

**ALFREDO CHING, PETITIONER, VS. THE SECRETARY OF JUSTICE,
ASST. CITY PROSECUTOR CECILYN BURGOS-VILLAVERTE, JUDGE
EDGARDO SUDIAM OF THE REGIONAL TRIAL COURT, MANILA,
BRANCH 52; RIZA...**

G.R. NO. 164317. February 06, 2006

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 57169 dismissing the petition for certiorari, prohibition and mandamus filed by petitioner Alfredo Ching, and its Resolution[2] dated June 28, 2004 denying the motion for reconsideration thereof.

Petitioner was the Senior Vice-President of Philippine Blooming Mills, Inc. (PBMI). Sometime in September to October 1980, PBMI, through petitioner, applied with the Rizal Commercial Banking Corporation (respondent bank) for the issuance of commercial letters of credit to finance its importation of assorted goods.[3]

Respondent bank approved the application, and irrevocable letters of credit were issued in favor of petitioner. The goods were purchased and delivered in trust to PBMI. Petitioner signed 13 trust receipts[4] as surety, acknowledging delivery of the following goods:

T/R Nos.

Date Granted

Maturity Date

Principal

Description of Goods

1845

12-05-80

03-05-81

P1,596,470.05

79.9425 M/T "SDK" Brand Synthetic Graphite Electrode

1853

12-08-80

03-06-81

P198,150.67

3,000 pcs. (15 bundles) Calorized Lance Pipes

1824

11-28-80

02-26-81

P707,879.71

One Lot High Fired Refractory Tundish Bricks

1798

11-21-80

02-19-81

P835,526.25

5 cases spare parts for CCM

1808

11-21-80

02-19-81

P370,332.52

200 pcs. ingot moulds

2042

01-30-81

04-30-81

P469,669.29

High Fired Refractory Nozzle Bricks

1801

11-21-80

02-19-81

P2,001,715.17

Synthetic Graphite Electrode [with] tapered pitch filed nipples

1857

12-09-80

03-09-81

P197,843.61

3,000 pcs. (15 bundles calorized lance pipes [])

1895

12-17-80

03-17-81

P67,652.04

Spare parts for Spectrophotometer

1911

12-22-80

03-20-81

P91,497.85

50 pcs. Ingot moulds

2041

01-30-81

04-30-81

P91,456.97

50 pcs. Ingot moulds

2099

02-10-81

05-11-81

P66,162.26

8 pcs. Kubota Rolls for rolling mills

2100

02-10-81

05-12-81

P210,748.00

Spare parts for Lacolaboratory Equipment[5]

Under the receipts, petitioner agreed to hold the goods in trust for the said bank, with authority to sell but not by way of conditional sale, pledge or otherwise; and in case such goods were sold, to turn over the proceeds thereof as soon as received, to apply against the relative acceptances and payment of other indebtedness to respondent bank. In case the goods remained unsold within the specified period, the goods were to be returned to respondent bank without any need of demand. Thus, said "goods, manufactured products or proceeds thereof, whether in the form of money or bills, receivables, or accounts separate and capable of identification" were respondent bank's property.

When the trust receipts matured, petitioner failed to return the goods to respondent bank, or to return their value amounting to P6,940,280.66 despite demands. Thus, the bank filed a criminal complaint for estafa[6] against petitioner in the Office of the City Prosecutor of Manila.

After the requisite preliminary investigation, the City Prosecutor found probable cause estafa under Article 315, paragraph 1(b) of the Revised Penal Code, in relation to Presidential Decree (P.D.) No. 115, otherwise known as the Trust Receipts Law. Thirteen (13) Informations were filed against the petitioner before the Regional Trial Court (RTC) of Manila. The cases were docketed as Criminal Cases No. 86-42169 to 86-42181, raffled to Branch 31 of said court.

Petitioner appealed the resolution of the City Prosecutor to the then Minister of Justice. The appeal was dismissed in a Resolution[7] dated March 17, 1987, and petitioner moved for its reconsideration. On December 23, 1987, the Minister of Justice granted the motion, thus reversing the previous resolution finding probable cause against petitioner.[8] The City Prosecutor was ordered to move for the withdrawal of the Informations.

