

SECOND DIVISION

[G.R. No. 126275, November 11, 2004]

**JOHANNE J. PEÑA & ERLANA G. VDA. DE INOCENCIO, DOING
BUSINESS UNDER THE NAME AND STYLE OF LARGESTONE
ENTERPRISES, PETITIONERS, VS. THE HONORABLE COURT OF
APPEALS AND DURA-TIRE & RUBBER INDUSTRIES, INC.,
RESPONDENTS.**

D E C I S I O N

CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals (CA) in CA-G.R. CV No. 42383 affirming the Decision^[2] of the Regional Trial Court (RTC) of Manila, Branch 10, in Civil Case No. 92-61507 and its Resolution dated August 19, 1996 denying the motion for reconsideration of the said decision.

The Antecedents

Respondent Dura-Tire & Rubber Industries, Incorporated (Dura-Tire for brevity) is a corporation engaged in the business of manufacturing and sale of vehicle tires and other rubber products. Among the customers of the respondent were petitioners Johanne J. Peña and Erlana G. Vda. de Inocencio who, by themselves, were also engaged in the business of buying rubber products from the respondent and of selling the same to their customers under the business name Largestone Enterprises (Largestone). Largestone was also the authorized sales agent of respondent Dura-Tire. The petitioners would purchase rubber products from the respondent on credit for delivery to their customers, after which the petitioners would pay the respondent for the said purchases.

On May 8, 1991, the respondent and petitioner Inocencio entered a surety agreement in which the latter bound and obliged herself, jointly and solidarily, with petitioner Peña to pay to the respondent, when due, all money indebtedness or obligation of any kind incurred by petitioner Peña in the past and/or thereafter, arising from or growing out of any sale, whether on credit and/or forwarding on consignment, for sale or return goods and deliveries, as well as customers' accounts guaranteed by petitioner Peña, and to pay on demand any said indebtedness upon his default.^[3] Petitioner Peña signed the agreement as a witness.

As shown by the sales invoices prepared by the respondent, Largestone delivered rubber products to the following business firms during the period of November 17, 1990 to December 10, 1991:

SOLD TO	SALES INVOICE NO.	TERM	DATE	AMOUNT	SALESMAN

Aboitiz Transport System	096864	COD/DMM	November 17, 1990	P92,997.00	R. Lee (Joe Peña) ^[4]
Alma Cuilleta c/o Erlana Inocencio	18563	COD/DMM	September 13, 1991	5,614.00	E. Inocencio ^[5]
Golden Rays Taxi c/o Erlana Inocencio	097871	COD/DMM	August 14, 1991	4,474.15	E.I. ^[6]
Golden Rays Taxi c/o Erlana Inocencio	17969	COD/DMM	August 17, 1991	29,149.50	E.I. ^[7]
LT Transport Care Trading	19064		November 4, 1991	24,044.47	
LT Transport Care Trading	19077		November 4, 1991	17,521.82	
LT Transport Care Trading	19075		November 4, 1991	33,579.06	
LT Transport Care Trading	18932		November 4, 1991	29,876.80 ^[8]	
Inland Trailways c/o Joe Peña	97487	COD/DMM	May 8, 1991	2,156.00	J.A. Flores ^[9]
Ipodca Cooperative	18524	COD/DMM	September 10, 1991	1,527.60	Erlana Inocencio ^[10]
Ipodca Cooperative	18525	COD/PU	September 10, 1991	15,496.80	Erlana Inocencio ^[11]
Largestone Enterprises	97847	30D/DMM	August 7, 1991	19,426.23	Joe Peña ^[12]
Largestone Enterprises	97890	30D/PU	August 17, 1991	12,591.00	Joe Peña ^[13]
Largestone Enterprises	097894	30D/PU	August 19, 1991	3,231.00	Joe Peña ^[14]
Largestone Enterprises	097921	30D/DMM	August 27, 1991	1,299.51	Joe Peña ^[15]
Largestone Enterprises	097942	30D/DMM PU	September 4, 1991	9,618.83	Joe Peña ^[16]
Largestone Enterprises	097967	30D/DMM	September 10, 1991	5,379.05	Joe Peña ^[17]
Largestone	98025	30Days/DMM	September	6425.00	Joe Peña ^[18]

