

THIRD DIVISION

[G.R. No. 133176, August 08, 2002]

**PILIPINAS BANK, PETITIONER, VS. ALFREDO T. ONG AND
LEONCIA LIM, RESPONDENTS.**

DECISION

SANDOVAL-GUTIERREZ, J.:

Petition for review on certiorari^[1] of the Resolutions^[2] dated January 9, 1998 and March 25, 1998 of the Court of Appeals in CA-G.R. SP No. 42005, "*Pilipinas Bank vs. The Honorable Secretary of Justice, the City Prosecutor of Makati City, Alfredo T. Ong and Leoncia Lim*," reversing its Decision dated August 29, 1997.

On April 1991, Baliwag Mahogany Corporation (BMC), through its president, respondent Alfredo T. Ong, applied for a domestic commercial letter of credit with petitioner Pilipinas Bank (hereinafter referred to as the bank) to finance the purchase of about 100,000 board feet of "Air Dried, Dark Red Lauan" sawn lumber.

The bank approved the application and issued Letter of Credit No. 91/725-HO in the amount of P3,500,000.00. To secure payment of the amount, BMC, through respondent Ong, executed two (2) trust receipts^[3] providing *inter alia* that it shall turn over the proceeds of the goods to the bank, if sold, or return the goods, if unsold, upon maturity on July 28, 1991 and August 4, 1991.

On due dates, BMC failed to comply with the trust receipt agreement. On November 22, 1991, it filed with the Securities and Exchange Commission (SEC) a Petition for Rehabilitation and for a Declaration in a State of Suspension of Payments under Section 6 (c) of P.D. No. 902-A,^[4] as amended, docketed as SEC Case No. 4109. After BMC informed its creditors (including the bank) of the filing of the petition, a Creditors' Meeting was held to:

(a) inform all creditor banks of the present status of BMC to avert any action which would affect the company's operations, and (b) reach an accord on a common course of action to restore the company to sound financial footing.

On January 8, 1992, the SEC issued an order^[5] creating a Management Committee wherein the bank is represented. The Committee shall, among others, undertake the management of BMC, take custody and control of all its existing assets and liabilities, study, review and evaluate its operation and/or the feasibility of its being restructured.

On October 13, 1992, BMC and a consortium of 14 of its creditor banks entered into a Memorandum of Agreement^[6] (MOA) rescheduling the payment of BMC's existing debts.

On November 27, 1992, the SEC rendered a Decision^[7] approving the Rehabilitation Plan of BMC as contained in the MOA and declaring it in a state of suspension of payments.

However, BMC and respondent Ong defaulted in the payment of their obligations under the rescheduled payment scheme provided in the MOA. Thus, on April 1994, the bank filed with the Makati City Prosecutor's Office a complaint^[8] charging respondents Ong and Leoncia Lim (as president and treasurer of BMC, respectively) with violation of the Trust Receipts Law (PD No. 115), docketed as I.S. No. 94-3324. The bank alleged that both respondents failed to pay their obligations under the trust receipts despite demand.^[9]

On July 7, 1994, 3rd Assistant Prosecutor Edgardo E. Bautista issued a Resolution^[10] recommending the dismissal of the complaint. On July 11, 1994, the Resolution was approved by Provincial Prosecutor of Rizal Herminio T. Ubana, Sr.^[11] The bank filed a motion for reconsideration but was denied.

Upon appeal by the bank, the Department of Justice (DOJ) rendered judgment^[12] denying the same for lack of merit. Its motion for reconsideration was likewise denied.^[13]

On July 5, 1996, the bank filed with this Court a petition for certiorari and mandamus seeking to annul the resolution of the DOJ. In a Resolution dated August 21, 1996, this Court referred the petition to the Court of Appeals for proper determination and disposition.^[14]

On August 29, 1997, the Court of Appeals rendered judgment, the dispositive portion of which reads:

"WHEREFORE, in view of all the foregoing, the assailed resolutions of the public respondents are hereby SET ASIDE and in lieu thereof a new one rendered directing the public respondents to file the appropriate criminal charges for violation of P.D. No. 115, otherwise known as The Trust Receipts Law, against private respondents."^[15]

However, upon respondents' motion for reconsideration, the Court of Appeals reversed itself, holding that the execution of the MOA constitutes novation which "places petitioner Bank in estoppel to insist on the original trust relation and constitutes a bar to the filing of any criminal information for violation of the trust receipts law."^[16]

The bank filed a motion for reconsideration but was denied.^[17] Hence this petition.

Petitioner bank contends that the MOA did not novate, much less extinguish, the existing obligations of BMC under the trust receipt agreement. The bank, through the execution of the MOA, merely assisted BMC to settle its obligations by rescheduling the same. Hence, when BMC defaulted in its payment, all its rights, including the right to charge respondents for violation of the Trust Receipts Law, were revived.

Respondents Ong and Lim maintain that the MOA, which has the effect of a compromise agreement, novated BMC's existing obligations under the trust receipt

agreement. The novation converted the parties' relationship into one of an ordinary creditor and debtor. Moreover, the execution of the MOA precludes any criminal liability on their part which may arise in case they violate any provision thereof.

The only issue for our determination is whether respondents can be held liable for violation of the Trust Receipts Law.

Section 4 of PD No. 115 (The Trust Receipts Law) defines a trust receipt as any transaction by and between a person referred to as the entruster, and another person referred to as the entrustee, whereby the entruster who owns or holds absolute title or security interest over certain specified goods, documents or instruments, releases the same to the possession of the entrustee upon the latter's execution and delivery to the entruster of a signed document called a "trust receipt" wherein the entrustee binds himself to hold the designated 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.^[18]

Failure of the entrustee to turn over the proceeds of the sale of the goods covered by a trust receipt to the entruster or to return the goods, if they were not disposed of, shall constitute the crime of estafa under Article 315, par. 1(b) of the Revised Penal Code.^[19] If the violation or offense is committed by a corporation, the penalty shall be imposed upon the directors, officers, employees or other officials or persons therein responsible for the offense, without prejudice to the civil liabilities arising from the criminal offense.^[20] It is on this premise that petitioner bank charged respondents with violation of the Trust Receipts Law.

Mere failure to deliver the proceeds of the sale or the goods, if not sold, constitutes violation of PD No. 115.^[21] However, what is being punished by the law is the dishonesty and abuse of confidence in the handling of money or goods to the prejudice of another regardless of whether the latter is the owner. ^[22]

In this case, no dishonesty nor abuse of confidence can be attributed to respondents. Record shows that BMC failed to comply with its obligations upon maturity of the trust receipts due to serious liquidity problems, prompting it to file a Petition for Rehabilitation and Declaration in a State of Suspension of Payments. It bears emphasis that when petitioner bank made a demand upon BMC on February 11, 1994 to comply with its obligations under the trust receipts, the latter was already under the control of the Management Committee created by the SEC in its Order dated January 8, 1992.^[23] The Management Committee took custody of all BMC's assets and liabilities, including the red *lauan* lumber subject of the trust receipts, and authorized their use in the ordinary course of business operations. Clearly, it was the Management Committee which could settle BMC's obligations. Moreover, it has not escaped this Court's observation that respondent Ong paid P21,000,000.00 in compliance with the equity infusion required by the MOA. The mala prohibita nature of the offense notwithstanding, respondents' intent to misuse or misappropriate the goods or their proceeds has not been established by the records.^[24]

Did the MOA novate the trust agreement between the parties?