

G.R. No. 205698 – HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND, *Petitioner* v. CHRISTINA SAGUN, *Respondent*.

G.R. No. 205780 – DEPARTMENT OF JUSTICE, represented by SEC. LEILA DE LIMA, STATE PROSECUTOR THEODORE M. VILLANUEVA, and PROSECUTOR GENERAL CLARO A. ARELLANO, and the NATIONAL BUREAU OF INVESTIGATION, *Petitioners* v. CHRISTINA SAGUN, *Respondent*.

G.R. No. 208744 – DEPARTMENT OF JUSTICE, *Petitioner* v. DELFIN S. LEE, *Respondent*.

G.R. No. 209424 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner* v. GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, DELFIN S. LEE, in his capacity as the President of the Corporation, and TESSIE G. WANG, *Respondents*.

G.R. No. 209446 – PEOPLE OF THE PHILIPPINES, *Petitioner* v. ALEX M. ALVAREZ, *Respondent*.

G.R. No. 209489 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner* v. ALEX M. ALVAREZ, *Respondent*.

G.R. No. 209852 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner* v. DELFIN S. LEE, *Respondent*.

G.R. No. 210095 – DEPARTMENT OF JUSTICE, *Petitioner* v. DELFIN S. LEE, *Respondent*.

G.R. No. 210143 – PEOPLE OF THE PHILIPPINES, *Petitioner* v. DELFIN S. LEE, *Respondent*.

G.R. No. 228452 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner* v. DEXTER L. LEE, *Respondent*.

G.R. No. 228730 – PEOPLE OF THE PHILIPPINES, *Petitioner* v. DEXTER L. LEE, *Respondent*.

G.R. No. 230680 – CRISTINA SALAGAN, *Petitioner* v. PEOPLE OF THE PHILIPPINES and HOME DEVELOPMENT MUTUAL FUND (HDMF), *Respondents*.

Promulgated:

July 31, 2018

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S E P A R A T E O P I N I O N

PERLAS-BERNABE, J.:**I. G.R. Nos. 205698, 205780, 209446, 209489,
209852, 210143, 228452, 228730, and 230680.**

These petitions commonly relate to the determination of probable cause against herein respondents Delfin S. Lee (Delfin Lee), Dexter L. Lee (Dexter Lee), Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex M. Alvarez (Alvarez; collectively respondents). In particular:

(a) The petitions in **G.R. Nos. 205698¹ and 205780²** were respectively filed by petitioners, the Home Development Mutual Fund (HDMF; also known as Pag-IBIG) and the Department of Justice (DOJ), to assail the Court of Appeals' (CA) Rulings³ in CA-G.R. SP No. 121346 which set aside the DOJ's Review Resolution⁴ dated August 10, 2011 finding probable cause to indict Sagun, among others, for the crime of syndicated *estafa*, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against her;

(b) The petitions in **G.R. Nos. 209446⁵ and 209489⁶** were respectively filed by petitioners, the People of the Philippines (People) and HDMF, to assail the CA's Ruling⁷ in CA-G.R. SP No. 127690 which annulled and set aside the Regional Trial Court (RTC) of Pampanga, Branch 42's (Pampanga-RTC) May 22, 2012 Resolution⁸ and August 22, 2012 Resolution⁹ judicially finding probable cause against Alvarez, *inter alia*, for the same crime of syndicated *estafa*, and hence, ordered the dismissal of the case and the quashal of the warrant of arrest issued against him;

(c) The petitions in **G.R. Nos. 209852¹⁰ and 210143¹¹** were respectively filed by HDMF and the People to assail the CA's ruling¹² in CA-G.R. SP No. 127553 which also annulled and set aside the aforesaid

¹ *Rollo* (G.R. No. 205698), Vol. I, pp. 111-198.

² *Rollo* (G.R. No. 205780), Vol. I, pp. 8-82.

³ See CA Decision dated October 5, 2012 and CA Resolution dated February 11, 2013, both penned by Associate Justice Angelita A. Gacutan with Associate Justices Mariflor Punzalan Castillo and Francisco P. Acosta concurring. *Rollo* (G.R. No. 205698), Vol. I, pp. 24-57 and 59-74.

⁴ *Id.* at 405-451. Penned by OIC, Senior Deputy State Prosecutor Theodore M. Villanueva and approved by Prosecutor General Claro A. Arellano.

⁵ *Rollo* (G.R. No. 209446), Vol. I, pp. 42-148.

⁶ *Rollo* (G.R. No. 209489), Vol. I, pp. 36-150.

⁷ *Rollo* (G.R. No. 209446), Vol. I, pp. 153-173. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Hakim S. Abdulwahid and Marlene Gonzales-Sison concurring.

⁸ *Id.* at 237-255. Penned by Judge Maria Amifait S. Fider-Reyes.

⁹ This resolves the motion for reconsideration of Alvarez only. *Id.* at 256-260.

¹⁰ *Rollo* (G.R. No. 209852), Vol. I, pp. 45-135.

¹¹ *Rollo* (G.R. No. 210143), Vol. I, pp. 49-161.

¹² See CA Decision dated November 7, 2013 penned by Associate Justice Franchito N. Diamante with Associate Justices Agnes Reyes Carpio and Melchor Q. C. Sadang concurring. *Rollo* (G.R. No. 209852), Vol. I, pp. 192-220.

Pampanga-RTC's May 22, 2012 Resolution¹³ and August 22, 2012 Resolution¹⁴ judicially finding probable cause against Delfin Lee, *inter alia*, for the same crime of syndicated *estafa*, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against him;

(*d*) The petitions in **G.R. Nos. 228452¹⁵ and 228730¹⁶** were respectively filed by HDMF and the People to assail the CA's Ruling¹⁷ in CA-G.R. SP No. 127554 which also annulled and set aside the Pampanga-RTC Resolutions¹⁸ judicially finding probable cause against Dexter Lee, *inter alia*, for the same crime of syndicated *estafa*, and ordered the dismissal of the case and the quashal of the warrant of arrest issued against him; and

(*e*) The petition in **G.R. No. 230680¹⁹** filed by Salagan assails the CA's March 18, 2016 Decision²⁰ and March 16, 2017 Resolution²¹ in CA-G.R. SP No. 134573 which affirmed the Pampanga-RTC's May 22, 2012 Resolution²² and January 29, 2014 Resolution,²³ and accordingly, upheld the latter court's finding of probable cause for syndicated *estafa* and issuance of warrant of arrest insofar as Salagan is concerned.

