

## FIRST DIVISION

[ G.R. No. 179003, January 09, 2013 ]

**ANTONIO L. TAN, JR., PETITIONER, VS. YOSHITSUGU MATSUURA  
AND CAROLINA TANJUTCO, RESPONDENTS.**

[G.R. NO. 195816]

**ANTONIO L. TAN, JR., PETITIONER, VS. JULIE O. CUA,  
RESPONDENT.**

### D E C I S I O N

**REYES, J.:**

Before the Court are two consolidated Petitions for Review on *Certiorari* filed by petitioner Antonio L. Tan, Jr. (Tan) and docketed as:

- (1) G.R. No. 179003 which assails the Court of Appeals' (CA) Decision<sup>[1]</sup> dated February 6, 2007 and Resolution<sup>[2]</sup> dated July 24, 2007 in CA-G.R. SP No. 89346, entitled *Yoshitsugu Matsuura & Carolina Tanjutco v. Hon. Raul Gonzales, in his capacity as Acting Secretary of the Department of Justice and Antonio L. Tan, Jr.*; and
- (2) G.R. No. 195816 which assails the CA's Decision<sup>[3]</sup> dated August 17, 2010 and Resolution<sup>[4]</sup> dated February 23, 2011 in CA-G.R. SP No. 95263, entitled *Julie O. Cua v. Antonio L. Tan, Jr., Hon. Raul M. Gonzales, in his capacity as Secretary of the Department of Justice and Hon. Ernesto L. Pineda, in his capacity as Undersecretary of the Department of Justice.*

#### **The Factual Antecedents**

On March 31, 1998, Tan filed with the Office of the City Prosecutor (OCP) of Makati City a Complaint-Affidavit<sup>[5]</sup> charging the respondents Yoshitsugu Matsuura (Matsuura), Atty. Carolina Tanjutco (Tanjutco) and Atty. Julie Cua (Cua) of the crime of falsification under the Revised Penal Code (RPC), allegedly committed as follows:

2. On or about the period from 21 December 1996 to 09 January 1997, Mr. YOSHITSUGU MATSUURA, Ms. HIROKO MATSUURA and Mr. RUBEN JACINTO have had stolen company's properties and my personal belongings which were kept "**under lock and key**". Among those stolen was my pre-signed DEED OF TRUST, whose date and number of shares, and the item witness were all in BLANK. As a result, Criminal Case No. 98-040 for Qualified Theft was filed against Mr. & Ms. Matsuura and Mr. Jacinto, and now pending before the Regional Trial Court (*of Makati City*)

Branch 132;

3. In the said "blank" Deed of Trust, the **entries** as to the number of shares and the date of the instrument were then inserted, that is, **28,500** as shares and **20<sup>th</sup>** day of January, and the **signatures** of Hiroko Matsuura and Lani C. Camba appeared in the item WITNESS, all without my participation whatsoever, or without my consent and authority. A copy of the "filled in" Deed of Trust is attached as Annex "A" and made part hereof;

4. Sometime on 19 June 1997, the said Deed of Trust, was made to be notarized by JULIE O. CUA, a Notary Public for and in the City of Makati, and entered in her Notarial Register as Doc[.] No. 2; Page No. 1; Book No. 1 and Series of 1997, *WHEN IN TRUTH AND IN FACT I HAVE NEVER **APPEARED, SIGNED OR TOOK** [sic] MY OATH BEFORE THE SAID NOTARY PUBLIC AND ON THE SAID DATE OF NOTARIZATION* because the document (*Deed of Trust*) was stolen as earlier stated, and the relation between us (*Mr. and Ms. Matsuura, or Mr. Jacinto, and the undersigned*) had become hostile and irreconcilable. A copy of the notarized Deed of Trust is attached as Annex "B" and made part hereof.

