

EN BANC

G.R. No. 205698 – HOME DEVELOPMENT MUTUAL FUND (HDMF) PAG-IBIG FUND, *Petitioner*, v. CHRISTINA SAGUN, *Respondent*.

G.R. No. 205780 – 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*, v. CHRISTINA SAGUN, *Respondent*.

G.R. No. 208744 – DEPARTMENT OF JUSTICE, *Petitioner*, v. DELFIN S. LEE, *Respondent*.

G.R. No. 209424 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner*, v. GLOBE ASIATIQUE REALTY HOLDINGS CORPORATION, DELFIN S. LEE, in his capacity as the President of the corporation, and TESSIE G. WANG, *Respondents*.

G.R. No. 209446 – PEOPLE OF THE PHILIPPINES, *Petitioner*, v. ALEX M. ALVAREZ, *Respondent*.

G.R. No. 209489 – HOME DEVELOPMENT MUTUAL FUND, *Petitioner*, v. ATTY. ALEX M. ALVAREZ, *Respondent*.

G.R. No. 209852 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner*, v. DELFIN S. LEE, *Respondent*.

G.R. No. 210095 – DEPARTMENT OF JUSTICE, *Petitioner*, v. DELFIN S. LEE, *Respondent*.

G.R. No. 210143 – PEOPLE OF THE PHILIPPINES, *Petitioner*, v. DELFIN S. LEE, *Respondent*.

G.R. No. 228452 – HOME DEVELOPMENT MUTUAL FUND (HDMF), *Petitioner*, v. DEXTER L. LEE, *Respondent*.

G.R. No. 228730 – PEOPLE OF THE PHILIPPINES, *Petitioner*, v. DEXTER L. LEE, *Respondent*.

G.R. No. 230680 – CRISTINA SALAGAN, *Petitioner*, v. PEOPLE OF THE PHILIPPINES and HOME DEVELOPMENT MUTUAL FUND (HDMF), *Respondents*.

Promulgated:

July 31, 2018

X

X

DISSENTING OPINION

CARPIO, J.:

This case involves the resolution of this issue: Is the taking of some ₱6.6 billion from the PAG-IBIG Fund, through the use of over one thousand fictitious borrowers, applied for by a private corporation through its corporate officers, simple *estafa* or syndicated *estafa*? The PAG-IBIG Fund, administered by a government corporation, is sourced from contributions by millions of public and private employees.

The majority holds that this mind-boggling taking of funds is a case of simple *estafa*. I dissent for obviously this is a case of syndicated *estafa*.

Before this Court are consolidated petitions for review filed under Rule 45 of the Rules of Court. The consolidated cases stemmed from the housing loan accounts taken out from Home Development Mutual Fund (HDMF) by Globe Asiatique Realty Holdings Corporation (Globe Asiatique) for its housing projects in Pampanga.

The Facts

In 2008, Globe Asiatique, represented by its president, Delfin S. Lee, negotiated with HDMF for a Window-1 Contract to Sell/Real Estate Mortgage (CTS-REM) with Buyback Guaranty take out mechanism for its Xevera Bacolor Project in Pampanga. Pursuant thereto, Globe Asiatique entered into Funding Commitment Agreements (FCAs) and Memoranda of Agreement (MOA) with HDMF.

On 10 September 2010, then HDMF Officer-in-Charge (OIC) Emma Faria (Faria) wrote a letter to the Director of the National Bureau of Investigation (NBI), requesting assistance in the investigation by HDMF on the housing loan accounts taken out by Globe Asiatique for Xevera and Sameera projects in Pampanga. In her letter, Faria stated that HDMF's own validation of Globe Asiatique's accounts revealed that hundreds of them have been taken out by spurious borrowers while about a thousand more could not be located.

The NBI conducted its own investigation. On 29 October 2010, the NBI forwarded to the Department of Justice (DOJ) a letter recommending that a preliminary investigation be conducted against Delfin S. Lee and others for the crime of syndicated *estafa* constituting economic sabotage. The DOJ formed a panel of prosecutors to investigate the complaint which was docketed as **NPS Docket XVI-INV-10J-00319, entitled *National***

Bureau of Investigation (NBI)/Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corp., Delfin S. Lee, et al. (First Criminal Complaint).

On 15 November 2010, Globe Asiatique and Delfin S. Lee filed before the Makati RTC a complaint for **Specific Performance and Damages against HDMF, its Board of Trustees and OIC Faria** (Makati Civil Case). The Complaint was docketed as **Civil Case No. 10-1120, entitled *Globe Asiatique Realty Corp., et al. v. The Home Development Mutual Fund or PAG-IBIG Fund, et al.*** and raffled to Makati RTC **Branch 58**. The complaint sought to compel HDMF to accept the replacements Globe Asiatique had proposed to take the place of buyers/borrowers who have become delinquents in their payments of their loan amortizations.

Meanwhile, on 10 December 2010, the NBI forwarded to the DOJ another letter recommending the conduct of preliminary investigation against Delfin S. Lee and others for syndicated estafa based on the complaints of HDMF and Globe Asiatique clients Evelyn Niebres, Catherine Bacani, and Ronald San Nicolas. Acting on the NBI recommendation, the DOJ formed a panel of prosecutors to handle the preliminary investigation of the complaint, which was docketed as **NPS Docket No. XVI-INV-10L-00363, entitled *National Bureau of Investigation/Evelyn B. Niebres, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al.*** (Second Criminal Complaint). On 18 February 2011, the third criminal complaint for syndicated estafa was filed, docketed as **NPS Docket No. XVI-INV-11B-00063, entitled *National Bureau of Investigation/Jennifer Gloria, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al.*** (Third Criminal Complaint). The fourth criminal complaint for syndicated estafa, docketed as **NPS Docket No. XVI-INV-11C-00138, entitled *National Bureau of Investigation/Maria Fatima Kayonas, et al. v. Globe Asiatique Realty Corp./Delfin S. Lee, et al.*** (Fourth Criminal Complaint) was filed on 25 March 2011. Delfin S. Lee filed a petition to suspend the proceedings, which the DOJ denied.

Without awaiting the outcome of the pending DOJ cases, Delfin S. Lee filed a **Petition for Injunction dated 27 July 2011 before the Pasig RTC to enjoin the DOJ from continuing with the preliminary investigation in the Second Criminal Complaint**. The case was docketed as **Civil Case No. 73115-PSG** and raffled to Branch 167 of the Pasig RTC, presided by Judge Rolando Misláng (Judge Misláng). In his petition, Delfin S. Lee argued that the Makati Civil Case poses a prejudicial question to the determination of the Second Criminal Complaint, and thus prayed for the suspension of the proceedings in the latter case.



In an Order dated 16 August 2011, Judge Mislang of the Pasig RTC granted Delfin S. Lee's application for TRO, and enjoined the DOJ from continuing with the preliminary investigation in the Second Criminal Complaint. In its Order dated 26 August 2011, the Pasig RTC likewise granted Delfin S. Lee's application for TRO to enjoin the DOJ from filing an Information for syndicated estafa in connection with the First Criminal Complaint. Thereafter, in its **Order dated 5 September 2011, the Pasig RTC issued a Writ of Preliminary Injunction, restraining the DOJ from filing the Information in the First Criminal Complaint and from proceeding with the preliminary investigation in the Second Criminal Complaint.**

In a petition docketed as CA-G.R. SP No. 121594, the DOJ assailed the Pasig RTC's Order dated 5 September 2011. In its Decision dated 16 April 2012, the Court of Appeals (CA) ruled that no prejudicial question exists and thus annulled the 5 September 2011 Order of the Pasig RTC. On appeal, this Court in its 4 July 2012 Resolution in G.R. No. 201360 affirmed the CA Decision, and thereafter denied Delfin S. Lee's Motion for Reconsideration. The CA Decision in CA-G.R. SP No. 121594 dated 16 April 2012 became final and executory on 2 January 2013.

In September 2011, HDMF filed before the Pasig RTC a Motion to Inhibit and Leave to File Motion in Intervention. The DOJ also filed a Motion to Inhibit. In its Order dated 27 January 2012, the Pasig RTC allowed HDMF to intervene but denied the motions to inhibit.

In the meantime, the **DOJ Task Force on Securities and Business Scam** issued a **Review Resolution dated 10 August 2011**, finding probable cause for syndicated estafa (NPS Docket No. XVI-INV-10J-00319) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez.

On the Makati Civil Case, the **Makati RTC issued a Resolution dated 30 January 2012, granting Delfin S. Lee's Motion for Summary Judgment, ruling that Globe Asiatique was entitled to specific performance and damages, except that the exact amount of damages will have to be determined during the trial proper.** In its Resolution dated 11 December 2012, the Makati RTC denied the Motion for Reconsideration filed by HDMF President and Chief Executive Officer Atty. Darlene Marie Berberabe (Atty. Berberabe) and Faria, and ruled that the Summary Judgment declared in Civil Case No. 10-1120 is already final and executory against HDMF. HDMF filed a Petition for *Certiorari* before the CA, docketed as CA-G.R. SP No. 128262. In its Decision dated 7 October 2013, the CA dismissed HDMF's petition, finding



no grave abuse of discretion and ruling that HDMF availed of the wrong remedy to assail the Makati RTC Resolutions and that there was no showing that the petition was filed under the authority of the Office of the Government Corporate Counsel (OGCC).

In the meantime, Delfin S. Lee filed before the Pasig RTC a Supplemental Petition dated 11 June 2012, seeking to enjoin the DOJ from proceeding with the Third and Fourth Criminal Complaints, citing the 30 January 2012 Resolution of the Makati RTC in the Makati Civil Case. On 21 March 2013, the Pasig RTC issued a TRO against the DOJ, enjoining the latter from proceeding with the preliminary investigation of the Second, Third, and Fourth Criminal Complaints. Thereafter, in its **Order dated 10 April 2013, the Pasig RTC issued the Writ of Preliminary Injunction, enjoining the DOJ from continuing with the preliminary investigation of the Second, Third, and Fourth Criminal Complaints.**

On 7 June 2013, the DOJ filed a Motion for Special Extension of Time to File Petition for Certiorari before the CA (CA-G.R. SP No. 130404). Thereafter, the DOJ filed on 18 June 2013 the Petition for *Certiorari*, assailing the Pasig RTC Order dated 10 April 2013. Unfortunately, the petition was inadvertently filed without a docket number, resulting in the petition being given a new docket number (CA-G.R. SP No. 130409) and raffled to another *ponente* and division.

On 8 July 2013, the CA issued a Resolution in CA-G.R. SP No. 130404, denying the DOJ's Motion for Special Extension of Time to File Petition for Certiorari, stating that the requested period has lapsed without the petition having been filed. DOJ filed a Manifestation with Motion to Admit Petition for Certiorari dated 16 July 2013, which sought reconsideration of the CA's Resolution dated 8 July 2013, and prayed for the admission of the attached petition. **In the Resolution dated 14 August 2013, the CA denied the motion for being filed out of time.**

As regards CA-G.R. SP No. 130409, the CA, in its 26 June 2013 Resolution, dismissed the Petition for *Certiorari* filed by the DOJ on 18 June 2013 for being filed out of time. The CA denied the DOJ's Motion for Reconsideration in the Resolution dated 11 November 2013.

In the meantime, on 30 April 2012, the criminal information for syndicated estafa against Delfin S. Lee, Dexter Lee, Atty. Alex Alvarez, Christina Sagun, and Cristina Salagan was raffled to Pampanga RTC, Branch 42, presided by Judge Maria Amifaith S. Fider-Reyes. The case was docketed as Criminal Case No. 18480 entitled "*People of the Philippines v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez.*"

On 22 May 2012, the Pampanga RTC issued a Resolution, finding probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued a warrant of arrest against them with no bail recommended.

