

AMELIA LUA DIN, DOING BUSINESS UNDER THE NAME AND STYLE OF KIMWA INDUSTRIAL RUBBER & RECAPPING, HEREIN REPRESENTED BY CORAZON LUA, PLAINTIFF-APPELLEE, VS. RICARDO P. DAMING, DOI...

Ponente: DIY, J.

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DIY, J.:

Before Us is an appeal from the Decision[1] dated July 9, 2004 of the Regional Trial Court of Cebu City in Civil Case No. CEB-25152, the dispositive portion of which reads:

For all the foregoing, judgment is hereby rendered ordering the defendant to pay the plaintiff the sum of P912,937.19.

Plaintiff is directed to pay the defendant P478,462.33 by way of actual damages.

SO ORDERED.

Likewise assailed is the Order[2] dated September 17, 2004 denying defendant-appellant's motion for reconsideration.

The Antecedents

In 1986, defendant-appellant Ricardo P. Daming, doing business under the name and style RMN TIRE SUPPLY & RECAPPING, engaged in the buy-and-sell business of brand new and recapped tires. He also offered recapping services. Defendant-appellant secured camelback materials from Mared Rubber and Filipinas Rubber, which were companies based in Manila.

Sometime in September 1999, plaintiff-appellee's sales representative offered to supply to defendant-appellant camelback materials on credit, for a period of 120 days from the date of delivery. Defendant-appellant entered into a contract of sale to purchase camelback materials from plaintiff-appellee. The latter had delivered these raw materials from November 1999 to January 2000. The camelback materials were utilized in defendant-appellant's tire recapping business. In paying for defendant-appellant's obligation, he issued several postdated checks.

Plaintiff-appellee notified defendant-appellant when the latter's checks were dishonored upon presentment. Several demands for payment were made by plaintiff-appellee but defendant-appellant failed to settle his outstanding obligation.

On May 10, 2000, a Complaint[3] for collection of a sum of money and attorney's fees with application for issuance of a writ of preliminary attachment was filed by plaintiff-appellant against defendant-appellant before the Regional Trial Court of Cebu City because he still failed to settle his indebtedness. In the complaint, it is alleged that the total amount of defendant-appellant's unpaid obligation had already reached P912,937.19.

In an Order[4] dated May 22, 2000, the application for the issuance of the writ of preliminary attachment was

granted and the writ was issued on June 27, 2000.[5]

On July 26, 2000, defendant-appellant filed an “Answer with Counter-claims”.[6] In said answer, defendant-appellant alleged that in the later part of December 1999, he received complaints from his customers about the defective camelback materials used in the recapping of their respective tires. In the months of January to April 2000, more complaints with regard to the recapped tires had reached him.

Because of the complaints against its products, defendant-appellant informed plaintiff-appellee about the problem. Plaintiff-appellee’s office responded that it would send a representative to conduct an inspection and to test the delivered camelback materials.

Sometime in February 2000, plaintiff-appellee’s representative Cristoven Caraldi tested the camelback materials. In his report, he concluded that the materials were defective. Because of this, defendant-appellant asked for an adjustment of his account. He called plaintiff-appellee’s office, requesting the latter not to deposit the postdated checks he issued. However, despite defendant-appellant’s request, plaintiff-appellee still proceeded to deposit one (1) of the checks. This prompted defendant-appellant to order his bank to stop the payment of his checks. He claimed that his account with the bank was duly funded to cover the issued checks.

Defendant-appellant denied that plaintiff-appellee notified him when the checks were dishonored. He likewise claimed that there was no demand for payment made upon him. Further, he asserted that despite the fact that the materials delivered were defective, plaintiff-appellee unreasonably failed to make adjustments of his account.

As counterclaim, he prayed for the award of P3,000,000.00 as actual damages for the reason that his tire recapping business suffered tremendous losses because of plaintiff-appellee’s defective camelback materials. He also asked for litigation expenses, attorney’s fees, moral damages, exemplary damages, and other relief consistent with law and equity.

