

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. LAMBERTO C. PEREZ, NESTOR C. KUN, MA. ESTELITA P. ANGELES-PANLILIO, AND NAPOLEON O. GARCIA, RESPONDENTS.

G.R. No. 166884. June 13, 2012

Ponente: BRION, J.

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BRION, J.:

Before this Court is a petition for review on certiorari,[1] under Rule 45 of the Rules of Court, assailing the decision[2] dated January 20, 2005 of the Court of Appeals in CA-G.R. SP No. 76588. In the assailed decision, the Court of Appeals dismissed the criminal complaint for estafa against the respondents, Lamberto C. Perez, Nestor C. Kun, Ma. Estelita P. Angeles-Panlilio and Napoleon Garcia, who allegedly violated Article 315, paragraph 1(b) of the Revised Penal Code, in relation with Section 13 of Presidential Decree No. (P.D.) 115 – the “Trust Receipts Law.”

Petitioner Land Bank of the Philippines (LBP) is a government financial institution and the official depository of the Philippines.[3] Respondents are the officers and representatives of Asian Construction and Development Corporation (ACDC), a corporation incorporated under Philippine law and engaged in the construction business.[4]

On June 7, 1999, LBP filed a complaint for estafa or violation of Article 315, paragraph 1(b) of the Revised Penal Code, in relation to P.D. 115, against the respondents before the City Prosecutor’s Office in Makati City. In the affidavit-complaint[5] of June 7, 1999, the LBP’s Account Officer for the Account Management Development, Edna L. Juan, stated that LBP extended a credit accommodation to ACDC through the execution of an Omnibus Credit Line Agreement (Agreement)[6] between LBP and ACDC on October 29, 1996. In various instances, ACDC used the Letters of Credit/Trust Receipts Facility of the Agreement to buy construction materials. The respondents, as officers and representatives of ACDC, executed trust receipts[7] in connection with the construction materials, with a total principal amount of P52,344,096.32. The trust receipts matured, but ACDC failed to return to LBP the proceeds of the construction projects or the construction materials subject of the trust receipts. LBP sent ACDC a demand letter,[8] dated May 4, 1999, for the payment of its debts, including those under the Trust Receipts Facility in the amount of P66,425,924.39. When ACDC failed to comply with the demand letter, LBP filed the affidavit-complaint.

The respondents filed a joint affidavit[9] wherein they stated that they signed the trust receipt documents on or about the same time LBP and ACDC executed the loan documents; their signatures were required by LBP for the release of the loans. The trust receipts in this case do not contain (1) a description of the goods placed in trust, (2) their invoice values, and (3) their maturity dates, in violation of Section 5(a) of P.D. 115. Moreover, they alleged that ACDC acted as a subcontractor for government projects such as the Metro Rail Transit, the Clark Centennial Exposition and the Quezon Power Plant in Mauban, Quezon. Its clients for the construction projects, which were the general contractors of these projects, have not yet paid them; thus, ACDC had yet to receive the proceeds of

the materials that were the subject of the trust receipts and were allegedly used for these constructions. As there were no proceeds received from these clients, no misappropriation thereof could have taken place.

On September 30, 1999, Makati Assistant City Prosecutor Amador Y. Pineda issued a Resolution^[10] dismissing the complaint. He pointed out that the evidence presented by LBP failed to state the date when the goods described in the letters of credit were actually released to the possession of the respondents. Section 4 of P.D. 115 requires that the goods covered by trust receipts be released to the possession of the entrustee after the latter's execution and delivery to the entruster of a signed trust receipt. He adds that LBP's evidence also fails to show the date when the trust receipts were executed since all the trust receipts are undated. Its dispositive portion reads:

WHEREFORE, premises considered, and for insufficiency of evidence, it is respectfully recommended that the instant complaints be dismissed, as upon approval, the same are hereby dismissed.^[11]

LBP filed a motion for reconsideration which the Makati Assistant City Prosecutor denied in his order of January 7, 2000.^[12]

On appeal, the Secretary of Justice reversed the Resolution of the Assistant City Prosecutor. In his resolution of August 1, 2002,^[13] the Secretary of Justice pointed out that there was no question that the goods covered by the trust receipts were received by ACDC. He likewise adopted LBP's argument that while the subjects of the trust receipts were not mentioned in the trust receipts, they were listed in the letters of credit referred to in the trust receipts. He also noted that the trust receipts contained maturity dates and clearly set out their stipulations. He further rejected the respondents' defense that ACDC failed to remit the payments to LBP due to the failure of the clients of ACDC to pay them. The dispositive portion of the resolution reads:

WHEREFORE, the assailed resolution is REVERSED and SET ASIDE. The City Prosecutor of Makati City is hereby directed to file an information for estafa under Art. 315 (1) (b) of the Revised Penal Code in relation to Section 13, Presidential Decree No. 115 against respondents Lamberto C. Perez, Nestor C. Kun, [Ma. Estelita P. Angeles-Panlilio] and Napoleon O. Garcia and to report the action taken within ten (10) days from receipt hereof.^[14]

The respondents filed a motion for reconsideration of the resolution dated August 1, 2002, which the Secretary of Justice denied.^[15] He rejected the respondents' submission that *Colinares v. Court of Appeals*^[16] does not apply to the case. He explained that in *Colinares*, the building materials were delivered to the accused before they applied to the bank for a loan to pay for the merchandise; thus, the ownership of the merchandise had already been transferred to the entrustees before the trust receipts agreements were entered into. In the present case, the parties have already entered into the Agreement before the construction materials were delivered to ACDC.

Subsequently, the respondents filed a petition for review before the Court of Appeals.

After both parties submitted their respective Memoranda, the Court of Appeals promulgated the assailed decision of January 20, 2005.^[17] Applying the doctrine in *Colinares*, it ruled that this case did not involve a trust receipt transaction, but a mere loan. It emphasized that construction materials, the subject of the trust receipt transaction, were delivered to ACDC even before the trust receipts were executed. It noted that LBP did not offer proof that the goods were received by ACDC, and that the trust receipts did not contain a description of the goods, their invoice value, the amount of the draft to be paid, and their maturity dates. It also adopted ACDC's argument that since no payment for the construction projects had been received by ACDC, its officers could not have been guilty of misappropriating any payment. The dispositive portion reads:

WHEREFORE, in view of the foregoing, the Petition is GIVEN DUE COURSE. The assailed Resolutions of the respondent Secretary of Justice dated August 1, 2002 and February 17, 2003, respectively in I.S. No. 99-F-9218-28 are hereby REVERSED and SET ASIDE.^[18]

LBP now files this petition for review on certiorari, dated March 15, 2005, raising the following error:

THE COURT OF APPEALS GRAVELY ERRED WHEN IT REVERSED AND SET ASIDE THE RESOLUTIONS OF THE HONORABLE SECRETARY OF JUSTICE BY APPLYING THE RULING IN THE CASE OF COLINARES V. COURT OF APPEALS, 339 SCRA 609, WHICH IS NOT APPLICABLE IN THE CASE AT BAR.[19]

On April 8, 2010, while the case was pending before this Court, the respondents filed a motion to dismiss.[20] They informed the Court that LBP had already assigned to Philippine Opportunities for Growth and Income, Inc. all of its rights, title and interests in the loans subject of this case in a Deed of Absolute Sale dated June 23, 2005 (attached as Annex "C" of the motion). The respondents also stated that Avent Holdings Corporation, in behalf of ACDC, had already settled ACDC's obligation to LBP on October 8, 2009. Included as Annex "A" in this motion was a certification[21] issued by the Philippine Opportunities for Growth and Income, Inc., stating that it was LBP's successor-in-interest insofar as the trust receipts in this case are concerned and that Avent Holdings Corporation had already settled the claims of LBP or obligations of ACDC arising from these trust receipts.

We deny this petition.

The disputed transactions
are not trust receipts.

Section 4 of P.D. 115 defines a trust receipt transaction in this manner:

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:

1. In the 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 tranship or otherwise deal with them in a manner preliminary or necessary to their sale[.]

There are two obligations in a trust receipt transaction. The first is covered by the provision that refers to money under the obligation to deliver it (entregarla) to the owner of the merchandise sold. The second is covered by the provision referring to merchandise received under the obligation to return it (devolvera) to the owner. Thus, under the Trust Receipts Law,[22] intent to defraud is presumed when (1) the trustee fails to turn over the proceeds of the sale of goods covered by the trust receipt to the entruster; or (2) when the trustee fails to return the goods under trust, if they are not disposed of in accordance with the terms of the trust receipts.[23]

In all trust receipt transactions, both obligations on the part of the trustee exist in the alternative – the return of the proceeds of the sale or the return or recovery of the goods, whether raw or processed.[24] When both parties enter into an agreement knowing that the return of the goods subject of the trust receipt is not possible even without any

fault on the part of the trustee, it is not a trust receipt transaction penalized under Section 13 of P.D. 115; the only obligation actually agreed upon by the parties would be the return of the proceeds of the sale transaction. This transaction becomes a mere loan,[25] where the borrower is obligated to pay the bank the amount spent for the purchase of the goods.

