

FIRST DIVISION

[G.R. No. 90828, September 05, 2000]

**MELVIN COLINARES AND LORDINO VELOSO, PETITIONERS, VS.
HONORABLE COURT OF APPEALS, AND THE PEOPLE OF THE
PHILIPPINES, RESPONDENTS.**

DECISION

DAVIDE JR., C.J.:

In 1979 Melvin Colinares and Lordino Veloso (hereafter Petitioners) were contracted for a consideration of P40,000 by the Carmelite Sisters of Cagayan de Oro City to renovate the latter's convent at Camaman-an, Cagayan de Oro City.

On 30 October 1979, Petitioners obtained 5,376 SF Solatone acoustical board 2'x4'x1½", 300 SF tanguile wood tiles 12"x12", 260 SF Marcelo economy tiles and 2 gallons UMYLIN cement adhesive from CM Builders Centre for the construction project.^[1] The following day, 31 October 1979, Petitioners applied for a commercial letter of credit^[2] with the Philippine Banking Corporation, Cagayan de Oro City branch (hereafter PBC) in favor of CM Builders Centre. PBC approved the letter of credit^[3] for P22,389.80 to cover the full invoice value of the goods. Petitioners signed a pro-forma trust receipt^[4] as security. The loan was due on 29 January 1980.

On 31 October 1979, PBC debited P6,720 from Petitioners' marginal deposit as partial payment of the loan.^[5]

On 7 May 1980, PBC wrote^[6] to Petitioners demanding that the amount be paid within seven days from notice. Instead of complying with PBC's demand, Veloso confessed that they lost P19,195.83 in the Carmelite Monastery Project and requested for a grace period of until 15 June 1980 to settle the account.^[7]

PBC sent a new demand letter^[8] to Petitioners on 16 October 1980 and informed them that their outstanding balance as of 17 November 1979 was P20,824.40 exclusive of attorney's fees of 25%.^[9]

On 2 December 1980, Petitioners proposed^[10] that the terms of payment of the loan be modified as follows: P2,000 on or before 3 December 1980, and P1,000 per month starting 31 January 1980 until the account is fully paid. Pending approval of the proposal, Petitioners paid P1,000 to PBC on 4 December 1980,^[11] and thereafter P500 on 11 February 1981,^[12] 16 March 1981,^[13] and 20 April 1981.^[14] Concurrently with the separate demand for attorney's fees by PBC's legal counsel, PBC continued to demand payment of the balance.^[15]

On 14 January 1983, Petitioners were charged with the violation of P.D. No. 115 (Trust Receipts Law) in relation to Article 315 of the Revised Penal Code in an Information which was filed with Branch 18, Regional Trial Court of Cagayan de Oro City. The accusatory portion of the Information reads:

That on or about October 31, 1979, in the City of Cagayan de Oro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused entered into a trust receipt agreement with the Philippine Banking Corporation at Cagayan de Oro City wherein the accused, as entrustee, received from the entruster the following goods to wit:

Solatone Acoustical board
Tanguile Wood Tiles
Marcelo Cement Tiles
Umylin Cement Adhesive

with a total value of P22,389.80, with the obligation on the part of the accused-entrustee to hold the aforesaid items in trust for the entruster and/or to sell on cash basis or otherwise dispose of the said items and to turn over to the entruster the proceeds of the sale of said goods or if there be no sale to return said items to the entruster on or before January 29, 1980 but that the said accused after receipt of the goods, with intent to defraud and cause damage to the entruster, conspiring, confederating together and mutually helping one another, did then and there wilfully, unlawfully and feloniously fail and refuse to remit the proceeds of the sale of the goods to the entruster despite repeated demands but instead converted, misappropriated and misapplied the proceeds to their own personal use, benefit and gain, to the damage and prejudice of the Philippine Banking Corporation, in the aforesaid sum of P22,389.80, Philippine Currency.

Contrary to PD 115 in relation to Article 315 of the Revised Penal Code.
[16]

The case was docketed as Criminal Case No. 1390.