5. Both documents (Annexes "A" and "B") were/are in the possessions of Mr. Matsuura and/or his lawyer, CAROLINA TANJUTCO, who **used** these false documents in the cases involving us;

6. Without prejudice to the filing of other charges in the proper venues, I am executing this affidavit for the purpose of charging Mr. YOSHITSUGU MATSUURA and ATTY. CAROLINA TANJUTCO for violation of Art. 172 (2) in relation to Art. 171 (6) of the Revised Penal Code with regard to Annex "A", and likewise charging MR. YOSHITSUGU MATSUURA and ATTYS. CAROLINA TANJUTCO and JULIE O. CUA for violation of Art. 172 (1) in relation to Art. 171 (2) of the Revised Penal Code, when through their concerted actions they **FALSELY** made it appeared [sic] that the undersigned had participated in notarization of the Deed of Trust (*Annex "B"*) on 19 June 1997, and in both instances causing prejudice and damages to the undersigned.<sup>[6]</sup>

The respondents filed their respective counter-affidavits.

Matsuura vehemently denied Tan's charges. He countered that the filing of the complaint was merely a scheme resorted to by Tan following their dispute in TF Ventures, Inc., and after he had obtained a favorable resolution in a complaint for estafa against Tan. Matsuura further explained that the transfer of the shareholdings covered by the subject Deed of Trust<sup>[7]</sup> was a result of Tan's offer to compromise the intra-corporate dispute. He insisted that it was Tan who caused the notarization of the deed, as this was a condition for Matsuura's acceptance of the compromise.<sup>[8]</sup>

For her defense, Tanjutco argued that Tan's admission of having pre-signed the subject deed only proved that he had willingly assigned his shares in TF Ventures, Inc. to Matsuura. She also argued that Tan failed to present any proof of her

participation in the deed's falsification, and explained that she had not yet known Matsuura at the time of the supposed notarization.<sup>[9]</sup>

For her part, Cua narrated that on June 19, 1997, a group that included a person who represented himself as Antonio Tan, Jr. approached her law office for the notarization of the subject deed. Tan presented his community tax certificate (CTC) as indicated in the subject deed of trust, then was sworn in by Cua as a notary public. Cua claimed to have conducted her duty in utmost good faith, with duplicate copies of the notarized deed reported to the Clerk of Court of Makati City. She denied having any business or interest whatsoever with the law offices of Tanjutco.<sup>[10]</sup>

### **The Ruling of the City Prosecutor**

On July 13, 1998, the OCP issued a Resolution<sup>[11]</sup> dismissing for lack of probable cause the complaint against Matsuura and Tanjutco. It considered the fact that Tan had voluntarily signed the subject deed, and further noted that "[w]hether or not the same document is notarized, the [d]eed has the effect of a binding contract between the parties. The element of damage has not been sufficiently shown."<sup>[12]</sup>

The complaint against Cua was also dismissed. For the OCP, Tan failed to overturn the presumption of regularity attached to the notary public's performance of her official duty. Any irregularity attending the execution of the deed of trust required more than mere denial from Tan.<sup>[13]</sup>

Tan's motion for reconsideration was denied, prompting him to file a petition for review<sup>[14]</sup> with the Department of Justice (DOJ).

### **The Ruling of the Secretary of Justice**

On April 4, 2003, then Secretary of Justice Simeon A. Datumanong issued a resolution<sup>[15]</sup> denying the petition. He ruled that no evidence was presented to show that the date, the number of shares and the witnesses' signatures appearing on the subject deed were merely inserted therein by the respondents. Tan's bare averments were insufficient to show the actual participation of the respondents in the alleged falsification.

Undaunted, Tan filed a motion for reconsideration, which was granted by then Acting Secretary of Justice Ma. Merceditas N. Gutierrez in a Resolution<sup>[16]</sup> dated July 1, 2004. In finding probable cause to indict the respondents for the crime of falsification, the DOJ noted that a copy of the deed of trust attached by Matsuura and Tanjutco to Matsuura's Answer dated October 30, 1997 in an intra-corporate dispute before the SEC was not yet notarized. Furthermore, the print and font of the deed's entries on its covered shares and date remarkably differed from the other portions of the document. The Secretary then held:

[I]t would appear that the subject deed of trust was indeed never notarized. If the said document was purportedly notarized on June 19, 1997, the same notarized copy should have been presented by respondent Matsuura. After all, his Answer filed before the SEC was made

with the assistance of respondent Atty. Tanjutco. There being none, it may be concluded that the notarization of the subject deed of trust was indeed made under doubtful circumstances.<sup>[17]</sup>

The Secretary also held that Cua should have been alerted by the variance in the deed's print styles, and the fact that the document was presented for notarization almost five months from the date of its purported execution. The dispositive portion of the Secretary's resolution then reads:

**WHEREFORE**, the motion for reconsideration is hereby GRANTED. Resolution No. 189 (Series of 2003) is hereby SET ASIDE. The City Prosecutor of Makati City is directed to file an information against respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco for violation of Art. 172 (2) in relation to Art. 171 (6), RPC; and another information for violation of Art. 171 (2), RPC against respondents Yoshitsugu Matsuura, Atty. Carolina Tanjutco and Atty. Julie Cua.

