

## THIRD DIVISION

[ G.R. No. 198660, October 23, 2013 ]

**TING TING PUA, PETITIONER, VS. SPOUSES BENITO LO BUN TIONG AND CAROLINE SIOK CHING TENG, RESPONDENTS.**

### R E S O L U T I O N

**VELASCO JR., J.:**

Under consideration is the Motion for Reconsideration interposed by petitioner Ting Ting Pua (Pua) of our Resolution dated April 18, 2012 effectively affirming the Decision<sup>[1]</sup> and Resolution<sup>[2]</sup> dated March 31, 2011 and September 26, 2011, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 93755, which, in turn, reversed the Decision of the Regional Trial Court (RTC) of the City of Manila, Branch 29 in Civil Case No. 97-83027.

As culled from the adverted RTC Decision, as adopted for the most part by the CA, the antecedent facts may be summarized as follows:

The controversy arose from a Complaint for a Sum of Money<sup>[3]</sup> filed by petitioner Pua against respondent-spouses Benito Lo Bun Tiong (Benito) and Caroline Siok Ching Teng (Caroline). In the complaint, Pua prayed that, among other things, respondents, or then defendants, pay Pua the amount of eight million five hundred thousand pesos (PhP 8,500,000), covered by a check. (Exhibit "A," for plaintiff)

During trial, petitioner Pua clarified that the PhP 8,500,000 check was given by respondents to pay the loans they obtained from her under a compounded interest agreement on various dates in 1988.<sup>[4]</sup> As Pua narrated, her sister, Lilian Balboa (Lilian), vouched for respondents' ability to pay so that when respondents approached her, she immediately acceded and lent money to respondents without requiring any collateral except post-dated checks bearing the borrowed amounts.<sup>[5]</sup> In all, respondents issued 17<sup>[6]</sup> checks for a total amount of one million nine hundred seventy-five thousand pesos (PhP 1,975,000). These checks were dishonored upon presentment to the drawee bank.<sup>[7]</sup>

As a result of the dishonor, petitioner demanded payment. Respondents, however, pleaded for more time because of their financial difficulties.<sup>[8]</sup> Petitioner Pua obliged and simply reminded the respondents of their indebtedness from time to time.<sup>[9]</sup>

Sometime in September 1996, when their financial situation turned better, respondents allegedly called and asked petitioner Pua for the computation of their loan obligations.<sup>[10]</sup> Hence, petitioner handed them a computation dated October 2, 1996<sup>[11]</sup> which showed that, at the agreed 2% compounded interest rate per month, the amount of the loan payable to petitioner rose to thirteen million two

hundred eighteen thousand five hundred forty-four pesos and 20/100 (PhP 13,218,544.20).<sup>[12]</sup> On receiving the computation, the respondents asked petitioner to reduce their indebtedness to PhP 8,500,000.<sup>[13]</sup> Wanting to get paid the soonest possible time, petitioner Pua agreed to the lowered amount.<sup>[14]</sup>

Respondents then delivered to petitioner Asiastrust Check No. BND057750 bearing the reduced amount of PhP 8,500,000 dated March 30, 1997 with the assurance that the check was good.<sup>[15]</sup> In turn, respondents demanded the return of the 17 previously dishonored checks. Petitioner, however, refused to return the bad checks and advised respondents that she will do so only after the encashment of Asiastrust Check No. BND057750.<sup>[16]</sup>

Like the 17 checks, however, Check No. BND057750 was also dishonored when it was presented by petitioner to the drawee bank. Hence, as claimed by petitioner, she decided to file a complaint to collect the money owed her by respondents.

For the defense, both respondents Caroline and Benito testified along with Rosa Dela Cruz Tuazon (Tuazon), who was the OIC-Manager of Asiastrust-Binondo Branch in 1997. Respondents categorically denied obtaining a loan from petitioner.<sup>[17]</sup> Respondent Caroline, in particular, narrated that, in August 1995, she and petitioner's sister, Lilian, forged a partnership that operated a *mahjong* business. Their agreement was for Lilian to serve as the capitalist while respondent Caroline was to act as the cashier. Caroline also agreed to use her personal checks to pay for the operational expenses including the payment of the winners of the games.<sup>[18]</sup> As the partners anticipated that Caroline will not always be in town to prepare these checks, she left with Lilian five (5) pre-signed and consecutively numbered checks<sup>[19]</sup> on the condition that these checks will only be used to cover the costs of the business operations and in no circumstance will the amount of the checks exceed PhP 5,000.<sup>[20]</sup>

