

## SECOND DIVISION

[ G.R. No. 141624, August 17, 2004 ]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. HERNANDO B. DELIZO, RESPONDENT.**

### DECISION

**CALLEJO, SR., J.:**

Before us is a petition for review on certiorari of the Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. SP No. 50995 granting the petition for certiorari of respondent Dr. Hernando B. Delizo and nullifying the December 18, 1998 and February 1, 1999 Orders<sup>[2]</sup> of the Regional Trial Court of Mandaluyong City in Criminal Case No. 167-MD for *estafa*.

#### *The Antecedents*

Arsenio T. Ng filed a criminal complaint for *estafa* against the respondent with the Office of the City Prosecutor of Mandaluyong City, docketed as Inv. Slip No. 97-10288. After the requisite preliminary investigation, First Assistant City Prosecutor Esteban A. Tacla, Jr. signed an Information dated October 10, 1997, charging the respondent with *estafa*. The accusatory portion of the Information reads:

That on or about the 24th day of October, 1996, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, being then President and Chairman of Mediserv, Inc., by means of deceit, false pretenses and fraudulent representation, executed prior to or simultaneously with the commission of the fraud, succeeded in inducing herein complainant, Arsenio T. Ng to give the amount of P12 Million, to the accused on his pretext that said amount will be converted by him into shares of stock (120,000 shares of stocks) and in order to complement such false pretenses or fraudulent acts, he (respondent) even showed a Board Resolution defining his authority to contract loan from the complainant and the conversion of such loan into shares of stock, which, on the strength by said manifestations and representations, the complainant gave said amount and duly received by the accused, he knowing fully well that the same were false and fraudulent and were only made to entice complainant into believing that he, indeed, is empowered and in a position to issue the equivalent number of shares of stocks (120,000) in order to obtain, as in fact, he (accused) obtained the total amount of P12 Million from the complainant and the accused, once in possession of the money, far from complying with his obligation to release the 120,000 shares of stocks into complainant's name, despite demands made on him and, with intent to defraud, did then and there willfully, unlawfully and feloniously misappropriate, misapply and convert said amount, to his own personal

use and benefit, to the damage and prejudice of Arsenio T. Ng, in the aforementioned amount of P12 Million.

CONTRARY TO LAW.<sup>[3]</sup>

Before the Information was filed, the Ambulatory Health Care Institute, Inc. (AHCII), also known as Clinica Manila (CM), and the Health Check, Inc. (HCI) filed a Complaint on October 22, 1997 with the Securities and Exchange Commission (SEC) against the respondent and a certain "John Doe" for injunction and damages. The case was docketed as SEC Case No. 10-97-5794. The petitioners therein alleged, *inter alia*, that a special meeting of the stockholders of CM was held on October 9, 1997 after due notice to the respondent two weeks before the said date. During the said meeting, the stockholders elected a new board of directors, replacing the respondent as CM president. Thereafter, at 3:00 p.m. of October 13, 1997, the respondent and an unidentified companion arrived at the CM office at SM Megamall, announced that he was still the president, and rallied the officers and employees against the new board of directors. Despite the security guards' request for him to leave the premises, the respondent refused to do so. He, thereafter, wrote the China Banking Corporation, the depository bank of CM, requesting it not to honor any change in the authorized signatories for CM, and appended thereto a falsified General Information Sheet (GIS) to show that he was still a member of the board of directors and president of CM. It was prayed that, after due proceedings, judgment be rendered:

WHEREFORE, it is respectfully prayed of this Honorable Commission to adjudge that respondent be ordered:

1. Not to do any act or deed that will disturb or interfere with the operations and business of the petitioners, and not to cause any alarm, scandal, disturbance, intrigue, disloyalty, disorder, or defiance on the part of any (*sic*) employees, officers, contractors, workers of CLINICA MANILA and HEALTH CHECK, INC.;
2. Not to do any act that will interfere with or disturb the management and operation of the funds, bank accounts, receivables, and all other property transactions of the petitioners, and to stop representing themselves as having any kind of power and authority over any asset of the two companies and their management;
3. Not to do any act or deed, directly or indirectly, that will dishonor the name and reputation of the petitioners;
4. To pay actual damages of P1,000,000; moral damages of P2,000,000; and exemplary damages of P500,000; and to pay the costs of suit.<sup>[4]</sup>

