

SECOND DIVISION

[G.R. No. 164673, January 15, 2010]

**SAMUEL U. LEE AND MAYBELLE LEE LIM, PETITIONERS, KBC
BANK N.V., RESPONDENT.**

D E C I S I O N

CARPIO, J.:

The Case

This is a petition^[1] for review on certiorari under Rule 45 of the Rules of Court. The petition challenges the 10 February 2004 Decision^[2] and 27 July 2004 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 78004. The Court of Appeals set aside the 26 March 2003 Order^[4] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 58, Makati City, in Criminal Case Nos. 02-344-45.

The Facts

Midas Diversified Export Corporation (MDEC) obtained a \$1,400,000 loan from KBC Bank N.V. (KBC Bank). KBC Bank is a Belgian corporation licensed to do business in the Philippines. On 12 August 1997, Samuel U. Lee (Lee), assistant treasurer and director of MDEC, executed a promissory note in favor of KBC Bank and a deed of assignment transferring all of MDEC's rights over Confirmed Purchase Order No. MTC-548 to KBC Bank. Confirmed Purchase Order No. MTC-548 was allegedly dated 15 July 1997, issued by Otto Versand, a company based in Germany, and covered a shipment of girl's basic denim jeans amounting to \$1,863,050.

MDEC obtained another loan, amounting to \$65,000, from KBC Bank. On 14 November 1997, Maybelle L. Lim (Lim), treasurer and assistant secretary of MDEC, executed a promissory note in favor of KBC Bank and a deed of assignment transferring all of MDEC's rights over Confirmed Purchase Order No. WC-128 to KBC Bank. Confirmed Purchase Order No. WC-128 was allegedly dated 1 October 1997, issued by Otto Versand, and covered a shipment of boy's bermuda jeans amounting to \$841,500.

On 23 December 1997, Lim renewed the 12 August 1997 promissory note and issued a notice of renewal and drawdown certificate to KBC Bank. On 29 December 1997, Lim executed an amended deed of assignment transferring all of MDEC's rights over Confirmed Purchase Order No. MTC-548 to KBC Bank.

MDEC was considered in default in paying the \$65,000 loan on 30 January 1998. Under a facility agreement between KBC Bank and MDEC, any default in payment of any obligation under the agreement would render MDEC in default with regard to

the \$65,000 loan -- MDEC defaulted in paying two other obligations under the agreement. MDEC also failed to pay the \$1,400,000 loan when it became due on 9 February 1998.

On 17 March 1998, KBC Bank sent a letter to Otto Versand verifying the validity of Confirmed Purchase Order Nos. MTC-548 and WC-128. On 19 March 1998, Otto Versand sent a facsimile message to KBC Bank stating that (1) it did not issue the purchase orders, (2) it did not order or receive the items covered by the purchase orders, and (3) it would not pay MDEC any amount.

In a complaint-affidavit^[5] dated 21 April 1998, Liza M. Pajarillo, manager of the corporate division of KBC Bank, charged Lee and Lim of estafa. In his Resolution^[6] dated 27 November 2001, State Prosecutor Josefino A. Subia (State Prosecutor Subia) found the existence of probable cause and recommended that two counts of estafa be filed against Lee and Lim. State Prosecutor Subia stated that:

After a careful evaluation of the evidence presented by the Bank, as well as of the respondents, we find the existence of a probable cause to indict respondents Samuel Lee and Maybelle Lee Lim.

It is an established fact that the confirmed purchase order nos. MTC-548 and WC-128 presented with the Bank by the Midas thru respondents Samuel Lee and Maybelle Lee Lim were false and spurious, having been unequivocally repudiated and/or disowned by Otto Versand, Germany, the foreign buyer who allegedly issued the same, as evidenced by a telefax message sent to the Bank by Otto Versand. Evidently, respondent Samuel Lee signed the following documents, to wit: the "conforme" portion of the US\$2.0 million short-term trade facility, the promissory note and the corresponding deed of assignment both dated August 12, 1997, covering the confirmed purchase order no[.] MTC-548, while respondent Maybelle Lee Lim signed in the promissory note and the corresponding deed of assignment both dated Nov. 14, 1997, the renewed promissory note and the notice of renewal and drawdown certificate both dated Dec. 23, 1997. Respondents Samuel Lee and Maybelle Lee Lim, thus cannot escape indictment, aside from signing those relevant loan documents, as they also clearly helped one another in fraudulently representing to the Bank that indeed said confirmed two (2) purchased [sic] orders does [sic] exists [sic] and that Midas have [sic] their [sic] rights, titles and interests thereto. With their fraudulent representation, they were able to entice or induce the Bank to extend [to] them the loan of USD\$1.4 million and USD\$ 65,000 under the short-term trade facility previously granted to them.^[7]

Accordingly, two informations for estafa against Lee and Lim were filed with the RTC. After finding probable cause, Judge Winlove M. Dumayas (Judge Dumayas) of the RTC issued warrants of arrest against Lee and Lim.

