

SECOND DIVISION

[G.R. No. 187769, June 04, 2014]

**ALVIN PATRIMONIO, PETITIONER, VS. NAPOLEON GUTIERREZ
AND OCTAVIO MARASIGAN III, RESPONDENTS.**

D E C I S I O N

BRION, J.:

Assailed in this petition for review on *certiorari*^[1] under Rule 45 of the Revised Rules of Court is the decision^[2] dated September 24, 2008 and the resolution^[3] dated April 30, 2009 of the Court of Appeals (CA) in CA-G.R. CV No. 82301. The appellate court affirmed the decision of the Regional Trial Court (RTC) of Quezon City, Branch 77, dismissing the complaint for declaration of nullity of loan filed by petitioner Alvin Patrimonio and ordering him to pay respondent Octavio Marasigan III (*Marasigan*) the sum of P200,000.00.

The Factual Background

The facts of the case, as shown by the records, are briefly summarized below.

The petitioner and the respondent Napoleon Gutierrez (*Gutierrez*) entered into a business venture under the name of Slam Dunk Corporation (*Slum Dunk*), a production outfit that produced mini-concerts and shows related to basketball. Petitioner was already then a decorated professional basketball player while Gutierrez was a well-known sports columnist.

In the course of their business, the petitioner pre-signed several checks to answer for the expenses of Slam Dunk. Although signed, these checks had no payee's name, date or amount. The blank checks were entrusted to Gutierrez with the specific instruction not to fill them out without previous notification to and approval by the petitioner. According to petitioner, the arrangement was made so that he could verify the validity of the payment and make the proper arrangements to fund the account.

In the middle of 1993, without the petitioner's knowledge and consent, Gutierrez went to Marasigan (the petitioner's former teammate), to secure a loan in the amount of P200,000.00 on the excuse that the petitioner needed the money for the construction of his house. In addition to the payment of the principal, Gutierrez assured Marasigan that he would be paid an interest of 5% per month from March to May 1994.

After much contemplation and taking into account his relationship with the petitioner and Gutierrez, Marasigan acceded to Gutierrez' request and gave him P200,000.00 sometime in February 1994. Gutierrez simultaneously delivered to Marasigan one of the blank checks the petitioner pre-signed with Pilipinas Bank, Greenhills Branch,

Check No. 21001764 with the blank portions filled out with the words "Cash" "*Two Hundred Thousand Pesos Only*", and the amount of "P200,000.00". The upper right portion of the check corresponding to the date was also filled out with the words "*May 23, 1994*" but the petitioner contended that the same was not written by Gutierrez.

On May 24, 1994, Marasigan deposited the check but it was dishonored for the reason "ACCOUNT CLOSED." It was later revealed that petitioner's account with the bank had been closed since May 28, 1993.

Marasigan sought recovery from Gutierrez, to no avail. He thereafter sent several demand letters to the petitioner asking for the payment of P200,000.00, but his demands likewise went unheeded. Consequently, he filed a criminal case for violation of B.P. 22 against the petitioner, docketed as Criminal Case No. 42816.

On September 10, 1997, the petitioner filed before the Regional Trial Court (RTC) a Complaint for Declaration of Nullity of Loan and Recovery of Damages against Gutierrez and co-respondent Marasigan. He completely denied authorizing the loan or the check's negotiation, and asserted that he was not privy to the parties' loan agreement.

Only Marasigan filed his answer to the complaint. In the RTC's order dated December 22, 1997, Gutierrez was declared in default.

The Ruling of the RTC

The RTC ruled on February 3, 2003 in favor of Marasigan.^[4] It found that the petitioner, in issuing the pre-signed blank checks, had the intention of issuing a negotiable instrument, albeit with specific instructions to Gutierrez not to negotiate or issue the check without his approval. While under Section 14 of the Negotiable Instruments Law Gutierrez had the prima facie authority to complete the checks by filling up the blanks therein, the RTC ruled that he deliberately violated petitioner's specific instructions and took advantage of the trust reposed in him by the latter.

Nonetheless, the RTC declared Marasigan as a holder in due course and accordingly dismissed the petitioner's complaint for declaration of nullity of the loan. It ordered the petitioner to pay Marasigan the face value of the check with a right to claim reimbursement from Gutierrez.

The petitioner elevated the case to the Court of Appeals (CA), insisting that Marasigan is not a holder in due course. He contended that when Marasigan received the check, he knew that the same was without a date, and hence, incomplete. He also alleged that the loan was actually between Marasigan and Gutierrez with his check being used only as a security.

The Ruling of the CA

On September 24, 2008, the CA affirmed the RTC ruling, although premised on different factual findings. After careful analysis, the CA agreed with the petitioner that Marasigan is not a holder in due course as he did not receive the check in good faith.

The CA also concluded that the check had been strictly filled out by Gutierrez in accordance with the petitioner's authority. It held that the loan may not be nullified since it is grounded on an obligation arising from law and ruled that the petitioner is still liable to pay Marasigan the sum of P200,000.00.

After the CA denied the subsequent motion for reconsideration that followed, the petitioner filed the present petition for review on *certiorari* under Rule 45 of the Revised Rules of Court.

The Petition

The petitioner argues that: (1) there was no loan between him and Marasigan since he never authorized the borrowing of money nor the check's negotiation to the latter; (2) under Article 1878 of the Civil Code, a special power of attorney is necessary for an individual to make a loan or borrow money in behalf of another; (3) the loan transaction was between Gutierrez and Marasigan, with his check being used only as a security; (4) the check had not been completely and strictly filled out in accordance with his authority since the condition that the subject check can only be used provided there is prior approval from him, was not complied with; (5) even if the check was strictly filled up as instructed by the petitioner, Marasigan is still not entitled to claim the check's value as he was not a holder in due course; and (6) by reason of the bad faith in the dealings between the respondents, he is entitled to claim for damages.

The Issues

Reduced to its basics, the case presents to us the following issues:

1. Whether the contract of loan in the amount of P200,000.00 granted by respondent Marasigan to petitioner, through respondent Gutierrez, may be nullified for being void;
2. Whether there is basis to hold the petitioner liable for the payment of the P200,000.00 loan;
3. Whether respondent Gutierrez has completely filled out the subject check strictly under the authority given by the petitioner; and
4. Whether Marasigan is a holder in due course.

The Court's Ruling

The petition is impressed with merit.

We note at the outset that the issues raised in this petition are essentially factual in nature. The main point of inquiry of whether the contract of loan may be nullified, hinges on the very existence of the contract of loan – a question that, as presented, is essentially, one of fact. Whether the petitioner authorized the borrowing; whether Gutierrez completely filled out the subject check strictly under the petitioner's

authority; and whether Marasigan is a holder in due course are also questions of fact, that, as a general rule, are beyond the scope of a Rule 45 petition.

The rule that questions of fact are not the proper subject of an appeal by *certiorari*, as a petition for review under Rule 45 is limited only to questions of law, is not an absolute rule that admits of no exceptions. One notable exception is when the findings of fact of both the trial court and the CA are conflicting, making their review necessary.^[5] In the present case, the tribunals below arrived at two conflicting factual findings, albeit with the same conclusion, *i.e.*, *dismissal of the complaint for nullity of the loan*. Accordingly, we will examine the parties' evidence presented.

I. Liability Under the Contract of Loan

The petitioner seeks to nullify the contract of loan on the ground that he never authorized the borrowing of money. He points to Article 1878, paragraph 7 of the Civil Code, which explicitly requires a written authority when the loan is contracted through an agent. The petitioner contends that absent such authority in writing, he should not be held liable for the face value of the check because he was not a party or privy to the agreement.

Contracts of Agency May be Oral Unless The Law Requires a Specific Form

Article 1868 of the Civil Code defines a contract of agency as a contract whereby a person "binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.

As a general rule, a contract of agency may be oral.^[6] However, it must be written when the law requires a specific form, for example, in *a sale of a piece of land or any interest therein through an agent*.

Article 1878 paragraph 7 of the Civil Code expressly requires a special power of authority before an agent can loan or borrow money in behalf of the principal, to wit:

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x

(7) **To loan or borrow money**, unless the latter act be urgent and indispensable for the preservation of the things which are under administration. (emphasis supplied)

Article 1878 does not state that the authority be in writing. As long as the mandate is express, such authority may be either oral or written. We unequivocally declared in *Lim Pin v. Liao Tian, et al.*,^[7] that the requirement under Article 1878 of the Civil

Code refers to the nature of the authorization and not to its form. Be that as it may, the authority must be duly established by competent and convincing evidence other than the self serving assertion of the party claiming that such authority was verbally given, thus:

The requirements of a special power of attorney in Article 1878 of the Civil Code and of a special authority in Rule 138 of the Rules of Court refer to the nature of the authorization and not its form.

The requirements are met if there is a clear mandate from the principal specifically authorizing the performance of the act. As early as 1906, this *Court in Strong v. Gutierrez-Repide* (6 Phil. 680) stated that **such a mandate may be either oral or written, the one vital thing being that it shall be express**. And more recently, We stated that, if the special authority is not written, then it must be duly established by evidence:

x x x the Rules require, for attorneys to compromise the litigation of their clients, a special authority. And while the same does not state that the special authority be in writing the Court has every reason to expect that, **if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him.** (*Home Insurance Company vs. United States Lines Company, et al.*, 21 SCRA 863; 866: *Vicente vs. Geraldez*, 52 SCRA 210; 225). (emphasis supplied).

The Contract of Loan Entered Into by Gutierrez in Behalf of the Petitioner Should be Nullified for Being Void; Petitioner is Not Bound by the Contract of Loan.

A review of the records reveals that Gutierrez did not have any authority to borrow money in behalf of the petitioner. Records do not show that the petitioner executed any special power of attorney (SPA) in favor of Gutierrez. In fact, the petitioner's testimony confirmed that he never authorized Gutierrez (or anyone for that matter), whether verbally or in writing, to borrow money in his behalf, nor was he aware of any such transaction:

ALVIN PATRIMONIO (witness)

ATTY. DE VERA: Did you give Nap Gutierrez any Special Power of Attorney in writing authorizing him to borrow using your money?

WITNESS: No, sir. (T.S.N., Alvin Patrimonio, Nov. 11, 1999, p. 105)^[8]

x x x x

Marasigan however submits that the petitioner's acts of pre-signing the blank checks and releasing them to Gutierrez suffice to establish that the petitioner had authorized Gutierrez to fill them out and contract the loan in his behalf.