

## EN BANC

**[ A.M. No. RTJ-14-2369 [Formerly OCA I.P.I. No. 12-3907-RTJ], July 26, 2016 ]**

**DEPARTMENT OF JUSTICE, REPRESENTED BY SECRETARY LEILA M. DE LIMA, PETITIONER, VS. JUDGE ROLANDO G. MISLANG, PRESIDING JUDGE, BRANCH 167, REGIONAL TRIAL COURT, PASIG CITY, RESPONDENT.**

**[A.M. No. RTJ-14-2372 [FORMERLY OCA I.P.I. No. 11-3736-RTJ]**

**HOME DEVELOPMENT MUTUAL FUND (HDMF), REPRESENTED BY ATTY. JOSE ROBERTO F. PO, PETITIONER, VS. JUDGE ROLANDO G. MISLANG, PRESIDING JUDGE, BRANCH 167, REGIONAL TRIAL COURT, PASIG CITY, RESPONDENT.**

## D E C I S I O N

### PER CURIAM:

This is a consolidation of the Administrative Complaints which the then Department of Justice (*DOJ*) Secretary Leila M. De Lima and Pag-IBIG Fund/Home Development Mutual Fund (*HDMF*), represented by Atty. Jose Roberto F. Po, filed against Hon. Rolando G. Mislang, Presiding Judge of the Regional Trial Court (*RTC*), Pasig City, Branch 167.

The following are the factual and procedural antecedents of the case:

On October 29, 2010, the National Bureau of Investigation (*NBI*) recommended that a preliminary investigation be conducted in view of the HDMF's Complaint Affidavit against Delfin S. Lee and other officers of Globe Asiatique Realty Holdings Corporation (*Globe Asiatique*) for the crime of syndicated estafa constituting economic sabotage under Presidential Decree No. 1689, in relation to Article 315(2) (a) of the Revised Penal Code, through the fraudulent take-out of housing loans for fake borrowers. Allegedly, these borrowers had actually no intention to apply for housing loans but were merely paid by Globe Asiatique agents to sign blank loan documents. Said loan documents were then submitted to the HDMF for processing. Because of this fraudulent scheme, the HDMF suffered damages in the amount of about P6.5 Billion. The DOJ then formed a panel of prosecutors to investigate the complaint, which was docketed as NPS Docket No. XVI-INV-10J-00319 (*1<sup>st</sup> DOJ case*). Subsequently, or on November 15, 2010, Lee, together with Globe Asiatique, filed a Complaint for specific performance and damages against the HDMF before the Makati RTC.

On December 10, 2010, the NBI Anti-Graft Division recommended that Lee, among others, be charged with the crime of syndicated estafa constituting economic sabotage. Thus, the DOJ formed a panel of prosecutors that would handle the

preliminary investigation of the complaint, which was docketed as NPS Docket No. XVI-INV-10L-00363 (2<sup>nd</sup> DOJ case). On January 27, 2011, Lee filed a Petition seeking the suspension of the proceedings in the 2<sup>nd</sup> DOJ case pending the outcome of the Makati civil case, because there were issues in the civil case which purportedly constituted a prejudicial question to the 2<sup>nd</sup> DOJ case. However, the DOJ panel issued an Omnibus Order dated February 21, 2011 which, among others, denied said petition for lack of common issues and parties. In denying Lee's prayer for suspension, the panel of prosecutors explained:

At first glance, it may appear that the issues in Civil Case No. 10-1120 are related to the issues in NPS No. XVI-INV-10L-00363, however, a cursory reading of the pertinent records of the two cases will reveal that, in the first, the main issue is the right of GA to replace its buyers pursuant to the Memorandum of Agreement (MOA), Funding Commitment Agreement (FCA), and Collection Servicing Agreement (CSA) it entered into with HDMF while, in the second, the matter to be resolved is whether or not respondents are liable for the crime of syndicated estafa. Moreover, there is no commonality of parties in the two cases, therefore, whatever would be the decision of the court in the aforementioned civil case will certainly not affect the resolution of the herein criminal complaint. And this is true since, as shown in the complaint in Civil Case No. 10-1120, the case is not about the sale of the properties to Evelyn B. Niebres, Ronald Gabriel Perez San Nicolas, and Catherine Bacani, rather, the action was filed by GA to compel HDMF to honor the provisions of the MOA, FCA and CSA entered into by the parties and/or compel HDMF to accept the replacement buyers/borrowers as offered by GA.<sup>[1]</sup>

