

D. HAMANO, PLAINTIFF AND APPELLANT, VS. RAMON R. PAPA AND ANGELA MONTENEGRO DE PAPA, DEFENDANTS AND APPELLANTS.*G. R. No. 30340. January 21, 1930*

Ponente: JOHNS, J.

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body { font-family: Verdana, Geneva, Arial, helvetica, sans-serif; font-size:80%; background-color:#FFFFFF; margin:0 2% 0 2%; text-align: justify; } h1 { font-family:times; } h2 { background-color:#cccccc; padding:10px 0 10px 0; font-weight: bold; text-align: center; } h3 { font-weight: bold; text-transform: uppercase; text-align: center; } div#footer { font-size:9px; }

The lower court in a well written opinion made a careful and detailed analysis of all the evidence pro and con, from which it found that neither party was entitled to recover, and citing and relying upon the specifications attached to the contract, under the heading of "modificaciones," refused to give plaintiff any compensation for and on account of extra work, services and materials. That clause, among other things, recites that:

"The architect reserves the undisputable right to make omissions or additions in the plans and specifications, which additions or suppressions, if they could be done by him, would not invalidate the contract nor affect any party, provision or clause thereof, and once made, they should be followed by the contractor completely and carefully as if they were embodied in the contract since the beginning. "Only upon a writing signed by the architect shall any omission or addition in the accompanying plans and specifications be considered authorized.

"If the contractor shall fail, within three days, from the receipt of the order to do or to omit some work, to present the aforementioned appropriation to the architect, such failure shall be understood as a renunciation of his right to any extraordinary compensation or extension of time."

Upon that question the lower court said: "Granting, without deciding that plaintiff, at the request of the defendant Dr. Ramon R. Papa did some extra work on the house, there is no evidence which tends to show that the cost of said extra work was passed upon and determined by experts, as provided in said paragraph 5 of the contract. There is no evidence tending to show that said extra work was made under a written order by the architect-who supervised the work, nor is there any evidence tending to show that the plaintiff gave to the defendants or to the architect a written budget of the said extra work. Failure on the part of the plaintiff to comply with the above conditions must be considered as a waiver on the part of the plaintiff to any claim or any right to compensation for said extra work."

The plaintiff claims, and the evidence tends to show, that in the construction of the building, he performed extra work and furnished extra materials of the reasonable value of P9,615.61, and in fact it is admitted that he performed a large amount of extra work and furnished a large amount of extra materials. It also appears that such extra work was performed and extra materials furnished at the personal request of the defendants, and that during its construction, the defendants in person were almost daily in the building. That they saw the different changes which were made, and knew how, and when they were made, and that they were made by the plaintiff at the

personal instance and request of the defendants.

Among other things, it appears in the itemized list of such extra work, that plaintiff made a charge of P2,103 for the increased number of iron bars of the interior and exterior walls due to the reduction of the prescribed distance in the plans between the bars. That the distance specified in the plans between horizontal and vertical iron bars were 20 centimeters and 40 centimeters, respectively, which was reduced to 15 centimeters instead of 20 centimeters, and 30 centimeters instead of 40 centimeters, which necessitated an increase in the number of iron bars, and 4 extra kilos of iron bars per square meter of cement had to be used, the total cost of which was P2,103. It also appears that an extra charge of P240 was made for the increased thickness of the foundation of the interior and exterior walls. That the original plans provided for a thickness of such walls of 70 centimeters and 75 centimeters, respectively, which was increased to 75 centimeters and 80 centimeters, or an increase of 5 centimeters in all of the walls. It also appears that a charge was made for P1,255.85 for extra labor and materials in changing the floor of the first floor from wood, as provided in the plans and specifications, to cement, as provided for in the second or amended plan. A charge for P132.30 was also made for the extra cost of labor and materials for putting in the first floor three extra cement beams not provided for in the original plans. A further charge of P375 was made for special decoration and designs not provided for in the original plans on the four cement posts, and for the construction of extra moulding in the first floor. A charge of P180 was made for extra cost of materials used in substituting tile floor provided for in the plans and specifications with granite on five doors, two porches, one hall, and one azotea. A charge of P480 was made for extra labor and materials for putting white tiles not prescribed in the original plans on the kitchen wall of an area of 24 square meters at P20 each square meter. A charge was made of P804.48 for hinges and sliding doors, hardware articles and plumbing materials, all of which were itemized. Also a charge of P430 was made for the use of molave for windows and pilaretes, when the plans provided for the use of ipil, and a further charge of P330 was made for 150 pieces of extramados in the second floor, not provided for in the plans, and the further charge of P627.50 for the installation of water pipe system built at the rear of the house and P655 for the extra cost of labor and materials for increasing the height of the garage, and extra improvements made in the garage. A charge of P288.82 was made for extra work done on the stairs, which was not provided in the plans, and P1,553.66 for extra labor and materials in the construction of the partition walls of the building. Also P150 for raising tip a fallen mango tree located in the premises of the building, in which 20 to 25 persons were employed about two hours overtime daily for a number of days.

