

[G.R. No. 3123. January 03, 1907]

SIMPLICIO SUAREZ, PLAINTIFF AND APPELLEE, VS. TELESFORO CRISANTO, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This case grew out of building contracts between the plaintiff, the contractor, and the defendant, the owner. On the 22d of June, 1904, the parties made a contract for the construction of four buildings (*accesorias*) upon the lot of the defendant, and on the 27th of July they made another contract for the construction of a fifth building (*accesoria*) upon the same lot. The buildings were completed and turned over to the owner on the 1st of March, 1905, he protesting at the time that the contracts had not been complied with by the plaintiff.

The points as to which the parties differ are the following:

1. The price stated in the second contract for the construction of the fifth building was 1,500 pesos. At the bottom of the contract there was a note signed by both parties saying that the contract price was 1,450 pesos. In the lower part of the duplicate which was kept by the plaintiff appear in black ink the figures "1,500 pesos," and the first question is whether the contract price for the fifth building was 1,450 pesos or 1,500 pesos.

The plaintiff testified that after the contract was signed, with the accompanying note fixing the price at 1,450 pesos, it was changed by mutual agreement to 1,500 pesos, and that the figures written across it were written by the defendant. There is evidence corroborating this statement. The defendant in his first examination did not positively deny that the amount of 1,500 pesos was in his handwriting, but later on in his testimony he did make such denial. The court below found that the contract price was 1,500 pesos. In no event can it be said that this finding is manifestly and plainly

against the weight of the evidence. We can not, therefore, disturb it. (*De la Rama vs. De la Rama*, 201 U. S., 303.)

2. It was provided in the specifications of the first contract that the partitions should be of one thickness—that is, as we understand it, that boards should be nailed only on one side of the uprights which ran from the floor to the ceiling. Later by the directions of the defendant, the partitions were made of two thicknesses and for this additional work the plaintiff seeks to recover.

That the contract stated that the partitions should be of one thickness is not denied by the defendant, but he claims that the words “one thickness” are interlined both in the duplicate which the plaintiff kept and the duplicate which he kept, and there being no notation at the bottom of the contract showing this change, that it can not be considered. The testimony of the plaintiff is to the effect that these words were in both parts of the contract when it was signed by the parties thereto. The finding of the court to that effect is sustained by the evidence.

3. The contract provided that the large upright pieces should be of molave, ipil, or tindalo, and the rest of the wood of the second group, and that the carpenter work should be made of wood of the second, third, or fourth groups. After the balconies had been constructed of such wood as was provided for in the contract, the defendant ordered the wood taken out and that the balconies be reconstructed of lumber of a better quality. This was done by the plaintiff and he seeks to recover for this extra work.

The claim of the defendant is that he did not know anything about the classes of wood and relied upon the plaintiff. He also claims that he ordered the change made because the wood was rotten and worm-eaten. The evidence does not support this contention and the finding of the court below upon this point must be sustained.

4. The plans of the architect for the building cost 60 pesos, which was paid by the plaintiff. The defendant claims that the plaintiff agreed to furnish these plans. There is nothing in the contract to this effect, plaintiff denies that he made any such agreement, and there was evidence to show that without special agreement it was

always the custom for the owner to pay for the plans. The ruling of the court below sustaining the plaintiff upon this point must be maintained.

5. The documentary evidence introduced by the defendant to show payments that he had made indicate that the court allowed him more than 100 pesos in excess of the payments shown by such evidence.
6. The first contract provided as follows:

“The time for the performance of the contract is 120 working-days, three pesos daily as a fine in case of excess.”

The second contract provided as follows:

“Y el costo convenido es el de 1,500 pesos, *local currency*, pagaderos por dicho Sr. Crisanto, propietario del mismo, al Sr. Suarez, en la misma forma como las otras anteriores, ambos contratantes segun contrato anterior.”

The first contract was not finished within the time mentioned and the defendant claims the sum of 227.24 pesos as a fine for noncompliance with this part of the contract.

In addition to the extra work ordered by the defendant and which has been hereinbefore discussed, defendant ordered other additional work to be done upon the buildings for which he paid. In ordering that additional work, and in ordering the additional work referred to in this decision, no agreement was made by the parties that the buildings with the additional work should be completed within the time mentioned in the contract. Moreover, the making of the second contract for the construction of a fifth building was in fact a modification and extension or change of the original contract. Under these circumstances the ordering of this additional work by the defendant was a waiver of that part of the contract that provided the time within which the work originally provided therein should be completed. That clause in the contract could not apply to work subsequently ordered by the defendant and which was necessary to be done before the building could be completed and delivered to the defendant.

7. The court below ordered judgment for the plaintiff for 1,185.31 pesos, Philippine currency, with interest for six months amounting to 35.55 pesos. This allowance of interest was erroneous and the plaintiff is entitled to recover interest only from the commencement of the action.

The judgment of the court below is modified so as to provide that the plaintiff recover of the defendant the sum of 1,185.30 pesos, Philippine currency, with interest thereon at the rate of 6 per cent per annum from the 12th day of September, 1905; in all other respects it is affirmed, with the costs of this instance against the appellant. After the expiration of twenty days let judgment be entered in accordance herewith and ten days thereafter the record be remanded to the court of its origin for execution. So ordered.

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