

## SECOND DIVISION

[ G.R. No. 152666, April 23, 2008 ]

**MARCIANO TAN, PETITIONER, VS. PHILIPPINE COMMERCIAL  
INTERNATIONAL BANK, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

From the March 19, 2002 Decision<sup>[1]</sup> of the Court of Appeals affirming that of the Makati Regional Trial Court (RTC) convicting Marciano Tan, herein petitioner, of nine (9) counts of violation of Batas Pambansa Blg. 22 (B.P. Blg. 22) or the Bouncing Checks Law, petitioner filed the present petition for review on certiorari.

The following **undisputed** facts spawned the filing of the nine (9) informations for violation of BP Blg. 22 against petitioner.

Master Tours and Travel (MTT), of which petitioner was executive vice-president, applied on July 16, 1990 for a 360-day Usance Letter of Credit (LC) with respondent Philippine Commercial International Bank (PCIB) for the importation of four tourist buses with a total value of US\$430,000<sup>[2]</sup> from Daewoo Corporation of Seoul, Korea (the supplier), which was agreed upon by the parties to amount to "closed [*sic*] to P10 Million Pesos"<sup>[3]</sup> computed on the basis of the then prevailing rate of exchange of the dollar to the peso.

As a condition to the grant of the LC, PCIB and MTT entered into a Memorandum of Agreement<sup>[4]</sup> under which the initial drawings of the supplier in the amount of US\$5,700 against the LC would be paid by PCI Leasing and Finance Inc. (PCILF) out of the proceeds of MTT's amortized loan with it, and any subsequent drawings against the LC by the supplier in excess of the said amount would be paid out of the proceeds of Treasury Bills which PCIB would purchase out of the proceeds of post-dated checks to be issued by MTT.

MTT thus issued five checks postdated August, September, October, November, and December 1990 each for P716,666.66 and another check in January 1991 for P716,666.70 or in the total amount of P4,300,000.

PCIB thereupon issued the Usance LC in favor of the supplier, which was to mature in October 1991.

The tourist buses arrived in October 1990 and were delivered to MTT, covered by Trust Receipts with PCIB as entruster and MTT as entrustee.

Of the six checks that MTT issued to PCIB, the first five representing a total amount of P3,583,333 were cleared but not the last one dated January 1991. PCIB soon demanded settlement of this dishonored check from MTT. At the same time, PCIB

required MTT to pay the exchange differential on the peso-dollar rate which was P23.7884 to US\$1 in July 1990 when the LC was issued to P28.56 to US\$1 in January 1991 when the last postdated check matured but was dishonored. The exchange differential was computed by PCIB to amount to P2,061,331.20. MTT agreed to pay the exchange differential, albeit it later claimed that its agreement to pay the differential was a "mistake"<sup>[5]</sup> since no such condition was incorporated in their contract. The exchange differential, of P2,061,331.20 when added to the P716,666.70 face value of the dishonored check, totalled P2,777,999.86.

MTT thus issued 14 postdated checks of P198,428.42, payable every 15 days, the first to start on February 28, 1991.

Of the 14 checks, only the first five were honored, the proceeds of which totaled P992,142.10. The other nine, those dated May 15, 1991 et seq. in the total amount of P1,785,855.78, were dishonored - the subject of the nine informations at bar.

MTT, having suffered financial reverses, availed of provision No. 7 of the Trust Receipt reading.

7. In the event the Entrustee defaults in his/its obligations or breaches or fails to comply with the terms and conditions of this Trust Receipt, or upon default in, breach of or noncompliance with the obligation evidenced by Annex A hereof or the agreement under which the Entruster issued the letter of credit under the terms of which the Trust Property was purchased ("events of default"), the Entruster may cancel this trust, and thereupon take possession of the Trust Property and/or such proceeds as may then have been realized therefrom, and have the goods sold and the proceeds of such sale applied, in accordance with the provisions of Section 7 of the Trust Receipts Law. In all cases where the Entruster is compelled to resort to the cancellation of this Trust Receipt or to take any other legal action to protect its interest, the Entrustee shall pay attorney's fees fixed at 15% of the total obligation of the Entrustee, which in no case shall be less than P500.00 exclusive of the costs and fees allowed by law and the other expenses of collection incurred by the Entruster. Any deficiency resulting from the sale of the Trust Property shall be paid by the Entrustee within 24 hours from such sale; failing which the Entruster may take such legal action, without further notice to the Entrustee, as it may deem necessary to collect such deficiency from the Entrustee.<sup>[6]</sup> (Underscoring supplied)

