

SPECIAL SIXTEENTH DIVISION

[CA-G.R. SP NO. 120730, April 28, 2014]

**SPOUSES DANTE AND ARLENE LUDOVICE, PETITIONERS,
MEMBERS: VS. VALERIANO B. TIZON, THE SECRETARY OF
JUSTICE AND THE OFFICE OF THE PRESIDENT, RESPONDENTS.**

D E C I S I O N

VILLON, J.:

This is a petition for certiorari under Rule 65 of the 1997 Rules of Civil Procedure, as amended, assailing, on grounds of grave abuse of discretion amounting to lack or excess of jurisdiction, the Resolutions dated January 21, 2010^[1] and May 27, 2010^[2] of the Department of Justice in I.S. No. 081-15668. The said issuances reversed the Resolutions dated March 4, 2009^[3] and August 13, 2009 of the Office of the City Prosecutor (OCP) of Manila which, in turn, dismissed the complaint filed by private respondent Valeriano B. Tizon against petitioners, the spouses Dante and Arlene Ludovice for Estafa under Article 315 of the Revised Penal Code (RPC), as amended. The case was initially appealed^[4] by petitioners to the Office of the President (OP) but was dismissed for lack of jurisdiction in its Order^[5] dated July 15, 2011. Having failed to obtain favorable relief from the OP, petitioners filed the instant petition.

In the Complaint-Affidavit^[6] executed by private respondent and filed with the OCP of Manila, he alleged that he was the winning party in Civil Case No. 04-109340 for abatement of nuisance and damages before Branch 50 of the Regional Trial Court (RTC) of Manila, where he was awarded ₱1,415,000.00 in damages in its Decision^[7] dated March 13, 2006 (or "RTC Decision"); that the losing party (petitioners) have two (2) properties, the first, covered by Transfer Certificate of Title (TCT) No. T-7691 located in Las Piñas City and the other, TCT No. 258179 located in the City of Manila; that both were unencumbered when the RTC Decision was rendered; that when an Alias Writ of Execution was issued on January 26, 2007, petitioners started to dispose, mortgage or otherwise alienate the said properties to the damage and prejudice of private respondent; that when the Sheriff implemented the said writ of execution and levied on the said properties, it was found out that the titles thereto contained annotations of an Absolute Deed of Sale and Deed of Real Estate Mortgage in favor of third parties; and that the acts of petitioners in alienating their properties were intended to deceive and/or defraud complainant of what was due to him pursuant to the RTC Decision.

In his Counter-Affidavit,^[8] petitioner Dante Ludovice (or "Dante") claimed that the enforcement of the RTC Decision had been suspended indefinitely by the said court, thus, the filing of the instant case was premature; that the charge of deceit and defraudation against him were based on assumption or conclusion without support from credible proof. The other petitioner, Arlene Ludovice (or "Arlene"), merely

claimed that she did not have knowledge of any fraud committed against private respondent.

In its Resolution^[9] of March 4, 2009, the OCP of Manila recommended the dismissal of the case for insufficiency of evidence against therein respondents (herein petitioners).

Aggrieved by the above Resolution, private respondent interposed an appeal before the Department of Justice (DOJ) which issued the herein first assailed Resolution on January 21, 2010, to wit:

“WHEREFORE, the assailed Resolutions are hereby REVERSED and SET ASIDE. The City Prosecutor of Manila is directed to file two [2] informations accusing respondents Dante Ludovice and Arlene Ludovice for the commission of the crime of Other Deceits under Article 318 of the Revised Penal Code, and report the actions taken thereon within ten [10] days from receipt hereof.

SO ORDERED.”^[10]

On January 28, 2010, petitioners filed their Motion for Reconsideration^[11] which was denied with finality by the DOJ in the second assailed Resolution^[12] dated May 27, 2010. As earlier pointed out, petitioners initially interposed an appeal to the OP which, however, dismissed the same for lack of jurisdiction, Hence, this Petition for Certiorari, petitioners submitting the following issues^[13] for resolution:

I.

