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Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

ESTATE OF HONORIO
POBLADOR, JR., represented by
RAFAEL A. POBLADOR,
Petitioner,

G.R. No. 192391

Present:

- versus -

SERENO, C.J., Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, JJ.

ROSARIO L. MANZANO,
Respondent.

Promulgated:

JUN 19 2017

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DECISION

PERLAS-BERNABE, J.:

Before the Court is a petition for review on *certiorari*¹ assailing the Decision² dated September 30, 2009 and the Resolution³ dated May 26, 2010 of the Court of Appeals (CA) in CA-G.R. CV No. 78891 that denied the appeal of petitioner Estate of Honorio Poblador, Jr. (petitioner), represented by Rafael A. Poblador (Rafael), from the Order⁴ dated January 13, 2003 of the Regional Trial Court of Pasig City, Branch 157 (RTC). Petitioner appealed the civil aspect of the dismissed criminal case for *Estafa* which it filed against respondent Rosario L. Manzano (Manzano).

¹ Rollo, pp. 13-42.

² Id. at 46-57. Penned by then Associate Justice Jose Catral Mendoza (now a member of this Court) with Associate Justices Myrna Dimaranan-Vidal and Antonio L. Villamor concurring.

³ Id. at 59. Penned by Associate Justice Antonio L. Villamor with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino concurring.

⁴ CA rollo, pp. 21-25. Penned by Judge Esperanza Fabon-Victorino.

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The Facts

Petitioner was the subject of settlement proceedings in Special Proceedings No. 9984 before the Regional Trial Court of Pasig City (Probate Court). Among its properties was one share of stock in Wack-Wack Golf and Country Club, Inc. (Wack-Wack Share) covered by membership Certificate No. 3759 issued on September 17, 1974.⁵

In an Order dated May 10, 1996, the Probate Court authorized petitioner's administratrix, Elsa A. Poblador (Elsa), to negotiate the sale of certain properties of petitioner, including the Wack-Wack Share. Upon Elsa's instruction, Rafael (one of the heirs of the deceased Honorio Poblador, Jr.) looked for interested buyers. Subsequently, he engaged the services of Manzano, a broker of Metroland Holdings Incorporated (Metroland)⁶ who, on September 9, 1996, faxed a computation for the sale of the Wack-Wack Share to petitioner,⁷ showing a final net amount of ₱15,000,000.00. On September 18, 1996,⁸ the final net amount to the seller was increased to ₱15,200,000.00.

Manzano later introduced Rafael to Moreland Realty, Inc. (Moreland), and in September 1996, the parties entered into a Deed of Absolute Sale⁹ with Elsa covering the Wack-Wack Share for the gross amount of ₱18,000,000.00. Out of the ₱18,000,000.00 purchase price, Moreland directly paid Elsa the amount of ₱15,200,000.00 through a Metrobank check.¹⁰ The balance of ₱2,800,000.00 was allegedly given to Manzano for the payment of the capital gains tax, documentary stamp tax, and other pertinent fees, as well as for her service fee.¹¹

In October 1996, however, the Probate Court annulled the sale of the Wack-Wack Share. Thus, Elsa returned to Moreland the amount of ₱18,000,000.00 which the latter paid for the Wack-Wack Share, plus interest, and applied with the Bureau of Internal Revenue (BIR) for the refund of the taxes paid for the annulled sale. Petitioner likewise asked Manzano to return the broker's service fee.¹²

Meanwhile, Rafael, through petitioner's accountant, Nonilo P. Torres (Torres), allegedly requested Manzano for an accounting of the ₱2,800,000.00 she received on behalf of petitioner. In response, Manzano faxed the following documents addressed to Torres: (a) Cover letter dated

⁵ *Rollo*, p. 17.

⁶ *Id.*

⁷ *Id.* at 60.

⁸ *Id.* at 61.

⁹ *Id.* at 62.

¹⁰ See acknowledgment receipt; *id.* at 63.

¹¹ *Id.* at 18.

¹² *Id.* at 18-19. See also *CA rollo*, p. 22.

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February 4, 1997;¹³ (b) Capital Gains Tax Return dated September 23, 1996 indicating the payment of ₱1,480,000.00 as capital gains tax;¹⁴ (c) BIR Certification dated September 23, 1996 indicating the payment of ₱1,480,000.00 as capital gains tax;¹⁵ (d) Authority to Accept Payment dated September 23, 1996 indicating the payment of ₱135,000.00 as documentary stamp tax;¹⁶ and (e) Deed of Absolute Sale between petitioner, represented by Elsa, and Moreland.¹⁷ Examining these documents, Rafael and Torres allegedly noticed a discrepancy in the faxed Capital Gains Tax Return: while the typewritten portion of the Return indicated ₱1,480,000.00 as the capital gains tax paid, the machine validation imprint reflected only ₱80,000.00 as the amount paid. To clarify the discrepancy, petitioner secured a certified true copy of the Capital Gains Tax Return from the BIR that reflected only ₱80,000.00 as the capital gains tax paid for the sale of the Wack-Wack Share.¹⁸ As a result, petitioner demanded¹⁹ Manzano to properly account for the ₱2,800,000.00 allegedly given to her for the payment of taxes and broker's fees, but to no avail.²⁰ This led to the filing, on December 8, 1999, of an Information²¹ for the crime of *Estafa* under Article 315, paragraph (1) (b) of the Revised Penal Code (RPC) against Manzano before the RTC, docketed as Crim. Case No. 113549.²² In the course of the proceedings, Manzano filed a Demurrer to Evidence²³ praying for the dismissal of the case for failure of the prosecution to establish the essential elements of *Estafa* with which she was charged.²⁴

The RTC Ruling

In an Order²⁵ dated January 13, 2003, the RTC granted Manzano's Demurrer to Evidence and dismissed the complaint for *Estafa* for failure of the prosecution to "prove all the elements of estafa through misappropriation as defined in and penalized under paragraph 1 (b)[, Article 315] of the Revised Penal Code, x x x."²⁶ The RTC found that the element of deceit was absent, considering that both Manzano and Rafael were equally guilty of defrauding the government of taxes actually due on the transaction. It pointed out that Rafael knew and concurred with the plan, including the special arrangements that had to be made with the BIR, as long as the estate would receive a higher net proceed from the sale. In fact, petitioner received in full the agreed net sale proceeds of ₱15,200,000.00. Finally, it held that Manzano was entitled to her broker's fee in the amount of ₱900,000.00 as

¹³ Id. at 64.

¹⁴ Id. at 65.

¹⁵ Id. at 66.

¹⁶ Id. at 67.

¹⁷ Id. at 19-20 and 62.

¹⁸ Id. at 20.

¹⁹ Id. at 69-70.

²⁰ Id. at 20-21.

²¹ *CA rollo*, pp. 26-27.

²² *Rollo*, p. 21.

²³ Not attached to the *rollo*.

²⁴ *Rollo*, p. 47.

²⁵ *CA rollo*, pp. 21-25.

²⁶ Id. at 25.

she was commissioned and successfully closed the transaction for petitioner.²⁷

Dissatisfied, petitioner filed a motion for reconsideration²⁸ which the RTC denied in an Order²⁹ dated March 11, 2003. Hence, petitioner appealed the civil aspect of the case before the CA.

The CA Ruling

In a Decision³⁰ dated September 30, 2009, the CA denied petitioner's appeal, declaring that the prosecution did not only fail to prove all the elements of *Estafa* through misappropriation;³¹ it also failed to prove the alleged civil liability of Manzano in the amount of ₱2,800,000.00.³²

It found that the prosecution's evidence failed to show that Manzano personally received the ₱2,800,000.00 earmarked for the payment of taxes and broker's fees.³³ At most, such evidence only proved that Manzano tried to help broker and negotiate the sale of the Wack-Wack Share.³⁴ In fact, Rafael himself admitted that he was unsure if Manzano indeed received the ₱2,800,000.00. Neither could he state the date when she supposedly received the same.³⁵

Moreover, the CA stressed that: (a) petitioner readily admitted receipt of the full amount of ₱15,200,000.00 – the amount agreed upon in the computation sent by Manzano – for the sale of the Wack-Wack Share which was paid with a check by the buyer, Moreland Realty, Inc., and acknowledged by Elsa A. Poblador;³⁶ (b) Rafael made a categorical admission that he did not even know who actually paid the taxes to the BIR and that the name of Manzano did not appear in the documents with respect to the payment of the capital gains tax and documentary stamp tax;³⁷ and (c) petitioner knew that Manzano was merely an employee of Metroland, who talked to and negotiated with it in such capacity, and with whom it would not have dealt with had she not been Metroland's employee.³⁸

Finally, the CA observed that this is a case of *pari delicto*, as petitioner's predicament would have been avoided if only Rafael sought the

²⁷ Id. at 23-25.

²⁸ Not attached to the *rollo*.

²⁹ CA *rollo*, p. 13.

³⁰ *Rollo*, pp. 46-57.

³¹ Id. at 52.

³² Id. at 54.

³³ Id.

³⁴ Id. at 55.

³⁵ Id. at 54, citing Transcript of Stenographic Notes (TSN) dated September 22, 1999 (pp. 41-42) and October 26, 2000 (p. 4).

³⁶ Id. at 55.

³⁷ Id. at 56.

³⁸ Id.

permission and approval of the Probate Court prior to the sale of the Wack-Wack Share.³⁹

Aggrieved, petitioner sought reconsideration,⁴⁰ which the CA denied in a Resolution⁴¹ dated May 26, 2010; hence, this petition.

The Issue Before the Court

The core issue in this case is whether or not the CA erred in denying petitioner's appeal on the civil liability *ex delicto* of Manzano.

The Court's Ruling

The petition lacks merit.

It is a fundamental rule that “[t]he acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted. **However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the [prosecution absolutely failed to prove the guilt of the accused, or the] act or omission from which the civil liability may arise did not exist, or where the accused did not commit the acts or omission imputed to him.**”⁴²

In the fairly recent case of *Dy v. People*,⁴³ the Court discussed the concept of civil liability *ex delicto* in *Estafa* cases under paragraph 1 (b), Article 315 of the RPC (with which Manzano was likewise charged), stating that **when the element of misappropriation or conversion is absent, there can be no *Estafa* and concomitantly, the civil liability *ex delicto* does not exist.** Particularly, the Court said:

Our laws penalize criminal fraud which causes damage capable of pecuniary estimation through *estafa* under Article 315 of the Revised Penal Code. In general, the elements of *estafa* are:

³⁹ Id.

⁴⁰ Dated October 22, 2009; *CA rollo*, pp. 240-255.

⁴¹ *Rollo*, p. 59. Penned by Associate Justice Antonio L. Villamor with Associate Justices Jose C. Reyes, Jr. and Florito S. Macalino concurring.

⁴² *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009). Citations omitted.

⁴³ G.R. No. 189081, August 10, 2016.

(1) That the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and

(2) That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

The essence of the crime is the unlawful abuse of confidence or deceit in order to cause damage. As this Court previously held, “the element of fraud or bad faith is indispensable.” Our law abhors the act of defrauding another person by abusing his trust or deceiving him, such that, it criminalizes this kind of fraud.

Article 315 of the Revised Penal Code identifies the circumstances which constitute *estafa*. Article 315, paragraph 1 (b) states that *estafa* is committed by abuse of confidence —

Art. 315. *Swindling (estafa)*. — . . . (b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property.

In this kind of *estafa*, **the fraud which the law considers as criminal is the act of misappropriation or conversion. When the element of misappropriation or conversion is missing, there can be no estafa. In such case, applying the foregoing discussions on civil liability ex delicto, there can be no civil liability as there is no act or omission from which any civil liability may be sourced.** However, when an accused is acquitted because a reasonable doubt exists as to the existence of misappropriation or conversion, then civil liability may still be awarded. This means that, while there is evidence to prove fraud, such evidence does not suffice to convince the court to the point of moral certainty that the act of fraud amounts to *estafa*. As the act was nevertheless proven, albeit without sufficient proof justifying the imposition of any criminal penalty, civil liability exists.⁴⁴

The Court further clarified that “whenever the elements of *estafa* are not established, and that the delivery of any personal property was made pursuant to a contract, any civil liability arising from the *estafa* cannot be awarded in the criminal case. This is because the civil liability arising from the contract is not civil liability *ex delicto*, which arises from the same act or omission constituting the crime. Civil liability *ex delicto* is the liability sought to be recovered in a civil action deemed instituted with the criminal case.”⁴⁵

In this case, the Court agrees with the findings of both the RTC and the CA that the prosecution failed to prove all the elements of *estafa* through misappropriation as defined in, and penalized under, paragraph 1 (b),

⁴⁴ Id. Citation omitted.

⁴⁵ Id.

[Article 315] of the [RPC].⁴⁶ As the RTC aptly noted, Rafael, as the representative of herein petitioner, very well knew of and concurred with the entire arrangement, including those which had to be made with the BIR. In fact, petitioner itself admitted that it received the full amount of ₱15,200,000.00 – the full amount to which it was entitled to under the terms of the sale of the Wack-Wack Share. For these reasons, petitioner could not claim that it was deceived. Thus, absent the element of fraud, there could be no misappropriation or conversion to speak of that would justify the charge of *Estafa* and, with it, the alleged civil liability *ex delicto*.

More significantly, the CA correctly observed that petitioner's evidence utterly failed to show that Manzano personally received the ₱2,800,000.00 from petitioner with the duty to hold it in trust for or to make delivery to the latter. In fact, Rafael categorically admitted that he did not even know who actually paid the taxes to the BIR, and that Manzano's name did not appear in the documents pertaining to the payment of the capital gains tax and documentary stamp tax.⁴⁷ This admission clearly contradicts the disputable presumption under Section 3 (q) of Rule 131 of the Rules of Court, *i.e.*, that the ordinary course of business has been followed, which petitioner adamantly relies on to support its claim.

