

## TWELFTH DIVISION

[ CA-G.R. SP. No. 122875, March 11, 2014 ]

**EDGARDO L. DE JESUS, PETITIONER, V. FORD LIBIS AND DEPARTMENT OF TRADE AND INDUSTRY, RESPONDENTS.**

### D E C I S I O N

**ELBINIAS, J.:**

Subject here is a Petition for Certiorari<sup>[1]</sup> filed under Rule 65 of the Rules of Court. The Petition assails the Resolution<sup>[2]</sup> dated August 9, 2011 of public respondent Department of Trade and Industry ("public respondent DTI" for brevity) in APPEAL CASE NO. 010-06.

Among the salient facts are those as stated in public respondent DTI's Resolution<sup>[3]</sup> dated August 9, 2011, which are as follows:

"Briefly, it is shown that **complainant** (*petitioner here*) **availed the 50% promotional offering by Ford Libis** (*private respondent here*) **of the For[d] Explorer Sport Trac model with the balance payable in two (2) years. Complainant** (*petitioner*) **informed respondent sales agent Cecille Cruz to get a[n] 'estate green' 2003 Ford Explorer Sport Trac in time for his wedding anniversary on July 22, 2003 with a price of P1, 368,000.00. Respondent** (*private respondent*) **did not have a unit of that color so it acquired from a co-dealer, Ford Edsa.**

**Complainant** (*petitioner*) **alleged that upon acquiring the unit on July 23, 2003, he** (*petitioner*) **noticed that the same did not have the smell of a brand new unit and that he** (*petitioner*) **told Ms. Cruz his observation that the unit was not a 2003 brand new model. Ms. Cruz accordingly answered him that the unit was brand new and the sale pushed through. The Vehicle Sales Invoice shows that the subject vehicle is a 2003 model, however, due to complainant's** (*petitioner's*) **suspicion, he asked some of his friends from LTO on the basis of the conduction sticker pasted on the vehicle. He** (*petitioner*) **was allegedly told that the unit was a 2002 issue.** He did not complain on what he learned, however, almost three (3) months after he bought the vehicle, she (*sic*) (*petitioner*) brought it to the service center for the first 800 km[.] check up and still he (*petitioner*) did not clarify the matter. It was only when he (*petitioner*) went back for installation of tonneau (pick-up cover), keyless entry and alarm that he (*petitioner*) told Ms. Cruz about what he (*petitioner*) discovered that the unit is a 2002 issue based on the conduction sticker but he did not file a formal query or complaint. **When he** (*petitioner*) **brought the said unit with** (*sic*) **Ford Edsa for a 500 km check-up, to his disappointment, he** (*petitioner*) **discovered that the subject**

**vehicle is a 2002 year model based on the computer generated print-out. Complainant (*petitioner*) alleged that based on the 10th digit of the Vehicle Identification Number (VIN), the vehicle is a 2002 model and its model number is different from the one indicated in the Vehicle Sales Invoice, Certificate of Registration and Official Receipt given by the respondent (*private respondent*). xxx”<sup>[4]</sup> (*Emphasis Supplied*)**

On November 24, 2004, petitioner Edgardo L. De Jesus (“petitioner” for brevity) filed before public respondent DTI, a Complaint<sup>[5]</sup> for “Deceptive, Unfair, and Unconscionable Sales Acts and Practices under Arts. 50 and 52”<sup>[6]</sup> of Republic Act No. 7394 (“R.A. No. 7394” for brevity), otherwise known as “The Consumer Act of the Philippines” against private respondent Ford Libis (“private respondent” for brevity).

The rest of the facts are continued in public respondent DTI's Resolution<sup>[7]</sup> dated August 9, 2011, to wit:

“During the preliminary conference, it was ruled that there was no need to include Ford Edsa and Ford Group Philippines, Inc. (FPGPI) as respondents since complainant (*petitioner*) has no privity of contract with them and even respondent Libis (*private respondent*) did not manifest to implead them as co-respondent.”<sup>[8]</sup>

On December 18, 2006, the Acting Consumer Arbitration Officer (CAAO) of the Office of Legal Affairs (“DTI-OLA” for brevity) of public respondent DTI rendered a Decision<sup>[9]</sup>, the dispositive portion of which read:

“WHEREFORE, foregoing premises considered, this Office finds for Complainant. Respondents are hereby found to have violated R.A. No. 7394, particularly the provisions of Deceptive, Unfair, and Unconscionable Sales Acts and Practices (Arts. 50 and 52). Consequently, Respondents are hereby directed to:

1. A. Refund the payments made by Complainant, as follows:

- a. Downpayment in the amount of SIX HUNDRED NINETY-EIGHT THOUSAND SIXTY-EIGHT PESOS (Php698,068.00) Philippine currency;
- b. FORTY-FIVE THOUSAND PESOS (Php45,000.00) Philippine currency, for the hard tonneau;
- c. SIX THOUSAND SEVEN HUNDRED SIXTY-NINE PESOS (Php6,769.00) Philippine currency, for the keyless entry; and
- d. Amortization payments paid by Complainant.

*PROVIDED*, that [a]fter Respondents have refunded above-mentioned amounts of money to the Complainant, the latter shall return the subject Ford Explorer Sport Trac to the former.

***OR IN THE ALTERNATIVE -***

B. Replace the subject vehicle with another Ford Explorer Sport Trac, which should be of 5000 kms. mileage only.

2. Pay Administrative Fine to the Government of the Republic of the Philippines, thru the Department of Trade and Industry, in the amount of FIFTEEN THOUSAND PESOS (Php15,000.00) Philippine currency, payable at the DTI-Cashier's Office, 4th Floor, 361 Sen. Gil Puyat Avenue, Makati City.

SO ORDERED. No pronouncement as to costs."<sup>[10]</sup> (*Emphasis and Italics were made in the original*)

As a result, private respondent Ford Libis filed an Appeal<sup>[11]</sup> on February 1, 2007<sup>[12]</sup> before the Office of the Secretary of public respondent DTI.

On May 31, 2007, the Office of the Secretary of public respondent DTI, through Director Benjamin T. Subido ("Director Subido" for brevity), issued an Order<sup>[13]</sup> remanding the case to the DTI-OLA for further proceedings to establish the year model of the subject vehicle.<sup>[14]</sup>

Petitioner and private respondent filed their respective Motions for Reconsideration<sup>[15]</sup> which were both denied by the Secretary of public respondent DTI, through Director Subido, in an Order<sup>[16]</sup> dated September 21, 2007. The Order also set aside<sup>[17]</sup> the DTI-OLA's Decision<sup>[18]</sup> dated December 18, 2006 because "during the arbitration proceedings, both parties (not complainant alone) failed to establish the true year model of the subject vehicle, which is the very reason why there is a need to remand the case to the concerned ACAO."<sup>[19]</sup>

On March 9, 2010, the DTI-OLA rendered a Decision<sup>[20]</sup> dismissing the case for petitioner's failure to "prove that the year model of the subject vehicle [was] indeed, 2002"<sup>[21]</sup> because petitioner only presented a "photocopy of the Sales Invoice"<sup>[22]</sup> of the subject vehicle.

Upon petitioner's Appeal<sup>[23]</sup>, public respondent DTI, through its Appeals Committee, issued the assailed Resolution<sup>[24]</sup> of August 9, 2011. The dispositive portion of the Resolution read:

"WHEREFORE, premises considered, the instant appeal is hereby granted. The respondent is hereby directed to perform the following:

1. To refund the complainant the price difference between 2002 and 2003 model of the vehicle.
2. To pay an administrative fine in the amount of P25,000.00 payable at DTI - Cashier's Office, 4th flr., 361 Sen. Gil Puyat Avenue, Makati City.

SO ORDERED."<sup>[25]</sup>

Petitioner then filed the Petition at bench, praying that:

"WHEREFORE, all the foregoing premises considered, Petitioner Edgardo L. De Jesus respectfully prays that the first part of the Decision dated 18 December 2006 be REINSTATED and the 2nd part – the option to avail of

the alternative should be an option to be exercise[d] by the Petitioner and only if there is a real 2003 year and model Sportac, in light of clear evidence that the only issue to be resolved, i.e., the true and actual year model of the subject vehicle, had been clearly established to be 2002, and not 2003. Specifically, Petitioner prays that:

1. A. Refund the payments made by Petitioner, as follows:

a. Downpayment in the amount of SIX HUNDRED NINETY EIGHT THOUSAND SIXTY-EXIGHT (sic) PESOS (P698,068.00) Philippine currency;

b. FORTY-FIVE THOUSAND PESOS (P45,000.00) Philippine currency, for the hard tonneau;

c. SIX THOUSAND SEVEN HUNDRED SIXTY-NINE PESOS (P6,769.00) Philippine currency, for the keyless entry; and

d. Amortization payments paid by Petitioner.

PROVIDED, that after Ford Libis have refunded above-mentioned amount of money to the Petitioner, the latter shall return the subject Ford Explorer Sport Trac to the former.

*OR AT THE PETITIONER'S OPTION, AS AN ALTERNATIVE*

B. Replace the subject vehicle with a 2003 Ford Explorer Sport Trac.

2. Pay Administrative Fine to the Government of the Republic of the Philippines, thru the Department of Trade and Industry, in the amount of FIFTEEN THOUSAND PESOS (P15,000.00) Philippine currency, payable at the DTI-Cashier's Office, 4th Floor, 361 Sen. Gil Puyat Avenue, Makati City.

Petitioner prays for other just and equitable reliefs in the premises.”<sup>[26]</sup>

Petitioner raised the following grounds:

## “I

**THE DTI APPEALS COMMITTEE COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR IN EXCESS OF JURISDICTION BY WHOLLY DEPARTING FROM THE DISPOSITIVE PORTION OF THE 18 DECEMBER 2006 DECISION OF THE DTI OLA, WHICH ALREADY FORMED PART OF THE LAW OF THE CASE.**

## II

**EVEN ASSUMING THAT THE DTI APPEALS COMMITTEE MAY DEPART FROM ITS EARLIER FINDINGS, THE DTI APPEALS COMMITTEE COMMITTED GRAVE ABUSE OF DISCRETION IN DIRECTING FORD LIBIS TO MERELY REFUND THE PRICE DIFFERENCE BETWEEN 2002 AND 2003 MODEL OF THE VEHICLE. THE MEAGER PENALTY IS CONTRARY TO LAW, BEREFT OF LEGAL BASIS AND IS THE INCORRECT PENALTY TO BE IMPOSED AGAINST A COMPANY FRAUDULENTLY SELLING A VEHICLE**

**DIFFERENT FROM THE VEHICLE DESCRIBED IN THE SALES INVOICE, OR AGAINST A COMPANY ENGAGED IN MISREPRESENTATION, FRAUDULENT, DECEPTIVE, AND UNFAIR SALES PRACTICES.**<sup>[27]</sup> (*Emphasis was made in the original*)

To begin with, the Petition for Certiorari at bench is readily defective and dismissible. This is because petitioners failed to file a Motion for Reconsideration of the assailed public respondent DTI's Resolution<sup>[28]</sup> dated August 9, 2011 before filing the Petition at bench. Such failure violates the pronouncement of the Supreme Court in ***Novateknika Land Corporation vs. Philippine National Bank and the Register of Deeds of Manila City***<sup>[29]</sup>, *citing Cervantes vs. Court of Appeals*, as follows:

**"Unmistakably, before a petition for certiorari can prosper, the petitioner must be able to show, among others, that he does not have any other 'plain, speedy and adequate remedy in the ordinary course of law.' This remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the questioned order.**

xxx

Jurisprudence is replete with decisions which reiterate that **before filing a petition for certiorari in a higher court, the attention of the lower court should be first called to its supposed error and its correction should be sought. Failing this, the petition for certiorari should be denied.** The reason for this is to afford the lower court the opportunity to correct any actual or fancied error attributed to it through a re-examination of the legal and factual aspects of the case. **The petitioner's disregard of this rule deprived the trial court the right and the opportunity to rectify an error unwittingly committed or to vindicate itself of an act unfairly imputed.** (*Emphasis Supplied*)

As aptly declared by this Court in the case of *Cervantes v. Court of Appeals*:

It must be emphasized that a writ of certiorari is a prerogative writ, never demandable as a matter of right, never issued except in the exercise of judicial discretion. Hence, he who seeks a writ of certiorari must apply for it only in the manner and strictly in accordance with the provisions of the law and the Rules. **Petitioner may not arrogate to himself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so, which petitioner failed to do.** Thus, the Court of Appeals correctly dismissed the petition. xxx (*Emphasis was made in the original*)

xxx

**The petitioner is reminded that procedural rules are instituted to facilitate the adjudication of cases and, as such, the courts and the litigants are enjoined to abide strictly by the rules.** While it is true that litigation is not a game of technicalities, it is equally important