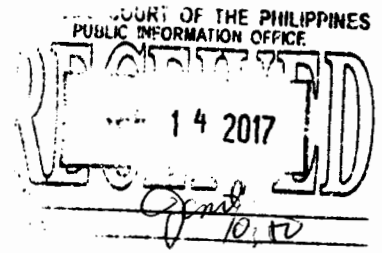




Republic of the Philippines
Supreme Court
 Manila



FIRST DIVISION

ALLAN S. CU,
 Petitioner,

G.R. No. 211222

Present:

- versus -

SERENO, C.J., Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 PERLAS-BERNABE, and
 CAGUIOA, JJ.

**SMALL BUSINESS GUARANTEE
 AND FINANCE CORPORATION
 THROUGH MR. HECTOR M.
 OLMEDILLO,**
 Respondent.

Promulgated:

AUG 07 2017

X-----X

DECISION

CAGUIOA, J.:

This is a Petition for Review on Certiorari¹ under Rule 45 of the Rules of Court assailing the Decision² of the Court of Appeals³ (CA) dated October 16, 2013 in CA-G.R. SP No. 121573 and the Resolution⁴ dated February 6, 2014 denying the Motion for Reconsideration filed by petitioner Allan S. Cu (“Cu”).

Facts and Antecedent Proceedings

The undisputed facts are summarized by the CA in its Decision dated October 16, 2013, thus:

x x x Small Business Guarantee and Finance Corporation [SB Corp.] is a government financial institution created by virtue of RA 6977, which is mandated by law to provide easy access credit to qualified micro, small and medium enterprises (MSMEs) through direct lending or through its conduit participating financial institutions for re-lending. One of its clients

¹ *Rollo*, pp. 3-28.

² *Id.* at 32-45. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla, concurring.

³ Eighth (8th) Division.

⁴ *Id.* at 67-69. Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla concurring.

was Golden 7 Bank (Rural Bank of Nabua, Inc.) [G7 Bank], a banking corporation duly organized and existing under Philippine laws.

On August 31, 2007, an "Omnibus Credit Line Agreement" was executed, whereby G7 Bank was initially granted credit line of Fifty Million Pesos (P50,000,000.00) by SB Corp. for re-lending to qualified MSMEs as sub-borrowers. Eventually, the credit line was increased to Ninety Million Pesos (P90,000,000.00), and in line with said increase, the Board of Directors of G7 Bank authorized any two of its officers, namely Fidel L. Cu, Allan S. Cu [Cu], Lucia C. Pascual and Norma B. Cueto, as signatories to loan documents, including postdated checks.

Subsequently, various drawdowns were made from the line and each drawdown was covered by a promissory note, amortization schedule and postdated check. Cu and his co-signatory Lucia Pascual (now deceased) [Pascual] then issued more than a hundred postdated checks as payment to the various drawdowns made on the credit line, including the following checks subject of [the criminal cases filed against Cu and Pascual], viz:

CHECK NUMBER	DATE	AMOUNT
865691	October 13, 2008	3,881,513.25
977005	October 13, 2008	29,058.75
977017	October 17, 2008	37,800.00
865558	October 6, 2008	225,812.31
865653	October 7, 2008	169,391.25

On July 31, 2008, Bangko Sentral ng Pilipinas (BSP) placed G7 Bank under receivership by the Philippine Deposit Insurance Corporation (PDIC).

Thus, on August 1, 2008, x x x PDIC through its Deputy Receiver, took over the bank, its premises, assets and records and accordingly, PDIC issued the following cease and desist order, to wit:

"With the MB's closure of the Bank, all members of the Board of Directors and officers of the Bank shall cease to have any further authority to act for and in behalf of the Bank, PDIC, as receiver, shall immediately take charge of the assets, records, and affairs of the Bank. As such, the Bank, its premises[,] assets, records shall be turned over to the Deputy Receiver immediately upon receipt of the attached MB Resolution."

Consequently, PDIC closed all of G7 Bank's deposit accounts with other banks, including its checking account with the Land Bank of the Philippines (LBP) against which the disputed checks were issued.

Upon maturity of the subject postdated checks in October 2008, SB Corp. deposited the same to its account with the LBP Makati branch but all of them were dishonored for reason of "Account Closed". Subsequently, SB Corp. sent demand letters to Cu and Pascual demanding payment of the amounts represented in the dishonored checks. Despite receipt of the demand letters, Cu and Pascual failed to make good the dishonored checks, prompting SB Corp. to file a Complaint-Affidavit for Violation of Batas Pambansa Blg. 22 (B.P. 22) before the Office of the City Prosecutor of Makati.

After finding that probable cause exists to indict Cu and Pascual for Violation of B.P. 22, on five counts, the corresponding Informations were filed in court. Eventually, the cases were raffled to Branch 65 of the [Metropolitan Trial Court,] Makati City [(MeTC)].

