

SECOND DIVISION

[G.R. No. 178947, June 26, 2013]

VIRGINIA DE LOS SANTOSDIO, AS AUTHORIZED REPRESENTATIVE OF H.S. EQUITIES, LTD., AND WESTDALE ASSETS, LTD., PETITIONER, VS. THE HONORABLE COURT OF APPEALS, JUDGE RAMON S. CAGUIOA, IN HIS CAPACITY AS PRESIDING JUDGE OF BRANCH 74, REGIONAL TRIAL COURT, OLONGAPO CITY, AND TIMOTHY J. DESMOND, RESPONDENTS.

[G.R. No. 179079]

PEOPLE OF PHILIPPINES, THE PETITIONER, VS. TIMOTHY J. DESMOND, RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

Before the Court are consolidated petitions for review on *certiorari*^[1] assailing the November 8, 2006 Decision^[2] and July 19, 2007 Resolution^[3] of the Court of Appeals (CA) in CA-G.R. SP No. 88285, upholding the validity of the trial court's dismissal of separate criminal informations for *estafa* against private respondent Timothy J. Desmond (Desmond) due to lack of probable cause.

The Facts

In 2001, petitioner Virginia De Los Santos-Dio (Dio), the majority stockholder of H.S. Equities, Ltd. (HS Equities) and authorized representative of Westdale Assets, Ltd. (Westdale),^[4] was introduced to Desmond, the Chairman and Chief Executive Officer (CEO) of the Subic Bay Marine Exploratorium, Inc. (SBMEI), and the authorized representative of Active Environments, Inc. and JV China, Inc. (JV China), the majority shareholder of SBMEI.^[5] After some discussion on possible business ventures, Dio, on behalf of HS Equities, decided to invest a total of US\$1,150,000.00^[6] in SBMEI's Ocean Adventure Marine Park (Ocean Adventure), a theme park to be constructed at the Subic Bay Freeport Zone which, when operational, would showcase live performances of false-killer whales and sea lions. In this relation, Dio claimed that Desmond led her to believe that SBMEI had a capital of US\$5,500,000.00, inclusive of the value of the marine mammals to be used in Ocean Adventure,^[7] and also guaranteed substantial returns on investment.^[8] Desmond even presented a Business Plan, indicating that: (a) Ocean Adventure's "attendance will rise from 271,192 in 2001 to just over 386,728 in 2006, with revenues rising from US\$4,420,000.00 million to US\$7,290,000.00 million in the same time frame"; (b) "[e]arly investors are expected to reap an annual return of 23% in 2001, rising to 51% in 2006"; and (c) "[f]ully priced shares [would yield a 19% return] in 2001, rising to 42% in 2006."^[9] Thus, on January 18, 2002, a

Subscription Agreement^[10] was executed by Desmond, as representative of SBMEI and JV China, and Dio, as representative of HS Equities.

While no Certificate of Stock was issued either to HS Equities or to Dio, HS Equities was expressly granted minority protection rights in a subsequent Subscription and Shareholders Agreement^[11] dated March 12, 2002, stating that there shall be "a nominee of [the] Subscriber to be elected as Treasurer/Chief Financial Officer, who may not be removed by the Board of Directors without the affirmative vote of the Subscriber."^[12] Accordingly, Dio was elected as a member of SBMEI's Board of Directors and further appointed as its Treasurer.^[13] The parties later executed two (2) Investor's Convertible Promissory Notes – one dated April 4, 2001^[14] and another dated May 8, 2001^[15] — covering HS Equities' infusion of a total of US\$1,000,000.00 for the purpose of purchasing machinery, equipment, accessories, and materials to be used for the construction of Ocean Adventure.

In June 2002, Dio, this time on behalf of Westdale, invested another US\$1,000,000.00^[16] in a separate business venture, called the Miracle Beach Hotel Project (Miracle Beach), which involved the development of a resort owned by Desmond adjoining Ocean Adventure. They agreed that the said investment would be used to settle SBMEI's P40,000,000.00 loan obligation to First Metro Investment Corporation and for the construction of 48 lodging units/cabanas.^[17] However, when the corresponding subscription agreement was presented to Dio by SBMEI for approval, it contained a clause stating that the "funds in the Subscription Bank Account" were also to be used for the "[f]unding of Ocean Adventure's Negative Cash Flow not exceeding [US\$200,000.00]."^[18] This was in conflict with the exclusive purpose and intent of Westdale's investment in Miracle Beach and as such, Dio refused to sign the subscription agreement.

