

THE TREASURER OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. SIMPLICIO RODIS, DEFENDANT AND APPELLANT.

G.R. No. 13012. March 10, 1920

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of this action was to recover the sum of P10,000 which had been deposited by the defendant with the plaintiff as security for the performance of certain obligations created by virtue of a franchise granted by the Government of the Philippine Islands to the defendant.

The facts upon which the action is based may be stated as follows:

By Act No. 2034, as amended by Act No. 2328, the defendant was granted a franchise to construct, maintain and operate a street railway in the municipality of Cebu. Under the terms of said franchise, the defendant was required to, and he did, deposit with the Insular Treasurer the sum of P10,000 as security for the performance of the obligation of the franchise.

The street railway for the construction of which the franchise was granted was not constructed within the period prescribed by said Acts. As a result of the failure of the defendant to construct the said street railway, the present action was brought to forfeit the deposit.

The lower court rendered a judgment in favor of the plaintiff and against the defendant for the full amount of the deposit, and the defendant now appeals.

From the record it appears that after the franchise was granted, the defendant began in good faith to prepare for the construction of said street railway. A survey of the line was made, plans and specifications were prepared, and about P10,000 had been expended preparatory for the compliances with the franchise. It further appears that money had been deposited in a bank in Paris for the purchase of materials, etc., for the consummation of the contract which the defendant had entered into with the Government of the Philippine Islands. It also appears that, due to the breaking out of the war in Europe, the defendant was unable to consummate his contract and was obliged to abandon the same.

Considering that the defendant had actually entered, in good faith, upon the performance of his part of the contract as represented by the franchise, and considering the extraordinary conditions existing at that time which prevented a full compliance with the terms of the franchise within the period prescribed by said Acts, we are of the opinion, taking into consideration the provisions of article 1154 of the Civil Code, that there should be an equitable mitigation of the penalty imposed; and, considering that there is no proof showing that the plaintiff had suffered any damage whatever of any character or nature, we are of the opinion that, in equity and justice, the defendant should not be required to pay more than P1,000. (Government of the Philippine Islands vs. Punzalan, 7 Phil., 546; Government of the Philippine Islands vs. Amechazurra, 10 Phil., 637, 640; Insular Government vs. Bingham, 13 Phil., 558, 574; Lambert vs. Fox, 26 Phil., 588, 591; Laureano vs. Kilayco and Lizares de Kilayco, 32 Phil., 194.)

Considering, therefore, that the defendant, in good faith, partially performed the obligations imposed upon him, and that the plaintiff had suffered no damage whatever, we are of the opinion, in view of the provisions of said article 1154 of the Civil Code, that the judgment of the lower court should be modified. It is, therefore, hereby ordered and decreed that the judgment of the lower court be modified, and that a judgment be entered in favor of the plaintiff and, against the defendant for the sum of P1,000, and that the balance of the money deposited as security be immediately returned to the defendant; and, without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Araullo, and Avanceña, JJ., concur.

DISSENTING

MALCOLM, J.:

I must dissent. The provisions of the franchise granted the defendant to construct, maintain, and operate a street railway in the municipality of Cebu, are plain. The defendant has failed to perform the obligations of his contract. Article 1154 of the Civil Code is not applicable. No benefit to the plaintiff from the partial performance of the contract is shown.

Judgment modified.

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