



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
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FIRST DIVISION

FACILITIES, INCORPORATED, G.R. No. 208642
 Petitioner,

- versus -

RALPH LITO W. LOPEZ,
 Respondent.

X-----X

RALPH LITO W. LOPEZ, G.R. No. 208883
 Petitioner,

Present:

SERENO, C.J.,
Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, JJ.

- versus -

Promulgated:

FACILITIES, INCORPORATED, FEB 07 2018
 Respondent.

X-----X

DECISION

TIJAM, J.:

Before the Court are two consolidated petitions for review on *certiorari*¹ filed under Rule 45 of the Rules of Court, assailing the Decision²

¹ *Rollo* (G.R. No. 208642), pp. 20-34; *rollo* (G.R. No. 208883), pp. 10-25.

² Penned by Associate Justice Elihu A. Ybañez, concurred in by Associate Justices Japar B. Dimaampao and Victoria Isabel A. Paredes; *rollo* (G.R. No. 208642), pp. 39-47.

dated January 24, 2013 and Resolution³ dated August 8, 2013 both of the Court of Appeals (CA) in CA-G.R. SP No. 112315.

Antecedent Facts

On July 23, 1999, a Memorandum of Agreement (MOA)⁴ was entered into between Facilities, Inc. (Facilities), represented by its President, Vicente M.W. Araneta III (Araneta III) and Primelink Properties and Development Corporation (PPDC), represented by its developer, President and CEO, Ralph Lito W. Lopez (Lopez). As stated in the MOA, PPDC is the owner of three lots (subject lots) which it is developing into a residential subdivision project known as Tagaytay Woodsborough Residential Estate (the Project), located at Barrio Asisan, Tagaytay City; while Facilities is the registered owner of Units 1601 and 1602 (condominium units) of Summit One Office Tower located at 530 Shaw Boulevard, Mandaluyong City.⁵ On even date, the parties executed a Contract to Sell⁶ over the subject lots and Contract of Lease⁷ over the condominium units. These contracts, which Facilities referred to as a “swap arrangement,”⁸ are embodied in the essential provisions of the MOA.

The MOA provides for the so-called “swap arrangement” between Facilities and PPDC in the following manner: Facilities agreed to lease the condominium units for a period of four years to PPDC. As a consideration for the first twenty (21) months of the four-year lease, PPDC through Lopez, agreed to execute a deed of absolute sale covering the subject lots in favor of Facilities. PPDC also committed to deliver the transfer certificate of title (TCT) covering the subject lots in Facilities' name within a period of 360 days reckoned from July 23, 1999. PPDC further bound itself to issue a certificate of ownership over the subject lots during the pendency of the processing and issuance of the individual titles.⁹

As a remedial measure, sub-paragraph 3.4.5¹⁰ of the MOA and paragraph 3¹¹ of the Contract to Sell stipulates that Facilities shall have the

³ Id. at 49-51.

⁴ Id. at 77-80.

⁵ Id. at 77.

⁶ Id. at 83-87.

⁷ Id. at 89-101.

⁸ *Rollo* (G.R. No. 208883), p. 72.

⁹ *Rollo* (G.R. No. 208642), pp. 40, 77 and 79.

¹⁰ 3.4.5. Failure by the FIRST PARTY to perform any of the foregoing shall give the SECOND PARTY the right to demand the cancellation of the Contract to Sell the Lots and to demand from the FIRST PARTY the payment of cash in the amount of TWO MILLION THREE HUNDRED EIGHTY[-]FOUR THOUSAND NINE HUNDRED EIGHTY[-]FIVE PESOS and SIXTY CENTAVOS (Php2,384,985.60). Id. at 79.

¹¹ 3. Failure of the SELLER to perform any of the foregoing shall give the BUYER the right to demand the cancellation of this Contract to Sell and to demand from the SELLER payment in cash in the amount of TWO MILLION THREE HUNDRED EIGHTY[-]FOUR THOUSAND NINE HUNDRED EIGHTY[-]FIVE PESOS and SIXTY CENTAVOS (Php2,384,985.60). Id. at 84.

right to demand the cancellation of the contract to sell and the payment of ₱2,384,985.60 from PPDC, in case of PPDC's failure to comply with its undertaking.

