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against him must be established by convincing proof. The record must disclose as free from doubt a case which compels the exercise by this Court of its disciplinary powers."[11]

WHEREFORE, this administrative complaint against respondent Virgilio Anz. Cruz is dismissed for lack of merit. Let a copy of this resolution be spread on his record.

Makalintal, C.J., Barredo, Aquino, and *Concepcion, Jr., JJ.,* concur.

Antonio, J., is on official leave.

SECOND DIVISION

[G.R. No. L-22493. July 31, 1975]

ISLAND SALES, INC., *plaintiff-appellee, vs.* **UNITED PIONEERS GENERAL CONSTRUCTION COMPANY, ET AL,** *defendants.* **BENJAMIN C. DACO,** *defendant-appellant.*

SYLLABUS

CIVIL LAW; PARTNERSHIP; OBLIGATIONS OF A PARTNER; THE FACT THAT THE COMPLAINT AGAINST THE DEFENDANT WAS DISMISSED, UPON MOTION OF THE PLAINTIFF, DOES NOT UNMAKE THE SAID LUMAUIG AS A GENERAL PARTNER IN THE DEFENDANT COMPANY.— In the instant case, there were five (5) general partners when the promissory note in question was executed for and in behalf of the partnership. Since the liability of the partners is *pro rata*, the liability of the appellant Benjamin C. Daco shall be limited to only one-fifth (1/5) of the obligations of the defendant company.

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[11] *Ibid*, 442.

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The fact that the complaint against the defendant Romulo B. Lumauig was dismissed, upon motion of the plaintiff, does not unmake the said Lumauig as a general partner in the defendant company. In so moving to dismiss the complaint, the plaintiff merely condoned Lumauig's individual liability to the plaintiff.

APPEARANCES OF COUNSEL

Grey, Buenaventura & Santiago for plaintiff-appellee.
Anacleto D. Badoy, Jr. for defendant-appellant.

D E C I S I O N

CONCEPCION, JR., *J.:*

This is an appeal interposed by the defendant Benjamin C. Daco from the decision of the Court of First Instance of Manila, Branch XVI, in Civil Case No. 50682, the dispositive portion of which reads:

"WHEREFORE, the Court sentences defendant United Pioneer General Construction Company to pay plaintiff the sum of ₱7,119.07 with interest at the rate of 12% per annum until it is fully paid, plus attorney's fees which the Court fixes in the sum of Eight Hundred Pesos (₱800.00) and costs.

"The defendants Benjamin C. Daco, Daniel A. Guizona, Noel C. Sim and Augusto Palisoc are sentenced to pay the plaintiff in this case with the understanding that the judgment against these individual defendants shall be enforced only if the defendant company has no more leviable properties with which to satisfy the judgment against it.

"The individual defendants shall also pay the costs."

On April 22, 1961, the defendant company, a general partnership duly registered under the laws of the Philippines, purchased from the plaintiff a motor vehicle on the installment basis and for this purpose executed a promissory note for ₱9,440.00, payable in twelve (12) equal monthly installments of ₱786.63, the first installment payable on or before May 22, 1961 and the subsequent installments on the 22nd day of every month thereafter, until fully paid, with the condition that failure to pay

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any of said installments as they fall due would render the whole unpaid balance immediately due and demandable.

Having failed to receive the installment due on July 22, 1961, the plaintiff sued the defendant company for the unpaid balance amounting to ₱7,119.07. Benjamin C. Daco, Daniel A. Guizona, Noel C. Sim, Romulo B. Lumauig, and Augusto Palisoc were included as co-defendants in their capacity as general partners of the defendant company.

Daniel A. Guizona failed to file an answer and was consequently declared in default.[1]

Subsequently, on motion of the plaintiff, the complaint was dismissed insofar as the defendant Romulo B. Lumauig is concerned.[2]

When the case was called for hearing, the defendants and their counsels failed to appear notwithstanding the notices sent to them. Consequently, the trial court authorized the plaintiff to present its evidence *ex-parte*,[3] after which the trial court rendered the decision appealed from.

The defendants Benjamin C. Daco and Noel C. Sim moved to reconsider the decision claiming that since there are five (5) general partners, the joint and subsidiary liability of each partner should not exceed one-fifth (1/5) of the obligations of the defendant company. But the trial court denied the said motion notwithstanding the conformity of the plaintiff to limit the liability of the defendants Daco and Sim to only one-fifth (1/5) of the obligations of the defendant company.[4] Hence, this appeal.

The only issue for resolution is whether or not the dismissal of the complaint to favor one of the general partners of a partnership increases the joint and subsidiary liability of each of the remaining partners for the obligations of the partnership.

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[1] p. 3a. RA.

[2] p. 4a. RA.

[3] p. 49. RA.

[4] pp. 56-57, RA.

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Article 1816 of the Civil Code provides:

"Art. 1816. All partners including industrial ones, shall be liable pro rata with all their property and after all the partnership assets have been exhausted, for the contracts which may be entered into in the name and for the account of the partnership. under its signature and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract."

In the case of *Co-Pitco vs. Yulo* (8 Phil. 544) this Court held:

"The partnership of Yulo and Palacios was engaged in the operation of a sugar estate in Negros. It was, therefore, a civil partnership as distinguished from a mercantile partnership. Being a civil partnership, by the express provisions of articles 1698 and 1137 of the Civil Code, the partners are not liable each for the whole debt of the partnership. The liability is *pro rata* and in this case Pedro Yulo is responsible to plaintiff for only one-half of the debt. The fact that the other partner, Jaime Palacios, had left the country cannot increase the liability of Pedro Yulo."

In the instant case, there were five (5) general partners when the promissory note in question was executed for and in behalf of the partnership. Since the liability of the partners is pro rata, the liability of the appellant Benjamin C. Daco shall be limited to only one-fifth (1/5) of the obligations of the defendant company. The fact that the complaint against the defendant Romulo B. Lumauig was dismissed, upon motion of the plaintiff, does not unmake the said Lumauig as a general partner in the defendant company. In so moving to dismiss the complaint, the plaintiff merely condoned Lumauig's individual liability to the plaintiff.

WHEREFORE, the appealed decision as thus clarified is hereby AFFIRMED, without pronouncement as to costs.

SO ORDERED.

Makalintal, C.J., Fernando (Chairman), Barredo, and *Aquino, JJ.,* concur.