Meantime, on October 15, 2009, PDIC filed a Petition for Assistance in the Liquidation of G7 Bank with the RTC Branch 21 of Naga City. SB Corp. then filed its Notice of Appearance with Notice of Claims with the liquidation court on January 28, 2010. The following day, the [MeTC] issued an Order setting the arraignment of the accused Cu and Pascual on March 2, 2010.

Before the scheduled arraignment, however, Cu and Pascual filed an "Omnibus Motion (1. For the Determination of Probable Cause 2. To Dismiss the Instant Cases on Jurisdictional Grounds 3. To Defer the Arraignment and Further Proceedings on the Ground of Prejudicial Question 4. To Dismiss the Case[s] for Lack of Probable Cause)," alleging the following:

1. The checks were intended to cover the installment payments of the credit line drawdowns obtained from SB Corp. However, the funding of the checks could not be validly done because G7 [Bank] was placed under receivership; and
2. The notice of dishonor was not received by them and in the meantime, there is already a petition for liquidation assistance pending with the RTC of Naga City filed by PDIC. Accordingly, the liquidation court has original exclusive jurisdiction over the settlement of all the obligations of G7 Bank, including the amounts covered by the subject checks.

SB Corporation countered that the only issue being determined in a prosecution for BP 22 case is whether or not the accused issued the worthless checks, the defense that they were precluded from fulfilling their obligation by reason of the receivership is a mere afterthought and an evidentiary matter that can be ventilated during trial.

Thereafter, in an Order dated April 5, 2010, the MeTC dismissed the B.P. 22 cases and ruled in this wise:

"It has been ruled in *Abacus Real Estate Development Center, Inc. v. Manila Banking Corporation* (455 SCRA 97) that the appointment of a receiver operates to suspend the authority of the bank and its directors and officers over its property and effects, such authority being reposed in the receiver, and in this respect, the receivership is equivalent to an injunction to restrain the bank officers from intermeddling with the property of the bank in any way.

After G7 Bank was placed under receivership and with the designation of PDIC as Receiver, the custody and control of its assets, funds and records are with the receiver. At that time, the bank can no longer transfer or dispose of its assets. In effect, the officers of the bank, the accused in



particular, can no longer touch the funds or property of the institution to fund the checks the maturity dates of which are after the bank was placed under receivership. Because of the receivership, G7 Bank cannot by itself keep sufficient funds in its account to cover the full amount of the subject checks at their maturity dates. Clearly, placing the bank under receivership prevented it from funding the checks subject of the cases. Thus, the herein cases for Violation of Batas Pambansa Bilang 22 deserve dismissal. The other grounds cited by the accused need not be discussed for being inconsequential.

WHEREFORE, premises considered, Criminal Case Nos. 361400 to 361404 for Violation of Batas Pambansa Bilang 22, against Allan S. Cu and Lucia C. Pascual are **DISMISSED**.

SO ORDERED.”

SB Corp. filed a Motion for Reconsideration from the Order of dismissal, but the same was denied by the M[e]TC in an Order dated June 25, 2010. It then appealed to the [Regional Trial Court, Branch 61, Makati City (RTC)] arguing that a pending liquidation proceedings (sic) does not extinguish the criminal and civil liabilities of the signatories to the dishonored corporate checks.

On May 2, 2011, the [RTC] rendered [a] Decision affirming *in toto* the dismissal of the cases for Violation of B.P. 22. The dispositive portion of the said Decision reads:

“**WHEREFORE**, premises duly considered the instant appeal of the herein complaining juridical entity, the Small Business Guarantee and Finance Corporation (SBGFC) is hereby **DISMISSED** for lack of merit.

Ex concessio, the challenged Order(s) of Branch 65 of the Metropolitan Trial Court of the City of Makati rendered in Criminal Case[s] Nos. 361400 to 361404 and dated 05 April 2010 and 25 June 2010, respectively, are hereby **BOTH AFFIRMED**.

No costs.

SO ORDERED.”

On June 21, 2011, SB Corp. filed a Motion for Reconsideration of the said Decision which was denied by the [RTC]. Hence the x x x petition [for review under Rule 42] was filed [with the Court of Appeals (CA)].⁵

In the decretal portion of its Decision, the CA: (1) granted the petition filed by SB Corp., (2) vacated and set aside the May 2, 2011 Decision of the Regional Trial Court (RTC) of Makati City, Branch 61, and (3) remanded the cases to the MeTC, Branch 65 of Makati City, for further proceedings.⁶

⁵ Id. at 33-38.

⁶ Id. at 44.



Cu's motion for reconsideration was denied by the CA in its Resolution dated February 6, 2014. Hence, this Petition for Review on Certiorari under Rule 45 of the Rules of Court.