Article 1371 of the Civil Code provides that “[i]n order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered.” Under this provision, we can examine the contemporaneous actions of the parties rather than rely purely on the trust receipts that they signed in order to understand the transaction through their intent.

We note in this regard that at the onset of these transactions, LBP knew that ACDC was in the construction business and that the materials that it sought to buy under the letters of credit were to be used for the following projects: the Metro Rail Transit Project and the Clark Centennial Exposition Project.[26] LBP had in fact authorized the delivery of the materials on the construction sites for these projects, as seen in the letters of credit it attached to its complaint.[27] Clearly, they were aware of the fact that there was no way they could recover the buildings or constructions for which the materials subject of the alleged trust receipts had been used. Notably, despite the allegations in the affidavit-complaint wherein LBP sought the return of the construction materials,[28] its demand letter dated May 4, 1999 sought the payment of the balance but failed to ask, as an alternative, for the return of the construction materials or the buildings where these materials had been used.[29]

The fact that LBP had knowingly authorized the delivery of construction materials to a construction site of two government projects, as well as unspecified construction sites, repudiates the idea that LBP intended to be the owner of those construction materials. As a government financial institution, LBP should have been aware that the materials were to be used for the construction of an immovable property, as well as a property of the public domain. As an immovable property, the ownership of whatever was constructed with those materials would presumably belong to the owner of the land, under Article 445 of the Civil Code which provides:

Article 445. Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

Even if we consider the vague possibility that the materials, consisting of cement, bolts and reinforcing steel bars, would be used for the construction of a movable property, the ownership of these properties would still pertain to the government and not remain with the bank as they would be classified as property of the public domain, which is defined by the Civil Code as:

Article 420. The following things are property of public dominion:

- (1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;
- (2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

In contrast with the present situation, it is fundamental in a trust receipt transaction that the person who advanced payment for the merchandise becomes the absolute owner of said merchandise and continues as owner until he or she is paid in full, or if the goods had already been sold, the proceeds should be turned over to him or to her.[30]

Thus, in concluding that the transaction was a loan and not a trust receipt, we noted in *Colinares* that the industry or line of work that the borrowers were engaged in was construction. We pointed out that the borrowers were not importers acquiring goods for resale.[31] Indeed, goods sold in retail are often within the custody or control of the trustee until they are purchased. In the case of materials used in the manufacture of finished products, these

finished products – if not the raw materials or their components – similarly remain in the possession of the trustee until they are sold. But the goods and the materials that are used for a construction project are often placed under the control and custody of the clients employing the contractor, who can only be compelled to return the materials if they fail to pay the contractor and often only after the requisite legal proceedings. The contractor's difficulty and uncertainty in claiming these materials (or the buildings and structures which they become part of), as soon as the bank demands them, disqualify them from being covered by trust receipt agreements.

Based on these premises, we cannot consider the agreements between the parties in this case to be trust receipt transactions because (1) from the start, the parties were aware that ACDC could not possibly be obligated to reconvey to LBP the materials or the end product for which they were used; and (2) from the moment the materials were used for the government projects, they became public, not LBP's, property.

Since these transactions are not trust receipts, an action for estafa should not be brought against the respondents, who are liable only for a loan. In passing, it is useful to note that this is the threat held against borrowers that Retired Justice Claudio Teehankee emphatically opposed in his dissent in *People v. Cuevo*,^[32] restated in *Ong v. CA, et al.*:^[33]

The very definition of trust receipt x x x sustains the lower court's rationale in dismissing the information that the contract covered by a trust receipt is merely a secured loan. The goods imported by the small importer and retail dealer through the bank's financing remain of their own property and risk and the old capitalist orientation of putting them in jail for estafa for non-payment of the secured loan (granted after they had been fully investigated by the bank as good credit risks) through the fiction of the trust receipt device should no longer be permitted in this day and age.

As the law stands today, violations of Trust Receipts Law are criminally punishable, but no criminal complaint for violation of Article 315, paragraph 1(b) of the Revised Penal Code, in relation with P.D. 115, should prosper against a borrower who was not part of a genuine trust receipt transaction.

Misappropriation or abuse of confidence is absent in this case.

Even if we assume that the transactions were trust receipts, the complaint against the respondents still should have been dismissed. The Trust Receipts Law punishes 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 or not. The law does not singularly seek to enforce payment of the loan, as "there can be no violation of [the] right against imprisonment for non-payment of a debt."^[34]

In order that the respondents "may be validly prosecuted for estafa under Article 315, paragraph 1(b) of the Revised Penal Code,^[35] in relation with Section 13 of the Trust Receipts Law, the following elements must be established: (a) they received the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to [the trustor], or to return the goods if not sold; (b) they misappropriated or converted the goods and/or the proceeds of the sale; (c) they performed such acts with abuse of confidence to the damage and prejudice of Metrobank; and (d) demand was made on them by [the trustor] for the remittance of the proceeds or the return of the unsold goods."^[36]

In this case, no dishonesty or abuse of confidence existed in the handling of the construction materials.