In the Resolution dated 22 August 2012, the Pampanga RTC denied the: (1) Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending the Resolution of the Motion filed by Delfin S. Lee and Dexter L. Lee; and (2) Motion to Quash Warrant of Arrest filed by Cristina Salagan.

On 29 January 2014, the Pampanga RTC issued a Resolution denying Christina Salagan's Second Motion to Quash Information with Prayer to Re-Determine Probable Cause Based on Supervening Event.

The Cases

The Court consolidated these cases which involve common questions of law and fact, and the reliefs sought are intertwined.

G.R. No. 205698

*(Home Development Mutual Fund (HDMF) PAG-IBIG Fund,
v. Christina Sagun)*

This petition for review on *certiorari* assails the 5 October 2012 Decision and the 11 February 2013 Resolution of the CA in CA-G.R. SP No. 121346. The dispositive portion of the Decision reads:

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

SO ORDERED.¹

The 10 August 2011 DOJ Review Resolution found probable cause against Delfin Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez for the crime of syndicated estafa in the First Criminal Complaint and recommended the filing of the corresponding information against them. The dispositive portion of the DOJ Review Resolution reads:

¹ *Rollo* (G.R. No. 205698), Vol. I, pp. 56-57.

WHEREFORE, premises considered, it is most respectfully recommended that this resolution, finding probable cause against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan and Atty. Alex Alvarez for the crime of syndicated estafa, as defined and penalized under paragraph 2(a) of Article 315 of the Revised Penal Code, in relation to Section 1 of Presidential Decree No. 1689, be APPROVED and that the corresponding information against them be filed in court WITH NO BAIL RECOMMENDED. It is likewise respectfully recommended that the complaint against Ramon P. Palma Gil, Lerma Vitug, Tintin Fonclara, Geraldine Fonclara, Revelyn Reyes, Rod Macaspac, Marvin Arevalo, Joan Borbon, Christian Cruz, Rodolfo Malabanan, Nannet Haguling and John Tungol, be DISMISSED for lack or insufficiency of evidence and that this Resolution be referred to the Office of the Ombudsman so that the appropriate investigation be conducted against the former and present officers of HDMF (Pag-Ibig Fund).

Petitioner HDMF's Motion for Reconsideration was denied by the CA in its Resolution dated 11 February 2013.

G.R. No. 205780

(Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun)

This petition for review on *certiorari* filed by the DOJ and NBI likewise seeks to reverse and set aside the 5 October 2012 Decision and the 11 February 2013 Resolution of the CA in CA-G.R. SP No. 121346.

G.R. No. 208744

(Department of Justice v. Delfin S. Lee)

This petition for review on *certiorari* assails the CA Resolutions dated 8 July 2013² and 14 August 2013³ in CA-G.R. SP No. 130404.

On 7 June 2013, the DOJ filed with the CA a Motion for Special Extension of Time to File Petition for Certiorari, praying for an additional period of ten days from 9 June 2013, or until 19 June 2013 to file the intended petition. On 18 June 2013, the DOJ filed the petition, assailing the 10 April 2013 Order of the Pasig RTC (Branch 167) in Civil Case No. 73115 which granted Delfin S. Lee's application for the issuance of a writ of preliminary injunction. The assailed Order enjoined the DOJ from continuing with the preliminary investigation of the Second, Third and Fourth Criminal Complaints, thus:

² *Rollo* (G.R. No. 208744), p. 122.

³ *Id.* at 118-121.

WHEREFORE, let a writ of preliminary injunction issue enjoining Department of Justice and any other person or panel under its supervision from continuing with the preliminary investigation of NPS Docket No. XVI-INV-10L-00363, the Second Criminal Complaint, NPS Docket No. XVI-INV-11B-00063, the Third Criminal Complaint, and NPS Docket No. XVI-INV-11C-00138, the Fourth Criminal Complaint.

Petitioner is directed to post a bond in the amount of Php2,000,000.00.⁴

Unfortunately, the petition filed on 18 June 2013 was without a docket number, which resulted in the petition being given another docket number, namely CA-G.R. SP No. 130409 (instead of CA-G.R. SP No. 130404), and the same was raffled to another *ponente* and division.

On 8 July 2013, the CA issued a Resolution in CA-G.R. SP No. 130404, denying the DOJ's Motion for Extension of Time to File Petition for Certiorari, stating that the requested period has lapsed without the petition having been filed. The DOJ filed a Manifestation with Motion to Admit Petition for Certiorari dated 16 July 2013, which sought reconsideration of the CA's Resolution dated 8 July 2013, and prayed for the admission of the attached petition. In the Resolution dated 14 August 2013, the CA denied the motion for being filed out of time. The CA did not consider the petition as filed on 18 June 2013 since the inexcusable inadvertence of the DOJ in filing the petition without a docket number resulted in the petition being considered as a freshly filed petition and given the latest docket number, namely, CA-G.R. SP No. 130409. Furthermore, the CA found no compelling reason to reconsider the 8 July 2013 Resolution denying the DOJ's Motion for Extension.

G.R. No. 209424

(Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the Corporation, and Tessie G. Wang)

This petition for review on *certiorari* assails the CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262,⁵ which upheld the Resolutions dated 30 January 2012 and 11 December 2012 of the Makati RTC in Civil Case No. 10-1120.⁶ The dispositive portion of the CA Decision reads:

⁴ Id. at 198.

⁵ *Home Development Mutual Fund v. The Hon. Eugene S. Paras, in his official capacity as the Presiding Judge of Branch 58 of the Regional Trial Court of Makati, Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as President of the corporation and Tessie G. Wang.*

⁶ *Globe Asiatique Realty Holdings Corporation and Delfin S. 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.*

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 the HDMF, Faria and Atty. Berberabe's Motion for Reconsideration, the instant petition is hereby DISMISSED.

SO ORDERED.⁷

The Makati RTC Resolution dated 30 January 2012 granted the Motion for Summary Judgment filed by Globe Asiatique and Delfin S. Lee.

HDMF and Faria filed a Motion for Reconsideration through private counsel, the Yorac Arroyo Chua Caedo & Coronel Law Firm. However, the Makati RTC held that the Motion for Reconsideration filed by the private counsel in behalf of HDMF is unauthorized. Atty. Berberabe likewise filed a Motion for Reconsideration. In a Resolution dated 11 December 2012, the Makati RTC denied the motions for reconsiderations filed by Faria and Atty. Berberabe for lack of merit. The Makati RTC further held that the 30 January 2012 Resolution containing the Summary Judgment has become final, executory, and immutable as to HDMF.

G.R. No. 209446

(People of the Philippines v. Alex M. Alvarez)

This petition for review on *certiorari* assails the CA Decision dated 3 October 2013 in CA-G.R. SP No. 127690, the dispositive portion of which reads:

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.⁸

The 22 May 2012 Resolution of the Pampanga RTC found probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to

⁷ *Rollo* (G.R. No. 209424), Vol. I, pp. 14-34.

⁸ *Rollo* (G.R. No. 209446), Vol. I, pp. 31-32.

Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued a warrant of arrest against them with no bail recommended.

In the Resolution dated 22 August 2012, the Pampanga RTC denied the: (1) Motion to Recall/Quash Warrant of Arrest and/or Hold in Abeyance their Release to Law Enforcement Agencies Pending the Resolution of the Motion filed by Delfin S. Lee and Dexter L. Lee; and (2) Motion to Quash Warrant of Arrest filed by Cristina Salagan.

G.R. No. 209489

(Home Development Mutual Fund v. Atty. Alex M. Alvarez)

This petition for review on *certiorari* filed by HDMF likewise assails the CA Decision dated 3 October 2013 in CA-G.R. SP No. 127690.

G.R. No. 209852

(Home Development Mutual Fund (HDMF) v. Delfin S. Lee)

This petition for review on *certiorari* assails the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553,⁹ which partially granted respondent Delfin S. Lee's Petition for *Certiorari* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480.¹⁰ The dispositive portion of the CA Decision reads:

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 part of public respondent Hon. Ma. Amifaieth 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.

⁹ *Delfin S. Lee v. Ma. Amifaieth S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF).*

¹⁰ *People v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, docketed as Criminal Case No. 18480 for syndicated estafa under Article 315(2)(a) of the RPC in relation to Section 1 of PD 1689, as amended.*

SO ORDERED.¹¹

G.R. No. 210095

(Department of Justice v. Delfin S. Lee)

This petition for review on *certiorari* assails the CA Resolutions dated 26 June 2013 and 11 November 2013 in CA-G.R. SP No. 130409. The 26 June 2013 Resolution dismissed the Petition for *Certiorari* filed by the DOJ on 18 June 2013 for being filed out of time. The CA denied the DOJ's Motion for Reconsideration in the Resolution dated 11 November 2013.

The Petition for *Certiorari* was filed by the DOJ before the CA to nullify the Order dated 10 April 2013 of Judge Mislang of the Pasig RTC (Branch 167) in Civil Case No. 73115, enjoining the DOJ from continuing with the preliminary investigation of the second, third, and fourth criminal complaints against Delfin S. Lee.

G.R. No. 210143

(People of the Philippines v. Delfin S. Lee)

This petition for review on *certiorari* assails the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553,¹² which partially granted respondent Delfin S. Lee's Petition for *Certiorari*, assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480. This case is related to the case entitled *Home Development Mutual Fund (HDMF) v. Delfin S. Lee* (G.R. No. 209852) which likewise seeks to reverse and set aside the CA Decision dated 7 November 2013 in CA-G.R. SP No. 127553.

G.R. No. 228452

(Home Development Mutual Fund (HDMF) v. Dexter L. Lee)

This petition for review on *certiorari* assails the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554,¹³ partially granting respondent Dexter L. Lee's Petition for *Certiorari* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480.¹⁴ The dispositive portion of the CA Decision

¹¹ Rollo (G.R. No. 209852), Vol. I, pp. 42-43.

¹² *Delfin S. Lee v. Ma. Amifaiith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF)*.

¹³ *Dexter L. Lee v. Ma. Amifaiith S. Fider-Reyes in her capacity as Presiding Judge of RTC Br. 42, San Fernando, Pampanga, People of the Philippines, and Home Development Mutual Fund (HDMF)*.

¹⁴ *People of the Philippines v. Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez*, docketed as Criminal Case No. 18480 for syndicated estafa under Article 315(2)(a) of the RPC in relation to Section 1 of PD 1689, as amended.

reads:

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 are ANNULLED 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.¹⁵

G.R. No. 228730

(People of the Philippines v. Dexter L. Lee)

This petition for review on *certiorari* likewise assails the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554, partially granting respondent Dexter L. Lee's Petition for *Certiorari* assailing the Resolutions dated 22 May 2012 and 22 August 2012 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480. This case is related to the immediately preceding case entitled *Home Development Mutual Fund (HDMF) v. Dexter L. Lee* (G.R. No. 228452) which also seeks to reverse and set aside the CA Decision dated 16 November 2016 in CA-G.R. SP No. 127554.

G.R. No. 230680

*(Cristina Salagan v. People of the Philippines and
Home Development Mutual Fund ([HDMF])*

This petition for review on *certiorari* assails the CA Decision dated 18 March 2016 in CA-G.R. SP No. 134573, affirming the Resolutions dated 22 May 2012 and 29 January 2014 of the Pampanga RTC (Branch 42) in Criminal Case No. 18480 insofar as accused Salagan is concerned. The dispositive portion of the CA Decision reads:

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

¹⁵ *Rollo* (G.R. No. 228730), pp. 32-33.

