

**MARIANO LIMJAP, PLAINTIFF AND APPELLEE, VS. J. MACHUCA
& CO., DEFENDANT AND APPELLANT.***G.R. No. 13210. August 09, 1918*

Ponente: FISHER, J.

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The defendant company entered into a contract with the plaintiff for the construction of a mausoleum in the Del Norte cemetery of the city of Manila, at the price of P7,500 and in accordance with the plans and specifications of plaintiff's architect. In one of the specifications of the contract it was provided that the pedestal of the mausoleum should be made of reinforced concrete. The defendant constructed the mausoleum; the plaintiff accepted the work and paid the entire price therefor. At the time of the acceptance of the work, the sub-base of the mausoleum presented certain crevices or cracks, but the defendant assured the plaintiff that the pedestal had been constructed of reinforced concrete in accordance with the specifications of the contract. In view of this statement, the plaintiff, confiding in its truthfulness, accepted the work and paid the contract price. The statement, however, was not true, as in fact the pedestal was not constructed of reinforced concrete. After the lapse of a certain length of time following the delivery and acceptance of the work, the pedestal commenced to sink and crack, owing to the weakness of its construction and due to the failure to employ reinforced concrete in the work. It was then discovered that these defects originated from the defendant's failure to comply with the requirement of the contract in respect to the use of reinforced concrete in the construction of the pedestal. A demand was made upon the defendant to repair the defects, but it failed and refused to do so. This action was brought to collect from the defendant the sum of P805, the cost of the work which the plaintiff would need to have done in order to put the defective structure, the subject matter of the complaint, into good condition. The trial judge, who found that the facts in the case were substantially as above related, rendered judgment in favor of the plaintiff for the amount claimed. From this judgment the defendant has appealed. In support of its appeal the defendant company maintains that the lower court erred in holding that, in conformity with the contract, the delivery to the plaintiff and the acceptance by him of the work did not entirely relieve it from subsequent liability, and that the trial court also erred in holding that article 1591 of the Civil Code was applicable to the case at bar.

Although the defendant filed a motion for a new hearing, founded on the usual grounds, and entered an exception to the order denying its motion, the evidence produced before the trial court was not transmitted to the Supreme Court. Therefore, in considering the questions of law raised by the appellant's assignment of errors, we must conclusively assume that the facts are as they are stated to be in the findings on which the judgment appealed from is based.

The appellant maintains that the trial court erred in not holding that the delivery and the acceptance of the work and the payment of the price of the contract are a bar to the institution of this action. We do not agree with this contention. The lower court found, as proven facts, that in accordance with the terms of the contract it was the duty of the defendant to construct the pedestal of the mausoleum of reinforced concrete; that, when the work was delivered, the defendant informed the plaintiff that it had complied with the specifications of the contract; that the

plaintiff accepted the work, confiding in this statement, which in reality was not true; that, by reason of the defendant's not having constructed the pedestal of reinforced concrete, it gave way, presented fissures or cracks and ceased to stand level; and that the cost of correcting the defects and completing the work as it should have been done, in accordance with the terms of the contract, was the amount awarded in the judgment rendered.

As the breach of the contract which gave rise to these proceedings consisted in the defendant's failure to construct the pedestal of the mausoleum of reinforced concrete, it is evident that the defect in the construction was not apparent at the time of the delivery and acceptance of the work. Therefore the plaintiff was justified in relying on the defendant's statement that it had complied with the contract in regard to the employment of reinforced concrete as specified therein. Though it is a general rule that the acceptance of a building by the owner without protest or objection is equivalent to an acknowledgment on his part that the work has been done substantially as required by the contract, yet this rule is not applicable to hidden defects. (*Chan Suanco vs. Alonso*, 14 Phil. Rep., 517.) . From the very nature of things it is impossible to determine by the simple inspection of a concrete wall, floor, or platform whether it has been made of reinforced concrete, for the reason that this work is done by embedding iron or steel rods in the concrete in such manner as to increase its strength.

Article 1591 of the Civil Code provides that the contractor shall be liable for the damages that occur in case the building should collapse within the period of prescription, on account of defects in the work. In his commentaries on this article, Manresa says (vol. 10, p. 700 [Ed. of 1908, p. 754]) :

"The reason for the provision is very clear. The delivery of the thing and the examination made of it are not sufficient to warrant the supposition that the lessee had an opportunity to arrive at a perfect knowledge of all the defects the thing may contain. On the contrary, rather is it probable that such defects will not be manifest at first, and that they can be detected only by the lapse of time. As this consideration forces itself upon us from the very nature of things, it is both prudent and just to fix a period of time during which the lessor may be held to account, and not to conclude that the fact of the acceptance implies, on the part of the lessee, a waiver of actions which, at that moment, it cannot be known whether or not he will have occasion to bring."

The appellant argues that this article is not applicable inasmuch as it was not proven that the defect in the work, consisting in the defendant's failure to comply with the terms of the building contract, was one that caused a total destruction of the work. This argument is based on a literal construction of the words *se arruinase* [should collapse] which appear in article 1591. We can not agree with the appellant. It may often happen that, upon the discovery of some defect in a building, due to improper construction, if the defect is promptly repaired great damage to the building may be averted at a relatively small cost, while, if neglected, it may in time be the cause of the total destruction of the building. According to the theory of the appellant, if the owner folds his arms and allows the building to crumble, he may, when it has been entirely destroyed collect its whole value from the contractor; but if he immediately takes the necessary measures to repair the defective construction and in this wise restrict the amount of the damage, the expense thereby incurred must be borne by himself. The mere enunciation of this proposition is enough to show its absurdity. On the contrary, it is the duty of the contracting party injured by a breach of contract, to exercise reasonable care and diligence to avoid loss and minimize the resulting damage. (8 R. C. L., 442.)

The judgment of the court below is affirmed, with the costs of both instances against the appellant. So ordered.

Arellano, C. J., Torres, Johnson, Street, and Malcolm, JJ., concur.

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