

CAROLYN M. GARCIA, PETITIONER, V.S. RICA MARIE S. THIO, Respondent.

G.R. No. 154878. March 16, 2007

Ponente: CORONA, J.

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CORONA, J.:

Assailed in this petition for review on certiorari[1] are the June 19, 2002 decision [2] and August 20, 2002 resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 56577 which set aside the February 28, 1997 decision of the Regional Trial Court (RTC) of Makati City, Branch 58.

Sometime in February 1995, respondent Rica Marie S. Thio received from petitioner Carolyn M. Garcia a crossed check[4] dated February 24, 1995 in the amount of US\$100,000 payable to the order of a certain Marilou Santiago.[5] Thereafter, petitioner received from respondent every month (specifically, on March 24, April 26, June 26 and July 26, all in 1995) the amount of US\$3,000[6] and P76,500[7] on July 26,[8] August 26, September 26 and October 26, 1995.

In June 1995, respondent received from petitioner another crossed check [9] dated June 29, 1995 in the amount of P500,000, also payable to the order of Marilou Santiago.[10] Consequently, petitioner received from respondent the amount of P20,000 every month on August 5, September 5, October 5 and November 5, 1995.[11]

According to petitioner, respondent failed to pay the principal amounts of the loans (US\$100,000 and P500,000) when they fell due. Thus, on February 22, 1996, petitioner filed a complaint for sum of money and damages in the RTC of Makati City, Branch 58 against respondent, seeking to collect the sums of US\$100,000, with interest thereon at 3% a month from October 26, 1995 and P500,000, with interest thereon at 4% a month from November 5, 1995, plus attorney's fees and actual damages.[12]

Petitioner alleged that on February 24, 1995, respondent borrowed from her the amount of US\$100,000 with interest thereon at the rate of 3% per month, which loan would mature on October 26, 1995.[13] The amount of this loan was covered by the first check. On June 29, 1995, respondent again borrowed the amount of P500,000 at an agreed monthly interest of 4%, the maturity date of which was on November 5, 1995.[14] The amount of this loan was covered by the second check. For both loans, no promissory note was executed since petitioner and respondent were close friends at the time.[15] Respondent paid the stipulated monthly interest for both loans but on their maturity dates, she failed to pay the principal amounts despite repeated demands.[16]

Respondent denied that she contracted the two loans with petitioner and countered that it was Marilou Santiago to whom petitioner lent the money. She claimed she was merely asked by petitioner to give the crossed checks to Santiago.[17] She issued the checks for P76,000 and P20,000 not as payment of interest but to accommodate petitioner's request that respondent use her own checks instead of Santiago's.[18]

In a decision dated February 28, 1997, the RTC ruled in favor of petitioner. [19] It found that respondent borrowed from petitioner the amounts of US\$100,000 with monthly interest of 3% and P500,000 at a monthly interest of 4%:[20]

WHEREFORE, finding preponderance of evidence to sustain the instant complaint, judgment is hereby rendered in favor of [petitioner], sentencing [respondent] to pay the former the amount of:

- [US\$100,000.00] or its peso equivalent with interest thereon at 3% per month from October 26, 1995 until fully paid;
- P500,000.00 with interest thereon at 4% per month from November 5, 1995 until fully paid.
- P100,000.00 as and for attorney's fees; and
- P50,000.00 as and for actual damages.

For lack of merit, [respondent's] counterclaim is perforce dismissed.

With costs against [respondent].

IT IS SO ORDERED.[21]

On appeal, the CA reversed the decision of the RTC and ruled that there was no contract of loan between the parties:

A perusal of the record of the case shows that [petitioner] failed to substantiate her claim that [respondent] indeed borrowed money from her. There is nothing in the record that shows that [respondent] received money from [petitioner]. What is evident is the fact that [respondent] received a MetroBank [crossed] check dated February 24, 1995 in the sum of US\$100,000.00, payable to the order of Marilou Santiago and a CityTrust [crossed] check dated June 29, 1995 in the amount of P500,000.00, again payable to the order of Marilou Santiago, both of which were issued by [petitioner]. The checks received by [respondent], being crossed, may not be encashed but only deposited in the bank by the payee thereof, that is, by Marilou Santiago herself.

It must be noted that crossing a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once--to one who has an account with the bank; (c) and the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

Consequently, the receipt of the [crossed] check by [respondent] is not the issuance and delivery to the payee in contemplation of law since the latter is not the person who could take the checks as a holder, i.e., as a payee or indorsee thereof, with intent to transfer title thereto. Neither could she be deemed as an agent of Marilou Santiago with respect to the checks because she was merely facilitating the transactions between the former and [petitioner].

With the foregoing circumstances, it may be fairly inferred that there were really no contracts of loan that existed between the parties. x x x (emphasis supplied)[22]

Hence this petition.[23]

As a rule, only questions of law may be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. However, this case falls under one of the exceptions, i.e., when the factual findings of the CA (which held that there were no contracts of loan between petitioner and respondent) and the RTC (which held that there were contracts of loan) are contradictory.[24]

The petition is impressed with merit.

A loan is a real contract, not consensual, and as such is perfected only upon the delivery of the object of the

contract.[25] This is evident in Art. 1934 of the Civil Code which 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 .
(Emphasis supplied)

Upon delivery of the object of the contract of loan (in this case the money received by the debtor when the checks were encashed) the debtor acquires ownership of such money or loan proceeds and is bound to pay the creditor an equal amount.[26]

It is undisputed that the checks were delivered to respondent. However, these checks were crossed and payable not to the order of respondent but to the order of a certain Marilou Santiago. Thus the main question to be answered is: who borrowed money from petitioner -- respondent or Santiago?

Petitioner insists that it was upon respondent's instruction that both checks were made payable to Santiago. [27] She maintains that it was also upon respondent's instruction that both checks were delivered to her (respondent) so that she could, in turn, deliver the same to Santiago.[28] Furthermore, she argues that once respondent received the checks, the latter had possession and control of them such that she had the choice to either forward them to Santiago (who was already her debtor), to retain them or to return them to petitioner.[29]

We agree with petitioner. Delivery is the act by which the res or substance thereof is placed within the actual or constructive possession or control of another.[30] Although respondent did not physically receive the proceeds of the checks, these instruments were placed in her control and possession under an arrangement whereby she actually re-lent the amounts to Santiago.

Several factors support this conclusion.

First, respondent admitted that petitioner did not personally know Santiago. [31] It was highly improbable that petitioner would grant two loans to a complete stranger without requiring as much as promissory notes or any written acknowledgment of the debt considering that the amounts involved were quite big. Respondent, on the other hand, already had transactions with Santiago at that time.[32]

Second, Leticia Ruiz, a friend of both petitioner and respondent (and whose name appeared in both parties' list of witnesses) testified that respondent's plan was for petitioner to lend her money at a monthly interest rate of 3%, after which respondent would lend the same amount to Santiago at a higher rate of 5% and realize a profit of 2%.[33] This explained why respondent instructed petitioner to make the checks payable to Santiago. Respondent has not shown any reason why Ruiz' testimony should not be believed.

Third, for the US\$100,000 loan, respondent admitted issuing her own checks in the amount of P76,000 each (peso equivalent of US\$3,000) for eight months to cover the monthly interest. For the P500,000 loan, she also issued her own checks in the amount of P20,000 each for four months.[34] According to respondent, she merely accommodated petitioner's request for her to issue her own checks to cover the interest payments since petitioner was not personally acquainted with Santiago.[35] She claimed, however, that Santiago would replace the checks with cash.[36] Her explanation is simply incredible. It is difficult to believe that respondent would put herself in a position where she would be compelled to pay interest, from her own funds, for loans she allegedly did not contract. We declared in one case that:

In the assessment of the testimonies of witnesses, this Court is guided by the rule that for evidence to be believed, it must not only proceed from the mouth of a credible witness, but must be credible in itself such as the common experience of mankind can approve as probable under the circumstances. We have no test of the

truth of human testimony except its conformity to our knowledge, observation, and experience. Whatever is repugnant to these belongs to the miraculous, and is outside of juridical cognizance.[37]

Fourth, in the petition for insolvency sworn to and filed by Santiago, it was respondent, not petitioner, who was listed as one of her (Santiago's) creditors.[38]

Last, respondent inexplicably never presented Santiago as a witness to corroborate her story.[39] The presumption is that "evidence willfully suppressed would be adverse if produced." [40] Respondent was not able to overturn this presumption.

We hold that the CA committed reversible error when it ruled that respondent did not borrow the amounts of US\$100,000 and P500,000 from petitioner. We instead agree with the ruling of the RTC making respondent liable for the principal amounts of the loans.

We do not, however, agree that respondent is liable for the 3% and 4% monthly interest for the US\$100,000 and P500,000 loans respectively. There was no written proof of the interest payable except for the verbal agreement that the loans would earn 3% and 4% interest per month. Article 1956 of the Civil Code provides that "[n]o interest shall be due unless it has been expressly stipulated in writing."

Be that as it may, while there can be no stipulated interest, there can be legal interest pursuant to Article 2209 of the Civil Code. It is well-settled that:

When the obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.[41]

Hence, respondent is liable for the payment of legal interest per annum to be computed from November 21, 1995, the date when she received petitioner's demand letter.[42] From the finality of the decision until it is fully paid, the amount due shall earn interest at 12% per annum, the interim period being deemed equivalent to a forbearance of credit.[43]

The award of actual damages in the amount of P50,000 and P100,000 attorney's fees is deleted since the RTC decision did not explain the factual bases for these damages.

WHEREFORE, the petition is hereby GRANTED and the June 19, 2002 decision and August 20, 2002 resolution of the Court of Appeals in CA-G.R. CV No. 56577 are REVERSED and SET ASIDE. The February 28, 1997 decision of the Regional Trial Court in Civil Case No. 96-266 is AFFIRMED with the MODIFICATION that respondent is directed to pay petitioner the amounts of US\$100,000 and P500,000 at 12% per annum interest from November 21, 1995 until the finality of the decision. The total amount due as of the date of finality will earn interest of 12% per annum until fully paid. The award of actual damages and attorney's fees is deleted.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Garcia, JJ., concur.

[1] Under Rule 45 of the Rules of Court.

[2] Penned by former Associate Justice Eubulo G. Verzola (deceased) and concurred in by Associate Justices Bernardo P. Abesamis (retired) and Josefina Guevara-Salonga of the Third Division of the Court of

Appeals; rollo, pp. 98-102.

[3] Id., pp. 104-105.

[4] This was Metrobank check no. 26910; id., pp. 70, 224 and 368.

[5] Id., pp. 60, 100-101, 224.

[6] Id., pp. 60-61. According to respondent, she originally issued four postdated checks each in the amount of P76,000 on the same dates mentioned but these were not encashed and instead each check was replaced by Santiago with US\$3,000 in cash given by respondent to petitioner; id., p. 224.

[7] This was the peso equivalent of US\$3,000 computed at the exchange rate of P25.50 to \$1.00; id., pp. 17 and 88. These postdated checks were deposited on their respective due dates and honored by the drawee bank; id., p. 225.

[8] According to respondent, this check was replaced by Santiago with cash in the amount of US\$3,000.

[9] This was City Trust check no. 467257; rollo, pp. 90 and 327.

[10] Id., pp. 60, 101 and 225.

[11] Id., p. 109.

[12] Docketed as Civil Case No. 96-266; rollo, pp. 15, 60 and 364.

[13] Id., p. 109.

[14] Id., p. 110.

[15] Id., p. 16.

[16] Id., p. 110.

[17] Id., p. 224.

[18] Id.

[19] Id., pp. 60-95.

[20] Id., pp. 79 and 89.

[21] Id., pp. 94-95.

[22] Id., pp. 100-101, citation omitted.

[23] The issues submitted for resolution are the following:

(A)

Is actual and physical delivery of the money loaned directly from the lender to the borrower the only way to perfect a contract of loan?

(B)

Does the respondent's admission that she paid interests to the petitioner on the amounts represented by the two checks given to her by said petitioner render said respondent in estoppel to question that there was no loan

transaction between her and the petitioner?

(C)

Is respondent's written manifestation in the trial court, through counsel, that she interposes no objection to the admission of petitioner's documentary exhibits for the multiple purposes specified in the latter's Formal Offer of Documentary Exhibits a judicial admission governed by Rule 129, Section 4, Rules of Court?

(D)

Is this Honorable Court bound by the conclusions of fact relied upon by the [CA] in issuing its disputed Decision?

(E)

Have the [RTC's] findings of fact on the lone issue on which respondent litigated in the [RTC], viz. existence of privity of contract between petitioner and respondent, been overturned or set aside by the [CA]?

(F)

May the respondent validly change the theory of her case from one of privity of contract between her and the petitioner in the [RTC], to one of not being a holder in due course of the crossed checks payable to a third party in the [CA] and before this Honorable Court?

(G)

Is the petitioner's entitlement to interest, despite absence of a written stipulation on the payment thereof, justified?

(H)

Is the deletion by the [CA] of the [RTC's] award of attorney's fees and actual damages in favor of the petitioner justified? *Id.*, pp. 401-402.

[24] *Philippine National Bank v. Andrada Electric & Engineering Co.*, G.R. No. 142936, 17 April 2002, 381 SCRA 244, 253, citing *Fuentes v. CA*, 335 Phil. 1163, 1167-1169 (1997).

[25] *Naguiat v. Court of Appeals*, G.R. No. 118375, 3 October 2003, 412 SCRA 591, 597.

[26] Article 1953 of the Civil Code states:

A person who receives a loan of money or any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

[27] *Rollo*, p. 39.

[28] *Id.*

[29] *Id.*, pp. 39-40.

[30] *Buenaflor v. Court of Appeals*, G.R. No. 142021, 29 November 2000, 346 SCRA 563, 569, citing *Black's Law Dictionary*, 5th ed.

[31] *Rollo*, p. 64.

[32] *Id.*, p. 70.

[33] *Id.*, pp. 76 and 85.

[34] *Id.*, pp. 16-17, 224-225, 411.

[35] *Id.*, p. 224.

[36] *Id.*, p. 70.

[37] *People v. Mala*, G.R. No. 152351, 18 September 2003, 411 SCRA 327, 337, citing *People v. Dayag*, 155 Phil. 421, 431 (1974).

[38] *Rollo*, pp. 88 and 94.

[39] *Id.*, p. 93.

[40] Sec. 3 (e), Rule 131, Rules of Court.

[41] *Eusebio-Calderon v. People*, G.R. No. 158495, 21 October 2004, 441 SCRA 137, 148-149, citing *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, 12 July 1994, 234 SCRA 78, 95; *Cabrera v. People*, G.R. No. 150618, 24 July 2003, 407 SCRA 247, 261.

[42] *Rollo*, p. 65.

[43] *Cabrera v. People*, *supra*.

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