

THIRD DIVISION

[G.R. No. 237845, October 16, 2019]

BDO LIFE ASSURANCE, INC. (FORMERLY GENERALI PILIPINAS LIFE ASSURANCE CO., INC.), PETITIONER, V. ATTY. EMERSON U. PALAD, RESPONDENT.

DECISION

REYES, A., JR., J.:

THE CASE

Challenged before this Court *via* this Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court is the October 2, 2017 Amended Decision^[2] of the Court of Appeals (CA), and its February 27, 2018 Resolution.^[3] The aforesated amended the CA's prior May 12, 2017 Decision^[4] which affirmed with modification the Final Resolution dated December 30, 2010 of the Assistant Prosecutor of Makati City to find probable cause to charge respondent Atty. Emerson U. Palad (Palad) with attempted estafa thru falsification of public documents, as a conspirator.

THE ANTECEDENT FACTS

The antecedents, as reproduced by the CA in its Decision, are culled from the narration of the Assistant City Prosecutor.^[5] The issues herein stem from a case for estafa through falsification of documents filed by petitioner BDO Life Assurance (formerly, as Generali Pilipinas Assurance Co., Inc. and Generali Pilipinas Insurance Company, Inc.), through their authorized representatives Jose Maria F. Ignacio and Roland P. Arcadio, against Raynel Thomas V. Alvarado (Alvarado), Genevie B. Gragas (Gragas), Vincent Paul L. Amposta (Amposta), Teodoro M. Olguera (Olguera), Cynthia O. Taniegra (Taniegra), Armel M. Santos (Santos), Imelda B. Neo (Neo), and respondent Palad.^[6] Alvarado had already been indicted for attempted estafa through falsification of public documents, and his inclusion for preliminary investigation referred only to the motor vehicle insurance claim that he made from petitioner.^[7]

The records from the National Bureau of Investigation (NBI) show that in May 2010, two Personal Accident Insurance claims on the death of spouses Carlos and Norma Andrada (spouses Andrada) were filed by Alvarado in petitioner's office under the name of Carlos Raynel Lao Andrada, the spouses Andradas' designated beneficiary.^[8] The benefit coverage amounts to Php3,000,000.00, plus Php200,000.00 as burial expenses and Php200,000.00 as medical expenses for each of the insured.^[9]

To support his claim, Alvarado submitted the following documents: (1) Death Certificate of insured Carlos Andrada; (2) Death Certificate of Norma Andrada; (3) An excerpt from a police blotter dated January 8, 2010 issued by the Philippine National Police, Flora Municipal Police Station, Flora, Apayao; (4) LTO Official Receipt

dated March 3, 2009 issued in the name of Carlos D. Andrada for mother vehicle with Plate No. WVW 963; (5) LTO Certificate of Registration dated March 8, 2001 issued in the name of Carlos Andrada for the Ford Expedition with Plate No. WVW 963; and (6) Professional Driver's License of Juan Ernesto Magadia Ciso, the alleged driver of the Andradas.^[10]

In order to analyze the two insurance claims, petitioner sought the services of an external investigator to check on the veracity of the documents submitted by Alvarado a.k.a. Carl Andrada. In the course of the investigation, petitioner discovered that there was another claim filed by the beneficiary-son Carl Raynel Lao for his Own Damage and Named Personal Accident on the Ford Expedition with Plate No. WVW 963, the insured vehicle, which allegedly sustained damages on December 28, 2009 due to the homicide hold up of the insured spouses, their driver Juan Ernesto M. Ciso, and bodyguard Mario Ellie Ciso. Such claim was assigned to the Technical Inspection Group (TIG), an independent adjuster, whose President and Chief Executive Officer is Teodoro M. Olguera. In its Evaluation Report dated March 22, 2010, the TIG confirmed the veracity of the incident and recommended to petitioner that the motor vehicle claim be paid. This claim was approved by petitioner, and Alvarado a.k.a. Carl Andrada received on March 12, 2010 the proceeds amounting to Php100,000.00.^[11]

On the other hand, the two Personal Accident claims of Alvarado a.k.a. Carl Andrada were originally assigned to a different adjuster. However, said adjuster requested that the same be assigned to the TIG. Armel Santos, petitioner's Claims Supervisor, then reassigned the claims to the TIG service on Marine Survey and Adjustment Company, an independent claim adjuster, for the usual evaluation and recommendation.^[12] The evaluation reports of the adjuster, together with the documents, were considered by Taniegra, who recommended the approval of the claims. Santos and Neo processed the approval.

In a separate investigation conducted by the petitioner, it was discovered that all the documents submitted by Alvarado to support his personal accident insurance claims and that of the motor vehicle claim were fakes. Petitioner found out that the name "Juan Ernesto M. Ciso" did not exist; no driver's license was ever issued to the spouses Andrada; the LTO Property Division had not issued Plate No. WVW 963, as of June 10, 2010; as per Certificate issued by the NAPOLCOM PNP, Police Regional Office-Cordillera, SPO1 Julio Caballero Yusop was not an organic member of their Office and per available records, no record of incident transpired within their area of responsibility on December 28, 2009; and, the entries in the police blotter did not exist on record.^[13]

Alarmed by these findings, petitioner sought the assistance of the Office of the Special Task Force of the NBI for investigation and the arrest of Alvarado a.k.a. Carl Andrada once cause for doing so was discovered. Upon verification from the National Statistics Office, it was found that while there indeed was a Carl Raynel Andrada, based on his birth record on file, there are no death records of the spouses Andrada.^[14]

As a result of these findings, an entrapment operation was set and implemented on July 2, 2010, at around 2 o'clock in the morning inside petitioner's office in Makati. During the operation, Alvarado, Gragas, who represented herself as Alvarado's aunt, and Palad, the respondent herein, arrived.^[15] Renato A. Vergel De Dios (Vergel De

Dios), petitioner's President, inquired as to the development regarding the police investigation of the incident involving the spouses Andrada. Alvarado and Gragas said that they had not received any word from the police. Palad offered to Vergel De Dios a copy of the Police Report which was originally submitted by Alvarado.

When asked for identification documents, Palad presented his identification card issue by the Integrated Bar of the Philippines (IBP), while Gragas failed to show any. Nevertheless, they all signed the check voucher and release claim for the payments of the insurance benefit worth almost Php6,240,000.00.^[16] When the two marked Banco De Oro checks in the amount of Php3,120,000.00 each were tendered to and received by Alvarado, a pre-arranged signal was given to the NBI operatives who, subsequently, arrested the trio.^[17]

It was then discovered that claimant Carl Andrada's real name was Raynel Thomas Alvarado, while "Melanie Andrada," who pretended to be the claimant's aunt, was actually found to be Genevie Gragas y Bartolome.^[18]

During questioning, Alvarado and Gragas pointed to a certain Amposta, who happened to be Palad's brother-in-law, as the mastermind and financier of the *modus operandi* wherein insurance companies were defrauded by using falsified and fictitious documents.^[19]

The Proceedings at the Prosecutor Level

After poring over the affidavits adduced by the parties implicated in the averred insurance fraud, the assistant city prosecutor found probable cause only against Alvarado, who pretended to be policy beneficiary Carl Andrada, and Gragas, who presented herself as "Carl's" aunt. The prosecutor ruled that there was no proof that the other named respondents therein dealt and cooperated with Alvarado and Gragas to such a degree that they could be branded conspirators to the crime.^[20]

As to the other named individuals, it was determined that Neo, Santos, and Taniegra only performed their duties in processing the fraudulent claims; that Olguera, being the President of the TIG and who was requested by Alvarado to survey the factual basis for the Andrada claims, could not be expected to personally conduct the investigations regarding the homicide and hold-up that triggered petitioner's obligation to pay such claims; that Amposta merely intended to discount the Generali checks that Alvarado and Gragas would have received pursuant to an innocent arrangement he reached with Gragas some months prior; and that Palad merely accompanied Alvarado and Gragas to receive the payment, upon request of the latter.^[21]

The dispositive portion of the prosecutor's Final Resolution reflects said findings, to wit:

WHEREFORE, premises considered, it is hereby recommended that Raynel Thomas Alvarado y Villas a.k.a. Carl Raynel Lao Andrada and Genevie Gragas y Bartolome a.k.a. Melanie Andrada, be indicted for violation of THE REVISED PENAL CODE, art. 315, par. 2(a) and the attached Information be approved for filing in court.

Further, it is recommended that Genevie Gragas y Bartolome be indicted as conspirator of Raynel Thomas y Villas in the case of attempted estafa

thru falsification of public documents.

