

## SECOND DIVISION

[ G.R. NO. 158131, August 08, 2007 ]

### **SOCIAL SECURITY SYSTEM, PETITIONER, VS. DEPARTMENT OF JUSTICE, JOSE V. MARTEL, OLGA S. MARTEL, AND SYSTEMS AND ENCODING CORPORATION, RESPONDENTS.**

#### **D E C I S I O N**

**CARPIO, J.:**

#### **The Case**

This is a petition for review<sup>[1]</sup> filed by the Social Security System (petitioner) of the Decision<sup>[2]</sup> dated 17 October 2002 and Resolution dated 5 May 2003 of the Court of Appeals. The Decision of 17 October 2002 affirmed the ruling of the Department of Justice (DOJ) dismissing petitioner's complaint against respondents Jose V. Martel, Olga S. Martel and five other individuals<sup>[3]</sup> for violation of Section 22(a) and (b) in relation to Section 28(e) of Republic Act No. 1161 (RA 1161),<sup>[4]</sup> as amended by Republic Act No. 8282 (RA 8282),<sup>[5]</sup> for non-remittance of contributions to petitioner. The 5 May 2003 Resolution denied petitioner's motion for reconsideration.

#### **The Facts**

Respondents Jose V. Martel and Olga S. Martel (respondent Martels) are directors of respondent Systems and Encoding Corporation (SENCOR), an information technology firm, with respondent Jose V. Martel serving as Chairman of the Board of Directors. Petitioner is a government-owned and controlled corporation mandated by its charter, RA 1161, to provide financial benefits to private sector employees. SENCOR is covered by RA 1161, as amended by RA 8282, Section 22 of which requires employers like SENCOR to remit monthly contributions to petitioner representing the share of the employer and its employees.

In 1998, petitioner filed with the Pasay City Prosecutor's Office a complaint against respondent Martels and their five co-accused (docketed as I.S. No. 98-L-1534) for SENCOR's non-payment of contributions amounting to P6,936,435.80 covering the period January 1991 to May 1997. To pay this amount, respondent Martels offered to assign to petitioner a parcel of land in Tagaytay City covered by Transfer Certificate of Title No. 26340 issued under respondent Martels' name. Petitioner accepted the offer "subject to the condition that x x x [respondent Martels] will x x x settle their obligation either by way of *dacion en pago* or through cash settlement within a reasonable time x x x."<sup>[6]</sup> Thus, petitioner withdrew its complaint from the Pasay City Prosecutor's Office but reserved its right to revive the same "in the event that no settlement is arrived at." Accordingly, the Pasay City Prosecutor's Office dismissed I.S. No. 98-L-1534.

In December 2001, respondent Jose V. Martel wrote petitioner offering, in lieu of the Tagaytay City property, computer-related services. The record does not disclose petitioner's response to this new offer but on 7 December 2001, petitioner filed with the Pasay City Prosecutor's Office another complaint against respondent Martels and their five co-accused (docketed as I.S. No. 00-L-7142) for SENCOR's non-remittance of contributions, this time from February 1991 to October 2000 amounting to P21,148,258.30.

In their counter-affidavit, respondent Martels and their co-accused alleged that petitioner is estopped from holding them criminally liable since petitioner had accepted their offer to assign the Tagaytay City property as payment of SENCOR's liability. Thus, according to the accused, the relationship between SENCOR and petitioner was "converted" into an ordinary debtor-creditor relationship through novation.

### **The Ruling of the Pasay City Prosecutor's Office**

In the Resolution of 28 February 2001, Pasay City Assistant Prosecutor Artemio Puti (Prosecutor Puti) found probable cause to indict respondent Martels for violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended by RA 8282.<sup>[7]</sup> Prosecutor Puti rejected respondent Martels' claim of "negation" of criminal liability by novation, holding that (1) SENCOR's criminal liability was already "consummated" before respondent Martels offered to pay SENCOR's liability and (2) the *dacion en pago* involving the Tagaytay City property did not materialize. Prosecutor Puti noted that respondent Martels did not dispute petitioner's claim on SENCOR's non-remittance of contributions.<sup>[8]</sup> Accordingly, the Pasay City Prosecutor's Office filed with the Regional Trial Court of Pasay City the corresponding Information against respondent Martels, docketed as Criminal Case No. 01-0517.

