

## SECOND DIVISION

[ G.R. No. 122502, December 27, 2002 ]

**LORENZO M. SARMIENTO, JR. AND GREGORIO LIMPIN, JR.,  
PETITIONERS, VS. COURT OF APPEALS AND ASSOCIATED  
BANKING CORP., RESPONDENTS.**

### DECISION

#### **AUSTRIA-MARTINEZ, J.:**

Filed with this court is the petition for review under Rule 45 of the Rules of Court assailing the July 31, 1995 Decision<sup>[1]</sup> of the Court of Appeals in CA-G.R. CV No. 31568 which affirmed the Decision of the Regional Trial Court of Davao City dated August 1, 1990 in Civil Case No. 19,272-88; and the October 25, 1995 Resolution<sup>[2]</sup> denying petitioners' Motion for Reconsideration.

The dispositive portion of the trial court's decision reads as follows:

"WHEREFORE, in view of all the foregoing, judgment is hereby rendered ordering defendants Lorenzo Sarmiento, Jr. and Gregorio Limpin, Jr. to pay jointly and severally, the plaintiff bank the principal sum of P495,000.00 plus interest thereon at the legal rate from December 6, 1978 until the full amount is paid; the sum of P49,500.00 as the agreed attorney's fees and the costs of suit.

"Defendant Sarmiento's counterclaim is DISMISSED.

"SO ORDERED."<sup>[3]</sup>

The facts of the case as found by the trial court and affirmed by the Court of Appeals are as follows:

"On September 6, 1978, defendant Gregorio Limpin, Jr. and Antonio Apostol, doing business under the name and style of 'Davao Libra Industrial Sales,' filed an application for an Irrevocable Domestic Letter of Credit with the plaintiff Bank for the amount of P495,000.00 in favor of LS Parts Hardware and Machine Shop (herein after referred to as LS Parts) for the purchase of assorted scrap irons. Said application was signed by defendant Limpin and Apostol (Exh. 'A'). The aforesaid application was approved, and plaintiff Bank issued Domestic Letter of Credit No. DLC No. DVO-78-006 in favor of LS Parts for P495,000.00 (Exh. 'B'). Thereafter, a Trust Receipt dated September 6, 1978, was executed by defendant Limpin and Antonio Apostol (Exh. 'C'). In said Trust Receipt, the following stipulation, signed by defendant Lorenzo Sarmiento, Jr. appears: -

'In consideration of the Associated Banking Corporation releasing to Gregorio Limpin and Antonio Apostol goods

mentioned in the trust receipt, we hereby jointly and severally undertake and agree to pay, on demand, to the Associated Bank Corporation all sums and amount of money which said Associated Banking Corporation may call upon us to pay arising out of, pertaining to, and/or any manner connected with the trust receipt, WE FURTHER AGREE that our liability in this undertaking shall be direct and immediate and not contingent upon the pursuit by the Associated Banking Corporation of whatever remedies it may have against the aforesaid Gregorio Limpin and Antonio Apostol.

SGD. T/LORENZO SARMIENTO,  
JR.  
Surety/Guarantor' (Exh. 'C-1)

"Among others, the Trust Receipt (Exh. 'C') provided that:

'The defendants acknowledged to have received in trust from the plaintiff Bank the merchandise covered by the documents and agreed to hold said merchandise in storage as the property of the Bank, with liberty to sell the same for cash for its accounts provided the proceeds thereof are turned over in their entirety to the bank to be applied against acceptance and any other indebtedness of the defendants to the bank. (Exh. 'C-2')

'That the defendants shall immediately give notice to said Bank of any average damage, non-shipment, shortage, non-delivery or other happening not in the usual and ordinary course of business (Exh. 'C-3').

'That the due date of the Trust Receipt is December 5, 1978, (Exh. 'C-4).'

"The defendants failed to comply with their undertaking under the Trust Receipt. Hence as early as March, 1980, demands were made for them to comply with their undertaking (Exhs. 'Q', 'R' to 'R-2', 'S', 'T', 'D' to 'D-1', 'F' to 'F-2'). However, defendants failed to pay their account. Legal action against the defendants was deferred due to the proposed settlement of the account (Exh 'U'). However, no settlement was reached. Hence the bank, thru counsel, sent a final letter of demand on May 26, 1986 (Exh. 'E'). On June 11, 1986, a complaint for Violation of the Trust Receipt Law was filed against the defendants before the City Fiscal's Office (Exh. 'L-3'). Thereafter, the corresponding Information was filed against the defendants. Defendant Lorenzo Sarmiento, Jr. was, however, dropped from the Information while defendant Gregorio Limpin, Jr. was convicted (Exh. 'P' to 'P-9').

"The defendants claim that they cannot be held liable as the 825 tons of assorted scrap iron, subject of the trust receipt agreement, were lost when the vessel transporting them sunk, and that said scrap iron were delivered to 'Davao Libra Industrial Sales', a business concern over which they had no interest whatsoever.

"They tried to show that the scrap irons were loaded on board Barge L-1853, owned and operated by Luzon Stevedoring, for shipment to Toledo Atlas Pier in Cebu (Exh. '1'; that the said Barge capsized on October 4, 1978 while on its way to Toledo City, and a notice of Marine Protest was made by Capt. Jose C. Barrientos (Exh. '2'); that Benigno Azarcon executed an affidavit attesting to the fact that Barge L-1853, capsized on October 4, 1978 and all its cargoes were washed away (Exh. '3'); that Charlie Torregoza, a security guard of L.S. Sarmiento and Company, Inc., who was one of those assigned to escort Barge L-1853, prepared an 'Incident Report', showing that said Barge capsized on October 4, 1978 and that cargoes were washed away (Exhs. '4' and '4-A')." [4]

After trial, the lower court rendered judgment in favor of herein private respondent Associated Banking Corporation.

On appeal by herein petitioners Sarmiento, Jr. and Limpin, Jr., the Court of Appeals affirmed the judgment of the trial court, and, denied the Motion for Reconsideration of herein petitioner.

Hence, herein petition assigning the following errors:

"1. THE RESPONDENT COURT OF APPEALS IN ITS AFOREQUOTED RULING HAD DEPARTED FROM THE APPLICABLE BASIC PRINCIPLE AND PROCEDURE TO THE INSTANT CIVIL CASE EMBODYING THE OFFENDED PARTY'S (ASSOCIATED BANK) CLAIM FOR THE CIVIL LIABILITY OF P495,000.00, NOT HAVING BEEN EXPRESSLY RESERVED BY IT, HAS BEEN NOT ONLY IMPLIEDLY, BUT IN FACT EXPRESSLY INSTITUTED ALREADY IN CRIMINAL CASE NO. 14,126, THE INFORMATION FOR WHICH HAD BEEN FILED AHEAD AND THE PROCEEDINGS CONDUCTED PRIOR TO THE PRESENT CIVIL CASE BEFORE THE SAME REGIONAL TRIAL COURT OF DAVAO CITY IS PROCEDURALLY BARRED.

"2. THE RESPONDENT COURT OF APPEALS HAD DISREGARDED BY JUDICIAL FIAT THAT THE RTC OF DAVAO CITY IN CRIMINAL CASE No. 14,126 HAD IN FACT ALREADY ADJUDGED CIVIL LIABILITY OF THE SAME CLAIM AS HEREIN IN FAVOR OF COMPLAINANT ASSOCIATED BANK AS AGAINST PETITIONER GREGORIO LIMPIN, JR.

"3. THE RESPONDENT COURT OF APPEALS HAD IGNORED THE CLEAR ADMITTED FACT OF RECORD THAT FORMAL APPEARANCE OF COMPLAINANT BANK'S COUNSEL HAD BEEN ENTERED IN CRIMINAL CASE NO. 14,126." [5]

With respect to the second assigned error, we find no cogent reason to disturb the finding of the RTC of Davao City (Branch 12) in its Order dated December 16, 1988 [6] that the decision promulgated by the RTC of Davao City (Branch 15) in Criminal Case No. 14,126 did not contain an award of civil liability as it appears in the dispositive portion of the latter court's Decision dated July 14, 1988. [7]

Being interrelated, we shall discuss jointly the first and third assigned errors.

At the outset, it should be stated that in the Amended Information, dated April 1, 1987, filed in Criminal Case No. 14,126, Lorenzo Sarmiento, Jr. was dropped as an

accused.<sup>[8]</sup> Hence, with respect to Sarmiento Jr., Criminal Case No. 14,126 cannot, in any way, bar the filing by private respondent of the present civil action against him.

With respect to Limpin, Jr., petitioners claim that private respondent's right to institute separately the civil action for the recovery of civil liability is already barred on the ground that the same was not expressly reserved in the criminal action earlier filed against said respondent.

Pertinent to this issue is the then prevailing Rule 111 of the 1985 Rules on Criminal Procedure. Section 1 thereof provides:

"Section 1. *Institution of criminal and civil actions.* — When a criminal action is instituted, the civil action for the recovery of civil liability is impliedly instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

"Such civil action includes recovery of indemnity under the Revised Penal Code, and damages under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines arising from the same act or omission of the accused.

"A waiver of any of the civil actions extinguishes the others. The institution of, or the reservation of the right to file, any of said civil actions separately waives the others.

"The reservation of the right to institute the separate civil actions shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"x x x."

Under the Revised Rules of Criminal Procedure, effective December 1, 2000,<sup>[9]</sup> the same Section of the same Rule provides:

"Section 1. *Institution of criminal and civil actions.* — (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

"The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

"x x x."

While a reading of the aforequoted provisions shows that the offended party is required to make a reservation of his right to institute a separate civil action, jurisprudence instructs that such reservation may not necessarily be express but may be implied<sup>[10]</sup> which may be inferred not only from the acts of the offended party but also from acts other than those of the latter.