Distinction Between Contract Fraud and Commercial Fraud

Distinction Between Contract Fraud and Commercial Fraud (Court of Cassation, Section III Criminal, Judgment No. 10093/20; Filed March 16)

First and foremost, it's essential to clarify that the crime of contract fraud under Article 640 of the Penal Code penalizes:

> *"Anyone who, by means of trickery or deceit, induces someone into error and thereby procures an unjust profit for themselves or others, causing harm to another."*

This conduct is distinct from that of commercial fraud under Article 515 of the Penal Code:

> *"Anyone who, in the exercise of a commercial activity or in a public shop, delivers to the buyer a movable item instead of another, or a movable item differing in origin, provenance, quality, or quantity from what was declared or agreed upon."*

Key Differences Between Contract Fraud and Commercial Fraud



In the crime of fraud, deceit is a crucial element for the conclusion of the contract. On the other hand, commercial fraud occurs when a different item than what was declared or agreed upon is delivered. This happens under a freely agreed contractual bond, without any trickery or deceit, but simply with the delivery of an item that differs from what was originally agreed upon.

The Supreme Court in its judgment (Section III Criminal No. 10093/2020) stated:

“Contract fraud is distinguished from commercial fraud because the former is realized when the deceit perpetrated against the victim is decisive for the conclusion of the contract, while the latter is completed with the delivery of an item different from what was declared or agreed upon, based on a freely constituted contract bond without the involvement of trickery or deceit. (Case of annulment of a conviction for the crime under Article 515 of the Penal Code, as the Court found a

different crime under Article 640 of the Penal Code in the delivery of a car in exchange for money, after inducing the purchase through deceit about the engine's characteristics)" (Section 3, No. 40271 of 16/07/2015 – filed 07/10/2015, Manconi, Rv. 26516301).

Furthermore, the judgment articulates a clear principle:

> *The crime of fraud is distinguished from commercial fraud by the presence of deceit or trickery. Therefore, a seller who, during contract execution, uses deceit or trickery to induce the other party to accept different conditions than agreed upon, commits fraud.*

The two crimes are distinct and cannot occur simultaneously. In fraud, the essential element is the use of trickery and deceit by the perpetrator to mislead the victim. In contrast, commercial fraud involves the delivery of an item that is substantially different in origin, provenance, quality, or quantity from what was agreed upon in the contract. This crime does not consider the use of deceitful methods to mislead the buyer but focuses on protecting the fair exercise of commercial activity as outlined in Article 515 of the Penal Code.

Conclusion

From the analysis of the aforementioned judgment, the following legal principle emerges:

> *"Contract fraud is distinguished from commercial fraud because the former is realized when the deceit against the victim is decisive for the contract's conclusion, while the latter is completed with the delivery of an item different from what was declared or agreed upon, based on a freely constituted contract bond without the involvement of trickery or deceit. Contract fraud thus includes an additional element*

of deceit or trickery not present in commercial fraud.”

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