On October 23, 1997, AHCII, Mediserv, Inc. (MI) and the respondent, filed a Complaint with the SEC against Arsenio T. Ng, Kelly S. Salvador, Antonio Roberto M. Abaya, Bartolome C. Felipe, Jr., Joel Abanilla and Nonette C. Mina. The complainants alleged, *inter alia*, that they had been stockholders of AHCII since August 1995, and represented a majority of the outstanding capital stock, owning 52.37% and 6.08%, respectively, as shown by the GIS dated October 15, 1997 filed with the SEC; the respondent was the incumbent chairman of the board of directors and president of

AHCII; and there was no quorum during the stockholders' meeting of October 9, 1997; as such, the said meeting where a new set of board of directors and officers were, elected was in violation of the by-laws of the complainant AHCII and, consequently, illegal. The complainants prayed that the following reliefs be granted after due proceedings:

- a) Declaring the Writ of Preliminary Injunction earlier issued as permanent;
- b) Adjudging the Special Stockholders' Meeting purportedly held on October 9, 1997 as null and void *ab initio*;
- c) Adjudging any action, proceeding, resolution, and/or election made in the alleged stockholders' meeting purportedly held on October 9, 1997 as null and void *ab initio*;
- d) Adjudging respondents Arsenio T. Ng, Kelly S. Salvador, Antonio Roberto M. Abaya, Bartolome C. Felipe, Jr., Joel Abanilla and Nonette C. Mina, jointly and severally, liable to pay to complainant Delizo moral damages of not less than P1,000,000.00;
- e) Adjudging respondents Arsenio T. Ng, Kelly S. Salvador, Antonio Roberto M. Abaya, Bartolome C. Felipe, Jr., Joel Abanilla and Nonette C. Mina, jointly and severally, liable to pay to the complainants, as follows:
  - i. Exemplary damages of not less than P500,000.00;
  - ii. Actual damages not less than P250,000.00;
  - iii. Attorney's fee of P200,000.00;
  - iv. Costs of litigation.

Other equitable reliefs are prayed for.<sup>[5]</sup>

The case was docketed as SEC Case No. 10-97-5796.

In the meantime, Mediserv, Inc., represented by its president, the respondent, and its treasurer, Marissa D. Delizo, filed a complaint with the RTC of Manila, Branch 29, against the China Banking Corporation, the Landheights (Iloilo) Development Corporation, Notary Public Romeo A. Ignacio, Jr. and the Registrar of Deeds for the City of Manila. An amended complaint was later filed, where it was alleged, *inter alia*, that MI received a loan from the bank in the amount of P9,820,000, later increased to P11,200,000. To secure the payment of the said loan, MI executed a real estate mortgage and amendment to real estate mortgage over its property covered by Transfer Certificate of Title (TCT) No. 205824 of the Register of Deeds of Manila. MI also executed a promissory note on October 5, 2000 in favor of the bank in the amount of P11,200,000. The bank, thereafter, foreclosed the mortgage and sold the property at public auction in favor of the bank for P15,649,023.29, through defendant Notary Public Romeo A. Ignacio, Jr. It was prayed that, after due proceedings, it be granted the following reliefs:

WHEREFORE, it is most respectfully prayed of this Honorable Court that:

1. Immediately upon filing of this Complaint, this Honorable Court issues a Writ of Preliminary Injunction, or at least a Temporary

Restraining Order enjoining and restraining defendant Register of Deeds from effecting/allowing the registration or annotation of the purported auction sale of plaintiff's property covered by TCT No. 205824 of the Register of Deeds for the City of Manila in favor of defendant Landheights, or any transaction, dealing or incident arising from the purported auction sale allegedly conducted by defendant Ignacio until further orders from this Honorable Court.

2. After hearing, to render Judgment, as follows:

- a. Declaring the Writ of Preliminary Injunction earlier issued as permanent;
- b. Declaring the alleged public auction sale conducted by defendant Ignacio over the subject plaintiff's property, as null and void;
- c. Ordering and commanding Defendant China Bank to comply and to reduce into writing and/or to document its agreement with plaintiff to consolidate the first P5 million loan of plaintiff with it with the plaintiff's second loan of P1,800,000.00;
- d. Adjudging defendants China Banking Corporation, Landheights (Iloilo) Development Corporation and Romeo A. Ignacio, Jr., jointly and severally, liable to pay to plaintiff the following:
  1. Attorney's Fees in the amount of P200,000.00; and
  2. Costs of suit.

Other equitable reliefs are prayed for.<sup>[6]</sup>

The case was docketed as Civil Case No. Q-97-86152.

On December 3, 1997, the Information for *estafa* against the respondent was filed with the RTC of Mandaluyong City and raffled to Branch 214. The case was docketed as Criminal Case No. 167-MD. The private prosecutor filed an *ex parte* motion for preliminary attachment, which was opposed by the respondent. On December 18, 1998, the trial court issued an Order<sup>[7]</sup> directing the issuance of a writ of preliminary attachment on a bond of P8,000,000. The respondent filed a motion for reconsideration of the order with a prayer for the suspension of the proceedings on the ground of the existence of a prejudicial question on December 23, 1998.

As early as January 13, 1998, the trial court in Branch 213 issued an Order denying the motion to suspend proceedings on the ground that the private complainant, Arsenio T. Ng, was not a stockholder of MI; hence, the pendency of the two (2) SEC cases was not a ground for the suspension of the case. On February 1, 1999, the trial court issued the assailed Order denying the motion for reconsideration.

On February 19, 1999, the respondent filed a Petition for Certiorari with the Court of Appeals, docketed as CA-G.R. SP No. 50995, for the nullification of the Orders of the trial court, contending as follows:

6.A.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN ORDERING THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT GROSSLY

IGNORING THE ESTABLISHED RULE THAT APPLICATIONS FOR A WRIT OF PRELIMINARY ATTACHMENT MUST BE STRICTLY CONSTRUED AGAINST THE APPLICANT AND LIBERALLY IN FAVOR OF THE PARTY AGAINST WHOM IT IS DIRECTED.

6.B.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN ORDERING THE ISSUANCE OF THE PRELIMINARY ATTACHMENT DESPITE THE CLEAR SHOWING THAT THE CIVIL ASPECT OF THE CRIMINAL CASE IS ALREADY COVERED BY CASES BEFORE THE SECURITIES AND EXCHANGE COMMISSION AND THE REGIONAL TRIAL COURT OF MANILA; HENCE, THERE IS NO CIVIL ASPECT ATTACHED AND/OR DEEMED INSTITUTED WITH THE CRIMINAL CASE.

6.C.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN ORDERING THE ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT ON A P12 MILLION CLAIM PER THE INFORMATION WITH ONLY P8 MILLION BOND; HENCE, GROSSLY INSUFFICIENT, IMPROPER AND UNREASONABLE.

6.D.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN MERELY RELYING ON THE ALLEGATIONS OF THE *EX PARTE* MOTION FOR ISSUANCE OF A WRIT OF PRELIMINARY ATTACHMENT WHICH ARE NOT SUPPORTED BY AFFIDAVIT/S AS REQUIRED UNDER THE RULES.

6.E.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN NOT SUSPENDING THE PROCEEDINGS IN THE SUBJECT CRIMINAL CASE IN VIEW OF THE PRESENCE OF PREJUDICIAL QUESTIONS IN THE SEC CASES AND THE RTC CASE WHICH ARE DETERMINATIVE OF THE INNOCENCE OR GUILT OF THE ACCUSED, THE HEREIN PETITIONER.

6.F.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN DENYING THE MOTION TO DISQUALIFY PRIVATE PROSECUTOR BEFORE THE SAID MOTION CAN BE HEARD; HENCE, A CLEAR AND PALPABLE VIOLATION OF DUE PROCESS.

6.G.) THE RESPONDENT JUDGE GRAVELY ABUSED HIS DISCRETION AND ACTED IN EXCESS AND/OR WITHOUT JURISDICTION IN NOT DISQUALIFYING THE PRIVATE PROSECUTOR DESPITE THE CLEAR SHOWING THAT THE CIVIL ASPECT OF THE SUBJECT CRIMINAL CASE IS PRESENTLY LITIGATED AND/OR THE SUBJECT OF SEPARATE ACTIONS BEFORE THE SEC AND THE RTC.<sup>[8]</sup>

On January 18, 2000, the CA rendered a Decision granting the petition and nullifying the assailed Orders of the trial court, as well as the writ of preliminary attachment it issued. The *fallo* of the decision reads: