



Republic of the Philippines  
**Supreme Court**  
Manila

EN BANC

**HOME DEVELOPMENT  
MUTUAL FUND (HDMF)  
PAG-IBIG FUND,**  
Petitioner,

**G.R. No. 205698**

- versus -

**CHRISTINA SAGUN,**  
Respondent.

X-----X

**DEPARTMENT OF JUSTICE,**  
rep. by **SEC. LEILA DE LIMA,**  
**STATE PROSECUTOR**  
**THEODORE M. VILLANUEVA,**  
and **PROSECUTOR GENERAL**  
**CLARO A. ARELLANO,** and **THE**  
**NATIONAL BUREAU OF**  
**INVESTIGATION (NBI),**  
Petitioners,

**G.R. No. 205780**

- versus -

**CHRISTINA SAGUN,**  
Respondent.

X-----X

**DEPARTMENT OF JUSTICE,**  
Petitioner,

**G.R. No. 208744**

- versus -

**DELFIN S. LEE,**  
Respondent.

X-----X

**HOME DEVELOPMENT  
MUTUAL FUND (HDMF),**  
Petitioner,

**G.R. No. 209424**

- versus -

Decision

2

G.R. No. 205698, 205780, 208744, 209424,  
209446, 209489, 209852, 210095, 210143,  
228452, 228730, 230680

**GLOBE ASIATIQUE REALTY  
HOLDINGS CORPORATION,  
DELFIN S. LEE, in his capacity as  
the President of the Corporation,  
and TESSIE G. WANG,**  
Respondents.

X-----X

**PEOPLE OF THE PHILIPPINES, G.R. No. 209446**  
Petitioner,

- versus -

**ALEX M. ALVAREZ,**  
Respondent.

X-----X

**HOME DEVELOPMENT G.R. No. 209489**  
**MUTUAL FUND,**  
Petitioner,

- versus -

**ATTY. ALEX M. ALVAREZ**  
Respondent.

X-----X

**HOME DEVELOPMENT G.R. No. 209852**  
**MUTUAL FUND, (HDMF),**  
Petitioner,

- versus -

**DELFIN S. LEE,**  
Respondent.

X-----X

**DEPARTMENT OF JUSTICE G.R. No. 210095**  
Petitioner,

- versus -

**DELFIN S. LEE,**  
Respondent.

X-----X

**PEOPLE OF THE PHILIPPINES G.R. No. 210143**  
Petitioner,

- versus -

Decision

3

G.R. No. 205698, 205780, 208744, 209424,  
209446, 209489, 209852, 210095, 210143,  
228452, 228730, 230680

**DELFIN S. LEE,**  
Respondent.

x-----x

**HOME DEVELOPMENT  
MUTUAL FUND (HDMF),**  
Petitioner,

**G.R. No. 228452**

- versus -

**DEXTER L. LEE,**  
Respondent.

x-----x

**PEOPLE OF THE PHILIPPINES,**  
Petitioner,

**G.R. No. 228730**

- versus -

**DEXTER L. LEE,**  
Respondent.

x-----x

**CRISTINA SALAGAN,**  
Petitioner,

**G.R. No. 230680**

Present:

- versus -

CARPIO, *Acting Chief Justice*  
VELASCO, JR.,  
LEONARDO-DE CASTRO,  
\*PERALTA,  
BERSAMIN,  
DEL CASTILLO,  
PERLAS-BERNABE,  
LEONEN,  
\*\*JARDELEZA,  
CAGUIOA,  
MARTIRES,  
TIJAM,  
REYES, JR., and  
GESMUNDO, *JJ.*

**PEOPLE OF THE PHILIPPINES  
and HOME DEVELOPMENT  
MUTUAL FUND (HDMF),**  
Respondents.

Promulgated:  
July 31, 2018

x-----x

\* No part.

\*\* No part, due to prior participation as Solicitor General.

**DECISION****BERSAMIN, J.:**

We hereby consider and resolve the following consolidated appeals by petition for review on *certiorari*,<sup>1</sup> namely:

(1) **G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452 and 228730**, whereby petitioners Department of Justice (DOJ), the People of the Philippines and the Home Development Mutual Fund (HDMF) assail the decisions<sup>2</sup> of the Court of Appeals (CA): (i) setting aside the August 10, 2011 *Review Resolution* of the DOJ insofar as Christina Sagun (Sagun) is concerned; and (ii) annulling the May 22, 2012 and August 22, 2012 resolutions of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga (Pampanga RTC), and quashing the warrants of arrest issued against Delfin Lee, Dexter Lee (Dexter), and Atty. Alex Alvarez (Atty. Alvarez) for lack of probable cause;

(2) **G.R. No. 230680**, whereby petitioner Cristina Salagan assails the decision of the CA dismissing her petition for *certiorari* and upholding the resolutions dated May 22, 2012 and January 29, 2014 of the Pampanga RTC insofar as finding probable cause for the crime of syndicated *estafa* and the issuance of a warrant of arrest against her were concerned;

(3) **G.R. Nos. 208744 and 210095**, whereby the DOJ challenges the resolutions of the CA dismissing its petition for *certiorari* for being filed out of time;<sup>3</sup> and

(4) **G.R. No. 209424**, whereby HDMF assails the decision promulgated on October 7, 2013,<sup>4</sup> whereby the CA found no grave abuse of discretion on the part of the Regional Trial Court, Branch 58, in Makati City (Makati RTC) in issuing its January 31, 2012 final resolution granting the motion for summary judgment of Globe Asiatique Realty Holdings, Corp. (Globe Asiatique) and Delfin Lee in Civil Case No. 10-1120 entitled *Globe Asiatique Realty Holdings Corporation and Delfin Lee, in his capacity as President of the Corporation v. Home Development Mutual Fund (HDMF) or Pag-IBIG Fund, its Board of Trustees and Emma Linda Faria, Officer-in-Charge*.

<sup>1</sup> *Rollo*, G.R. No. 210143, pp. 4885A-4885B; it is to be noted that on June 7, 2017, the Court issued a Resolution consolidating G.R. Nos. 228452 and 228730 with the other related cases.

<sup>2</sup> In C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554 and C.A.-G.R. SP No. 127690.

<sup>3</sup> In C.A.-G.R. SP No. 130409.

<sup>4</sup> In C.A.-G.R. SP No. 128262.

### Salient Factual Antecedents

In 2008, Globe Asiatique, through its president Delfin Lee, entered into a Window I–Contract to Sell (CTS) Real Estate Mortgage (REM) with Buy-back Guaranty take out mechanism with the HDMF, also known as the Pag-Ibig Fund, for its Xevera Bacolor Project in Pampanga. Globe Asiatique and HDMF also executed various Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOAs).<sup>5</sup>

Under the FCAs, Delfin Lee warranted that the loan applicants that Globe Asiatique would allow to pre-process, and whose housing loans it would approve, were existing buyers of its real estate and qualified to avail themselves of loans from HDMF under the Pag-Ibig Fund; that all documents submitted to the HDMF in behalf of the applicants, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding and enforceable; that any person or agent employed by Globe Asiatique or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and that in the event of a default of the three-month payment on the amortizations by said members or any breach of warranties, Globe Asiatique would buy back the CTS/REM accounts during the first two years of the loan.<sup>6</sup>

The parties further agreed that Globe Asiatique would collect the monthly amortizations on the loans obtained by its buyers in the first two years of the loan agreements and remit the amounts collected to HDMF through a Collection Servicing Agreement (CSA). In this regard, Delfin Lee undertook to maintain at least 90% Performing Accounts Ratio (PAR) under the CSA.<sup>7</sup>

On June 10, 2008, Delfin Lee proposed the piloting of a Special Other Working Group (OWG) Membership Program for its Xevera Bacolor Project while the FCA was in effect. The OWG Membership Program would comprise of HDMF members who were not formally employed but derived income from non-formal sources (*e.g.*, practicing professionals, self-employed members, Overseas Filipino Workers (OFWs), and entrepreneurs). Delfin Lee offered to extend the buy-back guarantee from two to five years to bolster his position that the project was viable. HDMF eventually entered into another agreement for this purpose.<sup>8</sup>

Corollary to the foregoing, the parties entered into a second FCA worth ₱200,000,000.00. Globe Asiatique likewise undertook that the PAR for all of its projects would be increased to at least 95%; that the buy-back

<sup>5</sup> *Rollo* (G.R. No. 205698), Vol. I, p. 26.

<sup>6</sup> *Id.* at 16.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 28.

guaranty for all accounts taken out from the Xevera Bacolor Project would be increased to five years; that it would assign all its housing loan proceeds from its other projects to HDMF to cover any unpaid obligations from the Xevera Project; and that the OWG borrowers, to be eligible for Pag-Ibig Membership, would be required to present their Income Tax Returns (ITRs) and affidavits of income.<sup>9</sup>

On July 13, 2009, the parties executed a MOA granting Globe Asiatique an additional ₱5,000,000,000.00 funding commitment line for its Xevera Projects in Pampanga on the condition that Globe Asiatique would maintain a 95% PAR, and that the housing loan take-outs would be covered by a buy-back guaranty of five years.<sup>10</sup> Section 9 of the MOA expressly stated, however, that the MOA “supersedes, amends and modifies provisions of all other previous and existing Agreements that are Inconsistent hereto.”<sup>11</sup>

More FCAs were executed between the parties. According to HDMF, the aggregate amount of ₱7,007,806,000.00 was released to Globe Asiatique in a span of two years from 2008 to September 24, 2010, representing a total of 9,951 accounts.<sup>12</sup>

In the course of its regular validation of buyers’ membership eligibilities for taking out loans for the Xevera Project, HDMF allegedly discovered some fraudulent transactions and false representations purportedly committed by Globe Asiatique, its owners, officers, directors, employees, and agents/representatives, in conspiracy with HDMF employees. HDMF invited the attention of Delfin Lee regarding some 351 buyers who surrendered or withdrew their loans and were no longer interested in pursuing the same, and requested Globe Asiatique to validate the 351 buyers. Delfin Lee replied that Globe Asiatique was actually monitoring about 1,000 suspicious buyers’ accounts. Subsequently, HDMF ostensibly found out about an additional 350 buyers who either denied knowledge of having availed of loans or manifested their intention to terminate their account.<sup>13</sup>

As a result, HDMF revoked the authority of Globe Asiatique under the FCA; suspended all take-outs for new housing loans; required the buy-back of the 701 fraudulent accounts; and cancelled the release of funds to Globe Asiatique in August 2010.

About a month later, Globe Asiatique discontinued remitting the monthly amortization collections from all borrowers of Xevera.

<sup>9</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 17.

<sup>10</sup> *Rollo* (G.R. No. 209424), Vol. II, pp. 598, 600.

<sup>11</sup> *Id.* at 601.

<sup>12</sup> *Rollo* (G.R. No. 205698), Vol. I, p. 30.

<sup>13</sup> *Id.* at 30-31.

Finally, HDMF terminated the CSA with Globe Asiatique on August 31, 2010.<sup>14</sup>

Meanwhile, HDMF continued its post take-out validation of the borrowers, and discovered that at least 644 supposed borrowers under the OWG Membership Program who were processed and approved by Globe Asiatique for the take-out by HDMF were not aware of the loans they had supposedly signed in relation to the Xevera Project; and assuming they were aware of the loan agreements, they had merely signed the same in consideration of money given to them by Globe Asiatique; that some borrowers were neither members of HDMF nor qualified to take out a housing loan from HDMF because they had insufficient or no income at all or they did not have the minimum number of contributions in HDMF; and that some of the borrowers did not live in the units they purchased.<sup>15</sup>

HDMF alleged that at least 805 borrowers could not be located or were unknown in the addresses they had provided in the loan agreements, or had indicated non-existent addresses therein; and that it incurred damages totalling ₱1.04 billion covering the loans of 644 fraudulent and 805 fake borrowers attributed to the fraudulent and criminal misrepresentations of Delfin Lee and Globe Asiatique's officials and employees.<sup>16</sup>

### The Criminal Charges

Upon the recommendation of the National Bureau of Investigation (NBI), the DOJ conducted its preliminary investigation against Globe Asiatique, particularly its officers, namely: Delfin S. Lee, Dexter L. Lee, Ramon Palma Gil, Cristina Salagan, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Atty. Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguiling, John Tungol and Atty. Alex Alvarez on the strength of the complaint-affidavit dated October 29, 2010 filed by Emma Linda B. Faria, then the officer-in-charge (OIC) of the HDMF. This first complaint alleged the commission of the crime of syndicated *estafa* constituting economic sabotage, as defined and penalized under Article 315(2)(a) of the *Revised Penal Code*, in relation to Presidential Decree No. 1689 (P.D. No. 1689).<sup>17</sup>

The DOJ formed a panel of prosecutors to investigate the complaint.

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<sup>14</sup> Id. at 31.

<sup>15</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 18.

<sup>16</sup> Id. at 19.

<sup>17</sup> Docketed as I.S. No. XVI-INV-10J-00319 entitled *National Bureau of Investigation (NBI)/ Home Development Mutual Fund (HDMF) vs. Globe Asiatique Realty Holdings Corp., et al.*

On December 10, 2010, the NBI Anti-Graft Division recommended the filing of a second complaint for syndicated *estafa* constituting economic sabotage under P.D. No. 1689, in relation to Article 315(2) of the *Revised Penal Code* against Delfin Lee and the others. This second complaint was precipitated by the complaints of supposed Globe Asiatique clients such as Evelyn Niebres, Catherine Bacani and Ronald San Nicolas, who were victims of double sale perpetrated by Globe Asiatique.<sup>18</sup>

Also, HDMF brought a complaint against Globe Asiatique and its officers for the fraudulent take-out of housing loans for bogus buyers.

