Supreme Court E-Library

FIRST DIVISION

[G.R. No. 214960. June 15, 2022]

TONY N. CHUA, JIMMY N. CHUA, and ERNEST T. JENG, *Petitioners*, *v.* **SECRETARY OF JUSTICE and BDO UNIBANK, INC.,** *Respondents*.

D E C I S I O N

HERNANDO, *J.*:

This Petition for Review on *Certiorari*[1] assails the May 29, 2014 Decision[2] and the October 15, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 124558, affirming the March 30, 2011[4] and February 20, 2012[5] Resolutions of respondent Secretary of Justice (SOJ), which found probable cause for the filing of four counts of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code[6] (RPC), in relation to Presidential Decree No. 115, series of 1973,[7] otherwise known as the "Trust Receipts Law," against petitioners Tony N. Chua, Jimmy N. Chua, and Ernest T. Jeng (collectively, petitioners). These SOJ Resolutions reversed the earlier June 1, 2010 Resolution,[8] which affirmed the

---

1 *Rollo*, pp. 9-30 (With Prayer for Issuance of [a] Temporary Restraining Order and/or Writ of Preliminary Injunction).

2 Id. at 31-40. Penned by Associate Justice Ramon A. Cruz, and concurred in by Associate Justices Hakim S. Abdulwahid and Socorro B. Inting.

3 Id. at 43.

4 Id. at 62-66. Penned by Secretary Leila M. De Lima.

5 Id. at 68-70.

6 Act No. 3815, entitled AN ACT REVISING THE PENAL CODE AND OTHER PENAL LAWS [THE REVISED PENAL CODE]. Approved: December 8, 1930.

7 Presidential Decree No. 115, entitled "PROVIDING FOR THE REGULATION OF TRUST RECEIPTS TRANSACTIONS [TRUST RECEIPTS LAW]." Approved: January 29, 1973.

8 *Rollo*, pp. 392-393. Penned by Chief State Prosecutor Claro A. Arellano.

Supreme Court E-Library

November 25, 2009[9] and March 12, 2010[10] Resolutions of the City Prosecutor of Makati City, finding lack of probable cause to charge petitioners with violation of the Trust Receipts Law.

The Factual Antecedents

This case arose from a Complaint-Affidavit[11] filed with the Office of the City Prosecutor, Makati City, by private respondent BDO Unibank, Inc. (BDO) against petitioners for four counts of violation of the Trust Receipts Law. BDO is the surviving entity in the merger between Banco de Oro Universal Bank, Inc. and Equitable PCI Bank, which in turn is the surviving entity in the merger between Equitable Banking Corporation (EBC) and PCI Banking Corporation. Meanwhile, petitioners are the responsible officers of NF Agri-Business Corporation (NF ABC).[12]

In 1999, EBC issued commercial letters of credit and, thereafter, imported merchandise for the account of NF ABC.[13] The merchandise consisted of peruvian fish meal and various kinds of soybean meals for agriculture purposes.[14] The imported merchandise was delivered to NF ABC. Consequently, petitioners executed trust receipts as follows:[15]

Trust Receipt No.	Date of Execution	Amount
FSA 70410361PRL	June 16, 1999	₱4,111,175.25
FSA 704100470PRL	July 1, 1999	8,749,580.10
FSA 704100453PRL	[September] 8, 1999	3,850,507.46

---

[9] Id. at 362-364. Penned by 2nd Assistant City Prosecutor Edgardo G. Hirang, recommending approval by 2nd Assistant City Prosecutor Christopher C. Garvida, and approved by City Prosecutor Feliciano Aspi.

[10] Id. at 383.

[11] Id. at 85-90.

[12] Id. at 85.

[13] Id. at 32.

[14] Id.

[15] Id.

Supreme Court E-Library

FSA 704100470PRL	[January] 21, 2000	3,698,375.42[16]
Total		**₱20,409,638.23**

The trust receipts were payable within 90 days from their dates of execution.[17] However, NF ABC failed to pay its obligation under the trust receipts when it became due.[18] On December 16, 2008, BDO demanded payment from NF ABC of the outstanding obligation under the trust receipts in the amount of ₱17,430,882.88; despite demand, however, NF ABC failed to turn-over the proceeds of the sale of the goods, or return the goods if not sold.[19] Hence, the Complaint-Affidavit.

In their defense, petitioners alleged that NF ABC was severely affected by the Asian Financial Crisis in 1999 to 2000, and by the successive typhoons that hit the Philippines.[20] The goods covered by the trust receipts were perishable.[21] Petitioners encountered difficulties in looking for buyers so they had to sell the goods at a non-profitable price, while some of the goods perished.[22]

Petitioners averred that NF ABC maintained and continued its commitment to pay its debt.[23] They entered into negotiations with BDO and they reached an agreement with respect to the terms of payment and interest.[24] This agreement was reduced into writing.[25] NF ABC then issued postdated checks for the period until April 2002, after which it proposed a revised repayment schedule and issued anew postdated checks until March 2004.[26] The outstanding obligation was ultimately reduced

---

16 Id. at 63.

17 Id. at 32.

18 Id.

19 Id.

20 Id.

21 Id.

22 Id. at 32-33.

23 Id. at 33.

24 Id.

25 Id.

26 Id.

Supreme Court E-Library

to ₱17,430,882.88.[27] In sum, petitioners argued that there was a novation as the trust receipt transaction was converted into a simple loan.[28]

Ruling of the City Prosecutor

In a Resolution[29] dated November 25, 2009, the City Prosecutor of Makati City dismissed the Complaint-Affidavit, holding that there was a novation as the long-term payment scheme was inconsistent with the liability under the trust receipts.[30] Further, the Trust Receipts Law which seeks to punish dishonesty and abuse of confidence in the handling of the money and goods to the prejudice of another was not violated since, in this case, there was neither dishonesty nor abuse of confidence on the part of petitioners.[31]

The dispositive portion of the Resolution reads:

> WHEREFORE, premises considered, it is respectfully recommended that the charge against the respondents for violation of P.D. 115 be dismissed for lack of probable cause, as upon approval hereof, the same is hereby dismissed.[32]

BDO moved for reconsideration[33] but to no avail.[34] Thus, it filed a Petition for Review[35] before the DOJ.

Rulings of the Secretary of Justice

In a June 1, 2010 Resolution,[36] the Department of Justice, through the Chief State Prosecutor, affirmed the dismissal of

---

27 Id.

28 Id.

29 Id. at 362-364.

30 Id. at 363.

31 Id. at 364.

32 Id.

33 Id. at 365-371.

34 Id. at 383.

35 Id. at 392.

36 Id. at 392-393.

Supreme Court E-Library

the complaint finding that there was no dishonesty or abuse of confidence that can be attributed to petitioners.[37] Moreover, their failure to comply with the obligation was due to the economic crisis; the goods were perishable so they were compelled to sell at a non-profitable price to make partial payments to the bank.[38] The dispositive portion of the June 1, 2010 Resolution reads:

WHEREFORE, considering the foregoing, the petition for review is **DENIED**.

SO ORDERED.[39] (Emphasis in the original)

BDO filed a Motion for Reconsideration.

In a March 30, 2011 Resolution,[40] the SOJ reversed the June 1, 2010 Resolution, finding that there was no novation of the obligations under the trust receipts.[41] There was no clear incompatibility, but merely modifications, of the terms as regards petitioners' obligations under the trust receipts in relation to the schedule of payments.[42] The parties did not intend to enter into novation as a mode to extinguish their rights and obligations under the trust receipts.[43] The mere failure of petitioners to turn over the proceeds of the sale of the goods, or to return the goods if not sold to the bank, is the gravamen of the offense charged; therefore, there is sufficient evidence to establish the existence of probable cause.[44] The SOJ directed the filing of four counts of Estafa under the RPC in relation to the Trust Receipts Law.

The dispositive portion of the March 30, 2011 Resolution reads:

WHEREFORE, premises considered, the motion for reconsideration is hereby **GRANTED**. Resolution No. 1479, s. of 2010 of this Office

---

37 Id.

38 Id. at 393.

39 Id.

40 Id. at 62-66.

41 Id. at 64-66.

42 Id. at 65.

43 Id.

44 Id.

Supreme Court E-Library

is **REVERSED**. The City Prosecutor of Makati City is directed to file four (4) counts of estafa under Article 315, par. 1(b) of the Revised Penal Code in relation to the provisions of P.D. No. 115 against respondents **TONY N. CHUA, JIMMY N. CHUA and ERNEST T. JENG,** and report on the action taken within ten (10) days from receipt hereof.

SO ORDERED.[45]

Petitioners moved for reconsideration[46] but it was denied by the SOJ in a Resolution[47] dated February 20, 2012. Thus, petitioners filed a Petition for *Certiorari*[48] before the CA.

Ruling of the Court of Appeals

In its May 29, 2014 Decision,[49] the CA dismissed the Petition for *Certiorari*, finding no grave abuse of discretion on the part of the SOJ in finding probable cause to charge petitioners with four counts of Estafa.[50] The obligations under the trust receipts were not novated. The appellate court found no written agreement stating in unequivocal terms the incompatibility of the original obligation under the trust receipts, and the alleged new obligation under the schedule of payments.[51] The two obligations are not incompatible. The schedule of payments merely modified the terms of payment of the old obligation; the intention of the new agreement was precisely to revive the old obligation after the original period expired, and the loan remained unpaid.[52]

---

45 Id. at 65-66.

46 Id. at 68.

47 Id. at 68-70.

48 Id. at 31.

49 Id. at 31-40.

50 Id. at 35, 38.

51 Id. at 36-37.

52 Id. at 37.

Supreme Court E-Library

Aggrieved, petitioners moved for reconsideration[53] but it was denied by the CA in its October 15, 2014 Resolution.[54] Hence, this Petition for Review on *Certiorari*.

Parties' Arguments

Petitioners attribute grave abuse of discretion on the part of the CA when it affirmed the SOJ's finding of probable cause.[55] They insist that the trust receipt agreement entered into by the parties was converted into a simple loan by virtue of the new schedule of payment that is totally incompatible with the original agreement.[56] The new schedule of payment did not merely modify the trust receipt agreement as it provided principal conditions that are incompatible with the latter agreement, thereby resulting to a novation.[57]

Petitioners also add that BDO is estopped from insisting on the original trust receipt transaction because the parties' contractual relationship has been converted, from entrustor-entrustee to debtor-creditor, long before the filing of the complaint.[58] Petitioners note that the novation of a trust agreement before the filing of an Information has the effect of preventing the rise of a criminal liability.[59]

Thus, petitioners insist that there is no probable cause against them for violation of the Trust Receipts Law. They also pray for this Court to issue a writ of preliminary injunction and a temporary restraining order (TRO) to enjoin the SOJ from enforcing its resolution.[60]

In its Comment,[61] BDO argues that petitioners' liability for violation of the Trust Receipts Law has not been extinguished by

---

53 Id. at 43.

54 Id.

55 Id. at 16.

56 Id. at 17-19.

57 Id.

58 Id. at 21-22.

59 Id. at 22.

60 Id. at 24-25.

61 Id. at 527-549.

Supreme Court E-Library

novation. Novation is not among the modes of extinguishing a criminal liability, which in this case pertains to petitioners' failure to deliver the proceeds of the sale of the goods, or return the goods if not sold, as provided by the Trust Receipts Law.[62] Further, there is probable cause to charge petitioners with violation of the Trust Receipts Law because mere failure to remit the proceeds, or return the goods if not sold, constitutes a violation of the law.[63] Lastly, BDO argues that there is no basis for the issuance of a writ of preliminary injunction and a TRO.[64]

The SOJ, through the Office of the Solicitor General, likewise filed a Comment,[65] positing the same arguments as BDO.[66]

Petitioners filed a Consolidated Reply[67] and reiterated the arguments in their Petition.

Issue

The issue here is whether the CA erred in affirming the SOJ's finding of probable cause to charge petitioners with Estafa under the RPC in relation to the Trust Receipts Law.

Our Ruling

The Petition has no merit. The Court affirms the finding of the CA that the SOJ did not commit grave abuse of discretion in ordering the filing of four counts of Estafa under the RPC, in relation to the Trust Receipts Law, against petitioners.

Section 4 of the Trust Receipts Law defines a trust receipt transaction as any transaction by and between an entruster and an entrustee, where the entrustor transfers possession of specific goods, among others, to which he or she has ownership or absolute title thereto, to the entrustee upon the latter's execution

---

62 Id. at 534-541.

63 Id. at 541-542.

64 Id. at 543-544.

65 Id. at 552-559.

66 Id.

67 Id. at 567-573.

Supreme Court E-Library

and delivery of a document called a trust receipt.[68] Under the trust receipt, the entrustee binds himself or herself to hold the goods in trust for the entruster, and to sell or otherwise dispose of them, with the obligation to turn over the proceeds of the sale to the entruster to the extent of the amount owed or the terms of the trust receipt.[69] If the goods are not sold or otherwise disposed, the entrustee shall return the goods themselves.[70]

The law punishes the entrustee's failure to turn over the proceeds of the sale of the goods covered, or to return the goods themselves if not sold. Under Section 13 of the law, such failure shall constitute the crime of Estafa under Article 315, paragraph 1(b) of the RPC.[71] The Court emphasizes that the offense of violation of the Trust Receipts Law is *malum prohibitum*: mere failure to turn over the proceeds of the sale, or to return the goods themselves if not sold, amounts to the violation.[72] Intent to defraud is immaterial.[73]

Proceeding from this, it can already be held that there is probable cause to hold petitioners liable for violating the Trust Receipts Law. It is undisputed that petitioners failed to turn over the proceeds of the sale of goods or return the goods themselves. By this mere failure, criminal liability attaches under the law. They admitted to this fact; this even resulted to the execution of the contentious new schedule of payments. Petitioners' defense that they were unable to sell the goods at a profitable price due to the financial crisis and successive typhoons is unavailing as the offense is *malum prohibitum*. They could have just returned the goods and not insist on selling them for a lower price upon the expiration of the term of the trust receipts.

But petitioners argue here that criminal liability did not arise because their obligation under the trust receipts was novated to a simple loan through the execution of the new schedule of payments.

---

68 TRUST RECEIPTS LAW, sec. 4.

69 Id.

70 Id.

71 Id., sec. 13.

72 See *BDO Unibank, Inc. v. Choa*, G.R. No. 237553, July 10, 2019.

73 Id.

Supreme Court E-Library

The Court holds that petitioners' obligation under the trust receipt agreements was not novated.

Novation is a mode of extinguishing an obligation. The Civil Code provides that one of the ways to novate an obligation is by changing its object, cause, or principal conditions.[74] Thus, Article 1292 of the Civil Code states:

> Article 1292. In order that an obligation may be extinguished by another which substitute the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

A necessary element of novation is the cancellation of the old obligation by the new one, which may be effected expressly or impliedly.[75] It is never presumed and must be proven as a fact.[76] There is an express novation if the new obligation unequivocally declares that it extinguishes or substitutes the old obligation; on the other hand, there is an implied novation if the old and the new obligations are on every point incompatible with each other.[77] The test of incompatibility is whether the two contracts can stand together, each one having an independent existence.[78] "The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation."[79]

The Court also emphasizes that the issue of novation involves a question of fact, as its resolution necessitates the factual

---

[74] Republic Act No. 386, entitled "AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES [CIVIL CODE OF THE PHILIPPINES], art. 1291." Approved: June 18, 1949.

