

FIRST DIVISION

[G.R. NO. 163255, June 22, 2007]

**INSULAR LIFE ASSURANCE COMPANY, LIMITED, PETITIONER,
VS. MANUEL M. SERRANO, RESPONDENT.**

DECISION

PUNO, C.J.:

Before us is a petition for review of the October 9, 2003 decision^[1] and April 15, 2004 resolution^[2] of the Court of Appeals in CA-G.R. SP No. 76341.

First, the antecedent facts.

In June 1987 respondent Manuel M. Serrano bought from petitioner Insular Life Assurance Company, Limited, a life insurance policy called "Diamond Jubilee, Participating" on his understanding that he shall be paying premiums for seven (7) years only. Dividend accumulations and earned interests were to be applied to subsequent premium payments. Respondent obtained six Diamond Jubilee Life Insurance policies, and religiously paid the premiums.

In early 1996, respondent was informed by his accountant that he had been paying premiums on some of his policies even beyond the seven-year period of their effectivity. Consequently, respondent wrote a letter to Atty. Ernesto G. Montalban, petitioner's Senior Vice President, Sales Operations Group, requesting that the overpayments be applied as premium payments of his other policies which have not reached the seven-year period. The request was denied on the ground that the self-liquidating option of the policies was not guaranteed because it was based on dividends which vary. Atty. Montalban, however, assured respondent that some of his policies will self-liquidate but on the following dates, to wit:

Policy Number	Issue Date	Date of Self-Liquidation
PN 2156675	June 9, 1987	June 9, 1997
PN 2160551	November 24, 1987	November 24, 1996
PN 2164830	December 23, 1987	December 23, 1997
PN 2168149	April 18, 1988	April 18, 1997

Insisting that petitioner's agents represented to him that the Diamond Jubilee Life Insurance policies are self-liquidating after 7 years, respondent repeatedly demanded that petitioner make good the representation, to no avail.

On October 8 and 11, 1996, respondent caused a notice to be published in the

URGENT NOTICE
TO ALL
INSULAR LIFE DIAMOND JUBILEE
POLICY-HOLDERS

IF YOU ARE A VICTIM OF INSULAR LIFE ASSURANCE'S REFUSAL TO HONOR ITS REPRESENTATION THAT YOUR POLICY BECOMES SELF-LIQUIDATING AFTER A LAPSE OF SEVEN (7) YEARS, PLEASE ATTEND A **SPECIAL MEETING** OF SIMILARLY SITUATED POLICY HOLDERS AND CO-OWNERS OF INSULAR LIFE ON **OCTOBER 16, 1996, 2:00 P.M. AT THE MAKATI SPORTS CLUB**, ALFARO ST., SALCEDO VILLAGE, MAKATI, TO CONSIDER COLLECTIVE ACTION TO PROTECT YOUR INTERESTS. **RSVP – CALL MRS. VILLAROYA OR MRS. CARIAGA AT 817-22-35 OR 816-25-64**

In addition, respondent filed on December 11, 1996 a civil case for specific performance, sum of money, and damages before the Regional Trial Court of Makati City against petitioner, Atty. Montalban, Insurance Underwriter Mila Ramos, Agency Manager Portia Valdez, and District Sales Manager Alfredo Sta. Maria, docketed as Civil Case No. 96-2009.

In turn, petitioner filed in May 1997 a complaint for libel against respondent before the City Prosecution Office of Makati City.^[3] The complaint alleged that the published notice was libelous as it depicted petitioner as having "victimized" or "conned" its policyholders by refusing to honor an alleged representation that its Diamond Jubilee Life Insurance policies were self-liquidating after 7 years. Petitioner maintained that the policies it issued bore no such representation. As a result of the libelous publication, petitioner allegedly suffered dishonor, discredit and damage in an amount not less than P100,000,000.00.

In his answer to the complaint, respondent contended that the word "victim" truthfully signified his situation as owner of six Diamond Jubilee Life Insurance policies which petitioner's agents represented to be self-liquidating after 7 years but which turned out to be not.

On October 6, 1997, the City Prosecutor of Makati dismissed petitioner's complaint for lack of probable cause, ruling that there was no defamatory imputation, and no malice in the publication.^[4] Petitioner's motion for reconsideration was denied.^[5]

Petitioner sought a review before the Secretary of Justice. On April 18, 2002,^[6] the Secretary of Justice affirmed the dismissal of petitioner's complaint for lack of probable cause.

Petitioner assailed the ruling before the Court of Appeals *via* a petition for *certiorari*.^[7] On October 9, 2003, the Court of Appeals dismissed the petition, finding no grave abuse of discretion on the part of the Secretary of Justice in affirming the dismissal of petitioner's complaint.^[8] Petitioner's motion for reconsideration was denied.^[9] Hence, this petition.

Petitioner assigns the following errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE INCORRECT FINDINGS OF THE DEPARTMENT OF JUSTICE INSOFAR AS IT CONCLUDED THAT THE ELEMENT OF DEFAMATORY IMPUTATION IS MISSING, HENCE, THE PUBLICATION, SUBJECT OF THE CRIMINAL COMPLAINT IS NOT LIBELOUS.

II.

THE HONORABLE COURT OF APPEALS ERRED IN NOT FINDING THAT THERE WAS GRAVE ABUSE OF DISCRETION ON THE PART OF THE DEPARTMENT OF JUSTICE WHEN IT REFUSED TO FILE THE INFORMATION AGAINST RESPONDENT DESPITE THE PUBLICATION OF THE SUBJECT LIBELOUS NOTICE.

The general rule is that the courts do not interfere with the discretion of the public prosecutor in determining the specificity and adequacy of the averments in a criminal complaint.^[10] The determination of probable cause for the purpose of filing an information in court is an executive function^[11] which pertains at the first instance to the public prosecutor and then to the Secretary of Justice.^[12] The duty of the Court in appropriate cases is merely to determine whether the executive determination was done without or in excess of jurisdiction or with grave abuse of discretion.^[13] Resolutions of the Secretary of Justice are not subject to review unless made with grave abuse.^[14]

In the case at bar, the City Prosecutor dismissed petitioner's complaint for libel because two elements of the crime were missing, defamatory imputation and malice. Under Article 353 of the **Revised Penal Code**,^[15] an accused may be held liable for the crime if the following elements concur, viz: (1) the allegation of a discreditable act or condition concerning another, (2) publication of the charge, (3) identity of the person defamed, and (4) existence of malice.^[16]

It is not disputed that the second and third elements are present. The subject article was published in the October 8 and 11, 1996 issues of the Manila Bulletin, and alluded to petitioner's refusal to honor an alleged representation that its Diamond Jubilee Life Insurance policies were self-liquidating after 7 years. Determination of probable cause in the case at bar, therefore, hinged on the existence of the first and last elements.

In concluding that there was no defamatory imputation and that there was no attendant malice, the City Prosecutor explained:

x x x [P]robable cause does not exist against respondent Manuel Serrano to warrant his indictment in Court for the crime of libel, considering that **he did not act with malice** in causing the publication of the notice in question in the issues of Manila Bulletin, on October 8 and 11, 1996, **since he can be considered as a victim** or was made to suffer from an act of the Insular Life Assurance Co. Ltd. in not honoring that his