

## FIRST DIVISION

[ G.R. No. 162126, December 09, 2004 ]

**RCL FEEDERS PTE., LTD., PETITIONER, VS. HON. HERNANDO PEREZ, IN HIS CAPACITY AS SECRETARY OF THE DEPARTMENT OF JUSTICE AND FELICIANO ZULUAGA, RESPONDENTS.**

### **DECISION**

#### **YNARES-SATIAGO, J.:**

Petitioner RCL Feeders PTE., Ltd. (RCL) is a Singaporean company engaged in the business of operating ships that transport cargo throughout the Southeast Asia Pacific region. In 1990, it appointed South China Lines (Philippines) as its shipping agent in the country, followed by EDSA Shipping Agency, Inc. (EDSA) in 1995.

Sometime in the year 2000, petitioner through its president, Sumate Tanthuwani, instructed its consultant, Hartwig Schulze-Eckardt, to investigate its transactions with EDSA. Tanthuwani apparently noticed that EDSA's billings for reimbursement over the last five years were abnormally excessive.

Upon investigation, Eckardt discovered that EDSA, allegedly through its president – respondent Feliciano Zuluaga – had billed petitioner for services rendered by a non-existent entity known as North Harbor Services (NHS). The total sum paid to NHS over the course of the Agency Agreement amounted to P78,290,232.08.

When confronted, respondent admitted to Eckardt the fictitious character of NHS. However, respondent explained that this was part of a continuing arrangement with petitioner in order to ensure the smooth operation of its shipping business in the Philippines. Respondent told Eckardt that the arrangement was for him to receive the payments for and in behalf of a "Philippine Group". The latter would then ensure the flow of inbound and outbound cargo shipped on petitioner's vessels at the rate of US\$ 5.00 per twenty-foot equivalent (TEU) unit container. EDSA would pay NHS and subsequently invoice the payments to RCL. The latter would then reimburse the payments to EDSA.<sup>[1]</sup>

Petitioner disclaimed knowledge of any such arrangement. It maintained that its business activities in the Philippines were legitimate and that it need not pay anyone in order to maintain its operations. It thus accused respondent of defrauding it and demanded the accounting and return of the amount.<sup>[2]</sup>

When respondent failed to heed the demand, petitioner, through Eckardt, filed a complaint for *estafa* against respondent before the Office of the City Prosecutor of Makati City.<sup>[3]</sup>

In his complaint-affidavit<sup>[4]</sup> dated March 22, 2001, Eckardt alleged that:

...

5. EDSA is a corporation that is controlled by Mr. Feliciano Zuluaga (hereinafter referred to as ZULUAGA), with postal address at Suite 1002, 10<sup>th</sup> Floor, Ayala Life-FGU Center, Mindanao Avenue, Cebu Business Park, 6000 Cebu, who has been its President since 1995 up to the present.

6. Sometime last year, SUMATE instructed me to investigate the abnormal and excessive billings of EDSA to RCL over the last five (5) years.

...

8. As a result of my investigation, I was able to ascertain that from November 1995 up to July 2000, EDSA, through ZULUAGA, had billed RCL for services allegedly rendered by a firm called North Harbor Services, which RCL duly paid. I was also able to ascertain from my investigation that North Harbor Services is a non-existent entity and that the services allegedly rendered by it are non-existent.

9. I confronted ZULUAGA about my aforesaid findings and he admitted to me that North Harbor Services is a non-existent entity, which did not render services at all. He told me that the payments made to North Harbor Services were payments, which he had personally received and encashed and subsequently remitted to a group in order to ensure that no operational problems would ensue in the operations of RCL in the Philippines. According to him, the arrangement was to give U.S. Five Dollars (\$5.00) per TEU (Twenty-Foot Equivalent Unit Container) for inbound and outbound cargoes of RCL vessels. He also told me that he was just continuing a previous arrangement that has been previously agreed upon. ZULUAGA reiterated his afore-mentioned admission in the E-mail, which he sent to me on September 29, 2000, a copy of which is herewith attached and made an integral part hereof as Annex "B".

...

13. Under the circumstances, it is quite clear that ZULUAGA had defrauded RCL through false and fraudulent representations in the total amount of P78,290,232.08 to the latter's damage and prejudice.