[75] See *Valdes v. La Colina Development Corporation*, G.R. No. 208140, July 12, 2021.

[76] *Spouses Angeles v. Traders Royal Bank*, G.R. No. 235604, May 3, 2021.

[77] *Asian Construction and Development Corporation v. MERO Structures, Inc.*, G.R. No. 221147, September 29, 2021.

[78] *Valdes v. La Colina Development Corporation*, supra.

[79] *CCC Insurance Corporation v. Kawasaki Steel Corporation*, 761 Phil. 1, 32 (2015) citing *Quinto v. People*, 365 Phil. 259, 267-268 (1999).

Supreme Court E-Library

determination of the requisites of a valid novation.[80] Petitioners are essentially asking the Court to resolve a question of fact. This Court is not a trier of facts. When a case is elevated to this Court via a petition for review on *certiorari* under Rule 45 of the Rules of Court, only questions of law may be resolved.[81] While there are exceptions to this rule,[82] none of which are present in the instant case.

Here, the Court affirms and adopts the SOJ's and CA's factual finding that the new schedule of payments did not novate the trust receipt agreement. As the CA has determined that there is no written contract between the parties stating in unequivocal terms that they were novating the original obligation, it is necessary and proper to determine whether the new schedule of payments is incompatible with the original obligation under the trust receipts.[83]

In this regard, there is no reason for Us to disturb the conclusion that the new schedule of payments is not incompatible with the original obligation. The new agreement expressly recognized the old obligation; the former did not completely obliterate the latter. The object—payment of the amount owed under the trust receipts—is retained, continues to exist, and is in fact extended by the new schedule of payments by prolonging the period for payment of the amount owed; petitioners are still liable under the trust receipts, but were given time to pay under the schedule of payments. This means that there is no incompatibility in the objects, causes, and principal conditions of the two agreements, despite the points of incompatibility petitioners posit. In other words, the new schedule of payments is merely modificatory and supplementary to the original obligation. The CA is correct in stating that the new agreement precisely revives the unpaid original obligation whose term already expired.

---

[80] See *David v. David*, 724 Phil. 239, 247 (2014).

[81] *Apolinario, Jr. v. People*, G.R. No. 242977, October 13, 2021.

[82] See *Zambales v. Zambales*, G.R. No. 216878, April 3, 2019.

[83] *Rollo*, p. 37.

Supreme Court E-Library

As there is no novation in the instant case, petitioners' argument that BDO is estopped from invoking the original agreement under the trust receipts necessarily fails; so is their argument that novation may prevent the incipience of a criminal liability if executed prior to the filing of an information.[84]

In sum, the SOJ did not err or gravely abuse her discretion in finding probable cause to charge petitioners with Estafa in relation to the Trust Receipts Law. The mere failure of petitioners to turn over the proceeds of the sale of goods, or to return the good themselves if not sold under the trust receipts that were not novated, constitutes the gravamen of the offense. Resultantly, the accompanying prayer for the issuance of a writ of preliminary injunction and a TRO has no basis.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The May 29, 2014 Decision and October 15, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 124558, are **AFFIRMED**. The City Prosecutor of Makati City is **DIRECTED** to file four counts of Estafa under Article 315, paragraph 1(b) of the Revised Penal Code in relation to Presidential Decree No. 115, or the Trust Receipts Law, against petitioners Tony N. Chua, Jimmy N. Chua, and Ernest T. Jeng. In the event that an Information has already been filed, the branch of the Regional Trial Court, Makati City where the criminal case is raffled, is **DIRECTED** to commence or continue with the proceedings with **DISPATCH**.

SO ORDERED.

Gesmundo, C.J. (Chairperson), Zalameda, Rosario, and *Marquez, JJ.*, concur.

APPEARANCES OF COUNSEL

Rigoroso Galindeza & Rabino Law Offices for petitioners.
Guirnalda Mallari-Dy & Associates for private respondent.

---

[84] Id. at 22; see *Social Security System v. Department of Justice*, 556 Phil. 263, 273 (2007).