



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 August 2021** which reads as follows:*

“**G.R. No. 211393** (*Jose Alejandro Payumo III v. Angelita Meneses*). – This is a Petition for Review on *Certiorari*¹ assailing the Decision² dated October 9, 2013 and Resolution³ dated February 20, 2014 of the Court of Appeals (CA) in CA-G.R. CR No. 35118 which affirmed with modification the Decision⁴ dated November 26, 2010 of Branch 5, Regional Trial Court (RTC), Baguio City. The RTC affirmed *in toto* the Decision dated December 18, 2009 of the Branch 1, Municipal Trial Court in Cities (MTCC), Baguio City finding Jose Alejandro Payumo III (petitioner) guilty beyond reasonable doubt of violation of *Batas Pambansa Bilang 22* (BP 22).⁵

The instant case stemmed from the Affidavit-Complaint of Angelita G. Meneses (respondent) against petitioner for violation of BP 22.⁶

The Antecedents

Sometime in July 2005, petitioner obtained a loan from respondent in the amount of One Million Five Hundred Forty-Five Thousand Two Hundred Fifty Pesos (₱1,545,250.00) which petitioner promised to pay on or before August 31, 2005. To secure the obligation, petitioner issued a postdated Land Bank-Dinalupihan Branch - Check

¹ *Rollo*, pp. 25-34.

² *Id.* at 8-15; penned by Associate Justice Franchito N. Diamante with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring.

³ *Id.* at 47-48.

⁴ *Id.* at 64-66; penned by Judge Antonio M. Esteves.

⁵ *Id.* at 64.

⁶ *Id.*

No. 0108742. When the check was presented for payment, it was dishonored for insufficiency of funds. Respondent demanded from petitioner to make good the dishonored check but the same proved futile. This prompted respondent to file a criminal case against petitioner for violation of BP 22.⁷

On August 28, 2006, the MTCC issued an Order directing petitioner to submit his counter-affidavit and supporting documents which he shall serve on the respondent and the public prosecutor within ten (10) days from notice. The MTCC also directed petitioner to seek the services of a lawyer and to attend the hearing on November 15, 2006 for his arraignment.⁸ On October 19, 2006, Atty. Juvy Mell B. Sanchez-Malit (Atty. Malit) entered her appearance for petitioner and moved to reset the hearing. After more than a year, or on February 4, 2008, petitioner, assisted by Atty. Malit, was arraigned and pleaded not guilty to the offense of violation of BP 22.⁹

Pre-trial ensued.¹⁰

On March 4, 2009, the MTCC declared the criminal case submitted for resolution and set the promulgation of decision on April 2, 2009.¹¹ However, on March 17, 2009, petitioner, through counsel, filed a Motion to Set Case for Hearing¹² alleging that his counsel has not received a copy of the pre-trial order and that there is a need to set the case for hearing so that both parties may be able to present their respective evidence.

On March 23, 2009, the MTCC granted the motion and converted the April 2, 2009 setting as a hearing for the presentation of evidence instead of a promulgation of decision.¹³ However, Atty. Malit and petitioner did not appear during the April 2, 2009 hearing. Thus, the presentation of evidence was reset to May 28, 2009.¹⁴

On May 28, 2009, Atty. Malit moved for the resetting of the presentation of evidence to August 19, 2009.¹⁵ On August 19, 2009, Atty.

⁷ *Id.* at 64-65.

⁸ *Id.* at 57.

⁹ *Id.* at 9

¹⁰ *Id.*

¹¹ *Id.* at 67.

¹² *Id.* at 68.

¹³ *Id.* at 70.

¹⁴ *Id.* at 71.

¹⁵ *Id.* at 72.

