

JUAN MANZANO Y MENDEZ, PLAINTIFF AND APPELLEE, VS. JOSE TAN SUNCO AND JUAN M. ANG CHONGUAN, DEFENDANTS.-JOSE TAN SUNCO, APPELLANT.*G.R. No. 5030. March 12, 1909*

Ponente: WILLARD, J.

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This action was brought originally against Jose Tan Sunco alone. Afterwards the proceedings were amended so as to bring into the case as a defendant Juan M. Ang Chonguan. The judgment from which this appeal was taken was a judgment against Jose Tan Sunco, the case not having been at that time tried as to the other defendant.

The action was brought upon a promissory note signed by the two defendants dated on the 3d day of January, 1900, by which they promised to pay de mancomun e insolidum to the order of the plaintiff 6,000 pesos on the 3d day of April, 1900. There was nothing on the face of the note to indicate that Juan Ang Chonguan was the principal and Jose Tan Sunco his surety, but the former testified at the trial that that was the relation between the parties. The defense of Jose Tan Sunco was that he was a surety on the note; that the defendant had extended the time for the payment thereof without his knowledge and consent, and that he, therefore, had been discharged from liability thereon. This defense was not sustained by the court and judgment was entered in favor of the plaintiff.

It is claimed by the appellee that the obligation on its face being solidaria, article 1851 of the Civil Code relied upon by the defendant is not applicable. We do not find it necessary to consider this question because the proof shows that whatever agreement was made in regard to interest, was made with the knowledge and consent of Jose Tan Sunco.

The mere failure of the plaintiff to collect the debt at its maturity did not constitute an extension of the time, for its payment, nor did the payment of interest, such payments not having been made in advance. (Banco Español-Filipino vs. Donaldson Sim & Co., 5 Phil. Rep., 418; Sons of De la Rama vs. Benedicto, 5 Phil. Rep., 512.)

The evidence as to any agreement for the extension of time by the payment of interest is very indefinite, but whatever agreement was made was made with the knowledge and consent of this appellant, Juan M. Ang Chonguan testifying at the trial, as follows:

"Q. Are you sure that the surely Tan Sunco knew that you had asked the plaintiff not to insist on the payment of this note as long as you paid the interest?-A. Yes, sir; and my compadre or padrino agreed to it.

"Q. This was done without the knowledge of the defendant Tan Sunco, was it not?-A. No, sir. It was with his knowledge and consent."

This appellant did not testify in the case and there was no evidence to contradict the testimony above given. Whatever agreement was made, having been made therefore with the knowledge and consent of the surety, article 1851 is not applicable.

After the decision of the court below had been filed, a motion for a new trial made and denied and excepted to, the defendant made a motion in which he stated that the testimony of the witness Ang Chonguan had not been correctly taken by the stenographer; that, instead of saying that the agreement in question was with the knowledge and consent of the defendant Tan Sunco, he in fact said that it was without his knowledge or consent, and he asked that the defendant Ang Chonguan be called and allowed to testify again. The court, after considering an affidavit presented by Ang Chonguan, which confirmed the statement made in the motion, and an affidavit of the stenographer in which he stated that he had correctly taken down the answer as interpreted, the court denied the motion. This denial is assigned as error in this court. In our opinion the assignment can not be sustained. It will be observed that the appellant did not claim that there was any error in the first answer which has been quoted above, wherein the witness stated that he was sure that Tan Sunco knew of his agreement with the plaintiff. We are satisfied, as the court was, that the testimony was taken down by the stenographer as it was given by the witness.

It is also said by the appellant that an agreement was made in 1904 between the plaintiff and Ang Chonguan by virtue of which the note was to be paid in installments and Ang Chonguan testified that he received such a proposition and accepted it, but did not carry it out. The court found that no such agreement was made, and we can not say that the evidence preponderates against that finding. The fact that Ang Chonguan continued paying interest after his alleged acceptance of this offer in the same way that he had been doing before is very strong evidence to show that no contract was made by which he was to pay in installments of 1,000 pesos.

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

Arellano, C. J., Torres, Mapa, Johnson, and Carson, JJ., concur.

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