

JOSE C. TUPAZ IV AND PETRONILA C. TUPAZ, PETITIONERS, VS. THE COURT OF APPEALS AND BANK OF THE PHILIPPINE ISLANDS, RESPONDENTS.

G.R. No. 145578. November 18, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a petition for review[1] of the Decision[2] of the Court of Appeals dated 7 September 2000 and its Resolution dated 18 October 2000. The 7 September 2000 Decision affirmed the ruling of the Regional Trial Court, Makati, Branch 144 in a case for estafa under Section 13, Presidential Decree No. 115. The Court of Appeals' Resolution of 18 October 2000 denied petitioners' motion for reconsideration.

The Facts

Petitioners Jose C. Tupaz IV and Petronila C. Tupaz ("petitioners") were Vice-President for Operations and Vice-President/Treasurer, respectively, of El Oro Engraver Corporation ("El Oro Corporation"). El Oro Corporation had a contract with the Philippine Army to supply the latter with "survival bolos."

To finance the purchase of the raw materials for the survival bolos, petitioners, on behalf of El Oro Corporation, applied with respondent Bank of the Philippine Islands ("respondent bank") for two commercial letters of credit. The letters of credit were in favor of El Oro Corporation's suppliers, Tanchaoco Manufacturing Incorporated[3] ("Tanchaoco Incorporated") and Maresco Rubber and Retreading Corporation[4] ("Maresco Corporation"). Respondent bank granted petitioners' application and issued Letter of Credit No. 2-00896-3 for P564,871.05 to Tanchaoco Incorporated and Letter of Credit No. 2-00914-5 for P294,000 to Maresco Corporation.

Simultaneous with the issuance of the letters of credit, petitioners signed trust receipts in favor of respondent bank. On 30 September 1981, petitioner Jose C. Tupaz IV ("petitioner Jose Tupaz") signed, in his personal capacity, a trust receipt corresponding to Letter of Credit No. 2-00896-3 (for P564,871.05). Petitioner Jose Tupaz bound himself to sell the goods covered by the letter of credit and to remit the proceeds to respondent bank, if sold, or to return the goods, if not sold, on or before 29 December 1981.

On 9 October 1981, petitioners signed, in their capacities as officers of El Oro Corporation, a trust receipt corresponding to Letter of Credit No. 2-00914-5 (for P294,000). Petitioners bound themselves to sell the goods covered by that letter of credit and to remit the proceeds to respondent bank, if sold, or to return the goods, if not sold, on or before 8 December 1981.

After Tanchaoco Incorporated and Maresco Corporation delivered the raw materials to El Oro Corporation, respondent bank paid the former P564,871.05 and P294,000, respectively.

Petitioners did not comply with their undertaking under the trust receipts. Respondent bank made several demands

for payments but El Oro Corporation made partial payments only. On 27 June 1983 and 28 June 1983, respondent bank's counsel[5] and its representative[6] respectively sent final demand letters to El Oro Corporation. El Oro Corporation replied that it could not fully pay its debt because the Armed Forces of the Philippines had delayed paying for the survival bolos.

Respondent bank charged petitioners with estafa under Section 13, Presidential Decree No. 115 ("Section 13")[7] or Trust Receipts Law ("PD 115"). After preliminary investigation, the then Makati Fiscal's Office found probable cause to indict petitioners. The Makati Fiscal's Office filed the corresponding Informations (docketed as Criminal Case Nos. 8848 and 8849) with the Regional Trial Court, Makati, on 17 January 1984 and the cases were raffled to Branch 144 ("trial court") on 20 January 1984. Petitioners pleaded not guilty to the charges and trial ensued. During the trial, respondent bank presented evidence on the civil aspect of the cases.

The Ruling of the Trial Court

On 16 July 1992, the trial court rendered judgment acquitting petitioners of estafa on reasonable doubt. However, the trial court found petitioners solidarily liable with El Oro Corporation for the balance of El Oro Corporation's principal debt under the trust receipts. The dispositive portion of the trial court's Decision provides:

WHEREFORE, judgment is hereby rendered ACQUITTING both accused Jose C. Tupaz, IV and Petronila Tupaz based upon reasonable doubt.

