

FIRST DIVISION

[G.R. No. 208642, February 07, 2018]

FACILITIES, INCORPORATED, PETITIONER, VS. RALPH LITO W. LOPEZ, RESPONDENT.

[G.R. No. 208883]

RALPH LITO W. LOPEZ, PETITIONER, VS. FACILITIES, INCORPORATED, RESPONDENT.

DECISION

TIJAM, J.:

Before the Court are two consolidated petitions for review on *certiorari*^[1] filed under Rule 45 of the Rules of Court, assailing the Decision^[2] dated January 24, 2013 and Resolution^[3] dated August 8, 2013 both of the Court of Appeals (CA) in CA-G.R.SP No. 112315.

Antecedent Facts

On July 23, 1999, a Memorandum of Agreement (MOA)^[4] was entered into between Facilities, Inc. (Facilities), represented by its President, Vicente M.W. Araneta III (Araneta III) and Primelink Properties and Development Corporation (PPDC), represented by its developer, President and CEO, Ralph Lito W. Lopez (Lopez). As stated in the MOA, PPDC is the owner of three lots (subject lots) which it is developing into a residential subdivision project known as Tagaytay Woodsborough Residential Estate (the Project), located at Barrio Asisan, Tagaytay City; while Facilities is the registered owner of Units 1601 and 1602 (condominium units) of Summit One Office Tower located at 530 Shaw Boulevard, Mandaluyong City.^[5] On even date, the parties executed a Contract to Sell^[6] over the subject lots and Contract of Lease^[7] over the condominium units. These contracts, which Facilities referred to as a "swap arrangement,"^[8] are embodied in the essential provisions of the MOA.

The MOA provides for the so-called "swap arrangement" between Facilities and PPDC in the following manner: Facilities agreed to lease the condominium units for a period of four years to PPDC. As a consideration for the first twenty (21) months of the four-year lease, PPDC through Lopez, agreed to execute a deed of absolute sale covering the subject lots in favor of Facilities. PPDC also committed to deliver the transfer certificate of title (TCT) covering the subject lots in Facilities' name within a period of 360 days reckoned from July 23, 1999. PPDC further bound itself to issue a certificate of ownership over the subject lots during the pendency of the processing and issuance of the individual titles.^[9]

As a remedial measure, sub-paragraph 3.4.5^[10] of the MOA and paragraph 3^[11] of the Contract to Sell stipulates that Facilities shall have the right to demand the cancellation of the contract to sell and the payment of P2,384,985.60 from PPDC, in case of PPDC's failure to comply with its undertaking.

Pursuant to these agreements, PPDC moved into the condominium units in August 1999 and occupied the same for over a period of 21 months from September 1999 until December 2001.^[12]

Facilities followed-up on PPDC's commitment to deliver the TCTs over the subject lots. Despite repeated demands, PPDC failed to comply with its contractual obligation and instead vacated the leased premises without leaving any forwarding address.^[13]

Later on, Facilities discovered that contrary to PPDC's representation, the title over the subject lots was still registered in the name of a certain Primo Erni.^[14]

Consequently, Facilities, through its President, Araneta III filed a Complaint-Affidavit^[15] before the Office of the City Prosecutor (OCP) of Mandaluyong City, alleging among others, that: (1) Lopez's failure to deliver the titles to the subject lots is in clear contravention of Sections 25^[16] and 39^[17] of Presidential Decree (P.D.) No. 957,^[18] otherwise known as The Subdivision and Condominium Buyers' Protective Decree; and (2) Lopez's false representations and act of selling the subject lots to the corporation makes him liable for the crime of *estafa* under paragraph 1, Article 316^[19] of the Revised Penal Code (RPC).

In its Counter-Affidavit (with Motion to Dismiss), PPDC through Mr. Lopez, argued that: (1) Lopez was not guilty of violating Sections 25 and 39 of P.D. No. 957 since the subject lots were not fully paid due to Facilities' failure to turn-over the entire premises of the condominium units; and (2) Lopez is not liable for the crime of *estafa* because PPDC was the real owner of the subject lots as evidenced by the Deed of Absolute Sale^[20] executed by PPDC and the heirs of the registered owner, Primo Erni on October 12, 1998.^[21]

In its September 30, 2002^[22] and November 11, 2002^[23] Resolutions, the OCP of Mandaluyong City dismissed the complaint and ruled that the remedy is civil in nature.

Dissatisfied, Facilities filed a Petition for Review^[24] under Department Circular No. 70^[25] otherwise known as the 2000 National Prosecution Service Rule on Appeal, of the Department of Justice (DOJ) averring among others, that the OCP of Mandaluyong City erred in holding that: (1) Facilities should have first filed an action for specific performance as it defeats the policy and purpose behind the enactment of P.D. No. 957; and (2) To be liable under paragraph 1, Article 316 of the RPC, one must misrepresent himself to be the "registered" owner, not merely the owner, of a real property.

Ruling of the DOJ

On October 8, 2007, the DOJ issued a Resolution^[26] granting Facilities' petition, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the questioned resolution is hereby **REVERSED and SET ASIDE**. The City Prosecutor of Mandaluyong City is hereby directed to file the appropriate information against [Lopez] for violation of Sec. 25 of [P.D.] No. 957, and another information for *estafa* under paragraph 1 of Article 316 of the [RPC], and to report to this Department the action taken within ten (10) days from receipt hereof.

SO ORDERED.^[27]

Lopez moved for a reconsideration of the resolution but the same was denied by the DOJ in another Resolution^[28] dated December 28, 2009.

Aggrieved, Lopez filed a Petition for *Certiorari* under Rule 65 with the CA, alleging grave abuse of discretion on the part of the SOJ.

Ruling of the CA

On January 24, 2013, the CA in its Decision,^[29] partially granted Lopez's petition. The CA ruled that there is no probable cause to warrant the prosecution of Lopez for the crime of *estafa*, since it is indubitable that his company is the owner of the subject lots. The CA, however, agreed with the DOJ's finding of probable cause to warrant the prosecution of Lopez for violation of Section 25 of P.D. No. 957. The dispositive portion of the decision reads, thus:

WHEREFORE, premises considered, the instant Petition is PARTIALLY GRANTED. The Resolution dated 09 October 2007 is **AFFIRMED WITH THE MODIFICATION** that the directive to file information for violation of paragraph 1 of Article 316 of the [RPC] is **SET ASIDE**. The charge, however, against [Lopez] for violation of Section 25 of [P.D.] No. 957 is **MAINTAINED**.

SO ORDERED.^[30]

Both parties filed their Motions for Partial Reconsideration dated February 27^[31] and 14,^[32] 2013, respectively. The motions, however, were both denied by the CA in its Resolution^[33] dated August 8, 2013.

Hence, these petitions.

In G.R. No. 208642,^[34] Facilities maintains that Lopez is guilty of *estafa* under paragraph 1, Article 316 of the RPC. In all the agreements executed by the parties, Lopez represented PPDC as having good and indefeasible title to the subject lots. Yet, the title of the subject lots remains in the name of a certain "Primo Erni." Facilities avers that despite numerous opportunities that were afforded Lopez to transfer ownership of the subject lots in Facilities' name, no title has been delivered to this day. Were it not for Lopez's representation that PPDC has good title to the subject lots, Facilities claims that it would not have entered into the MOA. Facilities,

thus, prays for the reversal of the CA's decision insofar as it ruled that there is no probable cause to warrant the prosecution of Lopez for the crime of *estafa*.

In G.R. No. 208883,^[35] Lopez insists that Facilities' remedy is purely civil in nature. Instead of filing a criminal complaint for *estafa*, Lopez claims that Facilities could have exhausted the remedy under sub-paragraphs 3.4.5 of the MOA, and paragraph 3 of the Contract to Sell, by demanding that the contract be rescinded and that PPDC be ordered to pay P2,384,985.60. Lopez maintains that he is the true owner of the subject lots based on the Deed of Absolute Sale which the heirs of the original registered owner executed in favor of PPDC on October 12, 1998. Lopez claims that he did not violate Section 25 of P.D. No. 957. He argues that since PPDC was unable to utilize the entire area of the condominium units, PPDC cannot be compelled to deliver the titles over the subject lots. He likewise claims that Facilities did not comply with its obligation to pay the notarial fees, documentary stamps, transfer and registration fees on the subject lots. Hence, Lopez entreats this Court to enter a judgment dismissing the complaint for violation of Section 25, P.D. No. 957 filed against him.

From the foregoing, the core issue to be resolved in this case is whether there is probable cause to indict Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

Ruling of the Court

We now resolve.

According to Section 1, Rule 112 of the Rules of Court, a preliminary investigation, is "an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial." The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties' evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense.^[36] "The role and object of preliminary investigation were to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions."^[37]

As We have postulated in *Villanueva, et al. v. Caparas*,^[38] the determination of the existence of probable cause lies within the discretion of the public prosecutor:

The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted the preliminary investigation on the offended party's complaint. The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination. As a rule, the Secretary's findings are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; or when he grossly

misapprehends facts; or acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law.

[39] (Citations omitted)

In ***Atty. Allan S. Hilbero v. Florencio A. Morales, Jr.***,^[40] this Court elucidated that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

In this case, there is evidence showing that more likely than not Lopez violated Section 25 of P.D. No. 957 and committed acts constitutive of the crime of *estafa* under paragraph 1, Article 316 of the RPC.

We explain.

Section 25 of P.D. No. 957, requires a developer, such as PPDC, of which Lopez is the President and CEO, to deliver the title of the lot or unit to the buyer, upon full payment of the said lot or unit. The provision partly reads, thus:

Sec. 25. *Issuance of Title*. The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit, xxx.

Indeed, the failure to comply with this explicit obligation makes the developer or the person who was charge of the administration of the business, criminally liable. Section 39 of P.D. No. 957 provides, thus:

Sec. 39. *Penalties*. ***Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.***
(Emphasis and italics ours)

The records established that Facilities and Lopez entered into a MOA, a Contract of Lease, and a Contract to Sell, over the subject lots located at Tagaytay City and the