

**UNIVERSAL INSURANCE AND INDEMNITY COMPANY,
PETITIONER-APPELLANT, VS. THE HON. ROMAN CANSINO, JR., AND
AGE CONSTRUCTION CO., INC., RESPONDENTS-APPELLEES.**

G.R. No. L-25082. November 23, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Appellant Universal Insurance and Indemnity Company went to the Court of First Instance of Manila on a petition for prohibition (Civil Case No. 59607) to stop the respondent Judge, the late Hon. Roman Cansino, Jr., presiding Branch VIII, City Court of Manila, from further taking cognizance of Civil Case No. 111904 insofar as said petitioner, one of the defendants therein, was concerned.

Civil Case No. 111904 is entitled "Age Construction Co., Inc., Plaintiff, vs. Beatriz Tengsico and Husband, and Universal Insurance and Indemnity Company, Defendants."

The pertinent facts are as follows: Age Construction Co., Inc. - hereinafter referred to as the respondent company - is a domestic corporation engaged in the construction business. On January 24, 1962 it entered into a written contract with Beatriz Tengsico, leasing to the latter several units of construction equipment, one of which was a vibrator stipulated to be worth not less than P500.00, at a monthly rental in the same amount. The lease contract was executed in the City of Manila and provided that the equipment subject thereof was to be used on a construction project of the lessee and returned to the lessor upon termination of the lease in the same good running condition as when it was received. The lessee also undertook to insure the equipment against loss, damage or destruction, the corresponding insurance policy to be issued in favor of the lessor.

On January 26, 1962 the policy was issued by the petitioner, with the respondent company appearing as the assured and with the place of execution indicated as follows: "IN WITNESS WHEREOF, a duly authorized officer of the (insurance) company has set his hand here-under in Makati, Rizal, Philippines, this 26th day of January 1962."

In due time the construction project of the lessee was finished and the respondent company asked for the return of the leased equipment. The vibrator, however, was not returned, the lessee alleging that it had been lost and that she had a certificate of loss in her possession. So the respondent company filed Civil Case No. 111904 in the City Court of Manila against Beatriz Tengsico and her husband for the recovery of the value of the vibrator and actual damages equivalent to the monthly rentals, as well as for moral and exemplary damages. The date of the filing of the complaint does not appear in the record before us. What does appear is that an amended complaint dated October 2, 1964 was subsequently filed pursuant to an order of the respondent Judge, impleading the herein petitioner as alternative party defendant in view of the allegation of the Tengsicos in their answer to the original complaint that the vibrator had been insured with the petitioner and that the same had been lost in their possession.

The allegation in the amended complaint with respect to the new defendant, petitioner herein, is that sometime in

December 1962 the plaintiff verbally requested the said defendant to pay the insurance value of the vibrator and followed such verbal request with a formal letter of demand on February 26, 1964, but that the demand was not complied with. The specific prayer against the same defendant is for judgment in the alternative to be rendered against it for the payment of the sum of P6,000.00, which is the aggregate insured value of the three items of equipment covered by the insurance policy.

On November 4, 1964 the petitioner filed a motion to dismiss the amended complaint insofar as it was concerned on the grounds: (1) that venue was improperly laid; (2) that the complaint failed to state a cause of action; and (3) that the plaintiff's claim set forth in the complaint had been waived or abandoned and had already prescribed. The motion was denied; the petitioner moved to reconsider but was turned down; and the case was set for trial on January 26, 1965.

The petition for prohibition, Case No. 59607, was thereupon commenced in the Court of First Instance of Manila seeking to stop the respondent Judge from further proceeding with Civil Case No. 111904, and alleging that the denial by him of the petitioner's motion to dismiss was without or in excess of jurisdiction and a grave abuse of discretion.

On July 9, 1965 the Court of First Instance rendered judgment sustaining the order of the respondent Judge and dismissing the petition for prohibition. Hence this appeal.

The only issue raised before Us is whether or not venue was properly laid in Civil Case No. 111904 as against the herein petitioner. It should be stated that the original complaint filed by the respondent company in the City Court of Manila was against the Tengsicos alone for the recovery of the value of the vibrator which had been leased to Beatriz Tengsico and which they failed to return upon the termination of the lease. In other words, the action was predicated on the lease contract, for breach of a stipulation therein. That action could be tried and proceed to judgment without bringing in the petitioner as defendant, the latter not being a party to the said contract, and its liability, if any, being based on the insurance policy it had issued. In fact, the prayer in the amended complaint is merely to hold it alternatively responsible. It is clear, therefore, that the petitioner is not an indispensable party in the action filed against the original defendants, since without its joinder a final determination of said action could be obtained.

If anything the petitioner was only a proper or necessary party within the meaning of Section 8 of Rule 3, which provides as follows:

"SEC. 8. Joinder of proper parties.- When persons who are not indispensable but who ought to be parties if complete relief is to be accorded as between those already parties have not been made parties and are subject to the jurisdiction of the court as to both service of process and venue, the court shall order them sum-moned to appear in the action. But the court may, in its discretion, proceed in the action without making such persons parties, and the judgment rendered therein shall be without prejudice to the rights of such persons."

It is to be noted that under the foregoing rule the joinder of proper parties, that is, of persons who are not indispensable but who ought to be parties if complete relief is to be afforded as between those already parties, requires that they be subject to the jurisdiction of the court as to both service of process and venue.

In the instant case there is no agreement in the insurance policy issued by the petitioner as to where an action for recovery thereon should be filed. Consequently, Rule 4, Section 1(b), subparagraph 2, should govern, to wit: "All other civil actions (i.e., actions other than forcible entry and detainer) in inferior courts should be brought: if there is no such agreement, in the place of execution of the contract sued upon as appears there from."

The place of execution is clear enough on the face of the policy: it was Makati, Rizal. Any evidence to show

otherwise would be immaterial, since the purpose of the rule is to avoid further inquiry outside that which appears on the document itself as the place of execution. Further-more, to permit such inquiry would be to assume that the contract does not show where it was executed, in which case subparagraph 3 of the same Rule 4 would be applicable, to the effect that action should be brought "in the municipali-ty where the defendant or any of the defendants resides or may be served with summons." In this case it is alleged in the amended complaint that "the Universal Insurance and Indemnity Company, Inc. is a corporation organized under the laws of the Philippines, with postal address at Insular Life Building, Ayala Avenue, Makati, Rizal," and it was in Makati, Rizal that it was served with summons.

In the case of *Enriquez v. Macaraeg*, 84 Phil. 674, this Court held that prohibition is the proper remedy against a Judge who proceeds "in defiance of the Rules of Court by refusing to dismiss an action which could not be maintained in his court" on the ground of improper venue.

Wherefore, the judgment appealed from is hereby reversed and the writ prayed for is ordered issued, pro-hibiting whoever is the successor of the respondent Judge, Hon. Roman Cansino, Jr., now deceased, from further proceeding in Civil Case No. 111904 of the City Court of Manila insofar as the petitioner, defendant therein, is concerned. Costs against the private respondent.

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

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