



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated September 8, 2020 which reads as follows:*

**“G.R. No. 230799 - Estrella T. Barbasa v. Elena A. Torres.**

RESOLUTION

Before this Court is a Petition for Review on *Certiorari*<sup>1</sup> assailing the Decision<sup>2</sup> dated October 5, 2016 and the Resolution<sup>3</sup> dated March 29, 2017 which dismissed the appeal of Estrella T. Barbasa (petitioner).

Records disclose that petitioner, who is engaged in a jewelry business and manpower agency, met Elena A. Torres (respondent) through a common friend sometime in 2000. Respondent introduced herself as a jewelry agent and a loan broker. In the same year, petitioner and respondent entered in to their first transaction wherein they redeemed the pawned pieces of jewelry and sold them at a higher price. Their second transaction was for rediscounting of checks wherein checks paid to respondent will be paid in cash by petitioner at a rediscounted amount. Petitioner and respondent’s business transactions were going on smoothly until 2003 when the 35 postdated checks issued by respondent were dishonored by the drawee banks.<sup>4</sup>

As summarized by the CA, the check transactions between petitioner and respondent allegedly involved the petitioner scouting

<sup>1</sup> *Rollo*, pp. 8-19.

<sup>2</sup> Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Danton Q. Bueser and Renato C. Francisco, concurring; *id* at 22-31.

<sup>3</sup> *Id.* at 33-37.

<sup>4</sup> *Id.* at 127-128.

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clients who will either obtain a loan or purchase jewelry from them *via* rediscounted checks. Upon approval by petitioner, she would require respondent to issue personal checks in petitioner's favor to cover the loaned amount of the clients. Said checks were allegedly considered as a "guarantee" for the loan. Consequently, petitioner would release the cash value of the check either directly to the clients or to respondent. For each completed transaction, respondent would get a commission from petitioner.<sup>5</sup>

The instant case involved the 35 checks, dishonored by the drawee banks, issued by respondent in favor of petitioner.<sup>6</sup> Demands to make good the same were made by petitioner. However, respondent failed to comply with her obligation. Thus, petitioner was constrained to file a formal complaint for *estafa* and violation of *Batas Pambansa Blg. 22*.<sup>7</sup>

In an Information<sup>8</sup> dated August 23, 2004, respondent was charged with the crime of *estafa* under Article 315, par. 2(d) of the Revised Penal Code (RPC). The accusatory portion reads:

That sometime in the year 2003, in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, with intent to defraud Estrella T. Barbasa, by means of deceit and false pretenses executed prior to or simultaneous with the commission of the fraud, did, then and there willfully, unlawfully and feloniously issued and delivered the following checks, to wit:

<u>Bank</u> <u>Nos.</u>	<u>Date</u>	<u>Amount</u>	<u>Check</u>
Allied Savings Bank	Aug. 3, 03	P24,350.59	0399232
-do-	Aug. 7, 03	24,350.59	0399233
-do-	Aug. 15, 03	12,000.00	0399213
-do-	Aug. 18, 03	9,735.00	0399230
-do-	Aug. 19, 03	186,375.19	0399219
-do-	Aug. 25, 03	10,000.00	0399227
-do-	Aug. 21, 03	10,000.00	0399218

<sup>5</sup> Id. at 26.

<sup>6</sup> Id. at 23.

<sup>7</sup> Id. at 23.

<sup>8</sup> Id. at 38-39.

-do-	Aug. 19, 03	15,000.00	0399214
-do-	Aug. 23, 03	15,000.00	0399225
-do-	Aug. 27, 03	15,000.00	0399215
-do-	Aug. 20, 03	32,000.00	0399223
-do-	Aug. 24, 03	30,000.00	0399226
-do-	Aug. 27, 03	40,000.00	0399228
-do-	Aug. 28, 03	65,000.00	0399229
-do-	Aug. 22, 03	70,000.00	0399224
-do-	Aug 21, 03	5,500.00	0399216
International			
Exchange Bank	Aug. 5, 03	25,000.00	97886
-do-	Aug. 10, 03	25,000.00	97896
-do-	Aug. 01, 03	35, 302.44	97883
-do-	Aug. 05, 03	23,000.00	97887
-do-	Aug. 10, 03	50,000.00	97897
-do-	Aug. 24, 03	10, 272.75	94562
-do-	Aug. 10, 03	10,000.00	97895
-do-	Aug. 08, 03	12,000.00	97903
-do-	Aug. 2, 03	10,000.00	97885
-do-	Aug. 2, 03	10,000.00	97884
-do-	Aug. 8, 03	10,000.00	97894
-do-	Aug. 5, 03	15,093.00	97888
-do-	Aug. 5, 03	15,093.00	97902
-do-	Nov. 16, 03	19,552.50	89385
-do-	Nov. 16, 03	3,060.00	94552
-do-	Oct. 16, 03	3,060.00	94551
-do-	Sept. 24, 03	10, 272.75	94561
-do-	Sept. 16, 03	19, 552.50	89383
Banco Filipino	May 20, 03	50,000.00	0216153

