

45 Phil. 242

[ G.R. No. 20586. October 13, 1923 ]

**SANTIAGO NAVARRO ET AL., PLAINTIFFS AND APPELLANTS, VS. FELIX MALLARI ET AL., DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**STREET, J.:**

This action was instituted in the Court of First Instance of Pampanga by Santiago Navarro, Sabas Magtoto, and Victorino Calara, as trustees (*mandatarios*) of the inhabitants of the barrio of San Vicente, in the municipality of Macabebe, to compel the defendants, Felix Mallari, as principal, and Leon Tolentino and Ignacio Tolentino, as sureties, to comply with the contract for the construction of a chapel to the patron saint of the barrio, or in the alternative to require the same defendants to return the sum of P12,000 paid to them upon said contract, together with the sum of P4,000 as stipulated damages for failure to construct the chapel according to specifications. The defendant Pedro Mercado appears to have been one of the four trustees or agents selected for the purpose of procuring the chapel to be built but as he refused to join with his associates in instituting the present action, he was impleaded as a defendant.

In their answer the defendants admitted the execution of the contract (Exhibit A), relied upon by the plaintiffs, but set forth that Felix Mallari was a mere figurehead in the contract and that the person to whom the building of the chapel was really confided was one Jose Mallari, a son of Felix Mallari. The defendants claim in short that the chapel was constructed in conformity with the contract and plan, was turned over to the committee and accepted by it. The defendants accordingly, by way of counterclaim, ask that the plaintiffs be required to pay the balance due upon the agreed price for the construction of the chapel, together with certain damages resulting from non-performance of the

contract.

At the trial of the cause his Honor, Judge Guillermo B. Guevara, after hearing the evidence, came to the conclusion that the chapel had been built according to contract and that the defendants were entitled to recover the sum of P4,000 upon their counterclaim, the same being the balance due upon the contract price. Judgment was accordingly entered absolving the defendants from the complaint and requiring the plaintiffs to pay the sum of P4,000 to Felix Mallari and to pay the costs of proceeding. From this judgment the plaintiffs appealed.

It appears in evidence that in the year 1920, certain inhabitants of the barrio of San Vicente, in the municipality of Macabebe, Pampanga, raised the sum of P16,000 for the purpose of erecting a suitable chapel in honor of San Vicente Ferrer, the patron saint of the barrio. This fund was placed in the hands of the four trustees or agents already named, in order that they might let the contract for the building of the chapel. While this matter was under consideration, a clerk employed in the drafting division of the Bureau of Public Works, named Jose Mallari, came to San Vicente on a visit, and he gave the four trustees above-mentioned to understand that he was a competent person to do the work which they had in mind and that he was not averse to assuming the task.

One obstacle to the letting of the contract to Jose was that he was in the Government service, and it was contrary to Government regulations to allow employees to do outside work. This obstacle was overcome by the expedient of having the contract made in the name of his father, Felix Mallari; and with the consent of Felix, this recourse was adopted. Accordingly on June 11, 1920, the contract (Exhibit A) was entered into between Felix Mallari, as contractor, on the one part, and the four trustees on the other, whereby Felix Mallari, in consideration of the sum of P16,000, paid and to be paid, obligated himself to construct within the period of one year a chapel to the patron saint of the barrio, San Vicente Ferrer, according to the plan accompanying the contract and made a part thereof. It was provided that first-class iron should be used for the roof, that the best of cement should also be used, and that the woods should be of bulaon (molave), dungon, guijo, and nothing else. Of the price of P16,000 stipulated to be paid for the building of the chapel, the sum of P12,000 was paid at the time the contract was executed, leaving the sum of P4,000 to be paid

when the work should be finished and accepted to the satisfaction of the trustees, acting in representation of the inhabitants of the barrio. For the better assurance of the faithful and exact performance of the contract, it was agreed that if either party should fail to comply with any of its conditions or stipulations, such party should pay to the other by way of indemnity the sum of P4,000.

Concurrently with the execution of said contract Leon Tolentino and Ignacio Tolentino, also residents of the municipality of Macabebe, obligated themselves in a collateral contract of guaranty (Exhibit C) to respond solidarily for the faithful and true performance of the contract Exhibit A on the part of Felix Mallari. Felix Mallari, it may be stated, is not a contractor or builder by profession and knows nothing about constructing houses. His son Jose, although he supposed himself to have some knowledge of the art, was but little better versed in such matters than his father; and he appears to have had but little skill even in the art of drafting.

As might have been expected from the lack of technical knowledge on the part of the "contractor," a botch was made of the job. The chapel was indeed constructed somewhat in the external shape indicated in the design, but the work was done with complete want of knowledge of the art of construction and of the material employed. These words we take from the report of a competent engineer, Señor Emilio Maria de Moreta, of Manila, who made a special examination and careful report upon the condition of the structure. In concluding his report (Exhibit E) Señor Moreta says that the plans were drawn by a person completely ignorant not only of all knowledge of the resisting power of materials and of descriptive geometry, as well as of technical knowledge in general, but that he did not even possess sufficient instruction in the drawing of plans. Señor Moreta concludes his report with the observation that the building threatens ruin for want of proper foundation and that upon the slightest tremor of the earth it might come down. The photographs in evidence as Exhibit I prepare one for the conclusion stated in Señor Moreta's report.

We do not encumber the opinion with the details stated at pages 2-6 of said report but will merely say that by that report and the testimony adduced at the trial, the case stated in the complaint is in our opinion completely demonstrated; and the plaintiffs are without doubt entitled to recover the

stipulated damages for failure of the contracting parties to construct a chapel in conformity with the fundamental principles of the art of building and in accordance with the specifications of the contract.

But the chapel, such as it is, appears to be in use for the purpose for which it was intended, and we are of the opinion that the plaintiffs are not entitled to confiscate the sum of P4,000 which is as yet unpaid upon the purchase price and at the same time to claim the stipulated damages. The result is that the damages to which the plaintiffs are entitled under the last clause of the contract (Exhibit A) must be set off against the portion of the contract price which has been retained in the hands of the plaintiffs, with the result that neither party can recover anything of the other.

Judgment will therefore be reversed and both parties absolved from the complaint of the other, without special pronouncement as to costs of either instance. So ordered.

*Johnson, Malcolm, Avanceña, Villamor, Johns, and Romualdez, JJ., concur.*

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