

ANALYSIS OF 5/11/2016 APPEALS COURT MOTION FOR RECONSIDERATION

Of all the documents here, this my favorite. Why? Let me explain.

My warranty claim was denied because even though the owners manual recommended the first oil change at 12,500 km, according to the warranty, an oil change at 1,600, 5,000 and 10,000 km was required. We mentioned this not only in our letters, but also in our complaint - the first legal document filed in this case. Subaru, however, never addressed this in any document up until this point (instead, only mentioning in vague terms that the car was not maintained). They knew that not only were their policies laughable, but also likely illegal (which is one of the reasons why I consider Subaru a criminal enterprise). So what they did instead is try their best to find another reason why the warranty was denied. And since I never received a denial in writing, they could claim that the warranty was denied for any reason that they could now think of. So, to get this case dismissed, what did Subaru try?

- There was a mysterious second owner of the car that took the car racing, with the proof being that the shocks were changed.
- The car had unauthorized modifications, also submitting as proof the fact that the shocks were changed (I guess if the tires were changed, that would be a reason also).
- The lawsuit was not filed within two days of the car breaking down. They attempted to support this wild requirement with case law that had nothing to do with the issue.
- The case had not been filed against the right companies. So who is the right company? They just told us to continue to play eenie meey mynee mo (their exact words).
- Make counter claims against me for millions of pesos, hoping to scare me into dropping the case (surprise surprise, that didn't work)
- That this was some type of extortion scheme. And their proof for this one? Well, because I wanted my warranty honored.
- So many different minor technicalities, I could not even begin to list them here.

So here we are. Nothing has worked. They made these claims to the trial judge. When denied, they asked the judge to reconsider. When denied again, they appealed. And when the appeal was denied, they filed the document we have here, which is asking the Court of Appeals to reconsider. But if this does not work, they will only have the Supreme Court to avoid a trial.

So they take a risk. In Paragraph 4.2, they state that since I admitted that I did not change the oil at 1,600, 5,000, and 10,000 km, the warranty was not valid. Easy to miss, but up until this point they had never admitted that these onerous oil changes were a warranty requirement. Wow, they must be really desperate to avoid a trial. But will it work?

So there you have it. If you buy a Subaru, throw out the owners manual and you had better make an appointment in about a month for your first 10,000 peso oil change.

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**COURT OF APPEALS
MANILA**

2016 MAY 11 PM 12:48
COURT OF APPEALS
OFFICE OF ATTY. EVANGELINE LLANES

TWELFTH DIVISION


**MOTOR IMAGE PILIPINAS INC.,
and BENEDICTO G. ARCINAS,**
Petitioners,

DATE OF RECEIPT: 5-16-16
TIME OF RECEIPT: 11:30
RECEIVED BY: [Signature]

CA G.R. SP NO. 137315

-versus-

**REGIONAL TRIAL COURT, CITY
OF PASIG, BRANCH 160, (SAN
JUAN CITY STATION) presided by
Hon. MYRNAV. LIM- VERANO and
JULIAN COHEN,**
Respondents.

Court of Appeals
Republic of the Philippines

14-006795-0012
2016-05-11 12:48:00 PM
12th Division
Ramon, Jr. Bato

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MOTION FOR RECONSIDERATION

(Of the Decision dated April 15, 2016)

Petitioners, **MOTOR IMAGE PILIPINAS, INC.** ("MIPI" for brevity),
and **BENEDICTO G. ARCINAS** ("ARCINAS" for brevity), by counsel,
respectfully state that:

1. On April 26, 2016, Petitioners received a copy of the
Honorable Court's Decision promulgated on April 15, 2016, dismissing
the above-entitled Petition for *Certiorari* under Rule 65 of the Revised
Rules of Court, the dispositive portion of which read as follows:

"WHEREFORE, the instant petition for certiorari is hereby
DISMISSED for lack of merit.

SO ORDERED."

2. In dismissing the Petition, the Court ruled, among others,
that there was no grave abuse of discretion amounting to lack or excess
of jurisdiction on the part of the Public Respondent, in issuing the
assailed Orders dated February 25, 2014 and August 29, 2014 in Civil
Case No. 73836, warranting the aid of the extraordinary writ of
certiorari. According to the Honorable Court, contrary to the allegations
of the Petitioners, the Complaint and Amended Complaint filed by the
Private Respondent stated a cause of action and were not barred by
statute of limitations;

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3. With all due respect and humility to this Honorable Court, however, Petitioners fervently maintain that clearly the Complaint and Amended Complaint filed by the Private Respondent not only failed to state a cause of action against herein Petitioners, but also were barred by statute of limitations;

4. Primordially, Petitioners are one with the Honorable Court in finding that the time honored principle in testing the sufficiency of facts alleged in the Complaint as constituting a cause of action is that whether or not admitting the facts alleged, the court can render a valid verdict in accordance with the prayer of the said Complaint¹. However, bearing this in mind, a perusal of the allegations in the Complaints filed by the Private Respondent (as well as in the Annexes attached thereto, which basically formed part of the Complaints), even if hypothetically admitted, would show that the same failed to state a cause of action against Petitioners **MIPI** and **ARCINAS**, considering that therein allegations refuted the existence of a valid warranty and coverage of the damage by the warranty;

