

FIRST DIVISION

[G.R. No. 195064, January 15, 2014]

**NARI K. GIDWANI, PETITIONER, VS. PEOPLE OF THE
PHILIPPINES, RESPONDENT.**

D E C I S I O N

SERENO, C.J.:

Before us is a Petition^[1] under Rule 45 of the Rules of Court, assailing the Decision^[2] and the subsequent Resolution^[3] of the Court of Appeals (CA) in CA-G.R. CR No. 32642 dated 17 September 2010 and 6 January 2011, respectively.

The facts are as follows:

Petitioner is the president of G.G. Sportswear Manufacturing Corporation (GSMC), which is engaged in the export of ready-to-wear clothes. GSMC secured the embroidery services of El Grande Industrial Corporation (El Grande) and issued on various dates from June 1997 to December 1997 a total of 10 Banco de Oro (BDO) checks as payment for the latter's services worth an aggregate total of P1,626,707.62.

Upon presentment, these checks were dishonored by the drawee bank for having been drawn against a closed account.

Thus, El Grande, through counsel, sent three demand letters regarding 8 of the 10 issued checks: ^[4]

Date of letter	BDO Check No.	Date of Check	Amount
24 September 1997	0000063646	4 September 1997	P 130,000.00
24 September 1997	0000059552	12 June 1997	412,000.00
	0000063643	24 July 1997	138,859.69
	0000063644	7 August 1997	138,859.69
	0000063650	7 August 1997	144,457.56
	0000063645	28 August 1997	138,859.68
8 October	0000063647	25 September 1997	130,000.00
	0000063648	2 October 1997	130,000.00

On 15 October 1997,^[5] petitioner wrote to El Grande's counsel acknowledging receipt of the 8 October demand letter^[6] and informing the latter that, on 29 August 1997, GSMC had filed a Petition with the Securities and Exchange

Commission (SEC). It was a Petition for the Declaration of a State of Suspension of Payments, for the Approval of a Rehabilitation Plan and Appointment of a Management Committee.^[7] Acting on the Petition, the SEC issued an Order^[8] on 3 September 1997 ordering the suspension of all actions, claims, and proceedings against GSMC until further order from the SEC Hearing Panel. Petitioner attached this SEC Order to the 15 October 1997 letter. In short, GSMC did not pay El Grande.

Despite its receipt on 16 October 1997 of GSMC's letter and explanation, El Grande still presented to the drawee bank for payment BDO Check Nos. 0000063652 and 0000063653 dated November and December 1997, respectively.

Thereafter, sometime in November 1997, El Grande filed a Complaint with the Office of the City Prosecutor of Manila charging petitioner with eight counts of violation of *Batas Pambansa Blg. 22* (B.P. 22) for the checks covering June to October 1997. El Grande likewise filed a similar Complaint in December 1997, covering the checks issued in November and December 1997.

Corresponding Informations for the Complaints were subsequently filed on 1 October 2001.

For his part, petitioner raised the following defenses: (1) the SEC Order of Suspension of Payment legally prevented him from honoring the checks; (2) there was no consideration for the issuance of the checks, because the embroidery services of El Grande were of poor quality and, hence, were rejected; and (3) he did not receive a notice of dishonor of the checks.

On 24 March 2008, after trial on the merits, the Metropolitan Trial Court (MTC) of Manila found petitioner guilty beyond reasonable doubt of ten counts of violation of B.P. 22. It ordered him to pay the face value of the checks amounting to P1,626,707.60 with interest at the legal rate *per annum* from the filing of the case and to pay a fine of P200,000 with subsidiary imprisonment in case of insolvency.^[9] The MTC held that the Petition for voluntary insolvency or a SEC Order for the suspension of payment of all claims are not defenses under the law regarding violations of B.P. 22, since an order suspending payments involves only the obligations of the corporation and does not affect criminal proceedings.

On appeal, the Regional Trial Court (RTC) affirmed the findings of the MTC and likewise denied the Motion for Reconsideration of petitioner.^[10]

Thereafter, petitioner filed with the CA a Petition for Review under Rule 42.

In its Decision dated 17 September 2010, the CA found that the prosecution was able to establish that petitioner had received only the 8 October 1997 Notice of Dishonor and not the others. The CA further held that the prosecution failed to establish that the account was closed prior to or at the time the checks were issued, thus proving knowledge of the insufficiency of funds.

Thus, the CA partly granted the appeal and acquitted petitioner of eight counts of violation of B.P. 22, while sustaining his conviction for the two remaining counts and ordering him to pay the total civil liability due to El Grande. The dispositive portion

of the Decision reads:

WHEREFORE, premises considered, the instant petition is **PARTLY GRANTED** and the assailed RTC Decision dated January 29, 2009 and its Order dated June 5, 2009 are **AFFIRMED with modifications**: (a) sustaining accused-appellant's conviction in Criminal Case Nos. 301888 and 301889; (b) acquitting him in Criminal Case Nos. 371112-13, 301883-87 and 301890; and (c) ordering him to pay private complainant, El Grande Industrial Corporation, the aggregate amount of P1,626,707.62 representing the value of the ten (10) BDO checks with interest at 12% per annum reckoned from the date of the filing of the Information until finality of this Decision, and thereafter, the total amount due, inclusive of interest, shall be subject to 12% annual interest until fully paid.

The rest of the Decision stands.

SO ORDERED.^[11]

Petitioner filed his Motion for Partial Reconsideration on 11 October 2010,^[12] raising the following as his defenses: (1) there was no clear evidence showing that he acknowledged the Notice of Dishonor of the two remaining checks; (2) the suspension Order of the SEC was a valid reason for stopping the payment of the checks; and, (3) as a corporate officer, he could only be held civilly liable.

On 6 January 2011, the CA denied the motion through its assailed Resolution.^[13]

Hence, this Petition.

Petitioner raises these two issues in the present Petition:

- A. THE COURT OF APPEALS ERRED IN RULING THAT THE ORDER FOR THE SUSPENSION OF PAYMENT ISSUED BY THE SECURITIES AND EXCHANGE COMMISSION IS NOT A VALID REASON TO STOP PAYMENT OF A CHECK EVEN IF SUCH ORDER WAS ISSUED PRIOR TO THE PRESENTMENT OF THE SUBJECT CHECKS FOR PAYMENT;
- B. THE COURT OF APPEALS ERRED IN FINDING A CORPORATE OFFICER PERSONALLY LIABLE FOR THE CIVIL OBLIGATION OF THE CORPORATION.^[14]

We find the appeal to be meritorious.

The elements of a violation of B.P. 22 are the following:^[15]

- 1) making, drawing and issuing any check to apply on account or for value;