



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
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**SECOND DIVISION**

**BDO UNIBANK, INC.,**  
Petitioner,

**G.R. No. 230923**

Present:

CARPIO, J., Chairperson,  
PERLAS-BERNABE,  
CAGUIOA,  
REYES, J., JR., and  
LAZARO-JAVIER, JJ.

- versus -

**FRANCISCO PUA,**  
Respondent.

Promulgated:

08 JUL 2019

x ----- *Atty. Carlos J. Reyes* ----- x

**DECISION**

**CARPIO, J.:**

**The Case**

For resolution is a petition for review on certiorari<sup>1</sup> dated 18 May 2017 filed by BDO Unibank, Inc.<sup>2</sup> (petitioner) assailing the Decision<sup>3</sup> dated 26 September 2016 and the Resolution<sup>4</sup> dated 5 April 2017 of the Court of Appeals in CA-G.R. CR No. 36696.

**The Facts**

Petitioner is a domestic expanded commercial bank duly organized and authorized to perform trust or agency functions and services as an investment manager through its Trust Department. On the other hand, Francisco Pua (respondent) is a client of petitioner and is engaged in business under the trade name and style of "Trends & Innovation Marketing."<sup>5</sup>

<sup>1</sup> Under Rule 45 of the Rules of Court.

<sup>2</sup> Formerly Equitable Banking Corporation-Trust Department. See *rollo*, p. 30.

<sup>3</sup> Id. at 7-20. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes concurring.

<sup>4</sup> Id. at 22-23.

<sup>5</sup> Id. at 7-8.

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On 20 January 1993, petitioner entered into an Investment Management Agreement (IMA) with Ernesto Ang (Ernesto). In the IMA, petitioner is tasked to act as the agent and investment manager for the money of Ernesto. Petitioner likewise executed an IMA with Edgard Ang (Edgard)<sup>6</sup> on 31 August 1993, Trilogy Properties Corporation (TPC) on 12 December 1996, and Lucia and/or Sharlene Po (Lucia and Sharlene, respectively) on 28 February 1997 for the same purpose.<sup>7</sup>

Thereafter, respondent, through petitioner, borrowed the sum of ₱41,500,000.00 from the funds invested by Ernesto, Edgard, TPC, Lucia, and Sharlene (collectively, Original Funders). Pursuant to the specific directive and authority to lend and invest signed by the Original Funders authorizing the release of the loan in favor of respondent, petitioner released the amount of ₱41,500,000.00 to respondent.<sup>8</sup>

On 7 May 1997, respondent informed petitioner of his intention to change the Original Funders of the loan. Two days thereafter, on 9 May 1997, respondent delivered two checks in the aggregate sum of ₱41,500,000.00. The aforesaid checks were drawn against the account name 7-21450065-1, Metrobank General Santos-Santiago Blvd. Branch and payable to the order of petitioner. On the same date, respondent informed petitioner that Efrain de Mayo<sup>9</sup> was the new funder under the account name for IMA placement. Thereafter, respondent renamed Efrain de Mayo to R. Makmur as the new funder.<sup>10</sup>

Unfortunately, the checks given by respondent to petitioner were dishonored when they were presented for payment, on account of the fact that they were drawn against a closed account. Hence, petitioner demanded payment from respondent. However, despite repeated demands, no payment was made by respondent. Thus, petitioner filed a complaint-affidavit for estafa by means of deceit against respondent.<sup>11</sup>

For his part, as stated in his counter-affidavit, respondent admitted that he had an obligation under the contract of loan, which he executed with petitioner. However, he argued that, while he represented to the officers of petitioner that R. Makmur was interested in replacing the investments of the Original Funders, he did not deceive nor convince petitioner to release the Original Funders, prior to the clearing of the personal checks of R. Makmur. According to respondent, petitioner had the sole discretion to replace and accept a funder. He further contended that he was not a party to the IMA between petitioner and its prospective funders.<sup>12</sup>

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<sup>6</sup> Also referred to in the records as "Edgardo Ang."

