

PILIPINAS BANK, PETITIONER, VS. ALFREDO T. ONG AND LEONCIA LIM, RESPONDENTS.

G.R. No. 133176. August 08, 2002

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari[1] of the Resolutions[2] dated January 9, 1998 and March 25, 1998 of the Court of Appeals in CA-G.R. SP No. 42005, "Pilipinas Bank vs. The Honorable Secretary of Justice, the City Prosecutor of Makati City, Alfredo T. Ong and Leoncia Lim," reversing its Decision dated August 29, 1997.

On April 1991, Baliwag Mahogany Corporation (BMC), through its president, respondent Alfredo T. Ong, applied for a domestic commercial letter of credit with petitioner Pilipinas Bank (hereinafter referred to as the bank) to finance the purchase of about 100,000 board feet of "Air Dried, Dark Red Lauan" sawn lumber.

The bank approved the application and issued Letter of Credit No. 91/725-HO in the amount of P3,500,000.00. To secure payment of the amount, BMC, through respondent Ong, executed two (2) trust receipts[3] providing inter alia that it shall turn over the proceeds of the goods to the bank, if sold, or return the goods, if unsold, upon maturity on July 28, 1991 and August 4, 1991.

On due dates, BMC failed to comply with the trust receipt agreement. On November 22, 1991, it filed with the Securities and Exchange Commission (SEC) a Petition for Rehabilitation and for a Declaration in a State of Suspension of Payments under Section 6 (c) of P.D. No. 902-A,[4] as amended, docketed as SEC Case No. 4109. After BMC informed its creditors (including the bank) of the filing of the petition, a Creditors' Meeting was held to:

(a) inform all creditor banks of the present status of BMC to avert any action which would affect the company's operations, and (b) reach an accord on a common course of action to restore the company to sound financial footing.

On January 8, 1992, the SEC issued an order[5] creating a Management Committee wherein the bank is represented. The Committee shall, among others, undertake the management of BMC, take custody and control of all its existing assets and liabilities, study, review and evaluate its operation and/or the feasibility of its being restructured.

On October 13, 1992, BMC and a consortium of 14 of its creditor banks entered into a Memorandum of Agreement[6] (MOA) rescheduling the payment of BMC's existing debts.

On November 27, 1992, the SEC rendered a Decision[7] approving the Rehabilitation Plan of BMC as contained in the MOA and declaring it in a state of suspension of payments.

However, BMC and respondent Ong defaulted in the payment of their obligations under the rescheduled payment scheme provided in the MOA. Thus, on April 1994, the bank filed with the Makati City Prosecutor's Office a

complaint[8] charging respondents Ong and Leoncia Lim (as president and treasurer of BMC, respectively) with violation of the Trust Receipts Law (PD No. 115), docketed as I.S. No. 94-3324. The bank alleged that both respondents failed to pay their obligations under the trust receipts despite demand.[9]

On July 7, 1994, 3rd Assistant Prosecutor Edgardo E. Bautista issued a Resolution[10] recommending the dismissal of the complaint. On July 11, 1994, the Resolution was approved by Provincial Prosecutor of Rizal Herminio T. Ubana, Sr.[11] The bank filed a motion for reconsideration but was denied.

Upon appeal by the bank, the Department of Justice (DOJ) rendered judgment[12] denying the same for lack of merit. Its motion for reconsideration was likewise denied.[13]

On July 5, 1996, the bank filed with this Court a petition for certiorari and mandamus seeking to annul the resolution of the DOJ. In a Resolution dated August 21, 1996, this Court referred the petition to the Court of Appeals for proper determination and disposition.[14]

On August 29, 1997, the Court of Appeals rendered judgment, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the assailed resolutions of the public respondents are hereby SET ASIDE and in lieu thereof a new one rendered directing the public respondents to file the appropriate criminal charges for violation of P.D. No. 115, otherwise known as The Trust Receipts Law, against private respondents."[15]

However, upon respondents' motion for reconsideration, the Court of Appeals reversed itself, holding that the execution of the MOA constitutes novation which "places petitioner Bank in estoppel to insist on the original trust relation and constitutes a bar to the filing of any criminal information for violation of the trust receipts law." [16]

The bank filed a motion for reconsideration but was denied.[17] Hence this petition.