Lee and Lim filed a petition^[8] for review dated 26 April 2002 with the Department of Justice. Lee and Lim challenged State Prosecutor Subia's 27 November 2001 Resolution and 17 April 2002 Order denying their motion for reconsideration. They

claimed that:

- I. THE RESOLUTIONS OF 27 NOVEMBER 2001 AND 17 APRIL 2002 MERELY RELIED ON HEARSAY EVIDENCE WHICH CANNOT BE THE BASIS FOR A FINDING OF A PROBABLE CAUSE.
- II. THE ASSAILED RESOLUTIONS WERE ISSUED BASED ONLY ON THE UNCORROBORATED ALLEGATIONS OF PAJARILLO THAT LEE AND LIM MADE FRAUDULENT REPRESENTATIONS TO [KBC BANK].
- III. THE ASSAILED RESOLUTIONS ERRED IN HOLDING LEE AND LIM TO BE CRIMINALLY LIABLE DESPITE THE TWO LOANS CREATING MERELY CIVIL LIABILITY ON THE PART OF MIDAS.^[9]

In his Resolution^[10] dated 12 July 2002, Secretary Hernando B. Perez (Secretary Perez) directed the withdrawal of the informations filed against Lee and Lim. Secretary Perez held that the facsimile message constituted hearsay evidence:

The twin charges of estafa are primarily anchored on respondents' alleged fraudulent representations to [KBC Bank] that the two purchase orders were fake or sham. To prove this point, Ms. Pajarillo of [KBC Bank] claims that she received a fax message from a representative of Otto Versand, stating that the latter company did not issue the purchase orders mentioned. There was no sworn statement from a responsible officer of Otto Versand presented to attest to the allegation that the subject purchase orders were fake. **Since Ms. Pajarillo did not have personal knowledge of the fact that the subject purchase orders were in fact fake, her testimony cannot be the basis for finding probable cause against respondents. Ms. Pajarillo can testify only to those facts that she knew of her personal knowledge. Admittedly, she derived knowledge of the supposed spurious character of the purchase orders from a mere fax copy of a message that [KBC Bank] received from a certain representative of Otto Versand in Germany, someone who she did not even know personally. Unfortunately, this fax copy is hearsay evidence and therefore, inadmissible to prove the truth of what it contains** (Pastor vs. Gaspar, 2 Phil 592).^[11] (Emphasis supplied)

KBC Bank filed a motion^[12] for reconsideration dated 2 August 2002 with the Department of Justice.

Lee and Lim had not been arraigned. In a motion^[13] dated 18 October 2002 and filed with the RTC, Assistant City Prosecutor Nora C. Sibucan (Assistant City Prosecutor Sibucan) prayed for the withdrawal of the informations filed against Lee and Lim. Assistant City Prosecutor Sibucan stated that:

The Prosecution, through the undersigned Trial Prosecutor, unto the Honorable Court, most respectfully moves and prays for the withdrawal of Information filed in the above-entitled cases in view of the resolution of the Department of Justice promulgated on July 12, 2002 reversing the resolution of the City Prosecutor of Makati City.^[14]

The RTC's Ruling

In his one-page Order^[15] dated 26 March 2003, Judge Dumayas granted Assistant City Prosecutor Sibucan's motion to withdraw the informations against Lee and Lim. Judge Dumayas held that:

This Court, after an in-depth scrutiny of the arguments raised by the prosecution and private complainant, finds the contentions of the prosecution to be sufficient and meritorious.

Accordingly, the Motion to Withdraw Information filed by the Prosecution is hereby granted and the two (2) informations for the crime of Estafa penalized under par. 2 (a) of the Revised Penal Code are hereby withdrawn from the docket of this court.^[16]

KBC Bank filed with the Court a petition^[17] for review on certiorari under Rule 45 of the Rules of Court. KBC Bank claimed that:

I.

The court a quo committed reversible error in issuing the questioned Order without specifying its legal basis.

II.

The court a quo committed reversible error in prematurely acting upon the Makati Prosecutor's Motion to Withdraw of Information.

III.

The court a quo committed reversible error in finding that no probable cause exists to hold respondents for trial for estafa under Article 315, par. 2(a) and in granting the Makati Prosecutor's Motion to Withdraw Information.^[18]

In a Resolution^[19] dated 23 June 2003, the Court referred the petition to the Court of Appeals pursuant to Section 6,^[20] Rule 56 of the Rules of Court. In his Resolution^[21] dated 19 November 2003, Secretary Simeon A. Datumanong denied KBC Bank's 2 August 2002 motion for reconsideration.

The Court of Appeals' Ruling

In its 10 February 2004 Decision, the Court of Appeals set aside Judge Dumayas' 26 March 2003 Order. The Court of Appeals held that:

It has long been established that the filing of a complaint or information in Court initiates a criminal action. The Court thereby acquires jurisdiction over the case, which is the authority to hear and determine the case. When after the filing of the complaint or information, a warrant for the arrest of the accused is issued by the trial court and the accused either voluntarily submitted himself to the Court or was duly arrested, the Court thereby acquired jurisdiction over the person of the accused.

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The trial judge practically concurred with the findings of the Secretary of Justice that the "fax copy is hearsay evidence and therefore, inadmissible to prove the truth that it contains", contrary to the well-reasoned findings of the investigating prosecutor. It is emphasized that a preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence; it is for the presentation of such evidence only as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.

The issue of admissibility or inadmissibility of evidence is a matter of defense that is best ventilated in a full-blown trial; preliminary investigation is not the occasion for the exhaustive display of presentation of evidence.^[22]

Hence, the present petition.

The Issues

In their petition, Lee and Lim raised as issues that:

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THE COURT EXCEEDED ITS AUTHORITY IN PASSING UPON THE ISSUE OF WHETHER OR NOT THERE WAS PRIMA FACIE EVIDENCE OF ESTAFA AGAINST THE PETITIONERS, AN ISSUE THAT WAS PENDING BEFORE THE SECRETARY OF JUSTICE

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