

THIRD DIVISION

[G.R. No. 141181, April 27, 2007]

SAMSON CHING, PETITIONER, VS. CLARITA NICDAO AND HON. COURT OF APPEALS RESPONDENTS. D E C I S I O N

CALLEJO, SR., J.:

Before the Court is a petition for review on *certiorari* filed by Samson Ching of the Decision^[1] dated November 22, 1999 of the Court of Appeals (CA) in CA-G.R. CR No. 23055. The assailed decision acquitted respondent Clarita Nicdao of eleven (11) counts of violation of *Batas Pambansa Bilang* (BP) 22, otherwise known as "The Bouncing Checks Law." The instant petition pertains and is limited to the civil aspect of the case as it submits that notwithstanding respondent Nicdao's acquittal, she should be held liable to pay petitioner Ching the amounts of the dishonored checks in the aggregate sum of P20,950,000.00.

Factual and Procedural Antecedents

On October 21, 1997, petitioner Ching, a Chinese national, instituted criminal complaints for eleven (11) counts of violation of BP 22 against respondent Nicdao. Consequently, eleven (11) Informations were filed with the First Municipal Circuit Trial Court (MCTC) of Dinalupihan-Hermosa, Province of Bataan, which, except as to the amounts and check numbers, uniformly read as follows:

The undersigned accuses Clarita S. Nicdao of a VIOLATION OF BATAS PAMBANSA BILANG 22, committed as follows:

That on or about October 06, 1997, at Dinalupihan, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused did then and there willfully and unlawfully make or draw and issue Hermosa Savings Loan Bank, Inc. Check No. [002524] dated October 06, 1997 in the amount of [P20,000,000.00] in payment of her obligation with complainant Samson T.Y. Ching, the said accused knowing fully well that at the time she issued the said check she did not have sufficient funds in or credit with the drawee bank for the payment in full of the said check upon presentment, which check when presented for payment within ninety (90) days from the date thereof, was dishonored by the drawee bank for the reason that it was drawn against insufficient funds and notwithstanding receipt of notice of such dishonor the said accused failed and refused and still fails and refuses to pay the value of the said check in the amount of [P20,000,000.00] or to make arrangement with the drawee bank for the payment in full of the same within five (5) banking days after receiving the said notice, to the damage and prejudice of the said Samson T.Y. Ching in the aforementioned amount of

[P20,000,000.00], Philippine Currency.CONTRARY TO
LAW.Dinalupihan, Bataan, October 21, 1997.(Sgd.) SAMSON
T.Y. CHINGComplainant

The cases were docketed as Criminal Cases Nos. 9433 up to 9443 involving the following details:

<u>Check No</u>	<u>Amount</u>	<u>Date</u>	<u>PrivateComplainant</u>	<u>Reason for the Dishonor</u>
002524 ^[2]	P20,000,000	Oct. 6, 1997	Samson T.Y. Ching	DAIF*
008856 ^[3]	150,000	Oct. 6, 1997	"	"
012142 ^[4]	100,000	Oct. 6, 1997	"	"
004531 ^[5]	50,000	Oct. 6, 1997	"	"
002254 ^[6]	100,000	Oct. 6, 1997	"	"
008875 ^[7]	100,000	Oct. 6, 1997	"	"
008936 ^[8]	50,000	Oct. 6, 1997;	"	"
002273 ^[9]	50,000	Oct. 6, 1997	"	"
008948 ^[10]	150,000	Oct. 6, 1997	"	"
008935 ^[11]	100,000	Oct. 6, 1997	"	"
010377 ^[12]	100,000	Oct. 6, 1997	"	"

At about the same time, fourteen (14) other criminal complaints, also for violation of BP 22, were filed against respondent Nicdao by Emma Nuguid, said to be the common law spouse of petitioner Ching. Allegedly fourteen (14) checks, amounting to P1,150,000.00, were issued by respondent Nicdao to Nuguid but were dishonored for lack of sufficient funds. The Informations were filed with the same MCTC and docketed as Criminal Cases Nos. 9458 up to 9471.

At her arraignment, respondent Nicdao entered the plea of "not guilty" to all the charges. A joint trial was then conducted for Criminal Cases Nos. 9433-9443 and 9458-9471.

For the prosecution in Criminal Cases Nos. 9433-9443, petitioner Ching and Imelda Yandoc, an employee of the Hermosa Savings & Loan Bank, Inc., were presented to prove the charges against respondent Nicdao. On direct-examination,^[13] petitioner Ching preliminarily identified each of the eleven (11) Hermosa Savings Loan Bank (HSLB) checks that were allegedly issued to him by respondent Nicdao amounting to P20,950,000.00. He identified the signatures appearing on the checks as those of respondent Nicdao. He recognized her signatures because respondent Nicdao

allegedly signed the checks in his presence. When petitioner Ching presented these checks for payment, they were dishonored by the bank, HSLB, for being "DAIF" or "drawn against insufficient funds."

Petitioner Ching averred that the checks were issued to him by respondent Nicdao as security for the loans that she obtained from him. Their transaction began sometime in October 1995 when respondent Nicdao, proprietor/manager of Vignette Superstore, together with her husband, approached him to borrow money in order for them to settle their financial obligations. They agreed that respondent Nicdao would leave the checks undated and that she would pay the loans within one year. However, when petitioner Ching went to see her after the lapse of one year to ask for payment, respondent Nicdao allegedly said that she had no cash.

Petitioner Ching claimed that he went back to respondent Nicdao several times more but every time, she would tell him that she had no money. Then in September 1997, respondent Nicdao allegedly got mad at him for being insistent and challenged him about seeing each other in court. Because of respondent Nicdao's alleged refusal to pay her obligations, on October 6, 1997, petitioner Ching deposited the checks that she issued to him. As he earlier stated, the checks were dishonored by the bank for being "DAIF." Shortly thereafter, petitioner Ching, together with Emma Nuguid, wrote a demand letter to respondent Nicdao which, however, went unheeded. Accordingly, they separately filed the criminal complaints against the latter.

On cross-examination,^[14] petitioner Ching claimed that he had been a salesman of the La Suerte Cigar and Cigarette Manufacturing for almost ten (10) years already. As such, he delivered the goods and had a warehouse. He received salary and commissions. He could not, however, state his exact gross income. According to him, it increased every year because of his business. He asserted that aside from being a salesman, he was also in the business of extending loans to other people at an interest, which varied depending on the person he was dealing with.

Petitioner Ching confirmed the truthfulness of the allegations contained in the eleven (11) Informations that he filed against respondent Nicdao. Hereiterated that, upon their agreement, the checks were all signed by respondent Nicdao but she left them undated. Petitioner Ching admitted that he was the one who wrote the date, October 6, 1997, on those checks when respondent Nicdao refused to pay him.

With respect to the P20,000,000.00 check (Check No. 002524), petitioner Ching explained that he wrote the date and amount thereon when, upon his estimation, the money that he regularly lent to respondent Nicdao beginning October 1995 reached the said sum. He likewise intimated that prior to 1995, they had another transaction amounting to P1,200,000.00 and, as security therefor, respondent Nicdao similarly issued in his favor checks in varying amounts of P100,000.00 and P50,000.00. When the said amount was fully paid, petitioner Ching returned the checks to respondent Nicdao.

Petitioner Ching maintained that the eleven (11) checks subject of Criminal Cases Nos. 9433-9443 pertained to respondent Nicdao's loan transactions with him beginning October 1995. He also mentioned an instance when respondent Nicdao's husband and daughter approached him at a casino to borrow money from him. He lent them P300,000.00. According to petitioner Ching, since this amount was also unpaid, he included it in the other amounts that respondent Nicdao owed to him

which totaled P20,000,000.00 and wrote the said amount on one of respondent Nicdao's blank checks that she delivered to him.

Petitioner Ching explained that from October 1995 up to 1997, he regularly delivered money to respondent Nicdao, in the amount of P1,000,000.00 until the total amount reached P20,000,000.00. He did not ask respondent Nicdao to acknowledge receiving these amounts. Petitioner Ching claimed that he was confident that he would be paid by respondent Nicdao because he had in his possession her blank checks. On the other hand, the latter allegedly had no cause to fear that he would fill up the checks with just any amount because they had trust and confidence in each other. When asked to produce the piece of paper on which he allegedly wrote the amounts that he lent to respondent Nicdao, petitioner Ching could not present it; he reasoned that it was not with him at that time.

It was also averred by petitioner Ching that respondent Nicdao confided to him that she told her daughter Janette, who was married to a foreigner, that her debt to him was only between P3,000,000.00 and P5,000,000.00. Petitioner Ching claimed that he offered to accompany respondent Nicdao to her daughter in order that they could apprise her of the amount that she owed him. Respondent Nicdao refused for fear that it would cause disharmony in the family. She assured petitioner Ching, however, that he would be paid by her daughter.

Petitioner Ching reiterated that after the lapse of one (1) year from the time respondent Nicdao issued the checks to him, he went to her several times to collect payment. In all these instances, she said that she had no cash. Finally, in September 1997, respondent Nicdao allegedly went to his house and told him that Janette was only willing to pay him between P3,000,000.00 and P5,000,000.00 because, as far as her daughter was concerned, that was the only amount borrowed from petitioner Ching. On hearing this, petitioner Ching angrily told respondent Nicdao that she should not have allowed her debt to reach P20,000,000.00 knowing that she would not be able to pay the full amount.

Petitioner Ching identified the demand letter that he and Nuguid sent to respondent Nicdao. He explained that he no longer informed her about depositing her checks on his account because she already made that statement about seeing him in court. Again, he admitted writing the date, October 6, 1997, on all these checks.

Another witness presented by the prosecution was Imelda Yandoc, an employee of HSLB. On direct-examination,^[15] she testified that she worked as a checking account bookkeeper/teller of the bank. As such, she received the checks that were drawn against the bank and verified if they were funded. On October 6, 1997, she received several checks issued by respondent Nicdao. She knew respondent Nicdao because the latter maintained a savings and checking account with them. Yandoc identified the checks subject of Criminal Cases Nos. 9433-9443 and affirmed that stamped at the back of each was the annotation "DAIF". Further, per the bank's records, as of October 8, 1997, only a balance of P300.00 was left in respondent Nicdao's checking account and P645.83 in her savings account. On even date, her account with the bank was considered inactive.

On cross-examination,^[16] Yandoc stated anew that respondent Nicdao's checks bounced on October 7, 1997 for being "DAIF" and her account was closed the

following day, on October 8, 1997. She informed the trial court that there were actually twenty-five (25) checks of respondent Nicdao that were dishonored at about the same time. The eleven (11) checks were purportedly issued in favor of petitioner Ching while the other fourteen (14) were purportedly issued in favor of Nuguid. Yandoc explained that respondent Nicdao or her employee would usually call the bank to inquire if there was an incoming check to be funded.

For its part, the defense proffered the testimonies of respondent Nicdao, Melanie Tolentino and Jocelyn Nicdao. On direct-examination,^[17] respondent Nicdao stated that she only dealt with Nuguid. She vehemently denied the allegation that she had borrowed money from both petitioner Ching and Nuguid in the total amount of P22,950,000.00. Respondent Nicdao admitted, however, that she had obtained a loan from Nuguid but only for P2,100,000.00 and the same was already fully paid. As proof of such payment, she presented a Planters Bank demand draft dated August 13, 1996 in the amount of P1,200,000.00. The annotation at the back of the said demand draft showed that it was endorsed and negotiated to the account of petitioner Ching.

In addition, respondent Nicdao also presented and identified several cigarette wrappers^[18] at the back of which appeared computations. She explained that Nuguid went to the grocery store everyday to collect interest payments. The principal loan was P2,100,000.00 with 12% interest per day. Nuguid allegedly wrote the payments for the daily interests at the back of the cigarette wrappers that she gave to respondent Nicdao.

The principal loan amount of P2,100,000.00 was allegedly delivered by Nuguid to respondent Nicdao in varying amounts of P100,000.00 and P150,000.00. Respondent Nicdao refuted the averment of petitioner Ching that prior to 1995, they had another transaction.

With respect to the P20,000,000.00 check, respondent Nicdao admitted that the signature thereon was hers but denied that she issued the same to petitioner Ching. Anent the other ten (10) checks, she likewise admitted that the signatures thereon were hers while the amounts and payee thereon were written by either Jocelyn Nicdao or Melanie Tolentino, who were employees of Vignette Superstore and authorized by her to do so.

Respondent Nicdao clarified that, except for the P20,000,000.00 check, the other ten (10) checks were handed to Nuguid on different occasions. Nuguid came to the grocery store everyday to collect the interest payments. Respondent Nicdao said that she purposely left the checks undated because she would still have to notify Nuguid if she already had the money to fund the checks.

Respondent Nicdao denied ever confiding to petitioner Ching that she was afraid that her daughter would get mad if she found out about the amount that she owed him. What allegedly transpired was that when she already had the money to pay them (presumably referring to petitioner Ching and Nuguid), she went to them to retrieve her checks. However, petitioner Ching and Nuguid refused to return the checks claiming that she (respondent Nicdao) still owed them money. She demanded that they show her the checks in order that she would know the exact amount of her debt, but they refused. It was at this point that she got angry and dared them to go