TEODORO A. REYES, PETITIONER, VS. ETTORE ROSSI, RESPONDENT.

G.R. No. 159823. February 18, 2013

Ponente: BERSAMIN, J.

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BERSAMIN, J.:

The rescission of a contract of sale is not a prejudicial question that will warrant the suspension of the criminal proceedings commenced to prosecute the buyer for violations of the Bouncing Checks Law (Batas Pambansa Blg. 22) arising from the dishonor of the checks the buyer issued in connection with the sale.

Antecedents

On October 31, 1997, petitioner Teodoro A. Reyes (Reyes) and Advanced Foundation Construction Systems Corporation (Advanced Foundation), represented by its Executive Project Director, respondent Ettore Rossi (Rossi), executed a deed of conditional sale involving the purchase by Reyes of equipment consisting of a Warman Dredging Pump HY 300A worth P10,000,000.00. The parties agreed therein that Reyes would pay the sum of P3,000,000.00 as downpayment, and the balance of P7,000,000.00 through four post-dated checks. Reyes complied, but in January 1998, he requested the restructuring of his obligation under the deed of conditional sale by replacing the four post-dated checks with nine post-dated checks that would include interest at the rate of P25,000.00/month accruing on the unpaid portion of the obligation on April 30, 1998, June 30, 1998, July 31, 1998, September 30, 1998 and October 31, 1998.[1]

Advanced Foundation assented to Reyes' request, and returned the four checks. In turn, Reyes issued and delivered the following nine post-dated checks in the aggregate sum of P7,125,000.00 drawn against the United Coconut Planters Bank,[2] to wit:

Check No.

Date

Amount

72807

April 30, 1998

P 25,000.00

79125

May 1, 1998

1,000,000.00

72802

May 30, 1998

2,000,000.00

72808

June 30, 1998

25,000.00

72809

July 31, 1998

25,000.00

72801

August 31, 1998

2,000,000.00

72810

September 30, 1998

25,000.00

72811

October 31, 1998

25,000.00

72903

November 30, 1998

2,000,000.00

Rossi deposited three of the post-dated checks (i.e., No. 72807, No. 79125 and No. 72808) on their maturity dates in Advanced Foundation's bank account at the PCI Bank in Makati. Two of the checks were denied payment ostensibly upon Reyes' instructions to stop their payment, while the third (i.e., No. 72802) was dishonored for insufficiency of funds.[3]

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Rossi likewise deposited two more checks (i.e., No. 72809 and No. 72801) in Advanced Foundation's account at the PCI Bank in Makati, but the checks were returned with the notation Account Closed stamped on them. He did not anymore deposit the three remaining checks on the assumption that they would be similarly dishonored.[4]

In the meanwhile, on July 29, 1998, Reyes commenced an action for rescission of contract and damages in the Regional Trial Court in Quezon City (RTC). His complaint, docketed as Civil Case No. Q98-35109 and entitled Teodoro A. Reyes v. Advanced Foundation Construction Systems Corporation, sought judgment declaring the deed of conditional sale "rescinded and of no further force and effect," and ordering Advanced Foundation to return the P3,000,000.00 downpayment with legal interest from June 4, 1998 until fully paid; and to pay to him attorney's fees, and various kinds and amounts of damages.[5]

On September 8, 1998, Rossi charged Reyes with five counts of estafa and five counts of violation of Batas Pambansa Blg. 22 in the Office of the City Prosecutor of Makati for the dishonor of Checks No. 72807, No. 72808, No. 72801, No. 72809 and No. 79125. Another criminal charge for violation of Batas Pambansa Blg. 22 was lodged against Reyes in the Office of the City Prosecutor of Quezon City for the dishonor of Check No. 72802.[6]

