

FIRST DIVISION

[G.R. No. 195198, February 11, 2013]

**LORELI LIM PO, PETITIONER, VS. DEPARTMENT OF JUSTICE AND
JASPER T. TAN, RESPONDENTS.**

[G.R. NO. 197098]

**ANTONIO NG CHIU, PETITIONER, VS. COURT OF APPEALS,
DEPARTMENT OF JUSTICE AND JASPER T. TAN, RESPONDENTS.**

R E S O L U T I O N

REYES, J.:

Herein private respondent, Jasper T. Tan (Tan), is a stockholder of Coastal Highpoint Ventures, Inc. (CHVI), a real estate development company. Antonio Ng Chiu^[1] (Chiu) is its President. Tan claimed that Loreli Lim Po^[2] (Po) is Chiu's personal accountant. Po asserted otherwise and instead alleged that she is merely a consultant for CHVI.

Tan lamented that pertinent information relative to CHVI's operations were withheld from him. His repeated requests for copies of financial statements and allowance to inspect corporate books proved futile. Consequently, he filed before the Office of the City Prosecutor of Cebu a complaint against Chiu and Po for violation of Section 74(2),^[3] in relation to Section 144^[4] of the Corporation Code of the Philippines, the origin of the two consolidated petitions now before us.

On October 16, 2008, Assistant City Prosecutor Anna Lou B. Fernandez-Cavada (Prosecutor Fernandez-Cavada) issued a Resolution^[5] finding probable cause to indict Chiu and Po based on the following grounds:

Complainant, as a stockholder, is entitled to inspect the corporate books and records of the CHVI. The record clearly shows that complainant had been demanding to inspect the corporate books, records of business and corporate reports since 13 June 2007. Noticeably, though several demands/requests for inspection of corporate records have been made by the complainant, the same werenot (sic) granted until after the month of April 2008 or roughly 10 months thereafter. The December 15, 2007 collective inspection cannot be regarded as compliance with the request as complainant has never agreed thereto.

x x x x

The allegation of the respondent Chiu that the complainant could easily secure copies of the corporate records for (sic) the Securities and

Exchange Commission cannot justify the refusal of the latter's demand for inspection. As beneficial owner of the business, the complainant has the right to know not only the financial condition of the corporation but also how the corporate affairs are being managed, so that if they find the conditions unsatisfactory, they may be able to take the necessary measures to protect their investment.

Moreover, "records of all business transaction[s]" contemplated in Section 74 covers more than the reportorial requirements mandated by the SEC. "*Records of all business transaction[s]*" include books of inventories and balances, business correspondence, letters, telegrams, contracts, memoranda, etc.[,] as well as journals, ledgers and supporting documents for (sic) tax purposes such as income tax returns, vouchers and receipts, financial statements and voting trust agreements.

From records of business transaction[s], the stockholder can find out how his investment is being used and the actual financial condition of the corporation. x x x Considering that the records may be voluminous and that a stockholder may find it difficult to interpret them, the Supreme Court has held that a stockholder may make copies, extracts and memoranda of such records. x x x.

x x x [I]t is quite inexplicable why the complainant is not made to inspect the corporate records to the extent that is satisfactory to him. While the respondent alleged that complainant through the inspection team was allowed to view/inspect the following records, to wit:

x x x x

No proof has been shown by respondents that these books/documents were indeed shown to the inspection team. A simple minute of the meeting/inspection signed by the inspection team would have conveniently supported this assertion. x x x.

x x x [T]he assertion of the complainant that the inspection team was limited to see the books of accounts for 2006 to 2007 with carry forward balances and not detailed schedules of accounts except for bank reconciliation, lapsing schedule and deposit on subscription has to be given credence considering that this was based on the communication sent by and (sic) independent accounting company which has no interest in the corporation and which does not stand to benefit from whatever transaction that the corporation may have.^[6] (Citations omitted and underlining ours)

On April 30, 2009, Prosecutor Fernandez-Cavada issued a Resolution^[7] denying Chiu and Po's motions to reconsider the foregoing.

A petition for review was filed before the Department of Justice (DOJ). On March 2, 2010, then Undersecretary Ricardo R. Blancaflor issued a resolution reversing Prosecutor Fernandez-Cavada's findings.

