



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ATCI OVERSEAS CORPORATION
and AMALIA G. IKDAL,

Petitioners,

- versus -

ASSET POOL A (SPV-AMC), INC.,

Respondent.

G.R. No. 250523

Present:

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J., JJ.

Promulgated:

June 28, 2021

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DECISION

DELOS SANTOS, J.:

This Petition for Review on *Certiorari*¹ under Rule 45 assails the Decision² dated November 19, 2018 and Resolution³ dated November 14, 2019 of the Court of Appeals (CA) in CA-G.R. CV No. 106371, which affirmed the Decision⁴ dated April 17, 2015 of the Regional Trial Court (RTC) of Makati City, Branch 145, in Civil Case No. 07-102 for sum of money.

¹ *Rollo*, pp. 13-57.

² Id. at 59-77; penned by Associate Justice Sesinando E. Villon, with Associate Justices Edwin D. Sorongon and Rafael Antonio M. Santos, concurring.

³ Id. at 104-107; penned by Associate Justice Rafael Antonio M. Santos, with Associate Justices Edwin D. Sorongon and Zenaida T. Galapate-Laguilles.

⁴ Id. at 231-253; penned by Presiding Judge Carlito B. Calpatura.

Factual Antecedents

On February 2, 2007, respondent Asset Pool A (SPV-AMC), Inc. (APA) filed a complaint against petitioners ATCI Overseas Corporation (ATCI) and Amalia G. Ildal (Ikdal), seeking to recover the sum of US\$1,000,000.00, representing the remaining balance of the loan allegedly extended by APA's predecessor-in-interest, United Coconut Planters Bank (UCPB), to petitioners.⁵

According to APA, ATCI obtained a loan from UCPB in the amount of US\$1,500,000.00, as embodied in a *Loan Agreement*⁶ dated July 2, 1993 and *Promissory Note No. 8103-93-30001*⁷ dated July 9, 1993, both signed by Ikdal as ATCI's authorized representative. The loan was secured by a *Surety Agreement*⁸ dated July 2, 1993 in favor of UCPB, which was also signed by Ikdal, binding herself jointly and severally liable with ATCI for the payment of the loan. APA alleged that ATCI left an unpaid balance in the amount of US\$1,000,000.00 of its principal obligation. In a *Deed of Absolute Sale*⁹ dated June 23, 2005, UCPB assigned its rights/interests pertaining to petitioners' balance in favor of respondent.¹⁰

In their separate answers, ATCI and Ikdal disowned the loan, alleging that it was a simulated transaction initiated and proposed by UCPB. According to petitioners, no credit accommodation was intended, and no loan was actually granted to them, as the real intention of the parties was merely to provide UCPB a means or vehicle to release funds for the operating capital of its dollar remittance venture in Kuwait.¹¹

Averring that foreign banks, like UCPB, are prohibited from directly operating a dollar remittance in Kuwait, petitioners claimed that under their agreement, ATCI were to act as a front for UCPB for said purpose. Petitioners added that it was UCPB that prepared the loan documents for the purpose of showing ostensible security for the loan, and providing cover-up for the release of the funds for its (UCPB) dollar remittance venture.¹²

To support their claim that the loan was simulated, petitioners advanced the following: (1) the purported loan is a "clean loan," unsecured by any asset or collateral; (2) the unsatisfactory financial condition of ATCI when the loan was granted could not have merited the amount of

⁵ Id. at 153.

⁶ Id. at 467-472.

⁷ Id. at 473.

⁸ Id. at 475-476.

⁹ Id. at 479.

¹⁰ Id. at 231.

¹¹ Id. at 232.

¹² Id.

US\$1,500,000.00, based on its financial statements for the preceding years, 1990 to 1992; and, (3) from the time the dollar remittance center was established, no legal action was taken by UCPB against petitioners for the payment of the loan, as well as its interests and charges.¹³

Trial on the merits ensued, during which the parties respectively presented their witnesses.

