

FOURTH DIVISION

[CA-G.R. SP No. 133874, March 13, 2015]

**TERESITA CELESTINO HOWARD AND JOSE HOWARD, JR.,
PETITIONERS, VS. SECRETARY OF JUSTICE, PEOPLE OF THE
PHILIPPINES, HON. ROWENA DE JUAN-QUINAGORAN,
PRESIDING JUDGE OF THE REGIONAL TRIAL COURT OF PASIG
CITY, BRANCH 166, AND RAYMOND THEODORE A. ALMEDA,
RESPONDENTS.**

DECISION

ABDULWAHID, J.:

Before this Court is a *petition for certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, filed by petitioners Teresita Celestino Howard and Jose Howard, Jr., assailing the twin *Resolutions* dated February 12, 2013^[1] and December 3, 2013^[2] of the Secretary of Justice, which denied petitioners' petition for review of the *Resolution* dated July 3, 2012 of the Office of the City Prosecutor of Pasig City in I.S. No. XV-14-INV-12D-00733 (Crim. Case No. 148540-PSG, RTC of Pasig City, Branch 166), and the *Motion for Reconsideration* thereof, respectively.

On March 30, 2012, private respondent Raymond Theodore A. Almeda filed with the Pasig City Prosecutor's Office a *Complaint-Affidavit*,^[3] charging petitioners with estafa under Article 315, paragraph 2(d) of the Revised Penal Code and violation of *Batas Pambansa* (B.P.) *Blg.* 22. The complaint alleged that sometime in June 2011, petitioners proposed a contract to produce and air a TV program in relation to the awarding and recognition of outstanding Filipino actors and actresses, among others. Considering the expenses of the production, petitioners borrowed from private respondent Php1,000,000.00, and promised to issue a check sufficiently funded upon presentment of payment. Since they were long-time friends, private respondent granted the loan of Php1,000,000.00 to petitioners who simultaneously issued and delivered Security Bank Check No. 0528040^[4] in the same amount. However, when the subject check was presented for payment within ninety (90) days from the date appearing thereon, it was dishonored due to "ACCOUNT CLOSED" as indicated in the check. On several occasions, private respondent demanded that petitioners pay the loan obligation but the demand was ignored. Finally, private respondent sent petitioners a final demand letter^[5] dated February 14, 2012 but the latter refused to receive it. To date, petitioners has failed and refused to pay their obligation causing private respondent damage and injury.

In their *Counter-Affidavits*,^[6] petitioners refuted private respondent's allegations, saying that there was no probable cause to hold them liable for estafa and violation of B.P. *Blg.* 22. They denied that they were long-time friends with private respondent and that they borrowed Php1,000,000.00 from him in order to finance the production of the star awards in 2011. According to them, Airtime Marketing

Phil., Inc. (Airtime), owned by petitioners, and Exile, Inc. (Exile), the president and CEO of which is Joey Valencia, agreed^[7] to produce the star awards for television in 2011. Each corporation agreed to provide capital of Php2,000,000.00 and to share income on a 50-50 basis. On June 21, 2011, Mr. Valencia delivered to Airtime Bank of the Philippine Islands (BPI) Check No. 37105,^[8] with the account name Almeda Construction & Equipment Rentals, in the amount of Php1,000,000.00, as payment for the share of Exile in the production. Petitioners have no knowledge of the relationship between private respondent and Almeda Construction & Equipment Rentals. Petitioners also denied having issued and delivered to private respondent Security Bank Check No. 0528040. The truth according to them was that Mr. Valencia asked if he could borrow the check in the amount of Php1,000,000.00 to be used in another transaction and on the promise that he will not deposit the said amount. Petitioners relied on such promise and even told Mr. Valencia that the amount in the bank is not sufficient to cover the amount stated in the check. As a precautionary measure, petitioners did not place their signature on the check. On several occasions prior to the due date, petitioners asked Mr. Valencia to return the check but the latter said he could not find it. He averred though that he did not use nor delivered it to anybody. Considering that the check was apparently lost, petitioners closed their bank account to ensure that the check cannot be cleared in favor of the person who may have found or stolen it. They also denied having received a copy of the demand letter.

In their *Supplemental Counter-Affidavit*,^[9] petitioners reiterated that they have no involvement with private respondent in the production of the star awards. They also reiterated that Joey Valencia of Exile, Inc., delivered the BPI Check No. 37105 dated June 21, 2011 with the account name Almeda Construction & Equipment Rentals in the amount of Php1,000,000.00. As evidence thereto, petitioners presented an *Acknowledgment Receipt*^[10] dated June 21, 2011. They also reiterated that they never issued and delivered to private respondent Security Bank Check No. 0528040 dated September 10, 2011. The truth is that Mr. Valencia merely borrowed the said check with the undertaking that he will not deposit it without petitioners' consent. A copy of the *Acknowledgment Receipt*^[11] dated June 27, 2011 signed by Mr. Valencia was presented in evidence.

After all pleadings were submitted, the Assistant City Prosecutor of Pasig City issued a *Resolution*,^[12] finding probable cause to charge petitioners with estafa under Article 315, paragraph 2(d) and only petitioner Teresita Celestino Howard for violation of *B.P. Blg. 22*. Petitioners made private respondent believe that the check issued to pay the obligations would be honored upon presentment. Instead however, the account of petitioners was closed, hence, the check was dishonored. As regards the charge for violation of *B.P. Blg. 22*, it is clear from the evidence that only petitioner Teresita Celestino Howard issued the subject check for payment, but the same was dishonored by reason of the fact that the account was closed. On the other hand, the defenses claimed by petitioners showed that the same are evidentiary in nature and should be proven during trial.

