

**EDUARDO G. RICARZE, PETITIONER, VS. COURT OF APPEALS,
PEOPLE OF THE PHILIPPINES, CALTEX PHILIPPINES, INC.,
PHILIPPINE COMMERCIAL AND INDUSTRIAL BANK (PCIBANK),
RESPONDENTS.**

G.R. NO. 160451. February 09, 2007

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before the Court is a petition for review on certiorari of the Decision[1] of the Court of Appeals in CA-G.R. SP No. 68492, and its Resolution[2] which denied the Motion for Reconsideration and the Supplemental Motion for Reconsideration thereof.

The Antecedents

Petitioner Eduardo G. Ricarze was employed as a collector-messenger by City Service Corporation, a domestic corporation engaged in messengerial services. He was assigned to the main office of Caltex Philippines, Inc. (Caltex) in Makati City. His primary task was to collect checks payable to Caltex and deliver them to the cashier. He also delivered invoices to Caltex's customers.[3]

On November 6, 1997, Caltex, through its Banking and Insurance Department Manager Ramon Romano, filed a criminal complaint against petitioner before the Office of the City Prosecutor of Makati City for estafa through falsification of commercial documents. Romano alleged that, on October 16, 1997, while his department was conducting a daily electronic report from Philippine Commercial & Industrial Bank (PCIB) Dela Rosa, Makati Branch, one of its depository banks, it was discovered that unknown to the department, a company check, Check No. 74001 dated October 13, 1997 in the amount of P5,790,570.25 payable to Dante R. Gutierrez, had been cleared through PCIB on October 15, 1997. An investigation also revealed that two other checks (Check Nos. 73999 and 74000) were also missing and that in Check No. 74001, his signature and that of another signatory, Victor S. Goquinco, were forgeries. Another check, Check No. 72922 dated September 15, 1997 in the amount of P1,790,757.25 likewise payable to Dante R. Gutierrez, was also cleared through the same bank on September 24, 1997; this check was likewise not issued by Caltex, and the signatures appearing thereon had also been forged. Upon verification, it was uncovered that Check Nos. 74001 and 72922 were deposited at the Banco de Oro's SM Makati Branch under Savings Account No. S/A 2004-0047245-7, in the name of a regular customer of Caltex, Dante R. Gutierrez.

Gutierrez, however, disowned the savings account as well as his signatures on the dorsal portions thereof. He also denied having withdrawn any amount from said savings account. Further investigation revealed that said savings account had actually been opened by petitioner; the forged checks were deposited and endorsed by him under Gutierrez's name. A bank teller from the Banco de Oro, Winnie P. Donable Dela Cruz, positively identified petitioner as the person who opened the savings account using Gutierrez's name.[4]

In the meantime, the PCIB credited the amount of P581,229.00 to Caltex on March 29, 1998. However, the City Prosecutor of Makati City was not informed of this development. After the requisite preliminary investigation, the City Prosecutor filed two (2) Informations for estafa through falsification of commercial documents on June 29, 1998 against petitioner before the Regional Trial Court (RTC) of Makati City, Branch 63. The Informations are worded as follows:

Criminal Case No. 98-1611

That on or about the 24[th] day of September 1997 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, a private individual, with intent to defraud and intent to gain, without the knowledge and consent of Caltex Philippines, Inc. through its duly authorized officers/representatives, and by means of falsification of commercial document, did then and there willfully, unlawfully and feloniously defraud Caltex Phils., Inc., in the following manner, to wit: said accused, having obtained possession of PCIBank check no. 72922 dated September 15, 1997 payable to Dante R. Gutierrez, in the amount of Php1,790,757.50 with intent to defraud or cause damage to complainant Caltex Phils., Inc., willfully, unlawfully and feloniously affixed or caused to be affixed signatures purporting to be those of Ramon Romano and Victor Goquingco, Caltex authorized officers/signatories, and of payee Dante R. Gutierrez, causing it to appear that Ramon Romano and Victor Goquingco have participated in the issuance of PCIBank check no. 72922 and that Dante R. Gutierrez had endorsed it, when in truth and in fact, as said accused well knew, such was not the case, since said check previously stolen from Payables Section of CALTEX, was neither duly signed by Ramon Romano and Victor Goquingco nor endorsed by Dante R. Gutierrez, after the check, a commercial document, was falsified in the manner above set forth, the said accused purporting himself to be the payee, Dante R. Gutierrez, deposited the check with Banco De Oro under Account No. 2004-0047245-7, thereby appropriating the proceeds of the falsified but cleared check, to the damage and prejudice of complainant herein represented by Ramon Romano, in the amount of Php1,790,757.50.

Criminal Case No. 98-1612

That on or about the 15[th] day of October 1997 in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, a private individual, with intent to defraud and intent to gain, without the knowledge and consent of Caltex Philippines, Inc. through its duly authorized officers/representatives, and by means of falsification of commercial document, did then and there willfully, unlawfully and feloniously defraud Caltex Phils., Inc., in the following manner, to wit: said accused, having obtained possession of PCIBank check no. 74001 dated October 13, 1997 payable to Dante R. Gutierrez, in the amount of Php5,790,570.25 with intent to defraud or cause damage to complainant Caltex Phils., Inc., willfully, unlawfully and feloniously affixed or caused to be affixed signatures purporting to be those of Ramon Romano and Victor Goquingco, Caltex authorized officers/signatories, and of payee Dante R. Gutierrez, causing it to appear that Ramon Romano and Victor Goquingco have participated in the issuance of PCIBank check no. 74001 and that Dante R. Gutierrez had endorsed it, when in truth and in fact, as said accused well knew, such was not the case, since said check previously stolen from Payables Section of CALTEX, was neither duly signed by Ramon Romano and Victor Goquingco nor endorsed by Dante R. Gutierrez, after the check, a commercial document, was falsified in the manner above set forth, the said accused purporting himself to be the payee, Dante R. Gutierrez, deposited the check with Banco De Oro under Account No. 2004-0047245-7, thereby appropriating the proceeds of the falsified but cleared check, to the damage and prejudice of complainant herein represented by Ramon Romano, in the amount of Php5,790,570.25.[5]

Petitioner was arraigned on August 18, 1998, and pleaded not guilty to both charges.[6] Pre-trial ensued and the cases were jointly tried. The prosecution presented its witnesses, after which the Siguion Reyna, Montecillio and Ongsiako Law Offices (SRMO) as private prosecutor filed a Formal Offer of Evidence.[7] Petitioner opposed the

pleading, contending that the private complainant was represented by the ACCRA Law Offices and the Balgos and Perez Law Office during trial, and it was only after the prosecution had rested its case that SRMO entered its appearance as private prosecutor representing the PCIB. Since the ACCRA and Balgos and Perez Law Offices had not withdrawn their appearance, SRMO had no personality to appear as private prosecutor. Under the Informations, the private complainant is Caltex and not PCIB; hence, the Formal Offer of Evidence filed by SRMO should be stricken from the records.

Petitioner further averred that unless the Informations were amended to change the private complainant to PCIB, his right as accused would be prejudiced. He pointed out, however, that the Informations can no longer be amended because he had already been arraigned under the original Informations.[8] He insisted that the amendments of the Informations to substitute PCIB as the offended party for Caltex would place him in double jeopardy.

PCIB, through SRMO, opposed the motion. It contended that the PCIB had re-credited the amount to Caltex to the extent of the indemnity; hence, the PCIB had been subrogated to the rights and interests of Caltex as private complainant. Consequently, the PCIB is entitled to receive any civil indemnity which the trial court would adjudge against the accused. Moreover, the re-credited amount was brought out on cross-examination by Ramon Romano who testified for the Prosecution. PCIB pointed out that petitioner had marked in evidence the letter of the ACCRA Law Office to PCIBank dated October 10, 1997 and the credit memo sent by PCIB to Caltex.[9]

Petitioner filed a Motion to Expunge the Opposition of SRMO.[10] In his Rejoinder, he averred that the substitution of PCIB as private complainant cannot be made by mere oral motion; the Information must be amended to allege that the private complainant was PCIB and not Caltex after the preliminary investigation of the appropriate complaint of PCIB before the Makati City Prosecutor.

In response, the PCIB, through SRMO, averred that as provided in Section 2, Rule 110 of the Revised Rules of Criminal Procedure, the erroneous designation of the name of the offended party is a mere formal defect which can be cured by inserting the name of the offended party in the Information. To support its claim, PCIB cited the ruling of this Court in *Sayson v. People*.^[11]

On July 18, 2001, the RTC issued an Order granting the motion of the private prosecutor for the substitution of PCIB as private complainant for Caltex. It however denied petitioner's motion to have the formal offer of evidence of SRMO expunged from the record.^[12] Petitioner filed a motion for reconsideration which the RTC denied on November 14, 2001.^[13]

Petitioner filed a Petition for Certiorari under Rule 65 of the Rules of Court with Urgent Application for Temporary Restraining Order with the Court of Appeals (CA,) praying for the annulment of the RTC's Orders of July 18, 2001 and November 14, 2001. The petitioner averred that:

I

RESPONDENT JUDGE GRIEVEOUSLY (SIC) ERRED IN RENDERING ITS ORDER ISSUED WITH GRAVE ABUSE OF DISCRETION TANTAMOUNT TO LACK OF OR IN EXCESS OF JURISDICTION BY ALLOWING THE SUBSTITUTION OF PRIVATE COMPLAINANT, AFTER THE ACUSED WAS ALREADY ARRAIGNED AND PROSECUTION HAS ALREADY TERMINATED PRESENTING ITS EVIDENCE THEREBY PATENTLY VIOLATING THE STRICT CONDITION IMPOSED UPON BY RULE 110 SEC. 14 RULES ON CRIMINAL PROCEDURE.

II

AND AS A COROLLARY GROUND RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF

DISCRETION IN EXCESS OF JURISDICTION IN RENDERING AN ORDER RECOGNIZING THE APPEARANCE OF A NEW PROSECUTOR WITHOUT WRITTEN OR EVEN ORAL WITHDRAWAL OF THE COUNSEL ON RECORD.[14]

According to petitioner, damage or injury to the offended party is an essential element of estafa. The amendment of the Informations substituting the PCIBank for Caltex as the offended party would prejudice his rights since he is deprived of a defense available before the amendment, and which would be unavailable if the Informations are amended. Petitioner further insisted that the ruling in the Sayson case did not apply to this case.

On November 5, 2002, the appellate court rendered judgment dismissing the petition. The fallo reads:

WHEREFORE, premises considered, the petition to annul the orders dated July 18, 2001 and November 14, 2001 of the Regional Trial Court, Branch 63, Makati City in Criminal Case Nos. 98-1611 and 98-1612 is hereby DENIED and consequently DISMISSED.

SO ORDERED.[15]

The appellate court declared that when PCIB restored the amount of the checks to Caltex, it was subrogated to the latter's right against petitioner. It further declared that in offenses against property, the designation of the name of the offended party is not absolutely indispensable for as long as the criminal act charged in the complaint or information can be properly identified. The appellate court cited the rulings of this Court in *People v. Ho*[16] and *People v. Reyes*.[17]

On October 17, 2003, the CA issued a Resolution denying petitioner's Motion for Reconsideration and Supplemental Motion for Reconsideration.[18]

Hence, petitioner filed the instant petition which is anchored on the following grounds:

- THE PEOPLE V. YU CHAI HO 53 PHILIPPINES 874 IS INAPPLICABLE TO THE CASE AT BAR CONSIDERING THE FACTS ARE SUBSTANTIALLY DIFFERENT.
- LIKEWISE, THE CASE OF PEOPLE VS. REYES CA, 50 (2) OG 665, NOVEMBER 11, 1953 HAS NO MATERIAL BEARING TO THE PRESENT CASE.
- THE SUBSTITUTION OF PCIBANK WILL SUBSTANTIALLY PREJUDICE THE RIGHTS OF THE PETITIONER HENCE, IT IS PROHIBITED BY SEC. 14 OF RULE 110.
- THERE IS NO VALID SUBROGATION BETWEEN CALTEX AND PCIBANK. ASSUMING THERE IS, THE CIVIL CASE SHOULD BE DISMISSED TO PROSECUTE.
- THE TWIN INFORMATIONS UPON WHICH PETITIONER WAS INDICTED, ARRAIGNED, PRE-TRIAL HELD AND PUBLIC PROSECUTOR TERMINATED THE PRESENTATION OF ITS EVIDENCE IN CHIEF ARE DEFECTIVE AND VOID, HENCE THE DISMISSAL IS IN ORDER.
- PETITIONER TIMELY OBJECTED TO THE APPEARANCE OF PRIVATE PROSECUTOR FOR PCIBANK.
- THE FINDINGS OF MATERIAL FACTS ARE NOT SUPPORTED BY THE RECORD NOR EVIDENCE AND BASED ON MISAPPRECIATION OF FACTS.
- PETITIONER'S SUPPLEMENTAL MOTION FOR RECONSIDERATION DID NOT VIOLATE THE OMNIBUS MOTION RULE UNDER SEC. 8, RULE 15 OF THE 1997 RULES OF CIVIL PROCEDURE.[19]

The Court's Ruling

Petitioner argues that the substitution of Caltex by PCIB as private complainant at this late stage of the trial is prejudicial to his defense. He argues that the substitution is tantamount to a substantial amendment of the Informations which is prohibited under Section 14, Rule 110 of the Rules of Court.

Under Section 5, Rule 110[20] of the Revised Rules of Rules, all criminal actions covered by a complaint or information shall be prosecuted under the direct supervision and control of the public prosecutor. Thus, even if the felonies or delictual acts of the accused result in damage or injury to another, the civil action for the recovery of civil liability based on the said criminal acts is impliedly instituted, and the offended party has not waived the civil action, reserved the right to institute it separately or instituted the civil action prior to the criminal action, the prosecution of the action (including the civil) remains under the control and supervision of the public prosecutor. The prosecution of offenses is a public function. Under Section 16, Rule 110 of the Rules of Criminal Procedure, the offended party may intervene in the criminal action personally or by counsel, who will act as private prosecutor for the protection of his interests and in the interest of the speedy and inexpensive administration of justice. A separate action for the purpose would only prove to be costly, burdensome and time-consuming for both parties and further delay the final disposition of the case. The multiplicity of suits must be avoided. With the implied institution of the civil action in the criminal action, the two actions are merged into one composite proceeding, with the criminal action predominating the civil. The prime purpose of the criminal action is to punish the offender in order to deter him and others from committing the same or similar offense, to isolate him from society, reform and rehabilitate him or, in general, to maintain social order.[21]

On the other hand, the sole purpose of the civil action is for the resolution, reparation or indemnification of the private offended party for the damage or injury he sustained by reason of the delictual or felonious act of the accused.[22] Under Article 104 of the Revised Penal Code, the following are the civil liabilities of the accused:

ART. 104. What is included in civil liability. - The civil liability established in Articles 100, 101, 102 and 103 of this Code includes:

- Restitution;
- Reparation of the damage caused;
- Indemnification for consequential damages.

On the other hand, Section 14, Rule 110 of the Revised Rules of Criminal Procedure states:

Section 14. Amendment or substitution. - A complaint or information may be amended, in form or in substance, without leave of court, at any time before the accused enters his plea. After the plea and during the trial, a formal amendment may only be made with leave of court and when it can be done without causing prejudice to the rights of the accused.

However, any amendment before plea, which downgrades the nature of the offense charged in or excludes any accused from the complaint or information, can be made only upon motion by the prosecutor, with notice to the offended party and with leave of court. The court shall state its reasons in resolving the motion and copies of its order shall be furnished all parties, especially the offended party.

Thus, before the accused enters his plea, a formal or substantial amendment of the complaint or information may be made without leave of court. After the entry of a plea, only a formal amendment may be made but with leave of court and if it does not prejudice the rights of the accused. After arraignment, a substantial amendment is proscribed except if the same is beneficial to the accused.[23]

A substantial amendment consists of the recital of facts constituting the offense charged and determinative of the jurisdiction of the court. All other matters are merely of form.[24] The following have been held to be mere

formal amendments: (1) new allegations which relate only to the range of the penalty that the court might impose in the event of conviction; (2) an amendment which does not charge another offense different or distinct from that charged in the original one; (3) additional allegations which do not alter the prosecution's theory of the case so as to cause surprise to the accused and affect the form of defense he has or will assume; (4) an amendment which does not adversely affect any substantial right of the accused; and (5) an amendment that merely adds specifications to eliminate vagueness in the information and not to introduce new and material facts, and merely states with additional precision something which is already contained in the original information and which adds nothing essential for conviction for the crime charged.[25]

The test as to whether a defendant is prejudiced by the amendment is whether a defense under the information as it originally stood would be available after the amendment is made, and whether any evidence defendant might have would be equally applicable to the information in the one form as in the other. An amendment to an information which does not change the nature of the crime alleged therein does not affect the essence of the offense or cause surprise or deprive the accused of an opportunity to meet the new averment had each been held to be one of form and not of substance.[26]

In the case at bar, the substitution of Caltex by PCIB as private complaint is not a substantial amendment. The substitution did not alter the basis of the charge in both Informations, nor did it result in any prejudice to petitioner. The documentary evidence in the form of the forged checks remained the same, and all such evidence was available to petitioner well before the trial. Thus, he cannot claim any surprise by virtue of the substitution.

Petitioner next argues that in no way was PCIB subrogated to the rights of Caltex, considering that he has no knowledge of the subrogation much less gave his consent to it. Alternatively, he posits that if subrogation was proper, then the charges against him should be dismissed, the two Informations being "defective and void due to false allegations."

Petitioner was charged of the crime of estafa complex with falsification document. In estafa one of the essential elements "to prejudice of another" as mandated by article 315 of the Revised Penal Code.

The element of "to the prejudice of another" being an essential element of the felony should be clearly indicated and charged in the information with TRUTH AND LEGAL PRECISION.

This is not so in the case of petitioner, the twin information filed against him alleged the felony committed "to the damage and prejudice of Caltex." This allegation is UNTRUE and FALSE for there is no question that as early as March 24, 1998 or THREE (3) LONG MONTHS before the twin information were filed on June 29, 1998, the prejudice party is already PCIBank since the latter Re-Credit the value of the checks to Caltex as early as March 24, 1998. In effect, assuming there is valid subrogation as the subject decision concluded, the subrogation took place and occurred on March 24, 1998 THREE (3) MONTHS before the twin information were filed.

The phrase "to the prejudice to another" as element of the felony is limited to the person DEFRAUDED in the very act of embezzlement. It should not be expanded to other persons which the loss may ultimately fall as a result of a contract which contract herein petitioner is total stranger.

In this case, there is no question that the very act of commission of the offense of September 24, 1997 and October 15, 1997 respectively, Caltex was the one defrauded by the act of the felony.

In the light of these facts, petitioner submits that the twin information are DEFECTIVE AND VOID due to the FALSE ALLEGATIONS that the offense was committed to the prejudice of Caltex when in truth and in fact the one prejudiced here was PCIBank.

The twin information being DEFECTIVE AND VOID, the same should be dismissed without prejudice to the

filing of another information which should state the offense was committed to the prejudice of PCIBank if it still legally possible without prejudicing substantial and statutory rights of the petitioner.[27]

Petitioner's argument on subrogation is misplaced. The Court agrees with respondent PCIB's comment that petitioner failed to make a distinction between legal and conventional subrogation. Subrogation is the transfer of all the rights of the creditor to a third person, who substitutes him in all his rights.[28] It may either be legal or conventional. Legal subrogation is that which takes place without agreement but by operation of law because of certain acts.[29] Instances of legal subrogation are those provided in Article 1302[30] of the Civil Code. Conventional subrogation, on the other hand, is that which takes place by agreement of the parties.[31] Thus, petitioner's acquiescence is not necessary for subrogation to take place because the instant case is one of legal subrogation that occurs by operation of law, and without need of the debtor's knowledge.