Respondent Martels appealed to the DOJ.

### **The Ruling of the Department of Justice**

In the Resolution dated 18 May 2001 signed by DOJ Undersecretary Manuel A.J. Teehankee, the DOJ granted respondent Martels' appeal, set aside Prosecutor Puti's Resolution of 28 February 2001, and ordered the withdrawal of the Information filed in Criminal Case No. 01-0517. The DOJ found that respondent Martels and petitioner entered into a compromise agreement before the filing of the Information in Criminal Case No. 01-0517 and that such "negated" any criminal liability on respondent Martels' part. The DOJ Resolution pertinently reads:

From the facts obtaining, it cannot be denied that the dismissal of the first complaint docketed as I.S. No. 98-L-1534 constituted the compromise agreement between the parties whereby complainant SSS agreed to respondents' mode of settling their liability through a "*dacion en pago*". Consequently, the original relation between the parties was converted to that of an ordinary creditor-debtor relationship thereby extinguishing the original obligation by a new one. Complainant, therefore, cannot insist on the original trust it had with respondents existing prior to the dismissal of the former complaint (I.S. No. 98-L-1534) by filling [sic] the present complaint (I.S. No. 00-L-7142 now subject of this appeal). Incidentally, this Office considers the latter

complaint as a mere refilling [sic] of the former already compromised and dismissed [complaint], because of the similarity of the parties and causes of action.

After the dismissal of the complaint in I.S. No. 98-L-1534 and prior to the filing of the complaint at bar docketed as 00-L-7142, respondents have exerted great effort towards complying with the terms and conditions of the compromise by way of "*dacion en pago*". For example, respondents cite their arrangement for ocular inspection of the Tagaytay land by the Presidential Commission on Tagaytay-Taal and with the Municipal Engineer of Laurel, Batangas. The approval of the said commission to build a 12-storey building had been complied with. This is not disputed by complainant. Access roads were acquired by respondents from adjacent owners, ready to be titled in complainant's name. Papers and permits like ecological impact certification, site resurvey, soil test and site appraisal were secured from various offices like the Municipality of Laurel, the Municipal Engineer, the Presidential Commission on Tagaytay-Taal, the Philippine Volcanology Commission, the Bureau of Lands and the Department of Agriculture, among others.

On the part of complainant, it equally shows [sic] adherence to the agreement to compromise. Records show that on October 1999, one of its officers, Atty. Mariano Pablo S. Tolentino, assistant vice-president, had expressed in writing his finding to the effect that "(they) are satisfied to see the lot that (respondents) have negotiated with Congressman Dumpit that (respondents) offered as access road to (respondents[']) property" (Annex "8" of Petition for Review). And, as borne by the records, a Dacion En Pago Committee had been created by complainant SSS precisely to set the mechanism of the settlement in motion. Further, respondents proposed an alternative mode of settlement through computer-related services, which proposal was submitted to complainant as late as December 1, 2000.

Verily, the foregoing facts indelibly show that the parties had acted with an obvious intention to compromise. Hence, respondents' reliance on the doctrine of incipient criminal liability had [sic] factual and legal bases. While the rule provides that novation does not extinguish criminal liability, this rule, however holds true only if a criminal information is already filed in court. Before that bench mark point, the criminal liability is only at its incipient stage and the new relation between the parties forged at such stage had the effect of negating the criminal liability of the offender (People vs. Galsim, People vs. Trinidad, 53 OG 731). x x x x

In fine, the compromise agreement between the parties whereby respondents' obligation will be settled through a "*dacion en pago*" and the dismissal of the complaint in I.S. No. 98-L-1534 has [sic] all the earmarks of novation negating respondents' criminal liability. Ergo, complainant is precluded from filing the present criminal complaint against respondents.<sup>[9]</sup>

Petitioner sought reconsideration but the DOJ denied its motion in the Resolution of 20 September 2001.

Petitioner appealed to the Court of Appeals in a petition for certiorari.

