

**BELL CARPETS INTERNATIONAL TRADING CORPORATION,
PETITIONER, VS. HON. COURT OF APPEALS, HON. MI-LAGROS
CAGUIOA, VICTOR R. STA. ANA, AND MANILA BAY SPINNING MILLS,
INC., RESPONDENTS.**

G.R. No. 75315. May 07, 1990

Ponente: NARVASA, J.

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NARVASA, J.:

In the Regional Trial Court at Pasig,[1] Manila Bay Spinning Mills, Inc. (hereafter, simply MBSMI) sued Carpets International (Phils.), Inc. (hereafter, simply Carpets International) for the recovery of P771,700.23 representing the unpaid balance of the purchase price of yarn ordered by and delivered to the latter during the period from June 30, 1983 to October 22, 1983.[2] Copies of (a) the corresponding sales invoices, (b) the post-dated checks issued by Carpets International but dishonored on presentment for payment, (c) the itemized statement of account, and (d) the letters demanding payment sent to and received by Carpets International, were attached to the verified complaint. The complaint contained an application for preliminary attachment grounded on Carpets' alleged "fraud in contracting its obligation with the plaintiff as demonstrated by its bouncing checks," and its having removed or disposed of its properties or ** (being) about to do so with intent to defraud the ** plaintiff." [3]

Carpets International filed an answer dated November 27, 1984 denying the allegations of paragraphs 2 to 13, inclusive, of the complaint, the "truth of the matter," according to it, being that (a) the yarn had been sold to it "on consignment basis ** to be manufactured to carpets to be paid from the proceeds of the sale of the manufactured carpets;" (b) 21 sales invoices were not signed by it, hence the yarn therein described was not received; (c) the post-dated checks were given as security for the consigned yarn; (d) the yarn could not have been received during the indicated period because there was a strike in the company at the time; (e) some of the yarn delivered was made out of waste cotton and was hence withdrawn by MBSMI and never replaced; (f) Carpets International had not refused to pay its debt, indeed there were on-going negotiations between it and MBSMI; (g) it had not removed or disposed of its properties, in fact the same were already encumbered in favor of banking institutions, nor had it misappropriated or converted the yarn. On these premises, Carpets International also sought the dissolution of the attachment.

As narrated by the Intermediate Appellate Court, the writ of preliminary attachment prayed for in the complaint issued ex parte[4] and pursuant thereto, the sheriff seized on December 4, 1984 machinery, equipment, raw materials and finished products ostensibly belonging to Carpets International found at its factory at Bagumbayan, Taguig, Metro Manila. On December 6, 1984, an affidavit of third-party claim was presented at the office of the sheriff at Pasig by Bell Carpets International Trading Corporation (hereafter, simply BCITC). In that affidavit, BCITC laid claim to some of the attached property, i.e., the inventory, finished products and hand tools valued at P867,000.00.

The Appellate Court's account[5] continues as follows:

"On 7 December 1984, Carpets International filed a counterbond of P771,700.23 to secure the dissolution of the attachment, which dissolution was granted but subsequently restored on motion of private respondent (MBSMI) and the filing of a bond of P1 million.

In a motion dated 29 December 1984, private respondent moved for leave to implead petitioner (Bell Carpets International Trading Corporation, BCITC for brevity) as party defendant for the reason that it and Carpets International are one and the same entity, the latter having been merged into the former. Private respondent filed its amended complaint dated 2 January 1985, praying that petitioner (BCITC) and Carpets International be ordered jointly and severally to pay it the amounts claimed in its original complaint.

On 1 February 1985, the Honorable respondent Judge granted private respondent's motion to implead petitioner as party defendant. On this day also Carpets International filed a manifestation stating that none of the items attached by respondent sheriff on 4 December 1984 belonged to it.

Petitioner filed its answer dated 25 February 1985 claiming that it is a separate and distinct corporation duly organized under the laws of the Philippines and that it had no participation in the alleged transactions between Carpet International and private respondent. It set up a counterclaim against private respondent praying that the attachment on its properties consisting of finished goods, inventory and hand-tools valued at P867,000.00 be lifted and the articles returned to it; the amended complaint be dismissed as against it; and, private respondent be ordered to pay it actual damages of P867,000.00, damages of P200,000.00, exemplary damages of P50,000.00, and attorney's fees of P50,000.00.

Private respondent filed a motion for summary judgment dated 20 August 1985 for the reason that the indebtedness, the amount thereof, and the ownership of the attached properties were all admitted by Carpets International and its responsible officers and, therefore, there are no disputed facts. Despite opposition by petitioner and Carpets International, the Honorable respondent Judge rendered a Summary Judgment on 18 September 1985 ordering Carpets International to pay private respondent the sum of P771,700.23, with legal rate of interest thereon from 23 October 1983 until fully paid to pay private respondent the equivalent of 15% of the total unpaid claim as attorney's fees; and to pay the costs of suit.

