

[ G.R. No. 1472. September 30, 1905 ]

**E. J. SMITH AND RAFAEL REYES, PROPRIETORS OF THE PHILIPPINE GAS LIGHT COMPANY, PLAINTIFFS AND APPELLEES, VS. JACINTA LOPEZ AND IGNAOIA LOPEZ DE PINEDA, DEFENDANTS AND APPELLANTS.**

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

**TORRES, J.:**

On November 19, 1902, Messrs. Smith and Reyes, as proprietors of the Philippine Gas Light Company, brought this action against the defendant sisters, Jacinta and Ignacia Lopez de Pineda, to recover from them the sum of 3,270 pesos, Mexican currency, with interest due thereon and costs of proceedings, for work performed in connection with the installation of a water system, urinals, closets, shower baths, and drain pipes in the house at No. 142 Calle Dulumbayan, district of Santa Cruz, the same being the property of the defendants. The plaintiffs alleged that they had complied with the agreement made with the father of the defendants, the administrator of the property, and that the labor performed and the material used were reasonably worth the sum of 4,020 pesos, Mexican currency, of which sum they acknowledged having received 750 pesos, and prayed that judgment be entered against the defendants and in favor of the plaintiffs for the sum of 3,270 pesos, together with accrued interest and costs of proceedings, defendants having refused to pay the same as agreed.

Attorney Gregorio Pineda appeared in behalf of the defendants, denied all the facts set out in the complaint, and alleged that it did not appear from the pleadings that plaintiffs had ever entered into a mercantile partnership under the aforesaid name and style, or that any such partnership legally existed; that Nicasio Lopez was not the

administrator nor was he empowered by the defendants to make any contract for repairs and improvements to and in the said house; that there was no allegation as to the extent and importance of the work performed on the premises nor as to the quality or quantity of the materials used; that the work was not reasonably worth 4,020 pesos; and that, assuming that plaintiffs had performed work in the said house pursuant to an agreement with Nicasio Lopez, without defendants' authority, the defendants set up a counterclaim for 600 pesos, Mexican currency, for damages caused to the house as a result of said work. Defendants finally prayed that the complaint be dismissed and that plaintiffs be ordered to pay the costs of proceedings and the amount of the counterclaim.

The court, after considering the allegations made and the evidence introduced by both parties, on April 3, 1903, entered judgment against the defendants and in favor of the plaintiffs for the sum of 2,717.40 pesos, local currency, and accrued interest thereon at the legal rate of 6 per cent per annum, from November 19, 1902, and costs of proceedings. To this judgment defendants duly excepted, having first moved for a new trial.

This is an action upon a contract to recover for labor performed on the premises, No. 142 Calle Dulumbayan, district of Santa Cruz, in connection with the installation of a water system, urinals, water-closets, shower baths, and drain pipes. The contract in question was entered into between one of the plaintiffs and Nicasio Lopez, the father of the defendants, who was at the time in charge of the house and cared for the same for the defendant sisters. There was no stipulation in the contract as to the specific cost of the work to be performed.

There is no doubt that the work was actually performed as alleged. It thus appears from the answer of the defendants to plaintiffs' complaint, and it was also admitted by the witness Nicasio Enrico Lopez, who, among other things, testified under oath, that if Mr. Smith had presented to him a bill for 1,500 or, at most, 2,000 pesos for the work performed he would have paid him with pleasure. In view of the

foregoing the court made the statement during the course of the trial that the only question was the reasonable value of the work.

One of the errors assigned by counsel for defendants and appellants in this court is that the court below erred in recognizing plaintiffs' capacity to sue as a partnership, there being no evidence to show that they were legally organized as such.

There was no such error. Messrs. Smith and Reyes executed the contract in their own individual capacity and not in the name of any partnership. They acted as co-owners of the Philippine Gas Light Company. In their complaint they sought to enforce a legitimate right which they had as such coowners. (Arts. 392 et seq., and 1669 of the Civil Code.)

The plaintiffs were not seeking to enforce a right pertaining to a legal entity. They were not obliged to register in the Mercantile Registry. They were merely merchants having a common interest in the business. They were under no obligation to register. (Arts. 16 and 17 of the Code of Commerce.)

As to the second, third, and fourth errors, it must be borne in mind that Nicasio Lopez, the father of the defendants, was the administrator of the property; that having been notified of an order of the Board of Health he took the necessary steps to comply with the same, calling upon one of the plaintiffs to do the work required, and that he made certain payments on account. He, the father of the defendants, did all this as a voluntary agent of the actual owners of the house, and, although there is no proof of an express power of attorney, it can not be denied that there was an implied power, because the defendants did not object to the work being done on the house, which was really benefited and improved by such work. For this reason it is evidently just that the owners be held liable for the cost of the work and the value of the material used therein. They can not now allege that there was no contract and that they did not agree to pay for such labor and material. There was a quasi contract which created certain reciprocal obligations between them and the plaintiffs. (Arts. 1887, 1888, 1892, and

1893 of the Civil Code.)

