

H. O'LEARY, PLAINTIFF AND APPELLEE, VS. MACONDRAY & CO., INC., DEFENDANT AND APPELLANT.

G.R. No. L-21383. March 25, 1924

Ponente: H. O'LEARY, PLAINTIFF AND APPELLEE, VS. MACONDRAY & CO., INC., DEFENDANT AND APPELLANT. STATEMENT It is alleged that on January 30, 1920, the plaintiff, who is a resident of Manila, and the defendant, a domestic corporation, made the following agreement: "MACONDRAY & CO." "Manila, P. I." "Through G. H. Hayward. "SIRS: Appertaining to the residence to be erected for your firm in Pasay, for which I have been requested by G. H. Hayward to submit a proposition, I have the honor to state that I have examined the plans and site and would undertake the work and complete the building in accordance with the plans and instructions, and under the supervision of the said architect for the amount of the actual cost plus twelve and one-half per cent (12½%). "Payments to be made monthly on statements supported by vouchers, approved and certified to by the architect. "It is understood that time is an important provision, and with due consideration therefor materials suitable for the work are to be purchased in such quantities and at such times as may appear to be, to your best interest. "Very respectfully, "H. O'LEARY "Accepted for and on behalf of Macondray & Co. "By (Sgd.) "CARLOS YOUNG" That plaintiff commenced the construction of the building under the supervision of the architect, and continued the work thereon until near its completion, and kept and performed all the terms and provisions of the contract by him to be kept and performed, and that pursuant to such agreement he paid out for labor and materials the sum of P20,287.03, which was the actual cost; and that the defendant is indebted to him in the further sum of P2,535.83, being 12½ per cent of the actual cost of such labor and materials, and for and on account of his services and superintendence of the building, and he prays judgment for P22,822.86, with interest from the filing of the complaint and costs. In its second amended answer, after admitting the making of the contract and the formal allegations of the complaint, the defendant denies all other material allegations, and, as a special defense, alleges that, through plaintiff's negligence in the construction of the building and the purchase of materials, the defendant was damaged in the sum of P32,624.25, as specified in seven different counterclaims. It is then alleged that the plaintiff was indebted to the Luneta Motor Company in the sum of P702.49, and to the Insular Lumber Company in the sum of P9,766.23, both of which claims are assigned to the defendant, and it prays judgment against the plaintiff for the total of all of such claims amounting to P43,092.97. The parties entered into a stipulation as to certain exhibits, and upon such issues, the trial court rendered judgment in favor of the plaintiff for P12,201.99, with legal interest from the filing of the complaint and costs, from which the defendant appeals, contending that the court erred in allowing interest from the filing of the complaint, and in its computation and as to the duplicated item of the Tuason & Sampedro bill, in refusing to receive evidence of the rental value of the house, in failing to make special findings of fact, and in failing to find that the delay caused in the completion of the house was caused by plaintiff's negligence, in finding for the plaintiff on defendant's second counterclaim for damages in the sum of P797, in finding for the plaintiff on defendant's third counterclaim for damages in the sum of P5,440.11, and in finding for the plaintiff on defendant's fourth counterclaim for damages in the sum of P13,407.25, the amount of the alleged increase in the cost of labor caused by plaintiff's negligence. JOHN, J.

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STATEMENT

It is alleged that on January 30, 1920, the plaintiff, who is a resident of Manila, and the defendant, a domestic corporation, made the following agreement:

"MACONDRAY & CO."

"Manila, P. I."

"Through G. H. Hayward.

"SIRS: Appertaining to the residence to be erected for your firm in Pasay, for which I have been requested by G. H. Hayward to submit a proposition, I have the honor to state that I have examined the plans and site and would undertake the work and complete the building in accordance with the plans and instructions, and under the supervision of the said architect for the amount of the actual cost plus twelve and one-half per cent (12½%).

"Payments to be made monthly on statements supported by vouchers, approved and certified to by the architect. It is understood that time is an important provision, and with due consideration therefor materials suitable for the work are to be purchased in such quantities and at such times as may appear to be, to your best interest.

"Very respectfully,

(Sgd.) "H. O'LEARY

"Accepted for and on behalf of Macondray & Co.

By (Sgd.) "CARLOS YOUNG"

That plaintiff commenced the construction of the building under the supervision of the architect, and continued the work thereon until near its completion, and kept and performed all the terms and provisions of the contract by him to be kept and performed, and that pursuant to such agreement he paid out for labor and materials the sum of P20,287.03, which was the actual cost; and that the defendant is indebted to him in the further sum of P2,535.83, being 12½ per cent of the actual cost of such labor and materials, and for and on account of his services and superintendence of the building, and he prays judgment for P22,822.86, with interest from the filing of the complaint and costs.

In its second amended answer, after admitting the making of the contract and the formal allegations of the complaint, the defendant denies all other material allegations, and, as a special defense, alleges that, through plaintiff's negligence in the construction of the building and the purchase of materials, the defendant was damaged in the sum of P32,624.25, as specified in seven different counterclaims. It is then alleged that the plaintiff was indebted to the Luneta Motor Company in the sum of P702.49, and to the Insular Lumber Company in the sum of P9,766.23, both of which claims are assigned to the defendant, and it prays judgment against the plaintiff for the

total of all of such claims amounting to P43,092.97.

The parties entered into a stipulation as to certain exhibits, and upon such issues, the trial court rendered judgment in favor of the plaintiff for P12,201.99, with legal interest from the filing of the complaint and costs, from which the defendant appeals, contending that the court erred in allowing interest from the filing of the complaint, and in its computation and as to the duplicated item of the Tuason & Sampedro bill, in refusing to receive evidence of the rental value of the house, in failing to make special findings of fact, and in failing to find that the delay caused in the completion of the house was caused by plaintiff's negligence, in finding for the plaintiff on defendant's second counterclaim for damages in the sum of P797, in finding for the plaintiff on defendant's third counterclaim for damages in the sum of P5,440.11, and in finding for the plaintiff on defendant's fourth counterclaim for damages in the sum of P13,407.25, the amount of the alleged increase in the cost of labor caused by plaintiff's negligence.

JOHN, J.:

Plaintiff's cause of action is founded upon the contract above quoted, the making of which defendant admits. By its express terms, plaintiff says that he "would undertake the work and complete the building in accordance with the plans and instructions, and under the supervision of the said architect for the amount of the actual cost plus twelve and one-half per cent (12½%)." Payments are to be made on monthly statements accompanied by vouchers to be approved and certified by the architect. It then recites:

"It is understood that time is an important provision, and with due consideration therefor materials suitable for the work are to be purchased in such quantities and at such times as may appear to be to your best interest."

To say the least, the contract was very loosely drawn. No date is specified in which the building is to be completed, and time is not made the essence of the contract. It is true that the materials were to be purchased in such quantities and at such times as may appear to be to the defendant's interest.

The defense is founded upon the theory that the labor was not furnished and that the materials were not purchased for its best interest. There is no claim or pretense of fraud, or that the plaintiff was dishonest. In its final analysis, defendant's counterclaims are founded upon plaintiff's mistakes and errors of judgment in the employment of labor and the purchase of materials.

Assuming that there were mistakes and errors of judgment only, the plaintiff would not be liable for them under the contract. The fact that the price of lumber or of labor went up or down, or was cheaper at a certain time, would not make the plaintiff liable for a breach of contract, so long as he was exercising his best judgment and acting in good faith.

It will be noted that the materials were to be purchased "in such quantities and at such times as may appear to be to your best interest." That vested in the plaintiff a discretionary power as to the time and manner for the purchase of materials, for which he would not be liable for honest mistakes or errors of judgment. The same thing is true as to the employment of labor. It is true that the contract recites "that time is an important provision." But it does not say when the building is to be completed, or that time is of the essence of the contract. In other words, under the terms of the contract, the employment of labor, the purchase of materials and the completion and construction of the building were all matters which were largely left to the discretion of the plaintiff, for which he would not be liable for honest mistakes or errors of judgment.

Pending the trial the judge of the lower court made a personal inspection of the building and of the labor and materials used in its construction, and upon all of such questions, we agree with the trial court.

Although this action is founded upon contract, the amount of plaintiff's claim was vigorously disputed. In fact the defendant claimed judgment against the plaintiff for a much larger amount. Upon such a state of facts, and under recent decisions of this court, plaintiff is only entitled to interest from the date of the judgment, and defendant's first assignment of error must be sustained. It also appears that a clerical error was made in computing 12½ per cent on P1,772.14, and that the amount which should be deducted was P221.52 and not P22.15, as found by the trial court. Correcting this error, the amount of plaintiff's judgment should be P12,002.63.

The judgment of the lower court will be modified, and instead of P12,201.99, the amount of plaintiff's judgment will be P12,002.63, which will draw interest at the rate of 6 per cent per annum from the first day of August, 1923, the date of the judgment in the lower court. In all other respects, the judgment is affirmed, with costs in favor of the appellant in this court. So ordered.

Araullo, C. J., Street, Avancena, Ostrand, and Romualdez, JJ., concur.

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