

**JULIAN MENDOZA, PETITIONER, VS. HON. CRISPIN V. BAUTISTA,
JUDGE OF THE COURT OF FIRST INSTANCE OF BULACAN, BRANCH
III, SPOUSES RENATO MACAPAGAL, AND CORAZON MACAPAGAL,
RESPONDENTS.**

G.R. No. L-45885. April 28, 1983

Ponente: VASQUEZ, J.

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VASQUEZ, J.:

This is a direct appeal by petition for review on certiorari of an order of the respondent Judge of the Court of First Instance of Bulacan, Branch III, dismissing the petitioner's complaint in Civil Case No. 339-V-76 and of the subsequent order denying a motion for the reconsideration of the order of dismissal.

In May 1975, the petitioner Julian Mendoza and private respondents, spouses Renato Macapagal and Corazon Macapagal, entered into a written contract, entitled "Kasunduan Sa Pagpapatayo Ng Tirahang Bahay" whereby for and in consideration of the sum of P320,000.00, the petitioner undertook to construct a residential house for the private respondents under the terms and conditions therein provided for. The construction of the house was attended by some misunderstandings between the parties, with the petitioner claiming that he is entitled to certain amounts which the private respondents refused to pay, and the latter in turn alleging that the petitioner should pay them damages for having abandoned the job.

Sometime in March 1976, the petitioner filed a complaint in the Court of First Instance of Bulacan against the private respondents for the recovery of two separate sums, namely, (a) the amount of P145,814.00 supposedly representing the value of the additional work performed by the petitioner in constructing the house conformably to the request of the private respondents; and (b) the sum of P48,000.00 representing the unpaid balance of the contract price of P320,000.00.

After the private respondents filed their answer to the complaint, a pre-trial was conducted in which the parties failed to arrive at an amicable settlement. Before any trial was conducted, however, the private respondents filed a motion to dismiss the complaint on the ground that the same does not state a cause of action. The petitioner filed an opposition to the said motion to dismiss. The respondent Judge resolved the said motion to dismiss in his order dated January 19, 1977 as follows:

"O R D E R

Acting upon the motion to dismiss filed by Atty. P. A. Funelas, counsel for the defendants, the opposition filed by Atty. Rogelio P. Closa, counsel for the plaintiff, and the reply thereat, carefully going over the allegations of the parties in their respective pleadings, it appearing that the Contract denominated as 'Kasunduan sa Pagpapatayo ng Tirahan' (Annex A), was the basis of plaintiff's action for a sum of money with damages and from said contract, plaintiff undertook the construction of defendants' residential house pursuant to the plan and specification agreed upon between the parties (Annex B). Considering that the additional work claimed to have been performed by plaintiff in the construction of defendants' house consisting of various changes and

modifications in the materials and workmanship were done by the former devoid of any written agreement, this case should really be dismissed. For, as aptly pointed out by the defendants, Article 1724 of the Civil Code provides that the contractor who undertakes to build a structure of any work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or materials, save when there has been a change in the plans and specifications, provided: (1) such has been authorized by the proprietor in writing; and (2) the additional price to be paid to the contractor has been determined in writing by both parties. From the foregoing, it can be safely concluded that the Court is of the opinion that the requirement of written authorization from the defendants is not merely for purposes of proof but it is a condition precedent. And, if it is not a condition precedent, it will be wasting the time of the Court when at the trial of the case no parole evidence can be adduced by the plaintiff because of the provisions of the Civil Code, that additional price to be paid to the contractor must be determined in writing.

WHEREFORE, the motion to dismiss is hereby granted without pronouncement as to costs." (Annex 'C', Rollo, pp. 16-17.)

A motion for the reconsideration of the above-quoted order (Annex 'D', Rollo, pp. 18-22) was denied by the respondent Judge in his order of March 10, 1977 for lack of merit. (Annex 'E', Rollo, p. 24.) The said two orders of the respondent Judge (Annexes 'C' and 'E') are the subject-matter of the instant appeal.

In moving for the dismissal of the complaint on the ground that it fails to state a cause of action the private respondents contend that the petitioner may not claim the value of the additional work performed in the construction of the house inasmuch as the private respondents have not given the petitioner a written authority for such additional work, as required by Article 1724 of the New Civil Code, which provides:

"ART. 1724, NCC.— The contractor who undertakes to build a structure or any other work for a stipulated price, in conformity with plans and specifications agreed upon with the landowner, can neither withdraw from the contract nor demand an increase in the price on account of the higher cost of labor or material, save when there has been a change in the plans and specifications, provided:

(1) Such change has been authorized by the proprietor in writing, and

(2) The additional price to be paid to the Contractor has been determined in writing by both parties." (Italics supplied.)

Private respondents point out to the fact in paragraph 5 of the petitioner's complaint, it was expressly alleged that the performance of the additional work was without any written agreement.

The petitioner opposed the motion to dismiss on the grounds that: (1) the filing of a motion to dismiss may not be done after an answer had already been filed; and (2) the complaint alleges two causes of action: the first, for the recovery of the value of the additional work amounting to P145,814.00; and the second, for the recovery of P48,000.00 representing the unpaid balance of the contract price. Hence, assuming that the first cause of action may not prosper in view of Article 1724 of the Civil Code, the same deficiency may not apply to the second cause of action.

As may be noted from the above-quoted order of the respondent Judge (Annex 'C'), the dismissal was based solely on the ground that there was no written authorization for the performance of the additional work and, by reason thereof, recovery of the value of the same is not permissible under Article 1724 of the New Civil Code. There is absolutely no discussion with respect to the contention of the petitioner that he has a second cause of action for the recovery of P48,000.00 representing the unpaid balance of the contract price. The said point also remained untouched in the order denying the motion for reconsideration despite the fact that the said motion for

reconsideration was based principally on that ground. This act on the part of the respondent Judge could have been induced by the fact that neither in their motion did the private respondents mention anything about the claim for the unpaid portion of the contract price.

The error in dismissing the complaint is quite obvious. While there may be some legal basis for the ruling that the petitioner has no cause of action with respect to the recovery of the value of the additional work in view of the provisions of Article 1724 of the New Civil Code (a point which We do not now decide, it being the petitioner's contention that he may recover the same on the ground of quantum meruit), there appears to be no basis for dismissing the complaint insofar as the second cause of action for the recovery of P48,000.00 is concerned. Although the petitioner admits that he had no written authorization for performing the additional work, the private respondents similarly admit that they have not paid the aforesaid sum of P48,00.00 to the petitioner. They merely justify the non-payment thereof by claiming that the petitioner abandoned the work, and that they spent an amount greater than the unpaid balance in finishing the construction of the house. In their answer, private respondents counterclaimed for the sum of P37,636.81 supposedly representing the expenses incurred by them over and above the contract price. Petitioner denies having abandoned the work.

It is axiomatic that a motion to dismiss based on the failure of the complaint to state a cause of action is to be resolved solely on the basis of the facts alleged in the complaint and no others, which facts are deemed hypothetically admitted for the purpose of such motion. If such facts constitute a cause of action on the basis of which the court may render a valid judgment, the motion to dismiss on this ground must be denied. (1 Moran, 1970 Edition, 494-495.)

The petitioner's cause of action for the recovery of P48,000.00 is alleged in paragraphs 8 and 9 of the complaint as follows:

"8. That plaintiff received from defendants as payment of the original contract of P320,000.00, the sum of P272,000.00 only, leaving a balance of P48,000.00; plaintiff's additional work for changes and modifications of the house amounted to P145,814.00 without any payment at all. Hence, defendants' total account is in the sum of P193,814.00;

"9. That demands were made by plaintiff from defendants to pay said sum, but defendants failed and refused and still continue to fail and refuse to pay the same;"

It may hardly be denied and, indeed, no denial was made either by the respondent Judge or by the private respondents that the above allegations in themselves sufficiently constitute a cause of action. Said allegations mention the fact that the private respondents contracted to pay the petitioner the sum of P320,000.00 but had paid only the sum of P272,000.00, thereby leaving a balance of P48,000.00. This sum remained unpaid despite demands.

It is true that in their answer to the complaint, the private respondents have countered that they are no longer obligated to pay the petitioner the aforesaid sum in view of the fact that when the petitioner abandoned the work due to illness, they themselves undertook the completion of the construction for which they spent a greater sum than what was due to the petitioner. The said allegations of the private respondents do not destroy the petitioner's cause of action as alleged in the complaint. They are matters of defense which should be proved during the trial; they are not to be considered in determining the truth of the facts alleged in the complaint which are deemed hypothetically admitted by their motion to dismiss on the ground that the facts alleged in the complaint do not constitute a cause of action.

Realizing, perhaps, the weakness of their position in sustaining the order of the respondent Judge in dismissing the complaint, the private respondents, in their memorandum, resorted to additional grounds for upholding such

dismissal. They now contend that this petition for certiorari may not be entertained because it is being utilized as a substitute for appeal, and that it was filed out of time. Neither of these contentions of the private respondents find support in applicable rules.

The instant proceeding is not a petition for certiorari under Rule 65 of the Rules of Court. It is an appeal by petition for review on certiorari in accordance with Republic Act No. 5440. It is illogical therefore, to claim that the petition is resorting to this proceeding as a substitute for appeal, it being an appeal in itself.

The contention that the petition was filed out of time is predicated on the claim that the motion for reconsideration was defective for being pro-forma and for failing to comply with the requirements of the Rules of Court regarding such a motion. We fail to see how the motion for reconsideration filed by the petitioner may be considered pro-forma, the same having called the attention of the trial court to a point which the latter totally ignored in the order dismissing the complaint. The requirement which the petitioner supposedly failed to observe in filing his motion for reconsideration was the failure to attach an affidavit of merit to the same. Private respondents argue that a motion for reconsideration is equivalent to a motion for new trial and, under Section 2 of Rule 37, when the motion for new trial is filed, affidavits of merits should be attached to the motion. Once again, private respondents misinterpreted the rules. While it is true that a motion for reconsideration is equivalent to a motion for new trial if based on a ground for new trial (2 Moran, 1970 Edition, p. 222), the so-called "motion for reconsideration" which is not called as such in Rule 37 is the term commonly used to refer to a motion for new trial under subdivision (c) of Section 1 of Rule 37. An affidavit of merit is required in a motion for new trial pursuant to Section 2 of Rule 37 if the motion for new trial is based on any of the causes mentioned in subdivision (a) of Section 1 of Rule 37, to wit, fraud, accident, mistake or excusable negligence. No similar requirement is imposed for a motion for new trial or motion for reconsideration under subdivision (c) of the same section.

The timeliness of the filing of this petition may not be validly questioned. The order dismissing the complaint was received by the petitioner on January 25, 1977. The motion for reconsideration was received on February 1, 1977. The order denying the motion for reconsideration was received by the petitioner on March 21, 1977. Within fifteen days thereafter or on April 4, 1977, the instant petition was filed before this Court.

WHEREFORE, the orders of the respondent Judge in Civil Case No. 339-V-76 are hereby ANNULLED and SET ASIDE. The motion to dismiss filed by the private respondents shall be deemed DENIED. Let the records of this case be remanded to the court of origin for further proceedings.

SO ORDERED.

Teehankee (Chairman), Melencio-Herrera, Plana, Relova and Gutierrez, Jr., JJ., concur.

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