At the request of Nicasio Lopez there were installed in the house of defendants a water-supply system, baths, water-closets, and drain pipes pursuant to orders from the Board of Health, for the purpose of bettering the sanitary condition of the premises, and the defendants never objected to the performance of the necessary work. It therefore must be presumed that they, the defendants, approved of the work done upon the house and ratified the action of their father in the premises as though he acted under an express power from them. (Art. 1892 of the Civil Code.)

But, even assuming that the defendants did not expressly ratify or approve the action of their father, Nicasio Lopez, the fact remains that the house was improved by said work, and, for this reason, the owners of the premises are liable for the obligations incurred by their agent, Lopez, for their benefit and advantage.

Furthermore, if the work had not been done as required by the Board of Health, it would have been to the dis-advantage of the defendants because the work would have been eventually undertaken by the authorities and at the expense of the said defendants. (Art.1893 of the Civil Code.)

As to the second error relating to the price of the work fixed by the court in its judgment, it should be noticed that when no price has been expressly stipulated in a contract of this nature, it is understood that the contracting parties have impliedly agreed to pay and receive the usual and reasonable value of the services rendered. Otherwise it must be presumed that the parties intended that the price be fixed by experts in case they fail to agree as to the same.

The rule as laid down by the authorities is to the effect that in a contract for services it shall be presumed that a certain compensation was intended to be fixed, although there may not be any express stipulation in regard thereto; taking into consideration the law in force and the customs of the country where the contract was executed,

except where such compensation is to be fixed by a third person or by a competent court upon the testimony of experts.

A contract for services or work to be performed exists not only where a certain and definite compensation has been expressly agreed upon, but also where the same can be ascertained from the customs and usages of the place in which such services were rendered. (Judgment of the supreme court of Spain of October 18, 1899.)

The foregoing disposes of the second, third, and fourth assignments of error.

It appears from the bill of exceptions that the defendants were the owners of one-half of the house in question, the other half belonging to the heirs of the deceased, Vicente Faustino Cruz. The action, however, was brought solely against these defendants. Neither the executor of the deceased co-owner of the house nor his surviving heirs having an interest in the property were joined as parties defendant in this case.

Section 114 of the Code of Civil Procedure provides, among other things, that every action must be prosecuted in the name of the real party in interest and that an executor or administrator of a deceased person may sue or be sued without joining with him the person for whose benefit the action is prosecuted or defended.

This action was prosecuted without the intervention of the executor or legal representatives of the deceased Vicente P. Cruz, one of the co-owners of the house in question. Therefore this decision can not, under section 277 of the Code of Civil Procedure, affect the rights of the successors or legal heirs of the said deceased.

For this reason, which is a perfectly legal one, a judgment against the defendants in this case enforcing the obligation incurred by them under article 1893 of the Civil Code would be of no effect as to the successors or heirs of the deceased Vicente F. Cruz, but a separate action must be commenced against such successors or legal heirs. It would not be just or proper that the defendants should pay the whole amount of the claim but only one-half thereof, since they only owned

half of the house wherein the work was done; the recovery of the cost of such, work being the subject-matter of this action.

As to the fifth and sixth assignments of error, it must be said that the bill tendered by the plaintiffs for material furnished and labor performed on the premises in question, was made up from the books kept by the plaintiffs, and was admitted in evidence by the court for what it might be worth, as shown by the bill of exceptions, and that notwithstanding defendants' objection, the fact is that they introduced no evidence tending to prove (1) that less material was used in the work than that stated in the bill; (2) that the work done was worth less than the amount charged in the bill. Therefore, after a consideration of the evidence of record in this case, we find that 3,467.40 pesos and not 4,020 pesos, Mexican currency, as alleged in the complaint was the reasonable value of the work performed, plaintiffs having agreed that the 552.60 pesos claimed by them as interest be deducted from the latter amount. They have expressly waived any right to the recovery of such amount.

From the sum of 3,467 pesos and 40 cents there should be deducted 750 pesos paid to the plaintiffs on account of their claim, thus leaving a balance of 2,717 pesos and 40 cents. One-half of this latter amount, to wit, 1,358 pesos and 70 cents, Mexican currency, plus interest due thereon at the rate of 6 per cent per annum from the 19th of November, 1902, is the total sum which the plaintiffs are entitled to recover from the defendants in this case.

For the foregoing reasons it is hereby adjudged and decreed that the defendants, Jacinta Lopez and Ignacia Lopez de Pineda, pay to the plaintiffs in this case the sum of 1,358 pesos and 70 cents, Mexican currency, or its equivalent in Philippine currency, said amount representing one-half of the total sum awarded by the judgment of the court below. The defendants shall further pay to the plaintiffs whatever interest may have accrued from the 19th of November, 1902, at the rate of 6 per cent per annum on the said sum. Defendants shall also pay the costs of proceedings in both instances. The judgment appealed from, thus modified, is in all other respects hereby affirmed, without

prejudice to the right of the plaintiffs to institute a separate action against the heirs and successors of the deceased Vicente F. Cruz for the recovery of the other half of the value of the work performed in and upon the premises No. 142 Calle Dulumbayan. After the expiration of twenty days let judgment be entered in accordance here with and the case be remanded to the Court of First Instance for action in accordance with the law. So ordered.

*Arellano C. J., Mapa, Johnson, Carson, and Willard, JJ., concur.*

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