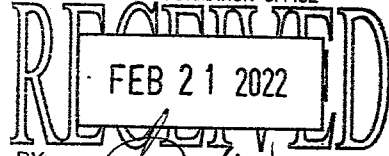




Republic of the Philippines
 Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE



BY: [Signature]
 NAME: _____

THIRD DIVISION

ALLAN S. CU and NORMA B. CUETO,
 Petitioners,

G.R. No. 218381

Present:

- versus -

LEONEN, *Chairperson*
 HERNANDO,
 INTING,
 ROSARIO,* and
 LOPEZ, *J.J.*

**SMALL BUSINESS GUARANTEE AND
 FINANCE CORPORATION,**
 Respondent.

**Promulgated:
 July 14, 2021**

Mis-ADC-Batt

X-----X

DECISION

LOPEZ, J., J.:

The Case

The petitioners seek to reverse and set aside the Amended Decision¹ dated September 22, 2014 and the Resolution² dated May 20, 2015 of the Court of Appeals (CA) in CA-G.R. CR No. 34738. The CA reversed and set aside the September 12, 2011 Resolution³ and January 31, 2012 Order⁴ of the Regional Trial Court, Branch 138, Makati-City (RTC Makati City).

* Designated as Additional Member per Special Order No. 2833 dated June 29, 2021.

¹ Penned by Associate Justice Rodil V. Zalameda (now a member of the Supreme Court) with Associate Justices Ramon M. Bato, Jr. and Pedro B. Corales, concurring; *rollo*, pp. 44-58.

² *Id.* at 73-74.

³ *Id.* at 125-127.

⁴ *Id.* at 128.

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The Antecedents

The facts as culled from the records are as follows:

Small Business Guarantee and Finance Corporation (SBGFC), a government financial institution organized and existing pursuant to Republic Act (R.A.) No. 6977, as amended by R.A. Nos. 8289 and 9501, and mandated by law to provide easy access credit to qualified micro, small and medium enterprises, executed an Omnibus Credit Line Agreement in favor of Golden 7 Bank (G7 Bank) in the amount of ₱35,000,000.00, which was ultimately increased to ₱90,000,000.00. Relative to the said loan, G7 Bank authorized two (2) of its officers, namely, Allan S. Cu, Norma B. Cueto (petitioners), Fidel L. Cu, and Lucia C. Pascual, as signatories.⁵

G7 Bank made several drawdowns from the credit line and through Allan S. Cu, Lucia C. Pascual and Norma B. Cueto issued several postdated Land Bank of the Philippines (LBP) checks in payment therefor, but which were eventually dishonored upon deposit with the LBP Makati City for reason of "Account Closed."⁶

Meanwhile, on July 31, 2008, the *Bangko Sentral ng Pilipinas* (BSP) pursuant to Section 53 of R.A. No. 8791 or the General Banking Law of 2000 and Section 30 of R.A. No. 7653 otherwise known as the New Central Bank Act issued a resolution that prohibited G7 Bank from doing business in the Philippines and placing its assets and affairs under receivership; and designated the Philippine Deposit Insurance Corporation (PDIC) as receiver.⁷

SBGFC filed before the Prosecutor's Office of Makati City several complaints for violation of *Batas Pambansa Bilang 22* (B.P. 22) against the responsible officers of G7 Bank for issuing dishonored postdated checks. After probable cause was found, the corresponding Informations for violation of B.P. 22, involving thirty-five (35) of the one hundred three (103) checks were filed before Branch 64, Metropolitan Trial Court of Makati City (MeTC Makati City).⁸

The petitioners filed an Omnibus Motion 1) For the Determination of Probable Cause; 2) To Dismiss the Instant Cases on Jurisdictional Grounds; 3) To Defer Arraignment and Further Proceedings on the Ground of Prejudicial Question; and 4) To Dismiss the Case for lack of Probable Cause.⁹

⁵ *Id.* at 157-158.

⁶ *Id.* at 158.

⁷ *Id.* at 123.

⁸ *Id.* at 158.

⁹ *Id.* at 159.

On August 9, 2010, the MeTC Makati City issued an Order dismissing the case. The MeTC opined that it was impossible for the officers of G7 Bank to still fund the checks, the maturity dates of which were after the bank had been placed under receivership.¹⁰ The *fallo* reads:

WHEREFORE, in view of the foregoing, the herein above-captioned cases are hereby DISMISSED against the accused Allan S. Cu, Norma B. Cueto and Lucia C. Pascual.

