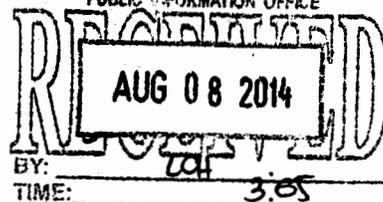




Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **June 30, 2014** which reads as follows:*

“G.R. No. 191214 – FERRER S. CO, Petitioner, v. SEC. RAUL M. GONZALES, RAYMOND JONATHAN LLEDO, PACA-AMBUNG C. MACABANDO, MARILYN CYNTHIA FATIMA MADAMBA-LUANG AND JULIETA P. TUBIERA, Respondents.

This appeal by petition for review on *certiorari* is being taken from the decision of the Court of Appeals promulgated on November 14, 2008 dismissing the petitioner’s special civil action for *certiorari*.¹

The antecedents are rendered in the CA’s decision as follows.

In an Affidavit-Complaint dated August 10, 2006, petitioner Ferrer S. Co charged herein respondents of the crime of estafa. He alleged that he is the duly elected President of the National Prosecutors League of the Philippines, Inc. (NPLP), and as such is the Chief Executive and has general supervision over the affairs of the Association. Part of the benefits being granted to members of the Association is the grant of financial assistance and repayment thereof by way of monthly salary deductions through individual Authority to Deduct and remit the deductions to the Association addressed to the Department of Justice (DOJ). Said deductions are made every 15th and 30th of each month and remitted to the Treasurer-elect regularly on or before the last day of the month or within the first five (5) days of the month, which has been the practice since 2000 up to June 2006. He made a demand for the release of the check representing the amount of Php 1,239,568.00, the total deductions for the month of July 2006. He instead received a Memorandum from respondent Secretary of Justice directing respondent Tubiera, DOJ Cashier, to suspend the subject remittances and turn over the same to the NPLP-Convention Executive

¹ *Rollo*, pp. 46-57; penned by Associate Justice Rosmari D. Carandang, with the concurrence of Presiding Justice Conrado M. Vasquez, Jr. (retired) and Associate Justice Mariflor P. Punzalan Castillo.

Committee pursuant to Special Board Meeting Resolution No. 007 dated May 29, 2006 and the Letter of respondents Lledo Macabando and Madamba-Luang. Petitioner claimed that said Special Board Meeting is invalid since it appears that only eight (8) directors attended the meeting, hence, not constituting a quorum in accordance with Section 2, Article VI of the Amended Constitution and By-Laws of the Association. Said section provides that the Board shall have eighteen (18) Directors and a quorum requirement needs a majority of the Board of Directors. Having ordered the unlawful turn over of the check belonging to the Association representing funds being held in-trust by the DOJ and knowing that said funds could be unlawfully disbursed in an unconstitutional convention, petitioner maintained that respondent Secretary of Justice has now conspired with respondents Lledo, Macabando, Luang and Tubiera in the crime of estafa.

In his Counter-Affidavit, respondent Secretary of Justice vehemently denied the false and malicious accusations lodged against him. He alleged, among others, that petitioner has no personality and cause of action to file an estafa case against them based on mere allegation that the monthly contribution and salary deductions of member prosecutors was not turned over to the past NPLP Treasurer Leah Armamento or to him. Since said amount represents funds owned by the NPLP and not petitioner, then the NPLP through majority of its officers and members can utilize or disburse the same to finance its activities, projects and programs. Contrary to petitioner's allegation, Special Board Meeting Resolution No. 007 is valid, having been passed upon by eleven (11) members of the Board of Directors who attended the meeting, hence, constituting a quorum. Acting thereon, he issued the Memorandum after considering their action to be in accord with Section 3, Article VIII of the NPLP Constitution and By-Laws. Further, he claimed that the entire amount of Php 1,239,568.00 is intact and the check covering said amount is still with the Cashier's Office. He and his co-respondents did not dispose of the money for their own personal advantage or use it for a purpose different from the intentions of the NPLP and that there is no abuse of confidence or deceit of their part, neither did petitioner nor the NPLP suffer any damage at all, for which reason they cannot be held liable for estafa.

Respondent Julieta P. Tubiera alleged that she cannot be indicted as a conspirator in the crime of estafa for her refusal to release the check to the then NPLP Treasurer corresponding to the NPLP monthly collection of dues and loan payments from its members for July 2006, which refusal was in compliance with the Memorandum issued by the Secretary of Justice. She cannot disobey such a lawful order from no less than the Secretary of Justice, one of the official advisers of the NPLP.

