

## THIRD DIVISION

[ G.R. No. 141258, April 09, 2003 ]

**TOMASA SARMIENTO, PETITIONER, VS. SPS. LUIS & ROSE SUN-CABRIDO AND MARIA LOURDES SUN, RESPONDENTS.**

### DECISION

**CORONA, J.:**

This appeal by certiorari stems from the Decision<sup>[1]</sup> of respondent Court of Appeals promulgated on November 26, 1999 in CA-G.R. SP No. 47431 declaring the private respondents not liable for damages.

Petitioner, Tomasa Sarmiento, states that sometime in April 1994, a friend, Dra. Virginia Lao, requested her to find somebody to reset a pair of diamond earrings into two gold rings.<sup>[2]</sup> Accordingly, petitioner sent a certain Tita Payag with the pair of earrings to Dingding's Jewelry Shop, owned and managed by respondent spouses Luis and Rose Cabrido,<sup>[3]</sup> which accepted the job order for P400.<sup>[4]</sup>

Petitioner provided 12 grams of gold to be used in crafting the pair of ring settings.<sup>[5]</sup> After 3 days, Tita Payag delivered to the jewelry shop one of Dra. Lao's diamond earrings which was earlier appraised as worth .33 carat and almost perfect in cut and clarity.<sup>[6]</sup> Respondent Ma. Lourdes (Marilou) Sun went on to dismount the diamond from its original setting. Unsuccessful, she asked their goldsmith, Zenon Santos, to do it. Santos removed the diamond by twisting the setting with a pair of pliers, breaking the gem in the process.<sup>[7]</sup>

Petitioner required the respondents to replace the diamond with the same size and quality. When they refused, the petitioner was forced to buy a replacement in the amount of P30,000.<sup>[8]</sup>

Respondent Rose Cabrido, manager of Dingding's Jewelry Shop, denied having entered into any transaction with Tita Payag whom she met only after the latter came to the jewelry shop to seek compensation from Santos for the broken piece of jewelry.<sup>[9]</sup> However, it was possible that Payag may have availed of their services as she could not have known every customer who came to their shop. Rose disclosed that she usually arrived at 11:00 a.m. When she was not around, her mother and sister tended the shop.<sup>[10]</sup>

Marilou admitted knowing Payag who came to Dingding's Jewelry Shop to avail of their services regarding a certain piece of jewelry. After a short conversation, Payag went inside the shop to see Santos. When the precious stone was broken by Santos, Payag demanded P15,000 from him. As the latter had no money, she turned to Marilou for reimbursement apparently thinking that Marilou was the owner of the

shop.<sup>[11]</sup>

For his part, Santos recalled that Payag requested him to dismount what appeared to him was a sapphire. While clipping the setting with the use of a small pair of pliers, the stone accidentally broke. Santos denied being an employee of Dingding's Jewelry Shop.<sup>[12]</sup>

Attempts to settle the controversy before the *barangay lupon* proved futile.<sup>[13]</sup> Consequently, petitioner filed a complaint for damages on June 28, 1994 with the Municipal Trial Court in Cities (MTCC) of Tagbilaran City docketed as Civil Case No. 2339 which rendered a decision<sup>[14]</sup> in favor of the petitioner, the dispositive portion of which reads:

WHEREFORE, Decision is hereby rendered in favor of plaintiff Tomasa Sarmiento and against defendants Spouses Luis and Rose Sun-Cabrido, ordering defendants to pay jointly and severally the amount of Thirty Thousand Pesos (P30,000.00) as actual or compensatory damages; Three Thousand Pesos (P3,000.00) as moral damages; Five Thousand Pesos (P5,000.00) as attorney's fees; Two Thousand Pesos (P2,000.00) as litigation expenses, with legal interest of 6% per annum from the date of this decision and 12% per annum from the date when this decision becomes final until the amounts shall have been fully paid and to pay the costs.

This case as against defendant Maria Lourdes Sun as well as defendants' counterclaim are dismissed for lack of merit.

SO ORDERED.

