

FOURTEENTH DIVISION

[CA-G.R. CV NO. 63293, August 31, 2006]

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

DECISION

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:

1. 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;
2. 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;
3. 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]