

## SECOND DIVISION

[ G.R. No. 199294, July 31, 2013 ]

**RALPH LITO W. LOPEZ, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

We review<sup>[1]</sup> the ruling<sup>[2]</sup> of the Court of Appeals affirming petitioner's conviction for estafa.

#### The Facts

Petitioner Ralph Lito W. Lopez (petitioner) was President and Chief Executive Officer (CEO) of Primelink Properties and Development Corporation (Primelink), a real estate developer. On 4 July 1996, Primelink entered into a Joint Venture Agreement (Agreement) with Pamana Island Resort Hotel and Marina Club, Inc. (Pamana) to develop a P60 million exclusive residential resort with marina (Subic Island Residential Marina and Yacht Club [Club]), on a 15,000 square-meter portion of an island in Subic, Zambales (Club site).<sup>[3]</sup> Under the Agreement, Pamana, the Club site owner, undertook to keep the title over the island where the Club site is located free of encumbrances. Primelink, for its part, will provide capital and handle marketing concerns, among others.<sup>[4]</sup> The Club was slated for completion in July 1998. While promoting the Club locally<sup>[5]</sup> and abroad,<sup>[6]</sup> Primelink commenced selling membership shares as stipulated in the Agreement.

On 10 October 1996, private complainant Alfredo Sy (Sy), through one of Primelink's sales officers, Joy Ragonjan (Ragonjan), placed a reservation to purchase one Club share for P835,999.94 (payable in installments), executed the reservation agreement, and paid the reservation fee of P209,000. Sy fully paid the balance by 19 April 1998.

In March 2002, Sy filed a criminal complaint against petitioner and Ragonjan in the Pasig City Prosecutor's Office for estafa. The complaint was grounded on the fact that the Club remained undeveloped and Primelink failed to return Sy's payment despite demands to do so. Sy also discovered that Primelink had no license from the Securities and Exchange Commission (SEC) to sell securities.

The Pasig City Prosecutor found probable cause to indict petitioner and Ragonjan for violation of Article 315, paragraph 2(a) of the Revised Penal Code, as amended (Code)<sup>[7]</sup> and filed the Information<sup>[8]</sup> with the Regional Trial Court of Pasig City (trial court).<sup>[9]</sup> Ragonjan remained at large, leaving petitioner to face trial by

himself.

During trial, Sy testified that Ragonjan assured him that Primelink was licensed to sell Club shares.<sup>[10]</sup> On cross-examination, Sy admitted dealing exclusively with Ragonjan for his reservation and purchase of the Club share.<sup>[11]</sup>

The defense presented Atty. Jaime Santiago (Santiago), Primelink comptroller and drafter of the Agreement, to testify on the circumstances leading to the sale of Club shares and petitioner's role in Primelink's decision to do so.

Petitioner also took the stand, testifying that the Club was a legitimate project of Primelink and Pamana but whose completion was rendered impossible by Pamana's breach of the Agreement, by, among others, mortgaging the Club site to Wesmont Bank. As a result, Primelink sued Pamana in the Regional Trial Court of Makati (Branch 59) for damages for breach of the Agreement.<sup>[12]</sup>

Petitioner admitted that Primelink sold unregistered shares. He invoked the Agreement as basis for the undertaking, adding that such is also an "industry practice."<sup>[13]</sup> On Ragonjan's dealings with Sy, petitioner stated that Primelink's sales agents were instructed to be "honest and candid" with prospective buyers on the status of the project and on Primelink's lack of license to sell Club shares.<sup>[14]</sup>

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

The trial court found petitioner guilty as charged, sentenced him to four years, two months and one day of *prision correccional* to twenty years of *reclusion temporal* and to indemnify Sy the amount of P835,999.94.<sup>[15]</sup> In the trial court's evaluation –

[t]he evidence on record indubitably shows that the elements of the subject offense are present in the case. Accused fraudulently offered to sell to private complainant a share over Subic Island [Club], while concealing from the former the material fact that x x x accused has yet to secure the requisite licenses and registration with the SEC to sell shares of the project and from the DENR and HLURB to develop and construct the same. Relying on the accused's misrepresentations, private complainant paid him the total amount of Php835,999.94, as consideration but he was never able to gain possession of a Certificate of Membership given accused's continued failure to proceed with the project. x x x.

x x x x

[T]he act of deliberately misrepresenting to the private complainant that Primelink had the necessary authority or license to pre[-] sell shares in Subic Island [Club], and the act of collecting money from private complainant only to renege on the promise to turn over said share[] and for failure to return the money collected from the private complainant, despite several demands, are clearly acts attributable to herein accused Lopez and amount to estafa punishable under Article 315, paragraph 2(a), of the Revised Penal Code.<sup>[16]</sup>

Petitioner appealed to the Court of Appeals.

### **The Ruling of the Court of Appeals**

The Court of Appeals affirmed the trial court's ruling *in toto*. According to the Court of Appeals -

[t]he RTC correctly found that the Accused-Appellant is guilty beyond reasonable doubt of Estafa as all [its] elements are present. The Accused-Appellant made false representations, through his marketing officer, Ragonjan, by making Sy believe that the necessary license to sell or permit from the government agencies has been obtained by their company, Primelink, to sell membership shares in the [Club]. Sy, highly trusting of the misrepresentations of the Accused-Appellant and Ragonjan, willingly parted with his money and bought a membership share in the same. x x x.

x x x x

[Were] it not for the Accused-Appellant's fraudulent machinations and false representations, Sy would not have parted with his money and would not be ripped-off of his hard-earned money in the amount of P835,999.94. x x x. It is also peculiar that no refund was made to the latter from the start of the trial until this time.<sup>[17]</sup>

Hence, this appeal under Rule 45.

