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Present: Fisher C.J. and Akbar J.

PERERA *v.* FERNANDO.

415—D. C. Colombo, 28,705.

Building contract—Plans supplied by plaintiff—Agreement to compensate for damage—Unskilful work—Supervision by plaintiff—Liability of contractor.

Where the defendant entered into an agreement to build a motor garage for plaintiff according to plans furnished by the latter, and further undertook " in case of breakdown within the period guaranteed to compensate any such damage ",—

Held, that the defendant was liable for damage resulting from unskilful work even if the building was constructed under the supervision of the plaintiff.

PLAINTIFF sued the defendant to recover damages for breach of a contract to construct a motor garage for the plaintiff according to plans furnished by the latter. Plaintiff alleged that the building was not constructed in accordance with the plan and that it was unfit for his purpose and that it required a further

sum of money to make it reasonably safe for use. The defendant pleaded that the building was constructed under the daily supervision of the plaintiff and that he was not responsible for any defects in the construction or for the use of materials which was obtained with the approval of the plaintiff. The learned District Judge dismissed the plaintiff's action.

Hayley, K.C. (with *Canjemanaden*), for the plaintiff, appellant.—The agreement contains a guarantee by the defendant that the building shall be fit for the purpose for which it is intended. There is also a further undertaking by the defendant that he will compensate any damage caused by a breakdown. The defendant cannot, therefore, escape responsibility for the defective nature of the work. He is a skilled workman and owes a duty to the plaintiff to do everything necessary to make the building complete, even though the contract or the specification may not provide for details of the necessary work. (*See Halsbury's Laws of England, vol. III., p. 186.*)

There is another duty thrown on a contractor who makes a tender for the construction of a building. He must examine the specification carefully and obtain the advice of an engineer if he cannot understand the details. He cannot be heard to say that the employment of an engineer would involve additional expense, or that he merely carried out instructions given him by the owner.

In *Thorn v. The Mayor and Commonalty of London* reported in 1 A. C. (1876) 120, the plaintiff contracted to build a bridge for the defendants according to plans and specifications prepared by the defendant's engineer. The plaintiff was to carry out the orders of the engineer, but part of the work became valueless owing to defects in the plans and a great deal of labour was thereby wasted. It was held that the plaintiff was not entitled to any compensation from the defendants for the loss caused to him.

B. F. de Silva (with *Nihal Gunesekera*), for the defendant, respondent.—The contract was to do the work in a particular manner. The defendant carried out the work in a manner to satisfy the plaintiff, as the plaintiff himself was present when the building was being constructed and issued instructions to the defendant from time to time. The defendant is not a skilled workman but only a servant employed by the plaintiff. The case reported in 1 A. C. (1876) will not, therefore, apply. The guarantee is expressed in vague terms. There is no period mentioned, and in view of the finding of fact no meaning can be attached to the words defining the guarantee.

April 15, 1930. AKBAR J.—

This was an action in which the plaintiff-appellant sued the defendant-respondent for damages sustained by him owing to the breach of a building contract dated January 5, 1928, by the

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defendant, by which he contracted to construct a motor garage for the plaintiff according to plans furnished by the plaintiff. The plaintiff claimed a sum of Rs. 1,160 by way of damages for this breach and a further sum of Rs. 340 as damages sustained by him owing to the defective and unworkmanlike manner in which the defendant constructed certain other works in connection with this motor garage. As there was a conflict of evidence on this second count Counsel for the appellant did not press this claim for Rs. 340, and so we are left only with the main claim for Rs. 1,160. The building agreement is P 3 and is dated January 5, 1928, and refers to a plan No. 1299, which was referred to as the white plan during the course of the argument. Admittedly the motor garage that has been built by the defendant for the plaintiff is not in accordance with this white plan, which provided for a wooden framework for the roof. The plaintiff's case is that along with this white plan (P 1) there was a blue print (P 2), which was also supplied to the defendant, showing the building in detail and providing for an iron framework for the roof. The plaintiff had led evidence to prove that the garage constructed by the defendant was not in accordance with this blue print, and that the building as constructed was totally unfit for his purpose, and required further repairs to the value of Rs. 1,160 to make it reasonably safe and fit for use. The defence met the plaintiff's case by pleading in paragraph 10 of the answer that the shed was constructed under the daily supervision of the plaintiff, and that therefore the defendant was not responsible for any defects in the construction of the garage, or for the use of any materials, which were all obtained at the request and with the approval of the plaintiff himself. The defendant further fortified his case by producing an estimate (D 2) dated December 15, 1927, which he said was approved by the plaintiff showing that certain iron posts were used at the request of the plaintiff. Now, there is one thing which has been clearly proved in this case, and that is that the building was on July 6, 1928 (that is, within three months of the delivery of possession of the building to the plaintiff), "dangerously unsafe, and unless you immediately have them strengthened there is every possibility of a serious collapse." (See P 4.)

Mr. Henson, Engineer of Messrs. Hoare and Co., has given detailed evidence showing that the trusses which give support to the whole roof were too slender and that as a result the roof was bent, and was in danger of collapsing at any moment. He was further of opinion that the struts were single struts when they should be double, and that the truss bolts were $\frac{3}{8}$ inch when they should be $\frac{1}{2}$ inch; and that the roof had in fact sunk in places. He also noticed that the inner stanchions had buckled, that the girder was not strong enough, and that it had actually sagged and the trusses had sagged

along with the girder. To fasten the zinc sheets hook bolts or clips should have been used, but in this building "about 30 per cent. hook bolts on each side, and roughly about 30 per cent. on the west, have not been used. The result would be a tendency for the sheets to come off and to get blown off." I have quoted only portions of Mr. Henson's evidence, but the evidence of the other expert, Fernando, was to the same effect. The defence (see paragraph 5 of answer) and the judgment of the learned District Judge (if I have correctly understood his judgment) are to the effect that even granting the building was defective the responsibility was the plaintiff's and not the defendant's. Mr. Hayley argues that defendant, as builder, even admitting all the facts put forward for the defence, cannot escape his liability for unskilful and unworkmanlike work. I think issues 2, 3, 6, and 8 do cover the argument of plaintiff's counsel. In vol. III. of the *Laws of England* by the Earl of Halsbury, page 186, I find the following passage:—

> A contract to complete a whole work as such involves an obligation to do everything that is necessary for the completion of the whole work as described. The omission of anything indispensably necessary will make the work incomplete so as to render the price not payable, and the builder or contractor liable in damages for non-completion. It makes no difference that such indispensably necessary works are not described in the specification, or are not shown on the drawings, or are impracticable, or are calculated wrongly, or their costs or extent underestimated in the specification, or are omitted or underestimated in the quantities, and this whether the quantities have been made part of the contract or not.

Similarly, in the House of Lords case of *Alexander Thorn v. The Mayor and Commonalty of London* [1] a plaintiff contracted with a defendant to build a bridge. Plans and specifications were prepared by the defendant's engineer and the plaintiff was required to obey the orders of the engineer. Part of the plan turned out to be of no value, and the work done in respect of this was wholly lost and the bridge had to be built in a different manner. The contractor sought for compensation; it was held that he could not sue. Lord Chelmsford during the course of his judgment, stated as follows:—

"There can be no doubt that the plaintiff, in the exercise of common prudence, before he made his tender, ought to have informed himself of all the particulars connected with the work, and especially as to the practicability of executing every part of the work contained in the specification, according to the specified terms and conditions. It is said that it would be very inconvenient

[1] *(1876) 1 A. C*

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to require an intended contractor to make himself thoroughly acquainted with the specification, as it would be necessary upon each occasion for him to have an engineer by his side. Such an imagined inconvenience is inapplicable in this case, as it appears that the plaintiff had his engineer, who examined the specification for him, though not carefully. But if the contractor ought prudently and properly to have full information of the nature of the work he is preparing to undertake, and the advice of a skilful person is necessary to enable him to understand the specification, is it any reason for not employing such a person that it would add to the expense of the contractor before making his tender? It is also said that it is the usage of contractors to rely on the specification and not to examine it particularly for themselves. If so, it is an usage of blind confidence of the most unreasonable description.

" The appellant having entered into the contract with the neglect of all proper precautions, and trusting solely to the specification in a case in which the proposed substitution of iron caissons for cofferdams was an entire novelty, and the progress of the work having disclosed the inefficiency of the plan of working described in the specification, which he might by careful examination have discovered beforehand, he endeavours to throw upon the defendants the consequences of his own neglect to inform himself of the nature of the work he was preparing to undertake, by alleging that there was an implied warranty by them that the bridge could be built according to the plans and specification, and that the caissons shown on the plans would answer the purpose of excluding the tidal water during the construction of the bridge.

" If the plaintiff had considered, as he was bound to do, the terms of the specification, he would either have abstained from tendering for the work, or he would have asked the defendants to protect him from the loss he was likely to sustain if the plan of working described in the specification should turn out to be an improper one. "

Mr. Henson's evidence clearly shows that the whole roof was badly constructed. Even if we admit that the estimate (D 2) was shown to plaintiff, yet it will be seen that the charge for the whole framework of the roof is given as follows: " 4,500 feet roof at 35 cents equals Rs. 1,575," clearly showing that defendant was responsible at least on D 2 for the proper construction of the roof. After all, P 3, however roughly it may have been drawn up, purports to be an agreement by defendant to build " with a guarantee which may be reasonable on a building of the kind " (see paragraph 8). Defendant further agreed to supply " all the materials required " and also " in case of breakdown within the period guaranteed by me I shall undertake to compensate any such damage or rebuild the above shed . . . . " The defendant cannot, I think, in the face of the document P 3 get rid of his liability by pleading that

he was a mere workman working under the directions of the plaintiff as he says in his evidence. Later P 5 dated June 13, 1928, shows estimates of the value of Rs. 1,110.25 required to cure the defects pointed out later by Mr. Henson in his evidence in detail. To this sum plaintiff has added Rs. 50, the inspecting engineer's fee, which I do not think he is entitled to claim. I would set aside the judgment and decree of the District Judge and give judgment for the plaintiff for Rs. 1,110.25 and costs in this Court and the Court below.

FISHER C.J.—I agree.

Appeal allowed.