

SECOND DIVISION

[G.R. No. 188197, August 03, 2010]

LEONARDO U. FLORES, PETITIONER, VS. HON. RAUL S. GONZALEZ, IN HIS CAPACITY AS SECRETARY OF JUSTICE, AND EUGENE LIM, RESPONDENTS.

D E C I S I O N

NACHURA, J.:

This is a petition^[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision^[2] dated March 6, 2008 and the Resolution^[3] dated May 28, 2009 of the Court of Appeals (CA) in CA G.R. CEB SP No. 02726.

The antecedent facts and proceedings follow:

On June 24, 2004, petitioner Leonardo U. Flores (Flores) filed a complaint-affidavit^[4] against private respondent Eugene Lim (Lim) for estafa before the City Prosecutor of Cebu City, docketed as I.S. No. 04-5228-F.

Briefly, the complaint alleged that, during the pre-incorporation stage of Enviroboard Manufacturing, Inc. (EMI) in October 1996, Lim tricked Flores and the other EMI's incorporators (Flores, et al.) to purchase two compact processing equipments, CP15 and CP14, from Compak System Limited, Inc. (Compak) in Great Britain for the manufacture of "Fiber Boards." Unknown to Flores, Lim was connected with Bendez International Corporation (Bendez), the exclusive distributor of Compak. Flores executed an agreement to purchase only a CP15. After the execution of the sales contract and due to some delay in the delivery of the CP15, Lim, through insidious words and deliberate bad faith, was able to convince Flores, et al. to purchase instead an unused but later model of the compact processing equipment, CP14, for £1,466,000.00 or P60,106,000.00, with the assurance that Lim could effect the cancellation of the purchase for the CP15. Flores, et al. agreed and purchased the CP14, using their funds allotted for the CP15. Later, however, Lim told them that the purchase of the CP15 could not be cancelled. Out of fear of lawsuits and acting upon the advice of Lim, Flores, et al. raised the necessary funds through bank loans to pay for the CP15. Then in 2001, Flores, et al. discovered the distributorship agreement between Bendez and Compak. Upon further investigation, they learned that the purchase price of the CP14 was only £908,140.00 or P38,174,618.16 (at the conversion of P41.80) per the Letter of Credit (LC) No. 263-C-6-00073^[5], Proforma Invoice No. CP627A dated June 18, 1996^[6] and the Ocean Bill of Lading^[7] relative to these documents.

Lim filed his counter-affidavit^[8] denying all the accusations against him. Among others, he insisted that the CP14 was actually priced at P60,106,000.00, and LC No. 263-C-6-00073 represented only part of the payment for the purchase price. To

support his refutations, he submitted a Contract Payment Receipt^[9] dated August 20, 1996 showing that the full price of a CP14, in reference to Proforma Invoice No. CP627B dated March 4, 1996, was actually £1,466,000.00 or P60,106,000.00. He also submitted documents showing that a CP10, an older model of the CP14 was already priced at £1,031,585.00.^[10]

After further exchange of pleadings and the case was submitted for resolution, the City Prosecutor of Cebu City issued a Resolution^[11] dated January 16, 2005 dismissing the complaint for lack of probable cause. The motion for reconsideration^[12] filed by Flores was denied in a Resolution^[13] dated June 2, 2005.

On July 12, 2005, Flores filed a petition for review^[14] with the Secretary of Justice questioning the January 16, 2005 and the June 2, 2005 Resolutions. Lim opposed this petition.^[15]

In a Resolution^[16] dated March 2, 2006, the Secretary of Justice dismissed the petition on the ground that there was no showing of any reversible error on the part of the handling prosecutors, and for Flores' failure to append several documents to his petition.