During trial, petitioner Veloso insisted that the transaction was a "clean loan" as per verbal guarantee of Cayo Garcia Tuiza, PBC's former manager. He and petitioner Colinares signed the documents without reading the fine print, only learning of the trust receipt implication much later. When he brought this to the attention of PBC, Mr. Tuiza assured him that the trust receipt was a mere formality.^[17]

On 7 July 1986, the trial court promulgated its decision^[18] convicting Petitioners of estafa for violating P.D. No. 115 in relation to Article 315 of the Revised Penal Code and sentencing each of them to suffer imprisonment of two years and one day of *prision correccional* as minimum to six years and one day of *prision mayor* as maximum, and to solidarily indemnify PBC the amount of P20,824.44, with legal interest from 29 January 1980, 12 % penalty charge per annum, 25% of the sums due as attorney's fees, and costs.

The trial court considered the transaction between PBC and Petitioners as a trust

receipt transaction under Section 4, P.D. No. 115. It considered Petitioners' use of the goods in their Carmelite monastery project an act of "disposing" as contemplated under Section 13, P.D. No. 115, and treated the charge invoice^[19] for goods issued by CM Builders Centre as a "document" within the meaning of Section 3 thereof. It concluded that the failure of Petitioners to turn over the amount they owed to PBC constituted estafa.

Petitioners appealed from the judgment to the Court of Appeals which was docketed as CA-G.R. CR No. 05408. Petitioners asserted therein that the trial court erred in ruling that they violated the Trust Receipt Law, and in holding them criminally liable therefor. In the alternative, they contend that at most they can only be made civilly liable for payment of the loan.

In its decision^[20] 6 March 1989, the Court of Appeals modified the judgment of the trial court by increasing the penalty to six years and one day of *prision mayor* as minimum to fourteen years eight months and one day of *reclusion temporal* as maximum. It held that the documentary evidence of the prosecution prevails over Veloso's testimony, discredited Petitioners' claim that the documents they signed were in blank, and disbelieved that they were coerced into signing them.

On 25 March 1989, Petitioners filed a Motion for New Trial/Reconsideration^[21] alleging that the "Disclosure Statement on Loan/Credit Transaction"^[22] (hereafter Disclosure Statement) signed by them and Tuiza was suppressed by PBC during the trial. That document would have proved that the transaction was indeed a loan as it bears a 14% interest as opposed to the trust receipt which does not at all bear any interest. Petitioners further maintained that when PBC allowed them to pay in installment, the agreement was novated and a creditor-debtor relationship was created.

In its resolution^[23] of 16 October 1989 the Court of Appeals denied the Motion for New Trial/Reconsideration because the alleged newly discovered evidence was actually forgotten evidence already in existence during the trial, and would not alter the result of the case.

Hence, Petitioners filed with us the petition in this case on 16 November 1989. They raised the following issues:

I. WHETHER OR NOT THE DENIAL OF THE MOTION FOR NEW TRIAL ON THE GROUND OF NEWLY DISCOVERED EVIDENCE, NAMELY, "DISCLOSURE ON LOAN/CREDIT TRANSACTION," WHICH IF INTRODUCED AND ADMITTED, WOULD CHANGE THE JUDGMENT, DOES NOT CONSTITUTE A DENIAL OF DUE PROCESS.

2. ASSUMING THERE WAS A VALID TRUST RECEIPT, WHETHER OR NOT THE ACCUSED WERE PROPERLY CHARGED, TRIED AND CONVICTED FOR VIOLATION OF SEC. 13, PD NO. 115 IN RELATION TO ARTICLE 315 PARAGRAPH (I) (B) NOTWITHSTANDING THE NOVATION OF THE SO-CALLED TRUST RECEIPT CONVERTING THE TRUSTOR-TRUSTEE RELATIONSHIP TO CREDITOR-DEBTOR SITUATION.

In its Comment of 22 January 1990, the Office of the Solicitor General urged us to deny the petition for lack of merit.

