

**[ G.R. NO. 155647, November 23, 2007 ]**

**METROPOLITAN BANK & TRUST COMPANY, PETITIONER, VS.  
JIMMY GO AND BENJAMIN GO BAUTISTA ALIAS BENJAMIN GO,  
RESPONDENTS.**

**DECISION**

**NACHURA, J.:**

Petitioner Metropolitan Bank & Trust Company (Metrobank) urges this Court to review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure the Decision dated August 15, 2002 and the Resolution dated October 15, 2002, both of the Court of Appeals in CA-G.R. SP No. 61544.<sup>[1]</sup>

***The Facts of the Case***

On September 30, 1988, Metrobank, through its Assistant Vice- President Leonardo B. Lejano, executed a Credit Line Agreement<sup>[2]</sup> in favor of its client, BGB Industrial Textile Mills, Inc. (BGB) in the total amount of P10,000,000.00. As security for the obligation, private respondent Benjamin Go (now deceased), being an officer of BGB, executed a Continuing Surety Agreement<sup>[3]</sup> in favor of Metrobank, binding himself solidarily with BGB to pay Metrobank the said amount of P10,000,000.00.

In November 1988, private respondent Jimmy Go, as general manager of BGB, applied for eleven (11) commercial letters of credit to cover the shipment of raw materials and spare parts. Accordingly, Metrobank issued the 11 irrevocable letters of credit to BGB. The merchandise/shipments were delivered to and accepted by BGB on different dates. Consequently, 11 trust receipts were executed by BGB thru Jimmy Go and Benjamin Go, as entrustees, in favor of Metrobank as entruster. The letters of credit and their corresponding trust receipts are listed below:

<b>Letter of Credit No.</b>	<b>Expiry Date of Trust Receipt</b>	<b>Amount of Trust Receipt</b>
DIV88-1941NC[4]	Feb. 18, 1989	P1,625,395.38[5]
DIV88-1940NC[6]	March 04, 1989	P3,011,249.71[7]
DIV88-1925NC[8]	March 07, 1989	P 508,252.16[9]
DIV88-1926NC[10]	March 07, 1989	P 626,165.28[11]
DIV88-1924NC[12]	March 14, 1989	P 452,289.55[13]
DIV88-1930NC[14]	April 04, 1989	P 660,348.00[15]

DIV88-1931NC[16]	April 04, 1989	P 594,313.20[17]
DIV88-1923NC[18]	April 10, 1989	P 358,113.33[19]
DIV88-1951NC[20]	April 12, 1989	P1,720,882.07[21]
DIV88-1932NC[22]	April 19, 1989	P 244,250.26[23]
DIV88-1952NC[24]	May 25, 1989	P1,413,999.11[25]

By the terms of the trust receipts, BGB agreed to hold the goods in trust for Metrobank and, in case of sale of the goods, to hand the proceeds to the bank to be applied against the total obligation object of the trust receipts.

On maturity dates of the trust receipts, because the goods remained unsold, BGB and Jimmy and Benjamin Go failed to satisfy their obligation. Metrobank filed three (3) separate complaints against BGB, for collection of sum of money equivalent to the value of the goods subject of the trust receipts. The cases were filed with the Makati Regional Trial Court and docketed as Civil Case Nos. 93-496, 93-509, and 93-910.

Later, Metrobank instituted 11 criminal charges against Jimmy and Benjamin Go for violation of Presidential Decree No. 115 (Trust Receipts Law) before the Office of the City Prosecutor of Manila.

After preliminary investigation, the Office of the City Prosecutor of Manila issued a Resolution<sup>[26]</sup> in I.S. Nos. 94D-09945-55 dated May 31, 1995 recommending the dismissal of the case, *viz.*:

The liability of respondents is only civil in nature in the absence of commission and misappropriation. Respondents are liable *ex-contractu* for breach of the Letters of Credit – Trust Receipt.

In the instant case, the goods subject of the trust receipts have not been sold, so there is (sic) no proceeds to deliver to the bank.

Granting for the sake of argument that respondents failed to account for said goods, the failure is only a mere disputable presumption which has been overturned by the submission of an inventory showing that the goods are intact and in the warehouse in Bataan.

Considering that the goods are still intact in the [respondents'] warehouse at the Bataan Export Processing Zone, considering further the fact that the goods were never processed, and considering finally that the goods have not been sold, *ergo*, there is no violation of [the] Presidential Decree. As already stated, respondents' liability is only civil in nature.