with the total amount of ₱951,115.81 with the assurance from the accused that the said checks are fully funded upon presentment to the drawee bank without which, the complainant would not have allowed accused to obtain loan from her, but contrary to her assurance and representation, there is no fund to cover the amount stated in the checks, so that when the said checks were presented for payment to the drawee bank, the same were dishonored and refused payment due to Account Closed/DRAWN AGAINST INSUFFICIENT FUNDS, and the said accused despite the lapse of three (3) days from receipt of notice of dishonor, failed and refused to make full payment thereof, to the damage and prejudice of its complainant in the aforementioned amount of ₱951,115.81.

CONTRARY TO LAW.<sup>9</sup>

<sup>9</sup> Id. at 39.

On September 27, 2004, Judge Paulita B. Acosta-Villarante issued an Order finding probable cause against respondent and accordingly issued a warrant of arrest.<sup>10</sup>

Upon arraignment, respondent pleaded not guilty to the charge. Consequently, trial on the merits ensued.<sup>11</sup>

In a Decision<sup>12</sup> dated June 3, 2015, the Regional Trial Court (RTC) of Mandaluyong City, Branch 211, acquitted the respondent of the crime charged.

The RTC ruled that the prosecution failed to establish all the elements of *estafa* under Article 315, par. 2(d) of the RPC. Noting the discrepancies in the testimonies of the prosecution witnesses and the defense witnesses, the RTC maintained that the prosecution failed to prove that the 35 checks were issued simultaneously with the loan obligation; and observed that the checks were issued merely to guarantee the loan granted to respondent's clients. In other words, the RTC limited respondent's liability to the obligation as a mere guarantor.

Likewise, the RTC dismissed the civil aspect of the case considering that the "evidence presented are vague" on the due and demandability of the loan obligation.

Thus:

**WHEREFORE**, premises considered, judgment is hereby rendered finding accused Elena A. Torres NOT GUILTY of the crime of *Estafa* under *Article 315, paragraph 2(d) of the Revised Penal Code*.

**SO ORDERED.**

Petitioner filed a Motion for Partial Reconsideration, which was denied for lack of merit in an Order<sup>13</sup> dated November 16, 2015. There being a contract of guaranty between petitioner and respondent, the RTC reiterated that the liability of the respondent is merely secondary:

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<sup>10</sup> Id. at 124.

<sup>11</sup> Id.

<sup>12</sup> Penned by Judge Ofelia L. Calo; id at 123-139.

<sup>13</sup> Id. at 147-149.

Art. 2058. The guarantor cannot be compelled to pay the creditor unless the latter has exhausted all the property of the debtor, and has resorted to all the legal remedies against the debtor.

Insisting on the civil liability of the respondent, petitioner filed an appeal and alleged the undisputed fact that respondent issued 35 checks, which were all dishonored by the drawee bank; and that respondent failed to make good said checks. Thus, petitioner asserted that respondent should be liable to pay the value of all the checks she issued.

In a Decision<sup>14</sup> dated October 5, 2016, the CA denied the appeal and affirmed the findings of the RTC that there was a contract of guaranty between petitioner and respondent. The CA maintained that the fact that the checks were issued by respondent in favor of petitioner merely to guarantee the payment of the loans of their clients, who were the principal debtors, was established by preponderance of evidence. The *fallo* reads:

**WHEREFORE**, the herein appeal is **DISMISSED**. The Decision dated 03 June 2015 as well as the Order dated 16 November 2015 are **AFFIRMED**.

**IT IS SO ORDERED.**<sup>15</sup>

On motion for reconsideration, the CA issued a Resolution<sup>16</sup> dated March 29, 2017 quoting the findings of the RTC in ruling that there was a contract of guaranty between petitioner and respondent.

*Via* a petition for review on *certiorari*, petitioner challenges the ruling of the CA in finding the existence of a contract of guaranty between her and respondent.

### **The Court's Ruling**

In a petition for review on *certiorari* Rule 45 of the Rules of Court, jurisdiction is generally limited to the review of errors of law committed by the appellate court. The Court is not obliged to review

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<sup>14</sup> Supra note 2.

<sup>15</sup> Id. at 31.

<sup>16</sup> Supra note 3.

all over again the evidence which the parties adduced in the court *a quo*.<sup>17</sup> The factual findings of the trial court, especially when affirmed by the CA, are generally conclusive and binding upon the Court.<sup>18</sup>

Section 1 of Rule 111 of the Rules of Court is explicit in stating that a civil action *ex delicto* or that which arises from a crime is deemed instituted in a criminal action.<sup>19</sup> While they are actions mandatorily fused, they are, in truth, separate actions whose existences are not dependent on each other.<sup>20</sup> In this sense, thus, the acquittal of an accused in a criminal action does not necessarily extinguish his civil liability thereto. Jurisprudence is replete with illustrations depicting that the result of a criminal action may be treated in isolation from the civil action:

[T]he acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.<sup>21</sup>

We agree with the findings of the RTC and the CA that the civil liability of respondent arising from an alleged contract of loan was not established. As aptly discussed by the courts *a quo*, petitioner failed to prove that respondent indeed was the recipient of the amounts covered by the checks; and, as such, primarily liable for the same. Based on the factual findings of the courts *a quo*, the following circumstances confirmed that respondent was actually a mere guarantor of the loan obligations: (1) for every transaction between petitioner and respondent, petitioner kept postdated checks or certificates of title of real properties as security for the loan, aside from the checks issued by respondent; (2) respondent earned a commission for such transactions; and (3) there were indeed principal debtors who secured the loan

<sup>17</sup> *Miro v. Vda. De Erederos*, 721 Phil. 772, 785-787 (2013).

<sup>18</sup> *Samala v. Court of Appeals*, 467 Phil. 563 (2004).

<sup>19</sup> SEC. 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.

<sup>20</sup> *Dy v. People of the Philippines*, 392 Phil. 672-697 (2016).

<sup>21</sup> *Rimando v. Spouses Aldaba*, 745 Phil. 358(2014), citing *Dayap v. Sendiong*, 597 Phil. 127, 141 (2009).



through respondent, which leads to the conclusion that respondent acted as a guarantor of the checks.

While it was established that respondent is a mere guarantor, the Court is still constrained to declare her civil liability on such account.

Statutorily defined, a contract of guaranty is one in which a guarantor binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter failed to do so.<sup>22</sup> The guarantor's payment to the creditor in favor of the principal debtor entitles the guarantor to indemnification.<sup>23</sup> However, the liability of the guarantor is subsidiary as he cannot be compelled to pay the creditor unless the latter has exhausted all the property of the principal debtor and resorted to all legal remedies against the debtor.<sup>24</sup> Appropriately, the benefit of excussion applies in a contract of guaranty in that the creditor may only proceed to collect from the guarantor after he/she has proceeded against the properties of the principal debtor and the debt remains unsatisfied.<sup>25</sup>

In this case, the records are bereft of proof that the principal debtors had in fact defaulted in their obligation upon demand made by petitioner. Even the amount of such obligations was not established. Thus, it would be premature to determine the liability of respondent as a guarantor of the obligations.

**WHEREFORE**, the petition is hereby **DENIED**. Accordingly, the Decision dated October 5, 2016 and the Resolution dated March 29, 2017 are **AFFIRMED in toto**.

This pronouncement is without any prejudice to any civil action which Estrella T. Barbasa may file against respondent Elena A. Torres on the basis of a contract of guaranty.

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<sup>22</sup> NEW CIVIL CODE OF THE PHILIPPINES, Article 2047.

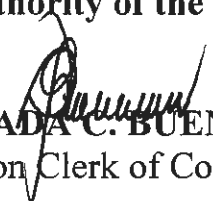
<sup>23</sup> Id., Article 2066.

<sup>24</sup> Id., Article 2060.

<sup>25</sup> See *Trade and Investment Development Corporation v. Philippine Veterans Bank*, G.R. No. 233850, July 1, 2019.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court <sub>2/12/14</sub>

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**177-B**

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(Crim. Case No. MC04-8530)

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