

TWENTY-SECOND DIVISION

[CA-G.R. CV NO. 01745-MIN, January 06, 2014]

**JASPER FRANCIS B. CAMBE, PLAINTIFF-APPELLEE, VS. RCL
DIRECT MARKETING CORP., REPRESENTED BY AMADO C.
PERICON, JR., DEFENDANT-APPELLANT.**

DECISION

INTING, J.:

This is an appeal from the December 29, 2006 Decision^[1] of the Regional Trial Court Branch 15, Davao City in Civil Case No. 30,333-04 for rescission of sale, damages, attorney's fees and cost, the *fallo* of which states:

"WHEREFORE, judgment is hereby rendered as follows:

1. The Deed of Sale of the motorcycle is rescinded;
2. The defendant shall pay the plaintiff the following sums:
 - a. Fifty-four Thousand Pesos representing the return of the purchase plus legal interest from April 2004 until fully paid;
 - b. Twenty-thousand Pesos as moral damages plus legal interest from April 2004 until fully paid;
 - c. Twenty-thousand Pesos as exemplary damages plus legal interest from April 2004 until fully paid;
 - d. Twenty-thousand Pesos as Attorney's fees;
 - e. Ten thousand Pesos as litigation expenses; and
 - f. Cost of suit.

SO ORDERED."

The facts of the case are as follows:

On July 29, 2003, herein plaintiff Jasper Cambe bought one (1) unit of Hensim Dragon 150-motorcycle from defendant RCL Direct Marketing for P54,000.00. In the evening of the same date, the unit's gas tank leaked which prompted the plaintiff to bring back the motorcycle to the defendant the next day. The leak was immediately remedied but a few weeks after, the same problem occurred. The plaintiff again took the unit to the defendant to have the leak fixed for the second time. The leak stopped but it lasted only for a few weeks. Considering the recurring problem on the unit despite the repairs made by the defendant's mechanic, the plaintiff opted to fix the leak himself. Since then, the leaking stopped.^[2] However, on August 5, 2003, one of the unit's copper tube broke spilling engine oil and causing the engine to make loud noises. The unit had to be pulled by another motorcycle to a motor shop in Digos. One of the plaintiff's staff reported the problem to the defendant's mechanic who merely advised him to fill the motor with a liter of engine oil. The

damage was temporarily repaired when the plaintiff's staff filled the engine with oil and expanded the broken end of the tube.^[3] Thereafter, the plaintiff went to the defendant to have the copper tube checked. The mechanic merely tightened the bolts.^[4] In the same month, aside from the rear wheel bearing making a loud noise which was eventually fixed by the defendant's mechanic after it was replaced with a new one, the other copper tube also broke. The defendant's mechanic advised the plaintiff to replace the copper tubes with a heat resistant hose; but since the latter could not find one, he instead decided to buy and install a steel tube which actually fixed the problem.^[5]

Sometime between the first or second month after his purchase, the plaintiff also experienced difficulty in starting the motor's engine. In one instance, the engine stopped running in the middle of the road and it took approximately 15 minutes for the plaintiff to get it started. The defendant's mechanic advised the plaintiff to just press the unlock button if it becomes difficult to start the engine but it did not work until the former replaced the current direct ignition (cdi). The plaintiff's agony did not end there for after four (4) months of using the unit, he noticed the engine produce unusual sounds which he consulted with the defendant's mechanic who recommended to have the motorcycle tuned up even if it was still below the mileage required for a mandatory tune-up.^[6] Besides the noise, the plaintiff also felt that the engine was not running smoothly and could hardly reach its usual speed. Further, the carburetor was not installed properly but since it was just a minor defect, the plaintiff opted to fix it himself. The headlight bulb also eventually failed to function but was immediately replaced by the defendant. The latest problem incurred by the plaintiff on his motorcycle is its sprocket which he found detached.^[7]

On January 5, 2004, the plaintiff submitted a Complaint/Problem Checklist^[8] to the defendant's representative followed by a letter to its Manager dated January 12, 2004 where he wrote therein the history of problems he encountered with the subject motorcycle, expressing dissatisfaction on the unit, the customer and maintenance services, as well as fear for his life when riding the defective unit. Thus, the plaintiff asked for a full refund of the price paid and offered to return the unit to avoid further damage thereto, but the defendant refused for lack of space to store the motorcycle.^[9]

On January 14, 2004, the plaintiff delivered the subject motorcycle to the defendant.^[10] On January 19 and 24, 2004, the plaintiff wrote follow-up letters to the defendant's Manager reiterating his intention to surrender the unit and ask for a full refund.^[11]

The defendant, through its area operations manager Amado Pericon, Jr., made a letter-reply dated January 26, 2004 stating that a warranty claim against the supplier was already made and that the defective parts were already replaced and attached to the subject unit thus, they were asking that the plaintiff first test the present condition of the unit. The defendant likewise reiterated the warranty coverage of 10,000 kilometers or one (1) year whichever comes first, both on parts and on service.^[12] The letter was received by the plaintiff on January 29, 2004.

Meanwhile, receiving no action from the defendant, the plaintiff instituted an action before the Department of Trade and Industry on January 26, 2004. A mediation

proceeding was conducted but to naught.

