

SPECIAL ELEVENTH DIVISION

[CA-G.R. CV No. 99656, November 25, 2014]

**CATHAY PACIFIC STEEL CORPORATION, PLAINTIFF-APPELLEE,
VS. CHARLIE CHUA UY, JR., DEFENDANT-APPELLANT.**

DECISION

PAREDES, J.:[*]

THE CASE

THIS APPEAL, filed by defendant-appellant Charlie Chua Uy, Jr. (Uy), assails the Decision^[1] dated August 10, 2012 of the Regional Trial Court (RTC), Branch 91, Quezon City, in Civil Case No. Q-08-63028 for *Sum of Money and Damages*.

THE ANTECEDENTS

On July 15, 2008, plaintiff-appellee Cathay Pacific Steel Corporation (Cathay) filed a Complaint^[2] against Uy for *Sum of Money and Damages* alleging, that: on February 16, 1996, Cathay hired Uy as section supervisor and at its Novaliches plant; on July 1, 1999, Uy was assigned as the material handling officer tasked with checking, accepting, and releasing steel products that go through the Novaliches plant premises, and the sale of special assorted (below standard length) steel bars known as *retazos*, authorized to accept cash payments directly from customers to be remitted immediately to Cathay's treasury department; sometime in March 2008, Cathay's management conducted a special audit of sales of *retazos* for the period covering the first quarter of 2008; as a result of the special audit, Cathay discovered that cash proceeds from the sale of *retazos* for the month of February 2008 covered by several delivery receipts amounting to P409,280.00 were not remitted to its treasury department; Uy's signature was on the delivery receipts; on May 29, 2008, Cathay sent a demand letter for payment of the amount covered by the questionable transactions within five days from receipt, but Uy failed to pay or settle with Cathay; and, the unlawful refusal of Uy to settle his obligation to Cathay caused it to file a collection suit and engage the services of counsel. Cathay prayed that a decision be rendered ordering Uy to pay P409,280.00 as principal obligation, legal interest from the filing of the complaint until fully paid; attorney's fees of P50,000.00; and costs of suit.

Uy filed a Motion^[3] for bill of particulars on August 26, 2008 which was opposed^[4] by Cathay. In a Resolution^[5] dated February 1, 2009, the motion was granted by the RTC and the same was complied^[6] with by Cathay. Uy then filed a Motion^[7] to Dismiss on the ground that the complaint states no cause of action but this was denied by the RTC in its Resolution^[8] dated May 29, 2009.

On February 11, 2010, Uy filed his Answer^[9]. Uy prayed that after hearing, the

complaint be dismissed and his counterclaim granted ordering Cathay to pay him actual damages of not less than P1,000,000.00; P1,000,000.00 by way of moral damages; P500,000.00 as exemplary damages; attorney's fees of P200,000.00 and costs of suit.

The parties were referred^[10] to mediation but this was unsuccessful^[11]. Pre-trial^[12] was conducted; and, thereafter, trial on the merits proceeded.

Cathay presented the testimonies of Elmer San Gabriel, Gerardo Delos Reyes Capitulo, and Angelito Kong Ong.

