

MARINO S. UMALI, PETITIONER, VS. EFRAIN Y. MICLAT, RESPONDENT.

G.R. No. L-9262. July 10, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an action to recover certain sums of money, plus damages and attorney's fees, for some work done by plaintiff for defendant Marino S. Umali. Defendant Antonio M. Tiongco was included in his capacity as guarantor of Umali but he was never served with summons. With leave of Court, defendant Umali filed a third party complaint against Maharlika Pictures, Inc., a corporation duly organized under the laws of the Philippines, but because the latter failed to file its answer, it was declared in default.

Defendant Umali set up the defense that the work done by the plaintiff was not complete or satisfactory; that the contract upon which the action is based was executed by the Maharlika Pictures, Inc., of which he is the President and General Manager, and so plaintiff's action should be directed against said corporation.

After trial, the lower court rendered judgment ordering defendant Umali to pay plaintiff the sum of P675.00, plus 10 % surcharge thereon as stipulated, and the sum of P200.00 as attorney's fees; and with respect to the second claim, to pay the Sum of P344.50. The Court ordered that the sums of P675.00 and P344.50 shall bear 6% interest per annum from the date of the filing of the complaint until paid. The complaint with respect to defendant Tiongco and the third party complaint against the corporation were dismissed. Costs were taxed against defendant Umali.

Umali took the case on appeal to the Court of Appeals, and the decision of the lower court was affirmed in toto, with costs against appellant. Hence the present petition for review.

It appears that in accordance with the contract Exhibit "A" and the Job Order Exhibit "D" appellee prepared posters, a theater show board display, a theater display standee, a float, and other forms of advertisement for the showing of the film "LAGRIMAS"; that for the work specified in Exhibit "A", Umali agreed to pay the sum of P900, of which appellee was paid P225 in advance; that for the work called for in Exhibit "D", Umali agreed to pay the sum of P344.50; that the work covered by the contract and job order above mentioned were completely done and the articles called for therein delivered to Umali; and that notwithstanding several demands made upon Umali, he refused to pay without justification.

The first defense set up by appellant is that the contracts which appellee's action is based were executed by and between the appellee and the Maharlika Pictures, Inc., of which appellant is the, President and General Manager, and so the action should have been directed against the corporation and not against him in his personal capacity. Appellant does not dispute the correctness of the amounts claimed in the complaint.

The Court of Appeals, in meeting this contention, made the following observation:

"We have gone carefully over the evidence of record, and we have arrived at the conclusion that the decision

appealed from should be affirmed. As the contract (Exhibit A) would show, Umali signed the same in his personal capacity. While it is mentioned therein that he is the President and General Manager of Maharlika Pictures, Inc., it is not stated that, as such, he was duly authorized to enter into the contract for and on behalf of the corporation. If it were true that it was the intention of the contracting parties to hold Maharlika Pictures, Inc., solely and exclusively liable, it was not explained why Umali allowed Maharlika Pictures, Inc., of which he was still an Officer at the time of trial of this case, to be declared in default by not filing its answer to the third-party complaint filed by him. Neither did Umali present in evidence any resolution or minutes of meeting of Maharlika Pictures, Inc., which Umali admits is a corporation duly organized and existing under and by virtue of the laws of the Philippines, or of its Board of Directors, ratifying the action of Umali and confirming the contract (Exhibit A) as an act of the corporation. As President and General Manager of the corporation and the party appearing to be solely and personally liable under the contract (Exhibit A), Umali should have taken steps to enable the Board of Directors of the corporation to adopt a resolution confirming the execution by him of Exhibit A as an act of the corporation because this was for his own protection."

We find the above observation supported by the evidence. Indeed it appears in the contract Exhibit "A" that the one who contracted for the work to be done is appellant in his personal capacity, although he described himself therein as President and General Manager of the Maharlika Pictures, Inc. Umali signed the contract as "party of the second part" without stating that he was acting in behalf of the corporation. And from what may be gathered from the decision both of the lower court and the Court of Appeals, Umali never explained that when he entered into such a contract he acted in behalf of the corporation or was authorized to do so by its Board of Directors. It is strange that, after bringing the corporation into this case as party-defendant, Umali allowed it to be declared in default being its president and general manager as he claims to be, which gives rise to the suspicion that his claim is merely an attempt to shift to the corporation the responsibility for the transaction. The same consideration may be made with regard to the job order Exhibit "D". It is true that on its face, it appears that the articles mentioned therein were delivered to the corporation, but apparently the requisition of said articles was made by appellant himself for which reason he was made personally responsible by the trial court and the Court of Appeals. This is a question of fact which we cannot now look into.

The next question refers to the surcharge of 10% which was agreed upon in the contract Exhibit "A". It appears therein that if appellant should fail to pay the balance of P675 after the lapse of 30 days from the date the exhibition of the film "LAGRIMAS" has started, he should pay a surcharge of 10% every 30 days thereafter until the amount has been fully paid. It is claimed that this surcharged is unconscionable and unreasonable, because it is tantamount to imposing an interest of 10% a month, or 120% a year on the balance of the obligation until the same is paid in full.

There is merit in this contention. While this surcharge partakes of the nature of a penal clause which the parties may stipulate under the law,[1] however, one cannot deny that the same is unreasonable, for if that is to be maintained, we would have that on the basis of P675 which is the balance that remains outstanding, appellant would pay P67.50 a month, or P810 a year, which considering the time that has already elapsed since appellant defaulted, would amount to P3,420. This is indeed a case where equity demands that the penalty be reduced in fairness to the debtor. And so, making use of the discretion that the law grants us on the matter, we are of the opinion that a surcharge of 20% per annum would be reasonable. We therefore hold that the penalty should be reduced accordingly.[2]

The last claim of appellant refers to the portion of the decision which orders the payment of 6% interest per annum from the date of the filing of the complaint until full payment of the obligation due, which is also considered unreasonable considering that appellant was already ordered to pay the penalty agreed upon. This claim is untenable in the light of the law and the contract of the parties. Thus, Article 1226 of the new Civil Code

provides that "in obligations with a penal clause, the penalty shall substitute the indemnity for damages and the payment of interests in case of non-compliance, if there is no stipulation to the contrary. Nevertheless, damages shall be paid if the obligor refuses to pay the penalty.* * *". In other words, the penalty takes the place of the interests only if there is no stipulation to the contrary, and even then, damages may still be collected if the obligor refuses to pay the penalty. In this case not only is there an express stipulation to pay damages in addition to the penalty, but appellant has failed to pay his obligation as well as the penalty. This appears in paragraph (f) of the contract Exhibit "A". The imposition of 6% interest per annum is, therefore, justified. Modified with regard to the amount of the surcharge to be imposed on appellant as above indicated, we hereby affirm the decision appealed from in all other respects, without pronouncement as to costs.

Paras, C. J., Bengzon, Padilla, Montemayor, Concepcion, Endencia, and Barrera, JJ., concur.

[1] Article 1226, new Civil Code.

[2] Article 1229, new Civil Code.

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