On July 13, 2012, an *Information*^[13] was filed with the Regional Trial Court (RTC) of Pasig City, charging petitioners with estafa under Article 315, paragraph 2(d) of the Revised Penal Code, committed as follows:

On or about or sometime on (sic) August 2011, in Pasig City and within the jurisdiction of this Honorable Court, the accused, with intent to defraud Raymond Theodore A. Almesa (sic), and by means of deceit, false pretenses and fraudulent acts, executed prior to or simultaneously with the commission of the fraud, did then and there willfully, unlawfully and feloniously make or draw and issue to said complainant the following check to wit:

Check No. : 0528040
Drawn Against : Security Bank
In the amount : P1,000,000.00
of
Date/Postdated : September 10, 2012
Payable to : Cash

in exchange for cash, well knowing that at the time they issued the said check, they have no funds in or credit with the said bank for the payment in full of the face amount of said cheque upon its presentment which check when presented for payment was subsequently dishonored by the drawee bank for the reason "Account Closed", and despite receipt of notice of dishonor, the accused refused and still refuses despite repeated demands to make arrangement for payment thereof or to pay amount of P1,000,000.00, to the damage and prejudice of Raymond Theodore A. Almeda.

On August 16, 2012, petitioner filed with the trial court an *Urgent Motion for the Suspension of Arraignment*,^[14] and on September 27, 2012, an *Urgent Motion for Suspension of Arraignment and for Leave to File Motion for Judicial Determination of Probable Cause*.^[15] However, in an *Order*^[16] dated September 27, 2012, the RTC denied the motions declaring that: (1) the court had already suspended the proceedings for more than two months pursuant to Rule 116 of the Rule on Criminal Procedure; and (2) it had earlier issued an order dated July 22, 2012, finding probable cause to charge petitioners with estafa. Finally, the trial court did not allow further resetting of arraignment at the instance of petitioners.

On November 7, 2012, petitioners were arraigned in Criminal Case No. 148540-PSG for the crime of estafa, wherein both pleaded not guilty to the offense charged.^[17]

Meanwhile, stressing that the issuance of the subject check does not constitute estafa and violation of *B.P. Blg. 22*, , petitioners, on July 27, 2012, filed with the DOJ a petition for review.^[18]

However, the Secretary of Justice, in the first assailed *Resolution*^[19] dated February 12, 2013, dismissed the petition on the ground that petitioners failed to append the motion to defer proceedings duly filed in court. As such, petitioners' right to appeal was deemed lost.

Petitioners moved for reconsideration for the *Resolution* but the motion was denied in the second assailed *Resolution*^[20] dated December 3, 2013. The Secretary of Justice ruled that the issuance by the RTC of Pasig City of the *Orders* denying petitioners' *Urgent Motion for Suspension of Arraignment* and finding probable cause

for the crime of estafa rendered the motion for reconsideration moot and academic. It further declared to leave the matter entirely for the determination of the court in line with the ruling in the case of *Crespo vs. Mogul*.

Aggrieved, petitioner filed with this Court a petition for certiorari, premised on the following grounds:^[21]

- 1. PUBLIC RESPONDENT SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY DISMISSING THE PETITION FOR REVIEW FILED BY PETITIONERS DUE TO ALLEGED FAILURE TO ATTACH A MOTION TO DEFER PROCEEDINGS FILED BEFORE TRIAL COURT;**
- 2. PUBLIC RESPONDENT SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY CONCLUDING THAT THE MOTION FOR RECONSIDERATION FILED BY PETITIONERS HAD BEEN RENDERED MOOT AND ACADEMIC BY THE ALLEGED DENIAL OF THE MOTION FOR SUSPENSION OF ARRAIGNMENT AND THE ISSUANCE BY THE TRIAL COURT OF AN ORDER FINDING PROBABLE CAUSE; and**
- 3. PUBLIC RESPONDENT SECRETARY OF JUSTICE ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION BY AFFIRMING THE DISMISSAL OF THE PETITION FOR REVIEW DESPITE THE FACT THAT THERE IS NO PROBABLE CAUSE AND THERE IS INSUFFICIENT EVIDENCE TO PROVE THAT PETITIONERS COMMITTED ESTAFA AND VIOLATION OF BATAS PAMBANSA BILANG 22.**

Petitioners contend that the Secretary of Justice committed grave abuse of discretion when she dismissed the petition for review solely on the ground of non-compliance with the requirements of the 2000 National Prosecution Service (NPS) Rule on Appeal, more so, since petitioners had earlier submitted the required motion for suspension of the arraignment. Likewise, according to petitioners, the Secretary of Justice committed grave abuse of discretion when she denied petitioners' motion for reconsideration on the ground that it had already become moot by the trial court's denial of their motion for suspension of the arraignment. Such ruling has no legal or factual basis. More importantly, petitioners argue that the DOJ did not make any ruling on the substantial issues raised by them. With this, petitioners maintain that there was no probable cause for the charge of estafa against them since the subject check was not issued in payment of an obligation contracted at the time it was issued. Petitioners had no obligation to private respondent under any contract or agreement. They did not also commit violation of *B.P. Blg. 22*. The subject check was incomplete because it did not contain petitioner Teresita Celestino Howard's signature and it was never issued nor delivered to private respondent. Petitioners also had no knowledge at the time of the issuance of the check that there was insufficient funds in the drawee bank and the notice of dishonor was not sent to nor received by them. Absent probable cause to indict petitioners of the the crimes