On April 30, 2010, then Acting DOJ Secretary Alberto C. Agra (Secretary Agra) issued a Resolution^[8] granting Tan's motion for reconsideration. Secretary Agra reversed the Resolution dated March 2, 2010 and instead affirmed Prosecutor Fernandez-Cavada's earlier disquisition. Chiu and Po's motions for reconsideration were denied by Secretary Agra through a Resolution^[9] dated June 21, 2010.

Chiu and Po each filed before the Court of Appeals (CA) a Petition for *Certiorari* under Rule 65 of the Rules of Court.^[10] Po and Chiu's petitions were docketed as CA-G.R. SP Nos. 05351 and 05352, respectively.

On December 15, 2010, the CA dismissed with finality Po's petition on technical grounds,^[11] viz:

While petitioner had complied with the requirement on competent evidence of her identity, she still failed to comply with the requirement on proper proof of service. Proper proof of personal service requires that the affidavit of the party serving must contain a full statement of the date, place and manner of service. Petitioner's attached affidavit of service lacked these pertinent details. As for the proof of service by registered mail, post office receipts do not suffice for it is stated, specifically in Section 10, Rule 13 of the Rules of Court, that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered as sufficient proof of service; they are merely evidence of the mail matter with the post office of the sender, not the delivery of said mail matter by the post office to the addressee.^[12] (Citations omitted and underlining ours)

On the other hand, Chiu's petition was denied for lack of merit.^[13] The CA declared that:

Grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the DOJ was not shown in the present case.

Here, the petitioner was criminally charged for violating Section 74 of the Corporation Code in relation to Section 144 of the same Code. The requisites in order for the penal provision under Section 144 of the Corporation Code to apply in a case of violation of a stockholder or member's right to inspect the corporate books/records as provided for under Section 74 of the Corporation Code, are enumerated in the recent case of *Sy Tiong Shiou, et al. v[.] Sy Chim, et al.*, citing *Ang-Baya, et al. v[.] Ang*:

First. A director, trustee, stockholder or member has made a prior demand in writing for a copy of excerpts from the corporation's records or minutes;

Second. Any officer or agent of the concerned corporation

shall refuse to allow the said director, trustee, stockholder or member of the corporation to examine and copy said excerpts;

x x x x

The Court has reviewed the records and the pleadings of the parties and found that the requisites mentioned above are present. It is noted that private respondent on several occasions had expressed in writing his request to inspect CHVI's corporate books and records but his written requests were turned down on the pretext that the petitioner needed more time to prepare the documents requested by the private respondent. The initial written demand was made on October 10, 2007 but it was only on April 24, 2008 that the audit team sent by the private respondent was able to inspect some of the documents of CHVI. However, it appears that the inspection was ineffective since the petitioner and Loreli Lim Po refused to present the other documents demanded by the inspection team. PO even prevented the team from copying the corporate books and records.

Petitioner repeatedly insists that private respondent's representatives were not refused inspection of the corporate book or records and the latter were even allowed to make copies of the documents during the meeting on April 24, 2008. These are defenses which could be properly threshed out in a full-blown trial. x x x [T]he purpose of determining probable cause is to ascertain that the person accused of the crime is probably guilty thereof and should be held for trial. A finding of probable cause needs only to rest on evidence showing that more likely than not[,] a crime has been committed and was committed by the suspect. Probable cause need not be based on clear and convincing evidence of guilt, neither on evidence establishing guilt beyond reasonable doubt, and definitely, not on evidence establishing absolute certainty of guilt.

Finally, it is once more appropriate to apply the Supreme Court's general policy of non-interference with the prosecutor's discretion to file or not to file a criminal case. x x x The courts try and absolve or convict the accused but, as a rule, have no part in the initial decision to prosecute him. The possible exception to this rule is where there is an unmistakable showing of a grave abuse of discretion amounting to lack or excess of jurisdiction that will justify judicial intrusion into the precincts of the executive which is not the case herein.^[14] (Citations omitted and underlining ours)

Po is before us now with a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court ascribing grave error on the part of the CA in (a) allegedly imposing upon her "an additional requirement of proof of service by registered mail of the actual receipt thereof by the addressee,"^[15] and (b) "invoking Section 10,^[16] Rule 13 of the Rules of Court on proof of service by registered mail when the applicable rule should have been Section 13^[17] of the said Rule 13."^[18]