

SECOND DIVISION

[G.R. No. 118375, October 03, 2003]

**CELESTINA T. NAGUIAT, PETITIONER, VS. COURT OF APPEALS
AND AURORA QUEAÑO, RESPONDENTS.**

D E C I S I O N

TINGA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45, assailing the decision of the Sixteenth Division of the respondent Court of Appeals promulgated on 21 December 1994^[1], which affirmed *in toto* the decision handed down by the Regional Trial Court (RTC) of Pasay City.^[2]

The case arose when on 11 August 1981, private respondent Aurora Queaño (Queaño) filed a complaint before the Pasay City RTC for cancellation of a *Real Estate Mortgage* she had entered into with petitioner Celestina Naguiat (Naguiat). The RTC rendered a decision, declaring the questioned *Real Estate Mortgage* void, which Naguiat appealed to the Court of Appeals. After the Court of Appeals upheld the RTC decision, Naguiat instituted the present petition.

The operative facts follow:

Queaño applied with Naguiat for a loan in the amount of Two Hundred Thousand Pesos (P200,000.00), which Naguiat granted. On 11 August 1980, Naguiat indorsed to Queaño Associated Bank Check No. 090990 (dated 11 August 1980) for the amount of Ninety Five Thousand Pesos (P95,000.00), which was earlier issued to Naguiat by the Corporate Resources Financing Corporation. She also issued her own Filmanbank Check No. 065314, to the order of Queaño, also dated 11 August 1980 and for the amount of Ninety Five Thousand Pesos (P95,000.00). The proceeds of these checks were to constitute the loan granted by Naguiat to Queaño.^[3]

To secure the loan, Queaño executed a *Deed of Real Estate Mortgage* dated 11 August 1980 in favor of Naguiat, and surrendered to the latter the owner's duplicates of the titles covering the mortgaged properties.^[4] On the same day, the mortgage deed was notarized, and Queaño issued to Naguiat a promissory note for the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00), with interest at 12% per annum, payable on 11 September 1980.^[5] Queaño also issued a Security Bank and Trust Company check, postdated 11 September 1980, for the amount of TWO HUNDRED THOUSAND PESOS (P200,000.00) and payable to the order of Naguiat.

Upon presentment on its maturity date, the Security Bank check was dishonored for insufficiency of funds. On the following day, 12 September 1980, Queaño requested Security Bank to stop payment of her postdated check, but the bank rejected the

request pursuant to its policy not to honor such requests if the check is drawn against insufficient funds.^[6]

On 16 October 1980, Queaño received a letter from Naguiat's lawyer, demanding settlement of the loan. Shortly thereafter, Queaño and one Ruby Ruebenfeldt (Ruebenfeldt) met with Naguiat. At the meeting, Queaño told Naguiat that she did not receive the proceeds of the loan, adding that the checks were retained by Ruebenfeldt, who purportedly was Naguiat's agent.^[7]

Naguiat applied for the extrajudicial foreclosure of the mortgage with the Sheriff of Rizal Province, who then scheduled the foreclosure sale on 14 August 1981. Three days before the scheduled sale, Queaño filed the case before the Pasay City RTC,^[8] seeking the annulment of the mortgage deed. The trial court eventually stopped the auction sale.^[9]

On 8 March 1991, the RTC rendered judgment, declaring the *Deed of Real Estate Mortgage* null and void, and ordering Naguiat to return to Queaño the owner's duplicates of her titles to the mortgaged lots.^[10] Naguiat appealed the decision before the Court of Appeals, making no less than eleven assignments of error. The Court of Appeals promulgated the decision now assailed before us that affirmed *in toto* the RTC decision. Hence, the present petition.

Naguiat questions the findings of facts made by the Court of Appeals, especially on the issue of whether Queaño had actually received the loan proceeds which were supposed to be covered by the two checks Naguiat had issued or indorsed. Naguiat claims that being a notarial instrument or public document, the mortgage deed enjoys the presumption that the recitals therein are true. Naguiat also questions the admissibility of various representations and pronouncements of Ruebenfeldt, invoking the rule on the non-binding effect of the admissions of third persons.^[11]

The resolution of the issues presented before this Court by Naguiat involves the determination of facts, a function which this Court does not exercise in an appeal by *certiorari*. Under Rule 45 which governs appeal by *certiorari*, only questions of law may be raised^[12] as the Supreme Court is not a trier of facts.^[13] The resolution of factual issues is the function of lower courts, whose findings on these matters are received with respect and are in fact generally binding on the Supreme Court.^[14] A question of law which the Court may pass upon must not involve an examination of the probative value of the evidence presented by the litigants.^[15] There is a question of law in a given case when the doubt or difference arises as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the falsehood of alleged facts.^[16]

Surely, there are established exceptions to the rule on the conclusiveness of the findings of facts of the lower courts.^[17] But Naguiat's case does not fall under any of the exceptions. In any event, both the decisions of the appellate and trial courts are supported by the evidence on record and the applicable laws.

Against the common finding of the courts below, Naguiat vigorously insists that Queaño received the loan proceeds. Capitalizing on the status of the mortgage deed as a public document, she cites the rule that a public document enjoys the

presumption of validity and truthfulness of its contents. The Court of Appeals, however, is correct in ruling that the presumption of truthfulness of the recitals in a public document was defeated by the clear and convincing evidence in this case that pointed to the absence of consideration.^[18] This Court has held that the presumption of truthfulness engendered by notarized documents is rebuttable, yielding as it does to clear and convincing evidence to the contrary, as in this case.^[19]

On the other hand, absolutely no evidence was submitted by Naguiat that the checks she issued or endorsed were actually encashed or deposited. The mere issuance of the checks did not result in the perfection of the contract of loan. For the Civil Code provides that the delivery of bills of exchange and mercantile documents such as checks shall produce the effect of payment only when they have been cashed.^[20] It is only after the checks have produced the effect of payment that the contract of loan may be deemed perfected. Art. 1934 of the Civil Code provides:

"An accepted promise to deliver something by way of commodatum or simple loan is binding upon the parties, but the commodatum or simple loan itself shall not be perfected until the delivery of the object of the contract."

A loan contract is a real contract, not consensual, and, as such, is perfected only upon the delivery of the object of the contract.^[21] In this case, the objects of the contract are the loan proceeds which Queaño would enjoy only upon the encashment of the checks signed or indorsed by Naguiat. If indeed the checks were encashed or deposited, Naguiat would have certainly presented the corresponding documentary evidence, such as the returned checks and the pertinent bank records. Since Naguiat presented no such proof, it follows that the checks were not encashed or credited to Queaño's account.

Naguiat questions the admissibility of the various written representations made by Ruebenfeldt on the ground that they could not bind her following the *res inter alia acta alteri nocere non debet* rule. The Court of Appeals rejected the argument, holding that since Ruebenfeldt was an authorized representative or agent of Naguiat the situation falls under a recognized exception to the rule.^[22] Still, Naguiat insists that Ruebenfeldt was not her agent.

Suffice to say, however, the existence of an agency relationship between Naguiat and Ruebenfeldt is supported by ample evidence. As correctly pointed out by the Court of Appeals, Ruebenfeldt was not a stranger or an unauthorized person. Naguiat instructed Ruebenfeldt to withhold from Queaño the checks she issued or indorsed to Queaño, pending delivery by the latter of additional collateral. Ruebenfeldt served as agent of Naguiat on the loan application of Queaño's friend, Marilou Farralese, and it was in connection with that transaction that Queaño came to know Naguiat.^[23] It was also Ruebenfeldt who accompanied Queaño in her meeting with Naguiat and on that occasion, on her own and without Queaño asking for it, Ruebenfeldt actually drew a check for the sum of P220,000.00 payable to Naguiat, to cover for Queaño's alleged liability to Naguiat under the loan agreement.^[24]

The Court of Appeals recognized the existence of an "agency by estoppel"^[25] citing