

WELDON CONSTRUCTION CORPORATION, PETITIONER, VS. COURT OF APPEALS (SECOND DIVISION) AND MANUEL CANCIO, RESPONDENTS.

G.R. No. L-35721. October 12, 1987

Ponente: CORTES, J.

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CORTES, J.:

The present controversy arose from the construction of the Gay Theater building on the corner of Herran and Singalong Streets in Manila. Petitioner WELDON CONSTRUCTION CORPORATION sued the private respondent Manuel Cancio in the then Court of First Instance of Manila to recover P62,378.83 Pesos, which is ten per cent (10%) of the total cost of construction of the building, as commission, and P23,788.32 Pesos as cost of additional works thereon.

The basis for the claim for commission is an alleged contract of supervision of construction between the theater owner Manuel Cancio, herein private respondent, and the petitioner's predecessor-in-interest, Weldon Construction, which the petitioner seeks to enforce. The private respondent refused to pay the amounts demanded on the ground that the Gay Theater building was constructed by Weldon Construction for the stipulated price of P600,000.00 Pesos which has already been fully paid. The irreconcilable positions taken by the parties brought the controversy before the courts.

Two documents, Exhibit "A" and Exhibit "5", were produced by the plaintiff and the defendant, respectively, before the trial court. Plaintiff, herein petitioner sought the enforcement of the alleged contract of supervision contained in Exhibit "A", which is quoted below:

March 7, 1961

Mr. & Mrs. Manuel Cancio

c/o Goodwill Trading Co.

Rizal Avenue, Manila

Dear Mr. & Mrs. Cancio:

We have the pleasure to offer your goodselves our services for the contruction of your theater and office building at Singalong corner Herran St., Manila per plans and specifications of Engr. Filomeno Nunez.

We shall handle the administration of the construction of your building under the following conditions:

1. The Owner shall transfer or advance an amount of TEN THOUSAND PESOS (P10,000.00) to serve as a revolving fund and to be replenished from time to time to take care of the cost and expenditures incurred for the proper prosecution of the work. Such cost to include the following items and to be at rates not higher than the standard paid in the locality of the work except with prior consent of the Owner:

- a. All materials necessary for the work;
- b. All payrolls including social security and other taxes related thereto;
- c. Salaries of employees stationed at the field office in whatever capacity employed. Employees engaged in expediting works or transportation of materials shall be considered as stationed in the field office;
- d. Traveling expenses of administrator or employees incurred in discharging duties connected with this work;
- e. Permit fees, royalties, damages for infringement of patents, and cost of defending suits therefore and for deposits lost;
- f. Losses and expenses not compensated by insurance provided they have resulted from causes other than our fault or neglect. No such losses and expenses shall be included in the cost of the work for the purpose of determining the commission. In the event of loss from fire, flood, or other fortuitous events, we shall be put in charge of reconstruction and be paid for a fee proportionate to the work done;
- g. Minor expense, such as telegrams, telephone services and similar petty cash items;
- h. The amount of all subcontracts;
- i. Premiums on all bonds and insurance policies called for the execution of the work;
- j. Rentals of all construction plant or parts thereof necessary in the execution of the work in accordance with rental agreements approved by the Owner.

Transportation of said construction plants, costs of loading and unloading, cost of installation and removing thereof, and minor repairs and replacements of parts during its use on the work, in accordance with the terms of the said rental agreement.

2. That the Owner shall not reimburse from us the following expenditures:

- a. Salary of any person employed in our main office or in any regular established branch office, during the execution of the work;
- b. Overhead or general expenses of any kind, except as those which maybe expressly included in this contract;
- c. Interest on capital employed either in plant or in expenditures on the work except as maybe expressly included in this contract.

3. That we shall be under the direct supervision of the Owner, and shall provide facilities for the Owner's representative to have access or inspection of the work whether it is in preparation or progress.

4. That we shall continuously maintain adequate protection of all works from damage and shall protect the Owner's property from injury or loss. We shall protect adjacent properties as provided by law.

5. That we shall receive a commission of Ten Percent (10%) of the total cost, to be paid upon submission of statement of cost.

