

## SECOND DIVISION

[ G.R. No. 114823, December 23, 1999 ]

**NILO B. DIONGZON, PETITIONER, VS. COURT OF APPEALS AND  
PEOPLE OF THE PHILIPPINES, RESPONDENTS.**

### DECISION

**MENDOZA, J:**

Before us is a petition seeking a review of the decision and resolution of the Court of Appeals<sup>[1]</sup> in CA-G.R. No. 08094 affirming the conviction of herein petitioner of violation of B.P. Blg. 22, the Bouncing Checks Law, by the Regional Trial Court, Branch 43, Bacolod City.

The information in this case charged -

That sometime in August, 1981, in the City of Bacolod, Philippines, and within the jurisdiction of this Honorable Court, the herein accused with intent to gain and by means of false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud knowing that at the time of issue he did not have deposit in or credit with the Allied Banking Corporation, Bacolod Branch, and/or after such issue, failed to keep sufficient funds or to maintain a credit to cover the full amount thereof, did, then and there willfully, unlawfully and feloniously make out, draw, issue and deliver to the herein offended party Filipro, Inc., represented herein by its Area Sales Manager, Anacleto Palisoc, the following checks, to wit:

1. ABC Check No. 540295881-E postdated

September 15, 1981 . . . . . P 36,874.00

2. ABC Check No. 540295880-E postdated

September 16, 1981 . . . . . P130,597.75

3. ABC Check No. 540295899-E postdated

October 3, 1981 . . . . . P130,647.75

or a total sum of Two Hundred Ninety Eight Thousand One Hundred Nineteen Pesos & 75/100 (P298,119.75) in payment of his accountabilities with said offended party; after said offended party, however, deposited said checks with its depository bank, upon presentment for payment therefor within a period of ninety (90) days from the date appearing thereon, the same were dishonored by the drawee bank for reasons that accused's signature differs from specimen on file and/or he had insufficient funds deposited with the Allied Banking Corporation, Bacolod Branch; that despite

such notice of such dishonor and repeated demands for the redemption, payment and/or any arrangements for payment in full of such checks within five (5) banking days after receipt of such notice, said accused deliberately refused and continue(sic) to refuse and fail(sic) to redeem the same or pay the value thereof up to the present time, to the damage and prejudice of the said offended party in the amount of Two Hundred Ninety Eight Thousand One Hundred Nineteen Pesos & 75/100 (P298,119.75), Philippine Currency.

Act contrary to law.

Bacolod City, Philippines, 15 December 1981.

Three witnesses - Anacleto B. Palisoc, area sales manager of Filipro, Inc., Linda Nicolas, cashier of Allied Banking Corporation (ABC), and Rogelio Azures, supervising document examiner of the National Bureau of Investigation (NBI) - testified for the prosecution. On the other hand, petitioner Nilo B. Diongzon testified in his own behalf.

The facts are summarized in the following portion of the decision of the Court of Appeals:

[A]ccused was a sales supervisor of Filipro Incorporated (now Nestle Philippines, Inc.). As such, he had authority to allow the withdrawal of Filipro products from its warehouse for delivery to its dealers or customers, to receive payment therefor and remit the same to Filipro through its depository bank at Bacolod City.

Due to the finding by Filipro accounting department that some delivery orders signed by the accused seemed questionable as the quantities ordered "were unusually big and seemed abnormal," Anacleto Palisoc, area sales manager, was authorized to conduct an investigation of the accused's withdrawal of goods and remittance of payments. Palisoc went to Bacolod City and contacted the dealers who were supposed to have ordered the goods. Certain dealers, namely: Queensland, Queendies, and Cokins denied having received the goods listed in the delivery orders signed by the accused. Whereupon, the accused approached Rene Garibay, sales representative, and offered his assistance in the collection of payments for the outstanding delivery orders. The next day the accused presented to him (Garibay) three checks in payment of the items listed in the invoices allegedly issued to Queensland, Queendies, and Cokins. These checks were (1) ABC Check No. 540295881-E, postdated September 15, 1981 for P36,874.00 (Exh. A); (2) ABC Check No. 540295880-E postdated September 16, 1981 for P130,597.75 (Exh. B); (3) ABC Check No. 540295899-E postdated October 3, 1981 for P130,647.75 (Exh. C).

The three checks were deposited with the Security Bank and Trust Company (Bacolod Branch), Filipro's depository bank. However, upon presentment to the drawee bank (Allied Banking Corporation, Bacolod Branch), the three checks were dishonored. The first two checks were dishonored because of the apparent difference between the drawer's signatures thereon and those in the bank's files. The third check was dishonored for insufficiency of funds.

After the checks were dishonored, Palisoc and Garibay conferred with the dealers of Queensland and Queendies. The latter claimed that they did not issue the checks

nor receive the goods under the delivery orders signed by the accused. When confronted about this matter, the accused acknowledged responsibility and promised to settle the same. He also admitted having issued the three checks under his account No. 006873 with the Allied Banking Corporation (Bacolod Branch). He explained that he resorted to credit riding, a practice whereby other dealers were allowed to use the existing credit line of the authorized dealers in order to avail of Filipro's goods without cash payments. According to the accused, he practiced this technique which was unofficially allowed by the company in order to achieve Filipro sales targets. He claimed that certain goods covered by delivery order No. 793192 with invoice No. 756445 in the amount of P125,971.40 intended for delivery to Reboton store were actually delivered to another dealer, UN Merchandising; that he issued his checks for the payment of accounts of the dealers, to whom the goods were delivered, with the understanding that he would hold on to those checks while waiting for their payments; and that he did this to accommodate the dealers.

During trial, petitioner initially denied that the signatures appearing in the first two checks were his. Then he argued that the three checks were not issued "on account" or "for value" as required in B.P. Blg. 22. Later, however, he admitted that he issued the third check to replace the second check which, he insisted, he did not issue.<sup>[2]</sup>

The trial court saw through petitioner's conflicting claims and held him guilty of violating B.P. Blg. 22.

On appeal, petitioner raised the same defenses he presented during trial. In addition, however, he claimed that the information charged more than one offense and that the issuance of the third check as replacement for the second check constituted novation which thereby extinguished his obligation. The Court of Appeals rejected petitioner's contentions and affirmed his conviction. However, it held that because B.P. Blg. 22 is a special law and does not contain a provision for subsidiary imprisonment, petitioner was not subject to subsidiary imprisonment in case of insolvency. The dispositive portion of the appellate court's decision reads:

WHEREFORE, the appealed decision is hereby affirmed with modification in its dispositive portion in the sense that the appellant should not be ordered to suffer subsidiary imprisonment in case he fails to pay the fine of P80,647.75 by reason of insolvency. With costs de officio.

SO ORDERED.

Petitioner filed a motion for reconsideration wherein he abandoned the defenses he raised in the trial court except that of novation. He argued that novation took place as a result of the partial payment he made and the written undertaking he had executed to pay for the balance of the check. His motion was, however, denied by the Court of Appeals. Hence, this petition for review on certiorari.

Petitioner argues that because of the incompatibility between the last check (Exh. C) and the partial payment and written undertaking he executed, there was a novation of his original obligation so that any incipient criminal liability which he might have had under the former obligation was thereby avoided.

Petitioner raises this issue for the first time on appeal. As already stated, his contentions in the trial court were: (1) that the two checks which had been