These cases stemmed from the HDMF's filing of a Complaint-Affidavit²⁴ for syndicated *estafa*, as defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC) in relation to Presidential Decree No. (PD) 1689,²⁵ and the National Bureau of Investigation's (NBI) referral letter dated October 29, 2010,²⁶ by virtue of which, the DOJ conducted a preliminary investigation²⁷ against respondents, along with several others. In brief, it was alleged that Delfin Lee, as the President and Chief Executive Officer of petitioner Globe Asiatique Realty Holdings Corporation (GA), entered into funding commitment agreements and other transactions with HDMF wherein he made false and fraudulent representations to HDMF that GA had interested buyers in its Xevera projects in Bacolor and Mabalacat, Pampanga, when in truth, Delfin Lee knew fully well that the corporation did

¹³ *Id.* at 254-272.

¹⁴ This resolves the motions of Delfin Lee and Dexter Lee. *Id.* at 273-285.

¹⁵ *Rollo* (G.R. No. 228452), Vol. I, pp. 3-120.

¹⁶ *Rollo* (G.R. No. 228730), Vol. I, pp. 36-148.

¹⁷ See CA Decision dated November 16, 2016 penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Jose C. Reyes, Jr. and Stephen C. Cruz concurring. *Rollo* (G.R. No. 228452), Vol. I, pp. 144-164.

¹⁸ *Id.* at 209-227 and 228-240.

¹⁹ *Rollo* (G.R. No. 230680) Vol. I, pp. 3-92.

²⁰ *Id.* at 343-369. Penned by Associate Justice Ramon A. Cruz with Associate Justices Rodil V. Zalameda and Henri Jean Paul B. Inting concurring.

²¹ *Id.* at 370-372.

²² *Id.* at 114-132.

²³ See *id.* at 22.

²⁴ The Complaint-Affidavit dated October 29, 2010 was filed by the Officer-in-Charge of HDMF, Emma Linda B. Faria; *rollo* (G.R. No. 205698), Vol. I, pp. 339-350.

²⁵ Entitled "INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA" (April 6, 1980).

²⁶ See preliminary investigation report dated October 29, 2010; *rollo* (G.R. No. 205698), Vol. I, pp. 330-338.

²⁷ See report dated December 10, 2010; *id.* at 400-404.

not have such buyers.²⁸ The fraud against HDMF was allegedly perpetrated by the submission by GA of names of fictitious buyers and documents to HDMF as part of certain housing loan applications that led to fund releases by HDMF in favor of GA.²⁹ In addition, GA purportedly employed a “special buyers” scheme whereby it recruited persons who did not have any intention to buy its housing units in Xevera, but, in exchange for a fee, lent their names and Pag-IBIG membership to GA so that the said corporation could use the same in obtaining fund releases from HDMF.³⁰ As stated in the Information, Delfin Lee, together with Dexter Lee, Sagun, and Salagan, in their respective capacities as Executive Vice-President/ Chief Finance Officer/ Treasurer, Documentation Department Head, and Accounting/ Finance Department Head of GA,³¹ as well as Alvarez, as Foreclosure Department Manager of HDMF,³² acted as a syndicate formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme of soliciting funds from the general public, each performing a particular act in furtherance of the common design.

After due proceedings, the DOJ issued a Review Resolution³³ dated August 10, 2011 (DOJ Review Resolution) finding probable cause to indict respondents for the crime complained of. The DOJ found that the elements of syndicated *estafa* are present in the instant case, considering that: (a) GA entered into various Funding Commitment Agreements (FCAs)³⁴ and a Memorandum of Agreement (MOA)³⁵ with HDMF whereby the former warranted, *inter alia*, that the borrowers are *bona fide* Pag-IBIG members who had been properly evaluated and approved in accordance with the guidelines of Pag-IBIG Housing Loan Program; (b) by virtue of the said FCAs and MOA, HDMF was induced to release to GA the aggregate amount of ₱7,007,806,000.00; (c) GA had reneged on said warranties as it, among others, employed fictitious buyers to be able to obtain said funds from HDMF; (d) when HDMF discovered such irregularities and stopped its fund releases to GA, the latter’s almost 100% monthly collection/remittance stopped as well, thereby strongly indicating that the monthly amortizations being remitted by GA were being paid from the fund releases it was receiving from HDMF; and (e) HDMF was prejudiced in the amount of ₱6,653,546,000.00 which has yet to be returned by GA.³⁶

Accordingly, the Information³⁷ for syndicated *estafa* was filed before the Pampanga-RTC.³⁸ Later, the said court, in a Resolution³⁹ dated May 22,

²⁸ See *rollo* (G.R. No. 205698), Vol. II, p. 613.

²⁹ See *id.*

³⁰ See *id.* at 614.

³¹ *Rollo* (G.R. No. 205698), Vol. I, p. 407.

³² *Id.* at 428.

³³ *Id.* at 405-451.

³⁴ See *id.* at 414.

³⁵ Dated July 13, 2009. *Rollo* (G.R. No. 205698), Vol. IV, pp. 2055-2060.

³⁶ See *rollo* (G.R. No. 205698), Vol. I, pp. 436-441.

³⁷ Dated August 25, 2011. *Rollo* (G.R. No. 205698), Vol. II, pp. 612-616.

³⁸ Docketed as Criminal Case No. 18480.

³⁹ *Rollo* (G.R. No. 209466), Vol. I, pp. 237-255.

2012, judicially determined the existence of probable cause against respondents, and consequently, ordered the issuance of warrants of arrest against them. Through various proceedings in different fora, respondents assailed the finding of probable cause against them, and eventually, such issue was raised before the Court through the aforesaid petitions.

The *ponencia* partially granted the petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 in that it found probable cause to prosecute Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez for simple *estafa* only, as defined and penalized under Article 315 (2) (a) of the RPC, and accordingly, directed the DOJ to amend the respondents' Information to reflect such indictment. The *ponencia* ruled that there is sufficient basis to support a reasonable belief that respondents, namely: Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez were probably guilty of simple *estafa*. It ratiocinated that through the representations and undertakings made by GA in its "special buyers" scheme, these respondents were able to induce HDMF in entering into the various FCAs to the latter's damage and prejudice. The *ponencia* went on to particularize the respondents' individual acts which made them criminally accountable for perpetrating the "special buyers" scheme, as follows: (a) Delfin Lee, for signing the FCAs and MOA in behalf of GA, and the checks issued by GA to the "special buyers" and HDMF; (b) Dexter Lee, for giving the orders to recruit "special buyers" and co-signing those checks issued to the "special buyers" and HDMF; (c) Sagun, as head of GA's Documentation Department, for collating the documents submitted by the borrowers/buyers, checking if the same are complete and duly accomplished, and verifying whether or not the said borrowers/buyers are indeed Pag-IBIG members with updated contributions or existing housing loans; (d) Salagan, as head of GA's Accounting/Finance Department, for reviewing all requests for payment from on-site projects and preparing the corresponding checks, ensuring that all loan takeouts are duly recorded, and that amortizations are timely remitted to HDMF; and (e) Alvarez, for notarizing crucial pieces of documents purportedly from affiants who turned out to be fictitious and/or non-existing, which directly led to HDMF releasing its funds to GA.⁴⁰

However, the *ponencia* held that respondents cannot be indicted for syndicated *estafa*, pointing out that the association of the said respondents did not solicit funds from the general public as there was no allegation that GA had been incorporated to defraud its stockholders or members, and that in fact, the only complainant in the *estafa* charges is a single juridical entity, *i.e.*, HDMF, which is not a stockholder or member of GA.⁴¹

⁴⁰ See *ponencia*, pp. 43-44.

⁴¹ See *id.* at 36-40.

Stripped of its technicalities⁴² and as will be explained hereunder, I agree with the *ponencia* in: (a) finding probable cause to indict respondents Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez for simple *estafa* only, and not syndicated *estafa*; and (b) directing the DOJ to amend the Information against them accordingly.

Article 315 (2) (a) of the RPC reads:

Art. 315. *Swindling (estafa)*. — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of *estafa* as contemplated in this provision are the following: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that, as a result thereof, the offended party suffered damage.⁴³

In relation thereto, Section 1 of PD 1689 states that syndicated *estafa* is committed as follows:

Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, “*samahang nayon(s)*,” or farmers’ association, or funds solicited by corporations/associations from the general public.

⁴² The procedural flaws in the petitions filed by Sagun, Delfin Lee, Dexter Lee, and Alvarez in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680 have been adequately addressed by Senior Associate Justice Antonio T. Carpio in his Dissenting Opinion (see pp. 14-23), which discussion I fully subscribe to.

⁴³ *People v. Tibayan*, 750 Phil. 910, 919 (2015), citing *People v. Chua*, 695 Phil. 16, 32 (2012).

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Thus, the elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling, as defined in Articles 315 and 316 of the RPC, is committed; (b) the *estafa* or swindling is committed by a syndicate of five (5) or more persons; and (c) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, “*samahang nayon(s)*,” or farmers’ association, or of funds solicited by corporations/associations from the general public.⁴⁴

With these in mind, it is my opinion that there is probable cause to believe that *estafa* under Article 315 (2) (a) of the RPC was committed by all of the respondents, considering that HDMF was induced to enter into various FCAs and a MOA with GA based on its understanding that GA would only process the applications of *bona fide* Pag-IBIG members who have been properly evaluated and approved in accordance with the program’s housing guidelines. Because of the execution of such FCAs and MOA, HDMF released funds to GA via numerous loan takeouts for the latter’s Xevera Project. However, unknown to HDMF, GA implemented fraudulent designs, such as the “special buyers” scheme, to make it appear that it had various buyers/borrowers for the Xevera Project, when in truth, most of such buyers/borrowers were fictitious, not qualified to avail of such loans, or even persons who merely signed documents in exchange for money offered to them by GA. Case law states that:

Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.⁴⁵

In this case, HDMF was evidently prejudiced by the scheme employed by GA, through its officers and agents, as HDMF unduly released public funds to GA, which it had yet to recover. In fact, as soon as HDMF stopped its fund releases to GA, the latter’s Performing Accounts Ratio for the Xevera Project went from 95% to 0%.

Notably, the foregoing is based on either undisputed facts or the audit findings conducted by HDMF functionaries. Anent the latter, the audit conducted by HDMF was made pursuant to its investigatory powers which is incidental to its power “[t]o ensure the collection and recovery of all indebtedness, liabilities and/or accountabilities, including unpaid contributions in favor of the Fund arising from any cause or source or whatsoever, due from all obligors, whether public or private x x x” under Section 13 (q) of Republic Act No. (RA) 9679,⁴⁶ known as “*Home Development Mutual Fund Law of 2009, otherwise known as Pag-IBIG (Pagtutulungan sa Kinabukasan: Ikaw, Bangko, Industriya at Gobyerno)*”

⁴⁴ Id. at 269, citing *Galvez v. CA*, 704 Phil 463, 472 (2013).

⁴⁵ *Galvez v. CA*, id. at 470; citation omitted.

⁴⁶ Entitled “AN ACT FURTHER STRENGTHENING THE HOME DEVELOPMENT MUTUAL FUND, AND FOR OTHER PURPOSES,” approved on July 21, 2009.

Fund.” Therefore, it cannot be denied that the audit was an official function, which hence, must be accorded the presumption of regularity. Case law states that “[t]he presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer’s act being lawful or unlawful, construction should be in favor of its lawfulness.”⁴⁷

In an attempt to shift the “blame” on HDMF for not properly verifying the borrowers/buyers submitted by GA, it has been contended that upon the execution of the MOA, GA was already relieved of its warranties: (a) on the proper evaluation and approval of loans of the borrowers/buyers; and (b) against misrepresentation of its agents/employees for loan accounts evaluated and approved by GA.

However, this contention is untenable, considering the inescapable fact that **at the time of the execution of the MOA on July 13, 2009, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less ₱2.9 Billion for the purpose.** As such, the crime of *estafa* was, in all reasonable likelihood, **already consummated even before the execution of the MOA.**

Furthermore, even assuming *arguendo* that the provisions of the MOA indeed superseded GA’s aforesaid warranties and that the obligation to evaluate and approve the loan applications of the borrowers/buyers of the Xevera Project was already with HDMF, GA remains bound to undertake corrective measures to address any defects regarding the membership and housing loan eligibility of its buyers:

In cases where defects in HDMF membership and housing loan eligibility of the buyer are found, the DEVELOPER shall undertake the following corrective measures to address the same:

- 1) Require the borrower to complete the required number of contributions, in case the required 24 monthly contributions is not met;
- 2) Require the borrower to update membership contributions, in case the membership status is inactive;
- 3) Require the borrower to update any existing Multi-Purpose Loan (MPL) if [it] is in arrears or pay in full if the same has lapsed;

⁴⁷ *Bustillo v. People*, 634 Phil. 547, 556 (2010).

- 4) Buyback the account in case the member has a HDMF housing loan that is outstanding, cancelled, bought back, foreclosed or subject to [*dacion en pago*].⁴⁸

Aside from these obligations, it goes without saying that the GA is obliged to only provide and process the applications of legitimate buyers. Verily, it would be nonsensical to suppose that HDMF would release funds to GA had it known that the list of borrowers/buyers and the accompanying documents submitted to it by the latter were fraudulent or fictitious.

Moreover, the HDMF's failure to prevent the fraudulent maneuverings allegedly employed by GA – whether through the negligence of its staff or otherwise – does not negate the fact that fraud was committed against the former. The scheme's discovery is already after the fact and hence, does not discount the posterior commission of fraud. At any rate, it should be highlighted that HDMF, is a government-owned and controlled corporation (GOCC)⁴⁹ and hence, an instrumentality of the State. Thus, the rule that the State is not bound by the omission, mistake or error of its officials or agents⁵⁰ applies.

As for the respondents' respective roles in the fraudulent scheme establishing the existence of probable cause against them, I fully agree with – and thus, need not repeat – the *ponencia's* findings. In light of the foregoing, it is my submission that there is probable cause to believe that all respondents, *i.e.*, Delfin Lee, Dexter Lee, Sagun, Salagan, and Alvarez, conspired and confederated with one another in order to commit the fraudulent acts against HDMF. In this regard, jurisprudence instructs that “in determining whether conspiracy exists, it is not sufficient that the attack be joint and simultaneous for simultaneousness does not of itself demonstrate the concurrence of will or unity of action and purpose which are the bases of the responsibility of the assailants. What is determinative is proof establishing that the accused were animated by one and the same purpose.”⁵¹

That it was GA and HDMF – both corporate entities – which dealt with each other, and not respondents in their personal capacities, does not eliminate the latter's criminal liabilities in this case, if so established after trial. Jurisprudence provides that “**if the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty shall be imposed upon the directors, officers, employees or other officials or persons responsible for the offense.**” The penalty referred to is imprisonment, the duration of which would depend on the amount of the fraud as provided for in Article 315 of the [RPC]. The reason for this is obvious:

⁴⁸ See Section 3 (c) of the July 13, 2009 MOA; *rollo* (G.R. No. 205698), Vol. IV, p. 2057.

⁴⁹ See RA 9679.

⁵⁰ *China Banking Corp. v. Commission of Internal Revenue*, G.R. No. 172509, February 4, 2015, 749 SCRA 525, 539.

⁵¹ *People v. Gerero*, G.R. No. 213601, July 27, 2016, 798 SCRA 702, 707, citing *Quidet v. People*, 632 Phil. 1, 11-12 (2010).

corporation, partnership, association or other juridical entities cannot be put in jail. However, it is these entities which are made liable for the civil liabilities arising from the criminal offense. This is the import of the clause ‘without prejudice to the civil liabilities arising from the criminal offense.’”⁵²

Also, it deserves pointing out that while respondents do not deny the existence of fictitious/non-existent buyers and that loan documents were falsified/simulated, they disclaim knowledge of the fraudulent scheme committed against HDMF, as it was allegedly its rogue agents which actually defrauded GA. Clearly, the foregoing constitutes denial and as such, is a matter of defense, the merits of which are better threshed out during trial.⁵³

Finally, it is important to elucidate that the RTC of Makati City, Branch 58’s (Makati-RTC) January 30, 2012 Resolution in Civil Case No. 10-1120 granting GA and Delfin Lee’s motion for summary judgment, and consequently, its complaint for specific performance and damages against HDMF has no bearing, considering its fundamental disparities with the present case. In particular, Civil Case No. 10-1120 involves a cause of action arising from the contractual relations of GA/ Delfin Lee and HDMF, which is adjudged under the evidentiary threshold of preponderance of evidence. On the contrary, this case (stemming from Criminal Case No. 18480) only seeks to determine whether probable cause exists to file a criminal case in court against the accused. The ruling in the former cannot be thus binding on the latter. At any rate, the ruling in Civil Case No. 10-1120 was premised on the fact that the July 13, 2009 MOA supposedly superseded, amended, and modified the provisions of the FCAs in that the power to approve the housing applications had already been removed from GA and in turn, was relegated to only loan counseling. Therefore, HDMF cannot renege on the performance of their contract on the ground that the defaulting buyers were fictitious and spurious.

As previously stated, the MOA was executed on July 13, 2009, and at that time, GA had already executed around nine (9) different FCAs with HDMF, with the latter having released funds amounting to more or less ₱2.9 Billion for the purpose.⁵⁴ Thus, even prior to the said amendment, the commission of fraud and the resulting damage to HDMF had, in all reasonable likelihood, already existed, which, in turn, means that the crime of *estafa* had already been probably consummated. The probable consummation of the crime is not erased by the succeeding partial novation⁵⁵ of the contract between the parties. Case law dictates that criminal liability for *estafa* is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion

⁵² *Ong v. CA*, 449 Phil. 691, 710 (2003); emphasis and underscoring supplied.

⁵³ See *Shu v. Dee*, 734 Phil. 204, 216-217 (2014).

⁵⁴ See *rollo* (G.R. No. 205698), Vol. I, p. 414.

