

LORENZO M. SARMIENTO, JR. AND GREGORIO LIMPIN, JR., PETITIONERS, VS. COURT OF APPEALS AND ASSOCIATED BANKING CORP., RESPONDENTS.

G.R. No. 122502. December 27, 2002

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Filed with this court is the petition for review under Rule 45 of the Rules of Court assailing the July 31, 1995 Decision[1] of the Court of Appeals in CA-G.R. CV No. 31568 which affirmed the Decision of the Regional Trial Court of Davao City dated August 1, 1990 in Civil Case No. 19,272-88; and the October 25, 1995 Resolution[2] denying petitioners' Motion for Reconsideration.

The dispositive portion of the trial court's decision reads as follows:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered ordering defendants Lorenzo Sarmiento, Jr. and Gregorio Limpin, Jr. to pay jointly and severally, the plaintiff bank the principal sum of P495,000.00 plus interest thereon at the legal rate from December 6, 1978 until the full amount is paid; the sum of P49,500.00 as the agreed attorney's fees and the costs of suit.

"Defendant Sarmiento's counterclaim is DISMISSED.

"SO ORDERED." [3]

The facts of the case as found by the trial court and affirmed by the Court of Appeals are as follows:

"On September 6, 1978, defendant Gregorio Limpin, Jr. and Antonio Apostol, doing business under the name and style of 'Davao Libra Industrial Sales,' filed an application for an Irrevocable Domestic Letter of Credit with the plaintiff Bank for the amount of P495,000.00 in favor of LS Parts Hardware and Machine Shop (herein after referred to as LS Parts) for the purchase of assorted scrap irons. Said application was signed by defendant Limpin and Apostol (Exh. 'A'). The aforesaid application was approved, and plaintiff Bank issued Domestic Letter of Credit No. DLC No. DVO-78-006 in favor of LS Parts for P495,000.00 (Exh. 'B'). Thereafter, a Trust Receipt dated September 6, 1978, was executed by defendant Limpin and Antonio Apostol (Exh. 'C'). In said Trust Receipt, the following stipulation, signed by defendant Lorenzo Sarmiento, Jr. appears: -

'In consideration of the Associated Banking Corporation releasing to Gregorio Limpin and Antonio Apostol goods mentioned in the trust receipt, we hereby jointly and severally undertake and agree to pay, on demand, to the Associated Bank Corporation all sums and amount of money which said Associated Banking Corporation may call upon us to pay arising out of, pertaining to, and/or any manner connected with the trust receipt, WE FURTHER AGREE that our liability in this undertaking shall be direct and immediate and not contingent upon the pursuit by the Associated Banking Corporation of whatever remedies it may have against the aforesaid Gregorio Limpin and Antonio Apostol.

SGD. T/LORENZO SARMIENTO, JR.

Surety/Guarantor' (Exh. 'C-1)

"Among others, the Trust Receipt (Exh. 'C') provided that:

'The defendants acknowledged to have received in trust from the plaintiff Bank the merchandise covered by the documents and agreed to hold said merchandise in storage as the property of the Bank, with liberty to sell the same for cash for its accounts provided the proceeds thereof are turned over in their entirety to the bank to be applied against acceptance and any other indebtedness of the defendants to the bank. (Exh. 'C-2')

'That the defendants shall immediately give notice to said Bank of any average damage, non-shipment, shortage, non-delivery or other happening not in the usual and ordinary course of business (Exh. 'C-3').

'That the due date of the Trust Receipt is December 5, 1978, (Exh. 'C-4').'

"The defendants failed to comply with their undertaking under the Trust Receipt. Hence as early as March, 1980, demands were made for them to comply with their undertaking (Exhs. 'Q', 'R' to 'R-2', 'S', 'T', 'D' to 'D-1'; 'F' to 'F-2'). However, defendants failed to pay their account. Legal action against the defendants was deferred due to the proposed settlement of the account (Exh 'U'). However, no settlement was reached. Hence the bank, thru counsel, sent a final letter of demand on May 26, 1986 (Exh. 'E'). On June 11, 1986, a complaint for Violation of the Trust Receipt Law was filed against the defendants before the City Fiscal's Office (Exh. 'L-3'). Thereafter, the corresponding Information was filed against the defendants. Defendant Lorenzo Sarmiento, Jr. was, however, dropped from the Information while defendant Gregorio Limpin, Jr. was convicted (Exh. 'P' to 'P-9').