Pursuant to these agreements, PPDC moved into the condominium units in August 1999 and occupied the same for over a period of 21 months from September 1999 until December 2001.¹²

Facilities followed-up on PPDC's commitment to deliver the TCTs over the subject lots. Despite repeated demands, PPDC failed to comply with its contractual obligation and instead vacated the leased premises without leaving any forwarding address.¹³

Later on, Facilities discovered that contrary to PPDC's representation, the title over the subject lots was still registered in the name of a certain Primo Erni.¹⁴

Consequently, Facilities, through its President, Araneta III filed a Complaint-Affidavit¹⁵ before the Office of the City Prosecutor (OCP) of Mandaluyong City, alleging among others, that: (1) Lopez's failure to deliver the titles to the subject lots is in clear contravention of Sections 25¹⁶ and 39¹⁷ of Presidential Decree (P.D.) No. 957,¹⁸ otherwise known as The Subdivision and Condominium Buyers' Protective Decree; and (2) Lopez's false representations and act of selling the subject lots to the corporation makes him liable for the crime of *estafa* under paragraph 1, Article 316¹⁹ of the Revised Penal Code (RPC).

¹² Id. at 40.

¹³ Id. at 118.

¹⁴ Id. at 120.

¹⁵ Id. at 115-122.

¹⁶ Sec. 25. *Issuance of Title.* The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit. No fee, except those required for the registration of the deed of sale in the Registry of Deeds, shall be collected for the issuance of such title. In the event a mortgage over the lot or unit is outstanding at the time of the issuance of the title to the buyer, the owner or developer shall redeem the mortgage or the corresponding portion thereof within six months from such issuance in order that the title over any fully paid lot or unit may be secured and delivered to the buyer in accordance herewith.

¹⁷ Sec. 39. *Penalties.* Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.

¹⁸ REGULATING THE SALE OF SUBDIVISION LOTS AND CONDOMINIUMS, PROVIDING PENALTIES FOR VIOLATIONS THEREOF.

¹⁹ Art. 316. *Other forms of swindling.* The penalty of *arresto mayor* in its minimum and medium period and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.

x x x x



In its Counter-Affidavit (with Motion to Dismiss), PPDC through Mr. Lopez, argued that: (1) Lopez was not guilty of violating Sections 25 and 39 of P.D. No. 957 since the subject lots were not fully paid due to Facilities' failure to turn-over the entire premises of the condominium units; and (2) Lopez is not liable for the crime of *estafa* because PPDC was the real owner of the subject lots as evidence by the Deed of Absolute Sale²⁰ executed by PPDC and the heirs of the registered owner, Primo Erni on October 12, 1998.²¹

In its September 30, 2002²² and November 11, 2002²³ Resolutions, the OCP of Mandaluyong City dismissed the complaint and ruled that the remedy is civil in nature.

Dissatisfied, Facilities filed a Petition for Review²⁴ under Department Circular No. 70²⁵ otherwise known as the 2000 National Prosecution Service Rule on Appeal, of the Department of Justice (DOJ) averring among others, that the OCP of Mandaluyong City erred in holding that: (1) Facilities should have first filed an action for specific performance as it defeats the policy and purpose behind the enactment of P.D. No. 957; and (2) To be liable under paragraph 1, Article 316 of the RPC, one must misrepresent himself to be the "registered" owner, not merely the owner, of a real property.

Ruling of the DOJ

On October 8, 2007, the DOJ issued a Resolution²⁶ granting Facilities' petition, the dispositive portion of which reads, thus:

WHEREFORE, premises considered, the questioned resolution is hereby **REVERSED and SET ASIDE**. The City Prosecutor of Mandaluyong City is hereby directed to file the appropriate information against [Lopez] for violation of Sec. 25 of [P.D.] No. 957, and another information for *estafa* under paragraph 1 of Article 316 of the [RPC], and to report to this Department the action taken within ten (10) days from receipt hereof.

SO ORDERED.²⁷

²⁰ *Rollo* (G.R. No. 208642), pp. 517-519.

²¹ *Id.* at 41.

²² *Id.* at 154-157.

²³ *Id.* at 159.

²⁴ *Id.* at 161-180.

²⁵ *Cariaga v. Sapigao, et al.*, G.R. No. 223844, June 28, 2017.

²⁶ Penned by Acting Secretary of Justice Agnes VST Devanadera; *rollo* (G.R. No. 208642), pp. 245-249.

²⁷ *Id.* at 249.

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Lopez moved for a reconsideration of the resolution but the same was denied by the DOJ in another Resolution²⁸ dated December 28, 2009.

Aggrieved, Lopez filed a Petition for *Certiorari* under Rule 65 with the CA, alleging grave abuse of discretion on the part of the SOJ.

