

SECOND DIVISION

[G.R. No. 214406, February 06, 2017]

**BP OIL AND CHEMICALS INTERNATIONAL PHILIPPINES, INC.,
PETITIONER, VS. TOTAL DISTRIBUTION & LOGISTIC SYSTEMS,
INC., RESPONDENTS.**

DECISION

PERALTA, J.:

Before this Court is the Petition for Review on *Certiorari* under Rule 45, dated November 10, 2014 of petitioner BP Oil and Chemicals International Philippines, Inc. (*BP Oil*) that seeks to reverse and set aside the Decision^[1] dated April 30, 2014 of the Court of Appeals (CA) which, in turn, reversed and set aside the Decision^[2] dated January 21, 2011 of the Regional Trial Court (RTC), Branch 148, Makati City, in a case for a collection of sum of money.

The antecedent facts follow.

A Complaint for Sum of Money was filed by petitioner BP Oil against respondent Total Distribution & Logistic Systems, Inc. (*TDLSI*) on April 15, 2002, seeking to recover the sum of P36,440,351.79 representing the total value of the moneys, stock and accounts receivables that TDLSI has allegedly refused to return to BP Oil.

The allegations of the parties, as summarized by the RTC, are as follows:

According to the allegations in the complaint, the defendant entered into an Agency Agreement (the Agreement) with BP Singapore on September 30, 1997, whereby it was given the right to act as the exclusive agent of the latter for the sales and distribution of its industrial lubricants in the Philippines. The agency was for a period of five years from 1997 to 2002. In return, the defendant was supposed to meet the target sales volume set by BP Singapore for each year of the Agreement. As agreed in the Supplemental Agreement they executed on January 6, 1998, the defendant was supposed to deposit the proceeds of the sales it made to a depository account that the defendant will open for the purpose. On April 27, 1998, BP Singapore assigned its rights under the Agreement to the plaintiff effective March 15 1998.

When the defendant did not meet its target sales volume for the first year of the Agreement, the plaintiff informed the defendant that it was going to appoint other distributors to sell the BP's industrial lubricant products in the Philippines. The defendant did not object to the plan of the plaintiff but asked for P10,000,000.00 as compensation for the expenses. The plaintiff did not agree to the demand made by the defendant.

On August 19, 1999, the defendant through its lawyer, wrote the plaintiff a letter where it demanded that it be paid damages in the amount of P40,000,000.00 and announced that it was withholding remittance of the sales until it was paid by the plaintiff. On September 1, 1999, the plaintiff wrote the defendant back to give notice that it was terminating the Agreement unless the defendant rectified the breaches it committed within a period of 30 days. The plaintiff also demanded that the defendant pay the plaintiff its outstanding obligations and return the unsold stock in its possession.

On October 11, 1999, the plaintiff gave the defendant formal notice of [sic] that it was terminating the Agreement after it did not hear from the defendant. The plaintiff would find out that the defendant had filed a request for arbitration with the Philippine Dispute Resolution Center, Inc. (PDRCI).

On October 9, 2000, the plaintiff, through Mr. Lau Hock Lee, sent the defendant another letter to reiterate its demand for the defendant to return the unremitted collections and stocks in its possession.

On April 30, 2001, the defendant, through Mr. Miguel G. de Asis, its Chief Finance Officer, wrote the plaintiff a letter admitting that as of the said date, it had in its possession collections against sales in the amount of P27,261,305.75, receivables in the amount of P8,767,656.26 and stocks valued at P1,155,000.00.

On July 9, 2001, the law firm of Siguion Reyna Montecillo & Ongsiako sent the defendant a formal demand letter for the payment of the total amount of P36,440,351.79 representing the total amount of the collections, receivables and stocks that defendant should have returned to the plaintiff as of May 31, 2001. The amount was based on a summary of account prepared by Ms. Aurora B. Osanna, plaintiffs Business Development Supervisor.

