

JUAN TUASON, PLAINTIFF AND APPELLEE, VS. CEFERINO DOMINGO LIM, DEFENDANT AND APPELLANT.

G.R. No. 3533. January 29, 1908

Ponente: WILLARD, J.

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WILLARD, J.:

The plaintiff brought this action in the Court of First Instance of the Province of Iloilo to foreclose a mortgage for 33,174.27 pesos, with interest. Judgment was rendered in favor of the plaintiff, and the defendant has appealed.

The mortgage in question was executed on the 31st day of March, 1902, and was not signed by the defendant himself, but was signed by Cesario Lopez, his attorney in fact. It is claimed by the appellant that the power of attorney given by the defendant to Lopez did not authorize him to execute this instrument. We do not find it necessary to decide this question because we think that the subsequent conduct of the defendant in relation thereto amounted to a ratification thereof.

As to the amount actually due from the defendant to the plaintiff, there is no question.

On the 31st day of December, 1904, the defendant agreed in writing that the amount due from him to the plaintiff was P35,801.71. It is claimed by the appellant that he did not examine the accounts fully when he signed this statement and that there was an understanding that there should be a further examination and a definite liquidation. This claim is not supported by the evidence, and we are satisfied that the defendant, on the date last mentioned, finally and definitely agreed that he owed the amount stated in that liquidation.

The mortgage contains the following clause:

"Eighth. Notwithstanding all the foregoing, the said Messrs. Hollmann & Co. bind themselves to pay the above-named Ceferino Domingo, for expenses and other requirements of the haciendas of Janiway, of this province, and Murcia, Island of Negros, up to three hundred Mexican dollars monthly for each hacienda, as it may be required, which amount will be charged to the same debt above acknowledged."

At the time the defendant signed the statement of December 31, 1904, the evidence shows that he examined a more detailed statement of account which was presented in evidence. That account shows repeated payments by the plaintiff from time to time of P600, evidently in accordance with the terms of the mortgage. It further appears that the plaintiff suspended the monthly payments for March and April of 1904, and that the defendant objected to such suspension. The evidence for the plaintiff also shows that the lawyer for the plaintiff had all the papers relating to this case in his office for two years, attempting to get a settlement with the defendant; that he had repeated conferences with the defendant, showed him all of the accounts relating thereto, and that the defendant never made any claim as to the invalidity of the mortgage, but simply requested further time in which to pay the debt. The defendant does not now in his testimony say that he did not know of the existence of the mortgage and of its terms. We are satisfied from all the evidence in the case that he did know of the existence of the mortgage and of the terms thereof, and that he voluntarily accepted the benefits conferred upon him by the contract by accepting the monthly payments therein mentioned. Such action on his part amounted to a ratification of the

mortgage within the terms of, article 1511 of the Civil Code.

The judgment of the court below is affirmed, with the costs of this instance against the appellant. So ordered.

Arellano, G. J., Torres, Mapa, Johnson, Carson, and Tracey, JJ., concur.

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