Such is the nature and extent of plaintiff's claim for extra work and materials furnished, which were not covered or provided for in the original plans. As stated, all of this extra work and materials was furnished by the plaintiff at the personal, special instance and request of the defendants, who personally saw the building almost daily during its construction. It is also true that in the very nature of things, the architect, who under the terms of the contract was to superintend the building, had personal knowledge of all of such changes. It is true, as the lower court found, that there is no evidence that the cost of extra work was passed upon by experts, as provided for in paragraph 5 of the contract. Neither is there any evidence that the extra work was made under a written order of the architect, who supervised the work. Be that as it may, the scope, nature and extent of the changes made in the original plans, plus the fact that they were made at the personal request of the defendants, and that both of them, with their architect, were in constant touch with the building during its construction, is conclusive evidence that the defendants not only knew of such changes in the original plans, but that such changes were made under the supervision and control of the defendants and with their express approval.

The evidence of the plaintiff also tends to show that by mutual consent of all parties, the formality of the written order of the architect was waived, and that the defendants assured him that he would, be justly paid for such extra work, and that the agreement for extra work was verbally made. It also appears from plaintiff's evidence that

before performing the extra work requested by the defendants, he presented to the architect and the defendants a written budget of the amount of such extra Work, but that both the architect and the defendants dispensed with the formalities of their written consent, by personally assuring him that he would be justly paid.

In the final analysis, the defendants received and accepted such extra work and materials, all of which went into the building for their use and benefit, and at their personal instance and request, and, they now seek to defeat plaintiff's right to recover for its reasonable use and value, because the plaintiff did not technically Comply with the formal provisions of the contract, which he was induced to waive by the actions and conduct of both the defendants and the architect. In other words, the defendants admit that the changes in question in the original plans and specifications were made at their instance and request, of which they had daily and personal knowledge, and that the plaintiff performed the extra labor and furnished the extra materials which were used in the construction of the building, and that they took and accepted the building with such changes, and yet they deny plaintiff's right to recover the reasonable value of such extra work and materials, which they accepted and appropriated to their own personal use. By their own actions and conduct, the defendants have waived their legal right to make such a technical defense. The plaintiff is clearly entitled to recover on a quantum meruit for such extra work and materials.

It will also be noted that the contract upon which defendants rely provides that "such failure shall be understood as a renunciation of his right to any extraordinary compensation or extension of time," and that it does not specify that such failure shall be conclusive of plaintiff's right to extra compensation. As stated, by their own actions and conduct, the defendants waived their legal right to insist upon a technical compliance of its provisions. That is to say, the oral evidence of the plaintiff and the conduct of the parties is sufficient to overcome any legal presumptions in the contract for the failure of the plaintiff to comply with its specific terms, and that by their own actions and conduct, the defendants waived their legal right to insist upon a technical compliance with its provisions.

The original contract was executed on the 4th day of March, 1921, and the building was completed and accepted on the 17th of July, 1922, and the complaint in this case was filed August 7, 1924.

Plaintiff's assignment of error No. 7 is well taken, and upon that point, the judgment of the lower court is reversed, and judgment will be entered for the plaintiff and against the defendants for the sum of P9,615.61, with interest thereon from August 7, 1924, at the rate of six per cent per annum, and in all other respects, the judgment of the lower court arising out of the complaint is affirmed.

We are clearly of the opinion that there is no merit in the defendants' appeal and the judgment of the lower court as to the claim of the defendants against the plaintiff, in all things and respects, is affirmed. Neither party to recover costs. So ordered.

Johnson, Malcolm, Villamor, Ostrand, Romualdez and Villareal, JJ., concur.

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