Elmer San Gabriel testified^[13], that: he was the corporate operations officer of Cathay and was authorized^[14] to file the case against Uy; he is in charge of handling the internal and external affairs of Cathay and performs such other duties as may be assigned by management; Cathay employed Uy in February 1995 as section head and later on assigned to various positions; in 1999, Uy was assigned as material handling officer at the Novaliches plant of Cathay; as such officer, Uy was tasked to monitor, check and authorize the release of steel products going in and out of the plant; Uy was also assigned to handle the sale of *retazos* on cash transaction basis; in March 2008, he was tasked to investigate anomalies pertaining to the sale of *retazos*; the treasury department conducted an audit by looking at the records of the remittances made by Uy and found that there were five (5) transactions in the month of February 2008 where the proceeds of the sale of the *retazos* were not remitted to Cathay's treasury department; the amount involved was more or less P409,000.00; Uy, who is also in charge of authorizing the release of sold *retazos*, authorized the release of the *retazos* in these five (5) transactions which are covered by Scrap Miscellaneous Sales (SMS)^[15], because the products will not be released without his signature; after the investigation, Cathay tried to contact Uy but failed to do so; meanwhile, Uy submitted a resignation letter^[16]; Cathay sent a letter^[17] to Uy on April 4, 2008 informing him that the company did not accept his resignation and that he was being asked to report for work; when Uy failed to respond, Cathay sent another letter^[18] dated April 15, 2008 which was received by his wife; when Cathay did not get any response, the matter was referred to the company counsel who then sent a demand letter^[19] to Uy; when there was no reply, the case was subsequently filed. Consequently, Cathay incurred P50,000.00 for the services of counsel and P7,128.00 as filing or docket fee. Cathay also filed a criminal complaint^[20] with the Office of the City Prosecutor of Quezon City against Uy; however, the complaint was dismissed^[21].

Gerardo Delos Reyes Capitulo stated^[22], that: he is employed as weigher and dispatcher at the material handling office of Cathay in Novaliches tasked with measuring deliveries or pick-ups of steel bars; he assists customers who want to buy steel bar *retazos*; when an investigation was conducted about the sale of *retazos*, Uy stopped reporting for work; during the investigation, sales receipts that were not remitted were shown to them; Cathay issues SMS as receipts in the sale of *retazos*; the signature of Uy appeared on the SMSes subject of the investigation; he is familiar with Uy's signature having worked with him from 1999 to 2008; he does not remember if he participated in the anomalous sale transactions covered by the SMSes; and when the investigation was conducted, Uy was no longer with Cathay

and did not take part therein.

Finally, Angelito Kong Ong testified^[23], that: he was a sales executive of Cathay whose function is to receive and process orders of the customers; sometimes he is tasked to check and verify whether the statement of account of customers have been paid or not; sometime in 2008, he was instructed to check and verify the unpaid statement of accounts^[24] for the purchase of steel bars and retazos; he found an unpaid account at the Novaliches plant; since Uy was the person in-charge of the material handling office and the sale transactions, he attempted to call the attention of Uy about the unpaid balance of a particular customer in March 2008, but Uy had stopped reporting to the office; hence, he referred the matter to their legal department.

Cathay submitted its Formal Offer^[25] of Documentary Evidence on June 21, 2011; Uy filed a Comment^[26] thereon. All exhibits of Cathay were admitted by the RTC in the Order^[27] dated July 18, 2011.

Uy testified^[28] in his defense and stated, that: he is a civil engineer by profession; he felt embarrassed and suffered sleepless nights because of the filing of the case; he also lost business and job opportunities and incurred costs for the hiring of lawyers; he submitted a resignation letter which was objected to by the plant manager so he had the letter received by the security guard; and he resigned because a job opportunity opened up, but which he lost because of the filing of a criminal case against him.

He then filed his Formal Offer^[29] of Evidence on September 23, 2011. After the Comment^[30] of Cathay, the RTC, on November 18, 2011, admitted^[31] all exhibits of Uy.

Subsequently, the RTC issued the assailed Decision^[32], disposing of the case thus:

WHEREFORE, premises considered, defendant is hereby ordered to pay plaintiff the following:

the amount of Four Hundred Nine Thousand Two Hundred Eighty Pesos (P409,280.00) as actual damages with legal interest from the filing of the complaint, attorney's fees in the amount of Fifty Thousand Pesos (P50,000.00) plus cost of suit.

SO ORDERED^[33].

Hence, this appeal^[34], Uy ascribing the following errors to the RTC, as follows:

THE COURT A QUO GROSSLY ERRED IN NOT DISMISSING THE COMPLAINT DUE TO THE UTTER FAILURE OF THE PLAINTIFF-APPELLEE TO PREPONDERANTLY ESTABLISH ITS CLAIM AGAINST THE DEFENDANT-APPELLANT.

THE COURT A *QUO* GROSSLY ERRED IN NOT AWARDING DEFENDANT-APPELLANT OF HIS COUNTERCLAIM FOR DAMAGES DESPITE ITS APPARENT AND INDUBITABLE BAD FAITH AND MALICE IN FILING THE INSTANT COMPLAINT AT BAR^[35].

THE ISSUE

In fine, the issue for resolution is whether or not the RTC erred in finding Uy liable towards Cathay for unremitted payments from the sale of *retazos*.

THE COURT'S RULING

The appeal is impressed with merit.

Uy argues^[36] that Cathay failed to prove its claim by preponderance of evidence because no evidence was presented to show that: its was his duty to sell *retazos*^[37]; he sold the *retazos* in the anomalous transactions but failed to remit the payments thereto^[38]; and that there was a shortage in the remittance of the payments for *retazos* sold^[39]. ***We agree.***

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law, which is preponderance of evidence in civil cases^[40]. "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." "Preponderance of evidence" is a phrase that, in the last analysis, means probability of the truth. It is evidence that is more convincing to the court as worthy of belief than that which is offered in opposition thereto^[41]. Rule 133, Section 1 of the Rules of Court provides the guidelines in determining preponderance of evidence, thus:

SECTION 1. *Preponderance of evidence, how determined.* - In civil cases, the party having burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

On the other hand, a cause of action is defined as "the act or omission by which a party violates a right of another"^[42]. It is the wrongful act or omission committed

by the defendant in violation of the primary rights of the plaintiff. Its elements consist of: (1) a right existing in favor of the plaintiff, (2) a duty on the part of the defendant to respect the plaintiff's right, and (3) an act or omission of the defendant in violation of such right^[43]. Cathay had to prove, by a preponderance of evidence, that: (a) it had the right to receive the payments from the sale of *retazos*; (b) Uy had the duty to remit such payments to the treasury department of Cathay; and (c) Uy failed to observe such duty.

Since our Rules of Court, in speaking of burden of proof in civil cases, states that each party must prove his own affirmative allegations and that the burden of proof lies on the party who would be defeated if no evidence were given on either side, the burden of proof is generally on the plaintiff, with respect to his complaint. In the instant case, it is Cathay's burden to prove that it is entitled to its claim against Uy. After a review of the records and evidence on hand, we rule that Cathay has failed to discharge its burden^[44].

In order to hold Uy liable, Cathay must be able to show that there were indeed payments from the sale of *retazos* which were not remitted to its treasury department. However, other than its allegation that a special audit was conducted and that the audit finding was that there were unremitted sales, there is a dearth of evidence to establish the claim of Cathay that Uy failed to remit payments from the sale of *retazos* in five (5) specific instances or transactions.

Cathay presented five (5) scrap miscellaneous sales^[45] and statements of accounts^[46], identified during the testimonies of its witnesses, to prove the unremitted sale proceeds. However, a perusal of these pieces of documentary evidence reveals discrepancies which do not support the claim of Cathay about the missing remittances. For one, while the anomalous transactions supposedly occurred sometime in February 2008 and a special audit and investigation was conducted shortly thereafter, the unpaid statements of account were all dated June 1, 2011, nearly three years after the filing of the complaint against Uy; these statements of account could not have been the statements of account used^[47] in the supposed audit investigation. If what prompted the filing of the complaint was the result of an audit conducted sometime after February 2008, it is inconceivable for statements of accounts used in the audit to be generated only after the filing of the complaint. Also, Cathay failed to present any evidence regarding the conduct of a special audit/investigation and the findings of the special audit. A written report, as is usual in the ordinary course of the audit, has not been submitted or presented. Furthermore, even the scrap miscellaneous sales and statements of account are conflicting, thus:

SMS* No.	Amount	SMS, as reflected in the SOAs ^x (dated 6/1/11)	Amount (Balance)
2285 ^[48]	P80,295.00	2285 ^[49]	P80,295.00
2353 ^[50]	81,090.00	2353 ^[51]	81,090.00
2296 ^[52]	142,305.00	2296 ^[53]	142,305.00