The complaint against Atty. Emerson U. Palad, Vincent Paul L. Amposta, Teodoro M. Olguera, Cynthia O. Taniegra, Armel M. Santos, and Imelda B. Neo is recommended to be, as upon approval, it is hereby dismissed for insufficiency of evidence.^[22]

Petitioner, thus, filed a Petition for Review with the Department of Justice, which denied the same through a Resolution dated May 16, 2015.^[23]

The Proceedings with the Appellate Court

On appeal with the CA, the petitioner alleged that the Department of Justice committed grave abuse of discretion amounting to lack and/or excess of jurisdiction in issuing the assailed Resolution, which dismissed its petition for review of the Resolution of the City Prosecutor of Makati insofar as it dismissed the complaint for attempted estafa through the falsification of public documents against Santos, Olguera, Amposta, and Palad.^[24]

Initially, the CA found merit in the appeal, and reversed the Final Resolution. In its Decision dated May 12, 2017, the CA ruled that the Prosecutor General committed grave abuse of discretion for having affirmed a stricter standard to determine the existence of probable cause,^[25] the standard being "clear and convincing evidence" and proof beyond reasonable doubt. Citing jurisprudence as basis,^[26] the CA emphasized that the test in finding probable cause is reasonableness and believability, *i.e.*, that an average person can engender a well-founded belief that the accused has committed the crime alleged, and in affirming a different standard, the Prosecutor General has not acted in accordance with law, had acted arbitrarily, and had, thus, acted with grave abuse of discretion.

The CA found upon its own independent review that there was probable cause to charge with the same felony as that of Alvarado and Gragas and as conspirators of the same, Amposta, Olguera, Taniegra, and herein respondent Palad. The dispositive portion of the CA's initial Decision reads, to wit:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **GRANTED**. The assailed Resolution dated 16 May 2015 of the Prosecutor General is hereby declared **NULL and VOID** for having been issued with grave abuse of discretion.

Pursuant to this Decision, the Final Resolution of the assistant city prosecutor of Makati City dated 30 December 2010 is **AFFIRMED with MODIFICATION**, to the effect that:

(a) We **affirm** that there is probable cause to charge Raynel Thomas Alvarado y Villas and Genevie Gragas y Bartolome with attempted estafa thru falsification of public documents. We also affirm the absence of probable cause to indict former respondent Imelda Neo and respondent Armel Santos, and

(b) We **modify** the Final Resolution to find probable

cause to charge with the same felony and as conspirators of Alvarado and Gragas the following:

- (1) Respondent Vincent Paul Amposta;
- (2) Respondent Teodoro M. Olguera;
- (3) Respondent Atty. Emerson U. Palad; and
- (4) Former respondent Cynthia O. Taniegra.

SO ORDERED.^[27]

Palad and Vincent Amposta filed separate Motions for Reconsideration of the above ruling of the CA. On October 2, 2017, the CA promulgated an Amended Decision, which reversed its earlier ruling charging Palad with probable cause. The dispositive portion of the same reads, to wit:

WHEREFORE, premises considered, the Court resolves the following:

- 1) The Motion for Reconsideration filed by respondent Vincent Paul L. Amposta is **DENIED** for lack of merit;
- 2) The Motion for Reconsideration filed by respondent Atty. Emerson U. Palad is hereby **GRANTED**;
- 3) This Court's 12 May 2017 Decision is **AMENDED** as follows:

"**WHEREFORE**, premises considered, the instant Petition for Certiorari is **PARTIALLY GRANTED** in that the Office of the City Prosecutor of Makati City is hereby **ORDERED** to indict for attempted estafa thru falsification of public documents respondents **Vincent Paul L. Amposta** and **Teodoro M. Olguera** in relation to NPS No. XV-05-INQ-10G-00275. The rest of the Final Resolution rendered by the Office of the City Prosecutor of Makati City dated 30 December 2010 is **AFFIRMED**."

SO ORDERED.^[28]

In amending its earlier Decision, the CA found merit in Palad's arguments that no probable cause exists to include him in the charge sheet.^[29] The CA found that a nuanced look at the records of the case will show that Palad had no participation in the insurance fraud, as he was only performing his duty as a lawyer by accompanying his clients in the recovery of the insurance proceeds. The CA reiterated that the insurance checks were already ready for collection when Palad came into the scene, and that petitioners could not be defrauded any further with or without his presence.^[30] Palad merely submitted the police report supplied by his clients and that was already on file with petitioner, which was an action done in the ordinary course of business, typical for any practicing private lawyer.