

## FIRST DIVISION

[ G.R. NO. 154685, November 27, 2006 ]

**METROPOLITAN BANK AND TRUST COMPANY, RICARDO GELLA  
AND TEOFILO FIESTA, PETITIONERS, VS. COURT OF APPEALS  
AND ANTONIO LAIÑO, RESPONDENTS.**

### D E C I S I O N

**AUSTRIA-MARTINEZ, J.:**

By Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, Metropolitan Bank and Trust Co. (Metrobank), its Asst. Vice President Ricardo Gella, and Manager Teofilo Fiesta (Fiesta) assail the March 13, 2002 Decision<sup>[1]</sup> and August 12, 2002 Resolution<sup>[2]</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 39343<sup>[3]</sup> holding them liable for damages in favor of Antonio Laiño (Laiño).

Below are the material facts.

Thirty-years back, Fiesta filed with City Fiscal Raymundo Ponteras (Fiscal Ponteras) a Letter-Complaint<sup>[4]</sup> accusing Laiño of swindling Metrobank. After preliminary investigation, Fiscal Ponteras issued a Resolution<sup>[5]</sup> dated December 28, 1976, finding probable cause to charge Laiño for estafa, thus:

xxx the facts borne on the records of the case show that the Bank has been misrepresented [sic] by Eduardo Tambis, Jr. to open his personal account No. 123 with Metro Bank, because of his assurance that the supporting authority of Mr. Antonio Laiño will be submitted later. Being the son of the Secretary of the Manager of San Carlos Milling Co., Inc. and a known dealer of spare parts with aforesaid Central xxx, he was allowed by Metro Bank xxx to open his account and to have Checks Nos. 1910 for P24, 900.00 and 12450 for P10,500.00, to be deposited in his name in trust for ACL Engine Consultant<sup>[6]</sup>, with the instruction to secure the authority from ACL Consultant Engine, [sic] which Tambis, Jr. agreed and promised to submit to Metro Bank.

Mr. Eduardo Tambis, Jr. as an agent or sales representative of Mr. Antonio Laiño withdrew from Metro Bank the amount of P24,551.08 and out of this withdrawal was deducted the amount of P22,900.00, in payment to Caspin Trading thru Mr. Delfin Castro from Manila for the spare parts purchased by Eduardo Tambis, Jr., in the name of ACL and thereafter sold to San Carlos Milling Co., Inc. for P25,400.00.

Caspin Trading issued to Eduardo Tambis, Jr. a receipt for the payment of P22,900.00 in the name of ACL Engine Consultant xxx.

From all appearances, it is clear that the P22,900.00 withdrawn by Eduardo Tambis, Jr., from the Metro Bank, was paid in good faith to the creditor of ACL Engine Consultant, thereby inuring to the benefit of the partnership. Since the total withdrawal with the bank amounted to P24,551.08 and what was paid to Caspin Trading was only P22,900.00, there is a difference of P1,651.08, which Mr. Eduardo Tambis, Jr. is personally liable to ACL Engine Consultant, but which Mr. Eduardo Tambis, Jr. argued that the said amount was necessary for his operational expenses in Manila for the benefit of the partnership.

On January 26, 1976, Mr. Antonio Laiño xxx protested before Metro Bank the actuations of Mr. Eduardo Tambis, Jr. in depositing the two checks xxx and the withdrawals made for the reason that the same were without his authority.

Assuming arguendo as true that the deposit of Eduardo Tambis, Jr. on the said checks were without his (Laiño) authority, however, he cannot deny and ignore that on the day he protested to the bank, he had already known that the amount of P22,900.00 was withdrawn by Eduardo Tambis, Jr. and paid to Caspin Trading in the name of the partnership (ACL) xxx.

x x x x

On February 17, 1976, Mr. Antonio Laiño withdrew the full amount of P35,400.00 from the Metro Bank, in complete and absolute disregard of the payment of his partner Eduardo Tambis, Jr. to Caspin Trading xxx.

It appearing that the present case arose from the unauthorized acts taken by Eduardo Tambis, Jr. which constitutes a felony; and, it resulting that Antonio Laiño withdrew the full amount of P35,400.00 in utter disregard of the amount of P22,900.00 validly paid to his creditor Delfin Castro on January 23, 1976 by Eduardo Tambis, Jr., thereby defrauding Metro Bank in the amount of P24,275.08 thru such a heinous strategy and scheme, it is the considered view of the investigating Fiscal that both are liable for Violation of General Order No. 26, dated March 31, 1973, for Estafa.<sup>[7]</sup>

Laiño did not appeal from the foregoing Resolution. Hence, an Information<sup>[8]</sup> was filed with the Regional Trial Court (RTC), Branch 57, San Carlos City, docketed as Criminal Case No. RTC-1015, charging Laiño and Eduardo Tambis (Tambis) with estafa. However, upon Demurrer to Evidence filed by Laiño, the RTC (Br. 57), in an Order<sup>[9]</sup> dated April 12, 1989, dismissed Criminal Case No. RTC-1015 but only as against him:

The evidence on record after the prosecution had presented their evidence does not show any document or proof of partnership between Tambis and Laiño. The mere allegation of partnership in an extra-judicial confession will not suffice considering that the extra-judicial confession is violative of the constitutional right of the accused and therefore has no probative value.

x x x x

From the evidence on record, this Court agrees with counsel of Antonio Laiño that **the evidence of the prosecution against Antonio Laiño is lamentably inadequate even to establish a mere preponderance of guilt.**<sup>[10]</sup> (Emphasis ours)

Thereafter, the RTC (Br. 57) rendered a Decision<sup>[11]</sup> dated February 28, 1990 also dismissing Criminal Case No. RTC-1015 as against Tambis. However, it held the latter civilly liable to Metrobank for P16,900.00 only.<sup>[12]</sup>

Meanwhile, on April 27, 1989, Laiño filed with the RTC, Branch 45, Bacolod City a Complaint<sup>[13]</sup> for Damages against Metrobank, Gella and Fiesta (Metrobank, *et al.*) and Fiscal Ponteras on the ground of malicious prosecution. In their Answer,<sup>[14]</sup> Metrobank, *et al.* countered with a claim for damages.<sup>[15]</sup>

The RTC dismissed the Complaint in a Decision<sup>[16]</sup> dated July 28, 1992, the dispositive portion of which reads:

WHEREFORE, premises considered, the instant complaint is hereby DISMISSED.

On the counterclaim, defendants having proved the same, plaintiff is hereby ordered to pay the defendants the following amounts: P70,000.00 as actual damages; P10,000.00 as exemplary damages; P25,000.00 as attorney's fees, and P500.00 per appearance; and to return to defendant bank the amount of P24,900.00 amount withdrawn by Eduardo Tambis, Jr.; and to pay the cost.

SO ORDERED. <sup>[17]</sup>

Laiño appealed to the CA which issued the March 13, 2002 Decision<sup>[18]</sup> awarding him damages, thus:

WHEREFORE, the decision of the Regional Trial Court dated July 28, 1992 in Civil Case No. 5397 is hereby SET ASIDE and another one is rendered holding defendant-appellant Metropolitan Bank & Trust Company, et al. liable for the following damages in favor of plaintiff-appellant Antonio Laiño:

P200,000.00 as moral damages  
P100,000.00 as exemplary damages  
P 50,000.00 as attorney's fees.

SO ORDERED. <sup>[19]</sup>

Metrobank, *et al.* filed a Motion for Reconsideration<sup>[20]</sup> but the CA denied the same in its August 12, 2002 Resolution. <sup>[21]</sup>

Petitioners Metrobank, *et al.* now question before this Court the foregoing CA Decision and **Resolution on the sole ground that the CA erred in holding them**

## **liable for malicious prosecution.**

The petition has no merit.

Sec. 11, Art. III of the Constitution guarantees right of access to the courts. This right is coupled with the responsibility to show that a suit is impelled by a legitimate cause of action.<sup>[22]</sup> The exercise of such legal right with responsibility does no injury. However, when the institution and pursuit of a legal proceeding is without probable cause, the only purpose thereof being to harass, annoy, vex or injure an innocent person who is then compelled to defend himself in court, it amounts to malicious prosecution.<sup>[23]</sup> *Denuncia falsa* or malicious prosecution is misuse or abuse of judicial processes. The party who is injured by such abuse may, at the termination of the frivolous suit, file a civil action for damages based on the provisions of the Civil Code on human relations.<sup>[24]</sup> But to merit an award of damages, he must prove that: (a) the defendant was himself the prosecutor or at least instigated the prosecution; (b) the prosecution finally terminated in the acquittal of plaintiff; (c) in bringing the action the prosecutor acted without probable cause, and (d) the prosecutor was actuated by malice, *i.e.*, by improper and sinister motives.<sup>[25]</sup> He must also prove the damages he has suffered.<sup>[26]</sup>

Herein petitioners instigated the commencement of the prosecution of respondent for estafa. It was their Letter-Complaint filed with Fiscal Ponteras that led to the institution of Criminal Case No. RTC-1015.<sup>[27]</sup>

It is also of record that when respondent filed Civil Case No. 5397 for damages on April 27, 1989, Criminal Case No. RTC-1015 had already been finally terminated with the issuance by the RTC of its April 12, 1989 Order dismissing the Information against respondent.

The only issue to be resolved is whether the CA was correct in holding that the prosecution of respondent in Criminal Case No. RTC-1015 was not founded on probable cause but was carried out to harass him.<sup>[28]</sup>

Petitioners insist that the better view was that of the RTC (Br. 45) which held that Criminal Case No. RTC-1015 was instituted based on a finding of probable cause by Fiscal Ponteras in his December 28, 1976 Resolution,<sup>[29]</sup> that such finding of probable cause was not overturned by RTC (Br. 57) even when it ordered the case dismissed upon Demurrer to Evidence; that such dismissal was only due to insufficiency of evidence which does not mean that the case was merely trumped up or fabricated; and that the existence of probable cause rules out malice. <sup>[30]</sup>

In its March 13, 2002 Decision, the CA rejected such view, thus:

In this case, it was shown that defendant-appellee Bank had repeatedly required Eduardo Tambis, Jr. to present his authorization from plaintiff-appellant before they could release the amount. Yet, despite Tambis' failure to present any written authorization, defendant-appellee Bank still encashed the check and handed the money to Tambis, Jr. The fact that Tambis, Jr. may have the money to pay another client does not make herein plaintiff-appellant guilty of any form of Estafa against defendant

Bank. From the resolution of the City Fiscal, it was shown that his only basis for finding probable cause against herein plaintiff-appellant is the latter's act of withdrawing the amount of the check. Without, however, being able to link said act of withdrawal to the previous act of Tambis, Jr. in encashing the check without any authorization.

The fact is there is nothing in the records to show that plaintiff-appellant had lifted a finger to convince the officers of defendant-appellee to release the amount of the checks to Tambis, Jr. Clearly, the repeated request of defendant-appellee Bank for any form of authorization from Tambis, Jr. only proves that the act of releasing the money to Tambis, Jr. was not a regular transaction of the bank with their client, plaintiff-appellant, thereby justifying plaintiff-appellant's action of demanding from them a reimbursement of the amount of the checks. Besides, there was even no evidence shown to prove that plaintiff-appellant had in fact benefited from the unauthorized release of the amount of the check to Tambis, Jr. Undoubtedly, the fault was with the officers of defendant-appellee Bank and the filing of the criminal case for estafa against plaintiff-appellant was in fact malicious on their part.<sup>[31]</sup>

We sustain the CA.

Probable cause implies mere reasonable belief of guilt. While it requires more than bare suspicion or speculation, probable cause needs only to rest on evidence of the likelihood that a crime has been committed and that the person suspected is probably guilty thereof.<sup>[32]</sup> It need not be based on clear and convincing evidence,<sup>[33]</sup> nor evidence sufficient to procure a conviction.<sup>[34]</sup> Thus, as a general rule, acquittal is not to be equated with lack of probable cause.<sup>[35]</sup>

Be that as it may, it does not follow that the finding of Fiscal Ponteras in his December 28, 1976 Resolution as to the existence of probable cause is conclusive. While as a matter of policy, courts refrain from interfering with the assessment by the executive department of the existence of probable cause,<sup>[36]</sup> this does not preclude us from evaluating the facts and circumstances upon which the determination of probable cause may have been based, if only to decide a case of malicious prosecution. As we held in *Cometa v. Court of Appeals*,<sup>[37]</sup> the determination of lack of probable cause as an element in malicious prosecution cannot be made to rely on the finding of the Department of Justice to file the criminal case for such practice will render obsolete the remedy of damages for malicious prosecution.

In the present case, the CA disregarded the finding of Fiscal Ponteras and declared that petitioners had absolutely no cause to drag respondent to court for estafa. And rightly so. A closer examination of the December 28, 1976 Resolution of Fiscal Ponteras reveals that his own findings tend to discount the probability that respondent committed estafa.

For one, the December 28, 1976 Resolution of Fiscal Ponteras states that Tambis was allowed by petitioner Metrobank to open Account No. 123 and deposit therein Check Nos. 1910 and 12450, even when these were payable to ACL, only because Tambis is the son of the secretary of the manager of San Carlos Milling Co., Inc..<sup>[38]</sup>