

THIRD DIVISION

[G.R. No. 171579, November 14, 2012]

**LILY SY, PETITIONER, VS. HON. SECRETARY OF JUSTICE MA.
MERCEDITAS N. GUTIERREZ, BENITO FERNANDEZ GO,
BERTHOLD LIM, JENNIFER SY, GLENN BEN TIAK SY AND MERRY
SY, RESPONDENTS.**

DECISION

PERALTA, J.:

In a Complaint-Affidavit^[1] filed on August 7, 2000, petitioner Lily Sy (petitioner) claimed that in the morning of December 16, 1999, respondents Benito Fernandez Go (Benito) and Glenn Ben Tiak Sy (Glenn), together with "Elmo," a security guard of Hawk Security Agency, went to petitioner's residence at the 10th Floor, Fortune Wealth, 612 Elcano St., Binondo, Manila and forcibly opened the door, destroyed and dismantled the door lock then replaced it with a new one, without petitioner's consent.^[2] She, likewise, declared that as a diversionary ruse, respondent Jennifer Sy (Jennifer) was at the lobby of the same building who informed petitioner's helper Geralyn Juanites (Geralyn) that the elevator was not working.^[3] Glenn and Benito's act of replacing the door lock appeared to be authorized by a resolution of Fortune Wealth Mansion Corporation's Board of Directors, namely, respondents Glenn, Jennifer, William Sy (William), Merlyn Sy (Merlyn), and Merry Sy (Merry).^[4]

In the evening of the same date, petitioner supposedly saw Benito, Glenn, Jennifer, Merry and respondent Berthold Lim (Berthold) took from her residence numerous boxes containing her personal belongings without her consent and, with intent to gain, load them inside a family-owned van/truck named "Wheels in Motion."^[5] The same incident supposedly happened in January 2000 and the "stolen" boxes allegedly reached 34,^[6] the contents of which were valued at P10,244,196.00.^[7]

Respondents Benito and Berthold denied the accusations against them. They explained that petitioner made the baseless charges simply because she hated their wives Merry and Jennifer due to irreconcilable personal differences on how to go about the estates of their deceased parents then pending before the Regional Trial Court (RTC) of Manila, Branch 51.^[8] They also manifested their doubts on petitioner's capability to acquire the personal belongings allegedly stolen by them.^[9]

Merry, Glenn, and Jennifer, on the other hand, claimed that petitioner's accusations were brought about by the worsening state of their personal relationship because of misunderstanding on how to divide the estate of their deceased father.^[10] They also pointed out that the whole condominium building where the alleged residence of petitioner is located, is owned and registered in the name of the corporation.^[11] They explained that the claimed residence was actually the former residence of their

family (including petitioner).^[12] After their parents' death, the corporation allegedly tolerated petitioner to continuously occupy said unit while they, in turn, stayed in the other vacant units leaving some of their properties and those of the corporation in their former residence.^[13] They further stated that petitioner transferred to the ground floor because the 10th floor's electric service was disconnected.^[14] They explained that they changed the unit's door lock to protect their personal belongings and those of the corporation as petitioner had initially changed the original lock.^[15] They supported their authority to do so with a board resolution duly issued by the directors. They questioned petitioner's failure to report the alleged incident to the police, considering that they supposedly witnessed the unlawful taking.^[16] They thus contended that petitioner's accusations are based on illusions and wild imaginations, aggravated by her ill motive, greed for money and indiscriminate prosecution.^[17]

In the Resolution^[18] dated September 28, 2001, Assistant City Prosecutor Jovencio T. Tating (ACP Tating) recommended that respondents Benito, Berthold, Jennifer, Glenn and Merry be charged with Robbery In An Uninhabited Place; and that the charges against William Go^[19] (the alleged new owner of the building), and "Elmo Hubio" be dismissed for insufficiency of evidence.^[20] ACP Tating found that the subject condominium unit is in fact petitioner's residence and that respondents indeed took the former's personal belongings with intent to gain and without petitioner's consent. He further held that respondents' defenses are not only contradictory but evidentiary in nature.^[21] The corresponding Information^[22] was filed before the RTC of Manila, docketed as Criminal Case No. 02-199574 and was raffled to Branch 19. On motion of Jennifer, Glenn and Merry, the RTC ordered a reinvestigation on the ground of newly-discovered evidence consisting of an affidavit of the witness.^[23] This notwithstanding, the Office of the City Prosecutor (OCP) sustained in a Resolution^[24] dated September 23, 2002 its earlier conclusion and recommended the denial of respondents' motion for reconsideration.

