

Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

MARTIN N. LIM, JR.,  
Petitioner,

G.R. No. 234405

Present:

- versus -

PERALTA, C.J., Chairperson,  
CAGUIOA,  
CARANDANG,  
ZALAMEDA, and  
GAERLAN, JJ.

MARIA CONCEPCION D.  
LINTAG,  
Respondent.

Promulgated:

DEC 09 2020

X ----- X

DECISION

PERALTA, C.J.:

On appeal is the May 18, 2017 Decision<sup>1</sup> of the Court of Appeals (CA) in CA-G.R. CV No. 104923 which affirmed the March 20, 2015 Decision<sup>2</sup> of the Regional Trial Court (RTC), Branch 148, Makati City, in Criminal Case No. 09-3335 and 09-3336, finding Martin N. Lim (*petitioner*) civilly liable to Maria Concepcion D. Lintag (*Lintag*).

On October 30, 2009, two (2) separate Informations for estafa were filed against petitioner, viz.:

Information dated October 30, 2009 in Criminal Case No. 09-3335 for estafa under Article 315(1)(b) of the RPC

<sup>1</sup> Penned by Associate Justice Amy C. Lazaro-Javier (now a member of this Court), with Associate Justices Celia C. Librea-Leagogo and Pedro B. Corales concurring; *rollo*, pp. 25-52.

<sup>2</sup> Records, Vol. 2, pp. 493-514.

On the 9<sup>th</sup> day of December 2008, in the [C]ity of Makati, the Philippines, the accused being the sales agent of New San Jose Builders, Inc. (NSJBI), received in trust from Maria Concepcion D. Lintag, a BPI Family Savings Bank check no. 0478253 in the amount of P158,344.48 as payment for the expenses to be incurred in the transfer of the unit purchased by the complainant from NSJBI and with the corresponding obligation on the part of the accused to immediately remit/turn-over the check to NSJBI, but the accused[,] far from complying with his obligation, with intent to defraud and with unfaithfulness and grave abuse of confidence encashed the check, and thereafter, accused did then and there willfully, unlawfully, and feloniously misappropriate, misapply, and convert the proceeds of the check to his own personal use and benefit, and the accused, despite repeated demands made by [the] complainant, failed and refused and still fails and refuses to return to the complainant or to remit/turn-over the amount of P158,344.48 to New San Jose Builders, Inc., to the damage and prejudice of Maria Concepcion D. Lintag.

CONTRARY TO LAW.<sup>3</sup>

Information dated October 30, 2009 in Criminal Case No. 09-3336 for estafa under Article 315(2) (a) in relation to Article 172 of the RPC:

On the 16<sup>th</sup> day of January 2009, in the [C]ity of Makati, the Philippines, accused, being the sales agent of New San Jose Builders, Inc. (NSJBI), received from Maria Concepcion D. Lintag BPI Family Savings Bank check no. 0478252 in the amount of P1,141,655.52, which is a commercial document, as partial payment for the condominium unit purchased from NSJBI, with the corresponding obligation on the part of the accused to deliver the check to NSJBI, the payee thereof, but the accused instead erased the words "New San Jose Builders, Inc." and wrote the word "CASH" as payee, and thereafter affixed the customary signature of Ma. Concepcion D. Lintag above the said word and accused, once he had accomplished the same, encashed the check to the drawee bank, accused knowing very well that the complainant did not participate or authorize the accused to change the payee's name and sign on her behalf in view of such falsification, accused was able to encash the check in the amount of P1,141,655.52 and received the proceeds thereof, to the damage and prejudice of Maria Concepcion D. Lintag.

CONTRARY TO LAW.<sup>4</sup>

Petitioner pleaded "not guilty" upon arraignment.<sup>5</sup>

Trial ensued and the succeeding facts were established.

Lintag purchased a condominium unit from New San Jose Builders, Inc. (NSJBI) for the total contract price of Two Million Four Hundred Thousand Pesos (₱2,400,000.00). The payment scheme was on a monthly basis and Lintag hands check payments to petitioner, a sales agent, who then remits it to NSJBI.

<sup>3</sup> Records, Vol. 1, p. 2.

<sup>4</sup> *Id.* at 6.

<sup>5</sup> *Id.* at 115.

On November 27, 2008, Lintag issued check no. 0478521 which was drawn from her checking account with BPI Family Savings Bank. The check, dated January 16, 2009, was payable to the order of *New San Jose Builders, Inc.*, for the amount of One Million Three Hundred Thousand Pesos (₱1,300,000.00). Petitioner issued a NSJBI acknowledgment receipt, with control no. 12802, dated November 27, 2008.

