

JOANNAH GANKEE YU AND JOHNNY YU, PETITIONERS, VS. HON. JOHNSON L. BALLUTAY, IN HIS CAPACITY AS PRESIDING JUDGE REGIONAL TRIAL COURT, BRANCH 25, CABANATUAN CITY AND JOLLY RAY ROM...

Ponente: BARRIOS, J.

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BARRIOS, J.:

Through this special civil action for certiorari, the petitioners spouses Joannah Gankee Yu and Johnny Yu (or the Yus for brevity unless individualized) seek the annulment of the twin Orders dated August 30, 2002 which denied their motion to dismiss and October 18, 2002 which denied the motion for its reconsideration. These are assailed for having been issued by the Regional Trial Court stationed in Cabanatuan with grave abuse of discretion amounting to lack or excess of jurisdiction.

The respondent Jolly Jay Romero (or Romero) filed before the court a quo a complaint against the Yus denominated as Breach of Contract with Prayer for Damages and Preliminary Attachment. It was averred in the complaint that on March 14, 2002 Joannah entered into a contract with Romero for the renovation of a house located at Philam Homes Subd., Quezon City, for the consideration of one million pesos (P1,000,000.00). The payment of the consideration was to be thru “progress billing” or commensurate to the work performed. Having come to terms, Romero commenced the renovation and after he had completed some stages of the work, he demanded for payment on his “progress billings” but which Joannah refused to pay. After 80% of the work was performed, Joannah unilaterally and unlawfully terminated the contract and Romero’s workers were then prevented from entering the construction site. Joannah committed several breaches in the contract, and she had made a payment of only P400,000.00 and is still liable for another P400,000.00 for the full payment of the 80% completed work.

The Yus moved to dismiss the complaint on the ground that:

THE COMPLAINT ASSERTING THE CLAIM STATES NO CAUSE OF ACTION (SECTION 1 [G], RULE 16 OF THE RULES OF COURT, AS AMENDED) (p. 60, rollo)

In turn, Romero filed his Opposition (Annex “F”, pp. 65-67, rollo). The court a quo in the assailed Order dated August 30, 2002 denied the motion to dismiss for lack of merit (p. 25, rollo). A motion for reconsideration was filed by the Yus but this too was denied in the court a quo’s second assailed Order dated October 18, 2002 stating in part thus:

x x x

Atty. Valentino Alberto who reiterated his original denial to the Motion to Dismiss considering that under Rule 129 of the Rules of Court, Motion for Reconsideration should be only once except when the decision or order of the Court is against the original Order.

In view of the foregoing, wherefore, premises considered, the Motions to Dismiss is denied for lack of merit. x

x x (p. 26, rollo)

Hence this certiorari where the Yus presented the following grounds in support of their petition:

[1] THE RESPONDENT JUDGE ACTED IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN, IN UTTER DISREGARD OF APPLICABLE LAWS AND JURISPRUDENCE, HE ISSUED THE ASSAILED ORDERS WHICH DENIED PETITIONERS' MOTION TO DISMISS AND THE MOTION FOR RECONSIDERATION BASED ON FAILURE TO STATE CAUSE OF ACTION.

[2] THE RESPONDENT JUDGE ACTED IN EXCESS OF JURISDICTION AND WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN, IN UTTER DISREGARD OF APPLICABLE LAWS AND JURISPRUDENCE, HE ISSUED THE ASSAILED ORDERS ACTUALLY DEFERRING HIS RESOLUTION ON THE MOTION TO DISMISS WHICH IS NOT ALLOWED UNDER THE NEW RULES. (p. 14, rollo)

According to the Yus the complaint does not state a cause of action and the allegations therein are insufficient to warrant the judgment sought by Romero. Giving their own version of the case, the Yus allege that they were made to understand that Romero has to complete the renovation of the project within 10 weeks or on or before May 23, 2002. Joannah made a down payment of P100,000.00 and thereafter she accommodated the requests of Romero for a weekly payment of P10,000.00 on April 2, 11 and 18, 2002. As of April 18, 2002 Romero already received a total amount of P400,000.00 as payment for the project despite having completed only 30% of the work he contracted to undertake. Despite their agreement that Romero should present "progress billings" to Joannah as basis for any payment that would be made, he never gave her this to support his demands for payment. They further argue that the letter of Romero dated May 14, 2002 (p. 39, rollo) should not be considered as a "progress billing" but a mere request for conformity for additional work. The Yus also refuse to acknowledge the other documents appended in the complaint and aver that these are merely self serving claims and not a "progress billing" statement. The Yus firmly state that for failure on the part of Romero to show a completion of the work done and to present even one "progress billing", then he should be barred from pursuing the instant case.

The petition lacks merit.

A cause of action exists if the following elements are present: (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or created; (2) an obligation on the part of the named defendant to respect and not to violate that right; and (3) an act or omission constituting a breach of obligation of the defendant to the plaintiff or violating the right of the plaintiff, for which the latter may maintain an action for recovery of damages (*Heirs of Gregorio Licaros vs. Sandiganbayan*, 440 SCRA 483). A motion to dismiss based on lack of cause of action hypothetically admits the truth of the alleged facts (*Regino vs. Pangasinan Colleges*, 443 SCRA 56), and therefore the counter-allegations and defenses that the Yus have raised are irrelevant at this point and can only be properly threshed out after a full blown trial. On the other hand the complaint speaks for itself, and clearly the allegations set forth therein amply states a cause of action sufficient to sustain the reliefs prayed for.

Coming to the next assigned error, the assailed Order dated August 30, 2002 states:

When this case was called for hearing at nine quarter this morning, the plaintiff and counsel Atty. Valentino Alberto were in Court, yet, Atty. Ricardo Pelares, Jr., counsel for the defendants were (sic) not around. In view of the foregoing, the Motion to Dismiss is hereby Denied for lack of merit. In the meantime, reset the Pre-Trial Conference of this case on September 23, 2002 at 8:20 o'clock in the morning. Parties are hereby warned to be ready with their Pre-Trial Brief and that the evidence for the plaintiff will be received by the Court if the defendants will not be around. (p. 25, rollo)

The Yus claim that the resolution of the motion to dismiss was deferred by the court a quo, and this is disallowed under our Rules. But on the contrary, there is nothing in the Order which even implied that ruling thereon was deferred. What is clear as day though, is that the motion to dismiss was denied for lack of merit.

A special civil action for certiorari could be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with abuse of discretion amounting to lack or excess of jurisdiction (Samson vs. Rivera, 428 SCRA 759). In this case no such grave abuse has been shown.

WHEREFORE, the petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.

Guariña, III and Tagle, JJ., concur.

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