In the Resolution⁷ of the Court dated December 1, 2016, Cu was required to furnish the Office of the Solicitor General (OSG) with a copy of the petition and OSG was required to file its comment on the petition. The OSG filed its Comment⁸ on July 10, 2017.

Issues

Whether the CA erred in not dismissing the SB Corp.'s petition because an appeal from the dismissal of a criminal case may be undertaken only by the State through the Solicitor General.

Whether the CA erred in reversing the May 2, 2011 Decision and September 5, 2011 Resolution of the RTC.

The Court's Ruling

Regarding the first issue, Cu contends that the CA should have dismissed SB Corp.'s petition because SB Corp., as the private offended party, could not, on its own, take an appeal from the decision of the RTC of Makati City, as it is only the Solicitor General who can represent the People of the Philippines on appeal, with respect to the criminal aspect.

In its Comment,⁹ SB Corp. counters that Cu is barred from raising this issue now because he did not raise it before the CA. SB Corp. also contends that in CA-G.R. CR No. 34738, which involves the same parties and informations for violation of B.P. 22, involving 35 of 103 checks¹⁰ that were filed against Cu and Pascual before Branch 64, MeTC of Makati City, the Solicitor General filed a motion for reconsideration after SB Corp.'s petition for review was dismissed by the CA for lack of authority to represent the People of the Philippines.¹¹ SB Corp. thus argues that since the Solicitor General had adopted the arguments of SB Corp. in that case, then it would not act differently in the instant cases. Finally, SB Corp. argues that the Revised Rules on Criminal Procedure authorize any party to appeal from a judgment or final order, unless the accused will be placed in double jeopardy¹² and a party may file a petition for review before the CA from a decision of the RTC rendered in the exercise of its appellate jurisdiction.¹³

⁷ Id. at 119.

⁸ Id. at 136-163.

⁹ Id. at 83-94.

¹⁰ The said checks were issued in payment of the same Omnibus Credit Line Agreement granted in favor of G7 Bank as in the present cases.

¹¹ *Rollo*, pp. 84, 95-100.

¹² Id. at 85, citing REVISED RULES ON CRIMINAL PROCEDURE, Rule 122, Sec. 1.

¹³ Id. at 85-86, citing REVISED RULES ON CRIMINAL PROCEDURE, id., Sec. 2(b) in relation to REVISED RULES OF COURT, Rule 42, Sec. 1.

The OSG, in its Comment, postulates that its participation is not always indispensable in the appeal of the dismissal of a criminal case by the trial court and that there have been times when the Court, in the interest of justice, gave due course to the appeal or petition in a criminal case filed before the Court or the CA by the private complainant or the public prosecutor.¹⁴ It is OSG's position that the CA did not err in giving due course to the petition for review filed by SB Corp. before the CA.¹⁵

The Court observed in *Mobilia Products, Inc. v. Umezawa*¹⁶ that:

In a criminal case in which the offended party is the State, the interest of the private complainant or the offended party is limited to the civil liability arising therefrom. Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned. In so doing, the private complainant or offended party need not secure the conformity of the public prosecutor. If the court denies his motion for reconsideration, the private complainant or offended party may appeal or file a petition for *certiorari* or *mandamus*, if grave abuse amounting to excess or lack of jurisdiction is shown and the aggrieved party has no right of appeal or x x x adequate remedy in the ordinary course of law.¹⁷

Following settled jurisprudence, the Court believes, and so holds, that being a mere private complainant, SB Corp. lacked the authority to represent the State in the appeal of the criminal cases before the CA as this authority is **solely** vested in the OSG. The OSG is the law office of the Government whose specific powers and functions¹⁸ include that of representing the Republic and/or the People before any court in any action which affects the welfare of the People as the ends of justice may require.¹⁹ Accordingly, if

¹⁴ Id. at 147.

¹⁵ Id. at 147, 149.

¹⁶ 493 Phil. 85 (2005).

¹⁷ Id. at 108, citing *Neplum, Inc. v. Orbeso*, 433 Phil. 844 (2002).

¹⁸ Executive Order No. 292, Series of 1987 or the 1987 Revised Administrative Code, Book IV, Title III, Chapter 12, Section 35 (1) provides:

SECTION 35. *Powers and Functions.* – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. x x x It shall have the following specific powers and functions:

(1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

¹⁹ *People v. Piccio*, 740 Phil. 616, 621-622 (2014), citing *Villareal v. Aliga*, 724 Phil. 47, 57-59 (2014) and *Gonzales v. Chavez*, 282 Phil. 858, 889 (1992).

there is a dismissal of a criminal case by the trial court, it is only the OSG that may bring an appeal of the criminal aspect representing the People.²⁰

Clearly, SB Corp. did not file its petition for review with the CA merely to preserve its interest in the civil aspect of the criminal cases but sought the reinstatement of the criminal prosecution of Cu for violation of B.P. 22. Being an obvious attempt to participate in, or otherwise prosecute, the criminal aspect of the cases without the conformity of the OSG, its recourse must fail.²¹

This Court has, however, taken exceptions and given due course to several actions even when the respective interests of the Government were not properly represented by the OSG,²² namely, when the challenged order affected the interest of the State or the People,²³ the case involved a novel issue, like the nature and scope of jurisdiction of the Cooperative Development Authority,²⁴ and the ends of justice would be defeated if all those who came or were brought to court were not afforded a fair opportunity to present their sides.²⁵

The Court is inclined to interpose the exception in the present petition for justice to prevail²⁶ and if only to write *finis* to the criminal cases from which the petition originates.

Proceeding now to the second issue, the OSG posits that a review of SB Corp.'s evidence to assess the propriety of the reinstatement or dismissal of the criminal cases against Cu before the MeTC is not warranted in a petition for review on certiorari before the Court because the determination of whether probable cause exists is not lodged with the Court.

In this petition, the propriety of the dismissal by the MeTC of B.P. 22 cases filed against Cu, which the RTC upheld, is in issue. Did the MeTC and RTC have legal basis for the dismissal?

The Court finds that the MeTC and RTC acted correctly and did not gravely abuse their discretion when they ordered the dismissal of the B.P. 22 cases against Cu.

In *Gidwani v. People*,²⁷ wherein several checks that were issued by the President of an exporter of ready-to-wear clothes in payment of the

²⁰ Id. at 622; citations omitted.

²¹ See id. at 623.

²² *Antone v. Beronilla*, 652 Phil. 151, 161 (2010).

²³ *Labaro v. Panay*, 360 Phil. 102, 110 (1998), cited in *Antone v. Beronilla*, id.

²⁴ *Cooperative Development Authority v. Dolefil Agrarian Reform Beneficiaries Cooperative, Inc.*, 432 Phil. 290, 308 (2002), cited in *Antone v. Beronilla*, id. at 162. The OSG was not even required to file a comment on the petition.

²⁵ *Antone v. Beronilla*, id., citing *Tan v. People*, 604 Phil. 68, 88 (2009).

²⁶ Id.

²⁷ 724 Phil. 636 (2014).

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 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.²⁸ (Emphasis and underscoring supplied)

The Court compared *Gidwani* with *Rosario v. Co.*²⁹ 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.³⁰

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*

²⁸ Id. at 644-645.

²⁹ 585 Phil. 236 (2008). Erroneously cited in *Gidwani* as *Tiong v. Co.*

³⁰ *Gidwani v. People*, supra note 27, at 644.

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.³¹ 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."³²

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.³³

³¹ R.A. 3591, as amended by RA No. 10846, Sec. 12(a).

³² Id., Sec. 13(e)(6) and (10).

³³ Id., Sec. 16(g), (h) and (i).

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"³⁴ — 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 fund the said checks. Stated otherwise, it was legally impossible for Cu to fund those checks on the dates indicated therein, which

³⁴ In the context of capability of being liquidated. According to *Montemayor v. Millora*, 670 Phil. 209, 218-219 (2011), a debt is liquidated when its existence and amount are determined or when it is expressed already in definite figures which do not require verification or when the determination of the exact amount depends only on a simple arithmetical operation.

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.

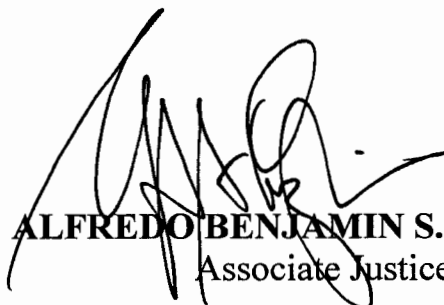
Furthermore, there was no way for Cu to pay SB Corp. the amount due on the subject checks or make arrangements for its payment in full within five banking days from after receiving notice that such checks had been dishonored pursuant to Section 2 of B.P. 22 because as of that time, the exact amount due 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.


Accordingly, the CA erred in reversing the May 2, 2011 Decision and the September 5, 2011 Order of the RTC, Branch 61 of Makati City.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated October 16, 2013 and Resolution dated February 6, 2014 in CA-G.R. SP No. 121573 are **REVERSED** and **SET ASIDE**. Criminal Case Nos. 361400 to 361404 are **DISMISSED**, without prejudice to the right of Small Business Guarantee and Finance Corporation to pursue its claim against Golden 7 Bank (Rural Bank of Nabua, Inc.) for the value of the five checks before the liquidation court.

SO ORDERED.


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice
Chairperson

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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
MARIA LOURDES P. A. SERENO
Chief Justice

[Handwritten signature]