

GEORGE G. TAYLOR, PLAINTIFF AND APPELLEE, VS. JAMES L. PIERCE, DEFENDANT AND APPELLANT.

G.R. No. 6088. September 01, 1911

Ponente: ARELLANO, C.J.

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ARELLANO, C.J.:

Plaintiff sues for a total of P1,030.70, in payment for labor and materials used on a boiler belonging to defendant.

A part of this labor and materials was furnished in accordance with an estimate submitted by plaintiff to defendant and approved by the latter; and the rest was added by agreement of both parties the former was for a sum of P954, as shown in Exhibit A, and the latter was for the sum of P76.70, as itemized in his complaint.

Defendant refused to pay the amount asked, alleging in his reply that he had applied to the plaintiff to examine the boiler, and after examination plaintiff had agreed with him to put the boiler in good condition for the sum of P950.

The Court of First Instance of the city of Manila found: (1) That the work to be done on the boiler was agreed upon in the estimate, Exhibit A, and that its value amounts to P954; (2) That later additional work was done in connecting the boiler with a washing-machine of the Manila Steam Laundry, to the value of P65, which, added to the foregoing P954, makes a total of P1,019; (3) That when the boiler had been connected with the machine and examined by the boiler inspector under the supervision of the city engineer of Manila, in conformity with ordinances in force, the latter refused to issue the permit necessary for its operation, because the boiler was not in proper condition, not being able to withstand a pressure of 90 pounds, making necessary the repairs indicated by the boiler inspector for its safe operation. The city engineer added that the lower back plate required a patch and this patch could not be put in place because of the peculiar position of the plate.

But the court did not find: (1) That it was agreed between plaintiff and defendant that the boiler and machine should withstand a pressure of 90 pounds; (2) that it was agreed between plaintiff and defendant that the boiler and machine would be subjected to inspection; (3) that, even though this were taken for granted, it was agreed between plaintiff and defendant that, without the approval of the city engineer, the work of the plaintiff would not be accepted, nor its value paid; (4) that the plaintiff did not perform all the work agreed upon in the said estimate, as well as the additional work necessary for connecting it with the machine; (5) that the work which, according to the city engineer, the plaintiff did not perform or left undone, as well as the additional work for connecting the boiler with the machine, would be included in the agreement between the plaintiff and the defendant according to the estimate, Exhibit A.

From the foregoing finding of facts proven and not proven, the court reaches the following conclusions:

- That the plaintiff on his part fulfilled the contract and performed all the work entrusted to him by the defendant, as well as the additional work necessary for the operation of the machine.

- That as it was not agreed between the plaintiff and the defendant that the approval of the city engineer would be a necessary condition to payment for the work; and that as it was not proven that the defects noted by the city engineer were due to the plaintiff's failure to do the work agreed upon between him and the defendant in the estimate, Exhibit A, it is clear that the plaintiff can not be held responsible for the defects in the boiler and machine that were noted by the city engineer, nor for the damages incurred by the defendant from the failure of the machine to operate at the proper time: damages for which the defendant in turn makes a counterclaim.

For all these reasons the court sentences the defendant to pay to the plaintiff P1,019, with legal interest at 6 per cent a year on said sum from July 12, 1909, the date of filing the complaint, until its complete liquidation, and to pay the costs; and dismisses the defendant's counterclaim against the plaintiff.

Defendant appealed, because of the court's holding Exhibit A to be a contract between parties; for holding that plaintiff had performed the work according to the contract; and for having granted the plaintiff the sum of money he sues for on account of work the defendant had entrusted to him as a skilled mechanic or engineer, when this amount of money and the labor employed on the work have not been useful or profitable to the defendant, for whom, rather, the value of the boiler has been lessened.

It appears from the trial:

1. That the defendant testified as follows:

"I bought this boiler at second-hand, knowing nothing about what condition it was in except what could be seen from the outside. Wishing to put it in good condition for operating the machinery of the new laundry, I asked for bids from various mechanics of the city, as to what the repairs would cost for putting the boiler in usable condition and fit for operation. Among the mechanics I remember Messrs. Taylor, McChesney, Manuel Earnshaw, and I think also the San Nicholas Iron Works. I think I received bids or estimates from all of them. I contracted with Mr. Taylor, whose agent examined the boiler and prepared a list of the repairs to be made for putting the boiler in usable condition. He said that he could make these repairs for nine hundred and fifty-four pesos. As this was the lowest bid, I immediately closed the deal." (Sten. notes, 24, 25.)