This time, respondent bank filed a motion for reconsideration, which, however, was denied on February 24, 1988.[9] The RTC, for its part, granted the Motion to Quash the Informations filed by petitioner on the ground that the material allegations therein did not amount to estafa.[10]

In the meantime, the Court rendered judgment in *Allied Banking Corporation v. Ordoñez*,[11] holding that the penal provision of P.D. No. 115 encompasses any act violative of an obligation covered by the trust receipt; it is not limited to transactions involving goods which are to be sold (retailed), reshipped, stored or processed as a component of a product ultimately sold. The Court also ruled that "the non-payment of the amount covered by a trust receipt is an act violative of the obligation of the entrustee to pay." [12]

On February 27, 1995, respondent bank re-filed the criminal complaint for estafa against petitioner before the Office of the City Prosecutor of Manila. The case was docketed as I.S. No. 95B-07614.

Preliminary investigation ensued. On December 8, 1995, the City Prosecutor ruled that there was no probable cause to charge petitioner with violating P.D. No. 115, as petitioner's liability was only civil, not criminal, having signed the trust receipts as surety.[13] Respondent bank appealed the resolution to the Department of Justice (DOJ) via petition for review, alleging that the City Prosecutor erred in ruling:

- That there is no evidence to show that respondent participated in the misappropriation of the goods subject of the trust receipts;
- That the respondent is a mere surety of the trust receipts; and
- That the liability of the respondent is only civil in nature.[14]

On July 13, 1999, the Secretary of Justice issued Resolution No. 250[15] granting the petition and reversing the assailed resolution of the City Prosecutor. According to the Justice Secretary, the petitioner, as Senior

Vice-President of PBMI, executed the 13 trust receipts and as such, was the one responsible for the offense. Thus, the execution of said receipts is enough to indict the petitioner as the official responsible for violation of P.D. No. 115. The Justice Secretary also declared that petitioner could not contend that P.D. No. 115 covers only goods ultimately destined for sale, as this issue had already been settled in *Allied Banking Corporation v. Ordoñez*,^[16] where the Court ruled that P.D. No. 115 is "not limited to transactions in goods which are to be sold (retailed), reshipped, stored or processed as a component of a product ultimately sold but covers failure to turn over the proceeds of the sale of entrusted goods, or to return said goods if unsold or not otherwise disposed of in accordance with the terms of the trust receipts."

The Justice Secretary further stated that the respondent bound himself under the terms of the trust receipts not only as a corporate official of PBMI but also as its surety; hence, he could be proceeded against in two (2) ways: first, as surety as determined by the Supreme Court in its decision in *Rizal Commercial Banking Corporation v. Court of Appeals*;^[17] and second, as the corporate official responsible for the offense under P.D. No. 115, via criminal prosecution. Moreover, P.D. No. 115 explicitly allows the prosecution of corporate officers "without prejudice to the civil liabilities arising from the criminal offense." Thus, according to the Justice Secretary, following *Rizal Commercial Banking Corporation*, the civil liability imposed is clearly separate and distinct from the criminal liability of the accused under P.D. No. 115.

Conformably with the Resolution of the Secretary of Justice, the City Prosecutor filed 13 Informations against petitioner for violation of P.D. No. 115 before the RTC of Manila. The cases were docketed as Criminal Cases No. 99-178596 to 99-178608 and consolidated for trial before Branch 52 of said court. Petitioner filed a motion for reconsideration, which the Secretary of Justice denied in a Resolution^[18] dated January 17, 2000.

Petitioner then filed a petition for certiorari, prohibition and mandamus with the CA, assailing the resolutions of the Secretary of Justice on the following grounds:

- THE RESPONDENTS ARE ACTING WITH AN UNEVEN HAND AND IN FACT, ARE ACTING OPPRESSIVELY AGAINST ALFREDO CHING WHEN THEY ALLOWED HIS PROSECUTION DESPITE THE FACT THAT NO EVIDENCE HAD BEEN PRESENTED TO PROVE HIS PARTICIPATION IN THE ALLEGED TRANSACTIONS.
- THE RESPONDENT SECRETARY OF JUSTICE COMMITTED AN ACT IN GRAVE ABUSE OF DISCRETION AND IN EXCESS OF HIS JURISDICTION WHEN THEY CONTINUED PROSECUTION OF THE PETITIONER DESPITE THE LENGTH OF TIME INCURRED IN THE TERMINATION OF THE PRELIMINARY INVESTIGATION THAT SHOULD JUSTIFY THE DISMISSAL OF THE INSTANT CASE.
- THE RESPONDENT SECRETARY OF JUSTICE AND ASSISTANT CITY PROSECUTOR ACTED IN GRAVE ABUSE OF DISCRETION AMOUNTING TO AN EXCESS OF JURISDICTION WHEN THEY CONTINUED THE PROSECUTION OF THE PETITIONER DESPITE LACK OF SUFFICIENT BASIS.^[19]

