

## ELEVENTH DIVISION

[ CA-G.R. SP No. 136634, March 17, 2015 ]

**MCN ANIMAL HEALTH CORPORATION REPRESENTED BY DABBIE E. CLEMENTE, PETITIONER, VS. HON. REGIONAL TRIAL COURT OF THE CITY OF MALOLOS, BULACAN, BRANCH 82 AND FELIPE LIM Y TIU, RESPONDENTS.**

### DECISION

**LIBREA-LEAGOGO, C.C., J.:**

Before this Court is a Petition for *Certiorari*<sup>[1]</sup> dated 01 August 2014 under Rule 65 of the Rules of Court, seeking the nullification of the Decision<sup>[2]</sup> dated 08 May 2014 of public respondent Regional Trial Court, Third Judicial Region, Branch 82, City of Malolos, Bulacan in the case entitled "*People of the Philippines v. Felipe Lim y Tiu*," docketed as *Criminal Case No. 2976-M-2008*, which acquitted private respondent Felipe Lim y Tiu of the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code, as his guilt was not proven beyond reasonable doubt.

Private respondent filed his Comment<sup>[3]</sup> dated 15 January 2015. Per JRD verification,<sup>[4]</sup> no reply was filed as per CMIS entry. Thus, the case is submitted for decision.

### **FACTUAL ANTECEDENTS**

It appears that accused Felipe Lim y Tiu was charged with the crime of estafa under Art. 315, par. 1(b) of the Revised Penal Code, as amended, in an Information<sup>[5]</sup> docketed as *Criminal Case No. 2976-M-2008* filed with the Regional Trial Court of the City of Malolos, Bulacan, the accusatory portion of which reads:

*"That on or about the 28<sup>th</sup> day of September 2005, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, being then employed as agent of the MCN Animal Health Corporation, with unfaithfulness or grave abuse of confidence, purchased various veterinary feeds and vitamin supplements from said MCN Animal Health Corporation and having collected and received from various customers of the said MCN Animal Health Corporation the full amount of P14,380,024.00 under the express obligation to immediately turn over and deliver said sum of P14,380,024.00 to the MCN Animal Health Corporation but far from complying with his obligation and despite repeated demands for compliance therewith, did then and there willfully, unlawfully and feloniously, with intent of (sic) gain and grave abuse of confidence, misappropriate, misapply and convert to his own personal use and benefit the proceeds of sale (sic) the said amount of P14,380,024.00,*

*belonging to the said MCN Animal Health Corporation, represented by Dabbie E. Clemente to (sic) damage and prejudice of the said owner.*

*Contrary to law.* “[6]

It further appears that accused filed a Motion to Quash Information on the ground that the court has no jurisdiction over the offense charged and there is no probable cause to indict him for estafa under Art. 315, par. 1(b) of the Revised Penal Code, to which public prosecutor and private complainant filed their Comment/Opposition dated 18 September 2009 and 05 October 2009, respectively.[7] The same was denied for lack of merit; accused was arraigned and he pleaded not guilty to the crime charged; pre-trial conference was conducted; and trial ensued.[8]

The prosecution presented three witnesses, namely: Dabbie E. Clemente, Linorio C. Espinosa, and Katherine E. Clemente.[9] Thereafter, the prosecution filed its Formal Offer of Exhibits[10] dated 01 July 2013, offering Exhibits “A” to “J”, to which the accused filed his Comment[11] dated 06 August 2013. It appears that Exhibits “A” to “J” were admitted by the trial court.[12]

Accused filed a Demurrer to Evidence (Motion to Dismiss)[13] on the ground that the evidence adduced were grossly insufficient to prove the essential elements of the crime of estafa, thus, failed to overcome the constitutional presumption of innocence of the accused.[14] The prosecution filed a Comment/Opposition[15] dated 11 November 2013. In the Order[16] dated 13 February 2014, the trial court deemed the accused to have waived his right to present evidence as his Demurrer to Evidence was filed without prior leave of court, and submitted the case for decision on the basis of the prosecution's evidence.

The assailed Decision[17] dated 08 May 2014 was promulgated, acquitting the accused of the crime of estafa for failure of the prosecution to prove his guilt beyond reasonable doubt. Pertinent portions of the same read:

***"After a careful evaluation of the facts and evidence on record, the Court finds that the prosecution failed to prove the guilt of the accused beyond reasonable doubt.***

x x x x

*Not all the foregoing elements of the offense were evidently proven. The prosecution has not clearly established that accused indeed has collected and received from the various customers of private complainant, MCN Animal Health Corporation, the total amount of P14,380,024.00 as stated in the (I)nformation to give rise to the obligation to make a delivery or return the same. It was not clearly demonstrated how the accused misappropriated or converted the money of the private complainant company for his personal use.*

*Otherwise stated, there is no sufficient proof to show that the proceeds of the sale have been actually and fully received by accused Felipe Lim y Tiu. Thus, his obligation to turn over or remit the same to MCN never*