However, El Oro Engraver Corporation, Jose C. Tupaz, IV and Petronila Tupaz, are hereby ordered, jointly and solidarily, to pay the Bank of the Philippine Islands the outstanding principal obligation of P624,129.19 (as of January 23, 1992) with the stipulated interest at the rate of 18% per annum; plus 10% of the total amount due as attorney's fees; P5,000.00 as expenses of litigation; and costs of the suit.[8]

In holding petitioners civilly liable with El Oro Corporation, the trial court held:

[S]ince the civil action for the recovery of the civil liability is deemed impliedly instituted with the criminal action, as in fact the prosecution thereof was actively handled by the private prosecutor, the Court believes that the El Oro Engraver Corporation and both accused Jose C. Tupaz and Petronila Tupaz, jointly and solidarily should be held civilly liable to the Bank of the Philippine Islands. The mere fact that they were unable to collect in full from the AFP and/or the Department of National Defense the proceeds of the sale of the delivered survival bolos manufactured from the raw materials covered by the trust receipt agreements is no valid defense to the civil claim of the said complainant and surely could not wipe out their civil obligation. After all, they are free to institute an action to collect the same.[9]

Petitioners appealed to the Court of Appeals. Petitioners contended that: (1) their acquittal "operates to extinguish [their] civil liability" and (2) at any rate, they are not personally liable for El Oro Corporation's debts.

The Ruling of the Court of Appeals

In its Decision of 7 September 2000, the Court of Appeals affirmed the trial court's ruling. The appellate court held:

It is clear from [Section 13, PD 115] that civil liability arising from the violation of the trust receipt agreement is distinct from the criminal liability imposed therein. In the case of *Vintola vs. Insular Bank of Asia and America*, our Supreme Court held that acquittal in the estafa case (P.D. 115) is no bar to the institution of a civil action for collection. This is because in such cases, the civil liability of the accused does not arise ex delicto but rather based ex contractu and as such is distinct and independent from any criminal proceedings and may proceed regardless of the result of the latter. Thus, an independent civil action to enforce the civil liability may be filed against the corporation aside from the criminal action against the responsible officers or employees.

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[W]e hereby hold that the acquittal of the accused-appellants from the criminal charge of estafa did not operate to extinguish their civil liability under the letter of credit-trust receipt arrangement with plaintiff-appellee, with which they dealt both in their personal capacity and as officers of El Oro Engraver Corporation, the letter of credit applicant and principal debtor.

Appellants argued that they cannot be held solidarily liable with their corporation, El Oro Engraver Corporation, alleging that they executed the subject documents including the trust receipt agreements only in their capacity as such corporate officers. They said that these instruments are mere pro-forma and that they executed these instruments on the strength of a board resolution of said corporation authorizing them to apply for the opening of a letter of credit in favor of their suppliers as well as to execute the other documents necessary to accomplish the same.

Such contention, however, is contradicted by the evidence on record. The trust receipt agreement indicated in clear and unmistakable terms that the accused signed the same as surety for the corporation and that they bound themselves directly and immediately liable in the event of default with respect to the obligation under the letters of credit which were made part of the said agreement, without need of demand. Even in the application for the letter of credit, it is likewise clear that the undertaking of the accused is that of a surety as indicated [in] the following words: "In consideration of your establishing the commercial letter of credit herein applied for substantially in accordance with the foregoing, the undersigned Applicant and Surety hereby agree, jointly and severally, to each and all stipulations, provisions and conditions on the reverse side hereof."

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Having contractually agreed to hold themselves solidarily liable with El Oro Engraver Corporation under the subject trust receipt agreements with appellee Bank of the Philippine Islands, herein accused-appellants may not, therefore, invoke the separate legal personality of the said corporation to evade their civil liability under the letter of credit-trust receipt arrangement with said appellee, notwithstanding their acquittal in the criminal cases filed against them. The trial court thus did not err in holding the appellants solidarily liable with El Oro Engraver Corporation for the outstanding principal obligation of P624,129.19 (as of January 23, 1992) with the stipulated interest at the rate of 18% per annum, plus 10% of the total amount due as attorney's fees, P5,000.00 as expenses of litigation and costs of suit.[10]

Hence, this petition. Petitioners contend that:

- A JUDGMENT OF ACQUITTAL OPERATE[S] TO EXTINGUISH THE CIVIL LIABILITY OF PETITIONERS[;]
- GRANTING WITHOUT ADMITTING THAT THE QUESTIONED OBLIGATION WAS INCURRED BY THE CORPORATION, THE SAME IS NOT YET DUE AND PAYABLE;
- GRANTING THAT THE QUESTIONED OBLIGATION WAS ALREADY DUE AND PAYABLE, xxx PETITIONERS ARE NOT PERSONALLY LIABLE TO xxx RESPONDENT BANK, SINCE THEY SIGNED THE LETTER[S] OF CREDIT AS 'SURETY' AS OFFICERS OF EL ORO, AND THEREFORE, AN EXCLUSIVE LIABILITY OF EL ORO; [AND]
- IN THE ALTERNATIVE, THE QUESTIONED TRANSACTIONS ARE SIMULATED AND VOID.[11]

