

THIRD DIVISION

[G.R. No. 157547, February 23, 2011]

**HEIRS OF EDUARDO SIMON, PETITIONERS, VS. ELVIN* CHAN
AND THE COURT OF APPEALS, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

There is no independent civil action to recover the civil liability arising from the issuance of an unfunded check prohibited and punished under *Batas Pambansa Bilang 22* (BP 22).

Antecedents

On July 11, 1997, the Office of the City Prosecutor of Manila filed in the Metropolitan Trial Court of Manila (MeTC) an information charging the late Eduardo Simon (Simon) with a violation of BP 22, docketed as Criminal Case No. 275381 entitled *People v. Eduardo Simon*. The accusatory portion reads:

That sometime in December 1996 in the City of Manila, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to Elvin Chan to apply on account or for value Landbank Check No. 0007280 dated December 26, 1996 payable to cash in the amount of P336,000.00 said accused well knowing that at the time of issue she/he/they did not have sufficient funds in or credit with the drawee bank for payment of such check in full upon its presentment, which check when presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said Elvin Chan the amount of the check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW. ^[1]

More than three years later, or on August 3, 2000, respondent Elvin Chan commenced in the MeTC in Pasay City a civil action for the collection of the principal amount of P336,000.00, coupled with an application for a writ of preliminary attachment (docketed as Civil Case No. 915-00).^[2] He alleged in his complaint the following:

2. Sometime in December 1996 defendant employing fraud, deceit, and misrepresentation encashed a check dated December 26, 1996 in the amount of P336,000.00 to the plaintiff assuring the latter that the check is duly funded and that he had an existing account with the Land Bank of the Philippines, xerox copy of the said check is hereto attached as Annex "A";

3. However, when said check was presented for payment the same was dishonored on the ground that the account of the defendant with the Land Bank of the Philippines has been closed contrary to his representation that he has an existing account with the said bank and that the said check was duly funded and will be honored when presented for payment;

4. Demands had been made to the defendant for him to make good the payment of the value of the check, xerox copy of the letter of demand is hereto attached as Annex "B", but despite such demand defendant refused and continues to refuse to comply with plaintiff's valid demand;

5. Due to the unlawful failure of the defendant to comply with the plaintiff's valid demands, plaintiff has been compelled to retain the services of counsel for which he agreed to pay as reasonable attorney's fees the amount of P50,000.00 plus additional amount of P2,000.00 per appearance.

ALLEGATION IN SUPPORT OF PRAYER
FOR PRELIMINARY ATTACHMENT

6. The defendant as previously alleged has been guilty of fraud in contracting the obligation upon which this action is brought and that there is no sufficient security for the claims sought in this action which fraud consist in the misrepresentation by the defendant that he has an existing account and sufficient funds to cover the check when in fact his account was already closed at the time he issued a check;

7. That the plaintiff has a sufficient cause of action and this action is one which falls under Section 1, sub-paragraph (d), Rule 57 of the Revised Rules of Court of the Philippines and the amount due the plaintiff is as much as the sum for which the plaintiff seeks the writ of preliminary attachment;

8. That the plaintiff is willing and able to post a bond conditioned upon the payment of damages should it be finally found out that the plaintiff is not entitled to the issuance of a writ of preliminary attachment.^[3]

On August 9, 2000, the MeTC in Pasay City issued a writ of preliminary attachment, which was implemented on August 17, 2000 through the sheriff attaching a Nissan vehicle of Simon.^[4]

On August 17, 2000, Simon filed an *urgent motion to dismiss with application to charge plaintiff's attachment bond for damages*,^[5] pertinently averring:

xxx

On the ground of *litis pendentia*, that is, as a consequence of the pendency of another action between the instant parties for the same cause before the Metropolitan Trial Court of Manila, Branch X (10) entitled "People of the Philippines vs. Eduardo Simon", docketed thereat as Criminal Case No. 275381-CR, the instant action is dismissable under Section 1, (e), Rule 16, 1997 Rules of Civil Procedure, xxx

xxx

While the instant case is civil in nature and character as contradistinguished from the said Criminal Case No. 915-00 in the Metropolitan Trial Court of Manila, Branch X (10), the basis of the instant civil action is the herein plaintiff's criminal complaint against defendant arising from a charge of violation of Batas Pambansa Blg. 22 as a consequence of the alleged dishonor in plaintiff's hands upon presentment for payment with drawee bank a Land Bank Check No. 0007280 dated December 26, 1996 in the amount of P336,000- drawn allegedly issued to plaintiff by defendant who is the accused in said case, a photocopy of the Criminal information filed by the Assistant City Prosecutor of Manila on June 11, 1997 hereto attached and made integral part hereof as Annex "1".

It is our understanding of the law and the rules, that, "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately xxx.

