

**PHILIPPINE INTERNATIONAL TRADING CORPORATION,
PETITIONER, VS. M.V. ZILEENA, ZILEENA NAVIGATION CO., S.A. AND
MARINE MANNING AND MANAGEMENT CORPORATION,
RESPONDENTS.**

G.R. No. 102904. October 30, 1992

Ponente: MELO, J.

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MELO, J.:

The legal query raised in the petition for review on certiorari before Us is whether the venue of the collection case was properly laid in the Regional Trial Court of Makati, bearing in mind the stipulation of the parties embodied in the agreement dated November 3, 1990 which reads:

“10. This Agreement shall be governed by and construed in accordance with Singapore Law and all disputes arising hereunder shall be subject to the exclusive jurisdiction of the High Court of Singapore.” (p. 5, Agreement, p. 69, Rollo)

When the bags of portland cement belonging to petitioner were supposedly lost or damaged while the same were on board respondents’ vessel for shipment from Lianyungang, China to Manila, petitioner Philippine International Trading Corporation sued for recovery of the value thereof. The complaint, with the corollary prayer for the issuance of the writ of preliminary attachment, was raffled to Branch 138 of the Regional Trial Court of the National Capital Judicial Region stationed at Makati whose presiding judge issued a writ of preliminary attachment against M/V Zileena, the vessel of respondents on the same day the suit was initiated.

Six days thereafter, respondents as the defendants, moved to lift the writ of attachment (pp. 70-76, Rollo) and on January 18, 1991 petitioner filed its amended complaint with an application for the issuance of a new writ of attachment. The provisional relief sought by petitioner was opposed by respondents to no avail. A new writ of preliminary attachment was issued.

On January 22, 1991, respondents moved to lift the writ of attachment (p. 8, Comment; p. 45, Rollo; pp. 92-95, Rollo) and on January 25, 1991, the court a quo resolved to discharge the attachment upon the filing of a counterbond by respondents. On January 28, 1991, the court of origin ordered the discharge of the writ of attachment when respondents posted the requisite counterbond.

Thereafter, respondents moved to dismiss the suit against them on three grounds, to wit:

“I.

VENUE HAS BEEN IMPROPERLY LAID CONSIDER-ING THAT THE PARTIES HAVE AGREED TO SUB-MIT THEIR CONTRACTUAL DISPUTES EXCLUSIVELY TO THE HIGH COURT OF SINGAPORE IN ACCORDANCE WITH SINGAPORE LAW.

II.

THE CLAIM SET FORTH IN THE COMPLAINT HAS BEEN WAIVED, ABANDONED AND/OR OTHERWISE EXTINGUISHED CONSIDERING THAT:

(A) BASED ON THE ACTIONABLE AGREEMENT ATTACHED TO THE COMPLAINT, PLAINTIFF EXPRESSLY AGREED NOT TO ATTACH OR ARREST THE VESSEL WHILST SHE WAS IN THE PHILIPPINES.

(B) UNDER THE AGREEMENT, PLAINTIFF'S CARGO WAS EXPRESSLY CARRIED UNDER 'FIOS' TERMS; THUS, THE RESPONSIBILITY FOR THE LOADING, HANDLING, STOWING AND DISCHARGING THE CARGO RESTED WITH THE PLAINTIFF.

III.

PLAINTIFF HAS NO CAUSE OF ACTION AGAINST DEFENDANT MARINE MANNING AND MANAGEMENT CORPORATION IN THAT THE SAID DEFENDANT IS NOT A REAL PARTY-IN-INTEREST." (pp. 103-104, Rollo)

On November 26, 1991, the assailed order of dismissal was issued on the following justification:

"But, whatever may be the correct interpretation of paragraph 7 of the Agreement, the Court action calling for such an interpretation must be instituted in the Courts of Singapore pursuant to the agreement of the parties as to the venue of all court actions arising from the agreement. This stipulation in the agreement is not a stipulation on jurisdiction as claimed by the plaintiff but an agreement on the venue of all actions between the parties arising out of the agreement. This is in accord with the ruling in the case of *Lingner and Fiser GMBH vs. Intermediate Appellate Court*, 125 SCRA 522. In this case of *Lingner*, the provision of the contract, involved, reads: 'All legal settlements within the compass of this Agreement shall fall under the jurisdiction of Philippine Courts.' When sued, *Lingner* moved to dismiss the complaint on the ground among others that it could not be sued in Philippine Courts because it was not licensed to do business in the Philippines. In resolving this issue, the Supreme Court ruled as follows:

'x x x Whether *Lingner* is or is not doing business in the Philippines will not matter because the parties had expressly stipulated in the Agreement that all controversies based on the Agreement shall fall under the jurisdiction of Philippine Courts. In other words there was a covenant on venue to the effect that *Lingner* can be sued by *Philcem* before Philippine Courts in regards to a controversy related to the AGREEMENT. (Supra p. 527. Underscoring ours.)

Thus, when plaintiff stipulated in its Agreement with 'Zileena' Navigation Co., S.A. that 'xxx all disputes arising hereunder shall be subject to the exclusive jurisdiction of the High Court of Singapore' it simply agreed to sue and be sued only in the Courts of Singapore." (pp. 24-25, Rollo)

In the petition at bar, petitioner insists that paragraph 10 of the covenant is an illegal agreement on *competencia* because it deprives Philippine courts from handling any case that may arise under the agreement. At any rate, petitioner asseverates that even granting *arguendo* that the proviso in question is an agreement on venue, respondents are nonetheless estopped from assailing the forum of the collection suit when respondents twice sought the lifting of the attachment against their vessel and when they posted a counterbond for the discharge of the writ of attachment.

