

ALLIED BANKING CORPORATION, PETITIONER, VS. HON. SECRETARY SEDFREY ORDONEZ (PUBLIC RESPONDENT) AND ALFREDO CHING (PRIVATE RESPONDENT), RESPONDENTS.

G.R. No. 82495. December 10, 1990

Ponente: PADILLA, J.

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PADILLA, J.:

In this special civil action for certiorari, the interpretation by the Department of Justice of the penal provision of PD 115, the Trust Receipts Law, is assailed by petitioner.

The relevant facts are as follows:

On 23 January 1981, Philippine Blooming Mills (PBM, for short) thru its duly authorized officer, private respondent Alfredo Ching, applied for the issuance of commercial letters of credit with petitioner's Makati branch to finance the purchase of 500 M/T Magtar Branch Dolomites and one (1) Lot High Fired Refractory Sliding Nozzle Bricks.

Petitioner issued an irrevocable letter of credit in favor of Nikko Industry Co., Ltd. (Nikko) by virtue of which the latter drew four (4) drafts which were accepted by PBM and duly honored and paid by the petitioner bank.

To secure payment of the amount covered by the drafts, and in consideration of the transfer by petitioner of the possession of the goods to PBM, the latter as entrustee, thru private respondent, executed four (4) Trust Receipt Agreements with maturity dates on 19 May, 3 and 24 June 1981 acknowledging petitioner's ownership of the goods and its (PBM'S) obligation to turn over the proceeds of the sale of the goods, if sold, or to return the same, if unsold within the stated period.

Out of the said obligation resulted an overdue amount of P1,475,274.09. Despite repeated demands, PBM failed and refused to either turn over the proceeds of the sale of the goods or to return the same.

On 7 September 1984, petitioner filed a criminal complaint against private respondent for violation of PD 115 before the office of the Provincial Fiscal of Rizal. After preliminary investigation wherein private respondent failed to appear or submit a counter-affidavit and even refused to receive the subpoena, the Fiscal found a prima facie case for violation of PD 115 on four (4) counts and filed the corresponding information in court.

Private respondent appealed the Fiscal's resolution to the Department of Justice on three (3) grounds:

1. Lack of proper preliminary investigation;
2. The Provincial Fiscal of Rizal did not have jurisdiction over the case, as respondent's obligation was purely civil;
3. There had been a novation of the obligation by the substitution of the person of the Rehabilitation Receivers in place of both PBM and private respondent Ching.

Then Secretary of Justice (now Senator) Neptali A. Gonzales, in a 24 September 1986 letter/resolution,[1] held:

"Your contention that respondent's obligation was purely a civil one, is without any merit. The four (4) Trust Receipt Agreements entered into by respondent and complainant appear regular in form and in substance. Their agreement regarding interest, not being contrary to law, public policy or morals, public order or good custom, is a valid stipulation which does not change the character of the said Trust Receipt Agreements. Further, as precisely pointed out by complainant, raw materials for manufacture of goods to be ultimately sold are proper objects of a trust receipt. Thus, respondent's failure to remit to the complainant proceeds of the sale of the finished products if sold or the finished products themselves if not sold, at the maturity dates of the trust receipts, constitutes a violation of P.D. 115."[2]

A motion for reconsideration alleged that, as PBM was under rehabilitation receivership, no criminal liability can be imputed to herein respondent Ching. On 17 March 1987, Undersecretary Silvestre H. Bello III denied said motion. The pertinent portion of the denial resolution states:

"It cannot be denied that the offense was consummated long before the appointment of rehabilitation receivers. The filing of a criminal case against respondent Ching is not only for the purpose of effectuating a collection of a debt but primarily for the purpose of punishing an offender for a crime committed not only against the complaining witness but also against the state. The crime of estafa for violation of the Trust Receipts Law is a special offense or mala prohi-bita. It is a fundamental rule in criminal law that when the crime is punished by a special law, the act alone, irrespective of its motives, constitutes the offense. In the instant case the failure of the entrustee to pay complainant the remaining balance of the value of the goods covered by the trust receipt when the same became due constitutes the offense penalized under Section 13 of P.D. No. 115; and on the basis of this failure alone, the prosecution has sufficient evidence to establish a prima facie case (Res. No. 671, s. 1981; Allied Banking Corporation vs. Reinhard Sagemuller, et al., Provincial Fiscal of Rizal, September 18, 1981).