Malit again failed to appear, prompting the MTCC to order her to show cause why she should not be cited for contempt of court for failure to appear despite notice.¹⁶ Due to Atty. Malit's absence, trial was reset to October 21, 2009 which was again reset to December 8, 2009.¹⁷ On December 8, 2009, again, Atty. Malit and petitioner did not appear, prompting the prosecutor to move that the criminal case be submitted for decision. The MTCC granted the motion considering that the case was governed by the 1991 Rules on Summary Procedure.¹⁸

The Ruling of the MTCC

In the Decision dated December 18, 2009, the MTCC found petitioner guilty beyond reasonable doubt of violation of BP 22, thus:

WHEREFORE, the Court finds the accused *guilty* beyond reasonable for violation of BATAS PAMBANSA BILANG 22 and hereby sentences him to pay a fine of TWO HUNDRED THOUSAND PESOS (Php200,000.00), Philippine Currency, with subsidiary imprisonment not to exceed six (6) months in case of insolvency, pursuant to paragraph 2, Article 39 of the Revised Penal Code.

Accused is also ordered to pay his civil liability of Php1,545,250 with legal interest of six percent (6%) per *annum* from the filing of the Information, i.e. August 17, 2006, until the finality of this Decision, and thereafter, the amount of which, inclusive of interest, shall be subject to twelve percent (12%) interest until fully paid.

Accused is also directed to pay attorney's fees of Php20,000.00.

Cost against the accused.

SO ORDERED.¹⁹

The MTCC held that the prosecution had sufficiently established the *prima facie* presumption that petitioner knew that he had no sufficient funds at the time he issued the subject check. It found that

¹⁶ *Id.* at 73.

¹⁷ *Id.* at 74.

¹⁸ *Id.* at 75.

¹⁹ As culled from the CA Decision, *id.* at 11.

despite demands from respondent, petitioner failed to make good the dishonored check.²⁰

Moreover, the MTCC ruled that, even for the sake of argument that petitioner informed respondent that he did not have sufficient funds to cover the amount of the check, petitioner is not exculpated from the offense. The knowledge of the payee of the insufficiency or lack of funds of the drawer with the drawee bank is immaterial since deceit is not an essential element of an offense penalized by BP 22.²¹

Petitioner appealed to the RTC and argued that he was not given his day in court. He added that the Rules on Summary Procedure governing criminal cases were not applied in the case. Thus, petitioner insisted that he was not able to refute the charges against him as he was not given the opportunity to do so.²²

The Ruling of the RTC

On November 26, 2010, the RTC affirmed *in toto* the MTCC Decision.²³

The RTC noted that contrary to his allegations, petitioner was granted the opportunity to present his evidence. It found that petitioner's counsel was present in the hearing of May 28, 2009 and that she was notified of the hearing scheduled on August 19, 2009 for the presentation of evidence. The RTC ruled that the proceedings conducted by the MTCC was in accordance with the law; and that all the elements of BP 22 were duly proved by the prosecution.²⁴

After the denial of his motion for reconsideration, petitioner filed a petition for review before the CA.²⁵

²⁰ *Id.* at 10-11.

²¹ *Id.* at 11.

²² *Id.* at 65.

²³ *Id.* at 66.

²⁴ *Id.*

²⁵ *Id.* at 12.

The Ruling of the CA

In the assailed Decision²⁶ dated October 9, 2013, the CA affirmed the RTC Decision²⁷ but deleted the award of attorney's fees. Thus:

WHEREFORE, premises considered, the instant petition is DENIED. Accordingly, the November 26, 2010 Decision and the June 28, 2012 Order of Baguio City Regional Trial Court, Branch 5, in Criminal Case No. 30426-R for violation of Batas Pambansa Blg. 22 are hereby AFFIRMED with slight modification in that the award of attorney's fees is deleted.

SO ORDERED. (Emphasis ommitted.)²⁸

In the Resolution dated February 20, 2014, the CA denied the motion for reconsideration.

Hence, the instant petition.

Petitioner insists that he was not accorded due process because there had been no hearing that was conducted prior to the promulgation of the MTCC Decision. Thus, he avers that he was unable to refute the charges against him because he was not given the opportunity to do so.²⁹

On the other hand, respondent posits in her Comment³⁰ that petitioner was given all the opportunities to present his evidence. Respondent argues that petitioner and his counsel failed to appear in the hearings set by the MTCC; that it was petitioner who filed several postponements which the MTCC granted; and that it is clear as daylight that petitioner was accorded his day in court.³¹

On September 20, 2016, petitioner's counsel notified the Court of the death of petitioner,³² which was duly noted by the Court in the Resolution dated October 12, 2016.³³

²⁶ *Id.* at 8-15.

