

**WILLIAM FRESSEL ET AL., PLAINTIFFS AND APPELLANTS, VS.
MARIANO UY CHACO SONS & COMPANY, DEFENDANT AND
APPELLEE.**

G.R. No. 10918. March 04, 1916

Ponente: TRENT, J.

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TRENT, J.:

This is an appeal from a judgment sustaining the demurrer on the ground that the complaint does not state a cause of action, followed by an order dismissing the case after the plaintiffs declined to amend.

The complaint, omitting the caption, etc., reads:

"2. That during the latter part of the year 1913, the defendant entered into a contract with one E. Merritt, whereby the said Merritt undertook and agreed with the defendant to build for the defendant a costly edifice in the city of Manila at the corner of Calle Rosario and Plaza del Padre Moraga. In the contract it was agreed between the parties thereto, that the defendant at any time, upon certain contingencies, before the completion of said edifice could take possession of said edifice in the course of construction and of all the materials in and about said premises acquired by Merritt for the construction of said edifice.

"3. That during the month of August last past, the plaintiffs delivered to Merritt at the said edifice in the course of construction certain materials of the value of P1,381.21, as per detailed list hereto attached and marked Exhibit A, which price Merritt had agreed to pay on the 1st day of September, 1914.

"4. That on the 28th day of August, 1914, the defendant under and by virtue of its contract with Merritt took possession of the incomplete edifice in course of construction together with all the materials on said premises including the materials delivered by plaintiffs and mentioned in Exhibit A aforesaid.

"5. That neither Merritt nor the defendant has paid for the materials mentioned in Exhibit A, although payment has been demanded, and that on the 2d day of September, 1914, the plaintiffs demanded of the defendant the return or permission to enter upon said premises and retake said materials at the time still unused which was refused by defendant.

"6. That in pursuance of the contract between Merritt and the defendant, Merritt acted as the agent for defendant in the acquisition of the materials from plaintiffs."

The appellants insist that the above quoted allegations show that Merritt acted as the agent of the defendant in purchasing the materials in question and that the defendant, by taking over and using such materials, accepted and ratified the purchase, thereby obligating itself to pay for the same. Or, viewed in another light, if the defendant took over the unfinished building and all the materials on the ground and then completed the structure according to the plans, specifications, and building permit, it became in fact the successor or assignee of the first builder, and as successor or assignee, it was as much bound legally to pay for the materials used as was the original party. The vendor can enforce his contract against the assignee as readily as against the assignor. While, on the other hand, the appellee contends that Merritt, being "by the very terms of the contract" an independent contractor, is

the only person liable for the amount claimed.

It is urged that, as the demurrer admits the truth of all the allegations of fact set out in the complaint, the allegation in paragraph 6 to the effect that Merritt "acted as the agent for defendant in the acquisition of the materials from plaintiffs," must be, at this stage of the proceedings, considered as true. The rule, as thus broadly stated, has many limitations and restrictions.

"A more accurate statement of the rule is that a demurrer admits the truth of all material and relevant facts which are well pleaded. * * * The admission of the truth of material and relevant facts well pleaded does not extend to render a demurrer an admission of inferences or conclusions drawn therefrom, even if alleged in the pleading; nor mere inferences or conclusions from facts not stated; nor conclusions of law." (Alzua and Arnalot vs. Johnson, 21 Phil. Rep., 308, 350.)

Upon the question of construction of pleadings, section 106 of the Code of Civil Procedure provides that:

"In the construction of a pleading, for the purpose of determining its effects, its allegations shall be liberally construed, with a view to substantial justice between the parties."

"This section is essentially the same as section 452 of the California Code of Civil Procedure. "Substantial justice," as used in the two sections, means substantial justice to be ascertained and determined by fixed rules and positive statutes. (Stevens vs. Ross, 1 Cal. 94, 95.) "Where the language of a pleading is ambiguous, after giving to it a reasonable intendment, it should be resolved against the pleader. This is especially true on appeal from a judgment rendered after refusal to amend; where a general and special demurrer to a complaint has been sustained, and the plaintiff has refused to amend, all ambiguities and uncertainties must be construed against him." (Sutherland on Code Pleading, vol. 1, sec. 85, and cases cited.)

The allegations in paragraphs 1 to 5, inclusive, above set forth, do not even intimate that the relation existing between Merritt and the defendant was that of principal and agent, but, on the contrary, they demonstrate that Merritt was an independent contractor and that the materials were purchased by him as such contractor without the intervention of the defendant. The fact that "the defendant entered into a contract with one E. Merritt, whereby the said Merritt undertook and agreed with the defendant to build for the defendant a costly edifice" shows that Merritt was authorized to do the work according to his own method and without being subject to the defendant's control, except as to the result of the work. He could purchase his materials and supplies from whom he pleased and at such prices as he desired to pay. Again, the allegations that the "plaintiffs delivered to Merritt * * * certain materials (the materials in question) of the value of P1,381.21, * * * which price Merritt agreed to pay," show that there were no contractual relations whatever between the sellers and the defendant. The mere fact that Merritt and the defendant had stipulated in their building contract that the latter could, "upon certain contingencies," take possession of the incompleting building and all materials on the ground, did not change Merritt from an independent contractor to an agent. Suppose that, at the time the building was taken over Merritt had actually used in the construction thus far P100,000 worth of materials and supplies which he had purchased on a credit, could those creditors maintain an action against the defendant for the value of such supplies? Certainly not. The fact that the P100,000 worth of supplies had been actually used in the building would place those creditors in no worse position to recover than that of the plaintiffs, although the materials which the plaintiffs sold to Merritt had not actually gone into the construction. To hold that either group of creditors can recover would have the effect of compelling the defendants to pay, as we have indicated, just such prices for materials as Merritt and the sellers saw fit to fix. In the absence of a statute creating what is known as mechanics' liens, the owner of a building is not liable for the value of materials purchased by an independent contractor either as such owner or as the assignee of the contractor.

The allegation in paragraph 6 that Merritt was the agent of the defendant contradicts all the other allegations and

is a mere conclusion drawn from them. Such conclusion is not admitted, as we have said, by the demurrer.

The allegations in the complaint not being sufficient to constitute a cause of action against the defendant, the judgment appealed from is affirmed, with costs against the appellants. So ordered.

Arellano, C. J., Torres, Johnson and Araullo, JJ., concur.

Moreland, J., concurs in the result.

Carson, J., dissents.

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