

FIRST DIVISION

[G.R. No. 159823, February 18, 2013]

**TEODORO A. REYES, PETITIONER, VS. ETTORE ROSSI,
RESPONDENT.**

DECISION

BERSAMIN, J.:

The rescission of a contract of sale is not a prejudicial question that will warrant the suspension of the criminal proceedings commenced to prosecute the buyer for violations of the Bouncing Checks Law (*Batas Pambansa Blg. 22*) arising from the dishonor of the checks the buyer issued in connection with the sale.

Antecedents

On October 31, 1997, petitioner Teodoro A. Reyes (Reyes) and Advanced Foundation Construction Systems Corporation (Advanced Foundation), represented by its Executive Project Director, respondent Ettore Rossi (Rossi), executed a deed of conditional sale involving the purchase by Reyes of equipment consisting of a Warman Dredging Pump HY 300A worth P10,000,000.00. The parties agreed therein that Reyes would pay the sum of P3,000,000.00 as downpayment, and the balance of P7,000,000.00 through four post-dated checks. Reyes complied, but in January 1998, he requested the restructuring of his obligation under the deed of conditional sale by replacing the four post-dated checks with nine post-dated checks that would include interest at the rate of P25,000.00/month accruing on the unpaid portion of the obligation on April 30, 1998, June 30, 1998, July 31, 1998, September 30, 1998 and October 31, 1998.^[1]

Advanced Foundation assented to Reyes' request, and returned the four checks. In turn, Reyes issued and delivered the following nine post-dated checks in the aggregate sum of P7,125,000.00 drawn against the United Coconut Planters Bank,^[2] to wit:

Check No.	Date	Amount
72807	April 30, 1998	P 25,000.00
79125	May 1, 1998	1,000,000.00
72802	May 30, 1998	2,000,000.00
72808	June 30, 1998	25,000.00
72809	July 31, 1998	25,000.00
72801	August 31, 1998	2,000,000.00
72810	September 30, 1998	25,000.00
72811	October 31, 1998	25,000.00
72903	November 30, 1998	2,000,000.00

Rossi deposited three of the post-dated checks (*i.e.*, No. 72807, No. 79125 and No. 72808) on their maturity dates in Advanced Foundation's bank account at the PCI Bank in Makati. Two of the checks were denied payment ostensibly upon Reyes' instructions to stop their payment, while the third (*i.e.*, No. 72802) was dishonored for insufficiency of funds.^[3]

Rossi likewise deposited two more checks (*i.e.*, No. 72809 and No. 72801) in Advanced Foundation's account at the PCI Bank in Makati, but the checks were returned with the notation *Account Closed* stamped on them. He did not anymore deposit the three remaining checks on the assumption that they would be similarly dishonored.^[4]

In the meanwhile, on July 29, 1998, Reyes commenced an action for rescission of contract and damages in the Regional Trial Court in Quezon City (RTC). His complaint, docketed as Civil Case No. Q98-35109 and entitled *Teodoro A. Reyes v. Advanced Foundation Construction Systems Corporation*, sought judgment declaring the deed of conditional sale "rescinded and of no further force and effect," and ordering Advanced Foundation to return the P3,000,000.00 downpayment with legal interest from June 4, 1998 until fully paid; and to pay to him attorney's fees, and various kinds and amounts of damages.^[5]

On September 8, 1998, Rossi charged Reyes with five counts of *estafa* and five counts of violation of *Batas Pambansa Blg. 22* in the Office of the City Prosecutor of Makati for the dishonor of Checks No. 72807, No. 72808, No. 72801, No. 72809 and No. 79125. Another criminal charge for violation of *Batas Pambansa Blg. 22* was lodged against Reyes in the Office of the City Prosecutor of Quezon City for the dishonor of Check No. 72802.^[6]

On September 29, 1998, Reyes submitted his counter-affidavit in the Office of the City Prosecutor of Makati,^[7] claiming that the checks had not been issued for any valuable consideration; that he had discovered from the start of using the dredging pump involved in the conditional sale that the Caterpillar diesel engine powering the pump had been rated at only 560 horsepower instead of the 1200 horsepower Advanced Foundation had represented to him; that welding works on the pump had neatly concealed several cracks; that on May 6, 1998 he had written to Advanced Foundation complaining about the misrepresentations on the specifications of the pump and demanding documentary proof of Advanced Foundation's ownership of the pump; that he had caused the order to stop the payment of three checks (*i.e.*, No. 72806, No. 72807 and No. 79125); that Advanced Foundation had replied to his letter on May 8, 1998 by saying that the pump had been sold to him on an *as is, where is* basis; that he had then sent another letter to Advanced Foundation on May 18, 1998 to reiterate his complaints and the request for proper documentation of ownership; that he had subsequently discovered other hidden defects, prompting him to write another letter; and that instead of attending to his complaints and request, Advanced Foundation's lawyers had threatened him with legal action.

