

THIRD DIVISION

[G.R. No. 178511, December 04, 2008]

**MA. BELEN FLORDELIZA C. ANG-ABAYA, FRANCIS JASON A. ANG,
HANNAH ZORAYDA A. ANG, AND VICENTE G. GENATO,
PETITIONERS, VS. EDUARDO G. ANG, RESPONDENT.**

DECISION

YNARES-SANTIAGO, J.:

This Petition for Review on *Certiorari*^[1] under Rule 45 of the Rules of Court assails the March 6, 2007 Decision^[2] of the Court of Appeals in CA-G.R. SP No. 94708, which nullified and set aside the July 26, 2005 and March 29, 2006 Resolutions^[3] of the Secretary of Justice in I.S. No. MAL-2004-1167 directing the withdrawal of the information filed against petitioners for violation of Section 74 of the Corporation Code. Also assailed is the June 19, 2007 Resolution^[4] denying the Motion for Reconsideration.

Vibelle Manufacturing Corporation (VMC) and Genato Investments, Inc. (Genato) (collectively referred to as "the corporations") are family-owned corporations, where petitioners Ma. Belen Flordeliza C. Ang-Abaya (Flordeliza), Francis Jason A. Ang (Jason), Vincent G. Genato (Vincent), Hanna Zorayda A. Ang (Hanna) and private respondent Eduardo G. Ang (Eduardo) are shareholders, officers and members of the board of directors.

Prior to the instant controversy, VMC, Genato, and Oriana Manufacturing Corporation (Oriana) filed Civil Case No. 4257-MC, which is a case for damages with prayer for issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction against herein respondent Eduardo, together with Michael Edward Chi Ang (Michael), and some other persons for allegedly conniving to fraudulently wrest control/management of the corporations.^[5] Eduardo allegedly borrowed substantial amounts of money from the said corporations without any intention to repay; that he repeatedly demanded for increases in his monthly allowance and for more cash advances contrary to existing corporate policies; that he harassed petitioner Flordeliza to transfer and/or sell certain corporate and personal properties in order to pay off his personal obligations; that he attempted to forcibly evict petitioner Jason from his office and claim it as his own; that he interfered with and disrupted the daily business operations of the corporations; that Michael was placed on preventive suspension due to prolonged absence without leave and commission of acts of disloyalty such as carrying out orders of Eduardo which were detrimental to their business, using privileged information and confidential documents/data obtained in his capacity as Vice President of the corporations, and admitting to have sabotaged their distribution system and operations.

During the pendency of Civil Case No. 4257-MC, particularly in July, 2004, Eduardo sought permission to inspect the corporate books of VMC and Genato on account of petitioners' alleged failure and/or refusal to update him on the financial and business activities of these family corporations.^[6] Petitioners denied the request claiming that Eduardo would use the information obtained from said inspection for purposes inimical to the corporations' interests, considering that: "a) he is harassing and/or bullying the Corporation[s] into writing off P165,071,586.55 worth of personal advances which he had unlawfully obtained in the past; b) he is unjustly demanding that he be given the office currently occupied by Mr. Francis Jason Ang, the Vice-President for Finance and Corporate Secretary; c) he is usurping the rights belonging exclusively to the Corporation; and d) he is coercing and/or trying to inveigle the Directors and/or Officers of the Corporation to give in to his baseless demands involving specific corporate assets."^[7]

Because of petitioners' refusal to grant his request to inspect the corporate books of VMC and Genato, Eduardo filed an Affidavit-Complaint^[8] against petitioners Flordeliza and Jason, charging them with violation (two counts) of Section 74, in relation to Section 144, of the Corporation Code of the Philippines.^[9] Ma. Belinda G. Sandejas (Belinda), Vincent, and Hanna were subsequently impleaded for likewise denying respondent's request to inspect the corporate books.