Cristina Salagan is concerned.

SO ORDERED.¹⁶

For clarity, the cases are discussed jointly in accordance with the resolutions or orders being ultimately assailed, thus:

I. DOJ Review Resolution dated 10 August 2011

1. **G.R. No. 205698** - *Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun*
2. **G.R. No. 205780** - *Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*

II. Pampanga RTC Resolutions dated 22 May 2012, 22 August 2012, and 29 January 2014

1. **G.R. No. 209446** - *People of the Philippines v. Alex M. Alvarez*
2. **G.R. No. 209489** - *Home Development Mutual Fund v. Atty. Alex M. Alvarez*
3. **G.R. No. 209852** - *Home Development Mutual Fund (HDMF) v. Delfin S. Lee*
4. **G.R. No. 210143** - *People of the Philippines v. Delfin S. Lee*
5. **G.R. No. 228452** - *Home Development Mutual Fund (HDMF) v. Dexter L. Lee*
6. **G.R. No. 228730** - *People of the Philippines v. Dexter L. Lee*
7. **G.R. No. 230680** - *Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)*

III. Pasig RTC Order dated 10 April 2013

1. **G.R. No. 208744** - *Department of Justice v. Delfin S. Lee*
2. **G.R. No. 210095** - *Department of Justice v. Delfin S. Lee*

IV. Makati RTC Resolutions dated 30 January 2012 and 11 December 2012

1. **G.R. No. 209424** - *Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang*

¹⁶ Rollo (G.R. No. 230680), Vol. I, p. 365.

The Issues

- I. Whether the CA erred in setting aside the DOJ Review Resolution dated 10 August 2011 as against Christina Sagun; (G.R. Nos. 205698 and 205780)
 - II. A. Whether the CA erred in finding no probable cause for syndicated estafa and for the issuance of arrest warrants against Delfin S. Lee, Dexter L. Lee, and Atty. Alex M. Alvarez; (G.R. Nos. 209446, 209489, 209852, 210143, 228452, and 228730)
B. Whether the CA (CA-G.R. SP No. 134573) erred in upholding the validity of the information for syndicated estafa as against Cristina Salagan and the issuance of the warrant of arrest against her. (G.R. No. 230680)
 - III. A. Whether the CA erred in dismissing the Petition for *Certiorari*, assailing the Pasig RTC Order in Civil Case No. 73115, for being filed out of time; and
B. Whether the Pasig RTC erred in enjoining the DOJ from continuing with the preliminary investigation of the second, third and fourth criminal complaints; (G.R. Nos. 208744 and 210095)
 - IV. A. Whether the CA erred in dismissing the Petition for *Certiorari* for being the wrong remedy to assail the Summary Judgment; and
B. Whether the Makati RTC erred in issuing the Summary Judgment in Civil Case No. 10-1120. (G.R. No. 209424)
- I.
 1. **G.R. No. 205698** - *Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun*
 2. **G.R. No. 205780** - *Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*

G.R. Nos. 205698 and 205780 both question the propriety of the CA's ruling on Sagun's petition. The petition before the CA questioned the Review Resolution, and not the issuance of the Information and the trial court's subsequent finding of probable cause. The issues before this Court in these two cases may be limited to the following: (1) whether Christina Sagun followed proper procedure, and (2) whether the CA was correct in proceeding to rule on the validity of the Information and of the issuance of the warrants of arrest.

I rule for petitioners HDMF and DOJ on both issues. The *ponencia* did not address the first issue. There was no mention of Sagun's direct resort to the CA after the release of the Review Resolution. The *ponencia* immediately ruled on the second issue and concluded that there was no



probable cause for the filing of the Information for syndicated estafa and for the issuance of warrants of arrest against respondents Delfin S. Lee, Dexter Lee, Christina Sagun, Atty. Alex Alvarez, and Cristina Salagan.

Christina Sagun failed to exhaust administrative remedies

Aggrieved parties may appeal from resolutions of prosecutors by filing a verified petition for review before the Secretary of Justice. The pertinent portions of the rule governing appeals from resolutions of prosecutors in the National Prosecution Service, otherwise known as the 2000 NPS Rule on Appeal,¹⁷ provide:

SECTION 1. *Scope.* - This Rule shall apply to appeals from resolutions of the Chief State Prosecutor, Regional State Prosecutors and Provincial/City Prosecutors in cases subject of preliminary investigation/reinvestigation.

SECTION 2. *Where to appeal.* An appeal may be brought to the Secretary of Justice within the period and in the manner herein provided.

SECTION 3. *Period to appeal.* The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

SECTION 4. *How appeal taken.* An aggrieved party may appeal by filing a verified petition for review with the Office of the Secretary, Department of Justice, and by furnishing copies thereof to the adverse party and the Prosecution Office issuing the appealed resolution.

The exception to the general rule will apply only when there is a clear showing of grave abuse of discretion by the public prosecutor amounting to lack or excess of jurisdiction. Absent such showing, the courts do not have the power to substitute their judgment for that of the Secretary of Justice.

In the DOJ's Review Resolution, Christina Sagun's defense is summarized as follows:

Respondent **Christina Sagun**, for her part, admits that she is the former head of the Documentation Department of GA since 2007. She asserts that the evidence against her in the above-entitled complaint is insufficient inasmuch as the complaint failed to specifically indicate her participation in the alleged crime. She stresses that the enumeration of her specific participation is an essential requirement of due process and is necessary for her to effectively prepare her defense and respond to the charges made against her. She believes that her inclusion in the instant case was in relation to the alleged second buyers of a property who availed

¹⁷ DOJ Department Circular No. 70 dated 6 July 2000.

of the loan privileges under the Window-1 – CTS-REM with buyback guaranty takeout mechanism granted by the HDMF to GA, namely: Girlie Santos Espanillo, Lerma Cariaga Villaflores, Emily Pagdato Bandillo, Jennifer Fernando and Marissa Quizon.

She also emphasizes that the function of the Documentation Department in relation to Window-1 – CTS-REM with buyback guaranty takeout mechanism of HDMF is ministerial in nature such as receiving, collating and checking loan documents if they are complete or not and verifying from Pag-IBIG if buyers/borrowers of GA are Pag-IBIG members with updated contribution and if they are qualified for a housing loan. In short, her office does not exercise discretion but merely perfunctory and strictly ministerial power. She maintains that she had not participated in any transactions with private complainants Evelyn Niebres, Catherine Bacani and Ronald San Nicolas. Neither had she made any false statement nor representation to the HDMF.¹⁸

The DOJ Review Resolution also stated that Christina Sagun prepared the developer's affidavits that Atty. Alex Alvarez notarized.¹⁹

The same DOJ Review Resolution set aside Christina Sagun's defense as follows:

By the same token, we hereby thrust aside the defenses raised by **Christina Sagun** x x x since, as shown by the Records, they are in the nature of denial which is "an intrinsically weak defense and which must be buttressed with strong evidence of non-culpability to merit credibility." Besides, it was clearly established by the evidence that Christina Sagun, being the head of the Documentation Department, is responsible for (a) collating and checking if the documents submitted by the borrowers/buyers, through GA's Marketing Department, are complete and duly accomplished, and (b) determine and verify from Pag-IBIG, through the submission of Membership Status Verification, whether or not said borrowers/buyers are indeed Pag-IBIG members, or with updated contributions, or [have] no existing housing loans, and thus are qualified to apply for housing loans. x x x. Verily, by the nature of their functions, **Christina Sagun** x x x could have prevented the commission of the herein fraud if only they exercised their functions diligently and in a prudent manner. But they failed and in fact they participated in the fraudulent scheme. x x x.

In the words of the Court, the rationale for making such officers responsible for the offense is that, "they are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law. And this principle applies "[W]hether [sic] 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

¹⁸ Review Resolution, pp. 19-20.

¹⁹ Id. at 41.

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 act.”

x x x x

Record also shows that during the Board Meeting held on June 20, 2008 wherein the piloting of the OWG membership program in GA’s Xevera Project was discussed, then CEO Atty. Romero Quimbo admitted the difficulty of monitoring the sources of income of this group because many of them do not declare their actual earnings such that a credit investigation will be conducted to verify the authenticity of their income. However, during the actual implementation of the program, the conduct of such credit investigation was delegated to GA. In fact, the Agreements subsequently entered into between HDMF and GA have practically given the latter blanket authority in determining membership and housing loan eligibility and capacity to pay of its buyers. It was also given the authority to evaluate, pre-process and approve housing loan applications. The only control mechanism put in place by HDMF being the post take-out audit or validation within thirty (30) days after loan take-out. However, the Special Audit Report dated July 26, 2010 (Annex “Q” of the Complaint) clearly established that there was non-validation or delayed post take-out on the part of HDMF San Fernando, Pampanga Branch, thus, exposing the Fund to probable loss of some financial investments.²⁰

The prerequisite for Sagun’s resort to the CA is a clear showing of grave abuse of discretion by the public prosecutors. Under the present circumstances, however, Sagun failed to show that the investigating prosecutors abused their discretion, much less gravely abused their discretion. Sagun, in contrast to her co-respondents in I.S. No. XVIINV-10J-00319, immediately resorted to judicial review before the CA. Delfin S. Lee, Dexter Lee, Cristina Salagan, and Atty. Alex Alvarez all filed appeals before the Secretary of Justice. Unlike Sagun, and despite her protestations about the utterances pre-judging the case made by the Secretary of Justice, that “time was of the essence,” and that there was “no plain, speedy and adequate remedy in the ordinary course of law,” her co-respondents saw that it was procedurally proper to have the Secretary of Justice reexamine the Review Resolution.

Sagun employed the wrong remedy in assailing the investigating prosecutor’s Review Resolution, and Sagun never filed an appeal before the Secretary of Justice. Sagun was never able to validly question the Review Resolution. Thus, both the findings and conclusion in the Review Resolution, as well as the consequent filing of the Information against Sagun, stand. The CA erred in considering Sagun’s petition and ruling in her

²⁰ Id. at 40-41, 44-45. Boldfacing in the original.

favor. Sagun's immediate filing of a petition before the CA is a procedural shortcut that merits a dismissal.

***The CA erred in proceeding to rule
on the validity of the Information and
of the issuance of the warrant of arrest***

The CA wrongfully asserted that when it reviews the DOJ's determination of probable cause, it makes a judicial determination of probable cause which binds the trial court.

Petitioners have done right in relying on *Alcaraz v. Gonzalez*:²¹

It bears stressing that in the determination of probable cause during the preliminary investigation, the executive branch of government has full discretionary authority. Thus, the decision whether or not to dismiss the criminal complaint against the private respondent is necessarily dependent on the sound discretion of the Investigating Prosecutor and ultimately, that of the Secretary of Justice. *Courts are not empowered to substitute their own judgment for that of the executive branch.*

The resolution of the Investigating Prosecutor is subject to appeal to the Justice Secretary who, under the Revised Administrative Code, exercises the power of control and supervision over said Investigating Prosecutor; and who may affirm, nullify, reverse, or modify the ruling of such prosecutor. Thus, while the CA may review the resolution of the Justice Secretary, it may do so only in a petition for *certiorari* under Rule 65 of the Rules of Court, solely on the ground that the Secretary of Justice committed grave abuse of his discretion amounting to excess or lack of jurisdiction.

It bears stressing that the Resolution of the Justice Secretary affirming, modifying or reversing the resolution of the Investigating Prosecutor is final. Under the 1993 Revised Rules on Appeals (now the 2000 National Prosecution Service Rules on Appeals), resolutions in preliminary investigations or reinvestigations from the Justice Secretary's resolution, except the aggrieved party, has no more remedy of appeal to file a motion for reconsideration of the said resolution of such motion if it is denied by the said Secretary. The remedy of the aggrieved party is to file a petition for *certiorari* under Rule 65 of the Rules of Court since there is no more appeal or other remedy available in the ordinary course of law.

*Reyes v. Pearlbank Securities, Inc.*²² defines probable cause in the following manner, and further explains why the courts generally do not review the findings made by the Secretary of Justice:

Probable cause, for the purpose of filing a criminal information, has been defined as such facts as are sufficient to engender a well-founded

²¹ 533 Phil. 796, 807-808 (2006). Italicization in the original.

²² 582 Phil. 505, 518-520 (2008).

belief that a crime has been committed and that respondent is probably guilty thereof. The term does not mean “actual and positive cause” nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.

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

These findings of probable cause fall within the jurisdiction of the prosecutor or fiscal in the exercise of executive power, which the courts do not interfere with unless there is grave abuse of discretion. The determination of its existence lies within the discretion of the prosecuting officers after conducting a preliminary investigation upon complaint of an offended party. Thus, the decision whether to dismiss a complaint or not is dependent upon the sound discretion of the prosecuting fiscal. He may dismiss the complaint forthwith, if he finds the charge insufficient in form or substance or without any ground. Or he may proceed with the investigation if the complaint in his view is sufficient and in proper form. To emphasize, the determination of probable cause for the filing of information in court is an executive function, one that properly pertains at the first instance to the public prosecutor and, ultimately, to the Secretary of Justice, who may direct the filing of the corresponding information or move for the dismissal of the case. Ultimately, whether or not a complaint will be dismissed is dependent on the sound discretion of the Secretary of Justice. And unless made with grave abuse of discretion, findings of the Secretary of Justice are not subject to review.

For this reason, the Court considers it sound judicial policy to refrain from interfering in the conduct of preliminary investigations and to leave the Department of Justice ample latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause for the prosecution of supposed offenders. Consistent with this policy, courts do not reverse the Secretary of Justice’s findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.

The reasons put forward by the CA to justify its substitution of the Pampanga RTC’s determination of probable cause do not amount to grave



abuse of discretion. The Pampanga RTC's determination of probable cause, although in accord with the findings of the DOJ, did not necessarily rely on the DOJ's resolution alone. Hence, in the absence of grave abuse of discretion, there is no reason to disturb the Pampanga RTC's determination of probable cause.

- II. 1. **G.R. No. 209446** - *People of the Philippines v. Alex M. Alvarez*
2. **G.R. No. 209489** - *Home Development Mutual Fund v. Atty. Alex M. Alvarez*
3. **G.R. No. 209852** - *Home Development Mutual Fund (HDMF) v. Delfin S. Lee*
4. **G.R. No. 210143** - *People of the Philippines v. Delfin S. Lee*
5. **G.R. No. 228452** - *Home Development Mutual Fund (HDMF) v. Dexter L. Lee*
6. **G.R. No. 228730** - *People of the Philippines v. Dexter L. Lee*
7. **G.R. No. 230680** - *Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)*

Delfin S. Lee and Dexter Lee failed to follow proper procedure

Delfin S. Lee and Dexter Lee's contumacious attitude to our rules of procedure is demonstrated by the following:

- (1) failing to file a motion for reconsideration of the 22 May 2012 resolution of the San Fernando RTC prior to filing a petition for *certiorari* before the CA;
- (2) filing a petition for *certiorari* before the CA without waiting for the decision of the San Fernando RTC on his motions for reconsideration of the 22 August 2012 resolution;
- (3) failing to file within the reglementary period a petition for *certiorari* to assail the 22 May 2012 resolution of the San Fernando RTC; and
- (4) repeated instances of forum-shopping.

On 22 May 2012, the San Fernando RTC issued a Resolution which found probable cause to issue warrants of arrest against Delfin S. Lee and Dexter Lee, among others. On 23 May 2012, Delfin S. Lee and Dexter 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." This Motion to Quash raised the following grounds: lack of



jurisdiction of the San Fernando RTC due to non-payment of filing fees; judicial interference of the San Fernando RTC with the civil case filed before the Makati RTC; and lack of probable cause for the crime of syndicated estafa.

Delfin S. Lee and Dexter Lee filed another Motion to Quash dated 3 June 2012. This second Motion to Quash raised the following grounds: the facts charged in the Information do not constitute an offense; there is no syndicated estafa because the facts stated in the Information do not state conspiracy; and judicial interference of the San Fernando RTC with the civil case filed before the Makati RTC.

The San Fernando RTC denied Delfin S. Lee and Dexter Lee's Motion in a Resolution dated 22 August 2012. Delfin S. Lee and Dexter Lee filed two Motions for Reconsideration of the 22 August 2012 Resolution: the first on 8 October 2012, and the second on 13 October 2012. Delfin S. Lee and Dexter Lee then separately filed a special civil action for *certiorari* before the CA (CA-G.R. SP No. 127553 for Delfin S. Lee and CA-G.R. SP No. 127554 for Dexter Lee) without waiting for any resolution from the San Fernando RTC. The CA, in its 7 November 2013 Decision in CA-G.R. SP No. 127553, even stated this deviation from procedure:

On 26 November 2012, without waiting for the resolution of the above-mentioned Motion, petitioner Lee filed a Petition for Certiorari (With Prayer for the Issuance of a TRO and/or Writ of Preliminary Injunction) before this Court directed against the Resolutions dated May 22, 2012 and August 22, 2012 issued by public respondent x x x.

As for Dexter Lee, the CA stated in its 16 November 2016 Decision:

Pending the resolution of the motion before the RTC of Pampanga, petitioner filed a Petition for Certiorari with prayer of a TRO and/or Writ of Preliminary Injunction before this Court assailing the May 22, 2012 and August 22, 2012 Resolutions of RTC Pampanga.

It is hornbook doctrine that a motion for reconsideration must first be filed with the lower court before resorting to the extraordinary writ of *certiorari*. A motion for reconsideration gives the lower court an opportunity to correct the errors imputed to it. Moreover, the special civil action for *certiorari* will not lie unless the aggrieved party has no other plain, speedy and adequate remedy in the course of law. In the present case, Delfin S. Lee arrogated to himself the determination of whether the filing of a motion for reconsideration is necessary. However, Delfin S. Lee failed to show any compelling reason for his non-filing of a motion for reconsideration and his immediate recourse to a special civil action for *certiorari* before the CA.

Assuming *arguendo* that a petition for *certiorari* was an available remedy to Delfin S. Lee, he was unable to file the petition within the reglementary period. Delfin S. Lee received the 22 May 2012 Resolution on 23 May 2012. Pursuant to Section 4 of Rule 65, he had 60 days, or until 22 July 2012, to file a petition. Delfin S. Lee, however, filed his petition before the CA only on 26 November 2012, or 127 days after the lapse of the 60-day deadline. No reason was given for the inordinate delay.

In similar manner, Dexter Lee received the 22 May 2012 Resolution on 23 May 2012. Pursuant to Section 4 of Rule 65, he had 60 days, or until 22 July 2012, to file a petition. Dexter Lee, however, filed his petition before the CA only on 23 November 2012, or 124 days after the lapse of the 60-day deadline. Dexter Lee also gave no reason for the inordinate delay.

With their immediate, yet separate, resort to a special civil action for *certiorari*, Delfin S. Lee and Dexter Lee have asked, successively and simultaneously, for judicial relief in different courts, particularly the San Fernando RTC and the CA, with the same end in mind: the dismissal of the syndicated estafa case filed against them.

Atty. Alex Alvarez engaged in forum-shopping

Among all respondents, it is Atty. Alex Alvarez who was most brazen in flouting our rules against forum-shopping. Consider the following:

1. Atty. Alvarez filed a Petition for Review before the Secretary of Justice on 3 October 2011 to assail the DOJ's Review Resolution dated 10 August 2011.
2. While the Petition for Review before the Secretary of Justice was pending, Atty. Alvarez filed a Petition (With Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Manila RTC.
3. Atty. Alvarez withdrew the Petition for Review before the Secretary of Justice only on 14 November 2011. The Secretary of Justice has yet to rule upon his withdrawal.
4. On 15 November 2011, Atty. Alvarez filed a petition before the CA docketed as CA-G.R. SP No. 122076. He prayed that the DOJ cease and desist from filing the Information in NPS Docket No. XVI-INV-10J-00319 and that he be excluded from the Information that may be filed in the case.



5. On 23 April 2012, Atty. Alvarez filed a Notice of Withdrawal of Petition in CA-G.R. SP No. 122076.

6. Still on 23 April 2012, Atty. Alvarez filed a Petition for Injunction and Prohibition (With Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction) before the Caloocan City RTC.

7. Atty. Alvarez filed an undated second petition before the CA, docketed as CA-G.R. SP No. 127690. He prayed that the Pampanga RTC cease from conducting further proceedings and that the warrant of arrest issued against him be lifted and suspended.

Throughout his numerous filings, Atty. Alvarez has sought only one end: the dismissal of the criminal case filed against him. Atty. Alvarez likewise submitted inaccurate certifications on non-forum shopping in CA-G.R. SP No. 122076, CA-G.R. SP No. 127690, and before the Caloocan City RTC.

Forum-shopping is an act of a party against whom an adverse judgment or order has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also be the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition. For it to exist, there should be (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.²³ The acts of Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez that were enumerated in the preceding paragraphs satisfy all these conditions.

The CA exceeded its certiorari jurisdiction

The CA quashed, recalled, and lifted the warrants of arrest against Delfin S. Lee, Dexter Lee, and Atty. Alex Alvarez. In doing so, the CA reviewed and weighed the evidence submitted before the trial court and tried the facts presented before it. It would do well for the CA to recall that its *certiorari* jurisdiction is limited to errors of jurisdiction and not errors of judgment. As we stated in *Leviste v. Alameda*:²⁴

²³ *Santos v. COMELEC*, 447 Phil. 760 (2003).

²⁴ 640 Phil. 620, 650-651 (2010).

In a petition for *certiorari*, like that filed by petitioner before the appellate court, the jurisdiction of the court is narrow in scope. It is limited to resolving only errors of jurisdiction. It is not to stray at will and resolve questions and issues beyond its competence, such as an error of judgment. The court's duty in the pertinent case is confined to determining whether the executive and judicial determination of probable cause was done without or in excess of jurisdiction or with grave abuse of discretion. Although it is possible that error may be committed in the discharge of lawful functions, this does not render the act amenable to correction and annulment by the extraordinary remedy of *certiorari*, absent any showing of grave abuse of discretion amounting to excess of jurisdiction.

It is premature for the CA to rule on the merits of the case prior to the trial on the merits.

