

## **EIGHTEENTH DIVISION**

**[ CA-G.R. CV NO. 00627, March 28, 2014 ]**

**AMELIA LUA DIN, DOING BUSINESS UNDER THE NAME AND  
STYLE OF KIMWA INDUSTRIAL RUBBER & RECAPPING, HEREIN  
REPRESENTED BY CORAZON LUA, PLAINTIFF-APPELLEE, VS.  
RICARDO P. DAMING, DOING BUSINESS UNDER THE NAME AND  
STYLE OF RMN TIRE SUPPLY & RECAPPING, DEFENDANT-  
APPELLANT.**

### **D E C I S I O N**

**DIY, J.:**

Before Us is an appeal from the Decision<sup>[1]</sup> dated July 9, 2004 of the Regional Trial Court of Cebu City in Civil Case No. CEB-25152, the dispositive portion of which reads:

For all the foregoing, judgment is hereby rendered ordering the defendant to pay the plaintiff the sum of P912,937.19.

Plaintiff is directed to pay the defendant P478,462.33 by way of actual damages.

SO ORDERED.

Likewise assailed is the Order<sup>[2]</sup> dated September 17, 2004 denying defendant-appellant's motion for reconsideration.

### ***The Antecedents***

In 1986, defendant-appellant Ricardo P. Daming, doing business under the name and style RMN TIRE SUPPLY & RECAPPING, engaged in the buy-and-sell business of brand new and recapped tires. He also offered recapping services. Defendant-appellant secured camelback materials from Mared Rubber and Filipinas Rubber, which were companies based in Manila.

Sometime in September 1999, plaintiff-appellee's sales representative offered to supply to defendant-appellant camelback materials on credit, for a period of 120 days from the date of delivery. Defendant-appellant entered into a contract of sale to purchase camelback materials from plaintiff-appellee. The latter had delivered these raw materials from November 1999 to January 2000. The camelback materials were utilized in defendant-appellant's tire recapping business. In paying for defendant-appellant's obligation, he issued several postdated checks.

Plaintiff-appellee notified defendant-appellant when the latter's checks were dishonored upon presentment. Several demands for payment were made by

plaintiff-appellee but defendant-appellant failed to settle his outstanding obligation.

On May 10, 2000, a Complaint<sup>[3]</sup> for collection of a sum of money and attorney's fees with application for issuance of a writ of preliminary attachment was filed by plaintiff-appellant against defendant-appellant before the Regional Trial Court of Cebu City because he still failed to settle his indebtedness. In the complaint, it is alleged that the total amount of defendant-appellant's unpaid obligation had already reached P912,937.19.

In an Order<sup>[4]</sup> dated May 22, 2000, the application for the issuance of the writ of preliminary attachment was granted and the writ was issued on June 27, 2000.<sup>[5]</sup>

On July 26, 2000, defendant-appellant filed an "Answer with Counter-claims".<sup>[6]</sup> In said answer, defendant-appellant alleged that in the later part of December 1999, he received complaints from his customers about the defective camelback materials used in the recapping of their respective tires. In the months of January to April 2000, more complaints with regard to the recapped tires had reached him.

Because of the complaints against its products, defendant-appellant informed plaintiff-appellee about the problem. Plaintiff-appellee's office responded that it would send a representative to conduct an inspection and to test the delivered camelback materials.

Sometime in February 2000, plaintiff-appellee's representative Cristoven Caraldi tested the camelback materials. In his report, he concluded that the materials were defective. Because of this, defendant-appellant asked for an adjustment of his account. He called plaintiff-appellee's office, requesting the latter not to deposit the postdated checks he issued. However, despite defendant-appellant's request, plaintiff-appellee still proceeded to deposit one (1) of the checks. This prompted defendant-appellant to order his bank to stop the payment of his checks. He claimed that his account with the bank was duly funded to cover the issued checks.

Defendant-appellant denied that plaintiff-appellee notified him when the checks were dishonored. He likewise claimed that there was no demand for payment made upon him. Further, he asserted that despite the fact that the materials delivered were defective, plaintiff-appellee unreasonably failed to make adjustments of his account.

As counterclaim, he prayed for the award of P3,000,000.00 as actual damages for the reason that his tire recapping business suffered tremendous losses because of plaintiff-appellee's defective camelback materials. He also asked for litigation expenses, attorney's fees, moral damages, exemplary damages, and other relief consistent with law and equity.

On August 4, 2000, plaintiff-appellee filed her Reply,<sup>[7]</sup> praying that judgment be rendered according to the prayer of the complaint.

On August 10, 2000, plaintiff-appellee filed her pre-trial brief<sup>[8]</sup> while defendant-appellant filed his pre-trial brief<sup>[9]</sup> on August 30, 2000.

On September 8, 2000, the RTC issued an Order<sup>[10]</sup> in this wise:

When this case was called for pre-trial, parties and counsel appeared and parties jointly manifested that they are entirely relying on their pre-trial briefs and have no other points to raise nor are they seeking admissions from each other.

On the part of plaintiffs, they reserved their right to mark their Exhibits during the trial on the merits while defendants preferred to mark their Exhibits for purposes of pre-trial and correspondingly marked as Exhibits 1 to 6 and submarkings.

Pre-trial of this case is therefore closed and by agreement of the parties, trial on the merits is set on November 23 and 24, 2000 all at 9:00 o'clock in the morning

SO ORDERED.

During trial, the parties presented their respective testimonial and documentary evidence.

On July 9, 2004, the lower court rendered the appealed Decision,<sup>[11]</sup> finding defendant-appellant liable to pay plaintiff-appellee the amount of P912,937.19. On the other hand, plaintiff-appellee is directed to reimburse defendant-appellant the amount of P478,462.33 by way of actual damages.

Consequently, defendant-appellant filed its Motion for Reconsideration.<sup>[12]</sup> But the same was denied in an Order<sup>[13]</sup> dated September 17, 2004.

On October 11, 2004, defendant-appellant filed a Notice of Appeal,<sup>[14]</sup> which was not given due course by the court *a quo* in its Order<sup>[15]</sup> for having been filed out of time.

Distressed, defendant-appellant filed a Motion for Reconsideration<sup>[16]</sup> praying that his Notice of Appeal be given due course.

On March 2, 2005, the RTC issued an Order<sup>[17]</sup> giving due course to the Notice of Appeal filed by defendant-appellant.

Hence, this appeal.

In its Brief, defendant-appellant assigned the following errors:<sup>[18]</sup>

The lower court erred in directing the appellant to pay the appellee the sum of P 912,937.19 despite sustaining his claim that the camel back [sic] material sold by the appellee to the appellant is defective.

The lower court erred in dismissing the appellant's claims for damages and attorney's fees.

## ***The Ruling of the Court***

The appeal is not impressed with merit.

Elementary is the rule that in civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Preponderance of evidence is the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto.<sup>[19]</sup> Thus, the party, whether plaintiff or defendant, who asserts the affirmative of an issue has the onus to prove his assertion in order to obtain a favorable judgment. For the plaintiff, the burden to prove its positive assertions never parts. For the defendant, an affirmative defense is one which is not a denial of an essential ingredient in the plaintiff's cause of action, but one which, if established, will be a good defense - i.e., an "avoidance" of the claim.<sup>[20]</sup>

A review of the facts of the case would reveal that plaintiff-appellee and defendant-appellant entered into a contract of sale. From November 1999 to January 2000, on several occasions, defendant-appellant purchased camelback materials from plaintiff-appellee. In doing so, defendant-appellant issued several postdated checks in partial payment. However, only one of the checks was actually encashed by plaintiff-appellee because defendant-appellant ordered the drawee bank to stop payment of such checks. The reason for the "stop payment order" was defendant-appellant's allegation that the camelback materials were defective. During the course of the trial, plaintiff-appellee was able to establish the unpaid obligation of defendant-appellant by presenting documentary evidence such as the dishonored checks, check return slips, sales invoices, bills of lading, Credit Memorandum No. 0409<sup>[21]</sup> in favor of defendant-appellant, and Accounts Subsidiary Ledger.<sup>[22]</sup> Thus, plaintiff-appellee had sufficiently adduced evidence to prove that the unpaid obligation of defendant-appellant amounted to P912,937.19.

On the other hand, defendant-appellant asserts that since the camelback materials delivered and supplied by plaintiff-appellee were defective, the latter should return the purchase price paid with interest and reimburse the former for all the expenses arising therefrom. He cites the provisions of Articles 1561 and 1568 of the Civil Code to support his claims.

We are not persuaded.

Under Article 1561 of the Civil Code, it is provided:

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