In his petition, petitioner incorporated a certification stating that "as far as this Petition is concerned, no action or proceeding in the Supreme Court, the Court of Appeals or different divisions thereof, or any tribunal or agency. It is finally certified that if the affiant should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, of any other tribunal or agency, it hereby undertakes to notify this Honorable Court within five (5) days from such notice."^[20]

In its Comment on the petition, the Office of the Solicitor General alleged that -

A.

THE HONORABLE SECRETARY OF JUSTICE CORRECTLY RULED THAT PETITIONER ALFREDO CHING IS THE OFFICER RESPONSIBLE FOR THE OFFENSE CHARGED AND THAT THE ACTS OF PETITIONER FALL WITHIN THE AMBIT OF VIOLATION OF P.D. [No.] 115 IN RELATION TO ARTICLE 315, PAR. 1(B) OF THE REVISED PENAL CODE.

B.

THERE IS NO MERIT IN PETITIONER'S CONTENTION THAT EXCESSIVE DELAY HAS MARRED THE CONDUCT OF THE PRELIMINARY INVESTIGATION OF THE CASE, JUSTIFYING ITS DISMISSAL.

C.

THE PRESENT SPECIAL CIVIL ACTION FOR CERTIORARI, PROHIBITION AND MANDAMUS IS NOT THE PROPER MODE OF REVIEW FROM THE RESOLUTION OF THE DEPARTMENT OF JUSTICE. THE PRESENT PETITION MUST THEREFORE BE DISMISSED.[21]

On April 22, 2004, the CA rendered judgment dismissing the petition for lack of merit, and on procedural grounds. On the procedural issue, it ruled that (a) the certification of non-forum shopping executed by petitioner and incorporated in the petition was defective for failure to comply with the first two of the three-fold undertakings prescribed in Rule 7, Section 5 of the Revised Rules of Civil Procedure; and (b) the petition for certiorari, prohibition and mandamus was not the proper remedy of the petitioner.

On the merits of the petition, the CA ruled that the assailed resolutions of the Secretary of Justice were correctly issued for the following reasons: (a) petitioner, being the Senior Vice-President of PBMI and the signatory to the trust receipts, is criminally liable for violation of P.D. No. 115; (b) the issue raised by the petitioner, on whether he violated P.D. No. 115 by his actuations, had already been resolved and laid to rest in *Allied Bank Corporation v. Ordoñez*;^[22] and (c) petitioner was estopped from raising the City Prosecutor's delay in the final disposition of the preliminary investigation because he failed to do so in the DOJ.

Thus, petitioner filed the instant petition, alleging that:

I

THE COURT OF APPEALS ERRED WHEN IT DISMISSED THE PETITION ON THE GROUND THAT THE CERTIFICATION OF NON-FORUM SHOPPING INCORPORATED THEREIN WAS DEFECTIVE.

II

THE COURT OF APPEALS ERRED WHEN IT RULED THAT NO GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WAS COMMITTED BY THE SECRETARY OF JUSTICE IN COMING OUT WITH THE ASSAILED RESOLUTIONS.[23]

The Court will delve into and resolve the issues seriatim.

The petitioner avers that the CA erred in dismissing his petition on a mere technicality. He claims that the rules of procedure should be used to promote, not frustrate, substantial justice. He insists that the Rules of Court should be construed liberally especially when, as in this case, his substantial rights are adversely affected; hence, the deficiency in his certification of non-forum shopping should not result in the dismissal of his petition.

