

THE GOVERNMENT OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. DOLORES LIM Y CHUMBUQUE, ANTONIA LIM Y CHUMBUQUE, JOSEFA LIM Y CHUMBUQUE, AND CHINA INSURANCE AND SURETY CO...*G.R. No. 41917. August 09, 1935*

Ponente: IMPERIAL, J.

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This appeal was taken by the defendants, except the corporation China Insurance and Surety Co., Inc., from a judgment of the Court of First Instance of Manila, sentencing them to pay the plaintiff, jointly and severally upon the first cause of action, the sum of ₱13,278.04 with 8 per cent interest per annum, payable quarterly, on the principal of ₱10,000 from December 20, 1933 until fully paid, plus 8 per cent interest per annum on all unpaid quarterly interest from the said date until fully paid, plus the further interest of 10 per cent per annum on the amount of ₱128.23, from December 20, 1933, until fully paid; and, upon the second cause of action, the sum of ₱3,944.91 with 8 per cent interest per annum payable quarterly on the principal of ₱3,000 from December 20, 1933, until fully paid, plus 8 per cent interest per annum on all unpaid quarterly interest from the said date until fully paid, and such other sum as the Pension and Investment Board may have advanced from the date of the judgment by way of taxes, insurance premiums, and repair of the mortgaged property. The judgment likewise provides that, in case the aforesaid amounts should not be paid or deposited with the court within three months, the mortgaged property be sold at public auction and the proceeds thereof applied to the judgment. The action was brought by the plaintiff to foreclose the mortgages executed by the defendants.

It was established at the trial that the defendants, on July 28 and October 28, 1930, obtained loans from the plaintiff of ₱10,000 and ₱3,000, respectively, and that they bound themselves to pay, jointly and severally, the first amount within five years and the second amount within four years and nine months, as well as the interest which they were ordered to pay, the taxes, the insurance premiums, the expenses of repair, and the stipulated penalties. Having failed to pay the stipulated interest, the obligations and mortgages became due and demandable, and on December 19, 1933, the defendants were indebted for the amounts and interest set forth in the appealed judgment.

The defendants do not deny their indebtedness, their obligation to pay the stipulated interest and the other amounts advanced by the plaintiff, nor question the latter's right to foreclose the mortgages. The only question raised in their sole assignment of error is plaintiff's right to recover the sum of ₱1,300 representing 10 per cent on the principal indebtedness of ₱13,000, for costs, expenses of collection, and attorney's fees. They contend that the enforcement of this penalty is unjustified in view of the fact that the Government has its own salaried counsel, and that it did not employ private counsel in the instant case. They finally contend that the affirmance of this portion of the judgment would be tantamount to the allowance of double compensation.

In the promissory notes executed by the defendants and incorporated in the mortgage deeds, they voluntarily

undertook to pay the sum of P1,300 as court costs, expenses of collection, and attorney's fees, whether incurred or not. This stipulation is a valid and permissible penal clause, not contrary to any law, morals, or public order, and is, therefore, strictly binding upon the defendants. (Articles 1091, 1152, and 1258, Civil Code; *Lambert vs. Fox*, 26 Phil., 588; *Bachraeh vs. Golingo*, 39 Phil., 138; *Compañia General de Tabacos vs. Jalandoni*, 50 Phil., 501; *Bachraeh Motor Co. vs. Espiritu*, 52 Phil., 346; *Manila Building & Loan Association vs. Green*, 54 Phil., 507.) It is neither excessive nor exorbitant, and the defendants have not made any payment upon their principal obligations, wherefore, the discretion conferred by article 1154 of the Civil Code may not be exercised to reduce the penalty.

There being no merit in the appeal taken by the defendants, the appealed judgment is affirmed in toto, with the costs of this instance to the defendants. So ordered.

Malcolm, Villa-Real, Butte, and Goddard, JJ., concur.

Judgment affirmed.

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