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

The respondents moved for reconsideration. On April 4, 2005, then DOJ Undersecretary Ernesto L. Pineda, signing on behalf of the Secretary of Justice, issued a resolution<sup>[19]</sup> affirming the presence of probable cause against Matsuura and Tanjutco, but ordering the exclusion of Cua from the filing of information. He ruled that Cua had exercised due diligence as a notary public by requiring from the person who appeared before her a proof of his identification. The resolution's decretal portion provides:

Premises considered, the Resolution dated July 1, 2004 is hereby **MODIFIED** accordingly. The City Prosecutor of Makati City is directed to move for the exclusion of respondent Julie Cua from the information for violation of Art. 171 (2), Revised Penal Code, if any has been filed, and to report the action taken within ten (10) days from receipt hereof. The motion for reconsideration filed by respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco is hereby **DENIED**.

**SO ORDERED.**<sup>[20]</sup>

At this point, Matsuura and Tanjutco filed with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 89346. The DOJ's review of its resolution on Cua's case continued with Tan's filing of a motion for partial reconsideration. Finding merit in the motion, the DOJ again reversed itself and issued on December 12, 2005 a Resolution<sup>[21]</sup> with dispositive portion that reads:

**WHEREFORE**, in view of the foregoing, the motion for partial reconsideration is **GRANTED** and resolution dated April 4, 2005 is **SET ASIDE**. The City Prosecutor of Makati City is hereby directed to include

Atty. Julie O. [Cua] in the information for violation of Article 171 (2) of the Revised Penal Code filed against respondents Yoshitsugu Matsuura and Atty. Carolina Tanjutco and report to this Office the action taken within ten (10) days from receipt hereof.

SO ORDERED.<sup>[22]</sup>

Cua's motion for reconsideration was denied, prompting her to file with the CA the petition for *certiorari* docketed as CA-G.R. SP No. 95263.

### **The Ruling of the CA**

The CA granted both petitions questioning the Secretary of Justice's resolutions.

In CA-G.R. SP No. 89346, the CA held that given the elements of the crime, the actual participation of respondents Matsuura and Tanjutco was not sufficiently alleged, and the element of damage was not sufficiently shown. The dispositive portion of its Decision<sup>[23]</sup> dated February 6, 2007 reads:

WHEREFORE, in view of the foregoing, the petition is **GRANTED**. The Resolution of the DOJ dated April 4, 2005 and July 1, 2004 are **SET ASIDE**. The Resolution of the City Prosecutor, Makati City dated July 13, 1998 in I.S. No. 98-C-15857-58 affirmed by the DOJ through Secretary Datumanong on April 4, 2003 **STANDS**.

SO ORDERED.<sup>[24]</sup>

Tan's motion for reconsideration was denied.

In CA-G.R. SP No. 95263, the CA held that Tan also failed to discharge the burden of proving probable cause against Cua. For the appellate court, there was nothing on record that was sufficient to overcome the presumption of regularity ascribed to both the subject deed as a public document and to Cua's discharge of her official functions as a notary public. The dispositive portion of its Decision<sup>[25]</sup> dated August 17, 2010 reads:

**WHEREFORE**, the instant Petition is **GRANTED**. The assailed Resolutions of the Secretary of Justice dated 12 December 2005 and 8 May 2006 are REVERSED and SET ASIDE. The Resolution of the Secretary of Justice dated 4 April 2003 affirming the findings of the City Prosecutor is hereby UPHELD.

**SO ORDERED.**<sup>[26]</sup>

Tan's motion for reconsideration was denied in a Resolution<sup>[27]</sup> dated February 23, 2011.