Evidence for respondent APA

APA presented its corporate and in-house counsel, Atty. Cecile R. Gonzales-Yumul (Atty. Yumul), and its manager, Ian M. Concepcion. The RTC summarized their testimonies as follows:

On June 23, 2005, UCPB assigned a non-performing loan to ATCI pursuant to a *Deed of Absolute Sale* signed by President Jose Querubin and Vice-President Hignio Macadaeg, Jr. of UCPB; and Atty. Eduardo Gana and Atty. Yumul for APA. The transfer was approved by the Central Bank of the Philippines in accordance with RA 9182, as shown in a Certificate of Eligibility.¹⁴

Owing to the assignment, UCPB turned over the following documents: (1) *Loan Agreement* dated July 2, 1993;¹⁵ (2) and *Promissory Note No. 8103-93-30001* dated July 9, 1993;¹⁶ (3) ATCI Board of Directors' *Minutes of the Special Meeting* dated June 25, 1993,¹⁷ authorizing ATCI to borrow the amount of US\$1,500,000.00 and designating Ikdal to sign relevant documents on behalf of ATCI; (4) *Surety Agreement* dated July 2, 1993¹⁸ signed by Ikdal, binding herself solidarily with ATCI to pay the loan; (5) *ATCI Letter* dated July 23, 1996,¹⁹ authorizing UCPB to debit from ATCI's dollar account the sum of US\$502,265.41 representing partial refund of the financial accommodation in the amount of US\$500,000, as well as its interest earned from June 27, 1996 to July 23, 1996 in the amount of US\$2,265.41 (hereinafter, "partial refund and interests"); and, (6) *Letter* dated July 23, 1999,²⁰ authorizing UCPB to debit US\$13,616.43, representing the interest earned from US\$1,000,000.00, from ATCI's dollar account.²¹

¹³ Id. at 210; 223-224.

¹⁴ Id. at 234-235.

¹⁵ Id. at 467-472.

¹⁶ Id. at 473.

¹⁷ Id. at 474.

¹⁸ Id. at 475-476.

¹⁹ Id. at 477.

²⁰ Id. at 478.

²¹ Id. at 235.

Evidence for petitioners

The testimonies of witnesses for petitioners, as summarized by the RTC, sought to establish the following:

Sometime in 1990, Alex Bangcola (Bangcola), Assistant Vice-President and Head of International Remittance of UCPB, approached Ikdal and two officers of ATCI, Antonio Dejoras (Dejoras) and Renato Dragon (Dragon). Bangcola intimated to them his plan of setting up a dollar remittance business in Kuwait through ATCI.²²

Bangcola proposed that Ikdal should be the one to set up a licensed dollar remittance business in Kuwait, and for UCPB to manage its operations and provide the required funds. Ikdal acceded to the proposal.²³

Pursuant to the arrangement, Bangcola prepared the loan agreement and promissory note, and made it appear that Ikdal and ATCI borrowed the amount of US\$1,500,000.00 from UCPB. UCPB also prepared and required Ikdal to sign a Surety Agreement making her liable with ATCI, and Dejoras to sign *Minutes of the Special Meeting* of the ATCI Board of Directors authorizing Ikdal to enter into the loan transaction. Bangcola also affixed his signature on the Loan and Surety Agreements in the presence of Ikdal. Since the loan was only simulated, neither Ikdal nor ATCI was required to furnish collaterals to UCPB as security for the loan, despite the huge amount involved and the fact that ATCI owned the condominium unit where UCPB held office at the time of the simulated loan. Moreover, ATCI was not required to submit financial statements, cash flow or repayment program; pay amortization or interest; or submit financial capability to borrow or repay the loan.²⁴

Upon confirmation from Bangcola that UCPB had agreed to the arrangements, Ikdal proceeded to set up the remittance company for UCPB in Kuwait, named Viking International Exchange Company (VIEC), secured its office spaces in a prime location, and worked on producing the remittance license. On January 1, 1994, UCPB sent Evangeline Reyes (Reyes) to Kuwait as remittance officer to conduct the remittance operations. The company was set up as a partnership with no incorporators having limited liability under Kuwaiti laws. VIEC was registered in the names of the Kuwaiti local sponsors, Achmed Dawis Jusien Awar as majority owner, and Amalia Ikdal, as minority owner (Exhs. 23, 23-A to 23-D), to conform to Kuwaiti Law requiring that a local company be owned by a Kuwaiti local

²² Id. at 237.

²³ Id. at 237-238.

²⁴ Id. at 238-239.

sponsor, as majority owner, and one or more resident non-citizens, as minority owner/s.²⁵

When the license was ready for approval, Ikdal told Bangcola that the funds needed for capitalization had to be received in Kuwait, as a requirement for issuance of the license. At that time, the amount required to be deposited for the remittance business in Kuwait was US\$ 1,500,000.00. In response, Bangcola had the simulated loan approved, and then deposited the USD1,500,000.00 million to ATCI's dollar account in UCPB on July 9, 1993. The funds did not stay in the hands of ATCI, as they were intended for VIEC as conduit of UCPB for the funds.²⁶

