

THIRD DIVISION

[G. R. No. 178104, January 27, 2009]

AUTO PROMINENCE CORPORATION AND PROTON PILIPINAS CORPORATION, PETITIONERS, VS. PROF. DR. MARTIN WINTERKORN, DR. HORST NEUMANN, DR. ANDREAS SCHLEEF, ERICH SCHMITT, RUPERT STADLER, DR. JOCHEM HEIZMANN, AND RALPH WEYLER, RESPONDENTS.

D E C I S I O N

CHICO-NAZARIO, J.:

In this Petition for Review on *Certiorari*^[1] under Rule 45 of the Revised Rules of Court, petitioners Proton Pilipinas Corporation (PPC) and Auto Prominence Corporation (APC) seek the reversal of the 27 September 2006 *Decision*^[2] and 30 May 2007 *Resolution*,^[3] both of the Court of Appeals in CA-G.R. SP No. 93107 entitled, *Auto Prominence Corp., et al. v. Hon. Raul Gonzales, in his official capacity as Secretary of Justice, et al.* In the assailed decision, the Court of Appeals dismissed the Petition for *Certiorari* of petitioners PPC and APC on the ground that the Secretary of Justice "did not whimsically and capriciously exercise his discretion when he upheld the resolution of the Chief State Prosecutor dismissing the criminal complaint"^[4] for estafa through falsification of public documents against respondents Prof. Dr. Martin Winterkorn, Dr. Horst Neumann, Dr. Andreas Schleef, Erich Schmitt, Rupert Stadler, Dr. Jochem Heizmann and Ralph Weyler (Audi AG officers).

Petitioners PPC and APC are two (2) different corporations duly organized and existing under the laws of the Philippines engaged in the business of assembling, buying, selling, distributing, importing, marketing and servicing motor vehicles. Respondents are members of the Board of Management and/or key officers of Audi AG, a non-resident foreign corporation organized and existing under the laws of the Federal Republic of Germany engaged in the manufacture of "Audi" brand cars.

In August 1996, petitioner PPC,^[5] represented by its Senior Vice-President and Chief Financial Officer Ernesto V. Tan, and Audi AG, entered into several agreements, *i.e.*, Assembly License, Technical Assistance and Spare Parts Supply Agreement (ALTAPS Agreement), License Fee Agreement and Sole Distributorship Contract, for the assembly and distribution of "Audi" brand cars in the Philippines. Said agreements, whereby petitioner PPC was appointed the sole and exclusive assembler and distributor of "Audi" brand cars in the country, were executed in compliance with the Motor Vehicle Development Program^[6] (MVDP) of the Philippine government, implemented by the Department of Trade and Industry (DTI) and the Bureau of Investment (BOI).

Petitioners PPC and APC alleged that in the intervening years, despite the latter's

fulfillment of their obligation under the abovementioned agreements, AUDI AG did not comply with its commitments equally dictated therein. In particular, they contended that the German car manufacturer (1) failed to establish a full assembly operation of AUDI brand cars and manufacture of spare parts for the same, intended for local distribution and export purposes; (2) failed to include the Philippines in its ASEAN Assembly Strategy program; and (3) prematurely terminated said agreements. Consequently, in March 2005, petitioners PPC and APC, through their representatives,^[7] instituted a criminal complaint^[8] against respondents AUDI AG officers for the violation of the Revised Penal Code, particularly Art. 171, par. 4, in relation to Art. 172, *i.e.*, for the falsification of public documents by private individuals, "and/or any other applicable crime."^[9] Said complaint was filed with the Office of the City Prosecutor of Alaminos City, Pangasinan.

On 18 April 2005, instead of filing their counter-affidavits, respondents Audi AG officers moved for the (1) endorsement of the preliminary investigation to the Department of Justice (DOJ) - on the allegation that Alaminos City, Pangasinan, was an improper venue, considering that all the elements of the supposed crime were committed either in Makati City or Mandaluyong City; and (2) extension of time to file respondents AUDI AG officers' joint counter-affidavit.

