

**SPOUSES SIMON YAP AND MILAGROS GUEVARRA, PETITIONERS, VS.
FIRST E-BANK CORPORATION (PREVIOUSLY KNOWN AS PDCP
DEVELOPMENT BANK, INC.), RESPONDENT.**

G.R. No. 169889. September 29, 2009

Ponente: CORONA, J.

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CORONA, J.:

On August 30, 1990, Sammy Yap obtained a P2 million loan from PDCP Development Bank, Inc.[1] (PDCP). As security, Sammy's parents, petitioners Simon Yap and Milagros Guevarra, executed a third-party mortgage on their land[2] and warehouse standing on it. The mortgage agreement provided that PDCP may extrajudicially foreclose the property in case Sammy failed to pay the loan.

On November 7, 1990, Sammy issued a promissory note and six postdated checks[3] in favor of PDCP as additional securities for the loan.

When Sammy defaulted on the payment of his loan, PDCP presented the six checks to the drawee bank but the said checks were dishonored.[4] This prompted PDCP to file a complaint against Sammy for six counts of violation of BP 22 (Bouncing Checks Law) on February 8, 1993.

On May 3, 1993, PDCP filed an application for extrajudicial foreclosure of mortgage on the property of petitioners which served as principal security for Sammy's loan.

On December 16, 1993, on motion of Sammy and without objection from the public prosecutor and PDCP, the BP 22 cases were provisionally dismissed.

On October 26, 1994, pursuant to the petition of PDCP for extrajudicial foreclosure, the extrajudicial sale was set on December 28, 1994. Copies of the notice of extrajudicial sale were sent by registered mail to Sammy, petitioners, the Registrar of Deeds of San Carlos City, Pangasinan, the Sangguniang Panglungsod of San Carlos City and the office of the barangay secretary of Taloy District, San Carlos City, Pangasinan.

The notice was also published in the Sunday Punch, a newspaper of general circulation in Pangasinan on November 27, December 4 and 11, 1994.

On December 20, 1994, petitioners filed in the Regional Trial Court (RTC) of San Carlos City, Pangasinan a complaint for injunction (with prayer for the issuance of a temporary restraining order/preliminary injunction), damages and accounting of payments against PDCP. The complaint sought to stop the foreclosure sale on the ground that PDCP waived its right to foreclose the mortgage on their property when it filed the BP 22 cases against Sammy.

On April 2, 1997, the RTC[5] ruled in favor of petitioners. It held that PDCP had three options when Sammy defaulted in the payment of his loan: enforcement of the promissory note in a collection case, enforcement of the checks under the Negotiable Instruments Law and/or BP 22, or foreclosure of mortgage. The remedies were

alternative and the choice of one excluded the others. Thus, PDCP was deemed to have waived its right to foreclose on the property of petitioners when it elected to sue Sammy for violation of BP 22.[6]

PDCP appealed to the Court of Appeals (CA). On February 8, 2005, the CA[7] reversed the RTC. It opined that PDCP was not barred from exercising its right to foreclose on the property of petitioners despite suing Sammy for violation of BP 22. The purpose of BP 22 was to punish the act of issuing a worthless check, not to force a debtor to pay his debt.[8]

Hence, this appeal[9] where petitioners argue that, when Sammy was sued for six counts of violation of BP 22, PDCP should have been deemed to have simultaneously filed for collection of the amount represented by the checks. The civil aspect of the case was naturally an action for collection of Sammy's obligation to PDCP. PDCP clearly elected a remedy. PDCP should not be allowed to pursue another, like foreclosure of mortgage.

The argument is not convincing.

First, petitioners anchor their position on Supreme Court Circular 57-97, which provides for the rules and guidelines in the filing and prosecution of criminal cases under BP 22. Pertinent portions of Circular 57-97 provide:

1. The criminal action for violation of [BP] 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.
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 filing fees in Section 7 (a) and Section 8 (a), Rule 141 of the Rules of Court, and last amended by Administrative Circular No. 11-94 effective August 1, 1994. Where the offended party 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 therefore based on the amounts thereof as alleged either in his complaint or in the information. If not so alleged but any of these damages are 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. (emphasis supplied)

Circular 57-97 has been institutionalized as Section 1(b), Rule 111 of the Rules of Court:[10]

Section 1. Institution of criminal and civil actions.--xxx

(b) The criminal action for violation of [BP] 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 fee 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. (emphasis supplied)

Sad to say, Circular 57-97 (and, it goes without saying, Section 1(b), Rule 111 of the Rules of Court) was not yet in force^[11] when PDCP sued Sammy for violation of BP 22 and when it filed a petition for extrajudicial foreclosure on the mortgaged property of petitioners on February 8, 1993 and May 3, 1993, respectively. In *Lo Bun Tiong v. Balboa*,^[12] Circular 57-97 was not applied because the collection suit and the criminal complaints for violation of BP 22 were filed prior to the adoption of Circular 57-97. The same principle applies here.

Thus, prior to the effectivity of Circular 57-97, the alternative remedies of foreclosure of mortgage and collection suit were not barred even if a suit for BP 22 had been filed earlier, unless a judgment of conviction had already been rendered in the BP 22 case finding the accused debtor criminally liable and ordering him to pay the amount of the check(s).^[13]

In this case, no judgment of conviction (which could have declared the criminal and civil liability of Sammy) was rendered because Sammy moved for the provisional dismissal of the case. Hence, PDCP could have still foreclosed on the mortgage or filed a collection suit.

Nonetheless, records show that, during the pendency of the BP 22 case, Sammy had already paid PDCP the total amount of P1,783,582.^[14] Thus, to prevent unjust enrichment on the part of the creditor, any foreclosure by PDCP should only be for the unpaid balance.

Second, it is undisputed that the BP 22 cases were provisionally dismissed at Sammy's instance. In other words, PDCP was prevented from recovering the whole amount by Sammy himself. To bar PDCP from foreclosing on petitioners' property for the balance of the indebtedness would be to penalize PDCP for the act of Sammy. That would not only be illogical and absurd but would also violate elementary rules of justice and fair play. In sum, PDCP has not yet effectively availed of and fully exhausted its remedy.

While it can be argued that PDCP may revive the BP 22 cases anytime as their dismissal was only provisional, suffice it to state that the law gives the right of choice to PDCP, not to Sammy or to petitioners.

Third, petitioners should be mindful that, by being third party mortgagors, they agreed that their property would stand as collateral to the loan of Sammy until the last centavo is paid to PDCP. That is a risk they willingly assumed. To release the mortgage just because they find it inconvenient would be the height of injustice against PDCP.

All told, PDCP should not be left without recourse for the unsettled loan of Sammy. Otherwise, an iniquitous situation will arise where Sammy and petitioners are unjustly enriched at the expense of PDCP. That we cannot sanction.

So as not to create any misunderstanding, however, the point should be underscored that the creditor's obvious purpose when it forecloses on mortgaged property is to obtain payment for a loan which the debtor is unable or unjustifiably refuses to pay. The rationale is the same if the creditor opts to sue the debtor for collection. Thus, it is but logical that a creditor who obtains a personal judgment against the debtor on a loan waives his right to foreclose on the mortgage securing the loan. Otherwise, the creditor becomes guilty of splitting a single cause of action^[15] for the debtor's inability (or unjustified refusal) to pay his debt.^[16] *Nemo debet bis vexare pro una et eadem causa*. No man shall be twice vexed for one and the same cause.

In the light of Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court, the same rule applies when the creditor sues the debtor for BP 22 and thereafter forecloses on the mortgaged property. It is true that BP 22 is a criminal remedy while foreclosure of mortgage is a civil remedy. It is also true that BP 22 was not enacted to force, much more penalize a person for his inability (or refusal to pay) his debt.^[17] What BP 22 prohibits and penalizes is the issuance of bum checks because of its pernicious effects on public interest. Congress, in the

exercise of police power, enacted BP 22 in order to maintain public confidence in commercial transactions.[18]

At the other end of the spectrum, however, is the fact that a creditor's principal purpose in suing the debtor for BP 22 is to be able to collect his debt. (Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court have been drawn up to address this reality.) It is not so much that the debtor should be imprisoned for issuing a bad check; this is so specially because a conviction for BP 22 does not necessarily result in imprisonment.[19]

Thus, we state the rule at present. If the debtor fails (or unjustly refuses) to pay his debt when it falls due and the debt is secured by a mortgage and by a check, the creditor has three options against the debtor and the exercise of one will bar the exercise of the others. He may pursue either of the three but not all or a combination of them.

First, the creditor may file a collection suit against the debtor. This will open up all the properties of the debtor to attachment and execution, even the mortgaged property itself. Second, the creditor may opt to foreclose on the mortgaged property. In case the debt is not fully satisfied, he may sue the debtor for deficiency judgment (not a collection case for the whole indebtedness), in which case, all the properties of the debtor, other than the mortgaged property, are again opened up for the satisfaction of the deficiency.[20] Lastly, the creditor may opt to sue the debtor for violation of BP 22 if the checks securing the obligation bounce. Circular 57-97 and Section 1(b), Rule 111 of the Rules of Court both provide that the criminal action for violation of BP 22 shall be deemed to necessarily include the corresponding civil action, i.e., a collection suit. No reservation to file such civil action separately shall be allowed or recognized.

Petitioners would have been correct had it not been for the reasons stated earlier.

WHEREFORE, the petition is hereby DENIED.

Costs against petitioners.

SO ORDERED.

Puno, C.J., (Chairperson), Chico-Nazario, Leonardo-De Castro, and Bersamin, JJ., concur.

[*] Per Special Order No. 698 dated September 4, 2009.

[1] Now First e-Bank Corporation.

[2] Covered by TCT No. 1650 situated in San Carlos City, Pangasinan.

[3] The particulars of the six postdated checks issued by Sammy to PDCP were not mentioned in the petition.

[4] The reason why the six postdated checks bounced was not stated in the petition.

[5] Decision penned by Judge Bienvenido R. Estrada. Rollo, pp. 28-32.

[6] Id., p. 29.

[7] Decision penned by Associate Justice Santiago Javier Ranada (retired) and concurred in by Associate Justices Marina L. Buzon (retired) and Mario L. Guariña III. Id., pp. 49-62.

[8] Id., p. 56.

[9] Under Rule 45 of the Rules of Court. Petitioner Simon Yap died on November 3, 2006 due to "septic shock" as shown by his death certificate (id., p. 119) and as noted by the Court in its Resolution dated June 4, 2007 (id., p. 121).

[10] This rule was enacted to help declog court dockets which are filled with [BP] 22 cases as creditors actually use the courts as collectors. Because ordinarily no filing fee is charged in 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 (*Hyatt Industrial Manufacturing Corp. v. Asia Dynamic Electric Corp.*, G.R. No. 163597, July 29, 2005, 465 SCRA 454, 460-461). (emphasis supplied)

[11] Supreme Court Circular 57-97 took effect on September 16, 1997.

[12] G.R. No. 158177, January 28, 2008, 542 SCRA 504.

[13] In such a case (that is, where there was a judgment of conviction), the imposition of civil liability through the order to pay the amount of the check shows that the civil action for collection was impliedly instituted in the BP 22 case.

[14] Rollo, p. 65.

[15] Sections 3 and 4, Rule 2 of the Rules of Court provide:

Section 3. One suit for a single cause of action.-- A party may not institute more than one cause of action.

Section 4. Splitting a single cause of action; effect of.--If two or more suits are instituted on the basis of the same cause of action, the filing of one or a judgment upon the merits in any one is available as a ground for the dismissal of the others.

[16] For nonpayment of a note secured by mortgage, the creditor has a single cause of action against the debtor. This single cause of action consists in the recovery of the credit with execution of the security. In other words, the creditor in his action may make two demands, the payment of the debt and the foreclosure of his mortgage. But both demands arise from the same cause, the nonpayment of the debt, and, for that reason, they constitute a single cause of action. Though the debt and the mortgage constitute separate agreements, the latter is subsidiary to the former, and both refer to one and the same obligation. Consequently, there exists only one cause of action for a single breach of that obligation. [The creditor] then, by applying the rule above stated, cannot split up his single cause of action by filing a complaint for payment of the debt, and thereafter another complaint for foreclosure of the mortgage. If he does so, the filing of the first complaint will bar the subsequent complaint. By allowing the creditor to file two separate complaints simultaneously or successively, one to recover his credit and another to foreclose his mortgage, we will, in effect, be authorizing him plural redress for a single breach of contract at so much cost to the courts and with so much vexation and oppression to the debtor. (*Bachrach Motor Co., Inc. v. Icarangal*, 68 Phil. 287, 293-294 [1939]).

[17] Otherwise, there will be a blatant violation of Article III, Section 20 of the Constitution, which proscribes imprisonment for debt.

[18] The gravamen of the offense punishable by BP 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the nonpayment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under the pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by law. The law punishes the act not as offense against property, but an offense against public order. *Lozano v. Martinez*, G.R. No. L-63419, 18

December 1986, 146 SCRA 323, 338. (emphasis supplied)

[19] See for example *Vaca v. Court of Appeals*, G.R. No. 131714, 16 November 1998, 298 SCRA 656 and *Lim v. People*, G.R. No. 130038, 18 September 2000, 340 SCRA 497, where the Supreme Court, although affirming the conviction of the accused, imposed a fine rather than imprisonment.

[20] *Bachrach Motor Co., Inc. v. Icarangal*, *supra*, p. 294.

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