

JERRY T. MOLES, PETITIONER, VS. INTERMEDIATE APPELLATE COURT AND MARIANO M. DIOLOSA, RESPONDENTS.*G.R. No. 73913. January 31, 1989*

Ponente: REGALADO, J.

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This petition for review on certiorari assails the decision of the then Intermediate Appellate Court[1] dismissing the complaint filed by herein petitioner against the herein private respondent in the former Court of First Instance of Negros Occidental in Civil Case No. 13821 thereof.[2]

The factual backdrop of this controversy, as culled from the records,[3] shows that on May 17, 1978, petitioner Jerry T. Moles commenced a suit against private respondent Mariano M. Diolosa in the aforesaid trial court, Branch IV in Bacolod City, for rescission of contract with damages. Private respondent moved to dismiss on the ground of improper venue, invoking therefor Sales Invoice No. 075A executed between petitioner and private respondent on April 23, 1977 which provides that "all judicial actions arising from this contract shall be instituted in the City of Iloilo".[4] This was opposed by petitioner who averred that there is no formal document evidencing the sale which is substantially verbal in character. In an order dated June 23, 1978, the trial court denied the motion to dismiss, holding that the question of venue could not be resolved at said stage of the case. The subsequent motion for reconsideration was likewise denied.

Consequently, private respondent, invoking the aforesaid venue stipulation, proceeded to this Court on a petition for prohibition with preliminary injunction in G.R. No. 49078, questioning the validity of the order denying his aforesaid two motions and seeking to enjoin the trial court from further proceeding with the case. This petition was dismissed for lack of merit in a resolution of the Court, dated February 7, 1979, and which became final on March 15, 1979. Thereafter, private respondent filed his answer and proceeded to trial.

The aforecited records establish that sometime in 1977, petitioner needed a linotype printing machine for his printing business, the LM Press at Bacolod City, and applied for an industrial loan with the Development Bank of the Philippines (hereinafter, DBP) for the purchase thereof. An agent of Smith, Bell and Co. who is a friend of petitioner introduced the latter to private respondent, owner of the Diolosa Publishing House in Iloilo City, who had two available machines. Thereafter, petitioner went to Iloilo City to inspect the two machines offered for sale and was informed that the same were secondhand but functional.

On his second visit to the Diolosa Publishing House, petitioner together with Rogelio Yusay, a letterpress machine operator, decided to buy the linotype machine, Model 14. The transaction was basically verbal in nature but to facilitate the loan application with the DBP, a pro forma invoice, dated April 23, 1977 and reflecting the amount of P50,000.00 as the consideration of the sale, was signed by petitioner with an addendum that payment had not yet been made but that he promised to pay the full amount upon the release of his loan from the aforementioned bank on or before the end of the month.[5] Although the agreed selling price was only P40,000.00, the amount on the invoice was increased by P10,000.00, said increase being intended for the purchase

of new matrices for said machine.

Sometime between April and May, 1977, the machine was delivered to petitioner's publishing house at Tangub, Bacolod City where it was installed by one Crispino Escurido, an employee of respondent Diolosa. Another employee of the Diolosa Publishing House, Tomas Plondaya, stayed at petitioner's house for almost a month to train the latter's cousin in operating the machine.[6]

Under date of August 29, 1977, private respondent issued a certification wherein he warranted that the machine sold was in "A-1 condition", together with other express warranties.[7]

Prior to the release of the loan, a representative from the DBP, Bacolod Branch, supposedly inspected the machine but he merely looked at it to see that it was there.[8] The inspector's recommendation was favorable and, thereafter, petitioner's loan of P50,000.00 was granted and released. However, before payment was made to private respondent, petitioner required the former, in a letter dated September 30, 1977, to accomplish the following, with the explanations indicated by him:

1) Crossed check for P15,407.10 representing:

a) P10,000.00

-

Overprice in the machine;

b) P 203.00

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Freight and handling of the machine;

c) P 203.00

-

Share in the electric repair; and

d) P 5,000.00

-

Insurance that Crispin will come back and repair the linotype machine at seller's account as provided in the contract; after Crispin has put everything in order when he goes home on Sunday he will return the check of P15,000.00.

2) Official receipt in the amount of P50,000.00 as full payment of the linotype machine.

These were immediately complied with by private respondent and on the same day, September 30, 1977, he received the DBP check for P50,000.00.[9]

It is to be noted that aforesaid official receipt No. 0451, dated September 30, 1977 and prepared and signed by private respondent, expressly states that he received from the petitioner "the DBP check for P50,000.00 issued in our favor in full payment of one (1) Unit Model 14 Linotype Machine as per Pro forma Invoice dated April 23, 1977".[10]

On November 29, 1977, petitioner wrote private respondent that the machine was not functioning properly as it needed a new distributor bar. In the same letter, petitioner unburdened himself of his grievances and sentiments in this wise:

"We bought this machine in good faith because we trusted you very much being our elder brother in printing and publishing business. We did not hire anybody to look over the machine, much more ask for a rebate in your price of P40,000.00 and believed what your trusted two men, Tomas and Crispin, said although they were hiding the real and actual condition of the machine for your business protection.

"Until last week, we found out the worst ever to happen to us. We have been cheated because the expert of the Linotype machine from Manila says, that the most he will buy your machine is at P5,000.00 only. x x x."[11]

Private respondent made no reply to said letter, so petitioner engaged the services of other technicians. Later, after several telephone calls regarding the defects in the machine, private respondent sent two technicians to make the necessary repairs but they failed to put the machine in running condition. In fact, since then petitioner was never able to use the machine.[12]

On February 18, 1978, not having received from private respondent the action requested in his preceding letter as hereinbefore stated, petitioner again wrote private respondent, this time with the warning that he would be forced to seek legal remedies to protect his interests.[13]

Obviously in response to the foregoing letter, private respondent decided to purchase a new distributor bar and, on March 16, 1978, private respondent delivered this spare part to petitioner through one Pedro Candido. However, when thereafter petitioner asked private respondent to pay for the price of the distributor bar, the latter asked petitioner to share the cost with him. Petitioner thus finally decided to indorse the matter to his lawyer.

An expert witness for the petitioner, one Gil Legaspina, declared that he inspected the linotype machine involved in this case at the instance of petitioner. In his inspection thereof, he found the following defects: (1) the vertical automatic stop lever in the casting division was worn out; (2) the justification lever had a slight breach (balana in the dialect); (3) the distributor bar was worn out; (4) the partition at the entrance channel had a tear; (5) there was no "pie stacker" tube entrance; and (6) the slouch arm lever in the driving division was worn out.

It turned out that the said linotype machine was the same machine that witness Legaspina had previously inspected for Sy Brothers, a firm which also wanted to buy a linotype machine for their printing establishment. Having found defects in said machine, the witness informed Sy Brothers about his findings, hence the purchase was aborted. In his opinion, major repairs were needed to put the machine back in good running condition.[14]

After trial, the court a quo rendered a decision the dispositive portion of which reads:

"IN VIEW OF THE FOREGOING CONSIDERATIONS, judgment is hereby rendered as follows:

- (1) Decreeing the rescission of the contract of sale involving one linotype machine No. 14 between the defendant as seller and the plaintiff as buyer;
- (2) Ordering the plaintiff to return to the defendant at the latter's place of business in Iloilo City the linotype machine aforementioned together with all accessories that originally were delivered to the plaintiff;
- (3) Ordering the defendant to return to the plaintiff the sum of Forty Thousand Pesos (P40,000.00) representing

the price of the linotype machine, plus interest at the legal rate counted from May 17, 1978 when this action was instituted, until fully paid;

(4) Ordering the defendant to indemnify the plaintiff the sum of Four Thousand Five Hundred Pesos (P4,500.00) representing unearned income or actual damages;

(5) Ordering the defendant to pay the plaintiff the sum of One Thousand Pesos (P1,000.00) for attorney's fees.

Costs against the defendant." [15]

From this decision, private respondent appealed to the Intermediate Appellate Court which reversed the judgment of the lower court and dismissed petitioner's complaint, hence the present petition.

We find merit in petitioner's cause.

On the matter of venue, private respondent relies on the aforementioned Sales Invoice No. 075A which allegedly requires that the proper venue should be Iloilo City and not Bacolod City. We agree with petitioner that said document is not the contract evidencing the sale of the linotype machine, it being merely a preliminary memorandum of a proposal to buy one linotype machine, using for such purpose a printed form used for printing job orders in private respondent's printing business. As hereinbefore explained, this issue on venue was brought to Us by private respondent in a special civil action for prohibition with preliminary injunction in G.R. No. 49078. After considering the allegations contained, the issues raised and the arguments adduced in said petition, as well as the comments thereto, the Court dismissed the petition for lack of merit. Respondent court erred in reopening the same issue on appeal, with a contrary ruling.

Furthermore, it was error for the respondent court, after adopting the factual findings of the lower court, to reverse the latter's holding that the sales invoice is merely a pro forma memorandum. The records do not show that this finding is grounded entirely on speculation, surmises or conjectures as to warrant a reversal thereof. [16] In fact, as hereinbefore stated, private respondent expressly admitted in his official receipt No. 0451, dated September 30, 1977, that the said sales invoice was merely a pro forma invoice. Consequently, the printed provisions therein, especially since the printed form used was for purposes of other types of transactions, could not have been intended by the parties to govern their transaction on the printing machine. It is obvious that a venue stipulation, in order to bind the parties, must have been intelligently and deliberately intended by them to exclude their case from the reglementary rules on venue. Yet, even such intended variance may not necessarily be given judicial approval, as, for instance, where there are no restrictive or qualifying words in the agreement indicating that venue cannot be laid in any place other than that agreed upon by the parties, [17] and in contracts of adhesion. [18]

Now, when an article is sold as a secondhand item, a question arises as to whether there is an implied warranty of its quality or fitness. It is generally held that in the sale of a designated and specific article sold as secondhand, there is no implied warranty as to its quality or fitness for the purpose intended, at least where it is subject to inspection at the time of the sale. On the other hand, there is also authority to the effect that in a sale of secondhand articles there may be, under some circumstances, an implied warranty of fitness for the ordinary purpose of the article sold or for the particular purpose of the buyer. [19]

In a line of decisions rendered by the United States Supreme Court, it had theretofore been held that there is no implied warranty as to the condition, adaptation, fitness, or suitability for the purpose for which made, or the quality, of an article sold as and for a secondhand article. [20]

Thus, in finding for private respondent, the respondent court cited the ruling in *Sison vs. Ago, et al.* [21] to the effect that unless goods are sold as to raise an implied warranty, as a general rule there is no implied warranty in the sale of secondhand articles. [22]

Said general rule, however, is not without exceptions. Article 1562 of our Civil Code, which was taken from the Uniform Sales Act, provides:

"Art. 1562. In a sale of goods, there is an implied warranty or condition as to the quality or fitness of the goods, as follows:

(1) Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are acquired, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose;"

x x x x x x x x

In *Drumar Mining Co. vs. Morris Ravine Mining Co.*,^[23] the District Court of Appeals, 3rd District, California, in applying a similar provision of law, ruled:

"There is nothing in the Uniform Sales Act declaring there is no implied warranty in the sale of secondhand goods. Section 1735 of the Civil Code declares there is no implied warranty or condition as to the quality or fitness for any particular purpose, of goods supplied under a contract to sell, or a sale, except (this general statement is followed by an enumeration of several exceptions). It would seem that the legislature intended this section to apply to all sales of goods, whether new or secondhand. In subdivision 1 of this section, this language is used: 'Where the buyer x x x makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment x x x there is an implied warranty that the goods shall be reasonably fit for such purpose.'"

Furthermore, and of a more determinative role in this case, a perusal of past American decisions^[24] likewise reveals a uniform pattern of rulings to the effect that an express warranty can be made by and also be binding on the seller even in the sale of a secondhand article.

In the aforecited case of *Markman vs. Hallbeck*, while holding that there was an express warranty in the sale of a secondhand engine, the court said that it was not error to refuse an instruction that upon the sale of secondhand goods no warranty was implied, since secondhand goods might be sold under such circumstances as to raise an implied warranty.

To repeat, in the case before Us, a certification to the effect that the linotype machine bought by petitioner was in A-1 condition was issued by private respondent in favor of the former. This cannot but be considered as an express warranty. However, it is private respondent's submission, that the same is not binding on him, not being a part of the contract of sale between them. This contention is bereft of substance.

It must be remembered that the certification was a condition sine qua non for the release of petitioner's loan which was to be used as payment for the purchase price of the machine. Private respondent failed to refute this material fact. Neither does he explain why he made that express warranty on the condition of the machine if he had not intended to be bound by it. In fact, the respondent court, in declaring that petitioner should have availed of the remedy of requiring repairs as provided for in said certification, thereby considered the same as part and parcel of the verbal contract between the parties.

On the basis of the foregoing circumstances, the inescapable conclusion is that private respondent is indeed bound by the express warranty he executed in favor of herein petitioner.

We disagree with respondent court that private respondent's express warranty as to the A-1 condition of the machine was merely "dealer's talk". Private respondent was not a dealer of printing or linotype machines to whom could be ascribed the supposed resort to the usual exaggerations of trade in said items. His certification as to the condition of the machine was not made to induce petitioner to purchase it but to confirm in writing for purposes of

the financing aspect of the transaction his representations thereon. Ordinarily, what does not appear on the face of the written instrument should be regarded as dealer's or trader's talk;^[25] conversely, what is specifically represented as true said document, as in the instant case, cannot be considered as mere dealer's talk.

On the question as to whether the hidden defects in the machine is sufficient to warrant a rescission of the contract between the parties, We have to consider the rule on redhibitory defects contemplated in Article 1561 of the Civil Code. A redhibitory defect must be an imperfection or defect of such nature as to engender a certain degree of importance. An imperfection or defect of little consequence does not come within the category of being redhibitory.^[26]

As already narrated, an expert witness for the petitioner categorically established that the machine required major repairs before it could be used. This, plus the fact that petitioner never made appropriate use of the machine from the time of purchase until an action was filed, attest to the major defects in said machine, by reason of which the rescission of the contract of sale is sought. The factual finding, therefore, of the trial court that the machine is not reasonably fit for the particular purpose for which it was intended must be upheld, there being ample evidence to sustain the same.

At a belated stage of this appeal, private respondent came up for the first time with the contention that the action for rescission is barred by prescription. While it is true that Article 1571 of the Civil Code provides for a prescriptive period of six months for a redhibitory action, a cursory reading of the ten preceding articles to which it refers will reveal that said rule may be applied only in case of implied warranties. The present case involves one with an express warranty. Consequently, the general rule on rescission of contract, which is four years^[27] shall apply. Considering that the original case for rescission was filed only one year after the delivery of the subject machine, the same is well within the prescriptive period. This is aside from the doctrinal rule that the defense of prescription is waived and cannot be considered on appeal if not raised in the trial court,^[28] and this case does not have the features for an exception to said rule.

WHEREFORE, the judgment of dismissal of the respondent court is hereby REVERSED and SET ASIDE, and the decision of the court a quo is hereby REINSTATED.

SO ORDERED.

Melencio-Herrera, (Chairman), Paras, Padilla, and Sarmiento, JJ., concur.

[1] Special Fourth Civil Cases Division; Justice Marcelino R. Veloso, ponente, Justices Mariano A. Zosa and Abdulwahid A. Bidin, concurring.

[2] Judge Segundino G. Chua, presiding.

[3] Rollo, 5-10; 19-28.

[4] Exhibit A.

[5] Exhibit A, ante.

[6] TSN, Aug. 11, 1980, 21-23; 36-38.

[7] Exhibit C; Rollo, 22.

[8] TSN, Oct. 8, 1979, 47.

[9] Rollo, 22.

- [10] Exhibit B.
- [11] Exhibit E.
- [12] TSN, Oct. 8, 1979, 15-16, 25-27.
- [13] Exhibit F.
- [14] TSN, Feb. 28, 1980, 5-8, 11-15.
- [15] Rollo, 19-20.
- [16] Legaspi vs. Court Of Appeals, et al. 142 SCRA 82 (1986).
- [17] Polytrade Corporation vs. Blanco, 30 SCRA 187 (1969).
- [18] Sweet Lines, Inc. vs. Teves, et al., 83 SCRA 361 (1978).
- [19] 46 Am. Jur. 545.
- [20] Fairbanks Steam Shovel Co. vs. Holt and Jeffrey, 79 Wash. 361; Perine Machinery Co. vs. Buck, 156 Pac. 20; Ramming vs. Caldwell, 43 Ill. App. 626; and Hanna-Breckinridge Co. vs. Holey-Matthews Mfg. Co., 140 SW 923, cited in Durbin vs. Denham, 29 ALR 1227.
- [21] 11 CA Rep. 2d 530.
- [22] Markman vs. Hallbeck, 206 Ill. App. 465, cited in Capistrano, Civil Code, Vol. IV, 124.
- [23] 92 P 2d 424, 46 Am. Jur. 545-546.
- [24] Fairbanks Steam Shovel Co. vs. Holt & Jeffrey, 79 Wash. 361; Yellow Jacket Min. Co. vs. Tegarden, 104 Ark. 573; Hanna Breckinridge Co. vs. Holey-Matthews Mfg. Co., 160 Mo. App. 437; and Markman vs. Hallbeck, 206 Ill. App. 465, as reported in 29 ALR 1231-1236.
- [25] Puyat & Sons, Inc. vs. Arco Amusement Co., 72 Phil. 402 (1941).
- [26] 10 Manresa, 1950 Ed., 250.
- [27] Art. 1389, Civil Code.
- [28] Ramos vs. Osorio, et al., 38 SCRA 469 (1971); Director of Lands vs. Daño, et al., 96 SCRA 161 (1980).

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