

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. RAMON P. JACINTO, RESPONDENT.*G.R. No. 154622. August 03, 2010*

Ponente: VILLARAMA, JR., J.

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Petitioner Land Bank of the Philippines (Land Bank) seeks the reversal of the Decision[1] dated November 28, 2001 and the Resolution[2] dated August 6, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 62773. The CA had set aside the Resolutions dated October 25, 2000[3] and December 18, 2000[4] of the Department of Justice (DOJ) and reinstated the Resolution[5] dated March 3, 1999 of the City Prosecution Office of Makati which dismissed the petitioner's complaint against respondent Ramon P. Jacinto in I.S. Nos. 99-A-1536-44 for violation of Batas Pambansa Blg. (B.P.) 22 or "The Bouncing Checks Law."

The undisputed facts, as gleaned from the records, are as follows:

The First Women's Credit Corporation (FWCC) obtained a loan from the petitioner Land Bank in the aggregate amount of P400 million, evidenced by a Credit Line Agreement[6] dated August 22, 1997. As security for the loan, respondent Ramon P. Jacinto, President of FWCC, issued in favor of Land Bank nine (9) postdated checks amounting to P465 million and drawn against FWCC's account at the Philippine National Bank. Later, before the checks matured, petitioner and respondent executed several letter agreements which culminated in the execution of a Restructuring Agreement on June 3, 1998. Under the new agreement, the loan obligation contracted under the Credit Line Agreement of August 22, 1997 was restructured, its terms of payment, among others, having been changed or modified. When FWCC defaulted in the payment of the loan obligation under the terms of their restructured agreement, petitioner presented for payment to the drawee bank the postdated checks as they matured. However, all the checks were dishonored or refused payment for the reason "Payment Stopped" or "Drawn Against Insufficient Funds." Respondent also failed to make good the checks despite demands.

Hence, on January 13, 1999, Land Bank, through its Assistant Vice President, Udela C. Salvo, Financial Institutions Department, filed before the Makati City Prosecutor's Office a Complaint-Affidavit[7] against respondent for violation of B.P. 22. Respondent filed his Counter-Affidavit[8] denying the charges and averring that the complaint is baseless and utterly devoid of merit as the said loan obligation has been extinguished by payment and novation by virtue of the execution of the Restructuring Agreement. Respondent also invoked the proscription in the May 28, 1998 Order of the Regional Trial Court (RTC) of Makati City, Branch 133 in Special Proceedings No. M-4686 for Involuntary Insolvency which forbade FWCC from paying any of its debts.

In a Resolution[9] dated March 3, 1999, Prosecutor George V. De Joya dismissed the complaint against respondent, finding that the letter-agreements between Land Bank and FWCC restructured and novated the original loan agreement. It was held that there being novation, the checks issued pursuant to the original loan obligation had lost their efficacy and validity and cannot be a valid basis to sustain the charge of violation of B.P. 22.

On June 21, 1999, petitioner's motion for reconsideration was likewise denied.[10]

Aggrieved, petitioner elevated the matter to the DOJ for review. On April 10, 2000, the DOJ issued a Resolution[11] dismissing the appeal. However, upon motion for reconsideration filed by petitioner, the DOJ reversed its ruling and issued a Resolution dated October 25, 2000 holding that novation is not a mode of extinguishing criminal liability. Thus, the DOJ held that:

WHEREFORE, there being probable cause to hold respondent triable for the offense of violation of BP 22 (nine (9) counts), the Department Resolution dated April 10, 2000 is hereby reconsidered and set aside and the resolution of the Office of the City Prosecutor, Makati City, dismissing the complaint should be, as it is, hereby REVERSED. Said office is directed to file the appropriate informations for violation of BP 22 (nine (9) counts) against respondent. Report the action taken within ten (10) days from receipt hereof.

SO ORDERED.[12]

Respondent moved for a reconsideration of the above Order but it was denied in a Resolution dated December 18, 2000. Undaunted, respondent filed a petition for certiorari before the CA.

On November 28, 2001, the CA, in the assailed Decision, reversed the Resolution of the DOJ and reinstated the Resolution of Prosecutor De Joya dismissing the complaint. While the CA ruled that novation is not a mode of extinguishing criminal liability, it nevertheless held that novation may prevent criminal liability from arising in certain cases if novation occurs before the criminal information is filed in court because the novation causes doubt as to the true nature of the obligation. Also, the CA found merit in respondent's assertion that a prejudicial question exists in the instant case because the issue of whether the original obligation of FWCC subject of the dishonored checks has been novated by the subsequent agreements entered into by FWCC with Land Bank, is already the subject of the appeal in Civil Case No. 98-2337 (entitled, "First Women's Credit Corporation v. Land Bank of the Philippines" for Declaration of Novation) pending before the CA. The CA also gave consideration to respondent's assertion that the Order dated May 28, 1998 of the RTC proscribing FWCC from paying its debts constitutes as a justifying circumstance which prevents criminal liability from attaching.

Petitioner's motion for reconsideration from the said decision having been denied, petitioner filed the instant petition for review on certiorari, raising the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE ELEMENT OF A PREJUDICIAL QUESTION EXISTS IN THE INSTANT CASE AND THAT THE RECOMMENDATION FOR THE FILING OF INFORMATIONS IN COURT AGAINST THE RESPONDENT WAS MADE WITH GRAVE ABUSE OF DISCRETION.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE ORDER DATED MAY 28, 1998 OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 133, CONSTITUTES AS A JUSTIFYING CIRCUMSTANCE THAT PREVENTS CRIMINAL LIABILITY FROM ATTACHING.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO TAKE JUDICIAL NOTICE OF THE PROVISIONS OF THE LANDBANK CHARTER RELATIVE TO THE COLLECTION OF ITS FINANCIAL EXPOSURES.[13]

Essentially, the issue to be resolved in this case is whether the CA erred in reversing the Resolution of the DOJ

finding probable cause to hold respondent liable for violation of B.P. 22.

Petitioner asserts that the June 3, 1998 Restructuring Agreement did not release FWCC from its obligation with Land Bank.[14] It merely accommodated FWCC's sister company, RJ Ventures and Development Corporation.[15] Whether there was novation or not is also not determinative of respondent's responsibility for violation of B.P. 22, as the said special law punishes the act of issuing a worthless check and not the purpose for which the check was issued or the terms and conditions relating to its issuance. In ruling that the Order dated May 28, 1998 of the RTC in Special Proceedings No. M-4686 constituted a justifying circumstance, the CA failed to take judicial notice of Section 86-B (4)[16] of Republic Act No. 7907 which excludes the proceeds of the checks from the property of the insolvent FWCC.

Respondent counters that there was novation which occurred prior to the institution of the criminal complaint against him and that if proven, it would affect his criminal liability.[17] Respondent averred that if the CA would judicially confirm the existence of novation in the appeal of Civil Case No. 98-2337 before it, then it would follow that the value represented by the subject checks has been extinguished. Respondent argues that the consideration or value of the subject checks have been modified or novated with the execution of the Restructuring Agreement. The payment of the obligation supposedly already depended on the terms and conditions of the Restructuring Agreement and no longer on the respective maturity dates of the subject checks as the value or consideration of the subject checks had been rendered inexistent by the subsequent execution of the Restructuring Agreement. He maintains that the subject checks can no longer be the basis of criminal liability since the obligation for which they were issued had already been novated or abrogated.

We grant the petition.

A prejudicial question generally exists in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must be preemptively resolved before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative juris et de jure of the guilt or innocence of the accused in the criminal case.[18] The elements of a prejudicial question are provided under Section 7, Rule 111 of the Revised Rules of Criminal Procedure, as amended, as follows: (i) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (ii) the resolution of such issue determines whether or not the criminal action may proceed.[19]

A prejudicial question is understood in law as that which must precede the criminal action and which requires a decision before a final judgment can be rendered in the criminal action with which said question is closely connected.[20] Not every defense raised in a civil action will raise a prejudicial question to justify suspension of the criminal action. The defense must involve an issue similar or intimately related to the same issue raised in the criminal case and its resolution should determine whether or not the latter action may proceed. If the resolution of the issue in the civil action will not determine the criminal responsibility of the accused in the criminal action based on the same facts, or if there is no necessity that the civil case be determined first before taking up the criminal case, the civil case does not involve a prejudicial question.[21] Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other. [22]

In the instant case, we find that the question whether there was novation of the Credit Line Agreement or not is not determinative of whether respondent should be prosecuted for violation of the Bouncing Checks Law.

