



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

IVY LIM,
Petitioner,

G.R. No. 224979

Present:

- versus -

CARPIO, J., Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA,
REYES, JR.,* JJ.

PEOPLE OF THE PHILIPPINES and
BLUE PACIFIC HOLDINGS, INC.,
Respondents.

Promulgated:

13 DEC 2017

X-----X

DECISION

PERALTA, J.:

This is a petition for review on *certiorari*, assailing the Decision¹ dated October 27, 2014 of the Court of Appeals (CA), which denied petitioner Ivy Lim's petition for review, and affirmed the Decision² dated September 30, 2013 and the Order dated December 3, 2013 rendered by the Regional Trial Court (RTC) of Makati City in Criminal Case No. 13-1586-86. The RTC affirmed the Joint Decision³ dated May 22, 2013 of the Metropolitan Trial Court (MeTC) of Makati City, which found Lim guilty beyond reasonable doubt of ten (10) counts of violation of *Batas Pambansa Bilang (B.P. Blg.)* 22 in Criminal Cases No. 346643-52.

The antecedent facts are as follows:

* On wellness leave.
¹ Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Japar B. Dimaampao and Carmelita S. Manahan, concurring; *rollo*, pp. 40-45.
² Penned by Presiding Judge Elpidio R. Calis, Branch 133; *id.* at 270-279.
³ Penned by Presiding Judge Barbara Aleli H. Briones, Branch 61; *id.* at 224-228.

Private respondent Blue Pacific Holdings, Inc. (*BPHI*) granted Rochelle Benito a loan amounting to ₱1,149,500.00 as evidenced by a Promissory Note acknowledged before a notary public on July 29, 2003. Petitioner Lim signed as a co-maker of her sister Benito. To secure payment of the loan, Benito and Lim issued eleven (11) Equitable PCI Bank checks with a face value of ₱67,617.65 each, or a total amount of ₱743,794.15, to wit:

Check No.	Date	Amount
0105461	May 29, 2004	₱67,617.65
0105462	June 29, 2004	67,617.65
0105463	July 29, 2004	67,617.65
0105464	August 29, 2004	67,617.65
0105465	September 29, 2004	67,617.65
0105466	October 29, 2004	67,617.65
0105467	November 29, 2004	67,617.65
0105468	December 29, 2004	67,617.65
0105452	January 29, 2005	67,617.65
0105477	February 28, 2005	67,617.65
0105478	March 29, 2005	67,617.65

Later on, 10 of these 11 checks were dishonored when presented for payment for having been drawn against a closed account. BPHI sent Lim various demand letters, but to no avail. On June 28, 2005, BPHI sent a final demand letter, which Lim supposedly received as shown by the registry return card bearing her signature.

For failing to pay the amounts corresponding the dishonored checks, Lim was charged with 11 counts of violation of B.P. Blg. 22. For her part, Lim raised the defenses that (1) she could not have signed and issued the checks on July 29, 2003 in the presence of BPHI Finance Officer Juanito Enriquez because she was then abroad as shown by the Certification of the Bureau of Immigration and Deportation (*BID*); (2) BPHI has no permit to conduct financing business; (3) the checks were issued to facilitate illegal trafficking of teachers to the United States for which there has been a criminal action filed and resolved for human trafficking; and (4) there was no valuable consideration given.

Upon arraignment on December 13, 2006, Lim, assisted by counsel, pleaded not guilty to all charges. During the preliminary conference, the parties admitted the following matters: (1) the jurisdiction of the trial court; (2) the identity of Lim as the accused, (3) the existence of the complaint affidavit, (4) the existence of the promissory note and Lim's signature thereon, and (5) the existence and due execution of the 11 checks with BPHI as payee.



During trial, the prosecution presented its witness, BPHI Finance Officer Enriquez, and documentary evidence consisting of the complaint-affidavit, the promissory note and the 11 checks, and the demand letters, among others. For the defense, Lim claimed that the subject checks were unauthenticated because she was out of the country on July 29, 2003, as shown by the certification of her travel record issued by the BID. She refuted the testimony of Enriquez that he personally saw her signed the checks before him.

