

ROYAL CARGO CORPORATION, PETITIONER, VS. DFS SPORTS UNLIMITED, INC., RESPONDENT.

G.R. No. 158621. December 10, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 61800 promulgated on January 24, 2003, and its Resolution, dated June 4, 2003, denying petitioner's Motion for Reconsideration.

The facts of the case, as summarized by the trial court and adopted by the CA, are as follows:

From the evidence offered by the parties and their admissions in their respective pleadings, the Court has clearly gathered that the plaintiff [herein petitioner] and the defendant [herein respondent] are domestic corporations organized under the laws of the Philippines. [Petitioner] is an international freight forwarder, which offers trucking, brokerage, storage and other services to the public, and serves as conduit between shippers, consignees, and carriers for the transportation of cargos from one point of the globe to another. [Respondent], on the other hand, is one of the concessionaires of the Subic Bay Metropolitan Authority (SBMA). It is principally engaged in the importation and local sale of duty-free sporting goods and other similar products.

Sometime in October 1993, the [respondent] engaged the services of the [petitioner] to attend and undertake the former's brokerage and trucking requirements.

Between the period from April to July, 1994 [petitioner] rendered trucking, brokerage, storage and other services to the [respondent] in connection with the latter's importation business, and as a consequence it incurred expenses for brokerage forms, stamps, notarial fees, arrastre charges, wharfage fees, storage charges, guarding fees, telegrams, LCL charges, photostat copies, trucking charges, processing fees, ocean freight charges, collection fees, brokerage fees, insurance premiums, and 10% VAT, which amounted to the total of P248,449.63, which the [respondent] fails and refuses to pay despite [petitioner's] demands.[2]

On April 19, 1995, petitioner filed against respondent a Complaint for Collection of Sum of Money[3] with the Regional Trial Court (RTC) of Manila seeking the recovery of the amount of P248,449.63 plus legal interest as well as attorney's fees and costs of suit.

Respondent filed its Answer with Counterclaim[4] contending that, except for a single occasion which happened sometime in May 1994, it never engaged the services of petitioner for the importation of various products and that it is under no legal obligation to heed the demand of plaintiff. As counterclaim, respondent alleged that petitioner owes it the sum of P200,000.00 representing the value of the imported goods respondent lost by reason of the gross negligence as well as illegal activities of petitioner in the transshipment of respondent's goods. Respondent also sought to recover the amount of P44,710.00 which it gave to petitioner as payment of the taxes and customs duties for the goods it (respondent) imported but which were not paid by petitioner. Respondent prayed for the grant of actual, moral and exemplary damages as well as attorney's fees and cost of suit.

Petitioner filed its Answer to respondent's Counterclaim denying the allegations contained therein.[5]

Subsequently, the parties filed their respective Pre-Trial Briefs.[6] Pre-trial conferences were conducted on October 12, 1995 and March 14, 1997.

Thereafter, trial ensued.

In the course of the trial, the parties made their respective formal offers of evidence.

Petitioner presented as part of its evidence, 34 carbon copies of invoices, marked as Exhibits "A" to "A-33," to prove respondent's indebtedness.[7] These were objected to by respondent on the ground that they are self-serving, immaterial and have no factual and legal basis. However, they were admitted by the RTC per its Order[8] dated August 1, 1997.

On the other hand, respondent presented, 28 original copies of the 34 invoices submitted by petitioner[9] for the purpose of proving payment of the amount sought to be recovered by the latter. Petitioner objected on the ground that the evidence contradicts respondent's claim in its Answer that it never engaged the services of petitioner for the importation of various products. In its Order[10] dated January 30, 1998, the RTC admitted the above-mentioned invoices as part of the evidence for the respondent.

On June 3, 1998, the RTC of Manila, Branch 35, rendered a Decision[11] dismissing petitioner's complaint and respondent's counterclaim.

Petitioner filed an appeal with the CA. Respondent did not appeal the RTC Decision.

On January 24, 2003, the CA rendered the presently assailed Decision[12] affirming the RTC Decision.

Petitioner filed a Motion for Reconsideration but it was denied by the CA in its Resolution[13] dated June 4, 2003.

Hence, the present petition raising the following issues:

- WHETHER OR NOT THE BURDEN OF EVIDENCE LIES WITH THE DEBTOR TO PROVE THAT PAYMENT HAS BEEN MADE.
- WHETHER OR NOT MERE PRESENTATION BY THE DEBTOR OF ORIGINAL INVOICES ALONE SUFFICIENTLY PROVES PAYMENT OF ITS DEBT.
- WHETHER OR NOT AN INVOICE IS DEEMED A CREDIT INSTRUMENT WHICH, UPON PRESENTATION BY THE DEBTOR, RAISES THE DISPUTABLE PRESUMPTION OF PAYMENT AS PER RULE 131, SECTION 3(h) OF THE RULES OF COURT THAT STATES THAT A DISPUTABLE PRESUMPTION OF PAYMENT IS RAISED WHEN AN OBLIGATION IS DELIVERED TO A DEBTOR.[14]

Petitioner contends that the CA erred in ruling that the burden of evidence is on petitioner who claims that respondent failed to pay its obligation to the former; that, on the contrary, the burden of proving payments lies with respondent, consistent with the rule that one who pleads payment has the burden of proving it; that, in the instant case, respondent's presentation of the original invoices in its possession is not sufficient to prove payment of its debt; that the original invoices are mere evidence of the transaction between petitioner and respondent but can never be relied upon as proof of payment; that the best proof of payment is either a receipt, return check, bank record or document proving that the creditor received the amount owed; that the disputable presumption that an obligation delivered up to a debtor is paid applies only to credit instruments delivered to the debtor; that an invoice is not a credit instrument.

Respondent counters that the issues raised by petitioner are factual; the factual findings of the RTC, especially when affirmed by the CA, are conclusive upon the parties, and; in a petition for review on certiorari under Rule 45 of the Rules of Court, the Supreme Court only reviews errors of law and not of fact.

The Court finds the petition meritorious.

The Court shall deal first with the question of whether the issues raised by petitioner are factual.

An issue is factual when the doubt or difference arises as to the truth or falsehood of alleged facts, or when the query invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole, and the probabilities of the situation.[15] On the other hand, an issue is one of law when the doubt or difference arises as to what the law is on a certain state of facts.[16]

In the present case, the main issues raised by petitioner are: (1) whether respondent, who is the debtor, has the burden of proving payment; and (2) whether the subject invoices prove such payment or at least raise a disputable presumption that payment has been made. Clearly, the first issue is not factual as it does not require calibration of evidence. However, the second issue is factual because it requires an examination of the probative value of the evidence of the parties.

The settled rule is that issues of fact are not proper subjects of a petition for review before this Court.[17] Nonetheless, there are recognized exceptions to this rule, among which are: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of facts are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the finding of absence of facts is contradicted by the presence of evidence on record; (8) the findings of the CA are contrary to the findings of the trial court; (9) the CA manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the CA are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[18] The Court finds that petitioner was able to demonstrate that the instant case falls under the fourth exception as will be discussed forthwith.

As to the first issue raised, the settled rule is that one who pleads payment has the burden of proving it.[19] Even where the creditor alleges non-payment, the general rule is that the onus rests on the debtor to prove payment, rather than on the creditor to prove non-payment.[20] The debtor has the burden of showing with legal certainty that the obligation has been discharged by payment.[21] Where the debtor introduces some evidence of payment, the burden of going forward with the evidence - as distinct from the general burden of proof - shifts to the creditor, who is then under a duty of producing some evidence to show non-payment.[22]

Since respondent claims that it had already paid petitioner for the services rendered by the latter, it follows that the former carries the burden of proving such payment.

This brings us to the second issue.

At the outset, it should be noted that respondent's defense of payment was only raised during the testimony of its first witness, Adora Co (Adora) on August 7, 1997. In its Answer, respondent merely alleged that, except for a transaction it had with petitioner sometime in May 1994, it never engaged the services of the latter for the importation of various products between April and July 1994; and that for the goods it imported in May 1994, it had given petitioner the amount of P44,710.00 to answer for the customs duties and taxes due thereon. Respondent further asserted that the goods were seized by Customs authorities because of petitioner's alleged falsification of receipts covering the payment of customs duties and taxes on the said goods; that by reason of

such seizure, the goods, which were kept in open air, lost their commercial value amounting to P200,000.00. Respondent claims that it was not able to recover the value of its seized property nor did petitioner return the amount of P44,710.00 given to it by respondent.