THE SECRETARY OF JUSTICE GROSSLY ERRED IN ISSUING THE QUESTIONED RESOLUTIONS DATED 21 JANUARY 2010 AND 27 MAY 2010 FOR LACK OF LEGAL AND FACTUAL BASIS.

II.

THE SECRETARY OF JUSTICE GROSSLY ERRED IN TAKING COGNIZANCE OF THE PETITION FOR REVIEW FILED BY PRIVATE RESPONDENT FROM THE RESOLUTIONS OF THE CITY PROSECUTOR OF MANILA DATED 4 MARCH 2009 AND 13 AUGUST 2009 CONSIDERING THE FINALITY OF THE 4 MARCH 2009 RESOLUTION.

III.

THE OFFICE OF THE PRESIDENT GROSSLY ERRED IN NOT REVERSING THE RESOLUTIONS OF THE SECRETARY OF JUSTICE.

On the first issue raised by petitioners, We hold that the Secretary of the DOJ did not commit error in issuing the questioned Resolutions dated January 21, 2010 and May 27, 2010. The pieces of evidence on record show that petitioners herein owned two (2) real properties registered in their names, one located in Las Piñas City and covered by TCT No. T-76291 and the other, in Tondo, Manila covered by TCT No. 258179.

It appears that during execution proceedings, upon the issuance of Writ of Execution by the RTC on January 26, 2007, of which petitioners were duly notified, they started to dispose, mortgage or otherwise alienate or transfer said properties to the damage of the herein private respondent.

The property in Las Piñas City was subsequently encumbered through a mortgage which was registered and annotated at the back of the covering title. It appears that earlier, it was first offered to private respondent by petitioners to answer for the award of damages in Civil Case No. 04-109340, as it was then unencumbered. It was only when the Sheriff was levying on the said property that the encumbrance by way of a mortgage thereon, in favor of a certain Juan Ronaldo Angeles through an instrument dated March 6, 2007, was discovered.^[14] This was executed after the RTC Decision was rendered.

Petitioners likewise resorted to a similar act with respect to their Tondo property by conveying it, through a Deed of Absolute Sale, in favor of a certain Alberto J. Regunan.

The foregoing acts were clandestinely carried out by petitioner Dante in conspiracy with his spouse, petitioner Arlene, who expressly conformed to the execution of the aforesaid Deed of Real Estate Mortgage and Deed of Absolute Sale.

After a careful consideration of the respective allegations of the herein parties and the evidence presented, this Court is convinced that indeed, there is a probable cause for the indictment of petitioners for Other Deceits under Article 318 of the RPC, all the elements thereof being present in this case.

It is provided under Article 318 that Other Deceits is committed by "any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles" referring to the general forms of Estafa under Article 315, Other Forms of Swindling under Article 316 and Swindling a Minor under Article 317. For one to be liable for "other deceits" under the law, it is required that the prosecution must prove the following essential elements: (a) false pretense, fraudulent act or pretense other than those in the preceding articles; (b) such false pretense, fraudulent act or pretense must be made or executed prior to or simultaneously with the commission of the fraud; and (c) as a result, the offended party suffered damage or prejudice.^[15]

The petitioners had become judgment-debtors by virtue of the award for damages in Civil Case No. 04-109340. The money judgment in favor of private respondent amounted to P1,415,000.00. It is clear from the records of the case that petitioners disposed and transferred their properties after they learned of the RTC Decision dated March 13, 2006. The Tondo property was made the subject of a Deed of Absolute Sale on July 31, 2006. On the other hand, the Las Piñas property was subjected to a Deed of Real Estate Mortgage on March 6, 2007. Such actions on the part of petitioners were clearly made to defraud private respondent.

Fraud or malice (dolo) has been defined as a "conscious and intentional design to evade the normal fulfillment of existing obligations" and is, thus, incompatible with good faith.^[16] Fraud, in its general sense, is deemed to comprise anything calculated