On August 4, 2000, plaintiff-appellee filed her Reply,[7] praying that judgment be rendered according to the prayer of the complaint.

On August 10, 2000, plaintiff-appellee filed her pre-trial brief[8] while defendant-appellant filed his pre-trial brief[9] on August 30, 2000.

On September 8, 2000, the RTC issued an Order[10] in this wise:

When this case was called for pre-trial, parties and counsel appeared and parties jointly manifested that they are entirely relying on their pre-trial briefs and have no other points to raise nor are they seeking admissions from each other.

On the part of plaintiffs, they reserved their right to mark their Exhibits during the trial on the merits while defendants preferred to mark their Exhibits for purposes of pre-trial and correspondingly marked as Exhibits 1 to 6 and submarkings.

Pre-trial of this case is therefore closed and by agreement of the parties, trial on the merits is set on November 23 and 24, 2000 all at 9:00 o’clock in the morning

SO ORDERED.

During trial, the parties presented their respective testimonial and documentary evidence.

On July 9, 2004, the lower court rendered the appealed Decision,[11] finding defendant-appellant liable to pay plaintiff-appellee the amount of P912,937.19. On the other hand, plaintiff-appellee is directed to reimburse defendant-appellant the amount of P478,462.33 by way of actual damages.

Consequently, defendant-appellant filed its Motion for Reconsideration.[12] But the same was denied in an Order[13] dated September 17, 2004.

On October 11, 2004, defendant-appellant filed a Notice of Appeal,[14] which was not given due course by the court a quo in its Order[15] for having been filed out of time.

Distressed, defendant-appellant filed a Motion for Reconsideration[16] praying that his Notice of Appeal be given due course.

On March 2, 2005, the RTC issued an Order[17] giving due course to the Notice of Appeal filed by defendant-appellant.

Hence, this appeal.

In its Brief, defendant-appellant assigned the following errors:[18]

The lower court erred in directing the appellant to pay the appellee the sum of P 912,937.19 despite sustaining his claim that the camel back [sic] material sold by the appellee to the appellant is defective.

The lower court erred in dismissing the appellant's claims for damages and attorney's fees.

The Ruling of the Court

The appeal is not impressed with merit.

Elementary is the rule that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.[19] Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense - i.e., an "avoidance" of the claim.[20]

A review of the facts of the case would reveal that plaintiff-appellee and defendant-appellant entered into a contract of sale. From November 1999 to January 2000, on several occasions, defendant-appellant purchased camelback materials from plaintiff-appellee. In doing so, defendant-appellant issued several postdated checks in partial payment. However, only one of the checks was actually encashed by plaintiff-appellee because defendant-appellant ordered the drawee bank to stop payment of such checks. The reason for the "stop payment order" was defendant-appellant's allegation that the camelback materials were defective. During the course of the trial, plaintiff-appellee was able to establish the unpaid obligation of defendant-appellant by presenting documentary evidence such as the dishonored checks, check return slips, sales invoices, bills of lading, Credit Memorandum No. 0409[21] in favor of defendant-appellant, and Accounts Subsidiary Ledger.[22] Thus, plaintiff-appellee had sufficiently adduced evidence to prove that the unpaid obligation of defendant-appellant amounted to P912,937.19.

On the other hand, defendant-appellant asserts that since the camelback materials delivered and supplied by plaintiff-appellee were defective, the latter should return the purchase price paid with interest and reimburse the former for all the expenses arising therefrom. He cites the provisions of Articles 1561 and 1568 of the Civil Code to support his claims.

We are not persuaded.

Under Article 1561 of the Civil Code, it is provided:

Art. 1561. The vendor shall be responsible for warranty against the hidden defects which the thing sold may have, should they render it unfit for the use for which it is intended, or should they diminish its fitness for such use to such an extent that, had the vendee been aware thereof, he would not have acquired it or would have given a lower price for it; but said vendor shall not be answerable for patent defects or those which may be visible, or for those which are not visible if the vendee is an expert who, by reason of his trade or profession, should have known them.