Flores moved for a reconsideration of this Resolution.^[17] Lim opposed,^[18] to which Flores replied.^[19]

In his Resolution^[20] dated May 31, 2006, the Secretary of Justice reconsidered, disposing thus--

WHEREFORE, premises considered, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Cebu City is hereby directed to file an information for other deceits defined and penalized under Article 318 of the Revised Penal Code before the Municipal Trial Court in Cities, Cebu City, and to report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.^[21]

Pursuant to the said directive, the Cebu City Prosecutor filed with the Municipal Trial Court in Cities (MTCC), Cebu City an Information^[22] against Lim for the crime of Other Deceits under Article 318 of the Revised Penal Code. The case was docketed as Criminal Case No. 135467-R and was raffled to Branch 4.

Lim thus filed a motion for reconsideration^[23] of the May 31, 2006 Resolution. Flores opposed.^[24] Lim replied.^[25] Flores filed a rejoinder.^[26]

On March 22, 2007, the Secretary of Justice reconsidered anew and issued another Resolution,^[27] disposing as follows--

WHEREFORE, finding respondent's motion for reconsideration to be meritorious, the Resolution dated May 31, 2006 is REVERSED. The instant petition for review is hereby DISMISSED WITH FINALITY.

Consequently, the Office of the City Prosecutor is hereby directed to withdraw the information, if any had been filed in Court, and report the action taken thereon within ten (10) days from receipt hereof.

SO ORDERED.^[28]

Accordingly, on May 3, 2007, the Cebu City Prosecutor filed with the MTCC a Motion to Withdraw Information.^[29]

Seeking to nullify the March 22, 2007 Resolution, Flores filed a petition for *certiorari*^[30] with the Court of Appeals on May 22, 2007.

Meanwhile, on June 20, 2007, the MTCC issued its Resolution^[31] denying the Motion to Withdraw Information. Ratiocinating on the denial of the motion, it declared--

The Court notes the flip-flopping of the Public Prosecutors, notably the Secretary of Justice in the instant case. On January 16, 2005, the Investigating Prosecutor dismissed the case for lack of probable cause. After his Motion for Reconsideration was denied, the private complainant appealed to the Secretary of Justice who, however, dismissed the same on a technicality. Private complainant filed a Motion for Reconsideration which the Secretary of Justice granted on May 31, 2006. In that Resolution, the City Prosecutor of Cebu was directed to file within ten (10) days from receipt, an Information charging Accused with the crime of "Other Deceits" under Article 318 of the Revised Penal Code. Now the same Secretary of Justice has reversed himself again and, through his subordinates, is asking the Court to withdraw the Information.

The Court has conformably to the doctrine laid down in Crespo and other cases made its own independent assessment of the evidence thus far submitted and is convinced that there exists probable cause to hold accused to trial where the parties can better ventilate their respective claims and defense[s].^[32]
(Emphasis supplied.)

On June 29, 2007, Flores filed a Manifestation^[33] with the Court of Appeals, attaching the June 20, 2007 Resolution of the MTCC.

Meanwhile, Lim, on July 20, 2007, moved to reconsider the June 20, 2007 MTCC Resolution.^[34]

On August 20, 2007, the Office of the Solicitor General (OSG) filed with the Court of Appeals its Manifestation and Motion in lieu of Comment.^[35] The OSG's position was that the Secretary of Justice acted with grave abuse of discretion in dismissing

the complaint and directing the withdrawal of the Information. Lim filed his Comment^[36] on September 28, 2007. Flores filed his Reply^[37] to Lim's Comment on November 8, 2007.

In the meantime, on November 26, 2007, the MTCC issued an Order^[38] holding in abeyance the proceedings pending before it, including the resolution of Lim's motion for reconsideration of the denial of the Motion to Withdraw Information. It held--

In a manner of speaking, the subject incident is straddling on two horses. The ardent desire of the private complainant to prosecute the accused is evident when he filed the petition before the Hon. Court of Appeals to question the Resolution of the Hon. Secretary of Justice. There is nothing wrong to be zealous in prosecuting an accused except that his chosen approach coupled with the fact that this court chose to disregard the subject Resolution and insists on its jurisdiction over the case result in a procedural disorder or confusion. This is taking into account the unquestionable primacy of the Hon. Court of Appeals over this court by virtue of which any action or resolution by this court on the issue can be negated or voided by the former. By reason of such primacy, this court ought to defer to the Hon. Court of Appeals and observe judicial courtesy to a superior court.