Lee moved for a partial reconsideration of the abovementioned Omnibus Order but the same was denied. The DOJ panel of prosecutors likewise directed him to file his counter-affidavit. On July 28, 2011, after filing his counter-affidavit, Lee filed a Petition for Injunction (with Application for Temporary Restraining Order or TRO) against the DOJ, which was raffled to the sala of Judge Mislang. Again, Lee sought to suspend the preliminary investigation being conducted by the DOJ in the 2<sup>nd</sup> DOJ case, and subsequently, to likewise prevent the filing of the Information in the 1<sup>st</sup> DOJ case. On August 5, 2011, Lee's counsel inquired if the DOJ's counsel would be willing to enter into a stipulation with regard to the existence of the 2<sup>nd</sup> DOJ case and the Makati civil case. After the counsel of the DOJ had acceded to said request, the parties, with the permission of Judge Mislang, then agreed to submit for resolution the petition for injunction upon submission of their respective memoranda within fifteen (15) days, since there were no longer factual matters that needed to be threshed out in a full-blown trial. However, on August 12, 2011, after Lee had submitted his memorandum the day before, he filed an unverified Urgent Motion for the *ex-parte* resolution of his application for the issuance of a TRO. Thereafter, without waiting for the DOJ's memorandum, Judge Mislang issued Orders dated August 16, 2011 and August 26, 2011, granting Lee's petition. Thus, the HDMF and the DOJ filed separate complaints, docketed as OCA I.P.I. No. 11-3736-RTJ and OCA I.P.I. No. 12-3907-RTJ, respectively, against Judge Mislang, alleging that the latter acted in patent disregard of the rules on injunctive relief and prejudicial question, exhibited gross ignorance of the law and/or procedure, and manifested partiality and gross misconduct in issuing the assailed Orders.

After a careful review and evaluation of the case, the Office of the Court Administrator (OCA) recommended in both Complaints that Judge Mislang be found guilty of gross ignorance of the law and be dismissed from service, with forfeiture of retirement benefits except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.<sup>[2]</sup>

### ***The Court's Ruling***

The Court finds no compelling reason to deviate from the findings and recommendations of the OCA.

The application for TRO for the 2<sup>nd</sup> DOJ case was incorporated in the petition for injunction. However, the DOJ was not given any notice of Lee's Urgent Motion for *ex-parte* resolution of his TRO application. And despite the parties' agreement in court to submit for resolution said petition for injunction only upon submission of their respective memoranda, Judge Mislang granted Lee's application for TRO without waiting for the DOJ's memorandum. He never conducted a hearing on either the application for TRO or on the motion for resolution of the TRO. Clearly, this is in violation of the DOJ's constitutional right to be heard and to due process. Judge Mislang's wanton disregard of the DOJ's right to due process was repeated when he granted the TRO for the 1<sup>st</sup> DOJ case. Although the application for TRO was contained in a verified petition, the DOJ was not properly served with a copy of the petition or the urgent motion for hearing. It was not likewise served with any notice of hearing. And notwithstanding the lack of proof of service, Judge Mislang still proceeded to hear the application for TRO against the 1<sup>st</sup> DOJ case during the hearing on the petition for issuance of a writ of preliminary injunction against the 2<sup>nd</sup> DOJ case.

Verily, Judge Mislang manifested serious lack of knowledge and understanding of the basic legal principles on prejudicial question and on jurisdiction in petitions for suspension of criminal action based on prejudicial questions, as prescribed by Sections 6<sup>[3]</sup> and 7,<sup>[4]</sup> Rule 111 of the Revised Rules of Criminal Procedure. The OCA adopted the ruling of the Court of Appeals (Seventeenth Division) in *Department of Justice v. The Hon. Rolando Mislang, etc. and Delfin Lee*, CA-G.R. SP No. 121594, dated April 16, 2012, thus:

After a thorough and judicious study of the attendant factual and legal milieu, this Court has come to the conclusion that **no prejudicial question exists that would justify the issuance by public respondent Judge of the writ of preliminary injunction as both cases before the DOJ can proceed independently of that with the Makati RTC.**

This Court agrees with petitioner's contention that no prejudicial question exists with respect to the first DOJ case. A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected. The civil action must be instituted prior to the institution of the criminal action. **As**

**it was shown that the recommendation by the NBI for DOJ to investigate Lee and other officials of the GA for estafa was filed ahead of the civil case which Lee filed against HDMF before the Regional Trial Court of Makati City, the doctrine of prejudicial question is untenable in the first DOJ case.**

Moreover, it did not escape this Court's attention that when Lee moved for the issuance of a temporary restraining order to enjoin the DOJ, in the first DOJ case, ... he did not file a petition for suspension of criminal action by reason of prejudicial question before the panel of DOJ prosecutors, in violation of the provisions of **Section 6, Rule 111 of the Revised Rules of Court...** **The rule is clear that in filing a petition for suspension of criminal action based upon a pendency of a prejudicial action in a civil action, the same should be made before the office of the prosecutor or the court conducting the preliminary investigation. If an information had already been filed before the court for trial, the petition to suspend should be filed before the court where the information was filed.**

Considering that no information has yet been filed against Lee and the action that was brought before the court *a quo* was one for injunction and damages, **the public respondent Judge gravely erred when he took cognizance of Lee's prematurely filed petition and granted his prayer for the issuance of a temporary restraining order.**

Nevertheless, even if the civil case was filed ahead of the first DOJ case, the doctrine of prejudicial question is still inapplicable.

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... (I)njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that **the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ.** Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.

**WHEREFORE,** in view of the foregoing, the instant Petition is hereby GRANTED. The assailed Order issued by public respondent Judge dated September 5, 2011 in Civil Case No. 73115-PSG for Injunction is **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction. The writ of preliminary injunction is hereby lifted for lack of basis both in fact and in law.<sup>[5]</sup>