Petitioner bank contends that the MOA did not novate, much less extinguish, the existing obligations of BMC under the trust receipt agreement. The bank, through the execution of the MOA, merely assisted BMC to settle its obligations by rescheduling the same. Hence, when BMC defaulted in its payment, all its rights, including the right to charge respondents for violation of the Trust Receipts Law, were revived.

Respondents Ong and Lim maintain that the MOA, which has the effect of a compromise agreement, novated BMC's existing obligations under the trust receipt agreement. The novation converted the parties' relationship into one of an ordinary creditor and debtor. Moreover, the execution of the MOA precludes any criminal liability on their part which may arise in case they violate any provision thereof.

The only issue for our determination is whether respondents can be held liable for violation of the Trust Receipts Law.

Section 4 of PD No. 115 (The Trust Receipts Law) defines a trust receipt as any transaction by and between a person referred to as the entruster, and another person referred to as the trustee, whereby the entruster who owns or holds absolute title or security interest over certain specified goods, documents or instruments, releases the same to the possession of the trustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the trustee binds himself to hold the designated goods, documents or instruments with the obligation to turn over to the entruster the proceeds thereof to the extent of the amount owing to the entruster or as appears in the trust receipt, or the goods, documents or instruments themselves if they are unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt.[18]

Failure of the trustee to turn over the proceeds of the sale of the goods covered by a trust receipt to the entruster or to return the goods, if they were not disposed of, shall constitute the crime of estafa under Article 315, par. 1(b)

of the Revised Penal Code.[19] If the violation or offense is committed by a corporation, the penalty shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.[20] It is on this premise that petitioner bank charged respondents with violation of the Trust Receipts Law.

Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes violation of PD No. 115.[21] However, what is being punished by the law is the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner. [22]

In this case, no dishonesty nor abuse of confidence can be attributed to respondents. Record shows that BMC failed to comply with its obligations upon maturity of the trust receipts due to serious liquidity problems, prompting it to file a Petition for Rehabilitation and Declaration in a State of Suspension of Payments. It bears emphasis that when petitioner bank made a demand upon BMC on February 11, 1994 to comply with its obligations under the trust receipts, the latter was already under the control of the Management Committee created by the SEC in its Order dated January 8, 1992.[23] The Management Committee took custody of all BMC's assets and liabilities, including the red lauan lumber subject of the trust receipts, and authorized their use in the ordinary course of business operations. Clearly, it was the Management Committee which could settle BMC's obligations. Moreover, it has not escaped this Court's observation that respondent Ong paid P21,000,000.00 in compliance with the equity infusion required by the MOA. The mala prohibita nature of the offense notwithstanding, respondents' intent to misuse or misappropriate the goods or their proceeds has not been established by the records.[24]

Did the MOA novate the trust agreement between the parties?

In *Quinto vs. People*, [25] this Court held that there are two ways which could indicate the presence of novation, thereby producing the effect of extinguishing an obligation by another which substitutes the same. The first is when novation has been stated and declared in unequivocal terms. The second is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together. If they cannot, they are incompatible and the latter obligation novates the first. Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions, otherwise, the change is merely modificatory in nature and insufficient to extinguish the original obligation.

Contrary to petitioner's contention, the MOA did not only reschedule BMC's debts, but more importantly, it provided principal conditions which are incompatible with the trust agreement. The undisputed points of incompatibility between the two agreements are:

Points of incompatibility

Trust Receipt

MOA

1)

Nature of contract

Trust Receipt

Loan[26]

2)

Juridical relationship

Trustor-Trustee

Lender-Borrower

3)

Status of obligation

Matured

Payable within 7 years[27]

4)

Governing law

Criminal

Civil & Commercial[28]

5)

Security offered

Trust Receipts

Real estate/chattel mortgages[29]

6)

Interest rate per annum

(Unspecified)

14%[30[]]

7)

Default charges

24%

14%[31]

8)

No. of parties

3

16

Hence, applying the pronouncement in *Quinto*, we can safely conclude that the MOA novated and effectively extinguished BMC's obligations under the trust receipt agreement.

