

SECOND DIVISION

[G.R. No. 187919, April 25, 2012]

**RAFAEL H. GALVEZ AND KATHERINE L. GUY, PETITIONERS, VS.
HON. COURT OF APPEALS AND ASIA UNITED BANK,
RESPONDENTS.**

[G.R. NO. 187979]

**ASIA UNITED BANK, PETITIONER, VS. GILBERT G. GUY, PHILIP
LEUNG, KATHERINE L. GUY, RAFAEL H. GALVEZ AND EUGENIO H.
GALVEZ, JR., RESPONDENTS.**

[G.R. NO. 188030]

**GILBERT G. GUY, PHILIP LEUNG AND EUGENIO H. GALVEZ, JR.,
PETITIONERS, VS. ASIA UNITED BANK, RESPONDENT.**

D E C I S I O N

PEREZ, J.:

THE FACTS

In 1999, Radio Marine Network (Smartnet) Inc. (RMSI) claiming to do business under the name Smartnet Philippines^[1] and/or Smartnet Philippines, Inc. (SPI),^[2] applied for an Omnibus Credit Line for various credit facilities with Asia United Bank (AUB). To induce AUB to extend the Omnibus Credit Line, RMSI, through its directors and officers, presented its Articles of Incorporation with its 400-peso million capitalization and its congressional telecom franchise. RMSI was represented by the following officers and directors occupying the following positions:

Gilbert Guy	-	Exec. V-Pres./Director
Philip Leung	-	Managing Director
Katherine Guy	-	Treasurer
Rafael Galvez	-	Executive Officer
Eugenio Galvez, Jr.	-	Chief Financial Officer/Comptroller

Satisfied with the credit worthiness of RMSI, AUB granted it a P250 million Omnibus Credit Line, under the name of Smartnet Philippines, RMSI's Division. On 1 February 2000, the credit line was increased to P452 million pesos after a third-party real estate mortgage by Goodland Company, Inc.,^[3] an affiliate of Guy Group of Companies, in favor of Smartnet Philippines,^[4] was offered to the bank. Simultaneous to the increase of the Omnibus Credit Line, RMSI submitted a proof of authority to open the Omnibus Credit Line and peso and dollar accounts in the name

of Smartnet Philippines, Inc., which Gilbert Guy, et al. represented as a division of RMSI,^[5] as evidenced by the letterhead used in its formal correspondences with the bank and the financial audit made by SGV & Co., an independent accounting firm. Attached to this authority was the Amended Articles of Incorporation of RMSI, doing business under the name of Smartnet Philippines, and the Secretary's Certificate of SPI authorizing its directors, Gilbert Guy and Philip Leung to transact with AUB.^[6] Prior to this major transaction, however, and, unknown to AUB, while RMSI was doing business under the name of Smartnet Philippines, and that there was a division under the name Smartnet Philippines, Gilbert Guy, *et al.* formed a subsidiary corporation, the SPI with a paid-up capital of only P62,500.00.

Believing that SPI is the same as Smartnet Philippines - the division of RMSI - AUB granted to it, among others, Irrevocable Letter of Credit No. 990361 in the total sum of \$29,300.00 in favor of Rohde & Schwarz Support Centre Asia Ptd. Ltd., which is the subject of these consolidated petitions. To cover the liability of this Irrevocable Letter of Credit, Gilbert Guy executed Promissory Note No. 010445 in behalf of SPI in favor of AUB. This promissory note was renewed twice, once, in the name of SPI (Promissory Note No. 011686), and last, in the name of Smartnet Philippines under Promissory Note No. 136131, bolstering AUB's belief that RMSI's directors and officers consistently treated this letter of credit, among others, as obligations of RMSI.

When RMSI's obligations remained unpaid, AUB sent letters demanding payments. RMSI denied liability contending that the transaction was incurred solely by SPI, a corporation which belongs to the Guy Group of Companies, but which has a separate and distinct personality from RMSI. RMSI further claimed that while Smartnet Philippines is an RMSI division, SPI, is a subsidiary of RMSI, and hence, is a separate entity.

