

SECOND DIVISION

[G.R. No. 159288, October 19, 2004]

JOHNSON LEE, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND NEUGENE MARKETING, INC., RESPONDENTS.

D E C I S I O N

CALLEJO, SR., J.:

NEUGENE Marketing, Inc. (NMI) was incorporated on January 27, 1978 with funds provided by the Uy Family. It had an authorized capital stock of P3 million divided into 30,000 shares with a par value of P100 per share. The original incorporators, with their corresponding number of shares and the amounts thereof, are as follows:

Johnson Lee	600	P 60,000.00
Lok Chun Suen	1,200	120,000.00
Charles O. Sy	1,800	180,000.00
Eugenio Flores, Jr.	2,100	210,000.00
Arsenio Yang, Jr.	300	30,000.00
T O T A L	6,000	P600,000.00
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There were two stock dividend declarations, one on June 7, 1980 in the amount of P60,000.00 and another on May 2, 1981 for P40,000.00. On May 15, 1986 Eugenio Flores, Jr. assigned/divested himself of his shares in favor of Sonny Moreno, 1,050 shares; Arsenio Yang, Jr., 700 shares and Charles O. Sy, 700 shares.^[1]

On June 11, 1987, the NMI sold and delivered to the Victorias Milling Company, Inc. (VMCI), in Victorias, Negros Occidental, 77,500 pieces of empty white bags for the price of P565,750.00. NMI issued Charge Invoice No. 0809^[2] dated June 11, 1987 to VMCI covering said sale. On June 18, 1987, VMCI purchased 100,000 pieces of empty white bags from NMI for P730,000.00 for which NMI issued Charge Invoice No. 0810.^[3] On June 25, 1987, VMCI again purchased 28,000 pieces of empty white bags from NMI for the price of P204,400.00 and the latter issued Charge Invoice No. 0811^[4] dated June 25, 1987. In payment of said purchases from NMI, VMCI drew and issued two Bank of the Philippine Islands (BPI) Checks: Check No. 068706 dated August 3, 1987 in the amount of P565,750.00^[5] and Check No. 068993 dated August 19, 1987 in the amount of P934,400.00.^[6] Both checks were payable to the order of NMI.

On October 13, 1987, stockholders owning two-thirds (2/3) of the subscribed capital stock of NMI voted to call a stockholders' meeting. One of the items in the agenda was the dissolution of the corporation.

Pursuant thereto, a special stockholders' meeting was held on October 24, 1987 in

Bacolod City. The following stockholders, who were also directors, were present and voted to dissolve the corporation:

Name of Stockholders	Number of Shares
Arsenio Yang, Jr.	1,050
Charles Sy	2,800
Lok Chun Suen	<u>1,400</u>
Total	5,250

Accordingly, notices were again sent to all stockholders of record, all of whom properly acknowledged the said notices, that a meeting was to be held on November 30, 1987 to consider the dissolution of the corporation. Again the stockholders who attended the October 24, 1987 meeting were present. Upon motion duly seconded, the dissolution was approved. Per Resolution of the Board of Directors, the law firm of Reyes, Treyes & Fudolin Law Office was appointed as trustee to collect all the receivables of the corporation.

At the time of the approval of the dissolution of the corporation on November 30, 1987, the shares of each stockholder were as follows:

<u>Name of Stockholders</u>	<u>Total as of Nov. 30.</u>
Johnson Lee, 600 (subscription); 60 (June 7, 1980 stock dividend); 40 (May 2, 1981 stock dividend) ----- --	700 shares
Lok Chun Suen, 1,200 (subscription); 120 (June 7, 1980 stock dividend); 80 (May 2, 1981 stock dividend) ----- ---	1,400 shares
Charles O. Sy, 1800 (subscription); 180 (June 7, 1980 stock dividend); 120 (May 2, 1981 stock dividend); 700 (acquisition from Eugenio Flores) ----- ---	2,800 shares
Arsenio Yang, Jr., 300 (subscription); 30 (June 7, 1980 stock dividend); 20 (May 2, 1981 stock dividend); 700 (acquisition from Eugenio Flores) ----- --	1,050 shares
Sonny Moreno, 1,050 (acquisition From Eugenio Flores) ----- ----	1,050 shares
Total -----	7,000 shares

Pursuant to Section 11 of the Corporation Code, the Securities and Exchange Commission approved the dissolution of the corporation on March 1, 1988 subject to

compliance of the requirements, such as the sending of notices to stockholders and publication thereof in a newspaper of general circulation, among others.

On March 22, 1988, Joson Lee, Sonny Moreno, Leoncio Tan and Nicanor Martin filed a petition with the Securities and Investigation Clearing Department (SICD) of the Commission praying, among other things, for the annulment or nullification of the Certification of Filing of Resolution of Voluntary Dissolution of NMI for being contrary to law and its by-laws.

In the meantime, the trustee wrote the petitioner, Johnson Lee, on March 8, 1988 requesting him to turn over to it the P1,500,150.00 he received in payment of the empty bags sold by NMI to VCMCI. However, he failed to do so.^[7]

A verified complaint for three (3) counts of estafa was filed against the petitioner and Sonny Moreno with the City Prosecutor's Office. Appended to the complaint were photocopies of Charge Invoice Nos. 0809, 0810, and 0811, issued by NMI to VMCI.

