

EN BANC

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

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

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

G.R. No. 209424 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner versus* 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 versus* ALEX M. ALVAREZ, *Respondent*.

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

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

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

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

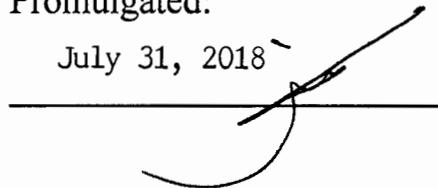
G.R. No. 228452 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner versus* DEXTER L. LEE, *Respondent*.

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

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

Promulgated:

July 31, 2018





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SEPARATE OPINION**TIJAM, J.:**

In 2008, Globe Asiatique Realty Holdings Corporation (GA), through its president Delfin Lee, entered into Funding Commitment Agreements (FCA) with Home Development Mutual Fund (HDMF) wherein it represented having interested buyers in its Xevera Projects in Pampanga. Under the arrangement, GA's supposedly existing buyers would be the loan applicants. GA will pre-process the loan applications and in case of default in the amortization, GA would buy back the loan accounts. This was followed by a second FCA, where the borrowers would be composed of Special Other Working Group (OWG) or those HDMF members who are not formally employed. In 2009, GA and HDMF executed a Memorandum of Agreement (MOA) for an additional funding commitment line. More FCAs were executed, reaching an aggregate amount of ₱7,007,806,000.00 released to GA.

HDMF subsequently discovered that some supposed borrowers under the OWG were not aware of the loans they supposedly obtained and that some borrowers were neither members of HDMF nor qualified to avail of housing loan. Consequently, HDMF revoked the authority of GA under the FCA, suspended all take-outs for new housing loans, required the buy-back of the 701 fraudulent accounts, and cancelled the release of fund to GA.

These events led to:

- (a) In October 2010, HDMF, through its officer-in-charge Faria, filed a complaint for syndicated *estafa* against GA's officers Delfin Lee and several others [*1st DOJ Complaint*].
- (b) In November 2010, GA and Delfin Lee filed a complaint for specific performance against HDMF before Regional Trial Court (RTC) of Makati [*Civil Case*]. They sought to compel HDMF to accept the replacements they proposed in lieu of the buyers who became delinquent in their amortizations.
- (c) 2nd, 3rd and 4th Department of Justice (DOJ) criminal complaints against respondents were filed.

1st DOJ Complaint:

The DOJ issued its Review Resolution recommending the filing of *estafa* against Delfin Lee, Christina Sagun (Sagun), Christina Salagan (Salagan), Dexter Lee and Atty. Alex M. Alvarez (Atty. Alvarez) with no bail.

Sagun filed a *certiorari* petition with the Court of Appeals (CA) while Atty. Alvarez filed his injunction petition with RTC Calocan to enjoin DOJ from filing the information.

The CA partially granted Sagun's petition. It held that Sagun's functions were limited to collation of documents. It dismissed the complaint as against Sagun and ordered the quashal of the arrest warrant issued against her.

On the other hand, GA clients, claiming to be victims of double sale made by GA, also filed a complaint for syndicated *estafa* against respondents. [***2nd DOJ Complaint***]

Delfin Lee filed an injunction petition with RTC Pasig to enjoin the DOJ from proceeding with the 2nd DOJ Complaint on the ground that the Civil Case for specific performance case constitutes a prejudicial question.

The RTC Pasig issued Temporary Restraining Order (TRO) and Writ of Preliminary Injunction (WPI). DOJ filed a *certiorari* petition with CA. CA granted DOJ *certiorari* petition. Delfin Lee appealed to Us. We denied appeal which became final.

DOJ thus filed criminal case for syndicated *estafa* against Delfin Lee, Dexter Lee, Sagun, Salagan and Atty. Alvarez with the RTC Pampanga.

The RTC Pampanga found probable cause for syndicated *estafa* and ordered the issuance of warrants of arrest.

