5 Phil. 512

[G.R. No. 2178. January 06, 1906]

SONS OF ISIDRO DE LA RAMA, PLAINTIFFS AND APPELLEES, VS. THE ESTATE OF TEODORO BENEDICTO, DEFENDANT AND APPELLANT.

D E C I S I O N

WILLARD, J.:

This action was brought on the following document:

"Yo,……,. principal del pueblo de……, he recibido en esta fecha de Don……de la Rama del comercio de esta cabecera la cantidad de dos mil y quinientos pesos fuertes a mi entera satisfaccion cuya cantidad prometo solemnemente pagaple en el termino de seis meses a parte de esta fecha asi como tambien los intereses de la misma al respecto de veinticinco pesos por ciento annal y caso de ser omiso en el cumplimiento puntual de esta condicion me obligo a la solvencia de todos los daños y perjuicios que por tal motivo se le ocasionen al Sr. De la Rama sea cual fnese la naturaleza de los mismos hasta que se vea solventada totalmente la presente deuda con sus cre"ditos al tanto por ciento indicado con la garantia de todos mis bienes habidos y por haber; ademas presento por mi fiador mancomunario k Don Teodoro Benedicto, vecino y principal de Jaro, quien consiente conmigo solidariamente en caso de insolvencia, en ser estrechado por el rigor de la Ley via de apremio su breve y ejecutiva……yo, todas las he……,…… favorecemos y para……o a este credito mi…… garantiza la presente …… habidos y por haber finalmente…… a voluntad que este documento se considere como si fuera hecho ante escribano publico, esto es con las fuerzas y validez necesarias y que para el derecho del mencionado Don Isidro de la Rama mejor conduzca. Y para que asi conste firmo el presente document© con mi flador mancomunario en Iloilo, o de Septiembre de 1882.—Crisostomo Ramos.—Teodoro Benedicto."

On the 1st of July, 1884, Isidro de la Rama instituted preparatory proceedings of an

executive action for the recovery of this debt. The surety, Benedicto, was summoned and on July 8, 1884, admitted the genuineness of his signature to the document. In the executive action which followed, judgment was rendered in favor of De la Rama and execution was issued and levied upon certain property of Ramos, the principal debtor. Thereupon, and in 1884, Julian Hernaez intervened in the action, claiming to be the owner of the property levied upon under the execution. This claim of intervention was decided in favor of Hernaez in 1900. Benedicto, the surety, was then dead, as was also Isidro de la Rama, the creditor. The heirs of the latter presented a claim for the debt evidenced by this document, in the proceedings for the settlement of the estate of Benedicto. This claim was disallowed by the committee, and the creditor appealed to the Court of First Instance. A trial was there had, which resulted in a judgment in favor of plaintiff and creditor for the sum of 14,926.05, Mexican pesos, and costs. The defendant moved for a new trial on the ground that the judgment was not justified by the evidence, which motion was denied, and he has brought the case here by bill of exceptions.

It is claimed by the appellant that De la Rama extended the time of the payment of this obligation, and thereby discharged the surety from liability thereon. The debt matured on the 6th day of March, 1883, and no proceedings in court were commenced thereon until the 1st of July, 1884. In the case of the Banco Espaiiol Filipino vs. Donaldson Sim & Co. et al.,[1] No. 2422, decided the 14th day of December, 1905, this court has had occasion to consider this question. In that case the court said:

> "El diferir el ejercicio de la accion no implica alteracion en la eficacia del contrato, ni modo alguno de responsabilidad por parte del acreedor. Es puramente, sin demostracion o prueba en contrario, espera, cortesia, lenidad, pasividad, inaccion. No constituye novacion, porque osta tiene que ser expresa. Ni engendra responsabilidad, porque esta de parte del acreedor, no puede nacer sino de mora, y para esta clase de mora seria necesaria interpelacion de parte de aquo que se considere perjudicado con ella. Para que aquella espera o inaccion, de suyo beneficiosa para los obligados, pueda traducirse como perjudicial para alguno de estos, es de todo punto necesario que asi se haga entender por medio de protesta o interpelacidn contra la demora; sin un acto de esta naturaleza sigue siendo lo que es: puramente no hacer por parte del acreedor, lo cual por si solo no es inductivo de responsabilidad."

There was no proof in this case to take it out of the rule laid down in the £ase cited. While there was evidence in the case that interest had been paid by Ramos prior to July, 1884, yet there was no evidence to show that this interest was paid in advance. Therefore, in accordance with the decision in said case of the Banco Español Filipino vs. Donaldson Sim & Co., such payment of interest did not constitute an extension of the time for the payment of the obligation.

The defendant presented also, as proof of the granting of such an extension, an answer filed in the executive action in 1885, by the lawyer who represented De la Rama in that suit. This answer stated that an extension had been granted. It was not, however, signed by De la Rama, and there was no evidence to show that he authorized the making of that particular statement. It is therefore not evidence in this case against his heirs.

The defendant also presented a letter Avritten by Ramos in April, 1884, asking for an extension. No answer by De la Rama to this letter was presented. It was a mere request of Ramos. No showing being made that it was ever granted, it was not sufficient to prove an extension.

The appellant claims that it was the duty of the creditor to exhaust the property of Ramos before an action could be maintained against the surety; that the evidence in the case shows that that was not done, and that consequently this action can not be maintained. We do not find it necessary to decide whether Ramos had or had not property out of which the debt could have been paid, for we think that the terms of the contract between the parties did not impose upon the creditor the duty of exhausting the property of Ramos before proceeding against the surety. The word “mancomunario,” used in the contract, has a general as well as a special meaning. That in this case it was used in its general signification is, we think, made plain by other terms of the agreement. It indicated nothing more than that Benedicto was presented as a person why would become obligated with Ramos, but it was not intended to indicate the precise character of the obligation which he incurred. This was, however, indicated in that other phrase of the contract which reads “quien consiente conmigo *solidariamente* en caso de insolvencia, en ser estrechado por el rigor de la ley,” etc. The insertion of this clause in the contract made Benedicto liable as a principal, in case of the insolvency of Ramos. This insolvency occurred, in our opinion, either at the maturity of the obligation, on the 6th day of March, 1883, or at the latest on July 1, 1884, when Ramos, not having paid the debt, judicial proceedings were commenced against him for its collection. The contention of the appellant is that the phrase “in case of insolvency” means that insolvency does not exist until after judgment has been obtained against Ramos,

execution issued thereon and returned unsatisfied, because no goods of Ramos could be found upon which to levy. To give the phrase this meaning would be to render useless and of no effect the word "solidariamente," for if this contention can be sustained, the liability of Benedicto, the surety by virtue of this contract, would be exactly the same as it would have been if this word had been omitted—that is, he would not be bound to pay until all the property of Ramos had been exhausted and a judicial determination of this fact had been obtained. We think the clear meaning of the contract is that in case Ramos did not pay the debt at its maturity he should then be considered as insolvent, and the liability of Benedicto as a principal of the obligation would at once arise.

It is suggested by the appellant in his brief that as this question of solidarity was not touched upon by the judge in his decision, it can not be considered upon the appeal. There is nothing in this point. The question is presented by the pleadings and the evidence, and the fact that the court below based its decision in favor of: the plaintiffs upon other grounds is no reason for saying that additional grounds can not be urged in this court to sustain it.

The judgment of the court below is affirmed, with the costs of this instance against the appellant, and after the expiration of twenty days judgment should be entered in accordance herewith and the case remanded to the court below for execution of said judgment. So ordered.

Arellano, C. J., Johnson, and *Carson, JJ.,* concur.

Mapa, J., did not sit in this case.

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[1] Page 418, supra.

Date created: April 28, 2014