***Atty. Alex Alvarez's indispensable participation
in the crime of syndicated estafa***

To emphasize the extent of Atty. Alvarez's participation in this scheme, we quote from the transcript of the clarificatory questioning of Veniza Santos Panem, an employee of Globe Asiatique:

Prosecutor Lao	x x x Kilala mo ba si Atty. Alvarez?
Veniza Santos Panem	Yes, your Honor.
Prosecutor Lao	Sino si Atty. Alvarez?
Veniza Santos Panem	Siya po ang nagnonotaryo ng mga dokumento sa Globe Asiatique.
Prosecutor Lao	San sya nag-o-opisina?
Veniza Santos Panem	Sa Globe Asiatique po.
Prosecutor Lao	Head office ba?
Veniza Santos Panem	Head office po.
Prosecutor Lao	So siya yung notary public. Regular employee? Lagi mo ba syang nakikita don? Ano sa pagkakaalam mo?
Veniza Santos Panem	Lagi ko po syang nakikita doon.
Prosecutor Lao	So regular employee siya ng Globe Asiatique?
Veniza Santos Panem	Hindi ko po sure pero lagi ko siyang nakikita.
Prosecutor Lao	Doon mo siya nakikita sa Globe Asiatique. Doon sya nag-o-opisina?
Veniza Santos Panem	Yes, your Honor.

h

- Prosecutor Lao Anong year?
Veniza Santos Panem Hindi ko po sigurado yung year.
- Prosecutor Lao Sa loob ng employment mo sa Globe Asiatique,
sinong nauna sa inyo doon bilang empleyado ng
Globe Asiatique?
Veniza Santos Panem Ako po.
- Prosecutor Lao Ikaw. So gaano katagal? Mga one year after?
Two years after or bago pumasok si Atty.
Alvarez?
Veniza Santos Panem Hindi ko po sure kung 2007 or 2008 po siya.
- Prosecutor Lao Sabi mo siya yung notaryo?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao Saan siya nag-o-office?
Veniza Santos Panem Sa amin po.
- Prosecutor Lao Doon sa inyo? May opisina siya doon?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao May sarili siyang kwarto doon?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao Lagi mo siyang makikita doon?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao 8:00 to 5:00? Whole day?
Veniza Santos Panem Hindi naman po whole day.
- Prosecutor Lao Mga anong oras? Example Monday to Friday ...
lagi ba siyang nandoon?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao So hindi siya pala-absent?
Veniza Santos Panem Minsan naman po wala naman po siya.
- Prosecutor Lao Pero minsan lang, absent siya minsan, kasi
nagnotaryo siya ng mga documents.
Veniza Santos Panem Meron po siyang secretary na nagno-notaryo.
- Prosecutor Lao Secretary niya nagno-notaryo?
Veniza Santos Panem Opo.
- Prosecutor Lao Sino yung secretary nya?
Veniza Santos Panem Si Imelda Saulo po.
- Prosecutor Lao Kapag wala si Atty. Alvarez, si Imelda ang
nagno-notaryo?
Veniza Santos Panem Yes, your Honor.



- Prosecutor Lao Attorney ba si Imelda?
Veniza Santos Panem Hindi po.
- Prosecutor Lao Ano siya?
Veniza Santos Panem Hindi ko po alam e.
- Prosecutor Lao Ano ang tawag sa opisina nila?
Veniza Santos Panem Legal department po.
- Prosecutor Lao Sila sa Legal department sila ni Atty. Alvarez at
Imelda Saulo.
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao Yung Legal department malapit sa office nyo?
Veniza Santos Panem Magkatapat po yung room.
- Prosecutor Lao So kapag pumapasok si Atty. Alvarez, makikita
mo?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao Araw-araw ba doon? Madalas mo ba siya
[makita] doon?
Veniza Santos Panem Yes, madalas po.
- Prosecutor Lao Example pumasok siya ngayong Monday, 8 to 5
nandun siya? Kapag pumapasok siya, usually
nandun lang siya sa office?
Veniza Santos Panem Yes, your Honor.
- Prosecutor Lao Nagtatagal ba siya doon?
Veniza Santos Panem Hindi po. Mga halfday po.
- Prosecutor Lao Halfday. Ano usually morning or afternoon?
Veniza Santos Panem Morning po.
- Prosecutor Lao So pag lunchtime umaalis na yan. Tapos babalik
bukas na.
Veniza Santos Panem Yes, your Honor.²⁵

Furthermore, the NBI report dated 29 October 2010 stated that:

Upon initial investigation of the sampling of loan folders submitted by Mr. DELFIN LEE for Globe Asiatique, it was discovered that majority of the fake and/or fraudulent loan documents were notarized by ATTY. ALEX ALVAREZ, an employee of Pag-IBIG assigned in its Legal Department and holding office in the HDMF head office. When invited for questioning by the NBI, ATTY. ALVAREZ admitted that he receives a monthly salary of ₱30,000 from Globe Asiatique in exchange for notarizing its documents (regardless of [illegible]). [Illegible] the borrowers to personally appear before him as the documents are brought to him for such notarization in batches. He claimed during the interview

²⁵ *Rollo* (G.R. No. 209446), pp. 2550-2563.

that he is not required to secure special permission from the President of Pag-IBIG to undertake limited practice of law (which includes notarizing documents) because only those with Salary Grade 23 or lower are required to secure such permission, and there is no specific provision governing someone like him with Salary Grade 24.²⁶

I cannot countenance Atty. Alvarez's actuations as that of a "mere" notary public. Atty. Alvarez was the Manager of HDMF's Foreclosure Department with Salary Grade 24. Despite being Manager of HDMF's Foreclosure Department, Atty. Alvarez ignored the glaring conflict of interest when he notarized loan applications with HDMF at the office of Globe Asiatique where he held office part-time, moonlighting as head of the legal department of Globe Asiatique. Worse, Atty. Alvarez notarized the loan applications without the personal appearance of the loan applicants. As Manager of HDMF's Foreclosure Department, he would be foreclosing on loans with fictitious borrowers based on mortgage documents that he himself notarized. Atty. Alvarez probably thought that the fictitious loan applicants would never be discovered since as Manager of HDMF's Foreclosure Department he had control of the foreclosures, and he could just expeditiously foreclose the mortgages without disclosing the fictitious mortgagees. For a monthly salary of ₱30,000 from Globe Asiatique, Atty. Alvarez made wholesale guarantees that the loan documents and supporting papers were submitted to him by persons who "personally appeared before him." Any agreement between Globe Asiatique and HDMF would not have materialized if it were not for Globe Asiatique's submission of mortgage documents notarized by Atty. Alvarez. Atty. Alvarez's participation in the entire scheme was a crucial and necessary step in Globe Asiatique's inducement of HDMF to release the loan proceeds to Globe Asiatique.

Syndicated Estafa

The 22 May 2012 Resolution of the Pampanga RTC found probable cause for the crime of estafa (Article 315(2)(a) of the RPC, in relation to Section 1 of PD 1689, as amended) against Delfin S. Lee, Dexter L. Lee, Christina Sagun, Cristina Salagan, and Atty. Alex Alvarez, and issued warrants of arrest against them with no bail recommended.

Article 315(2)(a) of the RPC reads:

Art. 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow 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:

²⁶ Id. at 722.



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

PD 1689, which increased the penalty for estafa, if committed by a syndicate provides:

Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Articles 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 farmers association, or of funds solicited by corporations/associations from the general public.

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

Under Section 1 of PD 1689, the elements of syndicated estafa are: (1) estafa or other forms of swindling as defined in Articles 315 and 316 of the RPC are committed; (2) the estafa or swindling is committed by a syndicate of five or more persons; and (3) the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon(s)*," or farmers' associations or of funds solicited by corporations/associations from the general public.²⁷

Under PD 1689, syndicated estafa includes cases where fraud results in the misappropriation of funds solicited by corporations/associations from the general public. Thus, the law does not require that the perpetrator or the accused corporation/association be the one to solicit the funds from the public. The law merely requires that the **"defraudation results in the misappropriation of money x x x or of funds solicited by corporations/associations from the general public."**

The alleged fraud perpetrated resulted in the misappropriation of funds of the HDMF or PAG-IBIG Fund which is undisputedly a provident fund of the general public. The PAG-IBIG Fund consists of mandatory contributions solicited by HDMF from all employees in the public and private sectors. The PAG-IBIG Fund includes the mandatory contributions of the approximately 28,000 employees of the Judiciary whose contributions were part of the ₱2.9 Billion loan proceeds received by Globe Asiatique from HDMF through the nine (9) FCAs executed by Globe Asiatique with HDMF. These nine FCAs dated 12 August 2008 (₱500 Million), 11

²⁷ *Belita v. Sy*, 788 Phil. 581, 588-589 (2016); *People v. Tibayan*, 750 Phil. 910, 920 (2015).

December 2008 (₱100 Million), 9 January 2009 (₱500 Million), 20 February 2009 (₱500 Million), 23 April 2009 (₱100 Million), 28 April 2009 (₱300 Million), 18 May 2009 (₱300 Million), 16 June 2009 (₱300 Million), and 10 July 2009 (₱300 Million), were executed prior to the execution of the MOA on 13 July 2009.²⁸ Thus, even before the execution of the MOA dated 13 July 2009, which Globe Asiatique contends relieves it of its warranties, estafa was already consummated.

After the MOA dated 13 July 2009, eight more FCAs were executed between Globe Asiatique and HDMF totaling ₱3.55 Billion: 13 July 2009 (₱500 Million), 24 September 2009 (₱500 Million), 22 October 2009 (₱700 Million), 15 December 2009 (₱250 Million), 5 January 2010 (₱500 Million), 17 March 2010 (₱500 Million), 19 March 2010 (₱500 Million), and 12 May 2010 (₱100 Million).²⁹ On 24 May 2010, HDMF issued a Notice to Delfin S. Lee for Globe Asiatique to validate the 351 buyers which were discovered by HDMF to have either surrendered or withdrawn their loans. In response to the Notice, Delfin S. Lee admitted that they are monitoring about 1,000 accounts which are suspected to be from questionable buyers, and that these accounts remain current with PAG-IBIG because Globe Asiatique had been paying for them.³⁰ Clearly, Globe Asiatique tried to cover-up or conceal the defaulting questionable buyers by paying on their behalf, thus keeping their accounts current. Globe Asiatique is the instrument used to defraud the HDMF of the PAG-IBIG Fund.

In short, the PAG-IBIG Fund consists of monetary contributions solicited from the general public by HDMF, which is indisputably a corporate entity. Under Section 13 of Republic Act No. 7679, “the Fund (HDMF) shall have the powers and functions specified in this Act and the usual corporate powers.” Under Section 14 of the same law, the “corporate powers and functions of the Fund shall be vested in and exercised by the Board of Trustees appointed by the President of the Philippines.” The PAG-IBIG Fund is the fund that was defrauded by Delfin S. Lee and his four (4) co-accused through the use, and submission to HDMF, of loan applications and mortgage documents of fictitious loan applicants.

***No grave abuse of discretion in trial court’s
determination of probable cause***

The Pampanga RTC’s determination of probable cause, which was in accord with the findings of the DOJ, shows no grave abuse of discretion. Hence, the claim of Cristina Salagan that there was no probable cause to charge her with syndicated estafa deserves scant consideration.

²⁸ *Rollo* (G.R. No. 209424), p. 810.

²⁹ *Id.* at 812.

³⁰ *Id.* at 814.

- III. 1. **G.R. No. 208744** - *Department of Justice v. Delfin S. Lee*
2. **G.R. No. 210095** - *Department of Justice v. Delfin S. Lee*

***Procedural rules may be relaxed
under exceptional circumstances***

I agree with the *ponencia* that the CA should not have dismissed the petitions for being filed out of time because there existed special and compelling reasons for the relaxation of procedural rules.

Rules of procedure are indispensable to facilitate the orderly and speedy adjudication of cases. Courts are constrained to adhere to procedural rules under the Rules of Court. Nevertheless, under Section 6 of Rule 1, courts are granted the leeway in interpreting and applying the rules:

Sec. 6. *Construction.* – These Rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding.