The Office of the Solicitor General (OSG) takes the opposite view, and asserts that indubitably, the certificate of non-forum shopping incorporated in the petition before the CA is defective because it failed to disclose essential facts about pending actions concerning similar issues and parties. It asserts that petitioner's failure to comply with the Rules of Court is fatal to his petition. The OSG cited Section 2, Rule 42, as well as the ruling of this Court in

Melo v. Court of Appeals.[24]

We agree with the ruling of the CA that the certification of non-forum shopping petitioner incorporated in his petition before the appellate court is defective. The certification reads:

It is further certified that as far as this Petition is concerned, no action or proceeding in the Supreme Court, the Court of Appeals or different divisions thereof, or any tribunal or agency.

It is finally certified that if the affiant should learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, of any other tribunal or agency, it hereby undertakes to notify this Honorable Court within five (5) days from such notice.[25]

Under Section 1, second paragraph of Rule 65 of the Revised Rules of Court, the petition should be accompanied by a sworn certification of non-forum shopping, as provided in the third paragraph of Section 3, Rule 46 of said Rules. The latter provision reads in part:

SEC. 3. Contents and filing of petition; effect of non-compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case and the grounds relied upon for the relief prayed for.

xxx

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom. xxx

Compliance with the certification against forum shopping is separate from and independent of the avoidance of forum shopping itself. The requirement is mandatory. The failure of the petitioner to comply with the foregoing requirement shall be sufficient ground for the dismissal of the petition without prejudice, unless otherwise provided.[26]

Indubitably, the first paragraph of petitioner's certification is incomplete and unintelligible. Petitioner failed to certify that he "had not heretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or the different divisions thereof or any other tribunal or agency" as required by paragraph 4, Section 3, Rule 46 of the Revised Rules of Court.

We agree with petitioner's contention that the certification is designed to promote and facilitate the orderly administration of justice, and therefore, should not be interpreted with absolute literalness. In his works on the Revised Rules of Civil Procedure, former Supreme Court Justice Florenz Regalado states that, with respect to the contents of the certification which the pleader may prepare, the rule of substantial compliance may be availed of.[27] However, there must be a special circumstance or compelling reason which makes the strict application of the requirement clearly unjustified. The instant petition has not alleged any such extraneous circumstance. Moreover, as worded, the certification cannot even be regarded as substantial compliance with the procedural requirement. Thus, the CA was not informed whether, aside from the petition before it, petitioner had commenced any other action involving the same issues in other tribunals.

On the merits of the petition, the CA ruled that the petitioner failed to establish that the Secretary of Justice committed grave abuse of discretion in finding probable cause against the petitioner for violation of estafa under

Article 315, paragraph 1(b) of the Revised Penal Code, in relation to P.D. No. 115. Thus, the appellate court ratiocinated:

Be that as it may, even on the merits, the arguments advanced in support of the petition are not persuasive enough to justify the desired conclusion that respondent Secretary of Justice gravely abused its discretion in coming out with his assailed Resolutions. Petitioner posits that, except for his being the Senior Vice-President of the PBMI, there is no iota of evidence that he was a participes crimines in violating the trust receipts sued upon; and that his liability, if at all, is purely civil because he signed the said trust receipts merely as a xxx surety and not as the entrustee. These assertions are, however, too dull that they cannot even just dent the findings of the respondent Secretary, viz:

"x x x it is apropos to quote section 13 of PD 115 which states in part, viz:

'xxx If the violation or offense is committed by a corporation, partnership, association or other judicial 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.'

"There is no dispute that it was the respondent, who as senior vice-president of PBM, executed the thirteen (13) trust receipts. As such, the law points to him as the official responsible for the offense. Since a corporation cannot be proceeded against criminally because it cannot commit crime in which personal violence or malicious intent is required, criminal action is limited to the corporate agents guilty of an act amounting to a crime and never against the corporation itself (*West Coast Life Ins. Co. vs. Hurd*, 27 Phil. 401; *Times, [I]nc. v. Reyes*, 39 SCRA 303). Thus, the execution by respondent of said receipts is enough to indict him as the official responsible for violation of PD 115.

"Parenthetically, respondent is estopped to still contend that PD 115 covers only goods which are ultimately destined for sale and not goods, like those imported by PBM, for use in manufacture. This issue has already been settled in the *Allied Banking Corporation* case, *supra*, where he was also a party, when the Supreme Court ruled that PD 115 is "not limited to transactions in goods which are to be sold (retailed), reshipped, stored or processed as a component or a product ultimately sold" but "covers failure to turn over the proceeds of the sale of entrusted goods, or to return said goods if unsold or disposed of in accordance with the terms of the trust receipts."

