

JUAN G. BOSQUE, PLAINTIFF AND APPELLANT, VS. YU CHIPCO, DEFENDANT AND APPELLEE.*G.R. No. 3862. September 06, 1909*

Ponente: JOHNSON, J.

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From an examination of the record it appears that on or about the 1st day of August, 1905, the plaintiff and defendant entered into a contract by which the latter was to construct a house, for the former and to complete the same within a period of four months after the contract was signed and delivered. The construction of the house was actually commenced. The plaintiff made some changes in and additions to the original plans of the house, which changes were agreed to by the defendant, and a new contract was made relating thereto. It appears that the defendant was prevented from continuing his work upon the house for the reason that the plaintiff had not secured a proper permit to make the additions from the authorities of the city of Manila. By reason of the failure of the plaintiff to obtain a permit to make the said changes and additions, the defendant was delayed for several weeks. For the construction of the house the plaintiff had furnished several pieces of timber, alleged to be worth P132. The defendant proved that he had expended in labor and money upon the additions made to the house the sum of P500. Under the first agreement the plaintiff was to make four equal payments for the construction of the house, each payment to be made when the house was in a certain state of completion. The evidence is very conflicting with reference to the state of completion at the time when the present differences arose between the parties. The evidence, however, sustains one fact beyond question, and that is that it had certainly passed the state of completion when the plaintiff was to make the first payment upon the original contract. The plaintiff does not allege nor attempt to prove that he made any payments whatever upon the original contract, nor any payments whatever upon the second contract for the additions to the original building.

The defendant alleges and proves that by reason of the fact that the plaintiff failed to make the payments in accordance with the terms of the contract, that he was unable to proceed with the construction of the house. The plaintiff attempted to prove that the material used by the defendant in the construction of the house was not of the class which he contracted to furnish. The defendant's witnesses all testified that the material was of the kind and character contracted to be supplied. Finally the house was totally destroyed by a baguio before its completion. On the 19th of December, 1906, the plaintiff commenced the present action for the purpose of recovering of the defendant the sum of P132, the value of the said pieces of material furnished by him to the defendant, and the sum of P600 damages for failure of the defendant to complete the house within the period of four months provided for in the first contract. The defendant answered the said complaint, denied really all of the material allegations of the complaint, set out the original contract, alleged the new contract and the fact that the plaintiff had refused to make payments in accordance with the terms of the contract, and asked for a judgment against the plaintiff in the sum of P1,928.56.

The lower court, after hearing the evidence, found as a matter of fact that each of the parties had more or less failed to comply with his respective obligation, and said:

"It is greatly to be regretted that the parties can not adjust their difficulties amicably. The condition in which both must be left as a result of this judgment, which appears to be the only one justified by the evidence, can hardly be satisfactory to either. The plaintiff will not have his building and the defendant, although he seems to have expended considerable for labor and material, will not receive his contract price."

Thus the lower court balances the failure of one of the parties to comply with his terms of the contract with the failure of the other to comply with his part of the original contract, and refused to allow either one a judgment.

The lower court further found that inasmuch as the plaintiff had actually furnished material to the defendant in the sum of P132, which the defendant had used, that he (the plaintiff) was entitled to a judgment for that amount.

The lower court further found that inasmuch as the defendant had expended in labor and material the sum of P500 for additional work and labor performed upon the additions made to the original building, at the request of the plaintiff, that he (the defendant) was entitled to a judgment against the plaintiff for that sum.

The conclusion of the lower court was, therefore, that the defendant recover of the plaintiff the sum of P368, being the difference between P500 and P132.

From this judgment of the lower court the plaintiff appealed, basing his appeal upon the provisions of articles 1124 and 1591 of the Civil Code.

It seems to us that the judgment of the lower court being based purely upon a question of fact, it should be affirmed, and without any finding as to costs, it is so ordered.

The appellant claims that the lower court committed an error in not deciding that each of the parties was absolved from any further liability under the said contract, by virtue of the provisions of article 1124 of the Civil Code. Upon this question we are of the opinion and so hold that while the court did not expressly pronounce that the parties were absolved from any further obligation upon the contract, yet, by the very terms of the judgment the said parties must necessarily be absolved from any further action or liability upon the said contract.

It is clear that the plaintiff did not perform the undertaking which he was bound by the terms of his agreement to perform; consequently he is not entitled to insist upon the performance of the contract by the defendant or to recover damages by reason of his own breach. We think the judgment of the lower court absolved each party from any further liability upon the said contract.

The plaintiff alleges that the lower court committed an error in not making the defendant, the contractor of the building which was destroyed, liable for the loss and damage which he suffered by such destruction. The building was destroyed by a baguio. The proof is not sufficient to show that the destruction was due to defects in the construction of the building, and until that fact had been established, certainly the plaintiff would not be entitled to damages under the said article, (Cf. Choy vs. Heredia, 12 Phil. Rep., 259.)

Under all of the evidence adduced in the trial of the case in the lower court, we are of the opinion and so hold that the judgment of the lower court should be affirmed, and without any finding as to costs. So ordered.

Arellano, C. J., Torres, Carson, and Moreland, JJ., concur.

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