4.1. To note, the Complaints of the Private Respondent hinged on the alleged breach of warranty committed by Petitioner **MIPI**. In support thereof, Private Respondent argued that when the subject vehicle was brought to the premises of so-called Subaru Pampanga for the enforcement of the warranty, the Service Manager of the co-defendant pointed at to the Private Respondent that the subject vehicle was no longer covered by the warranty because the Service Booklet did not have the required 1,600km, 5,000km and 10,000km service stamps for the validity of the warranty. Such fact was not denied by the Private Respondent and even impliedly admitted the same, albeit, questionably, alleging that he was "surprised where the policy requiring three (3) oil changes before 12,500km came from," thus:

"11. Even before the service personnel of Subaru Pampanga could look at the car or check their records, the Service Manager made it a point to immediately tell plaintiff that the said vehicle is no longer covered by warranty because the Motor Image service booklet did not have the 1600 km, 5,000 km and 10,000 km service stamps. **However, plaintiff disagreed because maintenance schedule in the Subaru owner's manual required the first oil change only at 12,500 km. Petitioner was surprised where the Policy requiring three (3) oil changes before 12,500 km came from.**" (Emphasis in bold supplied)

¹ Misamis Occidental II Cooperative, Inc. vs. David, G.R. No. 129928, August 25, 2005, citing A. U. Valencia & Co. vs. Layug, 103 Phil., 747, 749-750, 1958.

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4.2. Glaringly, however, the Private Respondent even attached to its Complaints copies of the Warranty and Service Booklet showing that in order to qualify for any warranty claim, the owner or transferee of the subject vehicle must send the subject vehicle in for regular servicing as recommended in the Vehicle Maintenance Schedule at the back of the booklet, thus:

"3-Year New Vehicle Limited Warranty

This 3-year new vehicle warranty is transferrable to any subsequent owner of the vehicle, provided no modifications have been made to the car.

To qualify for any warranty claims, you must send your Subaru in for regular servicing as recommended in the Vehicle Maintenance Schedule at the back of this Warranty & Service Booklet." (Emphasis in bold supplied) (See page 4 of the Booklet)

Contrary to the foregoing, the Vehicle Maintenance Record (page 16 of the Booklet) bore no stamps or any indication that the subject vehicle underwent any maintenance (i.e. the 1,600 km, 5,000 km and 10,000 km services required for the validity of the warranty). Accordingly, in this instance alone, and considering the admission of the Private Respondent as to the improper maintenance of the subject vehicle, it was highly improbable as to how the Court ruled for the existence of breach of warranty, when by hypothetically admitting the allegations in the Complaints of the Private Respondent, it would in themselves show that there was in fact no breach that transpired, thus the failure to state a cause of action, without the need to present further evidence;

4.3. Likewise, consistent with the foregoing, a scrutiny of the Complaints of the Private Respondent would show that not only was the warranty voided by the non-compliance with the proper maintenance requirement, said non-compliance also placed the damage suffered by the vehicle outside the coverage of the warranty, thus:

"What is NOT Covered

This warranty does not cover damages caused by factors **beyond the manufacturer's control, mishandling of the vehicle, or unauthorized repairs and services.** These include:

x x x

x x x

x x x

- **The lack of proper maintenance or the use of wrong fuel, oil or lubricants.** x x x" (Emphasis in bold supplied)
(See page 10 of the Booklet)

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5. Furthermore, that the Complaints stated a cause of action was belied by the fact that Private Respondent did not advise Petitioners of the alleged breach of warranty. Verily, a perusal of the letters annexed to the Complaints (i.e. Annexes "8", "9" and "10" of the Amended Complaint), none were addressed to Petitioners **MIPI** or **ARCINAS**, but to other individuals and entities other than herein Petitioners. Accordingly, it was doubtful as to how Petitioners committed an alleged breach of warranty when none was enforced against them, calling for response or immediate action on their part;

5.1. As regards Petitioner **ARCINAS**, who as alleged in the Amended Complaint was being "sued in his official capacity as the officer personally responsible," a perusal of the Complaints and Annexes of Private Respondent would show that the same were devoid of any allegation that would indicate that **ARCINAS** had any participation in determining the coverage of warranty of the vehicle nor even communicated with the Private Complainant. The reason was simple, Petitioner **ARCINAS** seized to be a stockholder and officer of Petitioner **MIPI** during the time that Private Respondent was allegedly enforcing the warranty accompanying the sale of the subject vehicle as per General Information Sheet filed by the Company with the Securities and Exchange Commission (attached for ease of reference);

5.2. Be that as it may, settled is the Rule in our Corporation laws that a corporation, as a juridical entity, may act only through its directors, officers and employees.² In fact, to hold a director or an officer personally liable for corporate obligations, the complainant must allege in the complaint that the director or officer assented to patently unlawful acts of the corporation, or that the officer was guilty of gross negligence or bad faith, and that the complainant must clearly and convincingly prove such unlawful acts, negligence or bad faith.³

Contrary to the foregoing, however, the Complaints of the Private Respondent bore no allegation of acts committed by Petitioner **ARCINAS** and were replete of allegations imputing gross negligence or bad faith on the part of Petitioner **ARCINAS** so as to be liable as an officer of the corporation.

² Lambert Pawnbrokers and Jewelry Corp. vs. Binamira, G.R. No. 170464, July 12, 2010, 624 SCRA 705.

³ Francisco vs. Mallen, Jr., G.R. No. 173169, September 22, 2010, citing Section 31 of the Corporation Code and Ramoso vs. CA, 400 Phil. 1260 (2000).

6. Anent the issue on prescription, the Honorable Court ruled that the findings of the Public Respondent were consistent with existing jurisprudence (particularly that of *Ang vs. CA*, G.R. No. 177874, September 29, 2008, citing *Engineering & Machinery Corp. vs. CA*, G.R. No. 52267, January 24, 1996, 252 SCRA 156) that stated that the prescriptive period for instituting actions based on a **breach of express warranty is that specified in the contract**, and in the absence of such period, allegedly such as in the case at bar, the general rule on rescission of contract, which is four (4) years reckoned from the breach of the express warranty. In this wise, the Honorable Court ruled that since the alleged breach took place on March 26, 2012, the Amended Complaint filed by herein Private Respondent on April 24, 2013 was well within the four (4) years prescriptive period;

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6.1. Contrary to the foregoing averments, however, Petitioners humbly submit that the general rule on rescission of contract (i.e. four (4) years) could not be applied in the present case considering that the contract between the parties specified the period within which actions based on breach of express warranty should be instituted. In this regard, the transferrable Warranty and Service Booklet issued by Petitioner **MIPI** accompanying the sale of the subject vehicle clearly provided that the period for instituting the action was for a limited period of three (3) years from the sale of the subject vehicle by Petitioner. Accordingly, consistent with the doctrine enunciated in *Engineering and Machinery Corp Case* decided by the Supreme Court in 1996, since the subject vehicle was sold to the alleged transferor of Private Respondent on March 28, 2009, Private Respondent had only until March 29, 2012 within which to file the action;

6.2. Interestingly, in 1999, when the Supreme Court was confronted with a Petition involving a **complaint for breach of express warranty**, the Court in the case of *Isidro vs. Nissan Motor Philippines Inc.*, G.R. No. 136500 applied the *Engineering Case Doctrine* and ruled that **where there is an express warranty in the contract, the prescriptive period is the one specified in the express warranty**, if any.

6.2.1. In the said case, which facts are very similar to the case at bar, the therein Respondent purchased a brand new Nissan Sentra with an express manufacturer's warranty against hidden defects for a period of twenty four (24) months or 50,000 kilometers, whichever came first. Two (2) years and nine months after delivery of the car, therein Petitioner filed with the Regional Trial Court a complaint against Respondent for breach of warranty. In so

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ruling that the Petitioner's action had prescribed, the Supreme Court ruled that the action to enforce the warranty was filed two and a half years from the date of the purchase or delivery of the vehicle subject of the warranty. The Court then went on to rule, applying the *Engineering & Machinery Corp Case* doctrine, that **where there was an express warranty in the contract, as in the case at bar, the prescriptive period was the one specified in the express warranty, if any.**

6.2.2. Accordingly, applying the foregoing to the case at bar, since the Warranty and Service Booklet provided that the express manufacturer's warranty was for a period of three (3) years or 60,000 kilometers, whichever came first, it followed that Private Respondent only had three (3) after delivery of the car to file a complaint against Petitioner **MIPI** for breach of warranty.

6.2.3. Likewise, by merely looking at the dates when the Complaint, Amended Complaint and the Second Amended Complaint were filed vis-à-vis the date of purchase of the vehicle (i.e. March 28, 2009) no additional evidence was required to prove that the Complaints were filed out of time. And if the Honorable Court were to consider the date the Second Amended Complaint was filed as basis for determining the prescriptive period, surely, the Second Amended Complaint was filed out of time.

7. All told, pursuant to Rule 9, Section 1 of the 1997 Rules of Civil Procedure, as amended, considering that as appearing from the Complaints and Annexes submitted by the Private Respondent that the action was already barred by the statute of limitations, the Court had no other recourse but to dismiss the claim.

WHEREFORE, Petitioners pray that Decision dated April 15, 2016 of this Honorable Court be reconsidered and set aside, and that a new judgment be rendered granting the Petition.

Such other reliefs just and equitable under the premises are likewise prayed for.

Quezon City for City of Manila, May 11, 2016.

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COPY FURNISHED:

PARAS AND MANLAPAZ LAWYERS


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REGISTRY RECEIPT

Post Office _____
Letter / Package No. _____
Posted on _____ 20____
Pres. _____
RD 622 058 975 2240 case of inquiry
Postmaster / Teller _____

EXPLANATION

In compliance with Section 11, Rule 13 of the 1997 Rules of Civil Procedure, counsel respectfully manifests that service of the foregoing Petition was done by registered mail, personal service not being practicable at the present time, due to distance and lack of personnel to effect personal service.


KENNETH A. BUENAVENTURA