

## EIGHTEENTH DIVISION

[ CA G.R. SP NO. 06455, February 28, 2014 ]

**REYNALDO CHAN, PETITIONER, VS. PEOPLE OF THE  
PHILIPPINES AND FRANK GICA, RESPONDENTS.**

### D E C I S I O N

**DIY, J.:**

Before Us is a Petition for Review<sup>[1]</sup> under Rule 42 of the 1997 Rules of Civil Procedure, filed by Reynaldo Chan on December 5, 2011, assailing the civil aspect of the Joint Judgment on Appeal rendered by Branch 28, Regional Trial Court of Mandaue City in Criminal Cases Nos. 31687-31693 (18407-18413-A).

#### *The Antecedents*

The instant case stemmed from seven (7) Informations for violation of Batas Pambansa (BP) Bilang 22 (Criminal Case Nos. 31687-31693) filed against herein petitioner Reynaldo Chan (hereinafter referred to as "Chan") with the Municipal Trial Court in Cities of Mandaue City ("MTCC", for brevity), specifically Branch 3 thereof, upon the initiative of respondent Frank Gica (hereinafter referred to as "Gica"). The accusatory portion of the Information in Criminal Case No. 31687 reads:

That sometime in the month of January, 2004 or thereabouts, in the City of Mandaue, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, with deliberate intent of gain, did then and there willfully, unlawfully and feloniously make, draw and issue ALLIED BANK Check bearing No. AAA-0003578966 Dated November 7, 2004 in the amount of **ONE HUNDRED THIRTY THOUSAND PESOS (P130,000.00)**, Philippine Currency[,] payable to the order of **Frank Gica** to apply on account or for value, the accused fully knowing well that at the time of the issuance of said check that he does not have sufficient funds in or credit with the drawee bank when he make or draw and issue [sic] a check but he failed to keep sufficient funds or to maintain a credit to cover the full amount of the check, which check when presented for encashment was dishonored by the drawee bank for the reason: **"Account Closed"** or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, and despite notice of dishonor and demands for payment, said accused failed and refused and still fails and refuses to redeem the check or to make arrangement for payment in full by the drawee bank of such check within five (5) banking days after receiving the notice of dishonor, to the damage and prejudice of the aforementioned private complainant, in the aforestated amount and other claims and charges allowed by civil law.

CONTRARY TO LAW.

The other Informations are similarly worded except for the Check Nos., dates of issue, and corresponding amounts. The data<sup>[2]</sup> are hereunder itemized, as follows:

Criminal Case No.	Bank/Check No.	Postdated	Amount
31687	Allied Bank/ AAA- 0003578966	November 7, 2004	P130,000.00
31688	Allied Bank/AAA- 0003578967	November 8, 2004	P300,000.00
31689	Allied Bank/AAA- 0003578963	November 23, 2004	P500,000.00
31690	Allied Bank/AAA- 0003578965	November 24, 2004	P150,000.00
31691	Allied Bank/AAA- 0003578964	November 28, 2004	P500,000.00
31692	Allied Bank/AAA- 0003578969	November 29, 2004	P220,000.00
31693	BPI/0996703	December 6, 2004	P359,000.00
Total Amount			P2,159,000.00

The parties present conflicting versions of the circumstances surrounding the issuance of the subject checks.

***Respondent's Version***

Respondent Gica is a sales agent who personally knows petitioner Chan as the latter is engaged in business under the name and style, "Alebon Genuine Merchandising". Petitioner is a customer of respondent Gica. Sometime in January 2004, and on several occasions thereafter, petitioner purchased from respondent several quantities of assorted paints and other chemical products amounting to Two Million One Hundred Fifty Nine Thousand Pesos (P2,159,000.00). As payment for these transactions, the subject postdated checks were allegedly issued by petitioner.

Petitioner assured respondent that the checks are fully funded and that the latter would not encounter any problem in encashing them. Thereafter, when the checks reached maturity, Chan called Gica requesting for extension of the dates of the

checks for purposes of presentment. Chan made such requests to extend the dates of the checks ten (10) times. Such extensions were granted by Gica.

Upon maturity of the checks with extended dates, when they were deposited at UCPB, Mandaue City for encashment, the same were returned by the drawee bank for the reason: "Account Closed" stamped on the respective copies of the checks as well as on the Check Return Slips.

Notice of dishonor and several demands, written and oral, were sent to petitioner to redeem these checks and to settle the accounts, but to no avail.

### ***Petitioner's Version***

Chan, on the other hand, asserts that in early 2001, his business in Cagayan de Oro City encountered financial problems. Gica approached Chan informing the latter of his willingness to lend Chan some money. On various dates, Gica loaned varying amounts to Chan. Their agreement was that these loans were "five-six" (5/6) transactions, as they were commonly called. As Gica was constantly out of town, the loans were made through long distance calls. No written agreements were ever made or executed. However, as a form of guarantee, Gica required Chan to issue postdated checks in Cagayan de Oro City.

Chan was able to pay the full amount of the loan by depositing cash, on several occasions, in the bank account of Gica's wife. However, since Chan trusted Gica, the former did not bother to demand the return of the checks.

Chan did not personally receive a notice of dishonor or a demand for payment.

### **Commencement of the Criminal Action**

In September 2005, Gica filed a complaint for Estafa and Violation of BP Blg. 22 against Chan before the Office of the City Prosecutor, Mandaue City.

On December 14, 2005, Assistant City Prosecutor Wilfredo Pangandoyon recommended the filing of seven (7) Informations for violation of BP Blg. 22 but recommended the dismissal of the Estafa case for lack of evidence.

When arraigned, accused, assisted by his counsel Atty. De Leon Gan, Jr., entered a plea of not guilty.<sup>[3]</sup>

On June 2, 2010, after a full blown trial, MTCC Presiding Judge Wilfredo A. Dagatan promulgated Judgment<sup>[4]</sup> acquitting Chan for failure of the prosecution to establish the necessary element of violation of BP Blg. 22 that the drawer actually received the Notice of Dishonor of the check. The dispositive portion of the Decision reads:

**WHEREFORE**, premises considered, judgment is hereby rendered **ACQUITTING** the accused, **REYNALDO CHAN**, for the seven (7) counts of the crime of Violation of B.P. 22 as charged.

Furthermore, it can be recalled that on July 10, 2006, complainant through counsel filed in this Court a Motion for the issuance of a Writ of Preliminary Attachment. After due hearing, on July 28, 2006, a Writ of

Preliminary Attachment was issued by the Court. Thereafter, Lot 21240-B under Transfer Certificate of Title No. T-52920 subject of the attachment of the aforementioned case is hereby cancelled. The Registry of Deeds is directed to cancel the Annotation of the Writ of Attachment in the above-described property.

All claims are hereby ordered dismissed for lack of merit.

**SO ORDERED.**

Aggrieved by the Decision, on August 3, 2010, Gica filed a Notice of Appeal<sup>[5]</sup> regarding the civil aspect of the case.

On July 27, 2011, a Joint Judgment<sup>[6]</sup> was rendered by Branch 28, RTC, Mandaue City. The dispositive portion of the Joint Decision reads:

WHEREFORE, the assailed Decision of the Municipal Trial Court, Branch 3, Mandaue City dated June 2, 2010 in Criminal Cases Nos. 31687-31693 acquitting the accused appellee Reynaldo Chan of Violation of BP Blg. 22 is hereby affirmed en toto. However, on the finding by the said court a quo that the accused-appellee is not civilly liable, it is hereby reversed. The accused-appellee Reynaldo Chan is hereby directed to pay to the complainant appellant Frank Gica, as his (accused-appellee) civil liabilities, the following amounts:

1. P 130,000.00 in Criminal Case No. 31687
2. P 300,000.00 in Criminal Case No. 31688
3. P 500,000.00 in Criminal Case No. 31689
4. P 150,000.00 in Criminal Case No. 31690
5. P 500,000.00 in Criminal Case No. 31691
6. P 220,000.00 in Criminal Case No. 31692 and
7. P 359,000.00 in Criminal Case No. 31693

MTCC, Branch 3, each at 12% interest per annum from the filing of the Informations until the finality of this Decision, the sum of which, inclusive of the interest, shall be subject thereafter to 12% per annum interest until the amount due is fully paid.

This Court hereby recalls the order of the court a quo in the dispositive portion of the Decision dated June 2, 2010 to lift the levy of Lot 21240-B under TCT No. T-52920 and the cancellation of the annotation of the writ of attachment on the said title.

*Costs de oficio.*

**IT IS SO ORDERED.**

Aggrieved by the reversal regarding the civil aspect of the case, on August 26, 2011, Chan filed a Motion for Reconsideration<sup>[7]</sup> of the Joint Judgment rendered by the RTC. On October 14, 2011, the RTC issued an Order<sup>[8]</sup> denying Chan's Motion for Reconsideration.

Hence, this petition, assigning the following errors of the RTC:

- A. IN FAILING TO CONSIDER MATERIAL AND RELEVANT EVIDENCES THAT THE FIVE-SIX (5/6) LOANS HAVE BEEN FULLY PAID
- B. IN RULING IN FAVOR OF CIVIL LIABILITY AND WHEN THE ACT FROM WHICH IT MIGHT ARISE DID NOT EXIST
- C. IN AWARDING CIVIL LIABILITY DESPITE ACQUITTAL FOR LACK OF EVIDENCE TO PROVE TRANSACTION
- D. IN REVERSING THE PREVIOUS ORDER LIFTING THE LEVY AND THE CANCELLATION OF ANNOTATION OF THE WRIT OF ATTACHMENT
- E. IN RELYING ON INSUFFICIENT EVIDENCE TO JUSTIFY THE DECISION
- F. IN NOT DISMISSING THE CASE FOR LACK OF JURISDICTION
- G. IN FAILING TO REMAND THE CASE TO THE COURT BELOW IN [sic] TO RULE ON THE FACTUAL ISSUES
- H. THE AWARD OF CIVIL LIABILITY IS PREMATURE FOR LACK OF CAUSE OF ACTION

Chan contends that the "5/6" loans, equivalent to the face value of the postdated checks, have been fully paid, as evidenced by the deposits made to the bank account of Gica's wife. It is alleged that such deposits totaled P2,200,000.00, more or less. Chan refutes Gica's claim that said deposits were made for other transactions since Gica could not substantiate what these other transactions are. And granting *in arguendo* that the seven (7) postdated checks have not yet been settled, then the payments received by Gica's wife constitute *solutio indebiti*.

On the other hand, Gica asserts that their transactions were purchases on credit of assorted paints and chemical products, and that the subject checks served as payments thereof.

Gica also posits that the deposits made in the bank account of Avelina Casas (Gica's wife) were from Asuncion Chan, the wife of petitioner, and not from Chan himself.

Moreover, Gica points out that his custody over the checks already satisfies, by itself, the quantum of proof (preponderance of evidence) necessary to prove civil liability.

### ***The Ruling of the Court***

The petition is bereft of merit.

This Court shall address the above-mentioned assigned errors holistically as they are interrelated. In arriving at Our ruling, We address the following factual and legal matters: