

**R. N. CLARK, PLAINTIFF AND APPELLANT, VS. GEORGE C. SELLNER,
DEFENDANT AND APPELLEE.**

G. R. No. 16477. November 20, 1921

Ponente: ROMUALDEZ, J.

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ROMUALDEZ, J.:

The defendant, in conjunction with two other persons, signed the following note in favor of the plaintiff:

"P12,000.00

MANILA, July 1, 1914.

"Six months after date, for value received, we jointly and severally promise to pay to the order of R. N. Clark at his office in the city of Manila, the sum of twelve thousand pesos, Philippine currency, with interest thereon in like currency from date until paid at the rate of ten per cent per annum, payable quarterly.

"If suit is necessary to collect this note, we hereby agree to pay as attorney's fees ten per centum of the amount found due.

(Sgd.) "W. H. CLARKE,

[INTERNAL REVENUE "JOHN MAYE.

STAMP.]

"By W. H. CLARKE, his attorney.

"GEO. C. SELLNER."

The note matured, but its amount was not paid.

Counsel for the defendant allege that the latter not receive in that transaction either the whole or any part of the amount of the debt; that the instrument was not presented to the defendant for payment; and that the defendant, being an accommodation party, is not liable unless the note is negotiated, which was not done, as shown by the evidence.

With regard to the first point, the liability of the defendant, as one of the signers of the note, is not dependent on whether he has, or has not, received any part of the amount of the debt. The defendant is really and expressly one of the joint and several debtors on the note, and as such he is liable under the provisions of section 60 of Act No. 2031, entitled The Negotiable Instruments Law, which provisions should be applied in this case in view of the character of the instrument.

As to presentment for payment, such action is not necessary in order to charge the person primarily liable, as is the defendant. (Sec. 70, Act No. 2031.)

And as to whether or not the defendant is an accommodation party, it should be taken into account that by putting his signature to the note, he lent his name, not to the creditor, but to those who signed with him placing himself with respect to the creditor in the same position and with the same liability as the said signers. It should be noted that the phrase "without receiving value therefor," as used in section 29 of the aforesaid Act, means "without receiving value by virtue of the instrument" and not, as it apparently is supposed to mean, "without receiving payment for lending his name." If, as in the instant case, a sum of money was received by virtue of the note, it is immaterial, so far as the creditor is concerned, whether one of the signers has, or has not, received anything in payment of the use of his name. In reality the legal situation of the defendant in this case may properly be regarded as that of a joint surety rather than that of an accommodation party. The defendant, as a joint surety, may, upon the maturity of the note, pay the debt, demand the collateral security and dispose of it to his benefit; but there is no proof whatever that this was done. As to the plaintiff, he is the "holder for value," under the phrase of said section 29, for he had paid the money to the signers at the time the note was executed and delivered to him. Who is the "holder" is defined in section 191 of the said law thus:

" 'Holder' means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof."

And as such holder, he has the right to demand payment of the debt from the signer of the note, even though he knows that said person is merely an accommodation party (section 29 above cited), assuming the defendant to be such, which, as has been stated, is not the case.

The trial judge took into account the fact that at the time of the maturity of the note, the collateral security given to guarantee the payment was worth more than what was due on the note, but it depreciated to such an extent that, at the time of the institution of this action, it was entirely valueless; And taking this circumstance, together with the fact that this case was not commenced until after the lapse of four years from the date on which the payment fell due, and with the further fact that the defendant had not received any part of the amount mentioned in the note, he was of the opinion, and so decided, that the defendant could not be held liable. The theory of the judge a quo was that the plaintiff's failure to enforce the guaranty for the payment of the debt, and his delay in instituting this action constitute laches, which had the effect of extinguishing his right of action.

We see no sufficient ground for applying such a theory to the case before us. As stated, the defendant's position being, as it is, that of a joint surety, he may, at any time after the maturity of the note, make payment, thus subrogating himself in the place of the creditor with the right to enforce the guaranty against the other signers of the note for the reimbursement of what he is entitled to recover from them. The mere delay of the creditor in enforcing the guaranty has not by any means impaired his action against the defendant. It should not be lost sight of that the defendant's signature on the note is an assurance to the creditor that the collateral guaranty will remain good, and that otherwise, he, the defendant, will be personally responsible for the payment.

True, that if the creditor had done any act whereby the guaranty was impaired in its value, or discharged, such an act would have wholly or partially released the surety; but it must be born in mind that it is a recognized doctrine in the matter of suretyship that with respect to the surety, the creditor is under no obligation to display any diligence in the enforcement of his rights as a creditor. His mere inaction, indulgence, passiveness, or delay in proceeding against the principal debtor, or the fact that he did not enforce the guaranty or apply on the payment of such funds as were available, constitute no defense at all for the surety, unless the contract expressly requires diligence and promptness on the part of the creditor, which is not the case in the present action. There is in some decisions a tendency toward holding that the creditor's laches may discharge the surety, meaning by laches a

negligent forbearance. This theory however, is not generally accepted and the courts almost universally consider it essentially inconsistent with the relation of the parties to the note. (21 R. C. L., 10321034.)

We find that in the judgment appealed from there were committed the errors assigned, and that the defendant is under obligation to pay the plaintiff the amount of the debt, as prayed for in the complaint.

The judgment appealed from must, therefore, be, as is hereby, reversed. Let an order be issued to the effect that the plaintiff have and recover from the defendant the sum of twelve thousand pesos (P12,000), as principal debt, plus one thousand two hundred pesos (P1,200), the sum agreed upon as attorney's fees, and 10 per cent interest on the principal debt from July 1, 1914, until it is fully paid, 'deducting therefrom the sum of three hundred pesos (P300) already paid on account, as stated in the complaint.

This decision is rendered without special pronouncement as to costs. So ordered.

Araullo, C. J., Street, Malcolm, Avancena, and Villamor, JJ., concur.

Johnson, J., did not take part.

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