



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

G.R. No. 164051

Present:

CARPIO, J.,
Chairperson,
LEONARDO-DE CASTRO,*
BRION,
PEREZ, and
PERLAS-BERNABE, JJ.

- versus -

Promulgated:

LILIAN S. SORIANO,
Respondent.

OCT 03 2012 *HM Catalina Projecto*

X-----X

DECISION

PEREZ, J.:

We are urged in this petition for review on *certiorari* to reverse and set aside the Decision of the Court of Appeals in CA-G.R. SP No. 76243¹ finding no grave abuse of discretion in the ruling of the Secretary of the Department of Justice (DOJ) which, in turn, dismissed the criminal complaint for *Estafa*, i.e., violation of Section 13 of Presidential Decree No. 115 (Trust Receipts Law), in relation to Article 315, paragraph 1(b) of the

* Per Special Order No. 1308 dated 21 September 2012.

¹ Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Bienvenido L. Reyes (now a member of this Court) and Rosalinda Asuncion-Vicente, concurring. *Rollo*, pp. 10-15.

Revised Penal Code, filed by petitioner Philippine National Bank (PNB) against respondent Lilian S. Soriano (Soriano).²

First, the ostensibly simple facts as found by the Court of Appeals and adopted by PNB in its petition and memorandum:

On March 20, 1997, [PNB] extended a credit facility in the form of [a] Floor Stock Line (FSL) in the increased amount of Thirty Million Pesos (₱30 Million) to Lisam Enterprises, Inc. [LISAM], a family-owned and controlled corporation that maintains Current Account No. 445830099-8 with petitioner PNB.

x x x. Soriano is the chairman and president of LISAM, she is also the authorized signatory in all LISAM's Transactions with [PNB].

On various dates, LISAM made several availments of the FSL in the total amount of Twenty Nine Million Six Hundred Forty Five Thousand Nine Hundred Forty Four Pesos and Fifty Five Centavos (₱29,645,944.55), the proceeds of which were credited to its current account with [PNB]. For each availment, LISAM through [Soriano], executed 52 Trust Receipts (TRs). In addition to the promissory notes, showing its receipt of the items in trust with the duty to turn-over the proceeds of the sale thereof to [PNB].

Sometime on January 21-22, 1998, [PNB's] authorized personnel conducted an actual physical inventory of LISAM's motor vehicles and motorcycles and found that only four (4) units covered by the TRs amounting to One Hundred Forty Thousand Eight Hundred Pesos (₱158,100.00) (*sic*) remained unsold.

Out of the Twenty Nine Million Six Hundred Forty Four Thousand Nine Hundred Forty Four Pesos and Fifty Five Centavos (₱29,644,944.55) as the outstanding principal balance [of] the total availments on the line covered by TRs, [LISAM] should have remitted to [PNB], Twenty Nine Million Four Hundred Eighty Seven Thousand Eight Hundred Forty Four Pesos and Fifty Five Centavos (₱29,487,844.55). Despite several formal demands, respondent Soriano failed and refused to turn over the said [amount to] the prejudice of [PNB].³

Given the terms of the TRs which read, in pertinent part:

² CA rollo, pp. 12-17.

³ Rollo, pp. 10-11.

RECEIVED in Trust from the [PNB], Naga Branch, Naga City, Philippines, the motor vehicles (“Motor Vehicles”) specified and described in the Invoice/s issued by HONDA PHILIPPINES, INC. (HPI) to Lisam Enterprises, Inc., (the “Trustee”) hereto attached as Annex “A” hereof, and in consideration thereof, the trustee hereby agrees to hold the Motor Vehicles in storage as the property of PNB, with the liberty to sell the same for cash for the Trustee’s account and to deliver the proceeds thereof to PNB to be applied against its acceptance on the Trustee’s account. Under the terms of the Invoices and (*sic*) the Trustee further agrees to hold the said vehicles and proceeds of the sale thereof in Trust for the payment of said acceptance and of any [of] its other indebtedness to PNB.

X X X X

For the purpose of effectively carrying out all the terms and conditions of the Trust herein created and to insure that the Trustee will comply strictly and faithfully with all undertakings hereunder, the Trustee hereby agrees and consents to allow and permit PNB or its representatives to inspect all of the Trustee’s books, especially those pertaining to its disposition of the Motor Vehicles and/or the proceeds of the sale hereof, at any time and whenever PNB, at its discretion, may find it necessary to do so.