The Issues

The petition raises these issues:

- (1) Whether petitioners bound themselves personally liable for El Oro Corporation's debts under the trust receipts;

(2) If so —

(a) whether petitioners' liability is solidary with El Oro Corporation; and

(b) whether petitioners' acquittal of estafa under Section 13, PD 115 extinguished their civil liability.

The Ruling of the Court

The petition is partly meritorious. We affirm the Court of Appeals' ruling with the modification that petitioner Jose Tupaz is liable as guarantor of El Oro Corporation's debt under the trust receipt dated 30 September 1981.

On Petitioners' Undertaking Under the Trust Receipts

A corporation, being a juridical entity, may act only through its directors, officers, and employees. Debts incurred by these individuals, acting as such corporate agents, are not theirs but the direct liability of the corporation they represent.[12] As an exception, directors or officers are personally liable for the corporation's debts only if they so contractually agree or stipulate.[13]

Here, the dorsal side of the trust receipts contains the following stipulation:

To the Bank of the Philippine Islands

In consideration of your releasing to under the terms of this Trust Receipt the goods described herein, I/We, jointly and severally, agree and promise to pay to you, on demand, whatever sum or sums of money which you may call upon me/us to pay to you, arising out of, pertaining to, and/or in any way connected with, this Trust Receipt, in the event of default and/or non-fulfillment in any respect of this undertaking on the part of the said I/we further agree that my/our liability in this guarantee shall be DIRECT AND IMMEDIATE, without any need whatsoever on your part to take any steps or exhaust any legal remedies that you may have against the said before making demand upon me/us.[14] (Capitalization in the original)

In the trust receipt dated 9 October 1981, petitioners signed below this clause as officers of El Oro Corporation. Thus, under petitioner Petronila Tupaz's signature are the words "Vice-Pres-Treasurer" and under petitioner Jose Tupaz's signature are the words "Vice-Pres-Operations." By so signing that trust receipt, petitioners did not bind themselves personally liable for El Oro Corporation's obligation. In *Ong v. Court of Appeals*,^[15] a corporate representative signed a solidary guarantee clause in two trust receipts in his capacity as corporate representative. There, the Court held that the corporate representative did not undertake to guarantee personally the payment of the corporation's debts, thus:

[P]etitioner did not sign in his personal capacity the solidary guarantee clause found on the dorsal portion of the trust receipts. Petitioner placed his signature after the typewritten words "ARMCO INDUSTRIAL CORPORATION" found at the end of the solidary guarantee clause. Evidently, petitioner did not undertake to guaranty personally the payment of the principal and interest of ARMAGRI's debt under the two trust receipts.

Hence, for the trust receipt dated 9 October 1981, we sustain petitioners' claim that they are not personally liable for El Oro Corporation's obligation.

For the trust receipt dated 30 September 1981, the dorsal portion of which petitioner Jose Tupaz signed alone, we find that he did so in his personal capacity. Petitioner Jose Tupaz did not indicate that he was signing as El Oro Corporation's Vice-President for Operations. Hence, petitioner Jose Tupaz bound himself personally liable for El Oro Corporation's debts. Not being a party to the trust receipt dated 30 September 1981, petitioner Petronila Tupaz is not liable under such trust receipt.

The Nature of Petitioner Jose Tupaz's Liability Under the Trust Receipt Dated 30 September 1981

As stated, the dorsal side of the trust receipt dated 30 September 1981 provides:

To the Bank of the Philippine Islands

In consideration of your releasing to under the terms of this Trust Receipt the goods described herein, I/We, jointly and severally, agree and promise to pay to you, on demand, whatever sum or sums of money which you may call upon me/us to pay to you, arising out of, pertaining to, and/or in any way connected with, this Trust Receipt, in the event of default and/or non-fulfillment in any respect of this undertaking on the part of the said I/we further agree that my/our liability in this guarantee shall be DIRECT AND IMMEDIATE, without any need whatsoever on your part to take any steps or exhaust any legal remedies that you may have against the said Before making demand upon me/us. (Underlining supplied; capitalization in the original)

The lower courts interpreted this to mean that petitioner Jose Tupaz bound himself solidarily liable with El Oro Corporation for the latter's debt under that trust receipt.

