

## SPECIAL SECOND DIVISION

[ G.R. No. 187919, February 20, 2013 ]

**RAFAEL H. GALVEZ AND KATHERINE L. GUY, PETITIONERS, VS.  
HON. COURT OF APPEALS AND ASIA UNITED BANK,  
RESPONDENTS.**

[G.R. NO. 187979]

**ASIA UNITED BANK, PETITIONER, VS. GILBERT G. GUY, PHILIP  
LEUNG, KATHERINE L. GUY, RAFAEL H. GALVEZ AND EUGENIO H.  
GALVEZ, JR., RESPONDENTS.**

[G.R. NO. 188030]

**GILBERT G. GUY, PHILIP LEUNG AND EUGENIO H. GALVEZ, JR.,  
PETITIONERS, VS. ASIA UNITED BANK, RESPONDENT.**

### R E S O L U T I O N

**PEREZ, J.:**

We resolve the Motion for Reconsideration filed by petitioner-movants, Rafael H. Galvez and Katherine L. Guy in G.R. No. 187919,<sup>[1]</sup> and, Gilbert G. Guy, Philip Leung and Eugenio H. Galvez, Jr. in G.R. No. 188030<sup>[2]</sup> addressed to our consolidated Decision dated 25 April 2012<sup>[3]</sup> finding probable cause to charge petitioners of the crime of **SYNDICATED ESTAFA** under Article 315 (2)(a) in relation to Presidential Decree No. 1689.

Our consolidated decision read:

**WHEREFORE**, the Decision of the Court of Appeals dated 27 June 2008 in CA-G.R. SP No. 97160 is hereby **AFFIRMED** with **MODIFICATION** that Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy and Eugenio H. Galvez, Jr. be charged for **SYNDICATED ESTAFA** under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689.<sup>[4]</sup>

#### **The Motion for Reconsideration**

In the main, petitioners submit the following arguments in support of their motion for reconsideration:

*First*, the petitioners cannot be charged for *estafa* whether simple or syndicated for the element of deceit was absent in the transactions that transpired between the

petitioners and respondent. This is a case of collection of sum of money, hence, civil in nature.

*Second*, the petitioners cannot be charged for syndicated *estafa* defined in Presidential Decree No. 1689 because they did not solicit funds from the general public, an indispensable element for syndicated *estafa* to prosper.<sup>[5]</sup>

In our 25 April 2012 Decision, we have more than amply discussed the petitioners' arguments, specifically, as to the first issue whether deceit was present in the transaction as to warrant prosecution for the crime of *estafa*. If only to emphatically write *finis* to this aspect of the case, we examine again the petitioners' arguments *vis-à-vis* this Court's ruling.

### **The facts**

In 1999, Radio Marine Network Inc. (RMSI) claiming to do business under the name Smartnet Philippines<sup>[6]</sup> and/or Smartnet Philippines, Inc. (SPI),<sup>[7]</sup> applied for an Omnibus Credit Line for various credit facilities with Asia United Bank (AUB). To induce AUB to extend the Omnibus Credit Line, RMSI, through its directors and officers, presented its Articles of Incorporation with its 400-peso million capitalization and its congressional telecom franchise. RMSI was represented by the following officers and directors occupying the following positions:

Gilbert Guy	-	Exec. V-Pres./Director
Philip Leung	-	Managing Director
Katherine Guy	-	Treasurer
Rafael Galvez	-	Executive Officer
Eugenio Galvez, Jr.	-	Chief Financial Officer/Comptroller

Satisfied with the credit worthiness of RMSI, AUB granted it a P250 Million Omnibus Credit Line, under the name of Smartnet Philippines, RMSI's Division. On 1 February 2000, the credit line was increased to P452 Million pesos after a third-party real estate mortgage by Goodland Company, Inc., an affiliate of Guy Group of Companies, in favor of Smartnet Philippines, was offered to the bank. Simultaneous to the increase of the Omnibus Credit Line, RMSI submitted a proof of authority to open the Omnibus Credit Line and peso and dollar accounts in the name of Smartnet Philippines, Inc., which Gilbert Guy, *et al.*, represented as a division of RMSI, as evidenced by the letterhead used in its formal correspondences with the bank and the financial audit made by SGV & Co., an independent accounting firm. Attached to this authority was the Amended Articles of Incorporation of RMSI, doing business under the name of Smartnet Philippines, and the Secretary's Certificate of SPI authorizing its directors, Gilbert Guy and Philip Leung to transact with AUB.<sup>[8]</sup> Prior to this major transaction, however, and, unknown to AUB, while RMSI was doing business under the name of Smartnet Philippines, and that there was a division under the name Smartnet Philippines, Gilbert Guy, *et al.* formed a subsidiary corporation, the SPI with a paid-up capital of only P62,500.00.

