

5 Phil. 557

[ G.R. No. 1810. January 22, 1906 ]

**J. W. MARKER, PLAINTIFF AND APPELLEE, VS. EULOGIO GARCIA, DEFENDANT  
AND APPELLANT.**

**D E C I S I O N**

**CARSON, J.:**

This is an action for damages for breach of contract in the construction of a skating rink which the defendant, a contractor and architect, agreed to build for the plaintiff, for the sum of 7,250 pesos, Mexican currency.

Plaintiff alleges that the defendant failed to complete the work within the specified time, and that the building was constructed in so unworkmanlike a manner and of such inferior materials that when completed it was wholly unfitted for use as a skating rink, and that as a consequence he had suffered damages in the sum of 7,250 pesos.

Defendant denies the claim of damages presented by the plaintiff, and alleges that while it is true that the work was not completed within the time specified in the original contract, the delay was due to certain changes made in the original plan at the request of the plaintiff, and that the materials used and the work done on the building were in accordance with the contract, and were accepted and approved by the plaintiff. Defendant further alleges that the original plans for the construction of the building having been abandoned, new plans were prepared, and the price for the entire work was fixed at 10,969 pesos, and prays that judgment be rendered in his favor for the balance of 3,717 pesos, being the difference between the amount actually paid and the amount agreed upon under the new contract.

We are of opinion that the evidence of record fully sustains the finding of the trial court that the contract price for the construction of the building under the modified plans was 7,250 pesos, as alleged by the plaintiff, and not 9,969 pesos, as claimed by the defendant.

We also think that the evidence of record establishes that the failure of the defendant to turn over the building within the time specified in the original contract was due to changes in the plans made at the instance of the plaintiff, and that the defendant should not be held responsible therefor.

The trial court found that the defendant so far failed in the performance of his contract, both in regard to the quality of the materials used in the building and the workmanlike manner in which it was constructed, that the plaintiff was damaged thereby in the sum of 3,625 pesos, and judgment was rendered in favor of the plaintiff for that amount. But while we agree that the evidence of record fully sustains the finding of the trial court that the quality of the materials and the workmanship employed in the building were so inferior as to constitute a breach of the defendant's contract, which entailed a heavy loss upon the plaintiff, we are unable to find any evidence which would sustain the finding of the trial court as to the precise amount of the damages allowed.

Except in those cases where the law authorizes the imposition of punitive or exemplary damages, a party claiming damages must establish by competent evidence the amount of such damages, and courts can not give judgment for a greater amount than that actually proven.

The trial court fixed the damage at exactly 50 per cent of the amount paid the defendant for the construction of the building, but a careful examination of the record fails to disclose any evidence whatever as to the precise amount of the damages other than that which goes to show that after taking over the building from the defendant the plaintiff was compelled to expend some 1,100 pesos in repairs upon the roof, floors, and outbuildings; and the statement of the plaintiff that the building when completed was of no value whatever, and that he, was damaged in substantially the total amount paid the defendant.

We are of opinion that the amount expended by the plaintiff in completing the building and in correcting the defects of construction which he found therein on looking it over is the true and only measure of the damages which can be allowed him in this action. The evidence shows that after the defendant ceased work upon the building, the plaintiff, while protesting vigorously because of defendant's failure to complete it in accordance with his contract, did in fact take it over, and expended so much money as he deemed necessary to correct defects in its construction. We think this expenditure was in fact necessary and proper, and that there would have been no need therefor had the defendant complied faithfully with the terms of his contract.

The judgment appealed from should be reversed and the case remanded to the trial court at the expiration of twenty days, when judgment will be entered in favor of the plaintiff for an amount expressed in Philippine currency equivalent to 1,100 pesos, Mexican currency, with legal interest thereon from the commencement of this action, and the costs in first instance. No costs should be allowed either party on appeal. So ordered.

*Arellano, C. J., Torres, and Johnson, JJ., concur.*

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