45 Phi. 137

[G.R. No. 20008. September 05, 1923]

MANILA ENGINEERING COMPANY, PLAINTIFF AND APPELLEE, VS. H. D. CRANSTON AND R. A. HEACOCK, DEFENDANTS AND APPELLANTS.

D E C I S I O N

STATEMENT

The complaint alleges that the Manila Engineering Company is a domestic corporation with its principal office in Manila; that the plaintiffs, F. de la Cantera and Charles G. Gabelman, are both residents of the City of Manila and of legal age; that the defendants, H. D. Cranston and R. A. Heacock, are both residents of Manila and partners doing business under the name and style of Cranston Engineering Company; that in August, 1920, the Manila Engineering Company and the defendants verbally agreed that the plaintiff company should do the actual construction work on six officers' quarters at Fort Mills, Corregidor, for the sum of $2,400, U. S. currency, for each building, plus $1.50 for each cubic yard of excavation for foundations, and $12 for each cubic yard of concrete foundations, and floors; that the defendants were awarded a contract by the United States to do the same work for $2,625 for each building, plus $2.20 for each cubic yard of excavation for foundations, and $12.50 for each cubic yard of concrete for foundations and floors; that on August 30, 1920, the contract here in question was affirmed in a letter written to the defendants, marked Exhibit A, and made a part of the complaint; that in the letter, by mistake or clerical error and unknown to the plaintiff, the P sign was used instead of the $ sign; that about November 5, 1920, the Manila Engineering Company, at the request of the defendants, rendered a bill for the work done up to that date in dollars, a copy of which is attached to the complaint; that the mistake was then for the first time discovered, and the plaintiff company asked

for the correction of the error; that it was a mutual error and known to the defendants, who fraudulently concealed it from the plaintiff; that the defendants refused to concede or correct the error, and, for such reason, the Manila Engineering Company stopped construction work, which was then taken over by its bondsmen, the plaintiffs, F. de la Cantera and Charles G. Gabelman, and that the buildings were completed by them; that the reasonable value of the work done by the plaintiffs is P39,717, upon which P15,658.50 has been paid, leaving a balance due and owing on the contract of P24,058.50; that by reason of the breach of the contract on the part of the defendants, the plaintiffs have been damaged in the sum of P5,000. Plaintiffs pray that, to carry out the true intent and purpose of the parties, the contract between them be reformed by the substitution of the dollar mark ($) for the peso mark (P), and that, if so changed, the plaintiffs have judgment for P24,058.50, and the further sum of P5,000, as damages; that in the event the contract should not be reformed, that plaintiffs have judgment for P24,058.50.

For answer, the defendants admit the payment of the P15,658.50, and deny all of the other material allegations of the complaint, and, as a further and separate defense and counterclaim, allege the making and acceptance of the contract in pesos; that on or about November 9, 1920, plaintiffs stopped work, and that the bondsmen took over the work and continued it until January 15, 1921—

> "When they also stopped work upon said construction and compelled these defendants to take it up and complete it.
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> "12. That during the progress of the work done by these plaintiffs they caused to be excavated 1,207 cubic yards of material for the placing of foundations of a total value, at the contract price of P1.50 per cubic yard, of P1,810.50, and they also placed 304 cubic yards of concrete at the contract price of P12 per cubic yard for which they should receive under said contract P3,648, or a total for these two items of P5,458.50."

That during the progress of the work, they paid the plaintiffs P15,658.50, and that, in addition thereto, the defendants were compelled to, and did, pay one Ah Chang—

> "For the completion of the work after January 15, 1921, the date when these plaintiffs stopped work upon said construction, the sum of P4,806.62, and these defendants were also compelled to pay, on account of said stoppage of work by these plaintiffs, the sum of P308 for the transportation of materials, P19.20 cost of transportation to Corregidor occasioned and required by such stoppage of work, or a total for the doing of the work which these plaintiffs had contracted to do of the sum of P20,792.32."

That by reason of the breach of the contract by the plaintiffs, the defendants have been damaged in the sum of P5,000, and they pray for judgment against the plaintiffs for P5,000, as damages, with interest.

Upon such issues, testimony was taken, and the lower court rendered judgment against the defendants for P24,058.50 with legal interest on P9,550.80 from December 1, 1920, the date of the filing of the original complaint, and legal interest on the balance from November 1, 1921, the date of the filing of the amended complaint, with costs, from which the defendants appeal, assigning nineteen different errors, in substance, that the court erred in the admission of testimony and in refusing to receive it; in finding that the six buildings were completed by the bondsmen; that the defendants had received P44,710.80 from the Government for the construction of the buildings.

> "(12) In finding that no contract resulted from the letter of proposal (Exhibit A) and the letter of acceptance (Exhibit D).
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> "(13) In cancelling the contract entered into between the plaintiffs and the defendants (Exhibits A and D).
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> "(14) In finding that the plaintiffs are entitled to recover the reasonable value of the work performed by them, and in finding such reasonable value to be P39,717.
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> "(15) In failing to find that plaintiffs had violated their contract with defendants by stopping work.
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> "(16) In failing to give defendants credit for the sum of P4,806.62 paid by them to Ah Chang.

> "(17) In rendering judgment against the defendants and in favor of the plaintiffs for the sum of P24,058.50, and in making such judgment a joint and several one.
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> "(18) In failing to render judgment against the plaintiffs and in favor of the defendants on the counterclaim of the latter.
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> "(19) In overruling defendants' motion for new trial," with other assignments which are not material to this opinion.

JOHNS, J.:

The record is voluminous, the briefs of opposing counsel are exhaustive, and in a well-written opinion of twenty pages, the trial court made a careful, analytical statement of the facts.

The storm center is the typewritten letter written by the plaintiffs on August 30, 1920, known in the record as Exhibit A. It clearly states that the proposition is submitted on a peso basis, and the dollar sign is nowhere used. Outside of that fact, the letter is a true copy of Exhibit B which was written in pencil by the plaintiff Gabelman, in which the dollar sign was used instead of the peso sign. It appears that Exhibit B was delivered to a clerk in the office of the plaintiffs to be copied, who, upon his own motion and without the knowledge of anyone, substituted the peso sign for the dollar sign in the original. The mistake was not discovered by the plaintiffs until they presented their bill on November 5. It is contended by the plaintiffs that it was a clerical error of the clerk, and that the mistake was mutual, and that the defendants knew of the error at the time they received the letter. This is vigorously denied by the defendants, who claim that they did not have any knowledge of any mistake, and that, in fact, it was not a mistake, and that they entered into the contract relying upon the peso sign in the letter Exhibit A.

It appears that the United States Government advertised for bids before letting the contract for the construction of the buildings, and that several other bids were submitted, and that the defendants were the lowest bidders, and for such reason were awarded the contract. Under their contract with the

Government, the defendants were to receive $2,625 for each building, $2.20 for each cubic yard of excavation and $12.50 for each cubic yard of concrete. By the terms of Exhibit A, the plaintiffs were to receive P2,400 or $1,200 for each building, P1.50 or $0.75 for each cubic yard of excavation, and P12 or $6 for each cubic yard of concrete. That is to say, if plaintiffs' contract was in pesos, the defendants would then make a net profit of P2,850 or $1,425 on each building on a contract price of $2,625, and the same percentage would be true as to the excavations, and would make such a profit after there was sharp competitive bidding in awarding the original contract to the defendants, who were the lowest bidders, and whose contract with the Government was made on the basis of dollars.

A detailed analysis of the whole mass of testimony upon that point would not serve any useful purpose. The collateral facts and circumstances surrounding the whole transaction, the actions and conduct of the parties, all tend to show that a mistake was made, and that the defendants had reasonable ground to believe that a mistake was made in the use of the peso sign instead of the dollar sign. When they received Exhibit A, in the very nature of things, defendants knew that no sane, responsible man would submit a bid to construct the buildings at that price in pesos, and that a mistake had been made in the use of the peso sign for the dollar sign.

After a careful analysis of the facts, the trial court, who saw and heard the witnesses testify, found that a mistake was made, and that it was mutual, and upon that point we agree with the trial court.

The record shows that Gabelman and Cantera were sureties in the sum of P15,000 for the faithful performance of the contract by the Manila Engineering Company. After that company stopped construction work the sureties, to protect their own interest and to save themselves from liability on the bond, undertook to, and did, in the main, complete the contract.