Relative thereto, Article 1567 of the same Code provides for the remedies available to the vendee in case of hidden defects, viz:

Art. 1567. In the cases of Articles 1561, 1562, 1564, 1565 and 1566, the vendee may elect between withdrawing from the contract and demanding a proportionate reduction of the price, with damages in either case.

In the instant case, defendant-appellant states that the defects in plaintiff-appellee's products were discovered when customers in his tire recapping business came back to him complaining that the products they bought would easily wear out due to the camelback materials. Defendant-appellant returned 82 rolls of the defective camelback materials and demanded an adjustment of his account with plaintiff-appellee. It is undisputed that some of the camelback materials were defective. Plaintiff-appellee even admitted such fact and reimbursed the amount of P119,867.52 by way of a credit memorandum in favor of defendant-appellant. By returning 82 rolls of camelback materials to plaintiff-appellee and asking for an adjustment of his account, defendant-appellant was in effect "demanding a proportionate reduction of the price" as provided in Art. 1567. Thus, defendant-appellant's claim that he should no longer pay his obligation is unwarranted. Allegation is not tantamount to proof. It must be stressed that one who alleged a fact has the burden of proving it.^[23] Defendant-appellant failed to overcome the burden of proving his claim by preponderance of evidence that all of the materials was defective. As amply found by the trial court:^[24]

While it is true that the plaintiff delivered defective camel back [sic], yet the amount of P119,867.52 representing the value of the defective goods was outright deducted from defendant's obligation, thus the amount of P912,937.19 represents the net obligation of the defendant. Both evidence presented shows that there was a technical inspection conducted by the plaintiff's technical consultant, which resulted to the finding that an approximately two tons of camel back [sic] were found defective, which explains for the deduction of P119,867.52 from the total obligation of the defendant. Defendant fully aware of the inspection conducted at his establishment or site and the number of tons or rolls found to be defective, he cannot claim that the total or whole deliveries were defective, hence, be relieved of his obligation to pay for the camel back [sic] delivered and not found to be defective. The fact that there was technical inspection to determine which deliveries of the camel back [sic] were defective right at the site of the defendant, the claim of defendant that there are still camel back [sic] remaining would only give rise to a conclusion that the remaining camel back formed part of the estimated two (2) tons of defective camel back [sic], hence, a credit memo was issued in favor of the defendant. This matter is established, for there were no subsequent deliveries after the technical inspection was made, that defendant can assert that the remaining camel back [sic] was not among those that were declared defective and credit memo was not issued for this.

After it was found out through technical inspection that approximately two (2) tons of the delivered camel back [sic] were defective, the value of the same was by credit memo out rightly deducted from defendant's obligation even before the institution of this present action. It is on this regard, that the Court considers not to impose interest on the amount representing the value of the defective camel back [sic], which the defendant

claimed he is entitled under Article 1568 of the Civil Code. Even defendant's evidence failed to establish that the plaintiff as vendor was aware of the hidden defect at the time of the transaction or deliveries. But, nevertheless, after a technical inspection by the plaintiff, a credit memo for P119,867.52 representing the 82 rolls of defective camel back (out of the 132 rolls delivered) was applied to defendant's obligation, even before the plaintiff filed this case. In the same way that the defendant failed to adduce evidence in order to be reimbursed of the expenses of the contract which the defendant as vendee might have been paid as provided in Article 1568 of said code. Yet, the Court directed the plaintiff to pay the defendant P478,462.33, by way of actual damages due to the credit memos, which defendant issued to his customers as adjustment of their payments of recapped tires, which used the defective camel back [sic] of the plaintiff.

Having failed to prove that the camelback materials delivered by plaintiff-appellee were all defective, defendant-appellant does not have any basis for claiming the right not to pay for the materials he purchased from plaintiff-appellee. Further, the Court opines that defendant-appellant should have withdrawn from the contract, if all the camelback materials was really defective.

