

## THIRD DIVISION

**[ G.R. No. 171659, December 13, 2007 ]**

**MARIETTA K. ILUSORIO, PETITIONER, VS. SYLVIA K. ILUSORIO,  
CRISTINA A. ILUSORIO, JOVITO CASTRO AND FIVE (5) JOHN  
DOES, RESPONDENTS.**

### DECISION

**NACHURA, J.:**

Before us on appeal, by way of a petition for review on *certiorari* under Rule 45 of the Rules of Court, is the Decision<sup>[1]</sup> dated November 23, 2005 and the Resolution<sup>[2]</sup> dated February 14, 2006, both of the Court of Appeals.

The case arose from a Complaint-Affidavit<sup>[3]</sup> filed by petitioner Marietta K. Ilusorio (Marietta) for robbery, qualified trespass to dwelling, and violation of Presidential Decree (P.D.) No. 1829 against private respondents Sylvia K. Ilusorio (Sylvia), Cristina A. Ilusorio (Cristina), Jovito Castro (Jovito), and five (5) John Does.

In the said Complaint-Affidavit, Marietta alleged that she, together with Erlinda K. Ilusorio (Erlinda), Ramon K. Ilusorio, and Shereen K. Ilusorio, owns and controls the majority of the shares of stock of Lakeridge Corporation (Lakeridge), the registered owner of Penthouse Unit 43-C (Penthouse Unit 43-C) of the Pacific Plaza Condominium (Pacific Plaza) in Ayala Avenue, Makati City; that Erlinda, Chairperson and President of Lakeridge, has, for the past eight years, been the present and lawful occupant of Penthouse Unit 43-C; that, sometime in October 1999, Erlinda left for the United States of America, giving her (Marietta) full authority to take care of, oversee, and secure Penthouse Unit 43-C through a letter to that effect addressed to the management of the Pacific Plaza; that on November 2, 1999, Sylvia, Christie Agcaoili-Ilusorio (referring to Cristina), with several unidentified persons, with the consent of Jovito, Chief Security of the Pacific Plaza, forcibly entered Penthouse Unit 43-C by breaking its door and locks and allegedly caused the loss of documents and jewelry (this incident was subject of a robbery case before the Office of the City Prosecutor of Makati City docketed as I.S. No. 99-Y-37824); that on November 6, 1999, five (5) unidentified persons, with Jovito's permission, forcibly entered Penthouse Unit 43-C by breaking its door and locks, replacing it with new ones, and thus preventing her entrance; that upon learning of the latter incident, she went to Penthouse Unit 43-C to verify, and, having seen the door knob torn and one of the locks broken, sought the assistance of the Makati Police; that during the on-site investigation by the police, Jovito failed to cooperate and even concealed information pertinent to the incident.

In their Counter-Affidavit,<sup>[4]</sup> private respondents, while agreeing that the registered owner of Penthouse Unit 43-C is Lakeridge Development Corporation, denied that petitioner and the other persons named in the Complaint-Affidavit own and control the majority shares and that Erlinda is the chairperson and president of Lakeridge.

To buttress this allegation, they submitted copies of the updated General Information Sheet<sup>[5]</sup> filed with the Securities and Exchange Commission (SEC), Secretary's Certification<sup>[6]</sup> dated November 8, 1999, and SEC Certificate of Corporate Filing/Information<sup>[7]</sup> dated November 3, 1999, all showing the stockholders, the officers, and the members of the board of directors of Lakeridge. They also alleged that the authority given by Erlinda to Marietta was without force and effect, being *ultra vires*, in the absence of any board resolution to support it. They also noted that the letter of authority,<sup>[8]</sup> while dated October 7, 1999, was received by the management of the Pacific Plaza only on November 3, 1999, which was after the November 2, 1999 incident described in the Complaint-Affidavit. They also submitted a copy of Lakeridge's letter<sup>[9]</sup> dated October 20, 1999 to the Pacific Plaza Condominium Association, Inc., received by the latter on October 29, 1999, stating that Lakeridge had not authorized any lease or sale of Penthouse Unit 43-C. They also averred that Marietta was not authorized by the board of directors of Lakeridge to institute the criminal case and that Erlinda's residence was not at the Pacific Plaza but in Antipolo, Rizal. More importantly, they alleged that there could not be robbery and qualified trespass to dwelling because, as officers of Lakeridge, they had the right to enter Penthouse Unit 43-C.

In his separate Counter-Affidavit<sup>[10]</sup> dated January 17, 2000, Jovito explained that the November 2, 1999 incident cited by Marietta in her Complaint-Affidavit where she claimed that Penthouse Unit 43-C was forced open by breaking the door and locks was really an act of maintenance of the property upon written request made by Sylvia as one of the legitimate unit owners per the records of Pacific Plaza. He claimed that he was merely dragged to the family feud of the Ilusorios.

In a Resolution<sup>[11]</sup> dated February 1, 2000, Prosecutor II Edgardo G. Hiran of the Office of the City Prosecutor of Makati City dismissed the charges against private respondents for lack of probable cause. He found that, according to the records of Pacific Plaza, Sylvia, who was alleged to have ordered the opening of the door and the replacement of the locks of Penthouse Unit 43-C on November 3, 1999, being among the legitimate owners of and who had on several occasions visited the unit, had the authority to do so for the effective maintenance of the unit. He also found that the charge against Jovito had already become moot and academic considering the dismissal of the charges for robbery and qualified trespass to dwelling.

Marietta's motion for reconsideration of the Resolution was denied in an Order<sup>[12]</sup> dated May 2, 2000.

Marietta elevated the case to the Department of Justice (DOJ) via a petition for review. However, in a Resolution<sup>[13]</sup> dated August 27, 2004, then Acting DOJ Secretary Ma. Merceditas N. Gutierrez denied the petition on the ground that there was no showing of any reversible error on the part of the Office of the City Prosecutor of Makati City to warrant the reversal of his dismissal of the criminal charges. The motion for reconsideration of the Resolution dated August 27, 2004 was, likewise, denied in a Resolution<sup>[14]</sup> dated February 11, 2005.

Marietta went to the Court of Appeals by means of a petition for review on *certiorari* under Rule 65 of the Rules of Court claiming grave abuse of discretion on the part of both the Office of the City Prosecutor of Makati City and the DOJ in dismissing, for

lack of probable cause, the charges she lodged against private respondents.

The Court of Appeals, in its Decision dated November 23, 2005, denied the petition for lack of merit. Marietta moved to reconsider the said Decision, but the motion was, likewise, denied in the Resolution dated February 14, 2006. Hence, this petition.

Petitioner posits that this Court should grant the petition because –

**The Public Respondents erred in upholding the resolution of the Investigating Prosecutor Edgardo G. Hiran, which dismissed the complaints for Robbery, Qualified Trespass to Dwelling, and Violation of P.D. [1829], considering that:**

- A. The evidence on record sufficiently established probable cause that [the] said crimes were committed and that the private respondents were probably guilty thereof.**
- B. The petitioner, together with EKI (Erlinda), Ramon K. Ilusorio, and Shereen K. Ilusorio, were the duly constituted officers of LAKERIDGE and that the lawful occupant of Penthouse Unit 43-C of Pacific Plaza Condominium was EKI, who in turn entrusted the same to petitioner in her absence.**
- C. The self-serving assertions of private respondents that they were representatives of LAKERIDGE did not authorize them to break open the doors of Penthouse Unit 43-C of Pacific Plaza Condominium and gain entry thereto.<sup>[15]</sup>**

We disagree.

In essence, Marietta ascribes reversible error in the Office of the City Prosecutor's finding of lack of probable cause against private respondents for robbery, qualified trespass to dwelling, and for violation of P.D. No. 1829, which was uniformly affirmed by the DOJ and the Court of Appeals.

Probable cause has been defined as the existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion, that the person charged is guilty of the crime for which he is sought to be prosecuted. Being based merely on opinion and reasonable belief, it does not import absolute certainty.<sup>[16]</sup> A finding of probable cause merely binds over the suspect to stand trial; it does not impose a guilty verdict. However, it requires more than bare suspicion.<sup>[17]</sup>

The conduct of preliminary investigation for the purpose of determining the existence of probable cause is executive in nature. The right to prosecute crime is reposed in the executive department of the government primarily responsible for the faithful execution of the laws of the land. This right vests the government prosecutor with a wide latitude of discretion on what and whom to charge upon proper finding of probable cause, depending on a smorgasbord of factors best appreciated by him. The preliminary investigation also serves to secure the innocent against hasty, malicious, and oppressive prosecution, and to protect him