However, courts are not given *carte blanche* authority to interpret rules liberally and the resort to liberal application of procedural rules remains as the exception to the well-settled principle that rules must be complied with for the orderly administration of justice.³¹

Section 4 of Rule 65 of the Rules of Court, as amended by A.M. No. 07-7-12-SC, provides for the period for filing petitions for *certiorari*:

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.

x x x x

Although the provision on motion for extension³² has been deleted in the amended Section 4, such omission does not automatically mean that a motion for extension is already prohibited. As held in *Domdom v. Third & Fifth Divisions of the Sandiganbayan*:³³

That no mention is made in the x x x amended Section 4 of Rule 65 of a motion for extension, unlike in the previous formulation, does not

³¹ *People v. Espinosa*, 731 Phil. 615, 627-628 (2014), citing *Building Care Corp./Leopard Security & Investigation Agency v. Macaraeg*, 700 Phil. 749, 755 (2012).

³² Prior to its deletion in the amendment, Section 4 of Rule 65 provides that “No extension of time to file the petition shall be granted except for the most compelling reason and in no case exceeding fifteen (15) days.”

³³ 627 Phil. 341, 347-348 (2010).

make the filing of such pleading absolutely prohibited. If such were the intention, the deleted portion could just have simply been reworded to state that “no extension of time to file the petition shall be granted.” Absent such prohibition, motions for extension are allowed, subject to the Court’s sound discretion.

The 18 June 2013 Petition for *Certiorari* was filed before the CA within the extended period requested by petitioner. However, due to the unintended omission of the docket number (CA-G.R. SP No. 130404), the petition was assigned a new docket number (CA-G.R. SP No. 130409) and raffled to another *ponente* and division. This resulted in the dismissal of the petition for being filed out of time. As explained by petitioner DOJ, the procedural lapse was due to inadvertence and not intended to delay the proceedings. Considering the merits of the petition and having been filed within the extended period requested, albeit lacking the proper docket number, the CA should have applied the rules liberally and excused the belated filing.³⁴ It is more prudent for the court to excuse a technical lapse to avoid causing grave injustice not commensurate with the party’s failure to comply with the prescribed procedure.³⁵ Furthermore, the merits of the case may be considered as a special or compelling reason for the relaxation of procedural rules.³⁶

The Pasig RTC disregarded a prior CA and SC ruling on the same issue when it issued the writ of preliminary injunction

The Petition for *Certiorari* filed with the CA assailed the 10 April 2013 Order of the Pasig RTC enjoining the continuation of the preliminary investigation by the DOJ of the Second, Third, and Fourth Criminal

³⁴ In *Castells v. Saudi Arabian Airlines*, 716 Phil. 667, 673-674 (2013), the Court cited the case of *Labao v. Flores*, 649 Phil. 213, 222-223 (2010), for the list of exceptions to the strict application of procedural rules, thus:

- (1) most persuasive and weighty reasons;
- (2) to relieve a litigant from an injustice not commensurate with his failure to comply with the prescribed procedure;
- (3) good faith of the defaulting party by immediately paying within a reasonable time from the time of default;
- (4) the existence of special or compelling circumstances;
- (5) the merits of the case;
- (6) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules;
- (7) a lack of any showing that the review sought is merely frivolous or dilatory;
- (8) the other party will not be unjustly prejudiced thereby;
- (9) fraud, accident, mistake or excusable negligence without appellant’s fault;
- (10) peculiar legal and equitable circumstances attendant to each case;
- (11) in the name of substantial justice and fair play;
- (12) importance of the issues involved; and
- (13) exercise of sound discretion by the judge guided by all the attendant circumstances.

³⁵ *Philippine Bank of Communications v. Court of Appeals*, G.R. No. 218901, 15 February 2017, 818 SCRA 68, citing *Tanenglian v. Lorenzo*, 573 Phil. 472 (2008).

³⁶ *Bases Conversion Dev’t. Authority v. Reyes*, 711 Phil. 631, 643 (2013), citing *Twin Towers Condominium Corp. v. Court of Appeals*, 446 Phil. 280, 298-299 (2003).

Complaints. The Pasig RTC held that the Summary Judgment dated 30 January 2012 in Civil Case No. 10-1120 (Makati Civil Case) issued by the Makati RTC eliminates the element of damage in the criminal complaints against Delfin S. Lee, which is an integral condition for an estafa case to prosper against the latter. The Pasig RTC explained:

The Court premised its issuance of the TRO based on the Makati RTC Branch 58 Summary Judgment dated 30 January 2012 and Order dated 11 December 2012 declaring the same to be final and executory.

The resolution of the Makati Court required intervenor HDMF to honor the terms and conditions of the Funding Commitment Agreement and other contracts entered into between the parties. Clearly thus, intervenor HDMF's performance of its obligations under the Funding Commitment Agreement, Collection Service Agreement and Memorandum of Agreement eliminates the element of damage in the criminal complaints against petitioner which is a condition *sine qua non* for an estafa case to prosper against it [sic]. Note further that although the Court of Appeals ("CA") Decision dissolving the Writ of Preliminary Injunction issued by this Court in restraining the second criminal complaint had been affirmed via a petition for review on certiorari, the subsequent rendition of the Summary Judgment by the Makati RTC 58 constitutes a supervening event to enjoin anew the proceedings in the second criminal complaint as the rendition of which and its eventual finality was clearly not yet extant and could not have been considered by the CA decision when the same was penned. Furthermore, the CA decision refers only to the injunction order issued by the Court and not to the Makati RTC 58 case which is still pending at the time. Reliance therefore on the CA decision as per second criminal complaint can no longer be made in light of the summary judgment and its finality. In the same vein, the injunction order should likewise extend to the third and fourth criminal complaints lodged against herein petitioner for compliance with the Summary Judgment by intervenor HDMF is concomitant with that of petitioner's compliance with his own obligations to the buyers considering that the titles of the private complainants which are presently in the possession of intervenor HDMF ought to be released and delivered to them, negating the breach being cited by the private complainants as the underlying premise for the criminal complaints against petitioner.

In essence, the summary judgment held that there can be no fraud and damages, an essential element for the crime of estafa, because it is HDMF that approved the Pag-Ibig membership and loan applications of the private complainants.

x x x x

In the case at bar, grave and irreparable damage would be caused to petitioner because he will most likely be indicted for another non-bailable offense despite the fact that the RTC Makati 58 already held that he committed no fraud against the private complainants. And to expose petitioner to unnecessary trauma, hardship, inconvenience, anxiety, and



fear associated with a criminal prosecution amounts to grave and irreparable injury which must be prevented.

Premises considered, and without prejudice to the final outcome of the certiorari proceeding pending against the assailed Summary Judgment of the Makati RTC 58 on the issue of the existence or non-existence of fraud committed by the respondent herein against intervenor HDMF and/or private complainants, the Court finds at this point in time that petitioner has an existing and valid right to be protected necessitating the issuance of an injunctive relief in its favor.

WHEREFORE, let a writ of preliminary injunction issue enjoining the Department of Justice and any other person or panel under its supervision from continuing with the preliminary investigation of NPS Docket No. XVI-INV-10L-00363, the Second Criminal Complaint, NPS Docket No. XVI-INV-11B-00063, the Third Criminal Complaint, and NPS Docket No. XVI-INV-11C-00138, the Fourth Criminal Complaint.

Petitioner is directed to post a bond in the amount of Php2,000,000.00.³⁷

As stated in this 10 April 2013 Order of the Pasig RTC, there was already a prior CA Decision dated 16 April 2012 in CA-G.R. SP No. 121594 which lifted the previous writ of preliminary injunction issued by the Pasig RTC in its Order dated 5 September 2011, restraining the DOJ from proceeding with the preliminary investigation of the Second Criminal Complaint. The CA ruling annulling the 5 September 2011 Order of the Pasig RTC for having been issued with grave abuse of discretion was affirmed by this Court in a Resolution dated 4 July 2012 in G.R. No. 201360. Clearly, the issue of whether the preliminary investigation of the criminal complaints can be enjoined has already been ruled upon with finality by this Court, which affirmed the ruling of the CA in CA-G.R. SP No. 121594, and which decision became final and executory on 2 January 2013. As ruled by the CA in its Decision dated 16 April 2012 in CA-G.R. SP No. 121594:

Anent the second DOJ case, the resolution of whether GA is entitled to replace the defaulting buyers/borrowers would not determine the guilt of Lee as the gravamen of the complaint for estafa filed by Niebres and Bacani against GA and Lee was the failure of GA to release to them the title to the respective property which they already paid in full because it turned out that the properties sold to them were subject of loans under the name of other persons. In the case of San Nicolas, on the other hand, he was paying for a property that was also a subject of a loan by another person.

Contrary to public respondent Judge's finding, the acceptance by HDMF of the replacement buyers that GA is offering will not in any way affect Lee's liability to Niebres, Bacani, and San Nicolas in selling to them

³⁷ *Rollo* (G.R. No. 208744), pp. 196-198.

units which were already sold to other buyers. x x x.

x x x x

What is clear in the second DOJ case is that the properties bought by complainants were subjects of double sale. The sale by GA of the units, already paid in full by Niebres, Bacani and still being paid for by San Nicolas, to other individuals created a temporary disturbance in the rights of the latter as property owners. Even if the Makati RTC would rule in favor of Lee, Niebres, Bacani and San Nicolas would not qualify as replacement buyers. Hence, the preemptive resolution of the civil case before the DOJ could conduct a preliminary investigation in the second DOJ case would not affect the determination of guilt or innocence of Lee for estafa.

To reiterate, injunction 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 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 or in excess of jurisdiction when he issued the writ of preliminary injunction enjoining the DOJ from filing an information for estafa against Lee in the first DOJ case and from proceeding with the preliminary investigation in the second DOJ case.³⁸ (Emphasis supplied)

Unfortunately, the Pasig RTC chose to ignore this ruling and issued again an Order for another writ of preliminary injunction, enjoining the DOJ from continuing with the Second, Third, and Fourth Criminal Complaints. It should be stressed that the private complainants in the Second, Third, and Fourth Criminal Complaints are similarly situated: all of them are alleged victims of double sales by Globe Asiatique and Delfin S. Lee. Clearly, the issuance of another writ of preliminary injunction by the Pasig RTC in its 10 April 2013 Order is a blatant disregard of the decision of this Court (which affirmed the CA Decision dated 16 April 2012 in CA-G.R. SP No. 121594). The Summary Judgment rendered by the Makati RTC does not determine the criminal liability of Delfin S. Lee for syndicated estafa in the Second, Third, and Fourth Criminal Complaints which involve double sales. Besides, the Summary Judgment merely orders the HDMF to comply with its obligations under the MOA with Globe Asiatique, including the acceptance of replacement buyers. The acceptance of replacement buyers contemplates defaulting buyers/borrowers of their loan and not double sales. The double sales allegedly perpetuated by Globe Asiatique and Delfin S. Lee in the Second, Third, and Fourth Criminal Complaints, were never an issue in the

³⁸

Id. at 650-652.

Makati Civil Case. In fact, the private complainants in the Second, Third, and Fourth Criminal Complaints are not parties to the Makati Civil Case, which was filed by Globe Asiatique and Delfin S. Lee against HDMF, its Board of Trustees, and OIC Faria. Clearly, the 10 April 2013 Order of the Pasig RTC is void for having been issued with grave abuse of discretion.

At this juncture, it bears stressing that the general rule is that criminal prosecution may not be restrained or stayed by injunction or prohibition³⁹ because public interest requires the immediate and speedy investigation and prosecution of criminal acts for the protection of society.⁴⁰ With more reason will injunction not lie when the case is still at the preliminary investigation stage.⁴¹ As the court held in *Atty. Paderanga v. Drilon*:⁴²

Preliminary investigation is generally inquisitorial, and it is often the only means of discovering the persons who may be reasonably charged with a crime, to enable the fiscal to prepare his complaint or information. It is not a trial of the case on the merits and has no purpose except that of determining whether a crime has been committed and whether there is probable cause to believe that the accused is guilty thereof, and it does not place the person against whom it is taken in jeopardy.

The institution of a criminal action depends upon the sound discretion of the fiscal. He has the quasi-judicial discretion to determine whether or not a criminal case should be filed in court. Hence, the general rule is that an injunction will not be granted to restrain a criminal prosecution.

However, there are exceptions to this rule, such as:

1. To afford adequate protection to the constitutional rights of the accused;
2. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;
3. When there is a prejudicial question which is *sub judice*;
4. When the acts of the officer are without or in excess of authority;
5. Where the prosecution is under an invalid law, ordinance or regulation;
6. When double jeopardy is clearly apparent;
7. Where the court has no jurisdiction over the offense;
8. Where there is a case of persecution rather than prosecution;
9. Where the charges are manifestly false and motivated by the lust for vengeance;
10. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied;
11. Preliminary injunction has been granted by the Supreme Court to

³⁹ *Camanag v. Guerrero*, 335 Phil. 945 (1997); *Atty. Paderanga v. Hon. Drilon*, 273 Phil. 290 (1991).

⁴⁰ *Domingo v. Sandiganbayan*, 379 Phil. 708 (2000).

⁴¹ *Samson v. Secretary Guingona, Jr.*, 401 Phil. 167 (2000); *Guingona v. The City Fiscal of Manila*, 222 Phil. 119 (1985).

⁴² 273 Phil. 290, 296 (1991).

prevent the threatened unlawful arrest of petitioners.⁴³

The Pasig RTC case does not fall under any of these exceptions. Thus, Judge Mislang of the Pasig RTC should not have issued the writ of preliminary injunction.

To underscore the wrongful actuations of Judge Mislang in handling the HDMF cases before his sala, this Court dismissed Judge Mislang from the service on 26 July 2016.⁴⁴ The pertinent portions of our *per curiam* decision read:

Judge Mislang issued two (2) TROs, a writ of preliminary injunction and a *status quo* order, both of which did not satisfy the legal requisites for their issuance, in gross violation of clearly established laws and procedures which every judge has the duty and obligation to be familiar with. The antecedent incidents of the case brought before Judge Mislang were clear and simple, as well as the applicable rules. Unfortunately, he miserably failed to properly apply the principles and rules on three (3) points, *i.e.*, the prematurity of the petition, the inapplicability of the prejudicial question, and the lack of jurisdiction of the court. His persistent disregard of well-known elementary rules in favor of Lee clearly reflects his bad faith and partiality.

x x x x

WHEREFORE, PREMISES CONSIDERED, the Court finds Judge Rolando G. Mislang, Regional Trial Court, Pasig City, Branch 167, GUILTY of Gross Ignorance of the Law in A.M. No. RTJ-14-2369 and A.M. No. RTJ-14-2372 and ORDERS his DISMISSAL from the service with FORFEITURE of retirement benefits, except leave credits, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned and controlled corporations.

SO ORDERED.⁴⁵

IV. G.R. No. 209424 - *Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang*

Petition for certiorari is the proper remedy

In its Decision dated 7 October 2013 in CA-G.R. SP No. 128262, the CA held that a summary judgment is a final judgment and that the proper remedy for petitioner HDMF was to file an ordinary appeal under Rule 41

⁴³ *People v. Grey*, 639 Phil. 535, 551 (2010), citing *Brocka v. Ponce Enrile*, 270 Phil. 271, 276-277 (1990). (Citations omitted)

⁴⁴ *Department of Justice v. Mislang*, 791 Phil. 219 (2016).

⁴⁵ *Id.* at 228-229, 232.

and not a petition for *certiorari* under Rule 65. The CA noted that the petition filed by HDMF lacks: (1) a written authorization from the OGCC that the Yorac Arroyo Chua Caedo & Coronel Law Firm or the HDMF Office of the Legal and General Counsel Group is duly authorized to file the petition; and (2) the written concurrence of the COA for the OGCC to delegate its duty to represent HDMF to file the petition. The CA ruled that the HDMF Office of the Legal and General Counsel Group and the Yorac Arroyo Chua Caedo & Coronel Law Firm had no authority to file the petition for *certiorari*. Thus, the CA dismissed the petition for *certiorari* mainly on technical grounds.

The CA did not rule on the propriety of the summary judgment, thus:

As to the issue on whether the Summary Judgment as contained in the first assailed Resolution was rendered in accordance with the law, particularly Rule 35 of the Rules of Court, and as to the wisdom and correctness of the Summary Judgment, thereby treating the instant petition as one of appeal, considering that the case involves paramount public interest, We refuse to dwell on the matter as the same, as elucidated above, is clearly not the proper subject of the instant petition for *certiorari* which only province is the determination of lack or excess of jurisdiction, or grave abuse of discretion amounting to lack or excess of jurisdiction.⁴⁶

It should be noted that in its 11 December 2012 Resolution, the Makati RTC held that the Motion for Reconsideration filed by the Yorac Arroyo Chua Caedo & Coronel Law Firm on behalf of HDMF is unauthorized and may be deemed a mere scrap of paper which does not toll the running of the period of appeal. The Makati RTC held that for failure of HDMF to file a valid motion for reconsideration or appeal of the Resolution dated 30 January 2012 containing the summary judgment, such has become “final, executory, and immutable” insofar as HDMF is concerned.

The dispositive portion of the 11 December 2012 Resolution reads:

WHEREFORE, premises considered, the Court hereby resolves to:

1. DENY the motions for reconsideration of the January 30, 2012 Resolution of this Court filed by defendants Faria and Atty. Berberabe for lack of merit; and
2. NOTE with approval the Manifestation filed by plaintiffs in connection with the failure of defendant Home Development Mutual Fund (HDMF) to file a motion for reconsideration or appeal from the January 30, 2012 Resolution of this Court containing the Summary Judgment which, except as to the exact amount of damages the plaintiffs are entitled, finally disposes of this case, rendering the summary judgment herein final, executory, and immutable as to defendant HDMF.

⁴⁶ Rollo (G.R. No. 209424), p. 32.

SO ORDERED.⁴⁷

Clearly, the finality of the judgment as against HDMF necessitates the filing of a petition for *certiorari* since a notice of appeal is barred where the judgment sought to be appealed is already final and executory. As held in *Victory Liner, Inc. v. Malinias*:⁴⁸

Thus, the MTC judgment became final and executory despite the filing of the Motion for Reconsideration thereto, as said motion did not toll the period for filing an appeal therefrom. Yet that did not mean that petitioner was left bereft of further remedies under our Rules. For one, petitioner could have assailed the MTC's denial of the Motion for Reconsideration through a special civil action for *certiorari* under Rule 65 alleging grave abuse of discretion amounting to lack of jurisdiction on the part of the MTC in denying the motion. If that remedy were successful, the effect would have been to void the MTC's denial of the Motion for Reconsideration, thus allowing petitioner to again pursue such motion as a means towards the filing of a timely appeal.

X X X X

On the other hand, a notice of appeal pursued even with a prior pronouncement by the trial court that the judgment sought to be appealed was already final is either misconceived or downright obtuse. It may have been a different matter if the notice of appeal was undertaken without there being any prior express ruling from the trial court that the appealed judgment was already final and that statement was instead expressed at the time the trial court denies the notice of appeal, for at least in that case, the appellant proceeded with the appeal with the comfort that the trial court had not yet said that the appeal was barred. However, as in this case, where the trial court already notified would-be appellant that the judgment was already final, executory and thus beyond appeal, appellant should suffer the consequences if the notice of appeal is nonetheless stubbornly pursued.

Similarly, in this case, the Motion for Reconsideration filed by HDMF was held unauthorized by the Makati RTC and deemed a mere scrap of paper which did not toll the running of the period of appeal. Thus, compared to Faria and Atty. Berberabe whose motions for reconsideration were denied for lack of merit, the Makati RTC ruled that the summary judgment is "final, executory, and immutable as to defendant HDMF." In light of this ruling, HDMF had to file a petition for *certiorari*, while Faria and Atty. Berberabe filed their notice of appeal.

Furthermore, where there is absolutely no legal basis for the rendition of a summary judgment, a petition for *certiorari* is the appropriate, adequate, and speedy remedy to nullify the assailed judgment to prevent irreparable

⁴⁷ Id. at 459.

⁴⁸ 551 Phil. 273, 290-292 (2007).



damage and injury to a party. As held in *Cadirao v. Judge Estenzo*:⁴⁹

Anent the propriety of the remedy availed of by the petitioners, suffice it to state, that although appeal was technically available to them, certiorari still lies since such appeal does not prove to be a speedy and adequate remedy. Where the remedy of appeal cannot afford an adequate and expeditious relief, certiorari can be allowed as a mode of redress to prevent irreparable damage and injury to a party. Certiorari is a more speedy and efficacious remedy of nullifying the assailed summary judgment there being absolutely no legal basis for its issuance. Moreover, the records show that private respondent had already moved for the issuance of a writ of execution and that respondent Judge merely held in abeyance resolution of the same pending resolution by this Court of the instant petition. Clearly then, even if appeal was available to the petitioners, it is no longer speedy and adequate.

The propriety of *certiorari* as the more speedy and adequate remedy is underscored by the fact that respondents Globe Asiatique and Delfin S. Lee have already filed a Motion for Execution⁵⁰ dated 19 March 2013 against HDMF. HDMF contends that if the motion is granted, HDMF will be required to release hundreds of millions or billions of pesos, money which came from the hard-earned contributions of HDMF members, in favor of Globe Asiatique. Moreover, HDMF posits that it will also be compelled to accept the replacement buyers offered by Globe Asiatique, whose accounts may be equally spurious as those of the original buyers whose applications were approved by Globe Asiatique.⁵¹

On the alleged unauthorized representation of the Yorac Arroyo Chua Caedo & Coronel Law Firm on behalf of HDMF, the records show that the OGCC in fact authorized HDMF to engage the services of the said private law firm as evidenced by the letters dated 28 December 2010⁵² and 5 December 2011⁵³ signed by Government Corporate Counsel Raoul C.

⁴⁹ 217 Phil. 93, 102 (1984).

⁵⁰ *Rollo* (G.R. No. 209424), pp. 1868-1882.

⁵¹ *Id.* at 271.

⁵² *Id.* at 1494-1495. The letter dated 28 December 2010 states:

This refers to your request for authority to engage the services of external counsel who will handle the cases filed by or against Globe Asiatique Holdings Corp.

In view thereof, and pursuant to Office of the Government Corporate Counsel (OGCC) Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, Home Development Mutual Fund (HDMF) is hereby authorized to engage the services of Raquel Wealth A. Taguian and Yorac Arroyo Chua Caedo & Coronel Law Firm to handle the aforesaid cases, subject to the control and supervision of the OGCC. This authority does not amount to an endorsement of the compensation of the lawyers to be engaged, which we leave to the sound discretion of management mindful of Commission on Audit rules and regulations.

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⁵³ *Id.* at 1496-1497. The letter dated 28 December 2010 states:

This confirms and ratifies the engagement of external counsel for the handling of

Creencia. Furthermore, in the COA Certification dated 10 January 2013,⁵⁴ COA Corporate Auditor Atty. Fidela M. Tan attested that the COA has concurred in the retainer agreement between HDMF and the Yorac Arroyo Chua Caedo & Coronel Law Firm. Clearly, the Yorac Arroyo Chua Caedo & Coronel Law Firm is vested with the proper authority to represent HDMF, and was in fact authorized to file the Motion for Reconsideration dated 17 February 2012 on behalf of HDMF.

