

PERMANENT CONCRETE PRODUCTS, INC., PLAINTIFF-APPELLEE, VS. DONATO TEODORO, DEFENDANT-APPELLANT. CLEMENTINA VDA. DE GUISON, DEFENDANT-APPELLEE.

G.R. No. L-29766. November 29, 1968

Ponente: CASTRO, J.

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CASTRO, J.:

This appeal from the decision in civil case 64002 of the Court of First Instance of Manila was certified by the Court of Appeals to this Court because it involves only questions of law.

There is no dispute as to the material and relevant facts.

The defendant Clementina Vda. de Guison hired the defendant contractor, Teodoro & Associates, to construct a building for her for a lump sum of P44,000, the contractor explicitly agreeing in the written contract with Guison that "all of said labor and materials shall be supplied by me."

During the construction, the contractor ordered and received from the plaintiff Permanent Concrete Products, Inc. hollow blocks, of an aggregate value of P759.88, which were used in the construction of the building. The contractor refused to pay the said amount, despite demands made upon it, on the ground that payment thereof is properly the obligation of Guison.

On May 18, 1964 the plaintiff filed suit in the city court of Manila against Donato Teodoro and Guison for the collection of the sum of P759.88, with interest thereon, plus attorney's fees and costs of suit. It amended its complaint on July 6, 1964 to include Teodoro & Associates as co-defendant and/or alternative defendant.

On December 16, 1964 the city court rendered judgment

"x x x in favor of the plaintiff and against the defendant C. Vda. de Guison, ordering said defendant to pay the plaintiff the sum of P759.88 with interest thereon at the stipulated rate of 12% per annum from March 9, 1963, the date of first extra-judicial demand (Exh. G), until the whole amount shall have been fully paid, plus the sum of P75.00 as and for attorney's fees, and the costs of suit."

Guison appealed to the Court of First Instance of Manila, in which tribunal all the parties adopted and reproduced the respective pleadings they filed with the city court.

On June 7, 1966 at the pre-trial conference held before the Court of First Instance, only three issues were agreed upon by the parties, which were incorporated in an order of the said court of the same date, to wit, (1) whether the defendant Guison, the owner of the building, can be held liable for materials ordered by the contractor without her signing for them; (2) whether the contractor can collect from Guison for an additional construction, the contract for which was entered into verbally between the contractor and the tenant of Guison with her consent; and (3) whether the contractor can be made responsible for the purchase of electrical, goods which were substituted with imported ones, although the contract does not so specify.

No evidence was presented. The parties filed their respective memoranda, after which the case was considered submitted for decision.

On September 12, 1966 the CFI rendered judgment ordering Donato Teodoro to pay to the plaintiff the cost of the hollow blocks (P759.88) with interest, plus attorney's fees and costs.

The latter's appeal to the Court of Appeals (which certified the case to us, as earlier mentioned) imputes two errors to the CFI. More specifically,

"The court a quo erred in sentencing the defendant-appellant to pay the sum of P759.88 with interest, costs and attorney's fees there being no evidence whatsoever to show his connection or participation in the transactions subject thereof;" and

"Even assuming arguendo that the appellant had something to do with said construction, defendant Clementina Vda. de Guison should be made liable for the plaintiff's claim and not appellant."

1. The thrust of the appellant's first assignment of error is that he cannot be held liable for the cost of the hollow blocks plus interest, attorney's fees and costs of suit, because no evidence was presented to show or even remotely suggest that he had any participation in or connection with any of the transactions involved in this case. This argument, however, ignores the admitted fact that at the pre-trial conference held in the court below, all the parties agreed to limit the issues to only three questions of law affecting all the parties alike. At the said pre-trial conference, the appellant failed to put in issue his alleged non-participation, in spite of the clear allegation in the amended complaint that "defendant Donato Teodoro and/or Teodoro and Associates was the contractor." Clearly, the question now sought to be argued and discussed by the appellant was waived by him. For indeed, the delimitation of issues at a pre-trial conference bars the consideration of other questions on appeal.[1]

And this is as it should be. "One of the objectives of pretrial procedure is to take the trial of cases out of the realm of surprise and maneuvering." [2] Pre-trial is primarily intended to make certain that all issues necessary to the disposition of a cause are properly raised. [3] Thus, to obviate the element of surprise, parties are expected to disclose at a pre-trial conference all issues of law and fact which they intend to raise at the trial, except such as may involve, privilege or impeaching matter. [4]

The appellant waited until the case was decided against him in the court a quo before he raised - on appeal - the issue of his non-participation in the transactions which gave rise to this case. His failure to disclose this defense is contrary to the purpose and spirit of pre-trial procedure as established and conducted in our courts. It effectively prevented the plaintiff and the defendant Guison from being accorded an opportunity to meet this defense. Both as a weapon of attack and defense, surprise should not be tolerated under our Rules of Court. The appellant is bound by the delimitation of the issues contained in the trial court's order issued on the very day the pre-trial conference was held. Such an order controls the subsequent course of the action, unless modified before trial to prevent manifest injustice. In the case at bar, modification of the pretrial order was never sought at the instance of any party.

The city court's pronouncement regarding the absence of evidence linking the appellant to the transactions, is of no moment. When a civil case is appealed from a city or municipal court to the court of first instance, all the proceedings had are deemed vacated. Thus provides sec. 9 of Rule 40 of the Revised Rules of Court:

"A perfected appeal shall operate to vacate the judgment of the justice of the peace or the municipal court, and the action when duly docketed in the Court of First Instance shall stand for trial de novo upon its merits in accordance with the regular procedure in that court, as though the same had never been tried before and had been originally there commenced. . ."

At all events, the record discloses circumstances which negative the appellant's contention that he is in no way connected with the transactions that gave rise to this controversy. First. - His identical address with Teodoro & Associates at 76 Makiling, Cubao, Quezon City, identifies him to be the contractor or one of several contractors doing business under the name and style of "Teodoro & Associates." Second. - He was served with summons at the same address with the Teodoro and Associates, and in fact both were represented in the court below by one and the same counsel in the person of Atty. Ismael M. Estella. Third. - The second paragraph of the appellant's cross-claim for reimbursement against Guison contained in his amended answer with counterclaim and cross-claim dated January 20, 1965, impliedly admits that he was involved in the said transactions had with the plaintiff.

2. The appellant argues, upon his other assignment of error, that assuming that he participated in the transactions involving the construction of the building, it is Guison, because she is the owner of the building, who is liable for the cost of the hollow blocks used therein.

This argument is unavailing. By virtue of the contract between Guison and the contractor, the latter expressly assumed the cost of the materials by undertaking that "All of said labor and materials shall be supplied by me," and this logically because the contract was for the construction of a building for which Guison agreed to pay a total lump sum.

It is true that the installation of the hollow blocks in the house of Guison redounded to her benefit. It does not thereby follow, however, that she was enriched at the expense of the plaintiff. The contract between her and the contractor, we reiterate, was for a lump sum of P44,000, with the latter assuming the obligation to furnish all labor and materials. In the absence of proof that she failed to comply with her covenant to pay P44,000 to the contractor, the latter is legally obliged to make good its own undertaking to furnish all materials and labor.

ACCORDINGLY, the judgment appealed from is affirmed, at appellant's cost.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Sanchez, Fernando, and Capistrano, JJ., concur.

[1] See *Frank v. Giesy*, 4 Federal Rules Service, 318.

[2] *Murrah*, Pre-Trial Procedure, 14 F.R.D. 417-418.

[3] 53 Am. Jur. 11.

[4] *Burton v. Weyerhaeuser Timber Co.*; see also 4 Federal Rules Service, 318.

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