

IN THE MATTER OF THE INVOLUNTARY INSOLVENCY OF ROMULO MACHETTI. EL HOSPICIO DE SAN JOSE, CLAIMANT AND APPELLEE, VS. FINDLAY MILLAR TIMBER CO., ANG LENG, LEE QUI CHICAN, AND ESTE...*G.R. No. 26482. March 31, 1927*

Ponente: STREET, J.

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This is an appeal from an order of the Court of First Instance of the City of Manila in the matter of involuntary insolvency of Romulo Machetti, allowing the claim of El Hospicio de San Jose against the insolvent in the amount of P124,342.37, with lawful interest from November 18, 1922, and with costs. In the court below the claim was opposed by Findlay Millar Timber Co. and other creditors of the insolvent, and by them the appeal is prosecuted in this court.

On July 17, 1916, the insolvent Romulo Machetti, then a building contractor, entered into a contract with the claimant El Hospicio de San Jose, by which he agreed to construct a building at 97-121 Rosario Street, District of Binondo, in the City of Manila, according to the plans drawn up by claimant's architects, Arellano Hermanos, which plans were expressly incorporated in the contract. On October 19, 1916, the same parties made another contract for the construction by the insolvent of warehouses in the rear of the buildings then in construction on Rosario Street. These warehouses were also to be built in conformity with plans drawn by the claimant's architects, and, except as otherwise expressly specified, in conformity with the stipulations contained in the first contract.

Among the provisions included in the main contract is one relative to the manner of making payments to the contractor for work done, the substance of which is that payment for work done during the progress of construction shall be made at the end of each month in an amount equivalent to 80 per cent of the value of the work accomplished during the month, said payment to be made upon appraisal of the owner's architects (art. 13). Delivery and reception of the work is dealt with in two articles of the contract as follows:

"ART. 17. Recepcion de las obras.—La recepcion de las obras sera hecha de conformidad con lo que se establece despues. Debera constar de dos partes: Recepcion provisional y recepcion definitiva, precediendo a la primera la liquidacion de las obras y quedando en poder del propietario un veinte por ciento (20%) del importe de la contrata para responder de los defectos que pudiera encontrarse al hacer la recepcion definitiva.

"ART. 18. Recepcion definitiva.—La recepcion provisional se hara en cuanto las obras especificadas en este contrato se hallen completamente terminadas y la recepcion definitiva dos meses despues, cesando despues de dicha recepcion definitiva toda responsabilidad del contratista respecto a la obra."

From these provisions it will be seen that El Hospicio de San Jose was at liberty to hold back 20 per cent of the value of the work done until it should definitely receive the finished work, when the entire amount would be paid.

During several months following the making of the above contracts, work was prosecuted thereunder by the contractor and payments made by the owner upon certification as to the progress of the work by the architects, until in January, 1917, when the entire compensation for work done under the major contract had been completely paid. Under the second contract there still remains nominally due to the contractor the amount of P4,976.08, which has been retained by El Hospicio de San Jose on account of defective construction. After the stage abovementioned had been reached, application was made to the city engineer for approval of the work on Rosario Street, but an examination revealed the fact that the building was defectively constructed and for the most part unsafe for occupation. This led to a careful inquiry into the condition of the structure and the character of the materials used therein. The exact state of affairs is fully revealed in the graphic statements of an engineer and builder, Mr. W. J. Odom, who was called in to remedy the defects of the structure in order to satisfy the terms of the contract and the requirements of the city engineer. The following excerpts from the testimony of Odom shows what had to be done by him and the nature of the troubles which he was called upon to remedy:

"The beams which had been constructed defectively by the previous contractor, Mr. Machetti, who had the contract, were removed. Some of the foundations were removed as being nothing more than steel sticking down in the dirt with no concrete around them. New beams, properly designed beams, were put in. Some of the beams which were removed were nothing more than concrete,— just a mixture of gravel, lime and cement, with no steel, not one bar of steel.

"The floor slabs and roof slabs were so badly deflected that by placing the beam as it was originally designed on the Arellano Hermanos plans it would not straighten the floor slab. The deflection had gone so far that one beam across the center of the store, or even the second floor, would not take the deflection out of the slab, so I placed another beam through the center in the opposite direction, which answered the purpose, and which did remove the deflection, that is, as much as possible to do so.

