

**YUTIVO SONS HARDWARE CO., PLAINTIFF AND APPELLEE, VS.
TOMAS CONFESOR, DEFENDANT AND APPELLANT.***G. R. No. 42701. March 06, 1937*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42701/>**DIAZ, J.:**

In the construction of the defendant's house, which was built on a lot situated at the corner of Arkansas and Florida Streets, Ermita, City of Manila, materials valued at P7,151.18, which had been taken on credit on different dates from the plaintiff's store, were employed. The plaintiff alleged in its complaint that of the above-stated amount, the sum of P1,400.70 has not yet been paid to it, and that, notwithstanding the various demands for payment made of the defendant, the latter has refused to make payment thereof. The defendant limited himself to denying generally and specifically in his answer each and every one of the allegations contained in the plaintiff's complaint.

After due hearing, the trial court rendered judgment against the defendant, ordering him to pay to the plaintiff the sum of P1,400.70 with legal interest thereon from the date of the filing of the complaint until fully paid, and the costs of the suit. The defendant appealed from the judgment and contends in his brief that:

"I. The lower court erred in finding that there was any business transaction between plaintiff and defendant.

"II. The lower court erred in finding that defendant has been paying Yutivo Sons Hardware Co. for the past goods and in concluding thereby that Confesor recognized the authority of the persons who have been getting the goods.

"III. The lower court erred in rendering judgment in favor of the plaintiff and against the defendant, granting for the sake of argument that there was any business transaction between them, in the unexplained amount of P1,400.70."

The evidence of record shows that, inasmuch as the appellant lacked funds sufficient to defray the expenses required by the construction of his house, he requested architect Fernando Ocampo, who had prepared the plans for him and had furthermore bound himself to supervise the work the execution of which was entrusted to the contractor named Candido Liwanag, to introduce him to the appellee and help him obtain from it a credit for construction materials up to the amount of P2,000. Architect Ocampo did so and Yu Khe Tay, manager of the appellee, taking into consideration the fact that the appellant was well known because he was at that time a public official, had no objection to opening the credit requested for him, Yu Khe Tay forthwith instructed his assistants to give to the appellant, on credit, construction materials not exceeding P2,000 in value. This took place about the end of February, 1929. Thereafter, construction materials the total value of which amounted to P7,151.18 have been delivered to the appellant through his representatives or agents, although his pending account therein never amounted to more than P2,000 because everytime he made an order, he was careful enough to make payments on account so as not to exceed the limit of the credit opened for him. Deliveries of the materials were made on the same lot where the appellant's house was being constructed and said materials were ordered by telephone by the appellant personally in most of the cases, and by architect Ocampo in the appellant's name in other cases. From the time the relation of creditor and debtor existed between the appellee and the appellant, that is, from February,

1929, to July, 1931, the appellee had been regularly sending to the appellant monthly statements of his accounts, and as soon as the latter received them, he used to make payments on account ranging from P200 to P1,711.38 in 1929, his payments during said year having amounted to P4,085.93; and from P12.35 to P500 in 1930, his payments during that year having amounted to P1,514.55. He also made another payment of P150 on July 2, 1931. All said payments amounted to P5,750.48. The appellant has presented no other evidence than his own testimony which, of course, is insufficient to counteract that of architect Fernando Ocampo, those of the other witnesses named Yu Khe Tay, Yu Tiam and Candido Liwanag, and Exhibit 1 which the appellant claims to be a contract executed by him and architect Fernando Ocampo. He contends that it was architect Ocampo who had taken charge of the expenses of providing materials for the construction of his house, having accepted the entire work, including materials, for the lump sum of P45,000.

Exhibit 1 is a contract which shows on its face that it has a supplement in the form of another contract executed by the appellant and the contractor Candido Liwanag, which is the one referred to in paragraph 1 of said document. In the course of the hearing, the appellant promised, through his attorney, to present said contract but failed to do so. This failure on his part correctly warrants the presumption that had he presented it, it would have been adverse to him (section 334, paragraph 5, Act No. 190). But even prescinding from said supplement, there is a very significant data in Exhibit 1 proving that architect Fernando Ocampo did not bind himself to construct the house in question, supplying the necessary construction materials, for the lump sum of P45,000; as in paragraph 7 of said document, there is a stipulation to the effect that the appellant would pay architect Ocampo the sum of P3,000 for his services. If Ocampo had really bound himself to construct the house for P45,000, there is no reason for inserting said paragraph 7 in the contract in question.

On the other hand, architect Ocampo testified that the preparation of Exhibit 1 was due to the appellant's desire to have some document whereby he could apply for and obtain a loan of P45,000 from some money-lender; that he consented to sign it upon petition of the appellant who induced him to believe that it was only for said purpose; and that in fact the contract entered into by them was verbal and consisted in his binding himself to prepare the plans and to supervise the work when it was carried out. This is not all. The same contract Exhibit 1 proves that the construction of the house in question was made by administration, so much so that the appellant himself admitted during the hearing that he had posted his overseer or watchman named Daniel Morga in the place where the work was being done, although he really testified that he had not authorized him at all to order materials. The above-cited paragraph 1 of Exhibit 1 reads:

"1. That the architect binds himself to construct completely, by administration, the proposed three-story dormitory which the owner Tomas Confesor plans to build at the corner of Florida and Arkansas Streets, Ermita, for an amount not exceeding forty-five thousand pesos (P45,000), which amount includes the sum of eight thousand five hundred pesos (P8,500) representing the cost of labor, as stated in the contract with Mr. Candido Liwanag attached hereto."

All the foregoing together with the statement in paragraph 7 to the effect that architect Ocampo would also be paid the sum of P3,000, prove that the construction materials had to come from and be defrayed by the appellant. Finally, there is the fact that the appellant has been paying to the appellee the amount of the materials used in the construction of his house until it was thereby reduced to the sum claimed in the complaint.

In view of the foregoing considerations, this court concludes that the errors attributed to the lower court by the appellant have not been committed, and therefore are unfounded, and that said appellant's appeal is entirely groundless.

The appealed judgment is affirmed, with the costs to the appellant. So ordered.

Avancena C. J., Villa-Real, Abad Santos, Imperial, Laurel, and Conception, JJ., concur.

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