

## SECOND DIVISION

[ G.R. No. 125059, March 17, 2000 ]

**FRANCISCO T. SYCIP, JR., PETITIONER, VS. COURT OF APPEALS  
AND PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**QUISUMBING, J.:**

For review on *certiorari* is the decision of the Court of Appeals, dated February 29, 1996, in CA-G.R. CR No. 15993, which affirmed the judgment of the Regional Trial Court of Quezon City, Branch 95, in Criminal Cases Nos. Q-91-25910 to 15, finding petitioner guilty beyond reasonable doubt of violating B.P. Blg. 22, the Bouncing Checks Law.

The facts in this case, as culled from the records, are as follows:

On August 24, 1989, Francisco T. Sycip agreed to buy, on installment, from Francel Realty Corporation (FRC), a townhouse unit in the latter's project at Bacoor, Cavite.

Upon execution of the contract to sell, Sycip, as required, issued to FRC, forty-eight (48) postdated checks, each in the amount of P9,304.00, covering 48 monthly installments.

After moving in his unit, Sycip complained to FRC regarding defects in the unit and incomplete features of the townhouse project. FRC ignored the complaint. Dissatisfied, Sycip served on FRC two (2) notarial notices to the effect that he was suspending his installment payments on the unit pending compliance with the project plans and specifications, as approved by the Housing and Land Use Regulatory Board (HLURB). Sycip and 12 out of 14 unit buyers then filed a complaint with the HLURB. The complaint was dismissed as to the defects, but FRC was ordered by the HLURB to finish all incomplete features of its townhouse project. Sycip appealed the dismissal of the complaint as to the alleged defects.

Notwithstanding the notarial notices, FRC continued to present for encashment Sycip's postdated checks in its possession. Sycip sent "stop payment orders" to the bank. When FRC continued to present the other postdated checks to the bank as the due date fell, the bank advised Sycip to close his checking account to avoid paying bank charges every time he made a "stop payment" order on the forthcoming checks. Due to the closure of petitioner's checking account, the drawee bank dishonored six postdated checks. FRC filed a complaint against petitioner for violations of B.P. Blg. 22 involving said dishonored checks.

On November 8, 1991, the Quezon City Prosecutor's Office filed with the RTC of Quezon City six Informations docketed as Criminal Cases No. Q-91-25910 to Q-91-25915, charging petitioner for violation of B.P. Blg. 22.

The accusative portion of the Information in Criminal Case No. Q-91-25910 reads:

"That on or about the 30th day of October 1990 in Quezon City, Philippines and within the jurisdiction of this Honorable Court, the said accused, did then and there, willfully, unlawfully and feloniously make, draw and issue in favor of Francel Realty Corporation a check 813514 drawn against Citibank, a duly established domestic banking institution in the amount of P9,304.00 Philippine Currency dated/postdated October 30, 1990 in payment of an obligation, knowing fully well at the time of issue that she/he did not have any funds in the drawee bank of (sic) the payment of such check; that upon presentation of said check to said bank for payment, the same was dishonored for the reason that the drawer thereof, accused Francisco T. Sycip, Jr. did not have any funds therein, and despite notice of dishonor thereof, accused failed and refused and still fails and refused (sic) to redeem or make good said check, to the damage and prejudice of the said Francel Realty Corporation in the amount aforementioned and in such other amount as may be awarded under the provisions of the Civil Code.

"CONTRARY TO LAW."<sup>[1]</sup>

Criminal Cases No. Q-91-25911 to Q-91-25915, with Informations similarly worded as in Criminal Case No. Q-91-25910, except for the dates, and check numbers<sup>[2]</sup> were consolidated and jointly tried.

When arraigned, petitioner pleaded "Not Guilty" to each of the charges. Trial then proceeded.

The prosecution's case, as summarized by the trial court and adopted by the appellate court, is as follows:

"The prosecution evidence established that on or about August 24, 1989, at the office of the private complainant Francel Realty Corporation (a private domestic corporation engaged in the real estate business) at 822 Quezon Avenue, QC, accused Francisco Sycip, Jr. drew, issued, and delivered to private complainant Francel Realty Corporation (FRC hereinafter) six checks (among a number of other checks), each for P9,304.00 and drawn pay to the order of FRC and against Francisco's account no. 845515 with Citibank, to wit: Check No. 813514 dated October 30, 1990 (Exh. C), Check No. 813515 dated November 30, 1990 (Exh. D), Check No. 813518 dated February 28, 1991 (Exh. E), Check No. 813516 dated December 30, 1990 (Exh. F), Check No. 813517 dated January 30, 1991 (Exh. G) and Check No. 813519 dated March 30, 1991 (Exh. H), as and in partial payment of the unpaid balance of the purchase price of the house and lot subject of the written contract executed and entered into by and between FRC as seller and Francisco as buyer on said date of August 24, 1989 (Exh. B, also Exh. 1). The total stipulated purchase price for the house and lot was P451,700.00, of which Francisco paid FRC in the sum of P135,000.00 as down payment, with Francisco agreeing and committing himself to pay the balance of P316,000.00 in 48 equal monthly installments of P9,304.00 (which sum already includes

interest on successive monthly balance) effective September 30, 1989 and on the 30th day of each month thereafter until the stipulated purchase price is paid in full. The said six Citibank checks, Exhs. C thru H, as earlier indicated were drawn, issued, and delivered by Francisco in favor of FRC as and in partial payment of the said 48 equal monthly installments under their said contract (Exh. B, also Exh. 1). Sometime in September 1989, the Building Official's certificate of occupancy for the subject house -a residential townhouse -was issued (Exh. N) and Francisco took possession and started in the use and occupancy of the subject house and lot.

"When the subject six checks, Exhs. C thru H, were presented to the Citibank for payment on their respective due dates, they were all returned to FRC dishonored and unpaid for the reason: account closed as indicated in the drawee bank's stamped notations on the face and back of each check; in fact, as indicated in the corresponding record of Francisco's account no. 815515 with Citibank, said account already had a zero balance as early as September 14, 1990 (Exh. 1-5). Notwithstanding the fact that FRC, first thru its executive vice president and project manager and thereafter thru its counsel, had notified Francisco, orally and in writing, of the checks' dishonor and demanded from him the payment of the amount thereof, still Francisco did not payor make good any of the checks (Exhs. I thru K)..."<sup>[3]</sup>

The case for the defense, as summarized also by the trial court and adopted by the Court of Appeals, is as follows:

"The defense evidence in sum is to the effect that after taking possession and starting in the use and occupancy of the subject townhouse unit, Francisco became aware of its various construction defects; that he called the attention of FRC, thru its project manager, requesting that appropriate measures be forthwith instituted, but despite his several requests, FRC did not acknowledge, much less attend to them; that Francisco thus mailed to FRC a verified letter dated June 6, 1990 (Exh. 2) in sum giving notice that effective June 1990, he will cease and desist 'from paying my monthly amortization of NINE THOUSAND THREE HUNDRED FOUR (P9,304.00) PESOS towards the settlement of my obligation concerning my purchase of Unit No. 14 of FRC Townhomes referred to above, unless and until your Office satisfactorily complete(s) the construction, renovation and/or repair of my townhouses (sic) unit referred to above' and that should FRC 'persist in ignoring my aforesaid requests, I shall, after five (5) days from your receipt of this Verified Notice, forthwith petition the [HLURB] for Declaratory Relief and Consignation to grant me provisional relief from my obligation to pay my monthly amortization to your good Office and allow me to deposit said amortizations with [HLURB] pending your completion of FRC Townhomes Unit in question'; that Francisco thru counsel wrote FRC, its president, and its counsel notices/letters in sum to the effect that Francisco and all other complainants in the [HLURB] case against FRC shall cease and desist from paying their monthly amortizations unless and until FRC satisfactorily completes the construction of their units in accordance with the plans and specifications thereof as approved by the [HLURB] and as

warranted by the FRC in their contracts and that the dishonor of the subject checks was a natural consequence of such suspension of payments, and also advising FRC not to encash or deposit all other postdated checks issued by Francisco and the other complainants and still in FRC's possession (Exhs. 3 thru 5); that Francisco and the other complainants filed the [HLURB] case against FRC and later on a decision was handed down therein and the same is pending appeal with the Board (Exhs. 6, 7, & 12 thru 17, also Exh. 8); that as of the time of presentation of the subject checks for payment by the drawee bank, Francisco had at least P150,000.00 cash or credit with Citibank (Exhs. 10 & 11) and, that Francisco closed his account no. 845515 with Citibank conformably with the bank's customer service officer's advice to close his said account instead of making a stop-payment order for each of his more than 30 post-dated checks still in FRC's possession at the time, so as to avoid the P600.00-penalty imposed by the bank for every check subject of a stop-payment order."<sup>[4]</sup>

On March 11, 1994, the trial court found petitioner guilty of violating Section 1 of B.P. Blg. 22 in each of the six cases, disposing as follows:

"WHEREFORE, in each of Crim. Cases Nos. Q-91-25910, Q-91-25911, Q-91-25912, Q-91-25913, Q-91-25914 and Q-91-25915, the Court finds accused Francisco T. Sycip, Jr. guilty beyond reasonable doubt of a violation of Sec. 1 of Batas Pambansa Blg. 22 and, accordingly, he is hereby sentenced in and for each case to suffer imprisonment of thirty (30) days and pay the costs. Further, the accused is hereby ordered to pay the offended party, Francel Realty Corporation, as and for actual damages, the total sum of fifty-five thousand eight hundred twenty four pesos (P55,824.00) with interest thereon at the legal rate from date of commencement of these actions, that is, November 8, 1991, until full payment thereof.

"SO ORDERED."<sup>[5]</sup>

Dissatisfied, Sycip appealed the decision to the Court of Appeals. His appeal was docketed as CA-G.R. CR No. 15993. But on February 29, 1996, the appellate court ruled:

"On the basis of the submission of the People, We find and so hold that appellant has no basis to rely on the provision of PD 957 to justify the non-payment of his obligation, the closure of his checking account and the notices sent by him to private complainant that he will stop paying his monthly amortizations."<sup>[6]</sup>

Petitioner filed a motion for reconsideration on March 18, 1996, but it was denied per Resolution dated April 22, 1996.

Hence, the instant petition anchored on the following assignment of errors:

# I

"THE APPELLATE COURT ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT FINDING THAT THE ACCUSED-APPELLANT DID NOT HAVE

ANY JUSTIFIABLE CAUSE TO STOP OR OTHERWISE PREVENT THE PAYMENT OF THE SUBJECT CHECKS BY THE DRAWEE BANK.

## II

"THE LOWER COURT ERRED IN FINDING THAT THE ACCUSED-APPELLANT MUST BE DEEMED TO HAVE WAIVED HIS RIGHT TO COMPLAIN AGAINST THE DEVELOPMENT OF THE TOWNHOUSE UNIT AND THE TOWNHOUSE PROJECT.

## III

"THE APPELLATE COURT ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT THAT THE ACCUSED-APPELLANT DID NOT HAVE SUFFICIENT FUNDS WITH THE DRAWEE BANK TO COVER THE SUBJECT CHECKS UPON PRESENTMENT FOR PAYMENT THEREOF.

## IV

"THE APPELLATE COURT ERRED IN AFFIRMING THE DECISION OF THE LOWER COURT CONVICTING THE ACCUSED-APPELLANT AND AWARDING DAMAGES IN FAVOR OF PRIVATE COMPLAINANT."<sup>[7]</sup>

The principal issue before us is whether or not the Court of Appeals erred in affirming the conviction of petitioner for violation of the Bouncing Checks Law.

Petitioner argues that the court *a quo* erred when it affirmed his conviction for violation of B.P. Blg. 22, considering that he had cause to stop payment of the checks issued to respondent. Petitioner insists that under P.D. No. 957, the buyer of a townhouse unit has the right to suspend his amortization payments, should the subdivision or condominium developer fail to develop or complete the project in accordance with duly-approved plans and specifications. Given the findings of the HLURB that certain aspects of private complainant's townhouse project were incomplete and undeveloped, the exercise of his right to suspend payments should not render him liable under B.P. Blg. 22.

The Solicitor General argues that since what petitioner was charged with were violations of B.P. Blg. 22, the intent and circumstances surrounding the issuance of a worthless check are immaterial.<sup>[8]</sup> The gravamen of the offense charged is the act itself of making and issuing a worthless check or one that is dishonored upon its presentment for payment. Mere issuing of a bad check is *malum prohibitum*, pernicious and inimical to public welfare. In his view, P.D. No. 957 does not provide petitioner a sufficient defense against the charges against him.

Under the provisions of the Bouncing Checks Law (B.P. No. 22),<sup>[9]</sup> an offense is committed when the following elements are present:

- (1) the making, drawing and issuance of any check to apply for account or for value;
- (2) the knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the