G.R. No. L-6500

[G.R. No. L-6500. September 16, 1954]

CORNELIO B. BORREROS, PLAINTIFF-APPELLANT, PHILIPPINE ENGINEERING CORPORATION AND THE PHILIPPINE GUARANTY CO., INC., DEFENDANTS-APPELLEES.

D E C I S I O N

BENGZON, J.:

In the court of first instance of Capis, Cornelio B. Borreros filed an action to recover several sums of money in connection with a contract he previously had with the defendant Philippine Engineering Corporation (hereafter called the Corporation).

Alleging that, under the contract, it had the option to select – and selected – the jurisdiction of the city of Manila for the judicial proceedings, the defendant corporation objected to the jurisdiction of the Capiz court. The other defendant joined this objection. After listening to arguments on both sides, the Capiz court declared itself without jurisdiction, and dismissed the case without prejudice to the presentation of another complaint in the Manila courts. Hence this appeal.

The contract sued on contains this stipulation:

> "It is hereby expressly agreed that any legal action arising out of this contract, or in connection with the property made the subject hereof, may at the option of the SELLER be brought in the Courts of the City of Manila."

The plaintiff argues that such agreement refers only to suits brought or to be brought by the Corporation, the seller, and not to suits brought by the purchaser. We find the argument to be unfounded. The stipulation refers to "any action", obviously by either party to the contract. There is no valid reason why it should apply only to actions by one side.

The plaintiff maintains that the complaint is not one "arising out" of his contract with the Corporation. By that contract (October 1949) Borreros purchased from the Corporation a rice mill and a Diesel engine for P29,550 of which P5,910 was paid in cash and the rest payable in installments. It provided among other things:

> "Par. II. The SELLER does . . . include in this contract the services of an installer to supervise the installation of the said property at Pontevedra, Capiz.
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> Par. VI. The deferred installments shall be secured by a chattel mortgage upon the property sold hereunder. x x x
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> Par. XVI. BUYER agrees to insure or cause to be insured at his own expense the mortgaged property against loss or damage by fire or lightning, in a sum not less than the unpaid balance; insurance to be payable to SELLER."

The mill and engine were shipped from Manila, and installed in due course in Pontevedra. Upon application of the vendor Corporation, the Philippine Guaranty Co. Inc. issued its Fire Policy No. M-28623 insuring the property for P23,640 for one year beginning March 16, 1950. On March 16, 1951, the policy was renewed at the smaller amount of P11,000.00 probably because the unpaid purchase price had decreased thru installment payments. Two days later, the engine and the mill were destroyed by fire, and the vendor corporation eventually received the insurance money (P11,000.).

The complaint now under examination impleads both the vendor corporation and the insurer upon three causes of action: (a) against the vendor alone for negligence in installing the rice mill and engine; (b) against both defendants, the plaintiff asserting that the insurance covered his interest, that it was unlawfully reduced and that payment of the original amount of P23,640 should be made to him after deducting the sum of P11,000 paid to the vendor; and (c) for resultant attorneys' fees.

It is clear that the first cause of action is based on the contract. Quite clear also that the second originated from the contract, because if there is any liability of the vendor and the insurer to plaintiff on account of the coverage, such liability can only be predicated on the contractual stipulation above- quoted concerning insurance. As a matter of fact, the complaint, referring to said agreement makes the allegations,

> "4. That, in compliance with the forecited undertaking, plaintiff on March 23, 1950, through defendant Philippine Engineering Corporation, caused to be insured the said mortgaged properties against loss or damage by fire of lightning with defendant Philippine Guaranty Co., Inc., in the sum of P23,640.00, and on the same date, March 23, 1950, caused to be paid, also through defendant Philippine Engineering Corporation, the full annual premium thereon, x x x
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> 8. That defendants, with malice aforethought and working and conniving together, have so contrived that defendant Philippine Engineering Corporation collected from its co-defendant Philippine Guaranty Co., Inc., and the latter paid to the former, only the sum of PP11,000.00, falsely making it appear that the insurance policy taken out by plaintiff through defendant Philippine Engineering Corporation on the mortgaged properties indicated above, was for P11,000.00, when in truth and in fact, as defendants well knew, it was for the amount of P23,640, above alleged."

Last contention of the plaintiff is that the clause regarding venue "is against public policy and therefore illegal". This is plainly unmeritorious. The Rules of Court expressly permit this stipulation concerning venue (sec. 4 Rule 5), which had been approved in Central Azucarera v. De Leon, 56 Phil. 169 and Navarro v. Aguila, 66 Phil. 604.

Wherefore, no error showing in the appealed order, the same is affirmed, with costs.

Paras, C.J., Pablo, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, Concepcion, and *Reyes, J.B.L., JJ.*, concur.

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