*arose. Accused could not be said to have misappropriated or converted the said proceeds since it is not clear that he has received the same from the various clients of MCN. The document purportedly a 'Summary of Accounts' which pertains to the Acknowledgment Receipt dated September 28, 2005 (Exhibit 'C') should not be the only evidence to be relied on or dealt with to prove misappropriation or conversion of the proceeds. The prosecution witnesses even testified that the four (4) checks issued by the accused were for the payment of the latter's own purchase of veterinary products which indicates that accused tried to pay his obligation as a client of MCN and not as its agent. xxx*

*x x x x*

*Although in Estafa under Art. 315 1, (b) of the Revised Penal Code, demand need not be formal or written, (Exhibit 'J') the amount that was being required of the accused to settle in the demand letter sent by the MCN Animal Health Corporation dated February 20, 2006, is only P347,075.00 and not the amount of P14,380,024.00 for which the accused stands charged with to turn over. This Court, hence, finds the demand letter confusing as to how much was the outstanding obligation that accused needed to settle with the private complainant.*

*x x x x*

*With regard to the civil liability of the accused, xxx, the Court shall also rule on the civil aspect of this case for when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action. Considering that the prosecution failed to establish the basis of the civil liability of the accused by preponderance of evidence, this Court finds the accused not liable to indemnify the private complainant.*

***WHEREFORE***, the prosecution having failed to prove the guilt of the accused beyond reasonable doubt, accused FELIPE LIM Y TIU is hereby ***ACQUITTED*** of the crime charged in the (I)nformation.

*SO ORDERED.* “[18] (Emphasis and underscoring in the original)

Hence, this Petition for *Certiorari*.

## **RULING**

Petitioner contends, *inter alia*, that: it is engaged in the business of manufacturing, producing and distributing various types of veterinary feeds and vitamin supplements; in Mindanao, private respondent was the duly appointed agent distributor for its products; it entrusted its products to private respondent and the latter was responsible for taking purchase orders of Mindanao-based clientele, delivering the products ordered and collecting payment for the purchase; on various dates, private respondent placed orders for several Mindanao-based clientele; it delivered to private respondent the corresponding veterinary feeds and vitamin supplements; private respondent was expected to remit payments that he collected; by 2005, the value of veterinary feeds and vitamin supplements entrusted and

delivered to him amounted to Php14,380,024.00; private respondent failed to remit said amount; during the meeting on 28 September 2005, the parties reconciled records of deliveries made to and accepted by private respondent and the latter's outstanding accountabilities; two documents were prepared, listing all Mindanao-based clientele and to whom private respondent made deliveries of its products; the 'Accounts to be collected' dated 28 September 2005 enumerates Mindanao-based clientele and the corresponding amount that must be collected by private respondent and remitted to it; the 'Accounts to be charged to Mr. Lim' also lists Mindanao-based clientele whose outstanding obligations will be charged to private respondent; said documents were personally signed by private respondent; private respondent again failed to remit what he committed to collect from the clientele; it followed up remittance of collections so private respondent issued four checks as payment for one of the accounts in 'Accounts to be collected'; however, when said checks were deposited, the same were dishonored for the reason 'Account Closed'; it summoned private respondent to another meeting where its corporate secretary personally handed the demand letter to him, to make good the checks he issued; its officers went to look for the clients listed in the two documents; it found several of the clients and demanded payment; one of the clients told its officers that he no longer had any indebtedness to it; it filed a criminal case against private respondent for estafa and violation of B.P. Blg. 22; the trial court totally disregarded the essence of the principal-agent relationship between them; the elements of estafa under Art. 315, par. 1(b) of the RPC do not pertain solely to actual receipt of monies; private respondent was its duly appointed agent in Mindanao and as agent, it entrusted its products to him as the latter was responsible for taking purchase orders, delivering products to clients and collecting payment thereof; private respondent did not actually receive any monies from it but actually received its products because it entrusted these products to him as agent; assuming he failed to collect or did not receive monies representing the proceeds of the sale of its products, he still had the obligation to account and return for the same as these were its properties; the prosecution established that private respondent failed to remit the sales proceeds and to return the products entrusted to him; the trial court totally disregarded the two documents signed by private respondent which are express admissions of his liabilities; the trial court totally disregarded the testimonies of Linorio C. Espinosa and Katherine E. Clemente; the checks issued by private respondent were a result of its repeated demands and were partial remittance of payments supposed to have been made for the products he received; the unequivocal statements of the witnesses and the documents clearly established the fiduciary relationship between it and private respondent as principal and agent and this was never denied by private respondent; the misappropriation of its products and/or monies collected in payment for the same was proven by the testimonies of its witnesses who established that private respondent failed to remit the value of products or proceeds from its sales, and account for and/or return the products he received from it; when he failed to do so, he issued worthless checks; these acts coupled with his undeniable failure to account for its products or to return the same established the element of misappropriation; the prejudice to it cannot be denied; private respondent took, in trust, its veterinary feeds and vitamin supplements with a total value of Php14,380,024.00; this value has not been recovered by it; and its officers have repeatedly made demands for private respondent to make good his obligation.

Private respondent ripostes, *inter alia*, that: in order for a petition for *certiorari* to prosper, it must be predicated on two exceptional grounds, in a judgment of acquittal rendered with grave abuse of discretion by the court and where the