

## SECOND DIVISION

[ G.R. No. 211535, July 22, 2015 ]

**BANK OF COMMERCE, PETITIONER, VS. MARILYN P. NITE,  
RESPONDENT.**

### DECISION

**CARPIO, ACTING CJ.:**

#### The Case

Before the Court is a petition for review on certiorari assailing the 22 November 2013 Decision<sup>[1]</sup> and 28 February 2014 Resolution<sup>[2]</sup> of the Court of Appeals in CA-G.R. CV No. 81500. The Court of Appeals affirmed *in toto* the Order dated 4 April 2003<sup>[3]</sup> and the Omnibus Order dated 5 January 2004<sup>[4]</sup> of the Regional Trial Court of Makati, Branch 150 (trial court) in Criminal Case Nos. 94-5267 and 94-5268.

#### The Antecedent Facts

Respondent Marilyn Nite (Nite) was charged, together with Nunelon Bradley (Bradley) and Victoria Magalona-Escalambre (Escalambre), with violation of Section 19 of Batas Pambansa Bilang 178<sup>[5]</sup> (BP Blg. 178) in an Information that reads:

That on or about April 25, 1994, in the Municipality of Makati, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, doing business under the name and style of Bancapital Development Corporation (Bancap) did then and there, willfully and feloniously engage in the business of selling securities, particularly treasury bills (T-bills) with Bank of Commerce (Bancom) in the amount of Php250 Million without having been registered as a broker, dealer or salesman with the Securities and Exchange Commission, in violation of said law.

CONTRARY TO LAW.<sup>[6]</sup>

The case was docketed as Criminal Case No. 94-5267.

Nite was also charged, together with Bradley, Escalambre, and Eugene Yang (Yang), with Estafa in an Information that reads:

That on or about April 25, 1994, in Makati, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, confederating together and mutually helping each other, by means of deceit, with unfaithfulness or abuse of confidence on the part of accused Eugene Yang and taking advantage of his position as senior manager of the Bank of Commerce (Bancom), did then and there willfully, unlawfully

and feloniously defraud Bancom as follows: That Bancapital Development Corporation (Bancap) thru accused Nite, Bradley and Escalambre by means of fraudulent misrepresentations; offered and confirmed for sale Php250 Million worth of Treasury bills at a discounted price of Php243,215,972.52 to Bancom which was actually purchased and fully paid by Bancom, when in truth and in fact Bancap which was not authorized to trade security did not actually have such Treasury bills worth Php250 Million as only Php88 Million worth of Treasury bills was delivered to Bancom upon receipt by Bancap of the full payment thereof; that accused Eugene Yang, senior manager of Bancom, willfully, unlawfully and feloniously caused the preparation, issuance and signing of the manager's check in payment of the treasury bills in question on the basis of the trading order he himself approved and Bancap's confirmation of sale signed by accused Nite and Escalambre, and, once in possession of the full payment thereof, the above-named accused misappropriated, misapplied and converted the same to their own personal use and benefit and despite repeated demands failed to deliver the remaining Treasury bills worth Php162 Million, to the damage and prejudice of Bancom, its creditors and stockholders, in the amount of Php162 Million Pesos.

CONTRARY TO LAW.<sup>[7]</sup>

The case was docketed as Criminal Case No. 94-5268. The two cases were tried jointly.

Since Bradley was still at large during the trial, and the proceedings against Escalambre and Yang were suspended pending their petition for certiorari and mandamus before the Court of Appeals in connection with the denial of their demurrer to evidence, a separate trial was conducted against Nite after she was arrested in the United States of America for overstaying and brought back to the Philippines.

In Criminal Case No. 94-5267, the thrust of the prosecution's argument was that Nite, as President of Bancapital Development Corporation (Bancap), violated Section 19 of BP Blg. 178 when Bancap sold P250 million worth of treasury bills to Bank of Commerce (Bancom) without being registered as broker, dealer, or salesman of securities. In Criminal Case No. 94-5268, the prosecution alleged that Nite defrauded Bancom by falsely pretending to possess and own P250 million worth of treasury bills that Bancap supposedly sold to Bancom when none of the treasury bills described in the Confirmation of Sale and Letter of Undertaking issued by Bancap were ever delivered to Bancom. The prosecution alleged that Bancom paid Bancap the amount of P243,215,972.52 as payment for the treasury bills but Bancap only delivered substitute bills in the amount of P88 million.

### **The Ruling of the Trial Court**

In a Decision dated 6 December 2002,<sup>[8]</sup> the trial court ruled as follows:

WHEREFORE, the foregoing considered, accused MARILYN NITE is hereby ACQUITTED of the charge of violating Sec. 19 of Batas Pambansa Bilang 178 under Criminal Case No. 94-5267 and likewise acquitted of the

charge of Estafa under Criminal Case No. 94-5268.

She, however, is hereby ordered to pay BANK OF COMMERCE the amount of Php162 million, representing the civil obligation of BANCAPITAL.

Let, therefore, the cash bond of accused Nite be released to her by the Office of the Clerk of Court, RTC, Makati City, upon surrender of the original official receipt.

SO ORDERED.<sup>[9]</sup>

The trial court ruled that in Criminal Case No. 94-5267, the prosecution was not able to establish that Bancap acted as a primary dealer that needed to be accredited. According to the trial court, Bancap acted as a secondary dealer and did not buy the treasury bills directly from the Central Bank. In Criminal Case No. 94-5268, the trial court ruled that the element of deceit was non-existent and that at the time of the transaction, Bancom was aware that Bancap was not in physical possession of the treasury bills subject of the sale.

However, the trial court ruled that Nite, being a responsible officer of Bancap, was civilly liable to Bancom in the amount of P162 million which represented the treasury bills that Bancap undertook to deliver to Bancom since only P88 million worth of substitute treasury bills had been delivered to and accepted by Bancom.

Nite filed a partial motion for reconsideration.

In the assailed 4 April 2003 Order, the trial court granted the partial motion for reconsideration. In resolving the motion, the trial court ruled that Bancap's charter allowed it to engage in the buying and selling of government securities as part of its secondary purpose. The trial court added that even if the buying and selling of securities were outside the scope of Bancap's primary purpose, the acts could only be considered as ultra vires and not illegal. The trial court could not disregard the rule on separate corporate identity absent any evidence that Bancap was used as a tool to commit fraud, injustice, or crime against Bancom. The dispositive portion of the Order reads:

WHEREFORE, premises considered, the Motion for Partial Reconsideration is hereby GRANTED. The DECISION dated December 6, 2002 insofar as the civil aspect of the case is concerned, rinding accused Nite civilly liable to BANCOM in the amount of Php162 million, representing the treasury bills BANCAP failed to deliver to BANCOM is hereby set aside. Accordingly, the dispositive portion of the said decision shall now read as follows:

"WHEREFORE, the foregoing considered, accused MARILYN NITE is hereby acquitted of the charge of violating Sec. 19 of Batas Pambansa Bilang 178 under Criminal Case No. 94-5267 and likewise acquitted of the charge of Estafa under Criminal Case No. 94-5268.

Let, therefore, the cash bond of accused Nite be released to her by the Office of the Clerk of Court, RTC, Makati City, upon surrender of the original official receipt.