Subsequently, the DOJ formed yet another panel of prosecutors to conduct another preliminary investigation.<sup>19</sup>

Upon learning of the filing of the second case in the DOJ, Delfin Lee filed a petition for the suspension of proceedings pending the outcome of the civil action for specific performance that he and Globe Asiatique had commenced in the Makati RTC, contending therein that the issue in the civil case constituted a prejudicial question vis-a-vis the second DOJ case.

On February 21, 2011, the DOJ panel of prosecutors issued an *Omnibus Order* denying Delfin Lee's prayer for suspension of proceedings.

After Delfin Lee's motion for reconsideration was denied on July 5, 2011, he filed his counter-affidavit *ad cautelam* in the DOJ.<sup>20</sup>

On August 10, 2011, Prosecutor General Claro A. Arellano approved the *Review Resolution* of Senior Deputy State Prosecutor Theodore M. Villanueva, the Chairman of the DOJ's Task Force on Securities and Business Scam (SDSP Villanueva) pertaining to the first criminal complaint.<sup>21</sup> It is noted that the investigating prosecutors of the DOJ's Task Force on Securities and Business Scam had initially recommended the filing of charges for the crime of *estafa* defined and penalized under paragraph 2(a) of Article 315 of the *Revised Penal Code*, in relation to paragraph 2, Section 1 of PD No. 1689, against Delfin Lee, Sagun, and Cristina Salagan (Salagan). However, SDSP Villanueva recommended in the *Review Resolution* the inclusion of Atty. Alvarez and Dexter Lee in the *estafa* charge, thereby charging syndicated *estafa*, with no bail recommended.<sup>22</sup>

<sup>18</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 20.

<sup>19</sup> The case was docketed as NPS No. XV-05-INV-10L-00363 entitled *National Bureau of Investigation (NBI)/Evelyn B. Niebres, et al. vs. Globe Asiatique Realty Holdings, Corp./Delfin S. Lee, et al.*

<sup>20</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 21.

<sup>21</sup> *Id.*

<sup>22</sup> *Rollo* (G.R. No. 209446), Vol. I, p. 165.



Consequently, Delfin Lee filed an amended petition on August 25, 2011 to enjoin the DOJ from filing the information for syndicated *estafa* in relation to the first DOJ case.<sup>23</sup>

On September 15, 2011, Sagun filed in the CA her petition for *certiorari* and prohibition with prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction to assail the August 10, 2011 *Review Resolution* of the DOJ (C.A.-G.R. SP No. 121346).<sup>24</sup>

On his part, Atty. Alvarez resorted to his own petition for review on October 3, 2011 of the same August 10, 2011 *Review Resolution* in the DOJ. However, on November 14, 2011, he withdrew his petition following his filing of a petition in the Manila RTC on October 10, 2011 assailing the same August 10, 2011 *Review Resolution*. He also filed a petition for *certiorari* with the CA on November 15, 2011 to enjoin the DOJ from filing the information in the first syndicated *estafa* case, but he subsequently withdrew the petition and filed on the same day a petition for injunction and prohibition in the Caloocan City RTC, Branch 125, to enjoin the DOJ from filing the information in the first syndicated *estafa* case and from conducting the preliminary investigation in the second case.<sup>25</sup>

### Proceedings in the Pasig RTC

Prior to the DOJ's issuance of its August 10, 2011 *Review Resolution*, Delfin Lee initiated his action for injunction on July 28, 2011 in the Pasig RTC to enjoin the DOJ from proceeding with the second DOJ case, and reiterated therein that the civil case pending in the Makati RTC constituted a prejudicial question vis-a-vis the second DOJ case. The case was docketed as Civil Case No. 73115 entitled *Delfin S. Lee v. Department of Justice*.

The Pasig RTC, then presided by Judge Rolando Misleng, granted Delfin Lee's prayer for the issuance of the TROs on August 16, 2011, and admitted the amended petition on August 26, 2011.<sup>26</sup>

The Pasig RTC thereafter issued the writ of preliminary injunction under both the original and the amended petitions on September 5, 2011.<sup>27</sup>

<sup>23</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 21.

<sup>24</sup> Sagun later on impleaded the Pampanga RTC in view of the eventual filing of the information against her in the RTC of Pampanga on April 30, 2012.

<sup>25</sup> *Rollo* (G.R. No. 209446), Vol. I, p. 15-16.

<sup>26</sup> On August 25, 2011, Delfin Lee filed an Amended Petition in the Pasig RTC to enjoin the filing of the Information for the first syndicated *estafa* case based on the August 10, 2011 *Review Resolution*.

<sup>27</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 22.

Aggrieved, the DOJ filed a petition for *certiorari* on October 6, 2011 (C.A.-G.R. SP No. 121594), alleging that Judge Mislang had committed grave abuse of discretion in issuing the writ of preliminary injunction enjoining the filing of the information for syndicated *estafa* with respect to the first case and from proceeding with the preliminary investigation in the second case on the ground of the existence of a prejudicial question.<sup>28</sup>

On April 16, 2012, the CA granted the DOJ's petition for *certiorari* in C.A.-G.R. SP No. 121594, and ruled that the facts and issues in the civil case pending in the Makati RTC were not determinative of the guilt or innocence of Delfin Lee in the cases filed in the DOJ; hence, it annulled and set aside the writ of preliminary injunction issued by Judge Mislang.<sup>29</sup>

The adverse ruling in C.A.-G.R. SP No. 121594 was appealed by petition for review on *certiorari*. On July 4, 2012, the Court dismissed the appeal because of Delfin Lee's failure to show any reversible error on the part of the CA in issuing the assailed decision. The dismissal became final and executory.<sup>30</sup>

Much later on, Delfin Lee learned of the third and fourth criminal complaints filed in the DOJ. Again, he sought the issuance of a TRO by the Pasig RTC.

On March 21, 2013, Judge Mislang issued the second TRO enjoining the preliminary investigation of the second, third and fourth criminal complaints.<sup>31</sup>

On April 10, 2013, Judge Mislang issued the writ of preliminary injunction in Civil Case No. 73115 enjoining the conduct of the preliminary investigation in the second, third and fourth criminal complaints.<sup>32</sup>

Consequently, the DOJ filed another petition for *certiorari*, docketed as **C.A.-G.R. SP No. 130409**, to annul the writ of preliminary injunction issued on April 10, 2013 by the Pasig RTC.

### **Proceedings in the Pampanga RTC**

With the lifting of the first writ of preliminary injunction issued by the Pasig RTC, the DOJ filed a criminal case for syndicated *estafa* against

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<sup>28</sup> Id.

<sup>29</sup> Id. at 23-24.

<sup>30</sup> Id. at 24.

<sup>31</sup> *Rollo* (G.R. No. 208744), Vol. I, p. 59.

<sup>32</sup> Id. at 61-62.

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Delfin Lee, Dexter Lee, Christina Sagun (Sagun), Cristina Salagan (Salagan), and Atty. Alex Alvarez (Atty. Alvarez) on April 30, 2012 in the Pampanga RTC. The case was docketed as Criminal Case No. 18480 entitled *People of the Philippines v. Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez*.<sup>33</sup>

The information in Criminal Case No. 18480 reads:

That sometime during the period from 10 June 2008 to 24 September 2010, or on dates prior and subsequent thereto, in the City of San Fernando, Pampanga, and within the jurisdiction of this Honorable Court, the above-named accused DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN[,] CRISTINA SALAGAN and ATTY. ALEX ALVAREZ, acting as a syndicate formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme of soliciting funds from the general public, each performing a particular act in furtherance of the common design, by way of take out on housing loans of supposed Pag-IBIG fund members through the use of fictitious buyers and/or “special buyers” conspiring, confederating and mutually helping one another, by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of fraud, did then and there wilfully, unlawfully and feloniously defraud the private complainant HOME DEVELOPMENT MUTUAL FUND, otherwise known as the Pag-IBIG Fund, in the following manner, to wit: accused Delfin S. Lee, being the president and chief executive officer of Globe Asiatique Realty Holdings Corporation (GA), a domestic corporation engaged in real estate development, did then and there wilfully, unlawfully and knowingly enter into funding commitment agreements and other transactions with the private complainant, wherein said accused Delfin S. Lee made false and fraudulent representations to the latter that GA has interested buyers in its Xevera projects in Bacolor and Mabalacat, Pampanga when, in truth and in fact, said accused knew fully well that the corporation does not have such buyers, as in fact the said corporation, through accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, in conspiracy with one another, submitted names of fictitious buyers and documents to Pag-IBIG Fund as housing loan applicants/buyers of GA’s Xevera projects in order to obtain, as in fact the said corporation obtained, through accused Delfin S. Lee, fund releases from HDMF by way of housing loan take-out of the said fictitious buyers. In addition, the said corporation, through accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez, has also engaged in a “special buyers” scheme whereby it recruited persons who does not have any intention to buy its housing units in Xevera but, in exchange for a fee, said “special buyers” lent their names and Pag-IBIG membership to GA, so that the said corporation could use, as in fact it has used, the names and Pag-IBIG membership of the said “special buyers” in obtaining fund releases from HDMF, as the said corporation, through accused Delfin S. Lee, had in fact obtained fund releases from HDMF, by way of take-out of the supposed housing loans of the “special buyers”, and by reason of the aforesaid false and fraudulent representations of accused Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez,

<sup>33</sup> Rollo (G.R. No. 209852), Vol. I, p. 24.

HDMF was induced to release, through several funding commitment agreements, to Globe Asiatique Realty Holdings Corporation, through accused Delfin S. Lee, the total amount of ₱6,653,546,000.00, more or less, and upon receipt of the aforesaid amount, the above-named accused did then and there willfully, unlawfully and feloniously convert, misappropriate and misapply the same, and despite repeated demands, the above-named accused failed and refused to pay the same, to the damage and prejudice of the private complainant in the aforesaid amount.

As to the element of deceit, it was found that the documents submitted by GA concerning the existence and qualifications of its buyers are spurious and/or questionable. It was uncovered that at least 351 of the supposed buyers have already surrendered or withdrew their loans and/or are no longer interested in pursuing their loans, while the alleged buyers for additional 350 Xevera accounts have either denied availing of the loans or expressed their intention to cancel their respective accounts. Afterwards, documents obtained by HDMF through special audit conducted on the Xevera Projects disclose that out of the 8,230 loans taken out by Pag-IBIG, only 39% of the borrowers belong to the Other Working Group (OWG) category. On the other hand, out of the 10% of the OWG surveyed/audited, only 1.85% are actually living in the units they purchased, whereas, 83.38% of the acquired units remain unoccupied; 7.69% of the units are closed, 6.15% are being occupied by third parties; and lastly, 0.92% of the units are yet to be constructed. The same documents likewise show that: (a) from a random examination of the units taken out by Pag-IBIG and which are being occupied by third parties, 16 units are being occupied by in-house buyers – two of whom have fully paid their obligations with GA; 3 units were leased out by non-borrowers; 1 unit is being occupied by a replacement buyer; and 82% of the borrowers of the units have failed to submit their respective Income Tax Returns (ITR) which is a mandatory requirement for the approval of their loan applications, and (b) as a result of the post take-out validation conducted by HDMF, it was found that 644 borrowers endorsed by GA are not genuine buyers of Xevera homes while 802 are nowhere to be found; 3 buyers are already deceased; and 275 were not around during the visit, hence, establishing that all of them are fictitious buyers.

In connection with the “special buyers scheme,” it was established that the people engaged as such have no intention of buying housing units from GA, but merely agreed to the same after GA’s agents sought them out for a fee of ₱5,000.00. After being paid such fee, the aforementioned “special buyers” agreed to apply for membership with Pag-IBIG, on the condition that it is GA that pays for their 24 months installments, so that they can be qualified to apply for a Pag-IBIG housing loan. Thereafter, these “special buyers” are made to execute loan and other supporting documents, which are then submitted to HDMF for take-out of their housing loans for the Xevera projects. After take-out, GA pays the monthly amortizations of these “special buyers” to Pag-IBIG, using the payment made to it by Pag-IBIG on the housing loan of GA’s Xevera project buyers. In this wise, GA’s Performing Accounts Ration (PAR) reached as high as 99.97%. However, when HDMF stopped fund releases to GA by way of housing loan take-outs of its buyers, or sometime August 2010, GA started to fail in remitting to HDMF Pampanga Branch office the monthly housing loan amortizations of its buyers of Xevera project. Thus, GA’s almost 100% monthly collection/remittance rate dropped to 0% or no remittance at all when HDMF stopped its fund releases to GA,

thereby establishing that the monthly amortizations of its borrowers were being paid by GA from the funds released by HDMF on the housing loans of its Xevera housing project borrowers.

That in carrying out the aforesaid conspiracy, accused Christina Sagun, head of the documentation department of Globe Asiatique Realty and Holdings Corp., did then and there unlawfully, feloniously and knowingly process and approve the housing loan applications of the said fictitious and “special buyers” of GA, in clear violation of the terms of conditions of the agreements entered into between HDMF and GA; accused Dexter L. Lee, did then and there, unlawfully, feloniously and knowingly order employees of GA to find and recruit “special buyers,” and in fact found such special buyers, in accordance with the aforementioned illegal scheme, and in fact, is a co-signatory of the checks issued by GA in favor of the said “special buyers;” accused Atty. Alex Alvarez, did then and there unlawfully, feloniously and knowingly notarize crucial pieces of documents, consisting, among others, of the buyer’s affidavit of income, promissory note, and developer’s affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by HDMF, all of which are essential for the processing and approval of the purported transaction; and accused CRISTINA SALAGAN, being the head of GA’s accounting department, did then and there unlawfully, feloniously and knowingly allow the release of the questionable amounts of ₱5,000.00 as payment to every fake/fictitious and/or “special buyer” applicant of GA despite knowledge of its unlawful and illegal nature, to the damage and prejudice of HDMF and/or its members.