On September 29, 1998, Reyes submitted his counter-affidavit in the Office of the City Prosecutor of Makati,[7] claiming that the checks had not been issued for any valuable consideration; that he had discovered from the start of using the dredging pump involved in the conditional sale that the Caterpillar diesel engine powering the pump had been rated at only 560 horsepower instead of the 1200 horsepower Advanced Foundation had represented to him; that welding works on the pump had neatly concealed several cracks; that on May 6, 1998 he had written to Advanced Foundation complaining about the misrepresentations on the specifications of the pump and demanding documentary proof of Advanced Foundation's ownership of the pump; that he had caused the order to stop the payment of three checks (i.e., No. 72806, No. 72807 and No. 79125); that Advanced Foundation had replied to his letter on May 8, 1998 by saying that the pump had been sold to him on an as is, where is basis; that he had then sent another letter to Advanced Foundation on May 18, 1998 to reiterate his complaints and the request for proper documentation of ownership; that he had subsequently discovered other hidden defects, prompting him to write another letter; and that instead of attending to his complaints and request, Advanced Foundation's lawyers had threatened him with legal action.

At the same time, Reyes assailed the jurisdiction of the Office of the City Prosecutor of Makati over the criminal charges against him on the ground that he had issued the checks in Quezon City; as well as argued that the Office of the City Prosecutor of Makati should suspend the proceedings because of the pendency in the RTC of the civil action for rescission of contract that posed a prejudicial question as to the criminal proceedings.[8]

On November 20, 1998, the Assistant City Prosecutor handling the preliminary investigation recommended the dismissal of the charges of estafa and the suspension of the proceedings relating to the violation of Batas Pambansa Blg. 22 based on a prejudicial question.[9]

On January 5, 1999, the City Prosecutor of Makati approved the recommendation of the handling Assistant City Prosecutor,[10] stating:

> WHEREFORE, premises considered, the complaint for Estafa is respectfully recommended to be dismissed, as upon approval, it is hereby dismissed.
>
> Further, it is respectfully recommended that the proceedings in the charge for Violation of Batas Pambansa Bilang 22 against the respondent be suspended until the prejudicial question raised in Civil Case Q-98-35109 for Rescission of Contract and Damages which is now pending with the RTC of Quezon City, Branch 224, has been duly resolved.

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Rossi appealed the resolution of the City Prosecutor to the Department of Justice, but the Secretary of Justice, by resolution of July 24, 2001, denied Rossi's petition for review.

After the denial of his motion for reconsideration on April 29, 2002, Rossi challenged the resolutions of the Secretary of Justice by petition for certiorari in the CA.

Ruling of the CA

In the petition for certiorari, Rossi insisted that the Secretary of Justice had committed grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the suspension of the criminal proceedings by the City Prosecutor of Makati on account of the existence of a prejudicial question, and in sustaining the dismissal of the complaints for estafa.

On May 30, 2003, the CA promulgated its assailed decision,[11] to wit:

> WHEREFORE, the foregoing considered, the assailed resolution is hereby MODIFIED and the instant petition is GRANTED in so far as the issue of the existence of prejudicial question is concerned. Accordingly, the order suspending the preliminary investigation in I.S. No. 98-40024-29 is REVERSED and SET ASIDE, and the dismissal of the complaint for estafa is AFFIRMED.
>
> SO ORDERED.

Issues

Hence, this appeal by Reyes.

Reyes asserts that the CA erred in ruling that there was no prejudicial question that warranted the suspension of the criminal proceedings against him; that the petition suffered fatal defects that merited its immediate dismissal; that the CA was wrong in relying on the pronouncements in Balgos, Jr. v. Sandiganbayan[12] and Umali v. Intermediate Appellate Court[13] because the factual backgrounds thereat were not similar to that obtaining here; and that the Secretary of Justice did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction.

In his comment,[14] Rossi counters that the petition for review should be outrightly dismissed because of its fatal defect; that the CA did not err in ruling that the action for rescission of contract did not pose a prejudicial question that would suspend the criminal proceedings.

Reyes submitted a reply,[15] declaring that the defect in the affidavit of service attached to his petition for review had been due to oversight; that he had substantially complied with the rules; that there existed a prejudicial question that could affect the extent of his liability in light of Supreme Court Administrative Circular No. 12-2000; and that the CA erred in finding that the Secretary of Justice committed grave abuse of discretion.

To be resolved is whether or not the civil action for rescission of the contract of sale raised a prejudicial question that required the suspension of the criminal prosecution for violation of Batas Pambansa Blg. 22.

Ruling
The petition for review is without merit.

