

EN BANC

[G.R. No. 205698, July 31, 2018]

**HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND,
PETITIONER, VS. CHRISTINA SAGUN, RESPONDENT.**

[G.R. No. 205780]

**DEPARTMENT OF JUSTICE, REP. BY SEC. LEILA DE LIMA, STATE
PROSECUTOR THEODORE M. VILLANUEVA, AND PROSECUTOR
GENERAL CLARO A. ARELLANO, AND THE NATIONAL BUREAU OF
INVESTIGATION (NBI), PETITIONERS, VS. CHRISTINA SAGUN,
RESPONDENT.**

[G.R. No. 208744]

**DEPARTMENT OF JUSTICE, PETITIONER, VS. DELFIN S. LEE,
RESPONDENT.**

[G.R. No. 209424]

**HOME DEVELOPMENT MUTUAL FUND (HDMF), PETITIONER, VS.
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, VS. ALEX M.
ALVAREZ, RESPONDENT.**

[G.R. No. 209489]

**HOME DEVELOPMENT MUTUAL FUND, PETITIONER, VS. ATTY.
ALEX M. ALVAREZ RESPONDENT.**

[G.R. No. 209852]

**HOME DEVELOPMENT MUTUAL FUND, (HDMF), PETITIONER, VS.
DELFIN S. LEE, RESPONDENT.**

[G.R. No. 210095]

**DEPARTMENT OF JUSTICE, PETITIONER, VS. DELFIN S. LEE,
RESPONDENT.**

[G.R. No. 210143]

**PEOPLE OF THE PHILIPPINES PETITIONER, VS. DELFIN S. LEE,
RESPONDENT.**

[G.R. No. 228452]

**HOME DEVELOPMENT MUTUAL FUND (HDMF), PETITIONER, VS.
DEXTER L. LEE, RESPONDENT.**

[G.R. No. 228730]

**PEOPLE OF THE PHILIPPINES, PETITIONER, VS. DEXTER L. LEE,
RESPONDENT.**

[G.R. No. 230680]

**CRISTINA SALAGAN, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES AND HOME DEVELOPMENT MUTUAL FUND (HDMF),
RESPONDENTS.**

D E C I S I O N

BERSAMIN, J.:

We hereby consider and resolve the following consolidated appeals by petition for review on *certiorari*,^[1] namely:

(1) **G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452 and 228730**, whereby petitioners Department of Justice (DOJ), the People of the Philippines and the Home Development Mutual Fund (HDMF) assail the decisions^[2] of the Court of Appeals (CA): (i) setting aside the August 10, 2011 *Review Resolution* of the DOJ insofar as Christina Sagun (Sagun) is concerned; and (ii) annulling the May 22, 2012 and August 22, 2012 resolutions of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga (Pampanga RTC), and quashing the warrants of arrest issued against Delfin Lee, Dexter Lee (Dexter), and Atty. Alex Alvarez (Atty. Alvarez) for lack of probable cause;

(2) **G.R. No. 230680**, whereby petitioner Cristina Salagan assails the decision of the CA dismissing her petition for *certiorari* and upholding the resolutions dated May 22, 2012 and January 29, 2014 of the Pampanga RTC insofar as finding probable cause for the crime of syndicated *estafa* and the issuance of a warrant of arrest against her were concerned;

(3) **G.R. Nos. 208744 and 210095**, whereby the DOJ challenges the resolutions of the CA dismissing its petition for *certiorari* for being filed out of time,^[3] and

(4) **G.R. No. 209424**, whereby HDMF assails the decision promulgated on October 7, 2013,^[4] whereby the CA found no grave abuse of discretion on the part of the Regional Trial Court, Branch 58, in Makati City (Makati RTC) in issuing its January 31, 2012 final resolution granting the motion for summary judgment of Globe Asiatique Realty Holdings, Corp. (Globe Asiatique) and Delfin Lee in Civil Case No.