When Evangeline Reyes, former comptroller of UCPB, left in December 1994, Ikdal and her staff were left to operate the business. Not equipped with experience in remittance business, Ikdal failed to achieve the volumes necessary for proper operation. After the Kuwait government found that VIEC was operating below volume, the deposit requirement was reduced upon finding that only US\$1,000,000.00 in deposit was needed to maintain the business instead of the original US\$1,500,000.00. Accordingly, Ikdal caused the refund of the amount of US\$500,000.00, including interest earned in the amount of US\$2,265.41, by depositing said amount to ATCI's account with UCPB. UCPB was authorized to the said amount from ATCI's account, as shown from Dejoras' letter dated 22 July 1996 (Exh. 11, also plaintiff's Exh. E).²⁷

On August 16, 2001, VIEC had to close down due to continued losses. After VIEC's closure on August 16, 2001, petitioners never heard any word from UCPB. On December 13, 2005, they received APA's demand letter dated December 13, 2005 for the payment of US\$1,000,000.00.²⁸

Petitioners presented ATCI's Financial Reports for the years 1990 to 1993 prior to the purported loan showing the corporation's total assets and net worth in the following amounts: ₱4,970,940.10 and ₱16,056.95 in 1990; ₱3,507,446.53 and ₱27,164.31 in 1991; ₱7,644,907.12 and ₱64,738.05 in 1992; ₱6,499,402.69 and ₱33,020.57 in 1993; and ₱5,007,501.93 and ₱54,430.40 in 1994. To petitioners, ATCI's financial capacity prior to the supposed loan transactions could not have merited a loan in the amount of US\$1,500,000.00, more so without collateral to secure it.²⁹

²⁵ Id. at 239-241.

²⁶ Id. at 240-242.

²⁷ Id. at 242-243.

²⁸ Id. at 243-244.

²⁹ Id. at 244-245.



Submitted for the RTC's resolution are the following issues, thus:

1. Whether or not the agreement entered into by UCPB and ATCI was a contract of loan;
2. Whether or not ATCI made partial payments acknowledging the loan;
3. Whether or not the transaction in question was validly transferred from UCPB to APA pursuant to the SPV Act of 2002; and
4. Whether or not APA's cause of action had been barred by prescription.

Ruling of the RTC

On April 17, 2015, the RTC rendered a Decision in favor of APA, disposing as follows:

WHEREFORE, premises considered, preponderance of evidence having been established by plaintiff to prove its cause of action, defendants ATCI Overseas Corporation and Amalia G. Ikdal are ordered to solidarily pay plaintiff ASSET POOL A (SPV-AMC) INC., the following amount:

1. ONE MILLION US DOLLARS (USD1,000,000.00), plus interest of twelve percent (12%) per annum from November 2, 2006 to June 30, 2013, and six percent (6%) per annum from July 1, 2013, until the said amount is fully paid;

2. ONE MILLION TWO HUNDRED FIFTY EIGHT THOUSAND SEVENTY TWO PESOS AND THIRTY CENTAVOS (Php 1,258,072.30) as reimbursement of litigation expenses;

3. TWO PERCENT[T] (2%) of the total monetary award by way of attorney's fees; and

4. Costs of suit.

The counterclaims of defendants are dismissed for lack of merit.

SO ORDERED.³⁰

³⁰ Id. at 253.

First, the RTC sustained the validity of the questioned loan, holding that APA's documents (*i.e.*, promissory note, loan agreement, ATCI *Minutes of Special Meeting*, and *Surety Agreement*), being notarized, except for the promissory note, enjoy the presumption of regularity, which petitioners failed to overcome. Further, the RTC treated ATCI's Letters dated July 23, 1996 and July 23, 1999 to UCPB as proofs of partial payments of the loan.³¹

Second, the RTC did not lend credence to petitioners' theory that UCPB merely used ATCI, through VIEC, to pose as a dummy for UCPB to operate a remittance business in Kuwait.³²

Third, the RTC found nothing irregular in UCPB's act of extending a "clean loan" in the US\$1,500,000.00, where ATCI was not required to submit financial statements or secure the loan with collateral. The RTC took judicial notice of some bank practices extending clean or uncollateralized loans to reputed or influential personalities.³³

Fourth, the RTC was convinced that ATCI's Letter dated July 23, 1996, authorizing UCPB to debit the amount of US\$500,000.00 from its (ATCI) dollar account with UCPB, constituted proof that petitioners acknowledged their obligation under the questioned loan.³⁴

Fifth, the RTC ruled out prescription or laches, holding that the partial payments made by petitioners to UCPB in 1996 and 1997, as well as APA's extrajudicial demand in 2005 for the payment of the loan, tolled the running of the prescriptive period for the filing of this case.³⁵

Lastly, the RTC sustained the transfer of the rights/interest to the loan from UCPB to APA pursuant to the SPV Act of 2002, relying on the *Certificate of Eligibility* issued by the Central Bank. Also, the RTC ruled that petitioners have no personality to question the assignment for not being privy thereto.³⁶

Aggrieved, petitioners appealed to the CA

³¹ Id. at 246-247.

