

SIXTH DIVISION

[CA-G.R. SP NO. 124558, May 29, 2014]

**TONY N. CHUA, JIMMY N. CHUA AND ERNEST T. JENG,
PETITIONERS, VS. SECRETARY OF JUSTICE AND BDO UNIBANK,
INC., RESPONDENTS.**

D E C I S I O N

CRUZ, R.A. J.:

THE CASE

This is a Petition for Certiorari under Rule 65 of the 1997 Rules on Civil Procedure seeking the review and reversal of the Resolution^[1] dated March 30, 2011 issued by the Secretary of Justice in NPS No. XV-05-INV-09F-01780 entitled "BDO Unibank, Inc. v. Tony N. Chua, Jimmy N. Chua and Ernest T. Jeng" the dispositive portion of which reads as follows:

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"WHEREFORE, premises considered, the motion for reconsideration is hereby GRANTED. Resolution No. 1479, s. 2010 of this Office is REVERSED. The City Prosecutor of Makati City is directed to file four (4) counts of estafa under Article 315, par. 1(b) of the Revised Penal Code in relation to the provisions of P.D. No. 115 against respondents TONY N. CHUA, JIMMY N. CHUA and ERNEST T. JENG, and report on the action taken within ten (10) days from receipt hereof.

"SO ORDERED."

X X X

They likewise assail the Resolution^[2] dated February 20, 2012 issued by the Secretary of Justice in the same case denying their Motion for Reconsideration.

THE ANTECEDENTS

BDO Unibank, Inc., the surviving entity in the merger between Banco de Oro Universal Bank, Inc. and Equitable PCI Bank (the surviving entity in the merger between Equitable Banking Corporation and PCI Banking Corporation) filed a complaint against Tony N. Chua, Jimmy N. Chua and Ernest T. Jeng, the responsible officers of NF-Agri-Business Corporation (NF-ABC) for four (4) counts of violation of Presidential Decree No. 115, otherwise known as the Trust Receipts Law. It was filed with the Office of the City Prosecutor, Makati City and docketed as IS No. XV-05-INV-09F-017805.

It alleged that, in 1999, Equitable Banking Corporation issued commercial letters of credit and, thereafter, imported the following merchandise for the account of NF-

Agri-Business Corporation (NF-ABC): (1) Peruvian Fish Meal at US\$345/mt, (2) Soybean Meal in Bulk at US\$154.34/mt; (3) Solvent Extracted Soybean Meal in Bulk at US\$151.36/mt, and (4) Soybean Meal in Bulk at US\$181.88/mt. The imported merchandise were delivered to NF-ABC. Tony N. Chua, Jimmy N. Chua and Ernest T. Jeng executed the corresponding trust receipts as follows:

Trust Receipt No.	Date of Execution of Trust Receipt	Amount
FSA 70410361PRL	June 16, 1999	P4,111,175.25
FSA 704100470PRL	July 1, 1999	P8,749,580.10
FSA 704100453PRL		P3,850,507.46

September 8, 1999

FSA 704100470	January 21, 2000	P3,698,375.42
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All the trust receipts were payable in 90 days from their dates of execution. After the due dates, NF-ABC failed to pay in full its obligation under the trust receipts. On December 16, 2008, BDO Unibank, Inc. demanded from NF-ABC payment of the outstanding trust receipts obligation in the amount of Php17,430,882.88, but despite demand, NF-ABC failed to pay the same or turn over the proceeds of the sale of goods covered by its trust receipts, or the goods, if unsold.

Ernest Jeng and Tony N. Chua and Jimmy N. Chua respectively filed their counter-affidavits explaining that due to the Asian Financial Crisis which hit the country in the year 1999 to 2000, and the successive typhoons at that time, NF-ABC was severely affected. Their goods being perishable which must be disposed of immediately, they encountered difficulties in looking for buyers of the goods, and they were constrained to sell the goods at a non-profitable price, while some the goods perished. Nevertheless, NF-ABC maintained and continued its commitment to fully repay its debt. It entered into negotiations with Equitable PCI Bank on how its debt may be paid and they reached an agreement with respect to the terms of the payment of the principal obligation plus interest consistent with the projected cash flow of NF-ABC. The agreement was reduced into writing as evidenced by the schedule of payment. NF-ABC issued post-dated checks until April 2002, after which they proposed a revised repayment scheme and issued anew post-dated checks until March 2004, ultimately reducing their outstanding obligation to Php17,430,828.88. The respondents therein argued that there has already been a novation because the trust receipt transaction was converted into a simple loan obligation.