10-1120 entitled *Globe Asiatique Realty Holdings Corporation and Delfin Lee, in his capacity as President of the Corporation v. Home Development Mutual Fund (HDMF) or Pag-IBIG Fund, its Board of Trustees and Emma Linda Faria, Officer-in-Charge.*

Salient Factual Antecedents

In 2008, Globe Asiatique, through its president Delfin Lee, entered into a Window I-Contract to Sell (CTS) Real Estate Mortgage (REM) with Buy-back Guaranty take out mechanism with the HDMF, also known as the Pag-Ibig Fund, for its Xevera Bacolor Project in Pampanga. Globe Asiatique and HDMF also executed various Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOAs).^[5]

Under the FCAs, Delfin Lee warranted that the loan applicants that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, were existing buyers of its real estate and qualified to avail themselves of loans from HDMF under the Pag-Ibig Fund; that all documents submitted to the HDMF in behalf of the applicants, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding and enforceable; that any person or agent employed by Globe Asiatique or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and that in the event of a default of the three-month payment on the amortizations by said members or any breach of warranties, Globe Asiatique would buy back the CTS/REM accounts during the first two years of the loan.^[6]

The parties further agreed that Globe Asiatique would collect the monthly amortizations on the loans obtained by its buyers in the first two years of the loan agreements and remit the amounts collected to HDMF through a Collection Servicing Agreement (CSA). In this regard, Delfin Lee undertook to maintain at least 90% Performing Accounts Ratio (PAR) under the CSA.^[7]

On June 10, 2008, Delfin Lee proposed the piloting of a Special Other Working Group (OWG) Membership Program for its Xevera Bacolor Project while the FCA was in effect. The OWG Membership Program would comprise of HDMF members who were not formally employed but derived income from non-formal sources (*e.g.*, practicing professionals, self-employed members, Overseas Filipino Workers (OFWs), and entrepreneurs). Delfin Lee offered to extend the buy-back guarantee from two to five years to bolster his position that the project was viable. HDMF eventually entered into another agreement for this purpose.^[8]

Corollary to the foregoing, the parties entered into a second FCA worth P200,000,000.00. Globe Asiatique likewise undertook that the PAR for all of its projects would be increased to at least 95%; that the buy-back guaranty for all accounts taken out from the Xevera Bacolor Project would be increased to five years; that it would assign all its housing loan proceeds from its other projects to HDMF to cover any unpaid obligations from the Xevera Project; and that the OWG borrowers, to be eligible for Pag-Ibig Membership, would be required to present their Income Tax Returns (ITRs) and affidavits of income.^[9]

On July 13, 2009, the parties executed a MOA granting Globe Asiatique an additional P5,000,000,000.00 funding commitment line for its Xevera Projects in Pampanga on the condition that Globe Asiatique would maintain a 95% PAR, and that the housing

loan take-outs would be covered by a buy-back guaranty of five years.^[10] Section 9 of the MOA expressly stated, however, that the MOA "supersedes, amends and modifies provisions of all other previous and existing Agreements that are Inconsistent hereto."^[11]

More FCAs were executed between the parties. According to HDMF, the aggregate amount of P7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to September 24, 2010, representing a total of 9,951 accounts.^[12]

In the course of its regular validation of buyers' membership eligibilities for taking out loans for the Xevera Project, HDMF allegedly discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique, its owners, officers, directors, employees, and agents/representatives, in conspiracy with HDMF employees. HDMF invited the attention of Delfin Lee regarding some 351 buyers who surrendered or withdrew their loans and were no longer interested in pursuing the same, and requested Globe Asiatique to validate the 351 buyers. Delfin Lee replied that Globe Asiatique was actually monitoring about 1,000 suspicious buyers' accounts. Subsequently, HDMF ostensibly found out about an additional 350 buyers who either denied knowledge of having availed of loans or manifested their intention to terminate their account.^[13]

As a result, HDMF revoked the authority of Globe Asiatique under the FCA; suspended all take-outs for new housing loans; required the buyback of the 701 fraudulent accounts; and cancelled the release of funds to Globe Asiatique in August 2010.

About a month later, Globe Asiatique discontinued remitting the monthly amortization collections from all borrowers of Xevera.

