

ROSENDO O. CHAVES, PLAINTIFF-APPELLANT, VS. FRUCTUOSO GONZALES, DEFENDANT-APPELLEE.

G.R. No. L-27454. April 30, 1970

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is a direct appeal by the party who prevailed in a suit for breach of oral contract and recovery of damages but was unsatisfied with the decision rendered by the Court of First Instance of Manila, in its Civil Case No. 65138, because it awarded him only P31.10 out of his total claim of P690.00 for actual, temperate and moral damages and attorney's fees.

The appealed judgment, which is brief, is hereunder quoted in full:

In the early part of July, 1963, the plaintiff delivered to the defendant, who is a typewriter repairer, a portable typewriter for routine cleaning and servicing. The defendant was not able to finish the job after some time despite repeated reminders made by the plaintiff. The defendant merely gave assurances, but failed to comply with the same. In October, 1963, the defendant asked from the plaintiff the sum of P6.00 for the purchase of spare parts, which amount the plaintiff gave to the defendant. On October 26, 1963, after getting exasperated with the delay of the repair of the typewriter, the plaintiff went to the house of the defendant and asked for the return of the typewriter. The defendant delivered the typewriter in a wrapped package. On reaching home, the plaintiff examined the typewriter returned to him by the defendant and found out that the same was in shambles, with the interior cover and some parts and screws missing. On October 29, 1963, the plaintiff sent a letter to the defendant formally demanding the return of the missing parts, the interior cover and the sum of P6.00 (Exhibit D). The following day, the defendant returned to the plaintiff some of the missing parts, the interior cover and the P6.00.

"On August 29, 1964, the plaintiff had his type-writer repaired by Freixas Business Machines, and the repair Job cost him a total of P89.85, including labor and materials (Exhibit C).

"On August 23, 1965, the plaintiff commenced this action before the City Court of Manila, demanding from the defendant the payment of P90.00 as actual and compensatory damages, P100.00 for temperate damages, P500.00 for moral damages, and P500.00 as attorney's fees.

"In his answer as well as in his testimony given before this court, the defendant made no denials of the facts narrated above, except the claim of the plaintiff that the typewriter was delivered to the de-fendant through a certain Julio Bocalin, which the de-fendant denied allegedly because the typewriter was delivered to him personally by the plaintiff.

"The repair done on the typewriter by Freixas Business Machines with the total cost of P89.85 should not, however, be fully chargeable against the defendant. The repair invoice, Exhibit C, shows that the missing parts had a total value of only P31.10.

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff the sum of P31.10, and the costs of suit.

"SO ORDERED."

The error of the court a quo according to the plaintiff-appellant, Rosendo O. Chaves is that it awarded only the value of the missing parts of the typewriter, instead of the whole cost of labor and materials that went into the repair of the machine, as provided for in Article 1167 of the Civil Code, reading as follows:

"Art. 1167. If a person obliged to do something fails to do it, the same shall be executed at his cost.

"This same rule shall be observed if he does it in contravention of the tenor of the obligation. Furthermore, it may be decreed that what has been poorly done be undone."

On the other hand, the position of the defendant-appellee, Fructuoso Gonzales, is that he is not liable at all, not even for the sum of P31.10, because his contract with plaintiff-appellant did not contain a period, so that plaintiff-appellant should have first filed a petition for the court to fix the period, under Article 1197 of the Civil Code, within which the defendant-appellee was to comply with the contract before said defend-ant-appellee could be held liable for breach of contract.

Because the plaintiff appealed directly to the Supreme Court and the appellee did not interpose any appeal, the facts, as found by the trial court, are now conclusive and non-reviewable.[1]

The appealed judgment states that the "plaintiff delivered to the defendant a portable typewriter for routine cleaning and servicing"; that the "defendant was not able to finish the job after some time despite repeated reminders made by the plaintiff"; that the "defendant merely gave assurances, but failed to comply with the same"; and that "after getting exasperated with the delay of the repair of the typewriter" , the plaintiff went to the house of the defendant and asked for its return, which, was done. The inferences derivable from these findings of fact, are that the appellant and the appellee had a perfected contract for cleaning and servicing a typewriter; that they intended that the defendant was to finish it at some future time although such time was not specified; and that such time had passed without the work having been accomplished, for the defendant returned the typewriter cannibalized and unrepaired, which in itself is a breach of his obligation, without demanding that he should be given more time to finish the job, or compensa-tion for the work he had already done. The time for compliance having evidently expired, and there being a breach of contract by non-performance, it was academic for the plaintiff to have first petitioned the court to fix a period for the performance of the contract before filing his complaint in this case. Defendant cannot invoke Article 1197 of the Civil Code for he virtually admitted non-performance by returning the typewriter that he was obliged to repair in a non-working condition, with essential parts missing. The fixing of a period would thus be a mere formality and would serve no purpose than to delay (of. *Tiglao, et al. v. Manila Railroad Co.*, 98 Phil. 181).

It is clear that the defendant-appellee contravened the tenor of his obligation because he not only did not repair the typewriter but returned it "in shambles", according to the appealed decision. For such con-travention, as appellant contends, he is liable under Article 1167 of the Civil Code, *jam quot*, for the cost of executing the obligation in a proper manner. The cost of the execution of the obligation in this case should be the cost of the labor or service expended in the repair of the typewriter, which is in the amount of P58.75, because the obligation or contract was to repair it.

In addition, the defendant-appellee is likewise liable, under Article 1170 of the Code, for the cost of the missing parts, in the amount of P31.10, for in his obligation to repair the typewriter he was bound, but failed or neglected, to return it in the same condition it was when he received it.

Appellant's claims for moral and temperate damages and attorney's fees were, however, correctly rejected by the trial court, for these were not alleged in his complaint (Record on Appeal, pages 1-5). Claims for damages and

attorney's fees must be pleaded, and the existence of the actual basis thereof must be proved.[2] The appealed judgment thus made no findings on these claims, nor on the fraud or malice charged to the appellee. As no findings of fact were made on the claims for damages and attorney's fees, there is no factual basis upon which to make an award therefor. Appellant is bound by such judgment of the court, a quo, by reason of his having resorted directly to the Supreme Court on questions of law.

IN VIEW OF THE FOREGOING REASONS the appealed judgment is hereby modified, by ordering the defendant?appellee to pay, as he is hereby ordered to pay, the plaintiff-appellant the sum of P89.85, with interest at the legal rate from the filing of the complaint. Costs in all instances against appellee Fructuoso Gonzales.

Concepcion, C.J., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Teehankee, and Villamor, JJ., concur. Barredo, J., did not take part.

[1] Perez v. Araneta, L-18414, 15 July 1968, 24 SCRA 43; Cebu Port-land Cement Co. v. Mun. of Naga, L-24116-17, 22 August 1968, 24 SCRA 708.

[2] Malonzo v. Galang, L-13851, 27 July 1960; Darang v. Belizar, L-22399, 31 March 1967, 19 SCRA 214.

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