

FIRST DIVISION

[G.R. No. 169889, September 29, 2009]

**SPOUSES SIMON YAP AND MILAGROS GUEVARRA, PETITIONERS,
VS. FIRST E-BANK CORPORATION (PREVIOUSLY KNOWN AS
PDCP DEVELOPMENT BANK, INC.), RESPONDENT.**

D E C I S I O N

CORONA, J.:

On August 30, 1990, Sammy Yap obtained a P2 million loan from PDCP Development Bank, Inc.^[1] (PDCP). As security, Sammy's parents, petitioners Simon Yap and Milagros Guevarra, executed a third-party mortgage on their land^[2] and warehouse standing on it. The mortgage agreement provided that PDCP may extrajudicially foreclose the property in case Sammy failed to pay the loan.

On November 7, 1990, Sammy issued a promissory note and six postdated checks^[3] in favor of PDCP as additional securities for the loan.

When Sammy defaulted on the payment of his loan, PDCP presented the six checks to the drawee bank but the said checks were dishonored.^[4] This prompted PDCP to file a complaint against Sammy for six counts of violation of BP 22 (Bouncing Checks Law) on February 8, 1993.

On May 3, 1993, PDCP filed an application for extrajudicial foreclosure of mortgage on the property of petitioners which served as principal security for Sammy's loan.

On December 16, 1993, on motion of Sammy and without objection from the public prosecutor and PDCP, the BP 22 cases were provisionally dismissed.

On October 26, 1994, pursuant to the petition of PDCP for extrajudicial foreclosure, the extrajudicial sale was set on December 28, 1994. Copies of the notice of extrajudicial sale were sent by registered mail to Sammy, petitioners, the Registrar of Deeds of San Carlos City, Pangasinan, the *Sangguniang Panglungsod* of San Carlos City and the office of the *barangay* secretary of Taloy District, San Carlos City, Pangasinan.

The notice was also published in the *Sunday Punch*, a newspaper of general circulation in Pangasinan on November 27, December 4 and 11, 1994.

On December 20, 1994, petitioners filed in the Regional Trial Court (RTC) of San Carlos City, Pangasinan a complaint for injunction (with prayer for the issuance of a temporary restraining order/preliminary injunction), damages and accounting of payments against PDCP. The complaint sought to stop the foreclosure sale on the ground that PDCP waived its right to foreclose the mortgage on their property when it filed the BP 22 cases against Sammy.

On April 2, 1997, the RTC^[5] ruled in favor of petitioners. It held that PDCP had three options when Sammy defaulted in the payment of his loan: enforcement of the promissory note in a collection case, enforcement of the checks under the Negotiable Instruments Law and/or BP 22, or foreclosure of mortgage. The remedies were alternative and the choice of one excluded the others. Thus, PDCP was deemed to have waived its right to foreclose on the property of petitioners when it elected to sue Sammy for violation of BP 22.^[6]

PDCP appealed to the Court of Appeals (CA). On February 8, 2005, the CA^[7] reversed the RTC. It opined that PDCP was not barred from exercising its right to foreclose on the property of petitioners despite suing Sammy for violation of BP 22. The purpose of BP 22 was to punish the act of issuing a worthless check, not to force a debtor to pay his debt.^[8]

Hence, this appeal^[9] where petitioners argue that, when Sammy was sued for six counts of violation of BP 22, PDCP should have been deemed to have simultaneously filed for collection of the amount represented by the checks. The civil aspect of the case was naturally an action for collection of Sammy's obligation to PDCP. PDCP clearly elected a remedy. PDCP should not be allowed to pursue another, like foreclosure of mortgage.

The argument is not convincing.

First, petitioners anchor their position on Supreme Court Circular 57-97, which provides for the rules and guidelines in the filing and prosecution of criminal cases under BP 22. Pertinent portions of Circular 57-97 provide:

1. The criminal action for violation of [BP] 22 shall be deemed to necessarily include the corresponding civil action, and no reservation to file such civil action separately shall be allowed or recognized.

2. Upon the filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based upon the amount of the check involved, which shall be considered as the actual damages claimed, in accordance with the filing fees in Section 7 (a) and Section 8 (a), Rule 141 of the Rules of Court, and last amended by Administrative Circular No. 11-94 effective August 1, 1994. Where the offended party seeks to enforce against the accused civil liability by way of liquidated, moral, nominal, temperate or exemplary damages, he shall pay the corresponding filing fees therefore based on the amounts thereof as alleged either in his complaint or in the information. If not so alleged but any of these damages are awarded by the court, the amount of such fees shall constitute a first lien on the judgment.

3. Where the civil action has heretofore been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in

accordance with the pertinent procedure outlined in Section 2 (a) of Rule 111 governing the proceedings in the actions as thus consolidated. (emphasis supplied)

Circular 57-97 has been institutionalized as Section 1(b), Rule 111 of the Rules of Court:^[10]

Section 1. *Institution of criminal and civil actions.*--xxx

(b) The criminal action for violation of [BP] 22 shall be deemed to include the corresponding civil action. No reservation to file such civil action separately shall be allowed.

Upon filing of the aforesaid joint criminal and civil actions, the offended party shall pay in full the filing fees based on the amount of the check involved, which shall be considered as the actual damages claimed. Where the complaint or information also seeks to recover liquidated, moral, nominal, temperate or exemplary damages, the offended party shall pay additional filing fees based on the amounts alleged therein. If the amounts are not so alleged but any of these damages are subsequently awarded by the court, the filing fee based on the amount awarded shall constitute a first lien on the judgment.

Where the civil action has been filed separately and trial thereof has not yet commenced, it may be consolidated with the criminal action upon application with the court trying the latter case. If the application is granted, the trial of both actions shall proceed in accordance with section 2 of this Rule governing consolidation of the civil and criminal actions. (emphasis supplied)

Sad to say, Circular 57-97 (and, it goes without saying, Section 1(b), Rule 111 of the Rules of Court) was not yet in force^[11] when PDCP sued Sammy for violation of BP 22 and when it filed a petition for extrajudicial foreclosure on the mortgaged property of petitioners on February 8, 1993 and May 3, 1993, respectively. In *Lo Bun Tiong v. Balboa*,^[12] Circular 57-97 was not applied because the collection suit and the criminal complaints for violation of BP 22 were filed prior to the adoption of Circular 57-97. The same principle applies here.

Thus, prior to the effectivity of Circular 57-97, the alternative remedies of foreclosure of mortgage and collection suit were not barred even if a suit for BP 22 had been filed earlier, unless a judgment of conviction had already been rendered in the BP 22 case finding the accused debtor criminally liable and ordering him to pay the amount of the check(s).^[13]

In this case, no judgment of conviction (which could have declared the criminal and civil liability of Sammy) was rendered because Sammy moved for the provisional dismissal of the case. Hence, PDCP could have still foreclosed on the mortgage or filed a collection suit.