

SOLIS & YARISANTOS, PETITIONER, VS. LIBERATO SALVADOR AND CESARIA M. SALVADOR, RESPONDENTS.

G.R. No. L-17022. August 14, 1965

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Under three distinct causes of action plaintiff, now petitioner, sought recovery of the sum of P6,751.04 from defendants, now respondents. The suit was filed in the Court of First Instance of Manila, which rendered judgment on October 13, 1956 absolving defendants and ordering plaintiff to return to them the amount of P2,000.00, with legal interest from January 14, 1954, and to pay moral damages and attorney's fees in the sum of P5,000.00, plus costs. On appeal by plaintiff the Court of Appeals affirmed, and the case came up to us for review by certiorari.

Petitioner is a partnership with the firm name "Solis & Yarisantos," engaged in the business of general engineering and construction. It contracted with respondents in 1952 "to prepare and interpret all the necessary plans and specifications of the proposed residential house of the latter and to supervise the construction thereof as well as to supply the technical know-how needed for work." Article II of the contract reads:

"SERVICE FEES:

"The owner shall pay the firm of solis & yarisantos for the performance of the agreement stated in Article 1, the amount of ONE THOUSAND SIX HUNDRED TWENTY-THREE (P1,623.00) PESOS which is equivalent to ten (10% PERCENT OF SIXTEEN THOUSAND TWO HUNDRED-THIRTY (P16,230.00) PESOS the estimated cost of construction complete of said building and fence as stipulated in the plans and specifications which form part and basis of the computation. That the OWNER shall pay the firm of solis & yarisantos the amount of TWO HUNDRED FIFTY (P250.00) pesos as soon as the plans and specifications of said building has been approved by the owner and the remaining ONE THOUSAND THREE HUNDRED SEVENTY-THREE (P1,373.00) pesos, which shall serve as a guarantee that the total cost of construction complete of said building and fence shall not exceed the sum of P16,230.00, to be paid after the complete construction of all items duly stated."

The Court of Appeals made the following findings and conclusions in its decisions:

"As stipulated, appellees paid P250.00 on September 19, 1952. The contract also provided that appellant "shall give all the necessary assistance to the owner in the procurement needed in the construction

x x x." The specifications accompanying the contract, provide, among others, that appellees would secure and pay for all permits and fees that might be required by the laws and ordinances; that all alterations and amendments should be the subject of the agreement between the parties and all works done in the process of construction which are not part of the contract or specifications would be considered extras to be paid for by the owner.

Appellant completed the construction in December, 1952, and appellees, in the same month, occupied and took

possession of the house which has a floor area of five square meters more than that provided in the plan, a terrace and some minor extras not included in the original plans and specifications. The fence was built breast-high, higher than what appellant claims was agreed upon. The cost of these additions, plus the amount it claims to have advanced for the necessary permits and fees, is what appellant is trying to recover.

A close study of the evidence reveals, that as regards the increase in floor area, the wall between the living room and the dining room, as contemplated in the plan, was discontinued, and the materials, or the equivalent thereof, that should have been used for said wall utilized in lengthening the living room by one-half meter. Likewise, there is sufficient evidence that it was after the house was finished that the garage was built by carpenters hired and paid by appellees and with materials sought and paid for by the latter.

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Anent the fence, the agreement provides only that "this Specifications includes the fence of the two sides fronting the two streets and one side of the property line only", the height not being fixed. The claim of appellant that the agreement was to build a fence of five layers only with a height of 60 centimeters from the ground is unbelievable. As aptly observed by the lower court, no sensible man would think of fencing his lot with a wall two feet high as it will prevent no animal from invading the lot. Besides, the specifications relating to the fence having been worded by appellant and to be interpreted by it, the same being incomplete, vague and obscure, should be construed against it (Article 1377, NCC; Rule 123 Sec. 65, Rules of Court). There being no specification as to how high the fence should be, it should be presumed to be of such height as to afford privacy and protection which are what a fence is for. Appellant therefore is not entitled to the additional costs it is charging for the erection of the fence.

Appellees admit that they caused the construction of the terrace and the installation of four extra lights without any definite agreement as to their cost; and that if they consented to some minor change or addition, it was upon appellant's assurance that it would not entail additional cost. From appellant's list of supposed extras, the cost of the materials actually used for the terrace such as hollow blocks, gravel, sand and cement, cannot be exactly determined since such materials bought at different times, were used in the simultaneous construction of the fence and the terrace. For these items, appellant is entitled to recover costs on quantum meruit. The total liability of appellees as per contract was P17,853.00 P16,230.00 of which is for cost of construction—labor and materials—and P16,230.00 for service fee. Excluding the P2,000.00 given by appellees on January 14, 1954, after the action was instituted, they had paid appellant P18,750.00 on account of the contract price, thus making an overpayment of P897.00. This amount is deemed a reasonable compensation for the terrace and four additional lights.

Regarding the list of extras, it is interesting to note that, according to appellant, it surrendered to appellees, for verification and checking, the vouchers or receipts for the corresponding items contained in said list which includes the fees allegedly advanced by appellant. But no counter-receipt or writing to show the nature of such surrender was presented. This, to our mind, is a strong indication that the costs of said items, granting that they were advanced by appellant, were reimbursed already, else the receipts would not have been given to appellees without counter-receipt. It is presumed that obligations delivered up to the debtor have been paid (Rule 123, Sec. 69 (h), id.). Appellant in delivering the receipts is likewise presumed to have taken ordinary care of his concerns and that he has followed the ordinary course of his business (Rule 123, Sec. 69 (d) and (q), id.). Or granting, on the other hand, that the amounts covered by the receipts were not reimbursed, appellant cannot now demand such costs or be allowed to recover them for failure to comply with Article 1724 of the New Civil Code which provides:

"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 nor 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 has been determined in writing by both parties."

As regards the nature of the payment made by appellees on January 14, 1954, it appears that in December 1952, when appellees took delivery of the finished building, they had so far paid appellant P16,750.00 only, still P1,103.00 short of the contract price of P17,853.00 including the service fee; that on February 19, 1953, appellant gave them the list of alleged extras for the , of which they are being charged; that on April 7, 1953, they again paid P2,000.00 to cover the unpaid balance of stipulated price and the cost of materials used in the terrace which were included in the list of extras and thus considered their house fully paid; that by this payment, they impliedly rejected the rest of appellant's claim for extras; that on October 17 and November 5, 1953, appellant made written demands upon appellees for the settlement of their unpaid account, meaning the cost of the extras; that appellees having refused to make any more payment, appellant filed its complaint on December 14, 1953; and that on January 14, 1954, upon appellees' request, Yarisantos, with his lawyer, went to the former's house to consider the settlement of the claim, and appellees paid him another P2,000.00 then and there.

Considering all the circumstances surrounding the payment of the P2,000.00 on January 14, 1954, we find no sufficient justification to disturb the conclusion of the court below that said payment was made in consideration of appellant's withdrawal of the complaint and final settlement of its claim and not, as it contends, as partial settlement only of any supposed pending account for additional labor and materials. Consequently, said amount ought to be returned inasmuch as appellant did not cause the dismissal of its complaint and, as above shown, appellees had already fully satisfied their obligation."

Petitioner assigns four errors in the foregoing decision, to wit:

I

"The Court of Appeals erred in applying Article 1724 of the Civil Code of the Philippines and Section 69 (h), Rule 123, Rules of Court, as a basis for disallowing the extras done by petitioner under its second and third causes of action.

II

The Court of Appeals erred in not awarding to petitioner its service fee of 10% of P897.00. The cost of the terrace and four lights of which the said court found to be extras, in spite of respondents' admission in their answer that petitioner is entitled to such service fee.

III

The Court of Appeals erred in finding that the payment of P2,000.00 made by respondents to petitioner on January 14, 1954 (Exhibit 5), is in the concept of having the case dropped.

IV

The Court of Appeals erred in finding petitioner liable to return to respondents the P2,000.00 paid on January 14, 1954, and to pay them the sum of P5,000.00 for moral damages."

Of the errors thus assigned the first and the second raise questions of law which may properly be reviewed by this Court; the third involves only a question of fact on which the finding of the Court of Appeals is conclusive; and the fourth, as far as the return of P2,000.00 is concerned, is merely a corollary of the third error assigned. The award of moral damages is a legal matter that may here be passed upon.

The applicability of Article 724 of the Civil Code, while it is indeed a question of law, need not be taken up in

view of the appellate court's conclusion that the cost of extras claimed in the complaint had been reimbursed to petitioner by respondents. Whether applicable or not, the provision of the Civil Code referred to would not make any difference.

The second assignment of error is well taken. Since the appellate court found that petitioner incurred extra expense for construction of the terrace and installation of additional lights and held that the sum of P897.00 paid by respondents in excess of the contract price just about covered the cost of such extra expense, petitioner is entitled to 10% thereof by way of service fee under Article II of the contract, or P89.70.

On one major point we disagree with both the trial and appellate courts. There is nothing in the decision under review which justifies the award of moral damages. There is no clear showing of malice on the part of the petitioner in filing the action; indeed, while both the trial and appellate courts found the facts to weigh more heavily in favor of respondents, and this finding is no longer subject to review at this stage, we cannot say that petitioner's evidence is utterly unworthy of credence. If respondents have suffered worries and mental anxiety, they could not have been more than what are usually caused to a party who is haled into court as defendant in a litigation.

The judgment appealed from is modified by eliminating: the award of moral damages therein and crediting to petitioner the sum of P89.70, the same to be deducted from the amount of P2,000.00 which petitioner is to pay under said judgment. No pronouncement as to costs.

Bengzon, C. J., Bautista Angelo, Concepcion, Reyes, J. B. L., Dizon, Regala, Bengzon, J. P., and Zaldivar, JJ., concur.

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