IN DEFENSE OF GUARANTY CHECKS UNDER B.P. 22

By ALAN F. PAGUIA*

There is a cloud of doubt in the interpretation and application of the Bouncing Check Law, otherwise known as Batas Pambansa Blg. 22, approved on April 3, 1979.

The doubt lies as to whether or not checks issued to guarantee the payment of an obligation are covered by the penal sanctions of the law.

In two circulars issued by the Department of Justice, conflicting answers were given. In Memorandum Circular No. 4, dated December 15, 1981, it was ruled that such guaranty checks are not covered by the law. However, in Ministry Circular No. 12, dated August 8, 1984, it was ruled that guaranty checks are covered by the law.

The radical change in posture from the extreme negative to the extreme positive is in itself the proof that the doubt earlier adverted to exists.

The rule is – in case of doubt in the interpretation or application of laws, it is presumed that the lawmaking body intended right and justice to prevail.[1] (Art. 10 CIVIL CODE).

In matters which are governed by special laws, their deficiency shall be supplied by the provisions of the Civil Code[2] (Art. 18, *ibid.*).

Ministry Circular No. 12

For facility, the circular is hereby quoted in full :

"TO: All Provincial/City Fiscals, their Assistants and State Prosecutors

This Ministry in a number of cases involving violation of the Bouncing Checks Law (B.P. Blg. 22) has ruled that a check issued as part of an arrangement to guarantee or secure the payment of an obligation or to facilitate collection is not covered by said law, You were advised of this ruling through Memorandum Circular No. 4, dated December 15, 1981.

After a re-examination of the aforesaid ruling, it appears that the same was a result of a misapplication of the deliberation in the Batasang Pambansa. The original bill, Cabinet Bill No. 9, of which I was the author, contained a proviso that the prohibition shall not include the issuance of a check as part of an arrangement to secure or guarantee the fulfillment of an obligation or to facilitate its collection. During the debate on general principles, the intent and coverage of the proviso was expounded on and situations to which it would be applicable were given. There was a suggestion that no exception be provided to make the law a better deterrent against the issuance of unfunded checks (Record of the Batasan, Vol. I, pp. 488-491, 494-495, Session of August 8, 1978; pp. 509-511, Session of August 9, 1978). The original bill was referred to the Committee of Revision of Laws and Codes and Constitutional Amendments which submitted a substitute bill. The proviso in the original bill was not included in the substitute bill because the committee felt that it might "needlessly encumber the enforcement of the Act" considering that the

---

*LIb. (1983), Ateneo School of Law.

situations which could be considered to be covered by the proviso may easily be susceptible to proof (Id., Vol. III, pp. 1036 and 1045, Session of December 4, 1978). The bill as finally approved, now B.P. Blg. 22, contains no exception.

The misapplication above adverted to could be due to the fact that the explanatory note on the original bill, *i.e.*, that the intention was not to penalize the issuance of a check to secure or guarantee the payment of an obligation, was carried in the substitute bill (Id., p. 1045) which could have given rise to the misapplication of the discussion on the proviso in the interpretation of B P. Blg. 22.

Henceforth, conformably with the rule that "an administrative agency having interpretive authority may reverse its administrative interpretation of a statute, but that its new interpretation applies only prospectively" *(Waterbury Savings Bank v. Danaher,* 128 Conn. 476; 20 A2d 455 (1941), in all cases involving violation of Batas Pambansa Blg. 22 wherein the check in question is issued after this date, the claim that the check is issued as a guarantee or part of an arrangement to secure an obligation or to facilitate collection will no longer be considered as a valid defense.

This amends Memorandum Circular No. 4, dated December 15, 1981.

Be guided accordingly."

The fact remains therefore, that in the explanatory note carried in the substitute bill that became B.P. Blg. 22 – the record has it that the lawmaking body's intention "was not to penalize the issuance of a check to secure or guarantee the payment of an obligation".

The categorical expression of this "intention" – though allegedly erroneous – does not seem to leave any room for construction or interpretation. It is therefore questionable that the Ministry or Department of Justice took liberty in interpreting the same, nay, negating the same. The consequence – encroachment by an executive agency upon the legitimate function of the legislative branch of the government. It is axiomatic that legislative error, if at all, would require legislative remedy, not executive, as was improperly done in this case.

"On account" Or "For value"

Under the law, the questioned check must have been issued *"on account"* or *"for value"* The word *"acount"* refers to a pre-existing obligation, while the phrase *"for value"* refers to an obligation incurred simultaneously with the issuance of the check.[3] (Prof. Jacinto Jimenez, *The New Bouncing Check Law,* Ateneo Law Journal, Vol. XXV, No. 1, p. 12, *citing* Record of Batasan, August 8, 1978, p. 494; December 4, 1978, p. 1041; lecember 8, 1978, p. 1123). In both instances, the check is issued to answer for an obligation. The question is – whose obligation does the law refer to? In a simple situation where a check is issued to guarantee the payment of an obligation, there are, ordinarily, three parties. First, the creditor who owns the obligation, and likewise, the payee of the check. Second, the debtor who owes the obligation, and a non-apparent party to the issuance of the check. And third, the guarantor of the obligation who draws and issues the check.

Obviously, in such a situation, the law refers to the debtor's obligation in favor of the creditor. And it is the payment of this obligation which is the object of the guaranty. In plain terms, here, the check is issued to guarantee the payment of the obligation.

Observe that, under the law, the sanction applies where the check is *issued in payment* of the obligation, pre-existing or simultaneous, and the said check bounces. So that where such check is issued, not in payment, but, to *guarantee the payment* of the obligation, the law simply does not apply especially where, as in the case of B.P. Blg. 22, the lawmaking body makes it of record that the law does not so apply.

Penal statutes are strictly construed in favor of the accused without however defeating the legislative intent.[4] (I AQUINO, THE REVISED PENAL CODE, 1976 ed., p. 12). With more reason must BP. Blg. 22 be strictly construed as, with respect to guaranty checks, the expressed legislative intent is thereby implemented.

Nature of Guaranty

By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so.[5] (Art. 2047, first par., CIVIL CODE).

The general rule is that a guaranty is gratuitous.[6]

A guarantor is a person distinct from the debtor. While the guarantor is subsidiarily liable, the debtor is principally liable.[7]

From the point of view of the aforementioned Ministry Circular No. 12, the guarantor as drawer of the check is made principally liable where the said check is subsequently dishonored and the necessary proceedings of dishonor are duly taken.[8] (*See* Negotiable Instruments Law, Act No. 2031 (1911), Arts. 61, 70, 89, and 152). However, the text of B.P. Blg. 22 itself is silent where such drawer is merely a guarantor. Hence, this deficiency must be supplied by the pertinent provisions of the Civil Code.[9] (Art. 18, CIVIL code). It must also be borne in mind that although the explanatory note on B.P. Blg. 22, mentioned in Ministry Circular No. 12, does not form part of the text of the law, it is nonetheless forcefully persuasive, if not binding, in supplying the said deficiency.

Would right and justice prevail (Art. 10, CIVIL CODE) by penalizing the guarantor while the principal debtor cavorts freely with the creditor?

Certainly not.

This could very well be the reason why in the explanatory note to B.P. Blg. 22 the lawmaking body stated that the "intention was not to penalize the issuance of a check to secure or guarantee the payment of an obligation."[10] (*See* Ministry Circular No. 12, aforequoted).

Malum Prohibitum?

Is B.P. Blg. 22 *malum prohibitum?*

According to the Supreme Court which has sustained the constitutionality of B.P. Blg. 22 in *Lozano v. Martinez.*[11] G.R. No. 63419, 18 December 1986, *in toto* – the law is *malum probitum.* Basis? Footnote numbered 14 on page 12 of *Lozano v. Martinez, ibid.*, states:

"The offense is punished not as a crime against property, but against public interest. See Record of Batasan, Vol. 3, P.B. No. 70."

However, according to Dean Antonio Gregorio who is an eminent authority on Philippine criminal law, B.P. Blg. 22 is not *malum prohibitum*. Basis? "From the wording of the law."[12] (GREGORIO, *Criminal Law*, in SURVEY AND ANALYSIS OF 1978 SUPREME COURT DECISIONS AND PRESIDENTIAL DECREES; U.P. Law Center; p. 162; U.P. Press, 1979).

> "Good faith is still a valid defense since criminal intent inheres in the offense considering that the drawer is given five (5) banking days from notice to pay the holder the amount of the check or make arrangement with the bank for its payment in full, and considering further that the bouncing check must be issued by the drawer knowing that on the date of issue he does not have sufficient funds. For example, if the obligation in consideration of which the bouncing check is issued in payment thereof is void or not enforceable, the offense punished in the new law cannot be committed. Or, if after the issuance of a postdated check the drawer suffered business reverses and he informed the payee not to deposit the check on the date of maturity because of inability to raise the amount in payment of the check, criminal intent would certainly be absent. The law cannot make the fiscal's office a collection agency. I believe the clause, "knowing at the time of issue that he does not have sufficient funds or credit with the drawee bank" must be deleted.

Between the discussion on the bill (Record of Batasan Proceedings) and the actual wording of the law, the latter naturally prevails.

According to the Supreme Court in *Lozano v. Martinez, supra*, p. 18:

> "The gravamen of the offense punished by B.P. 22 is the act of making and issuing a worthless check or a check that is dishonored upon its presentation for payment. It is not the non-payment of an obligation which the law punishes. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making of worthless checks and putting them in circulation. Because of its deleterious effects on the public interest, the practice is proscribed by the law. The law punishes the act not as an offense against the property, but an offense against public order."
>
> x x x x x x x x x x
>
> "An act may not be considered by society as inherently wrong, hence not *malum in se*, but because of the harm that it inflicts on the community, it can be outlawed and criminally punished as *malum prohibitum*. The state can do this in the exercise of its police power."

There seems to be valid ground to disagree with respect to the "gravamen" of the offense. While the High Court confines itself to the act of making or issuing of a bouncing check, the law further requires the specific purpose for which the said check is issued, *i.e.*, "to apply on account or for value"[13] (Sec. 1, B.P. Blg. 22). Meaning that the check must have been *issued in payment* of the obligation, pre-existing or simultaneous. Where the check is *issued to guarantee the payment* of the obligation, the law no longer applies.

Why? Because the latter case is no longer "plainly within the meaning of the language employed."[14] (GUEVARA, ELEMENTS OF PENAL SCIENCES, 1974, p. 26, *citing* BLACK, INTERPRETATION OF LAWS, p. 451).

In such latter case, it cannot be said that the drawer or maker and issuer of the check intended "to do the thing which the law in fact forbids"[15] (*U.S. v. Ah Chiong*, 15 Phil. 488) because the check was issued NOT in payment of the obligation.

Conclusion

Guaranty checks are not covered by B.P. Blg. 22. The explanatory note on the corresponding bill that became B.P. Blg. 22 supports this view. If there is error in said explanatory note, the remedy is legislative action, not abuse of executive fiat.

Guaranty checks are not, and they need not be, exceptions under the law. The language of the law simply does not include or cover them. As the language of the law is clear, there is no room for the exercise of any claimed "interpretive authority".

If the government wishes to penalize the issuance of guaranty checks which are subsequently dishonored, all it has to do is to pass a law to that effect. But it would not be fair for the prosecutory arm of the government to include something in the law which is not there. Such would be a disservice to the law-abiding citizens of the republic.

The Department of Justice would do well to recall and correct its aforementioned Ministry Circular No. 12.