

THIRD DIVISION

[G.R. No. 154622, August 03, 2010]

LAND BANK OF THE PHILIPPINES, PETITIONER, VS. RAMON P. JACINTO, RESPONDENT.

DECISION

VILLARAMA, JR., J.:

Petitioner Land Bank of the Philippines (Land Bank) seeks the reversal of the Decision^[1] dated November 28, 2001 and the Resolution^[2] dated August 6, 2002 of the Court of Appeals (CA) in CA-G.R. SP No. 62773. The CA had set aside the Resolutions dated October 25, 2000^[3] and December 18, 2000^[4] of the Department of Justice (DOJ) and reinstated the Resolution^[5] dated March 3, 1999 of the City Prosecution Office of Makati which dismissed the petitioner's complaint against respondent Ramon P. Jacinto in I.S. Nos. 99-A-1536-44 for violation of Batas Pambansa Blg. (B.P.) 22 or "The Bouncing Checks Law."

The undisputed facts, as gleaned from the records, are as follows:

The First Women's Credit Corporation (FWCC) obtained a loan from the petitioner Land Bank in the aggregate amount of P400 million, evidenced by a Credit Line Agreement^[6] dated August 22, 1997. As security for the loan, respondent Ramon P. Jacinto, President of FWCC, issued in favor of Land Bank nine (9) postdated checks amounting to P465 million and drawn against FWCC's account at the Philippine National Bank. Later, before the checks matured, petitioner and respondent executed several letter agreements which culminated in the execution of a Restructuring Agreement on June 3, 1998. Under the new agreement, the loan obligation contracted under the Credit Line Agreement of August 22, 1997 was restructured, its terms of payment, among others, having been changed or modified. When FWCC defaulted in the payment of the loan obligation under the terms of their restructured agreement, petitioner presented for payment to the drawee bank the postdated checks as they matured. However, all the checks were dishonored or refused payment for the reason "*Payment Stopped*" or "*Drawn Against Insufficient Funds.*" Respondent also failed to make good the checks despite demands.

Hence, on January 13, 1999, Land Bank, through its Assistant Vice President, Udela C. Salvo, Financial Institutions Department, filed before the Makati City Prosecutor's Office a Complaint-Affidavit^[7] against respondent for violation of B.P. 22. Respondent filed his Counter-Affidavit^[8] denying the charges and averring that the complaint is baseless and utterly devoid of merit as the said loan obligation has been extinguished by payment and novation by virtue of the execution of the Restructuring Agreement. Respondent also invoked the proscription in the May 28, 1998 Order of the Regional Trial Court (RTC) of Makati City, Branch 133 in Special

Proceedings No. M-4686 for Involuntary Insolvency which forbade FWCC from paying any of its debts.

In a Resolution^[9] dated March 3, 1999, Prosecutor George V. De Joya dismissed the complaint against respondent, finding that the letter-agreements between Land Bank and FWCC restructured and novated the original loan agreement. It was held that there being novation, the checks issued pursuant to the original loan obligation had lost their efficacy and validity and cannot be a valid basis to sustain the charge of violation of B.P. 22.

On June 21, 1999, petitioner's motion for reconsideration was likewise denied.^[10]

Aggrieved, petitioner elevated the matter to the DOJ for review. On April 10, 2000, the DOJ issued a Resolution^[11] dismissing the appeal. However, upon motion for reconsideration filed by petitioner, the DOJ reversed its ruling and issued a Resolution dated October 25, 2000 holding that novation is not a mode of extinguishing criminal liability. Thus, the DOJ held that:

WHEREFORE, there being probable cause to hold respondent triable for the offense of violation of BP 22 (nine (9) counts), the Department Resolution dated April 10, 2000 is hereby reconsidered and set aside and the resolution of the Office of the City Prosecutor, Makati City, dismissing the complaint should be, as it is, hereby REVERSED. Said office is directed to file the appropriate informations for violation of BP 22 (nine (9) counts) against respondent. Report the action taken within ten (10) days from receipt hereof.

SO ORDERED.^[12]

Respondent moved for a reconsideration of the above Order but it was denied in a Resolution dated December 18, 2000. Undaunted, respondent filed a petition for certiorari before the CA.

On November 28, 2001, the CA, in the assailed Decision, reversed the Resolution of the DOJ and reinstated the Resolution of Prosecutor De Joya dismissing the complaint. While the CA ruled that novation is not a mode of extinguishing criminal liability, it nevertheless held that novation may prevent criminal liability from arising in certain cases if novation occurs before the criminal information is filed in court because the novation causes doubt as to the true nature of the obligation. Also, the CA found merit in respondent's assertion that a prejudicial question exists in the instant case because the issue of whether the original obligation of FWCC subject of the dishonored checks has been novated by the subsequent agreements entered into by FWCC with Land Bank, is already the subject of the appeal in Civil Case No. 98-2337 (entitled, "*First Women's Credit Corporation v. Land Bank of the Philippines*" for Declaration of Novation) pending before the CA. The CA also gave consideration to respondent's assertion that the Order dated May 28, 1998 of the RTC proscribing FWCC from paying its debts constitutes as a justifying circumstance which prevents criminal liability from attaching.

Petitioner's motion for reconsideration from the said decision having been denied,

petitioner filed the instant petition for review on certiorari, raising the following assignment of errors:

I

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE ELEMENT OF A PREJUDICIAL QUESTION EXISTS IN THE INSTANT CASE AND THAT THE RECOMMENDATION FOR THE FILING OF INFORMATIONS IN COURT AGAINST THE RESPONDENT WAS MADE WITH GRAVE ABUSE OF DISCRETION.

II

THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE ORDER DATED MAY 28, 1998 OF THE REGIONAL TRIAL COURT OF MAKATI, BRANCH 133, CONSTITUTES AS A JUSTIFYING CIRCUMSTANCE THAT PREVENTS CRIMINAL LIABILITY FROM ATTACHING.

III

THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO TAKE JUDICIAL NOTICE OF THE PROVISIONS OF THE LANDBANK CHARTER RELATIVE TO THE COLLECTION OF ITS FINANCIAL EXPOSURES.^[13]

Essentially, the issue to be resolved in this case is whether the CA erred in reversing the Resolution of the DOJ finding probable cause to hold respondent liable for violation of B.P. 22.

Petitioner asserts that the June 3, 1998 Restructuring Agreement did not release FWCC from its obligation with Land Bank.^[14] It merely accommodated FWCC's sister company, RJ Ventures and Development Corporation.^[15] Whether there was novation or not is also not determinative of respondent's responsibility for violation of B.P. 22, as the said special law punishes the act of issuing a worthless check and not the purpose for which the check was issued or the terms and conditions relating to its issuance. In ruling that the Order dated May 28, 1998 of the RTC in Special Proceedings No. M-4686 constituted a justifying circumstance, the CA failed to take judicial notice of Section 86-B (4)^[16] of Republic Act No. 7907 which excludes the proceeds of the checks from the property of the insolvent FWCC.

Respondent counters that there was novation which occurred prior to the institution of the criminal complaint against him and that if proven, it would affect his criminal liability.^[17] Respondent averred that if the CA would judicially confirm the existence of novation in the appeal of Civil Case No. 98-2337 before it, then it would follow that the value represented by the subject checks has been extinguished. Respondent argues that the consideration or value of the subject checks have been modified or novated with the execution of the Restructuring Agreement. The payment of the obligation supposedly already depended on the terms and conditions of the Restructuring Agreement and no longer on the respective maturity dates of the subject checks as the value or consideration of the subject checks had been