Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

ALVIN PATRIMONIO,
Petitioner,

- versus -

NAPOLEON GUTIERREZ and OCTAVIO MARASIGAN III,
Respondents.

G.R. No. 187769

Present:

CARPIO, *J., Chairperson,*
BRION,
DEL CASTILLO,
PEREZ, and
PERLAS-BERNABE, *JJ.*

Promulgated:

JUN 04 2014

x----------x

DECISION

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 ₱200,000.00.

The Factual Background

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

---

1 Under Rule 45 of the Rules of Court, *rollo*, pp. 9-31.

2 Id. at 30-47; penned by Associate Justice Monina Arevalo-Zenarosa, and concurred in by Associate Justice Regalado E. Maambong and Associate Justice Sixto C. Marella, Jr.

3 Id. at 48-50.

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 ₱200,000.00 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 ₱200,000.00 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 "*₱200,000.00*". 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 ₱200,000.00, 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 ₱200,000.00.

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

---

4 *Rollo*, pp. 67-72.

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 ₱200,000.00 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 ₱200,000.00 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

---

5 *Republic v. Bellate*, G.R. No. 175685, August 7, 2013, 703 SCRA 210, 218.

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 unequivocably 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:

---

6 Article 1869, Civil Code of the Philippines.

7 200 Phil. 685 (1982).

> **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.

Marasigan's submission fails to persuade us.

---

8 *Rollo*, p. 82.

In the absence of any authorization, Gutierrez could not enter into a contract of loan in behalf of the petitioner. As held in *Yasuma v. Heirs of De Villa*,[9] involving a loan contracted by de Villa secured by real estate mortgages in the name of East Cordillera Mining Corporation, in the absence of an SPA conferring authority on de Villa, there is no basis to hold the corporation liable, to wit:

> The power to borrow money is one of those cases where corporate officers as agents of the corporation need a special power of attorney. In the case at bar, **no special power of attorney conferring authority on de Villa was ever presented**. x x x There was no showing that respondent corporation ever authorized de Villa to obtain the loans on its behalf.
>
> x x x x
>
> **Therefore, on the first issue, the loan was personal to de Villa. There was no basis to hold the corporation liable since there was no authority, express, implied or apparent, given to de Villa to borrow money from petitioner. Neither was there any subsequent ratification of his ac**t.
>
> x x x x
>
> The liability arising from the loan was the sole indebtedness of de Villa (or of his estate after his death). (citations omitted; emphasis supplied).

This principle was also reiterated in the case of *Gozun v. Mercado*,[10] where this court held:

> Petitioner submits that his following testimony suffices to establish that respondent had authorized Lilian to obtain a loan from him.
>
> x x x x
>
> Petitioner's testimony failed to categorically state, however, whether the loan was made on behalf of respondent or of his wife. While petitioner claims that Lilian was authorized by respondent, the statement of account marked as Exhibit "A" states that the amount was received by Lilian "in behalf of Mrs. Annie Mercado.
>
> It bears noting that Lilian signed in the receipt in her name alone, without indicating therein that she was acting for and in behalf of respondent. **She thus bound herself in her personal capacity and not as an agent of respondent or anyone for that matter.**
>
> **It is a general rule in the law of agency that, in order to bind the principal by a mortgage on real property executed by an agent, it must upon its face purport to be made, signed and sealed in the name of the principal, otherwise, it will bind the agent only. It is not enough merely that the agent was in fact authorized to make the mortgage, if he has not acted in the name of the principal**. x x x (emphasis supplied).

---

9 G.R. No. 150350, August 22, 2006, 499 SCRA 466, 472.

10 G.R. No. 167812, December 19, 2006, 511 SCRA 305, 313-314.

In the absence of any showing of any agency relations or special authority to act for and in behalf of the petitioner, the loan agreement Gutierrez entered into with Marasigan is null and void. Thus, the petitioner is not bound by the parties' loan agreement.

