

## THE ATLANTIC, GULF AND PACIFIC COMPANY, PLAINTIFF AND APPELLANT, VS. THE GOVERNMENT OF THE PHILIPPINE ISLANDS, DEFENDANT AND APPELLEE.

*G.R. No. 4195. February 18, 1908*

Ponente: TRACEY, J.

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### TRACEY, J.:

This is an appeal by the plaintiff from a final judgment in favor of the defendant upon its demurrer to plaintiff's complaint, which prayed for a recovery of P79,564.58 as damages for injuries to the Luneta improvement in the city of Manila by the typhoon of May 18, 1906.

On July 24, 1905, the plaintiff entered into a contract with a representative of the defendant to do the work on the Luneta Extension, consisting of the construction of a rock and timber bulkhead, the dredging and filling of the space behind it with not to exceed 400,000 cubic yards of dredging material, the constructing of a riprap foundation for the extension to the breakwater and of a concrete foundation for a light-house.

The specifications of the contract provided:

"4. The timber bulkhead will be reinforced with a riprap revetment against the outside and deposited in such a manner and at such times as will protect the structure against failure from pressure of the mud filling.

"5. The contractor will be responsible for all damages to the bulkhead and the revetment arising from wave action or from pressure of the revetment against the timber structure; but if a break is occasioned by pressure resulting from the mud filling, repairs to the structure will be paid for by the Government at prices specified in the contract, providing that the specifications have been fully complied with.

"12. \* \* \*All losses of dredged materials from the fills, except those due to failure of the bulkhead from pressure of the mud fill, as stated in article 5, will be measured as carefully as conditions will permit and computed amounts deducted from the final payment."

The complaint alleged:

"That on the said 1st day of May, 1906, and while the said improvements were in a condition as provided for in said contract, plan, and specifications, a section of about 200 feet in length of the said bulkhead and rock revetment was displaced by the pressure from the inside fill and moved a distance of about 20 feet into the waters of the Hay of Manila, and that through the opening thus caused there escaped into the bay a large quantity of the fill that had been pumped behind the said bulkhead: that after the break in the bulkhead and rock revetment of May 1, 1906, the plaintiff proceeded as rapidly in the repairing of the said bulkhead and revetment as it was permitted to do by the officer in charge representing the defendant, and in strict and immediate compliance with the orders received from the said officer in charge in that behalf; that thereafter and on the 18th day of May, 1906, before the aforesaid break in the bulkhead and revetment had been or could have been repaired, a severe typhoon occurred in the 15av of Manila; that the said bulkhead and rock revetment, being without support of the inside fill, which had escaped through the said break, were greatly

damaged and completely destroyed for a distance of about 1,800 feet by the pressure of the rock revetment and the wind and waves from the outside acting against the bulkhead and revetment, which, because of the escape of the heretofore-noted nil, was without support from the inside; that during and after the destruction of the bulkhead and revetment, caused as aforesaid, a large additional quantity of the inside fill escaped into the Hay of Manila."

Plaintiff further alleges the fact to be that if the break in the bulkhead and rock revetment of May 1, 1906, caused as aforesaid by the pressure of the inside fill, had not occurred, then no damage whatever would have been done to said improvements, bulkhead, rock revetment, or fill by the typhoon of May 18-19, 1906, since the said bulkhead and rock revetment, when in the condition as provided for in said contract, plan, and specifications, with the fill on the inside always about even with the rock revetment on the outside and both the fill and the rock revetment being about 4 feet above mean low-water mark, would have been sufficiently strong to resist the force of the wind and waves.

Upon this demurrer these allegations must be accepted as established facts, except in so far as they are statements of the contents or effect of the original contract and specifications annexed to the complaint. These documents, themselves, of course, control the mere recital of their tenor.

A supplementary contract was made between the same parties bearing date May 24, 1906, containing a recital of the provisions of the first contract, together with the following clauses:

"Whereas, on the 1st day of May, 1906, a break in the bulkhead and revetment occurred caused by pressure result ing from the mud fill so that the repairs thereby made necessary ought to be paid for by the Government in accordance with paragraph five of said specifications; and

"Whereas it has been determined that the repair's to the structure ought to be made, not by the construction of a new bulkhead of timber and replacing of the revetment of stone, as contemplated in said contract, but it lias been found advantageous and necessary to modify the project so that the repairs should be made by filling the space that has given way with rock and by filling the interstices of such rock with clay, soil, gravel, or broken stone, so that the water pumped into the fill would not flow through it and thus escape, and by the erection on the top of the rock so constructed of a temporary timber bulkhead, and that such change in the character of the repairs to be made would either increase or diminish the cost of the work; and

"Whereas it has been ascertained that to fill the space made by the giving way of the previously existing bulkhead would require approximately 3,000 tons, more or less, of stone; 1,500 tons more or less of clay, soil and gravel, or broken stone, and 200 lineal feet, more or less, of temporary timber bulkhead."

It then provided:

"That the repairs aforesaid required to be made by the Government of the Philippine Islands, in accordance with paragraph five of said specifications shall be made in the manner above stated instead of in the manner provided in said paragraph five of said specifications, and shall be made by the Atlantic, Gulf and Pacific Company, and that the expense of such repairs shall be paid for by the Government of the Philippine Islands at the actual and reasonable cost thereof, plus 15 per cent."

On May 26, 1906, the Government engineer addressed the following communication to the plaintiff:

"MAY 26, 1906.

"THE ATLANTIC, GULF AXD PACIFIC COMPANY, Manila, P. I

"GENTLEMEN: The following telegram was sent to Commissioner Forbes on May 25, 1906:

" 'FORBES, Baguio:

" 'For most of typhoon damage I hold contractors responsible ; they claim Government responsible for all on account delay repairing first break, but wish to make repairs in manner authorized for first break, leaving settlement of liability to be determined later. Repairs should be made at once, but in view of contract requirement that no payments shall be made unless agreement is approved before obligation is incurred do not see how contractors can be authorized proceed before determination of liability. What action is desired?

" FISK'.

"To the above wire the following reply has this day been received:

" 'Baguio, May 25, '06.

" 'FISK Port Works, Manila:

" 'Governor-General and I approve authorizing contractors to proceed immediately to make repairs on lines indicated, with the understanding that all rights reserved in regard to adjudication of liabilities.

" 'FORBES.'

"In accordance with the above, you are authorized to proceed to make repairs to the break in the Luneta Extension bulkhead in the manner outlined in supplement agreement entered into between yourselves and the Insular Government on May 24, 1906."

It being conceded that the Government Mas to pay for the damage to the breakwater on May 1, the question presented to us is, Who is to stand the consequences of the typhoon of May 18-19? As a general principle, in the absence of express agreement, the contractor must bear the loss from destruction of work under way, even in case of unavoidable accident, the rule in this jurisdiction being expressed in article 1589 of the Civil Code as follows:

"If the contractor is obliged to furnish the material, he must suffer the loss in case of destruction of the work before delivery, unless delayed by the party who was to accept."

In this instance, however, the parties have not left their liability to the general principles of law, but have made their own rule, dividing the responsibility so that while the contractor should remain answerable for all damage from outside pressure on the structure from wave and rock revetment, the Government assumed charge of repairing the breaks caused by pressure from the inside fill. Were we called upon to interpret only this last undertaking of the Government, separated from its context, then the inquiry would simply be what must be considered the true cause of the giving way of the bulkhead, what is termed in American cases the proximate cause, not implying, however, as might be inferred from the word itself, the nearest in point of time or relation, but rather the efficient cause, which may be the most remote of an operative chain. It must be that which sets the others in motion and is to be distinguished from a mere preexisting condition upon which the effective cause operates, and must have been adequate to produce the resultant damage without the intervention of an independent cause. (Insurance Co. vs. Boon, 95 U. S., 117, 130, and 133; Scheffer vs. Railroad Co., 105 U. S., 249; St. Louis I. M. & S. R. Co. vs. Commercial Ins. Co., 139 U. S., 223, 237; Washington & G. Hailway Co. vs. Hickey, 166 U. S., 521; The G. R. Booth, 171 U. S, 450.)

It is to be noted that in these cases and throughout this opinion the terms "cause" and "condition" are used in their English acceptance rather than that of the Spanish civil law.

Obviously in the present case such a proximate cause of the accident was either the typhoon of May 18 or the pressure of the mud fill producing the earlier break of May 1. Considering the undertaking of the Government only and disregarding that of the contractor, the typhoon could not be considered an independent cause, for the reason that it was within the scope of the contract itself, one of the general objects of which in the clause under

consideration was to provide against the consequences of such events. Nor for a like reason would the absence of the sustaining mud fill be regarded as a mere disconnected condition, but rather as a connecting cause, as it was the direct result of overpressure from within, through the fault of one of the parties, for which the contract expressly furnished a remedy. As a consequence we should be led to the conclusion that the proximate cause of the damage was not the typhoon, one of the contingencies provided against in the contract, but rather the overpressure of the fill, producing the escape of material and the weakness of the bulkhead, which rendered the destruction by the typhoon possible. But when we come to consider the effect of the counter undertaking of the company, we find the terms of the obligation and the relation of the parties changed. Between this primary cause and its ultimate effect, they have chosen to interpose an independent cause. Storms, typhoons, and external wave pressure are not left as foreseen contingencies to which other agencies might be attributed as causes, but are constituted in themselves independent causes of any damage that may result, for the consequences of which the contractor expressly agrees to be responsible. For such is the necessary effect of the words "The contractor will be responsible for all damages to the bulkhead and the revetment arising from wave action or from pressure of the revetment against the timber structure." They recognize exterior pressure as an independent agent of any injury that might occur therefrom. In other terms the injuries to the breakwater, resulting from the typhoon, might be said to have as their proximate cause the anterior over- pressure from within, producing the damaged condition following the break of May 1, had not the contractor stipulated to be responsible for all damages arising from pressure from without, by such stipulation constituting such external pressure a separate and an independent as it was clearly an intervening cause, for which he assumed the responsibility. It is plain that had there been no pressure from the typhoon no injury would have resulted from lack of the sustaining mud fill which had escaped. The break was immediately occasioned by wave action and the outside pressure of the typhoon. The contractor expressly agreed to answer for all damages from this source and the effect of this branch of the stipulation is, while changing into a preexisting condition what without it would have been a connecting cause, to convert into an independent cause for which the contractor is liable that which otherwise would have been a casualty within the purview of the contract.

In support of this view of the subject it must be borne in mind that the liability of the Government is narrowed by two important limitations: First, it does not extend to all kinds of damage, but only to repairs of any break in the bulkhead; and second, to such a break only when resulting from pressure from within and not from lack of such pressure. This furnishes a strong suggestion that what the parties had in mind was not the remote consequence of a damaged structure but rather the immediate repair of any break that might occur, thus looking separately to each particular break and its immediate cause.

The rules for the interpretation of contracts are found in Chapter IV of Title II of Book IV of the Spanish Civil Code, where, in article 1282, the elementary principle that contracts are to be interpreted in accordance with the intention, as shown by the acts of the parties, is expressly enjoined upon us as a primary canon of construction, in these words:

"In order to judge of the intention of the contracting parties regard must be had principally to their acts, both contemporaneous and subsequent to the contract."

We need not resort to conjecture as to what their acts in this case might have been, for we find them expressed in the supplemental contract of May 24. At that time the first break was more than three weeks old and five days had passed since the damage from the typhoon was apparent; nevertheless, in this agreement, reciting the occurrence of May 1, and purporting to completely provide for its consequences, it is stated that to fill the space made by the giving way of the bulkhead would require approximately 3,000 tons of stone, 1,500 of clay or similar material, and 200 lineal feet of timber, these quantities answering evidently to the immediate need of the break of May 1,

whereas the repairs necessitated by the typhoon, as stated in the complaint, called for 15,000 tons of rock, 116,000 cubic tons of fill, and other items. Had it been on the 24th of May in the minds of these parties that the repairs to the second break were to be considered part of the resultant damage of the first break, is it possible that they should have omitted from their computation the greater amounts, overlooking them while specifying the lesser results of the earlier accident? Had they then interpreted their contract as imposing on the Government the liability for the injuries of May 18-19, it is to be presumed that they would have so stated, or at least that the question would have been reserved for future settlement. It was only after the execution of this agreement that a claim was made that the Government was responsible for the effect of the typhoon. It is apparent from the communication of the engineer that, as soon as stated, this claim was resisted, and that in order to expedite the work and avoid future damage, the reservation was made of liabilities for future adjudication.

Moreover, the contract of May 24, having gone into force prior to this reservation and independent of it, should in fairness be given its apparent effect of an adjustment of the damages suffered by the break of May 1, and operate as a settlement of all claims existing when it was signed, five or six days after the typhoon. This view renders it unnecessary for us to determine whether the item of P27,840, the cost of replacing the fill behind the bulkhead, which enters into the damage sought by the plaintiff, as well as a proportional part of the item of P10,000 for labor, can be considered as a part of the "repairs to the structure" which alone the Government in any case agreed to pay for.

Our conclusion, therefore, is that interpreting this somewhat ambiguous contract in the light of the acts of the parties themselves, and giving effect to their agreement in settlement of the losses by the break of May 1, the plaintiffs have made themselves responsible for the damage by the typhoon and can not recover in this action. The judgment of the Court of First Instance must, therefore, be affirmed. So ordered.

Arellano, C. J., Torres, Mapa, and Willard, JJ., concur. Johnson and Carson, JJ., dissent.

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