In March 1996, however, respondent Caroline and Lilian had a serious disagreement that resulted in the dissolution of their partnership and the cessation of their business. In the haste of the dissolution and as a result of their bitter separation, respondent Caroline alleged that she forgot about the five (5) pre-signed checks she left with Lilian.<sup>[21]</sup> It was only when Lilian's husband, Vicente Balboa (Vicente), filed a complaint for sum of money in February 1997 against respondents to recover five million one hundred seventy-five thousand two hundred fifty pesos (PhP 5,175,250), covering three of the five post-dated and pre-signed checks.<sup>[22]</sup>

Respondent Caroline categorically denied having completed Check No. BND057750 by using a check writer or typewriter as she had no check writer and she had always completed checks in her own handwriting.<sup>[23]</sup> She insisted that petitioner and her sister completed the check after its delivery.<sup>[24]</sup> Furthermore, she could not have gone to see petitioner Pua with her husband as they had been separated in fact for nearly 10 years.<sup>[25]</sup> As for the 17 checks issued by her in 1988, Caroline alleged that they were not intended for Pua but were issued for the benefit of other persons.<sup>[26]</sup> Caroline postulated that the complaint is designed to allow Pua's sister, Lilian, to recover her losses in the foreign exchange business she had with Caroline in the 1980s.

Respondent Benito corroborated Caroline's testimony respecting their almost a decade separation.<sup>[27]</sup> As such, he could not have had accompanied his wife to see petitioner to persuade the latter to lower down any alleged indebtedness.<sup>[28]</sup> In fact, Benito declared, before the filing of the Complaint, he had never met petitioner Pua, let alone approached her with his wife to borrow money.<sup>[29]</sup> He claimed that he was impleaded in the case to attach his property and force him to enter into an amicable settlement with petitioner.<sup>[30]</sup> Benito pointed out that Check No. BND057750 was issued under Asiatruster Account No. 5513-0054-9, which is solely under the name of his wife.<sup>[31]</sup>

The witness for the respondents, Ms. Tuazon, testified that respondent Caroline opened Asiatruster Account No. 5513-0054-9 in September 1994.<sup>[32]</sup> She claimed that the average maintaining balance of respondent Caroline was PhP 2,000 and the highest amount issued by Caroline from her account was PhP 435,000.<sup>[33]</sup> She maintained that respondent Caroline had always completed her checks with her own handwriting and not with a check writer. On October 15, 1996, Caroline's checking account was closed at the instance of the bank due to 69 instances of check issuance against insufficient balance.<sup>[34]</sup>

After trial, the RTC issued its Decision dated January 31, 2006 in favor of petitioner. In holding thus, the RTC stated that the possession by petitioner of the checks signed by Caroline, under the Negotiable Instruments Law, raises the presumption that they were issued and delivered for a valuable consideration. On the other hand, the court *a quo* discounted the testimony for the defense completely denying respondents' loan obligation to Pua.<sup>[35]</sup>

The trial court, however, refused to order respondents to pay petitioner the amount of PhP 8,500,000 considering that the agreement to pay interest on the loan was not expressly stipulated in writing by the parties. The RTC, instead, ordered respondents to pay the principal amount of the loan as represented by the 17 checks plus legal interest from the date of demand. As rectified,<sup>[36]</sup> the dispositive portion of RTC's Decision reads:

Defendant-spouses Benito Lo Bun Tiong and Caroline Siok Ching Teng, are hereby ordered jointly and solidarily:

1. To pay plaintiff P1,975,000.00 plus 12% interest per annum from September 30, 1998, until fully paid;
2. To pay plaintiff attorney's fees of P200,000.00; and
3. To pay the costs of the suit.

Aggrieved, respondents went to the CA arguing that the court *a quo* erred in finding that they obtained and are liable for a loan from petitioner. To respondents, petitioner has not sufficiently proved the existence of the loan that they supposedly acquired from her way back in the late 1980s by any written agreement or memorandum.

By Decision of March 31, 2011, as reiterated in a Resolution dated September 26,

2011, the appellate court set aside the RTC Decision holding that Asiatrust Bank Check No. BND057550 was an incomplete delivered instrument and that petitioner has failed to prove the existence of respondents' indebtedness to her. Hence, the CA added, petitioner does not have a cause of action against respondents.<sup>[37]</sup>

Hence, petitioner came to this Court via a Petition for Review on Certiorari<sup>[38]</sup> alleging grievous reversible error on the part of the CA in reversing the findings of the court *a quo*.