...<sup>[5]</sup> (Underscoring Supplied)

In support of the foregoing allegations, petitioner submitted the following: (a) a copy of its Agency Agreement with South China Lines (Philippines); (b) an e-mail message sent by respondent to Eckardt in which the former described the supposed arrangement; (c) a schedule of the payments made by EDSA to NHS; and (d) copies of the check payments made by EDSA to NHS which were signed by RCL's representatives, Jesus Sedano and Aurelio Obillo.<sup>[6]</sup>

On May 28, 2001, respondent filed a counter-affidavit with motion to dismiss<sup>[7]</sup> together with the affidavit<sup>[8]</sup> of his witness, Carlos Marinas. He sought dismissal of the complaint on the ground that the acts complained of were acts of a corporate entity for which respondent cannot be held personally liable. Moreover, the allegations in the complaint are pure hearsay and there was no evidence of damage or prejudice to petitioner.

Petitioner filed a reply-affidavit<sup>[9]</sup> dated June 13, 2001 contending that the grounds

relied upon by petitioner for the dismissal of the complaint are evidentiary and should be proved during the trial on the merits and not during preliminary investigation.

On June 21, 2001, respondent submitted a rejoinder-affidavit<sup>[10]</sup> reiterating his previous averments.

Thereafter, the Investigating Prosecutor issued a resolution<sup>[11]</sup> on June 28, 2001 recommending the filing of an information for *estafa* against respondent under Article 315, par. 2 (a) of the Revised Penal Code. The City Prosecutor approved the recommendation and forthwith filed the information before the Regional Trial Court of Makati City (RTC-Makati City) where it was docketed as Criminal Case No. 01-1796 and raffled to Branch 64.

In the meantime, respondent filed a motion for reconsideration<sup>[12]</sup> of the resolution of the City Prosecutor which was denied in an order<sup>[13]</sup> dated September 28, 2001. Respondent thus filed a petition for review with the Department of Justice (DOJ) assailing the aforementioned resolution and order of the City Prosecutor.

On April 11, 2002, then Secretary of Justice Hernando B. Perez issued a resolution<sup>[14]</sup> ordering the City Prosecutor to move for the withdrawal of the information before the trial court because "there is no clear and categorical showing of any act, omission or concealment personally employed by respondent to deceive complainant (petitioner) into parting with its money."<sup>[15]</sup>

Petitioner filed a motion for reconsideration of the said DOJ resolution on April 16, 2002, but the same was denied.<sup>[16]</sup> Consequently, petitioner filed a petition for certiorari before the Court of Appeals under Rule 65, where it was docketed as CA-G.R. SP No. 72033.

Meanwhile, per directive of the DOJ Secretary, the prosecution moved for the withdrawal of the information filed against respondent before Branch 64 of the RTC-Makati City. In an order dated June 18, 2002, the trial court granted the motion and dismissed Criminal Case No. 01-1796.<sup>[17]</sup>

On June 5, 2003, the Court of Appeals rendered a decision<sup>[18]</sup> upholding the findings of the Secretary of Justice. Petitioner moved for reconsideration of the appellate court's decision which, however, was denied for lack of merit.<sup>[19]</sup> Hence, this petition under Rule 45 based on the following grounds:

- I. THE COURT OF APPEALS PATENTLY ERRED IN NOT RULING THAT THE DEPARTMENT OF JUSTICE, THROUGH HONORABLE HERNANDO PEREZ COMMITTED GRAVE ABUSE OF DISCRETION OR IN EXCESS OF JURISDICTION WHEN HE ORDERED THE CITY PROSECUTOR OF MAKATI CITY TO WITHDRAW THE INFORMATION IN CRIMINAL CASE NO. 01-1796 BEFORE THE REGIONAL TRIAL COURT OF MAKATI CITY AGAINST RESPONDENT.
- II. THE COURT OF APPEALS PATENTLY ERRED IN RULING THAT THERE IS NO PROBABLE CAUSE TO WARRANT THE FILING OF ESTAFA UNDER ARTICLE 315 PAR. 2(A) OF THE REVISED PENAL CODE, AS AMENDED, AGAINST