CONTRARY TO LAW.<sup>34</sup>

In due course, the respondents separately moved to quash the information and to seek judicial determination of probable cause.<sup>35</sup>

On May 22, 2012, the Pampanga RTC found probable cause for syndicated *estafa* and for the issuance of warrants of arrest, to wit:

PREMISES GIVEN, the Court orders the following:

I. Probable cause for the crime of ESTAFA (ARTICLE 315 [2] [a] of the Revised Penal Code, in relation to Section 1 of P.D. 1689, as amended, is found against the Accused DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.

II. Issue Warrant of Arrest against DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.

III. There is NO BAIL RECOMMENDED for each of DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN and ATTY. ALEX ALVAREZ.

<sup>34</sup> Id. at 24-27.

<sup>35</sup> Id. at 27-29.

The setting (sic) on May 23 and 24, 2010 is (sic) CANCELLED.

SO ORDERED.<sup>36</sup>

Upon notice of the resolution, Delfin Lee filed a *Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion*.

On August 22, 2012, the Pampanga RTC denied Delfin Lee's *Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending Resolution of this Motion*.<sup>37</sup>

Delfin Lee, Dexter and Salagan moved to reconsider the August 22, 2012 resolution of the Pampanga RTC.

Without waiting for the resolution of the motion, Delfin Lee filed a petition for *certiorari* with prayer for the issuance of a TRO and/or writ of preliminary injunction in the CA on November 26, 2012 to nullify the resolutions of the Pampanga RTC dated May 22, 2012 and August 22, 2012 (**C.A.-G.R. SP No. 127553**).<sup>38</sup>

Meanwhile, Atty. Alvarez also filed a motion for reconsideration of the May 22, 2012 resolution, but the Pampanga RTC denied the motion on August 22, 2012. Thereafter, he filed a petition for *certiorari* with the CA to nullify and set aside the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC. The petition was docketed as **C.A.-G.R. SP No. 127690**.

Dexter filed his own petition for *certiorari* in the CA to question the May 22, 2012 and August 22, 2012 resolutions of the Pampanga RTC,

Salagan likewise filed her own petition for *certiorari* in the CA alleging grave abuse of discretion on the part respondent Judge of the Pampanga RTC in issuing the May 22, 2012 resolution denying her second motion to quash information with prayer to re-determine probable cause and the January 29, 2014 resolution denying her motion for reconsideration.

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<sup>36</sup> Id. at 28-29.

<sup>37</sup> Id. at 30.

<sup>38</sup> Id. at 30-31.

**The Civil Case  
(Proceedings before the Makati RTC)**

Globe Asiatique and Delfin Lee initiated the complaint for specific performance and damages against HDMF on November 15, 2010. Docketed as Civil Case No. 10-1120,<sup>39</sup> the case was assigned to Branch 58 of the Makati RTC. Globe Asiatique and Delfin Lee thereby sought to compel HDMF to accept the proposed replacements of the buyers/borrowers who had become delinquent in their amortizations, asserting that HDMF's inaction to accept the replacements had forced Globe Asiatique to default on its obligations under the MOA and FCAs.<sup>40</sup>

Globe Asiatique and Delfin Lee filed a *Motion for Summary Judgment*, which the Makati RTC, after due proceedings, resolved on January 30, 2012, disposing thusly:

**WHEREFORE**, premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiff (sic) have proven their case by preponderance of evidence. **As such, they are entitled to specific performance and right to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper.**

2. Pursuant to the provisions of their MOA amending the continuing FCAs and CSAs, defendant HDMF is hereby ordered to comply faithfully and religiously with its obligation under the said contracts, including but not limited to the release of loan take-out proceeds of those accounts whose Deed[s] of Assignment with Special Power of Attorney have already been annotated in the corresponding Transfer Certificate of Title covering the houses and lots purchased by the Pag-IBIG member-borrowers from plaintiff GARHC as well as the evaluation of the loan applications of those who underwent or will undergo plaintiff GARHC's loan counselling and are qualified or PAG-IBIG FUND loans under the MOA and continuing FCAs and process the approval thereof only if qualified, under the Window 1 Facility as provided for in the MOA and continuing FCAs;

3. The unilateral cancellation by defendant HDMF of the continuing FCAs specifically the latest FCAs of December 15, 2009, January 5 and March 17, 2010 and CSA dated 10 February 2009, is hereby SET ASIDE[;]

4. Defendants are ordered to automatically off-set the balance of those listed in Annex "E" of the Motion for Summary Judgment against the retention money, escrow money, funding commitment fees, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;

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<sup>39</sup> Id. at 19.

<sup>40</sup> Id. at 20.

5. Defendants are ordered to accept the replacement-buyers listed in Annex "F" of the Motion for Summary Judgment, which list is unopposed by defendants, without interest or penalty from the time of defendant HDMF's cancellation of the Collection Servicing Agreement (CSA) resulting to the refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;

6. Defendants are ordered to release the corresponding Transfer Certificate of Title[s] (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "E" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof.

Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled to on March 12, 2012 at 8:30 in the morning.

SO ORDERED.<sup>41</sup>

On December 11, 2012, the Makati RTC denied the motion for reconsideration of OIC Faria and Atty. Berberabe filed through the Yorac Arroyo Chua Caedo and Coronal Law Firm (the Yorac Law Firm). The trial court held that the Yorac Law Firm was not duly authorized to represent the HDMF; hence, it treated the motion for reconsideration as a mere scrap of paper and opined that its filing did not toll the running of the period to appeal. As to the HDMF, the Makati RTC, noting with approval the manifestation of Globe Asiatique and Delfin Lee to the effect that the HDMF had not filed a motion for reconsideration or taken an appeal, deemed the summary judgment final and executory as to the HDMF.<sup>42</sup>

Aggrieved, the HDMF brought its petition for *certiorari* (C.A.-G.R. SP No. 128262).

### Decisions of the CA

The CA promulgated the separate decisions now under review.

#### 1.

**C.A.-G.R. SP No. 130409  
(DOJ petition assailing the April 10, 2013 writ of  
preliminary injunction issued by the Pasig RTC)**

<sup>41</sup> Id. at 22-23.

<sup>42</sup> *Rollo* (G.R. No. 209424), Vol. I, p. 26.



On June 18, 2013, the DOJ filed the intended petition for *certiorari* but inadvertently did not indicate therein the proper docket number for the case thereby causing the assignment by the CA of a new docket number, specifically C.A.-G.R. SP No. 130409. On June 26, 2013, the CA dismissed the DOJ's petition for *certiorari* in C.A.-G.R. SP No. 130409 on the ground that it had not received a motion for extension of time to file the petition.<sup>43</sup>

Meanwhile, on July 8, 2013, the CA issued its resolution in C.A.-G.R. SP No. 130404 denying the DOJ's motion for extension for failure of the DOJ to file the intended petition for *certiorari*.

Realizing its error later on, the DOJ immediately filed a manifestation with motion to admit petition for *certiorari* to clarify the mix-up and rectify its error. On August 14, 2013, the CA denied the DOJ's manifestation with motion to admit petition for *certiorari*.

Hence, the DOJ filed a petition docketed as G.R. No. 208744 to assail the resolution promulgated on July 8, 2013 in C.A.-G.R. SP No. 130404.<sup>44</sup> As to CA-G.R. SP No. 130409, the DOJ moved for reconsideration of the CA's resolution dated June 26, 2013, but the motion was denied on November 11, 2013.<sup>45</sup>

## 2.

### **C.A.-G.R. SP No. 128262 (HDMF Petition assailing the January 30, 2012 and December 11, 2012 resolutions of the Makati RTC in Civil Case No. 10-1120)**

On October 7, 2013, the CA promulgated its decision dismissing the HDMF petition in **C.A.-G.R. SP No. 128262**,<sup>46</sup> to wit:

**WHEREFORE**, there being no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in rendering the assailed Resolution dated January 30, 2012 containing the Summary Judgment and the Resolution dated December 11, 2012 denying HDMF, Faria and Atty. Berberabe's Motion for Reconsideration, the instant petition is hereby **DISMISSED**.

**SO ORDERED.**

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<sup>43</sup> Id. at 64-65.

<sup>44</sup> Id. at 65-66.

<sup>45</sup> *Rollo* (G.R. No. 210095), Vol. I, pp. 75-76.

<sup>46</sup> *Rollo* (G.R. No. 209424), Vol. I, pp. 14-34; penned by Associate Justice Stephen C. Cruz with the concurrence of Associate Justice Elihu A. Ybanez, and Associate Justice Danton Q. Bueser, while Associate Justice Magdangal M. De Leon and Associate Justice Myra V. Garcia Fernandez dissented.

The CA opined that the HDMF had availed itself of the wrong remedy to assail the January 30, 2012 summary judgment and the December 11, 2012 resolution of the Makati RTC; and that the *certiorari* petition did not further show that it had been filed under the authority of the Office of the Government Corporate Counsel, or by a private law firm with the necessary pre-requisite conformity of the Government Corporate Counsel and Commission on Audit.<sup>47</sup>

3.

**C.A.-G.R. SP No. 121346**  
**(Sagun Petition assailing the August 10, 2011**  
***Review Resolution of the DOJ*)**

In **C.A.-G.R. SP No. 121346**, the CA opined that respondent Sagun's duties as the Documentation Head of Globe Asiatique were ministerial in nature and did not require the employment of much discretion. As the DOJ observed in its assailed *Review Resolution*, Sagun's functions were limited to the collation of the documents submitted by the borrowers/buyers through Globe Asiatique's Marketing Department, and to ensuring that such documents were complete and duly accomplished, and to the determination and verification from the HDMF through the submission of Membership Status Verification whether the borrowers/buyers were really HDMF members, or had updated contributions, or had no existing housing loans, and were thus qualified to apply for housing loans. The CA conceded that any errors or oversights, which could occur in the performance of Sagun's duties, should be attributed to her negligence, as concluded in the *Review Resolution*.

While the DOJ asserted that the fraud could have been averted had Sagun not been negligent, the CA explained that such negligence negated any intent to commit a crime; hence, Sagun could not have committed the crime of *estafa* charged. Moreover, the documents Sagun had reviewed were forwarded to the HDMF for evaluation and approval; hence, the HDMF had the opportunity and the ultimate prerogative and discretion on the documents.

Accordingly, the CA disposed in its assailed decision promulgated on October 5, 2012 in **C.A.-G.R. SP No. 121346**,<sup>48</sup> viz.:

**WHEREFORE**, premises considered, the Petition for *Certiorari* and Prohibition is hereby **PARTIALLY GRANTED**. Consequently, the subject *Review Resolution* dated August 10, 2011 issued by respondent

<sup>47</sup> Id. at 32.

<sup>48</sup> *Rollo* (G.R. No. 205698), Vol. I, pp. 24-57; penned by Associate Justice Angelita Gacutan with the concurrence of Associate Justice Mariflor Punzalan Castillo and Associate Justice Francisco P. Acosta.

Decision

19

G.R. No. 205698, 205780, 208744, 209424,  
209446, 209489, 209852, 210095, 210143,  
228452, 228730, 230680

DOJ is **SET ASIDE** and **DISMISSED** as against petitioner Christina Sagun.

**SO ORDERED.**<sup>49</sup>

4.

**C.A.-G.R. SP No. 127553, C.A.-G.R. SP No. 127554,  
and C.A.-G.R. SP No. 127690  
(respectively, the Delfin Lee Petition, Dexter Lee Petition  
and Alvarez Petition assailing the May 22, 2012 and August  
22, 2012 resolutions of the Pampanga RTC)**

On October 3, 2013, the CA promulgated its decision on the Alvarez petition (**C.A.-G.R. SP No. 127690**),<sup>50</sup> ruling that there was not enough evidence to implicate Atty. Alvarez; that the RTC had merely listed the documents submitted by the task force and had not conducted any evaluation of the evidence to determine whether or not Alvarez had participated in the alleged grand scheme to defraud the HDMF; and that the RTC had relied solely on the recommendation of the panel of prosecutors, which was insufficient under prevailing jurisprudence. The disposition was as follows:

**WHEREFORE**, in view of the foregoing premises, the Petition for Certiorari and the Supplemental Petition are **PARTIALLY GRANTED** and the assailed Resolutions dated May 22, 2012 and August 22, 2012 of the Regional Trial Court, Branch 42 of San Fernando City, Pampanga in so far as petitioner **ALEX M. ALVAREZ** is concerned are hereby annulled and set aside. Accordingly, the warrant of arrest issued against him is hereby **LIFTED, QUASHED/RECALLED**.

**Meantime**, since the evidence do not support the finding of probable cause against petitioner **ALEX M. ALVAREZ**, public respondent court is hereby enjoined from proceeding with Criminal Case No. 18480 as against said petitioner only.

**SO ORDERED.**<sup>51</sup>

On November 7, 2013, the CA promulgated its decision on Delfin Lee's petition (**C.A.-G.R. SP No. 127553**),<sup>52</sup> decreeing:

**WHEREFORE**, in view of the foregoing, the instant petition is hereby **PARTIALLY GRANTED**. The assailed Resolutions dated May 22, 2012 and August 22, 2012 are hereby **ANNULLED** and **SET ASIDE** for the issuance thereof was attended with grave abuse of discretion on the

<sup>49</sup> Id. at 56-57.

