

## SECOND DIVISION

[ G.R. No. 220826, March 27, 2019 ]

**HUN HYUNG PARK, PETITIONER, V. EUNG WON[\*] CHOI,  
RESPONDENT.**

### D E C I S I O N

**CAGUIOA, J:**

Before this Court is a petition for review on *certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court filed by Petitioner Hun Hyung Park (Park) against Respondent Eung Won Choi (Choi), assailing the Court of Appeals' (CA) *Decision*<sup>[2]</sup> dated March 30, 2015 and *Resolution*<sup>[3]</sup> dated September 30, 2015 in CA-G.R. SP No. 124173.

In the assailed *Decision* and *Resolution*, the CA reversed and set aside the *Decision*<sup>[4]</sup> dated December 23, 2011 and *Order*<sup>[5]</sup> dated March 28, 2012 of the Regional Trial Court of Makati City - Branch 142 (RTC - Branch 142), which affirmed the *Decision*<sup>[6]</sup> dated April 26, 2011 of the Metropolitan Trial Court of Makati City - Branch 65 (MeTC), holding Choi civilly liable to pay Park the amount of One Million Eight Hundred Seventy-Five Thousand Pesos (P1,875,000.00) plus interest of 12% percent per annum from August 31, 2000 until the whole amount is paid, P200,000.00 as attorney's fees, and P9,322.25 as reimbursement for filing fees.<sup>[7]</sup>

#### ***The Antecedent Facts***

The present petition arose from a complaint<sup>[8]</sup> for *estafa* and violation of Batas Pambansa Blg. (B.P.) 22 filed by Park against Choi.

On June 28, 1999, Park, who was engaged in the business of lending money, extended a loan to Choi in the amount of P1,875,000.00.<sup>[9]</sup> As payment for the loan, Choi issued PNB Check No. 0077133<sup>[10]</sup> in the same amount dated August 28, 1999 in favor of Park.<sup>[11]</sup> On October 5, 1999, Park attempted to deposit the check to his bank account but the same was returned to him dishonored for having been drawn against a closed account.<sup>[12]</sup> Thereafter, Park, through counsel, sent a letter to Choi on May 11, 2000 informing the latter of the dishonored check.<sup>[13]</sup> Based on the registry return receipt attached to Park's *Complaint-Affidavit*,<sup>[14]</sup> and as stipulated by Choi during the pre-trial conference,<sup>[15]</sup> Choi received the demand letter on May 19, 2000 through a certain Ina Soliven.<sup>[16]</sup> Nevertheless, Choi failed to resolve the dishonored check.

With the loan remaining unpaid, Park instituted a complaint against Choi for *estafa* and violation of B.P. 22. Following Park's complaint, the Office of the City Prosecutor of Makati,<sup>[17]</sup> in an Information<sup>[18]</sup> dated August 31, 2000, charged Choi with one

count of violation of B.P. 22. The case was later docketed as Criminal Case No. 294690 before the MeTC.<sup>[19]</sup>

On arraignment,<sup>[20]</sup> Choi pleaded not guilty.<sup>[21]</sup> After the pre-trial conference and the prosecution's presentation of evidence, Choi filed a *Motion for Leave of Court to File Demurrer to Evidence* along with his *Demurrer*. In his *Demurrer*, Choi asserted that the prosecution failed to prove that he received the notice of dishonor.<sup>[22]</sup> Thus, Choi argued that since receipt of the notice of dishonor was not proven, then the presumption of knowledge of insufficiency of funds — an element for conviction of violation of B.P. 22 — did not arise.<sup>[23]</sup>

### ***Proceedings before the MeTC***

The MeTC **granted** Choi's *Demurrer* in an *Order* dated **February 27, 2003**<sup>[24]</sup> and **dismissed** the criminal complaint. The prosecution's *Motion for Reconsideration* of the dismissal was likewise denied, leading Park to appeal to the RTC of Makati City - Branch 60 (RTC - Branch 60).<sup>[25]</sup> In his appeal, Park contended that the dismissal of the criminal case should not carry with it the dismissal of the civil aspect of the case.<sup>[26]</sup>

### ***Ruling of the RTC - Branch 60***

The RTC - Branch 60,<sup>[27]</sup> in a *Decision*<sup>[28]</sup> dated September 11, 2003, **granted** Park's appeal. The RTC - Branch 60 held that while the evidence presented was insufficient to prove Choi's criminal liability for B.P. 22, it did not altogether extinguish his civil liability.<sup>[29]</sup> Accordingly, the RTC - Branch 60 ordered Choi to pay Park the face value of the check (P1,875,000.00) with legal interest.<sup>[30]</sup>

Aggrieved by the RTC - Branch 60 *Decision*, Choi filed a Motion for Reconsideration. Acting on Choi's Motion for Reconsideration, the RTC -Branch 60 **reversed** its September 11, 2003 *Decision* (finding that Choi was liable to Park for P1,875,000.00) and instead ordered the **remand** of the case to the MeTC so that Choi may adduce evidence on the civil aspect of the case.<sup>[31]</sup>

Meanwhile, aggrieved by the RTC - Branch 60's remand of the case to the MeTC, Park elevated the matter to the CA.<sup>[32]</sup> The CA, however, dismissed Park's petition on procedural grounds (*i.e.*, the verification and certification of non-forum shopping failed to comply with Section 4, Rule 7 of the Rules of Court;<sup>[33]</sup> failure to attach copies of the MeTC Order dismissing the criminal case, the *motion for leave to file demurrer to evidence* and the *demurrer*; and finally, for attaching an uncertified and illegible copy of the RTC - Branch 60 *Decision* of September 11, 2003).<sup>[34]</sup>

Unsatisfied with the CA's dismissal of his petition on procedural grounds, Park assailed the CA dismissal of his petition before the Court, and, in G.R. No. 165496 entitled "*Hun Hyung Park v. Eung Won Choi*,"<sup>[35]</sup> the Court, through its Second Division,<sup>[36]</sup> ruled that the remand of the case to the MeTC for reception of Choi's evidence on the civil aspect of the case was **proper**, *viz.*:

This Court therefore upholds respondent's right to present evidence as reserved by his filing of leave of court to file the demurrer.

**WHEREFORE**, the petition is, in light of the foregoing discussions, *DENIED*.

The case is *REMANDED* to the court of origin, Metropolitan Trial Court of Makati City, Branch 65 which is *DIRECTED* to forthwith set Criminal Case No. 294690 for further proceedings only for the purpose of receiving evidence on the civil aspect of the case.

Costs against petitioner.

**SO ORDERED.**<sup>[37]</sup>

In a *Resolution*<sup>[38]</sup> dated June 29, 2007, the Court denied Park's Motion for Reconsideration from the above *Decision*. The Court's *Decision* in G.R. No. 165496 attained finality on January 18, 2008.

### ***Proceedings before the MeTC***

With the proceedings now before the MeTC, the MeTC ordered the presentation of Choi's evidence on the civil aspect of the case. However, in the course of the proceedings before MeTC, Choi repeatedly moved for several postponements, which postponements eventually led the MeTC to issue its *Order*<sup>[39]</sup> dated March 7, 2011, declaring that Choi had waived his right to present evidence.

The specific incidents leading up to the MeTC *Order* dated March 7, 2011 are as follows:

The MeTC initially scheduled the case for reception of Choi's evidence on July 16, 2008, but the same was declared a holiday. Hearing was then reset to January 7, 2009, then to April 7, 2009 and to May 19, 2009 upon the instance of Choi. The case was again rescheduled to August 5, 2009, but the same was again declared a holiday. On September 15, 2010, Choi asked for postponement on the ground that he needed the assistance of an interpreter to assist him in translating his testimony from Korean to English.<sup>[40]</sup>

The MeTC granted Choi's request to reset the hearing from September 15, 2010 to November 23, 2010 in an *Order*<sup>[41]</sup> issued the same day. In the *Order*, the court warned that "[i]n the event that the defense fails to present its evidence on the next scheduled hearing, its right to do so will be deemed waived and the case will be considered submitted for resolution based on the prosecution's evidence."<sup>[42]</sup>

Notwithstanding the court's warning, in the scheduled hearing on November 23, 2010, Choi asked for another postponement on the ground that the *Certification as a Qualified Interpreter*<sup>[43]</sup> issued by the Korean Embassy of the Philippines and presented by Choi's interpreter, Han Jong<sup>[43a]</sup> Oh (Oh), certifies Oh's qualification as an interpreter in another case and not to the case then before the court.<sup>[44]</sup>

The MeTC again granted Choi's motion for postponement, with a warning that the grant of postponement on November 23, 2010 would be the last. The MeTC cautioned Choi that should he still be not ready by the next hearing, his right to present evidence would be considered waived.<sup>[45]</sup>

Despite the warning, on the scheduled hearing of March 7, 2011, Choi asked for yet another postponement on the ground that his previous counsel was retired from the practice of law and his new counsel was not prepared for the day's hearing. On that day, Park objected to further postponement of the case considering that the last two postponements had already come with the court's warning against further postponements.<sup>[46]</sup>

Ruling on what was by then the sixth motion for postponement by Choi, the MeTC, in an *Order* dated March 7, 2011, **denied** Choi's motion for postponement and declared that his right to present evidence had been waived. Accordingly, the MeTC ruled that the case was submitted for resolution.<sup>[47]</sup>

Subsequently, on **April 26, 2011**, the MeTC, rendered a *Decision* finding Choi civilly liable to Park, the dispositive portion of which reads:

WHEREFORE, premises considered, Eung Won Choi is ordered to pay private complainant Hun Hyung Park the amount of P1,875,000.00 representing the face value of the check subject of this case plus interest of 12% percent *per annum* from August 31, 2000 until the whole amount is paid, the amount of P200,000.00 by way of attorney's fees, and the amount of P9,322.25 as reimbursement for the filing fees.

