

[**G.R. No. 134436, August 16, 2000**]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
JOAQUIN TONDA AND MA. CRISTINA TONDA, RESPONDENTS.**

D E C I S I O N

GONZAGA-REYES, J.:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision^[1] of the Court of Appeals^[2] dated June 29, 1998 in CA-G.R. SP No. 38113 which: (1) reversed Resolution No. 417, s. 1994,^[3] dated June 1, 1994 of the Department of Justice^[4] directing to file the appropriate Information against herein respondents Joaquin P. Tonda and Ma. Cristina V. Tonda for violation of P.D. 115 in relation to Article 315 (1) (b) of the Revised Penal Code; and (2) effectively set aside the Resolutions dated April 7, 1995^[5] and July 12 1995^[6] of the Department of Justice denying the motions for reconsideration.

Spouses Joaquin G. Tonda and Ma. Cristina U. Tonda, hereinafter referred to as the TONDAS, applied for and were granted commercial letters of credit by petitioner Metropolitan Bank and Trust Company, hereinafter referred to as METROBANK for a period of eight (8) months beginning June 14, 1990 to February 1, 1991 in connection with the importation of raw textile materials to be used in the manufacturing of garments. The TONDAS acting both in their capacity as officers of Honey Tree Apparel Corporation (HTAC) and in their personal capacities, executed eleven (11) trust receipts to secure the release of the raw materials to HTAC. The imported fabrics with a principal value of P2,803,000.00 were withdrawn by HTAC under the 11 trust receipts executed by the TONDAS. Due to their failure to settle their obligations under the trust receipts upon maturity, METROBANK through counsel, sent a letter dated August 10, 1992, making its final demand upon the TONDAS to settle their past due TR/LC accounts on or before August 15, 1992. They were informed that by said date, the obligations would amount to P4,870,499.13. Despite repeated demands therefor, the TONDAS failed to comply with their obligations stated in the trust receipts agreements, i.e. the TONDAS failed to account to METROBANK the goods and/or proceeds of sale of the merchandise, subject of the trust receipts.

Consequently, on November 9, 1992, Metrobank, through its account officer Eligio Labog, Jr., filed with the Provincial Prosecutor of Rizal a complaint/affidavit against the TONDAS for violation of P.D. No. 115 (Trust Receipts Law) in relation to Article 315 (1) (b) of the Revised Penal Code. On February 12, 1993, the assigned Assistant Prosecutor of Rizal submitted a Memorandum to the Provincial Prosecutor recommending that the complaint in I.S. No. 92-8703 be dismissed on the ground that the complainants had failed to establish "the existence of the essential elements of Estafa as charged." The recommendation was approved by Rizal Provincial Prosecutor Mauro Castro on May 18, 1993.

METROBANK then appealed to the Department of Justice (DOJ). On June 1, 1994, Undersecretary Ramon. S. Esguerra reversed the findings of the Provincial Prosecutor of Rizal and ordered the latter to file the appropriate information against the TONDAS as charged in the complaint.

The TONDAS immediately sought a reconsideration of the DOJ Resolution but their motion was denied by the then acting Justice Secretary Demetrio G. Demetria in a Letter-Resolution dated April 7, 1995. A second motion for reconsideration by the TONDAS was likewise denied by then Justice Secretary Teofisto Guingona on July 12, 1995.

Subsequently, the TONDAS filed with the Court of Appeals a special civil action for *certiorari* and prohibition with application for a temporary restraining order or a writ of preliminary injunction,^[7] which was docketed as CA-G.R. SP No. 38113. They contended therein that the Secretary of Justice acted without or in excess of jurisdiction in issuing the aforementioned Resolution dated July 12, 1995 denying with finality their motion for the reconsideration of the Resolution dated April 7, 1995 of the Acting Secretary of Justice, which in turn denied their motion for the reconsideration of Resolution No. 417, s. 94, dated June 1, 1994, directing to file the appropriate Information against the TONDAS.