<sup>7</sup> *Rollo*, p. 8.

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

<sup>9</sup> Also referred to in the records as "Efrain de Mayo."

<sup>10</sup> *Rollo*, pp. 8-9.

<sup>11</sup> *Id.* at 9.

<sup>12</sup> *Id.* at 9-10.

Respondent pointed out that he had nothing to gain from the change of funder and lamented that the situation was more disadvantageous to him, since there was no funder anymore to the loan that he had made.<sup>13</sup>

After conducting the required preliminary investigation, in its Resolution dated 22 May 1998, the Office of the City Prosecutor of Manila (OCP-Manila) held that no probable cause existed and dismissed the case against respondent, to wit:

WHEREFORE, premises considered, it is respectfully recommended that the instant case be dropped for lack of merit.

SO ORDERED.<sup>14</sup>

Petitioner appealed to the Department of Justice (DOJ). In its Resolution dated 10 April 2012, the DOJ reversed the Resolution of the OCP-Manila dated 22 May 1998 and ordered the OCP-Manila to file an information for estafa by means of deceit against respondent, to wit:

WHEREFORE, the assailed resolution is hereby REVERSED and SET ASIDE. The City Prosecutor of Manila is directed to file [an] information for estafa under Article 315, par. 2(a), of the Revised Penal Code against respondent Francisco Pua, and report the action taken thereon within ten (10) days from receipt thereof.

SO ORDERED.<sup>15</sup>

Accordingly, an Information for estafa by means of deceit dated 31 July 2013 was filed against respondent before the Regional Trial Court (RTC), Branch 30, Manila, docketed as Criminal Case No. 13-299943. The aforesaid Information reads as follows:

That on or about May 9, 1997, in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud EQUITABLE BANKING CORPORATION, a domestic expanded bank duly organized and existing under the Philippines Law, with office address at EBC Building, 262 Juan Luna St., Binondo, Manila, this City, represented by its Vice President, Trust Department, Lydia N. Cruz, in the following manner, to wit: Equitable Banking Corporation (EBC) is legally authorized to perform trust or agency services as investment manager through its Trust Department (EBC-Trust), which offers, among others, portfolio management services for individuals, corporations and institutions; the arrangement, with complainant acting as the investment manager and the principal or funder, is reflected in the document called "Investment Management Agreement" (IMA); the IMA is an agency agreement where the principal retains legal title to the funds/cash that are delivered to it or after the time of the execution of the IMA, and in turn, complainant invests or lends the amount to a particular borrower-client under the principal's written specific directive or authority to lend/invest for

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<sup>13</sup> Id. at 10.

<sup>14</sup> Id.

<sup>15</sup> Id. at 10-11.

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the latter's own account and risk; the accused, following the IMA scheme, under his trade name Trends and Innovation Marketing, was granted a loan of ₱41,500,000.00 by EBC using funds invested by Mssrs. Ernesto Ang and Edgardo Ang, Messes. Sharlene Po and Lucia Po and Trilogy Properties Corporation, known as principals and who respectively, executed specific directive or authority for EBC to loan their investments to accused and in turn, accused executed corresponding promissory notes; accused Francisco Pua, by means of false manifestations and fraudulent representations which he made to complainant-EBC prior to and even simultaneously with the commission of the fraud, by delivering to complainant Metro Bank Check No. 2402001754 in the amount of ₱20,000,000.00 and Metro Bank Check No. 2402001755 in the amount of ₱21,500,000.00, both dated May 9, 1997 in [the] total amount of ₱41,500,000.00 payable to EBC, induced complainant to change or substitute his original funders/principals, Mssrs. Ernesto Ang and Edgardo Ang, Messes. Sharlene Po and Lucia Po and Trilogy Properties Corporation to Efraim de Mayo, but which, however, again induced complainant to change the funder's name from Efraim de Mayo to R. Makmur, as the latest funder – R. Makmur was the issuer of the said Metro Bank Checks, and assured the complainant that the checks were funded and shall be honored, and by means of similar import, induced and succeeded in inducing complainant to change the funder's name to R. Makmur and to give and deliver, as in fact, it gave and delivered to said accused the amount of ₱41,500,000.00, said accused well knowing that all his manifestation and representations were false and untrue and were made only to obtain from said complainant the amount of ₱41,500,000.00; but when said checks were presented for payment, the same were dishonored for the reason "Account Closed" and which amount once in his possession and with intent to defraud, he misappropriated, misapplied and converted the said amount of ₱41,500,000.00 to his own personal use and benefit, to the damage and prejudice of said Equitable Banking Corporation in the aforesaid sum of ₱41,500,000.00, Philippine Currency.

