

THIRD DIVISION

[G.R. No. 204025, November 26, 2014]

MARIA LINA S. VELAYO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

DECISION

REYES, J.:

This is a Petition for Review on *Certiorari*^[1] from the Decision^[2] dated July 4, 2012 of the Court of Appeals (CA) in CA-G.R. CR No. 34276 which affirmed the Decision^[3] dated January 25, 2011 of the Regional Trial Court (RTC) of Pasay City, Branch 111, in Criminal Case No. 03-1056, the dispositive portion of which reads:

WHEREFORE, this Court finds Accused Lina S. Velayo guilty beyond reasonable doubt of the crime of *estafa* and, accordingly, sentences her to suffer an indeterminate penalty of four (4) years, one (1) month and one (1) day of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum. Accused is directed to return to private complainant WJA Holdings, Inc. the amount of P3,429,225.00 with legal interest until fully paid.

SO ORDERED.^[4]

The Facts

An Information for *estafa* was filed against Lina S. Velayo (same person as herein petitioner Maria Lina S. Velayo [Velayo, for brevity]) on June 24, 2003, the accusatory portion of which reads:

That on or about the 29th day of March 2001 in Pasay City, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, LINA S. VELAYO, defrauded and deceived WJA Holdings, Inc. herein represented by its President, Jayne O. Abuid, in the following manner to wit: that the accused being then the President of Alorasan Realty Development Corporation entered into in its behalf a contract to purchase two parcels of land covered by TCT Nos. 142675 and 122230 for Php20,000,000.00 and Php40,000,000.00 respectively with WJA Holdings, Inc., with the understanding that the applicable withholding tax which WJA Holdings, Inc. was supposed to withhold and remit to the BIR re: the Php40,000,000.00 purchase price in the amount of Php3,000,000.00 representing the 7.5% withholding tax will not be deducted hence the total amount of Php40,000,000.00 was received by the accused under the obligation of effecting the registration and transfer of the title in the name of WJA and further accused received from the WJA the amount of Php346,670.00 representing documentary stamp tax

for such transfer and the accused once in possession of the said aggregate amount of Php3,346,670.00, which amount accused misapplied, misappropriated and converted to her own personal use and benefit, and despite repeated demand made upon her, accused failed to comply, to the damage and prejudice of said complainant in the aforesaid amount of Php3,346,670.00.

Contrary to law.^[5]

The above complaint arose from the sale to WJA Holdings, Inc. (WJA), owner of the Asian Institute of Maritime Studies (AIMS), of two properties owned by Alorasan Realty Development Corporation (ARDC), namely: a **2,568-square-meter** lot on Robert Street, Pasay City covered by Transfer Certificate of Title (TCT) No. 122230, for P40 Million; and a **550-sq-m** property along Roxas Boulevard covered by TCT No. 142675, for P20 Million. Emma Sayson (Sayson), a sales agent of ARDC, testified that she coordinated and was present in all the negotiations for the sale, which was finalized on March 29, 2001 at a meeting held at the AIMS office. At the said meeting, Velayo, ARDC Director and Corporate Secretary, represented ARDC, while Arlene Abuid-Paderanga (Paderanga), President of AIMS, and Janet Abuid (Abuid), Treasurer of WJA and Vice-President for Finance of AIMS, represented WJA.

^[6]

Since TCT No. 122230 was then on mortgage to Metrobank for P40 Million, AIMS agreed to pay a downpayment of P40 Million for the two lots to enable ARDC to secure the release of said title. Velayo claimed to know someone at the Bureau of Internal Revenue (BIR) who could help reduce the taxes, and so on behalf of WJA she volunteered to remit the pertinent capital gains and documentary stamp taxes and transfer fees due on the sale. She thus asked WJA not to deduct the said taxes from the gross amount of the checks. Of the initial P40 Million paid, P20 Million was applied to one-half of the gross price of TCT No. 122230, while the other P20 Million would represent the full payment for TCT No. 142675. On April 5, 2001, AIMS paid another P10 Million, and the next day it paid the final P10 Million, thereby completing the full gross price for the transaction.^[7]

For TCT No. 142675, total taxes and fees were said to amount to P1,733,350.00; for TCT No. 122230, the capital gains and documentary stamp taxes totaled P3 Million. Apparently, on the basis of some reduced property valuation only Velayo knew of, she computed the total documentary stamp tax due for TCT No. 142675 at P346,670.00 and P429,225.00 for TCT No. 122230. AIMS, thus, issued another check to ARDC, also through Velayo, for P775,895.00.^[8]

In June 2001, Velayo turned over to Sayson the Deed of Sale, BIR Form 1606, Form 2000, and BIR receipt and BIR Certificate Authorizing Registration (CAR), all for TCT No. 142675 only; but as for TCT No. 122230, Velayo claimed that she was waiting for a Department of Finance ruling which was forthcoming on September 1, 2001 which would lower the applicable taxes on TCT No. 122230. But Sayson observed that the entire P775,895.00 check intended for documentary stamp taxes for the two lots was actually applied only to the taxes for TCT No. 142675, leaving the documentary stamp tax for TCT No. 122230 unpaid.^[9]

Abuid, Treasurer of WJA, testified that the P40 Million check she initially paid to

Velayo as downpayment was used by ARDC to settle its mortgage loan on TCT No. 122230 with Metrobank; that Velayo requested that the withholding taxes be not deducted since she would take care of remitting the same to the BIR, where she knew someone who could help reduce WJA's tax liability; that AIMS paid another P10 Million on April 5, 2001, and the last P10 Million the next day, both to Velayo; that on May 29, 2001, Abuid issued to Velayo the last check, for P775,970.00, for the documentary stamp taxes on the two lots, P429,617.00 for TCT No. 122230 and P346,670.00 for TCT No. 142675; that on seeing the CAR and receipts from BIR, she noted that the P775,895.00 was entirely applied to the taxes due on only TCT No. 142675, thus only TCT No. 142675 was eventually transferred to the name of WJA.^[10]

Paderanga affirmed that Velayo volunteered, for expediency, to remit the taxes for the above transaction, and thus asked them not to withhold the taxes from the gross price. But until now, TCT No. 122230 has not been transferred to WJA because Velayo has not remitted the taxes thereon. She called Velayo many times to follow up, but she was always out of the house or out of the country. AIMS sent her two letters, dated September 22, 2001 and January 7, 2002, demanding delivery of their title replacing TCT No. 122230, to no avail.^[11]

Jason Pabilonia (Pabilonia), Branch Operations Officer of United Coconut Planters Bank (UCPB), testified that ARDC is one of its past clients whose authorized representative was Velayo; that it was Velayo who opened the account with an initial deposit of P40 Million; and that ARDC's signature cards bear only Velayo's signature.^[12]

Testifying alone in her defense, Velayo did not dispute the foregoing facts, except to assert that, under their Contract to Sell, it was WJA which expressly assumed the responsibility to remit all the withholding taxes and to send to ARDC the pertinent BIR receipts and documents to facilitate the transfer of the titles. She also claimed that she was able to reduce the applicable taxes by executing a second Deed of Absolute Sale showing a consideration of only P30,850,000.00.^[13]

Ruling of the RTC

In its Decision^[14] dated January 25, 2011 convicting Velayo of *estafa*, the RTC found that Velayo actually received the total purchase price of P60 Million, *including* the P3 Million for the withholding taxes on TCT No. 122230. It noted in particular that notwithstanding the express provision in the parties' Contract to Sell that WJA would remit the said taxes, Velayo volunteered to do the errand herself for WJA and convinced them not to deduct the taxes from the gross price. However, Velayo failed to remit to the BIR the P3 Million in taxes, as well as P429,617.00 in documentary stamp tax due on TCT No. 122230. Only the taxes on TCT No. 142675 were remitted, enabling her to secure a new title in the name of WJA. But Velayo insisted that she did not have "juridical possession" over the P3 Million for the taxes on TCT No. 122230, notwithstanding the acknowledgment receipt she executed, nor could she justify her failure to return the said amount despite demands. According to the RTC, all the elements of the crime of *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code (RPC) were established. Velayo's motion for reconsideration was denied in the court's Order^[15] dated May 17, 2011.

Ruling of the CA

On appeal to the CA, Velayo invokes the case of *Chua-Burce v. Court of Appeals*,^[16] in interposing as error the trial court's finding that all the elements of *estafa* are present, notwithstanding that she *did not acquire juridical possession of the funds alleged to be missing*. She asserted that she was merely acting in behalf of ARDC, the true payee and bank account holder which had sole juridical possession of the money. Moreover, the parties' Contract to Sell expressly provides that it was WJA which had the duty to withhold and remit the taxes to the BIR, not Velayo nor the ARDC.^[17]

But the CA in its Decision dated July 4, 2012 affirmed *in toto* the decision of the RTC, having determined that all the elements of *estafa* with abuse of confidence are present: a) that money, goods or other personal property was received by Velayo 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; b) that there be misappropriation or conversion of such money or property by Velayo; *or denial on her part of such receipt*; and c) that such misappropriation or conversion or denial is to the prejudice of WJA.^[18]

Petition for Review to the Supreme Court

Velayo reiterates the following grounds in her instant appeal, to wit:

A.

THAT [VELAYO] HAD NO OBLIGATION TO WITHHOLD TAXES ON BEHALF OF THE BUYER WJA AND THUS DID NOT RECEIVE [T]HE SUBJECT FUNDS IN A MANNER THAT WOULD MAKE HER LIABLE FOR THE CRIME OF ESTAFA[;]

B.

[VELAYO] DID NOT HAVE JURIDICAL POSSESSION OVER THE SUBJECT FUND[S] AND COULD NOT THEREFORE BE HELD LIABLE FOR THE CRIME OF ESTAFA[.]^[19]

Velayo maintains that an essential element of the crime of *estafa* is absent, since it is not shown that personal property was held by her in trust, on commission, for administration or under any other circumstance, for WJA. She insists that she had no juridical, but only physical or material, possession of the missing funds for the reason that under the Contract to Sell between ARDC and WJA, she was under no personal obligation to withhold the taxes due on the subject transaction. At best, her possession of the missing funds was in trust for ARDC which she represented, and any prejudice caused to WJA should be redressed by ARDC itself. In short, her possession gave rise only to a civil liability to ARDC.

Moreover, the Contract to Sell was between ARDC and WJA, from which ARDC's obligation over the missing funds arose. She herself was not a party thereto in her personal capacity, and thus she was not personally obligated to withhold or remit the taxes, a task which WJA assumed both under the law and under the aforesaid contract, yet the RTC and CA gave more credence to the witnesses of WJA by way of

parol evidence.

Furthermore, Velayo argues, relying on *Chua-Burce*, that even granting that she and not ARDC had material possession of the missing funds, she did not have juridical possession thereof, defined as possession vesting in the transferee a right over the thing transferred, and thus she could not have committed *estafa*. In *Chua-Burce*, a bank cash custodian was directly responsible and accountable for the cash-in-vault. It was held that as a mere cash custodian, she had no juridical possession over the missing funds; hence, the first element of *estafa* is absent and she cannot be convicted of *estafa* under Article 315(1)(b) of the Revised Penal Code. The Court quotes at length:

Petitioner was charged with the crime of *estafa* under Article 315 (1) (b) of the Revised Penal Code. In general, the elements of *estafa* are: (1) that the accused defrauded another (a) by abuse of confidence or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is not an essential requisite of *estafa* with abuse of confidence, since the breach of confidence takes the place of the fraud or deceit, which is a usual element in the other *estafas*.

The elements of *estafa* through conversion or misappropriation under Art. 315 (1) (b) of the Revised Penal Code are:

(1) that personal property is received in trust, on commission, for administration or under any other circumstance involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond;

(2) that there is conversion or diversion of such property by the person who has so received it or a denial on his part that he received it;

(3) that such conversion, diversion or denial is to the injury of another; and

(4) that there be demand for the return of the property.

Have the foregoing elements been met in the case at bar? We find the first element absent. When the money, goods, or any other personal property *is received* by the offender from the offended party (1) in *trust* or (2) on *commission* or (3) for *administration*, the offender acquires both material or physical possession and *juridical possession* of the thing received. Juridical possession means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner. In this case, petitioner was a cash custodian who was primarily responsible for the cash-in-vault. Her possession of the cash belonging to the bank is akin to that of a bank teller, both being mere bank employees.

In *People v. Locson*, the receiving teller of a bank misappropriated the money received by him for the bank. He was found liable for qualified