"Likewise untenable is your contention that 'rehabilitation proceedings must stay the attempt to enforce a liability in view of Section 4 of P.D. No. 1758.' Section 4 of P.D. No. 1758, provides, among others: 'x x x Provided, further, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

"You will note that the term 'all actions for claims' refer only to actions for money claims but not to criminal liability of offenders."[3]

Another motion for reconsideration was filed by respondent on 9 April 1987 to which an opposition was filed by the petitioner. Private respondent also filed a supplemental request for reconsideration dated 28 December 1987 with two (2) additional grounds, namely:

"x x x 3) there is no evidence on record to show that respondent was in particeps criminis in the act complained of; and 4) there could be no violation of the trust receipt agreements because the articles imported by the corporation and subject of the trust receipts were fungible or consummable goods and do not form part of the steel product itself. These goods were not procured to be sold in whatever state or condition they were in or were supposed to be after the manufacturing process."[4]

Because of private respondent's clarification that the goods subject of the trust receipt agreements were dolomites which were specifically used for patching purposes over the surface of furnaces and nozzle bricks which are insulating materials in the lower portion of the ladle which do not form part of the steel product itself, Justice Secretary Sedfrey Ordonez, on 11 January 1988, "rectified" his predecessor's supposed reversible error, and held:

"x x x it is clear that what the law contemplates or covers are goods which have, for their ultimate destination, the sale thereof or if unsold, their surrender to the entruster, this whether the goods are in their original form or

in their manufactured/processed state. Since the goods covered by the trust receipts and subject matter of these proceedings are to be utilized in the operation of the equipment and machineries of the corporation, they could not have been contemplated as being covered by PD 115. It is axiomatic that penal statutes are strictly construed against the state and liberally in favor of the accused (*People vs. Purisima*, 86 SCRA 542, *People vs. Terrado*, 125 SCRA 648). This means that penal statutes cannot be enlarged or extended by intendment, implication, or any equitable consideration (*People vs. Garcia*, 85 Phil. 651). Thus, not all transactions covered by trust receipts may be considered as trust receipt transactions defined and penalized under PD 115.

x x x x x x x x

Apparently, the trust receipt agreements were executed as security for the payment of the drafts. As such, the main transaction was that of a loan. x x x In essence, therefore, the relationship between the Bank and the corporation, consequently the respondent herein likewise included, is that of debtor and creditor.

x x x x x x x x

WHEREFORE, premises considered, our resolution dated September 24, 1986, recorded as Resolution No. 456, series of 1986, and that dated March 17, 1987, the latter being necessarily dependent upon and incidental to the former, are hereby abrogated and abandoned. You are hereby directed to move for the withdrawal of the information and the dismissal of the criminal cases filed in court. x x x" [5]

This time, petitioner Allied Bank filed a motion for reconsideration of the Ordonez resolution, which was resolved by the Department of Justice on 17 February 1988, enunciating that PD 115 covers goods or components of goods which are ultimately destined for sale. It concluded that:

"x x x The goods subject of the instant case were shown to have been used and/or consumed in the operation of the equipment and machineries of the corporation, and are therefore outside the ambit of the provisions of PD 115 albeit covered by Trust Receipt agreements. x x x Finally, it is noted that under the *Sia vs. People* (121 SCRA 655 (1983), and *Vintola vs. Insular Bank Of Asia and America* (150 SCRA 578 (1987) rulings, the trend in the Supreme Court appears to be to the effect that trust receipts under PD 115 are treated as security documents for basically loan transactions, so much so that criminal liability is virtually obliterated and limiting liability of the accused to the civil aspect only.

WHEREFORE, your motion for reconsideration is hereby DENIED." [6]

From the Department of Justice, petitioner is now before this Court praying for writs of certiorari and prohibition to annul the 11 January and 17 February 1988 DOJ rulings, mainly on two (2) grounds:

1. public respondent is without power or authority to declare that a violation of PD 115 is not criminally punishable, thereby rendering a portion of said law inoperative or ineffectual.
2. public respondent acted with grave abuse of discretion in holding that the goods covered by the trust receipts are outside the contemplation of PD 115.

Private and public respondents both filed their comments on the petition to which a consolidated reply was filed. After the submission of the parties' respective memoranda, the case was calendared for deliberation.

Does the penal provision of PD 115 (Trust Receipts Law) apply when the goods covered by a Trust Receipt do not form part of the finished products which are ultimately sold but are instead, utilized/used up in the operation of the equipment and machineries of the entrustee-manufacturer?

The answer must be in the affirmative. Section 4 of said PD 115 says in part:

"Sec. 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 the 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, x x x."

Respondent Ching contends that PBM is not in the business of selling Magtar Branch Dolomites or High Fired Refractory Sliding Nozzle Bricks, it is a manufacturer of steel and steel products. But PBM, as trustee under the trust receipts has, under Sec. 9 of PD 115, the following obligations, inter alia: (a) receive the proceeds of sale, in trust for the entruster and turn over the same to the entruster to the extent of the amount owing to him or as appears on the trust receipt; (b) keep said goods or proceeds thereof whether in money or whatever form, separate and capable of identification as property of the entruster; (c) return the goods, documents or instruments in the event of non-sale, or upon demand of the entruster; and (d) observe all other terms and conditions of the trust receipt not contrary to the provisions of said Decree.[7]

In trust receipts, there is an obligation to repay the entruster.[8] Their terms are to be interpreted in accordance with the general rules on contracts, the law being alert in all cases to prevent fraud on the part of either party to the transaction.[9] The trustee binds himself to sell or otherwise dispose of the entrusted goods with the obligation to turn over to the entruster the proceeds if sold, or return the goods if unsold or not otherwise disposed of, in accordance with the terms and conditions specified in the trust receipt. A violation of this undertaking constitutes estafa under Sec. 13, PD 115.

