

POLYTRADE CORPORATION, PLAINTIFF-APPELLEE, VS. VICTORIANO BLANCO, DEFENDANT-APPELLANT.

G.R. No. L-27033. October 31, 1969

Ponente: SANCHEZ, J.

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SANCHEZ, J.:

Suit before the Court of First Instance of Bulacan on four causes of action to recover the purchase price of raw hide delivered by plaintiff to defendant.[1] Plaintiff corporation has its principal office and place of business in Makati, Rizal. Defendant is a resident of Meycauayan, Bulacan. Defendant moved to dismiss upon the ground of improper venue. He claims that by contract suit may only be lodged in the courts of Manila. The Bulacan court overruled him. He did not answer the complaint. In consequence, a default judgment was rendered against him on September 21, 1966, thus:

"WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendant ordering defendant to pay plaintiff the following amounts:

First Cause of Action - P60,845.67, with interest thereon at 1% a month from May 9, 1965 until the full amount is paid.

Second Cause of Action - P51,952.55, with interest thereon at 1% a month from March 30, 1965 until the full amount is paid.

Third Cause of Action - P53,973.07, with interest thereon at 1% a month from July 3, 1965 until the full amount is paid.

Fourth Cause of Action - P41,075.22, with interest thereon at 1% a month[2] until the full amount is paid.

In addition, defendant shall pay plaintiff attorney's fees amounting to 25% of the principal amount due in each cause of action, and the costs of the suit. The amount of P400.00 shall be deducted from the total amount due plaintiff in accordance with this judgment."

Defendant appealed.

1. The forefront question is whether or not venue was properly laid in the province of Bulacan where defendant is a resident.

Section 2(b), Rule 4 of the Rules of Court on venue of personal actions triable by courts of first instance - and this is one - provides that such "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." Qualifying this provision is Section 3 of the same Rule which states that venue may be stipulated by written agreement - "By written agreement of the parties the venue of an action may be changed or transferred from one province to another."

Defendant places his case upon Section 3 of Rule 4 just quoted. According to defendant, plaintiff and defendant,

by written contracts covering the four causes of action, stipulated that: "The parties agree to sue and be sued in the Courts of Manila." This agreement is valid.[3] Defendant says that because of such covenant he can only be sued in the courts of Manila. We are thus called upon to shake meaning from the terms of the agreement just quoted.

But first to the facts. No such stipulation appears in the contracts covering the first two causes of action. The general rule set forth in Section 2(b), Rule 4, governs, and as to said two causes of action, venue was properly laid in Bulacan, the province of defendant's residence.

The stipulation adverted to is only found in the agree-ments covering the third and fourth causes of action. An accurate reading, however, of the stipulation, "The parties agree to sue and be sued in the Courts of Manila", does not preclude the filing of suits in the residence of plaintiff or defendant. The plain meaning is that the parties merely consented to be sued in Manila, Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. We cannot read into that clause that plaintiff and defendant bound themselves to file suits with respect to the last two transactions in question only or exclusively in Manila. For, that agreement did not change or transfer venue. It simply is permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4. *Renuntiatio non praesumitur*.

Illuminating on this point is *Engel vs. Shubert Theatrical Co.*, 151 N.Y.S. 593, 594. And this, because there the stipulation as to venue is along lines similar to the present. Said stipulation reads: "In case of dispute, both contracting parties agree to submit to the jurisdiction of the Vienna courts." And the ruling is: "By the clause in question the parties do not agree to submit their disputes to the jurisdiction of the Viennese courts, and to those courts only. There is nothing exclusive in the language used. They do agree to submit to the Viennese jurisdiction, but they say not a word in restriction of the jurisdiction of courts elsewhere; and whatever may be said on the subject of the legality of contracts to submit controversies to courts of certain jurisdictions exclusively, it is entirely plain that such agreements should be strictly construed, and should not be extended by impli-cation."

Venue here was properly laid.

2. Defendant next challenges the lower court's grant to plaintiff of interest at the rate of one per centum per month. Defendant says that no such stipulation as to right of interest appears in the sales confirmation orders which provided: "TERMS - 60 days after delivery with interest accruing on postdated cheques beyond 30 days." The flaw in this argument lies in that the interest and the rate thereof are expressly covenanted in the covering trust receipts executed by defendant in favor of plaintiff, as follows: "All obligations of the under-signed under this agreement of trust shall bear interest at the rate of one per centum (1%) per month from the date due until paid."

On this score, we find no error.

3. Defendant protests the award of attorneys' fees which totals P51,961.63, i.e., 25% of the total principal in-debtedness of P207,846.51 (exclusive of interest). Defendant's thesis is that the foregoing sum is "exorbitant and unconscionable."

To be borne in mind is that the attorneys' fees here pro-vided is not, strictly speaking, the attorneys' fees recoverable as between attorney and client spoken of and regulated by the Rules of Court. Rather, the attorneys' fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause.[4] It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant.[5] The attorneys' fees so provided are awarded in favor of the litigant, not his counsel. It is the litigant, not counsel, who is the judgment creditor entitled to enforce the judgment by execution.[6]

The governing law then is Article 2227 of the Civil Code, viz: "Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable." For this reason, we do not really have to strictly view the reasonableness of the attorneys' fees in the light of such factors as the amount and character of the services rendered, the nature and importance of the litigation, and the professional character and the social standing of the attorney. We do concede, however, that these factors may be an aid in the determination of the iniquity or unconscionableness of attorneys' fees as liquidated damages.

May the attorneys' fees (P51,961.63) here granted be tagged as iniquitous or unconscionable? Upon the circumstances, our answer is in the negative. Plaintiff's lawyers concededly are of high standing. More important is that this case should not have gone to court. It could have been easily avoided had defendant been faithful in complying with his obligations. It is not denied that the raw hide was converted into leather and sold by defendant. He raises no defense. In fact, he did not even answer the complaint in the lower court, and was thus declared in default. Nor does he deny the principal liability. Add to all these the fact that the writ of attachment issued below upon defendant's properties yielded no more than P400 and the picture is complete. The continued maintenance by defendant of the suit is plainly intended for delay. The attorneys' fees awarded cannot be called iniquitous or unconscionable.

In the very recent case of Universal Motors Corporation vs. Dy Hian Tat (1969), 28 SCRA 161, 170, we allowed attorneys' fees in the form of liquidated damages at the rate of 25% of the total amount of the indebtedness. Here, the trial court has already reduced the attorneys' fees from the stipulated 25% "of the total amount involved, principal and interest, then unpaid" to only 25% of the principal amount due. There is no reason why such judgment should be disturbed.

For the reasons given, the appealed judgment is hereby affirmed, except that interest granted, in reference to the fourth cause of action, should start from March 24, 1965.

Costs against defendant-appellant.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Castro, Fernando, Teehankee, and Barredo, JJ., concur.

[1] Civil Case 224-V, entitled "Polytrade Corporation, Plaintiff, versus Victoriano Blanco, Defendant."

[2] Interest should start from March 24, 1965. See: Decision, R.A., pp. 38-39.

[3] Navarro vs. Aguila, 66 Phil. 604, 608; Borreros vs. Philippine Engineering Corporation, L-6500, September 16, 1954; Bautista vs. De Borja (1966), 18 SCRA 474, 480, citing Central Azucarera de Tarlac vs. De Leon, 56 Phil. 169.

[4] Luneta Motor Company vs. Limgenco, 73 Phil. 80, 81.

[5] Government vs. Lim, 61 Phil. 737, 739.

[6] Gan Tion vs. Court of Appeals (1969), 28 SCRA 235, 237.

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