

## FIRST DIVISION

[ G.R. No. 189158, January 11, 2017 ]

**JAMES IENT AND MAHARLIKA SCHULZE, PETITIONERS, VS.  
TULLETT PREBON (PHILIPPINES), INC., RESPONDENT.**

[G.R. No. 189530]

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TULLETT PREBON (PHILIPPINES), INC., RESPONDENT.**

### D E C I S I O N

**LEONARDO-DE CASTRO, J.:**

In these consolidated Petitions for Review under Rule 45 of the Rules of Court, petitioners James A. Ient (Ient) and Maharlika C. Schulze (Schulze) assail the Court of Appeals Decision<sup>[1]</sup> dated August 12, 2009 in CA-G.R. SP No. 109094, which affirmed the Resolutions dated April 23, 2009<sup>[2]</sup> and May 15, 2009<sup>[3]</sup> of the Secretary of Justice in I.S. No. 08-J-8651. The Secretary of Justice, through the Resolutions dated April 23, 2009 and May 15, 2009, essentially ruled that there was probable cause to hold petitioners, in conspiracy with certain former directors and officers of respondent Tullett Prebon (Philippines), Inc. (Tullett), criminally liable for violation of Sections 31 and 34 in relation to Section 144 of the Corporation Code.

From an assiduous review of the records, we find that the relevant factual and procedural antecedents for these petitions can be summarized as follows:

Petitioner Ient is a British national and the Chief Financial Officer of Tradition Asia Pacific Pte. Ltd. (Tradition Asia) in Singapore.<sup>[4]</sup> Petitioner Schulze is a Filipino/German who does Application Support for Tradition Financial Services Ltd. in London (Tradition London).<sup>[5]</sup> Tradition Asia and Tradition London are subsidiaries of *Compagnie Financiere Tradition* and are part of the "Tradition Group." The Tradition Group is allegedly the third largest group of Inter-dealer Brokers (IDB) in the world while the corporate organization, of which respondent Tullett is a part, is supposedly the second largest. In other words, the Tradition Group and Tullett are competitors in the inter-dealer broking business. IDBs purportedly "utilize the secondary fixed income and foreign exchange markets to execute their banks and their bank customers' orders, trade for a profit and manage their exposure to risk, including credit, interest rate and exchange rate risks." In the Philippines, the clientele for IDBs is mainly comprised of banks and financial institutions.<sup>[6]</sup>

Tullett was the first to establish a business presence in the Philippines and had been engaged in the inter-dealer broking business or voice brokerage here since 1995.<sup>[7]</sup> Meanwhile, on the part of the Tradition Group, the needs of its Philippine clients were previously being serviced by Tradition Asia in Singapore. The other IDBs in the

Philippines are Amstel and Icap.<sup>[8]</sup>

Sometime in August 2008, in line with Tradition Group's motive of expansion and diversification in Asia, petitioners Ient and Schulze were tasked with the establishment of a Philippine subsidiary of Tradition Asia to be known as Tradition Financial Services Philippines, Inc. (Tradition Philippines).<sup>[9]</sup> Tradition Philippines was registered with the Securities and Exchange Commission (SEC) on September 19, 2008<sup>[10]</sup> with petitioners Ient and Schulze, among others, named as incorporators and directors in its Articles of Incorporation.<sup>[11]</sup>

On October 15, 2008, Tullett, through one of its directors, Gordon Buchan, filed a Complaint-Affidavit<sup>[12]</sup> with the City Prosecution Office of Makati City against the officers/employees of the Tradition Group for violation of the Corporation Code. Impleaded as respondents in the Complaint-Affidavit were petitioners Ient and Schulze, Jaime Villalon (Villalon), who was formerly President and Managing Director of Tullett, Mercedes Chuidian (Chuidian), who was formerly a member of Tullett's Board of Directors, and other John and Jane Does. Villalon and Chuidian were charged with using their former positions in Tullett to sabotage said company by orchestrating the mass resignation of its entire brokering staff in order for them to join Tradition Philippines. With respect to Villalon, Tullett claimed that the former held several meetings between August 22 to 25, 2008 with members of Tullett's Spot Desk and brokering staff in order to convince them to leave the company. Villalon likewise supposedly intentionally failed to renew the contracts of some of the brokers. On August 25, 2008, a meeting was also allegedly held in Howzat Bar in Makati City where petitioners and a lawyer of Tradition Philippines were present. At said meeting, the brokers of complainant Tullett were purportedly induced, *en masse*, to sign employment contracts with Tradition Philippines and were allegedly instructed by Tradition Philippines' lawyer as to how they should file their resignation letters.

