

## SECOND DIVISION

[ G.R. No. 185491, July 11, 2012 ]

**JULIETA E. BERNARDO, PETITIONER, VS. ANDREW (CHONG LUJAN) L. TAN, KATHERINE L. TAN, GERARDO C. GARCIA, CIIULO L. MANLANGIT, GEORGE T. YANG, THOMAS J. BARRACK, JR., ENRIQUE SANTOS L. SY, ROBERT J. ZULKOSKI, ROBERTO S. GUEVARRA, ANTONIO T. TAN, ROSE A. CAMBALIZA, LOURDES G. CLEMENTE, NOLI HERNANDEZ, FRANCIS CANUTO, CIELO CUSTODIO, GUNTER RAMETSTEINER, CHARLES Y. UY, RAQUEL BONCAN, AND RICHMOND TAN, RESPONDENTS.**

### DECISION

**SERENO, J.:**

Before the Court is a Petition for Review on Certiorari filed under Rule 45 of the Rules of Court, assailing the 24 November 2008 Decision of the Court of Appeals (CA).<sup>[1]</sup> The present controversy stems from the 29 June 2006 and 8 September 2006 Orders of the Regional Trial Court (RTC)<sup>[2]</sup> granting the withdrawal of the Informations filed against respondents for violation of Sections 5 (first Information), 17 (second Information), and 20 (third Information) in relation to Section 39 of Presidential Decree No. 957, otherwise known as "The Subdivision and Condominium Buyers' Protective Decree of 1976" (P.D. 957).

### FACTS

We reproduce the narration of facts by the CA<sup>[3]</sup> as follows:

On October 26, 2000, the petitioner Julieta Bernardo (Ms. Bernardo), offered to purchase a condominium unit described as Unit E with an area of 37 square meters of the Paseo Parkview Suites Tower II project of the developer Megaworld Corporation (Megaworld) located at Sedeño corner Valero Streets, Salcedo Village, Makati City. The said project was to be constructed on the lots covered by Transfer Certificates of Title Nos. 160210, 160211 and 160212, which are located at Makati City. The purchase price of the unit is P2,935,785.00 and Ms. Bernardo paid .19,571.90 as her reservation deposit, thus, a Request for Reservation [and Offer to Purchase] was completed by Ms. Bernardo and the same was assented to by Megaworld. Subsequently, a Contract to Buy and Sell dated November 22, 2000 was furnished to Ms. Bernardo. The said contract stipulated therein that the condominium unit would be delivered not later than July 31, 2003 with an additional grace period of six (6) months. As of October 22, 2003, Ms. Bernardo was able to pay the amount of P901,728.40. On April 15, 2004, Megaworld sent a letter to Ms. Bernardo regarding the transmittal of the Deed of Absolute Sale for

her to affix her signatures thereto and for her to pay taxes and other fees so that Megaworld could start with the processing of her bank loan. Attached with the letter is a schedule of expenses needed in the transfer of the certificate of title in favor of Ms. Bernardo. The taxes and other fees to be paid by Ms. Bernardo amounted to P93,318.13. The conflict arose when Megaworld sent a letter dated August 9, 2004 to Ms. Bernardo as a final notice of cancellation or rescission of the Request for Reservation because of the latter's alleged failure to make the necessary payments.

Consequently, Ms. Bernardo inquired with the Housing and Land Use Regulatory Board (HLURB) on the records of the project and she learned that the Certificate of Registration and the License to Sell for the project Paseo Parkview Tower 2 were only issued by HLURB on June 7, 2001. Hence, Ms. Bernardo, represented by Romeo Ruiz, filed a complaint on August 12, 2004 before the City Prosecutor of Makati City against the respondents for violations of Sections 5, 17 and 20 of Presidential Decree No. 957, otherwise known as "Regulating the Sale of Subdivision Lots and Condominiums, Providing Penalties for Violations Thereof" and the Revised Implementing Rules and Regulations of P.D. 957 and Estafa through False Pretenses and Fraudulent Acts before the Office of the City Prosecutor. Ms. Bernardo alleged that, since the Reservation Agreement (or Request for Reservation) was executed between her and Megaworld on October 26, 2000, the respondents should have caused the annotation of the same within 180 [days] therefrom or until April 24, 2001, that no annotation on the certificates of title was done when she verified the same, that Megaworld was never able to deliver the condominium unit on the stipulated deadline, which was [] on December 2003 and that, by such acts and omissions, Megaworld and the project owner, Sedeño Manor, violated the provisions of P.D. 957 to her prejudice.