Respondent's contention that if it be proven that the loan of FWCC had been novated and restructured then his liability under the dishonored checks would be extinguished, fails to persuade us. There was no express stipulation in the Restructuring Agreement that respondent is released from his liability on the issued checks and in fact the letter-agreements between FWCC and Land Bank expressly provide that respondent's JSS (Joint and

Several Signatures) continue to secure the loan obligation and the postdated checks issued continue to guaranty the obligation. In fact, as aptly pointed out by petitioner, out of the nine (9) checks in question, eight (8) checks were dated June 8 to October 30, 1998 or after the execution of the June 3, 1998 Restructuring Agreement. If indeed respondent's liability on the checks had been extinguished upon the execution of the Restructuring Agreement, then respondent should have demanded the return of the checks.[23] However, there was no proof that he had been released from his obligation. On the contrary, the Restructuring Agreement contains a proviso which states that "This Agreement shall not novate or extinguish all previous security, mortgage, and other collateral agreements, promissory notes, solidary undertaking previously executed by and between the parties and shall continue in full force and effect modified only by the provisions of this Agreement." [24]

Moreover, it is well settled that the mere act of issuing a worthless check, even if merely as an accommodation, is covered by B.P. 22.[25] Thus, this Court has held that the agreement surrounding the issuance of dishonored checks is irrelevant to the prosecution for violation of B.P. 22.[26] The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentment for payment.[27] Section 1 of B.P. 22 enumerates the following elements: (1) the making, drawing, and issuance of any check to apply on account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. Thus, even if it be subsequently declared that novation took place between the FWCC and petitioner, respondent is not exempt from prosecution for violation of B.P. 22 for the dishonored checks.

As to the issue of whether the Order dated May 28, 1998 of the RTC of Makati City in Special Proceedings No. M-4686 for Involuntary Insolvency constitutes as a justifying circumstance that prevents criminal liability from attaching, we rule in the negative. As stated at the outset, the said order forbids FWCC from paying its debts as well as from delivering any property belonging to it to any person for its benefit. Respondent, however, cannot invoke this Order which was directed only upon FWCC and is not applicable to him. Therefore, respondent, as surety of the loan is not exempt from complying with his obligation for the issuance of the checks.

WHEREFORE, the petition for review on certiorari is GRANTED. The November 28, 2001 Decision and August 6, 2002 Resolution of the Court of Appeals in CA-G.R. SP No. 62773 are hereby REVERSED and SET ASIDE. The Resolution dated October 25, 2000 of the Department of Justice directing the filing of appropriate Informations for violation of B.P. 22 against respondent Ramon P. Jacinto is hereby REINSTATED and UPHELD.

No costs.

SO ORDERED.

Carpio Morales, (Chairperson), Bersamin, Abad,[*] and Mendoza,[**] JJ., concur.

[*]Designated additional member per Special Order No. 843 dated May 17, 2010.

[**] Designated additional member per Raffle dated July 19, 2010 in place of Associate Justice Arturo D. Brion who inhibited due to prior action in a related case.

[1] Rollo, pp. 16-30. Penned by Associate Justice Teodoro P. Regino, with Associate Justices Eugenio S. Labitoria and Rebecca De Guia-Salvador concurring.

[2] Id. at 31-32.

[3] CA rollo, pp. 23-26.

[4] Id. at 27.

[5] Id. at 148-150.

[6] Records, pp. 70-82.

[7] CA rollo, pp. 30-31.

[8] Id. at 64-73.

[9] Id. at 148-150.

[10] Records, p. 139.

[11] Id. at 83.

[12] CA rollo, p. 25.

[13] Rollo, pp. 7-8.

[14] Id. at 72.

[15] Id.

[16] Section 86-B (4) of Republic Act No. 7907 which amended Republic Act No. 3844 on the Charter of the Land Bank of the Philippines, provides,

"Section 86-b foreclosure of collaterals and disposal of bank acquired properties--

x x x x

"4. Exemption from Attachment--The provisions of any law to the contrary notwithstanding, securities on loans and/or other credit accommodations granted by the bank shall not be subject to attachment, execution to any other court process, nor shall they be included in the property of insolvent persons or institutions, unless all debts and obligations of the debtors to the bank have been paid, including accrued interest, penalties, collection expenses, and other charges.

x x x x"

[17] Rollo, p. 95.

[18] Yap v. Cabales, G.R. No. 159186, June 5, 2009, 588 SCRA 426, 432.

[19] Jose v. Suarez, G.R. No. 176795, June 30, 2008, 556 SCRA 773, 782.

[20] Berbari v. Concepcion and Prosecuting Attorney of Manila, 40 Phil. 837, 839 (1920).

[21] Ty-De Zuzuarregui v. Hon. Villarosa, G.R. No. 183788, April 5, 2010, p. 8.

[22] Id.

[23] Rollo, p. 73.

[24] Records, p. 196.

[25] Saguiguit v. People, G.R. No. 144054, June 30, 2006, 494 SCRA 128, 135.

[26] Dreamwork Construction, Inc. v. Janiola, G.R. No. 184861, June 30, 2009, 591 SCRA 466, 478.

[27] Nuguid v. Nicdao, G.R. No. 150785, September 15, 2006, 502 SCRA 93, 99.

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