REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

-*versus*-

GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES, MAR S. LOPEZ, JEMMA L. LAMCES, MARCELESA F. SARTO,
Accused.

CTA Crim. Case Nos. O-741 to O-744
For: Violation of Section 255 of Republic Act 8424 (NIRC of 1997, as amended), in rel. to Sections 253, par. (d), and 256 of the same Code

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, and,
MANAHAN, ***JJ.***

Promulgated:

FEB 2 0 2020 ; 1:17 pm

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RESOLUTION

For this Court's resolution are the motions and incidents on the following consolidated cases:

CTA Crim. Case No. O-741 (First Division)

1. *Motion to Quash Information* filed by accused Jemma L. Lamces on January 21, 2020;
2. *Motion to Quash Information* filed by accused Marcelesa F. Sarto on January 21, 2020.

CTA Crim. Case No. O-743 (Third Division)

For determination of probable cause.

CTA Crim. Case No. O-744 (Second Division)

For setting of preliminary conference; arraignment and pre-trial conference.

FACTUAL BACKGROUND

Under CTA Criminal Case O-741

On December 20, 2019, the First Division issued a Resolution finding probable cause to hold accused Jemma L. Lamces and Mar S. Lopez for trial, with the exclusion of accused Marcelesa F. Sarto due to the failure of the prosecution to establish her actual name/identity, and we quote portions of said Resolution, thus:

> "In reference to the findings contained in the Resolution dated July 10, 2019 in addition to the documents attached to the plaintiff's *Compliance,* this Court finds the existence of probable cause to hold the above-named accused for trial with the *exclusion* of the person identified in the Information as ""**MARCELESA F. SARTO"** due to the failure of the prosecution to establish her actual name/identity.
>
> **ACCORDINGLY,** let Warrants of Arrest be issued against accused **MAR S. LOPEZ** and **JEMMA L. LAMCES.** »

The Court then issued Warrants of Arrest against accused Mar S. Lopez and Jemma L. Lamces both dated January 14, 2020, with the exclusion of Marcelesa F. Sarto.

Only Jemma L. Lamces posted a bail bond while Mar S. Lopez remains at large.

On January 21, 2020, accused Jemma L. Lamces filed the instant *Motion to Quash Information* on the ground that the facts charged do not constitute an offense and praying that the Information charging her for violation of Section 255 of the 1997 National Internal Revenue Code (NIRC), as amended, be quashed and the instant case be dismissed.

Likewise, accused Marcelesa Sarto filed a *Motion to Quash Information* also on January 20, 2020 on the same ground as that invoked by accused Jemma L. Lamces, i.e., that the facts charged do not constitute an offense.

Under CTA Crim Case No. O-743

For the determination of probable cause, we set forth the facts as follows:

On June 19, 2019, an Information was filed by the prosecution against the accused Great Domestic Corporation Insurance Company of the Philippines, Mar S. Lopez, Jemma L. Lamces and Marcelesa F. Sarto for violation of Section 255 in relation to Sections 253 (d) and 256 of the 1997 National Internal Revenue Code of 1997 ("1997 NIRC") and docketed as CTA Crim. Case No. O-743. We quote the Information as follows:

> "The undersigned State Prosecutor of the Department of Justice, hereby accuses **GREAT DOMESTIC INSURANCE COMPANY OF THE PHILIPPINES (GREAT DOMESTIC** for brevity), **MAR S. LOPEZ, JEMMA L. LAMCES** and **MARCELESA F. SARTO,** President, Treasurer, Accounting Manager, respectively, of GREAT DOMESTIC for violation of Sec. 255 of Republic Act 8424 otherwise known as the National Internal Revenue Code of 1997, as amended, in relation to Sections 253, par. (d), and 256 of the same code, committed as follows:
>
> "That on or about May 9, 2014 up to the present, in the City of Manila, Philippines, and within the jurisdiction of this Honorable Court, the aforenamed accused **GREAT DOMESTIC**, as well as its responsible officers namely: **MAR S. LOPEZ, JEMMA L. LAMCES** and **MARCELESA F. SARTO,** being the President, Treasurer and Accounting Manager, respectively, and, as such required by law, rules and regulations to pay taxes due from said corporation, did then and there willfully, unlawfully, feloniously fail and refuse to pay the Documentary Stamp Tax of GREAT DOMESTIC for taxable year 2009 in the total amount of **Fifteen Million Three Hundred Forty Nine Thousand Twenty One Pesos and Sixty Three centavos (P15,349,021.63),** exclusive of interest and surcharges, despite due notice and demand from the BIR Commissioner or his duly authorized representatives, to the damage and prejudice of the government."
>
> **CONTRARY TO LAW."**