In a Joint Counter-Affidavit filed by some of the respondents herein, they averred that Megaworld applied for a Certificate of Registration and License to Sell for the project as early as July 1, 1998, that subsequently, a License to Sell was issued by the HLURB but only for the Paseo Parkview Suites Phase 1 due to the modifications in the Paseo Parkview Suites Tower 2, that there was no intent on the part of Megaworld to defraud Ms. Bernardo because, when the latter requested for reservation, it has applied for the registration of the project and to have license to sell the units on the said project, that when HLURB issued the corresponding certificate and license for the Phase 1, it is understood that Megaworld is a dealer of good refute [sic] and is financially stable, that the subsequent issuance of the certificate of registration and license to sell on June 7, 2001 for the Tower 2 proved that Megaworld had good standing in pursuing the project, that subsequent certifications for the Tower 2 were issued before its completion, that Ms. Bernardo was not in good faith in filing the complaint against the respondents as she had defaulted in the payment of her obligations and also failed to settle the balance of P2,016,145.71 with interest and penalty charges amounting to P181,453.11 and that no damage was incurred by Ms. Bernardo since the Contract to Buy and Sell was never executed.

In a Resolution dated December 29, 2004, the City Prosecutor dismissed the complaint of Ms. Bernardo. Consequently, she filed a petition for review with the Secretary of Justice. Her petition was granted by the Secretary of Justice, hence, it ordered the filing of the corresponding Informations for violations of Sections 5, 17 and 20 of P.D. No. 957. The said Informations were filed in RTC, Branch 62 in Makati City. Due to the voluntary inhibition of the presiding judge of the said court, the case was re-assigned to RTC, Branch 150.

Aggrieved, the respondents moved for the reconsideration of the filing of the Informations against them. This time, the Secretary of Justice ruled in their favor and granted their motion in a Resolution dated November 17, 2005. Hence, pursuant to the Resolution, the Secretary of Justice ordered the City Prosecutor to move for the withdrawal of the Informations filed before the [trial] court. Acting on the motion of the City Prosecutor, the public respondent court issued the assailed Order dated June 29, 2006. The pertinent portion of the said order is quoted as follows:

“As correctly ruled by the Secretary of Justice, it is overly simplistic to consider respondents as having violated Section 5 of P.D. 957 requiring licenses to be secured for each phase of the project. Under Title I of P.D. 957 a condominium project shall mean the entire parcel of real property divided or to be divided primarily for residential purposes into condominium units including all structures thereon. Clearly, the requirement of securing a license for each phase refers to a subdivision project not a condominium project. There is therefore doubt as to whether or not Section 5 of P.D. 957 can be a basis for prosecuting the respondents. x x x.”

“Respondents cannot also be indicted for violation of Section 17 of P.D. 957 for failure to register the Contract to Buy and Sell with the Registry of Deeds of Makati City because they did not have in their possession said document. Their inability to register the same was justified. x x x.”

“Section 20 of P.D. 957 should not also [be] applied mechanically against the respondents. Under the Contract to Buy and Sell, Megaworld is mandated to complete the project by July 23, 2003 with a grace period of six (6) months barring delays due to manmade or natural causes. Upon its completion, Megaworld shall notify the complainant of such fact, which shall constitute constructive delivery of subject condominium unit. Under the facts obtaining, respondents had no obligation to notify the complainant of the completion and availability of the unit for occupancy due to complainant’s failure to pay in full the purchase price of the unit. In fact, Megaworld prepared a notice to cancel/rescind and forfeit the Contract to Buy and Sell due to complainant’s default. Following this theory, the non-completion of Phase II of the

condominium project cannot be made the basis of criminal prosecution under the aforecited section of P.D. 957.”

Consequently, Ms. Bernardo filed a motion for reconsideration but the same was denied by the [trial] court in [an Order] dated September 8, 2006. (Citations omitted)

On 24 November 2008, the CA issued its questioned Decision upholding the 29 June 2006 and 8 September 2006 Orders of the RTC. The appellate court ruled<sup>[4]</sup> that the RTC did not commit grave abuse of discretion when it allowed the withdrawal of the Informations filed against respondents for their alleged violation of P.D. 957. According to the CA, the trial court made an assessment and evaluation of the merits of the Motion to Withdraw the Informations independent from those of the respective findings of the Secretary of Justice and the City Prosecutor.

