

MOISES M. COLCOL, PETITIONER, VS. THE PHILIPPINE BANK OF COMMERCE, VICENTE DEL FIERRO, ET AL., AND THE HONORABLE COURT OF APPEALS, RESPONDENTS.

G.R. No. 23117. November 17, 1967

Ponente: BENGZON, J.P., J.

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BENGZON, J.P., J.:

To secure a P5,000-loan obtained from the Philippine Bank of Commerce, Vicente del Fierro, Luis de Leon, Moises Colcol and Working Press Corporation, jointly and severally, signed and executed a promissory note dated July 13, 1947 for the same amount, payable to the bank or its order, ninety (90) days after date with 8% interest per annum which interest if not paid when due, shall become part of the capital with the same rate of interest (See Art. 1959, Civil Code) and 25% of the amount due as attorney's fees should a litigation arise.

On May 25, 1954, the Philippine Bank of Commerce sued, before the Court of First Instance of Manila, Vicente del Fierro, Luis de Leon, Moises Colcol and the Working Press Corporation for the amount of P6,041.67 allegedly due as of May 3, 1954, plus 25% thereof as attorney's fees.

Answering on June 10, 1954, Colcol denied liability and in a cross-claim, alleged that he merely acted as guarantor of his co-defendants and did not receive any centavo from the loan.

The rest of the defendants also answered; but finding that the answer of said other defendants tendered no legal issue as it admitted the material allegations of the complaint, the Court of First Instance, on December 16, 1954, upon motion of the plaintiff and over the objection of defendant Colcol, rendered a judgment on the pleadings as to said other defendants, without prejudice to rendering a separate decision on Colcol's cross-claim, ordering these defendants, i.e., excluding Colcol, to pay plaintiff P6,041.67 with 8% interest from May 4, 1954 plus 25% attorney's fees.

On September 18, 1957, the date of hearing of the case against defendant Colcol, neither he nor his counsel appeared. Consequently, plaintiff presented its evidence and the court on November 15, 1957 ordered Colcol to pay, jointly and severally with his co-defendants, the amount still unpaid P4,535.90 with 8% interest from March 15, 1950 plus 25% attorney's fees.

Alleging mistake and excusable negligence consisting in the failure of his lawyer's new clerk to bring to the lawyer's attention the notice of hearing received September 2, 1958, as the clerk allegedly merely filed the notice in the folio of the case, Colcol petitioned on January 4, 1958 to set aside the court's decision of November 15, 1957.

Upon denial of the petition for lack of merit and of his motion for reconsideration of such denial, Colcol appealed to the Court of Appeals, alleging that he was denied his day in court.

On April 7, 1964, the Court of Appeals affirmed the appealed orders of the Court of First Instance on the following grounds: (a) Colcol's petition to set aside the judgment, considered under Rule 37 of the Rules of

Court as a motion for new trial, had an “affidavit of merits,” alleging the circumstances constituting the supposed excusable negligence, but it did not state facts showing a valid defense in case a new trial is granted; (b) The fraud, accident, mistake or excusable negligence as a ground must be of such a nature that ordinary prudence could not have guarded against it and by reason of which, the aggrieved party has probably been impaired in his rights. The failure of Colcol's counsel to instruct his new clerk from the start on a course of action as to papers received, is not an exercise of ordinary prudence and is inexcusable. Such instruction was given only after the incident occurred.

Appealing to us from the decision of the Court of Appeals Colcol insists that he was not given his day in court and claim substantial compliance with the rules regarding his affidavit of merits.

The duty rests on every counsel to see to it that there is adopted and strictly maintained a system that will efficiently take into account all court notices sent to him.[1] Appellants counsel should have been prudent enough to instruct his new clerk to keep him notified of pleadings that reach his office. Thus, We did not consider as excusable negligence a lawyer's failure to appear in a hearing due to the clerk's mistake of misfiling a notice of hearing just received before he went off for a vacation.[2] Considering the facts and circumstances and the rule that a motion for new trial rests on the sound discretion of the trial court.[3] We find no error on the part of the Court of Appeals in affirming the lower court's denial of such motion. In view of the patent inexcusability of the ground alleged, We find it unnecessary to go into appellant's other point.

WHEREFORE, the decision of the Court of Appeals is hereby affirmed, with double costs against appellant to be paid by his counsel.

SO ORDERED.

Concepcion, C.J., Reyes, Dizon, Makalintal, Zaldivar, Sanchez, Castro, Angeles, and Fernando, JJ., concur.

[1] Baring v. Cabahug, L-23229, July 20, 1967.

[2] Mendoza v. Bulanadi, 108 Phil. 11.

[3] Sharruf v. Bubla, L-17029, September 30, 1964.

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