

LAW 101

By: Gregorio M. Batiller, Jr.

CONTRACT FOR A PIECE OF WORK (As distinguished from a Contract of Sale)

Petitioners Spouses D are engaged in the manufacturing and selling of shirts. Respondent S, in turn, is part owner and general manager of a manufacturing corporation.

Petitioners and respondent entered into a contract whereby the latter would manufacture for the petitioners some 20,000 pieces of vinyl frogs and 20,000 pieces of vinyl moose heads which were intended to be attached to the shirts which petitioners would manufacture and sell.

Respondent S delivered in installments the 40,000 vinyl products, the last being made on September 28, 1988. Petitioners fully paid the agreed price. Subsequently, however, petitioners returned to respondent some 29,772 pieces of the vinyl products for failure to comply with the approved samples. The date of the return of the last batch of rejected items was on January 17, 1989. Petitioners then demanded for a refund amounting to P208, 404.00. Respondent refused. Petitioners sued sometime on July 24, 1989.

The RTC ruled in favor of petitioners and directed respondent to pay to petitioners the sum of P208, 404.00 with legal interest plus P20, 000.00 attorney's fees. The CA initially affirmed the RTC's decision.

On Motion for Reconsideration, respondent argued that petitioners' action for collection of sum of money based on breach of warranty had already prescribed. The CA rendered an Amended Decision and reversed the RTC's decision. Hence the appeal to the SC.

The SC sustained the CA's decision holding that what was involved was essentially a contract for a piece of work and that the action filed with the RTC was one for breach of warranty and refund of the purchase price.

“As this Court ruled in **Engineering & Machinery Corporation v. Court of Appeals, et al.**, 252 SCRA 156 (1996), 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. The contract between the petitioners and respondent stipulated that respondent would manufacture upon the order of the petitioners 20,000 pieces of vinyl frogs and 20,000 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. Clearly, the contract executed by and between the

petitioners and the respondent was a contract for a piece of work.”

Applying the provisions on hidden defects, in particular Art. 1571, NCC, the SC held that petitioners had six (6) months from last delivery of the thing sold within which to file suit. The last delivery of the vinyl products was on September 28, 1988. So the suit was filed out of time on July 24, 1989 or more than nine (9) months from the date of last delivery.

As to respondent’s argument that the defense of prescription was filed for the first time on Motion for Reconsideration before the CA, the SC held:

”In **Aldovino, et al. v. Alunan, et al.**, the Court *en banc* reiterated the *Garcia v. Mathis* doctrine cited in the *Gicano* case (157 SCRA 140) that when the plaintiff’s own complaint shows clearly that the action has prescribed, the action may be dismissed even if the defense of prescription was not invoked by the defendant.

This Court’s application of the *Osorio* and *Gicano* doctrines to the case at bar is confirmed and now enshrined in Rule 9, Sec. 1 of the 1997 Rules of Civil Procedure, viz:

Section 1. Defense and objections not pleaded. – Defenses and objections not pleaded whether in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by **statute of limitations**, the court shall dismiss the claim.” (Emphasis supplied)”

(Inocencia Yu Dino, et al. vs. CA and Roman Sio, etc., GR No. 113564, June 20, 2001).