A presumption is an assumption of fact resulting from a rule of law which requires such fact to be assumed from another fact or group of facts found or otherwise established in the action.⁴⁸ It is an inference of the existence or non-existence of a fact which courts are permitted to draw from proof of other facts.⁴⁹ **However, a presumption is not evidence,⁵⁰ but merely affects the burden of offering evidence.⁵¹ Under Section 3, Rule 131, disputable presumptions are satisfactory, if uncontradicted, but may be contradicted and overcome by other evidence, as in this case.** Apart from Rafael's admission, petitioner further admitted that: (a) Moreland directly paid Metroland the ₱2,800,000.00 in check although it did not actually see and was unaware to whom Moreland gave this check;⁵² (b) it did not ask Moreland to issue the check for the payment of the taxes directly in the name of the BIR;⁵³ (c) it would not have dealt with Manzano had she not been Metroland's employee;⁵⁴ and (d) it has several lawyers and an accountant at its disposal, and its representative Rafael is, in fact, in the real estate business and is familiar with brokerage transactions.⁵⁵

⁴⁶ *Rollo*, p. 50.

⁴⁷ *Rollo*, p. 54. See also TSN, August 24, 2000, pp. 22-23; and May 2, 2001, pp. 11-12.

⁴⁸ Black's Law Dictionary, 5th Ed., 1067 citing Uniform Rule 13; NJ Evidence Rule 13.

⁴⁹ See *Delgado vda. de Da la Rosa v. Heirs of Marciana Rustia vda. de Damian*, 516 Phil. 130, 145 (2006).

⁵⁰ See Riano, *Evidence (The Bar Lecture Series)*, (2009), p. 427, citing *California Evidence Code in Black's Law Dictionary*, 5th Ed., 1167.

⁵¹ See Riano, *Evidence (The Bar Lecture Series)*, (2009), p. 427, citing *1 Wharton's Criminal Evidence, Sec. 64*.

⁵² TSN, September 22, 1999, pp. 41-42; and October 26, 2000, p. 4

⁵³ TSN, October 26, 2000, pp. 11-12

⁵⁴ TSN, October 26, 2000, pp. 10-12.

⁵⁵ TSN, September 22, 1999, pp. 43-44; and August 24, 2000, pp. 2-4 and 13.

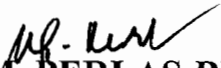
With these admissions and under these circumstances, it is thus safe to conclude that the parties deliberately deviated from the ordinary course of business, and that – at the very least – Manzano did not deal with it in bad faith. By and large, petitioner failed to prove even by preponderance of evidence⁵⁶ the existence of any act or omission of Manzano that would support its claim of civil liability *ex delicto*. In consequence, the present petition must fail.

As a final point, it deserves mentioning that in petitions for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law are addressed. It is not the Court's function to analyze or weigh the evidence (which tasks belong to the trial court as the trier of facts and to the appellate court as the reviewer of facts). The Court is confined to the review of errors of law that may have been committed in the judgment under review.⁵⁷ "The jurisdiction of the Supreme Court in cases brought to it from the Court of Appeals is limited to reviewing and revising the errors of law imputed to it, its findings of fact being conclusive."⁵⁸

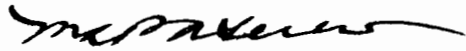
All told, the Court finds no reversible error in the CA ruling denying petitioner's appeal as its findings and conclusion are well supported by the facts and are founded in law.

WHEREFORE, the petition is **DENIED**. The Decision dated September 30, 2009 and the Resolution dated May 26, 2010 of the Court of Appeals in CA-G.R. CV No. 78891 are hereby **AFFIRMED**.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

⁵⁶ Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff has established his case, the burden of evidence shifts to the defendant, who, in turn, has the burden to establish his defense. (See *Sps. De Leon v. Bank of the Philippine Islands*, 721 Phil. 839, 848 (2013), citing *Aznar v. Citibank, N.A., (Philippines)*, 548 Phil. 218, 230 (2007) and *Jison v. CA*, 350 Phil. 138, 173 (1998); and *Far East Bank & Trust Company v. Chante*, 719 Phil. 221 [2013]).

⁵⁷ See *Far Eastern Surety and Insurance Co, Inc. v. People of the Philippines*, 721 Phil. 760, 769 (2013).

⁵⁸ See *id.* at 770, citing *Chan v. CA*, 144 Phil. 678, 684 (1970), in *Remalante v. Tibe*, 241 Phil. 930, 935 (1988).

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

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

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
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