834 Phil. 47

FIRST DIVISION

[G.R. No. 211876, June 25, 2018]

ASIAN TERMINALS, INC., PETITIONER, V. PADOSON STAINLESS STEEL CORPORATION, RESPONDENT.

D E C I S I O N

TIJAM, J.:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Asian Terminals, Inc. (ATI) assailing the Decision[2] dated July 23, 2013 and Resolution[3] dated March 26, 2014 of the Court of the Appeals (CA) in CA-G.R. CV No. 99435, which affirmed the Decision[4] dated July 16, 2012 of the Regional Trial Court (RTC) of Manila, Branch 41 in Civil Case No. 06-115638.

Factual Antecedents

Respondent Padoson Stainless Steel Corporation (Padoson) hired ATI to provide arrastre, wharfage and storage services at the South Harbor, Port of Manila. ATI rendered storage services in relation to a shipment, consisting of nine stainless steel coils and 72 hot-rolled steel coils which were imported on October 5, 2001 and October 30, 2001, respectively in favor of Padoson, as consignee. The shipments were stored within ATI's premises until they were discharged on July 29, 2006.[5]

Meanwhile, the shipments became the subject of a Hold-Order[6] issued by the Bureau of Customs (BOC) on September 7, 2001. This was an offshoot of a Customs case filed by the BOC against Padoson due to the latter's tax liability over its own shipments. The Customs case, docketed as Civil Case No. 01-102440, was pending with the RTC of Manila, Branch 173.[7]

For the storage services it rendered, ATI made several demands from Padoson for the payment of arrastre, wharfage and storage services (heretofore referred to as storage fees), in the following amounts: P540,474.48 for the nine stainless steel coils which were stored at ATI's premises from October 12, 2001 to July 29, 2006; and P8,374,060.80 for the 72 hot-rolled steel coils stored at ATI's premises from November 8, 2001 to July 29, 2006.[8]

The demands, however, went unheeded. Thus, on August 4, 2006, ATI filed a Complaint[9] with the RTC of Manila, Branch 41 for a Sum of Money and Damages with Prayer for the Issuance of Writ of Preliminary Attachment against Padoson, docketed as Civil Case No. 06-115638. ATI ultimately prayed that Padoson be ordered to pay the following amounts: P8,914,535.28 plus legal interest, representing the unpaid storage fees; P100,000.00 as exemplary damages; and P100,000.00 as attorney's fees.

In its Answer with Compulsory Counterclaim with Opposition to Application for Writ of Preliminary Attachment,[10] Padoson claimed among others, that: (1) during the time when the shipments were in ATI's custody and possession, they suffered material and substantial deterioration; (2) ATI failed to exercise the extraordinary diligence required of an arrastre operator and thus it should be held responsible for the damages; (3) the Hold-Order issued by the BOC was merely a leverage to claim Padoson's alleged unpaid duties; (4) relative to the Customs case pending with RTC, Branch 173, Padoson filed a Motion for Ocular Inspection[11] and in the course of the inspection, Sheriff Romeo V. Diaz (Sheriff Diaz) discovered that the shipments were found in an open area and were in a deteriorating state; (5) due to this, Padoson was compelled to file a Manifestation and Motion dated January 27, 2004 praying for the release of the shipments, which was in turn, granted by the RTC on June 25, 2004;[12] (6) on April 17, 2006, the RTC issued a Resolution,[13] granting Padoson's Motion for Issuance of Writ of Execution and accordingly issued the Writ of Execution, allowing Padoson to take possession of the shipment; (7) Sheriff Diaz in his Sheriff's Partial Return on Execution[14] dated August 8, 2006, stated that one of the nine steel coils which were part of the shipments, were missing; and (8) That due to the deterioration of the 72 hot-rolled steel coils, their value depreciated and when Padoson sold the same, he incurred a loss of P13.8 Million in lost profits. As to the stainless steel coils, he incurred a total loss of P2,992,000.00 corresponding to the value of the one steel coil lost (P882,000.00) and the lost profits for the sale of the remaining steel coils (P2,110,000.00).[15]

In its Answer to Compulsory Counterclaim, ATI countered that it exercise due diligence in the storage of the shipments and that the same were withdrawn from its custody in the same condition and quantity as when they they were unloaded from the vessel.[16]

Pre-trial was scheduled on August 12, 2009.[17] Thereafter, trial ensued.

During the trial, Padoson presented a certain Mr. Gregory Ventura (Ventura), who allegedly took pictures of the shipments. The pictures, however, were not pre-marked during the pre-trial. Consequently, the RTC issued an Order[18] dated September 8, 2011, disallowing the marking of the said pictures and Ventura's testimony thereon. To assail the said order, Padoson filed a Petition for *Certiorari* before the CA but the same was denied in the CA Decision[19] dated July 1, 2013, which became final and executory on July 24, 2013.[20]

ATI called to the witness stand its Cash Billing Supervisor, Mr. Samuel Goutana (Goutana) to explain how ATI computed the amount of storage fees prayed for in its Complaint against Padoson.[21]

On July 16, 2012, the RTC rendered its Decision,[22] dismissing ATI's complaint and Padoson's counterclaim. The RTC held that although the computation of storage fees to be paid by Padoson as prayed for in ATI's complaint to the tune of P8,914,535.28 plus legal interest, were "clear and unmistakable" and which Padoson never denied, the liability to pay the same should be borne by the BOC. Relying on the case of *Subic Bay Metropolitan Authority v. Rodriguez, et al*.[23] (SBMA), the RTC reasoned out that by virtue of the Hold-Order over Padoson's shipments, the BOC has acquired constructive possession over the same. Consequently, the BOC should be the one liable to ATI's money claims. The RTC, however, pointed out that since ATI

did not implead the BOC in its complaint, the BOC cannot be held to answer for the payment of the storage fees.

ATI appealed the RTC decision, but the same was denied by the CA in its Decision[24] dated July 23, 2013. TheCA ruled that the RTC did not err in holding that Padoson's shipments were under the BOC's constructive possession upon its issuance of the Hold-Order. The CA, likewise, ruled that there is substantial evidence to prove that the shipments suffered loss and deterioration or damage while they were stored in ATI's premises. But since the BOC had acquired constructive possession over the shipments, the CA ruled that neither ATI could be held liable for damages nor Padoson be held liable for the storage fees. Lastly, the CA pronounced that the RTC was correct in holding that no relief may be given to both ATI and Padoson since the BOC was not impleaded in ATI's complaint.

Aggrieved, ATI filed a Motion for Reconsideration,[25] stating among others, that: (1) the documents attached to Padoson's Answer are inadmissible and insufficient to prove that the shipments were damaged while in ATI's premises; (2) those documents were related to the Customs case in which ATI was not impleaded as a party, and thus, was not given an opportunity to contest them; (3) with respect to the photographs over the shipments allegedly taken on January 16, 2004, the same should be inadmissible for lack of authentication; (4) that Padoson's witness, a certain Mary Jane Lorenzo (Lorenzo), was not competent to testify on the photographs since she admitted that she was not the one who took the photographs and that the same do not indicate that they pertain to Padoson's shipment; (5) Sheriff Dizon's declaration in his Report on Ocular Inspection that the shipments, were "already in a deteriorating condition," were merely conclusory; and (6) Sheriff Dizon who prepared the Partial Return on Execution dated August 8, 2006, was not called to the witness stand to testify on the contents of the said Return.[26]

On March 26, 2014, the CA issued a Resolution[27] denying ATI's motion for reconsideration.

Hence, this petition for review on certiorari which submits the following arguments in support thereof:

A. The [CA] erred in ruling that the Subject Shipments were in the constructive possession of the [BOC];[28]

B. The [CA] erred in ruling that Padoson can no longer be held liable to ATI for arrastre, wharfage and storage fees because of said constructive possession[;] [29]

C. Padoson failed to establish that the Subject Shipments sustained damage while in ATI's custody[;][30]

D. ATI is entitled to an award of damages[; and][31]

E. The instant case should be decided on its merits. It should not have been dismissed based on the theory of constructive possession proposed by the trial court and adopted by the [CA.][32]

Ruling of the Court

The petition is granted.

Essentially, the issue posed before us is whether or not the CA erred in affirming the RTC decision.

We answer in the affirmative.

While this Court is not a trier of facts, still when the inference drawn by the CA from the facts is manifestly mistaken, as in the present case, we can, in the interest of justice, review the evidence to allow us to arrive at the correct factual conclusions based on the record.[33]

The CA and the RTC misapplied the case of SBMA

In *SBMA*,[34] we dealt with the following issues: (1) which court has the exclusive original jurisdiction over seizure and forfeiture proceedings; and (2) the propriety of the issuance by the RTC of a Temporary Restraining Order against the BOC. In ruling that it is the BOC, and not the RTC, which has exclusive original jurisdiction over seizure and forfeiture of the subject shipment, this Court explained that:

> The Collector of Customs sitting in seizure and forfeiture proceedings has exclusive jurisdiction to hear and determine all questions touching on the seizure and forfeiture of dutiable goods. Regional trial courts are devoid of any competence to pass upon the validity or regularity of seizure and forfeiture proceedings conducted by the BOC and to enjoin or otherwise interfere with these proceedings. x x x
>
> x x x [T]he rule is that from the moment imported goods are ***actually*** in the possession or control of the Customs authorities, even if no warrant for seizure or detention had previously been issued by the Collector of Customs in connection with the seizure and forfeiture proceedings, the BOC acquires exclusive jurisdiction over such imported goods for the purpose of enforcing the customs laws, subject to appeal to the Court of Tax Appeals whose decisions are appealable to this Court. x x x.[35] (Citations omitted and emphasis ours)

Nowhere in the *SBMA* case did we exclaim that the moment a Hold-Order has been issued, the BOC acquires constructive possession over the subject shipment. On the contrary, what we stated is that once the BOC is *actually* in possession of the subject shipment by virtue of a Hold-Order, it acquires exclusive jurisdiction over the same for the purpose of enforcing the customs laws. In fact, in *SBMA*, it is clear that the BOC's issuance of the Hold-Order was to direct the port officers to hold the delivery of the shipment and to transfer the same to the security warehouse.[36] The BOC, thus, had actual and *not* constructive possession over the subject shipment in said case. Here, the actual possession over Padoson's shipment remained with ATI since they were stored at its premises.

Likewise, in the *SBMA* case, We emphasize that the BOC's exclusive jurisdiction over the subject shipment is for the purpose of enforcing customs laws, so as to render effective and efficient the collection of import and export duties due the State.[37] It has nothing to do with the collection by a private company, like ATI in this case, of the storage fees for the services it rendered to its client, Padoson.

Further, there is no implication in the *SBMA* case that the BOC's mere issuance of a Hold-Over directed against the subject shipment constitutes constructive possession, which may exculpate the private consignee from its storage fee obligation with the arrastre operator.

Accordingly, there is no basis for the CA in holding that the RTC did *not* err in declaring that the subject shipments were deemed placed under BOC's constructive possession by its issuance of a Hold-Order over Padoson's shipment.

The alleged constructive possession by virtue of BOC's Hold-Order of Padoson's shipment was not even raised as an issue in this case

The matter concerning the BOC's alleged constructive possession was erroneously considered by the RTC and the CA in their respective decisions. The records show that this matter was neither alleged in Padoson's Answer nor was it raised in the stipulation of facts contained in the RTC's pre-trial Order dated August 12, 2009. Padoson never made an assertion to the effect that it could not be held liable for the storage fees because of the BOC's Hold-Order against its shipment. The disclosure that Padoson's shipments were subject of the BOC's Hold-Order was never raised in relation to Padoson's affirmative defense that it should not pay for the storage fees which arose from its contract of services with ATI.[38] In fact, it was the RTC, through its July 16, 2012 Decision, that brought up the concept of constructive possession by misapplying the *SBMA* case, as explained earlier.

As held in *LICOMCEN, Inc. v. Engr. Abainza*:[39]

> Although a pre-trial order is not meant to catalogue each issue that the parties may take up during the trial, issues not included in the pre-trial order may be considered only if they are impliedly included in the issues raised or inferable from the issues raised by necessary implication. The basis of the rule is simple. Petitioners are bound by the delimitation of the issues during the pre-trial because they themselves agreed to the same.[40] (Citation omitted)

As already elucidated, the theory of constructive possession espoused by the RTC and concurred in by the CA cannot be deemed to be impliedly included in the issue raised by ATI in its complaint, since it was not even touched upon in the RTC's pre-trial order.

Padoson, and not BOC, is liable to ATI for the payment of storage fees for the services rendered by ATI

First, granting, without admitting, that the BOC has constructive possession over Padoson's shipment, this does not, in itself release Padoson from its obligation to pay the storage fees due to ATI. It has been established that Padoson engaged ATI to perform arrastre, wharfage and storage services over its shipments from October 12, 2001 and November 8, 2001, until it was discharged from ATI's premises on July 29, 2006. Although Padoson's shipments were the subject of BOC's Hold-Order