THIRD DIVISION

[G.R. No. 277067. May 07, 2025]

DINA C. BUENAFLOR, PETITIONER, VS. OFFICE OF THE SECRETARY OF JUSTICE THROUGH HON. REGIONAL PROSECUTOR JANET GRACE B. DALISAY-FABRERO, IN HER CAPACITY AS THE REGIONAL PROSECUTOR OF THE REGIONAL PROSECUTION OFFICE XI OF THE DEPARTMENT OF JUSTICE, DAVAO CITY, PURSUANT TO DEPARTMENT CIRCULAR NO. 70-A, SERIES OF 2000 AND DEPARTMENT CIRCULAR NO. 003-A, SERIES OF 2017 IN RELATION TO REPUBLIC ACT NO. 10951; EDMOND E. BERNARDO, VICENTE A. CASIÑO,* JR., ATTY. MICHAEL P. MILLARES, ATTY. RONALD E. HUBILLA, AND ATTY. FLOR ANASTACIO, RESPONDENTS.**

D E C I S I O N

INTING, J.:

Before the Court is a Petition of Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Dina C. Buenaflor (Buenaflor), assailing the Decision[2] dated March 15, 2024, and the Resolution[3] dated September 30, 2024, of the Court of Appeals (CA) in CA-G.R. SP No. 10508-MIN.

The CA dismissed Buenaflor's Petition for *Certiorari* and upheld the Resolutions dated December 29, 2020,[4] and May 4, 2021,[5] of the Regional Prosecution Office XI, Davao City (RPO-XI) in A-RPO XI No. 2020-K-023. The Resolutions dismissed the Complaint-Affidavit[6] filed by Buenaflor against Edmond E. Bernardo (Bernardo), Atty. Michael P. Millares (Atty. Millares), Atty. Ronald E. Hubilla (Atty. Hubilla), Vicente A. Casiño, Jr. (Casiño, Jr.), and Atty. Flor Anastacio (Atty. Anastacio) (collectively, private respondents) on January 16, 2019. The dismissal was based on the ground of prescription and the finding that no probable cause exists to charge private respondents with Estafa with Abuse of Confidence under Article 315, paragraph 1(b)[7] and Other Deceits under Article 318[8] of the Revised Penal Code.

The Antecedents

In 1987, Buenaflor and her late husband (spouses) obtained loans amounting to PHP 950,000.00 (subject loans) from United Coconut Planters Bank Magsaysay Branch, Davao City (UCPB-Magsaysay), a bank accredited by Quedan and Rural Credit Guarantee Corporation (Quedancor) under its Food Traders and Processors financing program. The spouses obtained the subject loans for their corn and *palay* business under the name of Antipas Corn Grits.[9]

According to Buenaflor, sometime in 1989, after she and her late husband decided to obtain an additional PHP 3 million loan from UCPB-Magsaysay, she settled their outstanding loans by personally delivering PHP 950,000.00 to Bernardo, who was then the general manager of UCPB-Magsaysay.[10] Buenaflor's then personal secretary, Agnes Gepitulan Grande, was present when the payment was made. Allegedly, despite acceptance of the PHP 950,000.00 from Buenaflor, Bernardo did not issue any proof of receipt of the amount and instead instructed Buenaflor to return after a week, in time for the release of the bank's decision on her new loan application. When Buenaflor returned, she found out that her new loan application was denied, and still, no receipt was issued to her. In the subsequent years, Buenaflor purportedly made several demands for the issuance of a receipt or any document showing full settlement of the spouses' loan obligations, but her demands were all unheeded.[11]

Bernardo, however, denied receiving PHP 950,000.00 from Buenaflor.[12] By reason of the purported nonpayment of the subject loans, UCPB-Magsaysay demanded the payment of the supposed guarantee coverage from Quedancor, leading the latter to pay PHP 809,850.00 to the bank on February 19, 1991. An undated Subrogation Receipt was issued by UCPB-Magsaysay through Casino, Jr., its Vice-President, in favor of Quedancor, and pursuant to it, Quedancor acquired all the rights, interests, and claims that UCPB-Magsaysay may have had with respect to the subject loans.[13]

Attys. Millares and Hubilla of Quedancor informed Buenaflor that Quedancor paid PHP 809,850.00 to UCPB-Magsaysay. Atty. Anastacio of Quedancor issued a computation to Buenaflor and her late husband, indicating the amount paid by Quedancor, the date of payment, and the official receipt numbers, among others.[14]

On November 8, 1993, Quedancor filed a collection case against Buenaflor and her late husband before the Regional Trial Court of Makati City for the recovery of the amount that it paid to UCPB-Magsaysay. [The collection case was eventually dismissed on February 21, 2007, due to the non-appearance of Quedancor's counsel. The dismissal became final after Quedancor failed to appeal the denial of its Motion for Reconsideration of the same.[15]

After unsuccessful demands for accounting, Buenaflor filed an administrative complaint for unsafe and unsound banking practices against UCPB-Magsaysay with the Office of Special Investigation of the Bangko Sentral ng Pilipinas (OSI-BSP) on May 18, 2011. In a Resolution[16] dated June 8, 2012, the OSI-BSP dismissed[17] the administrative complaint for lack of merit. It concluded that Buenaflor's claims lacked credibility upon the following findings: *first*, considering that the amount involved was

quite substantial, Buenaflor's failure to insist on the issuance of an official receipt on the same day that she allegedly paid PHP 950,000.00 to UCPB-Magsaysay was contrary to human experience; *second*, Buenaflor alleged that she repeatedly demanded the issuance of an official receipt, yet she offered no proof that she made a formal or written demand upon Bernardo and UCPB-Magsaysay prior to April 2011; and *third*, the final written demand was sent only on April 5, 2011, after 22 years had already elapsed from the date of the alleged payment, and a month before she filed the administrative complaint. The OSI-BSP noted that the only thing that Buenaflor did was to send a letter to the Chairman of the Board of Directors of UCPB requesting an investigation on Bernardo's conduct, but this was denied for utter lack of merit.[18]

Buenaflor moved for reconsideration, but the OSI-BSP denied it in its Resolution[19] dated November 8, 2012. On appeal, the Monetary Board of the Bangko Sentral ng Pilipinas (BSP) affirmed the Resolutions dismissing Buenaflor's administrative complaint in its Resolution No. 498[20] dated March 21, 2013, and denied her motion for reconsideration dated December 11, 2017, in its Resolution No. 526[21] dated March 26, 2018.