The contract, therefore, consisted "in the plaintiff's making repairs to the boiler to put it in usable condition"

D. M. McChesney, one of the above-mentioned mechanics, was called as a witness for the defendant, and testified: That the defendant had in fact applied to him; that he had made an estimate, but it had not been accepted, perhaps because it was too high; that a condition of his contract was that "the boiler should be put in very good condition, so that it would be approved by the inspector." "It would be necessary," so he says, "according to the conditions in our regulations." [Sten. notes, 17.] He then confirms the defendant's statement that the inspector, accompanied by the manager of the laundry, tested the boiler after its installation by the plaintiff (it does not appear that the latter was present); and replies to the following cross-questions :

"Q. Did you examine the boiler and the machinery after it had been installed there by Mr. Taylor? - A. Yes, sir; I was the first to fill the boiler and put it under pressure.

"Q. Did you notice the various repairs made by Mr. Taylor? - A. I was not very familiar with what Mr. Taylor had done to the boiler, only with respect to the pipes and they were in good condition.

"Q. Did you operate the machine? - A. Yes, sir.

"Q. How did it work ? - A. The machinery seemed to run well.

"Q. Do you remember what pressure there was in the boiler? - A. Yes, sir; I remember the pressure I put on the boiler, but the inspector would have had me arrested if I had continued with the pressure I had put on.

"Q. What pressure did you put on the boiler? - A. Between ninety and a hundred pounds." (Sten. notes, 19, 20.)

The defendant again testifies, saying that the place where the boiler and machinery were installed was indicated by the manager of the Manila Steam Laundry.

"Q. By whose authority did Mr. McChesney test the machinery? - A. They made a kind of test of the machinery of the laundry without my knowledge.

"Q. To whom do you refer? - A. To Mr. McChesney and the manager of the laundry." (Sten. notes, 45.)

The witness McChesney was further cross-examined:

"Q. Do you know whether the boiler inspector examined this boiler before these repairs were made? - A. Only from what the inspector told me.

"Q. Did the inspector indicate to you the repairs that had to be made so that they could afterwards be approved? - A. Yes, sir; he indicated what had to be repaired in the boiler.

"Q. And did you make your calculation on what was indicated by the inspector? - A. No, sir; the calculation I made was before talking with the inspector.

"Q. Before making your bid, didn't you know what the inspector would require? - A. No, sir." (Sten. notes, 21.)

John Karsten, engineer, witness for the plaintiff, and employed by the latter on that contract, testifies regarding the facts entered in the complaint: that he had submitted the estimate, Exhibit A; that the defendant asked him what pressure the boiler would have and he told him that in his opinion it would have a pressure of about sixty pounds, and the boiler was repaired in accordance with that estimate; that he tested the boiler under hydraulic; and steam pressure and everything was in good condition.

From the foregoing evidence it appears: That for the proposed contract with McChesney, the latter talked with the boiler inspector, who indicated to him the repairs that had to be made to the boiler so that its installation would be approved; while for the proposed contract with Taylor, which was subsequent to McChesney's, there was not the slightest connection with said inspector.

Now what was the gist of the contract? This the defendant fixes exactly in several passages in his evidence:

"Repairs necessary to put the boiler in usable condition.(Page 24.)

"List of repairs he (Taylor) has to make to put the boiler in usable condition. (Page 25.)

"Karsten said that he would have the boiler in usable condition before the arrival of the September transport. (Page 25.)

"They informed me that the boiler was finished and ready for use, two days before the arrival of the transport. (Page 25.)

"He (Taylor) submitted a statement of the repairs he said were necessary to put the boiler in usable condition. (Page 44.)

"* * * and if those were the repairs necessary to put the boiler in usable condition, I told him (Karsten) that I would inform him afterwards, but I did not at the time accept his proposition. (Page 44.)

"I applied to Taylor later. The purpose of the conversation with him, acceptance of his bid for repairs." (Page 44.)

Nevertheless, on page 5 of his brief the appellant says:

"The plaintiff in the presence of the city engineer, admitted that the contract was to place the boiler in first-class condition to be used in the laundry, but denied that he agreed that it would pass inspection. (Page 57.) But had it been placed even in a usable condition, not necessarily first-class, his contract would have been performed."

On page 56 appears a question directed to the city engineer, Mr. Wylie, to this effect:

"In order to refresh your memory, I would like to ask you if Mr. Pierce asked Mr. Taylor, 'If you agreed to put the boiler in first-class condition, wasn't it up to you to do so?' and Mr. Taylor answered, 'Yes, sir; but I didn't guarantee that it would pass inspection;' and you [the witness] replied that if the boiler had been put in first-class condition it would have been approved by the inspector."

And on page 57 appears what Mr. Wylie really said:

"Mr. Pierce claimed that Mr. Taylor had contracted with him to sell or perhaps to repair a boiler and the conditions of this contract were that it would be put in first-class condition, Mr. Taylor stated that the conditions were not that the boiler be approved by the boiler inspector; while Mr. Pierce regarded this as the standard of its being put in first-class condition; and when these two points arose in the discussion, I told him that if he had put the boiler in first-class condition, it would necessarily have received the approval of the boiler inspector."

Considerably previous to the foregoing, there appears in the record, on page 28, the following regarding what Mr. Pierce really said:

"Mr. Taylor talked to me again about this matter in my office. I again told him, in the presence of Mr. Wylie, that he agreed to put the boiler in usable condition, and that it was his duty to do so. Mr. Taylor answered yes, but that it had not been agreed that said boiler would receive Mr. Wylie's approval on inspection. I answered him that if it had been in good condition it would have passed inspection."

Taylor and McChesney testify that they never said that they would put the boiler in first-class condition; the work done was to put the boiler in a condition to withstand a pressure of 60 pounds.

If, according to the appellant, the contract would have been fulfilled by putting the boiler in usable condition, without need for first-class work, then it has been fulfilled, especially as the boiler has been put in a condition to be used, in usable condition, in accordance with the agreement in the contract. The engineer McChesney, witness for the appellant, certifies that the machinery worked well, that it easily withstood a pressure of sixty pounds, for which the repairs made on that boiler were intended. If it was required that the boiler withstand greater pressure, that should have been expressly stipulated in the contract. There is no reason or indication that this condition could or ought to be understood by implication in a contract the terms whereof are merely those of the boiler's being used or in usable condition.

When the appellant received the appellee's estimate, Exhibit A, he had other estimates submitted by other mechanics, among these McChesney's, and he withheld his reply, promising to say later whether he accepted it or not. He was able to make comparisons, and he expressly stated that "if those were the repairs necessary for putting the boiler in usable condition he would inform him later," and afterwards he had to state his acceptance to the appellee. So it is logical to infer that he would do so knowingly and would not confide wholly in the skill of the other party to the contract.

Work superior to a usable condition, and a first-class condition that presupposes inferior classes, are relative terms which are not enforceable in contracts for work to be done, unless expressly stipulated. Greater power of resistance than that possessed by the thing made and the highest condition of perfection to which a piece of work can be raised, as first-class of its kind, are not terms that must be understood in a contract for work to be done. They must

be expressly required in the contract in order to be enforceable. Otherwise, it could happen that a perfect piece of work of the best kind, for which the money promised would not be adequate, might be required for a medium or minimum price.

The findings in the judgment appealed from clearly demonstrate that it was not a condition of the contract that the work had to be first class, nor that it was a condition of the contract that acceptance of the work had to depend upon the approval of a third party. With reference to the preliminaries of the contract, the difference between McChesney's and Taylor's proposals is quite clear: the former's contained that condition of the approval of the boiler inspector; the latter's made not the slightest mention of this approval, until the work was done. It can not be uniformly enforced in both instances, for the reason that it was imposed in one and left out of the other.

As for the law, article 1598, paragraph 2, of the Civil Code, furnishes the principle for deciding the present question. "If the person who has to approve the work is a third person that is, if it were so agreed his decision shall be final." Then if it was not agreed that a third person had to approve the work, no third person may decide upon the fulfillment of the contract.

The principles of law followed by the lower court being correct, the judgment appealed from is affirmed, with the costs of this instance against the appellant.

Torres, Mapa, and Johnson, JJ., concur.

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