SABA BROTHERS, Lebanese Merchants Transacting Business in Liberia, by TAN I OS H. SABA, Appellants,

r. J. WALTER FREDERICKS, Appellee.

APPEALFROM THECIRCUIT COURT OF THE FOURTH JUDICIAL CIRCUIT, MARYLAND COUNTY.

Argued April 5, 1962. Decided June 1, 1962.

1. Special damages must be pleaded with particularity.
2. Where special damages are based on depreciation, pleading and proof of such damages is inadequate without itemization of original cost and market value after depreciation.

On appeal from a judgment upon an award by a jury in an action for damages to personal property, *yud gm ent re versed.*

*Ri chard Dig gs* for appellants. *P. Clo nger Thom f›son*

and H. *Doe Gibson* for appellee.

MR. CHIEF JUSTICE ILSoN delivered the opinion of

the Court.

J. Walter Fredericks of the City of Harper, the ap- pellee in this case, in the exercise of his right of fee title ownership to a parcel of land situated in the township of Pleebo in Maryland County, contracted an agreement of lease for said property on January '› '9'is› with Saba

Brothers, Lebanese merchants doing business in Maryland

County.

At the time of said lease there had been erected on the said premises a building constructed of mud, plastered with cement and zinc-roofed. Said lease obligated Saba Brothers to demolish said building and to erect a suitable building or buildings on said premises within six years, with concrete blocks and zinc roof, and apartment, to be composed of store and dwelling quarters, at their own cost and expense, and not otherwise.

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According to the record certified to us, demolition took place and the construction of the new building was com- pleted. Subsequently, in correspondence, between the parties, the appellee charged the appellant with having used some of the materials taken from the demolished building to construct the new one in violation of the terms of the contract, and demanded surrender of said used materials, which the appellant refused to do. This re- sulted in the filing of an action of replevin to recover said materials, which the appellant failed to produce. The appellee then resorted to an action of damages for injuries to personal property.

Pleadings having rested, and the prayer of defendant, now appellant, for dismissal of the action not having been sustained by the court, the case was ruled for trial on the facts involved.

According to the bill of exceptions, ruling on the law issues made on the pleadings was waived, and hence is not before us for review. Exceptions to the verdict, the ruling on motion for new trial, and the final judgment, which are alleged not to be in harmony with the facts testified to at the trial, are contained in the bill of exceptions.

We first address ourselves to the lease which provides as follows:

“That the lessee shall have the right to erect suitable

building or buildings on said leased or rented premises within six years from the date of signing of this agree- ment, to consist of cement block and zinc roof, apart- ment to be composed of store and dwelling quarters, at their own cost and expense and not otherwise.” Appellee claimed that a violation of the contract oc-

curred when appellant used a portion of the materials from the old building to construct the new one, and refused to turn same or any portion of it over to the appellee.

Appellee, in his testimony, specifically stated that the

agreement provided that, in addition to erecting the new building at the appellant’s own expense, he was also required “to hand over to me my materials.” This addi- tional provision quoted by appellee in his testimony, not being specifically laid in the contract, must be considered as an interpretation placed on the above-quoted clause of the contract by the appellee, leaving this Court to say whether or not this interpretation is reasona bly fair and just.

I t does not seem necessary, however, to stress the point of interpretation of this clause of the contract, in view of appellants' denial of having used any of said materials on the building, and testimony that the materials of the demolished building had been personally conveyed by appellee to his farm in his own vehicle.

The weight of evidence, as produced by both sides on this score, being somewhat equal, we remain in doubt as to which of the two sides has really told the truth. We will therefore leave this point and pass on to the salient issue, which is that of the injuries done to the personal property of appellee, alleged to have been salvaged from this old building and not surrendered to him. This claim falls under the head of special damages which must be pleaded and proven at the trial.

“Special damages are any losses or inconveniences accruing to the plaintiff which can be specially traced to the conduct of the defendant. When special dam- ages are relied on, they must be stated in the complaint

and proven.” '9s 6 Code, tit. 6, § i i. Accord: Lech-

*man* v. *Ooh ns, i* L.L.R. Cyb, 4s7 ( '9 O$J .

Supporting the complaint of appellee, as recited in

Counts i and 2 of plaintiff’s amended complaint, is the following list of items including materials claimed to have been withheld by appellants in addition to legal fees, and two years’ rent claimed on the detained property, making an aggregate total Of $2,ooo, itemized as follows:



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“ 3





" 12



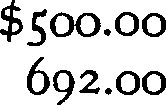
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“Lawyers’ fees



“Two years’ rent on materials

Notwithstanding these specific amounts, itemized and listed, and appellee’s effort to prove the injuries sustained, the empanelled jury, after deliberation, returned the fol- lowing verdict in favor of appellee:

“We, the empanelled jury in the case, *Frederic hs v. Saba Broth ers,* having listened to the evidence ad- duced, do hereby agree that the defendant is to pay the amount of $8oo to the plaintiff.”

This verdict was confirmed by final judgment of court which awarded damages to the extent of the jury’s verdict, and thereby rejected the difference between the $z,ooo claimed in appellee’s complaint and the $8oo awarded. Appellee did not appeal the disallowance by the jury and court of $ oo for legal services and $°9° \* r two years’

rent on property claimed to have been retained by

appellants.

Let us see whether the articles listed by appellee as having been unlawfully withheld from him by appellants have been proved as having been withheld, and the’ value

listed in the sum of $8oo as the actual cost thereof proved. But before doing so, let us see what has been complained of by appellants in the bill of exceptions as error com- mitted by the court below from which appellant has appealed to us.

Count i characterizes the verdict of the empanelled jury as not in harmony with the law and facts adduced at the trial, and in support of this allegation, besides denying that appellants used any of the materials from the demol- ished building in the construction of the new one, appel- lant contends that there has not been satisfactory proof of the value of the articles claimed to have been used, to the aggregate sum of $8o8, for the reason that these articles are those which were retrieved from the old building, constructed with mud, sticks, planks and zinc ten years prior to demolition ; so that, if these materials, or any portion of them, could have been retrieved, their market value at the time of purchase and installation in said mud building could never be the same after having remained in said building for ten years, exposed to termites and other deterioration.

This point was pressed for clarification from this bench

during argument. It is our considered opinion that, to determine the market value of the materials listed by appellee in his complaint as having been retrieved by appellant from the demolished building ten years after its construction, and used in the new building, with the value of each item, it was imperative that a comparative statement showing the value of each of these articles at the time of purchase, and the value at the time of demoli- tion, allowing for ten years of deterioration, ought to have been annexed to the complaint and proved at the trial.

The testimony of appellee, and that of James W. Davies, the builder of the old building, discloses that both of them testified to certain material and salient points on this issue, relevant portions of which testimony we quote. Witness Fredericks testified as follows:

*“O.* Please explain to this court and jury the type of building which, according to you, was demol- ished. I suggest it was a block house and zinc roof, or mud plastered with cement and zinc roof.

“A. It was a mud building, plastered with cement and zinc roof.”

The kind of building that was demolished ten years after construction was established by this answer of the appellee. His testimony on the quantity of materials that were used in this building is found in his answer to the following question on cross-examination:

“Q. Since, in deed and in truth, you have placed on record that the building was built out of sticks and mud and other cheap materials, do you give the court and jury to understand that, for seven or eight years, these materials are still serviceable, none of them being decayed 7

"A. The pieces bought and turned over to Mr. Davies were new ones and not second-hand ; and being under shelter, I do not think they were spoiled. Regards to the materials, Mr. Davies can come on the stand and testify that I bought all of these materials new. No, they were not cheap mate- rials.”

Nowhere in the testimony of appellee as witness in his

own behalf is it shown that he made any effort to show at what prices he bought the materials with which this de- molished mud and cement plastered building was con- structed eight to ten years prior to its demolition.

Let us, therefore, turn to the following testimony of James W. Davies, who constructed this building and who, it is alleged, received all the materials that were placed in it, to see if he made clarification in his te9timony of the market value of those materials when turned over to him, and what they cost at the prices prevailing at the time of demolition when retrieved, so that if there is

proof of same having been used by appellant in the con- struction of the new building, what could be the loss to appellee:

“O. You in your statement in chief, said that the materials were brought to you by several persons, and their prices were not known to you. How, now, you come to know as listed here the prices of said materials under your own handwriting and signature 2

“A.

*“a.*

“A.

It is like this. Plaintiff came to me and asked for this certificate. As a carpenter, I am ac- quainted with some of the prices of these things ; and he gave me the prices of some of these things ; and I scrutinized some of them and said : ‘We do not buy some of these things like this.’ Thereby he became normal in giving the prices, and these are the prices noted on the list.

So then, according to your last answer, you are not certain of the prices as listed on this list marked by the court Exhibit CP-J, but yet you had them done and turned over to plaintiff to be the correct prices for these materials. Am I correct 2

As I said before, plaintiff came and asked me for the certificate, the price of the materials. I was not present when he bought them ; but from mechanical experience I felt that, if I had bought them at the rate he told me, I might have been cheated. Therefore, the prices listed are prices that we generally buy these things in Pleebo ; those for which I had no particular knowledge, he himself priced them, even though I signed the certificate.”

Even if the above-quoted testimony is accepted as true in all respects, there is no showing that the least effort was made to prove any part of the damages alleged to have been sustained by reason of loss of materials from the old

building, much less to establish the market value of items retrieved from that building when demolished after hav- ing been exposed to deterioration for eight to ten years. Further, there is patent uncertainty as to which of the materials listed were priced by plaintiff, and which by the carpenter, James W. Davies, who testified, that if he had priced some of the articles at the prices given to him by plaintiff, he “might have been cheated,” without nam-

ing either the articles or the prices thereof.

On this quality of evidence, it is difficult to understand how the jury could have arrived at a verdict awarding plaintiff the sum of $8oo, or how the trial court could have ignored the absence of proof of value of the articles alleged to have been withheld from plaintiff by defendant, in direct violation of the statute which mandatorily pro- vides that special damages must be pleaded and proven. Appellee s claim of $6p2 as two y.ears’ rent on said withheld materials is not before us for review, the verdict of the jury having excluded it, and its exclusion not having been made a subject of appeal. The correctness of the jury’s exclusion is indicated by the absence of any evi- dence to show the manner and circumstances by which this rental payment became due. Plaintiff failed to prove the existence of the articles claimed to have been with- held, as also the value thereof, so as to entitle plaintiff to two years rental on them. Nor is it shown by the contract of the lease agreement between plaintiff and defendant that, after demolition of the old building, and until the new one was erected, a rental was due to be paid for the interim period. The verdict gave no consideration to the alleged payment of $ oo for legal services of plaintiff’s counsel ; nor was this reserved by plaintiff for review by

this Court.

The verdict of the jury, and the final judgment con- firming it, are therefore reversed with costs against the appellee. And it is so ordered.

***Reversed.***