If the above conditions are satisfactory to you, you may sign your approval at the left corner provided for in this page.

We shall submit an estimate of the whole project based on the plans as soon as possible. In as much (sic) as time is of the essence, may we proceed right away under the administrative (sic) basis.

Respectfully yours,

WELDON CONSTRUCTION

(Sgd.) ANTONIO C. WONG

Office Manager

Private respondent Cancio resisted the petitioner's claims for commission and for the cost of "extra works" by producing Exhibit "5", a building contract providing for the construction of the building in question for the stipulated price of P600,000.00 pesos which said private respondent had already paid to the petitioner's predecessor-in-interest. Exhibit "5" is reproduced as follows:

BUILDING CONTRACT

KNOW ALL MEN BY THESE PRESENTS:

This contract, made and executed in the City of Manila, Philippines, this 30th day of March, 1961 by and between:

MR. MANUEL CANCIO, of legal age, married and residing at 711 Rizal Avenue, Manila, Philippines, hereinafter referred to as the Owner,

-and-

WELDON CONSTRUCTION, a construction firm, with main office at No. 1262 Rizal Avenue Extension, Caloocan, Rizal, Philippines, represented herein by its General Manager and proprietor Lucio Lee, hereinafter referred to as the Contractor, witnesseth:

That, the Owner and the Contractor have agreed to the following terms and conditions:

1. The Contractor shall erect and build in a workmanlike manner and to the best of its ability a Cinema and Commercial Building located at Herran corner Singalong, Manila, in accordance with the plans and specifications agreed upon by the Owner and the Contractor, the latter being made an integral part hereof as Annex "A"; except the following:

- (a) Electrical Fixtures
- (b) Water pumps & Sump pumps
- (c) Drinking Fountains
- (d) Fire Fighting Equipments
- (e) Neon Lights
- (f) Air Conditioning
- (g) Chair
- (h) Curtain & Curtain Motors
- (i) Screen
- (j) Mezzanine along Singalong (Except that marked on plans noted.)
- (k) Contractor's Sales Tax
- (l) Doors for Store Space (to be provided by tenant)

(m) Third Storey (store space up to 2nd floor only)

2. The contractor shall supply the corresponding labor and materials on said construction which shall include plumbing, tinsmith, masonry, concreting, electrical, carpentry and painting, in accordance with the aforementioned plans and specifications (except as noted in Art. 1 above.)

3. The building permit shall be paid for by the Owner.

4. The Owner shall pay the Contractor the full amount of SIX HUNDRED THOUSAND (P600,000.00) PESOS, Philippine Currency, which payment the Owner shall pay in the basis of work accomplished based on the breakdown attached herewith marked Annex "B" and "C". Such payment shall be paid on the tenth day of every month. Ten percent retention of every payment shall be retained by the owner, to be paid upon completion of the project.

5. The Contractor recognizes that time is an essential element of this contract and, on this basis, agrees to finish the construction of the said Commercial-Cinema Building by November 30, 1961. Should the contractor fail to finish the said building by that date, he (the Contractor) shall indemnify the Owner the sum of SIX HUNDRED PESOS (P600.00) for each day of delay, as liquidated damages. Any extensions of the date of completion due to delays caused by force majeure or due to decision of Owner to hold in abeyance certain portions of work must be approved in writing by the Owner.

6. The Contractor shall secure from the proper authorities the certificate of final approval of the work completed in accordance with the plans and specifications, the same shall be given to the Owner upon the turnover of the work so completed.

IN WITNESS WHEREOF, the parties have signed this Building Contract this 30th day of March, 1961, at Manila, Philippines.

(Sgd.) MANUEL CANCIO

Owner

(Sgd.) LUCIO A. LEE

Contractor

With Marital Consent:

(Sgd.) JUANA CANCIO

SIGNED IN THE PRESENCE OF:

The then Court of First Instance of Manila ruled that the agreement between the parties is a contract of supervision of construction found in Exhibit "A" and ordered the theater-owner Cancio to pay the ten per cent (10%) supervision fee or commission provided for in said contract (Record on Appeal, p. 91). On appeal by the defendant Cancio, the Court of Appeals reversed the lower court's Decision and dismissed the Complaint. The appellate court held that the transaction between the parties is a construction contract for a stipulated price contained in Exhibit "5" (Rollo, pp. 53-62 [Court of Appeals Decision]) The dispositive portion of the Court of Appeals Decision promulgated on December 23, 1971 reads:

WHEREFORE, the judgment appealed from is reversed and set aside. Let another issue dismissing plaintiff's complaint and ordering plaintiff to pay defendant-appellant P5,000.00 as moral damages, P4,000.00 as exemplary damages, and P4,000.00 as attorney's fees. Costs against plaintiff-appellee in both instances.

SO ORDERED. (Rollo, p. 64)

Both parties moved for the reconsideration of the aforesaid Decision. Plaintiff-appellee WELDON CONSTRUCTION CORPORATION assailed the Decision as a whole and reiterated its claims. Defendant-appellant sought an increase in the amount of damages and attorney's fees awarded. In a Resolution dated February 7, 1972, the same division of the Court of Appeals denied the two Motions for Reconsideration. Upon a Second Motion for Reconsideration filed by the plaintiff-appellee, the Court of Appeals modified its Decision of December 23, 1971 as follows:

IN VIEW OF THE FOREGOING CONSIDERATIONS, We hereby maintain the decision of December 23, 1971, dismissing the plaintiff's complaint, with the modification that defendant's counterclaims are also dismissed, without pronouncement as to attorney's fees and costs.

SO ORDERED.

(Resolution, October 18, 1972; [Rollo, p. 124])

Not satisfied with the Resolution of its Second Motion for Reconsideration, plaintiff-appellee WELDON CONSTRUCTION CORPORATION elevated its case to this Tribunal by certiorari under Rule 45 of the Rules of Court.

1. The Court is called upon to ascertain whether or not a commission of ten per cent (10%) of the total cost of construction of the Gay Theater building should be paid by the private respondent pursuant to the alleged contract of supervision of construction which the petitioner seeks to enforce. Stated otherwise, the principal issue presented is whether the agreement between the parties is a contract of supervision of construction on commission basis, in which case commission will be legally demandable, or a construction contract for a stipulated price which has already been consummated. The ancillary issue is whether or not the petitioner can recover the cost of additional works on the building. The task at hand entails the interpretation of the true agreement between the parties, which is in effect an inquiry into the "law" imposed by the parties upon their contractual relations. Since a contract is in the nature of "law" as between the parties and their successors-in-interest its interpretation necessarily involves a question of law (*Melliza v. City of Iloilo*, L-24732, April 30, 1968, 23 SCRA 477, 481) properly raised in this Certiorari proceeding under Rule 45.

2. The facts are not disputed. It appears from the records that in 1961 Lucio Lee, whose name was later changed to Lucio Lee Rodriguez, was doing business under the trade name Weldon Construction, the predecessor-in-interest of the herein petitioner, WELDON CONSTRUCTION CORPORATION. The latter corporation was incorporated in July, 1963 as a closed corporation composed of Lucio Lee (owner of Weldon Construction), his wife, his sister and the latter's husband, and a cousin. The assets of Weldon Construction were transferred to, and its liabilities assumed by the new corporation. Hence, the instant case was brought by WELDON CONSTRUCTION CORPORATION as successor-in-interest of Weldon Construction and Lucio Lee.

Prior to March 7, 1961, Lucio Lee drafted plans for a theater-apartment building which private respondent Cancio intended to put up. Thereafter, on March 7, 1961, he submitted to the latter a proposal (Exhibit "A") for the supervision of the construction of said building on commission basis. The proposal was signed not by Lee but by his office manager, Antonio Wong. The private respondent never affixed his signature on the document.