During the pendency of Buenaflor's appeal before the Monetary Board of the BSP, she wrote a Letter[22] to the Office of the President (OP) wherein she assailed the existence and validity of the contract of guaranty and sought the OP's assistance for the investigation of the transactions between Quedancor and UCPB-Magsaysay regarding the subject loans. The OP endorsed the Letter to the Governance Commission for Government-Owned or Controlled Corporations (GCG) for investigation.[23] During the conference held by the GCG on June 23, 2017, Quedancor failed to present the original loan documents.[24] Thereafter, the GCG issued a Letter[25] dated July 25, 2017, certifying Quedancor's failure to produce the original promissory notes, among others. By reason thereof, Buenaflor, through counsel, wrote a letter to private respondents demanding that they account for and/or return the sum of PHP 950,000.00 that she paid to Bernardo.[26]

For failing to heed her demands, Buenaflor filed a criminal complaint for Estafa with Abuse of Confidence and Other Deceits against private respondents before the Office of the City Prosecutor, Davao City (OCP-Davao) on January 16, 2019.[27]

The Ruling of the OCP-Davao

On August 7, 2019, the OCP-Davao dismissed[28] Buenaflor's criminal complaint against private respondents due to prescription. It noted that the alleged payment was made in 1989, while the Complaint was filed on January 16, 2019, approximately 30 years later. Citing Article 90[29] of the Revised Penal Code, the OCP-Davao ruled that the crime had already prescribed.[30]

Buenaflor filed a Motion for Reconsideration, but the OCP-Davao denied it in the Resolution[31] dated February 20, 2020. Thus, Buenaflor filed a Petition for Review[32] with the Office of the Secretary of the Department of Justice.

The Ruling of the RPO-XI

In its Resolution[33] dated December 29, 2020, the RPO-XI dismissed Buenaflor's Petition for Review. It affirmed the findings of the OCP-Davao that the period of prescription commenced to run in 1989 when Bernardo denied receiving Buenaflor's payment in the amount of PHP 950,000.00. It ruled that even if the date of discovery was not in 1989, it definitely was not in 2017 considering that as early as November 1993, Quedancor already filed a collection case against Buenaflor and her husband involving the subject loans—this served as notice to Buenaflor that her supposed payment to Bernardo was not credited to their loan.[34]

In its Resolution[35] dated May 4, 2021, the RPO-XI denied Buenaflor's Motion for Reconsideration[36] for lack of merit. It ruled that the motion did not raise any new material or relevant issue in fact and in law that may warrant the reversal of the Resolution dated December 29, 2020.

Unsatisfied, Buenaflor filed a Petition for *Certiorari*[37] before the CA.

The Ruling of the CA

The CA upheld the dismissal of Buenaflor's criminal complaint. It found that the crime of Estafa had prescribed as Buenaflor discovered the alleged fraud in 1989 or 1993 but only filed the complaint more than 20 years later.[38] The appellate court further ruled that there was no probable cause to indict private respondents for Estafa under Articles 315, paragraph 1(b) and 318 of the Revised Penal Code, as there was no sufficient evidence that Bernardo received and misappropriated the payment allegedly made by Buenaflor. The CA reasoned that Buenaflor, being a businesswoman, is expected to exercise due diligence and caution to protect her interests.[39]

Thus, the Petition.

Petitioner's Arguments

Buenaflor relies on Article 1456[40] of the Civil Code as basis for her argument that the criminal complaint against private respondents was not predicated on Bernardo's refusal to issue receipts but on breach of implied trust, which was created when she paid PHP 950,000.00 to Bernardo in 1989. According to her, this implied trust was repudiated when private respondents failed to return the funds after her demand in December 2018.[41]

Citing *People v. Duque*,[42] Buenaflor contends that the "discovery" referred to in Article 91 of the Revised Penal Code is not the date of discovery of the acts committed but the discovery of the unlawful nature of the act or acts constitutive of the crime. She asserts that she only discovered the unlawful nature of private respondents' acts when the GCG issued a letter dated July 25, 2017, certifying that Quedancor does not have the original promissory notes and other loan documents. Prior to that, she did not know yet that private respondents, particularly, Bernardo, were obliged to return the amount of PHP 950,000.00 because the subject loans do not exist in the first place. Thus, she contends that the period of prescription commenced to run in 2017 at the earliest and in December 2018 at the latest.[43]

She maintains that all the elements of Estafa with Abuse of Confidence are present, highlighting Bernardo's fraudulent receipt of the money, the failure of private respondents to account for it, the resulting damages, and the confirmation of the fraud through the missing loan documents.[44]

Finally, she argues that private respondents committed Other Deceits by falsely representing Quedancor's possession of the original loan documents, which, when proven false, confirmed that her payment to Bernardo satisfied her loan obligation to UCPB-Magsaysay.[45]

The Issues

The issues for the Court's Resolution are *(1)* whether the CA erred in not finding grave abuse of discretion on the part of the RPO-XI when it found that the crimes of Estafa with Abuse of Confidence and Other Deceits had already prescribed; and *(2)* whether there is probable cause to indict private respondents for the crime of Estafa with Abuse of Confidence and Other Deceits.

The Ruling of the Court

The Petition is bereft of merit.