Costs against the accused.

**SO ORDERED.**<sup>[48]</sup>

Insofar as Choi's alleged indebtedness was concerned, the MeTC held that the prosecution had proven that the check subject matter of the case was issued by Choi to Park in exchange of the cash loaned to him.<sup>[49]</sup> Choi, on the other hand, did not even adduce any evidence to controvert Park's claim of indebtedness.<sup>[50]</sup> Consequently, finding that Choi had no valid defense against Park's claim of indebtedness, the MeTC held that Choi was civilly liable to Park for the loan.<sup>[51]</sup>

On Choi's repeated motions for postponement, the MeTC observed that:

As early as May 12, 2008, the defense was ordered to present its evidence. In the interim, the parties negotiated for the settlement of the case. The reception of defense evidence was postponed on several dates to accommodate the alleged negotiation for the settlement of the case as well as due to the unavailability of a Korean interpreter to aid the accused.

In the Order of September 15, 2010, the defense was given one last chance to present evidence on November 23, 2010. Accused again failed to present its evidence. In order to afford the accused his constitutional right to defend himself and to present evidence, he was again given one last chance to present evidence on March 7, 2011. On said date, the handling lawyer, sent his son, Atty. Rainald Paggao, who manifested that his father can no longer handle the case. On the same day, Atty. Jesus F. Fernandez verbally entered his appearance as new counsel for the accused. Atty. Fernandez moved for a resetting of the case, which the Court denied considering the objection of the private prosecutor, as well as due to the repeated warnings issued, and considering further the

length of time afforded the accused to present its (sic) evidence. The defense right (sic) to present evidence was deemed waived and the case was considered submitted for resolution.<sup>[52]</sup>

Unsatisfied, Choi appealed the above MeTC *Decision* dated April 26, 2011 to the RTC - Branch 142.

### ***The Ruling of the RTC - Branch 142***

In its *Decision*, dated **December 23, 2011**, the RTC - Branch 142 **affirmed** the MeTC *Decision* and **denied** Choi's appeal, viz.:

All told, this Court finds that the imposition of civil liability against the accused-appellant is correctly decided by the lower court.

**WHEREFORE**, the instant appeal is hereby **DENIED** and the *Decision* dated 26 April 2011, rendered by the Metropolitan Trial Court, Branch 65, Makati City is **AFFIRMED IN TOTO**.<sup>[53]</sup>

In this regard, the RTC - Branch 142 observed that:

In the 15 September 2010 Order of the lower [court], [Choi] was already given the last opportunity to present his defense on 23 November 2010, but still failed to introduce any. [In spite] of the warning, the lower court cancelled the hearing to afford the defense another day, on 7 March 2011. It was on said date that the lower court was constrained to declare the right of [Choi] to present evidence as deemed waived considering the prosecution's vigorous objection, the repeated warnings to [Choi] and the length of time afforded to [Choi] to present his defense.

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[Choi's] failure to adduce his evidence[,] is, clearly, attributable not to the lower court but to himself due to his repeated postponements. If it were true that [Choi] wanted to adduce his evidence, he could have taken advantage of the ample opportunity to present, to be heard and to testify in open court with the assistance of his counsel.<sup>[54]</sup>

Maintaining his position that he did not waive his right to present evidence, Choi filed a *Motion for Reconsideration*<sup>[55]</sup> of the above *Decision* on March 6, 2012, scheduled for hearing on March 9, 2012.<sup>[56]</sup>

On March 7, 2012, the RTC - Branch 142 gave Park ten (10) days within which to file an Opposition (to the Motion for Reconsideration) and ten (10) days to Choi to file a Reply to the Opposition upon receipt thereof.<sup>[57]</sup> On March 13, 2012, Park filed his opposition, which was received by Choi on March 20, 2012.<sup>[58]</sup>

On March 28, 2012, the RTC - Branch 142 issued an *Order denying* Choi's Motion for Reconsideration. On March 30, 2012 - that is, the day on which his ten (10) day period to file his Opposition to the Motion for Reconsideration was to expire - Choi filed a motion for extension of time to file his reply.<sup>[59]</sup> Notably, the court had already denied Choi's Motion for Reconsideration two days prior, or on March 28, 2012. Based on the record, Choi did not file a Reply to the Opposition to the Motion for Reconsideration.