Contrary to petitioner's asseverations, the case of *People v. Yu Chai Ho*[32] relied upon by the appellate court is in point. The Court declared -

We do not however, think that the fiscal erred in alleging that the commission of the crime resulted to the prejudice of Wm. H. Anderson & Co. It is true that originally the International Banking Corporation was the prejudiced party, but Wm. H. Anderson & Co. compensated it for its loss and thus became subrogated to all its rights against the defendant (article 1839, Civil Code). Wm. H. Anderson & Co., therefore, stood exactly in the shoes of the International Banking Corporation in relation to the defendant's acts, and the commission of the crime resulted to the prejudice of the firm previously to the filing of the information in the case. The loss suffered by the firm was the ultimate result of the defendant's unlawful acts, and we see no valid reason why this fact should not be stated in the information; it stands to reason that, in the crime of estafa, the damage resulting therefrom need not necessarily occur simultaneously with the acts constituting the other essential elements of the crime.

Thus, being subrogated to the right of Caltex, PCIB, through counsel, has the right to intervene in the proceedings, and under substantive laws is entitled to restitution of its properties or funds, reparation, or indemnification.

Petitioner's gripe that the charges against him should be dismissed because the allegations in both Informations failed to name PCIB as true offended party does not hold water.

Section 6, Rule 110 of the Rules on Criminal Procedure states:

Sec. 6. Sufficiency of complaint or information. - A complaint or information is sufficient if it states the name of the accused; the designation of the offense by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate time of the commission of the offense; and the place wherein the offense was committed.

When the offense is committed by more than one person, all of them shall be included in the complaint or information.

On the other hand, Section 12 of the same Rule provides:

Section. 12. Name of the offended party. - The complaint or information must state the name and surname of the person against whom or against whose property the offense was committed, or any appellation or nickname by which such person has been or is known. If there is no better way of identifying him, he must be described under a fictitious name.

(a) In offenses against property, if the name of the offended party is unknown, the property must be described with such particularity as to properly identify the offense charged.

(b) If the true name of the person against whom or against whose property the offense was committed is

thereafter disclosed or ascertained, the court must cause such true name to be inserted in the complaint or information and the record.

(c) If the offended party is a juridical person, it is sufficient to state its name, or any name or designation by which it is known or by which it may be identified, without need of averring that it is a juridical person or that it is organized in accordance with law. (12a)

In *Sayson v. People*,^[33] the Court held that in case of offenses against property, the designation of the name of the offended party is not absolutely indispensable for as long as the criminal act charged in the complaint or information can be properly identified:

The rules on criminal procedure require the complaint or information to state the name and surname of the person against whom or against whose property the offense was committed or any appellation or nickname by which such person has been or is known and if there is no better way of identifying him, he must be described under a fictitious name (Rule 110, Section 11, Revised Rules of Court; now Rule 110, Section 12 of the 1985 Rules on Criminal Procedure.) In case of offenses against property, the designation of the name of the offended party is not absolutely indispensable for as long as the criminal act charged in the complaint or information can be properly identified. Thus, Rule 110, Section 11 of the Rules of Court provides that:

Section 11. Name of the offended party-

...

(a) In cases of offenses against property, if the name of the offended party is unknown, the property, subject matter of the offense, must be described with such particularity as to properly identify the particular offense charged.

(b) If in the course of the trial, the true name of the person against whom or against whose property the offense was committed is disclosed or ascertained, the court must cause the true name to be inserted in the complaint or information or record.

...

