

[ G.R. No. 21924, May 12, 2010 ]

**SING JUCO, PLAINTIFF AND APPELLANT, VS. BENJAMIN CUAYCONG, AGATON TONGOY AND MARIANO RAMOS, DEFENDANTS AND APPELLEES.**

**D E C I S I O N**

**OSTRAND, J.:**

This is an appeal from a judgment of the Court of First Instance of Iloilo dismissing the plaintiff's claim for the sum of P15,000 in damages for the alleged breach of a contract for the sale of 1,000 piculs of sugar.

It appears from the evidence that on June 27, 1919, the defendants Cuaycong and Tongoy executed a document in writing in which they acknowledged having received the sum of P6,000 from the plaintiff as advance payment of part of the price of 1,000 piculs of sugar which they agreed to deliver on or before March 1, 1920. The defendant Ramos also signed the contract as guarantor of the repayment of the P6,000, with interest at the rate of 8 per cent. per annum in the event that the other defendants should fail to deliver the sugar. The document also contained the following clauses:

"That in case of failure on the part of the party of the first part to deliver the 1,000 piculs of sugar, said party shall be bound to pay, besides the sum of P6,000, interest at the rate of 8 per cent per annum on the said sum.

\* \* \* \* \*

"That I, Mariano Ramos, do hereby covenant that in case of failure of the party of the first part to deliver the said 1,000 piculs of sugar above sold and to return to the party of the second part the aforesaid sum of P6,000 with interest at the rate of 8 per cent per annum, I bind and obligate myself to pay to the party of the second part the whole amount due from the party of the first part, namely, the sum of P6,000 with interest at the rate of 8 per cent per annum, as well as all expenses and attorney's fees in case that the party of the second part should be compelled to employ any."

The plaintiff maintains that the clauses quoted were inserted in the document without his knowledge and consent and that, therefore, the document does not set forth the true agreement between the parties. We agree with the court below that this contention is not sustained by the evidence. The defendant explains that at the time the contract was entered into there was very keen competition among sugar buyers in Iloilo; that they, the defendants, had already sold to the sugar buyers as much sugar as they could expect to produce during the ensuing sugar cane harvest and therefore had doubts as to their ability to fulfill the contract; that they advised the plaintiff of their doubts but that he insisted on their entering into the contract and agreed that if they should find themselves unable to deliver the sugar he would accept the return of the money paid in advance, with interest at 8 per cent.. This explanation does not, under the circumstances, seem unreasonable and accounts for the insertion into the contract of the clauses in question.

It further appears from the record that the defendants tendered repayment of the money advanced to them by the plaintiff and upon his refusal to accept the tender deposited or consigned the sum of P6,500 with the clerk of the Court of First Instance. After the action was brought, but before the trial of the case, the plaintiff withdrew, unconditionally, the money so consigned.