Contrary to law.<sup>16</sup>

On 26 September 2013, respondent filed an urgent omnibus motion. Respondent prayed that the case against him be dismissed outright for lack of probable cause and for being prosecuted in violation of his constitutional rights to due process and to the speedy disposition of his case. He likewise prayed that the issuance of a warrant of arrest and other proceedings be suspended. Thereafter, petitioner filed its comment/opposition.<sup>17</sup>

### **The Ruling of the RTC**

In its Order dated 13 February 2014, the RTC disposed of the case as follows:

WHEREFORE, finding no probable cause to support and justify the case under consideration, the same is hereby DISMISSED.

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<sup>16</sup> Id. at 11-12.

<sup>17</sup> Id. at 12-13.



SO ORDERED.<sup>18</sup>

Aggrieved, petitioner moved for reconsideration, which was denied by the RTC in an Order dated 30 May 2014.<sup>19</sup> Hence, petitioner appealed to the Court of Appeals.

### **The Ruling of the Court of Appeals**

In its Decision dated 26 September 2016, the Court of Appeals dismissed the appeal and affirmed the Order of the RTC dated 13 February 2014.<sup>20</sup>

Petitioner argued in its appeal that the RTC erred in dismissing the criminal case for lack of probable cause. It alleged that the complaint-affidavit describes in detail the specific actions taken by respondent constituting a *prima facie* case for estafa by means of deceit under paragraph 2(a) of Article 315 of the Revised Penal Code.<sup>21</sup> According to petitioner, the complaint-affidavit indicates that respondent induced it and its officers to release the Original Funders of his loan on the assurance that he has a new funder in the name of R. Makmur and to accept the latter's spurious checks. Petitioner further contended that the release of the money to the Original Funders was the direct result of the deception employed by respondent. It likewise claimed that the RTC, in dismissing the criminal case, failed to consider that a finding of probable cause does not require an inquiry on whether or not there is sufficient evidence to secure a conviction.<sup>22</sup>

On the other hand, respondent maintained that the RTC rightly ruled in dismissing the criminal case for lack of probable cause. In reversing the Resolution of the OCP-Manila dated 22 May 1998, the DOJ merely relied upon speculations and conjectures in finding that he employed misrepresentation and deceit when he requested petitioner to replace the Original Funders of his loan with R. Makmur. Respondent argued that his act of informing petitioner about R. Makmur being interested in replacing the Original Funders does not amount to fraud. He pointed out that fraud is never presumed and must be proven by clear and convincing evidence. He contended that there was nothing in his representation indicating that he gave false assurances to petitioner and that he guaranteed that the checks issued by R. Makmur were sufficiently funded. In fact, according to respondent, he was not in a position to guarantee that the subject checks were sufficiently funded, considering that they were personal checks of R. Makmur. Respondent further averred that the law requires such a high degree of diligence from banks relative to the handling of its affairs, as opposed to those of ordinary business

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<sup>18</sup> Id. at 13.

<sup>19</sup> Id.

<sup>20</sup> Id. at 19.

<sup>21</sup> Id. at 13-14.