³² Id. at 247-250.

³³ Id. at 250-251.

³⁴ Id. at 251.

³⁵ Id. at 251-252.

³⁶ Id. at 252.

Ruling of the CA

The CA resolved the core issue whether or not the agreement entered into between the UCPB and ATCI was a *bona fide* contract of loan or a simulated one.

Essentially echoing the findings and ratiocination of the RTC, the CA rendered the challenged Decision dated November 19, 2018, affirming the RTC's ruling, thus:

WHEREFORE, the appeal is **DENIED**. **ACCORDINGLY**, the Decision dated April 17, 2015 of the Regional Trial Court of Makati City, Branch 145, is hereby **AFFIRMED**.

SO ORDERED.³⁷

Petitioners' motion for reconsideration was subsequently denied in the Resolution dated November 14, 2019.

Hence, this petition.

Issue

The core issue for resolution is whether or not the questioned *Loan Agreement* dated July 2, 1993 is a simulated loan.

The Court's Ruling

The petition is meritorious.

In sustaining the questioned transaction as a *bona fide* loan, the RTC and CA relied heavily on the fact of notarization of the assailed documents. In the challenged Decision, the CA underscored that petitioners impliedly admitted the genuineness of the signatures appearing on the questioned documents, when they claimed that the questioned loan was simulated. The CA ruled that documents, being notarized, constitute *prima facie* evidence of the truth of the facts stated therein, and petitioners failed to rebut the presumption by clear and convincing evidence.³⁸

³⁷ Id. at 77.

³⁸ Id. at 246.



While presumption of regularity is accorded by law to notarized documents, the same is not absolute and may be rebutted by clear and convincing evidence to the contrary.³⁹ In this case, the Court finds that petitioners have successfully overcome this presumption.

The act of UCPB extending credit accommodation to ATCI in the extraordinary amount of US\$1,500,000.00 sans any collateral is *not only highly irregular*, but also violative of the rules and regulations of the Bangko Sentral ng Pilipinas (*BSP*) for failure to strictly follow the guidelines in the conferment of unsecured loans set forth under the Manual of Regulations for Banks (*MORB*),⁴⁰ thus:

Sec. X319 Loans Against Personal Security. The following regulations shall govern credit accommodations against personal security granted by banks.

X319.1 General guidelines. Before granting credit accommodations against personal security, banks must exercise proper caution by ascertaining that the borrowers, co-makers, endorsers, sureties and/or guarantors possess good credit standing and are financially capable of fulfilling their commitments to the bank. For this purpose, banks shall keep records containing information on the credit standing and financial capacity of credit applicants.

X319.2 Proof of financial capacity of borrower. In addition to the usual personal information sheet about the borrower, banks shall require that an application for a credit accommodation against personal security be accompanied by:

- a. A copy of the latest income tax returns of the borrower and his co-maker duly stamped as received by the BIR; and
- b. If the credit accommodation exceeds ₱500,000.00, a copy of the borrower's balance sheet duly certified by an Independent Certified Public Accountant (CPA), and in case he is engaged in business, also a copy of the profit and loss statement duly certified by a CPA.

The required documents shall be submitted annually for as long as the credit accommodation is outstanding.

Contrary to the opinion of the CA, the above-mentioned requirements cannot be taken lightly, much less disregarded. The CA seriously erred in choosing to take judicial notice of the supposed uncommon practice of banks

³⁹ *Potenciano v. Reynoso*, 449 Phil. 406 (2003).

⁴⁰ See *Far East Bank and Trust Company (now Bank of the Philippine Islands), v. Tentmakers Group, Inc.*, 690 Phil. 134, 142-143 (2012).

of extending “clean loans” or non-collaterized loans,⁴¹ instead of applying the mandatory requirements.