"In regard to the other assigned errors, we note that the respondent bound himself under the terms of the trust receipts not only as a corporate official of PBM but also as its surety. It is evident that these are two (2) capacities which do not exclude the other. Logically, he can be proceeded against in two (2) ways: first, as surety as determined by the Supreme Court in its decision in *RCBC vs. Court of Appeals*, 178 SCRA 739; and, secondly, as the corporate official responsible for the offense under PD 115, the present case is an appropriate remedy under our penal law.

"Moreover, PD 115 explicitly allows the prosecution of corporate officers 'without prejudice to the civil liabilities arising from the criminal offense' thus, the civil liability imposed on respondent in *RCBC vs. Court of Appeals* case is clearly separate and distinct from his criminal liability under PD 115." [28]

Petitioner asserts that the appellate court's ruling is erroneous because (a) the transaction between PBMI and respondent bank is not a trust receipt transaction; (b) he entered into the transaction and was sued in his capacity as PBMI Senior Vice-President; (c) he never received the goods as an entrustee for PBMI, hence, could not have committed any dishonesty or abused the confidence of respondent bank; and (d) PBMI acquired the goods and used the same in operating its machineries and equipment and not for resale.

The OSG, for its part, submits a contrary view, to wit:

34. Petitioner further claims that he is not a person responsible for the offense allegedly because "[b]eing charged as the Senior Vice-President of Philippine Blooming Mills (PBM), petitioner cannot be held criminally liable as the transactions sued upon were clearly entered into in his capacity as an officer of the corporation' and that [h]e never received the goods as an entrustee for PBM as he never had or took possession of the goods nor did he commit dishonesty nor i½abuse of confidence in transacting with RCBC." Such argument is bereft of merit.

35. Petitioner's being a Senior Vice-President of the Philippine Blooming Mills does not exculpate him from any liability. Petitioner's responsibility as the corporate official of PBM who received the goods in trust is premised on Section 13 of P.D. No. 115, which provides:

Section 13. 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. (Emphasis supplied)

36. Petitioner having participated in the negotiations for the trust receipts and having received the goods for PBM, it was inevitable that the petitioner is the proper corporate officer to be proceeded against by virtue of the PBM's violation of P.D. No. 115.[29]

The ruling of the CA is correct.

In *Mendoza-Arce v. Office of the Ombudsman (Visayas)*,[30] this Court held that the acts of a quasi-judicial officer may be assailed by the aggrieved party via a petition for certiorari and enjoined (a) when necessary to afford adequate protection to the constitutional rights of the accused; (b) when necessary for the orderly administration of justice; (c) when the acts of the officer are without or in excess of authority; (d) where the charges are manifestly false and motivated by the lust for vengeance; and (e) when there is clearly no prima facie case against the accused.[31] The Court also declared that, if the officer conducting a preliminary investigation (in that case, the Office of the Ombudsman) acts without or in excess of his authority and resolves to file an Information despite the absence of probable cause, such act may be nullified by a writ of certiorari.[32]

Indeed, under Section 4, Rule 112 of the 2000 Rules of Criminal Procedure,[33] the Information shall be prepared by the Investigating Prosecutor against the respondent only if he or she finds probable cause to hold such respondent for trial. The Investigating Prosecutor acts without or in excess of his authority under the Rule if the Information is filed against the respondent despite absence of evidence showing probable cause therefor.[34] If the Secretary of Justice reverses the Resolution of the Investigating Prosecutor who found no probable cause to hold the respondent for trial, and orders such prosecutor to file the Information despite the absence of probable cause, the Secretary of Justice acts contrary to law, without authority and/or in excess of authority. Such resolution may likewise be nullified in a petition for certiorari under Rule 65 of the Revised Rules of Civil Procedure.[35]

A preliminary investigation, designed to secure the respondent against hasty, malicious and oppressive prosecution, is an inquiry to determine whether (a) a crime has been committed; and (b) whether there is probable

cause to believe that the accused is guilty thereof. It is a means of discovering the person or persons who may be reasonably charged with a crime. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon probable cause of reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction. A finding of probable cause needs only to rest on evidence showing that more likely than not, a crime has been committed by the suspect.[36]

However, while probable cause should be determined in a summary manner, there is a need to examine the evidence with care to prevent material damage to a potential accused's constitutional right to liberty and the guarantees of freedom and fair play[37] and to protect the State from the burden of unnecessary expenses in prosecuting alleged offenses and holding trials arising from false, fraudulent or groundless charges.[38]

In this case, petitioner failed to establish that the Secretary of Justice committed grave abuse of discretion in issuing the assailed resolutions. Indeed, he acted in accord with law and the evidence.

Section 4 of P.D. No. 115 defines a trust receipt transaction, thus:

Section 4. What constitutes a trust receipt transaction. A trust receipt transaction, within the meaning of this Decree, is any transaction by and between a person referred to in this Decree as the entruster, and another person referred to in this Decree as trustee, whereby the entruster, who owns or holds absolute title or security interests 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 in trust for the entruster and to sell or otherwise dispose of the 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, or for other purposes substantially equivalent to any of the following:

- In case of goods or documents, (a) to sell the goods or procure their sale; or (b) to manufacture or process the goods with the purpose of ultimate sale; Provided, That, in the case of goods delivered under trust receipt for the purpose of manufacturing or processing before its ultimate sale, the entruster shall retain its title over the goods whether in its original or processed form until the trustee has complied fully with his obligation under the trust receipt; or (c) to load, unload, ship or otherwise deal with them in a manner preliminary or necessary to their sale; or
- In the case of instruments a) to sell or procure their sale or exchange; or b) to deliver them to a principal; or c) to effect the consummation of some transactions involving delivery to a depository or register; or d) to effect their presentation, collection or renewal.

The sale of goods, documents or instruments by a person in the business of selling goods, documents or instruments for profit who, at the outset of the transaction, has, as against the buyer, general property rights in such goods, documents or instruments, or who sells the same to the buyer on credit, retaining title or other interest as security for the payment of the purchase price, does not constitute a trust receipt transaction and is outside the purview and coverage of this Decree.

An trustee is one having or taking possession of goods, documents or instruments under a trust receipt transaction, and any successor in interest of such person for the purpose of payment specified in the trust receipt agreement.[39] The trustee is obliged to: (1) hold the goods, documents or instruments in trust for the entruster and shall dispose of them strictly in accordance with the terms and conditions of the trust receipt; (2) receive the proceeds in trust for the entruster and turn over the same to the entruster to the extent of the amount owing to the

entruster or as appears on the trust receipt; (3) insure the goods for their total value against loss from fire, theft, pilferage or other casualties; (4) keep said goods or proceeds thereof whether in money or whatever form, separate and capable of identification as property of the entruster; (5) return the goods, documents or instruments in the event of non-sale or upon demand of the entruster; and (6) observe all other terms and conditions of the trust receipt not contrary to the provisions of the decree.[40]

The entruster shall be entitled to the proceeds from the sale of the goods, documents or instruments released under a trust receipt to the trustee to the extent of the amount owing to the entruster or as appears in the trust receipt, or to the return of the goods, documents or instruments in case of non-sale, and to the enforcement of all other rights conferred on him in the trust receipt; provided, such are not contrary to the provisions of the document.[41]

In the case at bar, the transaction between petitioner and respondent bank falls under the trust receipt transactions envisaged in P.D. No. 115. Respondent bank imported the goods and entrusted the same to PBMI under the trust receipts signed by petitioner, as trustee, with the bank as entruster. The agreement was as follows:

And in consideration thereof, I/we hereby agree to hold said goods in trust for the said BANK as its property with liberty to sell the same within ____days from the date of the execution of this Trust Receipt and for the Bank's account, but without authority to make any other disposition whatsoever of the said goods or any part thereof (or the proceeds) either by way of conditional sale, pledge or otherwise.

I/we agree to keep the said goods insured to their full value against loss from fire, theft, pilferage or other casualties as directed by the BANK, the sum insured to be payable in case of loss to the BANK, with the understanding that the BANK is, not to be chargeable with the storage premium or insurance or any other expenses incurred on said goods.

In case of sale, I/we further agree to turn over the proceeds thereof as soon as received to the BANK, to apply against the relative acceptances (as described above) and for the payment of any other indebtedness of mine/ours to the BANK. In case of non-sale within the period specified herein, I/we agree to return the goods under this Trust Receipt to the BANK without any need of demand.

