

G.A. MACHINERIES, INC., PETITIONER, VS. HORACIO YAPTINCHAY, DOING BUSINESS UNDER THE NAME AND STYLE "HI-WAY EXPRESS"; AND THE COURT OF APPEALS, RESPONDENTS.

G.R. No. L-30965. November 29, 1983

Ponente: GUTIERREZ, JR., J.

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GUTIERREZ, JR., J.:

Petitioner G. A. Machineries, Inc. (hereinafter referred to as GAMI) seeks the reversal of the decision of the Court of First Instance of Rizal, affirmed by the Court of Appeals in the original case entitled Horacio Yaptinchay, doing business under the name and style "Hi-way Express", v. G. A. Machineries Inc. for recovery of damages.

The antecedent facts of the case are not seriously disputed and are summarized by the Court of Appeals as follows:

"Sometime early in January, 1962 appellant GAMI, thru a duly authorized agent, offered to sell a brand-new Fordson Diesel Engine to appellee Horacio Yaptinchay, owner of the freight hauling business styled 'Hi-Way Express'. Relying on the representations of appellant's representative that the engine offered for sale was brand-new, appellee agreed to purchase the same at the price of P7,590.00. Pursuant to the contract of sale thus entered into, appellant delivered to appellee, on January 27, 1962, one (1) Fordson Diesel Engine assembly, Model 6-D, with Engine Serial No. A-212193, at 1500 RPM, with fly wheel, fly wheel housing, fuel injection assembly, exhauster, fuel filter, oil filter, fuel lift pump, plus conversion kit for F-500, subject to the standard warranties, particularly the representation, relied upon by appellee, that the same was brand-new. Said engine was installed by appellant in Unit No. 6 of the Hi-Way Express.

"Within the week after its delivery, however, the engine in question started to have a series of malfunctions which necessitated successive trips to appellant's repair shop. Thus, it first sprang an oil leak such that, on February 6, 1962, it was brought in to '1. Adjust idling of engine and tappete clearance; 2. Inspect and remedy oil leaks of engine; 3. Replace clutch disc and pressure plate w/original; and 4. Replace release bearing hub trunion bolt' (Exhibit C). Thereafter, the malfunctioning persisted and, on inspection, appellee's mechanic noticed a worn out screw which made appellee suspicious about the age of the engine. This prompted appellee, thru his lawyer, to write appellant a letter, dated February 10, 1962, protesting that the engine was not brand-new as represented (Exhibit E). Because of the recurring defects, the engine was again submitted to appellant's shop to '1. Inspect engine oil leaks on cylinder head; 2. Check up propeller shaft (vibrating at high speed); and 3. Tighten bolts of pump.' (Exhibit F). All these notwithstanding, the engine could still not be returned into operation because it continued not to function well. In fact, it was sent back to appellant's shop on the same day it was delivered after the last repair work done on it. Another check up was thereafter required to be made on March 5, 1962 (Exhibit G). Then, again, on March 10, 1962, the engine was back at the repair shop to '1. Inspect leaks on No. 1 & 5 high pressure pipe; and 2. Change engine oil with flushing & oil element' (Exhibit H). Still, the oil leaks remained unchecked and, on July 2, 1962, one last effort to '1. Remedy engine oil leaks' (Exhibit I) was made, but all to no avail because, instead of improving, the engine's condition became worse as it developed engine knock and appellee had to stop its operation altogether due to its unserviceability.

"These repeatedly recurring defects and continued failure of appellant to put the engine in good operating condition only served to firm up in appellee's mind the suspicion that the engine sold to him was not brand-new as represented. He then sought the assistance of the PC Criminal Investigation Service to check on the authenticity of the serial number of the engine, with due notice to appellant. Scientific examination and verification tests revealed that the original motor number of the engine aforesaid was tampered. Further inquiries by appellee from the Manila Trading Company, which also handles the importation and distribution of similar engines, also disclosed that, unlike the engine delivered to appellee whose engine body and injection pump were painted with two different colors, brand-new engines are painted with only one color all over.

"Thus convinced that a fraudulent misrepresentation as to the character of the engine had been perpetrated upon him, appellee made demands from appellant for indemnification for damages and eventually instituted the present suit.

"In its defense, appellant interposed prescription of the action, denied the imputation of misrepresentation, and disputed the propriety and amount of damages claimed." x x x

After trial on the merits, the trial court ruled in favor of plaintiff Yaptinchay as follows:

"FOR ALL THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment ordering the defendant, G.A. Machineries Inc., to pay the plaintiff, Horacio Yaptinchay, actual damages sustained in the sum of P54,000.48; to reimburse the purchase price of the Fordson diesel engine in the amount of P7,590.00; and to pay attorney's fees to plaintiff's counsel on the sum of P2,000.00 and costs.

"Plaintiff is, likewise, ordered to return the Fordson diesel engine with serial number A-21219 to the defendant."

Defendant GAMI appealed the decision to the Court of Appeals. As stated earlier, the decision was affirmed by the Appellate Court. A motion for reconsideration was denied. Hence, the instant petition.

Petitioner GAMI raises the following alleged errors of judgment of the respondent court:

I

THE COURT OF APPEALS ERRED IN NOT APPLYING THE PRESCRIPTIVE PERIOD OF ARTICLE 1571 OF THE CIVIL CODE TO THE CASE AT BAR.

II

THE COURT OF APPEALS ERRED IN APPLYING THE DOCTRINE IN THE CASE OF ASOCIACION ZANJERA CASILIAN vs. CRUZ, 46 O.G. 4813, 4820 REGARDING ADMISSION BY FAILURE TO REBUT, TO THE ISSUE OF ACTUAL DAMAGES, WHICH MUST BE PROVED BY THE BEST AND COMPETENT EVIDENCE.

III

THE COURT OF APPEALS ERRED IN AWARDING ACTUAL DAMAGES IN THE FORM OF UNREALIZED PROFITS (LUCRUM CESSANTE) WHEN THE ISSUE RAISED BY THE PLEADINGS REFERS ONLY TO ALLEGED ACTUAL DAMAGES IN THE FORM OF DAMNUM EMERGENTE.

IV

THE COURT OF APPEALS ERRED IN FINDING THAT THE FORDSON DIESEL ENGINE DELIVERED BY PETITIONER TO RESPONDENT HORACIO YAPTINCHAY WAS NOT BRAND NEW, REACHING SUCH FINDING BY WAY OF A MANIFESTLY MISTAKEN INFERENCE AND ON THE BASIS OF A

MISAPPREHENSION OF FACTS AND SOLELY ON THE GROUND OF SPECULATION, SURMISES AND CONJECTURES.

The assignments of errors raise the following issues: 1) whether or not the respondent's cause of action against the petitioner had already prescribed at the time the complaint was filed in the trial court; 2) whether or not the factual findings of both the trial and appellate courts as regards the subject Fordson diesel engine are supported by evidence and 3) whether or not the award of damages was justified considering evidence on record.

The first issue is premised on the petitioner's proposition that the respondent's cause of action was for breach of warranty against hidden defects as provided under Articles 1561 and 1566 of the Civil Code. Article 1571 of the Civil Code provides for a six-month prescriptive period from the delivery of the thing sold for the filing of an action for breach of warranty against hidden defects. According to petitioner GAMI when respondent Yaptinchay filed the case with the trial court, more than six months had already lapsed from the time the alleged defective engine was delivered and, therefore, the action had prescribed.

The petitioner contends that Yaptinchay's asserted cause of action was premised and anchored on the delivery by the defendant of a DEFECTIVE ENGINE and that the allegations in the complaint that the engine was not brand new are clearly mere specifications of the precise nature of the hidden defects.

A cursory reading of the complaint shows that the petitioner's arguments are not well-taken.

The main thrust of the complaint is the contention that the Fordson diesel engine delivered by the petitioner to the respondent was not brand-new contrary to the representations of the former and the expectations of the latter. The complaint was couched in a manner which shows that instead of the brand-new Fordson diesel engine which was bought by the respondent from the petitioner, another engine which was not brand new was delivered resulting in the damages sought to be recovered. It is evident therefore, that the complaint was for a breach of a contract of sale rather than a breach of warranty against hidden defects. This is so because an action for breach of warranty against hidden defects presupposes that the thing sold is the same thing delivered but with hidden defects. Consequently, the six-month prescriptive period under Article 1571 of the Civil Code is not applicable.

The petitioner takes exception to the factual findings of the appellate court and argues: 1) the fact that the Fordson diesel engine developed oil leaks does not necessarily imply that the said engine was not brand new and 2) the testimony of laboratory technician Captain Garcia of the Philippine Constabulary to the effect that the motor or serial number of the engine was tampered does not deserve credence.

The first argument is premised on the proposition that even brand-new engines in many cases develop oil leaks. To support this proposition the petitioner presented documentary evidence (Exhibits "5", "7", "8", "9", "10", "11", "12", "13", "14", "15", "16", and "17") consisting of job orders for allegedly brand new engines which developed oil leaks.

An examination of the documentary evidence shows that the job orders were for twelve (12) different engines. Moreover, the petitioner's witness who testified on the said job orders admitted that some engines were repaired only after a few months. On the other hand, the subject Fordson diesel engine was repaired on the complaint not only of oil leaks but also replacement of clutch disc and pressure plate, replacement of release bearing hub trunion belt, and other defects within a week after it was delivered to the respondents or on February 6, 1962 (Exhibit "C"). Thereafter it was returned for more repairs on February 28, 1962 (Exhibit "F"), on March 10, 1962 (Exhibit "H") and on July 2, 1962 (Exhibit "I"). The documentary evidence of the petitioner consisting of the job orders of the supposed brand-new engines which also developed oil leaks is no reason to doubt the trial court's and appellate court's factual findings. In fact, the documentary evidence and the admissions of the petitioner's witness enhance the respondent's allegation that the Fordson diesel engine sold to him was not brand-new.

The second argument questions Captain Garcia's findings that the original motor number of the engine was tampered as shown by the presence of fragmentary numbers which appeared in the engine when he conducted a macro-etching test thereon by applying acid on the surface of said engine. The petitioner emphasizes Captain Garcia's alleged testimony that "x x x what he calls fragmentary numeral" is not definitely a numeral or a fragment of a numeral and states that the same could have been caused by any molecular pressure applied to the area of the metal where it appeared. In effect, the petitioner insists that the supposed fragmentary numerals could have been merely scratches or indentations near the serial number of the motor which might have been caused by sparks from the welding process.

The arguments are not well-taken. First, the statements attributed to Captain Garcia are not accurate. An examination of the record shows that Captain Garcia positively stated the fragmentary numeral to be a numeral or a number but in the absence of key portions he could not positively identify the exact number or numeral. He discounted the possibility that such fragmentary numerals could be mere scratches. Second, the witness did not categorically state that any molecular pressure could have caused the fragmentary numeral. Hence, Captain Garcia under cross-examination stated:

"Q. This fragmentary numeral could be caused deliberately by tamper-ing with the engine number or by other factor such as scratches or burning by other foreign element, is that right?

"A No, sir, they can be caused by scraping but not by scratching, because by scraping there is molecular disturbance of metal.

"Q When you say molecular disturbance does it mean you first apply in the area, or would it disturb the molecule in or around that area?

"A Once you stamped the number, you impressed it and there is molecular disturbance in the structure of the metal.

"Q If the metal is burned, there is also molecular disturbance in the metal, is that correct?

"A The metal will only expand.

"Q There is no spark of the machine could not cause the molecular disturbance in the steam, is that right?

"A It cannot"

(T.S.N., Iluminado C. Palisoc, February 5, 1965, pp. 99-100)

The petitioner's argument that the Court of Appeals findings are based on manifestly mistaken inferences, misapprehension of facts, and purely on speculation, surmises, and conjectures is without merit.

The Fordson diesel engine delivered to the res-pondent was not brand-new.

We agree with the Court of Appeals that:

"Indeed, it would be too much to say that the successive malfunctions of the engine, the defects and other discrepancies therein that cropped up so soon after its delivery, the numerous trips it had to appellant's repair shop the demonstrable tampering with its serial number, and its ultimate breakdown despite appellant's attempts to put it into good working order could be attri-buted to mere coincidence. If all these mean anything at all, it can only be that the engine aforesaid was not really brand new.

The petitioner committed a breach of contract against the respondent. The misrepresentation of the quality of the subject Fordson diesel engine is tantamount to fraud or bad faith. The return of the P7,590.00 purchase price with legal interest from the date of purchase and computed pursuant to our ruling in *Viloria v. Court of Appeals* (G.R.

No. 63398, June 29, 1983) is justified. The next question refers to the award of actual damages in the amount of P54,000.48. This amount covers the probable income which the respondent failed to realize because of the breach of contract. Is the award of damages in the form of lucro cessante justified?

The law on the matter is spelled out in *Raagas v. Traya* (22 SCRA 839), where we stated:

"x x x In *Abubakar Tan v. Tian Ho*, L-18820, December 29, 1962 and *Lim Giok v. Bataan Cigar and Cigarette Factory*, L-15861, April 16, 1960, we held that even if the allegations regarding the amount of damages in the complaint are not specifically denied in the answer, such damages are not deemed admitted. In *Tomassi v. Villa-Abrille*, L-7047, August 21, 1958, *Suntay Tanjangco v. Jovellanos, et al.*, L-12332, June 30, 1960, and *Delfin v. Court of Agrarian Relations, et al.*, L-23348, March 14, 1967, 1967 A PHILD 453, we declared in no uncertain terms that actual damages must be proved, and that a court cannot rely on 'speculation, conjecture or guesswork' as to the fact and amount of damages, but must depend on actual proof that damages had been suffered and on evidence of the actual amount.x x x"

The fact that the defendant does not dispute the amount of this kind of damages does not necessarily imply that the other party outright is entitled to the award of damages.

Article 2200 of the Civil Code entitles the respondent to recover as compensatory damages not only the value of the loss suffered but also prospective profits while Article 2201 entitles the respondent to recover all damages which may be attributed to the non-performance of the obligation. However, in order to recover this kind of damages, the plaintiff must prove his case -

" 'When the existence of a loss is established, absolute certainty as to its amount is not required. The benefit to be derived from a contract which one of the parties has absolutely failed to perform is of necessity to some extent, a matter of speculation, but the injured party is not to be denied all remedy for that reason alone. He must produce the best evidence of which his case is susceptible and if that evidence warrants the inference that he has been damaged by the loss of profits which he might with reasonable certainty have anticipated but for the defendant's wrongful act, he is entitled to recover.' (*Cerreno v. Tan Chuco*, 28 Phil. 312 quoted in *Central Bank of the Philippines v. Court of Appeals*, 63 SCRA 431, 457).

Applying the foregoing test to the instant case, we find the evidence of the respondent insufficient to be considered within the purview of "best evidence". The bare assertion of the respondent that he lost about P54,000.00 and the accompanying documentary evidence presented to prove the amount lost are inadequate if not speculative. The document itself merely shows that everytime a truck travels, Mr. Yaptinchay earns P369.88. This amount is then multiplied by the number of trips which the truck was allegedly unable to make. The estimates were prepared by a certain Dionisio M. Macasieb whose identity was not even revealed by the respondent. Mr. Yaptinchay was in the freight truck business. He had several freight trucks among them the truck with the subject Fordson diesel engine, covering the route from Manila to Baguio. To prove actual damages, it would have been easy to present the average actual profits realized by the other freight trucks plying the Manila-Baguio route. With the presentation of such actual income the court could have arrived with reasonable certainty at the amount of actual damages suffered by the respondent. We rule that the award of actual damages in the amount of P54,000.08 is not warranted by the evidence on record.

WHEREFORE, the decision appealed from is hereby modified. The award of actual damages in the amount of P54,000.48 is deleted. The petitioner shall also pay six (6%) percent interest per annum on the P7,590.00 purchase price from January 27, 1962 to July 29, 1974 and twelve (12%) percent interest per annum from July 30, 1974 until the purchase price is reimbursed. In all other respects, the appealed decision is affirmed.

SO ORDERED.

Teehankee, (Chairman), Melencio-Herrera, Plana, and Relova, JJ., concur.

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