The determination of probable cause during a preliminary investigation is fundamentally an executive function entrusted to the public prosecutor or the investigating officer. The courts generally adhere to the principle of non-interference in the prosecutor's exercise of discretion in determining probable cause.[46]

As an exception to the principle of non-interference, however, the prosecutor's or the investigating officer's determination of probable cause may be modified or overturned upon showing that it was tainted with grave abuse of discretion amounting to lack or excess of jurisdiction. Thus, it is incumbent on Buenaflor to show that the RPO-XI exercised its investigatory and prosecutorial powers "*in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility, so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a*

duty enjoined by law. . ."[47] Further, "*[m]ere abuse of discretion is not enough; it must be grave*."[48]

There is grave abuse of discretion on the part of public prosecutors when their action upon a criminal complaint is attended with (1) palpable errors of jurisdiction; (2) violations of the Constitution, the law, and jurisprudence; or (3) gross misapprehension of facts.[49] A public prosecutor also commits grave abuse of discretion if "he [or she] arbitrarily disregards the jurisprudential parameters of probable cause," as when he or she applies a standard of proof other than probable cause in ascertaining whether a person should be indicted for a crime.[50] Conversely, no grave abuse of discretion may be imputed to the public prosecutor if the executive determination of probable cause or lack thereof is supported by basic principles of criminal law as applied to the facts, the allegations, or the evidence on record.[51]

Upon a careful review, the Court agrees with the CA's ruling that the RPO-XI did not commit grave abuse of discretion when it determined that there was no probable cause to charge private respondents with Estafa with abuse of confidence and Other Deceits. Contrary to Buenaflor's assertions, the RPO-XI's conclusions are in accord with the law and the evidence before it. Thus, it was proper to dismiss Buenaflor's criminal complaint against private respondents.

A. No probable cause exists to indict private respondents for Estafa with abuse of confidence

At the outset, it is well settled that in Rule 45 proceedings, only questions of law may be raised, not questions of fact.[52] The Petition mainly hinges on Buenaflor's contention that she paid PHP 950,000.00 to Bernardo in 1989—a question of fact that is beyond the scope of a Rule 45 proceeding. Although the rule admits of exceptions,[53] none obtain in the present case. Consequently, the Court can no longer disturb the CA's factual conclusion that Buenaflor failed to adequately prove her allegation that she paid PHP 950,000.00 to Bernardo in 1989.

More, the Court finds that Buenaflor's criminal complaint against private respondents is weak due to the lack of concrete evidence. Verily, an executive determination of probable cause must be supported by credible and sufficient evidence.[54] The complainant's evidence must be credible in itself and in conformity with common human experience.[55] As such, evidence that is *inherently* or physically improbable must be disregarded even if uncontradicted.[56]

Here, Buenaflor's assertion that she paid PHP 950,000.00 to Bernardo in 1989 not only lacks sufficient substantiation but is also inherently improbable. Indeed, it is supported only by her self-serving affidavit and that of her personal secretary, whose testimony must be taken with caution, for employees would naturally testify in favor of their

employers as far as they possibly could.[57] There is no reliable independent corroborative evidence that Bernardo received the payment, much less, misappropriated it.

The absence of a receipt for the significant amount of PHP 950,000.00, especially for a businesswoman like Buenaflor herself, further weakens her assertion. With the depreciation of the Philippine Peso over the years,[58] the amount of PHP 950,000.00 in 1989 would be equivalent to around 6.6 Million Pesos today.[59] It is simply incredible for a businesswoman like Buenaflor to casually hand over PHP 950,000.00 to Bernardo in 1989 as alleged payment for the subject loans without immediately demanding a receipt for such a substantial sum of money.

Buenaflor's assertion that the inability of Quedancor to produce the original loan documents confirms the fraud is likewise unmeritorious. While Quedancor's inability to produce the original loan documents might suggest issues with their records-keeping, it does not directly prove that Bernardo misappropriated the alleged payment from Buenaflor.

It should be emphasized that Quedancor was directed to produce the original loan documents during the conference before the GCG on June 23, 2017, or after about 10 years had already elapsed from the date of the dismissal of Quedancor's collection case in 2007. Relevantly, a non-bank financial institution that is subject to the regulatory authority of the Bangko Sentral ng Pilipinas,[60] such as Quedancor,[61] is only required to retain records of its transactions with its customers for a period of five years from the date of such transactions.[62] For closed accounts, the period of retention is five years from the date of closure.[63]

Unsurprisingly, when the 2017 conference before the GCG was held, Quedancor could no longer produce the original loan documents because by then, about 10 years had already passed from the time when the collection case was dismissed with finality in 2007, which is beyond the mandatory retention period of such documents. Hence, the mere fact that Quedancor could no longer present the original loan documents cannot be taken as proof of the purported fraud concerning the alleged PHP 950,000.00 payment for the subject loans.

Besides, a loan agreement is a real contract that is perfected not through mere consent, but by the delivery of the object of the contract.[64] That is, the delivery of the proceeds of the loan is absolutely indispensable for the perfection of the loan agreement.[65] Necessarily, then, the existence or inexistence of the subject loans is a matter that would have been known to Buenaflor as early as 1989, at the time when she purportedly paid PHP 950,000.00 to Bernardo, for she would obviously know whether or not the loan proceeds had been delivered to her. It would be absurd to hold that a businesswoman like Buenaflor could have "discovered" the inexistence of the subject loans only after she was informed of Quedancor's inability to produce the original loan documents in 2017.

Assuming *arguendo* that all the factual allegations made by Buenaflor in her criminal complaint were true, still, the actions of private respondent in relation to the subject loans would not constitute Estafa with Abuse of Confidence or Other Deceits.

The three elements of Estafa with Abuse of Confidence under Article 315, paragraph 1(b) of the Revised Penal Code are the following: (1) the receipt of money, goods, or other personal property in trust, on commission, for administration, or under any other obligation involving the duty to deliver or return the same; (2) misappropriation or conversion of the money or property received, or denial of such receipt; and (3) such misappropriation, conversion, or denial is to the prejudice of another.[66] While some cases[67] include demand as a fourth element, it is not necessary when misappropriation or conversion is clearly established by other evidence. Failure to account for funds or property upon demand is merely circumstantial evidence of the second element of misappropriation or conversion.[68]

To be clear, "[w]hen the money, goods, or any other personal property is received by the offender from the offended party (1) in trust or (2) on commission or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received."[69] Hence, it is not enough that material possession is transferred to the offender, the evidence must likewise show that juridical possession was transferred to the offender. Juridical possession is defined as "possession which gives the transferee a right over the property received, which the transferee may set up even against the owner."[70]