Hence, on April 21, 2004, the plaintiff filed a complaint against the defendant before the court *a quo* mainly for rescission of sale.^[13]

Defendant RCL, on the other hand, admits that the plaintiff's motorcycle is in their custody after repairs were made thereon. But they deny that those were factory or hidden defects but rather due to ordinary wear and tear considering the way the plaintiff used the unit recording a mileage of 9,186 km. in only a span of 170 days. RCL also maintains that the defects were only minor which did not render the unit unfit for use and were directly and immediately addressed to by them in accordance with their warranty. Hence, they refused to refund the plaintiff. During the mediation before the DTI, the defendant offered to replace plaintiff's unit with a new one and even for a better brand but to no avail.^[14]

Pre-trial ensued but on December 9, 2005, the defendant filed a demurrer to evidence contending that the defects on the unit did not impair its use nor diminish its fitness and that the plaintiff's action has already prescribed.^[15] Per Order dated January 12, 2006, the demurrer was denied.^[16]

During the hearing, aside from the plaintiff, Paul Dayoan, a mechanic by experience for two (2) years, was also presented to corroborate the former's claims. Paul attested that when he took a look at the plaintiff's unit, he noticed the leak which was caused by the lack of gasket on the upper block of the vehicle. He also observed that the bolts were not properly tightened and the engine gear and the compression were loose. When he rode on the motorcycle, he felt an air leak and he found the unit noisy.^[17]

For the defendant, their mechanics were presented to show that the defects on the unit were merely minor unless not immediately attended to.^[18] They explained that the noise produced by the unit was due to damaged bearings caused by lack of oil due to its constant running. Nevertheless, the bearings were replaced and greased with oil. They also admitted that the motor's CDI was replaced to address the problem with starting the engine. The mechanic also clarified that the defect on the headlight was caused by the bulb which life span is generally only for 4-5 months. However, the mechanic could hardly believe that the carburetor was not functioning as such defect would prevent the unit from running. Further, he also finds it improbable that the sprocket would just fall out considering that aside from the lock, there is still another cover that would hold the sprocket from falling.^[19] On his cross-examination, the mechanic admitted that when they tested the motorcycle, they only used a liter of fuel but had they filled the tank, they would have detected if there indeed was a leak thereon. He also admitted that the CDI was a major part of the vehicle. Yet, he insisted that the unit was not defective and that there was no leak but only a loose thread which was probably caused by frequent travels and the road condition. Furthermore, he maintained that the unit sounded the same from the time it was purchased by the plaintiff and that he only replaced its piston and cylinder to satisfy the plaintiff's requests.

The court *a quo* rendered the assailed decision in the plaintiff's favor finding that from the time the plaintiff bought the unit until the first week of August, the vehicle was brought to the defendant to have the gas leak repaired for three (3) times and within four (4) months from purchase, the unit has been subjected to several

repairs and replacements of parts and tune ups; that despite the foregoing, the unit remained sub-par in its performance; that the unit is clearly unfit for its purpose and the frequent repairs show that the motorcycle's quality is below standard; that rescission is allowed in such circumstances; that the defendant acted in wanton and reckless manner in dealing with the plaintiff's concerns assuring the latter that the defects were merely teething problems; and that the plaintiff had to hire a counsel to enforce and vindicate his rights.

The defendant's motion for reconsideration was denied.^[20] Adamant, the defendant appeals before Us contending that:

I.

THE LOWER COURT ERRED IN NOT ORDERING THE DISMISSAL OF THE CASE AT BAR ON THE GROUND THAT THE PLAINTIFF-APPELLEE'S CAUSE OF ACTION, IF ANY, HAD ALREADY PRESCRIBED;

II.

THE LOWER COURT ERRED IN HOLDING THAT IN THE CASE AT BAR, THE DEFENDANT-APPELLANT IS LIABLE FOR BREACH OF EXPRESS WARRANTY;

III.

THE LOWER COURT ERRED IN FINDING THAT RESCISSION IS PROPER IN THE CASE AT BAR;

IV.

THE LOWER COURT ERRED IN AWARDING DAMAGES TO THE PLAINTIFF-APPELEE.

The defendant asseverates that the plaintiff-appellee failed to establish that the defect existed at the time the sale was made; that the defects were merely due to ordinary wear and tear which was a necessary consequence taking into account the plaintiff-appellee's use of the vehicle; that the plaintiff-appellee's action has already prescribed considering that almost nine (9) months from the date of delivery has lapsed before the case was filed; that the warranty covers only parts and services but not to refund the price paid; that they promptly and satisfactorily replaced the defective parts and rendered free repairs for the plaintiff; that rescission is not apt because there was no breach of contract; that the plaintiff-appellee only notified them of his choice to rescind after 170 days from purchase which is not a reasonable period to elect rescission; that when the unit was returned, it was no longer in good condition as it was at the time it was delivered to the plaintiff-appellee; and that the award of damages and interest has no basis.^[21]

Our Ruling

The appeal is impressed with merit.

A warranty is a statement or representation made by the seller of goods, contemporaneously and as part of the contract of sale, having reference to the character, quality or title of the goods and by which he promises or undertakes to insure that certain facts are or shall be as he then represents them.^[22] Any