Dio further claimed that she found out that, contrary to Desmond's representations, SBMEI actually had no capacity to deliver on its guarantees, and that in fact, as of 2001, it was incurring losses amounting to P62,595,216.00.^[19] She likewise claimed to have discovered false entries in the company's books and financial statements — specifically, its overvaluation of the marine animals and its non-disclosure of the true amount of JV China's investment^[20] — which prompted her to call for an audit investigation. Consequently, Dio discovered that, without her knowledge and consent, Desmond made certain disbursements from Westdale's special account, meant only for Miracle Beach expenditures (special account), and diverted a total of US\$72,362.78 therein for the operating expenses of Ocean Adventure.^[21] When Desmond refused to execute an undertaking to return the diverted funds, Dio, in her capacity as Treasurer of SBMEI, suspended the release of the remaining funds in the aforesaid special account.^[22]

Eventually, after Dio was ousted as Director and Treasurer of SBMEI,^[23] she filed, on April 19, 2004, two (2) criminal complaints^[24] (subject criminal complaints) for *estafa* (a) through false pretenses under Article 315(1)(b)^[25] of the Revised Penal Code^[26] (RPC); and (b) with unfaithfulness or abuse of confidence through misappropriation or conversion under Article 315(2)(a)^[27] of the RPC, both against Desmond before the Olongapo City Prosecutor's Office (City Prosecutor's Office),

docketed as IS Nos. 04-M-992 and 04-M-993.

In defense, Desmond maintained that his representation of himself as Chairman and CEO of SBMEI was not a sham and that Dio has not even proven that he did not have the expertise and qualifications to double her investment. Among others, he also denied having been fired from Beijing Landa Aquarium Co. Ltd. for his supposed incompetence and mismanagement. He further asserted that it was not deceitful to value the marine mammals at US\$3,720,000.00 as equity contribution of JV China in SBMEI, notwithstanding the fact that two (2) false killer whales had already perished before the company could start operations. This is because the said valuation, in any case, would be based on the collective income-earning capacity of the entire animal operating system derived from revenues generated by marine park attendance and admission fees.^[28]

In reply, Dio insisted that SBMEI, at the outset, never had sufficient assets or resources of its own because, contrary to Desmond's claims, the total amount of US\$2,300,000.00 it purportedly invested in buildings and equipment actually came from the investments Dio's company made in SBMEI.^[29]

After the preliminary investigation, the City Prosecutor issued a Resolution^[30] dated August 26, 2004, finding probable cause against Desmond for the abovementioned crimes, to wit:

The foregoing clearly applies in the instant two (2) cases as borne out by the following facts, to wit [sic]: (1) Desmond, as the Chairman and Chief Executive Office of SBMEI and in order to persuade Dio to invest, represented that he possessed the necessary influence, expertise and resources (in terms of credit and property) for the project knowing the same to be false as he never had the capital for the project as borne out by his correspondences with Dio; and (2) Dio fell for these misrepresentations and the lure of profit offered by Desmond, thereby being induced to invest the amounts of \$1,150,000.00 and \$1,000,000.00 to the damage and prejudice of her company.

The elements of the crimes charged were thus established in these cases, namely Dio parted with her money upon the prodding and enticement of respondent on the false pretense that he had the capacity and resources for the proposed project. In the end, Dio was not able to get her money back, thus causing her damage and prejudice. Moreover, such defraudation or misappropriation having been committed by Desmond through his company SBMEI involving funds solicited from Dio as a member of the general public in contravention of the public interest, the probable cause clearly exists to indict Desmond for the crime of Estafa under Article 315 (1)(b) and (2)(a) of the Revised Penal Code in relation to PD No. 1689.^[31]

In view of the foregoing, corresponding criminal informations^[32] (subject informations) were filed with the Regional Trial Court of Olongapo City, Branch 74 (RTC), docketed as Criminal Case Nos. 516-2004 and 515-2004. The accusatory

portions thereof read as follows:

Criminal Case No. 516-2004^[33]