To illustrate, in *Medina v. People*,[71] the Court ruled that a sum of money received by an employee on behalf of the employer is not in the juridical possession of the employee, who has no independent right or title to the funds received.[72] Likewise, in *Pideli v. People*,[73] the Court explained that when a sum of money for bank deposits is given to a bank teller, the latter receives the funds on behalf of the bank; hence, the teller only has material possession of the funds, while the bank has juridical possession thereof. If the offenders only have material possession of the property transferred and they appropriate it for their personal benefit, the crime committed is either Theft[74] or Qualified Theft, not Estafa.[75]

Here, when Buenaflor purportedly delivered PHP 950,000.00 to Bernardo in full settlement of the subject loans, what was transferred to Bernardo was mere material possession of the said amount, not the juridical possession thereof. As UCPB Magsaysay's general manager, he held the funds on behalf of UCPB-Magsaysay and he had no personal or independent right or title over these funds which he can set up against either Buenaflor or UCPB-Magsaysay.

The second element of Estafa is likewise absent. Private respondents have no obligation to return the PHP 950,000.00 that Buenaflor allegedly paid as full satisfaction of the subject loans.

Buenaflor insists that private respondents were obliged to return the foregoing amount that she supposedly paid in 1989 because the subject loans do not exist in the first place, as confirmed by the letter from the GCG. As a result, an implied trust was allegedly created between her and Bernardo under Article 1456 of the Civil Code. The trust was later on repudiated when private respondents failed to return the funds after her demand in December 2018. Thus, the period of prescription commenced in 2017 at the earliest or December 2018 at the latest.

Buenaflor's contention is wholly untenable.

First, Buenaflor's own pleadings and evidence recognized the existence of the subject loans. Verily, Buenaflor's criminal complaint and the affidavit of her personal secretary both contain averments that the alleged PHP 950,000.00 was delivered to Bernardo as payment for the subject loans. Buenaflor cannot now be allowed to deny the existence of the subject loans upon the elementary principle that on appeal, a party is not allowed to take a position contrary to, or inconsistent with, its pleadings.[76]

Second, Article 1456 of the Civil Code finds no application in the case at bar. The provision explicitly pertains to the *acquisition of property* through mistake or fraud, thereby creating an implied trust in favor of the person from whom the property comes. In the case at bar, Buenaflor alleges that she had fully settled the subject loans before she discovered in 2017 that they did not actually exist. Assuming arguendo that Buenaflor made payments on non-existent loans, the scenario does not constitute an acquisition of property through mistake or fraud as contemplated by Article 1456. Rather, if there was indeed an erroneous payment or an obligation to return the amount, the more applicable provision is Article 2154 of the Civil Code on *solutio indebiti*, which arises when something is received when there is no right to demand it, and it was unduly delivered through mistake.

Third, when the offender in Estafa with Abuse of Confidence receives money, goods, or any other personal property "in trust or on commission or for administration, or under any other obligation involving the duty to make delivery of or to return the same," a *fiduciary relationship* is created between the offender and the offended party.[77] The existence of such fiduciary relationship in the form of a trust, commission, or administration, is an *essential element* of the crime of Estafa with Abuse of Confidence.[78] Thus, the crime of Estafa *with unfaithfulness or abuse of confidence* cannot be committed if there is no fiduciary relationship between the parties.

An implied trust may either be a resulting trust or a constructive trust.[79] Article 1456 imposes a constructive trust on a person acquiring a property through fraud or mistake.[80] Pertinently, the Court has held that unlike an express trust, a constructive trust does *not* emanate from or generate a fiduciary relation.[81] That is, in a constructive trust, "there is neither a promise nor any fiduciary relation to speak of and *the so-called trustee neither accepts any trust nor intends holding the property for the beneficiary*."[82] Rather, the so-called trustee's possession of the property subject of the constructive trust is for itself and is always adverse to the so-called trustor.[83] The constructive trust

need not even be repudiated by the so-called trustee before the prescriptive period for the action commences.[84]

Consequently, a constructive trust is beyond the ambit of Estafa with Abuse of Confidence under Article 315, paragraph 1(b) of the Revised Penal Code, as the latter expressly requires the existence of a fiduciary relationship between the offender and the offender party. Certainly, Estafa under Article 315, paragraph 1(b) is predicated on the *breach* of the confidence reposed by the trustor upon the trustee,[85] which does not exist in a constructive trust.

B. No probable cause exists to indict private respondents for Other Deceits.

The gravamen of Estafa under Chapter Six, Title Ten, Book II of the Revised Penal Code is the act of defrauding another person by either abusing his or her trust under Article 315, paragraph 1(b) of the Revised Penal Code, or by deceiving the person under Article 315, paragraph 2 of the same law.[86]

From Buenaflor's own narration of facts, Bernardo did not employ any fraud or deceit in order to convince her to part with her money—Buenaflor gave the amount to Bernardo on her own volition in full satisfaction of the subject loans that she admitted having obtained as early as 1987. Thus, even assuming that Buenaflor's statements of facts were true, the crimes of Other Deceits could not have been committed by Bernardo.

With respect to Casiño, Jr. of UCPB-Magsaysay and Attys. Millares, Hubilla, and Anastacio of Quedancor, the Court finds that Buenaflor's allegation that they conspired with Bernardo in committing the crime of Estafa with Abuse of Confidence and Other Deceits is unsubstantiated. Worse, it does not even appear from the records whether Casiño, Jr. was already employed in UCPB-Magsaysay at the time payment was allegedly made, while the remaining private respondents, Attys. Millares, Hubilla and Anastacio, were from Quedancor, and thus, could not have personally known whether Buenaflor indeed paid PHP 950,000.00 to Bernardo in 1989. The records are bereft of any details as to their participation in Bernardo's receipt of the alleged payment from Buenaflor and the purported misappropriation thereof. Thus, it goes without saying that the criminal complaint against them was aptly dismissed for lack of probable cause.

Accordingly, the CA aptly ruled that the RPO-XI's dismissal of the criminal complaint was not tainted with grave abuse of discretion due to the insufficiency of evidence in support thereof. Otherwise said, the RPO-XI did not err, much less acted with grave abuse of discretion, in finding that no probable cause exists to charge private respondents with Estafa with Abuse of Confidence and Other Deceits.

C. The crimes that were allegedly committed or may have been

committed by private respondents have prescribed

Buenaflor avers that the crime of Estafa with Abuse of Confidence that was allegedly committed by Bernardo had not yet prescribed. Purportedly, private respondents were obliged to return the amount she paid in 1989 because the subject loans do not exist in the first place, as confirmed by the letter from the GCG. As a result, a constructive trust was supposedly created between her and Bernardo under Article 1456 of the Civil Code which was later on repudiated when private respondents failed to return the funds after her demand in December 2018. Thus, Buenaflor insists that the period of prescription commenced in 2017 at the earliest or December 2018 at the latest.

Buenaflor's contentions lack merit.

As previously discussed, Article 1456 of the Civil Code is not applicable in the case at bar, and consequently, no constructive trust was created between Buenaflor and Bernardo. More, a constructive trust in Article 1456 does *not* create a fiduciary relationship between the parties and is therefore not the proper subject of Estafa in Article 315, paragraph 1(b) of the Revised Penal Code.

In addition, Buenaflor's reliance on the ruling in *Duque* is misplaced. *First*, the provision being interpreted in *Duque* is Section 2[87] of Act No. 3326, not Article 91 of the Revised Penal Code. *Second*, the crime committed by the accused therein is illegal recruitment, an offense punishable under Section 38 in relation to Section 39 of the Labor Code, a special law. The principle enunciated in *Duque* regarding the reckoning of the prescriptive period from the "discovery of the unlawful nature of the constitute act or acts" is premised on the nature of acts made criminal by special laws that are frequently not immoral or criminal in themselves.[88] For crimes punishable under the Revised Penal Code which are regarded as *malum in se*, such as Estafa, the prescriptive period is generally reckoned from the actual discovery of the crime by the offended party, the authorities, or their agents.[89]

What is more, the prescriptive period is not reckoned from December 2018 when Buenaflor made a formal letter of demand for accounting and/or return of the amount she purportedly paid. As previously discussed, demand is not an essential element of the crime of Estafa with Abuse of Confidence. Instead, it is merely circumstantial evidence of the offender's misappropriation or conversion.

At any rate, the prescription of a crime is reckoned from its discovery because an offended party cannot be expected to institute the appropriate criminal action if they have no knowledge of the commission of the crime, of their right to sue, or of the facts giving rise to that right.[90] Otherwise stated, "the courts would decline to apply the statute of limitations where the plaintiff does not know or has no *reasonable means of knowing* the existence of a cause of action."[91] Conversely, the offended party cannot deny knowledge of a crime if they had actual or constructive notice of circumstances that are reasonably sufficient for them to discover the commission of such unlawful act.[92]

Thus, even assuming *arguendo* that all the three elements of Estafa with Abuse of Confidence are present in the case, the prescriptive period began when it became *readily apparent* to Buenaflor that Bernardo misappropriated the payment he purportedly received, that is, in November 1993, when Quedancor filed a collection suit against Buenaflor and her late husband, specifically due to the alleged non-payment of their loan obligations, and not in December 2018, when private respondents did not heed her demand for the return of the PHP 950,000.00. In other words, the service upon Buenaflor of Quedancor's complaint in the collection case must be deemed as clear and unequivocal notice to Buenaflor that her supposed payment to Bernardo had not been credited to their loans with UCPB-Magsaysay, the obligation for which Quedancor had provided a guarantee. By this time, Buenaflor was already aware that the payment she claimed to have made was not acknowledged or applied to her outstanding debt, thus indicating a misappropriation. The inability of Quedancor to produce the original loan documents at a later date does not change the fact that the Buenaflor was aware of the alleged misappropriation or should have been aware of it much earlier.

In sum, the crimes allegedly committed or may have been committed by private respondents are Estafa with abuse of confidence, Other Deceits, Theft and Qualified Theft. Considering that the amount involved is PHP 950,000.00, the range of imposable penalties, sans any modifying circumstances, are (1) *arresto mayor* in its maximum period to *prision correccional* in its minimum period, for Estafa with Abuse of Confidence;[93] (2) *arresto mayor* and a fine of not less than the amount of the damage caused, i.e., PHP 950,000.00, and not more than twice such amount, i.e., PHP 1,900,000.00, for Other Deceits;[94] (3) *prision correccional* in its medium and maximum periods, for Theft;[95] and (4) two degrees higher than the penalty imposed on Theft, i.e., *prision mayor* maximum to *reclusion temporal* minimum,[96] for Qualified Theft.

Based on the penalties outlined above, the corresponding prescription period for each crime is outlined in the table below:

Crime	Highest Imposable Penalty[97]	Classification of Penalty[98]	Prescriptive Period[99]
Estafa with Abuse of Confidence	*Prision correccional* in its minimum period	*Correccional*	10 years
Other Deceits	Fine of PHP 1,900,000.00[100]	Afflictive	15 years
Theft	*Prision correccional* in its maximum period	*Correccional*	10
Qualified Theft	*Reclusion temporal* minimum	Afflictive	20

Approximately 25 years and 2 months have passed between November 1993, when Quedancor filed a collection case against Buenaflor and her husband, and January 16,

2019, when Buenaflor filed a criminal complaint against private respondents. Consequently, the crimes that may have been committed by private respondents had long prescribed.

A final note

It does not escape the Court's attention that the RTC's order of dismissal of Quedancor's collection suit that was filed in 1993 had long attained finality. Consequently, Buenaflor cannot be compelled by either UCPB-Magsaysay or Quedancor to make additional payments other than the PHP 950,000.00 she purportedly paid in 1989. To the Court's mind, the existence and validity of the contract of guaranty, an issue which Buenaflor is deeply fixated on, is already moot.

What is more, even assuming *arguendo* that the contract of guaranty does not exist or is void, Buenaflor, is not the real party-in-interest to assail it as she would not benefit or be injured from the ruling by any judgment on this issue.[101] Instead, the real party-in-interest who is entitled to bring the suit against UCPB-Magsaysay is Quedancor, the guarantor who, according to Buenaflor, erroneously paid UCPB-Magsaysay based on a non-existent or void contract of guaranty.

A contract of guaranty is a mere accessory contract. As explicitly stated in Article 2047 of the Civil Code, guarantors bind themselves to *fulfill the obligation of the principal debtor* in case of the latter's failure to do so. A contract of guaranty cannot exist without a valid obligation.[102] Consequently, the extinguishment of the principal obligation, such as through payment or performance, leads to the extinguishment of the contract of guaranty.[103] This direct correlation underscores the accessory nature of the guaranty. Stated otherwise, the validity of a contract of guaranty depends on the validity of the principal contract's validity.[104] The reverse, however, is not true. The validity of the principal contract, such as a loan, is assessed independently based on its own essential elements and legal requirements, without necessarily depending on the validity or enforceability of the security provided by a surety, guarantor, or mortgagor. Thus, the nullity of the accessory contract of guaranty will not result in the nullity of the principal contract of loan.[105]

Certainly, by no stretch of imagination would Buenaflor be entitled to the payment made by Quedancor to UCPB-Magsaysay in the amount of PHP 809,850.00 if the contract of guaranty is indeed non-existent or void. Even without the contract of guaranty, pursuant to Article 1293[106] in relation to Article 1236[107] of the Civil Code, the fact that UCPB-Magsaysay consented to the payment from Quedancor entitles the latter to demand and collect from Buenaflor the sum that it paid to the bank.

Nonetheless, the foregoing moot issue was brought before the Office of the President and eventually endorsed to the GCG. Upon learning that the original promissory notes could no longer be produced by Quedancor after the passage of more than a decade since the dismissal of its collection case attained finality, Buenaflor, despite being a party to the subject loans, challenged their existence.

Buenaflor's contention is neither legally nor logically sound. Quedancor's failure to produce the original loan documents before the GCG does not lend credence to Buenaflor's theory that the subject loans do not exist. On the contrary, being one of the parties to the subject loans, Buenaflor cannot deny personal knowledge of their existence. Again, it is now absurd for her to assert that the subject loans do not exist on the ground that she surprisingly discovered their non-existence only in 2017. Her own repeated admissions[108] that she obtained the subject loans from UCPB-Magsaysay as early as 1987 and her act of making the purported payment in 1989 militate against her contention as to the non-existence of these loans. Thus, she cannot now feign ignorance as to the existence of these loans and demand for the return of the payment she purportedly made in 1989 from private respondents.

Buenaflor's counsel, Jaromay Laurente & Associates Law Offices and its associates, namely, Attys. Ma. Rebecca G. Evangelista-Olavere, Angeline DC. Rodriguez, and Agatha Bernice G. Malalad,[109] are reminded of the duty of lawyers, as officers of the court, to advise their client, especially if the client is an ordinary layman such as Buenaflor, on the intricacies and vagaries of the law and on the merit or lack of merit of their case.[110] A lawyer's signature in a pleading is not just a routine procedural step but a formal certification that the lawyer has reviewed the allegations, arguments, and the relief sought, demonstrating their understanding and endorsement of the pleading's substance.[111] Under Rule 7, Section 3(c)[112] of the Revised Rules of Civil Procedure, [113] if the Court determines *motu proprio* and after due notice and hearing that this rule has been violated, it may impose an appropriate sanction or refer such violation to the proper office for disciplinary action, on any attorney, law firm, or party that violated the rule, or is responsible for the violation.

To stress, "[a] lawyer must resist the whims and caprices of [their] client, and temper [their] client's propensity to litigate."[114] It would be a violation of the Lawyer's Oath and the Code of Professional Responsibility and Accountability if a lawyer endorses suits that are intended to harass the opposing party, to cause unnecessary delay in the legal proceedings, or to needlessly increase the costs associated with litigation.

ACCORDINGLY, the Petition for Review on *Certiorari* is **DENIED**. The Decision dated March 15, 2024, and the Resolution dated September 30, 2024, of the Court of Appeals in CA-G.R. SP No. 10508-MIN are **AFFIRMED**.

Jaromay Laurente & Associates Law Offices and its associates, namely: Attys. Ma. Rebecca G. Evangelista-Olavere, Angeline DC. Rodriguez, and Agatha Bernice G. Malalad, are directed to explain in writing within 10 days from notice why they should not be sanctioned for violating Rule 7, Section 3 of the Revised Rules of Court and the Code of Professional Responsibility and Accountability.

SO ORDERED.

Caguioa (Chairperson), Gaerlan, and *Dimaampao, JJ.*, concur.
Singh,[***] *J.*, on leave.

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[*] "Casino" in some parts of the *rollo*.

[**] "Atty. Flor Anastacio Esteban" in some parts of the *rollo*.

[***] On leave.

[1] *Rollo*, pp. 4-43.

[2] *Id.* at 46-56. Penned by Associate Justice Evalyn M. Arellano-Morales and concurred in by Associate Justices Anisah B. Amanodin-Umpa and John Z. Lee of the Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

[3] *Id.* at 59-60. Penned by Associate Justice Evalyn M. Arellano-Morales and concurred in by Associate Justices Anisah B. Amanodin-Umpa and John Z. Lee of the Former Twenty-Second Division, Court of Appeals, Cagayan de Oro City.

[4] *Id.* at 334-337. Penned by Regional Prosecutor Janet Grace B. Dalisay-Fabrero.

[5] *Id.* at 359-360. Penned by Regional Prosecutor Janet Grace B. Dalisay-Fabrero.

[6] *Id.* at 95-110.

[7] ARTICLE 315. *Swindling (estafa)*. – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

> . . . .
> 1. With unfaithfulness or abuse of confidence, namely:
> . . . .
> b. By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property[.]

[8] ARTICLE 318. *Other deceits*. –The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount, shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this Chapter.

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of arresto mayor or a fine not exceeding Forty thousand pesos (P40,000).

[9] *Id.* at 47.

[10] *Id.* at 96.

[11] *Id.* at 47-48.

[12] *Id.* at 49, 160.

[13] *Id.* at 48.

[14] *Id.* at 99.

[15] *Id.* at 48.

[16] *Id.* at 167-174.

[17] *Id.* at 48-49.

[18] *Id.* at 173.

[19] *Id.* at 175-181.

[20] *Id.* at 183.

[21] *Id.* at 184-185.

[22] *Id.* at 117-121.

[23] *Id.* at 49.

[24] *Id.*

[25] *Id.* at 145.

[26] *Id.* at 49, 147.

[27] *Id.* at 49.

[28] *Id.* at 243-244, Resolution.

[29] ARTICLE 90. *Prescription of crimes*. – Crimes punishable by death, *reclusion perpetua* or *reclusion temporal* shall prescribe in twenty years.
Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by *arresto mayor*, which shall prescribe in five years[.]

[30] *Rollo*, p. 244.

[31] *Id.* at 334-337.

[32] *Id.* at 61-93.

[33] *Id.* at 334-337. Penned by Regional Prosecutor Janet Grace B. Dalisay-Fabrero.

[34] *Id.* at 336-337.

[35] *Id.* at 359-360.

[36] *Id.* at 338-358.

[37] *Id.* at 299-333.

[38] *Id.* at 53-54.

[39] *Id.* at 54-55.

[40] ARTICLE 1456. If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a *trustee of an implied trust* for the benefit of the person from whom the property comes. (Emphasis supplied)

[41] *Rollo*, pp. 25-26.

[42] 287 Phil. 669, 679 (1992).

[43] *Rollo*, pp. 21-24.

[44] *Id.* at 26-30.

[45] *Id.* at 31.

[46] **Agbayani v. Court of Appeals**, 689 Phil. 11, 24 (2012), *citing* **First Women's Credit Corp. v. Perez**, 524 Phil. 305, 308-309 (2006).

[47] *See* **Tan v. Sps. Antazo**, 659 Phil. 400, 404 (2011).

[48] *Id.*

[49] *See* **United Coconut Planters Bank v. Looyuko**, 560 Phil. 581, 592 (2007), *citing* **Presidential Commission on Good Government v. Desierto**, 445 Phil. 154, 175 (2003).

[50] *See* **Aguilar v. Department of Justice**, 717 Phil. 789, 799 (2013).

[51] **First Women's Credit Corp. v. Perez**, *supra* note 46, at 309.

[52] RULES OF COURT, Rule 45, sec. 1 states:

> SECTION 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by certiorari from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari. *The petition shall raise only questions of law which must be distinctly set forth*. (Emphasis supplied)

[53] Including, but not limited to: (1) where the conclusion is a finding grounded entirely on speculation, surmise, and conjectures; (2) where the inference made is manifestly mistaken; (3) where there is grave abuse of discretion; (4) where the judgment is based on misapprehension of facts; and (5) the findings of fact are premised on the absence of evidence and are contradicted by evidence on record; **Heirs of Villanueva v. Heirs of Mendoza**, 810 Phil. 172 (2017).

[54] *See* **Allado v. Judge Diokno**, 302 Phil. 213, 234 (1994).

[55] *See* **Salonga v. Hon. Paño**, 219 Phil. 402, 427 (1985), *citing* **People v. Dayag**, 155 Phil. 421, 431 (1974).

[56] *See* **People v. Sangcajo**, 839 Phil. 1073, 1082 (2018), *citing Louisville & N. R. Co. v. Chambers,* 165 Ky. 703.

[57] *See* **Lufthansa German Airlines v. Court of Appeals**, 313 Phil. 503, 514-515 (1995).

[58] https://www.bsp.gov.ph/statistics/external/pesodollar.xlsx [Last accessed on April 18, 2025.] According to the Bangko Sentral ng Pilipinas, 1 US Dollar was equivalent to PHP 21.7367 in 1989 and PHP 57.29 in 2024.

[59] https://filgit.com/philippine-inflation-calculator [Last accessed on April 18, 2025], which was cited as a source in **Bautista-Regodoz v. Rubia, A.C. No. 14211**, October 29, 2024.

The value of PHP 950,000.00 in 1989 is equivalent to PHP 6,683,244.010 in 2025. The purchasing power of the Philippine peso has depreciated by 603.50% from 1989 to 2025.

[60] REPUBLIC ACT NO. 7653, sec. 3, which states:

> SECTION 3. *Responsibility and Primary Objective*. – The Bangko Sentral shall provide policy directions in the areas of money, banking, and credit. *It shall have supervision over the operations of banks and exercise such regulatory powers as provided in this Act and other pertinent laws over the operations of finance companies and non-bank financial institutions performing quasi-banking functions*, hereafter referred to as quasi-banks, and institutions performing similar functions[.] (Emphasis supplied)

[61] Letter of Instruction No. 704, Series of 1978, paragraph 4, which states:

> 4. That by virtue of the guarantees system and the NGA licensing and supervision of all bonded warehouse operators, financing of grains quedan *shall be considered as supervised credit under existing policies of the Central Bank*. (Emphasis supplied)

[62] 2008 Manual of Regulations for Non-Bank Financial Institutions, Revised Implementing Rules and Regulations of Republic Act No. 9160, as amended by Republic Act No. 9194, Rule 9.2.a., which states:

> RULE 9.2.a. Record Keeping: Kinds of Records and Period for Retention. – All records of all transactions of covered institutions shall be maintained and safely stored for five (5) years from the dates of transactions. Said records and files shall contain the full and true identity of the owners or holders of the accounts involved in the covered transactions and all other customer identification documents. Covered institutions shall undertake the necessary adequate security measures to ensure the confidentiality of such file. Covered institutions shall prepare and maintain documentation, in accordance with the aforementioned client identification requirements, on their customer accounts, relationships and transactions such that any account, relationship or transaction can be so reconstructed as to enable the AMLC, and/ or the courts to establish an audit trail for money laundering.

[63] *Id.*, RULE 9.2.c, which states:

> Rule 9.2.c. *Closed Accounts*. – With respect to closed accounts, the records on customer identification, account files and business correspondence shall be preserved and safely stored for at least five (5) years from the dates when they were closed.

[64] *See* **Sps. Sy v. Westmont Bank**, 797 Phil. 694, 708 (2016); NEW CIVIL CODE, art. 1934.