And even assuming the absence of a clear provision in the trust receipt agreement, *Lee v. Rodil*[10] and *Sia v. CA*[11] have held: Acts involving the violation of trust receipt agreements occurring after 29 January 1973 (when PD 115 was issued) would render the accused criminally liable for estafa under par. 1(b), Art. 315 of the Revised Penal Code, pursuant to the explicit provision in Sec. 13 of PD 115.[12] The act punishable is *malum prohibitum*. Respondent Secretary's prognostication of the Supreme Court's supposed inclination to treat trust receipts as mere security documents for loan transactions, thereby obliterating criminal liability, appears to be a misjudgment.[13]

In an attempt to escape criminal liability, private respondent claims PD 115 covers goods which are ultimately destined for sale and not goods for use in manufacture. But the wording of Sec. 13 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. Private respondent claims that at the time of PBM's application for the issuance of the LC's, it was not represented to the petitioner that the items were intended for sale,[14] hence, there was no deceit resulting in a violation of the trust receipts which would constitute a criminal liability. Again, we cannot uphold this contention. The non-payment of the amount covered by a trust receipt is an act violative of the trustee's obligation to pay. There is no reason why the law should not apply to all transactions covered by trust receipts, except those expressly excluded.[15]

The Court takes judicial notice of customary banking and business practices where trust receipts are used for importation of heavy equipment, machineries and supplies used in manufacturing operations. We are perplexed by the statements in the assailed DOJ resolution that the goods subject of the instant case are outside the ambit of the provisions of PD 115 albeit covered by Trust Receipt Agreements (17 February 1988 resolution) and that not all transactions covered by trust receipts may be considered as trust receipt transactions defined and penalized under PD 115 (11 January 1988 resolution). A construction should be avoided when it affords an opportunity to defeat

compliance with the terms of a statute.

"A construction of a statute which creates an inconsistency should be avoided when a reasonable interpretation can be adopted which will not do violence to the plain words of the act and will carry out the intention of Congress.

In the construction of statutes, the courts start with the assumption that the legislature intended to enact an effective law, and the legislature is not to be presumed to have done a vain thing in the enactment of a statute. Hence, it is a general principle, embodied in the maxim, 'ut res magis valeat quam pereat,' that the courts should, if reasonably possible to do so without violence to the spirit and language of an act, so interpret the statute to give it efficient operation and effect as a whole. An interpretation should, if possible, be avoided, under which a statute or provision being construed is defeated, or as otherwise expressed, nullified, destroyed, emasculated, repealed, explained away, or rendered insignificant, meaningless, inoperative, or nugatory."^[16]

The penal provision of PD 115 encompasses any act violative of an obligation covered by the trust receipt; it 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.

To uphold the Justice Department's ruling would contravene not only the letter but the spirit of PD 115.

"An examination of P.D. 115 shows the growing importance of trust receipts in Philippine business, the need to provide for the rights and obligations of parties to a trust receipt transaction, the study of the problems involved and the action by monetary authorities, and the necessity of regulating the enforcement of rights arising from default or violations of trust receipt agreements. The legislative intent to meet a pressing need is clearly expressed. x x x" ^[17]

WHEREFORE, the petition is granted. The temporary restraining order issued on 13 April 1988 restraining the enforcement of the questioned DOJ resolutions dated 11 January 1988 and 17 February 1988 directing the provincial fiscal to move for the dismissal of the criminal case filed before the RTC of Makati, Branch 143 and the withdrawal of IS No. 84-3140, is made permanent. Let this case be remanded to said RTC for disposition in accordance with this decision.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Sarmiento, and Regalado, JJ., concur.

[1] No. 456, Series of 1986

[2] Rollo at 18

[3] Rollo at 20

[4] Rollo at 22

[5] Rollo at 25 and 26

[6] Ibid. at 27 and 28

[7] Sec. 9. Obligations of the trustee. - The trustee shall (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 this Decree.

[8] 53 Am Jur § 2

[9] Ibid. § 3

[10] G.R. No. 80544, 5 July 1989, 175 SCRA 100

[11] G.R. No. L-40324, 5 October 1988, 166 SCRA 263

[12] Sec. 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.

[13] Separate Opinions expressed by Justices, no matter how erudite or persuasive cannot override the majority's decision.

[14] Rollo at 39-41

[15] 68 Am Jur § 125

[16] 50 Am Jur § 366, 359, 358 cited in 29 SCRA 627, 628

[17] Lee v. Rodil, *supra*.

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