This is error.

In *Prudential Bank v. Intermediate Appellate Court*,^[16] the Court interpreted a substantially identical clause^[17] in a trust receipt signed by a corporate officer who bound himself personally liable for the corporation's obligation. The petitioner in that case contended that the stipulation "we jointly and severally agree and undertake" rendered the corporate officer solidarily liable with the corporation. We dismissed this claim and held the corporate officer liable as guarantor only. The Court further ruled that had there been more than one signatories to the trust receipt, the solidary liability would exist between the guarantors. We held:

Petitioner [*Prudential Bank*] insists that by virtue of the clear wording of the xxx clause "x x x we jointly and severally agree and undertake x x x," and the concluding sentence on exhaustion, [respondent] Chi's liability therein is solidary.

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Our xxx reading of the questioned solidary guaranty clause yields no other conclusion than that the obligation of Chi is only that of a guarantor. This is further bolstered by the last sentence which speaks of waiver of exhaustion, which, nevertheless, is ineffective in this case because the space therein for the party whose property may not be exhausted was not filled up. Under Article 2058 of the Civil Code, the defense of exhaustion (excussion) may be raised by a guarantor before he may be held liable for the obligation. Petitioner likewise admits that the questioned provision is a solidary guaranty clause, thereby clearly distinguishing it from a contract of surety. It, however, described the guaranty as solidary between the guarantors; this would have been correct if two (2) guarantors had signed it. The clause "we jointly and severally agree and undertake" refers to the undertaking of the two (2) parties who are to sign it or to the liability existing between themselves. It does not refer to the undertaking between either one or both of them on the one hand and the petitioner on the other with respect to the liability described under the trust receipt. xxx

Furthermore, any doubt as to the import or true intent of the solidary guaranty clause should be resolved against the petitioner. The trust receipt, together with the questioned solidary guaranty clause, is on a form drafted and prepared solely by the petitioner; Chi's participation therein is limited to the affixing of his signature thereon. It is, therefore, a contract of adhesion; as such, it must be strictly construed against the party responsible for its preparation.^[18] (Underlining supplied; italicization in the original)

However, respondent bank's suit against petitioner Jose Tupaz stands despite the Court's finding that he is liable as guarantor only. First, excussion is not a pre-requisite to secure judgment against a guarantor. The guarantor can

still demand deferment of the execution of the judgment against him until after the assets of the principal debtor shall have been exhausted.[19] Second, the benefit of excussion may be waived.[20] Under the trust receipt dated 30 September 1981, petitioner Jose Tupaz waived excussion when he agreed that his "liability in [the] guaranty shall be DIRECT AND IMMEDIATE, without any need whatsoever on xxx [the] part [of respondent bank] to take any steps or exhaust any legal remedies xxx." The clear import of this stipulation is that petitioner Jose Tupaz waived the benefit of excussion under his guarantee.

As guarantor, petitioner Jose Tupaz is liable for El Oro Corporation's principal debt and other accessory liabilities (as stipulated in the trust receipt and as provided by law) under the trust receipt dated 30 September 1981. That trust receipt (and the trust receipt dated 9 October 1981) provided for payment of attorney's fees equivalent to 10% of the total amount due and an "interest at the rate of 7% per annum, or at such other rate as the bank may fix, from the date due until paid xxx." [21] In the applications for the letters of credit, the parties stipulated that drafts drawn under the letters of credit are subject to interest at the rate of 18% per annum.[22]

The lower courts correctly applied the 18% interest rate per annum considering that the face value of each of the trust receipts is based on the drafts drawn under the letters of credit. Based on the guidelines laid down in *Eastern Shipping Lines, Inc. v. Court of Appeals*, [23] the accrued stipulated interest earns 12% interest per annum from the time of the filing of the Informations in the Makati Regional Trial Court on 17 January 1984. Further, the total amount due as of the date of the finality of this Decision will earn interest at 18% per annum until fully paid since this was the stipulated rate in the applications for the letters of credit.[24]

The accounting of El Oro Corporation's debts as of 23 January 1992, which the trial court used, is no longer useful as it does not specify the amounts owing under each of the trust receipts. Hence, in the execution of this Decision, the trial court shall compute El Oro Corporation's total liability under each of the trust receipts dated 30 September 1981 and 9 October 1981 based on the following formula:[25]

TOTAL AMOUNT DUE = [principal + interest + interest on interest] – partial payments made[26]

Interest = principal x 18 % per annum x no. of years from due date[27] until finality of judgment

Interest on interest = interest computed as of the filing of the complaint (17 January 1984) x 12% x no. of years until finality of judgment

Attorney's fees is 10% of the total amount computed as of finality of judgment

Total amount due as of the date of finality of judgment will earn an interest of 18% per annum until fully paid.