The aforequoted Information dated May 31, 2018 and filed with this Court on June 19, 2019 was accompanied by the following supporting documents:

1) Certified True Copy of the Resolution dated May 31, 2018 issued by Senior Assistant State Prosecutor, Merba A. Waga with Recommending Approval by Senior Deputy

State Prosecutor, Miguel F. Gudio, Jr. and approved by Officer-in-Charge, Prosecutor General, Richard Anthony D. Fadullon, recommending the filing of the Information for violation of Section 255 in relation to Sections 253 and 256 of the 1997 NIRC, as amended against Great Domestic Insurance Company of the Philippines (hereinafter referred to as Great Domestic)and its responsible corporate officers Mar S. Lopez, Jemma L. Lamces and Marcelesa F. Sarto as President, Treasurer and Accounting Manager, respectively.

2) Certified True Copy of the Motion for Reconsideration filed by Mar S. Lopez relative to the Resolution of Assistant State Prosecutor, Merba A. Waga dated May 31, 2018, filed by accused Mar S. Lopez;

3) Certified True Copy of the Resolution issued by Merba A. Waga dated January 8, 2019, denying accused's Motion for Reconsideration;

4) Certified True Copies of the Hearing Forms dated October 25, 2016, October 11, 2016, August 25, 2016, and September 19, 2016;

5) Certified True Copies of the Subpoenas addressed to Attys. Marvin P. Canero, Leonardo B. Quanico, Jr., and Alvin B. Diokno, Fremarie Aquino, Mirabel Vidal, Josebeth Gregorio and Jefferson Ocampo;

6) Certified True Copy of the Counter-Affidavit of accused Mar S. Lopez;

7) Certified True Copy of the Counter-Affidavit of Ana Marie V. Pagsibigan;

8) Certified True Copies of the Subpoenas issued to accused Mar S. Lopez, Marcelisa F. Sarto and Jemma L. Lamces and Atty. Ana Marie Pagisibigan;

9) Certified True Copy of the Referral Letter dated October 15, 2015 signed by then Commissioner of Internal Revenue Kim Jacinto-Henares, addressed to the then Secretary of Justice, Alfredo Benjamin Caguioa designating Attys. Mario A. Saldevar, Ma. Haidee Lourdes C. Organo, Ramon B. Lorenzo, Christopher G. Eugenio, Leonardo B. Quanico, Jr., Alvin B. Diokno and Marvin P.

Cañero designating them as representatives of the Bureau of Internal Revenue (BIR) in the preliminary investigation and prosecution of the case against the accused;

10. Certified True Copy of the Joint Complaint-Affidavit of BIR revenue officers Fremarie Aquino, Mirabel Vidal, Joesebeth Gregorio and Jefferson Ocampo accusing Great Domestic and its responsible corporate officers, Mar S. Lopez, Jemma L. Lamces and Marcelisa F. Sarto as President, Treasurer and Accounting Manager, respectively for violation of Section 255 in relation to Sections 253 and 256 of the 1997 NIRC, as amended.

    The Joint Complaint Affidavit has the following attachments (all certified true copies):

    a. Assessment Notices issued against Great Domestic all dated May 29, 2013;

    b. Formal Letter of Demand (FLD) with Details of Discrepancies issued against Great Domestic for taxable year 2009 for deficiency income tax, VAT and DST;

    c. General Information Sheet (GIS) of Great Domestic filed with the Securities and Exchange Commission (SEC) on June 27, 2014;

    d. Letter of Authority (LOA) with the dates and words not clearly printed;

    e. LOA dated September 9, 2010 authorizing the examination of the books of accounts and other accounting records of Great Domestic for the period January 1, 2009 to December 31, 2009.

    f. Memorandum of Assignment dated January 24, 2011;

    g. First Request for Presentation of Records dated May 6, 2010;

    h. Second Request for Presentation of Records (dates and words not clearly printed);

i. 3rd and Final Request for Presentation of Records dated May 24, 2010;

j. Notice of Informal Conference dated April 30, 2012;

k. Details of Discrepancies for taxable year 2009;

l. Preliminary Assessment Notice with Details of Discrepancies addressed to Great Domestic for taxable year 2009;

m. Letter Protest dated June 11. 2013 and signed by Mar S. Lopez;

n. Preliminary Collection Letter dated May 9, 2014;

o. Final Notice Before Seizure dated June 4, 2014;

p. Warrant of Distraint and Levy issued against Great Domestic;

q. Warrants of Garnishment addressed to various banks where Great Domestic maintains bank accounts; and

r. Other annexes.