Petitioners filed a Joint Counter-Affidavit praying for the dismissal of the complaint for lack of factual and legal basis, or for the suspension of the same while Civil Case No. 4257-MC is still pending resolution.^[10] They denied violating Section 74 of the Corporation Code and reiterated the allegations contained in their complaint in Civil Case No. 4257-MC. Petitioners blamed Eduardo's lavish lifestyle, which is funded by personal loans and cash advances from the family corporations. They alleged that Eduardo consistently pressured petitioner Flordeliza, his daughter, to improperly transfer ownership of the corporations' V.A.G. Building to him;^[11] to disregard the company policy prohibiting advances by shareholders; to unduly increase his corporate monthly allowance; and to sell her Wack-Wack Golf proprietary share and use the proceeds thereof to pay his personal financial obligations. When the proposed transfer of the V.A.G. Building did not materialize, petitioners claim that Eduardo instituted an action to compel the donation of said property to him.^[12] Furthermore, they claim that Eduardo attempted to forcibly evict petitioner Jason from his office at VMC so he can occupy the same; that Eduardo and his cohorts constantly created trouble by intervening in the daily operations of the corporations without the knowledge or consent of the board of directors.

Meanwhile, in Civil Case No. 4257-MC, the trial court rendered a Decision granting the permanent injunction applied for by the corporations.^[13] However, the Court of Appeals subsequently rendered a Decision^[14] declaring that Eduardo, his son Michael, and the other persons impleaded in Civil Case No. 4257-MC, were imprudently declared in default by the trial court. The appellate court thus annulled the permanent injunction issued by the trial court and remanded the case for further proceedings. VMC, Genato, and Oriana corporations filed a Petition for Review on *Certiorari* before this Court, but the same was denied for failure to sufficiently show any reversible error in the Decision of the Court of Appeals.^[15] The three corporations filed a Motion for Reconsideration, but the same was denied with finality on June 25, 2008.

Meanwhile, on February 3, 2005, the City Prosecutor's Office of Malabon City issued a Resolution^[16] recommending that petitioners be charged with two counts of violation of Section 74 of the Corporation Code, but dismissed the complaint against Belinda for lack of evidence.^[17] Petitioners filed a Petition for Review^[18] before the Department of Justice (DOJ), which reversed the recommendation of the City Prosecutor of Malabon City.^[19] The dispositive portion of the DOJ Resolution dated July 26, 2005, reads:

Wherefore, premises considered, the assailed resolution is REVERSED and SET ASIDE. The City Prosecutor of Malabon City is hereby directed to cause the withdrawal of the corresponding information filed against respondents [herein petitioners] for violation of Section 74 of the Corporation Code of the Philippines and to report the action taken thereon within ten (10) days from the receipt hereof.

SO ORDERED.^[20]

The DOJ denied Eduardo's Motion for Reconsideration^[21] in a Resolution^[22] dated March 29, 2006. On appeal, the Court of Appeals rendered the assailed Decision, the dispositive portion of which states:

WHEREFORE, the instant petition is partially GRANTED. The assailed Resolutions of public respondent dated July 26, 2005 and March 29, 2006 are hereby NULLIFIED and SET ASIDE. However, due to the present existence of a prejudicial question, the criminal case docketed I.S. No. MAL-2004-1167 is hereby SUSPENDED until Civil Case No. 4257-MC is decided on the merits with finality. ^[23]

The appellate court ruled that the Secretary of Justice committed grave abuse of discretion amounting to lack or excess of jurisdiction in reversing the Resolutions of the Malabon City Prosecutor and in finding that Eduardo did not act in good faith when he demanded for the examination of VMC and Genato's corporate books. It further held that Eduardo can demand said examination as a stockholder of both corporations; that Eduardo raised legitimate questions that necessitated inspection of the corporate books and records; and that petitioners' refusal to allow inspection created probable cause to believe that they have committed a violation of Section 74 of the Corporation Code.

On June 19, 2007, the Court of Appeals denied the Motions for Reconsideration filed by petitioners and the Secretary of Justice.^[24] Hence, this petition raising the following issues:

WHETHER OR NOT THE HONORABLE COURT OF APPEALS WAS CORRECT IN ITS FINDING THAT THE HONORABLE JUSTICE SECRETARY'S REVERSAL OF THE MALABON CITY PROSECUTOR'S *RESOLUTION* FINDING PROBABLE CAUSE AGAINST HEREIN PETITIONERS WAS DONE CONTRARY TO THE APPLICABLE LAW AND JURISPRUDENCE TANTAMOUNT TO GRAVE ABUSE OF DISCRETION.