SO ORDERED.¹¹

The RTC Makati City affirmed *in toto* the order of the MeTC Makati City.¹² The subsequent motion for reconsideration of SBGFC was likewise denied.¹³

Proceedings before the CA

SBGFC filed an appeal before the CA. SBGFC argued that the RTC Makati City erred in affirming *in toto* the decision of the first level court; and that it erred in finding that the G7 Bank having been placed under receivership and/or liquidation, the respondents cannot be made criminally and civilly liable.¹⁴

On November 28, 2013, the CA dismissed the petition for review based on its opinion that only the Office of the Solicitor General (OSG) can represent the People in appeals of criminal cases before appellate courts; and that the capability of a private complainant to question a dismissal or acquittal of an accused in a criminal case is limited to its civil aspect. The dispositive portion of the decision reads:

WHEREFORE, the Petition for Review is hereby DISMISSED for lack of authority of the petitioner to represent the People in the instant appeal.

SO ORDERED.¹⁵ (Emphasis in the original)

SBGFC argued in its motion for reconsideration that the ends of substantial justice would be better served by granting the petition; that the civil action is instituted with the criminal action for violation of B.P. 22 against the responsible officers; hence, when the criminal action is dismissed, the civil

¹⁰ *Id.* at 120-124.

¹¹ *Id.* at 124.

¹² *Id.* at 127.

¹³ *Id.* at 128.

¹⁴ *Id.* at 140.

¹⁵ *Id.* at 169.

action is not automatically extinguished; and that it is not mandatory for the petitioner-movant to be represented by the OSG on appeal.¹⁶

The OSG submitted its comment on the motion for reconsideration, where it stated that the SBGFC could not file an appeal to question the dismissal of a criminal case. The OSG stressed that the bare invocation of “the interest of substantial justice” is not a magic wand that will automatically compel courts to suspend procedural rules. However, the OSG pointed out that it can in certain instances, ratify and adopt as its own the petition filed by private complainant. In this case, the OSG expressly prayed, ratified, and adopted as its own the petition, filed by SBGCF, for the People of the Philippines.¹⁷

On September 22, 2014, the CA rendered its assailed decision reconsidering its own decision, the *fallo* reads:

WHEREFORE, premises considered, the instant Motion for Reconsideration is hereby **GRANTED**.

The instant Petition for Review is given **DUE COURSE** and the assailed Resolution dated 12 September 2011 and Order dated 31 January 2012 of Branch 138 of the Regional Trial Court of Makati City are hereby **REVERSED** and **SET ASIDE**.

Consequently, the Order dated 09 August 2010 and Order dated 24 November 2010, of Branch 64 of the Metropolitan Trial Court of Makati City, are likewise **ANNULLED** and **SET ASIDE**.

The MeTC is directed to **REINSTATE** 361405-21; 359678-81; 361390-95; and 3613778-89 in the active files of the court and to conduct further proceedings with immediate dispatch.

SO ORDERED.¹⁸ (Emphasis in the original)

In its amended decision, the CA stated that the filing of a case for violation of B.P. 22 is not a “claim” that can be enjoined within the purview of Presidential Decree (P.D.) No. 902-A.¹⁹ The CA further elaborated that as far as the criminal aspect of the cases is concerned, the provisions of Section 6 (c) of P.D. No. 902-A²⁰ should not interfere with the prosecution of a case for

¹⁶ *Id.* at 45-46.

¹⁷ *Id.* at 47-48.

¹⁸ *Id.* at 57.

¹⁹ *Id.* at 55-56.

²⁰ SECTION 6. In order to effectively exercise such jurisdiction, the Commission shall possess the following powers: x x x

c) To appoint one or more receivers of the property, real and personal, which is the subject of the action pending before the Commission in accordance with the pertinent provisions of the Rules of Court in such other cases whenever necessary in order to preserve the rights of the parties-litigants and/or protect the interest of the investing public and creditors: Provided, however; That the Commission may, in appropriate cases, appoint a rehabilitation receiver of corporations, partnerships or other associations not supervised or regulated

violation of B.P. 22, even if restitution, reparation or indemnification could be ordered, because an absurdity would result in a case where one has engaged in criminal conduct could escape by the mere filing of a petition for rehabilitation by the corporation of which such person is an officer.²¹

The motion for reconsideration to the amended decision was subsequently denied by the CA via Resolution dated May 20, 2015.²²

Hence, the petitioners filed this present petition. The petitioners assert that SBGFC by itself has no authority to appeal the case before the CA and the Supreme Court;²³ that the second element of B.P. 22 is absent in the criminal cases;²⁴ and that they cannot not be convicted for violation of B.P. 22 due to the fact that G7 Bank has been placed by the Monetary Board of the BSP under receivership which would operate to suspend the payment of all claims monetary or otherwise.²⁵

The OSG countered that the CA did not err in giving due course to the petition for review as the OSG ratified the petition filed by SBGFC;²⁶ that the CA did not err in granting SBGFC's petition for review, setting aside the orders of the RTC and the MeTC, and directing the reinstatement of the criminal cases;²⁷ and that the MeTC exceeded its authority when it entertained the Omnibus Motion filed by the petitioners as this is prohibited under the Rules on Summary Procedure.²⁸

The petitioners submitted a reply²⁹ that essentially rehashed the arguments raised in their petition.

The Court's Ruling

The petition is impressed with merit.

by other government agencies who shall have, in addition to the powers of a regular receiver under the provisions of the Rules of Court, such functions and powers as are provided for in the succeeding paragraph d) hereof: Provided, further, That the Commission may appoint a rehabilitation receiver of corporations, partnerships or other associations supervised or regulated by other government agencies, such as banks and insurance companies, upon request of the government agency concerned: Provided, finally, That upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body shall be suspended accordingly.

²¹ *Id.* at 56.

²² *Id.* at 73-74.

²³ *Id.* at 18.

²⁴ *Id.* at 25.

²⁵ *Id.* at 34.

²⁶ *Id.* at 204.

²⁷ *Id.* at 200.

²⁸ *Id.* at 207.

²⁹ *Id.* at 227-237.

All claims must be filed with the liquidation court

The original wording of Section 30 of R.A. No. 7653³⁰ outlines the process of receivership and liquidation for banks and quasi-banks. It recites:

Section 30. Proceedings in Receivership and Liquidation. — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due in the ordinary course of business: Provided, that this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary

³⁰ The amendments brought about by Republic Act No. 11211 to Section 30 of R.A. No. 7653 now reads:

Sec. 30. Proceedings in Receivership and Liquidation. - Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) has notified the *Bangko Sentral* or publicly announced a unilateral closure, or has been dormant for at least sixty (60) days or in any manner has suspended the payment of its deposit/deposit substitute liabilities, or is unable to pay its liabilities as they become due in the ordinary course of business: Provided, that this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;

(b) has insufficient realizable assets, as determined by the *Bangko Sentral*, to meet its liabilities; or

(c) cannot continue in business without involving probable losses to its depositors or creditors; or

(d) has willfully violated a cease and desist order under Section 37 of this Act that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation (PDIC) as receiver in the case of banks and direct the PDIC to proceed with the liquidation of the closed bank pursuant to this section and the relevant provisions of Republic Act No. 3591, as amended. The Monetary Board shall notify in writing, through the receiver, the board of directors of the closed bank of its decision.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship. The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

The authority of the Monetary Board to summarily and without need for prior hearing forbid the bank or quasi-bank from doing business in the Philippines as provided above may also be exercised over non-stock savings and loan associations, based on the same applicable grounds. For quasi-banks and non-stock savings and loan associations, any person of recognized competence in banking, credit or finance may be designated by the *Bangko Sentral* as a receiver.

Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

For a quasi-bank, any person of recognized competence in banking or finance may be designated as receiver.

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules of Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take-over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, that any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

(1) file *ex parte* with the proper regional trial court, and without requirement of prior notice or any other action, a petition for assistance in the liquidation of the institution pursuant to a liquidation plan adopted by the Philippine Deposit Insurance Corporation for general application to all closed banks. In case of quasi-banks, the liquidation plan shall be adopted by the Monetary Board. Upon acquiring jurisdiction, the court shall, upon motion by the receiver after due notice, adjudicate disputed claims against the institution, assist the enforcement of individual liabilities of the stockholders, directors and officers, and decide on other issues as may be material to implement the liquidation plan adopted. The receiver shall pay the cost of the proceedings from the assets of the institution.

(2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution. **The assets of an institution under receivership or liquidation shall be deemed in *custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt**

from any order of garnishment, levy, attachment, or execution.

The actions of the Monetary Board taken under this section or under Section 29 of this Act shall be final and executory, and may not be restrained or set aside by the court except on petition for certiorari on the ground that the action taken was in excess of jurisdiction or with such grave abuse of discretion as to amount to lack or excess of jurisdiction. The petition for certiorari may only be filed by the stockholders of record representing the majority of the capital stock within ten (10) days from receipt by the board of directors of the institution of the order directing receivership, liquidation or conservatorship.

The designation of a conservator under Section 29 of this Act or the appointment of a receiver under this section shall be vested exclusively with the Monetary Board. Furthermore, the designation of a conservator is not a precondition to the designation of a receiver.

It is clear from the old text of Section 30 of R.A. No. 7653 that the liquidation court has the exclusive jurisdiction to adjudicate disputed claims against the closed bank, assist in the enforcement of individual liabilities of the stockholders, directors and officers, and decide on all other issues as may be material to implement the distribution plan adopted by the PDIC for general application to all closed banks. Simply put, if there is a judicial liquidation of an insolvent bank, all claims against the bank should be filed in a liquidation proceeding. This holds true regardless of whether or not the claim is initially disputed in a court or agency before it is filed with the liquidation court.³¹

Thus, it is settled that the claim for the payment of the checks is for all intents a claim within the ambit of R.A. No. 7653. To hold otherwise would result in giving preferential treatment to creditors whose credits are secured by checks and who may resort to filing a criminal action to recover the money owed.

The doctrine of *stare decisis* should be applied

The time-honored principle of *stare decisis et non quieta movere* is a bar to any attempt to re-litigate the same issue where the same questions relating to the same event have been put forward by parties similarly situated as in a previous case litigated and decided by a competent court.³²

³¹ *Fil-Agro Rural Bank, Inc. Through The Philippine Deposit Insurance Corp. (PDIC), As Liquidator v. Antonio J. Villaseñor, Jr.*, G.R. Nos. 226761 & 226889, July 28, 2020.

³² *Tala Realty Services Corp., Inc., et al. v. Banco Filipino Savings & Mortgage Bank*, 788 Phil. 19, 26-27 (2016).

The principle is anchored on giving stability to judicial pronouncements, thus:

Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.³³

The effect of G7 Bank being placed under receivership by the Monetary Board of the BSP and subsequently, receiver PDIC is an institution of a petition for liquidation assistance on the criminal liability for violation of B.P. 22 by its officers were already ruled upon by this Court in G.R. No. 211222.³⁴ The opinion of the Court declares:

In *Gidwani v. People*, wherein several checks that were issued by the President of an exporter of ready-to-wear clothes in payment of the embroidery services rendered to the exporter were dishonored by the drawee bank for having been drawn against a closed account by reason of the order by the Securities and Exchange Commission (SEC) suspending all actions, claims and proceedings against the exporter that the SEC issued after the exporter filed a petition for declaration of a state of suspension of payments, for the approval of a rehabilitation plan and appointment of a management committee, the Court ruled:

Considering that there was a lawful Order from the SEC, the contract is deemed suspended. When a contract is suspended, it temporarily ceases to be operative; and it again becomes operative when a condition occurs or a situation arises — warranting the termination of the suspension of the contract.

In other words, the SEC Order also created a suspensive condition. When a contract is subject to a suspensive condition, its birth takes place or its effectivity commences only if and when the event that constitutes the condition happens or is fulfilled. Thus, at the time [the payee] presented the September and October 1997 checks for

³³ *Ty v. Banco Filipino Savings & Mortgage Bank*, 511 Phil. 510, 520-521 (2005).

³⁴ The case is entitled *Cu v. Small Business Guarantee and Finance Corp.*, 815 Phil. 617 (2017).

encashment, it had no right to do so, as there was yet no obligation due from the exporter, through its President.

Moreover, it is a basic principle in criminal law that any ambiguity in the interpretation or application of the law must be made in favor of the accused. Surely, our laws should not be interpreted in such a way that the interpretation would result in the disobedience of a lawful order of an authority vested by law with the jurisdiction to issue the order.

Consequently, because there was a suspension of the exporter's obligations, its President may not be held liable for civil obligations of the corporation covered by the bank checks at the time this case arose. However, it must be emphasized that [the President's] non-liability should not prejudice the right of the payee to pursue its claim through the remedies available to it, subject to the SEC proceedings regarding the application for corporate rehabilitation.

The Court compared *Gidwani* with *Rosario v. Co.* In *Rosario*, the presentment for payment and the dishonor of the checks took place before the petition for suspension of payments for rehabilitation purposes was filed with the SEC. There was already an obligation to pay the amount covered by the checks since the criminal proceedings were already underway when the SEC issued the Order suspending all actions for claims against the debtor therein. The accused therein was not excused from honoring his duly issued checks by the mere filing of the suspension of payments proceeding before the SEC.

While the facts in present B.P. 22 cases against Cu are not on all fours with those in *Gidwani*, the Court finds no reason why the ruling in *Gidwani* cannot be made to apply to these cases. In *Gidwani*, the SEC order of suspension of payments preceded the presentment for encashment of the subject checks therein. Here, the subject postdated checks were deposited by SB Corp. in October 2008, and dishonored for reason of "Account Closed," after the closure of G7 Bank and after the PDIC, through its Deputy Receiver, had taken over G7 Bank, its premises, assets and records on August 1, 2008 and had issued a cease and desist order against the members of the Board of Directors and officers of G7 Bank and closed all its deposit accounts with other banks, including its checking account with the LBP against which the five disputed checks were issued.

Significantly, when PDIC filed on October 15, 2009 a Petition for Assistance in the Liquidation of G7 Bank with the RTC Branch 21 of Naga City (the "liquidation court"), SB Corp. thereafter filed in said liquidation court, on January 28, 2010, its Notice of Appearance with Notice of Claims.

To digress, when a bank is ordered closed by the Monetary Board, PDIC is designated as the receiver which shall then proceed with the takeover and liquidation of the closed bank. The placement of a bank under liquidation has the following effect on interest payments: "The liability of a bank to pay interest on deposits and all other obligations as of closure shall cease upon its closure by the Monetary Board without prejudice to the first paragraph of Section 85 of Republic Act No. 7653 (the New Central Bank Act)," and on final decisions against the closed bank: "The execution and

enforcement of a final decision of a court other than the liquidation court against the assets of a closed bank shall be stayed. The prevailing party shall file the final decision as a claim with the liquidation court and settled in accordance with the Rules on Concurrence and Preference of Credits under the Civil Code or other laws."

The petition for assistance in the liquidation of a closed bank is a special proceeding for the liquidation of a closed bank, and includes the declaration of the concomitant rights of its creditors and the order of payment of their valid claims in the disposition of assets. It is a proceeding *in rem* and the liquidation court has exclusive jurisdiction to adjudicate disputed claims against the closed bank, assist in the enforcement of individual liabilities of the stockholders, directors and officers, and decide on all other issues as may be material to implement the distribution plan adopted by PDIC for general application to all closed banks. The provisions of the Securities Regulation Code or RA 8799, and Supreme Court Administrative Matter No. 00-8-10-SC or the Rules of Procedure on Corporate Rehabilitation are not applicable to the petition for assistance in the liquidation of closed banks.

In *Gidwani*, there was an SEC order of suspension of payments after a petition to that effect was filed, which had the effect of suspending the collection of the loan obligation of the debtor therein. In the present cases, the closure of G7 Bank by the Monetary Board, the appointment of PDIC as receiver and its takeover of G7 Bank, and the filing by PDIC of a petition for assistance in the liquidation of G7 Bank, had the similar effect of suspending or staying the demandability of the loan obligation of G7 Bank to SB Corp. with the concomitant cessation of the former's obligation to pay interest to the latter upon G7 Bank's closure. Moreover, these events also affected G7 Bank's "liquidability" — subjecting the exact amount that SB Corp. is entitled to collect from G7 Bank to the distribution plan adopted by PDIC and approved by the liquidation court in accordance with the Rules on Concurrence and Preference of Credits under the Civil Code.

Therefore, applying *Gidwani* by analogy, at the time SB Corp. presented the subject checks for deposit/encashment in October 2008, it had no right to demand payment because the underlying obligation was not yet due and demandable from Cu and he could not be held liable for the civil obligations of G7 Bank covered by the subject dishonored checks on account of the Monetary Board's closure of G7 Bank and the takeover thereof by PDIC. Even payment of interest on G7 Bank's loan ceased upon its closure. Moreover, as of the time of presentment of the checks, there was yet no determination of the exact amount that SB Corp. was entitled to recover from G7 Banks as this would still have to be ascertained by the liquidation court pursuant to the PDIC's distribution plan in accordance with the Concurrence and Preference of Credits under the Civil Code.

To clarify, given the invocation in *Gidwani* of the definition of an obligation subject to a suspensive obligation, what is suspended here is not the birth of the loan obligation since the debtor had availed of the loan proceeds. What is subject to a suspensive condition is the right of the creditor to demand the payment or performance of the loan — the exact amount due not having been determined or liquidated as the same is subject to PDIC's distribution plan. In the same vein, until then the debtor's obligation to pay or perform is likewise suspended.

SB Corp. knew at the time it deposited in October 2008 the subject postdated checks that G7 Bank was already under receivership and PDIC had already taken over the bank by virtue of the Monetary Board's closure thereof. SB Corp. acted in clear bad faith because with G7 Bank's closure and PDIC taking over its assets and closing all of its deposit and checking accounts, including that with LBP, there was no way that Cu or any officer of the bank could not fund the said checks. Stated otherwise, it was legally impossible for Cu to fund those checks on the dates indicated therein, which were all past G7 Bank's closure because all the bank accounts of G7 Bank were closed by PDIC.

After the closure of G7 Bank, its obligations to SB Corp., including those which the subject checks were supposed to pay, are subject to the outcome of the bank's liquidation. The exact consideration of the subject checks is, thus, contingent and any demand for the payment of the obligation for which those checks were issued after closure and pending liquidation of the bank is premature.

Furthermore, there was no way for Cu to pay SB Corp. the amount due on the subject checks or make arrangements for its payment in full within five banking days from after (sic) receiving notice that such checks had been dishonored pursuant to Section 2 of B.P. 22 because as of that time, the exact amount due on the subject checks was not known or uncertain.

Needless to add, the right of SB Corp. to pursue its civil or monetary claim against G7 Bank before the liquidation court exists and is undiminished.³⁵ (Emphasis supplied)

It is apparent as we have discussed in G.R. No. 211222 that as a result of the resolution issued by the BSP placing G7 Bank under receivership, the obligation to pay the amounts covered by the checks is suspended. Hence, there could be no criminal liability since there was a supervening fact that is beyond the control of the petitioners that prevented them from performing their obligation to fund the checks.

Applying our ruling in G.R. No. 211222 to the remaining criminal cases for violation of B.P. 22, We find that the MeTC Makati City correctly concluded that after the BSP had placed G7 Bank under receivership, all members of the Board of Directors, as well its officers, ceased to have any authority to act for and on behalf of the bank. Thus, it was legally impossible for the petitioners to still fund the checks that had maturity dates after the BSP resolution had taken effect.

WHEREFORE, in view of the foregoing, the petition is hereby **GRANTED**. The Court of Appeals Amended Decision dated September 22, 2014 and the Resolution dated May 20, 2015 in CA-G.R. CR No. 34738 are **REVERSED** and **SET-ASIDE**. The decisions of the

³⁵

Id. at 631-635.


Metropolitan Trial Court, Branch 64, Makati City and the Regional Trial Court, Branch 138, Makati City are hereby **REINSTATED**.


SO ORDERED.

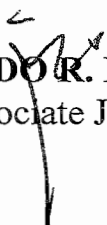

JHOSEP V. LOPEZ
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice

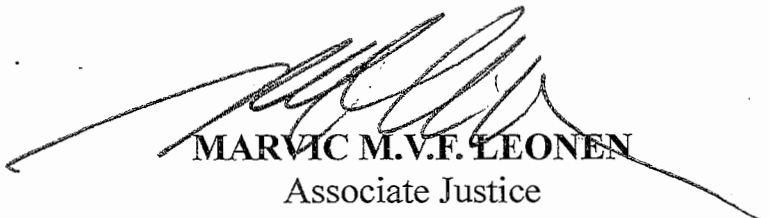

RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL INTING
Associate Justice


RICARDO R. ROSARIO
Associate Justice

ATTESTATION

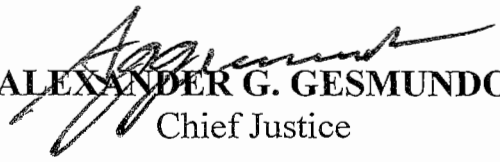
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson, Third Division

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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.


ALEXANDER G. GESMUNDO
Chief Justice