MTT thus surrendered the buses to PCIB which accepted them in mid 1991 and March 1992. By MTT's claim the buses were, at the time of surrender, estimated to be "about 6.6 million."

Subsequently or in July 1992, PCIB sent petitioner a letter of July 9, 1992 reading:

x x x x

From the records now in our possession, it appears that despite promises made by you to make good your obligations, no performance thus far has been made. As of June 30, 1992, inclusive of interests and penalty charges, your obligations totaled P10,327,591.21.

Since adequate time and opportunity had already been given you by our client, you are now requested to remit to it the aforesaid sum of P10,327,591.21 within five (5) days from your receipt hereof, otherwise, we shall bring you to court.

x x x x<sup>[7]</sup> (Underscoring supplied)

Replying, petitioner's counsel, by letter of July 22, 1992, wrote PCIB as follows:

Your letters of July 9, 1992 were endorsed to us for appropriate reply by our clients, Master Tours and Travel Corporation and Marciano Tan.

Your letter to Mr. Tan makes mention of two (2) trust receipts signed by him covering the importation of the four (4) units DAEWOO buses you want our client to account for. However, Philippine Commercial International Bank ("PCIB") never furnished our client copies thereof. And up to this date, none is in the possession of our client. Could you please provide our client with copies of the documents?

Delving into the crux of your demand, kindly be advised that our clients voluntarily surrendered physical possession and custody of the four (4) DAEWOO buses to PCIB as early as August [sic] 1991. The units were accepted by PCIB and, therefore, there no longer exist[s] any liability or obligation on the part of our clients towards that of yours. As clearly stated in your subject letter written to Mr. Marciano Tan, under the terms of the trust receipts, our client has the alternative obligation to either surrender the buses upon demand or pay the total value thereof. **As the buses have been surrendered and delivered to your client, our client's obligation has been extinguished.**

We suggest then that your clarify the fact of delivery of the four (4) units with your client.

We do hope to have amply answered and enlightened you on the status of the matter regarding our client's supposed liability on the four (4) buses.<sup>[8]</sup> (Emphasis and underscoring supplied)

There is no showing if PCIB reacted to the above-quoted letter of petitioner's counsel. PCIB subsequently filed in October 1992 a criminal complaint against petitioner before the Makati City Prosecutor's Office which resulted in the filing on April 1, 1993 of the nine informations against him for violation of B.P. Blg. 22 before the RTC of Makati. The first information, Criminal Case No. 93-2365, reads:

That on or about the 29<sup>th</sup> day of January 1991, in the Municipality of Makati, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused as the duly authorized signatory of Master Tours and Travel Corporation, did then and there willfully, unlawfully and feloniously make or draw and issue to Philippine Commercial Int[ernational] Bank to apply on account or for value the check/described below:

Check No.: 677744  
Drawn Against: Philippine Banking Corp.  
In the amount: P198,428.42  
Dated/Postdated: May 15, 1991  
Payable to: Philippine Commercial International Bank

said accused well knowing that at the time of issue thereof Master Tours & Travel Corp. had no sufficient funds in or credit with the drawee bank for the payment in full of the face amount of the check upon its presentment, which check was presented for payment within ninety (90) days from the date thereof was subsequently dishonored by the drawee bank for the reason "Drawn Against Insufficient Funds" and, despite receipt of notice of said dishonor, the accused and/or Master Tours & Travel Corporation failed to pay said payee the face amount of said check or to make arrangement for full payment thereof within five (5) banking days after receiving notice.<sup>[9]</sup> (Underscoring partly in the original and partly supplied)

The other eight informations, Criminal Case Nos. 93-2366 to 93-2373, are similarly worded and for the same amount, differing only as to the check numbers, the dates of issue and, with respect to Criminal Cases No. 93-2368 to 93-2373, the cause of dishonor ("account closed").<sup>[10]</sup>

Branch 142 of the Makati RTC, by Decision<sup>[11]</sup> of October 25, 1995, convicted petitioner of all the nine charges. The trial court absolved petitioner of civil liability, however, because "the money obligations arising from the checks are of Master Tours & Travel Corporation and not of the accused Marciano Tan who did not, by signing in behalf of the corporation, assume personal liability therefor."<sup>[12]</sup> Thus, the trial court disposed:

**WHEREFORE, the Court finds the accused MARCIANO T. TAN to be GUILTY beyond reasonable doubt of these nine (9) criminal charges for violation of BP 22, and hereby sentences him to suffer imprisonment for THIRTY (30) days for EACH of the NINE [9] CRIMINAL OFFENSES CHARGED.**

For lack of evidence, the claim of civil liability arising from the nine [9] dishonored checks, are DISMISSED, without prejudice to their being taken up in a proper civil action for recovery of the amounts till due, if any, from Master Tours [&] Travel Corporation.

Costs against the accused.<sup>[13]</sup> (Emphasis in the original; underscoring supplied)

On petitioner's appeal, the Court of Appeals affirmed the trial court's decision by Decision of March 19, 2002. Hence, the present Petition for Review,<sup>[14]</sup> faulting the appellate court

A

. . . IN CONVICTING THE ACCUSED DESPITE THE FACT THAT HIS

CRIMINAL LIABILITY WAS EXTINGUISHED BY HIS HAVING **OVERPAID** PCIB.

B

. . . IN NOT FINDING THAT MASTER HAD FULLY PAID PCIB [AND] . . . IN NOT FINDING THAT MASTER, AS A MATTER OF FACT, HAD IN EFFECT, OVERPAID PCIB WHEN THE LATTER **PULLED OUT THE BUSES SUBJECT OF THE TRUST RECEIPTS** ISSUED IN CONNECTION WITH THE TRANSACTION.

C

. . . IN NOT FINDING THAT THE **CONTRACT DOCUMENTS DO NOT CONTAIN ANY STIPULATION AS TO ADJUSTMENT OF THE OBLIGATION IN CASE OF FOREIGN EXCHANGE FLUCTUATION.** THERE IS NOTHING IN THE MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES NOR IN THE LETTER OF CREDIT APPLICATION OR IN ANY DOCUMENT COVERING THE TRANSACTION WHEREIN MASTER TOURS OBLIGED ITSELF TO PAY AN INCREASE IN DOLLAR EXCHANGE RATE FLUCTUATION. CONVERSELY, NEITHER IS PCIB OBLIGED TO REFUND MASTER TOURS OF ANY DECREASE IN THE PESO DOLLAR EXCHANGE RATE.

D

. . . IN NOT FINDING THAT EVEN ASSUMING MASTER WAS OBLIGED TO PAY FOREIGN EXCHANGE RATE DIFFERENTIAL, IT WAS **PREMATURE TO DEMAND IT [ON] JANUARY 7, 1991.**

x x x x

F

. . . IN NOT FINDING THAT THE **SUPERVENING BANKRUPTCY** SUFFERED BY MASTER BROUGHT ABOUT BY THE ECONOMIC DISLOCATION OF THE COUNTRY BROUGHT ABOUT BY THE MOUNT PINATUBO ERUPTION, THE GULF WAR AND THE BAGUIO EARTHQUAKE **DISCULPATES THE ACCUSED FROM CRIMINAL LIABILITY.**<sup>[15]</sup>  
(Emphasis and underscoring supplied)

The petition is impressed with merit.

Unless the following elements are shown to have been proven by the prosecution, an accused will not be convicted for violation of B.P. Blg. 22:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the