

ROSALIA S. DE TANGCO, PETITIONER VS. COURT OF APPEALS (FIRST DIVISION) AND RICARDO SUNGA, RESPONDENTS.

G. R. No. L-3754. June 29, 1951

Ponente: REYES, J.

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REYES, J.:

This is an appeal by certiorari from a decision of the Court of Appeals.

On March 18, 1947, Jose S. Marquez, an architect, entered into a contract with Rosalia S. de Tangco for the construction of a residential building according to plans and specifications to be prepared by the architect and approved by the owner. With the architect furnishing both labor and materials, the owner was to pay P45,000 for the finished structure. Subsequent changes on the plans and specifications due to extras ordered by the owner, made her answerable for an additional P1,300.

To expedite the construction, Marquez engaged Ricardo M. Sunga as a subcontractor, who agreed to erect the building for P42,000, exclusive of extras, subject to the former's technical supervision. It does not appear that Mrs. Tangeo gave her express approval to the subcontract, but on the day the construction began Sunga was introduced to her as the subcontractor who was to do the work. When the construction was about to be finished, that is, with nothing left to be done except the wainscoting of the kitchen, which according to estimate would have cost P300, Mrs. Tangeo stopped all work and took delivery of the building.

As often happens in these cases, a disagreement arose regarding payment. Sunga claimed that all in all he had received from Mrs. Tangeo, directly or through Marquez, a total of P41,300 only. Adding to this the P300 which he would have to allow for the unfinished wainscoting and subtracting the total from the price of P42,000 agreed upon between him and Marquez, there would still be a balance of P400 in his favor. Sunga also claimed that aside from the extras ordered by Mrs. Tangeo which, as above stated, made her answerable for an additional P1,300, he rendered other extra work of the total value of P5,920. As Mrs. Tangeo refused to pay the different amounts alleged to be due, Sunga brought the present action to enforce collection.

The Court of First Instance absolved Mrs. Tangeo from the complaint on the ground that she had contracted no obligation to Sunga as she was not privy to the subcontract entered into between the latter and Marquez. But the Court of Appeals reversed this decision and sentenced her to pay the various sums claimed in the complaint. It is this sentence that we now have to review.

There is no question about Mrs. Tangco's obligation to pay for the extras ordered by her of the agreed value of P1,300. This is admitted in her brief. She claims, however, that, including credits for materials furnished by her, she has already paid a total of P44,300 which, added to the P2,000 Marquez has authorized her to retain to cover the cost of incompleting work, was sufficient to offset the P45,000 she has agreed to pay for the building and the P1,300 for the extras ordered by her.

While the claim appears to find support in certain receipts appended to her brief but not presented as evidence at

the trial, the same can no longer be entertained, for the Court of Appeals has found it as a fact, and this finding is conclusive for the purposes of this appeal, that Mrs. Tangco has paid a total of P41,000 only, which together with the P300 allowed for unfinished work (the wainscoting of the kitchen) entitled her to a credit of P41,300 only. The judgment for the four hundred-peso balance and the P1,300 for extras must, therefore, stand.

The only question left is Mrs. Tangco's liability for alleged extras not included in the claim for P1,300 and which according to Sunga cost P5,920. Mrs. Tangco denies that any extra work was done aside from what was covered in the claim for P1,300. The Court of Appeals, however, found otherwise. And again this finding of fact we must accept as conclusive. But we think the Court of Appeals erred in holding Mrs. Tangco liable for this extra work. For unlike the case of the P1,300 extra work made at the request of Mrs. Tangco, there is no finding that this one has been rendered at her instance or with knowledge that she was expected to pay for it. This is obvious from the following portion of the decision below:

"It has been also established that while the construction of said two-family residential building was in progress, sub-contractor Sunga performed extra labor and furnished extra materials at the personal instance and request of contractor Marquez and Mrs. Tangco; that the latter had been in the building premises most of the time and had personally seen the different changes and extra work done by the sub-contractor; that she knew where such extra work was placed and that it was extra work because it does not appear in the plans and specifications; and that for these extra labor and materials Mrs. Tangco agreed to pay the sum of P13,000 (Exhibit F). In addition to this item the sub-contractor 'proved as per certification of contractor Marquez (Exhibit E), that he has done in the building additional extra work, according to Engineer Sunga at a cost of P5,920.00 which despite repeated demands made on Mrs. Tangco she failed to pay. This increased her indebtedness for extra labor and materials, to P7,200." (Italics supplied.)

In the circumstances, Mrs. Tangco cannot be legally held liable for this alleged extra work. The doctrine of quasicontract invoked by the Court of Appeals does not apply, for here there is an express contract by which Mrs. Tangco has set a limit to her liability at P45,000, later increased by P1,300 for extra work done at her request. To extend her liability beyond this limit, something more than what appears in the findings of fact of the Court of Appeals would be necessary, such as, among other things, Mrs. Tangco's consent to the doing of the extra work and knowledge on her part that the contractor expected payment for the same.

In view of the foregoing, the judgment appealed from is affirmed in so much as it sentences Mrs. Tangco to pay the sums of P400 and P1,300 and legal interest on both, but reversed in so much as it sentences her to pay P5,920.00 and legal interest thereon. Without costs.

Paras, C. J., Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor and Bautista Angelo, JJ., concur.

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