<sup>50</sup> *Rollo* (G.R. No. 209446), Vol. 1, pp. 12-32; penned by Associate Justice Edwin D. Sorongon with the concurrence of Associate Justice Hakim S. Abdulwahid and Associate Justice Marlene Gonzales-Sison.

<sup>51</sup> Id. at 31-32.

<sup>52</sup> *Rollo* (G.R. No. 209852), Vol. 1, pp. 15-43; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justice Agnes Reyes-Carpio and Associate Justice Melchor Q.C. Sadang.

part of public respondent Hon. Ma. Amifaith S. Fider-Reyes, in her capacity as the Presiding Judge of the San Fernando, Pampanga RTC – Branch 42. Consequently, the Warrant of Arrest issued against petitioner Delfin S. Lee is hereby **QUASHED, RECALLED AND LIFTED**. Afore-named public respondent judge is directed to **CEASE** and **DESIST** from further proceeding with Criminal Case No. 18480 insofar as petitioner Delfin S. Lee is concerned.

Furthermore, all government agencies tasked in the enforcement of the said warrant of arrest including but not limited to the Philippine National Police (PNP), the National Bureau of Investigation (NBI) and the Bureau of Immigration (BI) are immediately **ENJOINED** from implementing the same.

**SO ORDERED.**<sup>53</sup>

The CA observed that the RTC gravely abused its discretion because its conclusion on finding probable cause to issue the arrest warrant was in the nature of speculation; that the RTC had merely relied on the information, the *Review Resolution* and the six boxes of documentary evidence to find and conclude that a huge amount of money had been transferred from the HDMF to Globe Asiatique through a complex scheme that could only have been attained through the sustained action of people in concert to commit their criminal intention; that such findings and conclusions were not based on hard facts and solid evidence as required by jurisprudence; that the report did not mention how many perpetrators had conspired against the HDMF; that the parts of Delfin Lee and his supposed cohorts in the supposed fraudulent acts committed against the HDMF had not been particularly identified; that the conversion of the recommendation from the filing of simple *estafa* to syndicated *estafa* had not been clearly explained in the *Review Resolution*; that the RTC had simply adopted such findings without justifying how the charge could be for syndicated instead of simple *estafa*; and that the RTC had also issued the resolution a day immediately after the six boxes of documentary evidence had come to its knowledge as the trial court.

The CA debunked the HDMF's argument that Delfin Lee had defrauded it into releasing a considerable sum of money to Globe Asiatique through a complex scheme involving fraudulent buyers. The CA noted that the *Deed of Assignment with Contract to Sell and Special Power of Attorney* executed between Globe Asiatique and the HDMF showed that the HDMF had been ultimately duty-bound to check the applications of prospective borrowers and to approve the same; that, consequently, whatever damage the HDMF had incurred could not be solely ascribed to Delfin Lee; that in fact the DOJ had also endorsed the *Review Resolution* to the Ombudsman for the investigation of the HDMF officers for violation of Republic Act No. 3019; and that it was confusing that Delfin Lee had been charged separately of

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<sup>53</sup> Id. at 42-43.

another crime instead of being joined with the officers of the HDMF who had been referred to the Ombudsman for investigation.

On November 16, 2016, the CA promulgated its decision on Dexter's petition (**C.A.-G.R. No. 127554**), declaring that the Pampanga RTC had erred in its determination of probable cause against him;<sup>54</sup> that the Pampanga RTC had gravely abused its discretion when it based its assessment solely on the *Review Resolution* of the panel of prosecutors, the information, and the six boxes of documents presented as evidence by the Prosecution without making its independent assessment of the documents and other pieces of evidence to validate the issuance of the arrest warrant issued against Dexter.

The CA disposed thusly:

**ACCORDINGLY**, on the foregoing reasons, the petition is **PARTIALLY GRANTED**. The assailed Resolutions dated May 22, 2012 and August 22, 2012 of Branch 42 of Regional Trial Court of Pampanga City (sic) are **ANULLED and SET ASIDE**. Thus, the Warrant of Arrest issued against petitioner Dexter L. Lee is hereby **QUASHED, RECALLED and LIFTED**. Furthermore, the Regional Trial Court, Branch 42 of San Fernando, Pampanga is directed to **CEASE and DESIST** from further proceeding with Criminal Case No. 18480 insofar as petitioner Dexter L. Lee is concerned.

Moreover, all government agencies tasked in the enforcement of the Warrant of Arrest including but not limited to the Philippine National Police, the National Bureau of Investigation and the Bureau of Immigration are immediately **ENJOINED** from implementing the said Warrant.

**SO ORDERED.**<sup>55</sup>

**5.**

**C.A.-G.R. SP No. 134573  
(Salagan Petition assailing the May 22, 2012 and  
January 29, 2014 resolutions of the Pampanga RTC)**

Salagan claimed in **C.A.-G.R. SP No. 134573** that there was no probable cause to charge her with the crime of syndicated *estafa* in view of the decisions promulgated in C.A.-G.R. SP No. 121346, C.A.-G.R. SP No. 127553, and C.A.-G.R. SP No. 127690 finding that no probable cause existed against Sagun, Delfin Lee and Atty. Alvarez, respectively, for syndicated *estafa*.

<sup>54</sup> *Rollo* (G.R. No. 228730), Vol. 1, p. 108.

<sup>55</sup> *Id.* at 112-113.

The CA declared in **C.A.-G.R. SP No. 134573**, however, that the respondent Judge did not gravely abuse her discretion in finding probable cause against Salagan, and upheld the validity of the information filed in the Pampanga RTC against her; and that the warrant of arrest had been issued upon probable cause personally determined by the judge.<sup>56</sup> It ruled that the respondent Judge had properly denied Salagan's second motion to quash the information with prayer to re-determine probable cause based on a supervening event considering that Salagan had erroneously assumed that the separate decisions promulgated by the CA were supervening events that justified the re-determination of probable cause.<sup>57</sup>

The CA disposed on March 18, 2016 in **C.A.-G.R. SP No. 134573**:

**WHEREFORE**, in view of the foregoing, the Petition for Certiorari is **DISMISSED**. Accordingly, the Resolution dated May 22, 2012 and Resolution dated January 29, 2014 of the San Fernando, Pampanga RTC, Branch 42 are hereby **AFFIRMED** insofar as Accused Cristina Salagan is concerned.

**SO ORDERED.**<sup>58</sup>

### Issues

We simplify the legal issues as follows:

- (1) Whether or not the HDMF availed itself of the proper remedy to assail the summary judgment rendered by the Makati RTC (**G.R. No. 209424**);
- (2) Whether or not there was probable cause for the filing of the information for syndicated *estafa*, and for the issuance of the warrants of arrest against the respondents for that crime (**G.R. Nos. 205698, 205780, 209446, 209489, 209852, 210143, 228452, 228730 and 230680**); and
- (3) Whether or not the conduct of a preliminary investigation could be enjoined (**G.R. Nos. 208744 and 210095**).

On various dates, the Court issued TROs<sup>59</sup> to enjoin the implementation and enforcement of the assailed CA decisions and

<sup>56</sup> *Rollo* (G.R. No. 230680), Vol. 1, p. 358.

<sup>57</sup> *Id.* at 362.

<sup>58</sup> *Id.* at 365.

<sup>59</sup> *Rollo* (G.R. No. 209446), Vol. VI, pp. 2484-2485, 2754-2755; *Rollo* (G.R. No. 210143), Vol. X, pp. 4756-4758; *Rollo* (G.R. No. 228452), Vol. V, pp. 2261.

resolutions issued in **C.A.-G.R. SP No. 121346**, **C.A.-G.R. SP No. 127553**, **C.A.-G.R. SP No. 127554**, and **C.A.-G.R. SP No. 127690**. Inasmuch as the warrants of arrest remained valid nonetheless, Delfin Lee was arrested by virtue thereof,<sup>60</sup> and was detained in the Pampanga Provincial Jail since his arrest until this time.<sup>61</sup> The other respondents have remained at large.

### **Ruling of the Court**

We **PARTIALLY GRANT** the petitions in **G.R. No. 205698**, **G.R. No. 205780**, **G.R. No. 209446**, **G.R. No. 209489**, **G.R. No. 209852**, **G.R. No. 210143**, **G.R. No. 228452**, **G.R. No. 228730** and **G.R. No. 230680**, and, accordingly, **MODIFY** the assailed decisions of the CA.

On the other hand, we **GRANT** the petitions in **G.R. No. 209424**, **G.R. No. 208744**, and **G.R. No. 210095**, and, accordingly, **REVERSE** the resolutions of the CA assailed therein.

#### **1.**

**The January 30, 2012 summary judgment was an interlocutory judgment; hence, the HDMF correctly instituted a petition for *certiorari* instead of an appeal**

The HDMF argues that it correctly instituted the special civil action for *certiorari* to assail the resolutions of the Makati RTC dated January 30, 2012 and December 11, 2012 issued in Civil Case No. 10-1120; that the Yorac Law Firm had lawful authority to represent the HDMF; and that the Makati RTC rendered the questioned resolutions with grave abuse of discretion amounting to lack or excess of jurisdiction.

The HDMF's arguments are partly meritorious.

#### **1.a.**

**The January 30, 2012 summary judgment was an interlocutory order**

In Civil Case No. 10-1120, Globe Asiatique and Delfin Lee specifically averred separate causes of action against the HDMF, including that for damages. Thus, they prayed for the following reliefs, to wit:

<sup>60</sup> *Rollo* (G.R. No. 210143), Vol. X, p. 4932.

<sup>61</sup> *Id.* at 5217.

**PRAYER**

WHEREFORE, it is respectfully prayed that after due proceedings, a decision be rendered by the Honorable Court in favor of the plaintiffs and against the defendants, ordering the following:

1. With respect to the First Cause of Action, for defendant PAG-IBIG to accept the replacement of the buyer/borrowers as offered by plaintiff GARHC contained in a list hereto attached as Annex "O" pursuant to the latter's exercise of this option under Section 3.7 of the latest Funding Commitment Agreement in relation to the buyback provision under the Memorandum of Agreement dated 13 July 2009;
2. With respect to the Second Cause of Action, for defendant PAG-IBIG FUND to release the pending loan take-outs and amount of retention due plaintiff GARHC pursuant to the MOA and latest FCA and for all defendants to jointly and solidarily pay plaintiff GARHC the sum of Php 6,562,500.00, representing interest and penalty payments;
3. With respect to the Third Cause of Action, for defendant PAG-IBIG FUND to honor the provisions of its MOA, the latest FCA and CSA, to set aside the cancellation of the FCA and CSA, and restore plaintiff GARHC to its rights under the MOA, latest FCA and CSA;
4. With respect to the Fourth Cause of Action, for defendants to jointly and severally pay plaintiff GARHC the sum of Php1 Million as and by way of attorney's fees, Php500,000.00 as and by way of litigation expenses, and cost of suit; and
5. With respect to the Fifth Cause of Action, for defendants to pay exemplary damages in the amount of PPhp500,000.00.

Plaintiffs pray for such other reliefs and remedies that the Honorable Court may deem just and equitable in the premises.<sup>62</sup>

During the proceedings, Globe Asiatique and Delfin Lee filed the motion for summary judgment, stating the reliefs prayed for, as follows:

**PRAYER**

WHEREFORE, it is respectfully prayed that after due notice and hearing, an Order be issued granting the instant Motion for Summary Judgment and simultaneously therewith, to render the Summary Judgment prayed for, declaring and ordering the following:

1. That plaintiffs have proven their case by preponderance of evidence and, therefore, are entitled to specific performance and right to damages as prayed for in the Complaint;

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<sup>62</sup> Rollo (G.R. No. 209424), Vol. II, pp. 770-773.



2. That defendants HDMF should faithfully and religiously comply with the pertinent provisions of the FCAs and CSAs as amended by the MOA under the prevailing conditions prior to the precipitate unilateral termination thereof by defendant HDMF, including but not limited to the release of loan take-out proceeds of those accounts whose DOAs with SPAs have already been annotated in the corresponding TCTs as well as the evaluation and approval of the loan applications of those who underwent or will undergo plaintiff GARCH's loan counselling and are qualified for PAG-IBIG loans under the MOA and FCAs;
3. That defendant HDMF's unilateral termination of the MOA, FCAs and CSA be declared illegal and be set aside;
4. That defendants be ordered to automatically off-set the balance of those listed in Annex "E" hereof composed of fully-paid buyer-borrowers against the retention money, escrow money, funding commitment fees, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;
5. That defendants be ordered to accept the replacement-buyers listed in Annex "F" hereof, without interest or penalty from the time of defendant HDMF's refusal to accept the same up to the time that these replacement buyers are actually accepted by defendant HDMF;
6. That defendants be ordered to release the corresponding Transfer Certificate of Title(s) (TCTs) of those accounts which are fully paid or subjected to automatic off-setting starting from the list in Annex "e" of the Motion for Summary Judgment and thereafter from those listed in Annex "F" thereof and cause the corresponding cancellation of the annotations in the titles thereof, including that of complaint-intervenor Tessie G. Wang's titles;

Plaintiffs pray for such other reliefs and remedies that the Honorable Court may deem just and equitable in the premises.<sup>63</sup>

Globe Asiatique and Delfin Lee did not include the claim for damages among the reliefs prayed for by their motion for summary judgment.

