

## FOURH DIVISION

[ CA-G.R. SP NO. 74633, August 28, 2006 ]

**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 ROMERO, RESPONDENTS.**

### D E C I S I O N

**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: