

PHILIPPINE MILLING COMPANY, PETITIONER, VS. THE COURT OF APPEALS AND PHILIPPINE INDUSTRIAL EQUIPMENT COMPANY, RESPONDENTS.

G.R. No. L-9404. December 27, 1956

Ponente: MONTEMAYOR, J.

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MONTEMAYOR, J.:

The following facts are not disputed. The Philippine Industrial Equipment Company, later referred to as Equipment Co., is a domestic corporation whose articles of incorporation stated that it had its residence in the City of Manila, and in fact at the beginning, had its principal office in the city. The defendant, Philippine Milling Company, later referred to as Milling Co., is another domestic corporation which has its residence and principal office in San Jose, Mindoro. The Equipment Co. was dissolved on April 12, 1950, and the dissolution was approved by the Securities and Exchange Commission on December 22, 1951. From September 7 to October 23, 1950, while the Equipment Co. was in the process of liquidation, it sold to the Milling Co. machinery and office equipment, with a total value of P6,122.46, which were partly paid for, leaving a balance of P2,122.46 still unpaid. The Equipment Co. filed the present action in the Court of First Instance of Rizal to recover this balance, with interest at six per cent per annum from the commencement of the action, plus twenty-five per cent of the amount as attorney's fees. The plaintiff claims that it had its principal office in Makati, Rizal.

Without questioning the propriety and correctness of the claim, the Milling Co. raised the question of venue, claiming that the action should have been brought in the City of Manila where the plaintiff had its legal residence. After hearing, the trial court found that plaintiff had transferred its main office from Manila to Makati, Rizal, a fact not contradicted by defendant, and rendered judgment sentencing the Milling Co. to pay the amount of the claim, namely, P2,122.46 with interest at six per cent per annum from September 4, 1953, plus the amount of P400.00 as attorney's fees, with costs.

Appealing the decision to the Court of Appeals, the defendant Milling Co. again raised the question of venue and also the propriety of the award of attorney's fees. On June 25, 1955, the Court of Appeals, overruling the appellant's contention about improper venue, affirmed the decision with the exception of the amount of P400 as attorney's fees, which it eliminated. The Milling Co. again appealed to this Tribunal reiterating its contention that venue was improperly laid in the Court of First Instance of Rizal.

Both the trial court and the Court of Appeals found as a fact that the plaintiff had actually transferred its residence and its office from Manila to Makati, Rizal, and that at the time it filed the complaint, its actual residence was in the province of Rizal. The appellant, however, insists that inasmuch as the legal residence of the plaintiff was fixed in its articles of incorporation, which is Manila, it can change said legal residence only by amending its articles of incorporation to that effect, and said amendment could be made only by complying with the provisions of section 18 of the Corporation Law, by a majority vote of its board of directors or trustees, and by the vote or written assent of the stockholders representing at least two thirds of the subscribed capital stock of the

corporation, and that a copy of the articles of incorporation, as amended, duly certified to be correct by the President and the Secretary of the corporation and a majority of the board of directors or trustees, shall be filed in the office of the Securities and Exchange Commission.

From the very beginning, our impression is that the defense of the appellant in its appeal is based entirely on a technicality. As already stated, it never questioned the correctness and legality of the claim against it. Neither did it claim, much less prove, that the filing of the action in Rizal, instead of the City of Manila, caused it any unnecessary trouble, damage, or expense. It is clear that' inasmuch as the defendant-appellant had its legal residence and principal office in Mindoro, it made no difference to it whether it had to appear and interpose its defense if it had any which, as already shown, it had noiye, in Manila or in Pasig, Rizal, considering the close proximity of the two places. There is no showing, not even a hint, that plaintiff-appellee filed the action in Pasig, Rizal, instead of the City of Manila, just to harass the defendant. Under such circumstances, the courts are disposed to liberally construe the provisions of law about venue and about residence, specially since the provisions of Rule 5, section 1 of the Rules of Court, about venue are for the convenience of the plaintiff. Furthermore, we should also bear in mind that at the time that the obligation was contracted by the defendant-appellant and at the time that the present action was commenced, the plaintiff had already been dissolved and was in the process of liquidation; consequently, it would have been difficult, if not impossible, to comply strictly with the law as contended by the appellant by amending its articles of incorporation just to state the change of residence. At that time and under such circumstances, there is no assurance that, in view of the dissolution of the plaintiff, it could still have a meeting of its board of directors or trustees and secure the vote of stockholders representing at least two-thirds of the subscribed capital stock to amend its articles of incorporation, and then have a copy of the articles of incorporation, as amended, certified to be correct by the President and Secretary of the corporation and the majority of the members of the board of directors or trustees, filed with the Securities and Exchange Commission. Frankly, we cannot look with favor upon a defense and appeal based on a pure technicality such as we have now before us, which unnecessarily took up the time of two appellate courts, and delayed the giving of appropriate relief to the plaintiff by more than three years, considering that the decision of the trial court in favor of the plaintiff and against the defendant was rendered on November 13, 1953.

The Court of Appeals affirmed the decision of the trial court awarding the amount of P2,122.46 with interest at six per cent per annum from September 4, 1953 to the plaintiff. To this we agree. The Court of Appeals eliminated the amount of P400 awarded by the trial court as attorney's fees on the ground that plaintiff did not claim the same in his complaint, and that Article 2208 of the New Civil Code does not warrant said award. To this we are unable to agree. According to the record on appeal, plaintiff asked for the payment of twenty-five per cent of the sum due as attorney's fees. Evidently, based on said prayer the trial court granted the amount of P400 as attorney's fees. In the second place, Article 2208 of the New Civil Code, paragraph 11, provides that attorney's fees may be awarded in any case where the court deems it just and equitable that said fees and expenses of litigation should be recovered. Under the circumstances of the case as already mentioned, we believe that the plaintiff is entitled to attorney's fees.

In view of the foregoing, the appealed decision of the Court of Appeals is hereby affirmed, with the modification that the amount of P400 granted by the trial court as attorney's fees will be restored and will be paid by the defendant-appellant. With costs.

Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Endencia, and Felix, JJ., concur.

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