

HOECHST PHILIPPINES, INC., PETITIONER, VS. FRANCISCO TORRES AND THE HONORABLE PROCORO J. DONATO, JUDGE OF THE COURT OF FIRST INSTANCE OF ISABELA, RESPONDENTS.

G.R. No. L-44351. May 18, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Petition for certiorari and prohibition to declare respondent court without authority to take cognizance of private respondent's action for "Breach of Contract with Preliminary Injunction" and to enjoin said court from further taking any action in said case upon the ground of improper laying of the venue.

On April 8, 1976, private respondent, Francisco Torres, filed with respondent Court of First Instance of Isabela a complaint in Civil Case No. V-296 alleging breach of a distributorship contract on the part of petitioner, Hoechst Philippines, Inc. On April 14, 1976, petitioner filed a motion to dismiss said complaint based on the ground that as the contract, the very actionable document invoked in the complaint, provides that "(I)n case of any litigation arising out of this agreement, the venue of any action shall be in the competent courts of the Province of Rizal", venue has been improperly laid in respondent court, petitioner citing in his said motion principally the ruling of this Supreme Court in *Bautista vs. De Borja*, 18 SCRA 474. Respondent court nevertheless denied the said motion to dismiss as well as the motion for reconsideration of that denial, hence the present petition.

Respondents do not deny in their respective answers the clear tenor of the above-quoted stipulation as to venue in the contract in dispute. It is the position of respondent judge, however, that inasmuch as the contract was "a prepared standard form for the defendant-company, wherein blanks were merely filled up after the party distributor agreed on the valuation of products which he may order from the company for one year" and "all stipulations were standard and pre-made by the company, prepared by, as your Respondent can safely and rightly assume, its legal department" and "it (only) remains upon party-distributor to stamp his approval to the whole contract", hence "plaintiff distributor was given no option whatsoever except 'to take it or leave it'", the word "shall" in the stipulation in question should be construed to be merely permissive and not mandatory. It is argued that this construction serves not only the exclusive interests of petitioner but also that of private respondent.

It is further contended in said answer that reading the terms of the contract, it can be gathered that most likely, it would be petitioner who would have to sue private respondent, and, therefore, the stipulation as to venue was meant to apply only to suits to be filed by petitioner. Finally, it is maintained that there are no words in the contract expressly restricting the venue to the courts of Rizal.

Upon the other hand, in the answer of private respondent, he capitalizes on the theory that inasmuch as petitioner is a multinational company, it is against public policy for it to stipulate in any contract that the venue of actions thereunder should be in any particular place, much less its place of residence, to the prejudice of small-time, distributors, the private respondent. It is urged that to give effect to the stipulation in controversy "is to serve the convenience and the purpose of the petitioner only; its effect is to discourage, to deter, to render expensive and

uneconomical the filing of suits by small-time company distributors against the petitioner even for extremely meritorious cases of the latter's breach or violation of such distribution agreement."

The pose taken by respondents does evoke sympathy, but it can hardly carry the day for them. Change or transfer of venue from that fixed in the rules may be effected upon written agreement of the parties not only before the actual filing of the action but even after the same has been filed. The settled rule of jurisprudence in this jurisdiction is that a written agreement of the parties as to venue, as authorized by Section 3, Rule 4, is not only binding between the parties but also enforceable by the courts.[1] It is only after the action has been filed already that change or transfer of venue by agreement of the parties is understandably controllable in the discretion of the court.[2]

The agreement in this case was entered into long before the petitioner's action was filed. It is clear and unequivocal. The parties therein stipulated that "(I)n case of any litigation arising out of this agreement, the venue of any action shall be in the competent courts of the Province of Rizal." No further stipulations are necessary to elicit the thought that both parties agreed that any action by either of them would be filed only in the competent courts of Rizal province exclusively.

Respondent judge rather vehemently argues, however, that under the circumstances obtaining between the parties, as earlier stated in this decision, it is permissible, notwithstanding Our ruling in *Bautista*, supra, that the word "shall" in the agreement in question be construed as "may", hence not strictly obligatory. Private respondent points out that he had no choice but to sign the "Distributorship Agreement" in question, he being practically at the mercy of petitioner company which is allegedly a multinational corporation. He maintains that to enforce the agreement literally would amount to a denial to him, and to other distributors similarly situated, of the opportunity to file any suit against petitioner.

We have given due attention to this posture of respondents. Indeed, there may be instances when an agreement as to venue may be so oppressive as to effectively deny to the party concerned access to the courts by reason of poverty. The difficulties pictured by respondents that a poor plaintiff from a distant province may have to encounter in filing suit in a particular place can indeed happen. In such an eventuality and depending on the peculiar circumstances of the case, the Court may declare the agreement as to venue to be in effect contrary to public policy, -- despite that in general, changes and transfers of venue by written agreement of the parties is allowable -- whenever it is shown that a stipulation as to venue works injustice by practically denying to the party concerned a fair opportunity to file suit in the place designated by the rules.

But a cursory inquiry into the respective economic conditions of the parties herein as reflected in the record before Us does not show that private respondent Francisco Torres is really in no position to carry on a litigation in the Province of Rizal, because of his residence or place of business being in Isabela province. The volume of business covered by the Distributorship Agreement in question, Annex C of the Petition, and to be handled by private respondent Torres is P700,000. The amount sought to be recovered by said respondent in his complaint, Annex A of the Petition, totals more than P300,000. These circumstances preclude, in Our view, the need to apply equitable considerations to the case of respondent Torres. It is quite obvious that his economic condition does not warrant non-enforcement of the stipulation as to venue that he has agreed to. We are persuaded that his pretension that he had no alternative but to agree, even if true, does not merit relief. Considering the nature and volume of the business he has with petitioner, there is nothing oppressive in his being required to litigate out of his province. After all, for practical reasons, there seems to be justification also for petitioner to see to it that all suits against it be concentrated in the Province of Rizal, as otherwise, considering the nationwide extent of its business, it would be greatly inconvenienced if it has to appear in so many provinces everytime an action is filed against it. We are convinced both parties agreed to the venue in controversy with eyes wide open.

IN VIEW OF ALL THE FOREGOING, the petition is granted, the orders of respondent judge of May 13, 1976 and July 12, 1976 are hereby set aside, and petitioner's motion to dismiss private respondent's complaint in question is granted. Costs against private respondent Francisco Torres.

Fernando, (Chairman), Antonio, Aquino, Concepcion, Jr., and Santos, JJ., concur.

[1] Central Azucarera de Tarlac vs. De Leon, 56 Phil. 169; Bautista vs. De Borja et al., 18 SCRA 474.

[2] Zubiri vs. Ramos, 52 O.G. 6585, Res. of July 2, 1956 of the Court of Appeals citing 56 American Jurisprudence pp. 73-74.

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