

BARTOLOME E. SAN DIEGO, PETITIONER, VS. ELIGIO SAYSON, RESPONDENT.*G.R. No. 16258. August 31, 1961*

Ponente: LABRADOR, J.

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This is a petition for certiorari to review a decision of the Court of Appeals affirming a judgment of the Court of First Instance of Manila which sentenced petitioner Bartolome San Diego to pay respondent Eligio Sayson the sum of P5,541.76 with legal interest thereon from September 10, 1956, plus P500 as attorney's fees and costs. In the action brought by respondent Eligio Sayson in the Court of First Instance of Manila, he alleged that in November, 1954, he and San Diego entered into an agreement whereby Sayson would furnish labor for the construction of a building at 1200 Arlegui, Farnecio, Quiapo, Manila in accordance with the plans approved by the city engineer, at the price of P15,000; that in the course of the construction the plans approved by the city engineer were modified and changes were made not called for in the approved plans, for which plaintiff had to perform and/or furnish additional labor valued at P6,840.31; and that San Diego has refused to pay this additional sum. In a special defense, San Diego alleged that even granting that additional work had been performed, he may not be held liable for the same in view of the provisions of Article 1724 of the Civil Code.

At the trial the Court of First Instance of Manila found the following extra or additional work performed by Sayson:

"* * * he testified that the width of the building was increased from 13.80 meters in the plan as approved to 14.30 meters; the party wall of hollow block as appearing in the plan was changed to reinforced concrete; that although the mezzanine was ordered eliminated in the plan and therefore not included in the contract, defendant had it constructed; that after the stairs were constructed, it was ordered removed (Exhibit A—1—a); that the partitions were enlarged (Exhibit A—1—b); that the partitions on the second floor was raised, the transem was removed and the partition elevated to the ceiling (Exh. A—1—c); that all the partitions which were single in the plan were ordered made into double wall; the wooden flooring in Section 22 in the plan was changed to reinforced concrete (Exhibit A—3—a); that the eaves facing Farnecio Street although crossed out by the City Engineer were ordered made (Exh. A—1—d); that the walls had "costura" only under the plan but were ordered plastered and ceilings were ordered; although not included in the plan (Exhibit A—1—c). These changes which were ordered by defendant and his engineer are summarized on page 8 of Exhibit B as follows:

* * * * *

For additional work performed P6,840.31." (Record on Appeal, pp. 18, 19-20.)

Judgment for Sayson having been rendered for this amount the case was appealed to the Court of Appeals. In said court petitioner herein again raised as his defense the provisions of Article 1724 of the Civil Code, but this court held:

"We do not see any plausible reason why defendant should not compensate plaintiff for the alterations done by

the latter at the instance of the former who was benefitted thereby. Bid for such alterations were not included in the amount of P15,000.00, which amount was computed and submitted in the light of the approved plans. And since those alterations undoubtedly entailed expenses, time and efforts on the part of the contractor, then he should be in justice and equity to him paid for by defendant as owner of the building where they were done. It is true that there was no written agreement for such alterations but the absence thereof should not be allowed to make the contractor poorer and the owner of the building richer. Defendant in trying to justify his refusal to pay plaintiff for the latter's claim cites the following article of the Civil Code—

"Art. 1724. The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner can neither withdraw from the contract nor demand increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided:

- (1) Such change has been authorized by the proprietor in writing; and
- (2) The additional price to be paid to the contractor has been determined in writing by both parties.

"Obviously, the aforequoted provision of law is not applicable on the claim of defendant."

The decision was affirmed. Hence the case was brought here on an appeal by certiorari.

Article 1724 of the Civil Code is a modified form of Article 1593 of the Spanish Civil Code, which provides as follows:

"No architect or contractor who, for a lump sum, undertakes the construction of a building, or any other work to be done in accordance with a plan agreed upon with the owner of the ground, may demand an increase of the price, even if the costs of the materials or labor has increased; but he may do so when any change increasing the work is made in the plans, provided the owner has given his consent thereto."

In his commentaries on this Article, Manresa said:

"El artículo 1.793 del Código francés es más previsor que el que comentamos, pues exige para que el aumento de precio pueda pedirse, que los cambios o ampliaciones del plan se hayan autorizado por escrito y que se haya convenido el precio con el propietario." (X Manresa, Fifth ed., p. 926).

Obviously influenced by the above criticism of the article, the Code Commission recommended and the legislature approved the provision as it now stands. It will be noted that whereas under the old article recovery for additional costs in a construction contract can be had if authorization to make such additions can be proved, the amendment evidently requires that instead of merely proving authorization, such authorization by the proprietor must be made in writing. The evident purpose of the amendment is to prevent litigation for additional costs incurred by reason of additions or changes in the original plans. Is this additional requirement of a written authorization to be considered as a mere extension of the Statute of Frauds, or it is a substantive provision. That the requirement for a written authorization is not merely to prohibit admission of oral testimony against the objection of the adverse party, can be inferred from the fact that the provision is not included among those specified in the Statute of Frauds, Article 1403 of the Civil Code. As it does not appear to have been intended as an extension of the Statute of Frauds, it must have been adopted as a substantive provision or a condition precedent to recovery.

Our duty in this respect is not to dispute the wisdom of the provision; we should only limit ourselves to inquiring into the legislative intent, and once this is determined to make said intent effective. The new provision was evidently adopted to prevent misunderstandings and litigation between contractors and owners. Clearly it was the intention of the legislature in making the amendment to require authorization in writing before costs of additional

labor in a contract for the construction of a building may be demanded. We find that the provision is applicable to the circumstances surrounding the case at bar, and we are in duty bound to enforce the same. The trial court should have denied the demand for additional costs as directed by the provisions of Article 1724 of the Civil Code.

Wherefore, the writ is hereby granted, the decision of the Court of Appeals reversed, and the action of respondent dismissed. Without costs.

Bengzon, C. J., Padilla, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.
Concepcion, Barrera and Natividad, JJ., took no part.

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