On August 29, 2000, Chan opposed Simon's *urgent motion to dismiss with application to charge plaintiff's attachment bond for damages*, stating:

1. The sole ground upon which defendant seeks to dismiss plaintiff's complaint is the alleged pendency of another action between the same parties for the same cause, contending among others that the pendency of Criminal Case No. 275381-CR entitled "People of the Philippines vs. Eduardo Simon" renders this case dismissable;

2. The defendant further contends that under Section 1, Rule 111 of the Revised Rules of Court, the filing of the criminal action, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action which the plaintiff does not contest; however, it is the submission of the plaintiff that an implied reservation of the right to file a civil action has already been made, first, by the fact that the information for violation of B.P. 22 in Criminal Case No. 2753841 does not at all make any allegation of damages suffered by the plaintiff

nor is there any claim for recovery of damages; on top of this the plaintiff as private complainant in the criminal case, during the presentation of the prosecution evidence was not represented at all by a private prosecutor such that no evidence has been adduced by the prosecution on the criminal case to prove damages; all of these we respectfully submit demonstrate an effective implied reservation of the right of the plaintiff to file a separate civil action for damages;

3. The defendant relies on Section 3 sub-paragraph (a) Rule 111 of the Revised Rules of Court which mandates that after a criminal action has been commenced the civil action cannot be instituted until final judgment has been rendered in the criminal action; however, the defendant overlooks and conveniently failed to consider that under Section 2, Rule 111 which provides as follows:

In the cases provided for in Articles 31, 32, 33, 34 and 2177 of the Civil Code of the Philippines, an independent civil action entirely separate and distinct from the criminal action, may be brought by the injured party during the pendency of criminal case provided the right is reserved as required in the preceding section. Such civil action shall proceed independently of the criminal prosecution, and shall require only a preponderance of evidence.

In as much as the case is one that falls under Art. 33 of the Civil Code of the Philippines as it is based on fraud, this action therefore may be prosecuted independently of the criminal action;

4. In fact we would even venture to state that even without any reservation at all of the right to file a separate civil action still the plaintiff is authorized to file this instant case because the plaintiff seeks to enforce an obligation which the defendant owes to the plaintiff by virtue of the negotiable instruments law. The plaintiff in this case sued the defendant to enforce his liability as drawer in favor of the plaintiff as payee of the check. Assuming the allegation of the defendant of the alleged circumstances relative to the issuance of the check, still when he delivered the check payable to bearer to that certain Pedro Domingo, as it was payable to cash, the same may be negotiated by delivery by who ever was the bearer of the check and such negotiation was valid and effective against the drawer;

5. Indeed, assuming as true the allegations of the defendant regarding the circumstances relative to the issuance of the check it would be entirely impossible for the plaintiff to have been aware that such check was intended only for a definite person and was not negotiable considering that the said check was payable to bearer and was not even crossed;

6. We contend that what cannot be prosecuted separate and apart from the criminal case without a reservation is a civil action arising from the

criminal offense charged. However, in this instant case since the liability of the defendant are imposed and the rights of the plaintiff are created by the negotiable instruments law, even without any reservation at all this instant action may still be prosecuted;

7. Having this shown, the merits of plaintiff's complaint the application for damages against the bond is totally without any legal support and perforce should be dismissed outright.^[6]

On October 23, 2000, the MeTC in Pasay City granted Simon's *urgent motion to dismiss with application to charge plaintiff's attachment bond for damages*,^[7] dismissing the complaint of Chan because:

xxx

After study of the arguments of the parties, the court resolves to GRANT the Motion to Dismiss and the application to charge plaintiff's bond for damages.

For "*litis pendentia*" to be a ground for the dismissal of an action, the following requisites must concur: (a) identity of parties or at least such as to represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same acts; and (c) the identity in the two (2) cases should be such that the judgment, which may be rendered in one would, regardless of which party is successful, amount to *res judicata* in the other. xxx

A close perusal of the herein complaint denominated as "Sum of Money" and the criminal case for violation of BP Blg. 22 would readily show that the parties are not only identical but also the cause of action being asserted, which is the recovery of the value of Landbank Check No. 0007280 in the amount of P336,000.00. In both civil and criminal cases, the rights asserted and relief prayed for, the reliefs being founded on the same facts, are identical.

Plaintiff's claim that there is an effective implied waiver of his right to pursue this civil case owing to the fact that there was no allegation of damages in BP Blg. 22 case and that there was no private prosecutor during the presentation of prosecution evidence is unmeritorious. It is basic that when a complaint or criminal Information is filed, even without any allegation of damages and the intention to prove and claim them, the offended party has the right to prove and claim for them, unless a waiver or reservation is made or unless in the meantime, the offended party has instituted a separate civil action. xxx The over-all import of the said provision conveys that the waiver which includes indemnity under the Revised Penal Code, and damages arising under Articles 32, 33, and 34 of the Civil Code must be both clear and express. And this must be logically so as the primordial objective of the Rule is to prevent the offended party from recovering damages twice for the same act or omission of the accused.