereafter, on 9 May 1997, respondent delivered two checks in the aggregate sum of P41,500,000.00. The aforesaid checks were drawn against the account name 7-21450065-1, Metrobank General Santos-Santiago Blvd. Branch and payable to the order of petitioner. On the same date, respondent informed petitioner that Efrain de Mayo<sup>[9]</sup> was the new funder under the account name for IMA placement. Thereafter, respondent renamed Efrain de Mayo to R. Makmur as the new funder.<sup>[10]</sup>

Unfortunately, the checks given by respondent to petitioner were dishonored when they were presented for payment, on account of the fact that they were drawn against a closed account. Hence, petitioner demanded payment from respondent. However, despite repeated demands, no payment was made by respondent. Thus, petitioner filed a complaint-affidavit for estafa by means of deceit against respondent.<sup>[11]</sup>

For his part, as stated in his counter-affidavit, respondent admitted that he had an obligation under the contract of loan, which he executed with petitioner. However, he argued that, while he represented to the officers of petitioner that R. Makmur was interested in replacing the investments of the Original Funders, he did not deceive nor convince petitioner to release the Original Funders, prior to the clearing of the personal checks of R. Makmur. According to respondent, petitioner had the sole discretion to replace and accept a funder. He further contended that he was not a party to the IMA between petitioner and its prospective funders.<sup>[12]</sup>

Respondent pointed out that he had nothing to gain from the change of funder and lamented that the situation was more disadvantageous to him, since there was no funder anymore to the loan that he had made.<sup>[13]</sup>

After conducting the required preliminary investigation, in its Resolution dated 22 May 1998, the Office of the City Prosecutor of Manila (OCP-Manila) held that no probable cause existed and dismissed the case against respondent, to wit:

WHEREFORE, premises considered, it is respectfully recommended that the instant case be dropped for lack of merit.

SO ORDERED.<sup>[14]</sup>

Petitioner appealed to the Department of Justice (DOJ). In its Resolution dated 10 April 2012, the DOJ reversed the Resolution of the OCP-Manila dated 22 May 1998 and ordered the OCP-Manila to file an information for estafa by means of deceit against respondent, to wit:

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Manila is directed to file [an] information for estafa under Article 315, par. 2(a), of the Revised Penal Code against respondent Francisco Pua, and report the action taken thereon within ten (10) days from receipt thereof.

SO ORDERED.<sup>[15]</sup>

Accordingly, an Information for estafa by means of deceit dated 31 July 2013 was filed against respondent before the Regional Trial Court (RTC), Branch 30, Manila, docketed as Criminal Case No. 13-299943. The aforesaid Information reads as follows:

That on or about May 9, 1997, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud EQUITABLE BANKING CORPORATION, a domestic expanded bank duly organized and existing under the Philippines Law, with office address at EBC Building, 262 Juan Luna St., Binondo, Manila, this City, represented by its Vice President, Trust Department, Lydia N. Cruz, in the following manner, to wit: Equitable Banking Corporation (EBC) is legally authorized

to perform trust or agency services as investment manager through its Trust Department (EBC-Trust), which offers, among others, portfolio management services for individuals, corporations and institutions; the arrangement, with complainant acting as the investment manager and the principal or funder, is reflected in the document called "Investment Management Agreement" (IMA); the IMA is an agency agreement where the principal retains legal title to the funds/cash that are delivered to it or after the time of the execution of the IMA, and in turn, complainant invests or lends the amount to a particular borrower-client under the principal's written specific directive or authority to lend/invest for the latter's own account and risk; the accused, following the IMA scheme, under his trade name Trends and Innovation Marketing, was granted a loan of P41,500,000.00 by EBC using funds invested by Mssrs. Ernesto Ang and Edgardo Ang, Messes. Sharlene Po and Lucia Po and Trilogy Properties Corporation, known as principals and who respectively, executed specific directive or authority for EBC to loan their investments to accused and in turn, accused executed corresponding promissory notes; accused Francisco Pua, by means of false manifestations and fraudulent representations which he made to complainant-EBC prior to and even simultaneously with the commission of the fraud, by delivering to complainant Metro Bank Check No. 2402001754 in the amount of P20,000,000.00 and Metro Bank Check No. 2402001755 in the amount of P21,500,000.00, both dated May 9, 1997 in [the] total amount of P41,500,000.00 payable to EBC, induced complainant to change or substitute his original funders/principals, Mssrs. Ernesto Ang and Edgardo Ang, Messes. Sharlene Po and Lucia Po and Trilogy Properties Corporation to Efraim de Mayo, but which, however, again induced complainant to change the funder's name from Efraim de Mayo to R. Makmur, as the latest funder - R. Makmur was the issuer of the said Metro Bank Checks, and assured the complainant that the checks were funded and shall be honored, and by means of similar import, induced and succeeded in inducing complainant to change the funder's name to R. Makmur and to give and deliver, as in fact, it gave and delivered to said accused the amount of P41,500,000.00, said accused well knowing that all his manifestation and representations were false and untrue and were made only to obtain from said complainant the amount of P41,500,000.00; but when said checks were presented for payment, the same were dishonored for the reason "Account Closed" and which amount once in his possession and with intent to defraud, he misappropriated, misapplied and converted the said amount of P41,500,000.00 to his own personal use and benefit, to the damage and prejudice of said Equitable Banking Corporation in the aforesaid sum of P41,500,000.00, Philippine Currency.