After the parties have filed their respective affidavits, the City Prosecutors Office of Makati City issued a Resolution^[3] dated November 25, 2009 dismissing the complaint filed by private respondent. The City Prosecutor found that there was novation under the circumstances because the long-term payment is inconsistent with petitioners' liability under the trust receipts, thus:

x x x

"There is novation as EPCI and NF-ABC freely and voluntarily consented to restructure their loan agreement consistent with the projected cash flow of NF-ABC thus converting the Letter of Credit-Trust Receipt Transaction regime into an ordinary civil obligation. In fact, it was EPCI that prepared the schedule of payments subject for approval of NF-ABC thus a clear manifestation that EPCI unequivocally agreed to the restructuring of the loan. The schedule of payments presented by EPCI undoubtedly changed the nature of the prior agreement of the parties as it now involves a new scheme of payment and interest which alters the essence of the old obligation. Therefore, by virtue of novation, the terms and conditions previously implemented are clearly incompatible with the new one brought about by the restructuring of terms."

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It was further held that even if there was no novation, there was neither dishonesty nor abuse of confidence.

BDO Unibank, Inc. filed a Motion for Reconsideration to the said Resolution which was denied by the City Prosecutors Office of Makati City, finding that no new material evidence was raised that would warrant its reversal or modification.

BDO Unibank, Inc. then filed a Petition for Review with the Department of Justice which initially issued a Resolution^[4] dated June 1, 2010 affirming the City Prosecutors Office's Resolutions dismissing the complaint against Tony N. Chua, Jimmy N. Chua and Ernest T. Jeng.

Unyielding, BDO Unibank, Inc. filed a Motion for Reconsideration of the said Resolution. In the assailed Resolution dated March 20, 2011, the Department of Justice reversed its earlier findings and granted the Motion for Reconsideration of BDO Unibank, Inc., agreeing with the latter that no novation took place. Thus:

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"x x x In the instant case there appears to be no clear essential incompatibility but merely modifications as regards the obligations of the respondents in the subject trust receipts vis-a-vis the alleged schedule of payment claimed by them. In sum, there was no clear intention of the parties to enter into novation as a mode of extinguishment of their rights and obligations duly embodied in the trust receipts, whose object, cause and principal conditions still subsist and remain in force and effect.

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"Thus, mere failure of the respondents to turn over the proceeds of the sale of the goods covered by the trust receipts to the complainant or to return the goods if they were not disposed of is the gravamen of the offense charged and constitutes a violation of P.D. No. 115. There is, therefore, sufficient evidence to establish the existence of probable cause to indict respondents of the crime of estafa. The "why" or the reasons and underlying causes of their failure to do so are matters of defense and must be ventilated in court."

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This time, it was Tony N. Chua, Jimmy N. Chua and Ernest T. Jeng who filed a Motion for Reconsideration but the same was denied by the Secretary of Justice in its Resolution dated February 20, 2012.

Hence, this petition.

THE ISSUE BEFORE US

WHETHER PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION IN CAVALIERLY REVERSING ITS EARLIER RESOLUTION DATED 1 JUNE 2010 AND FINDING THAT THERE WAS NO NOVATION THAT TOOK PLACE BUT A MERE MODIFICATION OF THE PETITIONER'S OBLIGATION.

OUR RULING

Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that the full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion.^[5]

We find no grave abuse of discretion attendant in this case.

What is made a criminal offense under P.D. No. 115 is the misuse and/or misappropriation of goods or proceeds realized from the sale of goods, documents or instruments released under trust receipts.^[6] The relevant penal provision therein states:

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"Section 13. Penalty clause. The failure of an entrustee to turn over the proceeds of the sale of the goods, documents or instruments covered by a trust receipt to the extent of the amount owing to the entruster or as appears in the trust receipt or to return said goods, documents or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt shall constitute the crime of estafa, punishable under the provisions of Article Three hundred and fifteen, paragraph one (b) of Act Numbered Three thousand eight hundred and fifteen, as amended, otherwise known as the Revised Penal Code. If the violation or offense is committed by a corporation, partnership, association or other juridical entities, the penalty provided for in this Decree 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."

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Section 1 (b), Article 315 of the Revised Penal Code under which the violation is made to fall, states:

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