⁵⁵ “[T]he effect of novation may be partial or total. There is partial novation when there is only a modification or change in some principal conditions of the obligation. It is total, when the obligation is completely extinguished.” (*Ong v. Boghalbal*, 533 Phil. 139, 156 [2006]).

even though complete reparation should have been made of the damage suffered by the offended party.⁵⁶ A criminal offense is committed against the People and the offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the offense.⁵⁷

In light of the foregoing, the first element of syndicated *estafa* has been shown to be present. Correlatively, as the *estafa* was allegedly committed by at least five (5) individuals, there exists a “syndicate” within the purview of PD 1689, and thus, the second element of syndicated *estafa* is likewise present. However, the third and last element of syndicated *estafa*, as discussed by the *ponencia*,⁵⁸ is not present in this case.

As earlier stated, the third element of syndicated *estafa* is that the defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, “*samahang nayon(s)*,” or farmers’ association, **or of funds solicited by corporations/associations from the general public**. Essentially, the wide-scale defraudation of the public through the use of corporations/associations is the gravamen of syndicated *estafa*. This is clearly inferred from the “Whereas Clauses” of PD 1689 which read:

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, “*samahang nayon(s)*”, and farmers’ associations or corporations/associations **operating on funds solicited from the general public**;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, “*samahang nayon(s)*”, and farmers’ [association], or of **funds solicited by corporations/associations from the general public**, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, “*samahang nayon(s)*”, and farmers’ [association] or corporations/associations operating on funds solicited from the general public[.]⁵⁹

After a careful study of this case, I find the third element to be lacking. Based on the allegations of the complaint, it is apparent that the thrust thereof is respondents’ purported defraudation of HDMF which induced it to release funds. This is not a criminal case filed by members of the general public, such as buyers of the Xevera Project, claiming that rural banks, cooperatives, “*samahang nayon(s)*,” and farmers’ association or corporations/associations

⁵⁶ See *Metropolitan Bank and Trust Company v. Reynando*, 641 Phil. 208, 220 (2010).

⁵⁷ *People v. Gervacio*, 102 Phil. 687, 688 (1957).

⁵⁸ See *ponencia*, pp. 36-39.

⁵⁹ Emphases and underscoring supplied.

solicited funds from them, but later on resulted into them being defrauded. To be sure, the fact that the funds released by HDMF are in the nature of public funds does not mean that syndicated *estafa* was committed. The operative factor is whether or not the fraud was committed against the general public. On this point, the case of *Galvez v. CA*⁶⁰ illumines, among others, that PD 1689 does not apply when, regardless of the number of the accused, (a) the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or (b) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies:

In sum and substance and by precedential guidelines, we hold that, *first*, Presidential Decree No. 1689 also covers commercial banks; *second*, to be within the ambit of the Decree, the swindling must be committed through the association, the bank in this case, which operate on funds solicited from the general public; *third*, when the number of the accused are five or more, the crime is syndicated *estafa* under paragraph 1 of the Decree; *fourth*, if the number of accused is less than five but the defining element of the crime under the Decree is present, the second paragraph of the Decree applies; x x x **fifth, the Decree does not apply regardless of the number of the accused, when, (a) the entity soliciting funds from the general public is the victim and not the means through which the estafa is committed, or (b) the offenders are not owners or employees who used the association to perpetrate the crime, in which case, Article 315 (2) (a) of the Revised Penal Code applies.**⁶¹

In so far as this case is concerned, it is undoubted that the private complainant is HDMF; not the general public who claim to have been defrauded through the use of any juridical entity. Therefore, respondents cannot be indicted for syndicated *estafa*. Instead, they can be indicted only for simple *estafa* under Article 315 (2) (a) of the RPC for the reasons above-explained.

Although the Information filed before the RTC and the consequent warrants of arrest issued against respondents were for the crime of syndicated *estafa*, and not for simple *estafa*, the case of *Spouses Hao v. People*⁶² teaches that **said issuances remain valid** but a formal amendment of the Information should be made:

With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it **follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper.** To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

⁶⁰ See *supra* note 44.

⁶¹ *Id.* at 474-475; citations omitted, emphasis and underscoring supplied.

⁶² 743 Phil. 204 (2014).

Moreover, we note that simple *estafa* and syndicated *estafa* are not two entirely different crimes. Simple *estafa* is a crime necessarily included in syndicated *estafa*. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple *estafa*.⁶³
(Emphases and underscoring supplied)

Accordingly, it is my position that respondents should instead be indicted for simple *estafa* only. For this purpose, the DOJ should be directed to amend the Information so as to charge respondents accordingly. Meanwhile, the warrants of arrest issued against them must stand.

II. G.R. No. 209424.

The petition in G.R. No. 209424⁶⁴ was filed by HDMF against GA, Delfin Lee, and respondent Tessie G. Wang (Wang; a purported fully-paid buyer of 22 houses and lots in GA's Xevera Project)⁶⁵ assailing the CA's ruling⁶⁶ in CA-G.R. SP No. 128262. In the said case, the CA upheld the Makati-RTC's January 30, 2012 Resolution⁶⁷ in Civil Case No. 10-1120 granting the motion for summary judgment filed by GA, *et al.* and thereby, ordered HDMF to comply with its obligations under the MOA, FCAs, and Collection Servicing Agreements. Dissatisfied, HDMF filed a motion for reconsideration,⁶⁸ which was, however, denied by the Makati-RTC in a December 11, 2012 Resolution⁶⁹ on the ground that the same was filed by HDMF's engaged private counsel, Yorac Arroyo Chua Caedo & Coronel Law Firm (Yorac Law), without, however, the requisite approval of the Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA); hence, the RTC treated the motion as a mere scrap of paper which did not toll the running of the period of appeal.⁷⁰ Consequently, HDMF filed a petition for *certiorari*⁷¹ before the CA, which was dismissed mainly on the following grounds: (a) the *certiorari* petition is not the proper remedy, considering that the Makati-RTC's ruling was in the nature of a final judgment and hence, subject to an ordinary appeal under Rule 41 of the Rules of Court;⁷²

⁶³ Id. at 219-220; citations omitted.

⁶⁴ *Rollo* (G.R. No. 209424), Vol. I, pp. 143-283.

⁶⁵ See *id.* at 299.

⁶⁶ See Decision dated October 7, 2013, penned by Associate Justice Stephen C. Cruz (*id.* at 14-34). Associate Justices Elihu A. Ybañez and Danton Q. Bueser issued their respective Separate Concurring Opinions (*id.* at 37-40 and 35-36); while Associate Justices Magdangal M. De Leon and Myra V. Garcia-Fernandez issued separate Dissenting Opinions (*id.* at 41-63 and 64-68).

⁶⁷ *Rollo* (G.R. No. 209424), Vol. II, pp. 433-452. *Rollo* (G.R. No. 209852), Vol. I, pp. 296-315. Penned by Presiding Judge Eugene C. Paras.

⁶⁸ Dated February 24, 2012. *Rollo* (G.R. No. 209424), Vol. III, pp. 1264-1296.

⁶⁹ *Rollo* (G.R. No. 209424), Vol. II, pp. 453-459.

⁷⁰ See *id.* at 455-457.

⁷¹ Dated January 14, 2013. *Rollo* (G.R. No. 209424), Vol. I, pp. 347-431.

⁷² See *id.* at 306-308 and 311.

and (b) the Makati-RTC did not gravely abuse its discretion in dismissing HDMF's motion for reconsideration as it failed to comply with the rules, among others, the requisite authorization from the OGCC and the COA.⁷³

In ruling for the grant of **G.R. No. 209424**, the *ponencia* prefatorily held that the Resolution⁷⁴ dated January 30, 2012 of the Makati-RTC which granted summary judgment in GA, *et al.*'s favor is, strictly speaking, only a partial summary judgment rendered in the context of Section 4, Rule 35⁷⁵ of the Rules of Court. It then explained that such Resolution only resolved the issue of whether or not GA, *et al.* were entitled to specific performance, and explicitly stated that the issue on the proper amount of damages to be awarded to them shall still be subject to a presentation of evidence. Since there is still a matter to be resolved by the Makati-RTC, such Resolution partakes of the nature of an interlocutory order. As such, HDMF correctly availed of the remedy of filing a petition for *certiorari* before the CA.⁷⁶

The *ponencia* further found that Yorac Law Firm failed to sufficiently prove that it had the authority to represent HDMF in the proceedings before the Makati-RTC. In this regard, it pointed out that since HDMF is a GOCC, it may only engage private counsels with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the COA. Unfortunately, however, Yorac Law Firm was only able to provide a Certification⁷⁷ dated January 10, 2013 signed by the Office of the Supervising Auditor, COA Corporate Auditor Atty. Fidela M. Tan (Atty. Tan), stating that the COA purportedly authorized HDMF to engage Yorac Law Firm as private counsel. According to the *ponencia*, this cannot be given evidentiary weight not only because it is merely an attestation that the COA supposedly concurred in the HDMF's retainer agreement with Yorac Law

⁷³ See *id.* at 310.

⁷⁴ *Rollo* (G.R. No. 209424), Vol. II, pp. 433-452. *Rollo* (G.R. No. 209852), Vol. I, pp. 296-315. Penned by Presiding Judge Eugene C. Paras.

⁷⁵ Section 4, Rule 35 of the Rules of Court reads:

Section 4. *Case not fully adjudicated on motion.* – If on motion under this Rule, judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly.

⁷⁶ See *ponencia*, pp. 23-27.

⁷⁷ *Rollo* (G.R. No. 209424), Vol. IV, p. 1493.

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Firm, but also because it failed to comply with Sections 24 and 25, Rule 132⁷⁸ of the Rules of Court.⁷⁹

Finally, the *ponencia* recognized that since Yorac Law Firm was not authorized to appear on behalf of HDMF before the Makati-RTC proceedings, the motion for reconsideration it filed before such court did not toll the reglementary period for the filing of a petition for *certiorari* before the CA. Ordinarily, such petition filed by HDMF before the CA should be dismissed for being filed out of time. However, the *ponencia* held that in the broader interest of justice, as well as the peculiar legal and equitable circumstances in this case, the petition for *certiorari* before the CA should not be dismissed outright due to strict adherence to technical rules of procedure, but must be resolved on its merits. Hence, the *ponencia* ordered the remand of the case to the CA for the determination of the propriety of the Makati-RTC's issuance of a partial summary judgment.⁸⁰

While I concur with the *ponencia* insofar as it found that HDMF correctly availed of the remedy of *certiorari* before the CA, I respectfully disagree with its ruling that Yorac Law Firm had no authority to act as counsel on HDMF's behalf, and that the Makati-RTC must be directed to conduct further proceedings in Civil Case No. 10-1120 with dispatch so that the aggrieved party may appeal the Makati-RTC's issuance of a partial summary judgment in said case.

The general rule is that GOCCs, such as HDMF, are enjoined to refrain from hiring private lawyers or law firms to handle their cases and legal matters. However, in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm.⁸¹

⁷⁸ Sections 24 and 25, Rule 132 of the Rules of Court read:

Section 24. *Proof of official record.* – The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul-general, consul, vice-consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office.

Section 25. *What attestation of copy must state.* – Whenever a copy of a document or record is attested for the purpose of the evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court.

⁷⁹ See *ponencia*, pp. 28-31.

⁸⁰ See *id.* at 31-32 and 49.

⁸¹ See *PHIVIDEC Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 503 (2003), citing Memorandum Circular No. 9 dated August 27, 1998.

In this case, these written authorizations were complied with by HDMF. Records show that Atty. Tan issued a Certification⁸² that the COA concurred in the engagement by HDMF of Yorac Law Firm as its private counsel.⁸³ The said certification is presumed to have been issued by the said officer in the regular performance of her duties and hence, should be deemed valid, absent any showing to the contrary. Besides, as pointed out by one of the dissenting justices before the CA, if the Makati-RTC was uncertain about the authority of private counsel to represent HDMF, “fairness and prudence dictate that the [same] be given a chance to provide the form of proof acceptable to the RTC,”⁸⁴ especially considering the public interest involved in this case. To note, records show that the only party who objected to Yorac Law Firm’s representation of HDMF was respondent Wang, who filed a motion to expunge⁸⁵ on the sole ground of lack of COA conformity. This motion was never resolved by the Makati-RTC,⁸⁶ hence, leaving HDMF in the dark on the merits of the motion to expunge and on the necessity to submit further proof of the COA’s authorization. Meanwhile, anent the approval of the OGCC, records disclose that the same was procured through the letters dated December 28, 2010⁸⁷ and December 5, 2011⁸⁸ signed by Government Corporate Counsel Raoul C. Creencia.⁸⁹ In fine, it was grave error for the Makati-RTC to deny the HDMF’s motion for reconsideration.

⁸² *Rollo* (G.R. No. 209424), Vol. IV, p. 1493.

⁸³ Pertinent portions of the January 10, 2013 Certification read:

This is to certify that the Commission on Audit (COA), has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac, Arroyo, Chua, Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues.

This certification is issued to attest to the truth of the foregoing and for whatever legal purposes it may serve. (Id.)

⁸⁴ *Rollo* (G.R. No. 209424), Vol. I, p. 51.

⁸⁵ Dated December 9, 2011. *Rollo* (G.R. No. 209424), Vol. III, pp. 1214-1224.

⁸⁶ *Rollo* (G.R. No. 209424), Vol. I, p. 206.

⁸⁷ *Rollo* (G.R. No. 209424), Vol. III, pp. 1494-1495.

⁸⁸ Id. at 1496-1497.

⁸⁹ See id at 1494 and 1496. Pertinent portions of the December 28, 2010 and December 5, 2011 letters read:

December 28, 2010 letter

This refers to your request for authority to engage the services of external counsel who will handle the cases filed by or against the Globe Asiatique Holdings Corp.

In view thereof, and pursuant to Office of the Government Corporate Counsel (OGCC) Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated August 29, 1998, Home Development Mutual Fund (HDMF) is hereby authorized to engage the services of x x x Yorac Arroyo Chua Caedo & Coronel Law Firm to handle the aforesaid cases, subject to the control and supervision of the OGCC.

December 5, 2011 letter

This confirms and ratifies the engagement of external counsel for the handling of the cases filed by or against the Globe Asiatique Holding Corporation, and such other cases that arose out of or in relation to the Globe Asiatique Corporation Issues.

In view thereof, and pursuant to the Office’s Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, we confirm and ratify the engagement of Yorac Arroyo Chua Caedo & Coronel Law Firm to handle such cases and the submissions of the law firm in connection therewith, subject to the control and supervision of the OGCC.

In light of the foregoing submissions and under ordinary circumstances, court procedure dictates that the case be remanded for a resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had – as in this case, considering the copies of various pleadings and documents already in the possession of the Court – the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice.⁹⁰ Thus, I hereby submit that the Court may already resolve the issue of the propriety of the Makati-RTC's issuance of a partial summary judgment in this case.

Jurisprudence is clear that “[s]ummary judgment is not warranted when there are genuine issues which call for a full blown trial. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.”⁹¹

A perusal of the pleadings filed by the parties in Civil Case No. 10-1120 would show that genuine issues of fact were raised,⁹² and thus, negated the remedy of summary judgment. As encapsulated in the dissent before the CA, these genuine issues are: (a) whether GA was limited to conduct loan counseling instead of loan approval under the agreements; (b) whether GA, in fact, conducted loan approvals instead of mere loan counseling; (c) whether HDMF may buyback accounts despite the absence of a notice to buyback from HDMF; (d) whether HDMF refused to release collectibles under the agreements; (e) whether GA is guilty of fraud; (f) whether HDMF had factual basis to cancel the CSAs and FCAs; and (g) whether GA's acts were constitutive of breach of its warranties under the agreements.⁹³ **Clearly, the Makati-RTC could not turn a blind eye on these triable material factual issues by the mere expedient of saying that the July 13, 2009 MOA superseded the provisions of the FCAs and thus, relegated GA's authority to mere loan counseling, and therefore, rendered it unaccountable for the defaulting buyers, who turned out to be fictitious and spurious.** Surely, the alleged shift of GA's authority to mere loan counseling – assuming the same to be true – still does not definitively settle the foregoing issues and hence, cannot be the sole consideration to grant GA, *et al.*'s complaint for specific performance.⁹⁴ As such, the Makati-RTC's rulings were evidently tainted with

⁹⁰ See *Jolo's Kiddie Cars/Fun4Kids/Marlo U. Cabili v. Caballa*, G.R. No. 230682, November 29, 2017, citing *Sy-Vargas v. The Estate of Rolando Ogsos, Sr.*, G.R. No. 221062, October 5, 2016, 805 SCRA 438, 448.

⁹¹ *Nocom v. Camerino*, 598 Phil. 214, 233-234 (2009).

⁹² See *rollo* (G.R. No. 209424), Vol. I, pp. 56-59.

⁹³ See Dissenting Opinion of CA Justice Magdangal M. De Leon; *id.* at 59.

⁹⁴ Dated November 13, 2010. *Rollo* (G.R. No. 209424), Vol. II, pp. 753-774.

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grave abuse of discretion, and hence, correctly assailed by HDMF through a petition for *certiorari*.

For these reasons, it is my view that since it is already apparent from the records that the Makati-RTC erroneously rendered a partial summary judgment, it is but proper to order a remand of the case to the same court for the conduct of trial on the merits.

III. G.R. Nos. 208744 and 210095.

To recount, the petition in **G.R. No. 208744**⁹⁵ was filed by the DOJ against Delfin Lee to assail the CA's July 8, 2013⁹⁶ and August 14, 2013⁹⁷ Resolutions in CA-G.R. SP No. 130404 which essentially disallowed the DOJ's petition for *certiorari* for being filed out of time. In this case, the DOJ sought to nullify the Order⁹⁸ dated April 10, 2013 of the Regional Trial Court of Pasig City, Branch 167 (Pasig-RTC) in Civil Case No. 73115 enjoining the DOJ's preliminary investigation in the criminal cases entitled "*National Bureau of Investigation/Evelyn B. Niebres, et al. v. Globe Asiatique Realty Corp./ Delfin S. Lee, et al.*" (NPS Docket No. XVI-INV-10L-00363; Niebres Complaint), "*National Bureau of Investigation/Jennifer Gloria (Gloria), et al. v. Globe Asiatique Realty Corp./ Delfin S. Lee, et al.*" (NPS Docket No. XVI-INV-11B-00063), and "*National Bureau of Investigation/Maria Fatima Kayona (Kayona), et al. v. Globe Asiatique Realty Corp./ Delfin S. Lee, et al.*" (NPS Docket No. XVI-INV-11C-00138) for syndicated *estafa*.⁹⁹

On the other hand, the petition in **G.R. No. 210095**¹⁰⁰ was filed by the DOJ also against Delfin Lee to assail the CA's June 26, 2013¹⁰¹ and November 11, 2013¹⁰² Resolutions in CA-G.R. SP No. 130409 which likewise dismissed the DOJ's petition for *certiorari* for being filed out of time. The petition docketed as CA-G.R. SP No. 130409 is the same petition as that in CA-G.R. SP No. 130404, which was its initial docket number. The problem arose when the petition in CA-G.R. SP No. 130404 was filed by the DOJ without indicating the proper docket number by inadvertence. This prompted the CA to assign a new docket number to the petition, *i.e.*, CA-G.R. SP No. 130409, and the raffling thereof to another *ponente* and division.¹⁰³ Eventually, the petition was dismissed outright for having been filed out of time.¹⁰⁴

⁹⁵ *Rollo* (G.R. No. 208744), Vol. I, pp. 28-87.

