365 Phil. 259

THIRD DIVISION

[G.R. No. 126712, April 14, 1999]

LEONIDA C. QUINTO, PETITIONER, VS. PEOPLE OF THE PHILIPPINES, RESPONDENT.

D E C I S I O N

VITUG, J.:

Assailed in this Petition for Review on Certiorari under Rule 45 of the Rules of Court is the decision of the Court of Appeals, promulgated on 27 September 1996, in People of the Philippines *vs*. Leonida Quinto y Calayan, docketed CA-G.R. CR No. 16567, which has affirmed the decision of Branch 157 of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 157, Pasig City, finding Leonida Quinto y Calayan guilty beyond reasonable doubt of the crime of Estafa.

Leonida Quinto y Calayan, herein petitioner, was indicted for the crime of estafa under Article 315, paragraph 1(b), of the Revised Penal Code, in an information which read:

> "That on or about the 23rd day of March 1977, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, received in trust from one Aurelia Cariaga the following pieces of jewelry, to wit:
>
> One (1) set of marques with briliantitos
>
> valued at P17,500.00
>
> One (1) solo ring (2 karats & 30 points)
>
> valued at P16,000.00
>
> One (1) diamond ring (rosetas)
>
> valued at .....P 2,500.00
>
> with a total value of P36,000.00 for the purpose of selling the same on commission basis and with the express obligation on the part of the accused to turn over the proceeds of sale thereof, or to return the said jewelries (sic), if not sold, five (5) days after receipt thereof, but the accused once in possession of the jewelries (sic), far from complying with her obligation, with intent of gain, gave abuse of confidence and to defraud said Aurelia Cariaga, did then and there wilfully, unlawfully and feloniously misappropriate, misapply and convert to her own personal use and benefit the said jewelries (sic) and/or the proceeds of sale or to return the pieces of jewelry, to the damage and prejudice of the said

Aurelia Cariaga in the aforementioned amount of P 36,000.00.

"Contrary to law "[1]

Upon her arraignment on 28 March 1978, petitioner Quinto pleaded not guilty; trial on the merits thereupon ensued.

According to the prosecution, on or about 23 March 1977, Leonida went to see Aurelia Cariaga (private complainant) at the latter's residence in Makati. Leonida asked Aurelia to allow her have some pieces of jewelry that she could show to prospective buyers. Aurelia acceded and handed over to Leonida one (1) set of marques with *briliantitos* worth P17,500.00, one (1) solo ring of 2.30 karats worth P16,000.00 and one (1) *rosetas* ring worth P2,500.00. Leonida signed a receipt (Exhibit "A") therefor, thus:

"RECEIPT

Pinatutunayan ko na tinanggap ko kay Gng. Aurelia B. Cariaga (ang) mga alahas na nakatala sa ibaba, upang aking ipagbili sa pamamagitan ng BIGAY PALA o Commission at Kaliwaan lamang. Ako'y hindi pinahihintulutan (na) ipagbili ang mga ito ng Pautang. Pinananagutan ko na ang mga alahas na ito ay hindi ko ipagkakaloob o ipagkakatiwala sa kanino pa man upang ilagak o maipagbili nila, at ang mga ito ay ako ang magbibili sa ilalim ng aking pangangasiwa at pananagutan sa halagang nakatala sa ibaba. At aking isasauli ang mga hindi na maipagbili sa loob ng 5 days (sic) araw mula sa petsa nito o sa kahilingan, na nasa mabuti at malinis na kalagayan katulad ng tanggapin ko sa petsang ito.

MGA URI NG ALAHAS

1 set marques with titos 17,500.

1 solo 2 karats & 30 points 16,000.

1 ring Rosetas brill 2,500.

Makati, March 23, 1977
(Sgd.)"[2]

When the 5-day period given to her had lapsed, Leonida requested for and was granted additional time within which to vend the items. Leonida failed to conclude any sale and, about six (6) months later, Aurelia asked that the pieces of jewelry be returned. She sent to Leonida a demand letter which the latter ignored. The inexplicable delay of Leonida in returning the items spurred the filing of the case for estafa against her.

The defense proffered differently. In its version, the defense sought to prove that Leonida was engaged in the purchase and sale of jewelry. She was used to buying pieces of jewelry from a certain Mrs. Antonia Ilagan who later introduced her (Leonida) to Aurelia. Sometime in 1975, the two, Aurelia and Leonida, started to transact business in pieces of jewelry among which included a solo ring worth P40,000.00 which was sold to Mrs. Camacho who paid P20,000.00 in check and the

balance of P20,000.00 in installments later paid directly to Aurelia. The last transaction Leonida had-with Mrs. Camacho involved a "marques" worth P16,000.00 and a ring valued at P4,000.00. Mrs. Camacho was not able to pay the due amount in full and left a balance of P13,000.00. Leonida brought Mrs. Camacho to Aurelia who agreed to allow Mrs. Camacho to pay the balance in installments. Leonida was also able to sell for Aurelia a 2-karat diamond ring worth P17,000.00 to Mrs. Concordia Ramos who, unfortunately, was unable to pay the whole amount. Leonida brought Mrs. Ramos to Aurelia and they talked about the terms of payment. As first payment, Mrs. Ramos gave Leonida a ring valued at P3,000.00. The next payment made by her was P5,000.00. Leonida herself then paid P2,000.00.

The RTC, in its 25th January 1993 decision, found Leonida guilty beyond reasonable doubt of the crime of estafa and sentenced her to suffer the penalty of imprisonment of seven (7) years and one (1) day of *prision mayor* as minimum to nine (9) years of *prision mayor* as maximum and to indemnify private complainant in the amount of P36,000.00.

Leonida interposed an appeal to the Court of Appeals which affirmed, in its 27th September 1996 decision, the RTC's assailed judgment.

The instant petition before this Court would have it that the agreement between petitioner and private complainant was effectively novated when the latter consented to receive payment on installments directly from Mrs. Camacho and Mrs. Ramos.

The petition is bereft of merit.

Novation, in its broad concept, may either be **extinctive** or **modificatory**. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal).[3] Under this mode, novation would have dual functions - one to extinguish an existing obligation, the other to substitute a new one in its place[4] - requiring a conflux of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation.[5]

Novation is never presumed,[6] and the *animus novandi,* whether totally or partially, must appear by express agreement of the parties, or by their acts that are too clear and unequivocal to be mistaken.[7]

The extinguishment of the old obligation by the new one is a necessary element of novation which may be effected either expressly or impliedly.[8] The term "expressly" means that the contracting parties incontrovertibly disclose that their object in executing the new contract is to extinguish the old one.[9] Upon the other hand, no specific form is required for an implied novation,[10] and all that is prescribed by law would be an incompatibility between the two contracts. While

there is really no hard and fast rule to determine what might constitute to be a sufficient change that can bring about novation, the touchstone for contrariety, however, would be an irreconcilable incompatibility between the old and the new obligations.[11]

There are two ways which could indicate, in fine, the presence of novation and thereby produce the effect of extinguishing an obligation by another which substitutes the same. The *first* is when novation has been explicitly stated and declared in unequivocal terms. The *second* is when the old and the new obligations are incompatible on every point. The test of incompatibility is whether or not the two obligations can stand together, each one having its independent existence. If they cannot, they are incompatible and the latter obligation novates the first.[12] Corollarily, changes that breed incompatibility must be essential in nature and not merely accidental. The incompatibility must take place in any of the essential elements of the obligation, such as its object, cause or principal conditions thereof; otherwise, the change would be merely modificatory in nature and insufficient to extinguish the original obligation.

The changes alluded to by petitioner consists only in the manner of payment. There was really no substitution of debtors since private complainant merely acquiesced to the payment but did not give her consent[13] to enter into a new contract. The appellate court observed:

> "Appellant, however, insists that their agreement was novated when complainant agreed to be paid directly by the buyers and on installment basis. She adds that her liability is merely civil in nature.
>
> "We are unimpressed.
>
> "It is to remembered that one of the buyers, Concordia Ramos, was not presented to testify on the alleged aforesaid manner of payment.
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> "The acceptance by complainant of partial payment tendered by the buyer, Leonor Camacho, does not evince the intention of the complainant to have their agreement novated. It was simply necessitated by the fact that, at that time, Camacho had substantial accounts payable to complainant, and because of the fact that appellant made herself scarce to complainant. (TSN, April 15, 1981, 31-32) Thus, to obviate the situation where complainant would end up with nothing, she was forced to receive the tender of Camacho. Moreover, it is to be noted that the aforesaid payment was for the purchase, not of the jewelry subject of this case, but of some other jewelry subject of a previous transaction. (Ibid. June 8, 1981, 10-11)"[14]

There are two forms of novation by substituting the person of the debtor, depending on whose initiative it comes from, to wit: *expromision* and *delegacion.* In the former, the initiative for the change does not come from the debtor and may even be made without his knowledge. Since a third person would substitute for the original debtor and assume the obligation, his consent and that of the creditor would be required. In the latter, the debtor offers, and the creditor accepts, a third person who consents to the substitution and assumes the obligation, thereby releasing the original debtor from the obligation, here, the intervention and the consent of all