On May 22, 2013, the MeTC rendered a Joint Decision finding Lim guilty beyond reasonable doubt of 10 counts of violation of B.P. Blg. 22, the dispositive portion of which states:

WHEREFORE, in view of all the foregoing, judgment is hereby rendered finding accused IVY LIM a.k.a. IVY BENITO LIM *guilty beyond reasonable doubt for violation of Batas Pambansa Blg. 22 in Criminal [Case Nos.] 346643 or ten (10) counts* and hereby orders her to pay a FINE of SIX HUNDRED SEVENTY-SIX THOUSAND ONE HUNDRED SEVENTY-SIX PESOS AND 50/100 (₱676,176.50) which is the face value of the ten (10) checks with subsidiary imprisonment in case of insolvency in accordance with Article 39 of the Revised Penal Code.

The accused IVY LIM a.k.a. IVY BENITO LIM is acquitted in Criminal Case No. 346642 for failure of the prosecution to establish all the elements of the crime charged.

With regards to the civil aspect of these cases, she is hereby ordered to pay the private complainant Blue Pacific Holdings, Inc. the total amount of SEVEN HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED NINETY-FOUR PESOS AND 15/100 (₱743,794.15) which corresponds to the face value of the eleven (11) checks subject matter of the present cases, plus 12% interest *per annum* from date of the filing of the Informations on May 22, 2006 until the amount shall have been fully paid. She is likewise ordered to pay the amount of Twenty Thousand Pesos (₱20,000.00) as and for attorney's fees and to pay the costs of suit.

SO ORDERED.⁴

On appeal, the RTC found no reversible error and affirmed the MeTC Decision.



⁴ Rollo, pp. 227-228.

Dissatisfied, Lim filed a petition for review before the CA, which denied the same and affirmed the RTC Decision. The CA also denied her motion for reconsideration. Hence, the petition.

Lim raises the following grounds in support of her petition for review on *certiorari*:

- A. AN UNAUTHENTICATED REGISTRY RETURN CARD CANNOT PROVE RECEIPT OF NOTICE OF DISHONOR AND CANNOT BE A BASIS FOR CONVICTION FOR A CHARGE OF VIOLATION OF BATAS PAMBANSA BLG. 22 UNDER PREVAILING JURISPRUDENCE SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT – THAT THERE WAS PROOF OF PERSONAL SERVICE OF NOTICE OF DISHONOR ON THE PETITIONER BASED ON A COMPARISON OF SIGNATURES ON THE SUBJECT CHECKS AND OF THE SIGNATURES ON THE REGISTRY RETURN CARD – AND THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22
- B. UNAUTHENTICATED CHECKS CANNOT PROVE THAT HEREIN PETITIONER WAS THE SAME PERSON WHO ISSUED SAID CHECKS, IN ACCORDANCE WITH THE DOCTRINE ENUNCIATED IN *UNCHUAN V. LOZADA, ET AL (SUPRA.)*, SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22
- C. A DOCUMENT THAT WAS NEVER PRESENTED, IDENTIFIED, AUTHENTICATED NOR TESTIFIED ON DURING TRIAL CANNOT BE ADMITTED IN EVIDENCE NOR USED TO PROVE THE GUILT OF HEREIN PETITION[ER] FOR THE OFFENSE CHARGED AGAINST HER, IN ACCORDANCE WITH THE DOCTRINE IN *UNCHUAN V. LOZADA, ET AL, (SUPRA.)*, SUCH THAT THE COURT OF APPEALS GRAVELY ERRED IN UPHOLDING THE RULINGS OF THE TRIAL COURT AND THE REGIONAL TRIAL COURT THAT HEREIN PETITIONER WAS PROPERLY CONVICTED FOR VIOLATION OF BATAS PAMBANSA BLG. 22 CRIMINALLY AND CIVILLY LIABLE.⁵

The petition lacks merit, but a modification of the imposed penalty and the interest on actual damages awarded are in order.



⁵*Id.* at 21.

First, Lim argues that the signature in the registry return card of the demand letter was never authenticated because the prosecution's sole witness, Enriquez, admitted that he did not personally or actually see her receive the notice of dishonor nor sign the registry receipt. She faults Enriquez for failing to explain why he claimed that the signature on said registry return card was hers. She also contends that the CA committed manifest error in ruling that her actual receipt of the notice of dishonor was proven by comparing her signatures in the subject checks with that of the registry return card, because nowhere in the Rules of Evidence or jurisprudence is it provided that proof/authentication can be made by comparing two unauthenticated documents.

Second, Lim points out that while Enriquez testified that he saw her personally signed the 10 postdated checks on July 29, 2003 in Makati City, his testimony was belied by a BID Certification showing that she was out of the country that day and could not have signed the same checks. Since she did not sign the checks in the presence of Enriquez on said date, then the subject checks could not have been properly authenticated in accordance with the Rules on Evidence.

Lastly, Lim asserts that in holding her liable to BPHI, the trial court primarily relied on the Promissory Note which was never produced, presented, identified, authenticated or testified on by Enriquez. Thus, the trial court erred in admitting the said evidence and using it as basis for holding her guilty beyond reasonable doubt of violation of B.P. Blg. 22. Due to the improper admission of such evidence, Lim also contends that she could not be held civilly liable to BPHI for the issuance of the postdated checks, inasmuch as lack of consideration is a defense under the Negotiable Instruments Law.

Lim's arguments are untenable.

First, contrary to Lim's claim that only the unauthenticated registry return card was the only proof presented by the prosecution to establish service of a notice of dishonor, the evidence on record shows that the prosecution also presented the registry receipt and the testimony of Enriquez who sent the demand letter by registered mail.

In *Resterio v. People*,⁶ the Court ruled that the notice of dishonor required under B.P. Blg. 22 to be given to the drawer, maker or issuer of the check should be written. "If the service of the written notice is by registered mail, the proof of service consists not only in the presentation as evidence of

⁶ 695 Phil. 693, 698 (2012).



the registry return receipt but also of the registry receipt together with the authenticating affidavit of the person mailing the notice of dishonor. Without the authenticating affidavit, the proof of giving the notice of dishonor is insufficient, unless the mailer personally testifies in court on the sending by registered mail.”

Here, the transcript of stenographic notes confirm that the prosecution complied with the requisite proof of service of the notice of dishonor by presenting Enriquez, who testified on the sending of such notice by registered mail, and identified the demand letter, the registry receipt and the registry return card, *viz.* :

ATTY. DELA ROSA:

Q Mr. Witness, during the last hearing of this case, you went to identify the checks in question in this case which have been previously marked in evidence as Exhibits “E” to “O”, and you testified that these checks after they were issued to your company by the accused, Ivy Lim, the same were deposited and dishonored by the bank for the reason of account closed, is that correct?

A Yes, sir.

Q Now, after the checks in question were dishonored by the bank for the reason as stated account closed, what did you do?

A We called the accused by telephone to follow up payments of the returned checks, sir.

Q Were you able to talk to the accused through telephone?

A Yes, sir.

Q What was the reply of the accused, if any?

A The reply of Ms. Ivy Lim is that, can I answer that in Tagalog, your Honor?

COURT:

Yes.

(Witness testifying in Tagalog)

A “Ayaw pabayaran ni Ate.”

Q What did you do after that?

A Since our demand fell on death case, the office sent a demand letter dated 18 May 2005, sir.

Q To whom, was the demand letter sent?

A To Ms. Rocel Benito and Ms. Ivy Lim, sir.

Q Do you have a copy of the letter which you sent to the accused, Ivy Lim?

A Yes, sir.



Q Will you please produce the letter which you said was sent to the accused, Ivy Lim?

A Yes, sir.

ATTY. DELA ROSA:

Witness is producing the Letter dated May 18, 2005 which has been marked in evidence as Exhibit "Q" and "Q-1", respectively.

Q Mr. Witness, there appears to be a signature on top of the name Juanito M. Enriquez, whose signature is this?

A The same is my signature, sir.

ATTY. DELA ROSA:

May we request your Honor that the signature properly identified by the witness be marked as Exhibit "Q-4".

COURT:

Mark it.

ATTY. DELA ROSA:

Q How was this demand letter sent to the accused, Ivy Lim?

A The demand letter was sent through registered mail at Malolos, Bulacan, sir.

x x x x

Q Do you have any proof that the said letter, marked as Exhibit "Q" was sent by registered mail, as you claimed in Malolos, Bulacan?

A I have the registry receipt and the registry return card of the registered mail, sir.

Q Please produce the said registry receipt and the registry return card?

A Yes, sir.

Q Where is the Registry Receipt in this document?

A This long bond is the Registry Receipt because the registered mail is composed of several letters, sir.

ATTY. DELA ROSA:

May we respectfully request the Registry Receipt your Honor which this witness identified be marked in evidence as Exhibit "Q-5."