Granting the motion for summary judgment, the Makati RTC ultimately disposed:

**WHEREFORE**, premises considered, a Summary Judgment is hereby rendered declaring that:

1. Plaintiffs have proven their case by preponderance of evidence.  
**As such, they are entitled to specific performance and right**

<sup>63</sup> *Rollo* (G.R. No. 209424), Vol. III, pp. 1139-1141.

**to damages as prayed for in the Complaint, except that the exact amount of damages will have to be determined during trial proper.**

X X X X

**Let this case be set for the presentation of evidence on the exact amount of damages that plaintiffs are entitled on March 12, 2012 at 8:30 in the morning.**

SO ORDERED.<sup>64</sup> (Bold underscoring supplied)

As the foregoing shows, the Makati RTC set the case for the presentation of evidence to establish the other claims of Globe Asiatique and Delfin Lee stated in their complaint for specific performance, specifically those pertaining to the fourth and fifth causes of action. The claims related to damages, which, being still essential parts of the case, would still have to be established and adjudicated on their merits. Although the recovery of the damages was dependent on the determination that the HDMF had breached its contract with Globe Asiatique, it could not yet be said that the Makati RTC had fully disposed of the case through the summary judgment considering that there were still other reliefs sought by Globe Asiatique and Delfin Lee yet to be tried and determined either way. Under the circumstances, the summary judgment was, properly speaking, but an *interlocutory judgment* of the Makati RTC.

In this connection, the rule on separate judgments – Section 5, Rule 36 of the *Rules of Court* – is relevant. The rule requires the action to proceed as to the remaining but unresolved claims, to wit:

SEC. 5. *Separate judgments.* – When more than one claim for relief is presented in an action, the court, at any stage, upon a determination of the issues material to a particular claim and all counterclaims arising out of the transaction or occurrence which is the subject matter of the claim, may render a separate judgment disposing of such claim. **The judgment shall terminate the action with respect to the claim so disposed of and the action shall proceed as to the remaining claims.** In case a separate judgment is rendered, the court by order may stay its enforcement until the rendition of a subsequent judgment or judgments and may prescribe such conditions as may be necessary to secure the benefit thereof to the party in whose favor the judgment is rendered. (Bold underscoring supplied for emphasis)

A partial summary judgment like that rendered on January 30, 2012 by the Makati RTC was in the category of a separate judgment. Such judgment did not adjudicate damages, and still directed that further proceedings be had in order to determine the damages to which Globe

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<sup>64</sup> Id. at 451-452.

Asiatique and Delfin Lee could be entitled. Section 4, Rule 35 of the *Rules of Court* thus came into operation. Section 4 states:

SEC. 4. *Case not fully adjudicated on motion.* – If on motion under this Rule, **judgment is not rendered upon the whole case or for all the reliefs sought and a trial is necessary**, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel shall ascertain what material facts exist without substantial controversy and what are actually and in good faith controverted. It shall thereupon make an **order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just**. The facts so specified shall be deemed established, and the trial shall be conducted on the controverted facts accordingly. (Bold underscoring supplied for emphasis)

Worthy to emphasize is that the rendition of a summary judgment does not always result in the full adjudication of all the issues raised in a case.<sup>65</sup> In such event, a partial summary judgment is rendered in the context of Section 4, *supra*. Clearly, such a partial summary judgment – because it does not put an end to the action at law by declaring that the plaintiff either has or has not entitled himself to recover the remedy he sues for – cannot be considered a final judgment. It remains to be an interlocutory judgment or order, instead of a final judgment, and is not to be dealt with and resolved separately from the other aspects of the case.

In *Pahila-Garrido v. Tortogo*,<sup>66</sup> the distinctions between *final* and *interlocutory* orders were delineated thusly:

The distinction between a final order and an interlocutory order is well known. The first disposes of the subject matter in its entirety or terminates a particular proceeding or action, leaving nothing more to be done except to enforce by execution what the court has determined, but the latter does not completely dispose of the case but leaves something else to be decided upon. An interlocutory order deals with preliminary matters and the trial on the merits is yet to be held and the judgment rendered. The test to ascertain whether or not an order or a judgment is interlocutory or final is: *does the order or judgment leave something to be done in the trial court with respect to the merits of the case?* If it does, the order or judgment is interlocutory; otherwise, it is final.

What was the proper recourse against the partial summary judgment?

Considering that the January 30, 2012 partial summary judgment was interlocutory, the remedy could not be an appeal, for only a final judgment

<sup>65</sup> *Philippine Business Bank v. Chua*, G.R. No. 178899, November 15, 2010, 634 SCRA 635, 646-649.

<sup>66</sup> G.R. No. 156358, August 17, 2011, 655 SCRA 553.

or order could be appealed. Section 1, Rule 41 of the *Rules of Court* makes this clear enough by expressly forbidding an appeal from being taken from such interlocutory judgment or order, to wit:

Section 1. *Subject of appeal.* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

**No appeal may be taken from:**

x x x x

(f) **A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third party complaints, while the main case is pending, unless the court allows an appeal therefrom; and**

x x x x

**In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.**

Consequently, the interlocutory January 30, 2012 summary judgment could be assailed only through *certiorari* under Rule 65 of the *Rules of Court*. Thus, the HDMF properly instituted the special civil action for *certiorari* to assail and set aside the resolutions dated January 30, 2012 and December 11, 2012 of the Makati RTC.

**1.b.**

**The Yorac Law Firm had no authority to file the HDMF's motion for reconsideration of the January 30, 2012 summary judgment rendered by the Makati RTC**

The HDMF is a government-owned and -controlled corporation (GOCC) performing proprietary functions with original charter or created by special law, specifically Presidential Decree (P.D.) No. 1752, amending P.D. No. 1530.<sup>67</sup> As a GOCC, the HDMF's legal matters are to be handled by the Office of the Government Corporate Counsel (OGCC),<sup>68</sup> save for some

<sup>67</sup> See *Home Development Mutual Fund v. Commission on Audit*, G.R. No. 142297, June 15, 2004, 432 SCRA 126, 132.

<sup>68</sup> *Administrative Code of 1987*, Book IV, Title III, Chapter 3, Section 10 provides:

SECTION 10. Office of the Government Corporate Counsel. — The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

extraordinary or exceptional circumstances when it is allowed to engage the services of private counsels, provided such engagement is with the written conformity of the Solicitor General or the Government Corporate Counsel and the written concurrence of the Commission on Audit (COA).<sup>69</sup>

In *Phividec Industrial Authority v. Capitol Steel Corporation*,<sup>70</sup> the Court underscored that the best evidence to prove the COA's concurrence with the engagement of a private lawyer or law firm was the written concurrence from the COA itself, viz.:

Petitioners primarily rely on a certified true copy of an Indorsement issued by COA Regional Office No. 10 as proof of written concurrence on the part of the COA. All that it contains is a second-hand claim that the COA General Counsel had allegedly concurred in the retainer contract between PHIVIDEC and Atty. Adaza. The written concurrence itself which may be the best evidence of the alleged concurrence was not presented. It is also worth noting that the said Indorsement was dated 4 June 2002, or approximately two years after the filing of the expropriation case by Atty. Adaza.

The records reveal that although the OGCC authorized the HDMF to engage the services of the Yorac Law Firm, the HDMF did not sufficiently prove that the written concurrence of the COA had been obtained.

To substantiate its claim of the COA's concurrence with the engagement of the Yorac Law Firm's legal services, the HDMF presented the certification dated January 10, 2013,<sup>71</sup> viz.:

#### CERTIFICATION

This is to certify that the Commission on Audit (COA) has concurred in the Retainer Agreement entered into by and between the Home Development Mutual Fund (HDMF) and Yorac, Arroyo, Chua, Caedo & Coronel Law Firm, for the latter to provide legal services to the HDMF in connection with the cases filed by or against Globe Asiatique Realty Holdings Corporation, Mr. Delfin S. Lee, its officers, employees and agents, and such other cases that arose out of or in relation to the Globe Asiatique Realty Holdings Corporation issues

This certification is issued to attest to the truth of the foregoing and for whatever legal purposes it may serve.

10 January 2013

<sup>69</sup> See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. Commission on Audit*, G.R. No. 185544, January 13, 2015, 745 SCRA 269, 286-289.

<sup>70</sup> G.R. No. 155692, October 23, 2003, 414 SCRA 327, 335.

<sup>71</sup> *Rollo* (G.R. No. 209424), Vol. III, p. 1493.

(signed)  
**ATTY. FIDELA M. TAN**  
*Corporate Auditor*

It is immediately discernible, however, that the certification was merely the attestation by Atty. Tan that COA had concurred in the retainer agreement entered into by and between the HDMF and the Yorac Law Firm. Such attestation did not establish the written concurrence of the COA on the engagement of the Yorac Law Firm because it did not state that the copy was a correct copy of the original considering that no copy of COA's written concurrence was actually attached to the January 10, 2013 certification. Also, it did not thereby appear that Atty. Tan was the custodian of the records of COA. As the Makati RTC further observed, the attestation had not been made under the official seal of COA but printed only on the joint letterhead of the HDMF and COA, with the latter's address being indicated to be in Mandaluyong City when the COA's office was actually located in Commonwealth Avenue, Quezon City.<sup>72</sup>

Atty. Tan's attestation of the COA's purported concurrence had no evidentiary value due to its non-conformity with the requirements of Section 24 and Section 25, Rule 132 of the *Rules of Court* for presenting the record of a public document, to wit:

**Section 24. Proof of official record.**— The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. x x x

**Section 25. What attestation of copy must state.**— Whenever a copy of a document or record is attested for the purpose of evidence, the attestation must state, in substance, that the copy is a correct copy of the original, or a specific part thereof, as the case may be. The attestation must be under the official seal of the attesting officer, if there be any, or if he be the clerk of a court having a seal, under the seal of such court. (26a)

The foregoing bolstered the fact that the attestation, being at best the second-hand opinion of Atty. Tan as a corporate auditor who did not have the copy of the supposed COA concurrence, could not stand as the written concurrence of the COA contemplated by law for the purpose.

Nonetheless, even if the January 10, 2013 certification was to be regarded as the written concurrence of the COA, the fact that it was issued

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<sup>72</sup> *Rollo* (G.R. No. 209424), Vol. II, p. 455.

and presented *after* the Yorac Law Firm had entered its appearance on June 17, 2011 as counsel of the HDMF should not go unnoticed.<sup>73</sup> Records reveal that as of December 7, 2011, the COA was still in the process of evaluating the request for the concurrence on the hiring by the HDMF of the Yorac Law Firm.<sup>74</sup> This forthwith contravened the specific requirement that the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the written concurrence of the COA should first be secured *prior to* the hiring or employment of the private lawyer or law firm.<sup>75</sup>

In view of the HDMF's failure to secure the written concurrence of the COA, the Yorac Law Firm could not have been considered as authorized to represent the HDMF. With the filing of the HDMF's motion for reconsideration vis-a-vis the January 30, 2012 summary judgment of the Makati RTC being unauthorized, the CA did not err in upholding the Makati RTC's treatment of the HDMF's motion as a mere scrap of paper.

#### 1.c

#### **The broader interest of justice and the peculiar legal and equitable circumstances herein justified the relaxation of technical rules**

The import of failing to file the motion for reconsideration on the part of the HDMF meant that the 60-day period to initiate the petition for *certiorari* should be reckoned from its receipt of the assailed January 30, 2012 summary judgment. Since the HDMF actually filed the petition for *certiorari* on January 18, 2013, and thus went beyond the reglementary period, the petition should be dismissed for being filed out of time.

There are instances, however, when the rigidity of the rule requiring the petition for *certiorari* to be filed within 60 days from the receipt of the judgment, order, or resolution sought to be thereby assailed has been relaxed, such as: (1) when the most persuasive and weighty reasons obtain; (2) when it is necessary to do so in order to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure; (3) in case of the good faith of the defaulting party by immediately paying within a reasonable time of the default; (4) when special or compelling circumstances exist; (5) when the merits of the case so demand; (6) when the cause of the delay was not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (7) when there is no showing that the review sought is merely frivolous and dilatory; (8) when the other party will not be unjustly prejudiced thereby; (9) in case of fraud, accident, mistake or excusable negligence without the

<sup>73</sup> *Rollo* (G.R. No. 209424), Vol. III, p. 1037.

<sup>74</sup> *Id.* at 1225.

<sup>75</sup> *Oñate v. Commission on Audit*, G.R. No. 213660, July 5, 2016, 795 SCRA 661, 666-667.

appellant's fault; (10) when the peculiar legal and equitable circumstances attendant to each case so require; (11) when substantial justice and fair play are thereby served; (12) when the importance of the issues involved call for the relaxation; (13) in the exercise of sound discretion by the court guided by all the attendant circumstances; and (14) when the exceptional nature of the case and strong public interest so demand.<sup>76</sup>

Herein, the broader interest of justice and the attendant peculiar legal and equitable circumstances dictated that the HDMF's petition for *certiorari* be resolved on its merits despite its filing beyond the reglementary period. The HDMF believed in good faith that it had duly filed the motion for reconsideration vis-à-vis the January 30, 2012 summary judgment. Although the Makati RTC noted the HDMF's failure to secure the COA's concurrence, and resolved to treat the HDMF's motion for reconsideration as a mere scrap of paper, the reglementary period to file the petition for *certiorari* had already lapsed, such failure to file on time was not entirely attributable to the fault or negligence of the HDMF.

