

FELIX A, YUBOCO, ET AL., PLAINTIFFS AND APPELLANTS, VS. JOSE L. MATIAS, ET AL., DEFENDANTS AND APPELLEES.*G.R. No. L-20612. August 31, 1965*

Ponente: BENGZON, C.J.

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This is an appeal from the order of the Manila: court of first instance dismissing plaintiffs' complaint. The reason was failure to prosecute.

Such complaint was filed September 28, 1959. The defendant Caiman Plantation Co. answered November 9, 1959, alleging a counterclaim, to which plaintiffs replied November 12, 1959. The next pleading of record is the motion to dismiss submitted by Caiman Plantation on August 5, 1960. Three days afterwards, the plaintiffs presented their written "opposition" to the motion to dismiss. During that month, a reply and rejoinder were filed by plaintiffs and defendants respectively. Again, the motion to dismiss still pending, the plaintiffs filed on August 30, 1960, a petition for injunction to prevent the defendant Caiman Plantation from disposing of its properties. Despite opposition of defendants, the court granted the petition, and upon a bond of P10,000.00, it issued a preliminary writ on September 15, 1960. Then on January 26, 1961, setting forth several reasons, the court denied the motion to dismiss. Four days afterwards, the defendant Caiman Plantation presented a motion to dissolve the preliminary injunction, and to repeat its previous move to dismiss. There was opposition; and acting on the incident, the court decreed that the injunction may be dissolved if the defendants filed a counterbond in the amount of P10,000.00. This was June 1961.

Thereafter, i. e., in June 1962, the court *motu proprio* dismissed the case, upon finding that for one full year, plaintiffs did nothing to prosecute their claim.

Having failed to secure reinstatement of their case, plaintiffs appealed to this Court.

Observing that the period of plaintiffs' inaction lasted for only one year, but bearing in mind the presumption in favor of the correctness of the judge's ruling,[1] our first impulse was to approve the dismissal with the proviso that it shall be without prejudice. However, as the record exhibits some facts which very probably will defeat plaintiffs' cause of action, we have elected to affirm the order of dismissal. Our reasons follow:

Plaintiffs seek to require defendants to comply with a preliminary contract the terms of which, in part, read as follows:

"1. That the sum of Twenty Thousand Pesos (P20,000.00) Phil. Trust Co. Check No. EB 394206 A, is hereby tendered and paid as earnest money, the receipt of which is hereby acknowledged;

"2. That the sum of Eighty Thousand Pesos (P80,000.00) will be paid upon execution of the formal documents signed by all the parties concerned;

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"4. That the sum of One Hundred Ten Thousand Pesos (P110,000.00) will be the amount assumed to pay the estate and inheritance taxes due and Bureau of Internal Revenue if feasible or any other party concerned thru the assurance and guarantee of Mr. Mariano Y. Santos."

The defendants answered that certain conditions in the agreement had failed to materialize, namely, the condition (4) about assuming responsibility for inheritance taxes described above. For that failure, defendants had offered on September 1, 1959, the return of the check for P20,000.00 (given as earnest money), which offer to return, the plaintiffs themselves admitted in their complaint.

Now then, it appears from the pleadings that up to July, 1962, the check for P20,000.00, had not been cashed by defendants. Indeed, they found in August, 1962, from the drawee bank that the drawer-plaintiffs-had no funds; so plaintiffs had to admit before the court that they had withdrawn the funds from the bank after the case had been filed, because there was no "sense in freezing the amount of P20,000.00 during the pendency of the case."

These circumstances furnish strong ground to suppose that in fact the hitch which defendants asserted as defense, (the non-fulfillment of condition No. 4) had actually occurred. Anyway, the subsequent withdrawal of the funds covering the check (earnest money) could properly be regarded as a valid defense to the action, or as a virtual rescission of the contract by the plaintiffs themselves.

Order affirmed with costs.

Concepcion, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

[1] Not to mention the existence of preliminary injunction which made prompt decision imperative.

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