That in or about and sometime in early 2001, in Olongapo City, Philippines, and within the jurisdiction of this Honorable Court, the above- named accused, being the officer of Subic Bay Marine Exploration, Inc. (SBMEI), acting as a syndicate and by means of deceit, did then and there, wilfully, unlawfully and feloniously defraud H.S. EQUITIES LIMITED, represented in this case by Virginia S. Delos Santos-Dio in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which he made to said Virginia S. Delos Santos-Dio to the effect that he had the expertise and qualifications, as well as the resources, influence, credit and business transaction with the Subic Bay Metropolitan Authority (SBMA) and other financing institutions to ensure the viability of the Subic Bay Marine Exploration Ocean Adventure Project (SBMEOA), which he represented to be a qualified and legally existing investment enterprise with capacity to solicit investment from the general public, by submitting documents for the purpose, which representations he knew to be false and fraudulent and the supporting documents are similarly spurious and were only made in order to induce said Virginia S. Delos Santos-Dio to invest and deliver as in fact she invested and delivered a total amount of One Million One Hundred Fifty Thousand US Dollars (\$1,150,000.00) to the said accused on the strength of said manifestations and representations and supporting documents, and said accused, once in possession of the said amount, misapplied, converted and misappropriated the same to his own personal use and benefit, to the damage and prejudice of H.S. Equities Limited in the amount of US \$1,150,000.00 or Php57,500,000.00 Pesos, the dollar computed at the rate of Php 50.00 to [US]\$1.00 which was the prevailing rate of exchange of a dollar to peso at the time of the commission of the offense.

CONTRARY TO LAW.

Criminal Case No. 515-2004^[34]

That in or about and sometime during the period from June 2002 to July 2002, in Olongapo City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, wilfully, unlawfully and feloniously defraud Westdale Assets, Limited represented in this case by Virginia S. Delos Santos-Dio in the following manner to wit: the said accused received in trust and for administration from the said Virginia S. Delos Santos-Dio the amount of One Million US Dollars (\$1,000,000.00) under the express obligation of using the same to pay the loan facility of the Subic Bay Marine Exploration, Inc. (SBMEI) with First Metro Investment Corporation and to fund the construction and development of the Miracle Beach Project but the said accused, once in possession of the said amount, with grave abuse of confidence and with intent to defraud, misapplied, misappropriated and converted the same for his own use and benefit by devoting it to a purpose or use different

from that agreed upon and despite repeated demands made upon him to account for and to return the said amount, he failed and refused and still fails and refuses to do so, to the damage and prejudice of the said Westdale Assets, Limited in the amount of US \$1,000,000.00 or its equivalent to FIFTY MILLION (Php 50,000,000.00) Pesos, Philippine Currency, the dollar being computed at the rate of Php50.00 to \$ 1.00 which was the prevailing rate of exchange at the commission of the offense, to the damage and prejudice of the latter in the aforementioned amount.

CONTRARY TO LAW.

Aggrieved, Desmond filed a Motion for Reconsideration,^[35] as well as a Motion to Withdraw Filed Informations.^[36] He also filed before the RTC a Motion to Defer Further Proceedings and to Defer Issuance of Warrant of Arrest^[37] but subsequently withdrew the same and filed, instead, a Motion for Judicial Determination of Probable Cause.^[38]

The RTC Ruling

In an Order^[39] dated October 21, 2004, the RTC ruled in favor of Desmond and declared that no probable cause exists for the crimes charged against him since the elements of *estafa* were not all present, to wit:

First, the element of misrepresentation or deceit found in par. 2 (a) Article 315 of the Revised Penal Code is absent. It must be emphasized that the promises allegedly made to the complainant by the accused that her company's investment will significantly increase, clearly appeared in the Subic Bay Marine Exploration, Inc.'s ("SBMEI", for brevity) printed business plan dated January 12, 2001 (Annex "A", Complaint-Affidavit dated 19 April 2004). Verily, this is SBMEI's representation or "come on" to would-be investors and not a personal assurance of the accused. The fact that accused was the company's Chief Executive Officer and Chairman of the Board of Directors is of no moment in the absence of any evidence to show that accused personally prepared the business plan thereby making the alleged "rosy picture" his own personal enticements to the complainant. Therefore, there being a dearth of evidence pointing to the accused as author of the SBMEI's business plan, any misrepresentation or deceit committed cannot be personally attributed to him.

Furthermore, the court cannot find any sufficient evidence that the accused personally assured the complainant about his so-called power, influence and credit with the SBMA and other financial institutions that would supposedly insure the viability and profitability of the project. Note that nowhere in the Complaint-Affidavit of the private complainant are there specific factual allegations that would show that the accused had personal business meetings with the SBMA and said financial institutions. As to how and in what manner and scope accused exercised such alleged