Among the provisions contained in the proposal was the setting up of a revolving fund of P10,000.00 Pesos for the costs and expenditures to be incurred in the construction of the building, such as materials and labor among others (Exhibit "A", par. 1). The fund was to be replenished by the owner of the building from time to time (*Id.*). The proposal also provided for the payment to Weldon Construction of a commission of ten per cent (10%) of the

total cost of the building (Id., par. 5)

Without having signed the proposal Exhibit "A" or any written agreement on the construction of the building, private respondent Cancio gave an advance payment of P10,000.00 Pesos. Then, on March 28, 1961, Lee submitted another proposal (Exhibit "4") this time for the construction of the same building at the stipulated price of P600,000.00 Pesos. Two days after, Lee sent the private respondent a prepared "Building Contract" (Exhibit "5") signed by him, for the signature of the latter and those of the witnesses. Private respondent did not return the document to Lee, but the petitioner started the construction of the building. When the document (Exhibit "5") was later presented in court, it contained the signatures of Lee, as well as the signatures of Manuel Cancio, that of his wife, giving her marital consent, and those of two witnesses.

As the construction of the theater building shifted to high gear, subsequent payments were made by respondent Cancio to Weldon Construction as per accomplishment in the varying amounts of P25,000.00 Pesos, P27,414.62 Pesos, P40,000.00 Pesos, P50,000.00 Pesos and even P70,000.00 Pesos (Court of Appeals Decision, Rollo p. 56; Exhibits "8"-"18"). The materials were bought and paid for by the contractor, although the invoices were in the name of the owner, evidently to avoid payment by the former of the three per cent (3%) contractor's tax. (Court of Appeals Decision, Rollo p. 59). The invoices, receipts of payment, vouchers and payrolls were not surrendered to the owner but were kept by the contractor. (Id. p. 57).

Shortly after the completion of the theater building and its delivery to the owner, the latter completed the payment of the P600,000.00 contract price (CA Decision, Rollo p. 59). However, Weldon Construction demanded the payment of P62,378.83 Pesos, as a commission of ten per cent (10%) of the total cost of construction and of P23,788.32 Pesos as the cost of the "extra works" on the building. The owner Cancio denied the existence of any agreement on the payment of commission and refused to pay the amounts demanded. Hence, this suit initiated by the WELDON CONSTRUCTION CORPORATION, the successor-in-interest of Lucio Lee and Weldon Construction.

3. A careful scrutiny of each and every term and stipulation in the two documents Exhibit "A" and Exhibit "5" revealed two differences between them which are crucial to this case. One basic difference between the two agreements lies in the proposed consideration for the administration or supervision services. Proposed under Exhibit "A" was Ten Per Cent (10%) of the total cost of construction (Exh "A", par. 5) without a maximum amount set as a limit on that cost. In contrast, Exhibit "5" sets the stipulated price of the construction of the building at P600,000.00 Pesos, which is the consideration of the contract (Exhibit "5." par. 4). The other point of divergence is the manner in which the expenses for labor and materials are provided for. Exhibit "A" sets up a revolving fund of P10,000.00 Pesos to be paid by the Owner and to be replenished by him from time to time, which fund shall answer for the various costs of construction including labor and materials (Exh. "A" par. 1). No such fund is provided for in Exhibit "5" since the Contractor Weldon Construction binds itself to supply the labor and materials (Exh. "5", par. 2).

The first proposal submitted by Weldon Construction for rendering service under a contract of supervision (Exhibit "A") is simply that, a proposal. It never attained perfection as the contract between the parties. Only an absolute or unqualified acceptance of a definite offer manifests the consent necessary to perfect a contract (Article 1319, New Civil Code). The advance payment of P10,000.00 Pesos was not an unqualified acceptance of the offer contained in the first proposal (Exhibit "A") as in fact an entirely new proposal (Exhibit "4") was submitted by Weldon Construction subsequently. If, as claimed by the petitioner, the parties had already agreed upon a contract of supervision under Exhibit "A", why then was a second proposal made? *Res ipsa loquitur*. The existence of the second proposal belies the perfection of any contract arising from the first proposal.

With regard to the second proposal (Exhibit "4") for the construction of the building at a stipulated price, the same was closely followed by the "Building Contract" (Exhibit "5") signed by Lee, setting forth in detail the proposed terms and stipulations. Although the petitioner claims that the contract was never returned to its predecessors-in-interest, it appears upon the face of the document (Exhibit "5") that the same was signed by the contracting parties and their witnesses. Petitioner does not question the authenticity of the signature of its predecessor-in-interest, Lucio Lee, appearing on the document (Exhibit "5"). Lee himself has admitted said signature as his. Petitioner, however, impugns the binding effect of the Building Contract (Exhibit "5") by assailing its due execution. It calls the attention of the Court to

the conclusion of the trial court that the signature of the defendant (herein private respondent) and that of the witness Martinez were affixed on said contract after its purported date of execution on March 30, 1961 (Record on Appeal, pp. 89-90).

Petitioner's position is untenable. Once a contract is shown to have been consummated or fully performed by the parties thereto, its existence and binding effect can no longer be disputed. It is irrelevant and immaterial to dispute the due execution of a contract, i.e. the date of signing by one of the parties, if both of them have in fact performed their obligations thereunder and their respective signatures and those of their witnesses appear upon the face of the document.

Thus, even assuming that the Building Contract in Exhibit "5" was signed by the private respondent only after the Gay Theater building had been completed and the stipulated price of P600,000.00 Pesos fully paid, such fact can no longer negate the binding effect of that agreement if its existence and especially, its consummation can be established by other evidence, e.g. by the contemporaneous acts of the parties and their having performed their respective obligations pursuant to the agreement. As held in *Kriedt v. E.C. McCullough & Co.*, 37 Phil. 474, 480 (1918):

. . . Acts done by the parties to a contract in the course of its performance are admissible in evidence upon the question of its meaning as being their own contemporaneous interpretation of its terms. (Cited in *Manila Electric Company v. Court of Appeals*, L-33794, May 31, 1982, 114 SCRA 173, 181)

A similar pronouncement was made by the Court in *Shell Company of the Philippines, Ltd. v. Firemen's Insurance Co. of Newark*, 100 Phil. 757 (1957), to wit:

To determine the nature of a contract courts do not have or are not bound to rely upon the name or title given it by the contracting parties, should there be a controversy as to what they really had intended to enter into, but the way the contracting parties do or perform their respective obligations, stipulated or agreed upon may be shown and inquired into, and should such performance conflict with the name given the contract by the parties, the former must prevail over the latter (cited in *Borromeo v. Court of Appeals*, L-22962, September 28, 1972, 47 SCRA 65, 74).

Thus, the manner in which the parties conducted their transactions relating to the construction of the Gay Theater building indicates whether the parties had intended to be bound by a construction contract for a stipulated price or by any other agreement. The demandability of the amounts sought to be recovered by the petitioner will depend on the nature of that agreement.

In this case, the Court finds that the parties adhered to the terms and stipulations of the Building Contract (Exhibit "5"). After said contract bearing the signature of the contractor Lee was submitted for the signature of the respondent Cancio, subsequent payments were made by the latter in amounts ranging from P25,000.00 Pesos to P70,000.00 Pesos. Even granting that the P10,000.00 Pesos advance payment by the owner was set up as a revolving fund, these relatively large amounts could hardly be considered as mere replenishments of said initial amount. As correctly reasoned out in the Decision of the Court of Appeals (Rollo, p. 56), replenishments of the

P10,000.00-peso revolving fund could not exceed that amount. The remittances made by the building owner were actually partial payments of the contract price of P600,000.00 Pesos, the amount having been based on the actual accomplishment of the construction during the period covered by the payment. Thus, the receipts issued by Weldon Construction contained the words, "as per accomplishment" (Exhibits "8" - "18"). The aforementioned acts of the parties with respect to said remittances are in consonance with paragraph 4 of the Building Contract (Exhibit "5"), to wit:

* * *

4. The Owner shall pay the Contractor the full amount of SIX HUNDRED THOUSAND (P600,000.00) PESOS Philippine Currency, which payment the Owner shall pay in (sic) the basis of work accomplished based on breakdowns attached herewith marked Annex 'B' and 'C'. Such payments shall be paid on the tenth of every month. Ten per cent retention of every payment shall be retained by the Owner, to be paid upon the completion of the project;

* * *

The inescapable conclusion is that Weldon Construction assumed the obligation to construct the building at the price fixed by the parties and to furnish both the labor and materials required for the project. It acted as an independent contractor within the meaning of Article 1713 of the New Civil Code, which states:

ART. 1713. By the contract for a piece of work the contractor binds himself to execute a piece of work for the employer, in consideration of a certain price or compensation. The contractor may either employ only his labor or skill or also furnish the materials.