On June 22, 1995, Metrobank filed a motion for reconsideration, but the same was denied for lack of merit in the Review Resolution<sup>[27]</sup> dated October 25, 1999. Metrobank appealed to the Department of Justice. On September 5, 2000, then Acting Secretary of Justice, Ramon J. Liwag, rendered a Resolution<sup>[28]</sup> dismissing

the appeal on two grounds: (1) the resolution issued by the City Fiscal is in accord with law and evidence; and (2) Metrobank failed to submit proof of service of a copy of the appeal to the prosecutor either by personal service or registered mail as required by Section 3 of Department Order No. 223.

Metrobank went to the Court of Appeals via a petition for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. However, the Court of Appeals dismissed the petition for lack of merit. Metrobank moved to reconsider the dismissal, but the motion was denied. Hence, this petition.

### ***The Issues***

The reasons given by Metrobank for the allowance of its petition are as follows:

#### **First Reason**

BOTH THE RESOLUTION AND THE DECISION OF THE COURT OF APPEALS DELIBERATELY IGNORED THE GLARING VIOLATION COMMITTED BY THE RESPONDENTS OF BOTH THE PROVISIONS OF THE SUBJECT TRUST RECEIPTS AND OF *PRESIDENTIAL DECREE NO. 115*.

#### **Second Reason**

BOTH THE RESOLUTION AND THE DECISION OF THE COURT OF APPEALS DELIBERATELY IGNORED THE FACT THAT THE OFFER MADE BY THE RESPONDENTS TO ALLEGEDLY RETURN THE SUBJECT MERCHANDISE IS A MERE AFTERTHOUGHT.

#### **Third Reason**

BOTH THE RESOLUTION AND THE DECISION DELIBERATELY IGNORED THE FACT THAT A VIOLATION OF *PRESIDENTIAL DECREE NO. 115*, AS SETTLED JURISPRUDENCE HOLD, IS AN OFFENSE AGAINST PUBLIC ORDER AND NOT MERELY AGAINST PROPERTY.<sup>[29]</sup>

Petitioner Metrobank ascribed error to the Office of the City Prosecutor of Manila when it found that the liability of respondents Jimmy and Benjamin Go was only civil in nature, *i.e.*, to return the merchandise subject of the 11 trust receipts, considering that they were never sold, and to pay their obligation under the letters of credit. Citing jurisprudence,<sup>[30]</sup> it contends that Section 13,<sup>[31]</sup> the penal provision of the Trust Receipts Law, encompasses any act violative of an obligation covered by the trust receipt and is not limited to transactions in goods which are to be sold (retailed), reshipped, stored, and processed as a component of a product ultimately sold. It posits that a violation of the Trust Receipts Law can be committed by mere failure of the entrustee to discharge any of the obligations imposed upon him under Section 9<sup>[32]</sup> of the said law.

According to Metrobank, Jimmy and Benjamin Go's offer to deliver the merchandise subject of the trust receipts cannot exculpate them from criminal liability because they failed to offer to surrender and to actually surrender the goods upon maturity of the trust receipts and even when several demands were made upon them. Stated differently, it was Metrobank's position that there was already a violation of the Trust

Receipts Law committed by Jimmy and Benjamin Go even before they made their offer to return the merchandise to Metrobank in their pleadings before the Office of the City Prosecutor of Manila. Metrobank claimed that the belated offer of Jimmy and Benjamin Go to return the goods was a mere afterthought in order to evade indictment and prosecution.

Metrobank further argues that the dismissal by the Office of the City Prosecutor of Manila of the 11 criminal charges for violation of the Trust Receipts Law against Jimmy and Benjamin Go for want of probable cause, grounded on the absence of conversion or misappropriation, is tantamount to holding that a violation of the Trust Receipts Law is merely a crime against property and not against public order, contrary to prevailing jurisprudence.

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

After a judicious study of the records of this case, this Court does not find any cogent reason to reverse the assailed Decision and Resolution of the Court of Appeals, and the Resolutions of the Office of the City Prosecutor of Manila and of the Secretary of Justice.

*First.* The issues raised in this petition are substantially factual. Essentially, Metrobank urges this Court to determine whether or not Jimmy and Benjamin Go failed to turn over the proceeds of the sale of the goods or to return them, if unsold, in accordance with the terms of the 11 trust receipts. This failure, Metrobank adds, amounts to a violation of Section 13 of the Trust Receipts Law and warrants the prosecution of respondents for estafa under Article 315, paragraph 1(b)<sup>[33]</sup> of the Revised Penal Code.