Complainant also claimed that Villalon asked the brokers present at the meeting to call up Tullett's clients to inform them that they had already resigned from the company and were moving to Tradition Philippines. On August 26, 2008, Villalon allegedly informed Mr. Barry Denny, Chief Operating Officer of Tullett Prebon in the Asia-Pacific, through electronic mail that all of Tullett's brokers had resigned. Subsequently, on September 1, 2008, in another meeting with Ient and Tradition Philippines' counsel, indemnity contracts in favor of the resigning employees were purportedly distributed by Tradition Philippines. According to Tullett, respondents Villalon and Chuidian (who were still its directors or officers at the times material to the Complaint-Affidavit) violated Sections 31 and 34 of the Corporation Code which made them criminally liable under Section 144. As for petitioners Ient and Schulze, Tullett asserted that they conspired with Villalon and Chuidian in the latter's acts of disloyalty against the company.<sup>[13]</sup>

Villalon and Chuidian filed their respective Counter-Affidavits.<sup>[14]</sup>

Villalon alleged that frustration with management changes in Tullett Prebon motivated his personal decision to move from Tullett and accept the invitation of a Leonard Harvey (also formerly an executive of Tullett) to enlist with the Tradition Group. As a courtesy to the brokers and staff, he informed them of his move

contemporaneously with the tender of his resignation letter and claimed that his meetings with the brokers was not done in bad faith as it was but natural, in light of their long working relationship, that he share with them his plans. The affidavit of Engelbert Wee should allegedly be viewed with great caution since Wee was one of those who accepted employment with Tradition Philippines but changed his mind and was subsequently appointed Managing Director (Villalon's former position) as a prize for his return. Villalon further argued that his resignation from Tullett was done in the exercise of his fundamental rights to the pursuit of life and the exercise of his profession; he can freely choose to avail of a better life by seeking greener pastures; and his actions did not fall under any of the prohibited acts under Sections 31 and 34 of the Corporation Code. It is likewise his contention that Section 144 of the Corporation Code applies only to violations of the Corporation Code which do not provide for a penalty while Sections 31 and 34 already provide for the applicable penalties for violations of said provisions - damages, accounting and restitution. Citing the Department of Justice (DOJ) Resolution dated July 30, 2008 in *UCPB v. Antiporda*, Villalon claimed that the DOJ had previously proclaimed that Section 31 is not a penal provision of law but only the basis of a cause of action for civil liability. Thus, he concluded that there was no probable cause that he violated the Corporation Code nor was the charge of conspiracy properly substantiated.<sup>[15]</sup>

Chuidian claimed that she left Tullett simply to seek greener pastures. She also insisted the complaint did not allege any act on her part that is illegal or shows her participation in any conspiracy. She merely exercised her right to exercise her chosen profession and pursue a better life. Like Villalon, she stressed that her resignation from Tullett and subsequent transfer to Tradition Philippines did not fall under any of the prohibited acts under Sections 31 and 34. Section 144 of the Corporation Code purportedly only applies to provisions of said Code that do not provide for any penalty while Sections 31 and 34 already provide for the penalties for their violation - damages, accounting and restitution. In her view, that Section 34 provided for the ratification of the acts of the erring corporate director, trustee or officer evinced legislative intent to exclude violation of Section 34 from criminal prosecution. She argued that Section 144 as a penal provision should be strictly construed against the State and liberally in favor of the accused and Tullett has failed to substantiate its charge of bad faith on her part.<sup>[16]</sup>

In her Counter-Affidavit,<sup>[17]</sup> petitioner Schulze denied the charges leveled against her. She pointed out that the Corporation Code is not a "special law" within the contemplation of Article 10<sup>[18]</sup> of the Revised Penal Code on the supplementary application of the Revised Penal Code to special laws since said provision purportedly applies only to "special penal laws." She further argued that "[s]ince the Corporation Code does not expressly provide that the provisions of the Revised Penal Code shall be made to apply suppletorily, nor does it adopt the nomenclature of penalties of the Revised Penal Code, the provisions of the latter cannot be made to apply suppletorily to the former as provided for in the first sentence of Article 10 of the Revised Penal Code."<sup>[19]</sup> Thus, she concluded that a charge of conspiracy which has for its basis Article 8 of the Revised Penal Code cannot be made applicable to the provisions of the Corporation Code.

Schulze also claimed that the resignations of Tullett's employees were done out of their own free will without force, intimidation or pressure on her and Ient's part and were well within said employees' right to "free choice of employment."<sup>[20]</sup>

For his part, petitioner Ient alleged in his Counter-Affidavit that the charges against him were merely filed to harass Tradition Philippines and prevent it from penetrating the Philippine market. He further asserted that due to the highly specialized nature of the industry, there has always been a regular flow of brokers between the major players. He claimed that Tradition came to the Philippines in good faith and with a sincere desire to foster healthy competition with the other brokers. He averred that he never forced anyone to join Tradition Philippines and the Tullett employees' signing on with Tradition Philippines was their voluntary act since they were discontented with the working environment in Tullett. Adopting a similar line of reasoning as Schulze, Ient believed that the Revised Penal Code could not be made suppletorily applicable to the Corporation Code so as to charge him as a conspirator. According to Ient, he merely acted within his rights when he offered job opportunities to any interested person as it was within the employees' rights to change their employment, especially since Article 23 of the Universal Declaration of Human Rights (of which the Philippines is a signatory) provides that "everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment."<sup>[21]</sup> He also denounced the ComplaintAffidavit and the affidavits of Tullett employees attached thereto as self-serving or as an exaggeration/twisting of the true events.<sup>[22]</sup>

In a Consolidated Reply-Affidavit<sup>[23]</sup> notarized on January 22, 2009, Tullett argued that Villalon, Chuidian, Schulze, and Ient have mostly admitted the acts attributed to them in the Complaint-Affidavit and only attempted to characterize said acts as "normal," "innocent" or "customary." It was allegedly evident from the Counter-Affidavits that the resignation of Tullett's employees was an orchestrated plan and not simply motivated by their seeking "greener pastures." Purported employee movements in the industry between the major companies are irrelevant since such movements are subject to contractual obligations. Tullett likewise denied that its working environment was stringent and "weird." Even assuming that Villalon and Chuidian were dissatisfied with their employment in Tullett, this would supposedly not justify nor exempt them from violating their duties as Tullett's officers/directors. There was purportedly no violation of their constitutional rights to liberty or to exercise their profession as such rights are not unbridled and subject to the laws of the State. In the case of Villalon and Chuidian, they had to comply with their duties found in Sections 31 and 34 of the Corporation Code. Tullett asserts that Section 144 applies to the case at bar since the DOJ Resolution in UCPB is not binding as it applies only to the parties therein and it likewise involved facts different from the present case. Relying on *Home Insurance Company v. Eastern Shipping Lines*,<sup>[24]</sup> Tullett argued that Section 144 applies to all other violations of the Corporation Code without exception. Article 8 of the Revised Penal Code on conspiracy was allegedly applicable to the Corporation Code as a special law with a penal provision.<sup>[25]</sup>

In a Supplemental Complaint-Affidavit<sup>[26]</sup> likewise notarized on January 22, 2009, Tullett included Leonard James Harvey (Harvey) in the case and alleged that it learned of Harvey's complicity through the Counter Affidavit of Villalon. Tullett claimed that Harvey, who was Chairman of its Board of Directors at the time material to the Complaint, also conspired to instigate the resignations of its employees and was an indispensable part of the sabotage committed against it.

In his Rejoinder-Affidavit,<sup>[27]</sup> Ient vehemently denied that there was a pre-arranged plan to sabotage Tullett. According to Ient, Gordon Buchan of Tullett thought too highly of his employer to believe that the Tradition Group's purpose in setting up Tradition Philippines was specifically to sabotage Tullett. He stressed that Tradition Philippines was set up for legitimate business purposes and Tullett employees who signed with Tradition did so out of their own free will and without any force, intimidation, pressure or inducement on his and Schulze's part. All he allegedly did was confirm the rumors that the Tradition Group was planning to set up a Philippine office. Echoing the arguments of Villalon and Chuidian, Ient claimed that (a) there could be no violation of Sections 31 and 34 of the Corporation as these sections refer to corporate acts or corporate opportunity; (b) Section 144 of the same Code cannot be applied to Sections 31 and 34 which already contains the penalties or remedies for their violation; and (c) conspiracy under the Revised Penal Code cannot be applied to the Sections 31 and 34 of the Corporation Code.

In a Resolution<sup>[28]</sup> dated February 17, 2009, State Prosecutor Cresencio F. Delos Trinos, Jr. (Prosecutor Delos Trinos), Acting City Prosecutor of Makati City, dismissed the criminal complaints. He reasoned that:

It is our considered view that the acts ascribed [to] respondents Villalon and Chuidian did not constitute any of the prohibited acts of directors or trustees enunciated under Section 31. Their cited actuations certainly did not involve voting for or assenting to patently unlawful acts of [Tullett] nor could the same be construed as gross negligence or bad faith in directing the affairs of [Tullett]. There is also no showing that they acquired any personal or pecuniary interest in conflict with their duty as directors of [Tullett]. Neither was there a showing that they attempted to acquire or acquired, in violation of their duty as directors, any interest adverse to [Tullett] in respect [to] any matter which has been reposed in them in confidence.

x x x            x x x            x x x

The issue that respondent Villalon informed the brokers of his plan to resign from [Tullett] and to subsequently transfer to Tradition is not in dispute. However, we are unable to agree that the brokers were induced or coerced into resigning from [Tullett] and transferring to Tradition themselves. x x x As the record shows, Mr. Englebert Wee and the six (6) members of the broking staff who stand as [Tullett]'s witnesses, also initially resigned from [Tullett] and transferred to Tradition but backed out from their contract of employment with Tradition and opted to remain with [Tullett].

Even assuming *ex gratia argumenti* that the brokers were induced by the respondents or anyone of them to leave their employment with [Tullett], such inducement may only give rise to civil liability for damages against the respondents but no criminal liability would attach on them. x x x.

On the alleged inducements of clients of [Tullett] to transfer to Tradition, there is no showing that clients of [Tullett] actually transferred to Tradition. Also, the allegation that respondents orchestrated the mass resignation of employees of [Tullett] to destroy or shut down its business