<u>Under CTA Crim. Case No. O-744</u>

Under CTA Crim. Case No. O-744, all three of the accused, Mar S. Lopez, Jemma L. Lamces and Marcelesa F. Sarto were served with Warrants of Arrest but only two of the accused posted cash bail bonds. Accused Mar S. Lopez remains at large.

The accused Jemma L. Lamces and Marcelesa F. Sarto having posted their cash bail bond for their provisional liberty, the Court is now set to schedule the preliminary conference, arraignment and pre-trial conference for both accused.

RULINGS OF THE COURT

CTA Crim. Case No. O-741:

WHEREFORE, premises considered, the plaintiff is **DIRECTED** to file its comment on the *Motion to Quash Information* filed by accused Jemma L. Lamces on January 21, 2020 within a non-extendible period of ten (10) days from notice.

Upon filing of the comment or lapse of the period given, the *Motion to Quash Information* filed by accused Jemma L. Lamces filed on January 21, 2020, shall be deemed submitted for resolution.

With regard to the *Motion to Quash Information* filed by accused Marcelesa F. Sarto on January 21, 2020, the Court hereby **GRANTS** the same based on this Court's Resolution dated December 20, 2019 finding no probable cause against her, due to the failure of the prosecution to establish her actual name/identity.

Accordingly, CTA Crim. Case No. O-741 is **DISMISSED** as against accused, identified in the Information as "Marcelesa F. Sarto."

CTA Crim. Case No. O-743

We first resolve the inconsistencies surrounding the name of one of the accused who is identified in the Information as **"Marcelesa F. Sarto."**

In the *Manifestation and Compliance (Resolution dated 31 July 2019)* filed on October 1, 2019, plaintiff plainly stated that the name of the accused should be spelled as **"MERCELISA F. SARTO."** However, the Information filed on June 19, 2019 in CTA Crim. Case No, O-743 identified her as **"MARCELESA F. SARTO** as well as in the Resolution of Senior Assistant State Prosecutor, Merba A. Waga dated May 31, 2018**.** Further, the Referral Letter signed by then Commissioner of Internal Revenue, Kim Jacinto-Henares, identified her as "**MARCELISA F. SARTO"** as well as in the Joint Complaint-Affidavit filed by the revenue officers of the Bureau of Internal Revenue (BIR). This apparent confusion on the part of the prosecution as to the name of one of the accused should not prejudice the person or persons referred to in the documents submitted by the prosecution including the Information filed on June 19, 2019.

WHEREFORE, this Court finds the existence of probable cause to hold the above-named accused for trial with the *exclusion* of the person identified in the Information as "**"MARCELESA F. SARTO"** due to the failure of the prosecution to establish her actual name/identity.

ACCORDINGLY, let Warrants of Arrest be issued against accused **MAR S. LOPEZ** and **JEMMA L. LAMCES** while the Criminal Case filed against accused **MARCELESA F. SARTO** is **DISMISSED.**

The bail bond for provisional liberty is hereby fixed at Sixty Thousand Pesos (Php60,000.00) for each of the accused, namely, Mar S. Lopez and Jemma L. Lamces.

<u>CTA Crim. Case No. O-744</u>

WHEREFORE, the setting of the preliminary conference; arraignment of accused Jemma L. Lamces and Marcelesa F. Sarto and pre-trial conference pertaining to CTA Crim. Case No. O-744 is hereby **HELD IN ABEYANCE** pending the resolutions of the Court on the *Motion to Quash Information* filed by accused Jemma L. Lamces in CTA Crim. Case No. O-741 and the *Motions to Quash Information* and *Supplemental Motions to Quash* filed by accused Jemma L. Lamces and Marcelesa F. Sarto in CTA Crim Case No. O-742, in the interest of time and efficiency by conducting all three processes (preliminary conference, arraignment and pre-trial conference) for all the consolidated cases at the same time.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CATHERINE T. MANAHAN
Associate Justice