The CA, however, set aside the finding of the trial court with regard to the applicability of Section 5 of P. D. 957. According to the appellate court, the provision governs both subdivision and condominium projects. It then made a distinction between a contract to sell and a contract of sale. The CA explained that what P.D. 957 prohibits is the act of selling condominium units, not the act of approving the request of a client to reserve a unit for future sale, without license. It thereafter pointed out that the Request for Reservation and Offer to Purchase (Reservation Agreement) only acknowledged petitioner’s interest to buy the unit and her payment of the reservation deposit, which did not constitute a contract of sale. Consequently, the appellate court concluded that, since a violation of the provisions under P.D. 957 requires the execution of a contract of sale, the RTC’s grant of the withdrawal of Informations was done in accordance with law and did not constitute grave abuse of discretion.

## **ISSUE**

We summarize the legal arguments raised before this Court in one main issue – whether or not there is probable cause to indict respondents for allegedly violating Sections 5, 17, and 20 of P.D. 957.

## **DISCUSSION**

Prosecutors have discretion and control over the criminal prosecution of offenders, as they are the officers tasked to resolve the existence of a prima facie case and probable cause that would warrant the filing of an information against the perpetrator.<sup>[5]</sup> The process of determining whether there is probable cause is ordinarily done through the conduct of a preliminary investigation.<sup>[6]</sup> If the prosecutor finds that the evidence he or she relies upon is insufficient for conviction, courts may not compel the former to initiate criminal prosecution or to continue prosecuting a proceeding originally initiated through a criminal complaint.<sup>[7]</sup> Consequently, a prosecutor who moves for the dismissal of a criminal case or the withdrawal of an information for insufficiency of evidence has authority to do so, and courts that grant the motion commit no error.<sup>[8]</sup> Furthermore, a prosecutor “may re-investigate a case and subsequently move for the dismissal should the re-

investigation show either that the defendant is innocent or that his guilt may not be established beyond reasonable doubt.”<sup>[9]</sup>

However, once a complaint or an information is filed in court giving it jurisdiction over the criminal case, a reinvestigation thereof by the prosecutor requires prior permission from the court.<sup>[10]</sup> If reinvestigation is allowed, the findings and recommendations of the prosecutor should be submitted to the court for appropriate action.<sup>[11]</sup> If the prosecutor moves for the withdrawal of the information or the dismissal of the case, the court may grant or deny the motion. It may even order the trial to proceed with the proper determination of the case on the merits, according to its sound discretion.<sup>[12]</sup> The court “is the best and sole judge on what to do with the case before it.”<sup>[13]</sup> Thus, in *Yambot v. Armovit*,<sup>[14]</sup> we ruled:

[The court] **may therefore grant or deny at its option** a motion to dismiss or **to withdraw the information based on its own assessment of the records of the preliminary investigation submitted to it**, in the faithful exercise of **judicial discretion and prerogative**, and not out of subservience to the prosecutor. While it is imperative on the part of a trial judge to state his/her assessment and reasons in resolving the motion before him/her, he/she need not state with specificity or make a lengthy exposition of the factual and legal foundation relied upon to arrive at the decision. (Emphasis supplied and citations omitted)

This exercise of discretion is not unbridled, however, especially when attended with grave abuse. Grave abuse of discretion denotes “abuse of discretion too patent and gross as to amount to an evasion of a positive duty, or a virtual refusal to perform the duty enjoined or act in contemplation of law, or where the power is exercised in an arbitrary and despotic manner by reason of passion and personal hostility.”<sup>[15]</sup> It is present when there is capricious, whimsical, and arbitrary exercise of judgment, which in the eyes of the law amounts to lack of jurisdiction.<sup>[16]</sup>

We find reversible error in the CA Decision upholding the 29 June 2006 and 8 September 2006 Orders of the RTC insofar as the first (violation of Section 5) and the third (violation of Section 20) Informations are concerned. The trial court committed grave abuse of discretion when it granted the motion to withdraw the first and the third Informations against respondents on the basis of a grossly erroneous interpretation and application of law.

Probable cause for purposes of filing a criminal information is described as “such facts as are sufficient to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.”<sup>[17]</sup> In *Alejandro v. Bernas*,<sup>[18]</sup> we further elaborated thus:

[Probable cause] is such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean “actual or positive cause”; nor does it import absolute