

MEMORANDUM

TO : Clients (Specifically those in Retail and Wholesale Business)

FROM : Coto Malley & Tamargo, LLP

DATE : July 15, 2003

RE : Illegal Detention: Sales Receipt Verification

In Castro v. Tiendas Pitusa, Inc., 2003 J.T.S. 101 (June 9, 2003), the Supreme Court of Puerto Rico recently reiterated prior precedent holding that there is a cause of action for tort under Puerto Rico Law for illegal detention which can be brought under Article 1802 of the Civil Code of Puerto Rico (the general tort statute of Puerto Rico). The Court emphasized that the action requires three (3) elements in order to be proven, to wit:

1. Intention to restrict liberty of movement of a person;
2. That the detained person is conscious of the detention and that has not consented to it; and
3. That the detention has caused damages.

The Supreme Court further clarified that such claims are subject to the reasonability criteria, requiring that the Courts take into consideration all of the particular circumstances of each case.

Moreover, the Puerto Rico Supreme Court ruled that the verification by employees of sales receipt at the exit door of retail establishment does not constitute an illegal detention *per se* if it has the only purpose of verifying that the sale was made the same day and at that time. The Court ruled that the intervention does not constitute an invasion of the customer privacy when considering the nature of rights involved. In this regard, the Supreme Court weighed the customer's privacy versus the right of the retailers to establish a security process in order to deal with shoplifting at retail stores.

The Supreme Court of Puerto Rico followed and clarified precedent from Puerto Rico in reaching this decision and construed the constitutional right to privacy within the contest of such spot verifications by retailer employees. However, it is important to stress that the facts in this case show that none of the employees of the retailer asked to verify the contents of the bag containing the purchases, nor did they ask the customer about the type of merchandise he had purchased. They merely asked the customer to show the sales receipt with the only purposes of verifying that the sale had been made that day and at that time so to avoid having an old receipt brought into the store in order to show evidence of purchase of goods on that day. The decision is in the Spanish language but, if you are interested we may obtain an English translation.

Should you need further information, call or e-mail us.

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