At the same time, Reyes assailed the jurisdiction of the Office of the City Prosecutor of Makati over the criminal charges against him on the ground that he had issued the checks in Quezon City; as well as argued that the Office of the City Prosecutor of Makati should suspend the proceedings because of the pendency in the RTC of the

civil action for rescission of contract that posed a prejudicial question as to the criminal proceedings.^[8]

On November 20, 1998, the Assistant City Prosecutor handling the preliminary investigation recommended the dismissal of the charges of *estafa* and the suspension of the proceedings relating to the violation of *Batas Pambansa Blg. 22* based on a prejudicial question.^[9]

On January 5, 1999, the City Prosecutor of Makati approved the recommendation of the handling Assistant City Prosecutor,^[10] stating:

WHEREFORE, premises considered, the complaint for Estafa is respectfully recommended to be dismissed, as upon approval, it is hereby dismissed.

Further, it is respectfully recommended that the proceedings in the charge for Violation of Batas Pambansa Bilang 22 against the respondent be suspended until the prejudicial question raised in Civil Case Q-98-35109 for Rescission of Contract and Damages which is now pending with the RTC of Quezon City, Branch 224, has been duly resolved.

Rossi appealed the resolution of the City Prosecutor to the Department of Justice, but the Secretary of Justice, by resolution of July 24, 2001, denied Rossi's petition for review.

After the denial of his motion for reconsideration on April 29, 2002, Rossi challenged the resolutions of the Secretary of Justice by petition for *certiorari* in the CA.

Ruling of the CA

In the petition for *certiorari*, Rossi insisted that the Secretary of Justice had committed grave abuse of discretion amounting to lack or excess of jurisdiction in upholding the suspension of the criminal proceedings by the City Prosecutor of Makati on account of the existence of a prejudicial question, and in sustaining the dismissal of the complaints for *estafa*.

On May 30, 2003, the CA promulgated its assailed decision,^[11] to wit:

WHEREFORE, the foregoing considered, the assailed resolution is hereby **MODIFIED** and the instant petition is **GRANTED** in so far as the issue of the existence of prejudicial question is concerned. Accordingly, the order suspending the preliminary investigation in I.S. No. 98-40024-29 is **REVERSED** and **SET ASIDE**, and the dismissal of the complaint for estafa is **AFFIRMED**.

SO ORDERED.

Issues

Hence, this appeal by Reyes.

Reyes asserts that the CA erred in ruling that there was no prejudicial question that warranted the suspension of the criminal proceedings against him; that the petition suffered fatal defects that merited its immediate dismissal; that the CA was wrong in relying on the pronouncements in *Balgos, Jr. v. Sandiganbayan*^[12] and *Umali v. Intermediate Appellate Court*^[13] because the factual backgrounds thereat were not similar to that obtaining here; and that the Secretary of Justice did not commit any grave abuse of discretion amounting to lack or excess of jurisdiction.

In his comment,^[14] Rossi counters that the petition for review should be outrightly dismissed because of its fatal defect; that the CA did not err in ruling that the action for rescission of contract did not pose a prejudicial question that would suspend the criminal proceedings.

Reyes submitted a reply,^[15] declaring that the defect in the affidavit of service attached to his petition for review had been due to oversight; that he had substantially complied with the rules; that there existed a prejudicial question that could affect the extent of his liability in light of Supreme Court Administrative Circular No. 12-2000; and that the CA erred in finding that the Secretary of Justice committed grave abuse of discretion.

To be resolved is whether or not the civil action for rescission of the contract of sale raised a prejudicial question that required the suspension of the criminal prosecution for violation of *Batas Pambansa Blg. 22*.

Ruling

The petition for review is without merit.

A prejudicial question generally comes into play in a situation where a civil action and a criminal action are both pending, and there exists in the former an issue that must first be determined before the latter may proceed, because howsoever the issue raised in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.^[16] The rationale for the suspension on the ground of a prejudicial question is to avoid conflicting decisions.^[17]

Two elements that must concur in order for a civil case to be considered a prejudicial question are expressly stated in Section 7, Rule 111 of the 2000 *Rules of Criminal Procedure*, to wit:

Section 7. *Elements of prejudicial question.* – The elements of a prejudicial question are: (a) the previously instituted civil action involves an issue similar or intimately related to the issue raised in the subsequent criminal action, and (b) the resolution of such issue determines whether or not the criminal action may proceed.