Enterprises			25, 1991		
Largestone Enterprises	18414	COD	September 4, 1991	4546.69	Joe Peña ^[19]
* Largestone Enterprises	42336	COD/DMM	November 21, 1991	3400.00	Joe Peña ^[20]
* Largestone Enterprises	42194		December 10, 1991	971.76	Joe Peña ^[21]
Pandacan Coop c/o Erlana Inocencio	17942	COD/PU	August 16, 1991	23174.93	E.I. ^[22]
Pandacan Coop c/o Erlana Inocencio	18305	COD/DMM	August 27, 1991	6871.40	Erlana I. ^[23]
Pandacan Cooperative	18433	COD/DMM	September 25, 1991	14824.16	Erlana Inocencio ^[24]
Pandacan Coop c/o Erlana Inocencio	18643	COD/DMM	September 18, 1991	1176.00	E. Inocencio ^[25]
Pandacan Cooperative	18786	COD	September 26, 1991	13567.40	Erlana Inocencio ^[26]
Pandacan Cooperative	18789	COD	September 26, 1991	3230.17	Erlana ^[27]
Phil. World Characters & Travel Service Cooperation	17089	COD	June 14, 1991	6400.00	Joe Peña ^[28]
Project 4 Cooperative	17807	COD/DMM	August 7, 1991	3538.48	E.E. Inocencio ^[29]
Project 4 Cooperative	17809	COD/DMM	August 7, 1991	226.16	E. Inocencio ^[30]
Project 4 Cooperative	18785	COD	September 26, 1991	2920.35	Erlana ^[31]
Tire King Goodyear Servitic	18312	COD/PU	August 28, 1991	5497.12	Joe Peña ^[32]

* Delivery Receipt of Massive Sales Inc. c/o Dura-Tire Rubber Industries, Inc.

In partial payment of the said purchases from the respondent, petitioner Inocencio issued the following Philbanking Checks: Check No. 847401 dated November 21, 1991; Check No. 847402 dated December 10, 1991; Check No. 847404 dated December 29, 1991; and Check No. 847403 dated January 2, 1992. Petitioner Peña also drew and issued to the respondent Philippine National Bank Check No. 224391 dated November 25, 1991, in the amounts of P37,456.91, P29,771.10, P19,544.57, P46,431.67, and P14,063.58.^[33] However, these checks were returned by the drawee banks for either of the following reasons: "closed account," "payment

stopped," or "drawn against insufficient funds." The petitioners, likewise, failed to pay for the balance of their account.

The respondent sent letters on January 22 and 28, 1992 to the petitioners demanding the payment of their account which, according to the respondent, had amounted to P455,742.97, exclusive of interest, as shown in the statement of account appended thereto.^[34] The petitioners promised to pay their account to the respondent, but reneged thereon.

On June 10, 1992, the respondent filed a Complaint with the RTC of Manila against the petitioners for the collection of their account, plus interests and attorney's fees. The respondent prayed that, after due proceedings, judgment be rendered in its favor and against the petitioners, thus:

Wherefore, Plaintiff prays that after due hearings, judgment be rendered in favor of Plaintiff and against the Defendants, ordering the latter to pay, jointly and severally, the following amounts:

- A. P477,212.33 with 14% Int. P.A. from Jan. 20, 1992;
- B. P100,000.00 as Attorney's Fee;
- C. Cost of suit and other incidental expenses

Such other reliefs and remedies which may be just and equitable under the premises, are likewise prayed for.^[35]

The respondent appended to its complaint the surety agreement executed by it and petitioner Inocencio, the sales invoices issued to Aboitiz Transport, Alma Cuilleta, Golden Rays Taxi, ILT Transport Care Trading, Inland Con Carrier, Inland Trailways, Ipodca Cooperative, Largestone Enterprises, Pandacan Cooperative and Phil. World Charters and Travel Service Corporation, marked as Annexes "B" to "BB" thereof. It also appended to its complaint, as Annex "CC" thereof, the Delivery Receipt to Philtranco and the Sales Invoices to Project 4 Cooperative and Tire King Goodyear Service, as Annexes "DD" to "HH." It further appended to its complaint, as Annexes "II" to "LL" thereof, the five (5) checks drawn and issued by the petitioners in its favor; and, as Annexes "NN" to "OO" thereof, the respondent's letters of demand to the petitioners duly acknowledged by the latter.