"As near as I can give it to you, there were several foundations knocked down where the steel was exposed and sticking in the dirt, which required the foundations to be removed, and new foundations placed in a proper manner. Many of the columns from the foundation to the second floor were removed, due to the fact that they were badly cracked and opened up, and new properly constructed columns were put in their places, with proper material. I think all the beams on the second floor, including the roof slab, were removed. The roof slab was so badly cracked, due to deflection of the slab, that it was necessary to remove it. We could not save it,—it was an impossibility, and it was removed and replaced with proper mixture of concrete. Of course, the front wall in many places was bulging out where in some places he had put two or two and one-half inches of plaster on the outside of the concrete, and it did not stick and left the concrete, and was loose from the body of the structure, and had it fallen, which it surely would have done, it would have been dangerous to the people in the street. The parapet wall,—there was no connection between it and the structure itself. It simply set on the face of the building, and was leaning out on the street about eight inches, and the city engineer ordered it removed, which was done, and a new parapet wall put on. As I remember it, that was all that was done on the main building. *

* *"

The work of repairing the defective construction was done by Mr. Odom upon a contract for compensation calculated at the rate of 10 per cent of the necessary outlay, with the result that the remedying of the defects in Machetti's work cost the owner the sum of P57,342.37. Each of the two contracts contained a penalty clause stipulating for the payment, in case of the major contract, of P150 per day for delayed construction, and in case of the second contract, at the rate of P50 per day. Upon taking account of the delay that occurred in this case, in relation with the stipulations mentioned, the penalties to which El Hospicio de San Jose is entitled amount to P95,000. But from this the referee and court below deducted P28,000 which had accrued to the owner from the rental of part of the property on Rosario Street, leaving only P67,000 due upon account of the penalties and P57,342.37 upon cost of repair and completion, making a total of P124,342.37 for which the lower court gave

judgment as stated at the beginning of this opinion.

After this claim had been put in against Machetti in the insolvency proceeding, a referee (Mr. A. D. Tanner) was appointed with the consent of the parties concerned and his findings were afterwards adopted by the Court of First Instance. This report has considerable importance in the case, from the light which it sheds upon various aspects of the controversy; and we therefore incorporate a portion thereof in this opinion, beginning with paragraph 5 of said report and continuing to the end:

"(5) During the month of April, 1917, and after the receipt by Mr. Miguel Velasco, who was acting on behalf of the claimant, of letter, Exhibit H from the city engineer, it was discovered that the work done by Machetti on the 'accesorias' as also on the 'bodegas' was defective, either" because of the inferior grade of materials used or as not being in accordance with the plans and specifications. The city engineer refused to issue the final certificate of inspection but, on the contrary ordered certain portions of the buildings removed or replaced and others reconstructed or reinforced, inasmuch as the buildings were endangering or might endanger the lives of persons occupying the same or passing in the proximity;

"(6) To remedy these defects and to correct the faulty construction done by Machetti, it became necessary for the claimant to employ another contractor, and Mr. Odom was engaged for the purpose (see Exhibits R, S, T, and U). The condition of the buildings, as also the extent of reconstruction required, is described more or less in detail by both Mr. Velasco (transcript pages 8 to 10) and Mr. Odom (transcript pages 40 to 48) ; the latter testifying that the buildings or portions thereof were about to collapse when he undertook the work.

"(7) All efforts on the part of the claimant to get in touch with Mr. Machetti, with a view to having him conform to the terms of his contract, were of no avail and the Hospicio necessarily had to take charge of the work and comply with the requirements of the city engineer. To do this, the claimant incurred expenditures amounting to P57,342.37 as evidenced by Exhibits P and Q;

"(8) Under the terms of the first contract, Exhibit A, paragraphs 5 and 6, Machetti was obliged to terminate the work on the 'accesorias' in 150 days and, in case of failure so to do, to pay a penalty of P150 per day thereafter until completion thereof. In accordance with the 6th paragraph of Exhibit D, Machetti was to complete the work on the 'bodegas' one month later than the preceding contract and, in case of failure to do so, to pay a penalty of P50 per day until completion. During the course of construction, he was allowed an extension of 25 days so that under the terms of the first contract, delivery of the 'accesorias' was to be made on February 16th, 1917, and of the 'bodegas' on March 16th, 1917. Due to faulty construction discovered, the condition in which the buildings were found, and the fact that claimant was forced to continue the work in conformity, as nearly as possible, with the original plans and specifications and the requirements of the city engineer, the 'accesorias' and 'bodegas' were not terminated until June 18, 1918. Thus, for failure to deliver within the time prescribed, Machetti incurred the obligation to pay claimant the sum of P95,000 under the penalty clauses referred to.

"Claimant, however, admits that, from the time it undertook the work of reconstruction until the buildings were completed, it rented certain of the 'accesorias' from which it derived the sum of P28,000 as rental. The latter amount should be deducted from the total penalty of P95,000, leaving only P67,000 as the net amount due claimant.

"From the foregoing, and other evidence of record, the referee has concluded that Machetti made no effort whatever to construct the buildings in accordance with the terms and conditions of the contract but, on the contrary, actually acted in bad faith, and furthermore abandoned the work. As a consequence, claimant is entitled to the approval of its claim for the damages represented by expenditures incurred by it in saving the building and reconstructing same, as also for the amounts stipulated under the penalty clauses of the contract.

