

**BANK OF THE PHILIPPINE ISLANDS, PLAINTIFF-APPELLEE, VS.
NORTHEAST EQUIPMENT CORPORATION, FELIPE D. YU, JAIME Y.
NGO, CORAZON C. NGO & FLORANTE M. CANDELARIA,
DEFENDANTS, NORTHEA...**

CV No. 79450, July 27, 2010

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Court of Appeals

The instant case was re-raffled on April 19, 2010 to the undersigned Ponente pursuant to the Zero Backlog Project of this Court.[1]

THE CASE

Before Us is an appeal from the Decision[2] dated June 9,2003 of the Regional Trial Court, Branch 60, Makati City in Civil Case No. 01-1137 finding herein defendant-appellant Northeast Equipment Corporation liable to pay plaintiff-appellee Bank of the Philippine Islands the amount of P50,218,286.41. Defendants-appellants spouses Jaime and Corazon Ngo, on the other hand, were found jointly and severally liable as sureties, but only up to P27,000,000.00. The dispositive portion³ of the assailed Decision:

Wherefore, in review of the foregoing, judgment is rendered in plaintiff's favor holding the defendant Northeast Equipment Corp. and Sps. Jaime Y. Ngo and Corazon C. Ngo jointly and severally liable to pay the obligation stated in the Complainant which amounts to P50,218,286.41 with legal interest to be charged at a rate of 12% per annum from the date this Decision was rendered.

With respect to the Sps. Jaime and Corazon Ngo, however, because of the limitations provided in the Comprehensive Surety Agreement they executed, they are to be held jointly and severally liable to pay plaintiff only up to the maximum amount of P27,000,000.00 plus legal interest to run from the date of this Decision until the total amount is fully paid with attorney's fees and litigation expenses equivalent to 10% of the total amount due and cost of the suit to be shouldered by all the answering defendants.

SO ORDERED.[3]

THE FACTS

Appellee Bank of the Philippine Islands, a domestic banking corporation, is the successor-in-interest of Far East Bank and Trust Company (Far East Bank, for brevity), having absorbed the latter sometime in January 2000. Appellant Northeast Equipment Corporation, on the other hand, is a domestic corporation with appellants spouses Jaime and Corazon Ngo, along with defendants Felipe Yu and Florante Candelaria, as its officers.

On July 17, 2011, appellee bank filed a complaint for sum of money against appellants seeking the award of P50,218,286.41 plus interest as actual damages; P100,000.00 as litigation and other incidental expenses; and an amount equivalent to 25% of the total amount due as attorney's fees.

In its complaint, appellee bank alleged that its predecessor Far East Bank extended a Fifteen Million Peso

(P15,000,000.00)-discounting line in favor of appellant corporation, as evidenced by an Agreement for Discounting Line[5] dated September 25, 1997. A previously executed Comprehensive Surety Agreement[6] dated August 7, 1996 served as security therefor where appellants spouses Ngo, along with defendants Yu and Candelaria, jointly and severally bound themselves, together with appellant corporation, to pay the current and future obligations to Far East Bank up to the amount of Thirty Million Pesos (P30,000,000.00).

In six separate instances spanning from 1998 to 1999, appellant corporation borrowed the total amount of Twenty Eight Million Three Hundred Twenty Five Thousand Thirty Six Pesos and 1/100 centavos (P28,325,036.01) through the discounting line. The transactions were evidenced by promissory notes, as follows: PN No. BDC No. 2319/97[7] dated April 11, 1997 for P1,217,830.01; PN No. BDC No. 2507/97[8] dated September 18, 1997 for P750,000.00; PN No. BDC No. 2530/97[9] dated October 13, 1997 for P2,000,000.00; PN No. BDC No. 2652/98[10] dated February 18, 1998 for P2,500,000.00; PN No. BDC No. 2653/98[11] dated February 18, 1998 for P2,000,000.00; and PN No. TL No. 2-209-000012[12] dated December 2, 1998 for P19,857,206.00.

Appellant corporation, however, failed to pay the promissory notes upon their maturity. Appellee bank then sent demand letters to appellant corporation, and thereafter to appellants Spouses Ngo and defendants Yu and Candelaria as sureties, to pay the indebtedness plus interest and penalty charges, amounting to P46,035,179.1313, but the indebtedness remained unpaid. Hence, the instant complaint for sum of money.

Summons were served upon defendant Yu[14], but he was later dropped as a party-defendant after he entered into a compromise agreement with appellee bank. Per the agreement, appellee bank renounced and waived its cause of action against defendant Yu in consideration of Three Million Pesos (P3,000,000.00).[15] This was consented to by appellants spouses Ngo[16] and later approved by the court a quo in an Order[17] dated May 27, 2003.

The court a quo did not acquire jurisdiction over the person of defendant Candelaria. The summons sent to his address were returned unserved as he cannot be found thereat.[18]

Anent appellant corporation, its summons was also returned unserved since it was no longer doing business in its last known address in Makati.[19] Upon motion[20] of appellee bank, alias summons were served upon appellant corporation through Atty. Bartolome Yu[21] who manifested that he was not in-house counsel of appellant corporation. A second alias summons was served on the address of its president appellant Jaime Ngo, but the same was instead received by a certain Rodulfo Ngo[22], which was considered by appellee bank as substituted service. Later, after appellant corporation failed to file any responsive pleading during the period allowed by law, it was declared in default upon motion of appellee bank. The Order[23] dated May 21, 2002 declaring appellant corporation in default reads:

ORDER

This resolves the Motion to Declare Defendant Northeast Equipment Corporation in Default filed on 24 April 2002.

* * *

Under Section 11, Rule 14 of the 1997 Rules of Civil Procedure when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary or in-house counsel.

From the court's records, defendant corporation was served the second alias summons through the corporation's president Jaime Ngo through substituted service on 16 April 2001 (p. 164, records). Defendant corporation not having filed any pleading since then questioning the court's jurisdiction over it because of improper service and the defendant Jaime Ngo having filed a separate Answer on 18 April 2002, the court rules that there has been

proper service of summons upon the defendant corporation based on the aforementioned provision of law, and its failure to file its responsive pleading renders it vulnerable to being declared in this proceedings.

Wherefore, in view of the foregoing, the plaintiff's Motion is herein GRANTED and the defendant corporation is declared in default in this proceedings.

SO ORDERED.[24]

For their part, after being served with summons, appellants Spouses Ngo moved for the dismissal of the complaint for lack of cause of action. They alleged that they signed in blank the Agreement for Discounting Line. Apparently, appellee bank filled up the blank portions of the agreement with entries that the parties did not agree upon. Appellants spouses Ngo likewise did not personally appear before a notary public to have it notarized. Furthermore, the Agreement for Discounting Line was only for the amount of Fifteen Million Pesos (P15,000,000.00). It was thus impossible for appellant corporation to incur the alleged P28,325,036.01 availment therefrom. Appellants spouses Ngo similarly assail the genuineness of the subject promissory notes, on the ground that they signed them in blank and that no actual consideration was released on the basis thereof. Appellants spouses Ngo sought, by way of counterclaim, the award of P2,000,000.00 as exemplary damages; P100,000.00 as attorney's fees plus P10,000.00 per court' appearance fees; and P200,000.00 as litigation expenses.

In an order[25] dated April 19, 2002, the court a quo set the case for pre-trial on May 28, 2002 and ordered the parties to file their respective briefs before May 15, 2002. Appellants spouses Ngo, however, failed to file a pre-trial brief within the given period. Instead, ten (10) days thereafter, or on May 25, 2002, appellants spouses Ngo filed a motion to reset the pre-trial hearing.[26] This was granted by the court a quo in an Order[27] dated May 28, 2002 in the interest of substantial justice with the reminder that appellants spouses Ngo have yet to file their pre-trial brief.

During the re-schedule pre-trial on July 9, 2002, appellants spouses Ngo were once more absent. The court a quo noted that they still failed to file a pre-trial brief despite the court a quo's directive to do so. Thus, appellee bank was allowed to present its evidence ex parte.[28]

The following day, or on July 10, 2002, appellants spouses Ngo filed Motion for Leave of Court for Extension of Time to File Pre-Trial Brief[29], but this was denied by the court a quo in an Order[30] dated August 5, 2002.

On August 22, 2002, appellants spouses Ngo filed a Motion to Lift Order of Default alleging that their counsel had orally moved for the extension to file a pre-trial brief during the hearing on May 21, 2002. Their counsel was likewise ready to attend the pre-trial hearing on July 9, 2002, but he was prevented from doing so because the day before, July 8, 2002, Metro Manila allegedly experienced flooding that resulted in the suspension of all government offices, including the court a quo.

In an Order[31] dated September 23, 2002, the court a quo denied appellants spouses Ngo's motion ratiocinating that it did not declare appellants spouses Ngo in default but merely allowed appellee bank to present evidence ex parte. It then set the case for the cross-examination of the witnesses presented by appellee bank.

During the hearing on October 15, 2002, rather than cross-examining the witnesses of appellee bank, appellants spouses Ngo filed an Omnibus Motion[32] praying that the pre-trial brief attached thereto be admitted; that appellee bank's ex parte presentation of evidence be set aside; and the pre-trial conference be set anew. Appellants spouses Ngo set the hearing of their motion on that same day of October 15, 2002. This, however, was denied by the court a quo for being pro forma as it did not comply with the mandatory notice requirement set forth under Sections 4 and 5, Rule 15 of the Rules of Court.[33] Thereafter, appellee bank finished presenting its witness and rested its case. The case when then deemed submitted for decision.

In the assailed Decision[34] dated June 9, 2003, the court found appellant corporation liable to pay appellee bank Twenty Eight Million Three Hundred Twenty Five Thousand Thirty Six Pesos and 1/100 centavo (P28,325,036.01) exclusive of interest. The promissory notes clearly show that appellant corporation borrowed the said amount from appellee bank. Appellants spouses Ngo, on the other hand, clearly bound themselves, together with defendants Yu and Candelaria, as sureties to answer for appellant corporation's past and future obligations to the extent of Thirty Million Pesos (P30,000,000.00). As such, they are solidarity liable with appellant corporation only up to Twenty Seven Million Pesos (P27,000,000.00), which amount is less the Three Million Pesos (P3,000,000.00) their co-surety defendant Yu had already paid appellee bank. The pertinent portions of the Decision are quoted:

*** it has been established that defendant Northeast Equipment corporation had obtained a discounting line facility from FEBTC in the amount of Fifteen Million Pesos (P15,000,000.00) as evidenced by the Agreement for Discounting line executed by defendant Jaime Ngo and Felipe Yu for and in behalf of defendant corporation ***, which discounting line would be drawn from by defendant corporation upon the execution of promissory notes, as so provided in Section 8 of the said Agreement.

Defendant corporation availed of the discounting line as indicated from the promissory notes *** which were executed by defendants Jaime Ngo and Felipe Yu. To secure payment of these obligations when these fell due, a Comprehensive Surety Agreement for the amount of Thirty Million Pesos was executed by defendants Felipe D. Yu, Jaime Y. Ngo, Corazon C. Ngo and Florante M. Candelaria on August 7, 1996, in which instrument the defendants jointly recognized that the agreement "is a continuing guaranty and shall remain in full effect until full and due payment and performance of all the obligations of the borrower ***

When the maturity dates on the promissory notes issued arrived without the obligations being paid, the plaintiff *** was well within its rights to demand payment of the defendants obligations as indicated from the PNs and to charge interest and penalties on the unpaid amounts which interest charges are sanctioned also under Section 8 of the parties Agreement.

When the defendant corporation failed and thereafter refused to pay the obligations incurred despite demands, plaintiff chose to call on the individual sureties undertaking under the Comprehensive Surety Agreement they previously executed to compel payment of the said obligations.

In reference to this ***, Section 8(2) of the Agreement for Discounting Line expressly states that the said line shall be secured "against a Comprehensive Surety Agreement to be executed by spouses Felipe D. Yu and Pierre Angeline O. Yu, Spouses Jaime Y. and Corazon C. Ngo and Florante M. Candelaria in their personal capacities ***[']

With respect to the interest, penalties and attorney's fees charged[,] suffice it to state that the Agreement *** expressly authorizes the charging of interest of prevailing market rates and the award of attorney's fees and liquidated damages in an amount equivalent to 25% of the amount due.

However, *** the Comprehensive Surety Agreement only fixes a limit of Thirty Million Pesos, as the maximum amount the individual defendants may be held liable for under their surety undertaking and because plaintiff has already been paid Three Million Pesos (P3,000,000.00) as a consequence of the Compromise Agreement reached with defendant Felipe Yu, the amount due from the answering defendant spouses Ngo is Twenty Seven Million Pesos.

As for the attorney's fees charged, considering that this case did not go into exhaustive litigation and was decided on the basis of plaintiff's ex-parte presentation of evidence, attorney's fees and litigation expenses

equivalent to 10% of the amount due as herein provided for shall be just and reasonable under the circumstances.[35]

Hence, this appeal in which appellant corporation raised the following ASSIGNMENT OF ERRORS[36], to wit:

I

THE COURT A QUO ERRED IN DECLARING APPELLANT CORPORATION IN DEFAULT; AND

II

THE COURT A QUO ERRED IN ENTERING A JUDGMENT BY DEFAULT AGAINST APPELLANT CORPORATION.

Appellants spouses Ngo also filed an appeal and raised the following Assignment of Errors[37], to wit:

I

THE COURT A QUO ERRED IN DENYING THE MOTION FOR RECONSIDERATION DATED NOVEMBER 4, 2002;

II

THE COURT A QUO IN STRICTLY APPLYING THE RULES OF PROCEDURE AGAINST APPELLANTS SPOUSES NGO; AND

III

THE COURT A QUO ERRED WHEN IT DENIED APPELLANTS SPOUSES NGO THEIR DAY IN COURT.

THE ISSUE

The focal issues in the instant case are whether or not the court a quo acquired jurisdiction over appellant corporation; and whether or not appellants spouses Ngo were deprived of due process when the court a quo allowed appellee bank to present evidence ex parte after the former's failure to file a pre-trial brief.

THE RULING

We find the merit in the appeal filed by appellant corporation.

Appellant corporation contends that the court a quo never acquired jurisdiction over its person. An examination of the Return of Service of Summons[38] dated April 5, 2002 shows that the second alias summons was received by a certain Rodulfo Ngo and not by its president appellant Jaime Ngo. As such, there is no valid service upon it.

We agree.

The court a quo erred in taking jurisdiction over the person of appellant corporation despite the fact that the latter was not validly served with summons. At the onset, it must be stated that the issue of jurisdiction may be raised at any stage of the proceedings or even on appeal.[39] Additionally, one of the modes of acquiring jurisdiction over the person of a defendant is through proper service of summons.[40] The validity of service of summons is a vital and indispensable ingredient of due process.[41]

The applicable rule here is Section 11, Rule 14 of the Rules of Court which sets out an exclusive enumeration of the officers who can receive summons on behalf of a corporation, namely: the president, managing partner, general partner, corporate secretary, treasurer or in-house counsel.[42] In *Spouses Santiago and Spouses Lim vs.*

Bank of the Philippine Islands[43], the Supreme Court categorically stated that service of summons must be made upon an officer named in the statute, otherwise, the Service is insufficient. The rationale behind this is to render it reasonably certain that the corporation will receive prompt and proper notice in an action against it or to insure that the summons will be served on a represented so integrated with the corporation that such person will know what to do with the legal papers served on him.[44]

In this case, the Return of Service of Summons[45] dated April 5, 2002 clearly stated that the second alias summons was received by a certain Rodulfo Ngo. This is clearly invalid as he was not even an Officer of appellant corporation, much less an officer included in the enumeration under Section 11, Rule 14 of the Rules of Court. The full text of the return reads:

RETURN OF SERVICE OF SUMMONS

This is [TO CERTIFY] that on April 3, 2002 the undersigned Process Server caused the service of 2nd Alias Summons together with a copy of the complaint to defendants Northeast Equipment Corp thru Jaime Ngo as President, Jaime Ngo, Corazon Ngo at Uniply (Cebu) Inc., Don V. Sotto [St.], Cebu City thru Rodulfo (Rudy) Ngo, Manager of Uniply (Cebu), a person employed thereat of sufficient age and discretion to receive such court process, but refused to [sign] on the acknowledgment receipt thereof.

That efforts to serve the said 2nd Alias Summons personally upon defendants Northeast Equipment Corp. thru Jaime Ngo as President, Jaime Ngo, and Corazon Ngo were made on April 3, 2002 but the same were ineffectual and [unavailing] for the reason that the defendants were out of town *** when the undersigned came to the defendants office.

That substituted service was made in accordance with the section 7, rule 14 of the revised rules of Court.[46]
[Emphasis supplied]

There being no valid service of summons on appellant corporation, the court a quo clearly did not acquire jurisdiction over its person. As such, the portion of the assailed Decision insofar as appellant corporation is concerned must be set aside.

Be that as it may, appellee bank can still proceed solely against appellants spouses Ngo as sureties. By the very nature of a suretyship agreement, a surety is directly and equally bound with the principal, with whom the former is solidarily liable.[47] Article 1216 of the New Civil Code[48] allows a creditor to proceed singly against a surety, without prejudice to any the latter may file against the principal debtor or the other sureties.

Appellants spouses Ngo contend that they were deprived of due process when they were prevented by the court a quo from presenting their case. Their Omnibus Motion dated October 15, 2002 praying that their brief pre-trial brief be admitted was denied due to a mere technicality, that is, that it failed to comply with the three-day notice requirement in Section 4 and 5, Rule 15 of the Rules of Court.

We do not agree. Consequently, this Court denies the appeal of appellants spouses Ngo.

The court a quo correctly allowed appellee bank to present evidence ex parte after appellants spouses Ngo not only failed to file a pre-trial brief but likewise failed to attend the pre-trial hearing as well. This is sanctioned under Section 6, Rule 18 of the Rules of Court which provides that parties shall file with the court and serve upon the adverse party their respective pre-trial briefs. The defendant's failure to do so shall be cause to allow the plaintiff to present his evidence ex parte and for the court to render judgment on the basis thereof.[49]

In the case at bench, the records show that as early as April 2002, appellants spouses Ngo were ordered by the court a quo to file their brief on or before May 15, 2002. Without, however, filing any pre-trial brief within the period given by the court a quo, appellants spouses Ngo instead filed a motion to reset the pre-trial hearing three

(3) days before its schedule, or on May 24, 2002. In the interest of justice, the court a quo granted the motion to postpone and reminded appellants Ngo that they have yet to file their pre-trial brief. During the pre-trial hearing on July 9, 2002, appellants spouses Ngo still failed to file a pre-trial brief. To make matters worse, they were even absent on that day. This prompted the court a quo allow appellee bank to present its evidence ex parte, as mandated by Section 6, Rule 18 of the Rules of Court.

Appellants spouses Ngo cannot thus cry that they were denied of their right to due process. They were afforded all the opportunities to file a pre-trial brief by the court a quo but they inexplicably failed to do so.

Even appellants spouses Ngo's attempt to lift the order allowing appellee bank to present evidence ex parte proved lackluster and reflected their wanton disregard for the most basic rules of procedure.

In *Jonathan Landoil International Co., Inc. vs. Spouses Mangudadatu*,^[50] the Supreme Court ruled that the remedy of the defendant who failed to file a pre-trial brief is to file a motion for reconsideration and show that his failure to do so was due to fraud, accident, mistake or excusable neglect. This, however, appellants spouses Ngo failed to do. It was only after the period to file a motion for reconsideration had lapsed that appellants spouses Ngo filed a motion to lift order of default. This was correctly denied by the court a quo considering that it did not declare appellants spouses Ngo in default, but it merely allowed appellee bank to present evidence ex parte as a consequence of their failure to file a pre-trial, pursuant to Section 5 and 6, Rule 18 of the Rules of Court. The court a quo, in fact, allowed appellants spouses Ngo to cross-examine the witnesses presented by appellee bank and even set the hearing therefor:

Rather than taking advantage of the opportunity to cross-examine the witnesses presented by appellee bank, appellants spouses Ngo filed an Omnibus Motion, attaching for the first time thereto their pre-trial brief. Unfortunately for them, their motion was denied by the court a quo as it was set for hearing on the same day it was filed, which was on October 15, 2002. This violated Section 4, Rule 15 of the Revised Rules of Court which mandates that motions must be served at least three (3) days before the hearing.

The afore-cited acts of appellants spouses Ngo show their and their counsel's negligence. Prior to the resolution of the instant case, they had ample opportunities to present their side and to participate in the trial. They cannot now allege that they were deprived of due process, nor can they ask for the relaxation of the rules of procedure in the interest of substantial justice. Suffice it to state that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel the courts to suspend procedural rules.^[51] Procedural rules are required to be followed except only for the most persuasive of reasons^[52], which is not the case here.

Finally, it may be well to state that the court a quo did not err in finding appellants spouses Ngo liable as sureties to appellee bank for the total amount of Twenty Seven Million Pesos (P27,000,000.00).

The court a quo correctly found that appellant corporation is indebted to appellee bank up to the amount of P28,325,036.01 exclusive of interest. This was sufficiently evidenced by the six (6) notarized promissory notes, all of which were signed by appellant Jaime Ngo himself. It is an elementary rule of evidence that a duly notarized document is considered as a public document that enjoys not only full and credence attached to a public instrument, but also the prime facie presumption of genuineness and due execution. In fact, the Supreme Court, in the case of *Llemos, et al. vs. Llemos, et al.*,^[53] ruled that a notarized document is executed to lend truth to the statements contained therein and to the authenticity of the signatures. In order to overcome the presumption, there must be evidence that is clear, convincing and more than merely preponderant. Absent such evidence, the presumption must be upheld.^[54]

Moreover, appellants spouses Ngo did not even deny the genuineness of appellant Jaime Ngo's, signatures on the

promissory notes, alleging instead that he signed them in blank, which blanks were unilaterally filled up by appellee bank with entries not agree upon by the parties. It must be noted that appellant Jaime Ngo, a businessman who is the president of appellant corporation, is presumed to take ordinary care of his concerns.[55] As such, We find the allegation that he would sign a promissory note even in blank as incredible.

The court a quo likewise correctly found that appellants spouses Ngo bound themselves jointly and severally liable with appellants corporation as sureties to guarantee appellant corporation's past and future indebtedness with appellee bank. Like the subject promissory notes, the Comprehensive Surety Agreement[56] dated August 7, 1996 signed by appellants spouses Ngo, along with defendants Felipe Yu and Florante Candelaria, was also notarized. Again, appellants spouses Ngo both did not deny the genuineness of their respective signatures thereon.

That the Agreement for Discounting Line dated September 25, 1997 is limited only to Fifteen Million Pesos (P15,000,000.00) while appellant corporation was able to borrow P28,325,036.01 from appellee bank's predecessor FEBTC is of no moment. This is because the Comprehensive Surety Agreement dated August 7, 1996 is a continuing surety which is not limited to guaranteeing payment of indebtedness under the discounting line, but also contemplates all past and future dealings. It has the purpose of doing away with the need of executing a separate surety contract for each and every accommodation extended to appellant corporation by appellee bank.

The court a quo was also correct in limiting appellants spouses Ngo's liability to P27,000,000.00 notwithstanding the fact that appellant corporation's indebtedness had ballooned to P50,218,286.41 as of the time of the instant complaint. The obligation of a surety cannot be extended by implication beyond its specified limits.[57] Here, the Comprehensive Surety Agreement dated August 7, 1996 expressly limited the sureties' liability to P30,000,000.00. From this amount, the P3,000,000.00 paid by appellants spouses Ngo's co-surety must be credited.

This Court likewise affirm the court a quo's award of 10% of the total amount due as attorney's fees and litigation expenses. Notwithstanding the agreement of the parties, the stipulated 25% of the total amount due as attorney's fees and litigation expenses is exorbitant and unconscionable, considering that the instant case is a simple action for collection of sum of money and that appellee bank was allowed to present evidence ex parte. As such, the court a quo correctly tempered the same. The attorney's fees provided in the penal clauses of a contract is in the nature of liquidated damages and is binding upon the parties so long as such stipulation does not contravene any law, morals or public order.[58] Nonetheless, the courts are empowered to reduce the amount of attorney's fees if the same is iniquitous or unconscionable, pursuant to Articles 1229 and 2227 of the New Civil Code.

WHEREFORE, the appeal filed by appellant Northeast Equipment Corporation is hereby GRANTED. The Decision[59] dated June 9, 2003 of the Regional Trial Court, Branch 60, Makati City insofar as it is concerned is set aside. In lieu thereof, a new judgment is entered dismissing the Complaint for Sum of Money against appellant Northeast Equipment Corporation for lack of jurisdiction over its person .

On the other hand, the appeal filed by appellants spouses Jaime and Corazon Ngo is hereby denied. The assailed Decision[60] dated June 9, 2003 of the Regional Trial Court, Branch 60, Makati City is affirmed insofar as appellants spouses Jaime and Corazon Ngo are concerned.

SO ORDERED.

Carandang and Barrios, JJ., concur.

[1] Per Memo dated April 12, 2010 of Presiding Justice Andres B. Reyes, Jr. of the Court of Appeals.

[2] Rollo, pp. 53-62.

[3] The dispositive portion of the assailed Decision dated June 9, 2003 was amended by the court a quo in an Order dated July 4, 2003 upon motion of appellee bank, Rollo, pp. 63-64.

[4] Rollo, p. 64.

[5] Exhibit B, Records, p. 26-27.

[6] Exhibit I, Records, p. 34.

[7] Exhibit C, Records, p. 28.

[8] Exhibit F, Records, p. 31.

[9] Exhibit G, Records, p. 32.

[10] Exhibit D, Records, p. 29.

[11] Exhibit E, Records, p. 30.

[12] Exhibit H, Records, p. 33.

[13] See demand letter dated August 24, 1998 Exhibit J, Records, p. 35; five (5) demand letters' all dated September 10, 1999, Exhibits K to Records, pp. 36-40.

[14] See Return of Service of Summons dated September 7, 2001, Records, p. 63.

[15] Records, pp. 380-382.

[16] See Waiver of Benefit dated May 12, 2003, Records, p 383.

[17] Records, pp 384-386.

[18] Server's Return dated September 3, 2001, Records, p 58.

[19] Officer's Return dated August 2, 2001, Records, p 47.

[20] Records, pp 54-55.

[21] Return of Service of Alias Summons dated November 8, 2001, Records, p 101.

[22] Return of Service of Summons dated April 5, 2002, Records, p 135.

[23] Rollo, pp 173-174.

[24] Ibid.

[25] Records, p. 151.

[26] Records, pp. 176-177.

[27] Records, p. 190.

[28] See Order dated July 9, 2002, Records, pp. 202-203.

[29] Records, pp. 207-208.

[30] Records, pp. 294-295.

[31] Records, pp. 339-340.

[32] Records, pp. 346-349,

[33] See order dated October 15, 2002, Records pp 353-354.

[34] Supra, see note 2.

[35] Rollo, pp 59-62.

[36] Rollo, p 68

[37] Rollo, p 29.

[38] Records, p. 135.

[39] Figueroa vs. People of the Philippines, G.R. No. 147406, July 14, 2008.

[40] Spouses Santiago and Spouses Lim vs. Bank of the Philippine Islands, G.R. No. 163749, September 26, 2008.

[41] Ibid.

[42] Section 11, Rule 14 of the Rules of Court provides: Service upon domestic private juridical entity. — When the defendant is a corporation, partnership or association organized under the law of the Philippines with a juridical personality, service may be made on the president, managing partner, general manager, corporate secretary, treasurer or in-house counsel.

[43] G.R. No. 163749, September 26, 2008

[44] Ibid.

[45] Records, p. 135.

[46] Ibid.

[47] see Crystal, et al., vs. Bank of the Philippine Islands, G.R. No. 172428, November 28, 2008.

[48] Article 1216 of the New Civil Code provides: The creditor may proceed against any of the solidary debtors or some or all of them simultaneously. The demand made against one of them shall not be an obstacle to those which may subsequently be directed against the others, so long as the debt has not been fully collected.

[49] Section 6, Rule 18 of the Rules of Court reads: Pre-trial brief—The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs ***.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial

[50] G.R. No. 155010, August 16, 2004.

[51] Lazaro, et al., vs. Court of Appeals and Spouses Alesna, G.R. No. 137761, April 6, 2000.

[52] See Tanenglian vs. Lorenzo, et al., G.R. No. 173415, March 28, 2008 citing Sabastian vs. Morales, 445 Phil. 595, 604 (2003).

[53] G.R. No. 150162, January 26, 2007.

[54] See also Cavile, et al., vs. Heirs of Clarita Cavile, et al., G.R. No. 148635, April 1, 2003

[55] Section 3, Rule 131 of the Rules of Court; See also *Samsung Construction Company Philippines, Inc. vs. Far East Bank and Trust Company and Court of Appeals*, G.R. No. 129015 August 13, 2004.

[56] Exhibit I, Records, p. 34.

[57] *Visayan Surety & Insurance Corporation vs. Court of Appeals, et al.*, G.R. No. 127261, September 7, 2001.

[58] *First Metro Investment Corporation vs. Del Sol Mountain Reserve, Inc., et al.*, G.R. No. 141811, 15 November 2001.

[59] *supra*; Note 2

[60] *Ibid.*

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