The Trustee’s failure to account to PNB for the Motor Vehicles received in Trust and/or for the proceeds of the sale thereof within thirty (30) days from demand made by PNB shall constitute *prima facie* evidence that the Trustee has converted or misappropriated said vehicles and/or proceeds thereof for its benefit to the detriment and prejudice of PNB.⁴

and Soriano’s failure to account for the proceeds of the sale of the motor vehicles, PNB, as previously adverted to, filed a complaint-affidavit before the Office of the City Prosecutor of Naga City charging Soriano with fifty two (52) counts of violation of the Trust Receipts Law, in relation to Article 315, paragraph 1(b) of the Revised Penal Code.

In refutation, Soriano filed a counter-affidavit asserting that:

1. The obligation of [LISAM] which I represent, and consequently[,] my obligation, if any, is purely civil in nature. All of the alleged trust receipt agreements were availments made by the corporation

⁴

CA rollo, pp. 29-30.

[LISAM] on the PNB credit facility known as “Floor Stock Line” (FSL), which is just one of the several credit facilities granted to [LISAM] by PNB. When my husband Leandro A. Soriano, Jr. was still alive, [LISAM] submitted proposals to PNB for the restructuring of all of [LISAM’s] credit facilities. After exchanges of several letters and telephone calls, Mr. Josefino Gamboa, Senior Vice President of PNB on 12 May 1998 wrote [LISAM] informing PNB’s lack of objection to [LISAM’s] proposal of restructuring all its obligations. x x x.

2. On September 22, 1998 Mr. Avengoza sent a letter to [LISAM], complete with attached copy of PNB Board’s minutes of meeting, with the happy information that the Board of Directors of PNB has approved the conversion of [LISAM’s] existing credit facilities at PNB, which includes the FSL on which the Trust receipts are availments, to [an] Omnibus Line (OL) available by way of Revolving Credit Line (RCL), Discounting Line Against Post-Dated Checks (DLAPC), and Domestic Bills Purchased Line (DBPL) and with a “Full waiver of penalty charges on RCL, FSL (which is the Floor Stock Line on which the trust receipts are availments) and Time Loan. x x x.

3. The [FSL] and the availments thereon allegedly secured by Trust Receipts, therefore, was (sic) already converted into[,] and included in[,] an Omnibus Line (OL) of ₱106 million on September 22, 1998, which was actually a Revolving Credit Line (RCL)[.]⁵

PNB filed a reply-affidavit maintaining Soriano’s criminal liability under the TRs:

2. x x x. While it is true that said restructuring was approved, the same was never implemented because [LISAM] failed to comply with the conditions of approval stated in B/R No. 6, such as the payment of the interest and other charges and the submission of the title of the 283 sq. m. of vacant residential lot, x x x Tandang Sora, Quezon City, as among the common conditions stated in paragraph V, of B/R 6. The non-implementation of the approved restructuring of the account of [LISAM] has the effect of reverting the account to its original status prior to the said approval. Consequently, her claim that her liability for violation of the Trust Receipt Agreement is purely civil does not hold water.⁶

In a Resolution,⁷ the City Prosecutor of Naga City found, thus:

WHEREFORE, the undersigned finds *prima facie* evidence that respondent LILIAN SORIANO is probably guilty of violation of [the]

⁵ Id. at 69-70.

⁶ Id. at 32.

⁷ Id. at 34-37.

Trust Receipt Law[,] in relation to Article 315 par. 1 (b) of the Revised Penal Code, let therefore 52 counts of ESTAFA be filed against the respondent.⁸

Consequently, on 1 August 2001, the same office filed Informations against Soriano for fifty two (52) counts of *Estafa* (violation of the Trust Receipts Law), docketed as Criminal Case Nos. 2001-0641 to 2001-0693, which were raffled to the Regional Trial Court (RTC), Branch 21, Naga City.

Meanwhile, PNB filed a petition for review of the Naga City Prosecutor's Resolution before the Secretary of the DOJ.

In January 2002, the RTC ordered the dismissal of one of the criminal cases against Soriano, docketed as Criminal Case No. 2001-0671. In March of the same year, Soriano was arraigned in, and pled not guilty to, the rest of the criminal cases. Thereafter, on 16 October 2002, the RTC issued an Order resetting the continuation of the pre-trial on 27 November 2002.

