

**EFREN S. ZOLETA, PETITIONER, VS. HON. MANUEL ROMILLO, JR.,  
JUDGE OF THE COURT OF FIRST INSTANCE OF RIZAL, BRANCH  
XXVII, PASAY CITY AND FILINVEST CREDIT CORPORATION,  
RESPONDENTS.**

*G.R. No. L-58080. February 15, 1982*

Ponente: ABAD SANTOS, J.

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**ABAD SANTOS, J.:**

In this petition for certiorari, the petitioner seeks to nullify the order of the court a quo dated April 24, 1981, which dismissed the case filed by him against the private respondent.

On November 11, 1980, Efren S. Zoleta, the petitioner, filed a complaint against the private respondent, Filinvest Credit Corporation (FILINVEST), in the Court of First Instance of Rizal at Pasay City. The case was docketed as Civil Case No. 8592-P. The complaint reads as follows:

"Plaintiff, by counsel, to this Honorable Court respectfully declares:

1. That plaintiff is of legal age, Filipino and a resident of 53 1. r. Aquinaldo, B. F. Homes, Parañaque, Metro Manila while defendant is a domestic corporation duly registered under Philippine Laws, with principal office address at 8753 Paseo de Roxas, Makati, Metro Manila, where it may be served with summons and other court processes;

2. That plaintiff is a Certified Public Accountant, a faculty member on leave of the College of Commerce, Adamson University and the President and General Manager of EZ Express Courier, Inc.;

3. That in keeping with his social standing and position in the business community, plaintiff acquired a car particularly described as:

One (1) Unit '76 Toyota Corona

M# : 12RM 013987

S# : RT 110-902097

4. That the said purchase was financed by defendant corporation; plaintiff executed and delivered to the defendant a promissory note which was secured by a chattel mortgage over the said motor vehicle;

5. That in absolute good faith and honesty, plaintiff complied with the terms and condition of the said promissory note and chattel mortgage; the last installment due was paid last October 15, 1980, a xerox copy of the official receipt is hereto attached as Annex "A", to form an integral part hereof;

6. That the obligation secured by the chattel mortgage being fully liquidated, plaintiff obtained from the defendant a cancellation of the chattel mortgage, a copy of which is attached hereto as Annex "B", to form an integral part hereof;

7. That last November 2, 1980, plaintiff was deeply embarrassed to receive a notice of unpaid installment due from defendant, a copy of which is attached hereto as Annex "C" and made an integral part hereof;
8. That perplexed and upset, plaintiff readily relayed the same to a personnel of the defendant who promised to rectify or correct everything;
9. That last November 11, 1980, with obvious intent to cast aspersion upon the person of the plaintiff, defendant sent a telegram demanding payment again of an alleged debt, xerox copy of the telegram is hereto attached as Annex "D", to form an integral part hereof;
10. That the language used in the telegram imputed to plaintiff an act or omission tending to discredit his social standing and reputation among his peers in the business community, considering a telegram is publicly received, transmitted and delivered;
11. That by reason of the unjustifiable and unreasonable act of the defendant, plaintiff was exposed to dishonor, discredit and contempt and, consequently, suffered mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation of which he is entitled to moral damages in the minimum amount of not less than P250,000.00;
12. That as a deterrent to others who are similarly minded and by way of correction for the public good, plaintiff is entitled to exemplary damages in the minimum amount of P50,000.00 or as determined by this Honorable Court;
13. That as a consequence of the serious negligence of the defendant, plaintiff incurred actual expenses the amount of which may be proved by evidence during the trial;
14. That to vindicate the honor and reputation of the plaintiff among his peers in the business community, he was forced to hire the services of counsel, the amount of attorney's fee is to be proved during the trial of the case.

"WHEREFORE, premises considered, judgment be rendered in that:

1. Defendant be made to pay for actual expenses incurred by the plaintiff;
2. Defendant be made to pay for moral damages, in the minimum amount of P250,000.00, exemplary damages, attorney's fee and such other relief deemed just under the circumstances."

Annex A is official receipt No. Q 063502 dated October 15, 1980, showing that FILINVEST had received from Efren Zoleta the amount of P1,660.40.

Annex B is a Cancellation of Mortgage on a '76 Toyota Corona M No. 12RM 013987; S No. RT110-902097 executed by Venancio M. Alcabao, Vice President of FILINVEST, and notarized on October 30, 1980.

Annex C is a REMINDER sent by FILINVEST to Efren Zoleta dated November 2, 1980, that he had a past due, in the amount of P149.79 on his account.

Annex D is a telegram sent by FILINVEST to Zoleta which reads:

"pay P168.75 immediately w/in 24 hrs. to mkto office only else refer legal for acct. 111045169"

On December 12, 1980, FILINVEST filed a Motion to Dismiss the complaint on the ground of improper venue. It invoked the terms of the promissory note and the chattel mortgage which were executed by Zoleta and which respectively read as follows:

"x x x. It is expressly agreed that all legal actions arising out of this agreement or in connection with the

chattel(s) subject hereof shall only be brought in or submitted to the jurisdiction of the proper court either in the City of Manila or in the province, municipality or city where the branch of the OWNER's assignee at \_\_\_\_\_ is located. (PN)

"x x x it is expressly agreed that all legal actions arising out of this agreement or in connection with the chattel(s) subject hereof shall only be brought in or sub-mitted to the jurisdiction of the proper court either in the City of Manila or in the province, municipality or city where the branch of the OWNER's assignee at \_\_\_\_\_ is located." (CM)

To understand the meaning of "OWNER's assignee" it should be stated that Zoleta originally executed the promissory note and the chattel mortgage in favor of The Rallye Motor Co., Inc. (OWNER), the seller of the Toyota Corona, which in turn assigned them to FILINVEST as the financing company.

On April 24, 1981, the respondent judge entered the following:

"ORDER

"This is a motion to dismiss filed by defendant on the ground to improper venue.

"It is alleged therein that, by virtue of an express stipulation appearing in the Deed of Chattel Mortgage and the Promissory Note which are the actionable documents in this case, the parties agreed that all actions arising from the same 'shall be brought to the jurisdiction of the proper courts in the City of Manila', and, that pursuant to the pertinent provisions of Rule 4 of the Re-vised Rules of Court, the parties to a written agreement may change or transfer the venue of an action from one province to another.

"On the other hand, plaintiff filed an opposition alleging that plaintiff, being the assignee of the aforesaid actionable document, is a resident of Makati and consequently the case may be brought before the Court of First Instance of Rizal, of which this Court is a Branch.

"The Court is more inclined to rely on the arguments advanced by defendant than those by plaintiff.

"Finding the motion to be in order, the same is hereby GRANTED.

"WHEREFORE, the instant case is hereby DISMISSED, for having laid in an improper venue, without prejudice and without costs."

It is the aforequoted order which the petitioner seeks to set aside.

It is obvious that the petition is highly impressed with merit and that the respondent judge did not sufficiently ponder on the legal question which the private respondent improperly raised.

True it is that, "By written agreement of the parties the venue of an action may be changed or transferred from one province to another" (Rule 4, Sec. 3, Rules of Court) which the parties in this case did in respect of the promissory note and the chattel mortgage. But even a little reflection will show that the petitioner, by his complaint, is not suing on the promissory note nor on the chattel mortgage. The promissory note had been fully paid and the chattel mortgage to secure it had been cancelled. They belonged to the past. The petitioner is suing independently of the note and the mortgage; he is not relying on them; he is suing for damages because of the tortious act of the private respondent who sent him a dunning telegram for a debt which had already long been fully paid.

Under Rule 4, Sec. 2 (b) of the Rules of Court, personal "actions may be commenced and tried where the defendant or any of the defendants resides or may be found, or where the plaintiff or any of the plaintiffs resides, at the election of the plaintiff."

The record shows that Zoleta resides in B. F. Homes in Parañaque, while FILINVEST has its offices at Paseo de

Roxas in Makati. Accordingly, the venue was properly laid in the court presided by the respondent judge.

WHEREFORE, the petition is hereby granted; the order dis-missing the complaint is set aside; and the private respondent shall pay the costs.

**SO ORDERED.**

Barredo, (Chairman), Aquino, De Castro, Ericta, and Escolin, JJ., concur.

Concepcion, Jr., J., no part.

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