When elevated before the Secretary of Justice, then Secretary Simeon A. Datumanong (the Secretary) reversed and set aside^[25] the ACP's conclusions and the latter was directed to move for the withdrawal of the Information against respondents.^[26] The Secretary stressed that the claimed residence of petitioner is not an uninhabited place under the penal laws, considering her allegation that it is her residence.^[27] Neither can it be considered uninhabited under Article 300 of the Revised Penal Code (RPC), since it is located in a populous place.^[28] The Secretary opined that the elements of robbery were not present, since there was no violence against or intimidation of persons, or force upon things, as the replacement of the door lock was authorized by a board resolution.^[29] It is likewise his conclusion that the element of taking was not adequately established as petitioner and her helper were not able to see the taking of anything of value. If at all there was taking, the Secretary concluded that it was made under a claim of ownership.^[30] Petitioner's motion for reconsideration was denied on June 17, 2004.^[31]

Aggrieved, petitioner went up to the Court of Appeals (CA) in a special civil action for *certiorari* under Rule 65 of the Rules of Court. On December 20, 2004, the CA rendered a Decision^[32] granting the petition and, consequently, setting aside the

assailed Secretary's Resolutions and reinstating the OCP's Resolution with the directive that the Information be amended to reflect the facts as alleged in the complaint that the robbery was committed in an inhabited place and that it was committed through force upon things.^[33]

The CA held that petitioner had sufficiently shown that the Secretary gravely abused her discretion in reversing the OCP's decision.^[34] While recognizing the mistake in the designation of the offense committed because it should have been robbery in an inhabited place, the CA held that the mistake can be remedied by the amendment of the Information.^[35] Indeed, since the element of violence against or intimidation of persons was not established, the same was immaterial as the crime was allegedly committed with force upon things.^[36] Thus, it held that petitioner adequately showed that at the time of the commission of the offense, she was in possession of the subject residential unit and that respondents should not have taken the law into their own hands if they indeed had claims over the personal properties inside the subject unit.^[37] It also did not give credence to the newly-discovered evidence presented by respondents, because the affidavit was executed two years after the filing of petitioner's complaint.^[38] Lastly, the CA held that the element of taking was shown with circumstantial evidence.^[39]

On motion of respondents, the CA rendered an Amended Decision^[40] dated May 9, 2005, setting aside its earlier decision and reinstating the DOJ Secretaries' Resolutions.^[41] It concluded that as part-owner of the entire building and of the articles allegedly stolen from the subject residential unit, the very same properties involved in the pending estate proceedings, respondents cannot, as co-owners, steal what they claim to own and thus cannot be charged with robbery.^[42] It continued and held that assuming that the door was forced open, the same cannot be construed as an element of robbery as such was necessary due to petitioner's unjustified refusal to allow the other co-owners to gain access to the premises even for the lawful purpose of allowing prospective buyers to have a look at the building.^[43] Petitioner's motion for reconsideration was denied in the assailed Resolution^[44] dated February 10, 2006.

Hence, this petition raising the following issues:

- I. THE HONORABLE COURT OF APPEALS COMMITTED A GRIEVOUS ERROR WHEN IT RULED THAT A CORPORATION MAY ARBITRARILY TAKE THE LAW INTO THEIR OWN HANDS BY MEANS OF A MERE BOARD RESOLUTION.
- II. THE HONORABLE COURT OF APPEALS COMMITTED A GRIEVOUS ERROR WHEN IT RULED THAT THE PETITIONER WAS NO LONGER IN POSSESSION OF THE UNIT SIMPLY BECAUSE THE PETITIONER WAS IN POSSESSION OF ANOTHER UNIT.^[45]

We find no merit in the petition.

At the outset, a perusal of the records of Criminal Case No. 02-199574 in *People of*

the Philippines v. Benito Fernandez Go, et al., pending before the RTC where the Information for Robbery was filed, would show that on March 12, 2008, Presiding Judge Zenaida R. Daguna issued an Order^[46] granting the Motion to Withdraw Information filed by ACP Armando C. Velasco. The withdrawal of the information was based on the alleged failure of petitioner to take action on the Amended Decision issued by the CA which, in effect, reversed and set aside the finding of probable cause, and in order for the case not to appear pending in the docket of the court. The propriety of the determination of probable cause is, however, the subject of this present petition. Besides, in allowing the withdrawal of the information, the RTC in fact did not make a determination of the existence of probable cause. Thus, the withdrawal of the information does not bar the Court from making a final determination of whether or not probable cause exists to warrant the filing of an Information for Robbery against respondents in order to *write finis* to the issue elevated before us.^[47]

From the time the complaint was first lodged with the OCP, the latter, the Secretary of Justice and the CA had been in disagreement as to the existence or absence of probable cause sufficient to indict respondents of the offense charged. After a thorough review of the records of the case, we find no reason to depart from the CA conclusion that the evidence presented was not sufficient to support a finding of probable cause.

Probable cause refers to facts and circumstances that engender a well-founded belief that a crime has been committed and that the respondents are probably guilty thereof and should be held for trial.^[48] There is no definitive standard by which probable cause is determined except to consider the attendant conditions.^[49]

Respondents were charged with *robbery in an uninhabited place*, which was later amended to reflect the facts as alleged in the complaint that the robbery was committed in an inhabited place and that it was committed through force upon things.^[50]

"Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, is guilty of robbery."^[51] To constitute robbery, the following elements must be established:

- (1) The subject is personal property belonging to another;
- (2) There is unlawful taking of that property;
- (3) The taking is with the intent to gain; and
- (4) There is violence against or intimidation of any person or use of force upon things.^[52]

Admittedly, the subject 10th floor unit is owned by the corporation and served as the family residence prior to the death of petitioner and respondents' parents. The 10th floor unit, including the personal properties inside, is the subject of estate proceedings pending in another court and is, therefore, involved in the disputed claims among the siblings (petitioner and respondents). Respondents admitted that armed with a Board Resolution authorizing them to break open the door lock system