

SECOND DIVISION

[G.R. No. 170202, July 14, 2008]

**OPTIMUM MOTOR CENTER CORPORATION, PETITIONER, VS.
ANNIE TAN, DOING BUSINESS UNDER THE NAME & STYLE "AJ &
T TRADING," RESPONDENT.**

D E C I S I O N

TINGA, J.:

This Petition for Review^[1] seeks to reverse the Decision^[2] and Resolution^[3] of the Court of Appeals in CA-G.R. CV No. 63985. The decision affirmed with modification the judgment^[4] of the Regional Trial Court (RTC) of Manila, Branch 19 in Civil Case No. 94-71847.

The case originated from a Complaint^[5] for recovery of possession filed by Annie Tan (respondent) against Optimum Motor Center Corporation (Optimum) and Cesar Peña (Peña) with the RTC of Manila. Respondent is doing business under the name and style, "AJ & T Trading" which is engaged in transportation of cargoes.^[6] AJ & T Trading is the registered owner^[7] of an Isuzu cargo truck with Plate No. NWM 418, the subject of this complaint. Optimum is a domestic corporation which owned and operated an auto repair shop located at 120 Del Monte Avenue, Quezon City.^[8]

Respondent's version of the facts is as follows.

On 14 January 1994, she brought the subject truck to Optimum for body repair and painting. Peña introduced himself as the owner and manager of Optimum. Respondent verbally contracted with Peña for the repair of the damaged portions of the truck, repainting and upholstery replacement. It was then agreed that the work would take thirty (30) days to complete and would thus be finished on 15 February 1994.^[9] Leopoldo Daza, a security guard assigned to Optimum, received the truck and prepared a checklist^[10] of the items found therein. On 20 January 1994, an estimate^[11] detailing the description and price rates for the repair was sent to respondent. To bring down the repair costs, the parties agreed that respondent would supply the necessari materials such as windshield glasses for the front and back of the truck, rubber strip and quartered glass panel.^[12]

On 15 February 1994, respondent went to Optimum but was told to come back in March as the repair was not yet finished.^[13] On several occasions, respondent tried to claim her truck from Optimum^[14] to no avail. On 4 March 1994, she again went to Optimum's repair shop and was surprised to see that the trade name "AJ & T Trading" painted in the middle and side doors of the truck had been scraped off. She also noticed that the 100-meter skyline rope, oil stick gauge and right side mirror were missing.^[15] On 22 April 1994, she found her truck abandoned and unrepaired

at Optimum's compound. On 16 May 1994, she discovered that Optimum had already vacated its shop in Del Monte and that her truck was nowhere to be found. [16] Later, she learned that Optimum had transferred to a new location but her still unrepaired truck was found in Valenzuela City.

This prompted respondent to file the instant complaint with the trial court on 5 October 1994. [17] She prayed for the recovery of possession of the truck or, in the alternative, the payment of the value thereof. She also sought the award of attorney's fees, moral damages and costs of suit. [18] At the trial of the case, two witnesses, Maximo Merigildo [19] and Bel Eduardo Nitafan, [20] testified on the dilapidated condition of the truck when they saw it on separate occasions.

On 20 October 1994, the trial court issued an order directing the seizure of the vehicle upon respondent's filing of a bond in the amount of P1,200,000.00. [21] Respondent posted the required bond. [22] Optimum posted a counterbond to lift said order. [23]

Optimum controverted the allegations of respondent. In its own account of the facts, it denied guaranteeing that the repair work would be completed within 30 days from 15 January 1994. It claimed that the repairs were completed only on 8 May 1994 due to delay in respondent's delivery of the parts. [24] It presented as its witnesses the employees who had undertaken the tinsmithing [25] painting [26] and electrical works [27] on the truck.

Optimum also explained that by virtue of a writ of execution [28] issued against it by the Metropolitan Trial Court of Quezon City, it was forced to vacate its repair shop and to transfer all its equipment, tools and all the vehicles in its possession and custody, including respondent's truck, to the IIC Compound in Sitio Malinis, Bagbaguin, Valenzuela City. It claimed that it tried to get in touch with respondent to ask her to claim the truck but she was not available.

Optimum claimed its right to retain possession of the truck, by virtue of Article 1731 of the Civil Code, until the cost of repairs is paid. By way of counterclaim, it asked for the payment of P79,370.00 as the unpaid cost of repairs and P25,000.00 as attorney's fees. [29]

On 31 May 1999, the trial court rendered a decision in favor of respondent, thus:

WHEREFORE, premises considered, judgment is hereby rendered ordering defendants Optimum Motor Center Corporation and/or any person acting for and in its behalf, to surrender in good running condition the Isuzu Cargo Truck, subject matter of this complaint and if this is not feasible, to jointly and severally pay the sum of P600,000.00 with legal interest from the date (October 5, 1994) the complaint was filed, until fully satisfied, moral damages of P50,000.00 and litigation expenses of P30,000.00 plus 25% of the amount awarded from defendants as and for attorney's fees. The counterclaim of defendants is hereby DISMISSED for lack of merit.

SO ORDERED.^[30]

Of the two opposing contentions, the trial court accepted the version of respondent that the repairs on her truck had not been accomplished. It observed:

x x x Plaintiff claimed that even after the thirty (30) day period for the completion of the repair on the truck, the same remained unrepaired. This was supported by the testimonies of the Court's personnel, namely: Maximo Merigildo of the RTC, Branch 31, Quezon City, who served on April 25, 1994 the Writ of Execution in the Ejectment case against defendants and implemented the same on May 14, 1994. He observed that the three (3) tires were not installed and there were no left side mirror and door. Eduardo Bel Nitafan, Process Server, declared in open court that the Isuzu Cargo Truck was now parked at the I.I.C. Compound in Valenzuela, Metro Manila. The truck was surrounded with piles of lumber, about eight (8) feet in height. Missing were the two (2) batteries, one spare tire, front side glass, skyline rope and the light on top of the cowl. The electrical wirings were not in order. The interior portion appeared to be newly-painted but the outer portion looked rusty. He could not categorically tell if the truck was in good running condition, because the batteries and ignition key were missing. The testimonies of these witnesses were not rebutted by the defendants. They are independent witnesses whose testimonies deserve full faith and credit being neutral parties to the case. Even defendant Cesar Peña admitted that the repair was not completed after thirty (30) days from receipt of the Cargo Truck.^[31]

Furthermore, the trial court held Optimum liable for damages for its failure to execute its part of the contract on time, pursuant to Article 1170 of the Civil Code.^[32]

Optimum filed a Notice of Appeal,^[33] whereas respondent moved for reconsideration on the ground that the trial court failed to award actual damages and that Oriental Assurance Corporation, the bonding company of Optimum, should have been adjudged liable for damages payable by the latter.^[34] On 5 August 1999, the trial court issued an order denying the motion for reconsideration on the ground that it has already lost jurisdiction over the case.^[35] Thus, respondent filed her Notice of Appeal^[36] on 25 August 1999.

On 28 June 2005, the Court of Appeals promulgated its Decision affirming with modification the ruling of the RTC, to wit:

WHEREFORE, the appealed Decision is hereby AFFIRMED with the following MODIFICATIONS:

1. Appellant Optimum is ordered to return the cargo truck or to reimburse its value in the amount of P600,000.00 plus legal interest from the time of the commencement of the action until fully satisfied;

2. Temperate or moderate damages in the amount of Thirty Thousand Pesos (P30,000.00) is awarded;
3. Twenty percent (20%) of the total award is hereby given to appellee/appellant Tan for both attorney's fees and litigation expenses; and
4. The award of moral damages is deleted.

SO ORDERED.^[37]

The Court of Appeals adhered to the trial court's findings that the repairs on the truck had not been completed and that Optimum is liable for damages. It likewise ordered the return of the truck to respondent. It noted:

The trial court, in giving credence to the claim of appellee/appellant Tan that the repair of the cargo truck was not in accordance with her agreement with appellant Optimum, found the testimonies of a court personnel and a process server to be deserving of full faith and credit, being neutral parties. These witnesses categorically declared in favor of appellee/appellant Tan that the cargo truck was not yet repaired as of April 25, 1994 and May 14, 1994, respectively. Thus, even if We admit appellant Optimum's defense that the repair was delayed by the late delivery on May 7, 1994 of the quarter glass panel and the rubber strips, the fact remains that even after the said delivery on May 7, 1994, no such repair was yet done. The trial court found the defense of late delivery to be even toppled by a rebuttal witness for appellee/appellant Tan who testified that the said glass need not even be repaired or that it was not necessary for the complete repair of the cargo truck since they were not damaged at the time he had inspected the cargo truck prior to its delivery for repair to appellant Optimum.

Necessarily then, appellant Optimum was already liable to appellee/appellant Tan for damages from the time the latter demanded delivery of the cargo truck and the latter could not as yet deliver the same despite the lapse of the agreed period. The trial court rightly concluded that appellant Optimum was already remiss in the performance of its part of the contract for repair from the time of such demand. Hence, its liability accrues by virtue of Article 1170 of the Civil Code that states: Those who in the performance of their obligation are guilty of fraud, negligence or delay and those who in any manner contravene the tenor thereof are liable for damages. Thus, appellant Optimum may be compelled to deliver the cargo truck to appellee/appellant Tan despite that the agreed repair was not totally made or to reimburse the value thereof in the claimed amount of Six Hundred Thousand Pesos (P600,000.00), plus the legal interest of six percent (6%) thereof from the filing of the complaint for recovery.^[38]

Both parties moved for reconsideration. For her part, respondent reiterated that her claim for compensatory damages is supported by statement of accounts showing the earnings of the truck before it was brought to Optimum for repair. She likewise expressed disinterest in the return of the truck as it was no longer in good condition. Instead, she sought merely the reimbursement of its value at P600,000.00 with