As adverted to at the outset, the Court, in a Minute Resolution dated April 18, 2012, resolved to deny the petition.<sup>[39]</sup>

In this Motion for Reconsideration,<sup>[40]</sup> petitioner pleads that this Court take a second hard look on the facts and issues of the present case and affirm the RTC's case disposition. Petitioner argues, in the main, that the finding of the appellate court that petitioner has not established respondents' indebtedness to her is not supported by the evidence on record and is based solely on respondents' general denial of liability.

Respondents, on the other hand, argued in their Comment on the Motion for Reconsideration dated October 6, 2012 that the CA correctly ruled that Asiatrust Check No. BND057550 is an incomplete instrument which found its way into petitioner's hands and that the petitioner failed to prove respondents' indebtedness to her. Petitioner, so respondents contend, failed to show to whom the 17 1988 checks were delivered, for what consideration or purpose, and under whose account said checks were deposited or negotiated.

Cearly, the issue in the present case is factual in nature as it involves an inquiry into the very existence of the debt supposedly owed by respondents to petitioner.

The general rule is that this Court in petitions for review on certiorari only concerns itself with questions of law, not of fact,<sup>[41]</sup> the resolution of factual issues being the primary function of lower courts.<sup>[42]</sup> However, several exceptions have been laid down by jurisprudence to allow the scrutiny of the factual arguments advanced by the contending parties, viz: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) **the findings of fact are conflicting**; (6) there is no citation of specific evidence on which the factual findings are based; (7) **the findings of absence of fact are contradicted by the presence of evidence on record**; (8) **the findings of the CA are contrary to those of the trial court**; (9) **the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion**; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.<sup>[43]</sup> At the very least, therefore, the inconsonance of the findings of the RTC and the CA regarding the existence of the loan sanctions the recalibration of the evidence presented by the parties before the trial court.

In the main, petitioner asserts that respondents owed her a sum of money way back in 1988 for which the latter gave her several checks. These checks, however, had all

been dishonored and petitioner has not been paid the amount of the loan plus the agreed interest. In 1996, respondents approached her to get the computation of their liability including the 2% compounded interest. After bargaining to lower the amount of their liability, respondents supposedly gave her a postdated check bearing the discounted amount of the money they owed to petitioner. Like the 1988 checks, the drawee bank likewise dishonored this check. To prove her allegations, petitioner submitted the original copies of the 17 checks issued by respondent Caroline in 1988 and the check issued in 1996, Asiastrust Check No. BND057750. In ruling in her favor, the RTC sustained the version of the facts presented by petitioner.

Respondents, on the other hand, completely deny the existence of the debt asserting that they had never approached petitioner to borrow money in 1988 or in 1996. They hypothesize, instead, that petitioner Pua is simply acting at the instance of her sister, Lilian, to file a false charge against them using a check left to fund a gambling business previously operated by Lilian and respondent Caroline. While not saying so in express terms, the appellate court considered respondents' denial as worthy of belief.

After another circumspect review of the records of the present case, however, this Court is inclined to depart from the findings of the CA.

Certainly, in a suit for a recovery of sum of money, as here, the plaintiff-creditor has the burden of proof to show that defendant had not paid her the amount of the contracted loan. However, it has also been long established that where the plaintiff-creditor possesses and submits in evidence an instrument showing the indebtedness, a presumption that the credit has not been satisfied arises in her favor. Thus, the defendant is, in appropriate instances, required to overcome the said presumption and present evidence to prove the fact of payment so that no judgment will be entered against him.<sup>[44]</sup>

In overruling the trial court, however, the CA opined that petitioner "failed to establish [the] alleged indebtedness in writing."<sup>[45]</sup> Consequently, so the CA held, respondents were under no obligation to prove their defense. Clearly, the CA had discounted the value of the only hard pieces of evidence extant in the present case—the checks issued by respondent Caroline in 1988 and 1996 that were in the possession of, and presented in court by, petitioner.

In *Pacheco v. Court of Appeals*,<sup>[46]</sup> this Court has expressly recognized that a check "constitutes an evidence of indebtedness"<sup>[47]</sup> and is a veritable "proof of an obligation."<sup>[48]</sup> Hence, it can be used "in lieu of and for the same purpose as a promissory note."<sup>[49]</sup> In fact, in the seminal case of *Lozano v. Martinez*,<sup>[50]</sup> We pointed out that a check functions more than a promissory note since it not only contains an undertaking to pay an amount of money but is an "order addressed to a bank and partakes of a **representation** that the drawer has funds on deposit against which the check is drawn, sufficient to **ensure payment** upon its presentation to the bank."<sup>[51]</sup> This Court reiterated this rule in the relatively recent *Lim v. Mindanao Wines and Liquor Galleria* stating that "[a] check, the entries of which are in writing, could prove a loan transaction."<sup>[52]</sup> This very same principle