

**JOHANNE J. PEÑA & ERLANA G. VDA. DE INOCENCIO, DOING
BUSINESS UNDER THE NAME AND STYLE OF LARGESTONE
ENTERPRISES, PETITIONERS, VS. THE HONORABLE COURT OF
APPEALS AND DURA-TIRE &...**

G.R. No. 126275. November 11, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

Before us is a petition for review on certiorari of the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 42383 affirming the Decision[2] of the Regional Trial Court (RTC) of Manila, Branch 10, in Civil Case No. 92-61507 and its Resolution dated August 19, 1996 denying the motion for reconsideration of the said decision.

The Antecedents

Respondent Dura-Tire & Rubber Industries, Incorporated (Dura-Tire for brevity) is a corporation engaged in the business of manufacturing and sale of vehicle tires and other rubber products. Among the customers of the respondent were petitioners Johanne J. Peña and Erlana G. Vda. de Inocencio who, by themselves, were also engaged in the business of buying rubber products from the respondent and of selling the same to their customers under the business name Largestone Enterprises (Largestone). Largestone was also the authorized sales agent of respondent Dura-Tire. The petitioners would purchase rubber products from the respondent on credit for delivery to their customers, after which the petitioners would pay the respondent for the said purchases.

On May 8, 1991, the respondent and petitioner Inocencio entered a surety agreement in which the latter bound and obliged herself, jointly and solidarily, with petitioner Peña to pay to the respondent, when due, all money indebtedness or obligation of any kind incurred by petitioner Peña in the past and/or thereafter, arising from or growing out of any sale, whether on credit and/or forwarding on consignment, for sale or return goods and deliveries, as well as customers' accounts guaranteed by petitioner Peña, and to pay on demand any said indebtedness upon his default.[3] Petitioner Peña signed the agreement as a witness.

As shown by the sales invoices prepared by the respondent, Largestone delivered rubber products to the following business firms during the period of November 17, 1990 to December 10, 1991:

SOLD TO SALES INVOICE NO. TERM DATE AMOUNT SALESMAN

Aboitiz Transport System

096864 COD/DMM November 17, 1990 P92,997.00 R. Lee (Joe Peña)[4]

Alma Cuilleta c/o Erlana Inocencio

18563 COD/DMM September 13, 1991 5,614.00 E. Inocencio[5]

Golden Rays Taxi c/o Erlana Inocencio

097871 COD/DMM August 14, 1991 4,474.15 E.I.[6]

Golden Rays Taxi c/o Erlana Inocencio

17969 COD/DMM August 17, 1991 29,149.50 E.I.[7]

LT Transport Care Trading

19064 November 4, 1991 24,044.47

LT Transport Care Trading

19077 November 4, 1991 17,521.82

LT Transport Care Trading

19075 November 4, 1991 33,579.06

LT Transport Care Trading

18932 November 4, 1991 29,876.80[8]

Inland Trailways c/o Joe Peña

97487 COD/DMM May 8, 1991 2,156.00 J.A. Flores[9]

Ipodca Cooperative

18524 COD/DMM September 10, 1991 1,527.60 Erlana Inocencio[10]

Ipodca Cooperative

18525 COD/PU September 10, 1991 15,496.80 Erlana Inocencio[11]

Largestone Enterprises

97847 30D/DMM August 7, 1991 19,426.23 Joe Peña[12]

Largestone Enterprises

97890 30D/PU August 17, 1991 12,591.00 Joe Peña[13]

Largestone Enterprises

097894 30D/PU August 19, 1991 3,231.00 Joe Peña[14]

Largestone Enterprises

097921 30D/DMM August 27, 1991 1,299.51 Joe Peña[15]

Largestone Enterprises

097942 30D/DMM PU September 4, 1991 9,618.83 Joe Peña[16]

Largestone Enterprises

097967 30D/DMM September 10, 1991 5,379.05 Joe Peña[17]

Largestone Enterprises

98025 30Days/DMM September 25, 1991 6425.00 Joe Peña[18]

Largestone Enterprises

18414 COD September 4, 1991 4546.69 Joe Peña[19]

* Largestone Enterprises

42336 COD/DMM November 21, 1991 3400.00 Joe Peña[20]

* Largestone Enterprises

42194 December 10, 1991 971.76 Joe Peña[21]

Pandacan Coop c/o Erlana Inocencio

17942 COD/PU August 16, 1991 23174.93 E.I.[22]

Pandacan Coop c/o Erlana Inocencio

18305 COD/DMM August 27, 1991 6871.40 Erlana I.[23]

Pandacan Cooperative

18433 COD/DMM September 25, 1991 14824.16 Erlana Inocencio[24]

Pandacan Coop c/o Erlana Inocencio

18643 COD/DMM September 18, 1991 1176.00 E. Inocencio[25]

Pandacan Cooperative

18786 COD September 26, 1991 13567.40 Erlana Inocencio[26]

Pandacan Cooperative

18789 COD September 26, 1991 3230.17 Erlana[27]

Phil. World Characters & Travel Service Cooperation

17089 COD June 14, 1991 6400.00 Joe Peña[28]

Project 4 Cooperative

17807 COD/DMM August 7, 1991 3538.48 E.E. Inocencio[29]

Project 4 Cooperative

17809 COD/DMM August 7, 1991 226.16 E. Inocencio[30]

Project 4 Cooperative

18785 COD September 26, 1991 2920.35 Erlana[31]

Tire King Goodyear Servitic

18312 COD/PU August 28, 1991 5497.12 Joe Peña[32]

* Delivery Receipt of Massive Sales Inc. c/o Dura-Tire Rubber Industries, Inc.

In partial payment of the said purchases from the respondent, petitioner Inocencio issued the following Philbanking Checks: Check No. 847401 dated November 21, 1991; Check No. 847402 dated December 10, 1991; Check No. 847404 dated December 29, 1991; and Check No. 847403 dated January 2, 1992. Petitioner Peña also

drew and issued to the respondent Philippine National Bank Check No. 224391 dated November 25, 1991, in the amounts of P37,456.91, P29,771.10, P19,544.57, P46,431.67, and P14,063.58.[33] However, these checks were returned by the drawee banks for either of the following reasons: “closed account,” “payment stopped,” or “drawn against insufficient funds.” The petitioners, likewise, failed to pay for the balance of their account.

The respondent sent letters on January 22 and 28, 1992 to the petitioners demanding the payment of their account which, according to the respondent, had amounted to P455,742.97, exclusive of interest, as shown in the statement of account appended thereto.[34] The petitioners promised to pay their account to the respondent, but reneged thereon.

On June 10, 1992, the respondent filed a Complaint with the RTC of Manila against the petitioners for the collection of their account, plus interests and attorney’s fees. The respondent prayed that, after due proceedings, judgment be rendered in its favor and against the petitioners, thus:

Wherefore, Plaintiff prays that after due hearings, judgment be rendered in favor of Plaintiff and against the Defendants, ordering the latter to pay, jointly and severally, the following amounts:

- P477,212.33 with 14% Int. P.A. from Jan. 20, 1992;
- P100,000.00 as Attorney’s Fee;
- Cost of suit and other incidental expenses

Such other reliefs and remedies which may be just and equitable under the premises, are likewise prayed for.[35]

The respondent appended to its complaint the surety agreement executed by it and petitioner Inocencio, the sales invoices issued to Aboitiz Transport, Alma Cuilleta, Golden Rays Taxi, ILT Transport Care Trading, Inland Con Carrier, Inland Trailways, Ipodca Cooperative, Largestone Enterprises, Pandacan Cooperative and Phil. World Charters and Travel Service Corporation, marked as Annexes “B” to “BB” thereof. It also appended to its complaint, as Annex “CC” thereof, the Delivery Receipt to Philtranco and the Sales Invoices to Project 4 Cooperative and Tire King Goodyear Service, as Annexes “DD” to “HH.” It further appended to its complaint, as Annexes “II” to “LL” thereof, the five (5) checks drawn and issued by the petitioners in its favor; and, as Annexes “NN” to “OO” thereof, the respondent’s letters of demand to the petitioners duly acknowledged by the latter.

In their verified answer to the complaint, the petitioners admitted all the transactions alleged in the complaint in the form of “direct buy” and “commission basis,” but denied that the transactions remained wholly or partly unpaid. The petitioners further alleged that:

- They were not responsible for the collection of the amounts as well as agency covering those transactions covered by Annexes “F,” “I,”[36] and “HH.”[37] Petitioner Inocencio admitted the agency only over the transactions covered by Annexes “J,”[38] “K,”[39] “X,”[40] “Z,”[41] “AA,”[42] and “GG,”[43] and that, with the assistance of petitioner Peña, the amounts covered by Annexes “I,”[44] “J,”[45] “K,”[46] “X,”[47] “Z,”[48] “AA,”[49] “DD,”[50] “GG,”[51] and “HH”[52] had been collected and paid to the respondent;
- Petitioner Inocencio admitted the agency and responsibility for the collection of the amounts appearing in Annexes “C” to “E,”[53] “V,”[54] “W,”[55] “Y,”[56] “EE,”[57] and “FF,”[58] and averred that the amounts covered by Annexes “D,”[59] “E,”[60] “V,”[61] “W,”[62] “Y,”[63] “EE,”[64] and “FF”[65] had already been collected by her and paid to the respondent;
- Petitioner Peña admitted the agency and her responsibility for the collection of the amounts covered by Annexes

“B,”[66] “G,”[67] “H,”[68] “BB,”[69] and “DD,”[70] and averred that the amount covered by Annex “CC”[71] had been collected by her and paid to the respondent;

- Petitioner Peña admitted her purchases of the goods covered by Annexes “L” to “U,”[72] that the same were still unpaid and expressed her willingness to pay the same to the respondent;

- The goods covered by Annexes “B,”[73] “G,”[74] and “H”[75] was of poor quality; consequently, the customers of the petitioners rejected the goods and refused to pay for the same;

- Petitioner Inocencio admitted that she issued the checks, Annexes “II,” “JJ,” “KK,” and “LL,” but averred that she did so only in blank and delivered the same to petitioner Peña, and only to show the same to the respondent to prove that petitioner Inocencio had a checking account; that without the knowledge and consent of petitioner Inocencio, petitioner Peña delivered the checks to the respondent in payment of her purchases from the latter; and that petitioner Inocencio did not issue Check No. 224391, Annex “MM.”

On August 3, 1992, the trial court issued an Order setting the pre-trial at 8:30 a.m. on September 11, 1992 and requiring the parties to submit their respective pre-trial brief at least three days before the pre-trial date. There is no showing in the records that the petitioners were served with copies of the said order; however, their counsel received a copy of the same on August 14, 1992 and failed to file any pre-trial brief. The respondent filed its pre-trial brief on September 1, 1992. By agreement of the parties, through counsel, pre-trial was reset by the court on October 16, 1992 at 8:30 a.m. Petitioner Inocencio received a copy of the trial court’s Order dated September 11, 1992. The parties failed to appear for the pre-trial on October 16, 1992. Consequently, the court dismissed the complaint. The court granted the respondent’s motion for reconsideration of the order of dismissal and issued an Order on January 4, 1993 setting the pre-trial at 8:30 a.m. on February 19, 1993. The copies of the order addressed to the petitioners were returned to the court for their failure to claim the same from the post office. As per the notation on the face of the envelope containing the order addressed to the petitioners, the latter had vacated the houses indicated therein.

When the case was called for pre-trial on February 19, 1993, the petitioners and their counsel failed to appear before the court. On motion of the counsel for the respondent, the petitioners were declared as in default for their failure to appear before the court for pre-trial, and for their failure to file their pre-trial brief. The motion of the respondent to adduce its evidence ex parte against the petitioners was granted. The respondent presented Lydia C. Lao whose testimony was completed, and formally offered in evidence as Exhibits “A,” “B” to “B-32,” “C” to “C-5,” “D,” and “E” to “E-1,” all of which the trial court admitted. The court then issued an order declaring the case submitted for decision. The copy of the said order addressed to the counsel of the petitioners was returned to the court for the reason that the said counsel had apparently transferred his office without notifying the court of his new address. Furthermore, the copy of the order addressed to the petitioners was returned to the court for the reason that the latter had moved to another address.

On April 16, 1993, the trial court rendered a decision in favor of the respondent, the decretal portion of which reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering defendants Johanne J. Peña and Erlana G. Vda. de Inocencio, doing business under the name and style of Largestone Enterprises, to pay, jointly and severally, plaintiff Dura-Tire and Rubber Industries, Inc. as follows:

a)

the sum of P477,212.33 with legal interest per annum from January 28, 1992 until fully paid;

b)

the sum of P15,000.00 as and by way of attorney's fees; and

c)

costs of this suit.

SO ORDERED.[76]

The petitioners did not file any motion for reconsideration of the decision, nor a motion for new trial, and appealed the decision instead, contending that:

I

... THE TRIAL COURT ERRED IN DECLARING THAT FROM THE UNDISPUTED EVIDENCE AT HAND, PLAINTIFF APPEARS TO HAVE INDUBITABLY ESTABLISHED THE ALLEGATION IN THE COMPLAINT, THUS, ENTITLING THE PLAINTIFF TO COLLECT FROM DEFENDANTS, JOINTLY AND SEVERALLY, THE AMOUNT OF P477,212.33.

II

... THE TRIAL COURT ERRED IN DECLARING THE DEFENDANTS AS IN DEFAULT AND IN ALLOWING PLAINTIFF TO PRESENT EVIDENCE EX PARTE.[77]

On March 19, 1996, the CA promulgated a decision affirming the decision of the RTC. The petitioners filed a motion for reconsideration of the decision, but the CA denied the same.

The Present Petition

The petitioners forthwith filed their petition for review on certiorari, contending as follows:

- THAT THE HONORABLE COURT OF APPEALS ERRED IN AFFIRMING THE FINDINGS OF THE LOWER COURT DECLARING DEFENDANT-APPELLANT, ERLANA VDA. DE INOCENCIO, JOINTLY AND SEVERALLY, LIABLE TO DEFENDANT JOHANNED (SIC) PEÑA, REFERRED TO AS "CUSTOMER" IN THE SURETY AGREEMENT, IN VIOLATION OF THE VERY ESSENCE OF A CONTRACT OF GUARANTY UNDER ART. 2058 OF THE NEW CIVIL CODE, AS WELL AS TO OTHER DELIVERIES AS EVIDENCED BY INVOICES (EXHIBITS B, B-1 TO B-32), WHICH WERE NOT PROVEN TO BE DELIVERIES OF WHICH JOHANNED PEÑA HAD INCURRED IN DEBTEDNESS TO PLAINTIFF (SIC).

- THAT THE HONORABLE COURT HAD ERRED IN DECLARING THAT EVEN IF IT WERE CONCEDED THAT THE DEFENDANTS DID NOT RECEIVED (SIC) THE NOTICE OF PRE-TRIAL CONFERENCE WHICH WAS RETURNED TO THE TRIAL COURT UNCLAIMED, THEIR FAILURE TO FILE A PRE-TRIAL BRIEF AT LEAST THREE DAYS BEFORE THE DATE OF PRE-TRIAL CONFERENCE AS REQUIRED IN CIRCULAR NO. 1-89 OF THE SUPREME COURT (JAN. 19, 1989) IN RELATION TO ADMINISTRATIVE CIRCULAR NO. 3-90 (JAN. 31, 1990) JUSTIFIED THE TRIAL COURT IN DECLARING THEM AS IN DEFAULT.

- THAT THE COURT OF APPEALS HAD ERRED IN DECLARING THAT FOR FAILURE OF THE DEFENDANTS TO AVAIL THE REMEDY OF NEW TRIAL UNDER SEC. 1(a) OF RULE 37 OR IN THE ALTERNATIVE, A PETITION FOR RELIEF FROM SAID ORDER AND JUDGMENT, IT IS ABSURD (SIC) FOR THE DEFENDANT (SIC) TO QUESTION THE DEFAULT ORDER IN THE PRESENT APPEAL.[78]

The issues for resolution are procedural and substantive. On the procedural issue, the petitioners assert that the trial court erred in declaring them in default for their failure to file their pre-trial brief within three days from their

receipt of the Order of the trial court dated August 3, 1992 which set the pre-trial at 8:30 a.m. on September 11, 1992, and for their failure to appear before the court for the pre-trial on February 19, 1993. The petitioners assert that they never received copies of the August 3, 1992 Order of the trial court. They argue that although their counsel received on January 14, 1993 a copy of the trial court's Order dated January 4, 1993 setting the pre-trial on February 19, 1993, they cannot be faulted for their non-appearance for pre-trial on the said date. The petitioners assert that while the face of the envelope addressed to them containing the January 4, 1993 Order of the trial court states that the mail matter was not claimed by them, there is no proof on record that the requisite number of notices of registered matter were sent to and received by them before the same was returned to the court. The petitioners submit that before they could be properly declared as in default for their failure to file their pre-trial brief and for non-appearance during the pre-trial scheduled for February 19, 1993, there must be incontrovertible proof on record that they were notified of the scheduled pre-trial. The petitioners cite the ruling of this court in *Vecino v. Court of Appeals*.^[79]

The respondent, for its part, contends that the petitioners have themselves to blame for their failure to claim their mail matter despite notice thereof to them. The respondent asserts that to substantiate the petitioners' pose would be to allow them to profit from their own negligence and that of their counsel. The petitioners faulted the CA for holding that they had waived their right to assail the trial court's order of default merely because they failed to file a motion for reconsideration of the decision of the trial court or for a new trial.

The Ruling of the Court

We agree with the petitioners that the trial court erred in declaring them as in default for their failure to file a pre-trial brief at least three days before the scheduled pre-trial set on February 19, 1993 and to appear before the trial court on said date and time.

Under Section 1, Rule 20^[80] of the Rules of Court,^[81] the parties and their counsel are mandated to appear before the court for pre-trial and if the defendants fail to do so despite due notice and without any justifiable reason therefor, they may be declared as in default, conformably to Section 2, Rule 20 of the said Rules.^[82] The parties are also mandated under Circular No. 1-89 dated January 19, 1989^[83] to file their respective pre-trial briefs at least three days before the pre-trial conference and if the defendants fail to do so, they may be declared as in default. The parties and their counsel must be served with copies of the order of the court setting the case for pre-trial, either by personal delivery or by mail under Sections 3, 4, and 5, Rule 13^[84] of the Rules of Court, or by substituted service under Section 6, Rule 13^[85] of the Rules of Court.

The rule is that service by registered mail is complete upon actual receipt thereof by the addressee, except when the addressee does not claim his mail within five days from the date of the first notice of the postmaster, in which case, the service shall take effect within the said period. The certification from the postmaster would be the best evidence to prove that the notice had been validly made. However, if there is nothing on record showing how, when, and to whom, the delivery of the registry notices of the registered mail was made, the court should not rely on the notation "return to sender: unclaimed" to support the presumption of constructive service.^[86]

As admitted by the petitioners, a copy of the January 4, 1993 Order of the trial court was sent to and received by their counsel on January 14, 1993. A copy of the same order was placed on a sealed brown envelope, addressed to the petitioners. The records also contain a registry notice addressed to the petitioners at "Pandacan, Manila." There is no showing that the notice was sent to or received by the petitioners. In fact, the respondent even failed to submit to the trial court a certificate from the postmaster stating that the clerk of court sent a notice of registered mail to the petitioners' counsel and that the latter received the same. And yet, the trial court declared the petitioners as in default for their counsel's failure to appear for pre-trial and to file their brief three days before

February 19, 1993.

We are, thus, convinced that the trial court erred in declaring the petitioners as in default, in allowing the respondent to adduce its evidence ex parte, and in rendering judgment by default against the petitioners.

However, it must be stressed that the petitioners failed to file a motion for new trial under Section 1(a), Rule 37 of the Rules of Court despite receipt of notice of the trial court's decision. The petitioners had the right to appeal the judgment by default on the ground that the said judgment was contrary to law or the evidence. They were, however, proscribed from assailing the trial court's Order dated February 19, 1993 declaring them as in default.

On the substantial as well as the other procedural aspects, petitioner Inocencio avers that the respondent failed to adduce preponderant evidence to prove its claim for the principal amount of P477,212.33. She posits that she is not liable for the checks issued by petitioner Peña with respect to those purchases made by the latter's customers. She insists that she merely guaranteed the payment of the said purchases, and that the respondent had to first exhaust all the payments to be made by petitioner Peña before suing her. The petitioners assert that Lydia Lao, the lone witness of the respondent, failed to prove that they were privies to the sales invoices,[87] or were involved in the transactions covered by the same. They contend that there is no preponderant evidence that the transactions involving the said sales invoices were covered by the surety agreement executed by and between petitioner Inocencio and the respondent.

The burden of proof is on the petitioners to establish their defenses by a preponderance of evidence while the burden of proof is on the respondent, as plaintiff, to prove by a preponderance of evidence the material allegations of its complaint.[88] If the defendants admit the material allegations of the complaint, the plaintiff is then relieved of its burden.

In this case, the respondent alleged in its complaint that during the period of November 1990 to August 1991, it delivered to the petitioners or to their designated buyers, or upon their orders, credit or on consignment, tires and rubber products evidenced by the sales invoices appended to its complaint,[89] and that the petitioners still had an outstanding account for products covered by the said sales invoices in the total amount of P329,944.50, inclusive of the total amount of P147,267.83 of the dishonored checks, all of which amounted to P477,212.33. The respondent was, thus, burdened to prove these allegations.

However, petitioner Peña admitted liability for the products/deliveries to Largestone Enterprises covered by the sales invoices, Annexes "B-10" to "B-19"[90] in the total amount of P66,789.07, and the sales invoice, Annex "CC" of the complaint,[91] in the amount of P27,235.00. Petitioner Inocencio, likewise, admitted liability for the tires and rubber products covered by the sales invoices, Annexes "I," "J," "K," "W," "X," "Z," "AA," "DD," "GG," "HH," "D," "E," "V," "W," "Y," "EE," and "FF" in the total amount of P186,706.46. While petitioner Inocencio claimed that the aforesaid amount of P186,706.46 had already been remitted by her to the respondent, there is no record of any receipt which was issued by the respondent to serve as evidence of such payment. Neither did petitioner Peña adduce any receipt that was issued by the respondent for the amount of P27,235.00. In fine then, petitioner Peña's total admitted accountability amounted to P94,024.07, while that of petitioner Inocencio amounted to P186,706.46, or the total amount of P280,730.53.

The petitioners claim that they are not liable for the value of the merchandise covered by the other sales invoices on the ground that on the face of the said sales invoices, they had no involvement in the transactions covered by the same. Such contention of the petitioners lacks merit.

Although it appears in the other sales invoices that the petitioners were the salespersons who brokered the sales of the products covered by the said sales invoices to the vendees therein named, the said entries are not conclusive of

the extent and the nature of the involvement of the petitioners in the sales of the products under the said sales invoices which are not absolutely binding. They may be explained and put to silence by all the facts and circumstances characterizing the true import of the dealings to which they refer.[92] The facts contained in the said sales invoices may be contradicted by oral testimony.[93] Instead, while petitioner Peña appears to be the salesperson in the sales invoices in favor of Largestone, she, however, admitted that she was in fact the purchaser of the said products. Moreover, Lao testified that the petitioners purchased the merchandise described in the said sales invoices from the respondent, to be delivered to their respective customers as shown therein, and that the petitioners even promised to pay the same but reneged on their promise, prompting the respondent to send letters of demand to the petitioners. There is no evidence on record to controvert the evidence of the respondent. Furthermore, under the surety contract, petitioner Inocencio bound and obliged herself, jointly and severally, with petitioner Peña to pay for the merchandise sold and delivered to the customers of the latter or growing out of the said sales or deliveries.[94] The petitioners even drew and issued checks in partial payment of the said purchases, which checks were, however, dishonored by the drawee banks. The petitioners cannot escape liability for the transactions covered by the sales invoices.

We do not agree with the contention of the respondent that the petitioners drew and issued the checks to it in payment of obligations separate from those covered by the sales invoices appended to its complaint. The respondent failed to adduce any sales invoice issued by it showing sales and deliveries of the products to the petitioners or to their customers for which the latter drew and delivered the checks. We are convinced that the said checks were drawn and issued by the petitioners to the respondent in partial payment of the products covered by the said sales invoices.[95]

In fine, the petitioners are jointly and severally liable to the respondent in the principal amount of P329,944.50.

WHEREFORE, the petition is PARTIALLY GRANTED. The Decision of the Court of Appeals in CA-G.R. CV No. 42383, and its Resolution dated August 19, 1996, are hereby AFFIRMED with the modification that the petitioners are ordered to pay, jointly and severally, to the private respondent the principal amount of P329,944.50.

SO ORDERED.

Austria-Martinez, and Chico-Nazario, JJ., concur.

Puno, J., (Chairman), on official leave.

Tinga, J., on leave.

[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Salome A. Montoya (retired) and Oswaldo D. Agcaoili (retired), concurring.

[2] Penned by Judge Amor A. Reyes.

[3] Exhibit "A."

[4] Exhibit "B."

[5] Exhibit "B-1."

[6] Exhibit "B-2."

[7] Exhibit "B-3."

[8] Exhibit "B-4."

- [9] Exhibit “B-7.”
- [10] Exhibit “B-8.”
- [11] Exhibit “B-9.”
- [12] Exhibit “B-10.”
- [13] Exhibit “B-11.”
- [14] Exhibit “B-12.”
- [15] Exhibit “B-13.”
- [16] Exhibit “B-14.”
- [17] Exhibit “B-15.”
- [18] Exhibit “B-16.”
- [19] Exhibit “B-17.”
- [20] Exhibit “B-18.”
- [21] Exhibit “B-19.”
- [22] Exhibit “B-20.”
- [23] Exhibit “B-21.”
- [24] Exhibit “B-22.”
- [25] Exhibit “B-23.”
- [26] Exhibit “B-24.”
- [27] Exhibit “B-25.”
- [28] Exhibit “B-26.”
- [29] Exhibit “B-29.”
- [30] Exhibit “B-30.”
- [31] Exhibit “B-31.”
- [32] Exhibit “B-32.”
- [33] Records, pp. 4, 41, 42.
- [34] Exhibits “D” and “E,” pp. 43-44.
- [35] Records, p. 5.
- [36] Exhibit “B-7.”
- [37] Exhibit “B-32.”
- [38] Exhibit “B-8.”
- [39] Exhibit “B-9.”

- [40] Exhibit “B-22.”
- [41] Exhibit “B-24.”
- [42] Exhibit “B-25.”
- [43] Exhibit “B-31.”
- [44] Exhibit “B-7.”
- [45] Exhibit “B-8.”
- [46] Exhibit “B-9.”
- [47] Exhibit “B-22.”
- [48] Exhibit “B-24.”
- [49] Exhibit “B-25.”
- [50] Exhibit “B-28.”
- [51] Exhibit “B-31.”
- [52] Exhibit “B-32.”
- [53] Exhibits “B-1” to “B-3.”
- [54] Exhibit “B-20.”
- [55] Exhibit “B-21.”
- [56] Exhibit “B-23.”
- [57] Exhibit “B-29.”
- [58] Exhibit “B-30.”
- [59] Exhibit “B-2.”
- [60] Exhibit “B-3.”
- [61] Exhibit “B-20.”
- [62] Exhibit “B-21.”
- [63] Exhibit “B-23.”
- [64] Exhibit “B-29.”
- [65] Exhibit “B-30.”
- [66] Exhibit “B.”
- [67] Exhibit “B-5.”
- [68] Exhibit “B-6.”
- [69] Exhibit “B-26.”
- [70] Exhibit “B-28.”

[71] Exhibit “B-27.”

[72] Exhibits “B-10” to “B-19.”

[73] Exhibit “B.”

[74] Exhibit “B-5.”

[75] Exhibit “B-6.”

[76] Records, p. 99.

[77] CA Rollo, pp. 20-21.

[78] Rollo, p. 14.

[79] 76 SCRA 98 (1977).

[80] SEC. 4. Appearance of parties. – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

[81] Now Section 4, Rule 18 of the 1997 Rules of Civil Procedure.

[82] Now Section 5, Rule 18 of the 1997 Rules of Civil Procedure.

[83] SEC. 5. Effect of failure to appear. – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless, otherwise, ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence ex parte and the court to render judgment on the basis thereof.

[84] Now Sections 5, 6 and 7, Rule 13 of the 1997 Rules of Civil Procedure.

[85] Now Section 8, Rule 13 of the 1997 Rules of Civil Procedure.

[86] Johnson and Johnson (Phils.), Inc. v. Court of Appeals, 201 SCRA 768 (1991).

[87] Exhibits “B” to “B-32.”

[88] Section 1, Rule 131 of the Revised Rules of Evidence; Section 1, Rule 133, id.

[89] Exhibits “B,” “B-1” to “B-32.”

[90] Exhibits “B-10” to “B-19.”

[91] Exhibit “B-27.”

[92] Furst Brothers v. Commercial Bank, 43 S.E. 728 (1903).

[93] Flag Fish Company, Inc. v. Main Seafood, Inc., 34 S.E.2d 294 (1945).

[94] Exhibit “A.”

[95] Exhibits “B” to “B-32.”

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