

CHO CHUNG LUNG, PLAINTIFF AND APPELLEE, VS. FIGUERAS HERMANOS, DEFENDANTS AND APPELLANTS.

G.R. No. 4443. March 04, 1909

Ponente: JOHNSON, J.

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JOHNSON, J.:

The complaint filed in the Court of First Instance in this case contained two causes of action. In the first the plaintiff asked for judgment against the defendants in the sum of P2,100, with interest at the rate of 6 per cent from the 8th day of February, 1906. In the second the plaintiff asked for judgment in the sum of P296.80, with interest at the rate of 6 per cent from the 21st day of June, 1906. The plaintiff also prayed that he be given the right to retain the possession of the lorchá repaired by him until the full amount of the two sums (P2,100 and P296.80) be paid by the defendants.

After hearing the evidence adduced during the trial, the lower court rendered a judgment in favor of the plaintiff and against the defendants for the sum of P2,100, with interest at the rate of 6 per cent from the 8th day of February, 1906, and also for the further sum of P296.80, with interest at the rate of 6 per cent from the 21st day of June, 1906, and the costs, also declaring that the plaintiff might retain the possession of said lorchá until the full amounts of said judgments with interest had been paid.

The defendants in the lower court presented a counter-claim. The said court found that the facts did not justify the claim made by the defendants against the plaintiff in the said counterclaim.

The claims of the plaintiff against the defendants were based upon the following facts:

First. That on or about the 27th of December, 1905, the plaintiff and the defendants entered into a verbal contract by which the plaintiff was to make certain repairs upon the lorchá Dolores, by virtue of the terms of which contract the plaintiff was to furnish the labor and material. The record does not disclose that at the time the said contract was made there was any stipulated amount agreed upon for such labor and material. Between the 27th day of December, 1905, and the 8th day of February, 1906, the plaintiff made such repairs upon the said lorchá under and by virtue of the terms of the contract as the defendants indicated and requested. On the latter date (the 8th of February, 1906) the plaintiff presented a bill to the defendants for the labor and material used in repairing the said lorchá amounting to P4,500. To the amount of this bill the defendants made some objection and it was then and there mutually agreed between the plaintiff and the defendants that the amount of said bill should be reduced to P3,600. After the parties had agreed that the labor and material furnished by the plaintiff were worth P3,600, the defendants paid to the plaintiff, on different dates, the sum of P1,500, leaving a balance of P2,100.

Later, on or about the 11th of June, 1906, the plaintiff and the defendants entered into another contract for additional repairs upon the said lorchá, by which the plaintiff was to furnish the labor and material. Under this second contract, the labor and material furnished for repairs amounted to the sum of P296.80. The labor and material under the second contract were furnished and the repairs completed on or about the 21st of June, 1906, and the plaintiff then demanded his pay for such labor and material.

After the lorch was repaired in accordance with the contract, it was turned over to the defendants by the plaintiff, without any objection on the part of the defendants as to the class of material used or the character of the work done.

It appears from the record that some time after the defendants had accepted the said lorch and had used it on two or more occasions, it began to take in water. No complaint, however, was made by the defendants concerning the leakage until after the plaintiff insisted upon the payment of the balance of his account.

The theory of the defendants in their defense is that the plaintiff, in making said repairs, guaranteed that the said lorch should not take in water. The defendants alleged that the amount to be paid under the first contract was the sum of P3,300 and under the second contract the sum of P250. The fact, however, that the defendants agreed after the work was completed to pay the sum of P3,600, under the first contract, and the sum of P296.80, under the second contract, fully refutes this contention of the defendants as to the amounts which should be paid.

With reference to the contention of the defendants that the plaintiff should make the repairs and furnish the material therefor under a guaranty that said lorch should not leak, we are of the opinion and so hold that the record brought to this court does not justify the contention of the defendants. Even if the plaintiff did guarantee that the labor and material should be furnished in a way so as to prevent the said lorch when completed from leaking, the record clearly shows that said lorch did not leak until after it had been used two or three times by the defendants, which leakage might have been due to some other cause than defective labor and material furnished by the plaintiff. Moreover, the record shows that, under the contract, the defendants claimed the right to indicate to the plaintiff what parts or portions of the old lorch should be taken out and substituted by new pieces or parts. The plaintiff contends that, if said lorch leaked at all after it had been used two or three times by the defendants, it was due to the old and defective pieces which the defendants insisted upon leaving in the said lorch. The fact that the defendants insisted upon indicating just what repairs should be made by the plaintiff to the said lorch is inconsistent with any guaranty such as the defendants claim was made by the plaintiff, the defendants make no contention that, at the time they accepted the lorch after said repairs had been made, it was accepted under the condition that the same should be tried for the purpose of ascertaining whether or not the repairs had been made in accordance with the terms of the alleged contract.

In view of all the evidence adduced during the trial of the cause in the court below, we are of the opinion and so hold that the judgment of the lower court should be affirmed, with costs. So ordered.

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

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