WHETHER OR NOT THE HONORABLE JUSTICE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF

JURISDICTION IN REVERSING THE RESOLUTION OF THE MALABON CITY PROSECUTOR FINDING PROBABLE CAUSE AGAINST PETITIONERS AFTER PRELIMINARY INVESTIGATION FOR VIOLATION OF SECTION 74 OF THE CORPORATION CODE OF THE PHILIPPINES.

WHETHER OR NOT THE HONORABLE JUSTICE SECRETARY COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN FINDING THAT PETITIONERS ACTED IN GOOD FAITH WHEN THEY DENIED PRIVATE RESPONDENT'S DEMAND FOR INSPECTION OF CORPORATE BOOKS.^[25]

We grant the petition.

Probable cause, for purposes of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof. It is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean "actual or positive cause;" nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of prosecution's evidence in support of the charge."^[26]

The determination of the existence of probable cause lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Their decisions are reviewable by the Secretary of Justice who may direct the filing of the corresponding information or to move for the dismissal of the case.^[27]

In reversing the Resolutions of the Secretary of Justice directing the withdrawal of the information filed against petitioners for lack of probable cause, the Court of Appeals held that it was beyond the Secretary of Justice's authority to determine the motives of Eduardo in seeking an inspection of the corporations' books and papers.

In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present.^[28] This is based on the principle that every crime is defined by its elements, without which there should be - at the most - no criminal offense.

In *Gokongwei, Jr. v. Securities and Exchange Commission*,^[29] this Court explained the rationale behind a stockholder's right to inspect corporate books, to wit:

The stockholder's right of inspection of the corporation's books and records is based upon their ownership of the assets and property of the corporation. It is, therefore, an incident of ownership of the corporate property, whether this ownership or interest be termed an equitable ownership, a beneficial ownership, or a quasi-ownership. This right is predicated upon the necessity of self-protection. It is generally held by

majority of the courts that where the right is granted by statute to the stockholder, it is given to him as such and must be exercised by him with respect to his interest as a stockholder and for some purpose germane thereto or in the interest of the corporation. **In other words, the inspection has to be germane to the petitioner's interest as a stockholder, and has to be proper and lawful in character and not inimical to the interest of the corporation.**^[30]

In *Republic v. Sandiganbayan*,^[31] the Court declared that the right to inspect and/or examine the records of a corporation under Section 74 of the Corporation Code is circumscribed by the express limitation contained in the succeeding proviso, which states that:

[I]t shall be a defense to **any** action under this section that the person demanding to examine and copy excerpts from the corporation's records and minutes **has improperly used any information secured** through any prior examination of the records or minutes of such corporation or of any other corporation, **or was not acting in good faith or for a legitimate purpose in making his demand.** (Emphasis supplied)

Thus, contrary to Eduardo's insistence, the stockholder's right to inspect corporate books is not without limitations. While the right of inspection was enlarged under the Corporation Code as opposed to the old Corporation Law (Act No. 1459, as amended),

It is now expressly required as a condition for such examination that the one requesting it must not have been guilty of using improperly any information secured through a prior examination, or that the person asking for such examination must be acting in good faith and for a legitimate purpose in making his demand.^[32] (Emphasis supplied)

In order therefore for the penal provision under Section 144 of the Corporation Code to apply in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code, the following elements must be present:

First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;

Second. Any officer or agent of the concerned corporation shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;

Third. If such refusal is made pursuant to a resolution or order of the board of directors or trustees, the liability under this section for such action shall be imposed upon the directors or trustees who voted for such refusal; and,

Fourth. Where the officer or agent of the corporation sets up the defense that the person demanding to examine and copy excerpts from the corporation's records and minutes has improperly used any information secured through any prior examination of the records or minutes of such