[65] *Id.* at 708-709.

[66] *See* **Cosme, Jr. v. People**, 538 Phil. 52, 66 (2006), *citing* **Lee v. People**, 495 Phil. 239, 249 (2005); **Salazar v. People**, 439 Phil. 762, 770 (2002).

[67] *See* **Asejo v. People**, 555 Phil. 106, 114 (2007); **Ocampo-Paule v. Court of Appeals**, 426 Phil. 463 (2002); **Manahan, Jr. v. Court of Appeals**, 325 Phil. 484 (1996).

[68] **Cosme, Jr. v. People**, 538 Phil. 52 (2006). *See also* **Lim v. Court of Appeals**, 324 Phil. 400 (1996).

[69] **Chua-Burce v. People**, 387 Phil. 15, 26 (2000).

[70] *Id.*

[71] 944 Phil. 544, 553 (2023).

[72] *Id. See also* **Chua-Burce v. People**, *supra*; **Balerta v. People**, 748 Phil. 806 (2014); **Reside v. People**, 878 Phil. 122 (2020); **Ringor v. People**, 723 Phil. 685 (2013); **Santos v. People**, 260 Phil. 519 (1990).

[73] 568 Phil. 793 (2008).

[74] *See* **Ringor v. People**, 723 Phil. 685 (2013).

[75] *See* **Santos v. People**, 260 Phil. 519 (1990).

[76] **Duty Free Philippines Services, Inc. v. Tria**, 689 Phil. 494 (2012).

[77] *See* **Legaspi y Navera v. People**, 842 Phil. 72, 80 (2018).

[78] **Liwanag v. Court of Appeals**, 346 Phil. 211 (1997); **Galvez v. Court of Appeals**, 149 Phil. 377 (1971).

[79] **Cañezo v. Rojas**, 563 Phil. 551 (2007).

[80] **Estate of Margarita D. Cabacungan v. Laigo**, 671 Phil. 132, 161 (2011).

[81] **Cañezo v. Rojas**, *supra*.

[82] *Id.*; **Iglesia Filipina Independiente v. Heirs of Taeza**, 725 Phil. 577 (2014).

[83] **Cañezo v. Rojas**, 563 Phil. 551 (2007).

[84] *Id.*

[85] **Diaz v. People**, 585 Phil. 318 (2008).

[86] **Estate of Poblador, Jr. v. Manzano**, 811 Phil. 66 (2017).

[87] SECTION 2:. . . .

> Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and institution of judicial proceedings for its investigation and punishment.

[88] 287 Phil. 669 (1992).

[89] Cf. **Lim v. People**, 830 Phil. 669 (2018), wherein it was held that if the crime is falsification of a public document punishable under Article 172 of the Revised Penal Code, the prescriptive period commences on the date of registration of the forged or falsified document.

[90] *See* **Alcantara v. Amoranto**, 107 Phil. 147 (1960).

[91] **Department of Finance-Revenue Integrity Protection Service v. Enerio**, 903 Phil. 245, 255 (2021), *citing* **Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto**, 664 Phil. 16, 27-28 (2021). (Emphasis supplied)

[92] *See* **People v. Reyes**, 256 Phil. 1015 (256).

[93] REVISED PENAL CODE, art. 315.

[94] REVISED PENAL CODE, art. 318.

[95] REVISED PENAL CODE, art. 309 (2).

[96] REVISED PENAL CODE, art. 310.

[97] REVISED PENAL CODE, art. 90.

[98] REVISED PENAL CODE, arts. 25 and 26.

[99] REVISED PENAL CODE, art. 92.

[100] *See* **People v. Crisostomo**, 116 Phil. 200 (1962).

[101] *See* RULES OF COURT, Rule 3, sec. 2 which states:

> SECTION 2. *Parties in interest*. – A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[102] CIVIL CODE, art. 2052.

[103] CIVIL CODE, arts. 2076 and 2077.

[104] *See* **Prudential Guarantee and Assurance, Inc. v. Anscor Land, Inc.**, 644 Phil. 634 (2010).

[105] Cf. **Strong Fort Warehousing Corp. v. Banta**, 890 Phil. 172 (2020); **Rural Bank of Cabadbaran, Inc. v. Melecio-Yap**, 740 Phil. 35 (2014); **Flores v. Spouses Lindo, Jr.**, 664 Phil. 210 (2011).

[106] ARTICLE 1293. Novation which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. Payment by the new debtor gives him the rights mentioned in articles 1236 and 1237.

[107] 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.

[108] *Rollo*, pp. 7, 62, 96, 303, 362, 396.

[109] *Id.* at 33, 87, 250, 271-272, 292, 326, 356, 387.

[110] *See* **Montehermoso v. Batuto**, 891 Phil. 532, 535 (2020).

[111] *See* RULES OF COURT, Rule 7, sec. 3 which states:

> SECTION 3. *Signature and Address*. – (a) Every pleading and other written submissions to the court must be signed by the party or counsel representing him or her.
> (b) The signature of counsel constitutes a certificate by him or her that he or she has read the pleading and document; that to the best of his or her knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:
> (1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;
> (2) The claims, defenses, and other legal contentions are warranted by

existing law or jurisprudence, or by a non-frivolous argument for extending, modifying, or reversing existing jurisprudence;
(3) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after availment of the modes of discovery under these rules; and
(4) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information[.]

[112] (c) If the court determines, on motion or motu proprio and after notice and hearing, that this rule has been violated, it may impose an appropriate sanction or refer such violation to the proper office for disciplinary action, on any attorney, law firm, or party that violated the rule, or is responsible for the violation. Absent exceptional circumstances, a law firm shall be held jointly and severally liable for a violation committed by its partner, associate, or employee. The sanction may include, but shall not be limited to, non-monetary directive or sanction; an order to pay a penalty in court; or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation, including attorney's fees for the filing of the motion for sanction. The lawyer or law firm cannot pass on the monetary penalty to the client.

[113] A.M. No. 19-10-20-SC, October 15, 2019.

[114] **Montehermoso v. Batuto**, *supra* note 110, at 535.

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