<sup>22</sup> Id. at 14.

enterprises. Because petitioner failed to observe the diligence required of banks, by waiting first for the checks to be cleared before releasing the Original Funders of respondent's loan, respondent could not be held liable for petitioner's negligence.<sup>23</sup>

The Court of Appeals agreed with the RTC in dismissing the criminal case for lack of probable cause. It ruled that the evidence adduced by petitioner did not support a finding of probable cause for the crime of estafa by means of deceit. It held that respondent's mere act of informing petitioner about R. Makmur's interest in replacing the Original Funders does not constitute false pretense and misrepresentation, as contemplated in the crime of estafa by means of deceit, that warrants the filing of the criminal case against respondent. It held that there is nothing in the conduct of respondent in informing petitioner that R. Makmur is the new funder and delivering to petitioner the checks issued by R. Makmur that indicates respondent's intention to deceive petitioner.<sup>24</sup>

Petitioner moved for reconsideration, which the Court of Appeals denied in its Resolution dated 5 April 2017.<sup>25</sup> Hence, the instant petition before this Court.

### **The Issue**

The issue in the present case is whether or not the Court of Appeals erred in upholding the Order of the RTC dated 13 February 2014 dismissing the criminal case of estafa by means of deceit against respondent for lack of probable cause.

### **The Court's Ruling**

The Court finds the instant petition bereft of merit.

### ***Authority to Represent the State in Appeals of Criminal Cases Before the Court of Appeals and the Court***

At the onset, the Court notes that the present petition was filed by petitioner without the required authority from or conformity of the Office of the Solicitor General (OSG). The Court points out that the Manifestation of the OSG dated 26 January 2016 that was furnished to this Court by petitioner refers to the conformity of the OSG to the appeal filed by petitioner before the Court of Appeals and not the present petition before this Court.<sup>26</sup>

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<sup>23</sup> Id. at 14-15.

<sup>24</sup> Id. at 16.

<sup>25</sup> Id. at 22-23.

<sup>26</sup> Id. at 151-152.



Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 states that the OSG shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation, or matter requiring the services of lawyers. Moreover, the OSG shall represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings. The aforesaid provision states the following:

Section 35. *Powers and Functions.* – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the services of a lawyer. It shall have the following specific powers and functions:

**(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings;** represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

x x x x (Emphasis supplied)

In a plethora of cases, the Court has consistently ruled that only the OSG may bring or defend actions in behalf of the Republic of the Philippines, or represent the People or State in criminal proceedings before the Supreme Court and the Court of Appeals. The aforesaid is subject to two exceptions where a private complainant or offended party in a criminal case may file a petition directly with this Court, to wit: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party; and (2) when the private offended party questions the civil aspect of a decision of a lower court.<sup>27</sup>

The first exception contemplates a situation where the State and the offended party are deprived of due process, because the prosecution is remiss in its duty to protect the interest of the State and the offended party. This Court recognizes the right of the offended party to appeal an order of the trial court which denied him or her and the State of due process of law. On the other hand, under the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, not being satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation

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<sup>27</sup> *Heirs of Delgado v. Gonzales*, 612 Phil. 817, 843-844 (2009).



of the OSG.<sup>28</sup>

With respect to the first exception, petitioner did not allege that it and the State were deprived of due process of law. On the other hand, in relation to the second exception, a perusal of the present petition reveals that petitioner did not file such in order to preserve its interest in the civil aspect of the criminal case. In the case under consideration, petitioner not only sought for the reversal and the setting aside of the Decision dated 26 September 2016 and the Resolution dated 5 April 2017 of the Court of Appeals in CA-G.R. CR No. 36696 but also the reinstatement of Criminal Case No. 13-299943 and the issuance of a warrant of arrest against respondent for estafa by means of deceit. The latter relief being prayed for by petitioner clearly involves the criminal aspect of the criminal case. Nevertheless, Section 1, Rule 111 of the Revised Rules of Criminal Procedure notably provides that when a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action, unless the offended party waives the civil action, reserves the right to institute it separately, or institutes the civil action prior to the criminal action. An examination of the records of the case reveals that petitioner did not waive the civil action, and neither did it reserve the right to institute such separately nor institute the civil action prior to the criminal action. Hence, it is only with respect to the criminal aspect that the petition must necessarily fail. As previously mentioned, when the private offended party questions the civil aspect of a decision of a lower court, there is no need for the OSG to represent the People or State in criminal proceedings before this Court. Consequently, the civil aspect of the case at hand may proceed.