In this case, the misappropriation could be committed should the entrustee fail to turn over the proceeds of the sale of the goods covered by the trust receipt transaction or fail to return the goods themselves. The respondents could not have failed to return the proceeds since their allegations that the clients of ACDC had not paid for the

projects it had undertaken with them at the time the case was filed had never been questioned or denied by LBP. What can only be attributed to the respondents would be the failure to return the goods subject of the trust receipts.

We do not likewise see any allegation in the complaint that ACDC had used the construction materials in a manner that LBP had not authorized. As earlier pointed out, LBP had authorized the delivery of these materials to these project sites for which they were used. When it had done so, LBP should have been aware that it could not possibly recover the processed materials as they would become part of government projects, two of which (the Metro Rail Transit Project and the Quezon Power Plant Project) had even become part of the operations of public utilities vital to public service. It clearly had no intention of getting these materials back; if it had, as a primary government lending institution, it would be guilty of extreme negligence and incompetence in not foreseeing the legal complications and public inconvenience that would arise should it decide to claim the materials. ACDC's failure to return these materials or their end product at the time these "trust receipts" expired could not be attributed to its volition. No bad faith, malice, negligence or breach of contract has been attributed to ACDC, its officers or representatives. Therefore, absent any abuse of confidence or misappropriation on the part of the respondents, the criminal proceedings against them for estafa should not prosper.

In *Metropolitan Bank*,^[37] we affirmed the city prosecutor's dismissal of a complaint for violation of the Trust Receipts Law. In dismissing the complaint, we took note of the Court of Appeals' finding that the bank was interested only in collecting its money and not in the return of the goods. Apart from the bare allegation that demand was made for the return of the goods (raw materials that were manufactured into textiles), the bank had not accompanied its complaint with a demand letter. In addition, there was no evidence offered that the respondents therein had misappropriated or misused the goods in question.

The petition should be dismissed because the OSG did not file it and the civil liabilities have already been settled.

The proceedings before us, regarding the criminal aspect of this case, should be dismissed as it does not appear from the records that the complaint was filed with the participation or consent of the Office of the Solicitor General (OSG). Section 35, Chapter 12, Title III, Book IV of the Administrative Code of 1987 provides that:

Section 35. Powers and Functions. — The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceedings, investigation or matter requiring the services of lawyers. x x x It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphasis provided.)

In *Heirs of Federico C. Delgado v. Gonzalez*,^[38] we ruled that the preliminary investigation is part of a criminal proceeding. As all criminal proceedings before the Supreme Court and the Court of Appeals may be brought and defended by only the Solicitor General in behalf of the Republic of the Philippines, a criminal action brought to us by a private party alone suffers from a fatal defect. The present petition was brought in behalf of LBP by the Government Corporate Counsel to protect its private interests. Since the representative of the "People of the Philippines" had not taken any part of the case, it should be dismissed.

On the other hand, if we look at the mandate given to the Office of the Government Corporate Counsel, we find

that it is limited to the civil liabilities arising from the crime, and is subject to the control and supervision of the public prosecutor. Section 2, Rule 8 of the Rules Governing the Exercise by the Office of the Government Corporate Counsel of its Authority, Duties and Powers as Principal Law Office of All Government Owned or Controlled Corporations, filed before the Office of the National Administration Register on September 5, 2011, reads:

Section 2. Extent of legal assistance – The OGCC shall represent the complaining GOCC in all stages of the criminal proceedings. The legal assistance extended is not limited to the preparation of appropriate sworn statements but shall include all aspects of an effective private prosecution including recovery of civil liability arising from the crime, subject to the control and supervision of the public prosecutor.

Based on jurisprudence, there are two exceptions when a private party complainant or offended party in a criminal case may file a petition with this Court, without the intervention of the OSG: (1) when there is denial of due process of law to the prosecution, and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party;^[39] and (2) when the private offended party questions the civil aspect of a decision of the lower court.^[40]

In this petition, LBP fails to allege any inaction or refusal to act on the part of the OSG, tantamount to a denial of due process. No explanation appears as to why the OSG was not a party to the case. Neither can LBP now question the civil aspect of this decision as it had already assigned ACDC's debts to a third person, Philippine Opportunities for Growth and Income, Inc., and the civil liabilities appear to have already been settled by Avent Holdings Corporation, in behalf of ACDC. These facts have not been disputed by LBP. Therefore, we can reasonably conclude that LBP no longer has any claims against ACDC, as regards the subject matter of this case, that would entitle it to file a civil or criminal action.