In so delegating this task, we reiterate what we said in *Rizal Commercial Banking Corporation v. Alfa RTW Manufacturing Corporation*[28] where we also ordered the trial court to compute the amount of obligation due based on a formula substantially similar to that indicated above:

The total amount due xxx [under] the xxx contract[] xxx may be easily determined by the trial court through a simple mathematical computation based on the formula specified above. Mathematics is an exact science, the application of which needs no further proof from the parties.

Petitioner Jose Tupaz's Acquittal did not Extinguish his Civil Liability

The rule is that where the civil action is impliedly instituted with the criminal action, the civil liability is not extinguished by acquittal —

[w]here the acquittal is based on reasonable doubt xxx as only preponderance of evidence is required in civil cases; where the court expressly declares that the liability of the accused is not criminal but only civil in nature

xxx as, for instance, in the felonies of estafa, theft, and malicious mischief committed by certain relatives who thereby incur only civil liability (See Art. 332, Revised Penal Code); and, where the civil liability does not arise from or is not based upon the criminal act of which the accused was acquitted xxx.[29] (Emphasis supplied)

Here, respondent bank chose not to file a separate civil action[30] to recover payment under the trust receipts. Instead, respondent bank sought to recover payment in Criminal Case Nos. 8848 and 8849. Although the trial court acquitted petitioner Jose Tupaz, his acquittal did not extinguish his civil liability. As the Court of Appeals correctly held, his liability arose not from the criminal act of which he was acquitted (ex delicto) but from the trust receipt contract (ex contractu) of 30 September 1981. Petitioner Jose Tupaz signed the trust receipt of 30 September 1981 in his personal capacity.

On the other Matters Petitioners Raise

Petitioners raise for the first time in this appeal the contention that El Oro Corporation's debts under the trust receipts are not yet due and demandable. Alternatively, petitioners assail the trust receipts as simulated. These assertions have no merit. Under the terms of the trust receipts dated 30 September 1981 and 9 October 1981, El Oro Corporation's debts fell due on 29 December 1981 and 8 December 1981, respectively.

Neither is there merit to petitioners' claim that the trust receipts were simulated. During the trial, petitioners did not deny applying for the letters of credit and subsequently executing the trust receipts to secure payment of the drafts drawn under the letters of credit.

WHEREFORE, we GRANT the petition in part. We AFFIRM the Decision of the Court of Appeals dated 7 September 2000 and its Resolution dated 18 October 2000 with the following MODIFICATIONS:

- 1) El Oro Engraver Corporation is principally liable for the total amount due under the trust receipts dated 30 September 1981 and 9 October 1981, as computed by the Regional Trial Court, Makati, Branch 144, upon finality of this Decision, based on the formula provided above;
- 2) Petitioner Jose C. Tupaz IV is liable for El Oro Engraver Corporation's total debt under the trust receipt dated 30 September 1981 as thus computed by the Regional Trial Court, Makati, Branch 144; and
- 3) Petitioners Jose C. Tupaz IV and Petronila C. Tupaz are not liable under the trust receipt dated 9 October 1981.

SO ORDERED.

Davide, Jr., (Chairman), Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

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

[2] Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Salome A. Montoya and Romeo J. Callejo, Sr., concurring.

[3] Supplier of 23,524 kilos of high-grade steel bars and 305 high-carbon steel sheets. Tanchaoco Incorporated is also referred to as Tanchaoco Manufacturing Incorporation and Tanchaoco Manufacturing Corporation in other parts of the records.

[4] Supplier of 9,800 kilos of specialized rubber compound.

[5] Atty. Alfonso Verzosa.

[6] Manuel Maceda. It appears that the letter of 28 June 1983 was also signed by Atty. Alfonso Verzosa.

[7] "Penalty clause. — The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three Hundred and Fifteen, Paragraph One (b) of Act Numbered Three Thousand Eight Hundred and Fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree 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."

[8] Records, pp. 665-666.