It bears stressing and it is not disputed that, in the present case, the Original Funders are the creditors and respondent is the debtor. The Original Funders were paid by petitioner which advanced the payment to the Original Funders of their investments, prior to the clearing of the new funder's checks. This is a case of payment by a third party, petitioner, to the creditor, Original Funders, for the benefit of respondent, who is the debtor. Hence, the Original Funders assigned their credit to petitioner, when the latter paid the former.

Article 1236 of the Civil Code provides the following:

Article 1236. The creditor is not bound to accept payment or performance by a third person who has no interest in the fulfillment of the obligation, unless there is a stipulation to the contrary.

Whoever pays for another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

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<sup>28</sup> Id. at 844, 846.





In the instant case, petitioner paid the Original Funders for the benefit of respondent, with the knowledge of the latter. Accordingly, petitioner under the law possesses the rights of reimbursement and subrogation, *i.e.*, to recover what it has paid and to acquire all the rights of the Original Funders. Article 1303 of the Civil Code particularly provides that the effect of legal subrogation is to transfer to the new creditor the credit and all the rights and actions that could have been exercised by the former creditor either against the debtor or against third persons. Thus, petitioner has every right to proceed civilly against respondent.


**WHEREFORE**, the case is **REMANDED** to the Regional Trial Court, Branch 30, Manila, for the reception of evidence relating to the civil aspect of the case. The petition for review filed by BDO Unibank, Inc. is **DISMISSED** with respect to the criminal aspect of the case.

**SO ORDERED.**

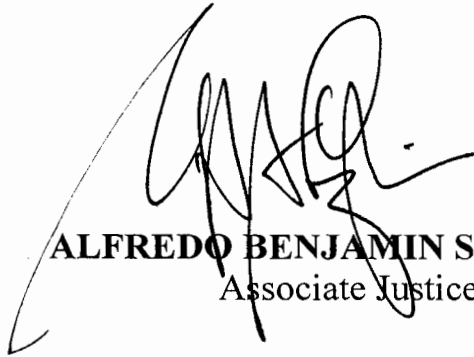


**ANTONIO T. CARPIO**  
Associate Justice

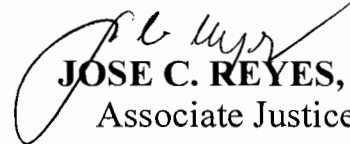
**WE CONCUR:**



**ESTELA M. PERLAS-BERNABE**  
Associate Justice



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



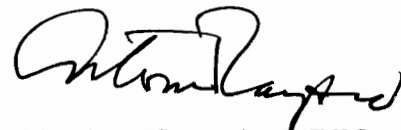
**JOSE C. REYES, JR.**  
Associate Justice



**AMY C. LAZARO-JAVIER**  
Associate Justice

**ATTESTATION**

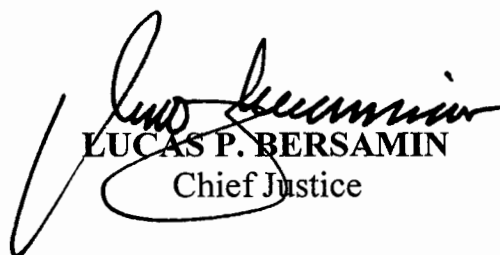
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



**ANTONIO T. CARPIO**  
Associate Justice  
Chairperson

## CERTIFICATION

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



LUCAS P. BERSAMIN  
Chief Justice