Petitioner seeks a re-appraisal of the Court of Appeals' factual findings, pointing to facts allegedly overlooked which, if considered, would alter the case's disposition. He also assails the Court of Appeals' appreciation of conspiracy between him and Ragonjan as speculative, grounded on mere assumptions.<sup>[18]</sup>

The Office of the Solicitor General (OSG) prays for the denial of the petition. As a threshold objection, the OSG contests the propriety of reviewing questions of fact, considering that the office of a Rule 45 petition is limited to the review of questions of law only. On the merits, the OSG prays for affirmance of the Court of Appeals' ruling.

### **The Issue**

The question is whether the Court of Appeals erred in affirming petitioner's conviction for estafa under Article 315, paragraph 2(a) of the Code.

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

We hold that the Court of Appeals committed no error in affirming petitioner's conviction for estafa.

### ***Review of Questions of Fact Improper***

We first resolve the threshold issue of the propriety of passing upon questions of fact in this review. The narrow ambit of review prescribed under Section 1 of Rule 45,<sup>[19]</sup> limiting the scope of our inquiry to questions of law only enforces our ordinary certiorari jurisdiction efficiently. By sparing the Court from the task of parsing through factual questions, we are able to swiftly dispose of such appeals. This rule, of course, admits of exceptions applicable to those rare petitions whose peculiar factual milieu justifies relaxation of the Rules such as when the Court of Appeals made erroneous inferences, arrived at a conclusion based on speculation or conjectures, or overlooked undisputed facts which, if duly considered, lead to a different conclusion.<sup>[20]</sup> As shown in the discussion below, however, none of these grounds obtain here. We thus proceed with our review without disturbing the Court of Appeals' factual findings.

### ***Elements of Estafa Under Article 315, paragraph 2(a)***

The Code defines estafa under Article 315, paragraph 2(a), the offense for which petitioner and Ragonjan stand accused, as follows:

*Swindling (estafa).* — Any person who shall defraud another x x x

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

This provision lays on the prosecution the burden of proving beyond reasonable doubt each of the following constitutive elements:

(1) The accused used fictitious name or false pretense that he possesses (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or (h) imaginary transaction, or other similar deceits;

(2) The accused used such deceitful means prior to or simultaneous with the execution of the fraud;

(3) The offended party relied on such deceitful means to part with his money or property; and

(4) The offended party suffered damage.

### ***Elements of Use of, and Reliance on, False Pretenses by Petitioner and Sy, Respectively***

The Information filed against petitioner and Ragonjan alleges that they conspired to use two false pretenses on Sy to defraud him on 10 October 1996, namely, that “[1] Subic Island [Club] would be developed by Primelink and that [2] the latter was duly authorized to sell membership certificates.” We find merit in petitioner’s contention that the prosecution failed to prove the element of use of false pretense regarding the first allegation. Nevertheless, we find the evidence sufficient to prove the use of false pretense on the second allegation.

### ***Allegation on the Club’s Development not “False”***

It is impossible to determine from the records the category of false pretense the prosecution wished the first allegation to belong. Undoubtedly, it concerns Primelink’s *capability* to develop the Club. Use of false pretense of *capability* is, however, not penalized under Section 2(a) of Article 315. The category approximating the allegation in question is false pretense of *power* (to develop the Club). We proceed with our analysis using such category as frame of reference.<sup>[21]</sup>

Without need of passing upon the question whether Ragonjan’s representations to Sy on 10 October 1996 bind petitioner, we resolve the threshold question whether her alleged statement that the Club will be finished by July 1998 was in the first place *false*. The Court of Appeals grounded its affirmative answer on the fact that the Club remained unfinished even after the lapse of its target completion date in July 1998. Section 2(a) of Article 315, however, requires that the false pretense be used “prior to or simultaneous with the execution of the fraud,” that is, on 10 October 1996. The crux of this issue then, is whether before or at that time, Primelink possessed *no power* (capability) to develop the Club, rendering Ragonjan’s statement false.

A review of the records compels a negative answer. When Sy reserved to buy a Club share on 10 October 1996, barely three months had passed after Primelink, a duly incorporated real estate developer, signed the Agreement with Pamana, another real estate developer, to develop the Club. Four months after Sy bought a Club share, Primelink promoted the Club here and abroad and continued selling Club shares.<sup>[22]</sup> All the while, Primelink released funds to finance the project’s initial expenses, a portion of which Pamana was ordered to repay by a Makati court after the project was aborted.<sup>[23]</sup>

These facts negate the conclusion that on or before 10 October 1996, petitioner and Ragonjan knew that the Club was a bogus project. At that time, the Project was on-course as far as Primelink was concerned. It was only after 10 October 1996 that Primelink encountered problems with Pamana, rendering impossible the Club’s completion.<sup>[24]</sup>

### ***False Pretense on Primelink’s Qualification to Pre-sell Club Shares Proven Beyond Reasonable Doubt***

There is no mistaking that the claim made by Ragonjan to Sy that Primelink was authorized to sell membership shares is false - Primelink held no license to sell securities at the time Sy bought a Club share on 10 October 1996 or afterwards. Such alleged false representation, which Sy relied upon to buy the share, belongs to