

RAMCAR INCORPORATED, PLAINTIFF AND APPELLEE, VS. DOMINGO GARCIA, DEFENDANT AND APPELLANT.*G.R. No. 16997. April 25, 1962*

Ponente: PAREDES, J.

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In May 1959, Domingo Garcia obtained the services of Ramcar Inc. for the repair of his two cars. The total cost of the repair, in labor and material, amounted to P1,610.82, which, according to their agreement, was payable within the first 10 days of the month. As Domingo Garcia failed to pay his obligation, despite demands, Ramcar Inc. on October 9, 1959, filed an action in the Municipal Court of Manila for the recovery of said amount. Judgment was entered in favor of Ramcar Inc., against Garcia who appealed to the CFI of Manila (being Civ. Case No. 41853). The lower court set the hearing of the case on January 28, 1960. On January 27, 1960, appellant's motion to postpone, as his counsel had to appear in a hearing in Pampanga—Crim. Case No. 3297, was denied. The lower court forthwith received plaintiff's evidence; in the absence of the defendant and entered judgment, condemning defendant to pay the amount of P1,610.82 at 12% interest per annum from October 9, 1959, until fully paid, plus 25% of the said sum as attorney's fees and the costs in both instances. Defendant's motion for new trial was denied. He directly appealed to this Court, alleging that (1) the lower court erred, in ordering him to pay, on the basis of the evidence presented by appellee, in view of article 1715, in relation to article 1169 of the new Civil Code; and (2) the decision of the trial court is contrary to law.

The position of the appellant may be stated as follows:

The contract between the parties is one for lease of work or service to execute a piece of work (Art. 1644 N.C.C.). Appellant in paragraph 3 of his answer avers—

"Defendant denies the allegations in Paragraph 4 of the complaint, the truth being that if he is at all indebted to the plaintiff, his obligation has not become due and demandable for the reason that plaintiff has not complied with defendant's request to correct defects in the repair services done by it."

Under the contract, it was appellee's obligation to do the work or repair without defects that would destroy or lessen the valued or fitness of the cars of their ordinary or stipulated use, pursuant to the provisions of Article 1715 N.C.C. which provides—

"ART. 1715. The contractor shall execute the work in such a manner that it has the qualities agreed upon and has no defects which destroy or lessen its value or fitness for its ordinary or stipulated use. Should the work be not of such quality, the employer may require that the contractor remove the defect or execute another work. If the contractor fails or refuses to comply with this obligation, the employer may have the defect removed or another work executed, at the contractor's cost."

As the principal issue raised by the pleadings was whether the repairs made by the appellee were not defective, the appellee has the burden of proof (*onus probandi*) of establishing that the repairs were not defective.

In other words, defendant-appellant contends that plaintiff-appellee runs the risk of losing its case, if it fails to prove that the repairs were without defect, considering the provision of said article 1715; that plaintiff merely proved the allegations in its complaint, in the absence of the defendant, notwithstanding the allegation in his answer that the repairs were defective and as appellee had failed to prove that it performed the repairs without any defect, appellant's obligation to pay such repairs is not yet due and demandable. Defendant-appellant in support of this theory, cites Art. 1169 N. C. C., which provides that in reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him.

The plaintiff in a civil case, is called upon only to prove the material allegations in his complaint constituting his cause of action. In the case at bar, plaintiff's cause of action relates to the prestation of repair services to the appellant for which the latter in turn obligated himself to pay for the value thereof. Appellee proved his allegations, it is not enough that a defendant interposes an affirmative or special defense, in order to relieve him of his liability to the plaintiff; he must establish by preponderant evidence such affirmative defense (*Kesler Electric Co. vs. Rodriguez*, 44 Phil., 19; *Alvarez vs. Vargas*, 35 Phil., 1). Although appellant herein, filed his answer, alleging that the repairs made by the appellee were defective, he presented no evidence in support of the same, because he failed to appear at the trial. The legal issue is not whether the repairs made were defective but rather the determination of who has the burden of proving that the repairs were defective. The burden of proof lies on the party who would be defeated, if no evidence were given on either side (sec. 70, Rule 123). The plaintiff herein having proven its case, the defendant would run the risk of being defeated, if he did not prove his allegation. It is true that defendant-appellant's averment to the effect that the repair services were defective, is a negative one, but defendant has asserted the affirmative of this issue, hence, he should be made to prove it. It stands to reason that the burden of proof lies on the party who substantially asserts the affirmative of the issue, upon the principle that the suitor who relies upon the existence of a fact should be called upon to prove that fact.

Article 1715 in conjunction with Art. 1169 of the N.C.C., may be available only under certain established facts; that is, the proof of the defects in the work, which in the instant case, appellant has failed to do. The trial court found that plaintiff did in fact render repair services to the defendant, and in the absence of proof to the contrary, such repair services are deemed satisfactory. The law presumes that appellee acted in accordance with his commitments, and that the repairs were regularly done (Sec. 69, pars. p & q Rule 123). And since, in the case at bar, defendant-appellant presented no evidence, he is not justified in invoking the aforecited provisions. Verily, the findings of the lower court, as to facts are now considered final and conclusive.

The judgment appealed from being in accordance with the evidence and the law on the matter, is hereby affirmed in toto, with costs against the defendant-appellant.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Barrera, and Dizon, JJ., concur.

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