Instead of directly responding to the basic points raised by petitioner, respondents mixed the chaff and the grain, so to speak, by infusing the intrinsic worth of their exculpations into the simple procedural backdrop of the legal tangle. Scattered on the face of the Comment to the Petition are piecemeal but subtle defenses which should not

now be addressed in as much as they properly pertain to, and must be ventilated in, the court of origin.

While We perceive merit in the petition, it must be impressed upon petitioner that paragraph 10 of the Agreement may not be equated with *competencia* and neither does it suggest that Philippine courts are divested of authority by reason of the parties' express preference to vest jurisdiction in the High Court of Singapore. Indeed, it was emphasized in *International Harvester Co. vs. Hamburg American Line*, (42 Phil. 845 [1918]):

"The only other point raised by the bill of exceptions, which we deem it necessary to notice, is based on a provision in the bill of lading to the effect that all disputes arising under the contract are, at the option of the defendant company, to be decided according to German law and exclusively by the Hamburg courts. From this it is argued that the Court of First Instance erred in assuming jurisdiction of the action and that the case should have been decided in accordance with the principles of German law.

It can not be admitted that a pro-*vision* of this character has the effect of ousting the jurisdiction of the courts of the Philippine Islands in the matter now before it. An express agreement tending to deprive a court of jurisdiction conferred on it by law is of no effect. (*Molina vs. De la Riva*, 6 Phil., 12.)" (p. 855)

In resolving this problem, which is analogous to the scenario that obtained in *Atlas Developer and Steel Industries, Inc. vs. Sarmiento Enterprises, Inc.* (184 SCRA 153 [1990]), petitioner must heed the reminder that:

"... Although it provides that the City Court of Manila shall have 'jurisdiction' over a legal action arising from the contract, the parties must have intended to fix the venue only, for jurisdiction over an action is conferred by law, and may not be changed by mere agreement of the parties (*Calimlim, et al. vs. Ramirez, et al.*, 118 SCRA 399; *De Jesus, et al. vs. Garcia, et al.*, 19 SCRA 554)." (p. 155)

On the second point concerning the demeanor of respondents in invoking the authority of the local court, We agree with petitioner's contention that respondents are indeed precluded from interposing an objection via a motion to dismiss grounded on improper venue since the actuations displayed by respondents before filing the bill of exception are tantamount to voluntary submission to the jurisdiction of the lower court. The filing of two motions for the lifting of the writ of attachment, the submission of a memorandum in support of the urgent motion to discharge the writ of attachment (p. 77, Rollo), the posting of a counterbond to dissolve the writ of attachment, the filing of a demurrer on an additional ground that petitioner has no cause of action (p. 103, Rollo), the filing of a reply to petitioner's opposition to the motion to dismiss (p. 111, Rollo) -- all of these can but signify a waiver of respondent's objection to improper venue (*Marquez Lim Cay vs. Del Rosario*, 55 Phil. 962 [1931]). Verily, venue involves no more and no less than a personal privilege which may be lost by failure to assert it seasonably, by formal submission in a cause, or by submission through conduct (56 Am. Jur. 44; 1 *Francisco*, Revised Rules of Court in the Philippines 366 [2nd ed., 1973]).

Respondents rely on the pronouncement of this Court in *Sy vs. Tyson Enterprises, Inc.* (119 SCRA 367 [1982]) to the effect that the filing therein of a motion for a bill of particulars, or any pleading for that matter, before submitting a motion to dismiss cannot be construed as a waiver of objection to venue since Section 4, Rule 4 of the Revised Rules of Court does not provide that improper venue should be challenged by a special appearance or before any pleading is filed. Yet, the *Sy* case contained an implicit reference to, and recognition of the doctrine announced in *Marquez Lim Cay vs. Del Rosario* (*supra*) relative to acts of a party which can give rise to an effective waiver of objection based on improper venue, thus:

"The case of *Marquez Lim Cay vs. Del Rosario*, 55 Phil. 962, does not sustain the trial court's order of denial because in that case the defendants, before filing a motion to dismiss on the ground of improper venue, interposed a demurrer on the ground that the complaint does not state a cause of action. Then, they filed a motion for the dissolution of an attachment, posted a bond for its dissolution and later filed a motion for the assessment of the damages caused by the attachment. All those acts constituted a submission to the trial court's

jurisdiction and a waiver of the objection based on improper venue under Section 377 of the Code of Civil Procedure.” (p. 372)

Commenting on Sy, Justice Oscar M. Herrera succinctly says that even as said case held that “the filing of a motion for bill of particulars is not a waiver, yet the filing of a demurrer on the ground that the complaint did not state a cause of action, a motion for dissolution of an attachment, posting of a bond for dissolution and motion for assessment of damages constituted a submission to the trial court's jurisdiction and waiver of the objection based on venue.” (1 Herrera, Remedial Law 166 [1990]).

In fine, respondents' objection grounded on improper venue may be deemed waived on the basis of the following acts they did:

- a) Filing of two motions for the lift-ing of the writ of attachment;
- b) The submission of a memorandum in support of the urgent motion to discharge the writ of attachment (p. 77, Rollo);
- c) The posting of a counterbond to dis-solve the writ of attachment;
- d) The filing of a demurrer on an addi-tional ground that petitioner has no cause of action (p. 103, Rollo); and
- e) The filing of a reply to petitioner's opposition to the motion to dismiss (p. 111, Rollo).

In view of the foregoing observations, We hereby hold that the lower court erred in confining its discussions to the issue of whether paragraph 10 of the covenant refers to jurisdiction or venue, without considering the more pivotal issue as to whether respondents, vis-a-vis the demeanor they demonstrated, can still object to improper forum.

WHEREFORE, the petition is hereby GRANTED. The order date November 26, 1991 is SET ASIDE and the case is hereby REMANDED to the court of origin for further proceedings.

SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

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