Claiming that ATCI’s financial standing at the time of the questioned transaction did not merit credit accommodation in the amount of US\$1,500,000.00, petitioners presented ATCI’s Financial Reports for years 1990 to 1993 prior to the questioned credit accommodation showing the corporation’s total assets and net worth in the following amounts: ₱4,970,940.10 and ₱16,056.95 in 1990; ₱3,507,446.53 and ₱27,164.31 in 1991; ₱7,644,907.12 and ₱64,738.05 in 1992; ₱6,499,402.69 and ₱33,020.57 in 1993; and ₱5,007,501.93 and ₱54,430.40 in 1994.⁴²

In this case, the records do not show that UCPB complied with the above-mentioned requirements. This is evident from the fact that the evidence for APA comprised merely of the testimonies of its officers, as well as the documents pertaining to the *Deed of Absolute Sale* dated June 23, 2005 assigning UCPB’s rights/interests to the loan to APA. The APA’s officers testified only to the fact of said assignment, as well as the documents turned over by UCPB to APA in relation thereto. Indeed, nothing can be derived from their testimonies as regards the nature of the questioned transaction executed between UCPB and ATCI on July 2, 1993, they being not privy thereto prior to the assignment executed on June 23, 2005, or after about 12 years. Thus, the material facts as established by ATCI’s financial statements, as well as UCPB’s non-compliance with the requirements mandated by MORB, remain unrefuted.

For the same reason, APA cannot rely on ATCI’s Letter dated July 23, 1996, authorizing UCPB to debit the amount of US\$500,000.00 from the ATCI dollar account with UCPB. The letter provides that the amount to be debited represents “partial refund” of the financial accommodation under the questioned Loan Agreement. This had been established by petitioners’ testimonial evidence,⁴³ which APA failed to rebut. Again, APA, not being privy to the transaction between UCPB and ATCI in 1993, its officers do not have personal knowledge to testify as to the nature of said transaction, as well as the import of the Letter dated July 23, 1996.

It bears stressing that the supposed loan agreement was executed in 1993, yet no evidence on record tended to establish that UCPB enforced petitioners’ obligation therein prior to the assignment of its rights and interests to APA in 2005. The only evidence on record tending to establish the enforcement of petitioners’ obligation is the extrajudicial demand made by APA, as assignee of UCPB, in 2005. Considering the extraordinary

⁴¹ *Rollo*, p. 251.

⁴² *Id.* at 244-245.

⁴³ *Id.* at 242-243.

amount of US\$1,500,000.00 indicated in the Loan Agreement, it is really baffling that UCPB, a prominent bank, never made any demand for petitioners to settle their obligation under the questioned Loan Agreement.

Given the factual antecedents in this case, it is evident that the *Loan Agreement* dated July 2, 1993 was merely simulated, and UCPB and ATCI never intended to be bound by its terms. The applicable laws on simulated contracts are Articles 1345 and 1346 of the Civil Code, which provide:

Art. 1345. Simulation of a contract may be absolute or relative. The former takes place when the parties do not intend to be bound at all; the latter, when the parties conceal their true agreement.

Art. 1346. An absolutely simulated or fictitious contract is void. A relative simulation, when it does not prejudice a third person and is not intended for any purpose contrary to law, morals, good customs, public order or public policy binds the parties to their real agreement.

Here, the true intention of UCPB and ATCI, *i.e.*, for ATCI to act as a vehicle for UCPB's dollar remittance venture in Kuwait, was concealed in the questioned *Loan Agreement* dated July 2, 1993. Owing to the irregularities attending the credit accommodation extended by UCPB to ATCI, it becomes clear that the intention of the parties was to circumvent banking laws and regulations. Thus, the *Loan Agreement* dated July 2, 1993 is void and inexistent under Article 1409⁴⁴ of the Civil Code. Consequently, neither the UCPB and ATCI being in *pari delicto*, will obtain any relief from the Court.⁴⁵

WHEREFORE, premises considered, the Decision dated November 19, 2018 and Resolution dated November 14, 2019 of the Court of Appeals in CA-G.R. CV No. 106371 are **REVERSED** and **SET ASIDE**. Respondent ASSET POOL A (SPV-AMC), INC.'s complaint for sum of money in Civil Case No. 07-102 is dismissed for lack of merit.

⁴⁴ Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

⁴⁵ *Tala Realty Services Corp. v. Banco Filipino Savings and Mortgage Bank*, 441 Phil. 1, 45 (2002).

SO ORDERED.



EDGARDO L. DELOS SANTOS
Associate Justice

WE CONCUR:



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



JHOSEP V. LOPEZ
Associate Justice

ATTESTATION

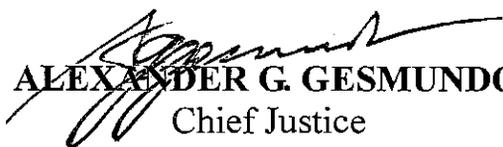
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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.



ALEXANDER G. GESMUNDO
Chief Justice