

SECOND DIVISION

[G.R. No. 175381, February 26, 2008]

**JAMES SVENDSEN, Petitioner, vs. PEOPLE OF THE PHILIPPINES,
Respondent.**

D E C I S I O N

CARPIO MORALES, J.:

Assailed via Petition for Review on Certiorari is the Court of Appeals Decision^[1] of November 16, 2006 denying petitioner's appeal from the December 22, 2005 Decision^[2] of the Regional Trial Court (RTC) of Manila, Branch 14 which affirmed the December 17, 2003 Judgment^[3] of the Metropolitan Trial Court (MeTC) of Manila, Branch 5, finding James Svendsen (petitioner) guilty of violation of *Batas Pambansa Blg.* (B.P. Blg.) 22 or the Bouncing Checks Law.

In October 1997, Cristina Reyes (Cristina) extended a loan to petitioner in the amount of P200,000, to bear interest at 10% a month. After petitioner had partially paid his obligation, he failed to settle the balance thereof which had reached P380,000 inclusive of interest.^[4]

Cristina thus filed a collection suit against petitioner, which was eventually settled when petitioner paid her P200,000^[5] and issued in her favor an International Exchange Bank check postdated February 2, 1999 (the check) in the amount of P160,000 representing interest.^[6] The check was co-signed by one Wilhelm Bolton.

When the check was presented for payment on February 9, 1999, it was dishonored for having been Drawn Against Insufficient Funds (DAIF).^[7]

Cristina, through counsel, thus sent a letter to petitioner by registered mail informing him that the check was dishonored by the drawee bank, and demanding that he make it good within five (5) days from receipt thereof.^[8]

No settlement having been made by petitioner, Cristina filed a complaint dated March 1, 1999 against him and his co-signatory to the check, Bolton, for violation of B.P. Blg. 22 before the City Prosecutor's Office of Manila. No counter-affidavit was submitted by petitioner and his co-respondent. An Information dated April 13, 1999 for violation of B.P. Blg. No. 22 was thus filed on April 29, 1999 before the MeTC of Manila against the two, the accusatory portion of which reads:

That sometime in December 1998 the said accused did then and there willfully, unlawfully, and feloniously and jointly make or draw and issue to CRISTINA C. REYES to apply on account or for value INTERNATIONAL EXCHANGE BANK check no. 0000009118 dated February 2, 1999 payable to CRISTINA REYES in the amount of P160,000.00 said accused well

knowing that at the time of issue she/he/they did not have sufficient funds and/or credit with the drawee bank for payment of such check in full upon its presentment, which check after having been deposited in the City of Manila, Philippines, and upon being presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for INSUFFICIENCY OF FUNDS and despite receipt of notice of such dishonor, said accused failed to pay said CRISTINA C. REYES the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.^[9]

Bolton having remained at large, the trial court never acquired jurisdiction over his person.^[10]

By Judgment of December 17, 2003, Branch 5 of the Manila MeTC found petitioner guilty as charged, disposing as follows:

WHEREFORE, this Court finds accused James Robert Svendson [*sic*] **GUILTY** beyond reasonable doubt of a violation of Batas Pambansa Blg. 22 (Bouncing Checks Law) and imposes upon him to pay a fine of **ONE HUNDRED SIXTY THOUSAND PESOS (P160,000.00)**, with subsidiary imprisonment in case of insolvency.

Accused is also made liable to pay private complainant Cristina C. Reyes civil indemnity in the total amount of **ONE HUNDRED SIXTY THOUSAND PESOS (P160,000.00)** representing his civil obligation covered by subject check.

Meantime, considering that other accused Wilhelm Bolton remains at large, let a warrant of arrest against him **ISSUE**. Pending his apprehension, let the case against him be sent to the **ARCHIVES**. (Emphasis in the original; underscoring supplied)

As priorly stated, the RTC affirmed the MeTC judgment and the Court of Appeals denied petitioner's appeal.

Hence, the present petition for review.

