

## SECOND DIVISION

[ G.R. Nos. 179282-83, December 01, 2010 ]

**MICHAEL SYIACO, PETITIONER, VS. EUGENE ONG, RESPONDENT.**

### D E C I S I O N

**NACHURA, J.:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Michael Syiaco against respondent Eugene Ong, seeking to reverse and set aside the Court of Appeals (CA) Decision<sup>[1]</sup> dated May 22, 2007 and Resolution<sup>[2]</sup> dated August 14, 2007 in CA-G.R. SP Nos. 86680 and 87253.

The factual and procedural antecedents are as follows:

Respondent was the President, while petitioner was the Chairman of the Board of Directors of Trans-Asia Securities, Inc. (Trans-Asia), a brokerage firm. Petitioner engaged the services of respondent, together with Trans-Asia's Chief Accountant Christina Dam (Dam), to purchase on his behalf 300,000,000 shares of stock of Palawan Oil and Gas Exploration (Palawan Oil), now iVantage, Equities, Inc. (iVantage), for P3,000,000.00 and 25,000 shares of stock of Equitable Banking Corporation (EBC) for P2,832,500.00. In payment of the purchase price, petitioner purportedly issued several checks made payable to the account of Trans-Asia, and drawn against Rizal Commercial Banking Corporation.<sup>[3]</sup> Despite full payment, respondent allegedly refused to deliver to petitioner the certificates of stock covering the same.<sup>[4]</sup>

In view of respondent's continued refusal to deliver the subject certificates despite demand, petitioner filed a criminal complaint against respondent and Dam for *estafa* through misappropriation or conversion under Article 315(1)(b) of the Revised Penal Code on March 9, 1998.<sup>[5]</sup> The case was docketed as I.S. No. 98C-10653.

In his defense, respondent claimed that he delivered the certificates of stock of Palawan Oil to petitioner's sister, Haling Chua (Chua), in her office at the Philippine Stock Exchange, as requested by petitioner. As to the EBC shares, respondent maintained that there were still matters about said shares that needed to be cleared. Dam, for her part, denied any participation in the commission of the alleged *estafa*. She claimed that she was a mere accountant of Trans-Asia and, as such, her duties did not involve the recording of stock transactions or the custody and delivery of its stock certificates.<sup>[6]</sup>

On July 15, 1998, the City Prosecutor of Manila dismissed the complaint against respondent and Dam. This was affirmed by the Department of Justice (DOJ) in a resolution dated October 26, 1998, and subsequently affirmed by the CA in a Decision<sup>[7]</sup> dated October 31, 2000 in CA-G.R. SP No. 55522. The CA held that the

element of conversion or misappropriation was not duly proven by petitioner. The appellate court noted that the checks were issued for the account of Trans-Asia, and that there was no showing how the money was converted by respondent and Dam to their personal use. The CA Decision became final and executory.<sup>[8]</sup>

Notwithstanding the finality of the CA Decision, petitioner refiled the case by instituting two criminal complaints against respondent and Dam for *estafa* through misappropriation or conversion. The first complaint, filed on August 27, 2001 and docketed as I.S. No. 01H-34490, pertained to the transactions involving the Palawan Oil shares, while the second complaint, filed on January 7, 2003 and docketed as I.S. No. 03A-00194, involved the EBC shares.<sup>[9]</sup> The refiling of the complaints was purportedly based on the following newly discovered evidence:

- 1) The letters issued by the Corporate Secretary and Stock and Transfer Agent of iVantage Equities, Inc. (formerly Palawan Oil) stating that complainant [petitioner herein] and his brother are not in the list of stockholders of iVantage Equities, Inc.

- 2) The Affidavit of Margarita dela Cruz, Trans-Asia's former Assistant Vice-President, stating that she does not remember having signed any check/s against Trans-Asia's account issued to and made payable to Palawan Oil or iVantage Securities or to Equitable Banking Corporation as payment for the shares of stocks bought for the private respondent.

- 3) The Minutes of Stockholders and Directors' Meeting of Trans-Asia, held on April 30, 1998, authorizing petitioner to sign all stock certificates and documents for any and all transactions consistent with the purpose of Trans-Asia Securities, Inc., so that according to private respondent, even if his money is still in the coffers of Trans-Asia, still, it is only petitioner who has access thereto considering that he has been designated as the sole signatory to all transactions of Trans-Asia.

- 4) The Affidavit of Haling Chua, denying receipt from [respondent] of any stock certificates of Palawan Oil Shares or any document representing the 300,000,000 Palawan Oil Shares bought by [petitioner].<sup>[10]</sup>

In a resolution<sup>[11]</sup> dated September 2, 2002, the Office of the Chief State Prosecutor (OCSA), in I.S. No. 01H-34490, involving the Palawan Oil shares, dismissed the complaint with respect to Dam, but found probable cause to indict respondent for *estafa* through misappropriation or conversion. On motion for reconsideration, the OCSA reversed and set aside its resolution on January 10, 2003. On appeal, however, the Secretary of Justice recommended that respondent be indicted for the crime of *estafa* involving the Palawan Oil shares.<sup>[12]</sup>

Meanwhile, in I.S. No. 03A-00194 involving the EBC shares, the OCSA dismissed the complaint in a Resolution dated January 15, 2004. The Prosecutor found that the pieces of evidence which petitioner presented were not newly discovered to warrant the reopening of the case. The resolution, however, was reversed by the DOJ, which recommended that respondent be likewise indicted for the crime of *estafa* involving

the EBC shares.<sup>[13]</sup>

In view of the DOJ resolutions, respondent was constrained to institute petitions for *certiorari* before the CA, docketed as CA-G.R. SP No. 86680 and CA-G.R. SP No. 87253, which were later consolidated as they involved the same parties and issues.

On May 22, 2007, the CA rendered a Decision in favor of respondent, the dispositive portion of which reads:

**WHEREFORE**, the Petitions for *Certiorari* in CA-G.R. SP No. 86680 and CA-G.R. SP No. 87253 are **GRANTED**. The assailed Resolutions dated May 5, 2004, July 5, 2004, July 28, 2004 and August 27, 2004, issued by public respondent Department of Justice in I.S. No. 01H-34490 and I.S. No. 03A-00194, respectively, are declared **NULL AND VOID**. The criminal complaints filed against petitioner subject of the said Resolutions, are ordered **DISMISSED**.

**SO ORDERED.**<sup>[14]</sup>

The CA focused on the determination of whether the pieces of evidence might be regarded as newly discovered, and found that they were not. It explained that the alleged newly discovered pieces of evidence were already existing and could have been easily produced by petitioner. It added that petitioner failed to show that he exercised reasonable diligence in procuring the subject pieces of evidence. Therefore, they could not qualify as newly discovered and, thus, will not justify the filing of new criminal cases against respondent. In that light, the CA concluded that the DOJ gravely abused its discretion in allowing the re-filing of the *estafa* cases against respondent on the basis of the subject newly discovered pieces of evidence.

<sup>[15]</sup> The CA later denied petitioner's motion for reconsideration for lack of merit.

Aggrieved, petitioner comes before the Court in this Petition for Review on *Certiorari*, raising the following issues:

First. The Court of Appeals [Former Twelfth Division] gravely erred when it applied the rule on "newly discovered evidence" as enunciated in the case of *Amarillo v. Sandiganbayan* [396 SCRA 434] [2003] which rules would apply only for the purpose of reopening a case and granting new trial.

Second. The Court of Appeals [Former Twelfth Division] gravely erred in finding that Petitioner Syiaco did not exercise reasonable diligence in procuring the subject pieces of evidence before or during the trial of the first *Estafa* case.

Third. The Court of Appeals [Former Twelfth Division] gravely erred in finding that the Department of Justice acted with grave abuse of discretion amounting to lack of or excess of jurisdiction when it allowed the re-filing of the *Estafa* cases against Respondent Ong on the basis of the subject evidence.<sup>[16]</sup>