## 2.

### **There was no probable cause for the filing of the information for syndicated *estafa* and for the issuance of the warrants of arrest for syndicated *estafa* against respondents**

Delfin Lee, Dexter, Sagun and Alvarez were charged with syndicated *estafa*, along with Cristina Salagan, on the basis of the findings of the DOJ that Globe Asiatique had violated its warranties under the FCAs and the July 13, 2009 MOA; that Globe Asiatique had submitted spurious and questionable documents concerning the qualifications of its buyers; that Globe Asiatique had employed fictitious buyers to obtain funds from the HDMF; and that Globe Asiatique had failed to remit to the HDMF the monthly housing loan amortizations of its buyers in the Xevera Project in Pampanga.<sup>77</sup>

The DOJ concluded thusly:

Given the foregoing the above-named respondents may be charged with the crime of "syndicated *estafa*" as they fall within the legal definition of a syndicate. A syndicate is defined as "consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "samahang nayon(s)", or farmers association,

<sup>76</sup> *Republic v. St. Vincent De Paul Colleges, Inc.* G.R. No. 192908, August 22, 2012, 678 SCRA 738, 747-750.

<sup>77</sup> *Rollo* (G.R. No. 209852), Vol. I, pp. 411-414.



or of funds solicited by corporations/associations from the general public. (Paragraph 1, Section 1, P.D. No. 1689; *People of the Philippines v. Vicente Menil*, G.R. Nos 115054-66, September 12, 2009).

x x x x

Having earlier established respondents' commission of estafa, it is pristine clear that the 1<sup>st</sup> and 2<sup>nd</sup> elements of the offense of *syndicated estafa* has already been satisfied in the instant case. Relative to the 3<sup>rd</sup> element, we believe that HDMF falls under the entities listed in P.D. 1689 that can be victimized under such law, as the provision specifically includes entities which solicited funds from the general public. x x x

It is our considered view that HDMF is, in all respect, a corporation that solicited funds from the general public, which respondents defrauded through the execution of their illegal scheme. We find as childish respondents' Delfin and Dexter Lee's argument that the Pag-Ibig fund is a mandatory contribution and does not fall under the term "solicited funds from the public." It bears to highlight that P.D. 1689 does not distinguish whether the solicited fund is a voluntary or mandatory contribution. Rather, the essential point is that the funds used by HDMF came from the general public.<sup>78</sup>

On its part, the Pampanga RTC found probable cause for the issuance of warrants of arrest against the respondents only because –

The records would show a huge amount of money that was transferred from the coffers of the PAG IBIG FUND and released to the GLOBE ASIATIQUE through a complex scheme involving fraudulent buyers at a scale and over a period of time that could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective. Hence, the Court finds probable cause for the existence of a syndicated estafa.<sup>79</sup>

The crucial questions before us relate to: (1) the DOJ's finding of probable cause for the filing of the information against Sagun; and (2) the Pampanga RTC's judicial determination of probable cause for the issuance of the warrant of arrest against the respondents.

The concept of probable cause has been discussed in *Napoles v. De Lima*<sup>80</sup> as follows:

x x x During preliminary investigation, the prosecutor determines the existence of probable cause for filing an information in court or dismissing the criminal complaint. As worded in the Rules of Court, the prosecutor determines during preliminary investigation whether "there is

<sup>78</sup> Id. at 420-421.

<sup>79</sup> Id. at 236.

<sup>80</sup> G.R. No. 213529, July 13, 2016, 797 SCRA 1, 16-18.

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.” At this stage, the determination of probable cause is an executive function. Absent grave abuse of discretion, this determination cannot be interfered with by the courts. This is consistent with the doctrine of separation of powers.

On the other hand, if done to issue an arrest warrant, the determination of probable cause is a judicial function. No less than the Constitution commands that “no . . . warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce[.]” This requirement of personal evaluation by the judge is reaffirmed in Rule 112, Section 5 (a) of the Rules on Criminal Procedure:

SEC. 5. *When warrant of arrest may issue.*—

(a) *By the Regional Trial Court.* — Within ten (10) days from the filing of the complaint or information, *the judge shall personally evaluate the resolution of the prosecutor and its supporting evidence.* He may immediately dismiss the case if the evidence on record clearly fails to establish probable cause. If he finds probable cause, he shall issue a warrant of arrest, or a commitment order when the complaint or information was filed pursuant to section 6 of this Rule. In case of doubt on the existence of probable cause, the judge may order the prosecutor to present additional evidence within five (5) days from notice and the issue must be resolved by the court within thirty (30) days from the filing of the complaint or information. (Emphasis supplied)

Therefore, the determination of probable cause for filing an information in court and that for issuance of an arrest warrant are different. Once the information is filed in court, the trial court acquires jurisdiction and “any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.”

While the courts are generally not permitted to substitute their own judgments for that of the Executive Branch in the discharge of its function of determining the existence of probable cause during the preliminary investigation,<sup>81</sup> the intervention of the courts may be permitted should there be grave abuse of discretion in determining the existence of probable cause on the part of the investigating prosecutor or the Secretary of Justice.

Thus, in order to settle whether or not the CA correctly reversed the August 10, 2011 *Review Resolution* of the DOJ insofar as it found probable cause to charge Sagun with syndicated *estafa*, and whether or not the

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<sup>81</sup> *Callo-Claridad v. Esteban*, G.R. No. 191567, March 20, 2013, 694 SCRA 185, 197.

warrants of arrest issued against the respondents should be quashed, it is imperative to discuss the nature of syndicated *estafa*.

Section 1 of P.D. No. 1689 defines syndicated *estafa* in the following manner:

SECTION 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Article 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders or members of rural banks, cooperative, "samahang nayon(s)", or farmer's association, or of funds solicited by corporations/associations from the general public.

When not committed by a syndicate as above defined, the penalty impossible shall be *reclusion temporal* to *reclusion perpetua* if the amount of the fraud exceeds 100,000 pesos.

P.D. No. 1689 seeks to impose a harsher penalty on certain forms of swindling, more particularly, syndicated *estafa*. The preamble of the decree recites:

WHEREAS, there is an upsurge in the commission of swindling and other forms of frauds in rural banks, cooperatives, "samahang nayon (s)", and farmers' associations or corporations/associations operating on funds solicited from the general public;

WHEREAS, such defraudation or misappropriation of funds contributed by stockholders or members of such rural banks, cooperatives, "samahang nayon(s)", or farmers' associations, or of funds solicited by corporations/associations from the general public, erodes the confidence of the public in the banking and cooperative system, contravenes the public interest, and constitutes economic sabotage that threatens the stability of the nation;

WHEREAS, it is imperative that the resurgence of said crimes be checked, or at least minimized, by imposing capital punishment on certain forms of swindling and other frauds involving rural banks, cooperatives, "samahang nayon(s)", farmers' associations or corporations/associations operating on funds solicited from the general public.

P.D. No. 1689 condemns the taking by fraud or deceit of funds contributed by members of rural banks, cooperatives, *samahang nayon* or farmers' associations, or of funds solicited by corporations or associations from the general public as such taking poses a serious threat to the general public. The elements of syndicated *estafa* are: (a) *estafa* or other forms of swindling, as defined in Articles 315 and 316 of the *Revised Penal Code*, is

committed; (b) the *estafa* or swindling is committed by a syndicate of five or more persons; and (c) defraudation results in the misappropriation of moneys contributed by the stockholders, or members of rural banks, cooperative, *samahang nayon(s)*, or farmers' associations, or of funds solicited by corporations/associations from the general public.<sup>82</sup>

In relation thereto, Article 315(2)(a) of the *Revised Penal Code* specifies that:

Art. 315. *Swindling (estafa)*. – Any person who shall defraud another by any means mentioned herein below shall be punished by:

x x x x

2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business, or imaginary transactions; or by means of other similar deceits.

x x x x

The elements of *estafa* by means of deceit under Article 315(2)(a) of the *Revised Penal Code* are, namely: (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (d) that as a result thereof, the offended party suffered damage.<sup>83</sup>

Based on the foregoing elements of syndicated *estafa*, the Court holds that the CA did not err in reversing the August 10, 2011 *Review Resolution* of the DOJ insofar as Sagun was concerned and in quashing the warrants of arrest issued against the respondents. In the same manner, we find and so hold that the CA erred in upholding the propriety of the issuance of the warrant of arrest against Salagan.

## 2.a

**In the case of the respondents,  
there was no syndicate as  
defined under P.D. No. 1689**

<sup>82</sup> *People v. Tibayan*, G.R. No. 209655-60, January 24, 2015, 746 SCRA 259, 269.

<sup>83</sup> *Id.* at 268.

A syndicate is defined by P.D. No. 1689 as consisting of **five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme.**<sup>84</sup> The Court has clarified in *Remo v. Devanadera*<sup>85</sup> that in order for any group to be considered a syndicate under P.D. No. 1689 –

**x x x [T]he perpetrators of an estafa must not only be comprised of at least five individuals but must have also used the association that they formed or managed to defraud its own stockholders, members or depositors. Thus:**

On review of the cases applying the law, we note that the **swindling syndicate used the association that they manage to defraud the general public of funds contributed to the association.** Indeed, Section 1 of Presidential Decree No. 1689 speaks of a syndicate formed with the intention of carrying out the unlawful scheme for the misappropriation of the money contributed by the members of the association. In other words, **only those who formed [or] manage associations that receive contributions from the general public who misappropriated the contributions can commit syndicated estafa.** x x x. (*Emphasis supplied*).

x x x x

Dissecting the pronouncement in *Galvez* for our present purposes, however, we are able to come up with the following standards by which a group of purported swindlers may be considered as a syndicate under PO No. 1689:

1. They must be at least five (5) in number;
2. They must have formed or managed a rural bank, cooperative, "*samahang nayon*," farmer's association or any other corporation or association that solicits funds from the general public.
3. They formed or managed such association with the intention of carrying out an unlawful or illegal act, transaction, enterprise or scheme *i.e.*, they used the very association that they formed or managed as the means to defraud its own stockholders, members and depositors.

None of the three abovementioned standards for determining the existence of a syndicate was present.

<sup>84</sup> *Catiis v. Court of Appeals*, G.R. No. 153979, February 9, 2006, 482 SCRA 71, 81.

<sup>85</sup> G.R. No. 192925, December 9, 2016, 813 SCRA 610, 633.

Delfin Lee, Dexter, Sagun, and Salagan were, respectively, the President/Chief Operating Officer, Executive Vice-President, Head of the Documentation Department, and Head of the Accounting/Finance Department of Globe Asiatique.<sup>86</sup> In view of their number being under five, the original charge brought against them was only for simple *estafa*. It was only in the assailed *Review Resolution* of August 10, 2011 that SDSP Villanueva recommended the filing of the charge for syndicated *estafa* due to the addition of Atty. Alvarez as a co-respondent, thereby increasing the number of the respondents to *at least* five. But Atty. Alvarez was the Manager of the HDMF's Foreclosure Department<sup>87</sup> whose only connection with Globe Asiatique was by reason of his having rendered notarial services for the latter.<sup>88</sup> If Atty. Alvarez was not related to Globe Asiatique either by employment or by ownership, he could not be considered as part of the syndicate supposedly formed or managed to defraud its stockholders, members, depositors or the public. This alone immediately removed the respondents' *supposed* association from being found and considered as a *syndicate* in the context of P.D. No. 1689.

Even assuming that Atty. Alvarez was juridically connected with Globe Asiatique in the context of P.D. No. 1689, the association of the respondents did not solicit funds from the general public. Globe Asiatique was incorporated in 1994 as a legitimate real-estate developer "to acquire by purchase, lease, donation or otherwise, to own, use, improve, develop, subdivide, sell, mortgage, exchange, lease, develop and hold for investment or otherwise, real estate of all kinds, whether improve, manage, or otherwise dispose of buildings, houses, apartments, and other structures of whatever kind, together with their appurtenances."<sup>89</sup> It is quite notable, too, that there was no allegation about Globe Asiatique having been incorporated to defraud its stockholders or members. In fact, the HDMF, the only complainant in the *estafa* charges, was not itself a stockholder or member of Globe Asiatique.

Moreover, the DOJ concluded that it was the HDMF itself, not Globe Asiatique, that had solicited funds from the public, to wit:

x x x HDMF falls under the entities listed in PD 1689 that can be victimized under such law, as the provisions specifically includes entities which solicited funds from the general public. x x x

x x x x

**It is our considered view that HDMF is, in all respect, a corporation that solicited funds from the general public, which respondents defrauded through the execution of their illegal scheme.**

<sup>86</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 381.

<sup>87</sup> *Id.* at 402.

<sup>88</sup> *Id.* at 402.

<sup>89</sup> *Rollo* (G.R. No. 209424), Vol. II, p. 754.

**We find as childish respondents' Delfin and Dexter Lee's argument that the Pag-ibig fund is a mandatory contribution and does not fall under the term "solicited funds from the public." It bears to highlight that P.D. 1689 does not distinguish whether the solicited fund is voluntary or mandatory contribution. Rather, the essential point is that the funds used by HDMF came from the general public.<sup>90</sup>**

The funds solicited by HDMF from the public were in the nature of their contributions as members of HDMF, and had nothing to do with their being a stockholder or member of Globe Asiatique.

It is further worth noting that the funds supposedly misappropriated did not belong to Globe Asiatique's stockholders or members, or to the general public, but to the HDMF. The pecuniary damage pertained to the FCLs extended to Globe Asiatique through ostensibly fictitious buyers and unremitted monthly housing loan amortizations for the Xevera Project in Pampanga that were supposedly collected by Globe Asiatique in behalf of the HDMF pursuant to the FCLs and MOA.