"The defendants claim that they cannot be held liable as the 825 tons of assorted scrap iron, subject of the trust receipt agreement, were lost when the vessel transporting them sunk, and that said scrap iron were delivered to 'Davao Libra Industrial Sales', a business concern over which they had no interest whatsoever.

"They tried to show that the scrap irons were loaded on board Barge L-1853, owned and operated by Luzon Stevedoring, for shipment to Toledo Atlas Pier in Cebu (Exh. '1'; that the said Barge capsized on October 4, 1978 while on its way to Toledo City, and a notice of Marine Protest was made by Capt. Jose C. Barrientos (Exh. '2'); that Benigno Azarcon executed an affidavit attesting to the fact that Barge L-1853, capsized on October 4, 1978 and all its cargoes were washed away (Exh. '3'); that Charlie Torregoza, a security guard of L.S. Sarmiento and Company, Inc., who was one of those assigned to escort Barge L-1853, prepared an 'Incident Report', showing that said Barge capsized on October 4, 1978 and that cargoes were washed away (Exhs. '4' and '4-A')."[4]

After trial, the lower court rendered judgment in favor of herein private respondent Associated Banking Corporation.

On appeal by herein petitioners Sarmiento, Jr. and Limpin, Jr., the Court of Appeals affirmed the judgment of the trial court, and, denied the Motion for Reconsideration of herein petitioner.

Hence, herein petition assigning the following errors:

"1. THE RESPONDENT COURT OF APPEALS IN ITS AFOREQUOTED RULING HAD DEPARTED FROM THE APPLICABLE BASIC PRINCIPLE AND PROCEDURE TO THE INSTANT CIVIL CASE EMBODYING THE OFFENDED PARTY'S (ASSOCIATED BANK) CLAIM FOR THE CIVIL LIABILITY OF P495,000.00, NOT HAVING BEEN EXPRESSLY RESERVED BY IT, HAS BEEN NOT ONLY

IMPLIEDLY, BUT IN FACT EXPRESSLY INSTITUTED ALREADY IN CRIMINAL CASE NO. 14,126, THE INFORMATION FOR WHICH HAD BEEN FILED AHEAD AND THE PROCEEDINGS CONDUCTED PRIOR TO THE PRESENT CIVIL CASE BEFORE THE SAME REGIONAL TRIAL COURT OF DAVAO CITY IS PROCEDURALLY BARRED.

"2. THE RESPONDENT COURT OF APPEALS HAD DISREGARDED BY JUDICIAL FIAT THAT THE RTC OF DAVAO CITY IN CRIMINAL CASE No. 14,126 HAD IN FACT ALREADY ADJUDGED CIVIL LIABILITY OF THE SAME CLAIM AS HEREIN IN FAVOR OF COMPLAINANT ASSOCIATED BANK AS AGAINST PETITIONER GREGORIO LIMPIN, JR.

"3. THE RESPONDENT COURT OF APPEALS HAD IGNORED THE CLEAR ADMITTED FACT OF RECORD THAT FORMAL APPEARANCE OF COMPLAINANT BANK'S COUNSEL HAD BEEN ENTERED IN CRIMINAL CASE NO. 14,126."[5]

With respect to the second assigned error, we find no cogent reason to disturb the finding of the RTC of Davao City (Branch 12) in its Order dated December 16, 1988[6] that the decision promulgated by the RTC of Davao City (Branch 15) in Criminal Case No. 14,126 did not contain an award of civil liability as it appears in the dispositive portion of the latter court's Decision dated July 14, 1988.[7]

Being interrelated, we shall discuss jointly the first and third assigned errors.

At the outset, it should be stated that in the Amended Information, dated April 1, 1987, filed in Criminal Case No. 14,126, Lorenzo Sarmiento, Jr. was dropped as an accused.[8] Hence, with respect to Sarmiento Jr., Criminal Case No. 14,126 cannot, in any way, bar the filing by private respondent of the present civil action against him.

With respect to Limpin, Jr., petitioners claim that private respondent's right to institute separately the civil action for the recovery of civil liability is already barred on the ground that the same was not expressly reserved in the criminal action earlier filed against said respondent.

Pertinent to this issue is the then prevailing Rule 111 of the 1985 Rules on Criminal Procedure. Section 1 thereof provides:

"Section 1. Institution of criminal and civil actions. — When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

"Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

"A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

"The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"x x x x x x x x."

Under the Revised Rules of Criminal Procedure, effective December 1, 2000,[9] the same Section of the same Rule provides:

"Section 1. Institution of criminal and civil actions. — (a) 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.

"The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"x x x x x x x x."

While a reading of the aforequoted provisions shows that the offended party is required to make a reservation of his right to institute a separate civil action, jurisprudence instructs that such reservation may not necessarily be express but may be implied^[10] which may be inferred not only from the acts of the offended party but also from acts other than those of the latter.

Demonstrative of the principle of implied reservation of a separate civil action are the cases of *Vintola vs. Insular Bank of Asia and America*,^[11] *Bernaldes, Sr. vs. Bohol Land Transp., Inc.*^[12] and *Jarantilla vs. Court of Appeals*.^[13]

In the *Vintola* case, Insular Bank of Asia and America (IBAA, for brevity) charged spouses Tirso and Loreta Vintola with *Estafa*. The spouses were acquitted on the ground that the element of misappropriation or conversion was inexistent. Subsequently, IBAA filed a civil case to recover the value of the goods allegedly misappropriated or converted. The lower court initially dismissed the complaint holding that Vintolas' acquittal in the criminal case barred the complaint, but on motion for reconsideration filed by IBAA the lower court ruled in favor of the latter. On appeal, the Vintolas contended that the civil action is already barred by the judgment in the criminal case because IBAA did not reserve in the criminal case its right to enforce separately the Vintolas' civil liability. They claim that by actively intervening in the prosecution of the criminal case through a private prosecutor, IBAA had chosen to file the civil action impliedly with the criminal action, pursuant to Section 1, Rule 111 of the 1985 Rules on Criminal Procedure. In ruling that the *Estafa* case is not a bar to the institution of a civil action for collection, this Court held that:

"[i]t is inaccurate for the VINTOLAS to claim that the judgment in the *estafa* case had declared that the facts from which the civil action might arise, did not exist, for it will be recalled that the decision of acquittal expressly declared that 'the remedy of the Bank is civil and not criminal in nature.' This amounts to a reservation of the civil action in IBAA's favor for the Court would not have dwelt on a civil liability that it had intended to extinguish by the same decision."

In the *Bernaldes* case, plaintiffs spouses Nicasio Bernaldes, Sr. and Perpetua Besas together with their minor son, Jovito, filed a complaint for damages against defendant Bohol Land Transportation Co. for the death of Jovito's brother Nicasio, Jr. and for serious physical injuries obtained by Jovito when the bus in which they were riding, fell off a deep precipice. Defendant bus company moved to dismiss the complaint on the ground that in the criminal case earlier filed against its bus driver, plaintiffs intervened through their counsel but did not reserve therein their right to file a separate action for damages. The lower court sustained defendant's motion to dismiss. On appeal, this Court held that the dismissal was improper and ruled thus:

"True, appellants, through private prosecutors, were allowed to intervene — whether properly or improperly we do not decide here — in the criminal action against appellee's driver, but if that amounted inferentially to submitting in said case their claim for civil indemnity, the claim could have been only against the driver but not against appellee who was not a party therein. As a matter of fact, however, in spite of appellee's statements to the contrary in its brief, there is no showing in the record before Us that appellants made of record their claim for damages against the driver or his employer; much less does it appear that they had attempted to prove such damages. The failure of the court to make any pronouncement in its decision concerning the civil liability

of the driver and/or of his employer must therefore be due to the fact that the criminal action did not involve at all any claim for civil indemnity."^[14] (*Italics supplied*)

Later, in *Jarantilla*, this Court ruled that the failure of the trial court to make any pronouncement, favorable or unfavorable, as to the civil liability of the accused amounts to a reservation of the right to have the civil liability litigated and determined in a separate action, for nowhere in the Rules of Court is it provided that if the court fails to determine the civil liability, it becomes no longer enforceable.^[15]

Nothing in the records at hand shows that private respondent ever attempted to enforce its right to recover civil liability during the prosecution of the criminal action against petitioners.

Petitioners correctly raised in their third assigned error that private respondent's counsel made a formal entry of appearance in Criminal Case No. 14,126.^[16] However, it is undisputed that in the early proceedings of the criminal action, private respondent's counsel moved to withdraw his appearance. The trial court, in its Order dated September 4, 1987, granted such motion.^[17] This Court has previously held that the appearance of the offended party in the criminal case through a private prosecutor may not per se be considered either as an implied election to have his claim for damages determined in said proceedings or a waiver of his right to have it determined separately.^[18] He must actually or actively intervene in the criminal proceedings as to leave no doubt with respect to his intention to press a claim for damages in the same action.^[19] In the present case, it can be said with reasonable certainty that by withdrawal of appearance of its counsel in the early stage of the criminal proceedings, the private respondent, indeed, had no intention of submitting its claim for civil liability against petitioners in the criminal action filed against the latter.

Furthermore, private respondent's right to file a separate complaint for a sum of money is governed by the provisions of Article 31 of the Civil Code, to wit:

"Article 31. When the civil action is based on an obligation not arising from the act or omission complained of as a felony, such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter."

In the present case, private respondent's complaint against petitioners was based on the failure of the latter to comply with their obligation as spelled out in the Trust Receipt executed by them.^[20] This breach of obligation is separate and distinct from any criminal liability for "misuse and/or misappropriation of goods or proceeds realized from the sale of goods, documents or instruments released under trust receipts", punishable under Section 13 of the Trust Receipts Law (P.D. 115) in relation to Article 315(1), (b) of the Revised Penal Code. Being based on an obligation *ex contractu* and not *ex delicto*, the civil action may proceed independently of the criminal proceedings instituted against petitioners regardless of the result of the latter.^[21]

WHEREFORE, the petition is denied and the assailed Decision and Resolution of the Court of Appeals are hereby AFFIRMED.

No pronouncement as to costs.

SO ORDERED.

Bellosillo (Chairman), Mendoza, Quisumbing, and Callejo, Sr., JJ., concur.

[1] Court of Appeals Rollo, pp. 246-255.

- [2] Ibid., p. 285.
- [3] Original Records, pp. 236-237.
- [4] RTC Decision, Original Records, pp. 232-234.
- [5] Rollo, pp. 15-16.
- [6] Original Records, p. 53.
- [7] Original Records, Exhibits "P" and "P-9", p. 123 and 133.
- [8] Exhibit "O-1", Original Records, p. 121.
- [9] A.M. No. 00-5-03-SC.
- [10] Regalado, Remedial Law Compendium, Vol. II, 7th Revised Ed., pp. 276-277, citing Bernaldes, Sr. vs. Bohol Land Trans., Inc., 7 SCRA 276, 280 and Vintola vs. Insular Bank of Asia and America, 150 SCRA 578, 585.
- [11] Ibid.
- [12] Ibid.
- [13] 171 SCRA 429 citing Bernaldes, Sr. vs. Bohol Land Trans., Inc., supra and Bachrach Motors Co., Inc. vs. Gamboa, 101 Phil 1219, 1220.
- [14] See Note 10.
- [15] See Note 13.
- [16] See p. 150, CA Rollo.
- [17] See p. 121, CA Rollo.
- [18] Meneses vs. Luat, 12 SCRA 454, 457-458; Reyes vs. Sempio-Diy, 141 SCRA 208, 212-213.
- [19] Meneses vs. Luat, supra.
- [20] Exhibit "C", Original Records, p. 7.
- [21] Vintola vs. Insular Bank of Asia and America, supra.

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