A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must first be determined 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.[16] The rationale for the suspension on the ground of a

prejudicial question is to avoid conflicting decisions.[17]

Two elements that must concur in order for a civil case to be considered a prejudicial question are expressly stated in Section 7, Rule 111 of the 2000 Rules of Criminal Procedure, to wit:

> Section 7. Elements of prejudicial question. – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.

In Sabandal v. Tongco,[18] the concept of prejudicial question is explained in this wise:

> For a civil action to be considered prejudicial to a criminal case as to cause the suspension of the criminal proceedings until the final resolution of the civil, the following requisites must be present: (1) the civil case involves facts intimately related to those upon which the criminal prosecution would be based; (2) in the resolution of the issue or issues raised in the civil action, the guilt or innocence of the accused would necessarily be determined; and (3) jurisdiction to try said question must be lodged in another tribunal.
>
> If both civil and criminal cases have similar issues or the issue in one is intimately related to the issues raised in the other, then a prejudicial question would likely exist, provided the other element or characteristic is satisfied. It must appear not only that the civil case involves the same facts upon which the criminal prosecution would be based, but also that the resolution of the issues raised in the civil action would be necessarily determinative of the guilt or innocence of the accused. 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 there is no necessity "that the civil case be determined first before taking up the criminal case," therefore, the civil case does not involve a prejudicial question. Neither is there a prejudicial question if the civil and the criminal action can, according to law, proceed independently of each other.

Contending that the rescission of the contract of sale constitutes a prejudicial question, Reyes posits that the resolution of the civil action will be determinative of whether or not he was criminally liable for the violations of Batas Pambansa Blg. 22. He states that if the contract would be rescinded, his obligation to pay under the conditional deed of sale would be extinguished, and such outcome would necessarily result in the dismissal of the criminal proceedings for the violations of Batas Pambansa Blg. 22.

The action for the rescission of the deed of sale on the ground that Advanced Foundation did not comply with its obligation actually seeks one of the alternative remedies available to a contracting party under Article 1191 of the Civil Code, to wit:

> Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfilment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfilment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

Article 1191 of the Civil Code recognizes an implied or tacit resolutory condition in reciprocal obligations. The condition is imposed by law, and applies even if there is no corresponding agreement thereon between the parties. The explanation for this is that in reciprocal obligations a party incurs in delay once the other party has performed

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his part of the contract; hence, the party who has performed or is ready and willing to perform may rescind the obligation if the other does not perform, or is not ready and willing to perform.[19]

It is true that the rescission of a contract results in the extinguishment of the obligatory relation as if it was never created, the extinguishment having a retroactive effect. The rescission is equivalent to invalidating and unmaking the juridical tie, leaving things in their status before the celebration of the contract.[20] However, until the contract is rescinded, the juridical tie and the concomitant obligations subsist.

To properly appreciate if there is a prejudicial question to warrant the suspension of the criminal actions, reference is made to the elements of the crimes charged. The violation of Batas Pambansa Blg. 22 requires the concurrence of the following elements, namely: (1) the making, drawing, and issuance of any check to apply for 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.[21] The issue in the criminal actions upon the violations of Batas Pambansa Blg. 22 is, therefore, whether or not Reyes issued the dishonoured checks knowing them to be without funds upon presentment. On the other hand, the issue in the civil action for rescission is whether or not the breach in the fulfilment of Advanced Foundation's obligation warranted the rescission of the conditional sale. If, after trial on the merits in the civil action, Advanced Foundation would be found to have committed material breach as to warrant the rescission of the contract, such result would not necessarily mean that Reyes would be absolved of the criminal responsibility for issuing the dishonored checks because, as the aforementioned elements show, he already committed the violations upon the dishonor of the checks that he had issued at a time when the conditional sale was still fully binding upon the parties. His obligation to fund the checks or to make arrangements for them with the drawee bank should not be tied up to the future event of extinguishment of the obligation under the contract of sale through rescission. Indeed, under Batas Pambansa Blg. 22, the mere issuance of a worthless check was already the offense in itself. Under such circumstances, the criminal proceedings for the violation of Batas Pambansa Blg. 22 could proceed despite the pendency of the civil action for rescission of the conditional sale.

Accordingly, we agree with the holding of the CA that the civil action for the rescission of contract was not determinative of the guilt or innocence of Reyes. We consider the exposition by the CA of its reasons to be appropriate enough, to wit:

> x x x x
>
> We find merit in the petition.
>
> A careful perusal of the complaint for rescission of contract and damages reveals that the causes of action advanced by respondent Reyes are the alleged misrepresentation committed by the petitioner and AFCSC and their alleged failure to comply with his demand for proofs of ownership. On one hand, he posits that his consent to the contract was vitiated by the fraudulent act of the company in misrepresenting the condition and quality of the dredging pump. Alternatively, he claims that the company committed a breach of contract which is a ground for the rescission thereof. Either way, he in effect admits the validity and the binding effect of the deed pending any adjudication which nullifies the same.
>
> Indeed, under the law on contracts, vitiated consent does not make a contract unenforceable but merely voidable, the remedy of which would be to annul the contract since voidable contracts produce legal effects until they are annulled. On the other hand, rescission of contracts in case of breach pursuant to Article 1191 of the Civil Code of the Philippines also presupposes a valid contract unless rescinded or annulled.

> As defined, a prejudicial question is one that arises in a case, the resolution of which is a logical antecedent of the issue involved therein, and the cognizance of which pertains to another tribunal. The prejudicial question must be determinative of the case before the court but the jurisdiction to try and resolve the question must be lodged in another court or tribunal.
>
> It is a question based on a fact distinct and separate from the crime but so intimately connected with it that it determines the guilt or innocence of the accused, and for it to suspend the criminal action, it must appear not only that said case involves facts intimately related to those upon which the criminal prosecution would be based but also that in the resolution of the issue or issues raised in the civil case, the guilt or innocence of the accused would necessarily be determined. It comes into play generally in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action 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.
>
> In this light, it is clear that the pendency of the civil case does not bar the continuation of the proceedings in the preliminary investigation on the ground that it poses a prejudicial question. Considering that the contracts are deemed to be valid until rescinded, the consideration and obligatory effect thereof are also deemed to have been validly made, thus demandable. Consequently, there was no failure of consideration at the time when the subject checks were dishonored. (Emphasis supplied)
>
> x x x x

WHEREFORE, the Court DENIES the petition for review; AFFIRMS the decision the Court of Appeals promulgated on May 30, 2003; and DIRECTS the petitioner to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Leonardo-De Castro, Villarama, Jr., and Reyes, JJ., concur.

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[1] Rollo, p. 27.

[2] Id. at 28.

[3] Id.

[4] Id.

[5] Id. at 39-43.

[6] Id. at 28.

[7] Id. at 48-51.

[8] Id. at 29.

[9] Id. at 52-55.

[10] Id. at 30.

[11] Id. at 26-35; penned by Associate Justice Josefina Guevara-Salonga (retired), and concurred in by Associate Justice Rodrigo V. Cosico (retired) and Associate Justice Edgardo F. Sundiam (retired/deceased).

[12] G.R. No. 85590, August 10, 1989, 176 SCRA 287 (Note, however, that this ruling was not mentioned in the decision of the CA).

[13] G.R. No. 63198, June 21, 1990, 186 SCRA 680.

[14] Rollo, pp. 81-88.

[15] Id. at 94-100.

[16] Jose v. Suarez, G.R. No. 176795, June 30, 2008, 556 SCRA 773, 781; Carlos v. Court of Appeals, G.R. No. 109887; February 10, 1997, 268 SCRA 25, 33; Tuanda v. Sandiganbayan (Third Division), G.R. No. 110544, October 17, 1995, 249 SCRA 342, 351.

[17] Beltran v. People, G.R. No. 137567, June 20, 2000, 334 SCRA 106, 110.

[18] G.R. No. 124498, October 5, 2001, 366 SCRA 567, 571-572.

[19] 4 Tolentino, Commentaries and Jurisprudence on the Civil Code of the Philippines, 1987 Edition, p. 175.

[20] Id. at 180.

[21] Tan v. Mendez, Jr., G.R. No. 138669, June 6, 2002, 383 SCRA 202, 210.

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