²⁷ *Id.* at 64-66.

²⁸ *Id.* at 15.

²⁹ *Id.* at 30-31.

³⁰ *Id.* at 56-60.

³¹ *Id.* at 58-59.

³² *Id.* at 85-86.

³³ *Id.* at 90.

In the Resolution³⁴ dated September 18, 2017, the Court required petitioner's counsel to furnish the Court with the names and addresses of petitioner's legal representative/s within ten (10) days from notice. In compliance thereto, on January 8, 2018 petitioner's counsel submitted the names of petitioner's legal representatives/heirs namely, his widow, Digna R. Payumo and his children Jose Nico R. Payumo IV and Abby Mari R. Payumo, with their given address at 41D N. Reyes St., Loyola Heights, Quezon City.³⁵

Thus, in the Resolution³⁶ dated July 23, 2018, the Court required petitioner's heirs to manifest if they are willing to substitute petitioner in the instant case.

Considering that in the Resolution dated November 5, 2018,³⁷ the Court resolved to await the compliance of petitioner's heirs, Atty. Malit informed the Court of the new address of petitioner's heirs at No. 82, Burgos St., Dinalupihan, Bataan.³⁸ Noting this new address, the Court issued Resolution³⁹ dated August 7, 2019, resolving to await anew the compliance of petitioner's heirs. However, the resolution was not served on the petitioners. This prompted the Court to issue Resolution dated February 24, 2020⁴⁰ where the Court resolved to re-send Resolution dated July 23, 2018 and to further await compliance thereto.⁴¹ On October 14, 2020, the Court required petitioner's heirs to show cause why they should not be subjected to disciplinary action or held in contempt of court for failure to comply with the directives of the Court.⁴² Up to the present date, petitioner's heirs or counsel have not complied with any of the Court's directives.

The Issue

The sole issue in this case is whether or not petitioner was denied due process in the MTCC.

³⁴ *Id.* at 94.

³⁵ *Id.* at 95.

³⁶ *Id.* at 99.

³⁷ *Id.* at 100.

³⁸ *Id.* at 101.

³⁹ *Id.* at 104.

⁴⁰ *Id.* at 113.

⁴¹ *Id.* at 114.

⁴² *Id.* at 115.

Our Ruling

At the outset, it must be emphasized that petitioner died pending the resolution of the case.⁴³ As a general rule, the death of an accused pending appeal extinguishes his criminal liability and the corresponding civil liability based solely on the offense (*delict*).⁴⁴ The intervention of the death of the accused in any case is an injunction by fate itself so that no criminal liability and the corresponding civil liability arising from the offense should be imposed on him.⁴⁵

However, independent civil liabilities survive the death and an action for recovery, therefore, may be pursued by filing a separate civil action against the estate of the accused.⁴⁶ Under Section 4, Rule 111 of the Rules of Court, the independent civil liabilities may be continued against the estate or legal representatives of the accused after the proper substitution, as the case may be.

The Court in *Heirs of Paz T. Bernardo v. People*⁴⁷ (*Heirs of of Paz Bernardo*) discussed the special rule in case the accused in a BP 22 case dies pending appeal, thus:

In B.P. 22 cases, the criminal action shall be deemed to include the corresponding civil actions. Instead of instituting two separate cases, only a single suit is filed and tried. This rule was enacted to help declog court dockets, which had been packed with B.P. 22 because creditors used the courts as collectors. x x x

As a necessary consequence of this special rule, the civil liabilities arising from the issuance of a worthless check are deemed instituted in a case for violation of B.P. 22; the death of Bernardo did not automatically extinguish the action. The independent civil liability based on contract, which was deemed instituted in the criminal action for B.P. 22, may still be enforced against her estate in the present case. We thus rule on the present action to determine Bumanglag's civil liability.⁴⁸

Following the foregoing rule, petitioner's civil liability which arose from a contract of loan and which was deemed instituted in the

⁴³ *Id.* at 85-86.

⁴⁴ *Heirs of Paz T. Bernardo v. People*, 770 Phil. 509, 521 (2015).

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 522.

⁴⁸ *Id.*

criminal action for BP 22 may still be enforced against his estate or legal representatives after proper substitution.

It is undeniable that petitioner contracted a loan in the amount of ₱1,545,250.00 from the respondent and that as security of the loan, petitioner issued a post-dated Land Bank Check No. 0108742.⁴⁹ However, upon presentment for payment, it was dishonored due to insufficiency of funds.⁵⁰

In *Travel-On, Inc. v. Court of Appeals*⁵¹ the Court held that checks in themselves constitute evidence of indebtedness; thus:

Thus, we believe and so hold that private respondent must be held liable on the six (6) checks here involved. Those checks in themselves constituted evidence of indebtedness (*sic*) of private respondent, evidence not successfully overturned or rebutted by private respondent.

Since the checks constitute the best evidence of private respondent's liability to petitioner Travel-On, the amount of such liability is the face amount of the checks, reduced only by the ₱10,000.00 which Travel-On admitted in its complaint to have been paid by private respondent sometime in March 1992.⁵²

Moreover, in *Lim v. Mindanao Wines & Liquor Galleria*⁵³ the Court held that a check is evidence of indebtedness which could prove a loan transaction. Likewise, in *Heirs of Paz Bernardo v. People*,⁵⁴ the Court recognized that a check issued can be proof of existence of an obligation.⁵⁵

Evidently, the existence of the obligation to pay was sufficiently established and because petitioner failed to settle his obligation arising from the contract before his death, his civil liability can be enforced against his estate or legal representatives.

The records show that after petitioner's counsel notified the Court of petitioner's death, the Court required petitioner's counsel to furnish

⁴⁹ *Rollo*, pp. 36, 64-65.

⁵⁰ *Id.* at 65.

⁵¹ 285 Phil 844 (1992).

⁵² *Id.*

⁵³ G.R. No. 175851, July 4, 2012, 690 Phil 206, 219 (2012), citing *Gaw v. Chua*, 551 SCRA 505, 519 (2008).

⁵⁴ *Supra* note 39.

⁵⁵ *Id.* at 527-528.

the name/s or address/es of petitioner's legal representative/s within ten (10) days from notice thereof.⁵⁶ On January 8, 2018, petitioner's counsel submitted compliance and provided the names and addresses of petitioner's legal representatives.⁵⁷ Subsequently, the Court required petitioner's heirs to manifest if they are willing to substitute petitioner in the case.⁵⁸

In Resolutions dated November 5, 2018,⁵⁹ August 7, 2019,⁶⁰ and February 24, 2020,⁶¹ the Court awaited the compliance from petitioner's legal representatives or petitioner's counsel. But up to this date, no compliance from petitioner's legal representatives or counsel has been submitted. Thus, on October 14, 2020, the Court required the heirs of petitioners to show cause why they should not be held in contempt for such failure to comply with the Court's directive.⁶² Still, there was no response from petitioner's legal heirs and counsel.

The failure of petitioner's heirs namely: (1) Digna R. Payumo (petitioner's widow); (2) Jose Nico R. Payumo IV (petitioner's son); and (3) Abby Mari R. Payumo (petitioner's daughter), to comply with the Court Resolutions – requiring them to manifest if they are willing to substitute the petitioner in this case, is tantamount to failure to appear and substitute the petitioner in this case.

Thus, it cannot be said that petitioner's heirs were deprived of due process.

Section 16, Rule 3 of the Rules of Court provides for the procedure for the substitution of a party-litigant who dies during the pendency of a case, viz.:

Section 16. Death of party; duty of counsel.— Whenever a party to a pending action dies, and the claim is not thereby extinguished, it shall be the duty of his counsel to inform the court within thirty (30) days after such death of the fact thereof, and to give the name and address of his legal representative or representatives. Failure of counsel to comply with his duty shall be a ground for disciplinary action.

⁵⁶ *Rollo*, p. 94.

⁵⁷ *Id.* at 95.

⁵⁸ *Id.* at 99.

⁵⁹ *Id.* at 100.

⁶⁰ *Id.* at 104.

⁶¹ *Id.* at 113.

⁶² *Id.* at 115.

x x x x .

The court shall forthwith order said legal representative or representatives to appear and be substituted within a period of thirty (30) days from notice.

If no legal representative is named by the counsel for the deceased party, or if the one so named shall fail to appear within the specified period, the court may order the opposing party, within a specified time to procure the appointment of an executor or administrator for the estate of the deceased and the latter shall immediately appear for and on behalf of the deceased. x x x.

There is no doubt that when a party to a case dies, his or her counsel is charged with the duty of informing the trial court of, first, the fact of the litigant's death and, second, the name and address of the litigant's representative. The court must then issue an order requiring the said representative to appear and formally be substituted.⁶³ However, if no representative is so named or if he or she does not appear, the court may direct the adverse party to procure an executor or administrator, who will be tasked to represent the deceased party until the case is terminated.⁶⁴

Hence, the Court finds it just to charge the face value of the subject check in the amount of One Million Five Hundred Forty-Five Thousand Two Hundred Fifty Pesos (₱1,545,250.00) against petitioner's estate.

Finally, the legal interest rate awarded by the MTCC, which was affirmed by both the RTC and the CA, must be modified pursuant to *Nacar v. Gallery Frames*⁶⁵ as follows: 12% *per annum* from the filing of the complaint until June 30, 2013; and 6% *per annum* from July 1, 2013 until fully paid.⁶⁶

WHEREFORE, the petition is **DENIED** and the Decision dated October 9, 2013 of the Court of Appeals in CA-G.R. CR No. 35118 is **AFFIRMED** with the following **MODIFICATIONS**:

⁶³ See *Republic v. Estate of Juan Maria Posadas III*, G.R. No. 214310, February 24, 2020.

⁶⁴ *Id.*

⁶⁵ 716 Phil. 267 (2013).

⁶⁶ *Id.* at 281-283. See also *Ongkingco v. Sugiyama*, G.R. No. 217787, September 18, 2019; *Abalos v. People*, G.R. No. 221836, August 14, 2019; *Saulo v. People*, G.R. No. 242900, June 8, 2020 (Resolution); and *Total Petroleum Philippines Corp. v. Lim*, G.R. No. 203566, June 23, 2020.

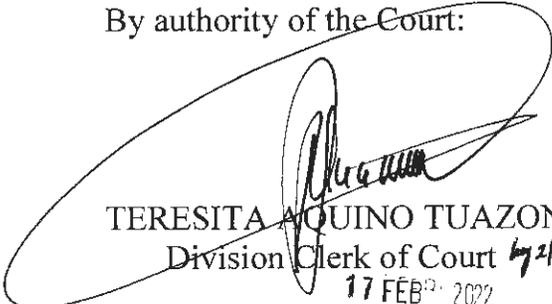
(1) The criminal aspect of the case against the petitioner is hereby dismissed by reason of his death; resultantly, the penalty of fine in the amount of ₱200,000.00 imposed against him is **DELETED**; and

(2) As to the civil aspect of the case, the amount of One Million Five Hundred Forty-Five Thousand Two Hundred Fifty Pesos (₱1,545,250.00) with the following legal interest rates: 12% *per annum* from the filing of the complaint until June 30, 2013; and 6% *per annum* from July 1, 2013 until fully paid shall be **CHARGED** against the Estate of Jose Alejandro Payumo III, with the adverse party to procure the appointment of an executor or administrator for the estate of the deceased;

(3) The compliance of the Court's Resolutions dated November 5, 2018, August 7, 2019, February 24, 2020, and October 14, 2020 addressed to the petitioner's heirs is **DISPENSED WITH**.

SO ORDERED." (ROSARIO, J., designated as Additional Member per Special Order No. 2835 dated July 15, 2021).

By authority of the Court:



TERESITA AQUINO TUAZON
Division Clerk of Court *by 2/17*
17 FEB 2022

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*with copy of the Decision dated 9 October 2013
Please notify the Court of any change in your address.
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