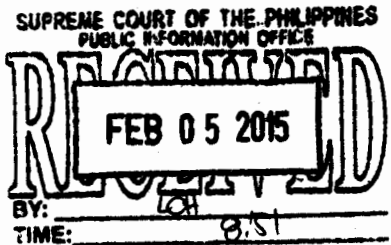




Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION



NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **January 28, 2015**, which reads as follows:*

“G.R. No. 202103 (*Thelma A. Tan vs. People of the Philippines*). – Considering the allegations, issues and arguments presented, the Court resolves to **DENY** the Petition for Review on Certiorari, for failing to sufficiently show that the Court of Appeals (CA) committed any reversible error in its assailed Decision dated October 25, 2011 and Resolution dated May 10, 2012 in CA-G.R. CR No. 00744-MIN, as to warrant the exercise of this Court’s appellate jurisdiction.

Both the trial court and the CA¹ did not commit reversible error in ruling that all the following elements of estafa under Article 315, paragraph 1(b) of the Revised Penal Code are present in the instant case, viz: (1) the offender’s receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received.²

The CA was correct in ruling that as a cashier of London Biscuit Company (LONBISCO), petitioner Tan had the obligation to remit her collections to the company. Her failure to do so amounts to misappropriation, to the prejudice of LONBISCO. The misappropriation is bolstered by petitioner’s execution of a promissory note precisely admitting the fact of misappropriation, along with a promise to pay the amount which the company lost. Anent the fourth element, suffice it to say that this Court had previously ruled that “demand is not an element of the felony or a condition precedent to the filing of a criminal complaint for estafa. Indeed, the accused may be convicted of the felony under Article 315, paragraph 1(b) of the Revised Penal Code if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the

¹ Citing *Dionisio Aw a.k.a. Tony Go v. People*, G.R. No. 182276, March 29, 2010.

² *Pamintuan v. People*, G.R. No. 172820, June 23, 2010.

January 28, 2015


Information.”³ Thus, despite the failure of LONBISCO to formally demand payment from petitioner, she can still be held liable for estafa.

Moreover, the CA correctly characterized the promissory note which petitioner executed in favor of LONBISCO to be an implied admission of guilt.⁴ If, indeed, she did not misappropriate the money, then she should not have executed a promissory note to the effect that she will pay the amount which the company lost. While petitioner attempts to prove that she executed the said promissory note under duress, the evidence on record fails to convince this Court of such allegation. On the contrary, both the trial court and the CA did not err in pointing out that when Tan went to the office of Rosendo Go (Go), president of LONBISCO, she did so voluntarily, and that the language and tenor of the promissory note appears to be petitioner’s own, and not dictated by Go, as petitioner would have this Court believe.

IN VIEW OF THE FOREGOING, the Court finds that the CA committed no reversible error in its Decision dated October 25, 2011 and Resolution dated May 10, 2012, and thus **AFFIRMS IN TOTO** the assailed Decision and Resolution. (Jardeleza, *J.*, no part; Perez, *J.*, designated Additional Member per Raffle dated January 26, 2015)

SO ORDERED.”

Very truly yours,


WILFREDO V. LARTAN
 Division Clerk of Court *2/2/15*

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OFFICE OF THE SOLICITOR GENERAL
 134 Amorsolo Street
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The Presiding Judge
 REGIONAL TRIAL COURT
 Branch 13, Ecoland
 8000 Davao City
 (Crim. Case 42244-98)

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³ *Lee v. People*, G.R. No. 157781, April 11, 2005.

⁴ *Rollo*, p. 31.