Moreover, it is significant to note that the only issues raised by respondent in its Pre-Trial Brief are the following:

- (a) Has plaintiff (herein petitioner) been engaged by defendant (herein respondent) at any time prior to the filing of the present Complaint in the "importation of various products"?
- (b) Is [petitioner] guilty of gross negligence on account of the seizure of [respondent's] products due to fake or spurious receipt of payment of customs duties and taxes?
- (c) Is [petitioner] liable to refund [respondent] the amount of P44,710.00, received by the former from the latter for the payment of customs duties and taxes assessed on said imported goods?
- (d) Is [petitioner] liable to reimburse the amount of P44,710.00 to [respondent] after the latter has paid the said amount to the Bureau of Customs for the release of the imported goods which [petitioner] undertook to release and deliver to [respondent's] customer in Makati City? and
- (e) Is [petitioner] liable to defendant for damages and attorney's fees incurred by the latter due to [petitioner's] gross negligence?[23]

Nowhere in its Answer or in its Pre-Trial Brief did respondent raise the defense that it had already paid petitioner its obligations. As earlier mentioned, respondent denied having entered into the subject transactions for which petitioner seeks payment. To repeat, it was only during the testimony of respondent's witness, Adora, that respondent claimed payment by presenting in evidence 28 original copies of the subject invoices which Adora claimed to have found two days before she was due to testify in court.

Preliminarily, it is necessary to discuss the effect of failure of petitioner to plead payment of its obligations.

Section 1, Rule 9 of the Rules of Court provides:

Section 1. Defenses and objections not pleaded. - Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by prior judgment or by statute of limitations, the court shall dismiss the claim.

In the present case, despite failure of the respondent to raise the defense of payment in its answer, the trial court cannot be faulted for admitting the testimonial and documentary evidence of respondent to prove payment, over the objection of petitioner. The trial court's action is in consonance with Section 5, Rule 10 of the Rules of Court, to wit:

Section 5. Amendment to conform to or authorize presentation of evidence. - When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

Interpreting Section 4, Rule 17 of the Rules of Court prior to its amendment in 1997, the provisions of which were

essentially the same as the above-quoted Section 5, Rule 10, the Court in *Co Tiamco v. Diaz*[24] held that:

x x x when evidence is offered on a matter not alleged in the pleadings, the court may admit it even against the objection of the adverse party, where the latter fails to satisfy the court that the admission of the evidence would prejudice him in maintaining his defense upon the merits, and the court may grant him continuance to enable him to meet the new situation created by the evidence.[25]

The above pronouncement was reiterated in the more recent case of *Ong v. Court of Appeals*.[26]

In the instant case, there is no showing that the admission of respondent's evidence would unduly prejudice petitioner in maintaining his claims. Besides, petitioner was given ample opportunity to refute the evidence presented by respondent.

Furthermore, even if respondent's answer was not amended to conform to the evidence it presented, it does not preclude the trial court from adjudicating the issue of payment. Citing of *Bank of America, NT & SA v. American Realty Corporation*[27] and *Talisay-Silay Milling Co., Inc. v. Asociacion de Agricultores de Talisay-Silay, Inc.*,[28] this Court held in *Mercader v. Development Bank of the Philippines (Cebu Branch)*[29] that:

The failure of a party to amend a pleading to conform to the evidence adduced during trial does not preclude adjudication by the court on the basis of such evidence which may embody new issues not raised in the pleadings. x x x Although, the pleading may not have been amended to conform to the evidence submitted during trial, judgment may nonetheless be rendered, not simply on the basis of the issues alleged but also on the issues discussed and the assertions of fact proved in the course of the trial. The court may treat the pleading as if it had been amended to conform to the evidence, although it had not been actually amended. x x x Clearly, a court may rule and render judgment on the basis of the evidence before it even though the relevant pleading had not been previously amended, so long as no surprise or prejudice is thereby caused to the adverse party. Put a little differently, so long as the basic requirements of fair play had been met, as where the litigants were given full opportunity to support their respective contentions and to object to or refute each other's evidence, the court may validly treat the pleadings as if they had been amended to conform to the evidence and proceed to adjudicate on the basis of all the evidence before it.[30] (Emphasis supplied)

This principle is in consonance with the one enunciated by the Court in *Sy v. Court of Appeals*,[31] that where there is a variance in the defendant's pleadings and the evidence adduced at the trial, the court may treat the pleading as amended to conform to the evidence.

The next question is: whether the evidence presented by respondent supported its claim of payment.

First, the Court does not agree with the finding of the CA that petitioner no longer questioned the ruling of the RTC regarding the probative value of the duplicate copies of the invoices presented in evidence by petitioner, more specifically the six invoices marked as Exhibits "A-2," "A-5," "A-30," "A-31," "A-32" and "A-33," the original copies of which were not produced by respondent as part of its evidence. A perusal of petitioner's appeal brief shows that petitioner specifically raised the issue of whether the RTC erred in failing to accord evidentiary weight to the invoices presented in evidence by petitioner.

Moreover, the RTC correctly admitted Exhibits "A" to "A-33" in its Order dated August 1, 1997.[32] Contrary to the claim of respondent that these pieces of evidence presented by petitioner to prove respondent's indebtedness are mere duplicate copies, the same are considered as original copies because they are carbon copies of the invoices which are in the possession of respondent and they may be introduced in evidence without accounting for the non-production of the other copies.[33] Hence, they serve as sufficient proof of the indebtedness of respondent.

Respondent's main evidence consists of 28 original copies of invoices showing the transactions that it had with

petitioner. Stamped on the face of each original invoice are the words "PAID" and "AUDITED," duly initialed.

Are these original invoices sufficient to prove payment or, at the least, do the same raise a disputable presumption that respondent had indeed discharged its obligations to petitioner? The Court rules in the negative.

An invoice or bill is a commercial document issued by a seller to the buyer indicating the products, quantities and agreed prices for product or services the seller has provided the buyer.[34] An invoice indicates the buyer must pay the seller according to the payment terms.[35] From the point of view of a seller, an invoice is a sales invoice.[36] From the point of view of a buyer, an invoice is a purchase invoice.[37] The document indicates the buyer and seller, but the term "invoice" indicates money is owed or owing.[38] The context of the term "invoice" is usually used to clarify its meaning, such as "We sent them an invoice" (they owe us money) or "We received an invoice from them" (we owe them money).[39]

In *Commissioner of Internal Revenue v. Manila Mining Corporation*,[40] "sales or commercial invoice" is defined as a written account of goods sold or services rendered indicating the prices charged therefor or a list by whatever name it is known which is used in the ordinary course of business evidencing sale and transfer or agreement to sell or transfer goods and services. On the other hand, the same case defines "receipt" as a written acknowledgment of the fact of payment in money or other settlement between seller and buyer of goods, debtor or creditor, or person rendering services, and client or customer.[41]

Black's Law Dictionary[42] defines an invoice as an itemized list of goods or services furnished by a seller to a buyer, usually specifying the price and terms of a sale; a bill of costs.

From the foregoing definitions, an invoice, in and by itself, and as opposed to a receipt, may not be considered evidence of payment. In addition, it does not mean that possession by a debtor of an invoice raises the presumption that it has already paid its obligation. An invoice is simply a list sent to a purchaser, factor, consignee, etc., containing the items, together with the prices and charges, of merchandise sent or to be sent to him; a mere detailed statement of the nature, quantity and cost or price of the things invoiced.[43]

A close examination of the invoices reveals that the words "PAID" and "AUDITED" were stamped on each of them. However, Adora, who is an employee of respondent in charge of all paid accounts, testified that the word "PAID" were stamped on the documents by the accounting department of respondent and not by the petitioner, and that the word "AUDITED" was stamped by respondent's auditor.[44] This is not rebutted by respondent. Thus, the Court finds that the trial court committed a serious error in appreciating the evidence when it discredited petitioner's claim that its purpose in sending the subject invoices to respondent was only to collect the latter's debt, not to evidence payment by the latter.

Furthermore, respondent's defense of payment is made more untenable by its failure to present any supporting evidence, such as official receipts or the testimony of its employee who actually paid or the one who had direct knowledge of the payment allegedly made in petitioner's favor, to prove that it had indeed paid its obligations to the latter. Respondent is a corporation engaged in the business of importation and local sale of duty-free sporting goods and similar products. It is presumed that it takes ordinary care of its concerns. In fact, as part of its evidence, respondent presented Official Receipt No. 52715[45] for the amount of P4,472.00 which it paid as advance freight payment in favor of petitioner. Respondent also presented other copies of official receipts for payments it made to another company, PAC-Atlantic Lines (Philippines) Inc. for the amounts of P10,152.12 and P21,144.92, respectively.[46] On this basis, it is difficult to see why respondent did not present any receipt or at least show that it had demanded an official receipt as proof of its payment with respect to the 34 transactions for which payment is being claimed by petitioner. Some of the amounts involved in said transactions were larger than the payments respondent made for which it was issued official receipts. Respondent's witness, Adora, failed to

sufficiently explain why it did not have receipts in its possession to prove payment. The witness simply reasoned out that even in the absence of any receipt, she assumed that an account was paid once the accounting department of respondent forwarded to her the original invoice which was stamped "PAID".[47] Such testimony, as well as the invoices which were stamped paid, are all self-serving and do not, by themselves, prove respondent's claim of payment.

Settled is the rule that in the course of trial in a civil case, once the plaintiff makes out a prima facie case in his favor, the duty or the burden of evidence shifts to the defendant to controvert the plaintiff's prima facie case; otherwise, a verdict must be returned in favor of the plaintiff.[48] In the instant case, respondent's indebtedness to petitioner has been established. However, respondent failed to meet its burden of proving payment. Hence, judgment must be rendered in petitioner's favor.

Aside from the principal amount of P248,449.63, petitioner also seeks recovery of interests thereon. As to computation of legal interest, the seminal ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals*[49] controls, to wit:

x x x x

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

- When an obligation is breached, and it consists in the payment of a sum of money, i.e., a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, i.e., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

- When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

- When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[50]

In the present case, respondent's obligation does not constitute a loan or forbearance of money. Hence, the principal amount owed to petitioner shall earn interest of 6% per annum to be computed from the time extrajudicial demand for payment was made on February 10, 1995[51] until finality of this decision. Thereafter, the amount due shall earn interest of 12% per annum computed from such finality until the same is fully paid.

The award of attorney's fees depends on the circumstances of each case and lies within the discretion of the court.[52] They may be awarded when a party is compelled to litigate or to incur expenses to protect its interest by reason of an unjustified act by the other party.[53]

In the instant case, the Court finds that petitioner is entitled to attorney's fees. First, Article 2208 (2) of the Civil

Code provides that attorney's fees may be recovered in cases where the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Second, there is a stipulation in the subject invoices allowing petitioner to recover attorney's fees in case it is compelled to file an action to enforce collection. Third, Article 2208 (5) of the same Code provides that attorney's fees may also be recovered where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim. In the instant case, it is established that respondent's refusal to satisfy petitioner's claim is unreasonable and is, in fact, without basis which compelled petitioner to resort to the instant case to recover what is due it.

The subject invoices stipulate that in case of judicial proceedings to enforce collection, respondent shall pay petitioner an amount equivalent to not less than 20% of the amount due for and as attorney's fees, in addition to costs of suit. However, the Court finds that the rate of 20% is excessive. Accordingly, the award for attorney's fees is reduced to a more reasonable rate of 10% of the total amount due.[54]

WHEREFORE, the petition for review is GRANTED. The Decision dated January 24, 2003 and the Resolution of June 4, 2003 of the Court of Appeals as well as the Decision of the Regional Trial Court dated June 3, 1998 are REVERSED and SET ASIDE. Respondent is ORDERED to pay petitioner: (1) the amount of Two Hundred Forty-Eight Thousand Four Hundred Forty-Nine Pesos and Sixty-Three Centavos (P248,449.63) plus legal interest of 6% per annum from February 10, 1995 until this Decision becomes final and executory; (2) the legal interest of 12% per annum on the total amount due from such finality until fully paid; (3) 10% of the total amount due as and by way of attorney's fees, and (4) the costs of suit.

SO ORDERED.

Ynares-Santiago, Chico-Nazario, Nachura, and Reyes, JJ., concur.

[1] Penned by Justice Andres B. Reyes, Jr. with the concurrence of Justices Delilah Vidallon-Magtolis and Regalado E. Maambong, rollo, p. 29.

[2] Records, Vol. I, pp. 456-457.

[3] Id. at 1.

[4] Id. at 43.

[5] Records, p. 63.

[6] Id. at 68, 112.

[7] Folder of Exhibits for the Plaintiff, id., Vol. II, pp. 24-57.

[8] Id., Vol. I, p. 318.

[9] Marked as Exhibits "8-B", "8-F", "8-H", "8-I", "8-J", "8-W", "8-X", "8-AAA", "8-BBB", "8-QQQ", "8-RRR", "8-AAAA", "8-BBBB", "8-KKKK", "8-LLLL", "8-EEEE", "8-FFFF", "8-PPPP", "8-QQQQ", "8-BBBBBB", "8-HHHHHH", "8-IIIIII", "8-VVVVVV", "8-WWWWWW", "8-KKKKKKK", "8-LLLLLLL", "8-ZZZZZZ", "8-AAAAAAA", Folder of Exhibits for the Defendant, id., Vol. III.

[10] Id., Vol. I, p. 424.

[11] Records, p. 456.

[12] CA rollo, p. 77.

[13] Id. at 101.

[14] Rollo, p. 13.

[15] Citibank, N.A. v. Jimenez, Sr., G.R. No. 166878, December 18, 2007, 540 SCRA 573, 582.

[16] Id.

[17] CGP Transportation and Services Corporation v. PCI Leasing and Finance, Incorporated, G.R. No. 164547, March 28, 2007, 519 SCRA 314, 324.

[18] Sandejas v. Ignacio, Jr., G.R. No. 155033, December 19, 2007, 541 SCRA 61, 74-75.

[19] Citibank, N.A. (Formerly First National City Bank) v. Sabeniano, G.R. No. 156132, October 16, 2006, 504 SCRA 378, 418.

[20] Coronel v. Capati, G.R. No. 157836, May 26, 2005, 459 SCRA 205, 213.

[21] Id; Citibank, N.A. v. Sabeniano, G.R. No. 156132, supra note 19.

[22] G & M (Phils.), Inc. v. Cruz, G. R. No. 140495, April 15, 2005, 456 SCRA 215, 222.

[23] Defendant's Pre-Trial Brief, records, Vol. I, pp. 114-115.

[24] 75 Phil. 672 (1946).

[25] Id. at 679.

[26] G.R. No. 144581, July 5, 2002, 384 SCRA 139, 146.

[27] G.R. No. 133876, December 29, 1999, 321 SCRA 659, 680-681.

[28] G.R. No. 91852, August 15, 1995, 247 SCRA 361, 377-378.

[29] G.R. No. 130699, May 12, 2000, 332 SCRA 82.

[30] Mercedes v. Development Bank of the Philippines, supra note 29.

[31] G.R. No. 124518, December 27, 2007, 541 SCRA 371, 387; National Power Corporation v. Court of Appeals, No. L-43814, April 16, 1982, 113 SCRA 556, 572.

[32] Records, p. 318.

[33] See Mahilum v. Court of Appeals, No. L-17970, June 30, 1966, 17 SCRA 482, 486.

[34] (visited October 16, 2008).

[35] Id.

[36] Id.

[37] Id.

[38] Id.

[39] Id.

[40] G.R. No. 153204, August 31, 2005, 468 SCRA 571, 590.

- [41] Commissioner of Internal Revenue v. Manila Mining Corporation, *supra* note 40.
- [42] Edited by Bryan A. Garner, Eighth Edition, 2004, p. 846; An invoice or bill.
- [43] 48 Corpus Juris Secundum, p. 764.
- [44] See TSN, August 7, 1997, pp. 42-50.
- [45] Exhibit "8-JJ", Folder of exhibits for the defendant, p.36.
- [46] See Exhibits "8-TTTTTT", "8-BBBBBBBBB", Folder of exhibits for the defendant, pp. 148 and 209.
- [47] TSN, August 7, 1997, pp. 13-15.
- [48] Prudential Guarantee and Assurance Inc. v. Trans-Asia Shipping Lines, Inc., G.R. No. 151890, June 20, 2006, 491 SCRA 411, 433.
- [49] G.R. No. 97412, July 12, 1994, 234 SCRA 78.
- [50] *Id.* at 95-97.
- [51] See demand letter, Folder of Exhibits for the Plaintiff, orig. records, Vol. II. p. 55.
- [52] Pilipinas Shell Petroleum Corporation v. John Bordman, Ltd. of Iloilo, Inc., G.R. No. 159831, October 14, 2005, 473 SCRA 151, 175.
- [53] Mercury Drug Corporation v. Huang, G.R. No. 172122, June 22, 2007, 525 SCRA 427, 442-443.
- [54] Santiago v. CF Sharp Crew Management, Inc., G.R. No. 162419, July 10, 2007, 527 SCRA 165, 180.

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