On 28 February 1990 Petitioners filed a Motion to Dismiss the case on the ground that they had already fully paid PBC on 2 February 1990 the amount of P70,000 for the balance of the loan, including interest and other charges, as evidenced by the different receipts issued by PBC,^[24] and that the PBC executed an Affidavit of desistance.^[25]

We required the Solicitor General to comment on the Motion to Dismiss.

In its Comment of 30 July 1990, the Solicitor General opined that payment of the loan was akin to a voluntary surrender or plea of guilty which merely serves to mitigate Petitioners' culpability, but does not in any way extinguish their criminal liability.

In the Resolution of 13 August 1990, we gave due course to the Petition and required the parties to file their respective memoranda.

The parties subsequently filed their respective memoranda.

It was only on 18 May 1999 when this case was assigned to the *ponente*. Thereafter, we required the parties to move in the premises and for Petitioners to manifest if they are still interested in the further prosecution of this case and inform us of their present whereabouts and whether their bail bonds are still valid.

Petitioners submitted their Compliance.

The core issues raised in the petition are the denial by the Court of Appeals of Petitioners' Motion for New Trial and the true nature of the contract between Petitioners and the PBC. As to the latter, Petitioners assert that it was an ordinary loan, not a trust receipt agreement under the Trust Receipts Law.

The grant or denial of a motion for new trial rests upon the discretion of the judge. New trial may be granted if: (1) errors of law or irregularities have been committed during the trial prejudicial to the substantial rights of the accused; or (2) new and material evidence has been discovered which the accused could not with reasonable diligence have discovered and produced at the trial, and which, if introduced and admitted, would probably change the judgment.^[26]

For newly discovered evidence to be a ground for new trial, such evidence must be (1) discovered after trial; (2) could not have been discovered and produced at the trial even with the exercise of reasonable diligence; and (3) material, not merely cumulative, corroborative, or impeaching, and of such weight that, if admitted, would probably change the judgment.^[27] It is essential that the offering party exercised reasonable diligence in seeking to locate the evidence before or during trial but nonetheless failed to secure it.^[28]

We find no indication in the pleadings that the Disclosure Statement is a newly discovered evidence.

Petitioners could not have been unaware that the two-page document exists. The Disclosure Statement itself states, "NOTICE TO BORROWER: YOU ARE ENTITLED TO A COPY OF THIS PAPER WHICH YOU SHALL SIGN."^[29] Assuming Petitioners' copy was then unavailable, they could have compelled its production in court,^[30] which they never did. Petitioners have miserably failed to establish the second requisite of the rule on newly discovered evidence.

Petitioners themselves admitted that "they searched again their voluminous records, meticulously and patiently, until they discovered this new and material evidence" only upon learning of the Court of Appeals' decision and after they were "shocked by the penalty imposed."^[31] Clearly, the alleged newly discovered evidence is mere forgotten evidence that jurisprudence excludes as a ground for new trial.^[32]

However, the second issue should be resolved in favor of Petitioners.

Section 4, P.D. No. 115, the Trust Receipts Law, defines a trust receipt transaction as any transaction by and between a person referred to as the entruster, and another person referred to as the trustee, 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 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 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.

There are two possible situations in a trust receipt transaction. The first is covered by the provision which refers to *money* received under the obligation involving the duty to deliver it (entregarla) to the owner of the merchandise sold. The second is covered by the provision which refers to merchandise received under the obligation to "return" it (devolvera) to the owner.^[33]

Failure of the trustee to turn over the proceeds of the sale of the goods, covered by the trust receipt to the entruster or to return said goods if they were not disposed of in accordance with the terms of the trust receipt shall be punishable as estafa under Article 315 (1) of the Revised Penal Code,^[34] without need of proving intent to defraud.

A thorough examination of the facts obtaining in the case at bar reveals that the transaction intended by the parties was a simple loan, not a trust receipt agreement.

Petitioners received the merchandise from CM Builders Centre on 30 October 1979. On that day, ownership over the merchandise was already transferred to Petitioners who were to use the materials for their construction project. It was only a day later, 31 October 1979, that they went to the bank to apply for a loan to pay for the merchandise.

This situation belies what normally obtains in a pure trust receipt transaction where