On the other litigation front, the DOJ, in a Resolution⁹ dated 25 June 2002, reversed and set aside the earlier resolution of the Naga City Prosecutor:

WHEREFORE, the questioned resolution is **REVERSED** and **SET ASIDE** and the City Prosecutor of Naga City is hereby directed to move, with leave of court, for the withdrawal of the informations for estafa against Lilian S. Soriano in Criminal Case Nos. 2001-0641 to 0693 and to report the action taken thereon within ten (10) days from receipt thereof.¹⁰

On various dates the RTC, through Pairing Judge Novelita Villegas-Llaguno, issued the following Orders:

⁸ Id. at 37.
⁹ Id. at 12-17.

1. 27 November 2002¹¹

When this case was called for continuation of pre-trial[,] [Soriano's] counsel appeared[.] [H]owever, Prosecutor Edgar Imperial failed to appear.

Records show that a copy of the Resolution from the Department of Justice promulgated on October 28, 2002 was received by this Court, (*sic*) denying the Motion for Reconsideration of the Resolution No. 320, series of 2002 reversing that of the City Prosecutor of Naga City and at the same time directing the latter to move with leave of court for the withdrawal of the information[s] for Estafa against Lilian Soriano.

Accordingly, the prosecution is hereby given fifteen (15) days from receipt hereof within which to comply with the directive of the Department of Justice.

2. 21 February 2003¹²

Finding the Motion to Withdraw Informations filed by Pros. Edgar Imperial duly approved by the City Prosecutor of Naga City to be meritorious the same is hereby granted. As prayed for, the Informations in Crim. Cases Nos. RTC 2001-0641 to 2001-0693 entitled, People of the Philippines vs. Lilian S. Soriano, consisting of fifty-two (52) cases except for Crim. Case No. RTC 2001-0671 which had been previously dismissed, are hereby ordered WITHDRAWN.

3. 15 July 2003¹³

The prosecution of the criminal cases herein filed being under the control of the City Prosecutor, the withdrawal of the said cases by the Prosecution leaves this Court without authority to re-instate, revive or re-file the same.

Wherefore, the Motion for Reconsideration filed by the private complainant is hereby DENIED.

¹⁰ Id. at 15.

¹¹ *Rollo*, p. 54.

¹² Id. at 55.

¹³ Id. at 56.

With the denial of its Motion for Reconsideration of the 25 June 2002 Resolution of the Secretary of the DOJ, PNB filed a petition for *certiorari* before the Court of Appeals alleging that:

A. [THE SECRETARY OF THE DOJ] COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO WANT OR EXCESS OF JURISDICTION IN REVERSING AND SETTING ASIDE THE RESOLUTION OF THE CITY PROSECUTOR OF NAGA CITY FINDING A PRIMA FACIE CASE AGAINST PRIVATE RESPONDENT [SORIANO], FOR THE SAME HAS NO LEGAL BASES AND IS NOT IN ACCORD WITH THE JURISPRUDENTIAL RULINGS ON THE MATTER.¹⁴

As stated at the outset, the appellate court did not find grave abuse of discretion in the questioned resolution of the DOJ, and dismissed PNB's petition for *certiorari*.

Hence, this appeal by *certiorari*.

Before anything else, we note that respondent Soriano, despite several opportunities to do so, failed to file a Memorandum as required in our Resolution dated 16 January 2008. Thus, on 8 July 2009, we resolved to dispense with the filing of Soriano's Memorandum.

In its Memorandum, PNB posits the following issues:

- I. Whether or not the Court of Appeals gravely erred in concurring with the finding of the DOJ that the approval by PNB of [LISAM's] restructuring proposal of its account with PNB had changed the status of [LISAM's] obligations secured by Trust Receipts to one of an ordinary loan, non-payment of which does not give rise to a criminal liability.
- II. Whether or not the Court of Appeals gravely erred in concluding and concurring with the June 25, 2002 Resolution of the DOJ

¹⁴

CA rollo, p. 7.

directing the withdrawal of the Information for Estafa against the accused in Criminal Case Nos. 2001-0641 up to 0693 considering the well-established rule that once jurisdiction is vested in court, it is retained up to the end of the litigation.