Finally, HDMF terminated the CSA with Globe Asiatique on August 31, 2010.^[14]

Meanwhile, HDMF continued its post take-out validation of the borrowers, and discovered that at least 644 supposed borrowers under the OWG Membership Program who were processed and approved by Globe Asiatique for the take-out by HDMF were not aware of the loans they had supposedly signed in relation to the Xevera Project; and assuming they were aware of the loan agreements, they had merely signed the same in consideration of money given to them by Globe Asiatique; that some borrowers were neither members of HDMF nor qualified to take out a housing loan from HDMF because they had insufficient or no income at all or they did not have the minimum number of contributions in HDMF; and that some of the borrowers did not live in the units they purchased.^[15]

HDMF alleged that at least 805 borrowers could not be located or were unknown in the addresses they had provided in the loan agreements, or had indicated non-existent addresses therein; and that it incurred damages totalling P1.04 billion covering the loans of 644 fraudulent and 805 fake borrowers attributed to the fraudulent and criminal misrepresentations of Delfin Lee and Globe Asiatique's officials and employees.^[16]

The Criminal Charges

Upon the recommendation of the National Bureau of Investigation (NBI), the DOJ conducted its preliminary investigation against Globe Asiatique, particularly its officers, namely: Delfin S. Lee, Dexter L. Lee, Ramon Palma Gil, Cristina Salagan, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Atty. Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguiling, John Tungol and Atty. Alex Alvarez on the strength of the complaint-affidavit dated October 29, 2010 filed by Emma Linda B. Faria, then the officer-in-charge (OIC) of the HDMF. This first complaint alleged the commission of the crime of syndicated *estafa* constituting economic sabotage, as defined and penalized under Article 315(2)(a) of the *Revised Penal Code*, in relation to Presidential Decree No. 1689 (P.D. No. 1689).^[17]

The DOJ formed a panel of prosecutors to investigate the complaint.

On December 10, 2010, the NBI Anti-Graft Division recommended the filing of a second complaint for syndicated *estafa* constituting economic sabotage under P.D. No. 1689, in relation to Article 315(2) of the *Revised Penal Code* against Delfin Lee and the others. This second complaint was precipitated by the complaints of supposed Globe Asiatique clients such as Evelyn Niebres, Catherine Bacani and Ronald San Nicolas, who were victims of double sale perpetrated by Globe Asiatique.^[18]

Also, HDMF brought a complaint against Globe Asiatique and its officers for the fraudulent take-out of housing loans for bogus buyers.

Subsequently, the DOJ formed yet another panel of prosecutors to conduct another preliminary investigation.^[19]

Upon learning of the filing of the second case in the DOJ, Delfin Lee filed a petition for the suspension of proceedings pending the outcome of the civil action for specific performance that he and Globe Asiatique had commenced in the Makati RTC, contending therein that the issue in the civil case constituted a prejudicial question vis-a-vis the second DOJ case.

On February 21, 2011, the DOJ panel of prosecutors issued an *Omnibus Order* denying Delfin Lee's prayer for suspension of proceedings.

After Delfin Lee's motion for reconsideration was denied on July 5, 2011, he filed his counter-affidavit *ad cautelam* in the DOJ.^[20]

On August 10, 2011, Prosecutor General Claro A. Arellano approved the *Review Resolution* of Senior Deputy State Prosecutor Theodore M. Villanueva, the Chairman of the DOJ's Task Force on Securities and Business Scam (SDSP Villanueva) pertaining to the first criminal complaint.^[21] It is noted that the investigating prosecutors of the DOJ's Task Force on Securities and Business Scam had initially recommended the filing of charges for the crime of *estafa* defined and penalized under paragraph 2(a) of Article 315 of the *Revised Penal Code*, in relation to paragraph 2, Section 1 of PD No. 1689, against Delfin Lee, Sagun, and Cristina Salagan (Salagan). However, SDSP Villanueva recommended in the *Review Resolution* the inclusion of Atty. Alvarez and Dexter Lee in the *estafa* charge,