

THIRD DIVISION

[G.R. No. 137915, November 15, 2000]

**NARRA INTEGRATED CORPORATION, PETITIONER, VS. THE
COURT OF APPEALS AND NC INDUSTRIAL TRADE, INC.,
RESPONDENTS.**

DECISION

GONZAGA-REYES, J.:

Before us is a petition for review on certiorari of the decision of the Court of Appeals^[1] in C.A. G.R. CV No. 54397, which affirmed the partial decision dated June 28, 1995 of the Regional Trial Court^[2] declaring petitioner to be liable to private respondent in the amount of P1,485,776.93, attorney's fees of P10,000.00 and costs of suit.

The factual antecedents of the case, as found by the Court of Appeals, are as follows:

"Sometime in November 1991, Narra Integrated Corporation contracted from NC Industrial Trade, Inc., manpower services and materials for the agreed consideration hereinbelow indicated, to wit:

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|---|---------------|
| A. Supply of Labor, trader, tools, equipment and supervision necessary to complete the installation, lay-out, testing and commissioning of one (1) lot ELECTRICAL POWER DISTRIBUTION SYSTEM for the factory of Kyung-Il Philippines at the construction site located in Dasmarinas, Cavite- - - - - | P3,683,710.00 |
| "B. For the supply of labor trades, tools, equipment and supervision necessary for piping installation, spotting and positioning of WASTE WATER TREATMENT PLANT EQUIPMENT AND MACHINERIES FOR KYUNG-IL PHILIPPINES at Dasmarinas, Cavite ----- | P1,344,100.00 |
| "C. For the supply of labor, materials, tools, consumables and supervision necessary for FABRICATION DELIVERY AND | P1,485,776.93 |

INSTALLATION OF ONE (1) LOT
CATWALK RAILINGS AND LADDER
at Waste Water Treatment Project

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The abovestated undertakings are evidenced by the following Sales Invoices issued by NC Industrial Trade, Inc., viz: Invoice Nos. 106 and 107, respectively dated June 13 and August 11, 1992 for the first project; Invoice Nos. 105 and 108, respectively dated June 13 and August 11, 1992 for the second undertaking; and Invoice No. 103, dated May 25, 1992 for the third project. For failure of Narra Integrated Corporation to pay a balance totaling P1,485,776.93 out of the consideration agreed upon for the aforesaid contracts, NC Industrial Trade, Inc. caused a demand letter dated October 24, 1992 to be sent to the former.

Claiming that Narra Integrated Corporation refused to heed its demand letter as aforesaid, and based on the foregoing factual antecedents and the actionable documents evidencing the same, NC Industrial Trade Inc. filed its complaint for a sum of money and damages. xxx

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Having been duly served with summons, the defendant Narra Integrated Corporation filed its answer alleging, among other matters, that it merely hired the plaintiff as a sub-contractor in the project it was doing for Kyung-Il Philippines, Inc.; that in the aforesaid capacity, plaintiff was aware that its payments were subject to the progress payments made by the project owner (Kyung-Il) to the defendant; that it has, itself, not been paid by Kyung-Il Philippines, Inc. on account of supposed defects in the works done in the project, including those done by the plaintiff; and, that the latter was apprised of the situation and, along with its other sub-contractors, had agreed that the defendant be first allowed to pursue payment from Kyung-Il Philippines, Inc. Contending that the plaintiff had no cause of action against it and that the case was prematurely filed, the defendant prayed for the dismissal of the complaint and the grant of its counterclaims for moral and exemplary damages, attorney's fees and litigation expenses. On the ground that it still had an outstanding balance in the sum of P4,102,661.01 from the project owner and that it would not have been hailed into the instant suit by the plaintiff had its demands for payment of the works already completed under the premises were heeded, Narra Integrated Corporation in turn filed a third-party complaint against Kyung-Il Philippines, Inc. xxx

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After the trial court's denial of the motion to dismiss it filed on the ground of improper service of summons, the third-party defendant Kyung-Il Philippines, Inc. filed another motion to dismiss for failure of the defendant/third-party plaintiff to attach a certification of non-forum shopping to the third-party complaint, and the said pleading's supposed

inadmissibility and impropriety. Over the opposition of the defendant/third-party plaintiff Narra Integrated Corp., the motion was granted by the trial court dismissing the third-party complaint in its order of October 18, 1993. However, the said order of the dismissal was set aside by the lower court upon the defendant/third-party plaintiff's motion for reconsideration and subsequent compliance with Supreme Court Circular No. 28-91.

