

8 Phil. 250

[G. R. No. 3348. July 26, 1907]

**JULIAN NAVAL, PLAINTIFF AND APPELLANT, VS. HERMOGENES BENAVIDES,
DEFENDANT AND APPELLEE.**

D E C I S I O N

JOHNSON, J.:

This was an action commenced in the Court of First Instance of the city of Manila, by the plaintiff against the defendant, for the purpose of recovering the sum of P1,663.70 for extra work done and material furnished in the construction of a house situated in Calle Lemery, in the city of Manila.

From the evidence presented during the trial in the lower court, it appears that in the month of July, 1904, the plaintiff entered into a written contract with the defendant, under the terms of which the plaintiff was to construct a dwelling house for the sum of P5,730; that sometime after the plaintiff had actually commenced the construction of the house under the said contract, it became necessary, by reason of an order of the city engineer of the city of Manila, to make certain changes in the form of said house; that at that time there was an agreement between the plaintiff and the defendant that, if it was necessary for the plaintiff to expend additional labor and material in the construction of the modified plans of said house, the defendant should pay for the said additional labor and material.

The plaintiff alleges in his complaint that the additional labor and material necessary for the construction of the house as modified, amounted to P1,663.70. However, in the testimony given by the plaintiff during the trial of the cause in the lower court, he fails to point out or to indicate in any way the items of the additional cost made necessary by the modification of the original plans and specifications. He presented two witnesses, however, who attempt to state what was the value of the additional material and labor. Eduardo Ramos, a mason, was one of them, and Sio Saco, a carpenter, was the other. Ramos testified that he had the contract for doing the masonry work in the construction of the

house; that his original contract for doing said masonry work was P420, and that to build the house in accordance with the modified plans it cost P550, or P130 more than the original contract price. Saco testified that he had a contract with the plaintiff to perform all of the carpentry work upon the said house; that the original contract price was P750, and that by reason of the modified plans, it cost him in labor and material P450 additional. The statement of these two witnesses is the only specific showing of the additional cost in the construction of the building, by virtue of the change made in the original plans.

The defendant admitted that the plans for the construction of the house had been changed and that at the time the changes were made he, the defendant, had a talk with the plaintiff concerning the additional cost by reason of said changes. The said defendant testified, concerning this conversation, as follows:

“He [the plaintiff] then told me that it was only a matter of two or three hundred pesos more of cost and that I [the defendant] should not be afraid of that or bother about it. On that understanding we agreed that the construction should be such as we talked about and that he [the plaintiff] would apply for a new license.”

The lower court, after hearing the evidence, made the following findings of fact:

“That the change of plans necessitated some additional material in the construction of the building, and some additional work on the part of the plaintiff in its construction; that the plaintiff is entitled to a reasonable compensation for the extra work and extra material furnished, arising from the change of plan from that contemplated in the contract; that the value of all the extra work performed and the extra material furnished is greatly less than that claimed by the plaintiff, and that the reasonable value of the extra work necessary to be performed and material furnished on account of the change of plan of the building from that contemplated under the contract is the sum of P270.”

The court thereupon rendered judgment in favor of the plaintiff and against the defendant for the sum of P270, with interest at the rate of (6 per cent, from the date of the decision (February 19, 1906) and for the costs. Both plaintiff and defendant presented an exception

to the decision of the lower court, after presenting a motion for a new trial. The plaintiff only presented a bill of exceptions. The defendant assigns certain errors in his brief presented in this court. Inasmuch, however, as the defendant has not also presented a bill of exceptions, we can not consider his assignment of errors.

The plaintiff and appellant made several assignments of error, and they may all be included under the general statement that the lower court erred in finding that the reasonable value of the additional labor and material furnished, by reason of the modifications made in the original contract, was only P270.

There was much conflict in the testimony of the witnesses concerning the real value of the additional labor and material furnished. It is true that the witnesses Ramos and Saco do state the specific amount of the additional cost, by reason of modifying the original contract, but they in no way specify in detail this additional cost. Their testimony was simply the general statement, without giving any items of the additional cost.

In view of the conflict in the testimony adduced during the trial of said cause, and in view of the fact that the lower court heard and saw the witnesses, we are not inclined to change the findings of fact. Therefore the judgment of the lower court is hereby affirmed, with interest at the rate of 6 per cent, from the date of said judgment and costs.

The defendant during the trial of said case attempted to show that the material used in the construction of said house was not in accordance with the plans and specifications. The evidence shows, however, that after the house was completed, he accepted the same without objection. This court has decided (*Campbell, etc., vs. Behn, Meyer & Company*, 2 Off. Gaz., 469; 3 Phil. Rep., 590) that the acceptance and occupation of a building by the owner amounts to an acknowledgment that the work has been performed substantially as required by the contract. Inasmuch, however, as the plaintiff does not make this an assignment of error in this court, it is unnecessary to consider that question. So ordered.

Arellano, C. J., Torres, Willard, and Tracey, JJ., concur.