On 26 April 2005, the City Prosecutor denied^[10] respondents AUDI AG officers' *Motion to Endorse Preliminary Investigation to the Department of Justice and for Extension of Time to File Counter-Affidavit and Manifestation*. Further, the City Prosecutor stated that it "will proceed with the Preliminary Investigation until ordered to stop the investigation by the DOJ."^[11]

On 4 May 2005, Atty. Jose A. Bernas (Bernas), counsel for respondents AUDI AG officers, filed his Counter-Affidavit to the subject complaint, refuting the allegations made therein. Atty. Bernas argued that (1) his clients were not signatories to any of the subject agreements^[12]; (2) all of the three subject agreements were executed either in Germany or in Mandaluyong and/or Makati City; and (3) his clients were never in the Philippines during the dates material to the subject agreements.

On the same date, Chief State Prosecutor Jovencito Zuño (Zuño), for the Secretary of Justice, issued a 1st Indorsement, referring to the City Prosecutor, for the latter's immediate action and comment (within ten days), the letter of Atty. Bernas requesting the transfer of the venue of the preliminary investigation in I.S. No. AC-05-89 to the DOJ, Manila.

Without complying with the 1st Indorsement of the Secretary of Justice, however, the City Prosecutor,^[13] in a *Resolution*^[14] dated 30 May 2005, ruled that there existed probable cause to hold respondents Audi AG officers liable to stand trial for the crime of estafa through falsification of public documents defined and penalized under Art. 315, par. 2(a), as well as Art. 171, par. 4, in relation to Arts. 172 and 48, all of the Revised Penal Code. Accordingly, on 1 June 2005, an *Information*^[15] was filed before the Regional Trial Court (RTC), Branch 54, Alaminos City, Pangasinan, docketed as Criminal Case No. 4824-A, the accusatory part of which reads:

That from August 1, 1996 up to the present in continuing and transitory mode or character of commission in or within Alaminos City, Pangasinan,

Philippines and within the jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and mutually helping one another and by means of deceit, false pretenses and fraudulent acts, did then and there willfully, unlawfully and feloniously induce, entice and cajole by representing to complainants Proton Pilipinas Corporation and thereafter Auto Prominence Corporation and by making untruthful statements in the narration of facts in the Assembly License, Technical Assistance and Spare Parts Supply Agreement (ALTAPS), Letter of Appointment for the Import and Distribution of AUDI AG Products in the Philippines, and License Fee Agreement that AUDI AG would transfer technical knowledge and know-how to complainants Proton Pilipinas Corp. and Auto Prominence Corp. and establish a full assembly, distributorship and spare parts operations of AUDI Cars in the Philippines in Alaminos City, Pangasinan, for domestic and export purposes in compliance with then President Fidel V. Ramos Car Development Program under Memorandum No. 346, Series of 1996, as in fact the three (3) Agreements were submitted to and admitted by the Board of Investments as a pre-condition to the immediate sale of AUDI Cars in the Philippines and for which Proton Pilipinas Corp. and Auto Prominence Corp. were induced and enticed to incur or spend, as in fact Proton Pilipinas Corp. and Auto Prominence Corp. had incurred and spent moneys and properties in the license fee in the total amount of FIFTY MILLION Philippine Pesos (Php50,000,000.00) more or less that was deceitfully and fraudulently exacted, imposed and collected by AUDI AG from Proton Pilipinas Corp. or Auto Prominence Corp. from 1996 to 2001; and capital investments and expenditures in the subject Proton Assembly plant, building, tools and equipment that Proton Pilipinas Corp. and Auto Prominence were induced by AUDI AG One (1) Billion Philippine Pesos, more or less, which turned out later however (sic) that the said representations were false, deceitful and fraudulent as AUDI AG had actually no intention of complying with the "ALTAPS" and the accused failed and refused and still fail and refuse to pay, return and/or reimburse despite demands from the complainants the license fees and capital investments and expenditures that Proton Pilipinas Corp. and Auto Prominence were made to incur and spend to the damage and prejudice of Proton Pilipinas Corporation and Auto Prominence Corporation.