Aggrieved, AUB filed a case of syndicated *estafa* under Article 315 (2) (a) of the Revised Penal Code in relation to Section 1 of Presidential Decree (PD) No. 1689 against the interlocking directors of RMSI and SPI, namely, Gilbert G. Guy, Rafael H. Galvez, Philip Leung, Katherine L. Guy, and Eugenio H. Galvez, Jr., before the Office of the City Prosecutor of Pasig City.

AUB alleged that the directors of RMSI deceived it into believing that SPI was a division of RMSI, only to insist on its separate juridical personality later on to escape from its liabilities with AUB. AUB contended that had it not been for the fraudulent scheme employed by Gilbert Guy, *et al.*, AUB would not have parted with its money, which, including the controversy subject of this petition, amounted to hundreds of millions of pesos.

In a Resolution dated 3 April 2006,^[7] the Prosecutor found probable cause to indict Gilbert G. Guy, et al. for *estafa* but dismissed the charge of violation of PD No. 1689 against the same for insufficiency of evidence, thus:

WHEREFORE, it is recommended that respondents be charged for ESTAFA under Article 315, par. 2(a) of the Revised Penal Code, and the attached information be filed with the Regional Trial Court in Pasig City, with a recommended bail of P40,000.00 for each respondent.

It is further recommended that the charge of violation of P.D. 1689 against the said respondents be dismissed for insufficiency of evidence.

[8]

Accordingly, an Information dated 3 April 2006^[9] was filed against Gilbert Guy, *et al.* with the Regional Trial Court of Pasig City.

Both parties, *i.e.*, the AUB and Gilbert Guy, *et al.*, filed their respective Petitions for Review with the Department of Justice (DOJ) assailing the 3 April 2006 Resolution of the Office of the City Prosecutor of Pasig City.

In a Resolution dated 15 August 2006,^[10] the DOJ reversed the City Prosecutor's Resolution and ordered the dismissal of the *estafa* charges against Gilbert Guy, *et al.* for insufficiency of evidence.

The AUB's Motion for Reconsideration was denied, constraining it to assail the DOJ Resolution before the Court of Appeals (CA).

The CA partially granted AUB's petition in a Decision dated 27 June 2008, thus:

WHEREFORE, the instant petition is **GRANTED**, finding probable cause against private respondents for the crime of **ESTAFA** under Article 315, par 2 (a) of the Revised Penal Code. The assailed Resolution dated August 15, 2006 of the Department of Justice is **REVERSED AND SET ASIDE**, subject to our ruling that the private respondents are not liable under P.D. 1689. The April 3, 2006 Resolution of Assistant City Prosecutor Paudac is hereby **REINSTATED**.^[11]

Aggrieved, Gilbert Guy, Philip Leung and Eugenio H. Galvez Jr. (in G.R. No. 188030) and separately, Rafael Galvez and Katherine Guy (in G.R. No. 187919) filed the present petitions before this Court assailing the CA Decision which reinstated the City Prosecutor's Resolution indicting them of the crime of *estafa*. The AUB also filed its own petition before us, docketed as G.R. No. 187979, assailing the Court of Appeals Decision for dismissing the charge in relation to Section 1 of PD No. 1689.

Hence, these consolidated petitions.

Gilbert Guy, *et al.* argue that this case is but a case for collection of sum of money, and, hence, civil in nature and that no fraud or deceit was present at the onset of the transaction which gave rise to this controversy, an element indispensable for *estafa* to prosper.^[12]

AUB, on the other, insists that this controversy is within the scope of PD No. 1689, otherwise known as syndicated *estafa*. It contends that Guy, *et al.*, induced AUB to grant SPI's letter of credit to AUB's damage and prejudice by misleading AUB into believing that SPI is one and the same entity as Smartnet Philippines which AUB granted an Omnibus Credit Transaction. After receiving and profiting from the proceeds of the aforesaid letter of credit, Gilbert Guy, *et al.* denied and avoided

liability therefrom by declaring that the obligation should have been booked under SPI as RMSI never contracted, nor authorized the same. It is on this premise that AUB accuses Gilbert Guy, *et al.* to have committed the crime of *estafa* under Article 315 (2) (a) of the Revised Penal Code in relation to PD No. 1689.