The Court of Appeals granted the TONDAS' petition and ordered the criminal complaint against them dismissed. The Court of Appeals held that METROBANK had failed to show a prima facie case that the TONDAS violated the Trust Receipts Law in relation to Art. 315 (1) (b) of the Revised Penal Code in the face of convincing proof that "that the amount of P2.8 Million representing the outstanding obligation of the TONDAS under the trust receipts account had already been settled by them in compliance with the loan restructuring proposal; and that in the absence of a loan restructuring agreement, METROBANK could still validly apply the amount as payment thereof." The relevant portions of the Court of Appeals decision are quoted as follows:

"Petitioners admitted that in 1991 their company, the Honey Tree Apparel Corporation (HTAC), had some financial reversals making it difficult for them to comply with their loan obligations with Metrobank. They were then constrained to propose a loan restructuring agreement with the private respondent to enable them to finally settle all outstanding obligations with the latter. In a letter dated 23 September 1991, petitioner Joaquin Tonda submitted a proposed Loan Restructuring Scheme to Metrobank. In said letter, petitioner Tonda proposed to immediately pay in full the outstanding principal charges under the trust receipts account and the remaining obligations under a separate schedule of payment. Petitioners attached with said letter an itemized proposal (Attachment "A"), part of which reads:

1. *Trust Receipts* - The new management and. Mr. Joaquin G. Tonda will pay immediately the entire principal of the outstanding Trust Receipts amounting to P2,803,097.14. While the interest accrued up to September 13, 1991 amounting to P409,601.57 plus the additional interest shall be re-structured together with item no. 2 below. A joint sharing account in the name of Joaquin G. Tonda and Wang Tien En equal to Trust Receipt amount of 1.8 Million will be opened at Metrobank Makati. (emphasis supplied)

It would appear that the aforesaid amount of 1.8 Million was erroneously written since the intention of the petitioners was to open an account of P2.8 Million to pay the entire principal of the outstanding trust receipts account. In fact, also on 23 September 1991, petitioner Joaquin Tonda and Wang Tien En deposited four different checks with a total amount of P2,800,000.00 with Metrobank. The checks were received by a certain Flor C. Naanep. Notably, the petitioners had obtained a written acknowledgement of receipt of the checks totaling P2.8 Million from the Metrobank officer in order to show proof of compliance with the loan restructuring proposal. If the petitioners had intended it to be a simple deposit, then a deposit slip with a machine validation by the private respondent bank would have otherwise been sufficient.

In a letter dated 22 October 1991, Metrobank wrote to the petitioners informing them that the bank had accepted their proposal subject to certain conditions, the first of which referred to the immediate payment of the amount of P2.8 Million, representing the outstanding trust receipts account. The petitioners appeared to have offered a counter proposal such that no final agreement had yet been reached.

However, the succeeding negotiations between petitioners and Metrobank, after the initial offer of 23 September 1991 was made, dealt with the other outstanding obligations while the matter regarding the trust receipts account remained unchanged; therefore, it was settled between the parties that the amount of P2.8 Million should be paid to cover all outstanding obligations under the trust receipts account. Despite the inability of both parties to reach a mutually agreeable loan restructured agreement, the amount of P2.8 Million which was deposited on 23 September 1991 by the petitioners appears to remain intact and untouched as Metrobank had failed to show evidence that the money has been withdrawn from the savings account of the petitioners.

Moreover, the deposit made by the petitioners was made known to Metrobank clearly as a compliance with the proposed loan restructuring agreement. As shown in the correspondence made by the petitioners on 28 February 1992 to Metrobank, after the latter had made a formal demand for payment of all outstanding obligations, the deposit was mentioned, to wit:

"May we emphasize that to show sincerity and financial capability, soon after we received your letter dated October 22, 1991 informing us of your approval of the restructuring and consolidation of our firm's obligations, a personal account was opened by two (2) of our stockholders in the amount equivalent to the TR/LC, Account of about P2.8 Million which deposit is still maintained with your bank, free from any lien or encumbrance, and may be applied anytime to the payment of the TR/LC Account upon the implementation by the parties of the terms of restructuring."(emphasis supplied)

The contention of Metrobank that the money had not been actually applied as payment for petitioners' outstanding obligation under the trust receipts account is absolutely devoid of merit, considering that the petitioners were still in the process of negotiating for a reasonable loan

restructuring arrangement with Metrobank when the latter abruptly abandoned all efforts to negotiate and instantly demanded from the petitioners the fulfillment of all their outstanding obligations.

In the case of *Tan Tiong Tick vs. American Apothecaries*, 65 Phil. 414, the Supreme Court had held that:

“When a depositor is indebted to a bank, and the debts are mutual - that is, between the same parties and in the, same right - the bank may apply the deposit, or such portion thereof as may be necessary, to the payment of the debt due it by the depositor, provided there is no express agreement to the contrary and the deposit is not specifically applicable to some other particular purpose.”

Applying the above-mentioned ruling in this case, if the parties therefore fail to reach an agreement regarding the restructuring of HTAC's loan, Metrobank can validly apply the amount deposited by the petitioners as payment of the principal obligation under the trust receipts account.

On the basis of all the evidence before Us, this Court is convinced that the amount of P2.8 Million representing the outstanding obligation of the petitioners under the trust receipts account had already been settled by the petitioners. The money remains deposited under the savings account of the petitioners awaiting a final agreement with Metrobank regarding the loan restructuring arrangement. Meanwhile, Metrobank has the right to use the deposited amount in connection with any of its banking business.

With convincing proof that the amount of P2.8 Million deposited under petitioners' savings account with Metrobank was indeed intended to be applied as payment for the outstanding obligations of HTAC under the trust receipts, Metrobank, therefore, had failed to show a prima facie case that the petitioners had violated the Trust Receipts Law (P.D. No. 115) in relation to Art. 315 of the Revised Penal Code. Besides, there is absolutely no evidence suggesting that Metrobank has been damaged by the proposal and the deposit made by the petitioners. As noted by the prosecutor:

“It is clear from the evidence that complainant bank had, all the while, been informed of the steps undertaken by the respondents relative to the trust receipts and other financial obligations vis-a-vis HTAC's financial difficulties. Hardly therefore, could it be said that respondents were unfaithfully, deceptively, deceitfully and fraudulently dealing with complainant bank to warrant an indictment for Estafa.”^[8]

Hence, this recourse to this Court where petitioner submits for the consideration of this Court the following issues:

I.

WHETHER METROBANK HAS SHOWN A PRIMA FACIE VIOLATION OF THE TRUST RECEIPTS LAW IN RELATION TO ART. 315 OF THE REVISED PENAL CODE

II.

WHETHER AN AGREEMENT WAS FORGED BETWEEN THE PARTIES THAT THE 2.8 MILLION DEPOSITED IN THE JOINT ACCOUNT OF JOAGUIN G. TONDA AND WANG TIEN EN WOULD BE CONSIDERED AS PAYMENT FOR THE OUTSTANDING OBLIGATIONS OF THE SPOUSES TONDA UNDER THE TRUST RECEIPTS

III.

WHETHER INSPITE OF THE FAILURE OF THE PARTIES TO AGREE UPON A RESTRUCTURING AGREEMENT, METROBANK CAN STILL APPLY THE P2.8 MILLION DEPOSIT AS PAYMENT TO THE PRINCIPAL AMOUNT COVERED BY THE TRUST RECEIPTS

IV.

WHETHER DAMAGE HAS BEEN CAUSED TO METROBANK BECAUSE OF THE PROPOSAL AND OF THE DEPOSIT

V.

WHETHER METROBANK HAS THE STANDING TO PROSECUTE THE CASE A QUO

VI.

WHETHER THE ASSIGNED ERRORS IN THE PETITION FOR *CERTIORARI* FILED WITH THIS HONORABLE COURT RAISES PURELY QUESTIONS OF FACTS^[9]

In response to the foregoing, the TONDAS maintain that METROBANK has no legal standing to file the present petition without the conformity or authority of the prosecutor as it deals solely with the criminal aspect of the case, a separate action to recover civil liability having already been instituted; that the issues raised in the present petition are purely factual; and that the subject trust receipts obligations have been extinguished by payment or legal compensation.

We find for petitioner bank.

Preliminarily, we shall resolve the issues raised by the TONDAS regarding the standing of METROBANK to file the instant petition and whether the same raises questions of law.

The general rule is that it is only the Solicitor General who is authorized to bring or defend actions on behalf of the People or the Republic of the Philippines once the case is brought before this Court or the Court of Appeals. However, an exception has been made that "if there appears to be grave error committed by the judge or lack of due process, the petition will be deemed filed by the private complainants therein as if it were filed by the Solicitor General."^[10] In that case, the Court gave due course to the petition and allowed the petitioners to argue their case in lieu of the Solicitor General. We accord the same treatment to the instant petition on account of the grave errors committed by the Court of Appeals. We add that no information having been filed yet in court, there is, strictly speaking, no case yet for the People or the Republic of the Philippines. In answer to the second issue raised by the