

MANILA BUILDING & LOAN ASSOCIATION, PLAINTIFF AND APPELLEE, VS. B. A. GREEN, DEFENDANT AND APPELLANT, S. W. O'BRIEN ET AL., DEFENDANTS AND APPELLEES.

G. R. No. 31884. February 27, 1930

Ponente: JOHNS, J.

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JOHNS, J.:

For brevity, the two cases will be deemed consolidated and tried here as one, and this decision will apply to both appeals.

The amount of the judgment rendered in the Court of First Instance of the Province of Rizal was P102,597.38, which was the first one rendered, and the amount of the judgment in the Court of First Instance of the City of Manila was P103,297.38, the difference representing accumulated interest between the dates of the respective judgments.

The mortgage in favor of the Manila Building & Loan Association expressly provides for an attorney's fee of 10 per cent in the event of suit or action to foreclose the mortgage. As stated, the total amount of attorney's fees allowed by the different courts was P7,500 as against the fee of 10 per cent of the amount found due and owing, as stipulated in the mortgage, which would be about P10,330. The defendant Green admitted the execution of both the note and the mortgage and never made any defense on the merits or as to the amount due and owing on the note. In legal effect, he claims and asserts that the Building & Loan Association is entitled to one attorney's fee only, and that it cannot recover attorney's fees in both courts for the foreclosure of the same mortgage. But upon that point it will be noted that the mortgage covers real property lying in two different provinces, and that to obtain and perfect the title under the practice here, it is necessary to procure decrees in both courts, in the one for the real property situate in the City of Manila, and in the other for the property in the Province of Rizal, which means at least double work for the attorneys.

After some discussion among the members of the court as to what, under the circumstances, would be a reasonable attorney's fee, the court finally agreed that P7,000 should be allowed the Building & Loan Association as attorney's fees, for the foreclosure of its mortgage lying in both provinces, with interest thereon at 6 per cent per annum from the date of the filing of the second complaint, which shall be deemed and treated as the full amount of all attorney's fees allowed by both lower courts. As to the attorney's fees allowed in the O'Brien et al. case, it appears that there is an express stipulation in that mortgage for an attorney's fee of P2,500 in the event of suit or action to foreclose. The parties to the mortgage, having made that stipulation, are bound by it, and for such reason the total amount of attorney's fees to be allowed for the foreclosure of that mortgage in both courts must be confined and limited to P2,500, with interest thereon at 6 per cent per annum from the date of the filing of the answer in the first, case, and as to the defendants O'Brien et al., the payment of the P2,500, with such interest, will operate as a full and complete satisfaction of all attorney's fees in both courts.

It is needless to say, that both the Manila Building & Loan Association and S. W. O'Brien et al., are only entitled

to one satisfaction of their respective judgments, and that when the second judgments rendered in the Court of First Instance of Manila are satisfied in full, it shall operate as a complete satisfaction of both judgments. That is to say, that when either party receives the full amount which is due and owing on their respective notes, together with such attorney's fees, interest and costs, it shall operate as a full and complete satisfaction of both judgments.

It follows that on the merits, the judgments in both courts in favor of the Manila Building & Loan Association and the defendants, O'Brien et al.. in all things and respects are affirmed, and the gross amount of attorney's fees allowed in both courts in favor of the Building & Loan Association is modified and reduced to P7,000 and such interest, and the attorney's fees of P2,500 allowed in each case in favor of O'Brien et al., is modified and reduced to P2,500 only, the amount stipulated in the second mortgage, with such interest. Neither party to recover costs on this appeal. So ordered.

Malcolm, Villamor, Ostrand, Romualdez and Villa-Real, JJ., concur.

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