Believing that SPI is the same as Smartnet Philippines - the division of RMSI - AUB granted to it, among others, Irrevocable Letter of Credit No. 990361 in the total sum of \$29,300.00 in favor of Rohde & Schwarz Support Centre Asia Ptd. Ltd., which

is the subject of these consolidated petitions. To cover the liability of this Irrevocable Letter of Credit, Gilbert Guy executed Promissory Note No. 010445 in behalf of SPI in favor of AUB. This promissory note was renewed twice, once, in the name of SPI (Promissory Note No. 011686), and last, in the name of Smartnet Philippines under Promissory Note No. 136131, bolstering AUB's belief that RMSI's directors and officers consistently treated this letter of credit, among others, as obligations of RMSI.

When RMSI's obligations remained unpaid, AUB sent letters demanding payments. RMSI denied liability contending that the transaction was incurred solely by SPI, a corporation which belongs to the Guy Group of Companies, but which has a separate and distinct personality from RMSI. RMSI further claimed that while Smartnet Philippines is an RMSI division, SPI, is a subsidiary of RMSI, and hence, is a separate entity.

Aggrieved, AUB filed a case of syndicated *estafa* under Article 315 (2)(a) of the Revised Penal Code in relation to Section 1 of Presidential Decree No. 1689 against the interlocking directors of RMSI and SPI, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr., before the Office of the City Prosecutor of Pasig City.

AUB alleged that the directors of RMSI deceived it into believing that SPI was a division of RMSI, only to insist on its separate juridical personality later on to escape from its liabilities with AUB. AUB contended that had it not been for the fraudulent scheme employed by Gilbert Guy, et al., AUB would not have parted with its money, which, including the controversy subject of this petition, amounted to hundreds of millions of pesos.

### **Our Ruling**

We already emphasized in the 25 April 2012 Decision that "this controversy could have been just a simple case for collection of sum of money had it not been for the sophisticated fraudulent scheme which Gilbert Guy, *et al.*, employed in inducing AUB to part with its money."<sup>[9]</sup> Our Decision meticulously discussed how we found probable cause, a finding affirming that of the prosecutor and the Court of Appeals, to indict petitioners for the crime of *estafa* under Article 315 (2)(a) of the Revised Penal Code.<sup>[10]</sup> We noted there and we now reiterate that it was neither the petitioners' act of borrowing money and not paying it, nor their denial thereof, but their very act of deceiving AUB in order for the latter to part with its money that is sought to be penalized. Thus:

x x x As early as the Penal Code of Spain, which was enforced in the Philippines as early as 1887 until it was replaced by the Revised Penal Code in 1932, the act of fraud through false pretenses or similar deceit was already being punished. Article 335 of the Penal code of Spain punished a person who defrauded another 'by falsely pretending to possess any power, influence, qualification, property, credit, agency or business, or by means of similar deceit.'<sup>[11]</sup>

Under Article 315 (2)(a) of the Revised Penal Code, *estafa* is committed by any

person who shall defraud another by, among others, false pretenses or fraudulent acts executed prior to or simultaneous with the commission of fraud, *i.e.*, by using a fictitious name, falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceptions.

Underscoring the aforesaid discussion, we found that:

*First*, Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez and Eugene Galvez, Jr., interlocking directors of RMSI and SPI, represented to AUB in their transactions that Smartnet Philippines and SPI were one and the same entity. While Eugene Galvez, Jr. was not a director of SPI, he actively dealt with AUB in his capacity as RMSI's Chief Financial Officer/Comptroller by falsely representing that SPI and RMSI were the same entity. Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez, and Eugene Galvez, Jr. used the business names Smartnet Philippines, RMSI, and SPI interchangeably and without any distinction. They successfully did this by using the confusing similarity of RMSI's business name, *i.e.*, Smartnet Philippines – its division, and, Smartnet Philippines, Inc. – the subsidiary corporation. Further, they were able to hide the identity of SPI, by having almost the same directors as that of RMSI. In order to let it appear that SPI is the same as that of Smartnet Philippines, they submitted in their application documents of RMSI, including its Amended Articles of Incorporation, third-party real estate mortgage of Goodland Company in favor of Smartnet Philippines, and audited annual financial statement of SGV & Co. Gilbert Guy, et al. also used RMSI letterhead in their official communications with the bank and the contents of these official communications conclusively pointed to RMSI as the one which transacted with the bank.

**These circumstances are all *indicia* of deceit.** Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury. [Citation omitted]

*Second*, the intent to deceive AUB was manifest from the start. Gilbert Guy et al. [,] laid down first all the necessary materials they need for this deception before defrauding the bank by first establishing Smartnet Philippines as a division of Radio Marine under which Radio Marine Network Inc. operated its business. Then it organized a subsidiary corporation, the SPI, with a capital of only P62,000.00. Later, it changed the corporate name of Radio Marine Network Inc. into RMSI.

Undoubtedly, deceit here was conceived in relation to Gilbert Guy, *et al.*'s transaction with AUB. There was a plan, documented in corporation's papers, that led to the defraudation of the bank. The circumstances of the directors' and officers' acts in inserting in Radio Marine the name of Smartnet; the creation of its division – Smartnet Philippines; and its registration as business name as Smartnet Philippines with the Department of Trade and Industry, together with the incorporation of its