

## SPECIAL THIRD DIVISION

[ G.R. No. 149472, August 18, 2004 ]

**JORGE SALAZAR, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES, RESPONDENT.**

### RESOLUTION

**PUNO, J.:**

For resolution is petitioner's Second Motion for Reconsideration filed on February 6, 2003,<sup>[1]</sup> seeking reversal of the Court's Decision<sup>[2]</sup> affirming his conviction by the Court of Appeals<sup>[3]</sup> for estafa under Article 315, par. (b) of the Revised Penal Code. **The Solicitor General, in his Manifestation in Lieu of Comment,<sup>[4]</sup> joined petitioner's reiterated plea for acquittal.** In light of the **joint pleas** of petitioner and the Office of the Solicitor General (OSG), and considering that the right to liberty of an individual is involved, we deem it wise to re-examine our Decision convicting petitioner of estafa.

In our Decision, we stated the facts of the case as follow:

It appears that Skiva International, Inc. ("Skiva") is a New York-based corporation which imports clothes from the Philippines through its buying agent, Olivier (Philippines) Inc. ("Olivier"). Aurora Manufacturing & Development Corporation ("Aurora") and Uni-Group Inc. ("Uni-Group") are domestic corporations which supply finished clothes to Skiva. Mr. Werner Lettmayr is the President of both Aurora and Uni-Group while the petitioner, Jorge Salazar, is the Vice-President and Treasurer of Uni-Group and a consultant of Aurora.

Skiva, through its buying agent, Olivier, has been purchasing finished clothes from Aurora and Uni-Group. When an order is procured for the delivery of clothes, Olivier, issues to the local supplier, Aurora/Uni-Group, a "Purchase Contract" and Olivier issues to Skiva a "Sales Contract." In these transactions, payment is usually made by way of a letter of credit wherein the supplier is paid only upon the presentation of the proper shipping documents to the designated bank.<sup>[5]</sup>

In December 1985, Skiva informed Olivier that it needs ladies jeans to be delivered sometime in January 1986. Olivier, in turn, through its Officer-in-Charge, Ms. Teresita Tujan, contacted Aurora and Uni-Group to supply the jeans.<sup>[6]</sup> Thus, a Purchase Contract dated December 18, 1985 was issued by Olivier to Uni-Group wherein Uni-Group was to supply 700 dozens of three (3) different designs of "Ladies Basic 5 Pockets Stretch Twill Jeans" payable by means of a letter of credit at sight.<sup>[7]</sup> The Purchase Contract was confirmed by Mr. Lettmayr on December 30,

1985.<sup>[8]</sup> A Sales Contract was also issued by Olivier to Skiva containing the same terms and conditions as the Purchase Contract and was confirmed by Mr. Jack Chehebar of Skiva.<sup>[9]</sup>

On January 7, 1986, the parties agreed that Skiva will advance to Aurora/Uni-Group the amount of US\$41,300.00 (then equivalent to P850,370.00 at the exchange rate of P20.59 to US\$1.00) as Aurora/Uni-Group did not have sufficient funds to secure raw materials to manufacture the jeans.<sup>[10]</sup> It was also agreed that the amount advanced by Skiva represents advance payment of its order of 700 dozens of ladies jeans.<sup>[11]</sup> Skiva then issued a check in the said amount payable to Uni-Group.<sup>[12]</sup> However, due to the length of time needed for the check to be cleared, the parties made arrangements to remit the funds instead by way of telegraphic transfer.<sup>[13]</sup> Thus, the check issued by Skiva was returned by Mr. Lettmayr<sup>[14]</sup> and as agreed, the funds were remitted by Skiva from its bank in New York, the Israel Discount Bank, to the joint account of Mr. and Mrs. Jorge Salazar and Mr. and Mrs. Werner Lettmayr at Citibank N.A.<sup>[15]</sup>

On January 16, 1986, petitioner, who had possession and control of the passbook of the said joint account, withdrew the amount of US\$21,675.21<sup>[16]</sup> and on January 22, 1986, petitioner withdrew the amount of US\$20,000.00.<sup>[17]</sup> The prosecution also presented evidence that subsequent to said withdrawals, the amounts of US\$71.70 and US\$63.99 were deducted from the joint account as telegraphic transfer fee and commission for the remittance of the funds to another account.<sup>[18]</sup>

In the meantime, Ms. Tujan contacted Aurora/Uni-Group to follow up on the production of the jeans. She learned that only 3,000 meters out of the 10,000 meters of Litton fabrics required for the order were purchased from Litton Mills by the petitioner.<sup>[19]</sup> 3,000 meters of Litton fabrics are enough to produce only 200 dozens of ladies jeans - an amount insufficient to satisfy the order of Skiva of 700 dozens of ladies twill jeans.<sup>[20]</sup> Upon inquiry with Mr. Lettmayr, the latter advised Ms. Tujan that the query be directed to petitioner as petitioner is in charge of securing the materials.<sup>[21]</sup> However, Ms. Tujan could not locate the petitioner.<sup>[22]</sup>

Consequently, in a letter dated March 13, 1986, demand was made upon Aurora/Uni-Group through its President, Mr. Lettmayr, to return the money advanced in the amount of US\$41,300.00.<sup>[23]</sup>

For failure of Aurora/Uni-Group to deliver the ladies jeans or to account for the US\$41,300.00 despite demand, Skiva, through its local agent represented by Ms. Tujan, filed a criminal complaint for estafa against Mr. Lettmayr and petitioner. After preliminary investigation, the Public Prosecutor dismissed the complaint against Mr. Lettmayr and an information was filed against petitioner.<sup>[24]</sup>

After trial, the lower court convicted herein petitioner of estafa under Article 315, paragraph 1 (b) of the Revised Penal Code, sentencing him to suffer the indeterminate penalty of imprisonment of eight (8) years and one (1) day of *prision mayor* as the minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as the maximum and to pay Uni-Group and Aurora the amount of P595,259.00.<sup>[25]</sup> On March 13, 1997, the lower court denied petitioner's Motion for Reconsideration.<sup>[26]</sup> On appeal, the Court of Appeals affirmed *in toto* the decision of the trial court and denied petitioner's Motion for Reconsideration.<sup>[27]</sup>

The Court denied petitioner's motion for reconsideration in a Resolution dated December 18, 2002.

In his Second Motion for Reconsideration, petitioner raises the following arguments:

- I. In a pure contract of sale, failure of the seller to deliver the goods purchased will not give rise to criminal liability.

x x x

- II. The assailed Decision states that the property rights of Aurora was disturbed by the petitioner and that the trust and confidence that Aurora reposed on the petitioner were betrayed despite the fact that Aurora never claimed so.

x x x

- III. The demand made by Skiva to Aurora could never be treated as a demand to the petitioner because such demand was not relayed to the petitioner.

x x x

- IV. The case of **Saddul, Jr. vs. CA** (192 SCRA 277) squarely applies to the instant case.<sup>[28]</sup>

On the other hand, the OSG, in its Manifestation in Lieu of Comment, contends:

1. The transaction between Skiva and Aurora was one of sale. Thus, if the transaction fails, the obligation to return the advance payment is of civil nature only. Moreover, as correctly held, petitioner had no obligation to account to Skiva.

x x x

2. Aurora/Uni-Group never claimed it was damaged by the petitioner simply because funds were duly accounted for. Raw materials were bought and the jeans were manufactured. Delivery was delayed because of circumstances beyond the control of petitioner.

Moreover, petitioner turned over the rest of the money to Uni-Group/Aurora.

x x x

3. No evidence to prove that petitioner defrauded Aurora; prosecution witness, Mr. Lettmayr, admitted that all the required raw materials had been purchased; jeans were not shipped on account of intervening events.

x x x

4. Testimonial and documentary evidence confirm that Aurora asked for offsetting, Skiva having unpaid accounts with the former.

x x x

5. Absent intent, no criminal act is committed. Likewise, without abuse of confidence, no estafa under paragraph 1(b) of Article 315 of the Revised Penal Code is committed.

x x x

6. The evidence presented does not prove petitioner's guilt beyond reasonable doubt.<sup>[29]</sup>

We find merit in the new motion.

The elements of estafa under Article 315, par. 1 (b) of the Revised Penal Code are the following: (a) that money, goods or other personal property is received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; (b) that there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt; (c) that such misappropriation or conversion or denial is to the prejudice of another; and (d) there is demand by the offended party to the offender.

We reiterate that the contract between Skiva and Aurora was one of sale. After the perfection of the contract of sale, Mr. Werner Lettmayr, representing Aurora/Uni-Group, requested Skiva for advance payment in order to procure the raw materials needed for the 700-dozen ladies' jeans. It was also Mr. Lettmayr who suggested that the advance payment be made to the joint account of himself and his wife, together with petitioner and his wife. As requested, \$41,300.00 was transmitted by Skiva as advance payment. Despite the payment, there was delay in the performance of contract on the part of Aurora/Uni-Group. Petitioner and the OSG contend that under these facts, Skiva has no cause to complain that petitioner committed estafa.

We agree. In **Abeto vs. People**,<sup>[30]</sup> we held that "an advance payment is subject to the disposal of the vendee. If the transaction fails, **the obligation to return the advance payment ensues but this obligation is civil and not of criminal nature.**" In fine, the remedy of Skiva against Aurora/Uni-Group for breaching its contract is a civil, not a criminal suit.