Nevertheless, defendant-appellant had sufficiently established that he suffered business losses because of the defective camelback materials. To support this claim, he presented several credit memoranda[25] totaling P478,462.33, in favor of his complaining customers. Well-settled is the rule that actual damages to be recoverable must not only be capable of proof, but must actually be proved with a reasonable degree of certainty. Courts cannot simply rely on speculation, conjecture or guesswork in determining the fact and amount of damages. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[26] Hence, the award of P478,462.33 as actual damages rendered by the lower court in favor of defendant-appellant is proper.

Further, defendant-appellant argues that he is entitled to the award of attorney's fees and litigation expenses since the court a quo found out that the camelback materials were defective.

We do not agree with defendant-appellant's contention.

An award of attorney's fees and expenses of litigation is proper under the circumstances provided for in Article 2208[27] of the Civil Code, one of which is when the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered and when the civil action or proceeding is clearly unfounded and where defendant acted in gross and evident bad faith. "The award of attorney's fees as damages is the exception rather than the rule; it is not to be given to the defendant every time the latter prevails. The right to litigate is so precious that a penalty should not be charged on those who may exercise it erroneously, unless, of course such party acted in bad faith." [28] In the instant case, the Court finds that defendant-appellant failed to establish bad faith on the part of plaintiff-appellee when the latter filed the action. Henceforth, in the absence of any showing of gross and evident bad faith in filing the action, We cannot award attorney's fees and expenses of litigation.

Further, the Supreme Court emphasized in numerous cases that no premium should be placed on the right to litigate. Attorney's fees are not to be awarded every time a party wins a suit. Even when a claimant is compelled to litigate or to incur expenses to protect his rights, still attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause.[29]

WHEREFORE, premises considered, the instant appeal is DENIED. The Decision dated July 9, 2004 and the Order dated September 17, 2004 of the Regional Trial Court of Cebu City in Civil Case No. CEB-25152, are hereby AFFIRMED.

SO ORDERED.

Maxino, and Diy, JJ.; concur.

[1] Rollo, pp. 26-34.

[2] Record, pp. 209-211.

[3] Ibid., pp. 1-21.

[4] Ibid., p. 21.

[5] Ibid., p. 28.

[6] Ibid., p. 41-55.

[7] Ibid., pp. 64-67.

[8] Ibid., pp. 68-71.

[9] Ibid., pp. 80-84.

[10] Ibid., p. 78.

[11] Rollo, pp. 26-34.

[12] Record, pp. 198-202.

[13] Ibid., pp. 209-211.

[14] Ibid., p. 213.

[15] Ibid., p. 221.

[16] Ibid., pp. 226-227.

[17] Ibid., pp. 233-234.

[18] Rollo, pp. 18-19.

[19] Eulogio v. Apeles, G.R. No. 167884, January 20, 2009.

[20] DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc., G.R. No. 147039, January 27, 2006.

[21] Exhibits, p. 78 (Exh. "LL").

[22] Ibid., p. 76 (Exh. "KK").

[23] Quizon, et. al. v. Juan, G.R. No. 171442, June 17, 2008.

[24] Record, pp. 210-211.

[25] Ibid., pp. 91-133.

[26] Viron Transportation Co., Inc. vs. Delos Santos y Natividad and Samidan, G.R. No. 138296. November 22, 2000.

[27] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;(3) In criminal cases of malicious prosecution against the plaintiff;(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;(6) In actions for legal support;(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;(8) In actions for indemnity under workmen's compensation and employer's liability laws;(9) In a separate civil action to recover civil liability arising from a crime;(10) When at least double judicial costs are awarded;(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered. In all cases, the attorney's fees and expenses of litigation must be reasonable.

[28] *Alonso v. Cebu Country Club, Inc.*, G. R. No. 130876, January 31, 2002.

[29] *Dart Philippines, Inc., v. Sps Calogcog*, G.R. No. 149241, August 24, 2009.

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