Based on the established circumstances, therefore, it becomes inevitable for the Court to affirm the CA's following conclusion that:

x x x [T]he statement made by public respondent that there is probable cause because "xxx a huge amount of money was transferred from the coffers of respondent HDMF and released to GA through a complex scheme xxx that could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective," to be in the nature of a speculation only and carries no weight in the determination of probable cause. Jurisprudence dictates that in the determination of probable cause, the same should be based on hard facts and solid evidence and not dwell on possibilities, suspicion and speculation. From the afore-quoted paragraph alone, petitioner's (Delfin Lee) participation, if there was any, in the offense for which he was indicted, was not established or ascertained. Worse, petitioner was not even named. Neither were his cohorts in the alleged defrauding of respondent HDMF.

Petitioner Lee and his co-accused were charged with syndicated estafa. For estafa to have been committed by a syndicate, the act must be committed by five or more persons. A considered scrutiny of the assailed Resolution by public respondent which found probable cause to issue a warrant of arrest against petitioner Lee and his co-accused, shows that there was no mention that the acts constituting estafa were done by five or more persons. The resolution merely mentioned "could only have been accomplished by and through the sustained supervision and action in concert of a group of persons for the attainment of the same criminal objective." Moreover, the amount of damage incurred by respondent HDMF was not ascertained. It goes without saying that public respondent did not take it upon herself to determine, based on the evidence submitted,

<sup>90</sup> *Rollo* (G.R. No. 209852), Vol. I, pp. 420-421.

the exact amount of damage incurred by respondent HDMF. Public respondent merely made a sweeping statement that a huge amount of money was transferred from the coffers of the PAG-IBIG Fund to GA.

Under the canons of statutory construction, indeed, the determination of the purpose of the law is a step in the process of ascertaining the intent or meaning of the enactment, because the reason for the enactment must necessarily shed considerable light on “the law of the statute,” *i.e.*, the intent; hence, the enactment should be construed with reference to its intended scope and purpose, and the courts should seek to carry out this purpose rather than to defeat it.<sup>91</sup> Given the rationale and purpose behind the enactment of P.D. No. 1689, it becomes inevitable to conclude that the crime of syndicated *estafa* can only be committed by the enumerated groups created for the sole purpose of defrauding its members through misappropriating the funds solicited from and contributed by them. Evidently, the evil sought to be prevented by P.D. No. 1689 does not exist in this case.

## 2.b

### **Notwithstanding the absence of a syndicate, the respondents made false representations that gave rise to probable cause for simple *estafa* against them**

In *Galvez v. Court of Appeals*,<sup>92</sup> the Court has emphasized that swindling may fall within the ambit of P.D. No. 1689 if it is committed *through* an association. On the other hand, Article 315(2)(a) of the *Revised Penal Code* applies regardless of the number of the accused when: (a) the entity soliciting funds from the general public is the victim and not the means through which the *estafa* is committed, or (b) the offenders are not owners or employees who used the association to perpetrate the crime.

Having shown that the alleged misappropriation was not committed through Globe Asiatique, we now address whether or not the acts of the respondents gave rise to probable cause for simple *estafa* under Article 315(2)(a) of the *Revised Penal Code*.

An examination of the records reveals that there is sufficient basis to support a reasonable belief that the respondents were probably guilty of simple *estafa*. The first three elements of *estafa* under Article 315(2)(a) of the *Revised Penal Code* -- (a) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property,

<sup>91</sup> *De Castro v. Judicial and Bar Council (JBC)*, G.R. Nos. 191002, 191032, 191057, 191149, 191342, 191420 and A.M. No. 10-2-5-SC, March 17, 2010, 615 SCRA 666, 742-743.

<sup>92</sup> G.R. No. 187919, 187979, 188030, February 29, 2013, 691 SCRA 445, 469.



credit, agency, business or imaginary transactions; (b) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; and (c) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property – obtained in this case.

The nature and character of deceit or fraud were explained in *Lateo v. People*,<sup>93</sup> to wit:

[F]raud in its general sense is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust, or confidence justly reposed, resulting in damage to another, or by which an undue and unconscientious advantage is taken of another. It is a generic term embracing all multifarious means which human ingenuity can devise, and which are resorted to by one individual to secure an advantage over another by false suggestions or by suppression of truth and includes all surprise, trick, cunning, dissembling and any unfair way by which another is cheated. And deceit is the false representation of a matter of fact whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed which deceives or is intended to deceive another so that he shall act upon it to his legal injury.

The first two elements of *estafa* under Article 315(2)(a) of the *Revised Penal Code* are satisfied if the false pretense or fraudulent act is committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive that induces the offended party to part with his money.<sup>94</sup>

In this connection, the DOJ underscored in its assailed *Review Resolution* that the fraudulent scheme employed by the respondents involved the “special buyers” arrangement. According to the *sinumpaang salaysay* of witnesses Francisco de la Cruz and Veniza Santos Panem, former employees of Globe Asiatique, the “special buyers” arrangement required:

x x x those who are not yet members of Pag-ibig Fund but who are paid by GA to apply for, and become members of the Fund in exchange of ₱5,000.00 so that their names/membership can be used to take out a housing loan from Pag-ibig of units from housing projects of GA. They assert that these special buyers have really no intention to buy housing units from GA projects but merely lend their Pag-ibig Fund membership to GA for a fee on condition that they will not apply for a loan with Pag-ibig for a period of two (2) years. The agents/employees of GA are the

<sup>93</sup> G.R. No. 161651, June 8, 2011, 651 SCRA 262, 275, citing *Alcantara v. Court of Appeals*, G.R. No. 147259, November 24, 2003, 416 SCRA 418, 430.

<sup>94</sup> *Aricheta v. People*, G.R. No. 172500, September 21, 2007, 533 SCRA 695, 704.

ones who recruit these “special buyers” also for a commission. They explain that once recruited, these “special buyers” are told to sign loan documents for Pag-Ibig but they will not occupy the housing units for which they applied for a housing loan. These units taken out by Pag-ibig for GA’s “special buyers” are then sold to real buyers who buy direct from GA. Whenever real buyers complaint that the units they bought had not yet been taken-out, they are made to execute an *Affidavit of Undertaking* that they are willing to assume the balance on the loan of the “special buyer” and GA will make it appear to Pag-Ibig that the “special buyer” has changed his mind so that the property could then be transferred to the real buyer. They further claim that there are more than “special buyers” than real buyers of GA and that its owners, respondents Delfin and Dexter Lee, themselves ordered the employees to recruit “special buyers”.

Witness Panem also asserted in her *Sinumpaang Salaysay* that “special buyers” are also employed by GA in its transactions with banks, like the RCBC and PNB. One of the enticement for these “special buyers”, aside from the P5,000.00 fee, is that they are assured that they will not pay for the housing loan they applied for with Pag-Ibig as in fact it is GA that pays for their housing loans. She also alleged that GA’s employees sometimes use fictitious names as “special buyers”.<sup>95</sup>

Allegedly using the “special buyers” scheme, Globe Asiatique entered into the FCAs with the HDMF during the period from August 12, 2008 to July 10, 2009 wherein Globe Asiatique represented that: (a) the buyers of its real estate projects were members of Pag-Ibig, hence, qualified to apply for the takeout loans under the Pag-Ibig Housing Loan Program; (b) the members-borrowers and their respective housing loan applications had been properly evaluated and approved in accordance with the applicable guidelines of the Pag-Ibig Housing Loan Program prior to their endorsement to the Pag-Ibig Fund; (c) that all documents submitted to the Pag-Ibig Fund, inclusive of the individual titles and the corresponding Deeds of Assignment, were valid, binding, and enforceable in all other respects that they purported to be; (d) that any person or agent employed or allowed to transact or do business in its behalf had not committed any act of misrepresentation; and (e) that all pertinent laws, rules and regulations had been complied with, among others.<sup>96</sup> As the result thereof, the HDMF extended the FCLs in favor of Globe Asiatique amounting to ₱2.9 billion.

On July 13, 2009, the MOA was forged between the HDMF and Globe Asiatique for the latter to again avail of a loan takeout from the HDMF. Accordingly, additional FCAs were extended to Globe Asiatique totaling ₱3.55 billion. While the MOA did not contain the same representations made in the previous FCAs, it nevertheless required Globe Asiatique to undertake the following corrective measures in case defects in the HDMF membership and housing loan eligibilities of the buyers should arise, namely:

<sup>95</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 393.

<sup>96</sup> *Id.* at 411-412.

- 1) Require the borrower to complete the required number of contributions, in case the required 24 monthly contributions is not met;
- 2) Require the borrower to update membership contributions, in case the membership status is inactive;
- 3) Require the borrower to update any existing Multi-Purpose Loan (MPL) if its in arrears or pay in full if the same has lapsed;
- 4) Buyback the account in case the member has a HDMF housing loan that is outstanding, cancelled, bought back, foreclosed or subject of dacion-en-pago.<sup>97</sup>

Had Globe Asiatique, through the respondents, not made the foregoing representations and undertaking, the HDMF would not have entered into the FCAs and granted the loan takeouts to Globe Asiatique to its damage and prejudice.

We next determine the individual participation of the respondents in the “special buyers” scheme.

In *Ching v. Secretary of Justice*,<sup>98</sup> the Court declared that corporate officers or employees through whose act, default or omission the corporation commits a crime were themselves individually guilty of the crime. The Court expounded why:

The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act. Moreover, all parties active in promoting a crime, whether agents or not, are principals.. Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

The DOJ aptly noted that the following acts of the respondents rendered them criminally accountable for perpetrating the “special buyers” scheme and causing pecuniary damage to the HDMF: **Delfin Lee**, for signing the FCAs and MOA in behalf of Globe Asiatique, and the checks issued by Globe Asiatique to the “special buyers” and the HDMF;<sup>99</sup> **Dexter**, for giving the orders to recruit “special buyers” and co-signing those checks issued to the special buyers and HDMF;<sup>100</sup> **Sagun**, head of Globe

<sup>97</sup> *Rollo* (G.R. No.209424), Vol. II, p. 599.

<sup>98</sup> G.R. No. 164317, February 6, 2006, 481 SCRA 609, 636-637.

<sup>99</sup> *Rollo* (G.R. No. 209852), Vol. I, p. 417.

<sup>100</sup> *Id.* at 418.

Asiatiques's Documentation Department, for collating the documents submitted by the borrowers/buyers, checking if the same are complete and duly accomplished, and for verifying whether or not said borrowers/buyers are indeed Pag-Ibig members with updated contributions or existing housing loans;<sup>101</sup> and **Salagan**, head of Globe Asiatique's Accounting/Finance Department, for reviewing all requests for payment from on-site projects and preparing the corresponding checks, ensuring that all loan takeouts are duly recorded, and that amortizations are timely remitted to HDMF.<sup>102</sup>

We agree that the concerted acts of the respondents could manifest a common criminal design to make it appear that Globe Asiatique had numerous qualified borrowers/buyers that would satisfy the HDMF's conditions for the loan takeouts. Their acts, taken collectively, would probably support a charge of conspiracy, and suggest that they participated in the transactions with a view to furthering the common design and purpose.<sup>103</sup>

As for Atty. Alvarez, we do not subscribe to the CA's view that his act of notarizing various documents, consisting of the individual buyer's affidavit of income, promissory note and developer's affidavit, which were material for the processing and approval of the transactions,<sup>104</sup> was insufficient to establish his having been part of the conspiracy in the execution of the "special buyers" scheme. In our view, the DOJ had reasonable basis to hold against him thusly:

x x x Atty. Alvarez knew, participated and consented to the illegal scheme perpetrated by respondents Delfin and Dexter Lee, Christina Sagun and Cristina Salagan. It should be underscored that Atty. Alvarez notarized crucial pieces of documents, consisting of the buyer's affidavit of income, promissory note, and developer's affidavit (by Ms. Cristina Sagun) alleging compliance with the conditions set by HDMF, all of which are essential for the processing and approval of the purported transaction. We also find the defense of Atty. Alvarez as self-serving, to say the least, considering that part of his job as a notary public is to ascertain the identity of the affiant appearing before him. As it turns out, a large number of the said affiants are either fictitious and/or non-existing, thereby enabling the execution of the grand scheme of his co-respondents. It bears to note that his actions, apart from evidencing his conspiracy, assent and/or cooperation in the accomplishment of the fraud, also constitutes a clear violation of Section 7, Paragraph B (2) of Republic Act No. 6713, also known as the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>105</sup>

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<sup>101</sup> Id.

<sup>102</sup> Id.

<sup>103</sup> See *Zapanta v. People*, G.R. Nos. 192698-99, April 22, 2015, 757 SCRA 172, 190-191.

<sup>104</sup> *Rollo* (G.R. No. 209852), Vol. 1, p. 419.

<sup>105</sup> Id. at 419-420.

In view of the foregoing, the amendment of the information to charge simple *estafa* is warranted pursuant to *Hao v. People*,<sup>106</sup> to wit:

With our conclusion that probable cause existed for the crime of simple *estafa* and that the petitioners have probably committed it, it follows that the issuance of the warrants of arrest against the petitioners remains to be valid and proper. To allow them to go scot-free would defeat rather than promote the purpose of a warrant of arrest, which is to put the accused in the court's custody to avoid his flight from the clutches of justice.

Moreover, we note that simple *estafa* and syndicated *estafa* are not two entirely different crimes. Simple *estafa* is a crime necessarily included in syndicated *estafa*. An offense is necessarily included in another offense when the essential ingredients of the former constitute or form a part of those constituting the latter.

Under this legal situation, only a formal amendment of the filed information under Section 14, Rule 110 of the Rules of Court is necessary; the warrants of arrest issued against the petitioners should not be nullified since probable cause exists for simple *estafa*.