Petitioner bank's argument that BMC's non-compliance with the MOA revived respondents' original liabilities under the trust receipt agreement is completely misplaced. Section 8.4 of the MOA on termination reads:

"8.4 Termination. Any provision of this Agreement to the contrary notwithstanding, if the conditions for rescheduling specified in Section 7 shall not be complied with on such later date as the Qualified Majority Lenders in their sole and absolute discretion may agree in writing, then

(i) the obligation of the Lenders to reschedule the Existing Credits as contemplated hereby shall automatically terminate on such date:

(ii) the Existing Agreements shall continue in full force and effect on the remaining loan balances as if this Agreement had not been entered into;

(iii) all the rights of the lenders against the borrower and Spouses Ong prior to the agreement shall revert to the lenders."

Indeed, what is automatically terminated in case BMC failed to comply with the conditions under the MOA is not the MOA itself but merely the obligation of the lender (the bank) to reschedule the existing credits. Moreover, it is erroneous to assume that the re-vesting of "all the rights of lenders against the borrower" means that petitioner can charge respondents for violation of the Trust Receipts Law under the original trust receipt agreement. As explained earlier, the execution of the MOA extinguished respondents' obligation under the trust receipts. Respondents' liability, if any, would only be civil in nature since the trust receipts were transformed into mere loan documents after the execution of the MOA. This is reinforced by the fact that the mortgage contracts executed by the BMC survive despite its non-compliance with the conditions set forth in the MOA.

All told, we find no reversible error committed by the Court of Appeals in rendering the assailed Resolutions.

WHEREFORE, the petition is DENIED. The assailed Resolutions of the Court of Appeals dated January 9, 1998 and March 25, 1998 in CA-G.R. SP No. 42005 are hereby AFFIRMED.

SO ORDERED.

Puno, (Chairman), Panganiban, and Carpio, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure, as amended.

[2] Penned by Associate Justice Consuelo Ynares-Santiago, now Associate Justice of the Supreme Court, and concurred in by Associate Justices Emeterio E. Cui and Conrado Vasquez, Jr.

[3] *Rollo*, pp. 48, 49.

[4] The Securities and Exchange Commission Reorganization Act.

[5] *Id.*, p. 56.

[6] *Id.*, p. 65.

- [7] Id., p. 134.
- [8] Through an Affidavit⁸ of its Assistant Vice President Diosdado B. Articono dated April 8, 1994, Rollo, pp. 149-151.
- [9] Rollo, p. 179.
- [10] Id., p. 160.
- [11] Id., pp. 159, 164.
- [12] Id., p. 205.
- [13] Id., p. 221.
- [14] Rollo, p. 240.
- [15] Rollo, p. 275.
- [16] CA Resolution dated January 9, 1998, Rollo, p. 315.
- [17] CA Resolution dated March 25, 1998, Rollo, p. 6.
- [18] Colinares vs. Court of Appeals, 339 SCRA 609, 619 (2000).
- [19] Section 13, P.D. No. 115 (Trust Receipts Law).
- [20] Ibid.
- [21] Metropolitan Bank and Trust Company vs. Tonda, 338 SCRA 254, 270 (2000).
- [22] Colinares vs. Court of Appeals, *supra*, p. 623.
- [23] CA Resolution, Rollo, p. 318.
- [24] Colinares vs. Court of Appeals, *supra*.
- [25] 305 SCRA 708, 715-716 (1999).
- [26] Rollo, p. 74.
- [27] Id., p. 141.
- [28] Id., p. 87.
- [29] Id., p. 80.
- [30] Id., pp. 76-77.
- [31] Id., pp. 76-77.

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