Summary Judgment is not proper because there are genuine issues of material facts

The Makati RTC Resolution dated 30 January 2012 granted the Motion for Summary Judgment filed by Globe Asiatique and Delfin S. Lee against HDMF, and ordered the latter to comply with its obligations under the MOA, FCAs, and CSAs. The dispositive portion of the resolution states:

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 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 obligations 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


the cases filed by or against the Globe Asiatique Holdings Corporation, and such other cases that arose out of or in relation to the Globe Asiatique Corporation issues.

In view thereof, and pursuant to this Office's Memorandum Circular 1, Series of 2002 in conjunction with Republic Act 3838 and Memorandum Circular 9 dated 29 August 1998, we confirm and ratify the engagement of Yorac Arroyo Chua Caedo & Coronel Law Firm to handle such cases, subject to the control and supervision of this Office. This authority does not amount to an endorsement of the compensation of the lawyers to be engaged, which we leave to the sound discretion of management mindful of Commission on Audit rules and regulations.

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⁵⁴ Id. at 1493. The COA Certification states:

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.



applications of those who underwent or will undergo plaintiff GARHC's loan counseling and are qualified for 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 fee, loan take-out proceeds and other receivables of plaintiff GARHC which are still in the control and possession of defendant HDMF;

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 on March 12, 2012 at 8:30 in the morning.

SO ORDERED.⁵⁵

A summary judgment is a procedural technique designed to promptly dispose of cases where the facts appear undisputed and certain from the pleadings, depositions, admissions, and affidavits on record.⁵⁶ The purpose of summary judgment is to grant immediate relief in cases where no genuine triable issue of fact is raised, and thus avoid needless trials and delays. Summary judgment should not be granted unless the records show with certainty that there is no disputable issue as to any material fact which would prevent recovery from the party presenting the motion for summary judgment if a full-blown trial is conducted. The party who moves for summary judgment has the burden of proving the absence of any genuine issue as to any material fact or that the issue posed is patently unsubstantial

⁵⁵ Id. at 451-452.

⁵⁶ *Phil. Countryside Rural Bank (Liloan, Cebu), Inc. v. Toring*, 603 Phil. 203 (2009).

and does not constitute a genuine issue for trial.⁵⁷

Summary judgment is provided under Rule 35 of the 1997 Rules of Civil Procedure. Sections 1 and 3 of Rule 35 read:

Section 1. *Summary judgment for claimant.* – A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory relief, at any time after the pleading in answer thereto has been served, move with supporting affidavits, depositions or admissions for a summary judgment in his favor upon all or any part thereof.

Section 3. *Motion and proceedings thereon.* – The motion shall be served at least ten (10) days before the time specified for the hearing. The adverse party may serve opposing affidavits, depositions, or admissions at least three (3) days before the hearing. After the hearing, the judgment sought shall be rendered forthwith if the pleadings, supporting affidavits, depositions, and admissions on file, show that, except as to the amount of damages, there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Section 3 of Rule 35 provides two requisites for the grant of a summary judgment: (1) there must be no genuine issue as to any material fact, except for the amount of damages; and (2) the party presenting the motion for summary judgment must be entitled to a judgment as a matter of law. Thus, where the pleadings tender a genuine issue which requires the presentation of evidence, the rendition of a summary judgment is not proper. A “genuine issue” is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived, or false claim.⁵⁸

Contrary to the ruling of the Makati RTC, the pleadings of the parties show the existence of genuine issues of material facts, rendering the summary judgment improper.

In its Complaint dated 13 November 2010,⁵⁹ Globe Asiatique claims that: (1) Globe Asiatique has the right to replace the buyers/borrowers who have been delinquent for whatever reason and that the refusal of Pag-IBIG Fund [HDMF] to accept the replacements violated Globe Asiatique’s rights to exercise the remedies available to it under the provisions of the MOA and FCA; (2) Pag-IBIG Fund’s precipitate cancellation of the latest FCA and its refusal to release the collectibles/loan take-outs to which Globe Asiatique is entitled caused the latter’s failure to comply with its obligations under the MOA and FCA; and (3) Pag-IBIG Fund’s cancellation of the latest FCA and CSA was intended to cause Globe Asiatique to fail to comply with its

⁵⁷ *YKR Corporation v. Philippine Agri-Business Center Corp.*, 745 Phil. 666, 685-686 (2014), citing *Viajar v. Judge Estenzo*, 178 Phil. 561, 573 (1979).

⁵⁸ *Phil. Countryside Rural Bank (Liloan, Cebu), Inc. v. Toring*, supra note 56; *Nocom v. Camerino*, 598 Phil. 214 (2009).

⁵⁹ *Rollo* (G.R. No. 209424), pp. 753-774.

obligations under the MOA and as a consequence lose its incentives for its good performance for the past years and the potential to earn under the agreements.

On the other hand, in its Answer with Compulsory Counterclaim dated 8 December 2010,⁶⁰ HDMF refutes Globe Asiatique's claims, thus: (1) HDMF has the right to terminate the agreements because of Globe Asiatique's "grand fraudulent scheme through the creation of ghost buyers and fabrication of loan documents" which violates the 13 July 2008 MOA and the 5 January 2010 FCA; (2) the alleged defaulting buyers/borrowers sought to be replaced by Globe Asiatique are in fact fake and fictitious buyers/borrowers; (3) under Section 3.7 (Buyback of Accounts) of the FCA, the remedy of buyback of accounts can only be availed of after receipt of the Notice of Buyback, which Pag-IBIG Fund did not issue for the 400 accounts mentioned by Globe Asiatique in its Complaint, which Globe Asiatique unilaterally canceled; (4) Section 3.7 of the FCA applies only in case of default and not when the cause for buyback is fraud or breach by Globe Asiatique of any of its warranties; (5) the CSA was canceled due to Globe Asiatique's failure to remit the amortization collections for the periods covering August 2-6, 2010 and August 9-13, 2010; (6) Pag-IBIG Fund canceled the 15 September 2010 FCA because of Globe Asiatique's failure to: a) buyback CTS accounts, other than the 400 accounts mentioned in Globe Asiatique's Complaint which Globe Asiatique unilaterally canceled and which were not subjected to Notices of Buyback by Pag-IBIG Fund; and b) remit the collection covering monthly installment payments of housing loan accounts under the CSA; and (7) Globe Asiatique violated its undertaking and warranty under Sections 3.1⁶¹ and 7.1⁶² of the FCA when it approved loan applications which were not eligible under the Pag-IBIG Housing Loan Program.

It is very apparent from the allegations in the parties' respective pleadings that there exist relevant genuine issues which require the presentation of evidence and which need to be resolved in a full-blown trial. Summary judgment cannot take the place of trial since the facts as pleaded by Globe Asiatique are categorically disputed and contradicted by HDMF.

⁶⁰ Id. at 776-831.

⁶¹ Section 3.1. The DEVELOPER shall receive, evaluate, process and approve the housing loan applications of its member-buyers in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program. The DEVELOPER shall likewise be responsible for the annotation of the Deeds of Assignment with Special Power of Attorney (DOA with SPA)/Loan and Mortgage Agreement (LMA) for accounts covered by the CTS and REM respectively, on the Individual Certificates of Title covering the house and lot units subject of the loan with the appropriate Register of Deeds (RD), and shall deliver the complete mortgage folders to Pag-IBIG Fund.

⁶² Section 7.1. LOAN EVALUATION – The DEVELOPER warrants that the member-borrowers and their respective housing loan applications have been properly evaluated and approved in accordance with the applicable Guidelines of the Pag-IBIG Housing Loan Program prior to their endorsement to Pag-IBIG Fund.

Thus, the CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262 should be reversed and the 30 January 2012 and 11 December 2012 Resolutions of the Makati RTC in Civil Case No. 10-1120 should be annulled and set aside. The case should be remanded to the Makati RTC for trial on the merits.

For the orderly disposition of these cases, my vote is summarized as follows:

I. DOJ Review Resolution dated 10 August 2011

1. **G.R. No. 205698** - *Home Development Mutual Fund (HDMF) PAG-IBIG Fund v. Christina Sagun*
2. **G.R. No. 205780** - *Department of Justice, represented by Sec. Leila De Lima, State Prosecutor Theodore M. Villanueva and Prosecutor General Claro A. Arellano, and the National Bureau of Investigation v. Christina Sagun*

The petitions filed by HDMF and DOJ should be **GRANTED**. The 5 October 2012 Decision and the 11 February 2013 Resolution in CA-G.R. SP No. 121346 should be **REVERSED**. The Warrant of Arrest issued in Criminal Case No. 18480 before RTC Branch 42 of San Fernando, Pampanga against Christina Sagun should be **REINSTATED**.

II. Pampanga RTC Resolutions dated 22 May 2012 and 22 August 2012

1. **G.R. No. 209446** - *People of the Philippines v. Alex M. Alvarez*
2. **G.R. No. 209489** - *Home Development Mutual Fund v. Atty. Alex M. Alvarez*
3. **G.R. No. 209852** - *Home Development Mutual Fund (HDMF) v. Delfin S. Lee*
4. **G.R. No. 210143** - *People of the Philippines v. Delfin S. Lee*
5. **G.R. No. 228452** - *Home Development Mutual Fund (HDMF) v. Dexter L. Lee*
6. **G.R. No. 228730** - *People of the Philippines v. Dexter L. Lee*
7. **G.R. No. 230680** - *Cristina Salagan v. People of the Philippines and Home Development Mutual Fund (HDMF)*

The petitions filed by HDMF and OSG should be **GRANTED**. The 3 October 2013 Decision in CA-G.R. SP No. 127690, the 7 November 2013 Decision in CA-G.R. SP No. 127553, and the 16 November 2016 Decision in CA-G.R. SP No. 127554 should be **REVERSED**. The Warrants of Arrest



issued in Criminal Case No. 18480 before RTC, Branch 42 of San Fernando, Pampanga against Delfin S. Lee, Dexter L. Lee, and Atty. Alex M. Alvarez should be **REINSTATED**. The petition filed by Cristina Salagan should be **DISMISSED**, and the Decision dated 18 March 2016 in CA-G.R. SP No. 134573 should be **AFFIRMED**.

III. Pasig RTC Order dated 10 April 2013

1. **G.R. No. 208744** - *Department of Justice v. Delfin S. Lee*
2. **G.R. No. 210095** - *Department of Justice v. Delfin S. Lee*

The CA Resolutions dated 14 August 2013 in CA-G.R. SP No. 130404 and the CA Resolution dated 26 June 2013 in CA-G.R. SP No. 130409 should be **REVERSED**. The Order dated 10 April 2013 of the Pasig RTC in Civil Case No. 73115-PSG, issuing the writ of preliminary injunction enjoining the DOJ from continuing the preliminary investigation of the Second, Third, and Fourth Criminal Complaints should be **ANNULLED** and **SET ASIDE**.

IV. Makati RTC Resolutions dated 30 January 2012 and 11 December 2012

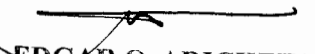
1. **G.R. No. 209424** - *Home Development Mutual Fund (HDMF) v. Globe Asiatique Realty Holdings Corporation, Delfin S. Lee, in his capacity as the President of the corporation, and Tessie G. Wang*

The CA Decision dated 7 October 2013 in CA-G.R. SP No. 128262 should be **REVERSED** and the 30 January 2012 and 11 December 2012 Resolutions of the Makati RTC in Civil Case No. 10-1120 should be **ANNULLED** and **SET ASIDE**. The case should be **REMANDED** to the Makati RTC for trial on the merits.



ANTONIO T. CARPIO
Senior Associate Justice

CERTIFIED TRUE COPY


EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court