In *U.S. v. Kepner* [1 Phil. 519 (1902)], this Court laid down the rule that when an offense shall have been described in the complaint with sufficient certainty as to identify the act, an erroneous allegation as to the person injured shall be deemed immaterial as the same is a mere formal defect which did not tend to prejudice any substantial right of the defendant. Accordingly, in the aforementioned case, which had a factual backdrop similar to the instant case, where the defendant was charged with estafa for the misappropriation of the proceeds of a warrant which he had cashed without authority, the erroneous allegation in the complaint to the effect that the unlawful act was to the prejudice of the owner of the cheque, when in reality the bank which cashed it was the one which suffered a loss, was held to be immaterial on the ground that the subject matter of the estafa, the warrant, was described in the complaint with such particularity as to properly identify the particular offense charged. In the instant suit for estafa which is a crime against property under the Revised Penal Code, since the check, which was the subject-matter of the offense, was described with such particularity as to properly identify the offense charged, it becomes immaterial, for purposes of convicting the accused, that it was established during the trial that the offended party was actually Mever Films and not Ernesto Rufino, Sr. nor Bank of America as alleged in the information.

Lastly, on petitioner's claim that he timely objected to the appearance of SRMO^[34] as private prosecutor for PCIB, the Court agrees with the observation of the CA that contrary to his claim, petitioner did not question the said entry of appearance even as the RTC acknowledged the same on October 8, 1999.^[35] Thus, petitioner cannot feign ignorance or surprise of the incident, which are "all water under the bridge for [his] failure to make a timely

objection thereto."[36]

WHEREFORE, the petition is DENIED. The assailed decision and resolution of the Court of Appeals are AFFIRMED. This case is REMANDED to the Regional Trial Court of Makati City, Branch 63, for further proceedings.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Chico-Nazario, JJ., concur.

[1] Penned by Associate Justice Remedios A. Salazar-Fernado with Associate Justices Ruben T. Reyes (now Presiding Justice) and Eduardo F. Sundiam concurring; rollo, pp. 57-68.

[2] Rollo, pp. 70-71

[3] Id. at 222.

[4] Id. at 209-221.

[5] Id. at 72.

[6] Id. at 228-229.

[7] Id. at 230-238.

[8] Id. at 242.

[9] Id. at 244-251.

[9] Id. at 253-254.

[11] G.R. No. L-51745, October 28, 1988, 166 SCRA 680.

[12] Rollo, p. 241.

[13] Id. at 412.

[14] Id. at 425.

[15] Id. at 68.

[16] 53 Phil. 874 1928).

[17] CA, 50 (2) OG 665, November 11, 1953.

[18] Rollo, pp. 70-71.

[19] Id. at 29-30.

[20] See 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 institute 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.

[21] *Ramiscal v. Sandiganbayan*, G.R. Nos. 140576-99, December 13, 2004, 446 SCRA 166, 185.

[22] *Id.*

[23] *Matalam v. Sandiganbayan*, G.R. No. 165751, April 12, 2005, 455 SCRA 736, 746.

[24] *Id.* at 747.

[25] *Id.*

[26] *Id.* at 747-748.

[27] *Rollo*, pp. 43-44.

[28] *Philippine National Bank v. Court of Appeals*, G.R. No. 128661, August 8, 2000, 337 SCRA 381, 404.

[29] *Chemphil Import & Export Corp. v. Court of Appeals*, G.R. Nos. 112438-39, December 12, 1995, 251 SCRA 257, 279.

[30] Art. 1302. It is presumed that there is legal subrogation:

- When a creditor pays another creditor who is preferred, even without the debtor's knowledge;
- When a third person, not interested in the obligation, pays with the express or tacit approval of the debtor;
- When, even without the knowledge of the debtor, a person interested in the fulfillment of the obligation pays, without prejudice to the effects of confusion as to the latter's share.

[31] *Chemphil Import & Export Corp. v. Court of Appeals*, *supra*.

[32] G.R. No. L-29278, October 3, 1928.

[33] *Supra* note 11.

[34] The Siguion Reyna Montecillo and Ongsiako Law Office filed its formal entry of appearance in behalf of PCIBank on October 5, 1999, and the trial court duly noted such appearance in its Order dated October 8, 1999. (see *Rollo*, pp. 406 and 408).

[35] *Rollo*, p. 66.

[36] *Id.* at 67.

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