At issue, therefore, is whether or not there is probable cause to prosecute Gilbert Guy, *et al.* for the crime of syndicated *estafa* on the basis of fraudulent acts or fraudulent means employed to deceive AUB into releasing the proceeds of Irrevocable Letter of Credit No. 990361 in favor of SPI.

Our Ruling

This controversy could have been just a simple case for collection of sum of money had it not been for the sophisticated fraudulent scheme which Gilbert Guy, *et al.* employed in inducing AUB to part with its money.

Records show that on 17 February 1995, Radio Marine Network, Inc. (Radio Marine) amended its corporate name to what it stands today – Radio Marine Network (**Smartnet**), Inc. This was a month after organizing its subsidiary corporation the **Smartnet Philippines, Inc.** with a capital of only P62,500.00.^[13] A year earlier, Gilbert Guy, *et al.*, established **Smartnet Philippines** as a division of Radio Marine under which RMSI operated its business.

It was, however, only on 26 March 1998, when the Securities and Exchange Commission approved the amended corporate name, and only in October 1999 did RMSI register Smartnet Philippines as its business name with the Department of Trade and Industry.^[14]

It is in this milieu that RMSI transacted business with AUB under the name Smartnet Philippines and/or SPI.

Article 315 (2) (a) of the Revised Penal Code provides:

Art. 315. *Swindling (estafa)* – any person who shall defraud another by any of the means mentioned herein below x x x :

x x x x

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

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

The elements of *estafa* by means of deceit are the following:

- a. That there must be a false pretense, fraudulent act or fraudulent means;
- b. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud;
- c. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means;
- d. That as a result thereof, the offended party suffered damage.^[15]

First, Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez and Eugene Galvez, Jr., interlocking directors of RMSI and SPI, represented to AUB in their transactions that Smartnet Philippines and SPI were one and the same entity. While Eugene Galvez, Jr. was not a director of SPI, he actively dealt with AUB in his capacity as RMSI's Chief Financial Officer/Comptroller by falsely representing that SPI and RMSI were the same entity. Gilbert Guy, Philip Leung, Katherine Guy, Rafael Galvez, and Eugene Galvez, Jr. used the business names Smartnet Philippines, RMSI, and SPI interchangeably and without any distinction. They successfully did this by using the confusing similarity of RMSI's business name, *i.e.*, Smartnet Philippines – its division, and, Smartnet Philippines, Inc. – the subsidiary corporation. Further, they were able to hide the identity of SPI, by having almost the same directors as that of RMSI. In order to let it appear that SPI is the same as that of Smartnet Philippines, they submitted in their application documents of RMSI, including its Amended Articles of Incorporation,^[16] third-party real estate mortgage of Goodland Company^[17] in favor of Smartnet Philippines, and audited annual financial statement of SGV & Co.^[18] Gilbert Guy, *et al.* also used RMSI letterhead in their official communications with the bank and the contents of these official communications^[19] conclusively pointed to RMSI as the one which transacted with the bank.

These circumstances are all *indicia* of deceit. Deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.^[20]

Second, the intent to deceive AUB was manifest from the start. Gilbert Guy *et al.* laid down first all the necessary materials they need for this deception before defrauding the bank by first establishing Smartnet Philippines as a division of Radio Marine under which Radio Marine Network Inc. operated its business.^[21] Then it organized a subsidiary corporation, the SPI, with a capital of only P62,000.00.^[22] Later, it changed the corporate name of Radio Marine Network Inc. into RMSI.^[23]

Undoubtedly, deceit here was conceived in relation to Gilbert Guy, *et al.*'s transaction with AUB. There was a plan, documented in corporation's papers, that led to the defraudation of the bank. The circumstances of the directors' and officers'