

SECOND DIVISION

[G.R. No. 107193, July 07, 1997]

EUGENIO TENEBRO, PETITIONER, VS. THE HONORABLE COURT OF APPEALS AND DAVAO FARMS CORPORATION, RESPONDENTS.

D E C I S I O N

MENDOZA, J.:

This is a petition for review of the decision of the Court of Appeals,^[1] affirming an order of the Regional Trial Court of Davao denying petitioner relief from judgment.

It appears that, on August 15, 1985, private respondent Davao Farms Corporation brought an action in the trial court for collection of P117,840.46 allegedly owed by petitioner for purchases of broiler chicks and egg trays.

In due time, petitioner filed his answer claiming that his unpaid balance was only P48,843.68. He executed a special power of attorney in favor of his counsel, Atty. Angel Fernandez, giving the latter authority to represent him and act on his behalf in the case.

On June 16, 1986, the pre-trial was terminated and the case was scheduled for hearing on July 30, 1986. Fernandez claimed, however, that after the pretrial he had lost contact with petitioner. His letter informing petitioner of the date and time of hearing had allegedly been returned unclaimed. The subpoena issued to petitioner at his given address was also returned undelivered.

Atty. Fernandez himself did not appear at the hearing scheduled on October 5, 1987 despite due notice to him, for which reason he was ordered by the court to show cause why he should not be declared in default. On October 10, 1987, Atty. Fernandez filed a "Manifestation" in which he claimed that his failure to appear at the hearing was due to the fact that his communications to petitioner had been returned undelivered and that petitioner could not be reached by long distance telephone.

The case was again scheduled for trial on January 11, 1988. But again petitioner and his counsel did not come. The hearings were reset several more times, but, as both petitioner and his counsel were absent, the trial court, on June 2, 1988, allowed private respondent, as plaintiff, to present its evidence ex parte.

On July 4, 1988, the trial court rendered judgment ordering petitioner to pay private respondent the amount of P103,690.46 for the unpaid purchases, plus interest at 14% per annum from January 25, 1985, attorney's fees and costs.

A copy of this decision was served on Atty. Fernandez on July 8, 1988. As the decision became final and executory, private respondent, on July 29, 1988, moved

for execution of the decision. A writ of execution was issued on August 1, 1988.

On October 27, 1988, petitioner filed, through a new counsel, a petition for relief from judgment with a prayer to quash the writ of execution, but his petition was denied on May 9, 1989. The trial court rejected petitioner's claim that he had been deprived of due process. It held that petitioner had not informed the court of his new address or inquired from it regarding the status of the case. The trial court also found petitioner's claim that he had a balance of only P48,843.68 to be without merit, there being no basis presented to show this, his theory being instead that the broiler chicks delivered to him had redhibitory defects.

Petitioner appealed but the Court of Appeals dismissed the appeal and affirmed the order of the trial court. Hence, this petition for review.

First. Petitioner contends that his failure to appear at the hearing of the case was a ground for considering him to have waived the right to cross-examine private respondent's witnesses, but not his right to present evidence. For this reason, he contends that a separate hearing for the reception of his evidence as defendant should have been held by the trial court and that the trial court erred in relying on the information of his counsel that he could not be located.

The contention has no merit. As the Court of Appeals correctly held:

The theory of appellant that he was deprived of his day in court deserves scant consideration. As can be gleaned from the records, after he executed a special power of attorney in favor of Atty. Fernandez, he did practically nothing to protect his interest in the litigation. For almost three years since commencement of the suit, he failed to communicate with his counsel to inquire about the status of the case if indeed he believed he has a meritorious defense. Now, after his long slumber, he had the temerity to declare that he was denied his day in court. One who was given full opportunity to present his evidence and who failed to do so cannot complain that he was denied due process when the court rendered its decision on the basis of the evidence given ex-parte. (*Ganaden vs. Ramos*, 99 SCRA 613). In his last-ditch effort to obtain the relief demanded, he alleged that he was not notified of the decision by his counsel. Assuming, *gratis argumenti*, that he was not notified, the failure of counsel to notify him of the adverse judgment does not constitute excusable negligence. A party cannot avoid liability ordered in the decision appealed from on the ground that because of "the caused action and/or omissions of his former counsels, he was placed in a position no better than those in default" considering that he was given every opportunity in the lower court to present his evidence. Except for their intermittent requests for postponements and change of counsels, he never appeared in court any more, until the case was finally terminated. Furthermore, the mistakes and negligence of counsel are binding upon his client (*Isaac vs. Mendoza*, 89 Phil. 279; *Vivero vs. Santos*, 98 Phil. 500; *Ocampo vs. Hon. Caluag, et al.*, 19 SCRA 717; *Javellana vs. Hon. Leuterio, et al.*, 20 SCRA 717).