

## FIRST DIVISION

[ G.R. No. 133978, November 12, 2002 ]

**JOSE S. CANCIO, JR., REPRESENTED BY ROBERTO L. CANCIO,  
PETITIONER, VS. MERENCIANA ISIP, RESPONDENT.**

### DECISION

**YNARES-SANTIAGO, J.:**

The instant petition for review under Rule 45 of the Rules of Court raises pure questions of law involving the March 20, 1998<sup>[1]</sup> and June 1, 1998<sup>[2]</sup> Orders<sup>[3]</sup> rendered by the Regional Trial Court of Pampanga, Branch 49, in Civil Case No. G-3272.

The undisputed facts are as follows:

Petitioner, assisted by a private prosecutor, filed three cases of Violation of B.P. No. 22 and three cases of Estafa, against respondent for allegedly issuing the following checks without sufficient funds, to wit: 1) Interbank Check No. 25001151 in the amount of P80,000.00; 2) Interbank Check No. 25001152 in the amount of P 80,000.00; and 3) Interbank Check No. 25001157 in the amount of P30,000.00.<sup>[4]</sup>

The Office of the Provincial Prosecutor dismissed Criminal Case No. 13356, for Violation of B.P. No. 22 covering check no. 25001151 on the ground that the check was deposited with the drawee bank after 90 days from the date of the check. The two other cases for Violation of B.P. No. 22 (Criminal Case No. 13359 and 13360) were filed with and subsequently dismissed by the Municipal Trial Court of Guagua, Pampanga, Branch 1, on the ground of "failure to prosecute."<sup>[5]</sup>

Meanwhile, the three cases for Estafa were filed with the Regional Trial Court of Pampanga, Branch 49, and docketed as Criminal Case Nos. G-3611 to G-3613. On October 21, 1997, after failing to present its second witness, the prosecution moved to dismiss the estafa cases against respondent. The prosecution likewise reserved its right to file a separate civil action arising from the said criminal cases. On the same date, the trial court granted the motions of the prosecution. Thus-

Upon motion of the prosecution for the dismissal of these cases without prejudice to the refileing of the civil aspect thereof and there being no comment from the defense, let these cases be dismissed without prejudice to the refileing of the civil aspect of the cases.

SO ORDER[ED].<sup>[6]</sup>

On December 15, 1997, petitioner filed the instant case for collection of sum of money, seeking to recover the amount of the checks subject of the estafa cases. On February 18, 1998, respondent filed a motion to dismiss the complaint contending

that petitioner's action is barred by the doctrine of *res judicata*. Respondent further prayed that petitioner should be held in contempt of court for forum-shopping.<sup>[7]</sup>

On March 20, 1998, the trial court found in favor of respondent and dismissed the complaint. The court held that the dismissal of the criminal cases against respondent on the ground of lack of interest or failure to prosecute is an adjudication on the merits which amounted to *res judicata* on the civil case for collection. It further held that the filing of said civil case amounted to forum-shopping.

On June 1, 1998, the trial court denied petitioner's motion for reconsideration.<sup>[8]</sup> Hence, the instant petition.

The legal issues for resolution in the case at bar are: 1) whether the dismissal of the estafa cases against respondent bars the institution of a civil action for collection of the value of the checks subject of the estafa cases; and 2) whether the filing of said civil action violated the anti-forum-shopping rule.

An act or omission causing damage to another may give rise to two separate civil liabilities on the part of the offender, i.e., (1) civil liability *ex delicto*, under Article 100 of the Revised Penal Code;<sup>[9]</sup> and (2) independent civil liabilities, such as those (a) not arising from an act or omission complained of as felony [e.g. culpa contractual or obligations arising from law under Article 31<sup>[10]</sup> of the Civil Code,<sup>[11]</sup> intentional torts under Articles 32<sup>[12]</sup> and 34,<sup>[13]</sup> and culpa aquiliana under Article 2176<sup>[14]</sup> of the Civil Code]; or (b) where the injured party is granted a right to file an action independent and distinct from the criminal action [Article 33,<sup>[15]</sup> Civil Code].<sup>[16]</sup> Either of these two possible liabilities may be enforced against the offender subject, however, to the caveat under Article 2177 of the Civil Code that the offended party "cannot recover damages twice for the same act or omission" or under both causes.<sup>[17]</sup>

The modes of enforcement of the foregoing civil liabilities are provided for in the Revised Rules of Criminal Procedure. Though the assailed order of the trial court was issued on March 20, 1998, the said Rules, which took effect on December 1, 2000, must be given retroactive effect in the instant case considering that statutes regulating the procedure of the court are construed as applicable to actions pending and undetermined at the time of their passage.<sup>[18]</sup>

Section 1, Rule 111, of the Revised Rules of Criminal Procedure provides:

SECTION 1. ***Institution of criminal and civil actions.*** – (a) When a criminal action is instituted, the civil action for the recovery of civil liability arising from the offense charged shall be deemed instituted with the criminal action unless the offended party waives the civil action, reserves the right to institute it separately or institutes the civil action prior to the criminal action.

