

SECOND DIVISION

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

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

DECISION

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;