- III. Whether or not the reinstatement of the 51 counts (Criminal Case No. 2001-0671 was already dismissed) of criminal cases for estafa against [Soriano] would violate her constitutional right against double jeopardy.¹⁵

Winnowed from the foregoing, we find that the basic question is whether the Court of Appeals gravely erred in affirming the DOJ's ruling that the restructuring of LISAM's loan secured by trust receipts extinguished Soriano's criminal liability therefor.

It has not escaped us that PNB's second and third issues delve into the three (3) Orders of the RTC which are not the subject of the petition before us. To clarify, the instant petition assails the Decision of the appellate court in CA-G.R. SP No. 76243 which, essentially, affirmed the ruling of the DOJ in I.S. Nos. 2000-1123, 2000-1133 and 2000-1184. As previously narrated, the DOJ Resolution became the basis of the RTC's Orders granting the withdrawal of the Informations against Soriano. From these RTC Orders, the remedy of PNB was to file a petition for *certiorari* before the Court of Appeals alleging grave abuse of discretion in the issuance thereof.

However, for clarity and to obviate confusion, we shall first dispose of the peripheral issues raised by PNB:

1. Whether the withdrawal of Criminal Cases Nos. 2001-0641 to 2001-0693 against Soriano as directed by the DOJ violates the well-

¹⁵

Rollo, p. 98.

established rule that once the trial court acquires jurisdiction over a case, it is retained until termination of litigation.

2. Whether the reinstatement of Criminal Cases Nos. 2001-0641 to 2001-0693 violate the constitutional provision against double jeopardy.

We rule in the negative.

Precisely, the withdrawal of Criminal Cases Nos. 2001-0641 to 2001-0693 was ordered by the RTC. In particular, the Secretary of the DOJ directed City Prosecutor of Naga City to move, **with leave of court**, for the withdrawal of the Informations for *estafa* against Soriano. Significantly, the trial court gave the prosecution fifteen (15) days within which to comply with the DOJ's directive, and thereupon, readily granted the motion. Indeed, the withdrawal of the criminal cases did not occur, *nay*, could not have occurred, without the trial court's *imprimatur*. As such, the DOJ's directive for the withdrawal of the criminal cases against Soriano did not divest nor oust the trial court of its jurisdiction.

Regrettably, a perusal of the RTC's Orders reveals that the trial court relied solely on the Resolution of the DOJ Secretary and his determination that the Informations for *estafa* against Soriano ought to be withdrawn. The trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. On one occasion, we have declared that while the recommendation of the prosecutor or the ruling of the Secretary of Justice is persuasive, it is not binding on courts.¹⁶ We shall return to this point shortly.

¹⁶ *Cerezo v. People*, G.R. No. 185230, 1 June 2011, 650 SCRA 222, 229.

In the same vein, the reinstatement of the criminal cases against Soriano will not violate her constitutional right against double jeopardy.

Section 7,¹⁷ Rule 117 of the Rules of Court provides for the requisites for double jeopardy to set in: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.**¹⁸

In the present case, the withdrawal of the criminal cases did not include a categorical dismissal thereof by the RTC. Double jeopardy had not set in because Soriano was not acquitted nor was there a valid and legal dismissal or termination of the fifty one (51) cases against her. It stands to reason therefore that the fifth requisite which requires conviction or acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met.

On both issues, the recent case of *Cerezo v. People*,¹⁹ is enlightening. In *Cerezo*, the trial court simply followed the prosecution's lead on how to proceed with the libel case against the three accused. The prosecution twice changed their mind on whether there was probable cause to indict the

¹⁷

SEC. 7. Former conviction or acquittal; double jeopardy. – When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charge, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

¹⁸

Co v. Lim, G.R. Nos. 164669-70, 30 October 2009, 604 SCRA 702, 714-715.

accused for libel. On both occasions, the trial court granted the prosecutor's motions. Ultimately, the DOJ Secretary directed the prosecutor to re-file the Information against the accused which the trial court forthwith reinstated. Ruling on the same issues raised by PNB in this case, we emphasized, thus:

x x x. In thus resolving a motion to dismiss a case or to withdraw an Information, the trial court should not rely solely and merely on the findings of the public prosecutor or the Secretary of Justice. It is the court's bounden duty to assess independently the merits of the motion, and this assessment must be embodied in a written order disposing of the motion. x x x.