### **The Ruling of the Court of Appeals**

In its Decision of 17 October 2002, the Court of Appeals affirmed the DOJ's rulings and dismissed petitioner's petition. The appellate court deferred to the DOJ's power to review rulings of prosecutors and held that in reversing Prosecutor Puti's findings, the DOJ did not act with grave abuse of discretion.<sup>[10]</sup>

Petitioner sought reconsideration but the appellate court denied its motion in the Resolution of 5 May 2003.

Hence, this petition. Petitioner contends that the Court of Appeals erred in affirming the DOJ's rulings because (1) respondent Martels were charged not with Estafa but with violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended, a special law impressed with public interest; (2) petitioner did not agree to settle respondent Martels' criminal liability; and (3) novation serves only to negate civil, but not criminal, liability.

In their Comment, respondent Martels countered that the DOJ correctly applied the concept of novation as they had settled SENCOR's liability. Respondent Martels added that as of the filing of their Comment, they had already paid P17,887,442.54 of SENCOR's liability.

In its Reply, petitioner contended that although respondent Martels attempted to pay SENCOR's overdue contributions through *dacion en pago*, no payment took place, as evidenced by respondent Martels' alternative offer to provide computer related services to petitioner instead of assigning the Tagaytay City realty. On respondent Martels' partial payment of SENCOR's liability, petitioner contended that such does not preclude the resolution of this petition.

### **The Issue**

The issue is whether the concept of novation serves to abate the prosecution of respondent Martels for violation of Section 22(a) and (b) in relation to Section 28(e) of RA 1161, as amended.

### **The Ruling of the Court**

We rule in the negative and accordingly grant the petition.

### ***The Concept of Novation Finds No Application Here***

Novation, a civil law concept relating to the modification of obligations,<sup>[11]</sup> takes place when the parties to an existing contract execute a new contract which either changes the object or principal condition of the original contract, substitutes the person of the debtor, or subrogates a third person in the rights of the creditor.<sup>[12]</sup> The effect is either to modify or extinguish the original contract. In its extinctive form, the new obligation replaces the original, extinguishing the obligor's obligations under the old contract.<sup>[13]</sup>

This Court first recognized the possibility of applying the concept of novation to criminal cases in *People v. Nery*,<sup>[14]</sup> involving a case for Estafa. In that case, the Court observed that although novation is not one of the means recognized by the Revised Penal Code to extinguish criminal liability,<sup>[15]</sup> it may "prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction," provided the novation takes place before the filing of the Information with the trial court. We held:

The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it x x x.

**It may be observed in this regard that novation is not one of the means recognized by the Penal Code whereby criminal liability can be extinguished; hence, the role of novation may only be to either prevent the rise of criminal liability or to cast doubt on the true nature of the original basic transaction, whether or not it was such that its breach would not give rise to penal responsibility, as when money loaned is made to appear as a deposit, or other similar disguise is resorted to x x x.<sup>[16]</sup> (Emphasis supplied)**

Thus, novation has been invoked to reverse convictions in cases where an underlying contract initially defined the relation of the parties such as the contract in sale on commission in Estafa cases<sup>[17]</sup> or the contract in sale of goods in cases of violation of the Trust Receipts Law.<sup>[18]</sup> Further, the party invoking novation must prove that the new contract did indeed take effect.<sup>[19]</sup>

The facts of this case negate the application of novation. In the first place, there is, between SENCOR and petitioner, no original contract that can be replaced by a new contract changing the object or principal condition of the original contract, substituting the person of the debtor, or subrogating a third person in the rights of the creditor. The original relationship between SENCOR and petitioner is defined by law - RA 1161, as amended - which requires employers like SENCOR to make periodic contributions to petitioner under pain of criminal prosecution. Unless Congress enacts a law further amending RA 1161 to give employers a chance to settle their overdue contributions to prevent prosecution, no amount of agreements between petitioner and SENCOR (represented by respondent Martels) can change the nature of their relationship and the consequence of SENCOR's non-payment of contributions.

The indispensability of a prior contractual relation between the complainant and the accused as requisite for the application of novation in criminal cases was underscored in *People v. Tanjutco*.<sup>[20]</sup> In that case, the accused, who was charged