ATTY. ALCUDIA:

Your Honor, that's already been marked in evidence as "Q-c."

That is the list of mail matters, your Honor.



ATTY. DELA ROSA:

Yes, I stand corrected, your Honor.

Q Now, who mailed this letter in Malolos, Bulacan?

A I am, sir.

x x x x

Q You said that you made a letter dated May 18, 2005 to the accused, Ivy Lim, what happened to this letter?

A The letter was received by Ms. Lim, sir.

Q Do you have any proof to show that the letter was received by the accused, Ivy Lim?

A The return card of that registered mail attached to the letter, sir.

Q I am showing to you the return card which have been previously marked in evidence as Exhibit "Q-2", where in this Exhibit "Q-2" will show that the accused received the letter of demand.

A The signature of Ms. Lim on May 24, 2005 at the back of the Registry Return Receipt, sir.

ATTY. DELA ROSA:

May we respectfully request that the dorsal portion of the Return Card your Honor be marked in evidence as Exhibit "Q-5" the date May 24, 2005 and Exhibit "Q-6" which is the signature of the accused.

COURT:

Mark them.⁷

In claiming that an unauthenticated registry return card cannot prove receipt of the notice of dishonor, Lim only objected to Exhibits "Q", "Q-2" and "Q-3" because there is no showing at all that the Demand Letter of Juanito Enriquez was actually and personally received by her.⁸ However, actual receipt of such notice of dishonor was proved by the prosecution through Enriquez who identified the signature on the dorsal portion of the registry return card as that of Lim. Enriquez can credibly identify Lim's signature because he testified having witnessed her signed the subject checks:

ATTY. DELA ROSA:

Q Now, Mr. Witness, in Exhibit "E" there appears to be a signature on the lower portion which has been marked in evidence as Exhibit "E-2". Whose signature is that, the signature marked as Exhibit "E-2"?

A The signature of Miss Ivy Lim.

⁷ TSN, December 12, 2007, pp. 2-9; *rollo*, pp. 70-76. (Emphasis added.)

⁸ *Rollo*, p. 161.

Q And why do you know that is the signature of the accused Ivy Lim?

A I was, I saw her when she signed the check sir.

Q Now again Mr, Witness, in Exhibit "F" there appears to be a signature on the lower portion of the check, more particularly this space for the drawer which has been marked Exhibit "F-2", whose signature is that Mr. Witness?

A The signature is that of Miss Ivy Lim.

Q Why do you know that is the signature of Ivy Lim?

A Again, I saw her when she signed the check.⁹

It bears emphasis that despite Lim's opposition to the prosecution's Formal Offer of Documentary Evidence, the MeTC admitted all its exhibits, noting that the objections thereto merely pertain to the weight and sufficiency of the evidence, which shall be considered by the court when it decides the case.¹⁰ Eventually, the MeTC has exercised its sound discretion, pursuant to Section 22,¹¹ Rule 132 of the Rules of Court in comparing the signatures of Lim in the registry return card and the checks to ensure that the notice of dishonor was indeed received by her, to wit:

As to the third element, Exhibit "Q", the demand letter dated May 18, 2005 addressed to Ivy Benito Lim and signed by Juanito Enriquez was undisputedly received by the accused Ivy Lim as shown in Exhibit "Q-6". The distinctive strokes in writing the name "Ivy" and the flourish of the stroke in writing "im" in the latter part thereof, compared with the signatures appearing on all the checks shown that these signatures were made by one and the same person.¹²

There is also no merit in Lim's claim that the subject checks were unauthenticated and not proven to have been issued by her. For one, in the Preliminary Conference Order¹³ dated March 28, 2007, the parties admitted that whenever the court refers to the name of Ivy Lim, the name pertains to the accused, and stipulated on the existence and due execution of the eleven (11) checks with payee Blue Pacific Holdings, Inc. For another, BPHI Finance Officer Enriquez presented and identified during trial the 11 checks issued by Lim, to wit:

⁹ TSN, August 29, 2007, pp. 13-14; *id.* at 61-62.

¹⁰ Order dated April 13, 2010, *id.* at 165.

¹¹ Section 22. *How genuineness of handwriting proved.* – The handwriting of a person may be proved by any witness who believes it to be the handwriting of such person because he has seen the person write, or has seen writing purporting to be his upon which the witness has acted or been charged, and has thus acquired knowledge of the handwriting of such person. Evidence respecting the handwriting may also be given by a comparison, made by the witness or the court, with writings admitted or treated as genuine by the party against whom the evidence is offered, or proved to be genuine to the satisfaction of the judge.

¹² Joint Decision dated May 22, 2013, p. 3; *id.* at 226.

¹³ *Rollo*, p. 429.



ATTY. LEOPOLDO DELA ROSA:

Q Do you have in your possession or in your presence the checks that were issued in payment of a loan by the accused in this case?

A What I have sir are the checks that bounced.

Q Yes, that is why can you produce them now?

A Yes, sir.

Q Please produce them now.

A Here sir.

Q Witness is producing the checks that bounced.

COURT:

Are those ten (10) checks?

ATTY. DELA ROSA:

Yes, I'll just count it your Honor. Ten (10) checks, original checks were produced by this witness and we would like to manifest for the record that these checks have already been marked in evidence as Exhibits "E" to "O". Now, I have here in my possession your Honor the original of the checks, as well as, the photocopies of checks which had [already been] marked your Honor and we would like to request again for the second time if counsel for the accused would like to examine the photocopies as well as the original checks although these checks were already produced during the pre-marking your Honor.

ATTY. ALCUDIA:

We manifest that all checks except the check which was marked Exhibit "G" has not been presented your Honor.

COURT:

I think he is presenting the check.

ATTY. ALCUDIA:

I make of record that Exhibit "G" has not been presented for payment.

COURT:

Not presented for payment?

ATTY. ALCUDIA:

Not presented your Honor.

COURT:

Duly noted. So they are faithful reproduction of the original?

ATTY. ALCUDIA:

Yes, all Exhibits "E" to "O" including "G."



COURT:

So stipulated.

ATTY. DELA ROSA:

x x x x

Q Now again Mr. Witness, in Exhibit "F" there appears to be a signature on the lower portion of the check, more particularly this space for the drawer which has been marked as Exhibit "F-2", whose signature is that Mr. Witness?

A The signature is that of Miss Ivy Lim.

Q Why do you know that is the signature of Ivy Lim?

A Again I saw her when she signed the check.

Q May we manifest for the record that the signature in Exhibit "F" of the accused Ivy Lim has been marked as Exhibit "F-2". Let us go to Exhibit "G", again there appears to be a signature on the lower portion of this check, whose signature is that?

A Again the signature of Miss Ivy Lim.

Q May we respectfully manifest that the signature of Ivy Lim identified by this witness has been marked as Exhibit "G-1". In Exhibit "H" there appears to be again a signature of the drawer. Whose signature is that?

A Miss Ivy Lim sir.

Q May we again manifest that the signature appearing in Exhibit "H" is the signature of the accused marked and bracketed as Exhibit "H-1" and properly identified by this witness. Again, Mr. Witness, there appears to be a signature on the lower portion of Exhibit "I". Will you please identify the signature, whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature identified by this witness has been marked in evidence as Exhibit "I-1". Again, in Exhibit "J" for the prosecution, there appears to be a signature on the lower portion. Whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature of the accused has been previously marked and bracketed as Exhibit "J-1" and identified by this witness your Honor. In Exhibit "K" Mr. Witness, there appears to be a signature on the lower portion. Whose signature is that?

A Miss Ivy Lim sir.

Q May we request now your Honor, because apparently the signature identified by the witness has not been bracketed and marked, may we request that the same be bracketed and marked as Exhibit "K-1".

COURT

Bracket and mark.

ATTY. DELA ROSA:

Q Again in Exhibit "L" there is a signature on the lower portion. Whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature in Exhibit "L" has been marked and bracketed as Exhibit "L-1" and identified by this witness as that of the accused. In Exhibit "M" there appears to be a signature on the drawer portion, whose signature is that?

A Miss Ivy Lim sir.

Q May we manifest that the signature identified by the witness has been marked and bracketed as Exhibit "M-1" and identified by the witness. In Exhibit "N" there appears to be again a signature, whose signature is that?

A Miss Ivy Lim.

Q May we manifest for the record that the signature identified by the witness has been marked and bracketed as Exhibit "N-1" and properly identified by this witness. In Exhibit "O" there appears to be again a signature. Whose signature is that?

A Signature of Miss Ivy Lim sir.

ATTY. DELA ROSA:

May we manifest that the signature of Miss Ivy Lim identified by the witness has been marked and bracketed as Exhibit "O-1" and identified by this witness. Your Honor, I am ready to continue, however, as I see the grim face of my fellow colleague waiting for their time and considering that I have further documents to ask from this witness, I pray for continuance your Honor.

COURT

Any objection?

ATTY. ALCUDIA:

No objection your Honor.¹⁴

Nowhere in the records did Lim deny that the signature on the 11 checks were hers nor claim that her signatures thereon were forged. She cannot be heard now to complain that unauthenticated checks cannot prove that she was the same person who issued them.

Raising the defenses of denial and *alibi*, Lim insists that she was abroad when she supposedly signed the 10 checks in the presence of prosecution witness Enriquez on July 29, 2003, as shown by a certification

¹⁴ TSN, August 29, 2007, pp. 10-18; *id.* at 58-66.



from the BID that she left the country on July 21, 2003 and returned on October 29, 2003. While the prosecution failed to refute such evidence, the MeTC correctly noted that (1) the unresolved issue is when these checks were issued and delivered to BPHI, and (2) the fact that the checks were issued is not an issue, as the existence of the checks and signatures of the accused on these checks are uncontroverted.¹⁵

There is nothing in the direct testimony of Enriquez which states that the checks were personally signed by Lim before him on July 29, 2003, for he only said that the checks were issued in BPHI's office at Morse corner Edison Streets in Barangay San Isidro, Makati.¹⁶ The wrong information was elicited from Enriquez' cross examination, which may have been based on the date when the promissory note was acknowledged before a notary public:¹⁷

ATTY. ALCUDIA:

We will proceed.

Q You have identified the Promissory Note, Exhibit "D", did you not Mr. Enriquez?

A Yes, sir.

Q And as stated here this was issued July 29, 2003, is it not?

A Yes, sir.

Q Is it not a fact that it is your claim that the checks subject of this complaint were issued and tendered to you also on July 29, 2003?

A Yes, sir.

Q All checks?

A Yes, sir.¹⁸

At any rate, what is material in B.P. Blg. 22 cases is the date of issuance of the checks which appear on their face, and not the exact date of the delivery or signing thereof. This can be gleaned from the fact that the offenses punished in the said law are not committed if the check is presented for payment after ninety (90) days from date of issue.

Concededly, the criminal action for violation of B.P. Blg. 22 shall be deemed to include the corresponding civil action, and no reservation to file such civil action separately shall be allowed.¹⁹ With respect to the civil aspect of a B.P. Blg. 22 case, Lim would do well to remember that when an

¹⁵ *Rollo*, p. 227.

¹⁶ TSN, August 29, 2007, p. 10; *id.* at 58.

¹⁷ *Rollo*, p. 132.

¹⁸ TSN, September 26, 2008, pp. 18-19; *id.* at 106-107.

¹⁹ Rule 111, Section 1 (b).

action is founded upon a written instrument, copied in or attached to the corresponding pleading, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts.²⁰

As can be gleaned from the Complaint-Affidavit dated October 5, 2005, the action of BPHI is not only meant to prosecute Lim for issuing bouncing checks to secure payment of loan as evidenced by a promissory note where Lim signed as a co-maker, but also for recovery of the amounts covered by said checks intended as payment of the loan. Lim does not specifically deny the genuineness and execution of the promissory note, let alone sets forth what he claims to be the facts. Moreover, such instrument no longer needs to be authenticated because Lim stipulated on the existence of the promissory note and her signature thereto, as shown in the Preliminary Conference Order²¹ dated March 28, 2007.

Against Lim's claim that the promissory note was not presented, identified and testified on during trial, the transcript of stenographic notes show otherwise, as it was made an integral part of the Complaint-Affidavit, which in turn was presented, identified authenticated and testified on during trial. Pertinent portion of the transcript of stenographic reads:

ATTY. DELA ROSA: [Private counsel of BPHI]

Q Mr. Witness, why do you say that these checks were drawn and issued by the accused in this case?

ATTY. ALCUDIA: [Counsel of accused Lim]

Same objection, no basis.

COURT:

Objection overruled. We have now the basis. Objection overruled.

Q Why do you say that?

A: The checks were drawn and issued to us in payment of the Promissory Note, sir.

Q Were you present when these checks were issued and executed?

A Yes, your Honor.

ATTY. DELA ROSA

Q Where were the checks issued?

A In Makati, sir.



²⁰ Rule 8, Section 8.

²¹ *Rollo*, p. 429.

- Q Where, what particular place?
A It is in our office at Morse corner Edison Streets in Barangay San Isidro, Makati.
- Q In connection with this case Mr. Witness that you are testifying before this Honorable Court, do you remember that you have executed a Complaint Affidavit insofar as this case is concerned?
A Yes, sir.
- Q I am showing to you Mr. Witness the original copy of the Complaint Affidavit which is attached to the record of this case and which has been previously marked as Exhibit "A" which Complaint Affidavit consist of five (5), no four (4) pages. Please examine this Affidavit or Complaint Affidavit Mr. Witness and tell us what is the relation of that Complaint to the Complaint Affidavit that you have mentioned.
A This is the Complaint Affidavit I subscribed and sworn to before Fiscal Henry Salazar.
- Q Now, in this Complaint Affidavit there appears to be one of the affiant Juanito Enriquez. Who is this Juanito Enriquez?
A I am sir.
- Q Do you affirm and reaffirm the truthfulness and correctness of this Affidavit Complaint before the oath that you have taken before this Honorable Court?
A Yes, sir.²²

Significantly, Lim's counsel admitted during cross-examination that the prosecution has presented, identified and testified on the subject promissory note, thus:

ATTY. ALCUDIA:

Before we proceed, may we request to be allowed access to the prosecution's Exhibits "D" and "U" which witness testified on during direct examination? Your, Honor, we have been presented a document which is original document designated Promissory Note but we note this is not marked document by the prosecution. Nevertheless, we can proceed if private prosecutor will stipulate and commit that this document is the original of the document that has been provisionally marked as Exhibits "D" and "D-1".

COURT:

You can commit Mr. Private Prosecutor?

ATTY. DELA ROSA:

We admit your Honor. What happened here is that the exhibit was marked in the photocopy. I think after making a comparison.²³

²² TSN, August 29, 2007, pp. 5-7; *id.* at 53-55.

²³ TSN, September 26, 2008, p. 2; *id.* at 90.

Anent the civil aspect of the B.P. Blg 22 cases, her defense of lack of consideration for the checks fails to persuade. Apart from having admitted the authenticity and due execution of the promissory note, Lim also failed to present clear and convincing evidence to overturn the disputable presumptions²⁴ that there were sufficient considerations for the said contract which she signed as a co-maker, and for the negotiable instruments consisting of 11 checks issued under her name as security for the payment of the loan. Besides, as a co-maker who agreed to be jointly and severally liable on the promissory note, Lim cannot validly claim that she hardly received any consideration therefor, as the fact that the loan was granted to the principal debtor, her sister Benito, already constitutes sufficient consideration.

All told, the Court of Appeals committed no reversible error in affirming the RTC decision, which upheld the conviction of Lim for 10 counts of violation of B.P. Blg. 22 and her civil liability for the face value of the 11 checks.

The elements of violation of B.P. Blg. 22 are as follows:

1. The accused makes, draws or issues any check to apply to account or for value;
2. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit; or it would have been dishonored for the same reason had not the drawer, without any valid reasons, ordered the bank to stop payment; and
3. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, drawee bank for payment of the check in full upon its presentment.

All the foregoing elements were established beyond reasonable doubt by the prosecution, as thoroughly discussed by the MeTC:

As to the first element, the Court finds that the checks were issued for value. Accused is the co-maker of the promissory note (Exhibit "D") wherein she voluntarily bound herself to be jointly and severally liable with Rochelle Benito, her sister, to Blue Pacific Inc. for the amount of ₱605,000.00 plus interests. Accused is also a signatory to the eleven checks issued, along with her sister, in favor of Blue Pacific. These checks constitute the means for payment of the promissory note signed by the accused and her sister. It is undisputed that the co-accused, Rochelle

²⁴ Rule 131. Section 3 (r) and (s).



Benito was able to travel to the United States. The expenses incurred for the said travel came, undoubtedly, from the proceeds of the said loan albeit the accused did not personally received the proceeds thereof. Although there was no personal receipt of the proceeds by the accused, it is undisputed that the principal objective of the accused, the processing and travel of her sister to the United States was accomplished. The accused then stood to benefit from the loan. The allegation of human trafficking, fraud and payment remains allegations as no evidence was presented to the Court to prove [them]. The pieces of evidence presented, testimonial and documentary, show that this is a business transaction between Blue Pacific and the accused.

As to the second element, except for Exhibit "G", the evidence shows that the ten (10) checks were presented for payment and subsequently dishonored for the reason "Account Closed". The check dated May 29, 2004 with check number 0105461 in the amount of ₱67,617.65 was not presented for payment, and hence to criminal liability attached thereto.

As to the third element, Exhibit "Q", the demand letter dated May 18, 2005 addressed to Ivy Benito Lim and signed by Juanito Enriquez was undisputedly received by the accused Ivy Lim as shown in Exhibit "Q-6". The distinctive strokes in writing the name "Ivy" and the flourish of the stroke in writing "im" in the latter part thereof, compared with the signatures appearing on all the checks shown that these signatures were made by one and [the] same person. No evidence was presented by the defense to refute the sending, receipt and existence of the signature of accused Ivy Lim in Exhibits "Q" and Q-6".²⁵

Be that as it may, a modification of the fine of ₱676,176.50 imposed by the MeTC is in order because it appears to exceed the ₱200,000.00 limit under Section 1 of B.P. Blg. 22 which provides for the penalty of "imprisonment of not less than thirty days but not more than one (1) year or by **a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos**, or both such fine and imprisonment at the discretion of the court." Instead of imposing a lump sum fine, the proper penalty should be a fine of ₱67,617.65 [face value of each check] for each of the Ten (10) counts of violation of *Batas Pambansa Blg. 22* with subsidiary imprisonment in case of insolvency.

Finally, the actual damages in the amount of ₱743,794.15, representing the face value of the Eleven (11) checks, which the MeTC awarded to BPHI shall further incur interest at the rate of six percent (6%) *per annum* from finality of this Decision until fully paid, in line with *Nacar v. Gallery Frames, Inc.*²⁶

²⁵ Joint Decision dated May 22, 2013, p. 3; *rollo*, p. 226.

²⁶ 716 Phil. 267, 282-283 (2013).

WHEREFORE, premises considered, the petition for review on *certiorari* is **DENIED**. The Court of Appeals Decision dated October 27, 2014 in CA-G.R. CR No. 36204 is **AFFIRMED** with **MODIFICATION**:

- (1) IVY LIM a.k.a. IVY BENITO LIM is **ORDERED** to **PAY** a FINE of SIXTY-SEVEN THOUSAND SIX HUNDRED SEVENTEEN PESOS AND 65/100 (₱67,617.65) for each of the Ten (10) counts of violation of *Batas Pambansa Blg. 22* in Criminal Cases Nos. 346643 to 346652, with subsidiary imprisonment in case of insolvency, pursuant to Article 39 of the Revised Penal Code; and
- (2) With regard to the civil aspect of these cases, she is hereby **ORDERED** to **PAY** the private complainant Blue Pacific Holdings, Inc. the total amount of SEVEN HUNDRED FORTY-THREE THOUSAND SEVEN HUNDRED NINETY-FOUR PESOS AND 15/100 (₱743,794.15) of the present cases, plus twelve percent (12%) interest *per annum* from date of the filing of the Informations on May 22, 2006 until finality of this Decision, and six percent (6%) interest *per annum* from such finality until fully paid. She is, likewise, **ORDERED** to **PAY** the amount of Twenty Thousand Pesos (₱20,000.00) as and for attorney's fees and to pay the costs of suit.

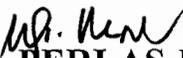
SO ORDERED.

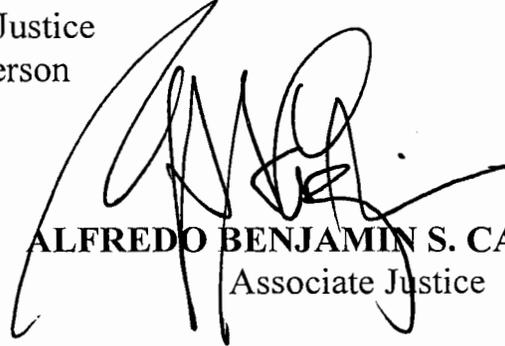

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson


ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

On wellness leave
ANDRES B. REYES, JR.
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice