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FIRST DIVISION

[G.R. No. 211564, November 20, 2017]

BENJAMIN EVANGELISTA, PETITIONER, V. SCREENEX,[1] INC., REPRESENTED BY ALEXANDER G, YU, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This is a Petition[2] for Review on *Certiorari* seeking to set aside the Decision[3] and Resolution[4] rendered by the Court of Appeals (CA) Manila, Fifth Division, in CA-G.R. SP No. 110680.

ANTECEDENT FACTS

The facts as summarized by the CA are as follows:

> Sometime in 1991, [Evangelista] obtained a loan from respondent Screenex, Inc. which issued two (2) checks to [Evangelista]. The first check was UCPB Check No. 275345 for P1,000,000 and the other one is China Banking Corporation Check No. BDO 8159110 for P500,000. There were also vouchers of Screenex that were signed by the accused evidencing that he received the 2 checks in acceptance of the loan granted to him.
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> As security for the payment of the loan, [Evangelista] gave two (2) open dated checks: UCPB Check Nos. 616656 and 616657, both pay to the order of Screenex, Inc. From the time the checks were issued by [Evangelista], they were held in safe keeping together with the other documents and papers of the company by Philip Gotuaco, Sr., father-in-law of respondent Alexander Yu, until the former's death on 19 November 2004.
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> Before the checks were deposited, there was a personal demand from the family for [Evangelista] to settle the loan and likewise a demand letter sent by the family lawyer.[5]

On 25 August 2005, petitioner was charged with violation of Batas Pambansa (BP) Blg. 22 in Criminal Case Nos. 343615-16 filed with the Metropolitan Trial Court (MeTC) of Makati City, Branch 61.[6] The Information reads:

> That sometime in 1991, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously make out, draw, and issue to SCREENEX INC., herein represented by ALEXANDER G. YU, to apply on account or for value the checks described below:

	Check No.	Date	Amount
United Coconut	AGR 616656	12-22-04	P1,000,000.00
Planters Bank	AGR 616657	12-22-04	500,000.00

said accused well knowing that at the time of issue thereof, said accused did not have sufficient funds in or credit with the drawee bank for the payment in full of the face amount of such check 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 the reason "ACCOUNT CLOSED" and despite receipt of notice of such dishonor, the said accused failed to pay said payee the face amount of said checks or to make arrangement for full payment thereof within five (5) banking days after receiving notice.

CONTRARY TO LAW.[7]

Petitioner pleaded not guilty when arraigned, and trial proceeded.[8]

THE RULING OF THE MeTC

The MeTC found that the prosecution had indeed proved the first two elements of cases involving violation of BP 22: i.e. the accused makes, draws or issues any check to apply to account or for value, and the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or the check would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment. The trial court pointed out, though, that the prosecution failed to prove the third element; i.e. at the time of the issuance of the check to the payee, the latter did not have sufficient funds in, or credit with, the drawee bank for payment of the check in full upon its presentment.[9] In the instant case, the court held that while prosecution witness Alexander G. Yu declared that the lawyer had sent a demand letter to Evangelista, Yu failed to prove that the letter had actually been received by addressee. Because there was no way to determine when the five-day period should start to toll, there was a failure to establish *prima facie* evidence of knowledge of the insufficiency of funds on the part of Evangelista.[10] Hence, the court acquitted him of the criminal charges.

Ruling on the civil aspect of the cases, the court held that while Evangelista admitted to having issued and delivered the checks to Gotuaco and to having fully paid the amounts indicated therein, no evidence of payment was presented.[11] It further held that the creditor's possession of the instrument of credit was sufficient evidence that the debt claimed had not yet been paid.[12] In the end, Evangelista was declared liable for the corresponding civil obligation.[13]

The dispositive portion of the Decision[14] reads:

WHEREFORE, judgment is rendered acquitting the accused BENJAMIN EVANGELISTA for failure of the prosecution to establish all the elements

> constituting the offense of Violation of B.P. 22 for two (2) counts. However, accused is hereby ordered to pay his civil obligation to the private complainant in the total amount of ONE MILLION FIVE HUNDRED THOUSAND PESOS (P1,500,000) plus twelve (12%) percent interest per annum from the date of the filing of the two sets of Information until fully paid and to pay the costs of suit.
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> SO ORDERED.[15]

THE RULING OF THE RTC

Evangelista filed a timely Notice of Appeal[16] and raised two errors of the MeTC before the Regional Trial Court (RTC) of Makati City, Branch 147. Docketed therein as Criminal Case Nos. 08-1723 and 08-1724, the appeal posed the following issues: (1) the lower court erred in not appreciating the fact that the prosecution failed to prove the civil liability of Evangelista to private complainant; and (2) any civil liability attributable to Evangelista had been extinguished and/or was barred by prescription.[17]

After the parties submitted their respective Memoranda,[18] the RTC ruled that the checks should be taken as evidence of Evangelista's indebtedness to Gotuaco, such that even if the criminal aspect of the charge had not been established, the obligation subsisted.[19] Also, the alleged payment by Evangelista was an affirmative defense that he had the burden of proving, but that he failed to discharge.[20] With respect to the defense of prescription, the RTC ruled in this wise:

> As to the defense of prescription, the same cannot be successfully invoked in this appeal. The 10-year prescriptive period of the action under Art. 1144 of the New Civil Code is computed from the time the right of action accrues. The terms and conditions of the loan obligation have not been shown, as only the checks evidence the same. It has not been shown when the loan obligation was to mature such that there is no basis to show or from which to infer, when the cause of action (non-payment of the loan) which would give the obligee the right to seek redress for the non-payment of the obligation, accrued. In other words, the reckoning point of prescription has not been established.
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> Prosecution witness Alexander G. Yu was not competent to state that the loan was contracted in 1991 as in fact, Yu admitted that it was a few months before his father-in-law (Philip Gotuaco) died when the latter told him about accused's failure to pay his obligation. That was a few months before November 19, 2004, date of death of his father-in-law.
>
> At any rate, the right of action in this case is not upon a written contract, for which reason, Art. 1144, New Civil Code, on prescription does not apply.[21]

In a Decision[22] dated 18 December 2008, the RTC dismissed the appeal and affirmed the MeTC decision *in toto*.[23] The Motion for Reconsideration[24] was likewise denied in an Order[25] dated 19 August 2009.

THE RULING OF THE CA

Evangelista filed a petition for review[26] before the CA insisting that the lower court erred in finding him liable to pay the sum with interest at 12% per annum from the date of filing until full payment. He further alleged that witness Yu was not competent to testify on the loan transaction; that the insertion of the date on the checks without the knowledge of the accused was an alteration that avoided the checks; and that the obligation had been extinguished by prescription.[27]

Screenex, Inc., represented by Yu, filed its Comment.[28] Yu claimed that he had testified on the basis of his personal dealings with his father-in law, whom Evangelista dealt with in obtaining the loan. He further claimed that during the trial, petitioner never raised the competence of the witness as an issue.[29] Moreover, Yu argued that prescription set in from the accrual of the obligation; hence, while the loan was transacted in 1991, the demand was made in February 2005, which was within the 10-year prescriptive period.[30] Yu also argued that while Evangelista claimed under oath that the loan had been paid in 1992, he was not able to present any proof of payment.[31] Meanwhile, Yu insisted that the material alteration invoked by Evangelista was unavailing, since the checks were undated; hence, nothing had been altered.[32] Finally, Yu argued that Evangelista should not be allowed to invoke prescription, which he was raising for the first time on appeal, and for which no evidence was adduced in the court of origin.[33]

The CA denied the petition.[34] It held that (1) the reckoning time for the prescriptive period began when the instrument was issued and the corresponding check returned by the bank to its depositor;[35] (2) the issue of prescription was raised for the first time on appeal with the RTC;[36] (3) the writing of the date on the check cannot be considered as an alteration, as the checks were undated, so there was nothing to change to begin with;[37] (4) the loan obligation was never denied by petitioner, who claimed that it was settled in 1992, but failed to show any proof of payment.[38] Quoting the MeTC Decision, the CA declared:

> [t]he mere possession of a document evidencing an obligation by the person in whose favor it was executed, merely raises a presumption of nonpayment which may be overcome by proof of payment, or by satisfactory explanation of the fact that the instrument is found in the hands of the original creditor not inconsistent with the fact of payment. [39]

The dispositive portion reads:

> **WHEREFORE**, premises considered, the petition is DENIED. The assailed August 19, 2009 Order of the Regional Trial Court, Branch 147, Makati City, denying petitioner's Motion for Reconsideration of the Court's December 18, 2008 Decision in Crim. Case Nos. 08-1723 and 08-1724 are **AFFIRMED**.
>
> **SO ORDERED.**[40]

Petitioner filed a Motion for Reconsideration,[41] which was similarly denied in a Resolution[42] dated 27 February 2014.

Hence, this Petition,[43] in which petitioner contends that the lower court erred in ordering the accused to pay his alleged civil obligation to private complainant. In particular, he argues that the court did not consider the prosecution's failure to prove his civil liability to respondent, and that any civil liability there might have been was already extinguished and/or barred by prescription.[44]

Meanwhile, respondent filed its Comment,[45] arguing that the date of prescription was reckoned from the date of the check, 22 December 2004. So when the complaint was filed on 25 August 2005, it was supposedly well within the prescriptive period of ten (10) years under Article 1144 of the New Civil Code.[46]

OUR RULING

With petitioner's acquittal of the criminal charges for violation of BP 22, the only issue to be resolved in this petition is whether the CA committed a reversible error in holding that petitioner is still liable for the total amount of P1.5 million indicated in the two checks.

We rule in favor of petitioner.

A check is discharged by any other act which will discharge a simple contract for the payment of money.

In BP 22 cases, the action for the corresponding civil obligation is deemed instituted with the criminal action.[47] The criminal action for violation of BP 22 necessarily includes the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized.[48]

The rationale for this rule has been elucidated in this wise:

> 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