



Republic of the Philippines
Supreme Court
Baguio City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated April 26, 2022 which reads as follows:

“G.R. No. 221154 (Philippine Amusement and Gaming Corporation, *Petitioner* vs. Dante A. Carandang, *Respondent*). – Before the Court is a Petition for Review¹ on *certiorari* filed by petitioner Philippine Amusement and Gaming Corporation (petitioner) assailing the Decision² dated January 5, 2015 and the Resolution³ dated October 20, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 128596. The CA denied petitioner’s petition for review under Rule 42 of the Rules of Court assailing the Decision⁴ dated July 27, 2012 and Resolution⁵ dated January 8, 2013 of Branch 39, Regional Trial Court (RTC) of Manila which absolved respondent Dante A. Carandang (respondent) of civil liability arising from dismissed charges of violation of Batas Pambansa Blg. (BP) 22.⁶

The Antecedents

On February 2, 1999, petitioner (through its Chairperson, Alicia Ll. Reyes) and Bingo Royale Inc. (BRI), through respondent as its President, entered into an agreement granting BRI the authority to operate bingo games at the Caedo Commercial Center, Batangas City.⁷ Under the agreement, BRI would remit 20% of its gross sales

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86-A

¹ *Rollo*, pp. 9-29.

² *Id.* at 43-51. Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Rodil V. Zalameda (now a Member of the Court) and Maria Elisa Sempio Diy.

³ *d.* at 64.

⁴ *Id.* at 97-108. Penned by Presiding Judge Noli C. Diaz.

⁵ *Id.* at 109-110.

⁶ An Act Penalizing the Making or Drawing and Issuance of a Check without Sufficient Funds or Credit and For Other Purposes, Batas Pambansa Bilang 22 (1979).

⁷ *Id.* at 67-71, 43.

receipts from its bingo card sales to petitioner. Subsequently, however, BRI failed to remit shares in sales plus interest in the amount of ₱6,064,833.14 (unremitted sales).⁸

Based on the agreed settlement payment scheme, respondent, in his capacity as President of BRI, issued twenty-four (24) postdated checks to answer for BRI's obligation to petitioner. Among the checks were three Bank of Commerce checks⁹ issued with a face amount of ₱300,000.00 each, all drawn in the name of BRI. Petitioner then deposited the three checks upon maturity. However, these were all dishonored by reason of "closed account." Allegedly, petitioner sent notices of dishonor and demand letters¹⁰ for respondent to pay the value of the three checks, but these remained unheeded.¹¹

The non-payment prompted the filing of charges against respondent for three counts of violation of BP 22.¹² Upon his arraignment, he pleaded not guilty. Trial on the merits ensued.

After the prosecution presented its evidence, respondent filed a demurrer to evidence; he argued that the prosecution miserably failed to: (1) prove his guilt beyond reasonable doubt and overcome the constitutional presumption of innocence; (2) prove the basic element of the actual receipt by respondent of the notice of dishonor of the subject checks as mandated by law and jurisprudence; and (3) adduce any evidence to establish his civil liability since the civil obligation in these cases is corporate and not personal.¹³

The Metropolitan Trial Court (MeTC) Ruling

In the Judgment¹⁴ dated February 11, 2011, Branch 21, MeTC of Manila granted respondent's demurrer to evidence and acquitted him of the charges. The MeTC found that the prosecution failed to present clear and convincing proof whether the notices of dishonor for the three checks were indeed personally served upon respondent.

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86-A

⁸ Id. at 72.

⁹ See Check Nos. BTG 0000039931 dated March 15, 2003, BTG 0000039933 dated May 15, 2003, and BTG 0000039934 dated June 15, 2003; id. at 73-75.

¹⁰ Id. at 86-88.

¹¹ Id. at 44.

¹² Docketed as Criminal Case Nos. 412809-CR, 412788-CR, and 412453-CR; id. at 91-92.

¹³ Id. at 44.

¹⁴ Id. at 91-96. Penned by Acting Presiding Judge Jaime B. Santiago.

Hence, the *prima facie* presumption under Section 2¹⁵ of BP 22 that the maker, drawer, or issuer knew of the insufficiency of funds cannot arise.¹⁶

The MeTC also dismissed respondent's civil liability due to lack of legal basis. It held that the civil liability of a corporate officer in a BP 22 case is extinguished with the criminal liability,¹⁷ citing the cases of *Bautista vs. Auto Plus Traders, Inc.*¹⁸ and *Gosiaco vs. Ching.*¹⁹

Petitioner filed an appeal with the RTC of Manila assailing respondent's exoneration from civil liability. This was raffled off to Branch 39 of the RTC.²⁰

The RTC Ruling

In the Decision²¹ dated July 27, 2012, the RTC affirmed the MeTC Judgment. The dispositive portion of the Decision reads:

WHEREFORE, based on the foregoing considerations, and finding no reversible error committed by the court of origin, the Decision appealed from is hereby AFFIRMED.

With cost against private complainant-appellant PAGCOR.

SO ORDERED.²²

In so ruling, the RTC explained as follows: the civil liability, if any, should be borne by BRI and not by respondent; respondent signed the subject checks on behalf of the corporation as its duly authorized officer and not for his own interest and benefit; and that

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86-A

¹⁵ SECTION 2. *Evidence of Knowledge of Insufficient Funds.* — The 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.

¹⁶ Id. at 94.

¹⁷ Id. at 95-96.

¹⁸ 583 Phil. 218 (2008).

¹⁹ 603 Phil. 457 (2009).

²⁰ See *rollo*, pp. 97-98.

²¹ Id. at 97-108.

²² Id. at 107-108.

petitioner, as a creditor, has a lawful and substantive right to recover due and demandable obligations against the debtor corporation, but not from respondent.²³

The RTC also denied petitioner's subsequent motion for reconsideration²⁴ in a Resolution²⁵ dated January 8, 2013.

Petitioner filed with the CA a Petition for Review²⁶ under Rule 42 of the Rules of Court.²⁷

The CA Ruling

In the Decision²⁸ dated January 5, 2015, the CA denied the petition. The dispositive portion of the Decision reads:

WHEREFORE, the instant petition for review is DENIED without prejudice to the right of petitioner PAGCOR to pursue an independent civil action against Bingo Royal Incorporated for the amount of the subject checks.

SO ORDERED.²⁹

The CA held that the prevailing rule is that the acquittal of an accused corporate officer for violation of BP 22 makes him or her free from any civil liability for the corporate debt. However, the effects would be different if the accused corporate officer will be adjudged criminally liable for violation of BP 22 as the former can also be held civilly liable.³⁰ Thus, the CA applied the foregoing disquisition following the salutary doctrine of *stare decisis et non quieta movere* which means "to adhere to precedents, and not to unsettle things which are established."³¹

Following the CA's denial of petitioner's motion for reconsideration in a Resolution³² dated October 20, 2015, petitioner filed the present petition.

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86-A

²³ Id. at 106.

²⁴ Id. at 52-62.

²⁵ Id. at 109-110.

²⁶ Id. at 30-42.

²⁷ Id. at 30-40.

²⁸ Id. at 43-51.

²⁹ Id. at 50-51.

³⁰ Id. at 50.

³¹ Id.

³² Id. at 64.

The Petition

Petitioner alleges that the CA erred: (1) in its decision that there can be no civil liability attached to respondent considering that there was no finding of criminal liability by the lower court; and (2) in declaring that respondent was not civilly liable *ex delicto* for issuing checks which were dishonored for the reason “account closed.”³³

The Court required respondent to file his comment on the petition;³⁴ but he failed to do so. Thus, the Court dispensed with respondent’s comment.³⁵

The Issue

The issue for resolution is whether respondent, as a corporate officer, who signed the dishonored checks for the corporation’s obligation, could still be held civilly liable after he was acquitted of the criminal charge of violation of BP 22.

The Court’s Ruling

The petition has no merit.

It is established that all the three dishonored checks were BRI’s checks which respondent signed in his capacity as President and for the purpose of paying the BRI’s corporate obligations to petitioner. There was no allegation or proof that respondent bound himself to be personally or solidarily liable with the BRI’s obligations. Notably, respondent corporate officer was already acquitted for the charge of violation of BP 22.

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86-A

³³ Id. at 15.

³⁴ See Resolution dated April 4, 2016; id. at 112.

The Resolution was returned unserved with notation “RTS, Addressee Deceased.” Respondent’s counsel, Malinao Carandang Adan Law Offices, was required to file Comment on the petition, and to confirm respondent’s death in a Resolution dated September 19, 2016. Id. at 120.

The Resolution was resent and was returned unserved with notation “RTS unclaimed.” The Court then required petitioner’s counsel, Atty Graziella C. Tondares, to confirm the death of respondent in a Resolution dated August 19, 2019. Id. at 156.

Later, the Court in a Resolution dated September 16, 2020 required Atty. Tondares to show cause why no disciplinary action should be taken against her for failure to comply with the Court’s directive. Id. at 166.

However, per notation on the letter envelope of the Resolution, Atty. Tondares is “no longer connected” with petitioner. Id. at 170.

³⁵ Resolution dated April 6, 2022.

In *Pilipinas Shell Petroleum Corp. vs. Duque*,³⁶ respondent corporate officers issued a bounced check drawn against the current account of a corporation covering corporate debts. Therein, the Court declared that respondents cannot be held liable for the value of the corporate check because they were acquitted of the offense of violating BP 22. The Court made the following disquisition, to wit:

x x x In the case of *Gosiaco v. Ching*, this Court enunciated the rule that a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted. In the said case, the Court ruled that:

When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.

The Court, citing the case of *Bautista v. Auto Plus Traders, Incorporated, et. al.*, nonetheless categorically held that the civil liability of a corporate officer in a BP 22 case is extinguished with the criminal liability.

The above rule is reiterated in the recent case of *Navarra v. People, et al.*, where the petitioner, the Chief Finance Officer of a corporation, who was the signatory of the dishonored corporate checks, was convicted of the offense of violation of BP 22 and was ordered to pay the private complainant civil indemnity in an amount equivalent to the value of the checks which bounced. The Court held thus:

The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he [or she] is convicted. The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf.

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86-A

³⁶ 805 Phil. 954 (2017).

As held above, it is clear that the civil liability of the corporate officer for the issuance of a bouncing corporate check attaches only if he [or she] is convicted. Conversely, therefore, it will follow that once acquitted of the offense of violating BP 22, a corporate officer is discharged from any civil liability arising from the issuance of the worthless check in the name of the corporation he [or she] represents. This is without regard as to whether his [or her] acquittal was based on reasonable doubt or that there was a pronouncement by the trial court that the act or omission from which the civil liability might arise did not exist.

Moreover, in the present case, nothing in the records at hand would show that respondents made themselves personally nor solidarily liable for the corporate obligations either as accommodation parties or sureties. On the contrary, there is no dispute that respondents signed the subject check in their capacity as corporate officers and that the check was drawn in the name of FCI as payment for the obligation of the corporation and not for the personal indebtedness of respondents. Neither is there allegation nor proof that the veil of corporate fiction is being used by respondents for fraudulent purposes. The rule is that juridical entities have personalities separate and distinct from its officers and the persons composing it. Generally, the stockholders and officers are not personally liable for the obligations of the corporation except only when the veil of corporate fiction is being used as a cloak or cover for fraud or illegality, or to work injustice, which is not the case here. Hence, respondents cannot be held liable for the value of the checks issued in payment for FCI's obligation.

The cases of *Mitra v. People, et al.* and *Llamado v. Court of Appeals, et. al.*, which were cited by petitioner, may not be made as bases to rule against respondents because the accused in the said cases were found guilty of violating BP 22. Thus, the general rule that a corporate officer who issues a bouncing corporate check can be held civilly liable when convicted, applies to them. In the present case, however, respondents were acquitted of the offense charged. As such, consistent with the rule established in *Bautista* and *Gosiaco*, respondents' civil liability was extinguished with their criminal liability. x x x.³⁷ (Citations omitted)

Thus, considering that respondent, a corporate officer, was already acquitted of the criminal charges of violation of BP 22 when his demurrer to evidence was granted by the MeTC, he is therefore also absolved from any civil liability for the value of the dishonored corporate checks he issued in behalf of BRI as payment for the latter's obligation to petitioner.

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86-A

³⁷ *Pilipinas Shell Petroleum Corp. vs. Duque, supra* note 36, at 961-963.

WHEREFORE, the petition for review is **DENIED**. The Decision dated January 5, 2015 and the Resolution dated October 20, 2015 of the Court of Appeals in CA-G.R. SP No. 128596 are hereby **AFFIRMED**.

SO ORDERED.” *Gaerlan, J., on official leave.*

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

86-A

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