⁹⁶ See CA Minute Resolution issued by Executive Clerk of Court III Caroline G. Ocampo-Peralta, MNSA; *id.* at 122.

⁹⁷ *Id.* at 118-121. Penned by Associate Justice Francisco P. Acosta with Associate Justices Fernanda Lampas Peralta and Angelita A. Gacutan concurring.

⁹⁸ *Id.* at 195-198. Penned by Judge Rolando G. Mislang.

⁹⁹ See *id.* at 33.

¹⁰⁰ *Rollo* (G.R. No. 210095), Vol. I, pp. 35-131.

¹⁰¹ *Id.* at 136-137. Penned by Associate Justice Amelita G. Tolentino with Associate Justices Ramon R. Garcia and Danton Q. Bueser concurring.

¹⁰² *Id.* at 139-142.

¹⁰³ See *id.* at 139-140.

¹⁰⁴ *Id.* at 137.

Verily, I agree with the *ponencia*'s holding in **G.R. Nos. 208744 and 210095**, considering that it is clear that the DOJ never intended to flout the rules nor employ any dilatory or underhanded tactic as its failure to state the initial docket number to its *certiorari* petition was by sheer inadvertence. As such, the CA should have relaxed the rules and allowed the filing of said petition, following case law which states that “[l]apses in the literal observance of a rule of procedure will be overlooked when they arose from an honest mistake, [and] when they have not prejudiced the adverse party.”¹⁰⁵

More importantly, the Pasig-RTC gravely abused its discretion in enjoining¹⁰⁶ the preliminary investigation of the aforesaid criminal cases mainly on the basis of Makati-RTC's ruling in Civil Case No. 10-1120 – which, as already adverted to, should be subject to re-evaluation. Clearly, the Pasig-RTC's reliance on such basis is misplaced because such civil case involves a cause of action arising from the contractual relations of GA/Delfin Lee and HDMF; whereas the preliminary investigation proceedings in the aforementioned criminal cases seek to determine whether probable cause exists to file criminal cases in court against the accused, this time based on the alleged double sales fraudulently perpetrated against the home-buyers/private complainants Niebres, Gloria, and Kayona, *et al.* Given the unmistakable variance in issues, and considering too that the evidentiary thresholds applied in civil cases are different from criminal cases, the ruling in the former would not be binding on the latter.

Thus, for these reasons, I agree with the *ponencia*'s ruling that the April 10, 2013 writ of preliminary injunction of the Pasig-RTC should be lifted and quashed. The conduct of preliminary investigation in the three other (3) criminal complaints against Delfin Lee, among others, docketed as NPS Docket No. XVI-INV-10L-00363, NPS Docket No. XVI-INV-11B-00063, and NPS Docket No. XVI-INV-11C-00138 for syndicated *estafa* should not have been enjoined. As such, the rulings of the Pasig-RTC and the CA regarding this matter should be rectified.

CONCLUSION

In conclusion, I hereby vote as follows:

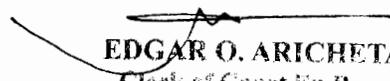
¹⁰⁵ *Aguam v. CA*, 388 Phil. 587, 595 (2000).

¹⁰⁶ While case law in *Samson v. Guingona* (401 Phil. 167, 172 [2000]) provides that criminal cases may be enjoined in the following instances: (1) when the injunction is necessary to afford adequate protection to the constitutional rights of the accused; (2) when it is necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; (3) when there is a prejudicial question which is *subjudice*; (4) when the acts of the officer are without or in excess of authority; (5) where the prosecution is under an invalid law, ordinance or regulation; (6) when double jeopardy is clearly apparent; (7) where the Court has no jurisdiction over the offense; (8) where it is a case of persecution rather than prosecution; (9) where the charges are manifestly false and motivated by the lust for vengeance; and (10) when there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied; none of these are applicable in the instant case.

- (a) The petitions in **G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730, and 230680** should be **PARTLY GRANTED**. For the reasons discussed in this Opinion, the public prosecutor should be **DIRECTED** to amend the Information in Criminal Case No. 18480 so as to charge respondents Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex M. Alvarez only for simple *estafa*, and not syndicated *estafa*. Meanwhile, the warrants of arrest issued against them **STAND**;
- (b) The petition in **G.R. No. 209424** should be **GRANTED**. The Decision dated October 7, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 128262, affirming the Resolutions dated January 30, 2012 and December 11, 2012 of the Regional Trial Court of Makati, Branch 58 (Makati-RTC) in Civil Case No. 10-1120, should be **REVERSED** and **SET ASIDE**. A new one should be **ENTERED** directing the **REMAND** of the case to the Makati-RTC for the conduct of a full-blown trial on the merits; and
- (c) The petitions in **G.R. Nos. 208744 and 210095** should be **GRANTED**. The Resolution dated August 14, 2013 in CA-G.R. SP No. 130404 and the Resolution dated June 26, 2013 in CA-G.R. SP No. 130409 of the CA, affirming the Resolution dated April 10, 2013 of the Regional Trial Court of Pasig City, Branch 167 in Civil Case No. 73115, should be **REVERSED** and **SET ASIDE**. Consequently, the April 10, 2013 writ of preliminary injunction issued by the said court should be **LIFTED** and **QUASHED**. The Department of Justice should be allowed to proceed with the preliminary investigation of the three (3) criminal complaints against Delfin S. Lee, among others, docketed as NPS Docket No. XVI-INV-10L-00363, NPS Docket No. XVI-INV-11B-00063, and NPS Docket No. XVI-INV-11C-00138.


ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court