

(JOESTEEL CONTAINER CORPORATION VS. COMMONWEALTH FINANCING CORPORATION).

G.R. No. L-25778. September 30, 1982

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PER CURIAM:

The Commonwealth Financing Corporation filed an action against the Joesteel Container Corporation before the City Court of Manila for the recovery of a certain amount of money, as deficiency on the proceeds of an extrajudicial foreclosure of mortgage executed by the defendant in favor of the plaintiff. The summons, which ordered the defendant to answer the complaint and enter into trial on August 12, 1965, and a copy of the complaint were served upon the defendant through its General Manager on July 13, 1965. On the date set for the hearing of the case, or on August 12, 1965, counsel for the defendant appeared before the court and asked for an extension of time to answer the complaint, but the motion was denied. Then, on motion of the plaintiff, the defendant was declared in default and the Deputy Clerk of Court was commissioned to receive the evidence. The plaintiff claimed that the defendant had 20 days from service of summons on July 13, 1965, within which to file an answer to the complaint and the period expired on August 2, 1965. On August 13, 1965, the defendant filed a motion to lift the order of default, but his motion was denied. On August 21, 1965, a judgment by default was rendered against the defendant. The defendant appealed, but the Court of First Instance of Manila denied the petition for relief.

Considering that the defendant had up to the date set for trial of the case within which to file an answer to the complaint or on August 12, 1965, (*Zenith Films, Inc. vs. Herrera*, G.R. No. L-26619, March 27, 1971, 38 SCRA 120), on which day the defendant filed a motion for extension of time within which to file an answer, so that the City Court gravely abused its discretion in declaring the defendant in default, the Court **RESOLVED** to **SET ASIDE** the order of default and the judgment rendered by the City Court of Manila in Civil Case No. 137730, entitled: "Commonweal Financing Corporation, plaintiff, versus Joesteel Container Corporation, defendant," and to **REMAND** this case to the court of origin for further proceedings.

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