In their verified answer to the complaint, the petitioners admitted all the transactions alleged in the complaint in the form of "direct buy" and "commission basis," but denied that the transactions remained wholly or partly unpaid. The petitioners further alleged that:

1. They were not responsible for the collection of the amounts as well as agency covering those transactions covered by Annexes "F," "I,"^[36] and "HH."^[37] Petitioner Inocencio admitted the agency only over the transactions covered by Annexes "J,"^[38] "K,"^[39] "X,"^[40] "Z,"^[41] "AA,"^[42] and "GG,"^[43] and that, with the assistance of petitioner Peña, the amounts covered by Annexes "I,"^[44] "J,"^[45] "K,"^[46] "X,"^[47] "Z,"^[48] "AA,"^[49] "DD,"^[50] "GG,"^[51] and "HH"^[52] had been collected and paid to the respondent;
2. Petitioner Inocencio admitted the agency and responsibility for the collection of the amounts appearing in Annexes "C" to "E,"^[53] "V,"^[54] "W,"^[55] "Y,"^[56] "EE,"

[57] and "FF,"[58] and averred that the amounts covered by Annexes "D,"[59] "E,"[60] "V,"[61] "W,"[62] "Y,"[63] "EE,"[64] and "FF"[65] had already been collected by her and paid to the respondent;

3. Petitioner Peña admitted the agency and her responsibility for the collection of the amounts covered by Annexes "B,"[66] "G,"[67] "H,"[68] "BB,"[69] and "DD,"[70] and averred that the amount covered by Annex "CC"[71] had been collected by her and paid to the respondent;
4. Petitioner Peña admitted her purchases of the goods covered by Annexes "L" to "U,"[72] that the same were still unpaid and expressed her willingness to pay the same to the respondent;
5. The goods covered by Annexes "B,"[73] "G,"[74] and "H"[75] was of poor quality; consequently, the customers of the petitioners rejected the goods and refused to pay for the same;
6. Petitioner Inocencio admitted that she issued the checks, Annexes "II," "JJ," "KK," and "LL," but averred that she did so only in blank and delivered the same to petitioner Peña, and only to show the same to the respondent to prove that petitioner Inocencio had a checking account; that without the knowledge and consent of petitioner Inocencio, petitioner Peña delivered the checks to the respondent in payment of her purchases from the latter; and that petitioner Inocencio did not issue Check No. 224391, Annex "MM."

On August 3, 1992, the trial court issued an Order setting the pre-trial at 8:30 a.m. on September 11, 1992 and requiring the parties to submit their respective pre-trial brief at least three days before the pre-trial date. There is no showing in the records that the petitioners were served with copies of the said order; however, their counsel received a copy of the same on August 14, 1992 and failed to file any pre-trial brief. The respondent filed its pre-trial brief on September 1, 1992. By agreement of the parties, through counsel, pre-trial was reset by the court on October 16, 1992 at 8:30 a.m. Petitioner Inocencio received a copy of the trial court's Order dated September 11, 1992. The parties failed to appear for the pre-trial on October 16, 1992. Consequently, the court dismissed the complaint. The court granted the respondent's motion for reconsideration of the order of dismissal and issued an Order on January 4, 1993 setting the pre-trial at 8:30 a.m. on February 19, 1993. The copies of the order addressed to the petitioners were returned to the court for their failure to claim the same from the post office. As per the notation on the face of the envelope containing the order addressed to the petitioners, the latter had vacated the houses indicated therein.

When the case was called for pre-trial on February 19, 1993, the petitioners and their counsel failed to appear before the court. On motion of the counsel for the respondent, the petitioners were declared as in default for their failure to appear before the court for pre-trial, and for their failure to file their pre-trial brief. The motion of the respondent to adduce its evidence ex parte against the petitioners was granted. The respondent presented Lydia C. Lao whose testimony was completed, and formally offered in evidence as Exhibits "A," "B" to "B-32," "C" to "C-5," "D," and "E" to "E-1," all of which the trial court admitted. The court then issued an order declaring the case submitted for decision. The copy of the said order