

TSUNETARO TAKAO, PLAINTIFF AND APPELLANT, VS. CARMEN BELANDO VDA. DE ITURRALDE, DEFENDANT AND APPELLEE.*G.R. No. 26321. February 24, 1927*

Ponente: JOHNSON, J.

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This action was commenced in the Court of First Instance of the City of Manila on the 21st day of July, 1925. Its purpose was to recover the balance due, together with extras furnished and damages, growing out of a certain contract for the construction of two houses by the plaintiff for the defendant. The defendant answered by a general and special defense. In her special defense she contends that the plaintiff did not complete the two houses in accordance with the terms of the contract and prays for damages resulting therefrom.

Upon the issue presented, the lower court dismissed the petition of the plaintiff and rendered a judgment in favor of the defendant, ordering the plaintiff (a) To immediately deliver the possession of the two houses to the defendant, (b) to complete the two houses in accordance with the terms of the contract within a period of thirty days, and (c) to pay to the defendant, as damages, P20 per day from the 1st day of July, 1925, until the final delivery of the two houses. From that judgment the plaintiff appealed and presents several assignments of error.

From an examination of the issues presented in the trial court and the judgment rendered thereon, in relation with the assignments of error made by the appellant, it appears that the appeal presents but two general questions: (a) Were the two buildings completed in accordance with the terms of the contract? and (b) if they were not completed in accordance with the terms of the contract, what amount of damages should be allowed?

It appears from the record that on the 13th day of March, 1925, the plaintiff entered into a contract with the defendant, by virtue of which the former was to construct two houses for the latter within a period of ninety working days, from said date, for the price of P30,700; for the construction of one house the contractor was to receive the sum of P17,400 and for the construction of the other he was to receive the sum of P13,300 (Exhibit A). Under the terms of said contract the defendant appointed Carlos A. Barretto, an architect, for the purpose of supervising the construction of the two houses. The contract further provided that payments upon said contract should be made from time to time as the construction proceeded. It further provided a penalty of P20 per day for each day the plaintiff should fail to complete the buildings within the terms of the contract. The contract contained various other conditions which are unimportant in the consideration of the questions presented to us.

The contention of the plaintiff is (a) That he completed the construction of the two houses not only in accordance with the contract but with the plans and specifications accompanying the same within the period mentioned in said contract, except for certain delays which were caused by the addition of extras to the contract; (b) that he is now entitled to the balance due on his contract, which is the sum of P8,180, together with the sum of P645, the value of the extras furnished by him as per request of the defendant; and (c) that he is entitled to damages in the sum of P20 per day for each of the days during which the defendant refused and failed to make the payments as per her contract.

With reference to the question whether the buildings were completed in accordance with the terms of the contract and within the time specified, it may be said that the oral testimony upon that question is about as conflicting as it is possible for testimony to be. By reference, however, to the documentary proof, we find Exhibit G, dated July 20, 1925. Exhibit G is a certificate of the architect Carlos A. Barretto who had been appointed by the defendant to supervise the construction of the two houses. That certificate is as follows:

"I hereby certify that I have this date made the final inspection on the houses built by Mr. T. Takao on Calle Azcarraga belonging to Mr. Jose Gomez Mariño and have them to be fully completed.

(Sgd.) "CARLOS A. BARRETTO
"Architect"

Considering that Carlos A. Barretto was the architect and in charge of the construction of the two houses, representing the defendant, it would seem to be sufficient proof that the houses in question were completed as early as July 20, 1925.

In addition, however, to the certificate of Carlos A. Barretto relating to the completion of the two houses, we have the certificates of Jose Garrido, superintendent of construction and inspection, and Santiago Artiaga, city engineer, dated July 7, 1925 (Exhibits C and D), in words and figures following:

"I hereby certify that the building located at No. 2036-46 Calle Azcarraga, District of Quiapo, has been constructed in conformity with the provisions of ordinances governing such construction.

(Sgd.) "JOSE GARRIDO
"Superintendent of Construction and Inspection

(Sgd.) "SANTIAGO ARTIAGA
"City Engineer"

I hereby certify that the building located at No. 2034-42 Calle Azcarraga, District of Quiapo, has been constructed in conformity with the provisions of ordinances governing such construction.

(Sgd.) "JOSE GARRIDO
"Superintendent of Construction and Inspection

(Sgd.) "SANTIAGO ARTIAGA
"City Engineer"

In addition to the foregoing certificates relating to the completion of the houses in question, we also have the certificate of the inspector of plumbing (Exhibit E). Said certificate is in the words and figures following:

"MANILA, P. I., July 1, 1925

"FRANCISCO ESPINOLA, Registered Master Plumber

"SIR: The plumbing work performed by you upon the premises located at No. 2022 A, Street Azcarraga, District of Quiapo, owned by Mrs. Carmen Belando, has been completed according to permit No. 25-488, issued on March 28, 1925.

"SANTIAGO ARTIAGA
"City Engineer

Per (Sgd.) "CORNELIO (Illegible)
"Inspector of Plumbing"

The foregoing certificates are not all of the proof found in the record relating to the completion of the houses in question. We also have Exhibit O. Exhibit O is a complaint presented by the defendant against the plaintiff in the municipal court of thg City of Manila on January 5, 1926. That action was one to recover the possession of the houses in question together with damages. In that action (Exhibit O) the plaintiff herself alleged that the houses in question had been completed since the 1st day of August, 1925; that the plaintiff herein refused to deliver the possession of the same and prayed for damages for the illegal detention of said houses by the plaintiff herein in the sum of P900. The record does not show exactly what was the outcome of that action.

The foregoing exhibits furnish a large preponderance of evidence that the two houses have been completed in accordance with the terms of the contract. That being so, the plaintiff is entitled to recover the balance of P8,180 of the contract price.

With reference to the extras furnished by the plaintiff amounting to P645, while there is some conflict in the testimony, yet, nevertheless, we are of the opinion that said extras were furnished at the request of, and accepted by the defendant. She should therefore be required to pay to the plaintiff that sum, in addition to the unpaid balance of the original contract price.

With reference to the penalty demanded by the plaintiff and prayed for by the defendant, mentioned above and provided for in the contract, we are of the opinion that there is nothing in the record, nor in justice and equity, which demands that said claim and counterclaim should be allowed. They are therefore hereby disallowed.

After a thorough examination of the entire record, we are of the opinion that the judgment of the lower court should be revoked, and that a judgment should be and is hereby rendered in favor of the plaintiff and against the defendant for the sum of P8,825, with costs. So ordered.

Street, Malcolm, Villamor, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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