The trial court found that the sureties were entitled to recover on a *quantum meruit*. That was error. The sureties became and were subrogated to the rights of their principal, and in doing what they did, they simply carried out the contract of their principal. Hence, their compensation would be measured by the contract and not by the reasonable value of the work performed.

Although that ruling of the court is assigned as error by the defendants only, the question is now before this court, and must be sustained.

It appears from Exhibit V that by the terms of the contract, plaintiffs were to receive P39,717, and that the actual cost of the work to them was P34,956.80, and this include the charge of P5,000 for supervision, overhead, etc. In other words, there was a profit to the plaintiff, including the P5,000 for supervision, overhead, etc., of P4,760.20. Hence, under the allegation of the reasonable value of the services, plaintiffs would not be entitled to exceed P34,956.80. Be that as it may, as we construe the record, plaintiffs' measure of recovery is not founded upon the reasonable value of the services, but upon the contract price.

In a short time after the defendants sublet their contract to the Manila Engineering Company, that company sublet the contract for the construction of the six buildings to Ah Chang at an agreed price of $1,729 per building, and he entered upon the performance of his contract. When the Manila Engineering Company stopped work and the bondsmen entered upon the performance of the contract, they recognized the contract with Ah Chang, who continued to work under it until about January 15, 1921. At that time he received notice from the bondsmen to stop work. In fact at that time it was the intention of the bondsmen to stop all work. The evidence shows that the defendants then appeared upon the scene and entered into a contract with Ah Chang, in and by which he was to complete the construction of the buildings upon the same terms and conditions specified in his original contract, and for which the defendants promised and agreed to pay him the same amount.

As a witness Ah Chang testified that the defendants paid him under that contract the sum of P4,806.62, and that is also the evidence of Mr. Cranston and is not disputed. Of course, Ah Chang is not entitled to his money twice for the same work. Any money which the defendants paid him on account of the construction of the buildings, under the circumstances shown in the record, was paid on account and for the use and benefit of the plaintiffs, and for which the defendants should have credit on their original contract. That would be true even though, as the bondsmen claim, they later rescinded the notice to Ah Chang to stop work, and that in truth and in fact Ah Chang never did actually stop work. The undisputed evidence shows that the defendants paid Ah Chang P4,806.62

on his contract for the construction of the six buildings. If so, the defendants should be credited with that amount on plaintiffs' claim against them, and a corresponding deduction should be made on any claim that Ah Chang may have against the plaintiffs for the same work. In addition to that amount, in their answer, the defendants allege that they were compelled to, and did, pay on account of the notice to stop work the sum of P308 for the transportation of materials, and the further sum of P19.20 for expenses of going to and from Corregidor. This allegation is supported by the evidence of Mr. Cranston, and is not disputed. No other payments or expenses are alleged in the answer. In addition to the payment of P15,658.50 allowed by the lower court, we hold that the defendants are entitled to a further credit of P4,806.62, the amount which they paid Ah Chang, and the further sum of P327.20, expenses incurred by reason of the notice to stop work, even though it was later rescinded.

Appellants vigorously contend that there is no proof as to the number of yards of excavation and concrete work. That is true. But the amount is specifically alleged in paragraph 12 of the further and separate answer of the defendants, and they are estopped by their own pleadings to rely upon that point.

Upon the question of joint and several liability of the defendants Cranston and Heacock, it is specifically alleged, both in the complaint and paragraph 8 of the answer, that Cranston and Heacock were partners doing business under the firm name and style of "Cranston Engineering Company."

We have carefully considered all of the many questions raised in appellants' vigorous brief, and, except as above stated, do not find any prejudicial error.

The judgment of the lower court will be modified, and one will be entered here in favor of the plaintiffs and against the defendants for the sum of P18,925.05, with legal interest on P9,550.80 from the date of the filing of the original complaint on December 1, 1920, and like interest on the balance from the date of the filing of the amended complaint on November 1, 1921, together with costs in the lower court, and a judgment in favor of the defendants and against the plaintiffs for costs in this court. So ordered.

Araullo, C.J.,
Johnson, Street, Malcolm, Avanceña, Villamor, and *Romualdez, JJ.,*
concur.

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