

MARIANO A. DE CASTRO, PETITIONER, VS. CASIMIRO TAMPARONG, RESPONDENT.*G.R. No. 49160. July 30, 1947*

Ponente: BENGZON, J.

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This is a review on certiorari of the decision of the Court of Appeals, promulgated May 17, 1944, which reads as follows:

"On August 3, 1937, Casimiro Tamparong represented by Ernesto Tamparong, his attorney-in-fact (Exhibit A-1), and Mariano A. de Castro, a building contractor, entered into a contract whereby the latter, for and in consideration of P18,000, undertook to build for the former a residential house in Cagayan, Oriental Misamis, in accordance with certain plans and specifications, labor and materials for the contractor's account, and the work to be completed within 150 working days from August 1, 1937 (Exhibit A). The performance of the construction thus undertaken by the contractor was guaranteed by the Luzon Surety Co., Inc., binding itself to pay the owner P4,500 should the contractor fail to perform his part of the contract (Exhibit B). On September 28, for and in consideration of a further sum of P2,000, the contractor undertook to do an additional work on the building, the performance of which was again guaranteed by the Luzon Surety Co., Inc., in the sum of P3,000 (Exhibits C, E). On January 31, 1938, the contractor, with the consent of the surety company, requested an extension of 60 working days from that date to complete the construction of the building (Exhibit D). This extension appeared in the bond for P3,000 accepted by the owner of the house (Exhibits E, F). Pursuant to this extension, the construction of the house was to be completed on April 5, 1938, but it was actually completed and the house occupied by the owner in the middle of May, 1938 (pp. 23, 60, t. s. n., Antillon). During the construction the contractor failed to supply materials and to furnish necessary funds to pay the artisans and laborers, and for that reason, besides authorizing the engineer in charge of the construction to receive from the owner payment of the stipulated installments beginning September 18, 1937 (Exhibits G, G-1), the contractor authorized the owner to make payment of payrolls and materials necessary for said construction, the payrolls and lists of materials to be prepared, verified and signed by the engineer in charge of the construction (Exhibit H). The owner having paid for the stipulated price and the contractor having failed to pay for materials supplied and funds advanced, the former brought action against the latter and the surety company to collect the amount due for such materials and funds. From a judgment directing defendants, jointly and severally, to pay plaintiff the sum of P7,346.07, together with lawful interests from the filing of the complaint until paid, and costs, they have appealed.

"There is no dispute that appellee had paid appellant contractor the sum of P20,040.63 (Exhibits I, I-1 to I-15); that from September 3, 1937 to March 30, 1938, appellee had supplied appellant contractor materials for the construction of the house, the total value of which is P3,769.38 (Exhibits J, J-1 to J-40); that from January 8, to March 31, 1938, appellee had furnished appellant contractor several sums of money with which to pay not only the artisans and laborers engaged in the construction but also for materials bought from other parties, the total of which is P3,228.85 (Exhibits K, K-1 to K-28); that from April 13, to 29, 1938, appellee had supplied appellant contractor materials, the total value of which is P1,426.08 (Exhibits L, L-1 to L-8); that from April 6 to 30, 1938, appellee had furnished appellant contractor several sums of money to pay labor and materials, the

total of which is P1,209.35 (Exhibits M, M-1 to M-10); and that appellee credited appellant contractor the sum of P131.42 (Exhibits N, N-1 to N-3). Appellant surety company does not deny that appellee through his attorney had made a demand upon it to pay under its bonds the amount owed by appellant contractor (Exhibits R, R-1, R-2).

"Contractor's theory is that at the request of appellee he had made additional and extra works on the building which entitled him to collect from appellee P6,941.79 (Exhibit 9). Appellee does not deny, and the evidence so shows, that there had been additional and extra works done on the building, but contends that the extra work done is itemized in Exhibit P, the total of which is P1,222, credited to appellant contractor in the judgment under review. The letter of the engineer in charge of the construction dated August 17, 1937, where he stated the changes appellee wanted to make on the house in process of construction (Exhibit 10), and the changes actually done, as testified to by said engineer (pp. 19, 21-22, 25-27, t. s. n., Nazario), lead us to believe that such additional work was the reason for the execution of the supplementary contract on September 28, 1937, whereby the price of construction was increased to P20,000 (Exhibit C). And the items of extra work as well as the price agreed upon appearing on Exhibit P, which tally—although not as to the value or price—with the first seven items of extra work done by appellant contractor as specified by him in Exhibit 9, lead us also to the conclusion that the price of all extra work done by appellant contractor had been agreed upon and credited to him. For that reason, the claim of appellant contractor for additional and extra works is untenable.

"The contention of appellant surety company that appellee had not complied with the stipulation of the contract in the matter of installment payments; that appellee and appellant contractor had entered into a contract of loan; that the former had sold to the latter merchandise and wares for building construction, without the consent of appellant surety company; and that the extension of the period by appellee was made without the consent of appellant surety company, is also untenable. Appellee paid the total sum stipulated in the contract with very little delay—only a matter of days; but that certainly cannot release appellant surety company from its undertaking. The whole amount stipulated in the two contracts was paid within the year 1937, or prior to the extension of 60 days requested by both appellants. If appellee had supplied construction materials and advanced money to appellant contractor to pay labor and materials, it was to help him fulfill his part of the contract. Appellant contractor did not send the building materials and funds to pay the labor as called for in the contracts. That failure on the part of appellant contractor was a violation of the contracts, the performance of which appellant surety company undertook to guarantee by its bonds. For such violation both appellants are liable.

"Judgment is affirmed with costs against appellants."

The petitioner claims the court a quo erred (a) in holding that he "violated the building contract for failure to send the building materials and funds to pay the labor"; (b) in accepting the full face value of Exhibit P as evidence; and (c) in rejecting petitioner's Exhibit 9.

At the outset, it must be explained that only questions of law are involved in this revision, because the judgment of the Court of Appeals is, under the Rules, conclusive as to the facts and may not be altered by the Supreme Court[1]. This reliance upon the findings of the appellate court is all the more compelling in this instance, considering the destruction of the record during the liberation of Manila and the insufficiency of the expediente as reconstituted.

Taking up petitioner's grievances, we notice that, arguing his first assignment of error, he submitted these propositions:

"The Honorable Court of Appeals has affirmed the judgment of the trial court upon the premise and view that 'appellant contractor (herein petitioner) did not send the building materials and funds to pay the labor as called for in the contracts'. (App. or Annex C, p. 5.) With deference and respect to that opinion, we respectfully submit our dissent thereto. In the first place, a perusal of the building contracts will readily show that these

contracts Exhibits A and C call for 'furnishing materials and performance of labor', but not for 'sending' them (possibly, in the mind of the court, to Cagayan, Oriental Misamis)."

If the whole decision is read, it will be perceived that counsel, in the above argument, adroitly seized upon the last part of it and the literal meaning of the word "send," to demonstrate the supposed inconsistency between the award and the building contract between the parties. That position should not be persuasive. The whole decision must be construed together. In the first paragraph, it declared that "During the construction the contractor failed to supply materials and to furnish necessary funds to pay the artisans and laborers" and that the owner supplied such materials and funds. It was therefore unnecessary to repeat in the concluding paragraph the word "furnish" in referring to the contractor's omission. Failure to "send" was employed to denote failure to "furnish" or to "supply."

Petitioner's second assignment of error concerns the admissibility of Exhibit P. He claims it was not sufficiently identified, besides being impertinent and irrelevant. The point is mainly one of fact, which was debated in the Court of Appeals in the light of the testimony of witnesses, not presently available. Consequently, there is no basis to impute error to the appealed judgment.

It is also alleged that it was a mistake to disregard Exhibit 9 of the petitioner. However, inasmuch as petitioner himself says the aforesaid exhibit was impliedly rejected when the court admitted Exhibit P, the contusion is unavoidable that the point involves the weight and value of the documents, together with the testimonies introduced in connection therewith. Hence, this is a factual issue, which we are not at liberty to revise.

Lastly, it is contended that "the acceptance and occupation of the building by the owner amounts to an acknowledgment of performance of the work in accordance with the contract." (Campbell and Go-Tauco vs. Behn, Meyer & Co., 3 Phil., 590; Naval vs. Benavides, 8 Phil., 250; Choy vs. Heredia, 12 Phil., 259.) This is probably the question of law that, at first glance, impressed this Court, and induced it to give due course to the petition for certiorari. Upon a deliberate examination of this phase of the controversy, it will be observed that the doctrine of the above-cited cases refers to the acceptance or occupation by the owner "without objection" or "without protest." Here we know the owner "protested," as shown by the circumstance that, before moving to the premises in May, 1938, he filed the complaint that started this litigation in April of the same year.

Wherefore, finding no legal error in the decision of the Court of Appeals, we hereby affirm it, with costs.

Moran, C.J., Paras, Feria, Pablo, Perfecto, Hilado, Hontiveros, and Tuason, JJ., concur.

[1] Moran, Comments on the Rules of Court, 2d Ed., Vol. I, p. 770, citing Hodges vs. People (68 Phil., 178); Onglengco vs. Ozaeta (70 Phil., 43); section 2, Rule 46.

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