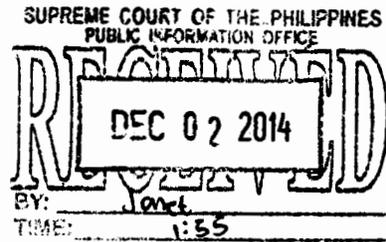




REPUBLIC OF THE PHILIPPINES
 SUPREME COURT
 Manila

SECOND DIVISION



NOTICE

Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated **12 November 2014** which reads as follows:

G.R. No. 213449 (Armando C. Abellon v. People of the Philippines). – This is a petition for review on *certiorari*¹ filed by petitioner Armando Abellon assailing the November 28, 2013 decision² and July 1, 2014 resolution³ of the Court of Appeals (CA) in CA-G.R. CR No. 34745.

The Case

On July 26, 2007, spouses Chito Mateo and Ma. Lourdes Mateo (*spouses Mateo*) bought a passenger jeep from FG Motors, Alabang through the latter's sales agent, Ben Alcantara (*Alcantara*). The spouses Mateo inquired from Alcantara the procedures on how to get a franchise for the jeep. Alcantara, in turn, informed the spouses Mateo that the petitioner could help them in obtaining a franchise. When the spouses Mateo asked to meet the petitioner, Alcantara told them to return to his office on August 2, 2007. He also told them that the fee for the procurement of a franchise was ₱85,000.00.

The spouses Mateo met the petitioner on August 2, 2007, and informed him of their desire to obtain a franchise for their jeep. During the meeting, the petitioner told the couple that he would be able to procure the jeep's franchise within one (1) or two (2) months. Thereafter, the spouses Mateo gave ₱85,000.00 to the petitioner.

However, the petitioner failed to deliver the line or franchise after two (2) months. Ma. Lourdes repeatedly called the petitioner, but the latter replied that the processing of their franchise was still on going. When Ma. Lourdes learned from the Land Transportation Franchising and Regulatory Board (*LTFRB*) that the petitioner did not file any application for a franchise, she demanded from him the return of the ₱85,000.00. The petitioner offered another franchise under the name of Marcelo Virtusio, but the spouses Mateo refused when they learned from the LTFRB that there was no franchise in his (Marcelo's) name. The spouse Mateo sent a demand letter for the petitioner to return their money, but the latter did not heed their demand.

The prosecution filed an information for the crime of estafa under Article 315(1)(b) of the Revised Penal Code, as amended, against the petitioner before the Regional Trial Court (*RTC*), Branch 276, Muntinlupa City. The case was referred to the Philippine Mediation Center for the

¹ *Rollo*, pp. 12-22.

² Penned by Associate Justice Marlene B. Gonzales-Sison, and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Edwin D. Sorongon; id. at 28-39.

³ Id. at 41-42.

mlg

possibility of an amicable settlement between the parties. On October 27, 2008, the parties arrived at a *Compromise Agreement (Agreement)* wherein the petitioner undertook to pay the ₱85,000.00 in four (4) monthly installments. On the next day, the *Agreement* was filed with the RTC which, in turn, provisionally dismissed the case pending compliance by the petitioner with the terms and conditions of the *Agreement*.

On March 19, 2009, the prosecution moved to revive the case due to the petitioner's failure to comply with the terms of the *Agreement*. The RTC granted this motion on June 1, 2009.

In its decision⁴ of February 2, 2012, the RTC convicted the petitioner of the crime charged, and sentenced him to suffer an indeterminate penalty of four (4) years, two (2) months, and one (1) day of *prision correccional*, as minimum, to eleven (11) years, eight (8) months, and twenty-one (21) days of *prision mayor*, as maximum.

On appeal, the CA affirmed the RTC decision *in toto*. The CA essentially held that the prosecution was able to establish all the elements of estafa.

The Petition for Review on Certiorari

In the present petition, the petitioner claimed that the CA gravely erred in affirming his conviction despite the prosecution's failure to prove his guilt beyond reasonable doubt. He maintained that he did not convert or misappropriate the money given to him, and that he was able to successfully explain his failure to return the money. He further added that the transaction would have been consummated had the spouses Mateo accepted the franchise of Marcelo that he offered to them.

Our Ruling

After due consideration, we **deny** the petition.

The elements of estafa with unfaithfulness or abuse of confidence under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, are: (1) that money, goods or other personal property be 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 be misappropriation or conversion of such money or property of the offender; or denial on his part of such receipt; (3) that such misappropriation or conversion or denial to the prejudice of another; and (4) that there is a demand made by the offended party to the offender.⁵

⁴ Id. at 59-68.

⁵ See *Jean D. Gamboa v. People of the Philippines*, G.R. No. 188052, April 21, 2014.

The essence of this kind of estafa is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made.

In the present case, the prosecution was able to prove all the elements of estafa under Article 315(1)(b). *First*, the petitioner admitted that he received in trust the amount of ₱85,000.00 from the spouses Mateo for the procurement of a franchise for the jeep within two (2) months. The petitioner even issued a receipt to evidence his acceptance of this money.

Second, the petitioner failed to secure a franchise after the lapse of the agreed period. The words “convert” and “misappropriate” connote an act of using or disposing of another’s property as if it were one’s own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one’s own use includes not only conversion to one’s personal advantage, but also every attempt to dispose of the property of another without right.⁶ The petitioner in the present case failed to return the money even after he failed to secure a franchise. Notably, both the RTC and the CA found unpersuasive the petitioner’s claim that he gave a portion of the money to Marcelo.

Third, the spouses Mateo had been prejudiced since they already parted with their money.

Finally, the spouses Mateo made repeated verbal and written demands on the petitioner, but the latter failed to heed these demands.

In sum, the CA did not err in sustaining the petitioner’s conviction for estafa.

WHEREFORE, premises considered, we **DENY** the petition for failure of the petitioner to show that the CA committed any reversible error in the assailed decision and resolution to warrant the exercise of our discretionary appellate jurisdiction.

SO ORDERED.

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court *by 11/27*

⁶ See *Soleda Tria v. People of the Philippines*, G.R. No. 204755, September 17, 2014.

PUBLIC ATTORNEY'S OFFICE (reg)
(ATTY. GIA JOY G. GALAROSA)
Department of Justice
PAO-DOJ Agencies Building
NIA Road corner East Avenue
Diliman, 1104 Quezon City

OFFICE OF THE SOLICITOR GENERAL(reg)
134 Amorsolo Street
1229 Legaspi Village
Makati City

HON. PRESIDING JUDGE (reg)
Regional Trial Court, Branch 276
Muntinlupa City
(Crim. Case No. 08-297)

COURT OF APPEALS (x)
Ma. Orosa Street
Ermita, 1000 Manila
CA-G.R. CR No. 34745

JUDGMENT DIVISION (x)
Supreme Court, Manila

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
LIBRARY SERVICES (x)
Supreme Court, Manila
[for uploading pursuant to A.M. No. 12-7-1-SC]

Please notify the Court of any change in your address.
GR213449. 11/12/14 (9)SR *11/12/14*