Delfin Lee, Dexter Lee and Salagan moved for reconsideration. Atty. Alvarez also moved for reconsideration.

Pending resolution of his motion for reconsideration, Delfin Lee filed a *certiorari* petition with the CA. Atty. Alvarez, Dexter Lee and Salagan also filed their respective *certiorari* petitions with the CA.

The CA partially granted Delfin Lee's and Atty. Alvarez's petition and quashed the arrest warrants issued against them. The CA dismissed Salagan's petition.

Hence, the petitions (*People v. Alvarez*, G.R. No. 209446; *HDMF v. Alvarez*, G.R. No. 209489; *HDMF v. Delfin Lee*, G.R. No. 209852; *People v. Delfin Lee*, G.R. No. 210143; *People v. Dexter Lee*, G.R. No. 228730; *HDMF v. Dexter Lee*, G.R. No. 228452; and *Salagan v. People and HDMF*, G.R. No. 230680).

Civil Case for specific performance:

GA and Delfin Lee filed a complaint for specific performance and damages, seeking to compel HDMF to accept the replacements they had proposed in lieu of the buyers/borrowers who had become delinquent in their amortization and asserting that HDMF's inaction to accept the replacement forced GA to default on its obligations under the MOA and FCAs, against HDMF.

The RTC Makati rendered a summary judgment in favor of GA and Delfin Lee.

Faria and Atty. Berberabe's motion for reconsideration filed by the Yorac Law Firm was denied due to the latter's lack of authority from HDMF. Supposedly, HDMF itself did not moved for reconsideration.

HDMF filed its *certiorari* petition with the CA.

The CA dismissed HDMF petition. In ruling so, the CA held that HDMF availed of the wrong remedy to assail a summary judgment and that the *certiorari* petition was not filed under the authority of the OGCC.

Hence, the petition (*HDMF v. GA*, G.R. No. 209424).

2nd, 3rd and 4th DOJ complaints:

To enjoin the 2nd, 3rd, and 4th DOJ complaints, Delfin Lee prayed for the issuance of a TRO with the RTC Pasig.

The RTC Pasig issued TRO and WPI against the conduct of the preliminary investigation in the 2nd, 3rd and 4th DOJ Complaints. It held that the summary judgment rendered by the RTC Makati effectively removed the element of damage in the criminal complaints.

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DOJ filed *certiorari* petition with the CA, but denied the petition for having been filed out of time.

Hence, the petitions (*DOJ v. Delfin Lee*, G.R. No. 208744; *DOJ v. Delfin Lee*, G.R. No. 210095).

I concur with the ponencia ordering the formal amendment of the Information from syndicated estafa to simple estafa and that the arrest warrants remain valid.

To determine if the first paragraph of Section 1 of Presidential Decree (P.D.) No. 1689 applies, two questions must be determined: *first*, whether HDMF funds may be the subject of syndicated *estafa*; and *second*, whether respondents, as GA officials, fall under the definition of who may commit syndicated *estafa*.

As to the first question, the HDMF funds may be the subject of syndicated *estafa*.

Under paragraph 1 of Section 1, P.D. No. 1689, the funds misappropriated must be:

- 1) moneys contributed by stockholders or members of rural banks, cooperative, *samahang nayons* or farmers' associations, or
- 2) funds solicited from the general public.

Section 10 of Republic Act (R.A) No. 9679 or the HDMF Law of 2009 describes the HDMF fund as "private in character, owned wholly by the members, administered in trust and applied exclusively for their benefit." The personal and employer contributions are to be fully credited to each member and shall earn dividends. The fund also constitutes as a provident fund of each member, to be paid upon termination of membership. In other words, HDMF funds are funds held in trust for the member and are provident funds to be paid to the member, or his estate or beneficiaries, upon termination of his membership. As in the nature of provident funds, the HDMF funds operate as a savings scheme consisting of contributions from the members in monetary form which, in turn, earns dividends, may be used as a loan facility and provides supplementary welfare benefit to members. It is *akin* to funds held by banks, which is still wholly owned by the depositor but is loaned to the bank which the latter may use/invest and thus earns interest for the depositor. In other words, HDMF funds may thus properly be regarded as moneys contributed by HDMF members which may be the



subject of syndicated *estafa*.

Nevertheless, as to the second question, the respondents GA officials do not fall under the definition of who may commit syndicated *estafa*. Jurisprudence, as it stands, particularly in *Galvez, et al. v. Court of Appeals, et al.*,¹ requires that the syndicate must have used the association that they manage to defraud the general public of the funds contributed to the association, to wit:

[W]e note that the swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association. Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated *estafa*.²

Otherwise stated, the syndicate must have used the rural banks, cooperative, *samahang nayons* or farmers' associations they formed, owned, or managed to misappropriate the moneys contributed by their stockholders or members, or the syndicate must have used the corporation or association they formed, owned, or managed to misappropriate the funds it solicited from the general public.

Here, the GA officials admittedly did not form, own or manage HDMF. It was neither alleged in the Information that the GA officials used HDMF to defraud the general public. Since it was HDMF (the "association" holding the moneys contributed by its members) which is the victim and the juridical person used by the syndicate to defraud, P.D. No. 1689 does not apply.

Finally, independently of whether the threshold number of accused, *i.e.*, five, is met (on whether Atty. Alvarez should properly be included or not), the fact remains that four out of the five accused are neither owners nor employees of HDMF. This places the instant case outside the scope of P.D. No. 1689.

Since the elements of simple *estafa* appear to be present, respondents, including Atty. Alvarez of the HDMF, should be charged of simple *estafa*. The arrest warrants against them stand, and if quashed, should be reinstated.

¹ 704 Phil. 463 (2013).

² *Id.* at 473.

I concur with ponencia reversing the CA Decision denying HDMF's certiorari petition against RTC Makati's summary judgment but, instead, of remanding to CA, the case should be remanded to RTC Makati for disposition on the merits.

The RTC Makati gravely abused its discretion when it rendered a summary judgment in the Civil Case for specific performance when it actually deemed that the issue as to damages necessitates further proceedings.

As suggested by Justice Estela M. Perlas-Bernabe, there is no need to remand the case to the CA to determine if the RTC Makati gravely abused its discretion especially so when proper evaluation of the merits may be had as when copies of various pleadings and documents are in possession of the Court. Instead, the case should be remanded to RTC Makati for further proceedings.

The Court's ruling charging respondents of simple *estafa* and affirming the validity of the arrest warrants does not pre-empt nor render moot the Civil Case for specific performance. Suffice to say that the instant petitions deal with the determination of the probable guilt of respondents for the crime of simple *estafa*; while the Civil Case simply determines contractual breach.

Under these premises, I vote as follows:

- (1) The petitions in G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680 should be **PARTIALLY GRANTED** in that the Department of Justice is **DIRECTED** to amend the Information in Criminal Case No. 18480 so as to charge respondents for simple *estafa*. The warrants of arrest issued **REMAIN VALID**;
- (2) The petition in G.R. No. 209424 should be **GRANTED**. The Decision dated October 7, 2013 of the Court of Appeals 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 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 RTC Makati for disposition on the merits;

Separate Opinion

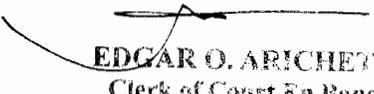
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G.R. Nos. 205698, 205780, 208744
209424, 209446, 209489, 209852,
210095, 210143, 228452, 228730,
and 230680

- (3) The petitions in G.R. Nos. 208744 and 210095 should be **GRANTED**, since the writ of preliminary injunction issued by the Regional Trial Court of Pasig City, Branch 167, which enjoined the preliminary investigation for the second, third and fourth criminal complaints filed against respondents was tainted with grave abuse of discretion amounting to lack of jurisdiction.


NOEL GIMENEZ TIJAM
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court