Petitioner argues that the appellate court erred in finding that the first element of violation of B.P. Blg. 22 – the making, drawing, and issuance of any check “to apply on account or for value” – was present, as the obligation to pay interest is void, the same not being in writing and the 10% monthly interest is unconscionable; in holding him civilly liable in the amount of P160,000 to private complainant, notwithstanding the invalidity of the interest stipulation; and in violating his right to due process when it convicted him, notwithstanding the absence of proof of receipt by him of a written notice of dishonor.

The petition is impressed with merit.

Section 1 of B.P. Blg. 22 or the Bouncing Checks Law reads:

SECTION 1. *Checks without sufficient funds.* – Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank. Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act.

For petitioner to be validly convicted of the crime under B.P. Blg. 22, the following requisites must thus concur: (1) the making, drawing and issuance of any check to apply for account or for value; (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of the check in full upon its presentment; and (3) the subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.^[11]

Petitioner admits having issued the postdated check to Cristina. The check, however, was dishonored when deposited for payment in Banco de Oro due to DAIF. Hence, the first and the third elements obtain in the case.

As for the second element, Section 2 of B.P. Blg. 22 provides that

[t]he making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

In *Rico v. People of the Philippines*,^[12] this Court held:

x x x [I]f x x x notice of non-payment by the drawee bank is not sent to the maker or drawer of the bum check, or if there is no proof as to when such notice was received by the drawer, then the presumption of knowledge as provided in Section 2 of B.P. 22 cannot arise, since there would simply be *no way of reckoning the crucial five-day period*.

x x x In recent cases, we had the occasion to emphasize that not only must there be a written notice of dishonor or demand letters actually received by the drawer of a dishonored check, but there must also be **proof of receipt** thereof that is properly authenticated, and not mere registered receipt and/or return receipt.

Thus, as held in *Domagsang vs. Court of Appeals*, while Section 2 of B.P. 22 indeed does not state that the notice of dishonor be in writing, this must be taken in conjunction with Section 3 of the law, *i.e.*, “that where there are no sufficient funds in or credit with such drawee bank, such fact *shall always be explicitly stated in the notice of dishonor or refusal*”. A mere oral notice or demand to pay would appear to be insufficient for conviction under the law. In our view, both the spirit and letter of the Bouncing Checks Law require for the act to be punished thereunder not only that the accused issued a check that is dishonored, but also that the accused has *actually been notified in writing* of the fact of dishonor. This is consistent with the rule that penal statutes must be construed strictly against the state and liberally in favor of the accused. x x x

In fine, the failure of the prosecution to prove the existence and receipt by petitioner of the requisite written notice of dishonor and that he was given at least five banking days within which to settle his account constitutes sufficient ground for his acquittal.^[13] (Italics in the original; emphasis and underscoring supplied)

The evidence for the prosecution failed to prove the second element. While the registry receipt,^[14] which is said to cover the letter-notice of dishonor and of demand sent to petitioner, was presented, there is no proof that he or a duly authorized agent received the same. Receipts for registered letters including return receipts do not themselves prove receipt; they must be properly authenticated to serve as proof of receipt of the letters.^[15] Thus in *Ting v. Court of Appeals*,^[16] this Court observed:

x x x All that we have on record is an illegible signature on the registry receipt as evidence that someone received the letter. As to whether this signature is that of one of the petitioners or of their authorized agent remains a mystery. From the registry receipt alone, it is possible that petitioners or their authorized agent did receive the demand letter. Possibilities, however, cannot replace proof beyond reasonable doubt.^[17]

For failure then to prove all the elements of violation of B.P. Blg. 22, petitioner’s acquittal is in order.

Petitioner is civilly liable, however. For in a criminal case, the social injury is sought to be repaired through the imposition of the corresponding penalty, whereas with respect to the personal injury of the victim, it is sought to be compensated through indemnity, which is civil in nature.^[18]

The decision of the MeTC, which was affirmed on appeal by the RTC and the appellate court, ordering petitioner “to pay private complainant Cristina C. Reyes civil indemnity in the total amount of ONE HUNDRED SIXTY THOUSAND PESOS