

THIRD DIVISION

[G. R. No. 158621, December 10, 2008]

**ROYAL CARGO CORPORATION, PETITIONER, VS. DFS SPORTS
UNLIMITED, INC., RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 61800 promulgated on January 24, 2003, and its Resolution, dated June 4, 2003, denying petitioner's Motion for Reconsideration.

The facts of the case, as summarized by the trial court and adopted by the CA, are as follows:

From the evidence offered by the parties and their admissions in their respective pleadings, the Court has clearly gathered that the plaintiff [herein petitioner] and the defendant [herein respondent] are domestic corporations organized under the laws of the Philippines. [Petitioner] is an international freight forwarder, which offers trucking, brokerage, storage and other services to the public, and serves as conduit between shippers, consignees, and carriers for the transportation of cargos from one point of the globe to another. [Respondent], on the other hand, is one of the concessionaires of the Subic Bay Metropolitan Authority (SBMA). It is principally engaged in the importation and local sale of duty-free sporting goods and other similar products.

Sometime in October 1993, the [respondent] engaged the services of the [petitioner] to attend and undertake the former's brokerage and trucking requirements.

Between the period from April to July, 1994 [petitioner] rendered trucking, brokerage, storage and other services to the [respondent] in connection with the latter's importation business, and as a consequence it incurred expenses for brokerage forms, stamps, notarial fees, arrastre charges, wharfage fees, storage charges, guarding fees, telegrams, LCL charges, photostat copies, trucking charges, processing fees, ocean freight charges, collection fees, brokerage fees, insurance premiums, and 10% VAT, which amounted to the total of P248,449.63, which the [respondent] fails and refuses to pay despite [petitioner's] demands.^[2]

On April 19, 1995, petitioner filed against respondent a Complaint for Collection of Sum of Money^[3] with the Regional Trial Court (RTC) of Manila seeking the recovery of the amount of P248,449.63 plus legal interest as well as attorney's fees and costs

of suit.

Respondent filed its Answer with Counterclaim^[4] contending that, except for a single occasion which happened sometime in May 1994, it never engaged the services of petitioner for the importation of various products and that it is under no legal obligation to heed the demand of plaintiff. As counterclaim, respondent alleged that petitioner owes it the sum of P200,000.00 representing the value of the imported goods respondent lost by reason of the gross negligence as well as illegal activities of petitioner in the transshipment of respondent's goods. Respondent also sought to recover the amount of P44,710.00 which it gave to petitioner as payment of the taxes and customs duties for the goods it (respondent) imported but which were not paid by petitioner. Respondent prayed for the grant of actual, moral and exemplary damages as well as attorney's fees and cost of suit.

Petitioner filed its Answer to respondent's Counterclaim denying the allegations contained therein.^[5]

Subsequently, the parties filed their respective Pre-Trial Briefs.^[6] Pre-trial conferences were conducted on October 12, 1995 and March 14, 1997.

Thereafter, trial ensued.

In the course of the trial, the parties made their respective formal offers of evidence.

Petitioner presented as part of its evidence, 34 carbon copies of invoices, marked as Exhibits "A" to "A-33," to prove respondent's indebtedness.^[7] These were objected to by respondent on the ground that they are self-serving, immaterial and have no factual and legal basis. However, they were admitted by the RTC per its Order^[8] dated August 1, 1997.

On the other hand, respondent presented, 28 original copies of the 34 invoices submitted by petitioner^[9] for the purpose of proving payment of the amount sought to be recovered by the latter. Petitioner objected on the ground that the evidence contradicts respondent's claim in its Answer that it never engaged the services of petitioner for the importation of various products. In its Order^[10] dated January 30, 1998, the RTC admitted the above-mentioned invoices as part of the evidence for the respondent.

On June 3, 1998, the RTC of Manila, Branch 35, rendered a Decision^[11] dismissing petitioner's complaint and respondent's counterclaim.

Petitioner filed an appeal with the CA. Respondent did not appeal the RTC Decision.

On January 24, 2003, the CA rendered the presently assailed Decision^[12] affirming the RTC Decision.

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its Resolution^[13] dated June 4, 2003.

Hence, the present petition raising the following issues:

- I. WHETHER OR NOT THE BURDEN OF EVIDENCE LIES WITH THE DEBTOR TO PROVE THAT PAYMENT HAS BEEN MADE.
- II. WHETHER OR NOT MERE PRESENTATION BY THE DEBTOR OF ORIGINAL INVOICES ALONE SUFFICIENTLY PROVES PAYMENT OF ITS DEBT.
- III. WHETHER OR NOT AN INVOICE IS DEEMED A CREDIT INSTRUMENT WHICH, UPON PRESENTATION BY THE DEBTOR, RAISES THE DISPUTABLE PRESUMPTION OF PAYMENT AS PER RULE 131, SECTION 3(h) OF THE RULES OF COURT THAT STATES THAT A DISPUTABLE PRESUMPTION OF PAYMENT IS RAISED WHEN AN OBLIGATION IS DELIVERED TO A DEBTOR.^[14]

Petitioner contends that the CA erred in ruling that the burden of evidence is on petitioner who claims that respondent failed to pay its obligation to the former; that, on the contrary, the burden of proving payments lies with respondent, consistent with the rule that one who pleads payment has the burden of proving it; that, in the instant case, respondent's presentation of the original invoices in its possession is not sufficient to prove payment of its debt; that the original invoices are mere evidence of the transaction between petitioner and respondent but can never be relied upon as proof of payment; that the best proof of payment is either a receipt, return check, bank record or document proving that the creditor received the amount owed; that the disputable presumption that an obligation delivered up to a debtor is paid applies only to credit instruments delivered to the debtor; that an invoice is not a credit instrument.

