

LEON J. LAMBERT, PLAINTIFF AND APPELLANT, VS. T.J. FOX, DEFENDANT AND APPELLEE.

G.R. No. 7991. January 29, 1914

Ponente: MORELAND, J.

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MORELAND, J.:

This is an action brought to recover a penalty prescribed in a contract as punishment for the breach thereof.

Early in 1911 the firm known as John R. Edgar & Co., engaged in the retail book and stationery business, found itself in such condition financially that its creditors, including the plaintiff and the defendant, together with many others, agreed to take over the business, incorporate it and accept stock therein in payment of their respective credits. This was done, the plaintiff and the defendant becoming the two largest stockholders in the new corporation called John R. Edgar & Co., Incorporated. A few days after the incorporation was completed plaintiff and defendant entered into the following agreement:

"Whereas the undersigned are, respectively, owners of large amounts of stock in John R. Edgar & Co., Inc.; and,

"Whereas it is recognized that the success of said corporation depends, now and for at least one year next following, in the larger stockholders retaining their respective interests in the business of said corporation:

"Therefore, the undersigned mutually and reciprocally agree not to sell, transfer, or otherwise dispose of any part of their present holdings of stock in said John R. Edgar & Co., Inc., till after one year from the date hereof.

"Either party violating this agreement shall pay to the other the sum of one thousand (P1,000) pesos as liquidated damages, unless previous consent in writing to such sale, transfer, or other disposition be obtained."

Notwithstanding this contract the defendant Fox on October 19, 1911, sold his stock in the said corporation to E. C. McCullough of the firm of E. C. McCullough & Co. of Manila, a strong competitor of the said John R. Edgar & Co., Inc.

This sale was made by the defendant against the protest of the plaintiff and with the warning that he would be held liable under the contract hereinabove set forth and in accordance with its terms. In fact, the defendant Fox offered to sell his shares of stock to the plaintiff for the same sum that McCullough was paying" for them less P1,000, the penalty specified in the contract.

The learned trial court decided the case in favor of the defendant upon the ground that the intention of the parties as it appeared from the contract in question was to the effect that the agreement should be good and continue only until the corporation reached a sound financial basis, and that that event having occurred some time before the expiration of the year mentioned in the contract, the purpose for which the contract was made had been fulfilled and the defendant accordingly discharged of his obligation there under. The complaint was dismissed upon the merits.

It is urged here that the court erred in its construction, of the contract. We are of the opinion that the contention is sound. The intention of parties to a contract must be determined, in the first instance, from the words of the contract itself. It is to be presumed that persons mean what they say when they speak plain English. Interpretation and construction should be the instruments last resorted to by a court in determining what the parties agreed to. Where the language used by the parties is plain, then construction and interpretation are unnecessary and, if used, result in making a contract for the parties. (*Lizarraga Hermanos vs. Yap Tico*, 24 Phil. Rep., 504.)

In the case cited the court said with reference to the construction and interpretation of statutes: "As for us, we do not construe or interpret this law. It does not need it. We apply it. By applying the law, we conserve both provisions for the benefit of litigants. The first and fundamental duty of courts, in our judgment, is to apply the law. Construction and interpretation come only after it has been demonstrated that application is impossible or inadequate, without them. They are the very last functions which a court should exercise. The majority of the laws need no interpretation or construction. They require only application, and if there were more application and less construction, there would be more stability in the law, and more people would know what the law is."

What we said in that case is equally applicable to contracts between persons. In the case at bar the parties expressly stipulated that the contract should last one year. No reason is shown for saying that it shall last only nine months. Whatever the object was in specifying the year, it was their agreement that the contract should last a year and it was their judgment and conviction that their purposes would not be subserved in any less time. What reason can be given for refusing to follow the plain words of the men who made the contract ? We see none.

The appellee urges that the plaintiff cannot recover for the reason that he did not prove damages, and cites numerous American authorities to the effect that because stipulations for liquidated damages are generally in excess of actual damages and so work a hardship upon the party in default, courts are strongly inclined to treat all such agreements as imposing a penalty and to allow a recovery for actual damages only. He also cites authorities holding that a penalty, as such, will not be enforced and that the party suing, in spite of the penalty assigned, will be put to his proof to demonstrate the damages actually suffered by reason of defendant's wrongful act or omission.

In this jurisdiction penalties provided in contracts of this character are enforced. It is the rule that parties who are competent to contract may make such agreements within the limitations of the law and public policy as they desire, and that the courts will enforce them according to their terms. (*Civil Code*, articles 1152, 1153, 1154, and 1155; *Fornow vs. Hoffmeister*, 6 Phil. Rep., 33; *Palacios vs. Municipality of Cavite*, 12 Phil. Rep., 140; *Gsell vs. Koch*, 16 Phil. Rep., 1.) The only case recognized by the *Civil Code* in which the court is authorized to intervene for the purpose of reducing a penalty stipulated in the contract is when the principal obligation has been partly or irregularly fulfilled and the court can see that the person demanding the penalty has received the benefit of such part or irregular performance. In such case the court is authorized to reduce the penalty to the extent of the benefits received by the party enforcing the penalty.

In this jurisdiction, there is no difference between a penalty and liquidated damages, so far as legal results are concerned. Whatever difference exists between them as a matter of language, they are treated the same legally. In either case the party to whom payment is to be made is entitled to recover the sum stipulated without the necessity of proving damages. Indeed one of the primary purposes in fixing a penalty or in liquidating damages, is to avoid such necessity.

It is also urged by the appellee in this case that the stipulation in the contract suspending the power to sell the stock referred to therein is an illegal stipulation, is in restraint of trade and, therefore, offends public policy. We do not so regard it. The suspension of the power to sell has a beneficial purpose, results in the protection of the

corporation as well as of the individual parties to the contract, and is reasonable as to the length of time of the suspension. We do not here undertake to discuss the limitations to the power to suspend the right of alienation of stock, limiting ourselves to the statement that the suspension, in this particular case is legal and valid.

The judgment is reversed, the case remanded with instructions to enter a judgment in favor of the plaintiff and against the defendant for P1,000, with interest; without costs in this instance.

Arellano, C. J., Trent and Araullo, JJ., concur.

CONCURRING

CARSON, J.

I concur.

I think it proper to observe, however, that the doctrine touching the construction and interpretation of penalties prescribed in ordinary civil contracts as set forth in the opinion is carried to its extreme limits and that its statement in this form is not necessary to sustain the decision upon the facts in this case.

Without entering upon an extended discussion of the authorities, it is sufficient for my purposes to cite the opinion of the supreme court of Spain, dated June 13, 1906, construing the provisions of article 6 of Book 4, Title 1 of the Civil Code which treats of "contracts with a penal clause." In that case the court held:

"The rules and prescriptions governing penal matters are fundamentally applicable to the penal sanctions of civil character."

This as well as other cases which might be cited from American as well as Spanish authorities indicate that special rules of interpretation are and should be made use of by the courts in construing¹ penal clauses in civil contracts, and that cases may well arise wherein the broad doctrine laid down in the opinion of the court may not be applicable.

Judgment reversed and case remanded with instructions.

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