[9] Ibid., p. 665.

[10] Rollo, pp. 28-30. (Italicization in the original; internal citations omitted).

[11] Ibid., p. 11.

[12] MAM Realty Devt. Corp. v. NLRC, 314 Phil. 838 (1995).

[13] Ibid.

[14] Records, Exhs. "D and M."

[15] 449 Phil. 691 (2003).

[16] G.R. No. 74886, 8 December 1992, 216 SCRA 257. See Ong v. Court of Appeals, supra note 15.

[17] The clause reads: "In consideration of the PRUDENTIAL BANK AND TRUST COMPANY complying with the foregoing, we jointly and severally agree and undertake to pay on demand to the PRUDENTIAL BANK AND TRUST COMPANY all sums of money which the said PRUDENTIAL BANK AND TRUST COMPANY may call upon us to pay arising out of or pertaining to, and/or in any event connected with the default of and/or non-fulfillment in any respect of the undertaking of the aforesaid:

PHILIPPINE RAYON MILLS, INC.

We further agree that the PRUDENTIAL BANK AND TRUST COMPANY does not have to take any steps or exhaust its remedy against aforesaid: [_____] before making demand on me/us.["]
(Underlining supplied; capitalization in the original)

[18] Prudential Bank v. Intermediate Appellate Court, supra note 16 (internal citations omitted).

[19] Southern Motors, Inc. v. Barbosa, 99 Phil. 263 (1956).

[20] Article 2059 (1) of the Civil Code provides: "[E]xcussion shall not take place:

(1) If the guarantor has expressly renounced it;

xxx"

[21] The trust receipts provide (Records, Exhs. "D" and "M"): "Should it become necessary for the BANK OF THE PHILIPPINE ISLANDS to avail of the services of an attorney-at-law to enforce any or all of its rights under this contract, I/We, jointly and severally, shall pay to the BANK OF THE PHILIPPINE ISLANDS, for and as

attorney's fees, a sum equivalent to 10% of the total amount involved, principal and interest, then unpaid, but in no case less than P100, whether actually incurred or not, exclusive of all costs or fees allowed by law. All obligations of the undersigned under this agreement of trust shall bear interest at the rate of 7% per annum, or at such other rate which the BANK may fix, from the date due until paid, plus all other bank charges." Although the trust receipts provided for payment of "other bank charges," it appears that respondent bank did not present evidence on the rates of such other charges. What respondent bank presented was the testimony of one Lourdes Palomo that it imposed penalty charges of 12% per annum allegedly based on the stipulation in the letters of credit providing payment of "charges and/or other expenses" (TSN [Lourdes Palomo], 5 August 1985, pp. 9-15; Records, pp. 365-371). Further, respondent bank did not present proof of disclosure to El Oro Corporation of such penalty charges, contrary to its undertaking. Significantly, in its statement of account as of 23 January 1992, respondent bank did not include "other bank charges" but only took into account the 18% annual interest rate in computing El Oro Corporation's liabilities (Records, p. 645).

[22] Records, pp. 218, 229.

[23] G.R. No. 97412, 12 July 1994, 234 SCRA 78. "1. When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code." (Emphasis supplied)

[24] See *Philippine Blooming Mills, Inc. v. Court of Appeals*, G.R. No. 142381, 15 October 2003, 413 SCRA 445.

[25] See *Rizal Commercial Banking Corp. v. Alfa RTW Mfg. Corp.*, 420 Phil. 702 (2001), citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, *supra* note 23.

[26] Taking into account Articles 1252-1254 of the Civil Code.

[27] 8 December 1981 for the trust receipt dated 9 October 1981 and 29 December 1981 for the trust receipt dated 30 September 1981.

[28] *Supra* note 25. Reported as *Rizal Commercial Banking Corp. v. Alfa RTW Mfg. Corp.*

[29] *Padilla, et al. v. CA*, 214 Phil. 492 (1984).

[30] The action to recover payment under a trust receipt may be instituted separately under Article 31 of the Civil Code based on the trust receipt contract (*Vintola v. Insular Bank of Asia and America*, No. L-78671, 25 March 1988, 159 SCRA 140; *Vintola v. Insular Bank of Asia and America*, No. L-73271, 29 May 1987, 150 SCRA 578) or under Article 33 of the Civil Code based on fraud (*Prudential Bank v. Intermediate Appellate Court*, *supra* note 16). The civil action under Article 31 or Article 33 proceeds independently of the criminal action.

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