In the Joint Counter-Affidavit, the other respondents namely Raymond Jonathan B. Lledo, Paca-ambung C. Macabando and Marilyn Cynthia Fatima Madamba-Luang denied the accusations for being utterly false, unfounded and without legal basis. They alleged the following: that pursuant to a letter dated March 10, 2006 signed by five (5) Directors and two (2) Executive Officers of the Association, a Special Board Meeting was held on March 17, 2006 attended by eleven (11) members of the Board of Directors out of the total eighteen (18) Directors and one (1) Executive Officer, during which Special Board

Resolution No. 001 was passed ~~canceled~~ the scheduled convention in Dakak on April 4-6, 2006 and resetting the date of the convention and election to August 2006 in Cebu City; that a subsequent Special Board Meeting was held at the Cebu Grand Convention Center on May 29, 2007 attended by eight (8) Directors and two (2) Executive Officers; that while two (2) regional directors (Region I and XI) were not physically present, they were nonetheless in constant communication with the Board of Directors through cellular phones; that the two (2) regional directors were duly apprised of the proceedings and have expressed their agreement to the Special Board Meeting Resolutions (Resolutions 002 to 007) that were unanimously approved and passed including the subject Resolution No. 007 authorizing the Convention Executive Committee to make a formal demand upon the DOJ Accounting and Finance Department to suspend the remittances of collected NPLP dues and loan repayments to NPLP Treasurer Leah Armamento and turn them over to the Convention Executive Committee should NPLP President Ferrer Co and Treasurer Leah Armamento refuse to release the amount of two million pesos; and that all the above resolutions were valid and lawful having been passed pursuant to Section 3, Article VIII of the Amended Constitution and By-Laws. The respondents further asserted that the Board of Directors is still the governing board of the NPLP and not the President acting alone. The complaint has no leg to stand on since the subject check has not been released to the respondents and still in the custody of co-respondent Tubiera. They did not commit any act of defraudation against petitioner by means of abuse of confidence or deceit, neither has the latter suffered any damage or prejudice. Respondents maintained that the filing of the complaint is being resorted to by petitioner just to remain in power and thus derail what obviously are valid and lawful acts of the NPLP Board of Directors in order to achieve such reprehensible goal.

In his Reply-Affidavit, petitioner claimed, in answer to all the counter-affidavits of respondents, that as of August 9, 2006 he and Leah Armamento were still the duly elected and legitimate President and Treasurer of NPLP. The funds were being utilized as financial assistance to members. Consequently, the members were deprived of their right to financial assistance when, despite demand, they refused to deliver the subject check which respondents alleged to be still in the possession of the DOJ. However, petitioner maintained that said defense is unavailing since permanent damage or prejudice is not necessary in estafa. Temporary deprivation is sufficient damage. And even assuming that estafa was not consummated, respondents are still liable for either attempted or frustrated estafa.²

On October 23, 2006, the Office of the City Prosecutor of Manila issued its Resolution dismissing the charge of *estafa* against all the respondents, explaining that what the petitioner had actually put in issue was the validity of Special Board Meeting Resolution No. 001 and Special Board Meeting Resolution No. 007 of the National Prosecutors' League of the Philippines, Inc. (NPLP) based on lack of quorum and proper notice, and that such issue was one that should come under the definition of an intra-corporate dispute over which the Regional Trial Court, not the Office

² Id. at 47-51.

of the City Prosecutor, had original jurisdiction pursuant to Republic Act No. 8799; that no deceit or abuse of confidence within the contemplation of the crime of *estafa* was attendant; that the element of damage was also wanting because the amount of ₱1,239,568.00 allegedly defrauded had remained intact inside the vault of the Cashier's Office of the Department of Justice (DOJ), based on the Certification dated September 11, 2006 of the DOJ Cashier; and that, therefore, the same had not been appropriated by the respondents.³

The petitioner moved for reconsideration, but his motion to that effect was denied for lack of merit on May 22, 2007.⁴

By petition for *certiorari*,⁵ the petitioner assailed the dismissal of the complaint in the CA upon the sole jurisdictional error of:

WHETHER OR NOT PUBLIC RESPONDENT OFFICE OF THE CITY PROSECUTOR OF MANILA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ISSUED THE ASSAILED RESOLUTIONS.⁶

On November 14, 2008,⁷ the CA promulgated its decision, disposing thusly:

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Resolutions of the Office of the City Prosecutor of Manila dated October 23, 2006 and May 22, 2007 is hereby **AFFIRMED**.

SO ORDERED.⁸

Hence, this appeal by petition for review on *certiorari*,⁹ with the petitioner insisting that: (1) the CA erred in ruling that there must be actual misappropriation or conversion of the funds to constitute *estafa*; (2) the case was an intra-corporate dispute cognizable by the RTC instead of by the Office of the City Prosecutor of Manila; and (3) the CA erred in appreciating the nature of a preliminary investigation.

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³ Id. at 51-52.

⁴ Id. at 571-572.

⁵ Id. at 573-587.

⁶ Id. at 584.

⁷ Supra note 1.

⁸ Id at 56.

⁹ Id at 17-36.

The petition for review is denied due course.

In dismissing the petition for *certiorari* brought by the petitioner, the CA stated as follows:

The instant petition is devoid of merit.

In this petition, petitioner wants us to examine and evaluate the determination of public respondent finding no probable cause to charge herein respondents of the crime of estafa. He contends that the public respondent committed grave abuse of discretion when it ruled that the matters and issues raised in his complaint involve intra-corporate dispute which is beyond its jurisdiction. He asserts that estafa was committed when, despite demand, respondent Tubiera refused to release the money held in trust, upon written order of respondent Secretary of Justice, which deprived the incumbent executive officers of NPLP of the use of said funds.

Estafa is a crime committed by a person who defrauds another, causing him to suffer damages by means of unfaithfulness or abuse of confidence, or of false pretenses or of fraudulent acts. A person may be convicted of the crime of estafa, if the following elements are present, to wit: (1) that the accused defrauded another by abuse of confidence or by means of deceit; (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. On the other hand, the elements of estafa under Article 315 (1-b) of the Revised Penal Code (RPC) are as follows: (1) that money, goods, or other personal properties are received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same; (2) that there is a misappropriation or conversion of such money or property by the offender or denial on his part of such receipt; (3) that such misappropriation or conversion or denial is to the prejudice of another; and (4) that there is a demand made by the offended party on the offender.

The aforesaid elements are wanting in this case. There was no abuse of confidence or deceit when there was refusal, despite demand, on the part of respondent Tubiera to turn over to Treasurer Leah Armamento or to petitioner the amount of Php 1,239,568.00 representing the monthly contributions of member prosecutors and payment for their loans for July 2006 deducted from their salaries. Though the amount was only held in-trust by her, the refusal of respondent Tubiera was merely in obedience to the Memorandum of Secretary of Justice Raul Gonzales directing her to immediately suspend the said remittances and turn over the same to the NPLP Convention Executive Committee. In turn, said Memorandum of Secretary Gonzales was made pursuant to a Special Board Meeting Resolution No. 007 and the letter of respondents Lledo, Macabando and Madamba-Luang demanding from the Accounting and Finance Department of the DOJ to suspend said remittances to Treasurer Armamento.

The essence of estafa under Article 315 (1-b) of the RPC is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment. In this case, the refusal or failure to turn-over is not predicated on misappropriation or conversion by the respondents of the subject check. They did not use or dispose of the subject check as if it was theirs or devoted it to a purpose different from that agreed upon. There is no proof of misappropriation or conversion on the part of respondents. As above-explained there is sufficient justification on the part of respondent Tubiera why she refused to turn-over the remittances to petitioner or to the Treasurer of NPLP. More so, petitioner failed to adduce evidence that damage or prejudice capable of pecuniary estimation is caused to him or to third person. He merely claimed that because of the refusal to turn-over the remittances, the NPLP incumbent executive officers were deprived of the use of said funds and that the members were deprived of financial assistance. Yet, he failed to fully substantiate such claim by explaining how they were deprived or damaged, *i.e.*, whether the association's activities and projects were hampered or delayed, or that any of its members were prejudiced thereby. His assertion looks to be too sweeping.

Besides, there is evidence to prove that the subject check representing the amount of Php 1,239,568.00 is still intact and has not been appropriated by any of the respondents. Per Certification dated September 11, 2006 of Leandra C. Cordova, Cashier II of the DOJ, the check is still in her custody and is being kept inside the vault of the Cashier's Office as of said date.

Petitioner's arguments as to the validity of the questioned Special Board Meeting Resolutions specifically Resolution Nos. 001 and 007 based on lack of quorum and proper notice as mandated in the NPLP Amended Constitution and By-Laws are, as correctly ruled upon by public respondent, intra-corporate matters which are cognizable by the Regional Trial Courts and not proper for adjudication in this petition which primarily delves on the existence of probable cause for estafa. Whether or not the subject Special Board Meeting Resolutions were passed upon in violation of the provisions of the Amended Constitution and By-Laws of the association, the fact remains, as shown by the evidence as has far been adduced, that no probable cause exists to indict herein respondents of the crime of estafa, whether in its consummated, frustrated or attempted stage. Consequently, the public respondent did not commit grave abuse of discretion amounting to lack or excess of jurisdiction when it dismissed petitioner's complaint.¹⁰

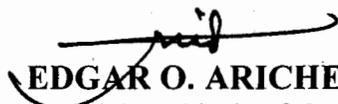
In our view, the CA correctly resolved all the issues that the petitioner raised against the questioned resolution of the Office of the City Prosecutor of Manila. We adopt with approval the CA's aforequoted resolution, for, under the premises, the Office of the City Prosecutor of Manila did not act whimsically, arbitrarily or capriciously in dismissing the charges of *estafa*.

¹⁰ Id. at 52-56.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision of the Court of Appeals promulgated on November 14, 2008; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.”

Very truly yours,


EDGAR O. ARICHETA
Division Clerk of Court
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