Furthermore, that the petitioner entrusted the blank pre-signed checks to Gutierrez is not legally sufficient because the authority to enter into a loan can never be presumed. The contract of agency and the special fiduciary relationship inherent in this contract must exist as a matter of fact. The person alleging it has the burden of proof to show, not only the fact of agency, but also its nature and extent.[11] As we held in *People v. Yabut*:[12]

> Modesto Yambao's receipt of the bad checks from Cecilia Que Yabut or Geminiano Yabut, Jr., in Caloocan City cannot, contrary to the holding of the respondent Judges, be licitly taken as delivery of the checks to the complainant Alicia P. Andan at Caloocan City to fix the venue there. He did not take delivery of the checks as holder, *i.e*., as "payee" or "indorsee." And there appears to be no contract of agency between Yambao and Andan so as to bind the latter for the acts of the former. Alicia P. Andan declared in that sworn testimony before the investigating fiscal that Yambao is but her "messenger" or "part-time employee." **There was no special fiduciary relationship that permeated their dealings. For a contract of agency to exist, the consent of both parties is essential, the principal consents that the other party, the agent, shall act on his behalf, and the agent consents so to act. It must exist as a fact. The law makes no presumption thereof. The person alleging it has the burden of proof to show, not only the fact of its existence, but also its nature and extent. This is more imperative when it is considered that the transaction dealt with involves checks, which are not legal tender, and the creditor may validly refuse the same as payment of obligation.** (at p. 630). (emphasis supplied)

The records show that Marasigan merely relied on the words of Gutierrez without securing a copy of the SPA in favor of the latter and without verifying from the petitioner whether he had authorized the borrowing of money or release of the check. He was thus bound by the risk accompanying his trust on the mere assurances of Gutierrez.

No Contract of Loan Was Perfected Between Marasigan And Petitioner, as The Latter's Consent Was Not Obtained.

Another significant point that the lower courts failed to consider is that a contract of loan, like any other contract, is subject to the rules governing the requisites and validity of contracts in general.[13] Article 1318 of the Civil Code[14] enumerates the essential requisites for a valid contract, namely:

---

11 *People v. Yabut*, G.R. No. L-42847 and L-42902, April 29, 1977, 167 Phil. 336, 343.

12 Id.

13 *Pentacapital Investment Corporation v. Mahinay*, G.R. No. 171736, July 5, 2010, 623 SCRA 284, 302.

14 Art. 1318. There is no contract unless the following requisites concur:

1. **consent of the contracting parties**;
2. object certain which is the subject matter of the contract; and
3. cause of the obligation which is established.

In this case, the petitioner denied liability on the ground that the contract lacked the essential element of consent. We agree with the petitioner. As we explained above, Gutierrez did not have the petitioner's written/verbal authority to enter into a contract of loan. While there may be a meeting of the minds between Gutierrez and Marasigan, such agreement cannot bind the petitioner whose consent was not obtained and who was not privy to the loan agreement. Hence, only Gutierrez is bound by the contract of loan.

True, the petitioner had issued several pre-signed checks to Gutierrez, one of which fell into the hands of Marasigan. This act, however, does not constitute sufficient authority to borrow money in his behalf and neither should it be construed as petitioner's grant of consent to the parties' loan agreement. Without any evidence to prove Gutierrez' authority, the petitioner's signature in the check cannot be taken, even remotely, as sufficient authorization, much less, consent to the contract of loan. Without the consent given by one party in a purported contract, such contract could not have been perfected; there simply was no contract to speak of.[15]

With the loan issue out of the way, we now proceed to determine whether the petitioner can be made liable under the check he signed.

II. Liability Under the Instrument

The answer is supplied by the applicable statutory provision found in Section 14 of the Negotiable Instruments Law (*NIL*) which states:

> Sec. 14. *Blanks; when may be filled.* - Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, **it must be filled up strictly in accordance with the authority given and within a reasonable time**. But if any such instrument, after completion, is **negotiated to a holder in due course**, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

---

(1) Consent of the contracting parties;
(2) Object certain which is the subject matter of the contract;
(3) Cause of the obligation which is established. (1261).

15 *Deheza-Inamarga v. Alano*, G.R. No. 171321, December 18, 2008, 574 SCRA 651, 660.

This provision applies to an incomplete but delivered instrument. Under this rule, if the maker or drawer delivers a pre-signed blank paper to another person for the purpose of converting it into a negotiable instrument, that person is deemed to have *prima facie* authority to fill it up. It merely requires that the instrument be in the possession of a person other than the drawer or maker and from such possession, together with the fact that the instrument is wanting in a material particular, the law presumes agency to fill up the blanks.[16]

In order however that one who is not a holder in due course can enforce the instrument against a party prior to the instrument's completion, two requisites must exist: (1) that the blank must be filled strictly in accordance with the authority given; and (2) it must be filled up within a reasonable time. If it was proven that the instrument had not been filled up strictly in accordance with the authority given and within a reasonable time, the maker can set this up as a personal defense and avoid liability. However, if the holder is a holder in due course, there is a conclusive presumption that authority to fill it up had been given and that the same was not in excess of authority.[17]

In the present case, the petitioner contends that there is no legal basis to hold him liable both under the contract and loan and under the check because: **first**, the subject check was not completely filled out strictly under the authority he has given and **second**, Marasigan was not a holder in due course.