On appeal, the Regional Trial Court (RTC) of Tagbilaran City, Branch 3, reversed the decision of the MTCC, thus absolving the respondents of any responsibility arising from breach of contract.<sup>[15]</sup> Finding no reversible error, the Court of Appeals (CA) affirmed the judgment of the RTC in its Decision promulgated on November 26, 1999.<sup>[16]</sup>

Unable to accept the decision, the petitioner filed the instant petition for review with the following assigned errors:

## I

THE COURT OF APPEALS ERRED IN MAINTAINING AND SO HOLDING THAT ZENON SANTOS IS NOT AN EMPLOYEE OF DEFENDANT (herein respondent) ROSE SUN-CABRIDO, AND IS THEREFORE ANSWERABLE FOR HIS OWN ACTS OR OMISSIONS

## II

THE HONORABLE COURT OF APPEALS ERRED IN SUSTAINING THE REGIONAL TRIAL COURT'S PRONOUNCEMENTS THAT THERE EXISTS NO AGREEMENT BETWEEN THE PETITIONER AND RESPONDENTS THAT THE LATTER WOULD ANSWER FOR ANY LIABILITY SHOULD THE DIAMOND BE

DAMAGED IN THE PROCESS OF DISMOUNTING THEM FROM THE EARRINGS.

Essentially, petitioner claims that the dismantling of the diamond from its original setting was part of the obligation assumed by the private respondents under the contract of service. Thus, they should be held liable for damages arising from its breakage. On the other hand, the version of the private respondents, upheld by the RTC and the CA, is that their agreement with the petitioner was for crafting two gold rings mounted with diamonds only and did not include the dismantling of the said diamonds from their original setting.<sup>[17]</sup> Consequently, the crux of the instant controversy is the scope of the obligation assumed by the private respondents under the verbal contract of service with the petitioner.

The Court notes that, during the trial, private respondents vigorously denied any transaction between Dingdings' Jewelry Shop and the petitioner, through Tita Payag. Rose Cabrido, for instance, denied having ever met Payag before the latter came to seek reimbursement for the value of the broken diamond. Likewise, while Marilou acknowledged acquaintance with Payag, she nevertheless denied accepting any job order from her. Debunking their protestations, however, the MTCC of Tagbilaran City rendered its decision on November 26, 1999 in favor of herein petitioner.

Apparently realizing the weakness and futility of their position, private respondents conceded, on appeal, the existence of an agreement with the petitioner for crafting a pair of gold rings mounted with diamonds. This apparent concession by the private respondents, however, was really nothing but an ingenious maneuver, designed to preclude, just the same, any recovery for damages by the petitioner. Thus, while ostensibly admitting the existence of the said agreement, private respondents, nonetheless denied assuming any obligation to dismount the diamonds from their original settings.<sup>[18]</sup>

The inconsistent position of the private respondents impugns their credibility. They cannot be permitted to adopt a certain stance, only to vacillate later to suit their interest. We are therefore inclined to agree with the MTCC in giving credence to the version of the petitioner. The MTCC had the unique opportunity to actually observe the behavior and demeanor of the witnesses as they testified during the trial.<sup>[19]</sup>

At any rate, the contemporaneous and subsequent acts of the parties<sup>[20]</sup> support the version of the petitioner. Thus, when Tita Payag asked Marilou of Dingding's Jewelry Shop to reset a pair of diamond earrings, she brought with her the said pieces of jewelry so that the diamonds which were still mounted could be measured and the new ring settings crafted accordingly. On the said occasion, Marilou expressed no reservation regarding the dismantling of the diamonds which, after all, was an integral part of petitioner's job order. She should have instructed Payag to have them dismantled first if Marilou had actually intended to spare the jewelry shop of the task but she did not. Instead, petitioner was charged P400 for the job order which was readily accepted. Thus, a perfected contract to reset the pair of diamond earrings arose between the petitioner, through Payag, and Dingding's Jewelry Shop, through Marilou.

Marilou's subsequent actuations were even more revealing as regards the scope of obligation assumed by the jewelry shop. After the new settings were completed in 3