

HEIRS OF EDUARDO SIMON, PETITIONERS, VS. ELVIN CHAN AND THE COURT OF APPEALS, RESPONDENT.

G.R. No. 157547. February 23, 2011

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

There is no independent civil action to recover the civil liability arising from the issuance of an unfunded check prohibited and punished under Batas Pambansa Bilang 22 (BP 22).

Antecedents

On July 11, 1997, the Office of the City Prosecutor of Manila filed in the Metropolitan Trial Court of Manila (MeTC) an information charging the late Eduardo Simon (Simon) with a violation of BP 22, docketed as Criminal Case No. 275381 entitled *People v. Eduardo Simon*. The accusatory portion reads:

That sometime in December 1996 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Elvin Chan to apply on account or for value Landbank Check No. 0007280 dated December 26, 1996 payable to cash in the amount of P336,000.00 said accused well knowing that at the time of issue she/he/they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said Elvin Chan the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW. [1]

More than three years later, or on August 3, 2000, respondent Elvin Chan commenced in the MeTC in Pasay City a civil action for the collection of the principal amount of P336,000.00, coupled with an application for a writ of preliminary attachment (docketed as Civil Case No. 915-00).[2] He alleged in his complaint the following:

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2. Sometime in December 1996 defendant employing fraud, deceit, and misrepresentation encashed a check dated December 26, 1996 in the amount of P336,000.00 to the plaintiff assuring the latter that the check is duly funded and that he had an existing account with the Land Bank of the Philippines, xerox copy of the said check is hereto attached as Annex "A";

3. However, when said check was presented for payment the same was dishonored on the ground that the account of the defendant with the Land Bank of the Philippines has been closed contrary to his representation that he has an existing account with the said bank and that the said check was duly funded and will be honored when presented for payment;

4. Demands had been made to the defendant for him to make good the payment of the value of the check, xerox copy of the letter of demand is hereto attached as Annex "B", but despite such demand defendant refused

and continues to refuse to comply with plaintiff's valid demand;

5. Due to the unlawful failure of the defendant to comply with the plaintiff's valid demands, plaintiff has been compelled to retain the services of counsel for which he agreed to pay as reasonable attorney's fees the amount of P50,000.00 plus additional amount of P2,000.00 per appearance.

ALLEGATION IN SUPPORT OF PRAYER
FOR PRELIMINARY ATTACHMENT

6. The defendant as previously alleged has been guilty of fraud in contracting the obligation upon which this action is brought and that there is no sufficient security for the claims sought in this action which fraud consist in the misrepresentation by the defendant that he has an existing account and sufficient funds to cover the check when in fact his account was already closed at the time he issued a check;

7. That the plaintiff has a sufficient cause of action and this action is one which falls under Section 1, sub-paragraph (d), Rule 57 of the Revised Rules of Court of the Philippines and the amount due the plaintiff is as much as the sum for which the plaintiff seeks the writ of preliminary attachment;

8. That the plaintiff is willing and able to post a bond conditioned upon the payment of damages should it be finally found out that the plaintiff is not entitled to the issuance of a writ of preliminary attachment.[3]

On August 9, 2000, the MeTC in Pasay City issued a writ of preliminary attachment, which was implemented on August 17, 2000 through the sheriff attaching a Nissan vehicle of Simon.[4]

On August 17, 2000, Simon filed an urgent motion to dismiss with application to charge plaintiff's attachment bond for damages,[5] pertinently averring:

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On the ground of *litis pendentia*, that is, as a consequence of the pendency of another action between the instant parties for the same cause before the Metropolitan Trial Court of Manila, Branch X (10) entitled "People of the Philippines vs. Eduardo Simon", docketed thereat as Criminal Case No. 275381-CR, the instant action is dismissable under Section 1, (e), Rule 16, 1997 Rules of Civil Procedure, xxx

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While the instant case is civil in nature and character as contradistinguished from the said Criminal Case No. 915-00 in the Metropolitan Trial Court of Manila, Branch X (10), the basis of the instant civil action is the herein plaintiff's criminal complaint against defendant arising from a charge of violation of Batas Pambansa Blg. 22 as a consequence of the alleged dishonor in plaintiff's hands upon presentment for payment with drawee bank a Land Bank Check No. 0007280 dated December 26, 1996 in the amount of P336,000- drawn allegedly issued to plaintiff by defendant who is the accused in said case, a photocopy of the Criminal information filed by the Assistant City Prosecutor of Manila on June 11, 1997 hereto attached and made integral part hereof as Annex "1".

It is our understanding of the law and the rules, that, "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately xxx.

On August 29, 2000, Chan opposed Simon's urgent motion to dismiss with application to charge plaintiff's attachment bond for damages, stating:

1. The sole ground upon which defendant seeks to dismiss plaintiff's complaint is the alleged pendency of another action between the same parties for the same cause, contending among others that the pendency of Criminal Case No. 275381-CR entitled "People of the Philippines vs. Eduardo Simon" renders this case dismissable;

2. The defendant further contends that under Section 1, Rule 111 of the Revised Rules of Court, the filing of the criminal action, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action which the plaintiff does not contest; however, it is the submission of the plaintiff that an implied reservation of the right to file a civil action has already been made, first, by the fact that the information for violation of B.P. 22 in Criminal Case No. 2753841 does not at all make any allegation of damages suffered by the plaintiff nor is there any claim for recovery of damages; on top of this the plaintiff as private complainant in the criminal case, during the presentation of the prosecution evidence was not represented at all by a private prosecutor such that no evidence has been adduced by the prosecution on the criminal case to prove damages; all of these we respectfully submit demonstrate an effective implied reservation of the right of the plaintiff to file a separate civil action for damages;

3. The defendant relies on Section 3 sub-paragraph (a) Rule 111 of the Revised Rules of Court which mandates that after a criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action; however, the defendant overlooks and conveniently failed to consider that under Section 2, Rule 111 which provides as follows:

In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of criminal case provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

In as much as the case is one that falls under Art. 33 of the Civil Code of the Philippines as it is based on fraud, this action therefore may be prosecuted independently of the criminal action;

4. In fact we would even venture to state that even without any reservation at all of the right to file a separate civil action still the plaintiff is authorized to file this instant case because the plaintiff seeks to enforce an obligation which the defendant owes to the plaintiff by virtue of the negotiable instruments law. The plaintiff in this case sued the defendant to enforce his liability as drawer in favor of the plaintiff as payee of the check. Assuming the allegation of the defendant of the alleged circumstances relative to the issuance of the check, still when he delivered the check payable to bearer to that certain Pedro Domingo, as it was payable to cash, the same may be negotiated by delivery by who ever was the bearer of the check and such negotiation was valid and effective against the drawer;

5. Indeed, assuming as true the allegations of the defendant regarding the circumstances relative to the issuance of the check it would be entirely impossible for the plaintiff to have been aware that such check was intended only for a definite person and was not negotiable considering that the said check was payable to bearer and was not even crossed;

6. We contend that what cannot be prosecuted separate and apart from the criminal case without a reservation is a civil action arising from the criminal offense charged. However, in this instant case since the liability of the defendant are imposed and the rights of the plaintiff are created by the negotiable instruments law, even without any reservation at all this instant action may still be prosecuted;

7. Having this shown, the merits of plaintiff's complaint the application for damages against the bond is totally without any legal support and perforce should be dismissed outright.[6]

On October 23, 2000, the MeTC in Pasay City granted Simon's urgent motion to dismiss with application to charge plaintiff's attachment bond for damages,[7] dismissing the complaint of Chan because:

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After study of the arguments of the parties, the court resolves to GRANT the Motion to Dismiss and the

application to charge plaintiff's bond for damages.

For "litis pendentia" to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two (2) cases should be such that the judgment, which may be rendered in one would, regardless of which party is successful, amount to res judicata in the other. xxx

A close perusal of the herein complaint denominated as "Sum of Money" and the criminal case for violation of BP Blg. 22 would readily show that the parties are not only identical but also the cause of action being asserted, which is the recovery of the value of Landbank Check No. 0007280 in the amount of P336,000.00. In both civil and criminal cases, the rights asserted and relief prayed for, the reliefs being founded on the same facts, are identical.

Plaintiff's claim that there is an effective implied waiver of his right to pursue this civil case owing to the fact that there was no allegation of damages in BP Blg. 22 case and that there was no private prosecutor during the presentation of prosecution evidence is unmeritorious. It is basic that when a complaint or criminal Information is filed, even without any allegation of damages and the intention to prove and claim them, the offended party has the right to prove and claim for them, unless a waiver or reservation is made or unless in the meantime, the offended party has instituted a separate civil action. xxx The over-all import of the said provision conveys that the waiver which includes indemnity under the Revised Penal Code, and damages arising under Articles 32, 33, and 34 of the Civil Code must be both clear and express. And this must be logically so as the primordial objective of the Rule is to prevent the offended party from recovering damages twice for the same act or omission of the accused.

Indeed, the evidence discloses that the plaintiff did not waive or made a reservation as to his right to pursue the civil branch of the criminal case for violation of BP Blg. 22 against the defendant herein. To the considered view of this court, the filing of the instant complaint for sum of money is indeed legally barred. The right to institute a separate civil action shall be made before the prosecution starts to present its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation. xxx

Even assuming the correctness of the plaintiff's submission that the herein case for sum of money is one based on fraud and hence falling under Article 33 of the Civil Code, still prior reservation is required by the Rules, to wit:

"In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of criminal case provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence."

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WHEREFORE, premises considered, the court resolves to:

- Dismiss the instant complaint on the ground of "litis pendentia";
- Dissolve/Lift the Writ of Attachment issued by this court on August 14, 2000;
- Charge the plaintiff's bond the amount of P336,000.00 in favor of the defendant for the damages sustained by the latter by virtue of the implementation of the writ of attachment;
- Direct the Branch Sheriff of this Court to RESTORE with utmost dispatch to the defendant's physical possession the vehicle seized from him on August 16, 2000; and

- Direct the plaintiff to pay the defendant the sum of P5,000.00 by way of attorney's fees.

SO ORDERED.

Chan's motion for reconsideration was denied on December 20, 2000,[8] viz:

Considering that the plaintiff's arguments appear to be a mere repetition of his previous submissions, and which submissions this court have already passed upon; and taking into account the inapplicability of the ratio decidendi in the Tactaquin vs. Palileo case which the plaintiff cited as clearly in that case, the plaintiff therein expressly made a reservation to file a separate civil action, the Motion for Reconsideration is DENIED for lack of merit.

SO ORDERED.

On July 31, 2001, the Regional Trial Court (RTC) in Pasay City upheld the dismissal of Chan's complaint, disposing:[9]

WHEREFORE, finding no error in the appealed decision, the same is hereby AFFIRMED in toto.

SO ORDERED.

On September 26, 2001, Chan appealed to the Court of Appeals (CA) by petition for review,[10] challenging the propriety of the dismissal of his complaint on the ground of *litis pendentia*.

In his comment, [11] Simon countered that Chan was guilty of bad faith and malice in prosecuting his alleged civil claim twice in a manner that caused him (Simon) utter embarrassment and emotional sufferings; and that the dismissal of the civil case because of the valid ground of *litis pendentia* based on Section 1 (e), Rule 16 of the 1997 Rules of Civil Procedure was warranted.

On June 25, 2002, the CA promulgated its assailed decision,[12] overturning the RTC, viz:

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As a general rule, an offense causes two (2) classes of injuries. The first is the social injury produced by the criminal act which is sought to be repaired through the imposition of the corresponding penalty, and the second is the personal injury caused to the victim of the crime which injury is sought to be compensated through indemnity which is also civil in nature. Thus, "every person criminally liable for a felony is also civilly liable."

The offended party may prove the civil liability of an accused arising from the commission of the offense in the criminal case since the civil action is either deemed instituted with the criminal action or is separately instituted.

Rule 111, Section 1 of the Revised Rules of Criminal Procedure, which became effective on December 1, 2000, provides that:

(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 institute the civil action prior to the criminal action.

Rule 111, Section 2 further states:

After the criminal action has been commenced, the separate civil action arising therefrom cannot be instituted until final judgment has been entered in the criminal action.

However, with respect to civil actions for recovery of civil liability under Articles 32, 33, 34 and 2176 of the Civil Code arising from the same act or omission, the rule has been changed.

In *DMPI Employees Credit Association vs. Velez*, the Supreme Court pronounced that only the civil liability arising from the offense charged is deemed instituted with the criminal action unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action. Speaking through Justice Pardo, the Supreme Court held:

"There is no more need for a reservation of the right to file the independent civil action under Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines. The reservation and waiver referred to refers only to the civil action for the recovery of the civil liability arising from the offense charged. This does not include recovery of civil liability under Articles 32, 33, 34, and 2176 of the Civil Code of the Philippines arising from the same act or omission which may be prosecuted separately without a reservation".

Rule 111, Section 3 reads:

Sec. 3. When civil action may proceed independently. In the cases provided in Articles 32, 33, 34, and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

The changes in the Revised Rules on Criminal Procedure pertaining to independent civil actions which became effective on December 1, 2000 are applicable to this case.

Procedural laws may be given retroactive effect to actions pending and undetermined at the time of their passage. There are no vested rights in the rules of procedure. xxx

Thus, Civil Case No. CV-94-124, an independent civil action for damages on account of the fraud committed against respondent Villegas under Article 33 of the Civil Code, may proceed independently even if there was no reservation as to its filing."

It must be pointed that the abovesited case is similar with the instant suit. The complaint was also brought on allegation of fraud under Article 33 of the Civil Code and committed by the respondent in the issuance of the check which later bounced. It was filed before the trial court, despite the pendency of the criminal case for violation of BP 22 against the respondent. While it may be true that the changes in the Revised Rules on Criminal Procedure pertaining to independent civil action became effective on December 1, 2000, the same may be given retroactive application and may be made to apply to the case at bench, since procedural rules may be given retroactive application. There are no vested rights in the rules of procedure.

In view of the ruling on the first assigned error, it is therefore an error to adjudge damages in favor of the petitioner.

WHEREFORE, the petition is hereby GRANTED. The Decision dated July 13, 2001 rendered by the Regional Trial Court of Pasay City, Branch 108 affirming the dismissal of the complaint filed by petitioner is hereby REVERSED and SET ASIDE. The case is hereby REMANDED to the trial court for further proceedings.

SO ORDERED.

On March 14, 2003, the CA denied Simon's motion for reconsideration.[13]

Hence, this appeal, in which the petitioners submit that the CA erroneously premised its decision on the assessment that the civil case was an independent civil action under Articles 32, 33, 34, and 2176 of the Civil Code; that the CA's reliance on the ruling in *DMPI Employees Credit Cooperative Inc. v. Velez*[14] stretched the meaning and intent of the ruling, and was contrary to Sections 1 and 2 of Rule 111 of the Rules of Criminal

Procedure; that this case was a simple collection suit for a sum of money, precluding the application of Section 3 of Rule 111 of the Rules of Criminal Procedure.[15]

In his comment,[16] Chan counters that the petition for review should be denied because the petitioners used the wrong mode of appeal; that his cause of action, being based on fraud, was an independent civil action; and that the appearance of a private prosecutor in the criminal case did not preclude the filing of his separate civil action.

Issue

The lone issue is whether or not Chan's civil action to recover the amount of the unfunded check (Civil Case No. 915-00) was an independent civil action.

Ruling

The petition is meritorious.

A

Applicable Law and Jurisprudence on the Propriety of filing a separate civil action based on BP 22

The Supreme Court has settled the issue of whether or not a violation of BP 22 can give rise to civil liability in *Banal v. Judge Tadeo, Jr.*, [17] holding:

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Article 20 of the New Civil Code provides:

Every person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same.

Regardless, therefore, of whether or not a special law so provides, indemnification of the offended party may be had on account of the damage, loss or injury directly suffered as a consequence of the wrongful act of another. The indemnity which a person is sentenced to pay forms an integral part of the penalty imposed by law for the commission of a crime (*Quemel v. Court of Appeals*, 22 SCRA 44, citing *Bagtas v. Director of Prisons*, 84 Phil 692). Every crime gives rise to a penal or criminal action for the punishment of the guilty party, and also to civil action for the restitution of the thing, repair of the damage, and indemnification for the losses (*United States v. Bernardo*, 19 Phil 265).

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Civil liability to the offended party cannot thus be denied. The payee of the check is entitled to receive the payment of money for which the worthless check was issued. Having been caused the damage, she is entitled to recompense.

Surely, it could not have been the intendment of the framers of Batas Pambansa Blg. 22 to leave the offended private party defrauded and empty-handed by excluding the civil liability of the offender, giving her only the remedy, which in many cases results in a Pyrrhic victory, of having to file a separate civil suit. To do so may leave the offended party unable to recover even the face value of the check due her, thereby unjustly enriching the errant drawer at the expense of the payee. The protection which the law seeks to provide would, therefore, be brought to naught.

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However, there is no independent civil action to recover the value of a bouncing check issued in contravention of BP 22. This is clear from Rule 111 of the Rules of Court, effective December 1, 2000, which relevantly provides:

Section 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.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

When the offended party seeks to enforce civil liability against the accused by way of moral, nominal, temperate, or exemplary damages without specifying the amount thereof in the complaint or information, the filing fees therefor shall constitute a first lien on the judgment awarding such damages.

Where the amount of damages, other than actual, is specified in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court.

Except as otherwise provided in these Rules, no filing fees shall be required for actual damages.

No counterclaim, cross-claim or third-party complaint may be filed by the accused in the criminal case, but any cause of action which could have been the subject thereof may be litigated in a separate civil action. (1a)

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.[18]

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay the filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of the Rule governing consolidation of the civil and criminal actions.

Section 3. When civil action may proceed independently. - In the cases provided in Articles 32, 33, 34 and 2176 of the Civil Code of the Philippines, the independent civil action may be brought by the offended party. It shall proceed independently of the criminal action and shall require only a preponderance of evidence. In no case, however, may the offended party recover damages twice for the same act or omission charged in the criminal action.

The aforequoted provisions of the Rules of Court, even if not yet in effect when Chan commenced Civil Case No. 915-00 on August 3, 2000, are nonetheless applicable. It is axiomatic that the retroactive application of procedural laws does not violate any right of a person who may feel adversely affected, nor is it constitutionally objectionable. The reason is simply that, as a general rule, no vested right may attach to, or arise from, procedural laws.[19] Any new rules may validly be made to apply to cases pending at the time of their promulgation, considering that no party to an action has a vested right in the rules of procedure,[20] except that in criminal cases, the changes do not retroactively apply if they permit or require a lesser quantum of evidence to convict than what is required at the time of the commission of the offenses, because such retroactivity would be unconstitutional for being *ex post facto* under the Constitution.[21]

Moreover, the application of the rule would not be precluded by the violation of any assumed vested right,

because the new rule was adopted from Supreme Court Circular 57-97 that took effect on November 1, 1997.

Supreme Court Circular 57-97 states:

Any provision of law or Rules of Court to the contrary notwithstanding, the following rules and guidelines shall henceforth be observed in the filing and prosecution of all criminal cases under Batas Pambansa Blg. 22 which penalizes the making or drawing and issuance of a check without funds or credit:

1. The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized.[22]

2. Upon the filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based upon the amount of the check involved which shall be considered as the actual damages claimed, in accordance with the schedule of fees in Section 7 (a) and Section 8 (a), Rule 141 of the Rules of Court as last amended by Administrative Circular No. 11-94 effective August 1, 1994. Where the offended party further seeks to enforce against the accused civil liability by way of liquidated, moral, nominal, temperate or exemplary damages, he shall pay the corresponding filing fees therefor based on the amounts thereof as alleged either in the complaint or information. If not so alleged but any of these damages are subsequently awarded by the court, the amount of such fees shall constitute a first lien on the judgment.

3. Where the civil action has heretofore been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with the pertinent procedure outlined in Section 2 (a) of Rule 111 governing the proceedings in the actions as thus consolidated.

4. This Circular shall be published in two (2) newspapers of general circulation and shall take effect on November 1, 1997.

The reasons for issuing Circular 57-97 were amply explained in *Hyatt Industrial Manufacturing Corporation v. Asia Dynamic Electrix Corporation*,[23] thus:

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We agree with the ruling of the Court of Appeals that upon filing of the criminal cases for violation of B.P. 22, the civil action for the recovery of the amount of the checks was also impliedly instituted under Section 1(b) of Rule 111 of the 2000 Rules on Criminal Procedure. Under the present revised Rules, the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. The reservation to file a separate civil action is no longer needed. The Rules provide:

Section 1. Institution of criminal and civil actions. —

(a) x x x

(b) The criminal action for violation of Batas Pambansa Blg. 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fees based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is

granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions.

The foregoing rule was adopted from Circular No. 57-97 of this Court. It specifically states that the criminal action for violation of B.P. 22 shall be deemed to include the corresponding civil action. It also requires the complainant to pay in full the filing fees based on the amount of the check involved. Generally, no filing fees are required for criminal cases, but because of the inclusion of the civil action in complaints for violation of B.P. 22, the Rules require the payment of docket fees upon the filing of the complaint. This rule was enacted to help declog court dockets which are filled with B.P. 22 cases as creditors actually use the courts as collectors. Because ordinarily no filing fee is charged in criminal cases for actual damages, the payee uses the intimidating effect of a criminal charge to collect his credit gratis and sometimes, upon being paid, the trial court is not even informed thereof. The inclusion of the civil action in the criminal case is expected to significantly lower the number of cases filed before the courts for collection based on dishonored checks. It is also expected to expedite the disposition of these cases. Instead of instituting two separate cases, one for criminal and another for civil, only a single suit shall be filed and tried. It should be stressed that the policy laid down by the Rules is to discourage the separate filing of the civil action. The Rules even prohibit the reservation of a separate civil action, which means that one can no longer file a separate civil case after the criminal complaint is filed in court. The only instance when separate proceedings are allowed is when the civil action is filed ahead of the criminal case. Even then, the Rules encourage the consolidation of the civil and criminal cases. We have previously observed that a separate civil action for the purpose of recovering the amount of the dishonored checks would only prove to be costly, burdensome and time-consuming for both parties and would further delay the final disposition of the case. This multiplicity of suits must be avoided. Where petitioners' rights may be fully adjudicated in the proceedings before the trial court, resort to a separate action to recover civil liability is clearly unwarranted. In view of this special rule governing actions for violation of B.P. 22, Article 31 of the Civil Code cited by the trial court will not apply to the case at bar.[24]

The CA's reliance on *DMPI Employees Credit Association v. Velez*[25] to give due course to the civil action of Chan independently and separately of Criminal Case No. 275381 was unwarranted. DMPI Employees, which involved a prosecution for estafa, is not on all fours with this case, which is a prosecution for a violation of BP 22. Although the Court has ruled that the issuance of a bouncing check may result in two separate and distinct crimes of estafa and violation of BP 22,[26] the procedures for the recovery of the civil liabilities arising from these two distinct crimes are different and non-interchangeable. In prosecutions of estafa, the offended party may opt to reserve his right to file a separate civil action, or may institute an independent action based on fraud pursuant to Article 33 of the Civil Code,[27] as DMPI Employees has allowed. In prosecutions of violations of BP 22, however, the Court has adopted a policy to prohibit the reservation or institution of a separate civil action to claim the civil liability arising from the issuance of the bouncing check upon the reasons delineated in *Hyatt Industrial Manufacturing Corporation*, supra.

To repeat, Chan's separate civil action to recover the amount of the check involved in the prosecution for the violation of BP 22 could not be independently maintained under both Supreme Court Circular 57-97 and the aforequoted provisions of Rule 111 of the Rules of Court, notwithstanding the allegations of fraud and deceit.

B

Aptness of the dismissal of the civil action
on the ground of *litis pendentia*

Did the pendency of the civil action in the MeTC in Manila (as the civil aspect in Criminal Case No. 275381) bar

the filing of Civil Case No. 915-00 in the MeTC in Pasay City on the ground of *litis pendentia*?