"The opponents vigorously contend that the payment of the entire sum due Machetti under contract Exhibit A constituted an acceptance of the 'accesorias' and that, therefore, he Machetti, contractor, should be relieved from further responsibility to the claimant. Likewise opponents contend that because claimant employed a

supervising architect who approved the work and certified payments, it now has no claim whatsoever against the contractor, Machetti, but one solely against the said architect. Opponents also contend that the work done by Odom for the Hospicio was not in conformity with the original plans and specifications but in accordance with modified ones and hence Machetti is not responsible for the expenditures.

"The referee fails to see the logic of any of these contentions. In the first place, Machetti entered into a contract to erect buildings in accordance to certain plans and specifications (Exhibit A). The very first condition in Chapter I, article 1, of the said specifications provides:

" 'Intencion. * * * Su construccion se sujetara a las ordenanzas municipales vigentes al tiempo de la construccion, y a las ordenes e instrucciones que de el Director facultativo y a los planos que, unidos a este pliego de condiciones forman el proyecto completo de construccion. * * *'

"Article 2 of the same specifications reads:

" 'Definiciones. * * * Se entendera por contratista a quien asume la obligacion de ejecutar y terminar las obras que son objeto de este proyecto, cumpliendo al pie de la letra cuanto en sus planos y en este pliego de condiciones se prescriben. * * *'

"Machetti most certainly violated both of the above quoted provisions of his contract and consequently the Hospicio's claim is legitimate and just.

"Aside from the foregoing articles of the contract the law itself makes specific provision for cases of this nature. Article 1591 of the Civil Code reads as follows:

" 'ART. 1591. The contractor of a building which becomes ruinous by reason of defects in the construction shall be liable in damages if such ruin occurs within ten years, to be counted from the completion of the construction. The architect who directed the work shall be subject to the same liability and for the same length of time if the ruin should be due to defects in the ground or to improper direction.

" 'If the cause should be non-compliance on the part of the contractor with the conditions of the contract, the action for damages may be brought within fifteen years.'

"Said article clearly shows that liability of the contractor, whose work is defective, may be enforced at any time during 10 years succeeding the completion of the construction, and 15 years in case of non-compliance with the conditions of the contract, irrespective of any responsibility incurred by the architect who supervised and directed the work.

"In view of the above findings of facts and provisions of law your referee is of the opinion that claimant is entitled to the allowance of its claim for

"(1) Fifty-seven thousand three hundred and forty-two pesos and thirty-seven centavos (P57,342.37) as damages suffered by it arising from the necessity to remedy and reconstruct the faulty work of Machetti;

"(2) Sixty-seven thousand pesos (P67,000) as the next amount due claimant under the penalty clauses of the contracts ;

"(3) Legal interest on both of the above-mentioned sums from the date of filing its claim; and

"(4) Costs."

Upon the submission of the foregoing report, the trial court approved the same, with the following comment:

"A careful examination of the report of the referee filed in this court on June 16, 1926, shows that the findings of facts are in accordance with the evidence and the conclusions of law are in accordance with the legal

principles applicable thereto. The court approves said report in all its parts and by reference makes it a part of this judgment."

In this instance error is now assigned to the action of the lower court in admitting various exhibits, and especially the Exhibits B and C, which are the plans of construction under the two contracts. In view of the reference to the plan in the main contract and their necessary relation to the controversy, as explanatory of the obligations of the contractor, we are of the opinion that they were properly admitted. Some of the other exhibits, to the reception of which error is assigned, are possibly of doubtful admissibility, but they exercise no material influence over the determination of the case, and error in their admission, if any, was error without injury. The testimony of Odom and that of Velasco, in connection with the plans, show clearly the deplorable lack of honesty and good faith which went to the performance of the contracts in question.

The principal contention of the appellants in this court is based upon articles 13, 17, and 18 of the contract of July 17, 1916, and it is insisted that the payments for the work done, having been made upon certification of the plaintiff's architect, the plaintiff is estopped from raising the question that the work was not done according to contract. A careful reading of the contract, however, shows that there is no stipulation to the effect that the certificates of the architects will be final and conclusive, though it may be conceded that they raise a prima facie presumption that the work was satisfactorily done. A court will not consider the architect's certificate conclusive in the absence of express stipulation to that effect. It is evident that the provisions relied upon were intended chiefly to define the conditions under which installments of the price would be paid to the contractor; and the contract evinces no intention, in our opinion, to make the certificate of the architects conclusive as to compliance on the part of the contractor with the terms of the contract. Moreover, it will be observed that the provision concerning the holding back of 20 per cent of the value of the work was to cover defects that might be discovered before the owner should definitely receive the work. The defects from which this work was found to suffer were largely of a hidden character and not obvious upon casual examination.

The judgment appealed from will be affirmed, and it is so ordered, with costs against the appellants.

Johnson, Malcolm, Villamor, Ostrand, and Villa-Real, JJ., concur.

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