



REPUBLIC OF THE PHILIPPINES  
SUPREME COURT  
Manila

SECOND DIVISION

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **27 January 2021** which reads as follows:*

**“G.R. No. 253359 (*Tektwin Marketing Corporation v. Bermon Marketing Communications Corporation*).** – The Court resolves to **GRANT** petitioner’s motion for extension of thirty (30) days from the expiration of the reglementary period within which to file a Petition for Review on *Certiorari*.

The petition utterly lacks merit.

In reciprocal obligations, either party may rescind the contract upon the other’s breach of obligation.<sup>1</sup> The basis therefor is Article 1191 of the New Civil Code, *viz.*:

Article 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible. xxx

More accurately referred to as resolution, rescission is predicated on a breach of faith that violates the reciprocity between the parties to the contract. This retaliatory remedy is given to the contracting party who suffers the

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<sup>1</sup> *Golden Valley Exploration, Inc. v. Pinkian Mining Co.*, 736 Phil. 230, 236 (2014).

injurious breach on the premise that it is “unjust that a party be held bound to fulfill his promises when the other violates his.”<sup>2</sup>

*Casiño v. Court of Appeals*<sup>3</sup> decreed though that rescission would not be permitted for “slight or casual” breach of contract but only for “**substantial and fundamental**” breach.<sup>4</sup> Substantial breach refers to violations which defeat the very object of the parties in making the agreement.<sup>5</sup> The question of whether a breach of contract is substantial **depends upon the attending circumstances**.<sup>6</sup>

Here, it is undisputed that the sales contract executed between petitioner and respondent provided for the sale of one (1) Teckwin 2500 printer worth ₱2,600,000.00. One of the specifications stated therein is that it must be equipped with **XAAR 126 printer head**, viz.:

One (1) unit Teckwin 2500                      Php2.6million

xxx

Printing Technology

- High-resolution piezoelectric print heads **Xaar 126**, 600x600 dpi

xxx

Based on the sales contract, petitioner and respondent had reciprocal obligations, *i.e.*, for petitioner to deliver the Teckwin 2500 printer with XAAR 126 printer head to respondent, and for respondent to pay for the said printer in accordance with the terms of payment. But after respondent fulfilled its obligation by making a downpayment representing 50% of the purchase price and issuing twelve (12) post-dated checks as installment for the remaining 50% balance, petitioner failed to comply with its contractual commitment when what it delivered to respondent was a printer with XAAR 128 printer head instead of XAAR 126 printer head. Surely, petitioner breached the sales contract. Both the trial court and the Court of Appeals correctly found that it was substantial breach.

Records show that from the time petitioner delivered the printer with XAAR 128 printer head to respondent, the latter had not been able to use it without any malfunction issues or printing defects. Even a tarpaulin could not be printed without being crumpled. That respondent continued to purchase inks for the printer is of no moment. For respondent never denied that they were able to use the printer during times that it was not malfunctioning. But

<sup>2</sup> *Nolasco v. Cuerpo*, 775 Phil. 410, 415 (2015).

<sup>3</sup> 507 Phil. 59, 70 (2005).

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*, (paraphrased).

<sup>6</sup> *Supra* note 2 at 416.

every time the printer malfunctioned, respondent had to call petitioner to service it as shown by the trouble shooting/maintenance forms.<sup>7</sup> Too, respondent's letter complaint to petitioner on December 6, 2003 showed that the printer had several issues that needed to be addressed.<sup>8</sup>

As it was, the printer with XAAR 128 printer head caused the printer itself to malfunction. Petitioner's own technician Mr. Yao confirmed that the malfunction was due to the incompatible XAAR 128 printer head. To remedy the defect, petitioner offered to replace the printer head with XAAR 126,<sup>9</sup> but it never did. Consequently, respondent's printing and advertising business had been severely affected. Not only did respondent incur additional expenses for the repair of the printer, they also incurred losses and missed business opportunities thus negating the very reason why it entered into the sales contract with petitioner.<sup>10</sup>

Petitioner, though, claims there was no breach of contract to speak of since respondent supposedly agreed, albeit verbally, to the delivery of the Teckwin 2500 printer with XAAR 128 print head. But as the trial court and the Court of Appeals aptly found, such claim is unsubstantiated. A party who asserts that a contract of sale has been changed or modified has the burden of proving the change or modification by clear and convincing evidence.<sup>11</sup> Further, an unsubstantiated testimony offered as proof of verbal agreements which tend to vary the terms of a written agreement is inadmissible.<sup>12</sup>

More, the Court of Appeals found that it was petitioner's technician Mr. Han Yao who eventually told respondent that a printer head XAAR 128 was the one installed in the printer instead of XAAR 126.<sup>13</sup>

It is clear therefore that petitioner's failure to deliver a Teckwin 2500 printer with XAAR 126 printer head cannot, by any measure, be considered as "slight or casual."<sup>14</sup> As the Court of Appeals correctly held:

By failing to deliver the stipulated specifications of the printer agreed upon by the parties as subject of the sales contract, Tektwin committed serious breach of its obligation. The said breach caused Bermon to incur unnecessary costs for repair including the incidental costs as per advice by Tektwin's technician to make the printer function well. Tektwin offered to replace the printer head but failed again to fulfill the said promise which left Bermon with no choice but to file a case for rescission of contract. The repeated breach of Tektwin in the performance of its obligation under

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<sup>7</sup> *Rollo*, p. 33.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Supra* note 2.

<sup>11</sup> *Aerospace Chemical Industries, Inc. v. Court of Appeals*, 373 Phil. 710, 727 (1999).

<sup>12</sup> *Sps. Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785, 816 (2001).

<sup>13</sup> *Supra* note 7.

<sup>14</sup> *Supra* note 3 at 70.

the sales contract is substantial and fundamental that defeats the very object of the parties in making the agreement. Hence, rescission is proper.<sup>15</sup>

Verily, the Court of Appeals did not commit reversible error when it affirmed the trial court's findings that petitioner's breach of contract is substantial. **The rescission of the sales contract is therefore proper.**

In *Supercars Management & Development Corp. v. Flores*,<sup>16</sup> Supercar and Flores entered into a contract of sale for the latter's purchase of an Isuzu Carter Crew Cab. But after the vehicle was delivered to respondent, it continued to malfunction despite repeated repairs by Supercar. Consequently, Flores filed a complaint for rescission of contract which the trial court granted finding that Supercar failed to comply with its obligation to deliver a well-functioning Isuzu Carter Crew Cab vehicle for the use of Flores. The Court upheld the rescission of contract of sale on ground of substantial breach.

So must it be in the case at bar.

Going now to the effects of rescission, Article 1385 of the New Civil Code states:

**Article 1385.** Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore. xxx

In *Gotesco Properties, Inc. v. Sps. Fajardo*,<sup>17</sup> the Court held that rescission under Article 1385 in relation to Article 1191 of the New Civil Code does not merely terminate the contract and release the parties from further obligations to each other, but abrogates the contract from its inception and restores the parties to their original positions as if no contract has been made.<sup>18</sup>

Following *Gotesco*, the trial court aptly ordered petitioner and respondent to be restored to their original positions as if the sales contract was not executed, thus petitioner was required to pay respondent ₱1,516,000.00 or the equivalent of 50% down payment and ₱46,430.00 freight charges paid, while respondent was required to return the Teckwin 2500 printer with XAAR 128 printer head to petitioner.<sup>19</sup>

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<sup>15</sup> *Rollo*, pp. 35-36.

<sup>16</sup> 487 Phil. 259-270 (2004).

<sup>17</sup> 705 Phil. 294, 303 (2013).

<sup>18</sup> Citing *Unlad Resources Dev't. Corp. v. Dragon*, 582 Phil. 61, 80 (2008)

<sup>19</sup> See fallo of RTC Decision dated August 8, 2017; *rollo*, p. 56.

Since respondent was constrained to litigate to protect its interests due to petitioner's breach, the Court finds the award of attorney's fees in the amount of ₱100,000.00 proper.<sup>20</sup>

Finally, *Nacar v. Gallery Frames*<sup>21</sup> decrees that monetary awards adjudged are in the nature of forbearance of money. Hence, the total amount adjudged here shall be **modified** by adding an interest rate of 6% *per annum* reckoned from finality of this Resolution until full satisfaction.<sup>22</sup>

**ACCORDINGLY**, the petition is **DENIED** for failure to sufficiently show that the Court of Appeals committed reversible error in rendering its assailed dispositions as to warrant the Court's exercise of its discretionary appellate jurisdiction.

The Decision dated July 11, 2019 and Resolution dated August 27, 2020 of the Court of Appeals in CA-G.R. CV No. 110572 are **AFFIRMED with MODIFICATION**.

Petitioner **Tektwin Marketing Corporation** is ordered to **refund** respondent **Bermon Marketing Communications Corporation** ₱1,516,000.00 representing the 50% down payment paid for (1) unit Teckwin 2500 printer; ₱46,430.00 freight charges; and ₱100,000.00 attorney's fees. These amounts shall earn six percent (6%) interest *per annum* from finality of this Resolution until fully paid.

Respondent **Bermon Marketing Communications Corporation**, on the other hand, is ordered to **return** the Teckwin 2500 printer to petitioner **Tektwin Marketing Corporation** upon payment of all its claims.

**SO ORDERED.**" (Hernando, *J.* designated additional member per Raffle dated January 4, 2021; Lopez, Mario *J.*, no part due to prior action in the Court of Appeals; Lopez, Jhosep *J.*, additional member per Special Order No. 2797 dated January 26, 2021)

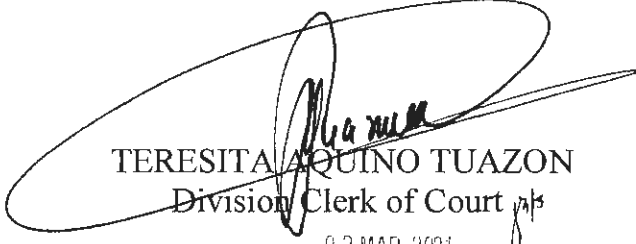
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<sup>20</sup> See *Heirs of Asis, Jr. v. G.G. Sportswear Manufacturing Corp.*, G.R. No. 225052, March 27, 2019; See also *Fil-Estate Properties, Inc. v. Spouses Go*, 557 Phil. 377, 385 (2007).

<sup>21</sup> 716 Phil. 267-283 (2013).

<sup>22</sup> See *Heirs of Asis, Jr. v. G.G. Sportswear Manufacturing Corp.*, supra note 20.

By authority of the Court:



TERESITA AQUINO TUAZON  
Division Clerk of Court  
03 MAR 2021

By:

MA. CONSOLACION GAMINDE-CRUZADA  
Deputy Division Clerk of Court

A.M. ALBERTO LAW OFFICE (reg)  
Counsel for Petitioner  
5<sup>th</sup> Floor, Pioneer cor. Sheridan Sts.  
Mandaluyong City

ATTY. BRYAN DE JESUS (reg)  
Counsel for Respondent  
Unit 201 MJM Building I  
650 JP Rizal St., Brgy. Valezuela  
1208 Makati City

HON. PRESIDING JUDGE (reg)  
Regional Trial Court, Branch 211  
Mandaluyong City  
(Civil Case No. MC07-3200)

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COURT OF APPEALS (x)  
Ma. Orosa Street  
Ermita, 1000 Manila  
CA-G.R. CV No. 110572

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