I/we agree to keep the said goods, manufactured products or proceeds thereof, whether in the form of money or bills, receivables, or accounts separate and capable of identification as property of the BANK.[42]

It must be stressed that P.D. No. 115 is a declaration by legislative authority that, as a matter of public policy, the failure of person to turn over the proceeds of the sale of the goods covered by a trust receipt or to return said goods, if not sold, is a public nuisance to be abated by the imposition of penal sanctions.[43]

The Court likewise rules that the issue of whether P.D. No. 115 encompasses transactions involving goods procured as a component of a product ultimately sold has been resolved in the affirmative in *Allied Banking Corporation v. Ordoñez*.^[44] The law applies to goods used by the trustee in the operation of its machineries and equipment. The non-payment of the amount covered by the trust receipts or the non-return of the goods covered by the receipts, if not sold or otherwise not disposed of, violate the trustee's obligation to pay the amount or to return the goods to the entruster.

In *Colinares v. Court of Appeals*,^[45] the Court declared that there are two possible situations in a trust receipt transaction. The first is covered by the provision which refers to money received under the obligation involving the duty to deliver it (*entregarla*) to the owner of the merchandise sold. The second is covered by the provision which refers to merchandise received under the obligation to return it (*devolvera*) to the owner.^[46] Thus, failure of the trustee to turn over the proceeds of the sale of the goods covered by the trust receipts to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt is a crime under P.D. No. 115, without need of proving intent to defraud. The law punishes dishonesty and abuse of confidence in

the handling of money or goods to the prejudice of the entruster, regardless of whether the latter is the owner or not. A mere failure to deliver the proceeds of the sale of the goods, if not sold, constitutes a criminal offense that causes prejudice, not only to another, but more to the public interest.[47]

The Court rules that although petitioner signed the trust receipts merely as Senior Vice-President of PBMI and had no physical possession of the goods, he cannot avoid prosecution for violation of P.D. No. 115.

The penalty clause of the law, Section 13 of P.D. No. 115 reads:

Section 13. 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.

The crime defined in P.D. No. 115 is *malum prohibitum* but is classified as *estafa* under paragraph 1(b), Article 315 of the Revised Penal Code, or *estafa* with abuse of confidence. It may be committed by a corporation or other juridical entity or by natural persons. However, the penalty for the crime is imprisonment for the periods provided in said Article 315, which reads:

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

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be;

2[nd]. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3[rd]. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period, if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4[th]. By *arresto mayor* in its medium and maximum periods, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means; xxx

Though the entrustee is a corporation, nevertheless, the law specifically makes the officers, employees or other officers or persons responsible for the offense, without prejudice to the civil liabilities of such corporation and/or board of directors, officers, or other officials or employees responsible for the offense. The rationale is that such officers or employees are vested with the authority and responsibility to devise means necessary to ensure compliance with the law and, if they fail to do so, are held criminally accountable; thus, they have a responsible share in the violations of the law.[48]

If the crime is committed by a corporation or other juridical entity, the directors, officers, employees or other officers thereof responsible for the offense shall be charged and penalized for the crime, precisely because of the

nature of the crime and the penalty therefor. A corporation cannot be arrested and imprisoned; hence, cannot be penalized for a crime punishable by imprisonment.[49] However, a corporation may be charged and prosecuted for a crime if the impossible penalty is fine. Even if the statute prescribes both fine and imprisonment as penalty, a corporation may be prosecuted and, if found guilty, may be fined.[50]

A crime is the doing of that which the penal code forbids to be done, or omitting to do what it commands. A necessary part of the definition of every crime is the designation of the author of the crime upon whom the penalty is to be inflicted. When a criminal statute designates an act of a corporation or a crime and prescribes punishment therefor, it creates a criminal offense which, otherwise, would not exist and such can be committed only by the corporation. But when a penal statute does not expressly apply to corporations, it does not create an offense for which a corporation may be punished. On the other hand, if the State, by statute, defines a crime that may be committed by a corporation but prescribes the penalty therefor to be suffered by the officers, directors, or employees of such corporation or other persons responsible for the offense, only such individuals will suffer such penalty.[51] Corporate officers or employees, through whose act, default or omission the corporation commits a crime, are themselves individually guilty of the crime.[52]

The principle applies whether or not the crime requires the consciousness of wrongdoing. It applies to those corporate agents who themselves commit the crime and to those, who, by virtue of their managerial positions or other similar relation to the corporation, could be deemed responsible for its commission, if by virtue of their relationship to the corporation, they had the power to prevent the act.[53] Moreover, all parties active in promoting a crime, whether agents or not, are principals.[54] Whether such officers or employees are benefited by their delictual acts is not a touchstone of their criminal liability. Benefit is not an operative fact.

