

THIRD DIVISION

[G.R. No. 237553, July 10, 2019]

**BDO UNIBANK, INC., PETITIONER, VS. ANTONIO CHOA,
RESPONDENT.**

DECISION

LEONEN, J.:

When a demurrer is granted in a criminal case, the private complainant can file a Rule 65 petition on the civil aspect of the case, as long as he or she can show that the trial court committed grave abuse of discretion in granting the demurrer.

This Court resolves a Petition for Review on Certiorari^[1] under Rule 45 of the 1997 Rules of Civil Procedure, assailing the October 24, 2017 Decision^[2] and February 13, 2018 Resolution^[3] of the Court of Appeals in CA-G.R. SP No. 140059.^[4] The Court of Appeals affirmed the November 26, 2014^[5] and February 12, 2015^[6] Orders of the Regional Trial Court, which granted Antonio Choa (Choa)'s Demurrer to Evidence.

On February 28, 2008, an Information^[7] was filed before the Regional Trial Court of Pasig City against Choa, then president and general manager of Camden Industries, Inc. (Camden). He was charged with violating Presidential Decree No. 115, or the Trust Receipts Law, to the prejudice of BDO Unibank, Inc. (BDO), the private complainant. The Information read:

That, on or about and during the period beginning March 12, 1999 until May 20, 1999, in the then Municipality of San Juan, now City of San Juan, a place within the jurisdiction of this Honorable Court, the above named accused, being then the President and General Manager of Camden Industries, Inc., execute several Trust Receipt Agreements with Nos. 0006, 0007, 0008, 0009, 0024, 0025, 0046 and 0047 in favor of Equitable PCI Bank (now Banco De Oro-EPCI, Inc.), herein represented by its Senior Manager Danilo M. De Dios, in consideration of the receipt by the said accused of . . . for which there is now due the sum of Php 7,875,904.96 under the terms of which the accused agreed to sell the same with express obligation to remit to the complainant bank proceeds of the sale and/or turn over the same if not sold or disposed of in accordance with the said Trust Receipt Agreements on demand, but the accused once in possession of the said good, far from complying with his obligation and with unfaithfulness and abuse of confidence, did then and there willfully, unlawfully and feloniously, misappropriate, misapply and convert to his own personal use and benefit the said goods and/or the proceeds of the sale thereof, and despite repeated demands, failed and refused to account for and/or remit the proceeds of the sale thereof, to

the damage and prejudice of the said complainant bank in the aforementioned amount of Php7,875,904.96.

CONTRARY TO LAW.^[8]

Trial ensued. The prosecution presented Gerard K. Santiago (Santiago) and Froilan Carada (Carada) as its witnesses.^[9] The witnesses testified, among others, that per Civil Case No. 70098, entitled "*CAMDEN Industries, Inc. v. Equitable PCI Bank*" (Pasig civil case), which had been elevated to the Court of Appeals, BDO supposedly owed Camden the judgment award of P90 million.^[10] They testified:

- a. The subject trust receipts are for the account of CAMDEN Industries[;]
- b. The complainant bank did not sue CAMDEN for the liability. The only one they sued was CAMDEN's President, the accused;
- c. CAMDEN sued the bank and was awarded P90M plus. The bank was ordered to pay CAMDEN the same amount. The case is now on appeal to the Court of Appeals;
- d. Upon the other hand, the money claim of the bank against CAMDEN and/or for the accused is P20M plus;
- e. On clarificatory question by the court, the prosecution witness Gerard Santiago [a]dmitted that currently the bank is a judgment debtor of CAMDEN in the amount of P90M plus while the bank's claim against CAMDEN/accused is P20M plus[.]^[11]

On August 20, 2014, the prosecution filed its Formal Offer of Documentary Evidence,^[12] which the trial court admitted in its September 12, 2014 Order.^[13] In the same Order, the trial court gave Choa 10 days to comment on the prosecution's evidence.^[14]

On September 25, 2014, Choa filed his Comment.^[15]

Later, on October 13, 2014, Choa filed a Motion for Leave (To file Demurrer to Evidence),^[16] attached to which was his Demurrer to Evidence.^[17] In both pleadings, Choa argued:

It would thus appear that CAMDEN, represented by the accused, and the bank, assuming *arguendo* without admitting the bank's theory of the case, are mutually creditors and debtors of each other (*Art. 1278, Civil Code*). Consequently, their obligations are extinguished proportionately by operation of law. Since the P20M plus being claimed by the bank is more than offset by the P90M plus judgment against the bank, there is

no basis for the claim of violation of the *Trust Receipts Law*. At the very least, it would be impossible under such premises to build the case beyond reasonable doubt.^[18] (Emphasis in the original)

In its October 20, 2014 Order,^[19] the trial court directed the prosecution to comment on Choa's pleading, and Choa's counsel to reply on the comment if needed.^[20]

On October 30, 2014, the prosecution filed its Opposition.^[21] Arguing that the Motion for Leave should be expunged from the records, it claimed that the pleading was *pro-forma* for being filed beyond the five (5)-day reglementary period under Rule 119, Section 23 of the Rules of Court.^[22]

Even if the Motion was timely filed, the prosecution asserted that it should still be denied for lack of basis, maintaining that Choa's civil liabilities could not have been offset by the judgment award granted to Camden in the Pasig civil case. It points out that since Choa's civil liabilities stemmed from his criminal violations of the Trust Receipts Law,^[23] they could not be the subject of compensation.^[24]

The prosecution added that the decision of the trial court, which had awarded Camden P90 million, was reversed and set aside by the Court of Appeals.^[25]

On November 26, 2014, the trial court issued an Order^[26] granting Choa's Demurrer to Evidence. Based on the records and the witnesses' testimonies, it found that the prosecution failed to establish Choa's guilt.^[27]

The trial court found that: (1) the amounts BDO and Camden owed each other—BDO's P90 million judgment debt to Camden, and Camden's P20 million judgment debt to BDO—may be legally compensated; (2) BDO failed to prove that Choa was liable for P7,875,904.96, and that this amount formed part of the P20 million trust receipt; and (3) BDO failed to prove Choa's criminal intent in not paying or turning over the goods.^[28]

From these findings, the trial court declared that "the case is subject to compensatory action, which is civil in nature."^[29]

The dispositive portion of the Regional Trial Court Order read:

WHEREFORE, premises considered, accused Antonio Choa's Demurrer to Evidence is hereby **GRANTED**.

SO ORDERED.^[30] (Emphasis in the original)

The prosecution filed a Motion for Reconsideration,^[31] which the trial court denied in its February 12, 2015 Order.^[32]

Thus, BDO filed before the Court of Appeals a Petition for Certiorari,^[33] assailing the trial court's November 26, 2014 and February 12, 2015 Orders. It argued that the trial court judge committed grave abuse of discretion in:

1. granting Choa's Demurrer to Evidence despite being filed out of time;
2. granting the Demurrer to Evidence without first resolving the Motion for Leave and giving BDO due process;
3. ruling that Choa's civil liabilities may be legally compensated with the judgment award in the Pasig civil case despite it being irrelevant to this case, and despite the award having been reversed by the Court of Appeals;
4. granting the Demurrer to Evidence despite the prosecution having established a *prima facie* case for Choa's violation of the Trust Receipts Law; and
5. ruling that the prosecution failed to present enough proof of Camden's outstanding obligations to BDO despite evidence to the contrary.^[34]

Affirming the trial court's Orders, the Court of Appeals issued its October 24, 2017 Decision^[35] denying BDO's Petition. It found that Choa filed his Motion for Leave within the prescriptive period since the prosecution could not "yet be deemed to have rested its case."^[36] It explained that the trial court only "physically 'admitted'"^[37] in its September 12, 2014 Order the prosecution's Formal Offer of Documentary Evidence, but had yet to rule on its admissibility. This was shown, the Court of Appeals explained, when Choa was also directed to submit his Comment.^[38]

The Court of Appeals added that BDO was not denied due process. It pointed out that the bank's filing of its Opposition and subsequent Motion for Reconsideration showed that it had been given an opportunity to be heard.^[39] The Court of Appeals noted that when the opportunity to be heard is accorded, "there is no denial of procedural due process."^[40]

Finally, the Court of Appeals held that BDO failed to show how the trial court had committed grave abuse of discretion in issuing the September 12, 2014 Order.^[41] Even if the trial court erred in granting Choa's Demurrer to Evidence, the Court of Appeals stated that this error was not "capricious and whimsical as to constitute grave abuse of discretion."^[42]

The dispositive portion of the Court of Appeals Decision read:

WHEREFORE, the instant petition is hereby **DENIED. ACCORDINGLY,** the assailed Orders dated November 26, 2014 and February 12, 2015 of the Regional Trial Court of Pasig City (assigned in San Juan City), Branch 264, in Criminal Case No. 137326, are hereby **AFFIRMED.**

SO ORDERED.^[43] (Emphasis in the original)

BDO moved for reconsideration,^[44] but the Court of Appeals denied the Motion in its February 13, 2018 Resolution.^[45]

Hence, BDO filed this Petition for Review on Certiorari,^[46] assailing the October 24, 2017 Decision and February 13, 2018 Resolution of the Court of Appeals.^[47]

On November 5, 2018, Choa filed his Comment.^[48] In turn, BDO filed its Reply^[49] on February 1, 2019.

Petitioner insists that the Motion for Leave was not timely filed. It avers that under Rule 119, Section 23 of the Rules of Court, respondent should have filed his Motion for Leave within five (5) days from September 12, 2014, when the prosecution supposedly rested its case after its documentary evidence had been admitted by the trial court judge.^[50] It claims that if, according to the Court of Appeals, the prosecution did not rest its case at the time of the filing of the Motion for Leave, then the trial court's judgment granting the Demurrer to Evidence was premature, and therefore, void.^[51]

Moreover, petitioner contends that the trial court should have first ruled on respondent's Motion for Leave,^[52] as this would have helped "in determining whether he is merely stalling the proceedings."^[53] Nonetheless, even if the trial court judge was allowed to resolve respondent's Demurrer to Evidence without first ruling on the Motion, petitioner claims that the prosecution should have been given 10 days from notice of the ruling on the Motion so it could file its Opposition to the Demurrer to Evidence.^[54] What happened, petitioner claims, was that the prosecution was deprived of an opportunity to be heard on both pleadings.^[55]

Petitioner maintains that it was deprived of an opportunity to present extensive evidence on the overpayment in the Pasig civil case as it believed that the trial court would not use the Pasig civil case judgment in resolving the Demurrer to Evidence. It points out that the trial court has consistently stated in three (3) Orders—July 21, 2008, April 14, 2009, and November 8, 2010—that the Pasig civil case was irrelevant to this case. It says it did not know that the trial court would use the Pasig civil case judgment in ruling that the judgment debts may be offset.^[56]

Finally, petitioner avers that the Court of Appeals should have decided on the merits of the Demurrer to Evidence after the trial court judge had committed grave abuse of discretion in:

1. allowing respondent to comment on the Formal Offer of Documentary Evidence despite it having already been admitted;
2. granting the Motion for Leave despite being filed belatedly;