For *litis pendentia* to be successfully invoked as a bar to an action, the concurrence of the following requisites is necessary, namely: (a) there must be identity of parties or at least such as represent the same interest in both actions; (b) there must be identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and, (c) the identity in the two cases should be such that the judgment that may be rendered in one would, regardless of which party is successful, amount to *res judicata* in respect of the other. Absent the first two requisites, the possibility of the existence of the third becomes nil.[28]

A perusal of Civil Case No. 01-0033 and Criminal Case No. 275381 ineluctably shows that all the elements of *litis pendentia* are attendant. First of all, the parties in the civil action involved in Criminal Case No. 275381 and in Civil Case No. 915-00, that is, Chan and Simon, are the same. Secondly, the information in Criminal Case No. 275381 and the complaint in Civil Case No. 915-00 both alleged that Simon had issued Landbank Check No. 0007280 worth P336,000.00 payable to "cash," thereby indicating that the rights asserted and the reliefs prayed for, as well as the facts upon which the reliefs sought were founded, were identical in all respects. And, thirdly, any judgment rendered in one case would necessarily bar the other by *res judicata*; otherwise, Chan would be recovering twice upon the same claim.

It is clear, therefore, that the MeTC in Pasay City properly dismissed Civil Case No. 915-00 on the ground of *litis pendentia* through its decision dated October 23, 2000; and that the RTC in Pasay City did not err in affirming the MeTC.

Wherefore, we grant the petition for review on certiorari, and, accordingly, we reverse and set aside the decision promulgated by the Court of Appeals on June 25, 2002. We reinstate the decision rendered on October 23, 2000 by the Metropolitan Trial Court, Branch 45, in Pasay City.

Costs of suit to be paid by the respondent.

SO ORDERED.

Brion, (Acting Chairperson),[*] Abad,[**] Villarama, Jr., and Sereno, JJ., concur.

[*] Misspelled as Elven in the caption of the petition and in the rollo.

[**] Acting Chairperson in lieu of Justice Conchita Carpio Morales who is on leave per Special Order No. 925 dated January 24, 2011.

[***] Additional member per Special Order No. 926 dated January 24, 2011.

[1] Rollo, p. 31.

[2] *Id.*, pp. 35-37.

[3] *Id.*, pp. 35-36.

[4] *Id.*, p. 24.

[5] *Id.*, pp. 38-46.

[6] *Id.*, pp. 47-49.

[7] *Id.*, pp. 50-54.

[8] *Id.*, p. 56.

[9] *Id.*, pp. 76-79.

[10] *Id.*, pp. 80-88.

[11] *Id.*, pp. 89-97.

[12] *Id.*, pp. 23-27; penned by Associate Justice Perlita J. Tria Tirona (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Mario L. Guariña.

[13] *Id.*, pp. 29-30.

[14] G.R. No. 129282, November 29, 2001, 371 SCRA 72.

[15] See note 19, p.16.

[16] *Rollo*, pp. 105-109.

[17] G.R. No. L-78911, December 11, 1987, 156 SCRA 325.

[18] Bold emphasis supplied.

[19] *Cheng v. Sy*, G.R. No. 174238, July 7, 2009, 592 SCRA 155, 164-165.

[20] *Aldeguer v. Hoskyn*, 2 Phil. 502; *Ayala de Roxas v. Case*, 8 Phil. 197.

[21] Sec. 22, Art. III, 1987 Constitution; *Cooley's Principle of Constitutional Law*, p. 313.

[22] Bold emphasis supplied.

[23] G.R. No. 163597, July 29, 2005, 465 SCRA 454, 459-461.

[24] Bold emphasis supplied.

[25] *Supra*, note 14.

[26] E.g., *Rodriguez v. Ponferrada*, G.R. Nos. 155531-34, July 29, 2005, 465 SCRA 338, 343.

[27] Article 33. In cases of defamation, fraud, and physical injuries a civil action for damages, entirely separate and distinct from the criminal action, may be brought by the injured party. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

[28] *Taningco v. Taningco*, G.R. No. 153481, August 10, 2007, 529 SCRA 735.

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