With the denial of its motion seeking the reconsideration of the order that reinstated the third party complaint, the third-party defendant filed its answer, specifically denying the material allegations of the said pleading. As affirmative defenses, it alleged, among other matters, that despite the fact that it was the one who drew the contracts between them, the defendant/third-party plaintiff violated the same by failing to submit adequate performance bond, incurring substantial delays, hiring subcontractors without prior approval and submitting defective, if not substandard, construction work. The third-party defendant sought the dismissal of the third-party complaint and prayed for liquidated, moral and exemplary damages, attorney's fees and litigation expenses.

The issues thus joined, the court a quo set the case for pre-trial. Alleging that the answer filed by the defendant/third party plaintiff did not tender an issue on account of the said party's admission of the material allegations of the complaint and the actionable documents attached thereto, the plaintiff filed a motion for summary judgment. The defendant/third-party plaintiff interposed its opposition thereto. Nevertheless, the motion was granted by the trial court in the partial decision which is the subject matter of the instant appeal xxx"[3] (citations omitted)

Petitioner appealed the Partial Decision^[4] dated June 25, 1995 of the trial court to the Court of Appeals. The appellate court upheld the judgment of the trial court in its Decision^[5] dated November 27, 1998. The Motion for Reconsideration filed by petitioner was likewise denied by the Court of Appeals in a Resolution^[6] dated March 12, 1999.

Hence, this petition for review on certiorari where petitioner raises the following arguments^[7]

I.

THE HONORABLE COURT OF APPEALS GROSSLY ERRED IN AFFIRMING THE LOWER COURT'S ERRONEOUS DECISION ALLOWING A JUDGMENT ON THE PLEADINGS WHERE THERE ARE IN FACT GENUINE ISSUES RAISED IN PETITIONER'S ANSWER THAT WOULD NECESSITATE A TRIAL OR HEARING ON THE MERITS UPON ITS MISTAKEN PERCEPTION THAT THE ALLEGATIONS THEREOF MERELY GAVE A REASON, NOT JUSTIFICATION, OF ITS FAILURE TO PAY EVEN AS IT FURTHER FAILED TO TAKE INTO ACCOUNT THAT THE MATTER OF THE COMPLETION OF THE PROJECT IS STILL THE SUBJECT MATTER OF THE LITIGATION

PENDING BEFORE THE LOWER COURT.

II.

THE HONORABLE COURT OF APPEALS, BY DISREGARDING THE GLARING AND APPARENT EXISTENCE OF CONTENTIOUS ISSUES RAISED BY PETITIONER-APPELLANT IN ITS ANSWER FILED BEFORE THE REGIONAL TRIAL COURT, AND AFFIRMING THE LOWER COURT'S PARTIAL DECISION RENDERED WITHOUT AWAITING THE RESULTS OF THE THIRD PARTY COMPLAINT WHICH PETITIONERS FILED WITH LEAVE OF COURT AGAINST THE PROJECT OWNER, KYUNGI, PHILS. INC., WHICH RULING IN EFFECT DEPARTED FROM THE USUAL COURSE OF JUDICIAL PROCEEDINGS AND HAS DECIDED THE ISSUES RAISED BY PETITIONER-APPELLANT IN A WAY NOT IN ACCORD WITH LAW AND WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT."

We affirm the decision of the Court of Appeals.