Contrary to law. [16]

On 26 September 2013, respondent filed an urgent omnibus motion. Respondent prayed that the case against him be dismissed outright for lack of probable cause and for being prosecuted in violation of his constitutional rights to due process and to the speedy disposition of his case. He likewise prayed that the issuance of a warrant of arrest and other proceedings be suspended. Thereafter, petitioner filed its comment/opposition. [17]

## **The Ruling of the RTC**

In its Order dated 13 February 2014, the RTC disposed of the case as follows:

WHEREFORE, finding no probable cause to support and justify the case under consideration, the same is hereby DISMISSED.

SO ORDERED.<sup>[18]</sup>

Aggrieved, petitioner moved for reconsideration, which was denied by the RTC in an Order dated 30 May 2014.<sup>[19]</sup> Hence, petitioner appealed to the Court of Appeals.

## **The Ruling of the Court of Appeals**

In its Decision dated 26 September 2016, the Court of Appeals dismissed the appeal and affirmed the Order of the RTC dated 13 February 2014.<sup>[20]</sup>

Petitioner argued in its appeal that the RTC erred in dismissing the criminal case for lack of probable cause. It alleged that the complaint-affidavit describes in detail the specific actions taken by respondent constituting a *prima facie* case for estafa by means of deceit under paragraph 2(a) of Article 315 of the Revised Penal Code.<sup>[21]</sup> According to petitioner, the complaint-affidavit indicates that respondent induced it and its officers to release the Original Funders of his loan on the assurance that he has a new funder in the name of R. Makmur and to accept the latter's spurious checks. Petitioner further contended that the release of the money to the Original Funders was the direct result of the deception employed by respondent. It likewise claimed that the RTC, in dismissing the criminal case, failed to consider that a finding of probable cause does not require an inquiry on whether or not there is sufficient evidence to secure a conviction.<sup>[22]</sup>

On the other hand, respondent maintained that the RTC rightly ruled in dismissing the criminal case for lack of probable cause. In reversing the Resolution of the OCP-Manila dated 22 May 1998, the DOJ merely relied upon speculations and conjectures in finding that he employed misrepresentation and deceit when he requested petitioner to replace the Original Funders of his loan with R. Makmur. Respondent argued that his act of informing petitioner about R. Makmur being interested in replacing the Original Funders does not amount to fraud. He pointed out that fraud is never presumed and must be proven by clear and convincing evidence. He contended that there was nothing in his representation indicating that he gave false assurances to petitioner and that he guaranteed that the checks issued by R. Makmur were sufficiently funded. In fact, according to respondent, he was not in a position to guarantee that the subject checks were sufficiently funded, considering that they were personal checks of R. Makmur. Respondent further averred that the law requires such a high degree of diligence from banks relative to the handling of its affairs, as opposed to those of ordinary business enterprises. Because petitioner failed to observe the diligence required of banks, by waiting first for the checks to be cleared before releasing the Original Funders of respondent's loan, respondent could not be held liable for petitioner's negligence.<sup>[23]</sup>

The Court of Appeals agreed with the RTC in dismissing the criminal case for lack of probable cause. It ruled that the evidence adduced by petitioner did not support a finding of probable cause for the crime of estafa by means of deceit. It held that respondent's mere act of informing petitioner about R. Makmur's interest in