

J. C. CHOY, ATTORNEY IN FACT FOR GO-SITCO, PLAINTIFF AND APPELLEE, VS. GENARO HEREDIA, DEFENDANT AND APPELLANT.

G.R. No. 4888. December 16, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

On the 21st of August, 1903, the parties to this action signed the following document:

"I, Go-Sitco, a Chinaman residing in this city, Calle de Arranque, of age, a bachelor, do hereby state: That by virtue of a contract that I entered into with Don Genaro Heredia on the 1st day of December, 1902, for the construction of two houses, one, consisting of four posesiones in Calle Soler, and the other with an entresuelo in Calle Bernardo, district of Santa Cruz, the first named bearing the numbers 385, 387, 389, and 391 on Calle Soler, and the second, numbered 8 and 10 on Calle Bernardo are completed.

"That the price agreed upon for the construction of the said buildings is fourteen thousand five hundred pesos, Mexican currency (\$14,500), of which I have received at different times thirteen thousand one hundred and sixty- five pesos, Sr. Heredia having still to pay me one thousand three hundred and thirty-five pesos, Mexican currency (\$1,335).

"Inasmuch as Sr. Heredia asked for an increased amount of material for said houses, to the extent of seven hundred and sixty-five pesos, Mexican currency, and engaged to pay me the same together with the aforesaid balance, it makes a total of two thousand one hundred pesos (P2,100).

"There are, however, some small things to be done to both houses which I hereby bind myself to complete within a few days either by myself or by my representative in this city.

"By all that has been stated above, Don Genaro Heredia is indebted to me in the sum of two thousand one hundred pesos, Mexican currency, both for the price of construction and for the increase in the materials, and I guarantee the work and the materials employed in the said buildings for the period of three years from this date, in which case Sr. Heredia will pay me in addition the sum of four hundred pesos as a gratification excepting any damage arising out of earthquake or fire as provided.

"I, Genaro Heredia, a resident of this city, hereby accept this document according to the terms stated by Senor Go-Sitco.

"In witness whereof, we attach our signatures on this the 21st day of August, 1903."

After a lapse of three years from that date, and on the third day of November, 1905, the plaintiff brought this action to recover the P2,100 mentioned in the contract as being the balance due for the work performed and material furnished, and also to recover the P400 mentioned in the contract as an additional payment. The court below found that after the making of the contract of the 21st of August, 1903, the defendant had paid 1,000 pesos thereon, and entered judgment in favor of the plaintiff for 1,100 pesos, but refused to allow the plaintiff anything on account of the 400 pesos. From this judgment the defendant only has appealed.

The defendant in his answer did not deny under oath the execution of the document above quoted. He therefore admitted its authenticity. At the trial he asked leave to amend his answer by inserting a denial under oath as to the execution of the contract. Whether the refusal to allow this amendment was or was not error it is not necessary to determine because the defendant, himself, in his brief, admitted that he executed the document, but claimed that it involved fraud and deceit. This deceit could have been shown by the defendant under his original answer. We find no evidence in the case to show that the execution of this document was obtained by any fraud or deceit practiced by the plaintiff, nor do we find that the court ruled out any evidence presented by the defendant for the purpose of establishing that fact. He was allowed to, and did show that some of the material used in the contract was not the material indicated in the specifications. But this did not prove, nor tend to prove that his consent to the contract of the 21st of August was obtained by fraud. He had before signing that contract ample opportunity to examine the work and determine for himself whether it complied with the terms of the contract or not. His express acceptance without protest was an acknowledgment by him that the work had been performed substantially as required by the contract. (*Campbell vs. Behn, Meyer & Co.*, 3 Phil Rep., 590; *Naval vs. Benavides*, 8 Phil. Rep., 350. See also *Ang Toa vs. Alvarez*,^[1] 6 Off. Gaz., 1308.)

Article 1591 of the Civil Code, cited by the appellant, has no application to this case. That article is as follows:

"The contractor of a building which may have been destroyed by reason of defects in the construction shall be liable for the losses and damages if said building should collapse within ten years, to be counted from the completion of the construction; and during the same time the same liability shall be incurred by the architect who may have directed the work if the collapse is due to defects in the ground or in the direction."

It is not claimed by the defendant that the building has been entirely destroyed by errors in the construction.

We think that the purpose of this contract of the 21st of August was (1) to establish conclusively that the defendant owed the plaintiff 2,100 pesos; and (2) to allow the plaintiff 400 pesos more if for three years the building continued in good condition. The plaintiff, in any event, was entitled to recover the balance due on his original contract but he was not entitled to recover the 400 pesos unless he showed that his guaranty had been complied with for three years. The court below found from the evidence presented by the defendant that he had not fulfilled this guaranty and therefore refused to allow him any part of the 400 pesos. But his failure to make such proof did not affect his right to recover the balance due on the original contract.

The judgment of the court below is affirmed with the costs of this instance against the appellant. So ordered.

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

[1] 11 Phil. Rep., 146.

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