Warrants for the arrest of respondents Audi AG officers^[16] were issued by the RTC on 9 June 2005.

On 27 June 2005, respondents Audi AG officers filed with the OCP a *Joint Motion for Reconsideration* of its *30 May 2005 Resolution*.

Shortly thereafter, on 30 June 2005, respondents Audi AG officers filed with the RTC, in Criminal Case No. 4824-A, an *Urgent Motion for the Determination or Re-determination of Probable Cause and/or Motion to Defer Proceedings, in the alternative, Motion for Re-investigation with Motion to Recall Warrant of Arrest*.

On 4 July 2005, Chief State Prosecutor Zuño resolved to direct the transmittal to his office of the entire record of I.S. No. AC-05-89, which included the unresolved Joint Motion for Reconsideration of respondents AUDI AG officers. In a Resolution dated 17 August 2005, the Chief State Prosecutor reversed and set aside the *30 May 2005*

Resolution of the City Prosecutor finding probable cause against respondents AUDI AG officers. Based on the determination that petitioners PPC and APC failed to establish respondents AUDI AG officers' criminal culpability for the crime charged, [17] the dispositive part of the Chief State Prosecutor's Resolution reads:

WHEREFORE, premises considered, the assailed resolution dated May 30, 2005 is hereby REVERSED and SET ASIDE. The City Prosecutor of Alaminos City, Pangasinan (sic) is directed to cause the withdrawal, with leave of court, of the information for estafa through falsification of public documents filed against respondents Prof. Dr. Martin Winterkorn, Dr. Horst Neumann, Dr. Andres Schleef, Erich Schmitt, Rupert Stadler, Dr. Jochem Heizmann, Ralph Weyler and Sunil Kaul, and to report the action taken thereon within ten (10) days from receipt hereof.

Undaunted, petitioners PPC and APC filed a Petition for Review before the Office of the DOJ Secretary.

In the meantime, because of the *17 August 2005 Resolution* of the Chief State Prosecutor, the City Prosecutor filed on 21 September 2005 before the RTC in Criminal Case No. 4824-A, a Motion to Withdraw Information (with Leave of Court).

On 11 October 2005, the Secretary of Justice denied the petition for review filed by petitioners PPC and APC; thus, affirming the Chief State Prosecutor's reversal of the resolution finding probable cause. The subsequent motion for reconsideration was similarly denied in a *Resolution* [18] dated 5 December 2005.

Not satisfied, petitioners PPC and APC went to the Court of Appeals *via a Petition for Certiorari* under Rule 65 of the Revised Rules of Court imputing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the Secretary of Justice in affirming the finding of the Chief State Prosecutor that there was no probable cause for the filing of criminal charges against respondents AUDI AG officers.

On 27 September 2006, the Court of Appeals promulgated its *Decision* [19] dismissing the recourse of petitioners PPC and APC for lack of merit. The *fallo* of the assailed decision of the appellate court states:

WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit. The assailed resolutions of the Secretary of Justice are hereby AFFIRMED and UPHeld.

The Court of Appeals held that the Secretary of Justice correctly affirmed the finding that no probable cause existed to hold respondents AUDI AG officers liable to stand trial given that (1) upon scrutiny of the subject agreements, it appeared that none of the respondents AUDI AG officers were signatories thereto; and (2) the complaint failed to state with particularity the individual and actual participation of respondents AUDI AG officers in committing the supposed false pretense, fraudulent acts or means. These observations were fatal to the cause of petitioners PPC and APC.

Anent the authority of the Chief State Prosecutor to resolve respondents AUDI AG officers' Joint Motion for Reconsideration of the 30 May 2005 Resolution of the City