During the requisite preliminary investigation, the petitioner and Moreno submitted their counter-affidavits. The counter-affidavit of the petitioner consisted of five pages.^[8] After the investigation, two (2) Amended Informations were filed against the petitioner and Moreno, with the Regional Trial Court (RTC) of Negros Occidental. Except as to the particulars of the checks, the accusatory portions of the two Informations are identical, thus:

That sometime in the month of August 1987, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused, Johnson Lee, being then the President and Sonny Moreno, the General Manager of Neugene Marketing, Inc., with the duty and responsibility to collect, turn over and deliver their collections to the herein offended party, Neugene Marketing, Inc., a corporation organized and existing by and under the laws of the Philippines, represented herein by its Trustees, Roger Reyes, Ernesto Treyes, and Eutiquio Fudolin, the said accused conspiring, confederating, and acting in concert far from complying with the aforementioned obligation having collected the amount of P565,750.00 covered by BPI Check No. 068766 (*sic*) dated August 3, 1987 as payment of Victorias Milling Company, a customer of the herein offended party, with intent of gain, and with unfaithfulness or abuse of confidence failed and refused to deliver the aforementioned amount to the herein offended party, up to the present, in spite of proper demands, but instead, did, then and there willfully, unlawfully and feloniously convert[ed] and/or misappropriated the same to their personal use and benefit to the damage and prejudice of the herein offended party in the aforementioned amount of FIVE HUNDRED SIXTY-FIVE THOUSAND SEVEN HUNDRED FIFTY (P565,750.00) PESOS, Philippine Currency.

Act contrary to law.^[9]

The cases were docketed as Criminal Cases Nos. 10010 and 10011.

During the trial, the original copies of Charge Invoice Nos. 0809, 0810 and 0811,

and of BPI Check Nos. 068766 and 068993 were not in the custody of the prosecution.

To prove the loss, destruction or non-availability of the original copies of the charge invoices and checks, as well as the authenticity and due execution thereof, the prosecution presented Ban Hua Flores, who testified that she saw the two checks in the office of the petitioner at the Singson Building, Plaza Moraga, Sta. Cruz, Manila. Sometime in 1987, she went to the office of the VMCI and inquired if it still had copies of the two checks and the clerk thereat informed her that it would be difficult to locate the checks as they were stored in the bodega, where many other checks were kept.^[10] Flores also testified that the signatures at the dorsal portion of the checks were those of the petitioner, the President of NMI, with whom she had been working, and that he indorsed and deposited the same on September 4, 1987 with the Solidbank, instead of the BPI Plaza Cervantes branch in Manila, the official depository bank of NMI. According to Flores, she was able to secure microfilm copies of the checks from Solidbank, and was sure that the copies of the checks and invoices were faithful reproductions of the original copies thereof.^[11]

Testifying for the prosecution in obedience to a subpoena issued by the court, Merlita Bayaban, Manager for Corporate Affairs of VMCI, declared that the records section of VMCI, which had custody of all checks and other corporate records, was near her office. She testified that the checks, including their other records, were lost during the flood in 1985.^[12] She also testified on the Certification^[13] issued by Carolina Diaz, the Comptroller of VMCI, confirming the loss of the two checks. She, however, admitted that she did not see the original copies of the checks^[14] and that she was not a signatory thereto.^[15]

Thereafter, the prosecution formally offered in evidence the counter-affidavit of the petitioner during the preliminary investigation, as well as the charge invoices and checks, viz.

"G" NMI Charge Invoice No. 0809 dated June 11, 1987	To prove that Victorias Milling Co., Inc. (VMC) ordered 77,500 pieces of empty bags from NMI on June 11, 1987 and that these bags were delivered to VMC.
"H" NMI Charge Invoice No. 0810 dated June 18, 1987	To prove that VMC ordered 100,000 pieces of empty bags from NMI on June 18, 1987 and that these bags were delivered to VMC.
"I" NMI Charge Invoice No. 0811 dated June 25, 1987	To prove that VMC ordered 28,000 pieces of empty bags from NMI on June 25, 1987 and that these bags were delivered to VMC
"J" Demand letter dated March 8,	To prove that in 1988, NMI made a demand upon the accused for the delivery of

	1988 signed by Atty. Roger Z. Reyes	the amount of of P1,500,150.00 representing VMC's payment for the delivery of the empty bags mentioned in Exhibits "G," "H" and "I."
"J-1 "	Signature appearing above the typewritten name "Roger Z. Reyes" duly identified by the prosecution witness, Mrs. Ban Hua Flores as the signature of Atty. Roger Z. Reyes	To prove the genuineness, authenticity and due execution of Exhibit "J."
"K"	Bank of the Philippine Islands (BPI) Legaspi Village Extension Check No. 068706 dated August 3, 1987 in the amount of P565,750.00	To prove that VMC made a check payable to NMI, in the amount of P565,750, as payment to NMI for the delivery of the empty bags mentioned in Exhibits "G," "H" and "I."
"K- 1"	Signature found on the dorsal side of Exhibit "K" which Mrs. Flores identified as the signature of Accused Johnson Lee.	To prove that the accused Lee received and was in possession of Exhibit "K" and that he indorsed and deposited the same.
"K- 2"	Rubberstamp showing the name of "Solidbank appearing on the dorsal side of Exhibit "K"	To prove that Exhibit "K" was deposited by accused Lee in the Solidbank which is not the official depository bank of NMI, the official NMI depository bank being the BPI Plaza Cervantes Branch.
"L"	BPI Legaspi Village Extension Check No. 068993 dated Aug. 19, 1987 in the Amount of P934,400.00	To prove that VMC made a check payable to NMI in the amount of P934,400, as payment to NMI for the delivery of the empty bags mentioned in Exhibits "G," "H" and "I."
"L- 1"	Signature found on the dorsal side of Exhibit "L" which Mrs. Flores identified as the signature of accused Lee	To prove that the accused Lee received and was in possession of Exhibit "L" and that he indorsed and deposited the same.
"L- 2"	Rubberstamp showing the name	To prove that Exhibit "L" was deposited by accused Lee in