In a motion dated 23 September 1985, private respondent moved for execution pending appeal because: (1) the finished goods that were attached easily deteriorate and go out of fashion insofar as the shades and colors are concerned, thus making them unsaleable, and their continued storage will only make them dirty and further depreciate their value; (2) the judgment may become ineffective as Carpets International is in imminent danger of insolvency as it has not been in operation since the inception of the strike of its employees; (3) the indebtedness and the amount thereof are not denied by Carpets International and therefore, any appeal would be purely dilatory. Aside from opposing the aforesaid motion, Carpets International and petitioner moved for the reconsideration of the summary judgment.

On 19 November 1985, the Honorable respondent Judge denied the motions for reconsideration of petitioner and Carpets International and granted private respondent's motion for execution. On 22 November 1985 a writ of execution was issued and on 28 November 1985, respondent sheriff scheduled the sale of the attached properties for 10 December 1985 at 2:00 p.m. ***."

BCITC filed a special civil action of certiorari with the Intermediate Appellate Court, praying that the summary judgment be annulled and a trial on the merits had. But by decision dated June 11, 1986, the Intermediate Appellate Court^[6] affirmed the summary judgment,^[7] and denied on July 9, 1986 BCITC's motion for reconsideration thereafter filed. BCITC has appealed to this Court on certiorari.

In this Court, BCITC theorizes that it was error for the Intermediate Appellate Court not to have nullified the acts of the Trial Court complained of, it appearing that -

1) the summary judgment was rendered with grave abuse of discretion because -

(a) the pleadings raised issues of fact as regards (1) the ownership of the items attached; and (2) the indebtedness of P771,700.23; and

(b) BCITC's counterclaim was dismissed without hearing; and

2) the order authorizing levy on execution on property of BCITC and the sale thereof at public auction was a despotic exercise of judicial authority.

The petition must be denied for lack of merit.

In the first place, the judgment of the Trial Court sought to be annulled has become final and executory by reason of BCITC's failure to appeal therefrom within the time appointed, i.e., 15 days from notice of the judgment. The summary judgment was unquestionably a final one. It disposed of the case on the merits. It definitively declared which party was in the right and the nature and extent of the obligations of one party in relation to the other, and left nothing more to be done by the Trial Court.[8] The remedy against such a judgment is an appeal, regardless of the questions sought to be raised on appeal, whether of fact, or of law, whether involving jurisdiction or grave abuse of discretion of the Trial Court. No appeal was taken from the summary judgment.[9] Instead a petition for certiorari under Rule 65 of the Rules of Court was filed with the Intermediate Appellate Court praying for the annulment of the judgment. But it is obvious that the party aggrieved thereby did not have the option to substitute the special civil action of certiorari under Rule 65 for the remedy of appeal provided for in Rule 41. Indeed, the existence and availability of the right of appeal are antithetical to the availment of the special civil action of certiorari.[10] The summary judgment having thus become final and executory, the proceedings at bar for its annulment are futile and inefficacious.

In any event, the facts, as found by the Intermediate Appellate Court to have been duly established from the pleadings, affidavits and other papers on record, show that the summary judgment was correctly and properly rendered by the Trial Court. The issues raised by Carpets International and BCITC in their answers (to the complaint of MBSMI) are demonstrably sham, fictitious, contrived.

As regards Carpets International, the record shows that to the complaint were appended copies of the documents upon which the cause of action of plaintiff MBSMI was based, and that Carpets International failed to deny the genuineness and due execution of those documents specifically and under oath. That failure of Carpets International gave rise to a judicial admission on its part of the genuineness and due execution of said instruments, in accordance with Section 8, Rule 8 of the Rules of Court.[11] Judicial admissions of this sort "do not require proof and can not be contradicted unless previously shown to have been made through palpable mistake." [12] Thus, any evidence presented by the admitter, even without objection by the adverse party, tending to contradict or otherwise negate or modify the judicial admission, will be disregarded in the absence of a prior showing that the admission had been "made through palpable mistake." [13]

Apart from this, the record also shows, as found by the Intermediate Appellate Court,[14] that (a) responsible officials of Carpets International,[15] who were charged with estafa for having issued bouncing checks in payment of the purchased yarn, declared in their affidavits at the preliminary investigation,[16] that the company had indeed bought yarn from MBSMI between 29 June 1983 and 21 October 1983 with a total value of P705,445.47, that (b) this was in fact the conclusion of the Investigating Fiscal, except that the value of the yarn was determined to be P771,700.22; [17] and (c) Carpets International had posted a bond in the amount of P771,700.22 on December 7, 1984 in an attempt to secure the discharge of the attachment levied on property found in its factory. It is therefore clear from all these that Carpets International is in truth indebted to MBSMI in the sum of P771,700.22, the property seized from it belongs to it, and its denials of the plaintiff MBSMI's formal averments are not genuine, but sham and fictitious.

So, too, petitioner BCITC's claim of title to the property seized from Carpets International under the writ of preliminary attachment of the Trial Court, is not genuine, but sham and fictitious. This is amply proven by the factual findings of the Intermediate Appellate Court on this point,[18] by which this Court is normally bound,[19] viz:

"As to the ownership of the attached properties the following clearly demonstrate that the same was vested in Carpets International and that none of them was owned by petitioner (BCITC);

(1) The attached goods were found and were stored in the factory compound of Carpets International at 1st Street, Sta. Maria Real Estate Subdivision, Bo. Bagumbayan, Taguig, Metro Manila, the same address where private respondent (MBSMI) delivered the yarns purchased by Carpets International from it. (No acceptable explanation is given by petitioner as to how these goods which it claims it owns found their way to the factory of Carpets International).

(2) Carpets International filed a bond to have the attachment discharged, which attachment covered the goods claimed by petitioner as well. (If Carpets International was not the owner of the goods, it would not have bothered to file a bond for the discharge of the attachment).

(3) On the other hand, petitioner, aside from its bare claim, had presented no evidence to show how it came to be the owner of the attached goods."

There can therefore be no gainsaying the correctness of the rendition of the summary judgment in question, or of its affirmance by the Intermediate Appellate Court. That judgment was rendered entirely in accordance with the Rules of Court and applicable jurisprudence, considering that "the pleadings and admissions on file together with the affidavits show that ** there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." [20]

WHEREFORE, the petition for review on certiorari is DENIED and the judgment of the Intermediate Appellate Court subject thereof, sustaining that of the Regional Trial Court is AFFIRMED. Costs against petitioner.

Cruz, Gancayco, Griño-Aquino, and Medialdea, JJ., concur.

[1] Branch 165

[2] The case was docketed as Civil Case No. 51711.

[3] Rollo, pp. 53-54; 61-99

[4] Id., pp. 20-22

[5] Idem.; emphasis supplied

[6] In AC-G.R. SP NO. 07880, the decision dated June 11, 1986 having been written for the Court by Javellana, J., with whom concurred Zosa, Mendoza and Tensuan, JJ.

[7] By Hon. Milagros V. Caguioa

[8] Pan Realty Corp. v. CA and S.C. Tan Export Corp., 167 SCRA 564, citing cases; Gold City Integrated Port Services, Inc. v. IAC and Dumlao, G.R. No. 71771-73, March 31, 1989, citing Puertollano v. IAC, 156 SCRA 188

[9] The only appeal in Civil Case No. 5711 was evidently that taken on October 15, 1986 by BCITC, from the Order of Judge Caguioa dated October 7, 1986 "denying the motion for reconsideration of** (said) BCITC for the disqualification of the presiding judge** (Rollo, pp. 325-328).

[10] Pan Realty Corp. v. CA and S.C. Tan Export Corp., 167 SCRA 564, *supra*

[11] The section pertinently reads as follows: "SEC. 8. How to contest genuineness of such documents -- When an action or defense is founded upon a written instrument, copied in or attached to the corresponding pleading as provided in the preceding section, the genuineness and due execution of the instrument shall be deemed admitted unless the adverse party, under oath, specifically denies them, and sets forth what he claims to be the facts **."

[12] Sec. 2, Rule 129

[13] SEE Joe's Radio & Electrical Supply v. Alto Electronics Corp., et al., 104 Phil. 333; Cunanan v. Amparo, 80 Phil. 227; Ramirez v. Orientalist Co., 38 Phil. 634; McDaniel v. Apacible, 44 Phil. 248; Santiago v. de los Santos, 61 SCRA 146

[14] Rollo, p. 23

[15] Messrs. Jose S. Orosa, Nicasio Cruz and Antonio Ocampo

[16] I.S. No. 84-12111

[17] Respondents Cruz and Ocampo appealed the Fiscal's resolution to the Ministry of Justice but did not otherwise question this finding of fact.

[18] Rollo, pp. 23-24

[19] It is axiomatic that subject to a few exceptions, findings of fact of the Court of Appeals are final, conclusive and are not subject to review by this Court (e.g., Social Security System v. C.A., 156 SCRA 383 (1987); BPI v. Pineda, 156 SCRA 404 (1987); Mendoza v. C.A., 156 SCRA 597 (1987); Tong Brothers Co. v. I.A.C., 156 SCRA 725 (1987).

[20] Secs. 1 and 3, Rule 34, Rules of Court; Garcia, et al. v. C.A., G.R. No. 82282-83, Nov. 24; 1988; Arradaza, et al. v. C.A., G.R. No. 50422, Feb. 8, 1989

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