In an appeal via *certiorari*, only questions of law may be raised because this Court is not a trier of facts.<sup>[34]</sup> Metrobank wants to make this case an exception to the rule, as it attributes to the Office of the City Prosecutor of Manila, the Secretary of Justice, and the Court of Appeals a misapprehension of the facts. Unfortunately, there is no adequate support for this imputation.

In order that respondents Jimmy and Benjamin Go may be validly prosecuted for estafa under Article 315, paragraph 1(b) of the Revised Penal Code, in relation to Section 13 of the Trust Receipts Law, the following elements must be established: (a) they received the subject goods in trust or under the obligation to sell the same and to remit the proceeds thereof to Metrobank, or to return the goods if not sold; (b) they misappropriated or converted the goods and/or the proceeds of the sale; (c) they performed such acts with abuse of confidence to the damage and prejudice of Metrobank; and (d) demand was made on them by Metrobank for the remittance of the proceeds or the return of the unsold goods.<sup>[35]</sup>

The Office of the City Prosecutor and the Secretary of Justice had identical findings that the element of misappropriation or conversion is absent, and that Jimmy and Benjamin Go could not deliver the proceeds of the sale of the merchandise to Metrobank because the goods remained unsold. Both offices similarly found that the failure of the respondents to account for the proceeds of the sale or of the goods only created a disputable presumption that either the proceeds or the goods themselves were converted or misappropriated, but the presumption was

overturned when the goods were offered to be inventoried and returned as they remained intact in the warehouse at the Bataan Export Processing Zone. Accordingly, they both ruled that the liability of Jimmy and Benjamin Go was merely civil in nature, and the criminal complaints were dismissed for lack of probable cause.

Declaring that the Office of the City Prosecutor did not commit grave abuse of discretion, the Court of Appeals likewise made a factual finding that Jimmy and Benjamin Go offered to return the goods even prior to the filing of the civil cases against them, although the offer was not accepted because Metrobank appeared more interested in collecting the amount it advanced under the letters of credit. It also found that Metrobank failed to prove its demand for the return of the goods.

Thus, even if we accommodate the petitioner's plea to review the case's factual milieu, we still have to agree with the findings of fact of the Office of the City Prosecutor and of the Court of Appeals. These findings appear to be supported by the evidence on record. The prosecution for estafa under Article 315, paragraph 1(b) of the Revised Penal code, cannot prosper because the second (misappropriation/conversion) and the fourth (demand) elements of the offense are not present.

Under the pro-forma trust receipts subject of this case, Jimmy and Benjamin Go, as entrustees, agreed to hold the goods (whether in their original, processed or manufactured state, and irrespective of the fact that a different merchandise is used in completing such manufacture) in trust for Metrobank, as its exclusive property, with liberty to sell them for cash only for the latter's account, but without authority to make any other disposition whatsoever of the said goods or any part (or the proceeds) thereof by way of conditional sale, pledge, or otherwise. They further agreed that in case of sale of the goods, or if the goods are used for the manufacture of finished products and are sold, they will turn over the proceeds to Metrobank to be applied against their total obligation under the trust receipts and for the payment of other debts to Metrobank.

It is noteworthy that Jimmy and Benjamin Go processed the goods into textiles, to be sold for cash only, and that not all of the merchandise were sold such that they were able to remit only enough proceeds to fully settle their accounts under Letters of Credit-Trust Receipt Nos. 1922 and 1939, which were not subject of the 11 criminal complaints filed by Metrobank. Metrobank wants us to interpret this as confirmation that Jimmy and Benjamin Go had sold all the other merchandise but deliberately failed to turn over their corresponding proceeds. However, the Court sees this circumstance for what it simply and truly is, *i.e.*, that Jimmy and Benjamin Go exerted efforts to comply with their obligation to sell the merchandise and remit the proceeds thereof. Unfortunately, the rest of the merchandise remained unsold in the warehouse at the Bataan Export Processing Zone, such that no proceeds thereof could be remitted to Metrobank.

This Court also observes that the same trust receipts provide that Metrobank has the option to take possession of the goods upon default of Jimmy and Benjamin Go on any of their obligations and to sell them, with the proceeds thereof to be applied to the principal obligation and also to the expenses to be incurred by Metrobank in selling the same.<sup>[36]</sup> But Metrobank did not exercise this option. Instead, it filed three (3) complaints to collect the value of the merchandise. Jimmy and Benjamin