

## FIRST DIVISION

[ G.R. No. 113564, June 20, 2001 ]

**INOCENCIA YU DINO AND HER HUSBAND DOING BUSINESS UNDER THE TRADE NAME "CANDY CLAIRE FASHION GARMENTS", PETITIONERS, VS. COURT OF APPEALS AND ROMAN SIO, DOING BUSINESS UNDER THE NAME "UNIVERSAL TOY MASTER MANUFACTURING", RESPONDENTS.**

### DECISION\*

**PUNO, J.:**

Though people say, "better late than never", the law frowns upon those who assert their rights past the eleventh hour. For failing to timely institute their action, the petitioners are forever barred from claiming a sum of money from the respondent.

This is a petition for review on *certiorari* to annul and set aside the amended decision of the respondent court dated January 24, 1994 reversing its April 30, 1993 decision and dismissing the plaintiff-petitioners' Complaint on the ground of prescription.

The following undisputed facts gave rise to the case at bar:

Petitioners spouses Dino, doing business under the trade name "Candy Claire Fashion Garment" are engaged in the business of manufacturing and selling shirts.

[1] Respondent Sio is part owner and general manager of a manufacturing corporation doing business under the trade name "Universal Toy Master Manufacturing." [2]

Petitioners and respondent Sio entered into a contract whereby the latter would manufacture for the petitioners 20,000 pieces of vinyl frogs and 20,000 pieces of vinyl mooseheads at P7.00 per piece in accordance with the sample approved by the petitioners. These frogs and mooseheads were to be attached to the shirts petitioners would manufacture and sell. [3]

Respondent Sio delivered in several installments the 40,000 pieces of frogs and mooseheads. The last delivery was made on September 28, 1988. Petitioner fully paid the agreed price. [4] Subsequently, petitioners returned to respondent 29,772 pieces of frogs and mooseheads for failing to comply with the approved sample. [5] The return was made on different dates: the initial one on December 12, 1988 consisting of 1,720 pieces, [6] the second on January 11, 1989, [7] and the last on January 17, 1989. [8]

Petitioners then demanded from the respondent a refund of the purchase price of the returned goods in the amount of P208,404.00. As respondent Sio refused to

pay,<sup>[9]</sup> petitioners filed on July 24, 1989 an action for collection of a sum of money in the Regional Trial Court of Manila, Branch 38.

The trial court ruled in favor of the petitioners, *viz*:

"WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Vicente and Inocencia Dino and against defendant Toy Master Manufacturing, Inc. ordering the latter to pay the former:

1. The amount of Two Hundred Eight Thousand Four Hundred Four (P208,404.00) Pesos with legal interest thereon from July 5, 1989, until fully paid; and
2. The amount of Twenty Thousand (P20,000.00) Pesos as attorney's fees and the costs of this suit.

The counterclaim on the other hand is hereby dismissed for lack of merit."<sup>[10]</sup>

Respondent Sio sought recourse in the Court of Appeals. In its April 30, 1993 decision, the appellate court affirmed the trial court decision. Respondent then filed a Motion for Reconsideration and a Supplemental Motion for Reconsideration alleging therein that the petitioners' action for collection of sum of money based on a breach of warranty had already prescribed. On January 24, 1994, the respondent court reversed its decision and dismissed petitioners' Complaint for having been filed beyond the prescriptive period. The amended decision read in part, *viz*:

"Even if there is failure to raise the affirmative defense of prescription in a motion to dismiss or in an appropriate pleading (answer, amended or supplemental answer) and an amendment would no longer be feasible, still prescription, if apparent on the face of the complaint may be favorably considered (Spouses Matias B. Aznar, III, et al. vs. Hon. Juanito A. Bernad, etc., supra, G.R. 81190, May 9, 1988). The rule in Gicano vs. Gegato (supra) was reiterated in Severo v. Court of Appeals, (G.R. No. 84051, May 19, 1989).

WHEREFORE the Motion For Reconsideration is granted. The judgment of this Court is set aside and judgment is hereby rendered REVERSING the judgment of the trial court and dismissing plaintiff's complaint."<sup>[11]</sup>

Hence, this petition with the following assignment of errors:

I.

The respondent Court of Appeals seriously erred in dismissing the complaint of the Petitioners on the ground that the action had prescribed.

II.

The respondent Court of Appeals seriously erred in holding that the defense of prescription would still be considered despite the fact that it was not raised in the answer, if apparent on the face of the complaint.

We first determine the nature of the action filed in the trial court to resolve the issue of prescription. Petitioners claim that the Complaint they filed in the trial court on July 24, 1989 was one for the collection of a sum of money. Respondent contends that it was an action for breach of warranty as the sum of money petitioners sought to collect was actually a refund of the purchase price they paid for the alleged defective goods they bought from the respondent.

We uphold the respondent's contention.

The following provisions of the New Civil Code are apropos:

"Art. 1467. A contract for the delivery at a certain price of an article which the vendor in the ordinary course of his business manufactures or procures for the general market, whether the same is on hand at the time or not, is a contract of sale, but if the goods are to be manufactured specially for the customer and upon his special order, and not for the general market, it is a contract for a piece of work."

"Art. 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill, or also furnish the material."

As this Court ruled in **Engineering & Machinery Corporation v. Court of Appeals, et al.**,<sup>[12]</sup> "a contract for a piece of work, labor and materials may be distinguished from a contract of sale by the inquiry as to whether the thing transferred is one not in existence and which would never have existed but for the order of the person desiring it. In such case, the contract is one for a piece of work, not a sale. On the other hand, if the thing subject of the contract would have existed and been the subject of a sale to some other person even if the order had not been given then the contract is one of sale."<sup>[13]</sup> The contract between the petitioners and respondent stipulated that respondent would manufacture upon order of the petitioners 20,000 pieces of vinyl frogs and 20,000 pieces of vinyl mooseheads according to the samples specified and approved by the petitioners. Respondent Sio did not ordinarily manufacture these products, but only upon order of the petitioners and at the price agreed upon.<sup>[14]</sup> Clearly, the contract executed by and between the petitioners and the respondent was a contract for a piece of work. At any rate, whether the agreement between the parties was one of a contract of sale or a piece of work, the provisions on warranty of title against hidden defects in a contract of sale apply to the case at bar, viz:

"Art. 1714. If the contractor agrees to produce the work from material furnished by him, he shall deliver the thing produced to the employer and

transfer dominion over the thing. This contract shall be governed by the following articles as well as by the pertinent provisions on warranty of title and against hidden defects and the payment of price in a contract of sale."

"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."

Petitioners aver that they discovered the defects in respondent's products when customers in their (petitioners') shirt business came back to them complaining that the frog and moosehead figures attached to the shirts they bought were torn. Petitioners allege that they did not readily see these hidden defects upon their acceptance. A hidden defect is one which is unknown or could not have been known to the vendee.<sup>[15]</sup> Petitioners then returned to the respondent 29,772 defective pieces of vinyl products and demanded a refund of their purchase price in the amount of P208,404.00. Having failed to collect this amount, they filed an action for collection of a sum of money.

Article 1567 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."

By returning the 29,772 pieces of vinyl products to respondent and asking for a return of their purchase price, petitioners were in effect "withdrawing from the contract" as provided in Art. 1567. The prescriptive period for this kind of action is provided in Art. 1571 of the New Civil Code, viz:

"Art. 1571. Actions arising from the provisions of the preceding ten articles shall be barred **after six months** from the delivery of the thing sold." (Emphasis supplied)

There is no dispute that respondent made the last delivery of the vinyl products to petitioners on September 28, 1988. It is also settled that the action to recover the purchase price of the goods petitioners returned to the respondent was filed on July 24, 1989,<sup>[16]</sup> more than nine months from the date of last delivery. Petitioners having filed the action three months after the six-month period for filing actions for breach of warranty against hidden defects stated in Art. 1571,<sup>[17]</sup> the appellate