

## EUMELIA R. MITRA, PETITIONER, VS. PEOPLE OF THE PHILIPPINES AND FELICISIMO S. TARCELO, RESPONDENTS.

*G.R. No. 191404. July 05, 2010*

Ponente: MENDOZA, J.

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### **MENDOZA, J.:**

This is a petition for review on certiorari under Rule 45 of the Rules of Court assailing the July 31, 2009 Decision[1] and the February 11, 2010 Resolution of the Court of Appeals (CA) in CA-G.R. CR No. 31740. The subject decision and resolution affirmed the August 22, 2007 Decision of the Regional Trial Court, Branch 2, Batangas City (RTC) which, in turn, affirmed the May 21, 2007 Decision of the Municipal Trial Court in Cities, Branch 2, Batangas City (MTCC).

### **THE FACTS:**

Petitioner Eumelia R. Mitra (Mitra) was the Treasurer, and Florencio L. Cabrera, Jr. (now deceased) was the President, of Lucky Nine Credit Corporation (LNCC), a corporation engaged in money lending activities.

Between 1996 and 1999, private respondent Felicisimo S. Tarcelo (Tarcelo) invested money in LNCC. As the usual practice in money placement transactions, Tarcelo was issued checks equivalent to the amounts he invested plus the interest on his investments. The following checks, signed by Mitra and Cabrera, were issued by LNCC to Tarcelo.[2]

Bank

Date Issued

Date of Check

Amount

Check No.

Security Bank

September 15, 1998

January 15, 1999

P 3,125.00

0000045804

-do-

September 15, 1998

January 15, 1999

125,000.00

0000045805

-do-

September 20, 1998

January 20, 1999

2,500.00

0000045809

-do-

September 20, 1998

January 20, 1999

100,000.00

0000045810

-do-

September 30, 1998

January 30, 1999

5,000.00

0000045814

-do-

September 30, 1998

January 30, 1999

200,000.00

0000045815

-do-

October 3, 1998

February 3, 1999

2,500.00

0000045875

-do-

October 3, 1998

February 3, 1999

100,000.00

0000045876

-do-

November 17, 1998

February17, 1999

5,000.00

0000046061

-do-

November 17, 1998

March 17, 1999

5,000.00

0000046062

-do-

November 17, 1998

March 17, 1999

200,000.00

0000046063

-do-

November 19, 1998

January 19, 1999

2,500.00

0000046065

-do-

November 19, 1998

February19, 1999

2,500.00

0000046066

-do-

November 19, 1998

March 19, 1999

2,500.00

0000046067

-do-

November 19, 1998

March 19, 1999

100,000.00

0000046068

-do-

November 20, 1998

January 20, 1999

10,000.00

0000046070

-do-

November 20, 1998

February 20, 1999

10,000.00

0000046071

-do-

November 20, 1998

March 20, 1999

10,000.00

0000046072

-do-

November 20, 1998

March 20, 1999

10,000.00

0000046073

-do-

November 30, 1998

January 30, 1999

2,500.00

0000046075

-do-

November 30, 1998

February 28, 1999

2,500.00

0000046076

-do-

November 30, 1998

March 30, 1999

2,500.00

0000046077

-do-

November 30, 1998

March 30, 1999

100,000.00

0000046078

When Tarcelo presented these checks for payment, they were dishonored for the reason "account closed." Tarcelo made several oral demands on LNCC for the payment of these checks but he was frustrated. Constrained, in 2002, he caused the filing of seven informations for violation of Batas Pambansa Blg. 22 (BP 22) in the total amount of P925,000.00 with the MTCC in Batangas City.[3]

After trial on the merits, the MTCC found Mitra and Cabrera guilty of the charges. The fallo of the May 21, 2007 MTCC Decision[4] reads:

WHEREFORE, foregoing premises considered, the accused FLORENCIO I. CABRERA, JR., and EUMELIA R. MITRA are hereby found guilty of the offense of violation of Batas Pambansa Bilang 22 and are hereby ORDERED to respectively pay the following fines for each violation and with subsidiary imprisonment in all cases, in case of insolvency:

1. Criminal Case No. 43637 - P200,000.00
2. Criminal Case No. 43640 - P100,000.00
3. Criminal Case No. 43648 - P100,000.00
4. Criminal Case No. 43700 - P125,000.00
5. Criminal Case No. 43702 - P200,000.00
6. Criminal Case No. 43704 - P100,000.00
7. Criminal Case No. 43706 - P100,000.00

Said accused, nevertheless, are adjudged civilly liable and are ordered to pay, in solidum, private complainant Felicisimo S. Tarcelo the amount of NINE HUNDRED TWENTY FIVE THOUSAND PESOS (P925,000.000).

**SO ORDERED.**

Mitra and Cabrera appealed to the Batangas RTC contending that: they signed the seven checks in blank with no name of the payee, no amount stated and no date of maturity; they did not know when and to whom those checks

would be issued; the seven checks were only among those in one or two booklets of checks they were made to sign at that time; and that they signed the checks so as not to delay the transactions of LNCC because they did not regularly hold office there.[5]

The RTC affirmed the MTCC decision and later denied their motion for reconsideration. Meanwhile, Cabrera died. Mitra alone filed this petition for review[6] claiming, among others, that there was no proper service of the notice of dishonor on her. The Court of Appeals dismissed her petition for lack of merit.

Mitra is now before this Court on a petition for review and submits these issues:

1. WHETHER OR NOT THE ELEMENTS OF VIOLATION OF BATAS PAMBANSA BILANG 22 MUST BE PROVED BEYOND REASONABLE DOUBT AS AGAINST THE CORPORATION WHO OWNS THE CURRENT ACCOUNT WHERE THE SUBJECT CHECKS WERE DRAWN BEFORE LIABILITY ATTACHES TO THE SIGNATORIES.
2. WHETHER OR NOT THERE IS PROPER SERVICE OF NOTICE OF DISHONOR AND DEMAND TO PAY TO THE PETITIONER AND THE LATE FLORENCIO CABRERA, JR.

The Court denies the petition.

A check is a negotiable instrument that serves as a substitute for money and as a convenient form of payment in financial transactions and obligations. The use of checks as payment allows commercial and banking transactions to proceed without the actual handling of money, thus, doing away with the need to physically count bills and coins whenever payment is made. It permits commercial and banking transactions to be carried out quickly and efficiently. But the convenience afforded by checks is damaged by unfunded checks that adversely affect confidence in our commercial and banking activities, and ultimately injure public interest.

BP 22 or the Bouncing Checks Law was enacted for the specific purpose of addressing the problem of the continued issuance and circulation of unfunded checks by irresponsible persons. To stem the harm caused by these bouncing checks to the community, BP 22 considers the mere act of issuing an unfunded check as an offense not only against property but also against public order.[7] The purpose of BP 22 in declaring the mere issuance of a bouncing check as *malum prohibitum* is to punish the offender in order to deter him and others from committing the offense, to isolate him from society, to reform and rehabilitate him, and to maintain social order.[8] The penalty is stiff. BP 22 imposes the penalty of imprisonment for at least 30 days or a fine of up to double the amount of the check or both imprisonment and fine.

Specifically, BP 22 provides:

SECTION 1. Checks Without Sufficient Funds. -- Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

SECTION 2. Evidence of Knowledge of Insufficient Funds. -- The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

Mitra posits in this petition that before the signatory to a bouncing corporate check can be held liable, all the elements of the crime of violation of BP 22 must first be proven against the corporation. The corporation must first be declared to have committed the violation before the liability attaches to the signatories of the checks.[9]

The Court finds Itself unable to agree with Mitra's posture. The third paragraph of Section 1 of BP 22 reads: "Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act." This provision recognizes the reality that a corporation can only act through its officers. Hence, its wording is unequivocal and mandatory - that the person who actually signed the corporate check shall be held liable for a violation of BP 22. This provision does not contain any condition, qualification or limitation.

In the case of *Llamado v. Court of Appeals*,<sup>[10]</sup> the Court ruled that the accused was liable on the unfunded corporate check which he signed as treasurer of the corporation. He could not invoke his lack of involvement in the negotiation for the transaction as a defense because BP 22 punishes the mere issuance of a bouncing check, not the purpose for which the check was issued or in consideration of the terms and conditions relating to its issuance. In this case, Mitra signed the LNCC checks as treasurer. Following *Llamado*, she must then be held liable for violating BP 22.

Another essential element of a violation of BP 22 is the drawer's knowledge that he has insufficient funds or credit with the drawee bank to cover his check. Because this involves a state of mind that is difficult to establish, BP 22 creates the prima facie presumption that once the check is dishonored, the drawer of the check gains knowledge of the insufficiency, unless within five banking days from receipt of the notice of dishonor, the drawer pays the holder of the check or makes arrangements with the drawee bank for the payment of the check. The service of the notice of dishonor gives the drawer the opportunity to make good the check within those five days to avert his prosecution for violating BP 22.

Mitra alleges that there was no proper service on her of the notice of dishonor and, so, an essential element of the offense is missing. This contention raises a factual issue that is not proper for review. It is not the function of the Court to re-examine the finding of facts of the Court of Appeals. Our review is limited to errors of law and cannot touch errors of facts unless the petitioner shows that the trial court overlooked facts or circumstances that warrant a different disposition of the case<sup>[11]</sup> or that the findings of fact have no basis on record. Hence, with respect to the issue of the propriety of service on Mitra of the notice of dishonor, the Court gives full faith and credit to the consistent findings of the MTCC, the RTC and the CA.

The defense postulated that there was no demand served upon the accused, said denial deserves scant consideration. Positive allegation of the prosecution that a demand letter was served upon the accused prevails over the denial made by the accused. Though, having denied that there was no demand letter served on April 10, 2000, however, the prosecution positively alleged and proved that the questioned demand letter was served upon the accused on April 10, 2000, that was at the time they were attending Court hearing before Branch I of this Court. In fact, the prosecution had submitted a Certification issued by the other Branch of this Court

certifying the fact that the accused were present during the April 10, 2010 hearing. With such straightforward and categorical testimony of the witness, the Court believes that the prosecution has achieved what was dismally lacking in the three (3) cases of Betty King, Victor Ting and Caras - evidence of the receipt by the accused of the demand letter sent to her. The Court accepts the prosecution's narrative that the accused refused to sign the same to evidence their receipt thereof. To require the prosecution to produce the signature of the accused on said demand letter would be imposing an undue hardship on it. As well, actual receipt acknowledgment is not and has never been required of the prosecution either by law or jurisprudence.[12] [emphasis supplied]

With the notice of dishonor duly served and disregarded, there arose the presumption that Mitra and Cabrera knew that there were insufficient funds to cover the checks upon their presentment for payment. In fact, the account was already closed.

To reiterate the elements of a violation of BP 22 as contained in the above-quoted provision, a violation exists where:

- a person makes or draws and issues a check to apply on account or for value;
- the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the full payment of the check upon its presentment; and
- the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment. [13]

There is no dispute that Mitra signed the checks and that the bank dishonored the checks because the account had been closed. Notice of dishonor was properly given, but Mitra failed to pay the checks or make arrangements for their payment within five days from notice. With all the above elements duly proven, Mitra cannot escape the civil and criminal liabilities that BP 22 imposes for its breach.[14]

WHEREFORE, the July 31, 2009 Decision and the February 11, 2010 Resolution of the Court of Appeals in CA-G.R. CR No. 31740 are hereby AFFIRMED.

**SO ORDERED.**

Carpio, (Chairperson), Nachura, Peralta, and Mendoza, JJ., concur.

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justice Isaias P. Dicdican and Associate Justice Marlene Gonzales-Sison concurring.

[2] Complaint-Affidavits, Rollo, pp. 109-115.

[3] Id. at 116-129.

[4] Id. at 130-134.

[5] Id. at 143.

[6] Id. at 75-105.

[7] Lozano v. Martinez, 230 Phil. 406, 428 (1986).

[8] Rosario v. Co, G.R. No. 133608, August 26, 2008, 563 SCRA 239, 253.

[9] Rollo, p. 47.

[10] 337 Phil. 153, 160 (1997).

[11] American Home Assurance Company v. Chua, 368 Phil. 555, 569 (1999).

[12] Rollo, p. 133.

[13] Rigor v. People, 485 Phil. 125, 139 (2004).

[14] In *Gosiaco v. Ching*, G.R. No. 173807, April 16, 2009, 585 SCRA 471, 483, we held an accused corporate officer free from civil liability for the corporate debt after the lower court acquitted the accused of criminal liability under BP 22. Note that this is a totally different case from the present case as the issue here is both criminal and civil liability.

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