

THIRD DIVISION

[G.R. No. 175466, December 23, 2009]

**BANK OF THE PHILIPPINE ISLANDS AS SUCCESSOR-IN-
INTEREST OF FAR EAST BANK AND TRUST COMPANY,
PETITIONER, VS. SMP, INC., RESPONDENT.**

RESOLUTION

NACHURA, J.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision^[1] dated August 16, 2006 and the Resolution^[2] dated November 15, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 86055.

The facts of the case, as culled by the CA from the Decision^[3] dated June 6, 2005 of the Regional Trial Court (RTC), Branch 92, Quezon City, in Civil Case No. Q-97-30372, entitled "*SMP, Inc. v. Far East Bank and Trust Company, et al.*," are as follows:

Sometime in January 1995, Maria Teresa Michaela Ong, as Sales Executive of SMP, Inc. undertook the acceptance and servicing of a purchase order of CLOTHESPAK MANUFACTURING PHILS. (Clothespak) for 4,000 bags or sacks of General purpose (GPS) polystyrene products. The ordered products were delivered, for which delivery receipts were issued. The total selling price of the products amounted to U.S. \$118,500.00. As payment, Clothespak issued postdated checks in favor of plaintiff SMP and delivered the same to Maria Teresa Michaela Ong. When the same were deposited by SMP Inc. on their maturity dates, the drawee bank dishonored and returned said checks for the reason "Account Closed."

In the meantime, a case was filed by herein defendant Far East Bank and Trust Company against Clothespak for a recovery of sum of money with prayer for issuance of preliminary attachment. The Pasig Court granted and issued the writ dated March 14, 1995 in favor of the plaintiff bank. Real and personal properties of the defendants were levied and attached.

Thereafter, on March 28, 1995, SMP, Inc. filed an Affidavit of Third Party Claim in that Civil Case No. 65006, claiming ownership of the 4,000 bags of General Purpose (GPS) polystyrene products taken at Clothespak factory worth P3,096,405.00. With the filing by Far East Bank of the indemnity bond, the goods claimed were not released and the Pasig Court directed SMP, Inc. to ventilate its claim of ownership in a vindicatory action under Section 17, Rule 39 of the Revised Rules of Court. Meanwhile, Far East Bank obtained a favorable judgment against

Clothespak. It has become final and executory which led to the implementation and enforcement of said decision against Clothespak's properties inclusive of the goods earlier attached. Hence, the instant case is filed by SMP, Inc. to recover from the attaching bank the value of the goods it claims ownership and for damages.

SMP, Inc. alleges that there was wrongful attachment of the goods for ownership of the same was never transferred to Clothespak. The former anchors its claim of ownership over the goods by virtue of the Provisional Receipt No. 4476 issued by Sales Executive Maria Teresa Michaela Ong to Clothespak with the words, "*Materials belong to SMP Inc. until your checks clear.*" She testified during the trial that the above words were in her own handwriting. The said receipt was allegedly issued to Alex Tan of Clothespak after the checks, payment for the goods, were issued to her. It is asserted that despite receipt by Clothespak of the goods, ownership remained with SMP, Inc. until the postdated checks it issued were cleared.

Defendant bank, however, claims that the said provisional receipt was falsified to negate the terms of the Sales Invoices. The phrase, "*materials belong to SMP, Inc. until your checks clear,*" was only an insertion of plaintiff's representative in her own handwriting. It did not bear the conformity of Clothespak. Further, defendant bank assails the admissibility of the receipt for it is a mere triplicate copy; the original and duplicate copies were not presented in court, in violation of the Best Evidence Rule. Neither was there secondary evidence presented to conform to the rule.

Defendant asserted that the buyer Clothespak had already acquired ownership over the goods at the time of attachment. As the delivery receipts clearly showed that the goods had already been delivered and received by the buyer subject to the terms and conditions of the sales invoices where it was provided that the sales is (sic) "F.O.B." with the loss and/or damage to the goods in transit being for the buyer's account. As provided by law, the ownership of the thing is acquired by the vendee from the moment of delivery in any of the ways therein specified or in any manner signifying an agreement that the possession is transferred to the vendee, and the thing sold is considered delivered when placed in the control and possession of the said vendee.

The main issue presented is whether at the time of the attachment, plaintiff still owned the goods levied upon, or ownership thereof had already passed to Clothespak Manufacturing. After carefully studying the different contentions of both parties and the pieces of evidence they have submitted, the Courts (sic) finds in favor of the plaintiff. [4]

The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against defendant Far East Bank and Trust Company (now Bank of the