

**DIAO CONTINO, PLAINTIFF AND APPELLANT, VS. NOVO &
COMPANY, DEFENDANT AND APPELLANT.br>***G.R. No. 10057. January 27, 1916*

Ponente: TRENT, J.

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The plaintiff's steamer Isabela was inspected by the customs authorities at Cebu in 1908, and an extensive list of repairs was ordered to be made thereon as a result of that inspection. Between March 31, 1908, and April 10, 1908, the parties consummated a contract wherein the defendant agreed to make the required repairs for P18,182 and to complete the work within ninety days. In the meantime (April 6, 1908) the vessel was delivered to the defendant and the work was commenced. On November 11, 1908, the defendant proposed in writing to renew the protection strips or "rozaderos" on the steamer for the sum of P900, and this proposal was accepted by the plaintiff. The vessel was completely repaired and returned to the plaintiff on February 11, 1909. Subsequent thereto and on January 19, 1910, the plaintiff commenced this action to recover damages to the amount of P32,250, incurred by reason of the loss of the use of the steamer during the period of 215 days, or from July 6, 1908, ninety days after the delivery of the vessel to the defendant, to February 11, 1909. After making a general denial, the defendant interposed a special defense wherein it is alleged that the termination of the repairs on the steamer was delayed upon the orders and instructions of the plaintiff, and the defendant, by means of a cross-complaint, seeks to recover (a) P11,768.20 as compensation for extra work not included in the written contracts; (b) P1,638 for docking the vessel; and (c) P10,000 damages for libel of its business. Upon the issues thus joined, the trial was had and judgment entered on January 19, 1914, absolving the defendant and awarding it the sum of P11,619.70, being the greater portion of the compensation demanded for extra work. From this judgment both parties have appealed.

The principal contract to repair the vessel within ninety days for P18,182 and the supplementary contract for additional work amounting to P900 are both in writing and are not questioned by either party. Aside from these written contracts, there are two letters in the record to which our attention has been specially called. These letters read as follows:

"CEBU, April 18, 1908.

"Mr. CONTINO DIAO LIECCO.

"DEAR SIR: As some of the braces in the woodwork of the side of the coal bunkers and a part of the bows not included in the contract, as well as the joists under the bed of the engine of the steamer Isabela now undergoing repairs in the undersigned's shipyard, are in very bad condition, we hope you will give such instructions as you may deem proper with respect thereto, so as to avoid delay. "Yours respectfully,

(Sgd.) "M. NOVO & CO.

"April 20, 1908.

"MESSRS. M. NOVO & CO.

"GENTLEMEN : In reply to your favor of the 18th instant, I have to say to you that, with respect to the unestimated work on the steamer Isabela undergoing repairs in your shipyard, you may from this day forward make arrangements with the Chinaman Julian, to whom I have already given orders in the matter, thus avoiding delays in the progress of the work on the steamer.

"Yours respectfully,

(Sgd.) "DIAO CONTINO."

If the plaintiff did not agree to extend the time within which the defendant might complete the repairs on his steamer, why did he authorize the defendant in November, which was long after the ninety days had expired, to make additional repairs amounting to P900? That the plaintiff consented to extend the time beyond the ninety days, there can be no question. This fact is clearly established by the November agreement. And furthermore, the record fails to show any protest on the part of plaintiff at any time against the delay in completing the work, and he did not commence this action for nearly a year after the vessel had been completed and returned to him.

Does the record show with any degree of certainty just what "extra" work the defendant did and its reasonable value? In the first place, the defendant denied having sent a representative aboard the steamer after the receipt of the list of repairs which the customs authorities had ordered and before it submitted its bid of P18,182, for the purpose of determining the cost of such repairs; but the record shows the contrary. An inspection by the defendant's representative was made, after which the bid was submitted. In the offer to do the work for P18,182, the defendant calls attention to the fact that it is including the building of two large tanks of approximately three tons. If the defendant did nothing except make up its offer from the plaintiff's list, how did it know that the tanks were necessary when no mention of them was made in the list of repairs sent by the plaintiff to the defendant? Again, aside from the positive testimony that defendant's representative did make a thorough examination of the ship before offering to do the work for P18,182, is it conceivable that a well regulated business house of the character of the defendant would undertake to make so many important repairs on a steamer for the sum mentioned within ninety days without an examination of the vessel, when the vessel was just a few hundred yards away? Notwithstanding these facts and the further fact that both principal and supplementary contracts were in writing, the defendant attempts to collect in this action P11,768.20 for "extras" aside from those agreed upon in the two contracts. In support of this demand, the defendant presented its Exhibit A, which is an alleged list of "extras," and specifically examined certain witnesses upon the question of whether or not the "extras," contained in Exhibit A, were included in the written contracts. As to whether these extra repairs were really made and whether the charges are reasonable, the trial court said:

"During the course of the hearing it was claimed that the several entries of additional work, contained in the Statement A, were, at least in part, included in the work and repairs estimated and contracted for in the first estimate, plaintiffs Exhibit 2. The court does not claim to possess expert knowledge of this kind of work, but nevertheless, he has made a comparison of the two lists, plaintiff's Exhibit 2 and the Statement A, and cannot see by such comparison that the said lists include, even in part, identical work, except in the case of a few entries which will be referred to later on. Neither has the plaintiff tried during the course of the trial to prove these allegations, although it presented at the hearing a witness who is an expert on the subject. The court, therefore, finds that, with the exceptions to be mentioned further on, the original estimate, plaintiffs Exhibit 2, and the references to additional work specified in detail in the defendant's Statement A, relate to separate and distinct work.

* * * * *

"With respect to the prices of the said additional work specified in the defendant's Statement A, it is plain that

no written, nor perhaps any verbal, agreement was made between the parties. The plaintiff has not endeavored to prove that the said prices are unjust or unreasonable, or that they exceed the current local prices for labor and material. In the Code of Civil Procedure there are provisions which allow a presumption of fact that transactions of this kind are just, and the court therefore, in view of the fact that the plaintiff has evidently not attempted to present any evidence assailing the value of the aforementioned work, finds that those prices are just and reasonable in accordance with the current local prices. It is probable that in this case the just and reasonable local prices are somewhat in excess of the prices which could have been stipulated by express agreement between the parties, but this is customary in cases of this nature. The plaintiff appears not to have kept any book or memorandum concerning the extent of the said additional work or the prices to be paid therefor; so, if the prices are, in comparison with the current local prices, somewhat higher than those which could have been expressly stipulated by the parties, the fault for this situation rests only upon the plaintiff itself."

With these conclusions we cannot agree. The defendant does not contend that there existed an express and complete agreement between it and the plaintiff for the performance of the extra work at the agreed price of P11,768.20. It is merely claimed that the extra work performed was done with the knowledge and consent of the plaintiff in pursuance of the letter of April 20th, above quoted. Consequently, this demand is upon a quantum meruit. Therefore, before recovery can be had upon this count, the defendant must show (1) the quantity of work performed and (2) the reasonable value of such work. The error of the trial court upon the first point is based upon the unfounded premise that the burden of showing duplicate charges in the two accounts of defendant rested upon the plaintiff. The trial court has apparently overlooked the fact that we have here to do with a contractor who has performed his contract and who has been paid the contract price, but who is claiming that he has performed extra services for which he seeks extra compensation. It is the duty of the defendant as such claimant to establish that he has performed services outside of his contract and to establish the value of such services. In other words, upon the claim and count for extra services, the defendant can only recover for such services as are extra, that is, outside of the express contracts, and to warrant a recovery upon this ground the defendant must show that the services performed are other and different than the services for which it has been paid under the contract. The trial court has rejected five separate items from defendant's claim on the ground that they are included in the principal contract, and is in error in finding that the remaining items are "extras" on the ground that the plaintiff has failed to prove them otherwise.

In the same manner and to the same degree does the trial court err relative to the amount to be awarded to the defendant on account of the alleged extras. Plainly, the amount due defendant therefor, if any, is not the amount which defendant may see fit to ask for its extra work, but is the reasonable and proper value thereof. The evidence of record fails to establish with any degree of certainty the reasonable value of the alleged extra work. The trial court recognizes and acknowledges this deficiency, but seeks to remedy the deficiency by casting the burden upon the plaintiff to prove that the charges are unjust and unreasonable, or in excess of the current market price thereof, and by invoking an alleged presumption from the Code of Civil Procedure that operations or transactions of this kind are just. The trial court fails to cite the provisions of the Code from which this presumption is taken, and we have been unable to find such a provision. We apprehend the true rule to be that the defendant is entitled to only such sum or amount as it proves that its work is worth. After a careful examination of the record, we must conclude that the defendant has failed to prove within any degree of certainty the amount of the alleged work or its value.

The item of P1,638 as compensation for docking the vessel and the item of P10,000 for libel of the defendant's business must be rejected upon the ground that the defendant has entirely failed to show that it is entitled to these amounts or either of them.

For the foregoing reasons, the judgment appealed from, awarding the defendant the sum of P11,619.70 for alleged extras, is reversed. The record will be returned to the court below with direction to enter judgment dismissing the complaint. No costs will be allowed in this instance. So ordered.

Arellano, C. J., Torres, Johnson, Carson, and Moreland, JJ., concur.

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