The reservation of the right to institute separately the civil action shall be made before the prosecution starts presenting its evidence and under circumstances affording the offended party a reasonable opportunity to make such reservation.

x x x x x x x x

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.

Under the 1985 Rules on Criminal Procedure, as amended in 1988 and under the present Rules, the civil liability ex-delicto is deemed instituted with the criminal action, but the offended party is given the option to file a separate civil action before the prosecution starts to present evidence.<sup>[19]</sup>

Anent the independent civil actions under Articles 31, 32, 33, 34 and 2176 of the Civil Code, the old rules considered them impliedly instituted with the civil liability ex-delicto in the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action. Under the present Rules, however, the independent civil actions may be filed separately and prosecuted independently even without any reservation in the criminal action. The failure to make a reservation in the criminal action is not a waiver of the right to file a separate and independent civil action based on these articles of the Civil Code.<sup>[20]</sup>

In the case at bar, a reading of the complaint filed by petitioner show that his cause of action is based on culpa contractual, an independent civil action. Pertinent portion of the complaint reads:

x x x x x x x x

2. That plaintiff is the owner/proprietor to CANCIO'S MONEY EXCHANGE with office address at Guagua, Pampanga;

3. That on several occasions, particularly on February 27, 1993 to April 17 1993, inclusive, defendant drew, issued and made in favor of the plaintiff the following checks:

CHECK NO. DATE AMOUNT

1. Interbank Check No. 25001151 March 10, 1993 P80,000.00

2. Interbank Check No. 25001152 March 27, 1993 P80,000.00

3. Interbank Check No. 25001157 May 17, 1993 P30,000.00 in exchange of cash with the assurance that the said checks will be honored for payment on their maturity dates, copy of the aforementioned checks are hereto attached and marked.

4. That when the said checks were presented to the drawee bank for encashment, the same were all dishonored for reason of DRAWN AGAINST INSUFFICIENT FUNDS (DAIF);

5. That several demands were made upon the defendant to make good the checks but she failed and refused and still fails and refuses without justifiable reason to pay plaintiff;

6. That for failure of the defendant without any justifiable reason to pay plaintiff the value of the checks, the latter was forced to hire the services of undersigned counsel and agreed to pay the amount of P30,000.00 as attorney's fees and P1,000.00 per appearance in court;

7. That for failure of the defendant without any justifiable reason to pay plaintiff and forcing the plaintiff to litigate, the latter will incur litigation expenses in the amount of P20,000.00.

IN VIEW OF THE FOREGOING, it is prayed of this Court that after due notice and hearing a judgment be rendered ordering defendant to pay plaintiff as follows:

- a. the principal sum of P190,000.00 plus the legal interest;
- b. attorney's fees of P30,000.00 plus P1,000.00 per court appearance;
- c. litigation expenses in the amount of P20,000.00

PLAINTIFF prays for other reliefs just and equitable under the premises.

x x x x x x x x. [21]

Evidently, petitioner sought to enforce respondent's obligation to make good the value of the checks in exchange for the cash he delivered to respondent. In other words, petitioner's cause of action is the respondent's breach of the contractual obligation. It matters not that petitioner claims his cause of action to be one based on delict. [22] The nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action. The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filing the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief. [23]

Neither does it matter that the civil action reserved in the October 21, 1997 order of the trial court was the civil action *ex delicto*. To reiterate, an independent civil action arising from contracts, as in the instant case, may be filed separately and prosecuted independently even without any reservation in the criminal action. Under Article 31 of the Civil Code "[w]hen the civil action is based on an obligation not arising from the act or omission complained of as a felony, [e.g. culpa contractual] such civil action may proceed independently of the criminal proceedings and regardless of the result of the latter." Thus, in *Vitola, et al. v. Insular Bank of Asia and America*, [24] the Court, applying Article 31 of the Civil Code, held that a civil case seeking to recover the value of the goods subject of a Letter of Credit-Trust Receipt is a civil action *ex contractu* and not *ex delicto*. As such, it is distinct and independent from the estafa case filed against the offender and may proceed regardless of the result of the criminal proceedings.

One of the elements of *res judicata* is identity of causes of action. [25] In the instant case, it must be stressed that the action filed by petitioner is an independent civil action, which remains separate and distinct from any criminal prosecution based on the same act. [26] Not being deemed instituted in the criminal action based on culpa criminal, a ruling on the culpability of the offender will have no bearing on said