Ruling of the CA

On January 24, 2013, the CA in its Decision,²⁹ partially granted Lopez's petition. The CA ruled that there is no probable cause to warrant the prosecution of Lopez for the crime of *estafa*, since it is indubitable that his company is the owner of the subject lots. The CA, however, agreed with the DOJ's finding of probable cause to warrant the prosecution of Lopez for violation of Section 25 of P.D. No. 957. The dispositive portion of the decision reads, thus:

WHEREFORE, premises considered, the instant Petition is **PARTIALLY GRANTED**. The Resolution dated 09 October 2007 is **AFFIRMED WITH THE MODIFICATION** that the directive to file information for violation of paragraph 1 of Article 316 of the [RPC] is **SET ASIDE**. The charge, however, against [Lopez] for violation of Section 25 of [P.D.] No. 957 is **MAINTAINED**.

SO ORDERED.³⁰

Both parties filed their Motions for Partial Reconsideration dated February 27³¹ and 14,³² 2013, respectively. The motions, however, were both denied by the CA in its Resolution³³ dated August 8, 2013.

Hence, these petitions.

In G.R. No. 208642,³⁴ Facilities maintains that Lopez is guilty of *estafa* under paragraph 1, Article 316 of the RPC. In all the agreements executed by the parties, Lopez represented PPDC as having good and indefeasible title to the subject lots. Yet, the title of the subject lots remains in the name of a certain "Primo Erni." Facilities avers that despite numerous opportunities that were afforded Lopez to transfer ownership of the subject lots in Facilities' name, no title has been delivered to this day. Were it not for Lopez's representation that PPDC has good title to the subject lots, Facilities claims that it would not have entered into the MOA. Facilities, thus, prays for the reversal of the CA's decision insofar as it ruled that there

²⁸ Id. at 252.

²⁹ Id. at 39-47.

³⁰ Id. at 47.

³¹ Id. at 63-68.

³² Id. at 53-61.

³³ Id. at 50-51.

³⁴ Id. at 20-34.

is no probable cause to warrant the prosecution of Lopez for the crime of *estafa*.

In G.R. No. 208883,³⁵ Lopez insists that Facilities' remedy is purely civil in nature. Instead of filing a criminal complaint for *estafa*, Lopez claims that Facilities could have exhausted the remedy under sub-paragraphs 3.4.5 of the MOA, and paragraph 3 of the Contract to Sell, by demanding that the contract be rescinded and that PPDC be ordered to pay ₱2,384,985.60. Lopez maintains that he is the true owner of the subject lots based on the Deed of Absolute Sale which the heirs of the original registered owner executed in favor of PPDC on October 12, 1998. Lopez claims that he did not violate Section 25 of P.D. No. 957. He argues that since PPDC was unable to utilize the entire area of the condominium units, PPDC cannot be compelled to deliver the titles over the subject lots. He likewise claims that Facilities did not comply with its obligation to pay the notarial fees, documentary stamps, transfer and registration fees on the subject lots. Hence, Lopez entreats this Court to enter a judgment dismissing the complaint for violation of Section 25, P.D. No. 957 filed against him.

From the foregoing, the core issue to be resolved in this case is whether there is probable cause to indict Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

Ruling of the Court

We now resolve.

According to Section 1, Rule 112 of the Rules of Court, a preliminary investigation, is “an inquiry or proceeding to determine whether there is sufficient ground to engender a well-founded belief that a crime has been committed and the respondent is probably guilty thereof, and should be held for trial.” The investigation is advisedly called preliminary, because it is yet to be followed by the trial proper in a court of law. The occasion is not for the full and exhaustive display of the parties’ evidence but for the presentation only of such evidence as may engender a well-founded belief that an offense has been committed and that the accused is probably guilty of the offense.³⁶ “The role and object of preliminary investigation were to secure the innocent against hasty, malicious, and oppressive prosecutions, and to protect him from open and public accusation of crime, from the trouble, expenses and anxiety of a public trial, and also to protect the State from useless and expensive prosecutions.”³⁷

³⁵ *Rollo* (G.R. No. 208883), pp. 10-25.

³⁶ *Dr. Osorio v. Hon. Desierto*, 509 Phil. 540, 555 (2005).

³⁷ *Callo-Claridad v. Esteban, et al.*, 707 Phil. 172, 184 (2013).

As We have postulated in *Villanueva, et al. v. Caparas*,³⁸ the determination of the existence of probable cause lies within the discretion of the public prosecutor:

The determination of probable cause is essentially an executive function, lodged in the first place on the prosecutor who conducted the preliminary investigation on the offended party's complaint. The prosecutor's ruling is reviewable by the Secretary who, as the final determinative authority on the matter, has the power to reverse, modify or affirm the prosecutor's determination. As a rule, the Secretary's findings are not subject to interference by the courts, save only when he acts with grave abuse of discretion amounting to lack or excess of jurisdiction; or when he grossly misapprehends facts; or acts in a manner so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined by law; or when he acts outside the contemplation of law.³⁹ (Citations omitted)

In *Atty. Allan S. Hilbero v. Florencio A. Morales, Jr.*,⁴⁰ this Court elucidated that a finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects:

A finding of probable cause needs only to rest on evidence showing that more likely than not a crime has been committed by the suspects. It need not be based on clear and convincing evidence of guilt, not on evidence establishing guilt beyond reasonable doubt, and definitely not on evidence establishing absolute certainty of guilt. In determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. What is determined is whether there is sufficient ground to engender a well-founded belief that a crime has been committed, and that the accused is probably guilty thereof and should be held for trial. It does not require an inquiry as to whether there is sufficient evidence to secure a conviction.

In this case, there is evidence showing that more likely than not Lopez violated Section 25 of P.D. No. 957 and committed acts constitutive of the crime of *estafa* under paragraph 1, Article 316 of the RPC.

We explain.

Section 25 of P.D. No. 957, requires a developer, such as PPDC, of which Lopez is the President and CEO, to deliver the title of the lot or unit to the buyer, upon full payment of the said lot or unit. The provision partly reads, thus:

³⁸ 702 Phil. 609 (2013).

³⁹ *Id.* at 616.

⁴⁰ G.R. No. 198760, January 11, 2017, citing *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 519 (2008).

Sec. 25. *Issuance of Title.* The owner or developer shall deliver the title of the lot or unit to the buyer upon full payment of the lot or unit.
x x x.

Indeed, the failure to comply with this explicit obligation makes the developer or the person who was charge of the administration of the business, criminally liable. Section 39 of P.D. No. 957 provides, thus:

Sec. 39. *Penalties.* ***Any person who shall violate any of the provisions of this Decree and/or any rule or regulation that may be issued pursuant to this Decree shall, upon conviction, be punished by a fine of not more than twenty thousand (P20,000.00) pesos and/or imprisonment of not more than ten years: Provided, That in the case of corporations, partnership, cooperatives, or associations, the President, Manager or Administrator or the person who has charge of the administration of the business shall be criminally responsible for any violation of this Decree and/or the rules and regulations promulgated pursuant thereto.*** (Emphasis and italics ours)

The records established that Facilities and Lopez entered into a MOA, a Contract of Lease, and a Contract to Sell, over the subject lots located at Tagaytay City and the condominium units located at Shaw Boulevard, Mandaluyong City. Essentially, these agreements provide that as advance rental payments for the first twenty-one (21) months of a four-year lease agreement, PPDC, through Lopez would transfer the subject lots to and register it in the name of Facilities. Simply stated, the parties agreed that the consideration for the sale of the subject lots is the lease of the condominium units by PPDC for the first twenty-one (21) months of the four-year lease agreement.

It is indisputable that Facilities performed its end of the bargain from the moment it allowed PPDC to utilize the condominium units for a period of twenty-eight (28) months. This was admitted by none other than Lopez himself when he stated in his Counter-Affidavit that PPDC occupied the premises owned by Facilities, beginning August 1999 up to December 2001,⁴¹ or a period of twenty-eight (28) months, which is even beyond what was stipulated in the MOA. Despite this, PPDC through Lopez, refused to complete the titling process and issue the titles over the subject lots in the name of Facilities. Lopez ignored several demands made by Facilities for the delivery of the titles which was part of their agreement. Instead, he justified the non-delivery of the titles on the allegation that Facilities failed to pay the purchase price in full, including the notarial fees, documentary stamps, transfer and registration fees on the subject lots.

⁴¹ Rollo (G.R. No. 208642), p. 327.

These contentions, however, are unavailing.

What Lopez refuses to state is the unconverted fact that Primo Erni, the registered owner of the subject lots has not yet transferred the titles in the name of PPDC. This belies Lopez's feigned effort at securing title in PPDC's name, so that the latter may, in turn, be transferred in the name of Facilities. Likewise, Facilities' non-payment of the taxes is reasonable for the simple reason that these taxes are required to be paid only after the tax on the sale (ordinary tax and capital gains tax) has already been paid. Until the sales tax over the subject lots have been paid by PPDC, no title could be issued in Facilities' favor. Thus, Facilities has no obligation yet to pay notarial fees, documentary stamps, transfer and registration fees.

At any rate, “[i]t is basic that a contract is the law between the parties. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.”⁴² Lopez who represented PPDC, freely signed the *MOA*. He cannot now be allowed to renege on his obligation to deliver the titles over the subject lots, based on his claim that PPDC was unable to occupy the entire portion of the condominium units.

Contrary to Lopez's stance, a suit for the violation of P.D. No. 957 is independent from whatever remedy granted under the *MOA*, *i.e.*, rescission of the Contract to Sell, or under existing laws, which obviously includes the provisions of the RPC.

A perusal of P.D. No. 957 reveals that a violation of its provisions may be the subject of a criminal action, and not merely limited to a civil remedy. The decree expressly recognizes that the aggrieved party may avail of the remedies provided not only in P.D. No. 957, but also under existing laws. The decree, states, thus:

Section 41. *Other remedies.* The ***rights and remedies*** provided in ***this*** Decree shall be ***in addition*** to any and all other rights and remedies that may be ***available under existing laws.*** (Emphasis and italics ours)

Notably, nowhere in the aforecited provision nor in the full text of P.D. No. 957, does it say that the aggrieved party is barred from filing a criminal complaint under P.D. No. 957 and under the RPC. Also, it is clear that the *MOA* did not limit the remedy to rescission in case of breach by PPDC. This Court cannot merely supply material stipulations to a contract, so as to favor one party against the other pertaining to the remedies available to each of them. Indeed, “[w]hen the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of

⁴² *Morla v. Belmonte, et. al.*, 678 Phil. 102, 117 (2011).



its stipulations governs.”⁴³

Corollarily, Lopez may likewise be held criminally liable under the RPC. Paragraph 1, Article 316 of the RPC penalizes a person who pretends to be the owner of a real property and sells the same, reads:

Art. 316. *Other forms of swindling.* The penalty of *arresto mayor* in its minimum and medium period and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

(1) Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.

Here, the records show that Lopez, on behalf of PPDC, misrepresented to Facilities that PPDC is the owner of the subject lots and that it has good and indefeasible title over them. These categorical statements led Facilities to enter into a MOA with PPDC and subsequently into a Contract to Sell and Contract of Lease. As indicated earlier, Facilities complied with its obligation under the lease contract and allowed PPDC to occupy the condominium units which served as the consideration of the subject lots. PPDC, however, ignored its obligation to deliver the titles over the subject lots which was part of their agreement. Up until the filing of the criminal complaint, the subject lots remain in the name of Primo Erni; not PPDC; and certainly not Facilities.

As aptly observed by the Acting DOJ Secretary, in her October 8, 2017 Resolution:⁴⁴

Evidence also shows that there was misrepresentation on the part of PPDC as regards the true status of the subject lots. Though [Facilities] was shown the deed of sale between PPDC and the heirs of the original owner thereof, the continued failure of PPDC to transfer the ownership thereof to [Facilities] within the stipulated period of time, and up to the filing of the case, only shows that there was bad faith on its part when it presented the deed of absolute sale to [Facilities] which appeared to be a forgery. Without the assurance from PPDC that the lots were in fact its property, [Facilities] could not have possibly agreed to the sale and in the process, part with the lease of their two (2) commercial units as payment for the full consideration of the subject lots. Undoubtedly therefore, PPDC have acted in bad faith and committed deceit in deliberately concealing the true status of the subject lots.⁴⁵

⁴³ *Pan Pacific Service Contractors, Inc., et al. v. Equitable PCI Bank*, 630 Phil. 94, 105 (2010).

⁴⁴ *Rollo* (G.R. No. 208642), pp. 245-249.

⁴⁵ *Id.* at 248.

Prescinding from the aforementioned discussion, We hold that there is probable cause sufficient to institute a criminal complaint against Lopez for violation of Section 25, P.D. No. 957 and for the crime of *estafa* under paragraph 1, Article 316 of the RPC.

WHEREFORE, premises considered, the Court hereby **RESOLVES**:

(1) To **GRANT** Facilities, Incorporated's petition in G.R. No. 208642;


(2) To **DENY** Ralph Lito W. Lopez's petition in G.R. No. 208883; and

(3) To **AFFIRM** the Decision dated January 24, 2013 and Resolution dated August 8, 2013 of the Court of Appeals in CA-G.R. SP No. 112315, in the **MODIFICATION** that the City Prosecutor of Mandaluyong City is directed to file the appropriate information against Ralph Lito W. Lopez for *estafa* under paragraph 1, Article 316 of the Revised Penal Code.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Maria Lourdes P. A. Sereno
MARIA LOURDES P. A. SERENO
Chief Justice