WHEREFORE, we DENY the petition and AFFIRM the January 20, 2005 decision of the Court of Appeals in CA-G.R. SP No. 76588. No costs.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Rollo, pp. 15-30.

[2] Penned by Associate Justice Lucenito N. Tagle, and concurred in by Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Regalado E. Maambong; id. at 35-48.

[3] Id. at 15-16.

[4] Id. at 16.

[5] Id. at 89-91.

[6] Id. at 49-50.

[7] The affidavit-complaint of June 7, 1999 and the resolution of Makati Assistant City Prosecutor Amador Y. Pineda dated September 30, 1999 refer to eleven trust receipts marked as Annexes "C" to "C-10." However, the Annexes found in the records of the Department of Justice, the Court of Appeals and the Supreme Court show only ten trust receipts marked as "C" to "C-9." The letters used for the markings vary before each quasi-judicial or judicial office, but there are only ten trust receipts attached. (Records, pp. 89-108; CA rollo, pp. 75-93; and rollo, pp. 69-88.)

[8] CA rollo, p. 94.

[9] Records, p. 32.

[10] Rollo, pp. 92-95.

[11] Id. at 95.

[12] Id. at 96.

[13] Id. at 97-102.

[14] Id. at 101.

[15] Id. at 103-105.

[16] 394 Phil. 106 (2000).

[17] Supra note 2.

[18] Rollo, p. 47.

[19] Id. at 21.

[20] Id. at 265-279.

[21] Id. at 273.

[22] Section 13 of P.D. 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. (Emphasis ours.)

[23] Colinares v. Court of Appeals, supra note 16, at 120; and Gonzales v. Hongkong and Shanghai Banking Corporation, G.R. No. 164904, October 19, 2007, 537 SCRA 255, 272.

[24] See Allied Banking Corporation v. Ordoñez, G.R. No. 82495, December 10, 1990, 192 SCRA 246, 254; and Ching v. The Secretary of Justice, 517 Phil. 151, 174-175 (2006). We clarified in these two cases that a trust receipt agreement covers materials used in manufacturing. It covers all the components of a product that is ultimately sold, even if this component is fungible or comes in the form of machineries and equipment. The fact that the raw material or process can no longer be distinguished within the finished product does not remove it from the protection of the Trust Receipts Law.

[25] Article 1953 of the Civil Code states that:

Article 1953. A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

[26] Records, p. 29.

[27] Rollo, pp. 55-68.

[28] Id. at 90.

[29] CA rollo, p. 94. The crucial parts of the letter read:

“Records indicate that your unpaid obligation under the Short Term Loan Line Facility as of March 31, 1999 amounts to P44,392,455.58, including interest and penalties. Further, availments under the Trust Receipt Facility as of said date amounts to P66,425,924.39 or an aggregate total obligation of P110,818,379.97. Attached herewith is the Statement of Account for your reference.

In view thereof, you are hereby given ten (10) days from receipt of this letter, to settle said obligation, otherwise, we have no recourse but to file civil and criminal actions against you and other officers of the corporation to protect the interest of our client.”

[30] National Bank v. Viuda e Hijos de Angel Jose, 63 Phil. 814, 821 (1936).

[31] Supra note 16, at 124.

[32] 191 Phil. 622, 633 (1981).

[33] 209 Phil. 475, 479 (1983).

[34] People v. Nitafan, G.R. Nos. 81559-60, April 6, 1992, 207 SCRA 726, 730.

[35] Article 315. Swindling (estafa). - Any person who shall defraud another by any of the means mentioned hereinbelow x x x:

x x x x

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

[36] Metropolitan Bank and Trust Company v. Go, G.R. No. 155647, November 23, 2007, 538 SCRA 337, 345-346.

[37] Id. at 350-351.

[38] G.R. No. 184337, August 7, 2009, 595 SCRA 501, 522-524.

[39] Merciales v. Court of Appeals, 429 Phil. 70, 78-80 (2002); Narciso v. Sta. Romana-Cruz, 385 Phil. 208, 221-224 (2000); and People v. Calo, Jr., 264 Phil. 1007, 1012-1014 (1990).

[40] Perez v. Hagonoy Rural Bank, Inc., 384 Phil. 322, 337 (2000); and People v. Judge Santiago, 255 Phil. 851, 861-862 (1989).

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