At the onset, we note that the petitioner, as shown in its assignment of errors, is guilty of the usual error of equating a summary judgment with a judgment on the pleadings. While the petitioner makes mention of the lower court's promulgation of a judgment on the pleadings, we have gone over the records and it is clear that what the trial court actually rendered was a summary judgment.

The existence or appearance of ostensible issues in the pleadings, on the one hand, and their sham or fictitious character, on the other, are what distinguish a proper case for summary judgment^[8] from one for a judgment on the pleadings^[9]. In a proper case for judgment on the pleadings, there is no ostensible issue at all because of the failure of the defending party's answer to raise an issue. On the other hand, in the case of a summary judgment, issues apparently exist - i.e. facts are asserted in the complaint regarding which there is as yet no admission, disavowal or qualification; or specific denials or affirmative defenses are in truth set out in the answer - but the issues thus arising from the pleadings are sham, fictitious or not genuine, as shown by affidavits, depositions, or admissions. In other words, a judgment on the pleadings is a judgment on the facts as pleaded, while a summary judgment is a judgment on the facts as summarily proven by affidavits, depositions, or admissions.^[10]

As such, even if the answer does tender issues -- and therefore a judgment on the pleadings is not proper -- a summary judgment may still be rendered on the plaintiff's motion if he can show that the issues thus tendered are not genuine, sham, fictitious, contrived, set up in bad faith, or patently unsubstantial.^[11] The trial court can determine whether there is a genuine issue on the basis of the pleadings, admissions, documents, affidavits and/or counter-affidavits submitted by the parties to the court.^[12]

In the instant case, the answer^[13] submitted by the petitioner in Civil Case No. 92-3567 appears on its face to tender issues. The answer purports to deal with each of the material allegations of the complaint^[14], and either specifically denies, partially admits, or professes lack of knowledge or information to form a belief as to them.

The answer likewise sets up affirmative defenses.

A cursory reading of petitioner's answer in the trial court would therefore, show that it does ostensibly raise issues. The question that must be answered then is whether or not these issues are sham or fictitious so as to justify a summary judgment?

[15] In answering this question, the trial court may rely on the pleadings, admissions, affidavits, and documents submitted by the private respondent in support of his Motion for Partial Summary Judgment [16] These include the affidavits of petitioner's own General Manager and of private respondent's President and the Letter Contract dated November 6, 1991 [17] between petitioner and private respondent.

To begin with, petitioner, in its Answer, does not deny that it entered into the November 6, 1991 letter-contract with private respondent for the supply of labor, trader, tools, equipment and supervision necessary for the installation of an electrical power distribution system, waste water treatment plant, and catwalk railings and ladder. Neither did it specifically deny the invoices issued by private respondent which show the various amounts owed by it to private respondent. Finally, petitioner did not dispute the unpaid balance of P1,485,776.93 which it still allegedly owes private respondent.

Petitioner insists, however, that there are genuine issues raised in its Answer which require a full-blown trial on the merits. Specifically, petitioner claims that paragraphs 7 to 10 of the Answer clearly allege that the project undertaken by respondent is subject to the acceptance by the project owner, Kyung-Il Phils., Inc. and/or by the petitioner, as General Contractor. Paragraphs 7 to 10 of the Answer is quoted hereunder, as follows:

"7. As one of the numerous subcontractors of defendant in Kyungil, Dasmarinas, Cavite Project, Defendant, before entering into the sub-contractor agreement, was well aware of the fact that:

a) their billings are subject to progress payments which, before its release to plaintiff, must follow certain requirements of inspection, approval and/or certification from defendant's and the project owner's representatives;

b) progress payments on plaintiff's progress billings shall be subject to the progress payments of the project owner to the principal contractor, defendant herein;

c) payments of its progress billings to defendant is subject to the project owner's acceptance of the works done by the principal contractor defendant herein which necessarily includes acceptance of plaintiff's works as it is defendant's sub-contractor;

8. Unfortunately, defendant herein, the principal contractor of the project, has not been paid up to the present time by the project owner despite numerous oral as well as written demands served on it.

9. The project owner, faced with defendant's demand letters for payment