

2 Phil. 488

[G.R. No. 1171. September 09, 1903]

ROBERTO AND JOSE T. FIGUERAS, PLAINTIFFS AND APPELLEES, VS. MANUEL VY-TIEPCO, DEFENDANT AND APPELLANT.

D E C I S I O N

TORRES, J.:

On the 9th of May, 1902, Roberto Figueras and Jose T. Figueras brought an action in the Court of First Instance of Iloilo against a Chinaman named Manuel Vy-TiepcO, for the recovery of the sum of \$1,544 and costs. The facts set forth in the complaint were that on January 29, 1900, it was agreed between the parties that the defendant should build a house on Rosario Street, Iloilo, in accordance with plans drawn for that purpose, and that the construction of the house should be completed within four months in strict conformity with the terms and conditions of the contract signed by the defendant Vy-TiepcO and the plaintiff Jose Figueras; that the defendant did not build the house in accordance with the agreement, but left many parts thereof uncompleted, whereby the value of the work performed was diminished in the sum of f> 1,544, as shown by the statement of the items of uncompleted work attached to the complaint; that, a demand having been made upon the defendant by the plaintiffs for the performance of the contract in the manner agreed upon, the defendant refused to do so, thereby causing the plaintiffs damages in the sum expressed.

The defendant presented a demurrer to the complaint and, after argument thereon, it was agreed between the parties litigant that the defendant should withdraw the demurrer and that the plaintiffs would present the original plan in accordance with which the house was to have been constructed and of which the attorney for the plaintiffs at that time exhibited a copy.

The defendant on July 24, 1902, filed his answer to the complaint. In it he denied the facts alleged in paragraphs 2 and 3 of the complaint, and stated that while it was true that in 1900 he had agreed to build the house on Rosario Street, Iloilo, for the plaintiffs, upon the

condition that it was to be terminated within four months, it was to be constructed in accordance with the detailed plans prepared for that purpose, and that this agreement had been reduced to writing in a contract signed January 29, 1900; that he had fully performed the contract within the term fixed, with the exception of two arches between the dining room and the sitting room in the lower story, and that these arches were omitted by order of the plaintiff Roberto Figueras, who, in the absence of Jose T. Figueras, had charge of the inspection of the work; that the omission of the arches in question had been directed because of the intention of the plaintiffs to use that part of the premises as a storeroom, which they did in fact do after the work was completed and the building delivered to the owners; that the latter paid the defendant \$1,000, the balance due, in accordance with the agreement, without making any claim whatever; that for other work performed by the defendant, not provided for in the agreement, the plaintiffs, when the building was finally turned over to them, paid the defendant the additional sum of \$600; and that the plans presented by the plaintiff were not the plans to which the contract referred and in accordance with which the house was built. The answer terminated by asking for judgment in favor of the defendant, with costs to the plaintiffs.

The defendant excepted to the judgment rendered and prepared a bill of exceptions. This bill was allowed by the trial judge, and the case was brought to this court for determination solely of the questions of law raised therein. We can not review the evidence or make findings upon the controverted facts, as no motion for a new trial was made in compliance, with the provisions of section 497 of the Code of Civil Procedure.

The decision of this court below was rendered in accordance with the prayer of the plaintiffs, upon the supposition that the defendant had failed to complete at least eleven items of the work of construction of the house which he had by contract undertaken to build. The court based this conclusion upon the copy of the plan presented in evidence by the plaintiffs, notwithstanding the fact that the defendant objected to its admission upon the ground that it was not the original plan to which the contract referred.

It does not appear to have been shown that the plan offered in evidence was the original plan which formed part of the contract. On the contrary, the plan produced shows details and deficiencies which demonstrate conclusively that it was not the one which was to be followed in the construction of the house the defendant agreed to build for the plaintiffs—that the original plan was not produced in evidence and that the plan presented had been drawn subsequently.

Without the original plan, it is impossible to hold that there has been any breach of the contract; that the contractor failed to perform the work specified in the statement presented (p. 1.3) or that the plaintiffs, as owners of the house¹, are entitled to recover from the defendant the amount claimed as the value of the work alleged to have been omitted.

The court below accordingly erred in rendering judgment in favor of the plaintiffs, upon the ground that the construction of the house was not completed in accordance with the plan exhibited by the plaintiffs. The trial judge has taken as the basis of his decision a document which was not the one agreed upon and which was properly objected to by the defendant, since it was not shown that it was the original plan referred to in the written contract entered into by the parties thereto.

For the reasons stated, we are of the opinion that the judgment below must be set aside, and, after the expiration of twenty days from the date of the registry of this decision, judgment will be entered accordingly. The case will be returned to the court below for a new trial, at the instance of the plaintiffs, with the costs of this instance to the latter. So ordered.

Arellano, C. J., Cooper, Willard, Mapa, and McDonough, JJ., concur.