The outcome of the pending case before the Hon. Court of Appeals questioning the resolution and order of the Hon. Secretary of Justice will eventually determine the merit of the resolution of this court in denying the motion to withdraw filed by the prosecution acting on the order of the Hon. Secretary of Justice.

Hypothetically, if the Hon. Court of Appeals will sustain the Hon. Secretary of Justice, how can this court take a posture different from that of a superior court and insist[s] on hearing this case. Conversely, if the Hon. Court of Appeals will sustain the private complainant, it will, in effect, sustain the resolution of this court denying the motion to withdraw Information, and render the motion for reconsideration of the public prosecution moot and academic. In such a case, the prosecution of the accused will have to proceed.

If the court will proceed with this case but the Hon. Secretary of Justice will be eventually upheld by the Hon. Court of Appeals, all the proceeding[s] already had in this court would become useless and wasted, including the time and efforts of all parties concerned.

Furthermore, to continue with the proceedings in this case while a case that matters is pending in the Hon. Court of Appeals will constitute discourtesy and disrespect to a superior court. That there is no injunction or restraint on this court to proceed with this case is not an issue since in the first place it was the private complainant and not the public prosecutor or the accused who initiated the petition for certiorari in the Hon. Court of Appeals. In fact, judicial courtesy and respect dictate that the private complainant ought to initiate the suspension of the proceedings of the case in this court while the petition is pending, or if he

wants the proceedings herein to continue, then he should have initiated the withdrawal or termination of the case he filed in the Hon. Court of Appeals.^[39]

On March 8, 2008, the Court of Appeals promulgated the questioned Decision finding no grave abuse of discretion on the part of the Secretary of Justice in issuing his March 22, 2007 Resolution.

Flores filed a motion for reconsideration of the March 8, 2008 Decision. The Court of Appeals denied it in its Resolution dated May 28, 2009. Hence, this petition anchored on the following issues:

I. WHETHER OR NOT THE JUNE 20, 2007 RESOLUTION OF THE MUNICIPAL TRIAL COURT, DENYING RESPONDENT LIM'S MOTION TO WITHDRAW INFORMATION AND FINDING PROBABLE CAUSE, RENDERED THE DISPOSITION OF THE PETITION BEFORE [THE] COURT OF APPEALS ACADEMIC?

II. WHETHER OR NOT THE HON. SECRETARY OF JUSTICE COULD RULE IN A PRELIMINARY INVESTIGATION ON THE VALIDITY, WEIGHT, ADMISSIBILITY, AND MERITS OF PARTIES' DEFENSES, EVIDENCE, AND ACCUSATION?

In gist, Flores asserts in his petition that the June 20, 2007 Resolution of the MTCC denying the Motion to Withdraw filed by the prosecution and finding probable cause to hold Lim for trial for the crime of Other Deceits under Article 318 of the Revised Penal Code rendered his petition for *certiorari* before the Court of Appeals moot and academic. He says that this is pursuant to the ruling in the landmark case of *Crespo v. Mogul*^[40] that once a complaint or information is filed in court, any disposition of the case resulting either in the conviction or acquittal of the accused rests in the sound discretion of the court, who is the best and sole judge on what action to take in the case before it.

Flores further argues that the Secretary of Justice overstepped his jurisdiction in the determination of probable cause when he ruled during the preliminary investigation on the validity, weight, admissibility and merits of the parties' evidence. According to him, these matters are better ventilated before the court during the trial proper.

Our Ruling

With respect to the first issue, we rule in the affirmative. Indeed, as *Crespo* declared--

[O]nce a complaint or information is filed in Court, any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court. Although the fiscal retains the direction and control of the prosecution of criminal cases even while the case is already in Court, he cannot impose his opinion on the trial court. The Court is the best and sole judge on what to do with the case before