

SECOND DIVISION

[G.R. No. 135548, September 29, 2000]

FAR EAST BANK AND TRUST COMPANY, PETITIONER, VS. COURT OF APPEALS AND SMP, INC., RESPONDENTS.

DECISION

BELLOSILLO, J.:

FAR EAST BANK AND TRUST COMPANY filed a Complaint against Clothespak Manufacturing Phils., Inc. (hereafter CLOTHESPAK) for recovery of sums of money before the Regional Trial Court of Pasig City.^[1]

On 14 March 1995 the trial court issued a Writ of Preliminary Attachment by virtue of which the Sheriff levied on the personal properties found in the premises of CLOTHESPAK. On 28 March 1995 respondent SMP, Inc. (hereafter SMP) filed an Affidavit of Third-Party Claim asserting ownership over 4,000 bags of General Purpose (GPS) polystyrene products included among the attached properties. On 6 April 1995 petitioner posted a Sheriff's Indemnity Bond issued by Siddcor Insurance Corporation (hereafter SIDDCOR).

On 21 May 1996 the trial court ruled that the third-party claim can be best and fully ventilated in a vindictory action under Sec. 17, Rule 39, of the *Rules of Court*.^[2]

On 13 January and 7 March 1997 it denied reconsideration.^[3] Thereafter, a Decision was rendered in favor of petitioner and a Writ of Execution was accordingly issued upon the judgment becoming final and executory. Petitioner acquired the attached goods as highest bidder in the public auction.

Meanwhile, on 26 February 1997 respondent SMP filed a Complaint for damages against petitioner, the Sheriff and SIDDCOR before the Regional Trial Court of Quezon City, docketed as Civil Case No. Q-97-30372, pertinent portions of which read -

5. Plaintiff is engaged in the manufacture, production, formulation, tolling, distribution, trading, selling, import and export of polystyrene products and such other businesses related to or connected with polystyrene products.

6. On January 19, 1995, Maria Teresa Michaela Ong, one of the Sales Executives of plaintiff, personally undertook the acceptance and servicing of a purchase order of CLOTHESPAK MANUFACTURING PHILS., INC. (CLOTHESPAK for brevity) for 4,000 bags or sacks of General Purpose (GPS) polystyrene products to be made by CLOTHESPAK into "plastic hangers" x x x x

7. Pursuant to such Purchase Order, the ordered products (4,000 bags)

were delivered on January 23, 24, 25, and 27, 1995 to the plant of CLOTHESPAK located at Bo. Panungyanan, General Trias, Cavite City, for which Delivery Receipts were issued x x x x

8. The total selling price of the above delivered products amounted to U.S. \$118,500, as evidenced by Sales Invoices Nos. 5509, 5510, and 5511 x x x x

9. As "payment" for the goods ordered and duly delivered, CLOTHESPAK issued postdated checks in favor of plaintiff SMP, INC. and delivered the same to Maria Teresa Michaela Ong upon delivery of the ordered goods x x x x As agreed upon, the ownership over the goods delivered was explicitly retained by SMP until all the above-enumerated postdated checks shall have cleared and honored as good by the bank, with the understanding that SMP can get back the goods delivered at any time in case the check(s) are dishonored and returned by the bank for any reason, as contained in the Provisional Receipt issued by SMP to CLOTHESPAK upon receipt by SMP of the above postdated checks x x x x

10. When the above checks were deposited by SMP on their maturity dates, the drawee bank dishonored and returned them for the reason "Account Closed" x x x x

14. Deputy Sheriff Alejandro Loquinario of RTC-Pasig City x x x made an actual levy/attachment on the properties found on the premises of CLOTHESPAK at Panungyanan, Gen. Trias, Cavite on various dates in March 1995 before several witnesses including the representative of FEBTC. Among the properties levied/attached were "plastic resins" and "plastic hangers," as evidenced by the Notice of Levy/Attachment issued and submitted by Deputy Sheriff Loquinario for March 14, 1995 (plastic resins), March 15, 1995 (plastic resins) and March 16, 1995 (plastic hangers) x x x x

The LISTS OF INVENTORY attached to the Notice of Levy/Attachment did not fully describe with specificity the materials or goods attached; most of the sacks were described merely as "RAW MATERIALS" and "GRINDED;" a few were labeled "DOW" which indicates a foreign brand and therefore probably imported. This would seem to indicate that FEBTC directed the Sheriff to attach any and all goods found in the premises of CLOTHESPAK without regard as to whether they are those "goods intended to be attached," and most likely in order to make it difficult to trace, verify or check, the Sheriff just listed the goods without detailed description or identification. Since FEBTC was desperate in recovering *whatever it can recover* from its credit exposure to CLOTHESPAK, even goods clearly not owned by FEBTC by virtue of its alleged Trust Receipts just had to be attached for any reason.

Yet, it is clear from the allegations made in FEBTC's Complaint (Annex "G") that it was only after goods imported by CLOTHESPAK and allegedly paid for through LC/TR. Hence, FEBTC should have attached only those plastic products that were imported and not those that are locally produced like those of SMP.

15. Yet, the main bulk of the plastic goods/materials attached by the sheriff belonged to the plaintiff as can easily be seen from the pictures of the sacks of goods attached which show clearly the labels "TOPRENE" (a brand name) and "SMP INCORPORATED" and Paseo de Blas, Valenzuela, Philippines", all of which indicate that the goods/materials are owned by plaintiff and locally made. The pictures were taken in the place where the sheriff brought the goods for safe-keeping, i.e, at the Tacoma Warehouse, Port Area, Manila x x x x^[4]

On 8 April 1997 SIDDCOR filed a Motion to Dismiss the Complaint on the assertion that no action was filed by respondent SMP against the Sheriff within 120 days from the filing of the bond as provided in Sec. 17, Rule 39, of the Rules of Court. On 10 April 1997 petitioner and the Sheriff filed a Manifestation and Motion for a Bill of Particulars and Production of Documents. Movants averred that CLOTHESPAK was an indispensable party; that the Complaint did not state a cause of action; and, that certain allegations therein should be particularized.

On 15 July 1997 the trial court granted the Motion of SIDDCOR. It found that indeed the case was filed beyond the 120-day period, relieving SIDDCOR from any liability. On the other hand, it denied the Motion of petitioner and the Sheriff. It expressed the view that CLOTHESPAK was not responsible for the attachment and necessarily could not be made defendant in the present case; that the allegations in the Complaint were sufficient bases for them to properly formulate their defenses; and, that the matters they sought to be particularized were evidentiary in character and should therefore be threshed out during the trial proper.

On 12 August 1997 petitioner filed another Motion this time seeking the dismissal of the Complaint anchored on these grounds: (a) the Complaint stated no cause of action; and, (b) the cause of action, if any, was barred by prior judgment since the third-party claim of respondent SMP was denied in Civil Case No. 65006.

On 24 October 1997 the trial court denied petitioner's Motion explaining that the Complaint alleged ultimate facts constituting a cause of action and that from the denial of respondent SMP's third- party claim, SMP could file a separate action to vindicate its claim to the properties.^[5] On 25 November 1997 reconsideration was denied.^[6]

Through a Petition for *Certiorari* and *Mandamus* petitioner assailed the 24 October and 25 November 1997 Orders of the trial court before the Court of Appeals. On 31 July 1998 the Petition was dismissed. The appellate court concurred in the finding of the trial court that the Complaint stated a cause of action and held that neither *certiorari* nor *mandamus* was a proper remedy.^[7] On 16 September 1998 reconsideration was denied.^[8]

Petitioner asserts that the Complaint of respondent SMP does not state a cause of action because on the basis of the allegations therein, subject goods were already owned by CLOTHESPAK at the time of attachment. Petitioner also claims that respondent SMP raised a new theory in Civil Case No. Q-97-30372, i.e., that respondent SMP retained ownership of the goods based on a provisional receipt wherein its collector acknowledged having received postdated checks drawn by