### 3.

#### **The conduct of the preliminary investigation by the DOJ was invalidly enjoined**

In support of its move to reverse and set aside the adverse resolutions of the CA, the DOJ argues in **C.A.-G.R. No. 208744** and **C.A.-G.R. No. 210095** that the CA should not have dismissed its petition for *certiorari* for being allegedly filed out of time because there existed special and compelling reasons to justify the relaxation of the procedural rules. Worthy to note is that the CA had denied petitioner's motion for special extension of time to file the petition for *certiorari* because there was no compelling reason to extend the period for doing so.

Under Section 4,<sup>107</sup> Rule 65 of the *Rules of Court*, as amended by A.M. No. 07-7-12-SC, any aggrieved party has a non-extendible period of 60 days from receipt of the assailed decision, order or resolution within which to file the petition for *certiorari*. The period is non-extendible to avoid causing any unreasonable delay that would violate the constitutional rights of parties to the speedy disposition of the case.<sup>108</sup> Regrettably, when the DOJ finally filed the petition for *certiorari* during the extended period

<sup>106</sup> G.R. No. 183345, September 17, 2014, 735 SCRA 312, 329-330.

<sup>107</sup> Section 4. When and where to file the petition. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. **In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of the motion.** (Emphasis ours)

<sup>108</sup> *Manila Electric Company v. N.E. Magno Construction, Inc.* G.R. No. 208181, August 31, 2016, 802 SCRA 51, 59.

sought, the petition lacked the proper docket number due to inadvertence, which prompted the CA to assign a new docket number to the petition. This move on the part of the CA resulted in the outright dismissal of the petition for having been filed beyond the reglementary period.

In view of the obtaining circumstances, we find merit in the DOJ's argument.

In *Vallejo v. Court of Appeals*,<sup>109</sup> the Court allowed the petition filed almost four months beyond the reglementary period to proceed. We emphasized therein that meritorious cases should be allowed to proceed despite their inherent procedural defects and lapses in keeping with the principle that the rules of procedure were but tools designed to facilitate the attainment of justice, and that the strict and rigid application of rules that would allow technicalities to frustrate rather than promote substantial justice must always be avoided. The Court explained that excusing a technical lapse and affording the parties a review of the case to attain the ends of justice, instead of disposing of the case on technicality and thereby causing grave injustice to the parties, would be a far better and more prudent course of action.

Time and again, the Court, in resolving the OSG's requests for extension, has taken cognizance of the heavy workload of that office. It should not be any different now. Worthy to note is that the OSG, representing the DOJ, offered suitable explanations and apologies, like the associate solicitor in charge of filing the petition having been rushed to the hospital and thus being denied the opportunity to supervise or see to the filing of the intended petition. Also, the omission of the docket number from the petition that was ultimately filed did not look as if it was aimed either to delay the proceedings or to confuse the CA. The explanation for the delay in the filing of the petition in the CA tendered by the OSG thereon, coupled with its invocation of liberality or the relaxation of the rules, was fully acceptable. As such, the petition should be allowed to proceed. We further find that the CA's dismissal of the petition was disproportionate to the inadvertence committed considering the substantial merits of the DOJ's case. Verily, the petition deserves to be given due course and resolved in view of the fact that the injunction issued by the RTC against the DOJ on the conduct of the preliminary investigation was a patent nullity on its very face.

We now go to the merits of the petitions in **C.A.-G.R. No. 208744** and **C.A.-G.R. No. 210095**.

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<sup>109</sup> G.R. No. 156413, April 14, 2004, 427 SCRA 658, 668.

The Pasig RTC issued the assailed April 10, 2013 order enjoining the DOJ from proceeding with the preliminary investigation of the second, third, and fourth complaints for syndicated *estafa* against Globe Asiatique, *et al.* because of its impression that the summary judgment rendered by the Makati RTC in favor of Globe Asiatique had effectively removed the indispensable element of damage from the criminal complaints.<sup>110</sup> The Pasig RTC undeniably gravely abused its discretion in issuing the writ of preliminary injunction.

It is an established judicial policy that injunction cannot be used as a tool to thwart criminal prosecutions because investigating the criminal acts and prosecuting their perpetrators right away have always been in the interest of the public. Such policy is intended to protect the public from criminal acts. The Pasig RTC could not feign ignorance of such policy, especially considering that the CA's previous ruling against its issuance of a writ of preliminary injunction had been affirmed by this Court with finality. The CA also observed then:

[I]njunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and protected (sic) for the protection of society. It is only in extreme cases that injunction will lie to stop criminal prosecution. Public respondent Judge anchored his issuance of the writ on the existence of a prejudicial question. However, this Court finds that the facts and issues in the Makati civil case are not determinative of Lee's guilt or innocence in the cases filed before the DOJ. Verily public respondent Judge committed grave abuse of discretion amounting to lack of or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information of *estafa* against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.<sup>111</sup>

We emphasize yet again that the conduct of a preliminary investigation, being executive in nature, was vested in the DOJ. As such, the injunction issued by the Pasig RTC inexcusably interfered with the DOJ's mandate under Section 3(2), Chapter 1, Title III, Book IV of the *Administrative Code of 1987* to investigate the commission of crimes and to prosecute the offenders.

Equally worthy of emphasis is that the ruling of the CA in C.A.-G.R. SP No. 121594 attained finality after the Court reviewed such ruling in G.R. No. 201360. Considering that the petitions against the DOJ arose from the same factual milieu and sought the same relief, which was to restrain the DOJ from conducting preliminary investigations against Globe Asiatique and its officers and employees upon the complaints filed before the DOJ, and considering further that the cases involved the same parties and reprised

<sup>110</sup> *Rollo* (G.R. No. 208744), Vol. I, p. 62.

<sup>111</sup> *Rollo* (G.R. No. 208744), Vol. II, p. 652.

the arguments, the doctrine of the law of the case certainly applied to bar a different outcome. At the very least, the Pasig RTC should have been very well instructed thereby, and should have avoided the incongruous situation of ignoring what was already the clear law of the case.

The doctrine of the law of the case precludes departure in a subsequent proceeding essentially involving the same case from a rule previously made by an appellate court. Applying this doctrine, the Court in *Land Bank of the Philippines v. Suntay*<sup>112</sup> held that:

We underscore that *Land Bank v. Suntay* (G.R. No. 157903) was the appropriate case for the determination of the issue of the finality of the assailed RARAD Decision by virtue of its originating from Land Bank's filing on April 20, 2001 of its petition for judicial determination of just compensation against Suntay and RARAD Miñas in the RTC sitting as a Special Agrarian Court. Therein, Suntay filed a motion to dismiss mainly on the ground that the petition had been filed beyond the 15-day reglementary period as required by Section 11, Rule XIII of the *Rules of Procedure of DARAB*. After the RTC granted the motion to dismiss, Land Bank appealed to the CA, which sustained the dismissal. As a result, Land Bank came to the Court (G.R. No. 157903), and the Court then defined the decisive issue to be: "whether the RTC erred in dismissing the Land Bank's petition for the determination of just compensation."

The Court ruled in favor of Land Bank. For both Land Bank and Suntay (including his assignee Lubrica), the holding in *Land Bank v. Suntay* (G.R. No. 157903) became the law of the case that now controlled the course of subsequent proceedings in the RTC as a Special Agrarian Court. In *Cucueco v. Court of Appeals*, the Court defined law of the case as "the opinion delivered on a former appeal." *Law of the case* is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. With the pronouncement in G.R. No. 157903 having undeniably become the law of the case between the parties, we cannot pass upon and rule again on the same legal issue between the same parties.<sup>113</sup>

Indeed, the issue submitted for the Pasig RTC's determination had been resolved by the CA in CA-G.R. SP No. 121594 to the effect that the Pasig RTC could not enjoin the DOJ from proceeding with the preliminary investigation of the second complaint. As far as the parties were concerned, therefore, the propriety of the DOJ's conduct of the preliminary investigation was no longer an unresolved issue. But by issuing the writ of preliminary injunction yet again to prevent the preliminary investigation of

<sup>112</sup> G.R. No. 188376, December 14, 2011, 662 SCRA 614.

<sup>113</sup> Id. at 643-644.



the second and subsequent complaints by the DOJ, the Pasig RTC acted with manifest whimsicality that amounted to gross and patent abuse of discretion. Such action was void and ineffectual.

**WHEREFORE**, the Court **GRANTS**:

(1) The petitions for review on *certiorari* in **G.R. No. 209424** and, accordingly, **ANNULS** and **SETS ASIDE** the decision promulgated on October 7, 2013 by the Court of Appeals in **C.A.-G.R. No. SP No. 128262**; **REVERSES** the resolution of December 11, 2012 issued in Civil Case No. 10-1120 by the Regional Trial Court, Branch 58, in Makati City declaring the partial summary judgment rendered on January 30, 2012 final and executory; **PRONOUNCES** that the partial summary judgment rendered on January 30, 2012 may still be appealed by the aggrieved party upon rendition of the final judgment in Civil Case No. 10-1120; and **DIRECTS** the Regional Trial Court, Branch 58, in Makati City to conduct further proceedings in Civil Case No. 10-1120 with dispatch; and

(2) The petitions for review on *certiorari* in **G.R. No. 208744** and **G.R. No. 210095** and, accordingly, **REVERSES** and **SETS ASIDE** the resolution promulgated on July 8, 2013 in C.A.-G.R. No. 130404 denying the motion for extension of the Department of Justice, and the resolution promulgated on August 14, 2013 denying the motion to admit petition for *certiorari* filed by the Department of Justice; **LIFTS** and **QUASHES** the writ of preliminary injunction issued on April 10, 2013 by the Regional Trial Court, Branch 167, in Pasig City enjoining the preliminary investigation for the second, third and fourth criminal complaints filed against the respondents on the ground that such writ of preliminary injunction was issued with grave abuse of discretion amounting to lack of jurisdiction; **DECLARES** that the Department of Justice may now resume the preliminary investigation of the remaining criminal complaints against the respondents for simple *estafa* under Article 315(2)(a) of the *Revised Penal Code*; and **ORDERS** the Regional Trial Court, Branch 167, in Pasig City to dismiss Civil Case No. 73115 entitled *Delfin S. Lee v. Department of Justice*.

The Court **PARTIALLY GRANTS** the petitions for review on *certiorari* in **G.R. No. 205698**, **G.R. No. 205780**, **G.R. No. 209446**, **G.R. No. 209489**, **G.R. No. 209852**, **G.R. No. 210143**, **G.R. No. 228452**, **G.R. No. 228730** and **G.R. No. 230680** and, accordingly:

(1) **DIRECTS** the **DEPARTMENT OF JUSTICE** to amend the information in Criminal Case No. 18480 entitled *People of the Philippines v. Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez* of the Regional Trial Court, Branch 42, in San Fernando City,

Pampanga to charge respondents **DELFIN S. LEE, DEXTER L. LEE, CHRISTINA SAGUN, CRISTINA SALAGAN** and **ALEX M. ALVAREZ** with simple *estafa* under Article 315(2)(a) of the *Revised Penal Code*; and

(2) **ORDERS** the Presiding Judge of the Regional Trial Court, Branch 42, in San Fernando City, Pampanga to suspend proceedings in Criminal Case No. 18480 pending the filing by the **DEPARTMENT OF JUSTICE** of the amended information as directed herein, and to try the respondents as the accused in Criminal Case No. 18480 in accordance therewith, without prejudice to acting on any matter incidental to the conduct of the trial of a criminal case, including applications for bail.

No pronouncement on costs of suit.

**SO ORDERED.**

*Lucas P. Bersamin*  
**LUCAS P. BERSAMIN**  
Associate Justice

**WE CONCUR:**

*See Dissenting Opinion*  
*Antonio T. Carpio*  
**ANTONIO T. CAPIO**  
Acting Chief Justice

*No Part*  
*Presbitero J. Velasco, Jr.*  
**PRESBITERO J. VELASCO, JR.**  
Associate Justice

*I join the dissent of Justice Carpio*  
*Teresito Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice

*No Part*  
*Diosdado M. Peralta*  
**DIOSDADO M. PERALTA**  
Associate Justice

*I join J. Bernabe's separate concurring opinion*  
*Mariano C. del Castillo*  
**MARIANO C. DEL CASTILLO**  
Associate Justice

*Please see separate opinion*  
*Estela M. Perlas-Bernabe*  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

*I dissent. See separate opinion*  
*Marvic M.V.F. Leonen*  
**MARVIC M.V.F. LEONEN**  
Associate Justice

*Francis Jardeleza*  
 (No Part) *No part*  
**FRANCIS H. JARDELEZA**  
 Associate Justice

*Alfredo Benjamin S. Caguioa*  
**ALFREDO BENJAMIN S. CAGUIOA**  
 Associate Justice

*See separate concurring opinion.*

*I join the dissenting opinion of J. Carpio*  
*Martires*  
**SAMUEL R. MARTIRES**  
 Associate Justice

*Noel Gimenez Tijam*  
**NOEL GIMENEZ TIJAM**  
 Associate Justice

*Please see separate concurring opinion*

*I join Justice Carpio's dissenting opinion*  
*Reyes*  
**ANDRES B. REYES, JR.**  
 Associate Justice

*I join Justice Benabib's separate concurring opinion*  
*Gesmundo*  
**ALEXANDER G. GESMUNDO**  
 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.

*Antonio T. Carpio*  
**ANTONIO T. CARPIO**  
 Acting Chief Justice

**CERTIFIED TRUE COPY**

*Edgar O. Aricheta*  
**EDGAR O. ARICHETA**  
 Clerk of Court En Banc  
 Supreme Court