In this case, it is obvious from the March 17, 2004 Order of the RTC, dismissing the criminal case, that the RTC judge failed to make his own determination of whether or not there was a *prima facie* case to hold respondents for trial. He failed to make an independent evaluation or assessment of the merits of the case. The RTC judge blindly relied on the manifestation and recommendation of the prosecutor when he should have been more circumspect and judicious in resolving the Motion to Dismiss and Withdraw Information especially so when the prosecution appeared to be uncertain, undecided, and irresolute on whether to indict respondents.

The same holds true with respect to the October 24, 2006 Order, which reinstated the case. The RTC judge failed to make a separate evaluation and merely awaited the resolution of the DOJ Secretary. This is evident from the general tenor of the Order and highlighted in the following portion thereof:

As discussed during the hearing of the Motion for Reconsideration, the Court will resolve it depending on the outcome of the Petition for Review. Considering the findings of the Department of Justice reversing the resolution of the City Prosecutor, the Court gives favorable action to the Motion for Reconsideration.

By relying solely on the manifestation of the public prosecutor and the resolution of the DOJ Secretary, the trial court abdicated its judicial power and refused to perform a positive duty enjoined by law. The said Orders were thus stained with grave abuse of discretion and violated the complainant's right to due process. They were void, had no legal standing, and produced no effect whatsoever.

x x x x

It is beyond cavil that double jeopardy did not set in. Double jeopardy exists when the following requisites are present: (1) a first jeopardy attached prior to the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. A first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) **when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.**

Since we have held that the March 17, 2004 Order granting the motion to dismiss was committed with grave abuse of discretion, then respondents were not acquitted nor was there a valid and legal dismissal or termination of the case. Ergo, the fifth requisite which requires the conviction and acquittal of the accused, or the dismissal of the case without the approval of the accused, was not met. Thus, double jeopardy has not set in.²⁰ (Emphasis supplied)

We now come to the crux of the matter: whether the restructuring of LISAM's loan account extinguished Soriano's criminal liability.

PNB admits that although it had approved LISAM's restructuring proposal, the actual restructuring of LISAM's account consisting of several credit lines was never reduced into writing. PNB argues that the stipulations therein such as the provisions on the schedule of payment of the principal obligation, interests, and penalties, must be in writing to be valid and binding between the parties. PNB further postulates that assuming the restructuring was reduced into writing, LISAM failed to comply with the conditions precedent for its effectivity, specifically, the payment of interest and other charges, and the submission of the titles to the real properties in *Tandang Sora*, Quezon City. On the whole, PNB is adamant that the events concerning the restructuring of LISAM's loan did not affect the TR security, thus, Soriano's criminal liability thereunder subsists.

²⁰

Id. at 229-231.

On the other hand, the appellate court agreed with the ruling of the DOJ Secretary that the approval of LISAM's restructuring proposal, even if not reduced into writing, changed the status of LISAM's loan from being secured with Trust Receipts (TR's) to one of an ordinary loan, non-payment of which does not give rise to criminal liability. The Court of Appeals declared that there was no breach of trust constitutive of *estafa* through misappropriation or conversion where the relationship between the parties is simply that of creditor and debtor, not as entruster and entrustee.

We cannot subscribe to the appellate court's reasoning. The DOJ Secretary's and the Court of Appeals holding that, the supposed restructuring novated the loan agreement between the parties is myopic.

To begin with, the purported restructuring of the loan agreement did not constitute novation.

Novation is one of the modes of extinguishment of obligations;²¹ it is a single juridical act with a diptych function. The substitution or change of the obligation by a subsequent one extinguishes the first, resulting in the creation of a new obligation in lieu of the old.²² It is not a complete obliteration of the obligor-obligee relationship, but operates as a relative extinction of the original obligation.

Article 1292 of the Civil Code which provides:

Art. 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared

²¹ **Art. 1231** of the **Civil Code**: Obligations are extinguished:

x x x x

²² (6) By novation.
Art. 1292 of the **Civil Code**.

in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

contemplates two kinds of novation: express or implied. The extinguishment of the old obligation by the new one is a necessary element of novation, which may be effected either expressly or impliedly.

In order for novation to take place, the concurrence of the following requisites is indispensable:

- (1) There must be a previous valid obligation;
- (2) There must be an agreement of the parties concerned to a new contract;
- (3) There must be the extinguishment of the old contract; and
- (4) There must be the validity of the new contract.²³

Novation is never presumed, 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 unmistakable. The contracting parties must incontrovertibly disclose that their object in executing the new contract is to extinguish the old one. Upon the other hand, no specific form is required for an implied novation, and all that is prescribed by law would be an incompatibility between the two contracts.²⁴ Nonetheless, both kinds of novation must still be clearly proven.²⁵

In this case, without a written contract stating in unequivocal terms that the parties were novating the original loan agreement, thus undoubtedly eliminating an express novation, we look to whether there is an incompatibility between the Floor Stock Line secured by TR's and the

²³ *Sueno v. Land Bank of the Philippines*, G.R. No. 174711, 17 September 2008, 565 SCRA 611, 617-618; *Azolla Farms v. Court of Appeals*, 484 Phil. 745, 755 (2004).

²⁴ *Philippine Savings Bank v. Sps. Mañalac, Jr.*, 496 Phil. 671, 687-688 (2005).

²⁵ *Bisaya Land Transportation Co., Inc. v. Sanchez*, 237 Phil. 510, 522-523 (1987).

subsequent restructured Omnibus Line which was supposedly approved by PNB.

Soriano is confident with her assertion that PNB's approval of her proposal to restructure LISAM's loan novated the loan agreement secured by TR's. Soriano relies on the following:

1. x x x. All the alleged trust receipt agreements were availments made by [LISAM] on the PNB credit facility known as "Floor Stock Line," (FSL) which is just one of the several credit facilities granted to [LISAM] by PNB. When my husband Leandro A. Soriano, Jr. was still alive, [LISAM] submitted proposals to PNB for the restructuring of all of [LISAM's] credit facilities. After exchanges of several letters and telephone calls, Mr. Josefino Gamboa, Senior Vice President of PNB on 12 May 1998 wrote [LISAM] informing PNB's lack of objection to [LISAM's] proposal of restructuring all its obligations[.] x x x[.]

2. On September 22, 1998[,] Mr. Avengoza sent a letter to [LISAM], complete with attached copy of PNB's Board's minutes of meeting, with the happy information that the Board of Directors of PNB has approved the conversion of [LISAM's] existing credit facilities at PNB, which includes the FSL on which the trust receipts are availments, to [an] Omnibus Line (OL) available by way of Revolving Credit Line (RCL), Discounting Line Against Post-Dated Checks (DLAPC), and Domestic Bills Purchased Line (DBPL) and with a "Full waiver of penalty charges on RCL, FSL (which is the Floor Stock Line on which the trust receipts are availments) and Time Loan. x x x."²⁶

Soriano's reliance thereon is misplaced. The approval of LISAM's restructuring proposal is not the bone of contention in this case. The pith of the issue lies in whether, assuming a restructuring was effected, it extinguished the criminal liability on the loan obligation secured by trust receipts, by extinguishing the entruster-entrustee relationship and substituting it with that of an ordinary creditor-debtor relationship. Stated differently, we examine whether the Floor Stock Line is incompatible with the purported restructured Omnibus Line.

The test of incompatibility is whether 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. 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.²⁷

We have scoured the records and found no incompatibility between the Floor Stock Line and the purported restructured Omnibus Line. While the restructuring was approved in principle, the effectivity thereof was subject to conditions precedent such as the payment of interest and other charges, and the submission of the titles to the real properties in *Tandang Sora*, Quezon City. These conditions precedent imposed on the restructured Omnibus Line were never refuted by Soriano who, oddly enough, failed to file a Memorandum. To our mind, Soriano's bare assertion that the restructuring was approved by PNB cannot equate to a finding of an implied novation which extinguished Soriano's obligation as entrustee under the TR's.

Moreover, as asserted by Soriano in her counter-affidavit, the waiver pertains to penalty charges on the Floor Stock Line. There is no showing that the waiver extinguished Soriano's obligation to "sell the [merchandise] for cash for [LISAM's] account and to deliver the proceeds thereof to PNB to be applied against its acceptance on [LISAM's] account." Soriano further agreed to hold the "vehicles and proceeds of the sale thereof in Trust for the

²⁶ CA rollo, pp. 69-70.

²⁷ *California Bus Lines, Inc. v. State Investment House, Inc.*, 463 Phil. 689, 703 (2003) citing *Molino v. Security Diners International Corporation*, 415 Phil. 587, 594 (2001).

payment of said acceptance and of any of its other indebtedness to PNB.” Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.²⁸ Besides, novation does not extinguish criminal liability.²⁹ It stands to reason therefore, that Soriano’s criminal liability under the TR’s subsists considering that the civil obligations under the Floor Stock Line secured by TR’s were not extinguished by the purported restructured Omnibus Line.

In *Transpacific Battery Corporation v. Security Bank and Trust Company*,³⁰ we held that the restructuring of a loan agreement secured by a TR does not *per se* novate or extinguish the criminal liability incurred thereunder:

x x x Neither is there an implied novation since the restructuring agreement is not incompatible with the trust receipt transactions.

Indeed, the restructuring agreement recognizes the obligation due under the trust receipts when it required "payment of all interest and other charges prior to restructuring." With respect to Michael, there was even a proviso under the agreement that the amount due is subject to "the joint and solidary liability of Spouses Miguel and Mary Say and Michael Go Say." While the names of Melchor and Josephine do not appear on the restructuring agreement, it cannot be presumed that they have been relieved from the obligation. The old obligation continues to subsist subject to the modifications agreed upon by the parties.

The circumstance that motivated the parties to enter into a restructuring agreement was the failure of petitioners to account for the goods received in trust and/or deliver the proceeds thereof. To remedy the situation, the parties executed an agreement to restructure Transpacific's obligations.

²⁸ *Spouses Reyes v. BPI Family Savings Bank, Inc.*, 520 Phil. 801, 807-808 (2006).

²⁹ **Art. 89 of the Revised Penal Code.**

³⁰ G.R. No. 173565, 8 May 2009, 587 SCRA 536.

The Bank only extended the repayment term of the trust receipts from 90 days to one year with monthly installment at 5% per annum over prime rate or 30% per annum whichever is higher. Furthermore, the interest rates were flexible in that they are subject to review every amortization due. Whether the terms appeared to be more onerous or not is immaterial. Courts are not authorized to extricate parties from the necessary consequences of their acts. The parties will not be relieved from their obligations as there was absolutely no intention by the parties to supersede or abrogate the trust receipt transactions. The intention of the new agreement was precisely to revive the old obligation after the original period expired and the loan remained unpaid. Well-settled is the rule that, with respect to obligations to pay a sum of money, the obligation is not novated by an instrument that expressly recognizes the old, changes only the terms of payment, adds other obligations not incompatible with the old ones, or the new contract merely supplements the old one.³¹

Based on all the foregoing, we find grave error in the Court of Appeals dismissal of PNB's petition for *certiorari*. Certainly, while the determination of probable cause to indict a respondent for a crime lies with the prosecutor, the discretion must not be exercised in a whimsical or despotic manner tantamount to grave abuse of discretion.

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals in CA-G.R. SP No. 76243 finding no grave abuse of discretion on the part of the Secretary of Justice is **REVERSED** and **SET ASIDE**.

The Resolution of the Secretary of Justice dated 25 June 2002, directing the City Prosecutor of Naga City to move for the withdrawal of the Informations for *estafa* in relation to the Trust Receipts Law against respondent Lilian S. Soriano, and his 29 October 2002 Resolution, denying

³¹

Id. at 548-549.

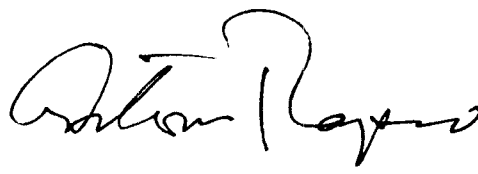
petitioner's Motion for Reconsideration, are **ANNULLED** and **SET ASIDE** for having been issued with grave abuse of discretion; and the Resolution of the Naga City Prosecutor's Office dated 19 March 2001, finding probable cause against herein respondent, is **REINSTATED**. Consequently, the Orders of the Regional Trial Court, Branch 21 of Naga City in Criminal Cases Nos. 2001-0641 to 2001-0693, except Criminal Case No. 2001-0671, dated 27 November 2002, 21 February 2003 and 15 July 2003 are **SET ASIDE** and its Order of 16 October 2002 resetting the continuation of the pre-trial is **REINSTATED**. The RTC is further ordered to conduct the pre-trial with dispatch.

SO ORDERED.



JOSE PORTUGAL PEREZ
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson


TERESITA J. LEONARDO-DE CASTRO
Associate Justice


ARTURO D. BRION
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

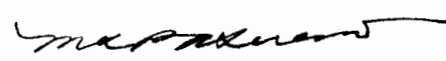
ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice