

PEDRO MARTINEZ, PLAINTIFF AND APPELLANT, VS. MATIAS CAVIVES ET AL., DEFENDANTS AND APPELLEES. ROBERT LINEAU, ADMR., INTERVENER AND APPELLANT.

G.R. No. 7663. October 20, 1913

Ponente: TRENT, J.

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TRENT, J.:

Pedro Martinez, the plaintiff in this case, seeks to recover from Matias Cavives and Severino Cavives, the defendants, on some promissory notes executed by them in 1896. The first note, in the sum of \$4,317.15 Mexican currency, was executed on April 8 of that year, and was jointly signed by them and their brother Carlos Cavives, now deceased. The note calls for interest at ten per cent per annum. Matias Cavives obtained \$300 on April 30, \$200 on May 30, and \$200 on June 7 of that year, and Severino Cavives, \$600 on June 9 (all Mexican currency), each of which stipulated that the sums mentioned therein had been borrowed under the same terms and conditions as were expressed in the joint obligation of the three brothers above mentioned. The due execution of all these notes is admitted. None of these notes were ever paid by any of the three brothers. On June 14, 1898, the deceased brother Carlos entered into an agreement with the plaintiff whereby all the obligations contracted by the three brothers during the year 1896 were liquidated and a new note was executed and signed by these two parties (Exhibit 4), its amount, \$9,483, 5 reales, 17 cuartos, purporting to include the principal and interest at the specified rate up to the date of its execution. The evidence of record shows that Carlos Cavives, in executing this note, agreed to obtain the signatures of his brothers to it, but this was never done. During the settlement of the estate of the deceased Carlos, an agreement was entered into by his widow and Pedro Martinez, whereby the latter agreed to accept P3,000 in full satisfaction of his claim against her husband's estate, a sum considerably less than the principal and accumulated interest of the original notes. A note (Exhibit 5) was executed under these conditions, whereby the widow was to pay its face value in annual installments.

The contention of the defendants, sustained by the court below, was that the original obligations had been novated by the agreement made in 1898 between Carlos Cavives and Pedro Martinez. It was held that as neither party to this agreement exercised proper diligence in securing the signatures of the other brothers, there was a tacit consent to permit the obligation to stand as a debt against Carlos Cavives alone. The fact that the compromise settlement made between the plaintiff and the widow of Carlos Cavives made no mention of the amounts borrowed by Matias and Severino Cavives was deemed by the court further proof of the intention of the plaintiff to novate the debts of the three brothers and hold only Carlos liable for their payment.

Article 1205 of the Civil Code reads as follows: "Novation, consisting in the substitution of a debtor, in the place of the original one, may be made without the knowledge of the latter, but not without the consent of the creditor."

So far as Exhibit 4 is concerned, it cannot be presumed that the plaintiff considered the liability of Carlos alone as better than the liability of all three of the brothers, since Carlos promised, at his request, to secure the signatures of his brothers to this document. Nor can it be presumed, in the absence of evidence, that there was any

consideration present to induce Carlos to assume what was theretofore strictly a liability of his brothers. So that to construe Exhibit 4 to the effect that by its terms Carlos was substituted as the sole debtor of the plaintiff would mean that the latter accepted less security for his loans than he originally had, and that the former assumed liabilities which he was under no obligation to assume and for which there was no valid consideration. At the time this instrument was executed, then, it was not the intention of either of the signers to release these defendants as debtors of the plaintiff. As to the subsequent silence of both parties to this agreement, we do not consider that it was, at least so far as the plaintiff was concerned, of any significance. He signed Exhibit 4 at the time Carlos Cavives signed it on the condition that the latter would secure the signatures of his two brothers to it, thereby creating a joint obligation against the three. Carlos Cavives never secured the signatures of his brothers. The contract in question contained mutual obligations which were to be fulfilled by each of the signers, i. e., on the part of Carlos to secure the signatures of his brothers to the instrument, and then on the part of the plaintiff to recognize it as a joint obligation of the three brothers covering their indebtedness to him.

The last paragraph of article 1100 of the Civil Code reads as follows: "In mutual obligations, none of the persons bound shall incur default if the other does not fulfill or does not submit to properly fulfill what is incumbent upon him. From the time one of the persons obligated fulfills his obligation, the default begins for the other party."

Until Carlos obtained the signatures of his brothers to this instrument we cannot say that the plaintiff was in any way bound to acknowledge it as anything more than an executory contract containing a condition precedent which was to be performed by Carlos Cavives before his (the plaintiff's) obligation was due. Mere continued silence on his part could signify nothing until the signatures of the two brothers had been secured. As further indication that this contract (Exhibit 4) was not considered as discharging the original obligation of the defendants in this case, it may be noted that the plaintiff has never surrendered, nor was he ever called upon to surrender so far as this record shows, the original promissory notes executed by these defendants. They are still in his possession. Up to the time of the compromise settlement between the plaintiff and the widow of Carlos, at least, there is not a scintilla of evidence to show that either party to the contract of 1898 considered it as a discharge of the original debtors, Severino and Matias Cavives. The compromise settlement with the widow of Carlos, Exhibit 5, is relied upon to show novation. In this document, plaintiff makes the statement, in effect, that the whole sum of the liquidated obligation of the brothers set forth in Exhibit 4 was a liability against the estate of Carlos. It is urged that this shows the plaintiff's intention to novate the debt by substituting Carlos as his sole debtor in lieu of the defendants. There is one fact which points strongly against this conclusion. That is, that the present action against these defendants was instituted some months previous to the date of the compromise settlement and has been prosecuted by the plaintiff with due diligence ever since its institution. But admitting, for the moment, that by this compromise settlement he was desirous of so substituting Carlos as his sole debtor in lieu of the defendants, it does not by any means follow that he could do so without the consent of Carlos. The consent of the new debtor is as essential to the novation as is that of the creditor. As we have seen, there is nothing to show that Carlos ever consented to such an arrangement. Indeed, the evidence is all the other way. A mere recital that he had so consented to accept full liability for the debts of his brothers, especially after his death, would not be sufficient to establish the fact. But we cannot believe that this statement was intended to have any such meaning by the plaintiff in view of the fact that at the time it was made he was actively prosecuting a suit against the brothers who were originally liable as his debtors, and the further fact that the total amount due him, including interest, was greatly in excess of the sum due him in 1898,

Furthermore, the position taken by these defendants in their amended answer is diametrically opposed to the defense of novation. In that amended answer they say: "That these defendants have never refused to pay the proportion of the total amount borrowed which they justly owe, that is, one-third of it, to Don Francisco Martinez, or his executor or administrator, or to all of his heirs, but they do refuse to pay to one of the heirs what belongs to

all of them."

Article 1204 of the Civil Code reads: "In order that an obligation may be extinguished by another which substituted it, it is necessary that it should be so expressly declared, or that the old and new be incompatible in all points."

In its decision of December 31, 1904, the supreme court of Spain said: "Novation of contracts cannot be presumed in any case unless it is a necessary result of the express will of the parties, or that the old and the new obligations are incompatible in all points."

To the same effect is its decision of January 25, 1899. In its decision of March 14, 1908, that high court said (quoting from the syllabus): "It is not proper to consider an obligation novated by unimportant modification's which do not alter its essence and when it is not extinguished-by another which takes its place or substitutes the person of the debtor." To the same effect are the decisions of April 15, 1909, and July 8, 1910.

In *Latiolais, admrx. vs. Citizens' Bank of Louisiana* (33 La. Ann., 1444)-, one Duclozel mortgaged property to the defendant bank for the triple purpose of obtaining shares in the capital stock of the batik, bonds which the bank was authorized to issue, and loans to him as a stockholder. Duclozel subsequently sold this mortgaged property to one Sproule, who, as one of the terms of the sale, assumed the liabilities of his vendor to the bank. Sproule sold part of the property to Graff and Chalfant. The debt becoming due, the bank brought suit against the last two named persons and Sproule as owners. Duclozel was not made a party. The bank discontinued these proceedings and subsequently brought suit against Latiokiis, administratrix of Duclozel, who had died.

The court said: "But the plaintiff insists that in its petition in the proceeding first brought the bank ratified the sale made by Duclozel to Sproule, and by the latter to other parties, in treating them as owners. Be that so, but it does not follow in the absence of either a formal and express or of an implied consent to novate, which should be irresistibly inferred from surrounding circumstances, that it has discharged Duclozel unconditionally, and has accepted those parties as new delegated debtors in his place. *Nemo presumitur donare*.

"Novation is a contract, the object of which is: either to extinguish an existing obligation and to substitute a new one in its place; or to discharge an old debtor and substitute a new one to him; or to substitute a new creditor to an old creditor with regard to whom the debtor is discharged.

"It is never presumed. The intention must clearly result from the terms of the agreement or by a full discharge of the original debt. Novation by the substitution of a new debtor can take place without the consent of the debtor, but the delegation does not operate a novation, unless the creditor has expressly declared that he intends to discharge with delegating debtor, and the delegating debtor was not in open failure or insolvency at the time. The mere indication by a debtor of a person who is to pay in his place does not operate a novation. *Delegatus debitor est odiosus in lege*.

"The most that could be inferred would be that the bank in the exercise of a sound discretion, proposed to better its condition by accepting an additional debtor to be and remain bound with the original one."

In *Fidelity L. & T. Co. vs.* (99 Va., 168), the court said: "Whether or not a debt; has been novated is a question of fact and depends entirely upon the intention of the parties to the particular transaction claimed to be novated. In the absence of satisfactory proof to the contrary, the presumption is that the debt has not been extinguished by taking the new evidence of indebtedness; such new evidence, in the absence of an intention expressed or implied, being treated as a conditional payment merely."

In *Hamlin vs. Drummond* (91 Me., 175; 39 A., 551), it was said that novation is never presumed but must always be proven. In *Netterstorm vs. Gallistel* (110 111. App., 352), it was said that the burden of establishing a novation

is on the party who asserts its existence; that novation is not easily presumed; and that it must clearly appear before the court will recognize it.

There is no express stipulation in any of the documents of record that the obligation of the defendants was novated, and the parol evidence tending to show that it was novated is not sufficient in law to establish that fact.

During the progress of this case, Robert Lineau, administrator of the estate of Francisco Martinez, father of the plaintiff, intervened claiming that the obligations of the defendants were justly due to the estate of the said Francisco Martinez. The notes themselves (Exhibit G) make no mention whatever of Francisco Martinez, nor is there any evidence upon which the relation of principal and agent between Francisco Martinez and Pedro Martinez could be predicated. The notes must therefore be declared the sole property of the plaintiff, and the intervener's claim must be denied.

For the foregoing reasons, it is hereby ordered that the defendants Severino Cavives and Matias Cavives, comply with their obligations as set forth in Exhibit G, by the payment of the principal and interest thereon at the rate of ten per cent per annum as called for in the said notes, from the date of their execution up to the full satisfaction of the judgment in this case. It is understood that as to the first note signed by the three brothers, these defendants are each liable for one-third of its principal and accumulated interest; that Matias Cavives is alone liable for the notes executed by him of April 30th, May 30th, and June 7th, 1896, whose amounts are \$300, \$200, and \$200, respectively; and that Severino Cavives is alone liable for the note of June 9, 1896, signed by him, amounting to \$600.

The judgment appealed from is reversed and in accordance with sections 3, 4, and 5 of Act No. 1045, and the decision of this court in *Urbano vs. Ramirez* (15 Phil. Rep., 371), the record will be returned to the court below and a new trial will be had for the sole purpose of ascertaining, after due hearing, the present actual value of Mexican money as compared with Philippine currency, in order to reduce the debt to Philippine currency. Final judgment will then be entered against the defendants in accordance with this decision. Without costs.

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

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