Marasigan is Not a Holder in Due Course

The Negotiable Instruments Law (*NIL*) defines a holder in due course, thus:

> Sec. 52 — A holder in due course is a holder who has taken the instrument under the following conditions:
>
> (a) That it is complete and regular upon its face;
>
> (b) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;
>
> (c) **That he took it in good faith** and for value;
>
> (d) **That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.** (emphasis supplied)

Section 52(c) of the NIL states that a holder in due course is one who takes the instrument "in good faith and for value." It also provides in Section

---

16 *Dy v. People*, G.R. No. 158312, November 14, 2008, 571 SCRA 59, 71-72.

17 T.B. Aquino, Notes and Cases on Banks, Negotiable Instruments and Other Commercial Documents, p. 234 (2006 ed.).

52(d) that in order that one may be a holder in due course, it is necessary that at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

Acquisition in good faith means taking without knowledge or notice of equities of any sort which could be set up against a prior holder of the instrument.[18] It means that he does not have any knowledge of fact which would render it dishonest for him to take a negotiable paper. The absence of the defense, when the instrument was taken, is the essential element of good faith.[19]

As held in *De Ocampo v. Gatchalian*:[20]

> In order to show that the defendant had "knowledge of such facts that his action in taking the instrument amounted to bad faith," **it is not necessary to prove that the defendant knew the exact fraud that was practiced upon the plaintiff by the defendant's assignor, it being sufficient to show that the defendant had notice that there was something wrong about his assignor's acquisition of title, although he did not have notice of the particular wrong that was committed.**
>
> It is sufficient that the buyer of a note had notice or knowledge that the note was in some way tainted with fraud. **It is not necessary that he should know the particulars or even the nature of the fraud**, since all that is required is knowledge of such facts that his action in taking the note amounted bad faith.
>
> The term 'bad faith' does not necessarily involve furtive motives, but means bad faith in a commercial sense. The manner in which the defendants conducted their Liberty Loan department provided an easy way for thieves to dispose of their plunder. It was a case of "no questions asked." Although gross negligence does not of itself constitute bad faith, it is evidence from which bad faith may be inferred. The circumstances thrust the duty upon the defendants to make further inquiries and they had no right to shut their eyes deliberately to obvious facts. (emphasis supplied).

In the present case, Marasigan's knowledge that the petitioner is not a party or a privy to the contract of loan, and correspondingly had no obligation or liability to him, renders him dishonest, hence, in bad faith. The following exchange is significant on this point:

> **WITNESS: AMBET NABUS**
>
> Q: Now, I refer to the second call… after your birthday. Tell us what you talked about?
>
> A: Since I celebrated my birthday in that place where Nap and I live together with the other crew, there were several

---

[18] A.F. Agbayani, Commentaries and Jurisprudence on the Commercial Laws of the Philippines, p. 281 (1992 ed.).

[19] Id.

[20] G.R. No. L-15126, November 30, 1961, 3 SCRA 596, 598.

visitors that included Danny Espiritu. So a week after my birthday, Bong Marasigan called me up again and he was fuming mad. Nagmumura na siya. Hinahanap niya si… hinahanap niya si Nap, dahil pinagtataguan na siya at sinabi na niya na kailangan I-settle na niya yung utang ni Nap, dahil…

x x x x

WITNESS: Yes. Sinabi niya sa akin na kailangan ayusin na bago pa mauwi sa kung saan ang tsekeng tumalbog… (He told me that we have to fix it up before it…) mauwi pa kung saan…

x x x x

Q: What was your reply, if any?

A: I actually asked him. Kanino ba ang tseke na sinasabi mo? (Whose check is it that you are referring to or talking about?)

Q: What was his answer?

A: It was Alvin's check.

Q: What was your reply, if any?

