

EUSEBIO MENDOZA, PLAINTIFF-APPELLEE, VS. GREGORIO HERRERA, DEFENDANT-APPELLANT.

Ponente: LAMPAS PERALTA, J.

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LAMPAS PERALTA, J.:

This is an appeal from the Decision dated July 15, 1998 in Civil Case No. R-4508 of Branch 40, Regional Trial Court, Calapan City which granted the complaint for specific performance and damages on the basis of plaintiff-appellee's evidence presented ex parte. Defendant-appellant had been declared in default for failure to file answer or responsive pleading.

THE ANTECEDENTS

On September 5, 1996, plaintiff-appellee filed a complaint against defendant-appellant for specific performance and damages alleging, among others, that: (i) defendant-appellant borrowed plaintiff-appellee's certificates of title to guaranty the payment of defendant-appellant's loan from a lending company; (ii) defendant-appellant mortgaged the properties of plaintiff-appellee without the latter's knowledge and consent; (iii) after several months and despite repeated demands by plaintiff-appellee, defendant-appellant failed to return the titles; (iv) a representative of Multi Line Credit Corporation informed plaintiff-appellee that the mortgage constituted on his properties was due for foreclosure; (v) when pressed for payment, defendant-appellant promised plaintiff-appellee that he would pay his indebtedness and redeem the subject titles, but he failed to fulfill his promise; and (vi) to ensure that defendant-appellant would not renege on his promise to pay his indebtedness to Multi Line Credit Corporation thru one-half (1/2) of the income of his property in Aurora, Naujan, Oriental Mindoro which was also in danger of being disposed of, said property should be placed in receivership and the proceeds thereof be applied to his indebtedness.[1] Thus, the complaint prayed for the appointment of a receiver to preserve the property of defendant-appellant in Aurora, Naujan, Oriental Mindoro, and that defendant-appellant be ordered to pay his indebtedness to Multi Line Credit Corporation and redeem the mortgage on plaintiff-appellee's properties.[2]

On motion of plaintiff-appellee, defendant-appellant was declared in default for failure to file his responsive pleading to the complaint.[3] Thereafter, the trial court received plaintiff-appellee's evidence ex parte.

On July 15, 1998, the trial court rendered a Decision in favor of plaintiff-appellee, the dispositive portion of which reads:

ACCORDINGLY, judgment is hereby rendered in favor of the plaintiff and against the defendant, as follows:

- The defendant is hereby directed to perform his promise of paying his indebtedness to Multi-Line Credit Corporation and to redeem the mortgage on the properties of the plaintiff covered by TCT Nos. T-41074 and T-66668 of the Registry of Property of Oriental Mindoro;
- The defendant is hereby ordered to pay the plaintiff the sum of P30,000.00 for costs and expenses of litigation and attorney's fees of P25,000.00 for moral damages and P30,000.00 as exemplary damages;
- A receiver to be designated by the plaintiff is hereby appointed to guard and preserve the property of the

defendant situated in Barangay Aurora, Naujan, Oriental Mindoro which is covered by OCT No. P-3709 and said receiver is hereby ordered to receive the proceeds of the harvest from said land to be applied to the payment of defendant's indebtedness with the Multi-Line Credit Corporation, if the defendant fails to comply with the Order of the Court to pay his indebtedness with the Multi-Line Credit Corporation within fifteen (15) days after this Decision becomes final and executory.

SO ORDERED.[4]

On August 17, 1998, defendant-appellant filed a motion for new trial on the ground that he was not properly declared in default because his failure to file answer was due to fraud, mistake or excusable negligence.[5] In an Order dated September 24, 1998, the trial court denied defendant-appellant's motion for new trial for the reason that defendant-appellant's allegation of fraud lacked merit.[6]

Hence, defendant-appellant filed this appeal raising the following lone assignment of error:

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THE TRIAL COURT COMMITTED AN ERROR WHEN IT DENIED THE MOTION FOR NEW TRIAL OF THE DEFENDANT-APPELLANT.[7]

THE ISSUE

Whether defendant-appellant's failure to file answer or responsive pleading was due to extrinsic fraud which would constitute sufficient ground for a new trial in the case below.

THE COURT'S RULING

Defendant-appellant argues that the trial court erred in denying his motion for new trial on the ground of fraud, mistake or excusable negligence. Allegedly, defendant-appellant failed to file his answer within the required period because plaintiff-appellee led him to believe that their differences would be settled amicably.[8]

The argument is devoid of merit.

It must be stressed at the outset that although defendant-appellant received the trial court's Order dated November 6, 1997 declaring him in default and his receipt thereof was before the trial court rendered its Decision, he did not file any motion to set aside said Order of default. Basic are the remedies available to a party declared in default which, as enunciated in *Indiana Aerospace University vs. Commission on Higher Education*, 356 SCRA 367 (2001), are as follows:

We agree with respondent. *Lina v. Court of Appeals* discussed the remedies available to a defendant declared in default, as follows: (1) a motion to set aside the order of default under Section 3(b), Rule 9 of the Rules of Court, if the default was discovered before judgment could be rendered; (2) a motion for new trial under Section 1(a) of Rule 37, if the default was discovered after judgment but while appeal is still available; (3) a petition for relief under Rule 38, if the judgment has become final and executory; and (4) an appeal from the judgment under Section 1, Rule 41, even if no petition to set aside the order of default has been resorted to. (Underscoring supplied)

Thus, defendant-appellant's failure to file any motion to lift the order of default is not in accord with the *Indiana* ruling that if the default was discovered before judgment, the defaulting party's remedy was to file a motion to set aside the order of default.

In any event, Section 1, Rule 37, 1997 Rules of Civil Procedure provides that an aggrieved party may move for new trial based on the grounds of fraud, accident, mistake, excusable negligence or newly discovered evidence.

Thus:

Section 1. Grounds of and period for filing motion for new trial or reconsideration. – Within the period for taking an appeal, the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

(a) Fraud, accident, mistake or excusable negligence which ordinary prudence could not have guarded against and by reason of which such aggrieved party has probably been impaired in his rights; or

(b) Newly discovered evidence, which he could not, with reasonable diligence, have discovered and produced at the trial, and which if presented would probably alter the result.

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In *Jonathan Landoil International Co., Inc. vs. Mangudadatu*, 436 SCRA 559 (2004), the Supreme Court stressed the grounds for a motion for new trial as follows:

A motion for new trial may be filed on the grounds of: (1) fraud, accident, mistake or excusable negligence that could not have been guarded against by ordinary prudence and by reason of which the aggrieved party's rights have probably been impaired; or (2) newly discovered evidence that, with reasonable diligence, the aggrieved party could not have discovered and produced at the trial; and that, if presented, would probably alter the result. xxx

Jurisprudence is settled that extrinsic fraud refers to any fraudulent act of the prevailing party in a litigation which is committed outside of the trial of the case, where the losing party was prevented from defending his cause by fraud or deception employed by the former. As held in *Republic vs. "G" Holdings*, 475 SCRA 608 (2005):

xxx Fraud is regarded as extrinsic where it prevents a party from having a trial or from presenting his entire case to the court, or where it operates upon matters pertaining not to the judgment itself but to the manner in which it is procured. The overriding consideration when extrinsic fraud is alleged is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.

The purported extrinsic fraud relied upon by defendant-appellant cannot properly secure a new trial. In the first place, the alleged fraud is not extrinsic as defendant-appellant was not prevented from presenting his case before the trial court. Record shows that after service of summons to file answer or responsive pleading, defendant-appellant filed on October 25, 1996 an "Urgent Motion for Extension of Time to Submit Answer"[9] which was granted by the trial court in an Order dated October 28, 1996.[10] Defendant-appellant was thus given an extended period of fifteen (15) days from October 27, 1996 within which to file answer or responsive pleading, but he failed to file answer or responsive pleading within that period. The alleged efforts of the parties to arrive at an amicable settlement did not detract from the fact that defendant-appellant was given sufficient time to file an answer or responsive pleading to the complaint. In fact, defendant-appellant was served a copy of plaintiff-appellee's motion to declare him in default but he did not even file any opposition thereto. Clearly, there is no indication whatsoever of any fraud employed upon defendant-appellant which prevented him from having his day in court. As the trial court correctly noted:

xxx In all these hearings, the defendant was duly notified, however, said defendant failed to file any motion for reconsideration to set aside the order of default issued by this Court. After the ex-parte presentation of evidence for the plaintiff, the Court rendered its decision dated 15 July 1998, copy of the said decision was received by the defendant on 03 August 1998.

xxx It is crystal clear that the defendant had received the summons together with the complaint and other supporting documents wherein which said defendant filed an Urgent Motion for extension of Time to Submit Answer and the Court granted the said motion giving said defendant another 15-day period within which to file

answer, however, after the lapse of said grace period given to the defendant to file answer, no answer or responsive pleading was ever filed. The order of this Court [11] declaring said defendant in default is therefore proper. The averments in the Motion for New Trial that the defendant was led to believe by the plaintiff that their differences could be settled amicably, hence, extrinsic fraud prevented the defendant from filing his Answer is untenable and therefore, the same cannot be considered by this Court as a ground for a new trial.

Then again, the basic ground for the grant of a new trial is that there has been a miscarriage of justice and that the new trial will be in the interest of justice. Where an injustice has been done, and a further trial is necessary to secure justice, courts have not only the right and inherent power, in their discretion, but also the duty, to grant a new trial.[12] This does not obtain in the present case.

WHEREFORE, the trial court's Decision dated July 15, 1998 is affirmed.

SO ORDERED.

Reyes, (Chairman) and Dimaranan-Vidal, JJ., concur.

[1] pp. 1-4, Record

[2] p.5, *ibid.*

[3] p. 22, *ibid.*

[4] pp. 80-81, Record

[5] p. 84, *ibid.*

[6] pp. 91-92, *ibid.*

[7] p 18, Rollo

[8] pp. 18-20, Rollo

[9] p. 18, Record

[10] p. 19, *ibid.*

[11] p. 92, Record

[12] *Abrajano vs. Court of Appeals*, 343 SCRA 68 (2000)

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