On April 15, 2002, the plaintiff filed the instant complaint for collection against the defendant. The defendant initially filed a Motion to Dismiss the complaint on the ground for [sic] lack of cause of action because of the existence of an arbitration agreement, as well as a previously filed arbitration proceeding between the parties. This Court denied the defendant's Motion to Dismiss for lack of merit in its Order dated February 21, 2003. The Motion for Reconsideration filed by the defendant was likewise denied by this Court on April 30, 2003. The Defendant went up to the Court of Appeals to question the denial of its Motion to Dismiss via a Petition for *Certiorari* and Prohibition.

On June 9, 2003, the Defendant filed its Answer *Ad Cautelam* with Compulsory Counterclaim *Ad Cautelam*.

In its answer, the defendant alleged that it was appointed as the exclusive agent of the plaintiff to sell BP brand industrial lubricants in the Philippines. The agency was to last for five years from signing of the

Agreement, or until September 29, 2001. As the exclusive agent of BP products, the defendant was tasked to promote, market, distribute and sell the BP products supplied the plaintiff.

The defendant further alleged that it did not fail to meet the sales target for Year I. Delays on the part of the plaintiff in shipping the products moved the commencement of the Agreement from January 1997 to August 1997, making the stipulated sales target no longer applicable.

On June 8, 1999, the plaintiff unexpectedly informed the defendant of its intention to assume more control of Philippine operations, including the appointment of a full-time representative in the Philippines and new distributors. No reason was given for this policy change.

Although the defendant pointed out to the plaintiff that the appointment of a new distributor would violate the Agency Agreement, the plaintiff ignored the defendant's protests and affirmed that it would proceed with taking over control of the distribution in the Philippines of BP products and with appointing additional distributors.

While business proceeded, the defendant's counsel, Atty. Eugenio E. Perez III, sent the plaintiff a letter dated August 19, 1999 pointing out, among others, that: a) The plaintiffs plan to take over the lubricant business and appoint other distributors was in breach of the Agency Agreement; b) the defendant incurred losses because of the plaintiffs non-compliance with the Agreement and lack of support; and c) the defendant would be carrying on the business would be withholding any funds to be collected pending compliance with the demand.

Instead of heeding the consequences of its proposed illegal acts, the plaintiffs took steps to take over the distribution of BP Products in the Philippines and to appoint new agents for this purpose. Even before the termination of the Agreement, the plaintiff cut off the supply of BP products to the defendant, and even tried to sell directly to the defendant's customers, without the defendant's knowledge. To protect its rights, and pursuant to the arbitration clause under the Agreement, the defendant filed a Request for Arbitration before the Philippine Dispute Resolution Center, Inc. (PDRCI) on 5 October 1999.

By way of affirmative defenses, the defendant argued that: 1.) it has the right to retain in pledge objects subject of the agency until it is indemnified by the plaintiff for the damages it suffered under Article 1914 in relation to Articles 1912 and 1913 of the Civil Code; 2.) the complaint is dismissible on the ground of lack of cause of action for being prematurely filed and/or *litis pendencia* because the issue in the case is already a sub-issue in the arbitration proceedings; and 3.) the action should be stayed in accordance with Republic Act No. 876.

On March 21, 2004, the Court of Appeals came out with its Decision affirming this Court's denial of the defendant's Motion to Dismiss after the defendant filed its Answer *Ad Cautelam*. The Court of Appeals also denied the defendant's Motion for Reconsideration on August 16, 2004.

The Decision of the Court of Appeals sustaining this Court attained finality with the denial by the Supreme Court on November 10, 2004 of the Petition for Review on *Certiorari* filed by the defendant as well as its Motion for Reconsideration from the said denial.

In light of the finality of the decision of the Court of Appeals, the defendant lost its right to invoke the pendency of the arbitration proceedings as part of its affirmative defenses. The defendant is therefore left with only one affirmative defense to the complaint of the plaintiff, and this is the right of retention given to an agent under Article 1912, 1913 and 1914 of the Civil Code.

This makes the issue to be resolved by this Court uncomplicated: 1) whether the plaintiff has the right to collect the amount of P36,440,351.79 from the defendant together with legal interest computed from September 1, 1999, attorney's fees and costs of suit; and 2) whether the defendant is justified in retaining the amounts and stocks in its possession by virtue of the aforementioned provisions of the Civil Code on agency.^[3]

In its Decision dated January 21, 2011, the RTC ruled in favor of the petitioner, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, judgment is hereby rendered, granting the claim of the plaintiff and directing the defendant to pay the plaintiff the sum of:

(1) Thirty-Six Million Nine Hundred Forty-Three Thousand Eight Hundred Twenty-Nine Pesos and Thirteen Centavos (P36,943,829.13) for the value of the stocks and the moneys received and retained by the defendant in its possession pursuant to the Agreement with legal interest computed at 6% per annum from July 19, 2001 up to the finality of this decision and at 12% per annum from finality of this decision up to the date of payment.

(2) Attorney's fees in the amount of One Million Five Hundred Thousand Pesos (P1,500,000.00) and costs of suit amounting to Four Hundred Thirty-Nine Thousand Eight Hundred Forty Pesos (P439,840.00).

SO ORDERED.^[4]

After the respondent elevated the case to the CA, the latter court reversed and set aside the decision of the RTC and found in favor of the respondent in its Decision dated April 30, 2014, thus:

WHEREFORE, the instant appeal is GRANTED. The assailed Decision dated January 21, 2011 of the Regional Trial Court of Makati City, Branch 148 is REVERSED and SET ASIDE. The instant complaint is DISMISSED.

SO ORDERED.^[5]

The CA ruled, among others, that the admission made by respondent in Exhibit "J," that it was withholding moneys, receivables and stocks respectively valued at

P27,261,305.75, P8,767,656.26 and P1,155,000.00 from petitioner, has no evidentiary weight, thus, petitioner was not able to preponderantly establish its claim.

Hence, the present petition where petitioner states the following grounds:

THE COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW IN RENDERING ITS DECISION AS WELL AS IN DENYING BP OIL'S MOTION FOR RECONSIDERATION. SPECIFICALLY:

I

THE COURT OF APPEALS ERRED IN NOT RULING THAT TDLSI HAS MADE A JUDICIAL ADMISSION THAT IT HAS POSSESSION OF THE STOCKS, MONEYS AND RECEIVABLES THAT BP OIL SEEKS TO RECOVER IN THE COMPLAINT BELOW, CONSIDERING THAT:

a. EXHIBIT "J" QUALIFIES AS AN ACTIONABLE DOCUMENT WHOSE AUTHENTICITY AND DUE EXECUTION WERE DEEMED ADMITTED BY TDLSI FOLLOWING ITS FAILURE TO SPECIFICALLY DENY THE SAME UNDER OATH IN ITS ANSWER.

b. REGARDLESS OF WHETHER EXHIBIT "J" MAY BE CONSIDERED AS AN ACTIONABLE DOCUMENT, THE FACT REMAINS THAT TDLSI HAD ACTUALLY ADMITTED PREPARING AND SENDING THE SAME TO BP OIL IN ITS ANSWER.

i. NO RESERVATION WAS EVER MADE BY TDLSI REGARDING THE AUTHENTICITY OF ITS CONTENTS AND NO WITNESS WAS EVER PRESENTED BY TDLSI TO DISOWN ITS DUE EXECUTION.

ii. ASIDE FROM BEING SELF-SERVING, THE ANSWER TO WRITTEN INTERROGATORIES GIVEN BY TDLSI'S MR. MIGUEL DE ASIS AND CITED IN THE DECISION AS A BASIS TO NEGATE TDLSI'S ADMISSION OF EXHIBIT "J" WAS NEVER OFFERED IN EVIDENCE. THE COURT OF APPEALS SHOULD NOT HAVE EVEN CONSIDERED THE SAME IN RENDERING ITS DECISION.

c. THE RIGHT OF RETENTION INVOKED BY TDLSI IN ITS ANSWER CARRIES WITH IT THE ADMISSION: (i) THAT BP OIL IS ENTITLED TO THE STOCKS, MONEYS AND RECEIVABLES SUBJECT OF THE COMPLAINT BELOW, AND (ii) THAT TDLSI IS WITHHOLDING THE SAME FROM BP OIL.

II

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING THAT WITH OR WITHOUT EXHIBIT "J," BP OIL HAS MET THE QUANTUM OF PROOF REQUIRED BY LAW TO PROVE ITS CLAIM.