Respondent counters that the issues raised by petitioner are factual; the factual findings of the RTC, especially when affirmed by the CA, are conclusive upon the parties, and; in a petition for review on *certiorari* under Rule 45 of the Rules of Court, the Supreme Court only reviews errors of law and not of fact.

The Court finds the petition meritorious.

The Court shall deal first with the question of whether the issues raised by petitioner are factual.

An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.^[15] On the other hand, an issue is one of law when the doubt or difference arises as to what the law is on a certain state of facts.^[16]

In the present case, the main issues raised by petitioner are: (1) whether respondent, who is the debtor, has the burden of proving payment; and (2) whether the subject invoices prove such payment or at least raise a disputable presumption that payment has been made. Clearly, the first issue is not factual as it does not require calibration of evidence. However, the second issue is factual because it

requires an examination of the probative value of the evidence of the parties.

The settled rule is that issues of fact are not proper subjects of a petition for review before this Court.^[17] Nonetheless, there are recognized exceptions to this rule, among which are: (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 facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings 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.^[18] The Court finds that petitioner was able to demonstrate that the instant case falls under the fourth exception as will be discussed forthwith.

As to the first issue raised, the settled rule is that one who pleads payment has the burden of proving it.^[19] Even where the creditor alleges non-payment, the general rule is that the *onus* rests on the debtor to prove payment, rather than on the creditor to prove non-payment.^[20] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.^[21] Where the debtor introduces some evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.^[22]

Since respondent claims that it had already paid petitioner for the services rendered by the latter, it follows that the former carries the burden of proving such payment.

This brings us to the second issue.

At the outset, it should be noted that respondent's defense of payment was only raised during the testimony of its first witness, Adora Co (Adora) on August 7, 1997. In its Answer, respondent merely alleged that, except for a transaction it had with petitioner sometime in May 1994, it never engaged the services of the latter for the importation of various products between April and July 1994; and that for the goods it imported in May 1994, it had given petitioner the amount of P44,710.00 to answer for the customs duties and taxes due thereon. Respondent further asserted that the goods were seized by Customs authorities because of petitioner's alleged falsification of receipts covering the payment of customs duties and taxes on the said goods; that by reason of such seizure, the goods, which were kept in open air, lost their commercial value amounting to P200,000.00. Respondent claims that it was not able to recover the value of its seized property nor did petitioner return the amount of P44,710.00 given to it by respondent.

Moreover, it is significant to note that the only issues raised by respondent in its Pre-Trial Brief are the following:

- (a) Has plaintiff (herein petitioner) been engaged by defendant (herein respondent) at any time prior to the filing of the present Complaint in the "importation of various products"?

(b) Is [petitioner] guilty of gross negligence on account of the seizure of [respondent's] products due to fake or spurious receipt of payment of customs duties and taxes?

(c) Is [petitioner] liable to refund [respondent] the amount of P44,710.00, received by the former from the latter for the payment of customs duties and taxes assessed on said imported goods?

(d) Is [petitioner] liable to reimburse the amount of P44,710.00 to [respondent] after the latter has paid the said amount to the Bureau of Customs for the release of the imported goods which [petitioner] undertook to release and deliver to [respondent's] customer in Makati City? and

(e) Is [petitioner] liable to defendant for damages and attorney's fees incurred by the latter due to [petitioner's] gross negligence?^[23]

Nowhere in its Answer or in its Pre-Trial Brief did respondent raise the defense that it had already paid petitioner its obligations. As earlier mentioned, respondent denied having entered into the subject transactions for which petitioner seeks payment. To repeat, it was only during the testimony of respondent's witness, Adora, that respondent claimed payment by presenting in evidence 28 original copies of the subject invoices which Adora claimed to have found two days before she was due to testify in court.

Preliminarily, it is necessary to discuss the effect of failure of petitioner to plead payment of its obligations.

Section 1, Rule 9 of the Rules of Court provides:

Section 1. *Defenses and objections not pleaded.* - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim.

In the present case, despite failure of the respondent to raise the defense of payment in its answer, the trial court cannot be faulted for admitting the testimonial and documentary evidence of respondent to prove payment, over the objection of petitioner. The trial court's action is in consonance with Section 5, Rule 10 of the Rules of Court, to wit:

Section 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at