

## FIRST DIVISION

[ G.R. No. 150536, September 17, 2008 ]

**BIENVENIDO GOMBA, PETITIONER, VS. THE PEOPLE OF THE  
PHILIPPINES,<sup>[1]</sup> RESPONDENT.**

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

**CORONA, J.:**

In this petition for review on certiorari under Rule 45 of the Rules of Court, petitioner Bienvenido Gomba assails the October 15, 2001 decision<sup>[2]</sup> of the Court of Appeals (CA) convicting him of estafa through misappropriation under Article 315, paragraph 1 (b) of the Revised Penal Code (RPC).

Gomba was the common area administrator of MRB-NGCP Phase 1 homeowners association (association) from April 16 to December 18, 1998.<sup>[3]</sup> His primary task was to see to it that the residents of MRB-NGCP Phase 1 had clean surroundings and a constant water supply. His other tasks included the collection of association dues and water bills and the remittance of these collections on a daily basis to the association.<sup>[4]</sup>

Gomba allegedly failed to remit his collections for the months of July, September and October 1998. This matter was reported by the association's treasurer to its board of directors. The association, through external auditors, performed audits to investigate the alleged anomaly. In two separate memoranda,<sup>[5]</sup> Gomba was ordered to produce and turn over various documents in his possession. He was likewise required to explain why he failed to remit his water bill collections. Gomba, for unexplained reasons, refused to receive these memoranda prompting the association to take further action. Ultimately, it was reported that Gomba's unremitted collections amounted to P237,996.44.

The association filed a complaint before the *Lupong Tagapamayapa* of Barangay Commonwealth. In the proceedings before the *Lupon*, Gomba offered to settle his unremitted collections.<sup>[6]</sup> However, he reneged on his promise.

A criminal complaint was therefore filed against Gomba. After preliminary investigation, an Information for estafa under Article 315, paragraph 1 (b) of the RPC was lodged against him in the Regional Trial Court (RTC), Branch 95, Quezon City.

Gomba pleaded not guilty when arraigned. During trial, he denied the allegations that he failed to remit the amounts he collected. He claimed to have faithfully performed his duties as administrator by receiving daily collections and remitting them to the administration treasurer, less expenses incurred every month.<sup>[7]</sup>

After trial on the merits, Gomba was found guilty beyond reasonable doubt of the crime charged. He was sentenced to suffer an indeterminate penalty of six years, eight months and 21 days of *prision mayor* to twenty years of *reclusion temporal*. He was also ordered to return or pay the amount of P237,996.44 to the association with legal interest computed from June 16, 1999 until fully paid.

On appeal, the CA affirmed the RTC decision.

In this petition for review on certiorari, Gomba contests the findings of the RTC and the CA that there was misappropriation. He also questions the appreciation of various pieces of evidence against him.<sup>[8]</sup>

We deny the petition.

Gomba was convicted of estafa with abuse of confidence through misappropriation under Article 315, paragraph 1 (b) of the RPC.<sup>[9]</sup> Its elements are:

1. That money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
3. That such misappropriation or conversion or denial is to the prejudice of another; and
4. That there is a demand made by the offended party to the offender.

<sup>[10]</sup>

Gomba asserts that misappropriation, the second element, is absent.

Misappropriation is defined as:

[A]n act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. To "misappropriate" a thing of value for one's own use or benefit [includes] not only conversion to one's personal advantage but also every attempt to dispose of the property of another without a right.<sup>[11]</sup>

The demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation.<sup>[12]</sup> In this case, Gomba, as common area administrator, received the collections in trust for the association. The association made a demand upon Gomba to remit his collections. He failed to do so, despite several opportunities given to him. This was evidence that he misappropriated the money, bolstered by the fact that he merely submitted reports without the corresponding remittances on various occasions.<sup>[13]</sup>

In the face of positive evidence to the contrary, Gomba's claim that he incurred no shortages (without submitting a detailed accounting of the collections and alleged expenses<sup>[14]</sup>) deserves scant consideration. Although Gomba enjoyed the presumption of innocence and that the duty to prove misappropriation belonged to the prosecution, the latter was able to effectively discharge that burden, as already discussed.