In view of all the foregoing considerations this Court finds that the agreement between the parties is the contract of construction for a stipulated price contained in Exhibit "5" which is akin to a contract for a piece of work defined in the aforequoted article. Both parties having fully performed their reciprocal obligations in accordance with said contract, petitioner is estopped from invoking an entirely different agreement so as to demand additional consideration. Once a contract has been consummated, there is nothing left to be done or to be demanded by the parties thereto. All obligations arising from the contract are extinguished.

As set by the parties, the consideration for the construction of the Gay Theater building is P600,000.00 Pesos which amount has been fully paid by the private respondent. There is no basis for the petitioner's demand for the payment of P62,378.83 Pesos as commission of ten per cent (10%) of the total cost of construction. The denial of petitioner's claim for said amount is affirmed.

4. Since the contract between the parties has been established as a contract for a piece of work for a stipulated price the right of the contractor to recover the cost of additional works must be governed by Article 1724 quoted as follows:

ART. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract or demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing; and

(2) The additional price to be paid to the contractor had been determined in writing by both parties.

This Court has found occasion to expound upon the nature of the requisites prescribed by Article 1724 in the case of *San Diego v. Sayson*, L-16258, August 31, 1961, 2 SCRA 1175, 1178-1179, which is in point:

* * *

It will be noted that whereas under the old article recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, the amendment evidently requires that instead of merely proving authorization, such authorization must be made in writing. The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. Is this additional requirement of a written authorization, to be considered as a mere extension of the Statute of Frauds, or is it a substantive provision? That the requirement for a written authorization is not merely to prohibit admission or oral testimony against the objection of the adverse party, can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article 1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery.

* * *

In addition to the owner's authorization for any change in the plans and specifications, Article 1724 requires that the additional price to be paid for the contractor be likewise reduced in writing. Compliance with the two requisites in Article 1724, a specific provision governing additional works, is a condition precedent to recovery (*San Diego v. Sayson*, supra.). The absence of one or the other bars the recovery of additional costs. Neither the authority for the changes made nor the additional price to be paid therefor may be proved by any other evidence for purposes of recovery.

In the case before this Court, the records do not yield any written authority for the changes made on the plans and specifications of the Gay Theater building. Neither can there be found any written agreement on the additional price to be paid for said "extra works". While the trial court may have found in the instant case that the private respondent admitted his having requested the "extra works" done by the contractor (Record on Appeal, p. 66 [C.F.I. Decision]), this does not save the day for the petitioner. The private respondent claims that the contractor agreed to make the additions without additional cost. Expectedly, the petitioner vigorously denies said claim of the private respondent. This is precisely a misunderstanding between parties to a construction agreement which the lawmakers sought to avoid in prescribing the two requisites under Article 1724 (Report of the Code Commission, p. 148). And this case is a perfect example of a tedious litigation which had ensued between the parties as a result of such misunderstanding. Again, this is what the law endeavors to prevent (*San Diego v. Sayson*, supra.).

In the absence of a written authority by the owner for the changes in the plans and specifications of the building and of a written agreement between the parties on the additional price to be paid to the contractor, as required by Article 1724, the claim for the cost of additional works on the Gay Theater building must be denied.

WHEREFORE, the judgment of the Court of Appeals in its Decision of December 23, 1971 which was upheld in its Resolution of October 18, 1972 dismissing the complaint filed by Weldon Construction Corporation is **AFFIRMED**. The modification by the Court of Appeals of said Decision in its Resolution of October 18, 1972 which dismissed the defendant's counterclaims is likewise **AFFIRMED**. Petition **DISMISSED** for lack of merit.

SO ORDERED.

Fernan, (Chairman), Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.

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