On December 9, 2008, Lintag once again met with petitioner to replace check no. 0478521 after the latter made representations that NSJBI wanted Lintag to issue two different checks – one check for partial payment of the condominium unit, and the other to cover expenses for transfer of unit under Lintag and her husband's names. Consequently, Lintag issued two crossed-checks dated January 16, 2009. Check no. 0478252, was issued as partial payment for the unit and was payable to *New San Jose Builders, Inc.*, for the amount of ₱1,141,655.52. The other one, check no. 0478253, was issued to cover expenses for transfer and was payable to *CASH*, for the amount of ₱158,344.48. Petitioner received the checks and placed them inside his clutch bag, and then handed another NSJBI acknowledgment receipt with control no. 12803.

On his way home, petitioner was allegedly accosted by two unidentified men who were armed with deadly weapons. The men grabbed petitioner's clutch bag and immediately absconded, taking the checks with them.

Petitioner, however, failed to inform Lintag and NSJBI that the checks were stolen. Lintag testified that she and petitioner communicated on several occasions, through text messages or personal interactions, to finalize the purchase of the unit. Lintag stated that, on January 8, 2009, petitioner even reminded her to ensure that her accounts had sufficient funds.

On February 6, 2009, Lintag learned that her current account with BPI had been credited for the checks, but not as payment to NSJBI. She also discovered that check no. 0478252 had been tampered with when the payee was changed from *New San Jose Builders, Inc.* to *CASH*. It was also only after such discovery that petitioner revealed the robbery incident to Lintag. Aggrieved Lintag filed a complaint for estafa with abuse of confidence, under Article 315 (1)(b), and estafa through falsification of commercial documents, under Article 315 (2)(a), against petitioner.



On March 20, 2015, the RTC rendered a Decision,<sup>6</sup> acquitting petitioner from estafa, but holding him civilly liable, the dispositive portion of which reads:

**WHEREFORE**, premises considered, for failure of the prosecution to establish the guilt of the accused beyond reasonable doubt, accused **Martin N. Lim Jr.** is hereby **ACQUITTED on Criminal Case Nos. 09-3335 and 09-3336.**

Nevertheless, Accused Martin N. Lim[, Jr.] is held civilly liable to the private complainant and is hereby ordered to pay the latter the following:

1. Nominal Damages in the amount of P200,000.00
2. Moral Damages in the amount of P200,000.00
3. Attorney's fees in the amount of P100,000.00
4. Cost of Suit.

**SO ORDERED.**<sup>7</sup>

The RTC Decision states that the following elements must be proven beyond reasonable doubt in prosecuting for the crime of estafa through misappropriation or conversion under paragraph (1) (b) Article 315 of the Revised Penal Code:

- (1) that the money, good or other personal property is received by the offender in trust, of on commission, of for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
- (2) that there be misappropriation or conversion of such money or property by the offender or denial on his part of such receipt;
- (3) that such misappropriation or conversion or denial is to the prejudice of another; and
- (4) that there is demand made by the offended party on the offender.<sup>8</sup>

The RTC found that the prosecution failed to prove the first and second elements of the crime charged. The first element necessitates material or physical, *and* juridical possession of the thing received. As stated by the RTC, petitioner only had material or physical possession of the checks because he received them not "as agent of [Lintag]" but as an employee of NSJBI.

Misappropriation was also wanting because there was no moral certainty that petitioner received the proceeds of the checks. Respondent alleged that the checks were crossed or for deposit only yet, she did not present any proof as to whose accounts the checks were deposited.

<sup>6</sup> Records, Vol. 2, pp. 493-514.

<sup>7</sup> *Id.* at 514.

<sup>8</sup> *Id.* at 509-510, citing *Serona v. Hon. Court of Appeals, et al.*, G.R. No. 130423, November 18, 2012 (Unreported).

In the end, the RTC only found petitioner civilly liable for failing to report the robbery incident to Lintag or NSJBI, which could have averted the unauthorized encashment of the checks.

On April 23, 2015, petitioner filed an appeal before the CA. Petitioner averred that his civil liability had no sufficient basis as he was not the perpetrator of the crimes charged.

On May 18, 2017, the CA rendered the assailed Decision, the dispositive portion of which reads:

The Decision dated March 20, 2015 is AFFIRMED with MODIFICATION, AWARDING P1,300,000.00 as actual damages (representing the total value of BPI Family Savings Bank Check Nos. 0478252 and 0478253), P200,000.00 as moral damages, P30,000.00 as exemplary damages, and P500,000.00 as attorney's fees. The award of P200,000.00 as nominal damages is DELETED.<sup>9</sup>

On June 16, 2017, petitioner filed his Motion for Reconsideration, but the same was denied in a Resolution<sup>10</sup> dated September 6, 2017.

Thus, the present petition.

Petitioner submits the following assignment of error:

Specifically, the question here is whether or not it is proper for the Court of Appeals, following the trial court, to award a huge money judgment to the private complainant despite the findings that:

- (a) The trial court did not find the accused to have committed the crimes charged or profited therefrom.
- (b) There is no preponderance of evidence in these cases establishing that accused's acts caused the loss and damage to the private complainant.
- (c) The rules and jurisprudence are clear that, if there is no basis to charge the accused, then he has no criminal liability; it follows that he should also have no civil liability.<sup>11</sup>

The only issue to be resolved before the Court is whether or not Lim is liable for civil damages.

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<sup>9</sup> *Rollo*, p. 53.

<sup>10</sup> *Id.* at 62.

<sup>11</sup> *Id.* at 14.

The Court answers in the affirmative.

Petitioner maintains that there is no basis for civil liability because he was found innocent of the crime charged. Such argument must fail. It is entrenched in jurisprudence, that the extinction of penal action does not carry with it the extinction of civil action where (a) the acquittal is based on reasonable doubt as only a 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 was acquitted.<sup>12</sup>

Here, the RTC acquitted petitioner on ground of reasonable doubt because the prosecution failed to submit sufficient evidence that petitioner misappropriated the checks, thus:

x x x [T]he Court notes that the two checks were admittedly crossed checks or for deposit only which meant that before it could be credited to a party, it had to undergo the standard bank clearing process. No paper trail was presented to establish as to whose account the said BPI checks were deposited or credited. No BPI representative was presented to testify on the process conducted before the said checks were cleared and appropriated in order to determine to whose account the proceeds of the checks went. Thus, the prosecution failed to establish with moral certainty that the proceeds of the subject checks went to the accused or that he misappropriated the same.<sup>13</sup>

The RTC, however, held petitioner civilly liable for failing to report the alleged robbery incident. On appeal, the CA modified the civil liability by increasing the damages due after determining that the proximate cause for Lintag's financial damage is the failure to report the robbery incident. The Court now affirms but modifies the award of damages of the CA.

The lower courts duly established that Lintag suffered financial damage when petitioner failed to deliver the checks to NSJBI. As mentioned, the RTC and the CA attributed said failure to the robbery incident. The Court, however, refuses to believe the veracity of the robbery incident but agrees with the lower courts that petitioner employed dishonesty in his dealings with Lintag.

The robbery incident was a matter of affirmative defense which the petitioner had the duty to prove with the quantum of evidence required by law.<sup>14</sup> Since the civil liability is all that is left to be determined, petitioner had the burden to prove his defense by preponderance of evidence, which is the

<sup>12</sup> *Chua v. People*, G.R. No. 195248, November 22, 2017.

<sup>13</sup> *Records*, Vol. 2, p. 511.

<sup>14</sup> *People v. Librero*, 395 Phil. 425, 436 (2000).

more convincing evidence to the court as worthy of belief than that offered in opposition thereto.<sup>15</sup> Section 1, Rule 133 of the Rules of Court provides:

Section 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

A perusal of the records would disclose that the robbery incident was unsupported and uncorroborated. The witness of petitioner was not present during the alleged robbery.<sup>16</sup> Petitioner also stated in his Judicial Affidavit<sup>17</sup> that he actually knew who caused the encashment of the checks, to wit:

Q5: What is your work prior to being as (*sic*) salesman of New San Jose Builders?

A: I used to be an owner of a business, Madelcor International Corporation ("Madelcor," for brevity), which is engaged in installation of PABX microwave communications equipments (*sic*).

Q6: What happened to that business?

A: The business went bankrupt in 2006-2007 when my parents swindled me and took the business away from me. Then, the personal and institutional creditors of Madelcor run (*sic*) after me for the corporate liabilities, which reached to a total amount of more than Five Million Pesos (P5,000,000.00).

Q7: What did you do after getting broke?

A: I started all over again. That is why, I worked with New San Jose Builders as a salesman.

X X X X

Q37: Did you inform Ms. Lintag about the incident?

A: I did not inform Ms. Lintag right away.

Q38. Why?

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<sup>15</sup> *Beltran v. Villarosa*, 603 Phil. 279, 289 (2009).

<sup>16</sup> TSN, June 25, 2014, pp. 16-17.

<sup>17</sup> Records, Vol. 2, pp. 595-601.

A: Sir I have several reasons. I am terribly afraid that she will not believe my story and trust me anymore, and she will report the problem to the company and discontinue with the sales transactions. That way, I will lose my job. I thought of admitting and paying the civil obligation of the checks to Ms. Lintag. **Anyway, the checks would be considered as payment to my Madelcor creditors who were responsible for the incident.** Furthermore, I estimated that only the second check, which was paid to "CASH" in the amount of P158,344.48, will be the damage of Ms. Lintag. I thought that I can pay that amount with my sales commission from the company.<sup>18</sup> (Emphasis supplied)

Petitioner's passive response to the alleged robbery incident and his failure to file a complaint against his Madelcor creditors after learning that the proceeds of the checks allegedly ended up in their hands seem suspect.

Thus, the preponderance of evidence is considered in favor of Lintag as petitioner failed to support his affirmative defense with evidence that could have justified or excused his failure to deliver the checks to NSJBI.

Incidentally, petitioner's answer to question 38, wherein he stated that "*I thought I can pay that amount with my sales commission from the company,*" is sufficient proof and admission that he was a sales agent of NSJBI and he received sales commissions from NSJBI. Such fact was also duly proven during trial.

Jurisprudence has consistently provided that an agent has material and juridical possession of the thing received because he can assert, as against his own principal, an independent, autonomous right to retain the money or goods received in consequence of the agency; as when the principal fails to reimburse him for advances he has made, and indemnify him for damages suffered without his fault.<sup>19</sup> This only means that as an agent of NSJBI, petitioner had both material and juridical possession of the checks.

Absent any plausible defense, the Court holds that petitioner was unable to overcome the burden and holds him civilly liable. The Court affirms the award of actual damages in the amount of ₱1,300,000.00 as this has been duly proven during trial. The total amount of damages shall also earn interest at the legal rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.

The award of moral damages, exemplary damages and attorney's fees are, however, deleted for lack of sufficient basis. In order that moral damages may be awarded, there must be pleading and proof of moral suffering, mental anguish, fright and the like.<sup>20</sup> Exemplary damages, on the other hand, is

<sup>18</sup> *Id.* at 596-599.

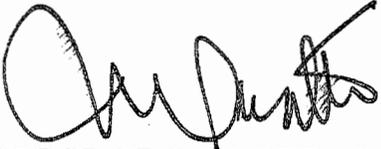
<sup>19</sup> *Benabaye v. People*, 755 Phil. 144, 156 (2015).

<sup>20</sup> *Espino v. Spouses Bulut*, 664 Phil. 702, 710. (2011).

allowed only in addition to moral damages such that no exemplary damages can be awarded unless the claimant first establishes his clear right to moral damages.<sup>21</sup> Since Lintag failed to establish her claim for moral damages, the award of exemplary damages also cannot stand.

**WHEREFORE**, the petition is **DENIED**. The May 18, 2017 Decision and the September 6, 2017 Resolution of the Court of Appeals in CA-G.R. CV No. 104923 are hereby **AFFIRMED with MODIFICATIONS**. Accordingly, petitioner Martin N. Lim, Jr. is **ORDERED** to **PAY** the amount of ₱1,300,000.00 as actual damages subject to six percent (6%) *per annum* interest rate from the date of finality of this decision until fully paid. The award of moral damages, exemplary damages and attorney's fees are **DELETED**.

**SO ORDERED.**

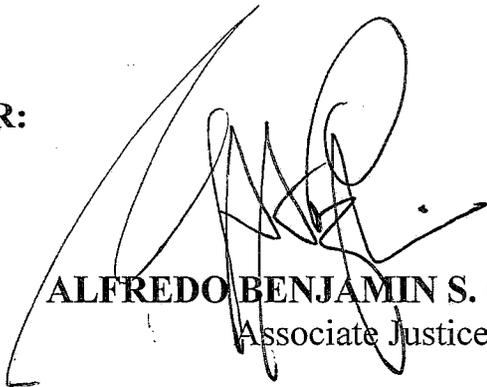


**DIOSDADO M. PERALTA**  
Chief Justice

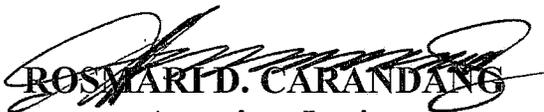
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<sup>21</sup> *Villanueva v. Court of Appeals*, 536 Phil. 404, 412 (2006).

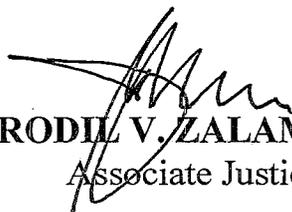
**WE CONCUR:**



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice



**ROSMARID. CARANDANG**  
Associate Justice



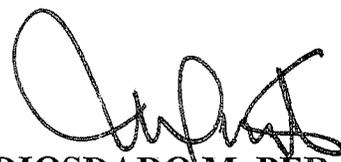
**RODIL V. ZALAMEDA**  
Associate Justice



**SAMUEL H. GAERLAN**  
Associate Justice

**CERTIFICATION**

Pursuant to Section 13, Article VIII of the Constitution, 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.



**DIOSDADO M. PERALTA**  
Chief Justice