A: **I told him do you know that it is not really Alvin who borrowed money from you or what you want to appear…**

x x x x

Q: What was his reply?

A: **Yes, it was Nap, pero tseke pa rin ni Alvin ang hawak ko at si Alvin ang maiipit dito.** (T.S.N., Ambet Nabus, July 27, 2000; pp.65-71; emphasis supplied)[21]

Since he knew that the underlying obligation was not actually for the petitioner, the rule that a possessor of the instrument is *prima facie* a holder in due course is inapplicable. As correctly noted by the CA, his inaction and failure to verify, despite knowledge of that the petitioner was not a party to the loan, may be construed as gross negligence amounting to bad faith.

Yet, it does not follow that simply because he is not a holder in due course, Marasigan is already totally barred from recovery. The NIL does not provide that a holder who is not a holder in due course may not in any case recover on the instrument.[22] The only disadvantage of a holder who is not in due course is that the negotiable instrument is subject to defenses as if it

---

21 *Rollo*, pp. 141-142.

22 *Dino v. Loot*, G.R. No. 170912, April 19, 2010, 618 SCRA 393, 404.

were non-negotiable.[23] Among such defenses is the filling up blank not within the authority.

On this point, the petitioner argues that the subject check was not filled up strictly on the basis of the authority he gave. He points to his instruction not to use the check without his prior approval and argues that the check was filled up in violation of said instruction.

Check Was Not Completed Strictly Under The Authority Given by The Petitioner

Our own examination of the records tells us that Gutierrez has exceeded the authority to fill up the blanks and use the check. To repeat, petitioner gave Gutierrez pre-signed checks to be used in their business provided that he could only use them upon his approval. His instruction could not be any clearer as Gutierrez' authority was limited to the use of the checks for the operation of their business, and on the condition that the petitioner's **prior approval** be first secured.

While under the law, Gutierrez had a *prima facie* authority **to complete the check**, such *prima facie* authority does not extend to its use (*i.e.*, subsequent transfer or negotiation) once the check is completed. In other words, only the authority to complete the check is presumed. Further, the law used the term "*prima facie*" to underscore the fact that the authority which the law accords to a holder is a presumption *juris tantum* only; hence, subject to subject to contrary proof. Thus, evidence that there was no authority or that the authority granted has been exceeded may be presented by the maker in order to avoid liability under the instrument.

In the present case, no evidence is on record that Gutierrez ever secured prior approval from the petitioner to fill up the blank or to use the check. In his testimony, petitioner asserted that he never authorized nor approved the filling up of the blank checks, thus:

ATTY. DE VERA:	Did you authorize anyone including Nap Gutierrez to write the date, May 23, 1994?
WITNESS:	No, sir.
Q:	Did you authorize anyone including Nap Gutierrez to put the word cash? In the check?
A:	No, sir.
Q:	Did you authorize anyone including Nap Gutierrez to write the figure P200,000 in this check?

[23] Id.

A: No, sir.

Q: And lastly, did you authorize anyone including Nap Gutierrez to write the words P200,000 only xx in this check?

A: No, sir. (T.S.N., Alvin Patrimonio, November 11, 1999).[24]

Notably, Gutierrez was only authorized to use the check for *business expenses*; thus, he exceeded the authority when he used the check to pay the loan he supposedly contracted *for the construction of petitioner's house*. This is a clear violation of the petitioner's instruction to use the checks for the expenses of Slam Dunk. It cannot therefore be validly concluded that the check was completed strictly in accordance with the authority given by the petitioner.

Considering that Marasigan is not a holder in due course, the petitioner can validly set up the personal defense that the blanks were not filled up in accordance with the authority he gave. Consequently, Marasigan has no right to enforce payment against the petitioner and the latter cannot be obliged to pay the face value of the check.

WHEREFORE, in view of the foregoing, judgment is hereby rendered **GRANTING** the petitioner Alvin Patrimonio's petition for review on *certiorari*. The appealed Decision dated September 24, 2008 and the Resolution dated April 30, 2009 of the Court of Appeals are consequently **ANNULLED AND SET ASIDE**. Costs against the respondents.

SO ORDERED.

ARTURO D. BRION
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

---

24 *Rollo*, p. 117.

MARIANO C. DEL CASTILLO
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
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.

ANTONIO T. CARPIO
Associate Justice
Chairperson, Second 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.

MARIA LOURDES P. A. SERENO
Chief Justice