

**ENRIQUE J. L. RUIZ, JOSE V. HERRERA, IN THEIR BEHALF AND AS
MINORITY STOCKHOLDERS OF THE ALLIED TECHNOLOGISTS, INC.,
PLAINTIFFS-APPELLANTS, vs. HON. SOTERO B. CABAUG,
SECRETARY...**

G.R. NO. L-9990. February 10, 1915

Ponente: LABRADOR, J.

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LABRADOR, J.:

Appeal from a judgment of the Court of First Instance of Manila dismissing plaintiffs' amended complaint .

The facts upon which plaintiffs' first cause of action are based are alleged as follows: On July 31, 1950 the Secretary of National Defense accepted the bid of the Allied Technologists, Inc., to furnish the architectural and engineering services in the construction of the Veterans Hospital at a price of P302,700. The plans, specifications, sketches and detailed drawings and other architectural requirements submitted by the Allied Technologists through three of its architects, Messrs. Enrique J. L. Ruiz, Jose V. Herrera and Pablo D. Panlilio were approved by the United States Veterans Administration in Washington, D. C. Because of the technical objection to the capacity of the Allied Technologists, Inc. to practice architecture and upon the advice of the Secretary of Justice, the contract was signed on the part of the Allied Technologists, Inc. by E. J. L. Ruiz as President and P. D. Panlilio as Architect. When the defendants-officials paid the Allied Technologists the contract price for the architectural engineering service, they retained 15% of the sum due, for the reason that defendant Panlilio has asserted that he is the sole and only architect of the Veterans Hospital to the exclusion of plaintiffs Ruiz and Herrera, assertion aided and abetted by defendant Jimenez. Unless defendants are prevented from recognizing defendant Panlilio as the sole architect of the contract and from paying the 15% retained, plaintiffs will be deprived of the monetary value of their professional services and their professional prestige and standing would be seriously impaired.

Under the second cause of action the following facts are alleged: Under Title II of the contract entered into between plaintiffs and the Secretary of National Defense, at any time prior to six months after completion and acceptance of the work under Title I, the Government may direct the Allied Technologists, Inc. to perform the services specified in said Title II. But notwithstanding such completion or acceptance, the Government has refused to direct the plaintiffs to perform the work, entrusting such to a group of inexperienced and unqualified engineers.

The prayer based on the first cause of action is that defendants desist from recognizing Panlilio as the sole and only architect of the 'Veterans Hospital and from paying him the 15 per cent retained as above indicated, and that after hearing Ruiz, Herrera and Panlilio be recognized as the architects of the "Veterans Hospital. Under the second cause of action it is prayed that the defendants be directed to turn over the supervision called for by Title II of the contract.

The court a quo dismissed the complaint on the ground that the suit involved is one against the Government, which may not be sued without its consent. It is also held that as the majority of the stockholders of the Allied

Technologists, Inc. have not joined in the action, the minority suit does not lie. It dismissed the second cause of action on the ground that the optional services under Title II have already been performed. On this appeal the plaintiffs assign the following errors:

I

THE LOWER COURT ERRED IN RULING THAT THE PRESENT SUIT IS ONE AGAINST THE GOVERNMENT AND THEREFORE CANNOT BE VALIDLY ENTERTAINED BECAUSE THE GOVERNMENT CANNOT BE SUED WITHOUT ITS CONSENT.

II

THE LOWER COURT ERRED IN HOLDING THAT THE PROVISIONS OF ACT 3083, AS AMENDED BY COMMONWEALTH ACT 327 ARE APPLICABLE TO THIS CASE; IT ERRED IN HOLDING THAT PLAINTIFFS' CLAIM SHOULD HAVE BEEN FILED WITH THE AUDITOR GENERAL.

III

THE LOWER COURT ERRED IN RULING THAT THE MINORITY. SUIT IS UNTENABLE.

IV

THE LOWER COURT ERRED IN DISMISSING THE AMENDED COMPLAINT WITH INJUNCTION.

Evidently, the plaintiffs-appellants do not question the dismissal of the second cause of action. So, the appeal has relation to the first cause of action only.

A careful study of the allegations made in the amended complaint discloses the following facts and circumstances: The contract price for the architectural engineering services rendered by the Allied Technologists, Inc. and the plaintiffs is P231,600.00. All of that sum has been set aside for payment to the Allied Technologists, Inc. and its architects, except the sum of P34,740.00, representing 15 per cent of the total cost, which has been retained by the defendants-officials. Insofar as the Government of the Philippines is concerned, the full amount of the contract price has been set aside and said full amount authorized to be paid. The Government does not any longer have any interest in the amount, which the defendants-officials have retained and have refused to pay to the plaintiffs, or to the person or entity to which it should be paid. And the plaintiffs do not seek to sue the Government to require it to pay the amount or involve it in the litigation. The defendant Jimenez is claimed to have "aided and abetted defendant Panlilio in depriving the Allied Technologists, Inc. and its two architects (Ruiz and Herrera) of the honor and benefit due to them under the contract Annex 'C' thereof." It is further claimed by plaintiffs that the defendants-officials are about to recognize Panlilio as the sole architect and are about to pay him the 15 per cent which they had retained, and thus deprive plaintiffs of their right to share therein and in the honor consequent to the recognition of their right, the suit, therefore, is properly directed against the officials and against them alone, not against the Government, which does not have any interest in the outcome of the controversy between plaintiffs on the one hand, and Panlilio on the other. The suit is between these alone, to determine who is entitled to the amount retained by the officials; and if the latter did aid and abet Panlilio in his pretense, to the exclusion and prejudice of plaintiffs, it is natural that they alone, and not the Government, should be the subject of the suit. Had said officials chosen not to take sides in the controversy between the architects, and had disclaimed interest in said controversy, the suit would have been converted into one of interpleader. But they have acted to favor one side, and have abetted him in his effort to obtain payment to him of the sum remaining unpaid and credit for the work, to the exclusion of the plaintiffs. Hence, the suit.

We are not wanting in authority to sustain the view that the State need not be a party in this and parallel cases.

"There is no proposition of law which is better settled than the general rule that a sovereign state and its political subdivision cannot be sued in the courts except upon the statutory consent of the state. Numerous decisions of this court to that effect may be cited; but it is enough to note that this court, in *bane inclaicecent* case, *State v. Woodruff* (Miss.), 150 So. 760, has so held; and therein overruled a previous decision which had adjudicated that such consent could be worked out of a statute by implication, when express consent was absent from the terms of that statute.

"But the rule applies only when the state or its subdivision is actually made a party upon the record, or is actually necessary to be made a party in order to furnish the relief demanded by the suit. It does not apply when the suit is against an officer or agent of the state, and the relief demanded by the suit requires no affirmative official action on the part of the state nor the affirmative discharge of any obligation which belongs to the state in its political capacity, even though the officers or agents who are made defendants disclaim any personal interest in themselves and claim to hold or to act only by virtue of a title of the state and as its agents and servants.

"Thus it will be found, as illustrative of what has been above said, that nearly all the cases wherein the rule of immunity from suit against the state, or a subdivision thereof, has been applied and upheld, are those which demanded a money judgment, and wherein the discharge of the judgment, if obtained, would require the appropriation or an expenditure therefrom, which being legislative in its character is a province exclusively of the political departments of the state. And in the less frequent number of cases where no money judgment is demanded, and the rule of immunity is still upheld, it will be found in them that the relief demanded would be, nevertheless, to require of the state or its political subdivision the affirmative performance of some asserted obligation, belong to the state in its political capacity.

"When, therefore, officers or agents of the state, although acting officially and not as individuals, seize the private property of a citizen, the state having no valid right or title thereto, or trespass upon that property or damage it, the jurisdiction of the courts to eject the officers or agent, or to enjoin them from further trespass or damage, in a suit by the owner against the officers or agents, is as well settled in the jurisprudence of this country as is the general rule first above mentioned; for in such a suit no relief is demanded which requires any affirmative action on the part of the state. Such a suit is only to the end that the officers and agents of the state stay off the private property of the citizen and cease to damage that property, the state having no right or title thereto." (*State Mineral Lease Commission vs. Lawrence* [1934], 157 So. 897,898-899.)

We hold that under the facts and circumstances alleged in the amended complaint, which should be taken on its face value, the suit is not one against the Government, or a claim against it, but one against the officials to compel them to act in accordance with the rights to be established by the contending architects, or to prevent them from making payment and recognition until the contending architects have established their respective rights and interests in the funds retained and in the credit for the work done. The order of dismissal is hereby reversed and set aside, and the case is remanded to the court a quo for further proceedings. With costs against the defendants-appellees.

Paras, C. J., Bengzon, Montemayor, Reyes, A., Bautista Angelo, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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