In this case, petitioner signed the trust receipts in question. He cannot, thus, hide behind the cloak of the separate corporate personality of PBMI. In the words of Chief Justice Earl Warren, a corporate officer cannot protect himself behind a corporation where he is the actual, present and efficient actor.[55]

IN LIGHT OF ALL THE FOREGOING, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Panganiban, C.J., (Chairman), Ynares-Santiago, Austria-Martinez and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Rebecca de Guia-Salvador and Fernanda Lampas Peralta, concurring; rollo, pp. 10-26.

[2] Rollo, pp. 7-8.

[3] Records, pp. 15-23.

[4] Id. at 24-61.

[5] Id. at 4-5

[6] Docketed as I.S. No. 84-01648.

[7] Annex "A," Petition in CA-G.R. SP No. 57169.

[8] Annex "C," id.

[9] Annex "D," id.

[10] Rollo, pp. 70-73.

[11] G.R. No 82495, December 10, 1990, 192 SCRA 246.

- [12]Id. at 254.
- [13]Rollo, pp. 82-85.
- [14] Records, p. 6.
- [15] Rollo, pp. 86-91.
- [16]Supra, at note 11.
- [17] G.R. No. 85396, October 27, 1989, 178 SCRA 739.
- [18] Records, p. 140.
- [19]Rollo, pp. 13-14.
- [20] Id. at 59.
- [21] Comment dated April 18, 2000, p. 4.
- [22] Supra, at note 11.
- [23] Rollo, p. 34.
- [24] 376 Phil. 204 (1999).
- [25]Rollo, p. 58. (Emphasis supplied)
- [26] Melo v. Court of Appeals, supra, at note 24.
- [27]Cited in Melo v. Court of Appeals, supra at 214-215.
- [28] Rollo, pp. 20-22.
- [29] Rollo, pp. 117-118.
- [30] 430 Phil. 101 (2002).
- [31] Id. at 113.
- [32] Id. at 112.
- [33] The Court approved the revised rules on October 3, 2000, which took effect on December 1, 2000.
- [34]Enemecio v. Office of the Ombudsman, G.R. No. 146731, January 13, 2004, 419 SCRA 82.
- [35] Nava v. Commission on Audit, 419 Phil. 544 (2001).
- [36]Id. at 554.
- [37] Drilon v. Court of Appeals, 327 Phil. 916, 923 (1996).
- [38]People v. Court of Appeals, 361 Phil. 401, 412-413 (1999), citing Ledesma v. Court of Appeals, 278 SCRA 657, 673-674 (1997).
- [39]Section 3(b) of P.D. No. 115.
- [40] Section 9 of P.D. No. 115.
- [41] Section 7 of P.D. No. 115.
- [42]Annex "K," records, p. 27.
- [43]Tiomico v. Court of Appeals, G.R. No. 122539, March 4, 1999, 304 SCRA 216, citing Lee v. Rodil, 175 SCRA 100 (1989).

[44]Supra, at note 11.

[45]394 Phil. 106 (2000).

[46] Id. at 119-120, citing *People v. Cuevo*, 104 SCRA 312, 318 (1981).

[47] *People v. Nitafan*, G.R. Nos. 81559-60, April 6, 1992, 207 SCRA 726.

[48] See *U.S. v. Park*, 421 U.S. 658, 95, S.Ct. 1903 (1975).

[49] See *Ong v. Court of Appeals*, G.R. No. 499 Phil. 691 (2003).

[50] *W.H. Small & Co. v. Commonwealth*, 120 S.W. 361 (1909).

[51] *Paragon Paper Co. v. State*, 49 N.E. 600 (1898).

[52]*U.S. v. Park*, supra, at note 48.

[53] Id.

[54] *U.S. v. Wise*, 370 U.S. 405, 82 S.Ct., 1354 (1962).

[55] Id.

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