

**THE MANILA RACING CLUB, INC., PLAINTIFF AND APPELLANT, VS.
THE MANILA JOCKEY CLUB ET AL., DEFENDANTS AND APPELLEES.***G.R. No. 46533. October 28, 1939*

Ponente: AVANCEÑA, C.J.

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On September 18, 1936 Rafael J. Campos entered into a contract (Exhibit C) with the Manila Jockey Club, an unregistered partnership, whereby he purchased from it the parcel of land described in transfer certificate of title No. 8724 with its improvements, the good-will, and certain personal property. The price agreed upon in this transaction is P1,200,000, payable as follows: P50,000 upon the signing of the contract; P50,000 on or before September 28, 1936; P300,000 on or before December 24, 1936; P200,000 on or before March 24, 1937; and P600,000 on or before September 24, 1937. It was agreed that should the purchaser fail to pay the amount corresponding to each installment in due time, the vendor may rescind the contract and keep the amounts paid for itself. One of the clauses of the deed also states that the purchaser may form a corporation called the Manila Racing Club, Inc., to whom he may transfer all his rights and obligations under the contract.

The purchaser Campos made the down payment of P50,000 upon signing the contract and on September 28, 1936 paid the second installment of P50,000.

On October 22, 1936, the Manila Racing Club, Inc., was organized and Campos transferred to it all his rights and obligations under his contract with the Manila Jockey Club.

As the third installment of P300,000 became due on December 24, 1936, and the purchaser could not pay it, the vendor, on January 11, 1937, declared the contract cancelled and kept the amount of P100,000 already paid, corresponding to the first two installments. The purchaser was, however, granted an extension until January 22, 1937, to revive the contract by paying the P300,000, but having failed to do this, the partners of the vendor ratified on January 23, 1937, the cancellation of the contract agreed upon by its board of directors and the forfeiture of the P100,000 paid by the purchaser. Although the plaintiff contends that the Manila Jockey Club granted to purchaser Campos an indefinite time to pay the P300,000, corresponding to the third installment, there is no sufficient evidence thereof and, on the contrary, Campos admits, and defendants' evidence so indicate, that January 22, 1937, was the last extension granted to him to make this payment.

On March 23, 1937 the Manila Jockey Club, Inc., was organized and to it were transferred all the properties, rights and actions of the Manila Jockey Club.

This action is filed by the plaintiff against the Manila Jockey Club and its partners for the recovery from them of the forfeited amount of P100,000 and for the payment of P50,000 as damages. The appealed judgment absolves the defendants.

Assuming these facts to be true, if the clause of the contract referring to the forfeiture of the P100,000 already paid, should the purchaser Campos fail to pay the subsequent installments, is valid, the case does not present any

difficulty because the contract is clear on this point.

This clause regarding the forfeiture of what has been partially paid is valid. It is in the nature of a penal clause which may be legally established by the parties (articles 1152 and 1255 of the Civil Code). In its double purpose of insuring compliance with the contract and of otherwise measuring beforehand the damages which may result from non-compliance, it is not contrary to law, morals or public order because it was voluntarily and knowingly agreed upon by the parties. Viewing concretely the true effects thereof in the present case, the amount forfeited constitutes only eight per cent of the stipulated price, which is not excessive if considered as the profit which would have been obtained had the contract been complied with. There is, moreover, evidence that the defendants, because of this contract with Campos, had to reject other propositions to buy the same property. At any rate, the penal clause does away with the duty to prove the existence and measure of the damages caused by the breach.

On the other hand, the allegation that the defendants were responsible for the non-compliance with the contract is in no wise justified. It is said that the majority of the members of the Manila Jockey Club promised to subscribe to one-half of the shares of the plaintiff, and for failure to live up to this promise, the money to pay the third installment of P300,000 could not be raised. There is, however, no sufficient evidence of such promise which, according to Campos; was merely verbal. Furthermore, Campos himself attributes the failure to pay the third installment to the fact that the public, due to the state of the stock market, did not respond to the expectations of the incorporators of the plaintiff. But it seems that even this is not the cause of the breach, for on the date the third installment became due, the plaintiff had subscribed shares of its capital stock in the amount of P600,000, paid in part and the remainder payable on demand. The deduction from all this is that the breach of the contract cannot be attributed to the defendants and, much less, to the company which, it is also alleged, the defendants brought into being to defeat the organization of the plaintiff.

In view of the foregoing considerations, the appealed judgment is affirmed, with the costs to the appellant. So ordered.

Villa-Real, Imperial, Diaz, Laurel, Concepcion, and Moran, JJ., concur.

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