

FIRST DIVISION

[G.R. No. 164538, August 09, 2010]

**METROPOLITAN BANK AND TRUST COMPANY, PETITIONER, VS.
ROGELIO REYNADO AND JOSE C. ADRANDEA, ** RESPONDENTS.**

D E C I S I O N

DEL CASTILLO, J.:

"It is a hornbook doctrine in our criminal law that the criminal liability for estafa is not affected by a compromise, for it is a public offense which must be prosecuted and punished by the government on its own motion, even though complete reparation [has] been made of the damage suffered by the private offended party. Since a criminal offense like estafa is committed against the State, the private offended party may not waive or extinguish the criminal liability that the law imposes for the commission of the crime."^[1]

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks the reversal of the Court of Appeals' (CA's) Decision^[2] dated October 21, 2002 in CA-G.R. SP No. 58548 and its further Resolution^[3] dated July 12, 2004 denying petitioner's Motion for Reconsideration.^[4]

Factual Antecedents

On January 31, 1997, petitioner Metropolitan Bank and Trust Company charged respondents before the Office of the City Prosecutor of Manila with the crime of estafa under Article 315, paragraph 1(b) of the Revised Penal Code. In the affidavit^[5] of petitioner's audit officer, Antonio Ivan S. Aguirre, it was alleged that the special audit conducted on the cash and lending operations of its Port Area branch uncovered anomalous/fraudulent transactions perpetrated by respondents in connivance with client Universal Converter Philippines, Inc. (Universal); that respondents were the only voting members of the branch's credit committee authorized to extend credit accommodation to clients up to P200,000.00; that through the so-called Bills Purchase Transaction, Universal, which has a paid-up capital of only P125,000.00 and actual maintaining balance of P5,000.00, was able to make withdrawals totaling P81,652,000.00^[6] against uncleared regional checks deposited in its account at petitioner's Port Area branch; that, consequently, Universal was able to utilize petitioner's funds even before the seven-day clearing period for regional checks expired; that Universal's withdrawals against uncleared regional check deposits were without prior approval of petitioner's head office; that the uncleared checks were later dishonored by the drawee bank for the reason "Account Closed"; and, that respondents acted with fraud, deceit, and abuse of confidence.

In their defense, respondents denied responsibility in the anomalous transactions

with Universal and claimed that they only intended to help the Port Area branch solicit and increase its deposit accounts and daily transactions.

Meanwhile, on February 26, 1997, petitioner and Universal entered into a Debt Settlement Agreement^[7] whereby the latter acknowledged its indebtedness to the former in the total amount of P50,990,976.27^[8] as of February 4, 1997 and undertook to pay the same in bi-monthly amortizations in the sum of P300,000.00 starting January 15, 1997, covered by postdated checks, "plus balloon payment of the remaining principal balance and interest and other charges, if any, on December 31, 2001."^[9]

Findings of the Prosecutor

Following the requisite preliminary investigation, Assistant City Prosecutor Winnie M. Edad (Prosecutor Edad) in her Resolution^[10] dated July 10, 1997 found petitioner's evidence insufficient to hold respondents liable for estafa. According to Prosecutor Edad:

The execution of the Debt Settlement Agreement puts complainant bank in estoppel to argue that the liability is criminal. Since the agreement was made even before the filing of this case, the relations between the parties [have] change[d], novation has set in and prevented the incipience of any criminal liability on the part of respondents.^[11]

Thus, Prosecutor Edad recommended the dismissal of the case:

WHEREFORE, for insufficiency of evidence, it is respectfully recommended that the case be dismissed.^[12]

On December 9, 1997, petitioner appealed the Resolution of Prosecutor Edad to the Department of Justice (DOJ) by means of a Petition for Review.^[13]

Ruling of the Department of Justice

On June 22, 1998, the DOJ dismissed the petition ratiocinating that:

It is evident that your client based on the same transaction chose to file estafa only against its employees and treat with kid gloves its big time client Universal who was the one who benefited from this transaction and instead, agreed that it should be paid on installment basis.

To allow your client to make the choice is to make an unwarranted classification under the law which will result in grave injustice against herein respondents. Thus, if your client agreed that no estafa was committed in this transaction with Universal who was the principal player and beneficiary of this transaction[,], more so with herein respondents whose liabilities are based only on conspiracy with Universal.

Equivocally, there is no estafa in the instant case as it was not clearly shown how respondents misappropriated the P53,873,500.00 which Universal owed your client after its checks deposited with Metrobank were dishonored. Moreover, fraud is not present considering that the Executive Committee and the Credit Committee of Metrobank were duly notified of these transactions which they approved. Further, no damage was caused to your client as it agreed [to] the settlement [with] Universal.^[14]

A Motion for Reconsideration^[15] was filed by petitioner, but the same was denied on March 1, 2000 by then Acting Secretary of Justice Artemio G. Tuquero.^[16]

Aggrieved, petitioner went to the CA by filing a Petition for *Certiorari* & Mandamus.^[17]

Ruling of the Court of Appeals

By Decision^[18] of October 21, 2002, the CA affirmed the twin resolutions of the Secretary of Justice. Citing jurisprudence^[19] wherein we ruled that while novation does not extinguish criminal liability, it may prevent the rise of such liability as long as it occurs prior to the filing of the criminal information in court.^[20] Hence, according to the CA, "[j]ust as Universal cannot be held responsible under the bills purchase transactions on account of novation, private respondents, who acted in complicity with the former, cannot be made liable [for] the same transactions."^[21] The CA added that "[s]ince the dismissal of the complaint is founded on legal ground, public respondents may not be compelled by mandamus to file an information in court."^[22]

Incidentally, the CA totally ignored the Comment^[23] of the Office of the Solicitor General (OSG) where the latter, despite being the statutory counsel of public respondent DOJ, agreed with petitioner that the DOJ erred in dismissing the complaint. It alleged that where novation does not extinguish criminal liability for estafa neither does restitution negate the offense already committed.^[24]

Additionally, the OSG, in sharing the views of petitioner contended that failure to implead other responsible individuals in the complaint does not warrant its dismissal, suggesting that the proper remedy is to cause their inclusion in the information.^[25] This notwithstanding, however, the CA disposed of the petition as follows:

WHEREFORE, the petition is DENIED due course and, accordingly, DISMISSED. Consequently, the resolutions dated June 22, 1998 and March 1, 2000 of the Secretary of Justice are AFFIRMED.

SO ORDERED.^[26]

Hence, this instant petition before the Court.

On November 8, 2004, we required^[27] respondents to file Comment, not a motion to dismiss, on the petition within 10 days from notice. The OSG filed a Manifestation and Motion in Lieu of Comment^[28] while respondent Jose C. Adraneda (Adraneda) submitted his Comment^[29] on the petition. The Secretary of Justice failed to file the required comment on the OSG's Manifestation and Motion in Lieu of Comment and respondent Rogelio Reynado (Reynado) did not submit any. For which reason, we issued a show cause order^[30] on July 19, 2006. Their persistent non-compliance with our directives constrained us to resolve that they had waived the filing of comment and to impose a fine of P1,000.00 on Reynado. Upon submission of the required memorandum by petitioner and Adraneda, the instant petition was submitted for resolution.

Issues

Petitioner presented the following main arguments for our consideration:

1. Novation and undertaking to pay the amount embezzled do not extinguish criminal liability.
2. It is the duty of the public prosecutor to implead all persons who appear criminally liable for the offense charged.

Petitioner persistently insists that the execution of the Debt Settlement Agreement with Universal did not absolve private respondents from criminal liability for estafa. Petitioner submits that the settlement affects only the civil obligation of Universal but did not extinguish the criminal liability of the respondents. Petitioner thus faults the CA in sustaining the DOJ which in turn affirmed the finding of Prosecutor Edad for committing apparent error in the appreciation and the application of the law on novation. By petitioner's claim, citing *Metropolitan Bank and Trust Co. v. Tonda*,^[31] the "negotiations pertain [to] and affect only the civil aspect of the case but [do] not preclude prosecution for the offense already committed."^[32]

In his Comment, Adraneda denies being a privy to the anomalous transactions and passes on the sole responsibility to his co-respondent Reynado as the latter was able to conceal the pertinent documents being the head of petitioner's Port Area branch. Nonetheless, he contends that because of the Debt Settlement Agreement, they cannot be held liable for estafa.

The OSG, for its part, instead of contesting the arguments of petitioner, even prayed before the CA to give due course to the petition contending that DOJ indeed erred in dismissing the complaint for estafa.

Given the facts of the case, the basic issue presented before this Court is whether the execution of the Debt Settlement Agreement precluded petitioner from holding respondents liable to stand trial for estafa under Art. 315 (1)(b) of the Revised Penal Code.^[33]

Our Ruling

We find the petition highly meritorious.

Novation not a mode of extinguishing criminal liability for estafa; Criminal liability for estafa not affected by compromise or novation of contract.

Initially, it is best to emphasize that "novation is not one of the grounds prescribed by the Revised Penal Code for the extinguishment of criminal liability."^[34]

In a catena of cases, it was ruled that criminal liability for estafa is not affected by a compromise or novation of contract. In *Firaza v. People*^[35] and *Recuerdo v. People*,^[36] this Court ruled that in a crime of estafa, reimbursement or belated payment to the offended party of the money swindled by the accused does not extinguish the criminal liability of the latter. We also held in *People v. Moreno*^[37] and in *People v. Ladera*^[38] that "criminal liability for estafa is not affected by compromise or novation of contract, for it is a public offense which must be prosecuted and punished by the Government on its own motion even though complete reparation should have been made of the damage suffered by the offended party." Similarly in the case of *Metropolitan Bank and Trust Company v. Tonda*^[39] cited by petitioner, we held that in a crime of estafa, reimbursement of or compromise as to the amount misappropriated, after the commission of the crime, affects only the civil liability of the offender, and not his criminal liability.

Thus, the doctrine that evolved from the aforecited cases is that a compromise or settlement entered into after the commission of the crime does not extinguish accused's liability for estafa. Neither will the same bar the prosecution of said crime. Accordingly, in such a situation, as in this case, the complaint for estafa against respondents should not be dismissed just because petitioner entered into a Debt Settlement Agreement with Universal. Even the OSG arrived at the same conclusion:

Contrary to the conclusion of public respondent, the Debt Settlement Agreement entered into between petitioner and Universal Converter Philippines extinguishes merely the civil aspect of the latter's liability as a corporate entity but not the criminal liability of the persons who actually committed the crime of estafa against petitioner Metrobank. x x x^[40]

Unfortunately for petitioner, the above observation of the OSG was wittingly glossed over in the body of the assailed Decision of the CA.

Execution of the Debt Settlement Agreement did not prevent the incipience of criminal liability.

Even if the instant case is viewed from the standpoint of the law on contracts, the disposition absolving the respondents from criminal liability because of novation is still erroneous.