

PHILIPPINE BANKING CORPORATION, PETITIONER, VS. HON. SALVADOR S. TENSUAN, JUDGE OF THE REGIONAL TRIAL COURT OF MAKATI, NATIONAL CAPITAL JUDICIAL REGION, BRANCH 146; CIRCLE FINA...

G.R. No. 106920. December 10, 1993

Ponente: FELICIANO, J.

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FELICIANO, J.:

In this Petition for Review on Certiorari, petitioner asks us to review and set aside the Order of Judge Salvador A. Tensuan dated 3 August 1992, dismissing petitioner's complaint in Civil Case No. 91-2220 entitled "Philippine Banking Corporation vs. Circle Financial Corporation, et. al."

Petitioner Philippine Banking Corporation (hereafter "Bank") is a commercial banking corporation with principal office at Makati, Metro Manila. Petitioner Bank instituted a complaint for collection of a sum of money, with a prayer for preliminary attachment, at the Regional Trial Court of Makati. It appears from the allegations of the Bank's complaint that respondent Circle Financial Co. (hereafter "Circle"), sometime in 1983 and 1984, through its representatives, obtained several loans aggregating P1,000,000.00 from petitioner. Respondent Circle, for value received, delivered to petitioner Bank four (4) promissory notes, each of which contained the stipulation that:

"I/We hereby expressly submit to the jurisdiction of the courts of Valenzuela any legal action which may arise out of this promissory note."

As security for the re-payment by respondent Circle of the sums loaned by petitioner Bank, eight (8) individuals, who were impleaded as defendants in the complaint -- namely, Avelino Deato, Miguel Violago, Benjamin Santiago, Socorro Gomez, Nerissa Gloria, Filemon Marquez, Domingo Santiago and Hilario Lopez -- executed a Continuing Surety Agreement and undertook to pay jointly and severally respondent Circle's obligations. Only five (5) out of the eight (8) individual obligors are respondents in present case, namely: Domingo Santiago, Hilario Lopez, Avelino Deato, Benjamin P. Santiago and Socorro Gomez.

On their due dates, Circle failed to pay its obligations under the promissory notes. Thereupon, petitioner Bank demanded payment from the eight (8) individual sureties conformably with their promises contained in the Continuing Surety Agreement; the individual obligors, however, also failed to pay.

Petitioner moved for issuance of a writ of preliminary attachment, alleging that respondent Circle had become insolvent and had been placed under receiver-ship by the Central Bank. The trial judge granted the motion and issued a writ of preliminary attachment. The sheriff's return indicated, however, that no properties belonging to the respondent Circle and the individual obligors could be found. Per sheriff's return, summons was served upon Domingo Santiago,[1] Hilario P. Lopez,[2] Avelino Deato,[3] Benjamin P. Santiago[4] and Socorro Gomez.[5] The sheriff failed to serve summons on (a) Miguel Violago, who had died; (b) Nerissa T. Gloria[6] and Filemon

Marquez,[7] whose whereabouts were unknown; and (c) Circle, which had ceased to engage in business at the address given by petitioner and could not be located.

A motion to dismiss was filed by the respondents (Circle and the five [5] individual sureties served with summons) and averred that the venue of the action was improperly laid since an agreement had fixed the venue of actions arising from the promissory notes in Valenzuela, Metro Manila, only. Respondents called the trial court's attention to the stipulation contained in the promissory note, quoted in limine.

Acting upon respondents' motion, respondent Judge Tensuan issued the challenged Order which read as follows:

"Acting on defendants' motion to dismiss on grounds of improper venue in relation with actionable promissory notes which stipulate that the parties 'expressly submit to the jurisdiction of the Courts of Valenzuela, Metro Manila any legal action which may arise', and,

Finding said motion to be impressed with merit consistent with Sec. 13, Rule 14 of the Rules of Court as well as in line with the doctrinal rule in *Bautista vs. Hon. Juan de Borja, et al.* (18 SCRA 474) that the proper venue for an action is that stipulated in a document 'in case of any litigation herefrom or in connection herewith' upon a rationale that had the parties intended to reserve the right to choose venue under Section 2 (b), Rule 4 of the Rules of Court, such reservation should have been reflected in the document as against the rationale in *Polytrade Corporation vs. Blanco* (30 SCRA 187) which should allow choice of venue where an actionable document does not set forth qualifying or restrictive words in point, and

In order to more clearly define the parameters of the rule on proper venue vis-a-vis a clear perception that a stipulation to 'expressly submit to the jurisdiction of the Courts of Valenzuela, Metro Manila' amount to an unequivocal agreement to sue and be sued in Valenzuela, Metro Manila.

WHEREFORE, premises considered and finding the motion to be meritorious, same is hereby granted and the above-entitled case is accordingly dismissed. Without pronouncement as to costs.

SO ORDERED."[8]

Petitioner moved for reconsideration of the above Order of the trial court, without success.

Hence, this Petition.

We consider that the Petition is meritorious.

It is settled in this jurisdiction that the parties, by written agreement, may change or transfer the venue of an action from one province to another.[9] We have many times sustained the validity and enforceability of contractual stipulations relating to venue. In the enforcement of the parties' stipulations concerning venue, it is, of course, the tenor of their agreement which is of critical relevance. The relevant task, in other words, is determining the intent of the parties as manifested in the words employed by them and, where such words are less than clear, in other recognized indicators of the will of the contracting parties.

Petitioner Bank contends that the stipulation contained in the promissory notes is merely an agreement to add the courts of Valenzuela to the tribunals to which the parties may resort. Petitioner thus insists that the venue stipulation set out in the notes did not restrict or limit the permissible venue of actions arising out of those notes to the courts of Valenzuela, to the exclusion of all the other courts recourse to any one of which is authorized or permitted under the Rules of Court. Thus, venue was properly laid by petitioner Bank in the place where its principal offices are located: i.e., Makati, Metropolitan Manila.

Private respondents, in opposition, aver that the words used in the stipulation here involved are clear and unambiguous. A promise to submit to the jurisdiction of a specific court, without an express reservation of the

right to resort to one or more of the tribunals otherwise accessible under the Rules of Court, is an agreement definitely fixing the permissible venue in only one place, i.e., Valenzuela, to the exclusion of other competent courts.

A careful reading of the terms of the stipulation -- "I/We hereby expressly submit to the jurisdiction of the courts of Valenzuela any legal action which may arise out of this promissory note" -- shows that that stipulation does not require the laying of venue in Valenzuela exclusively or mandatorily. The plain or ordinary import of the stipulation is the authorizing of, or permission to bring, suit in Valenzuela; there is not the slightest indication of an intent to bar suit in other competent courts.

Permissive stipulations like the one here considered have invariably received judicial approval and we have declared that either of the parties is authorized to lay venue of an action in the court named in the stipulation. The stipulation here does not purport to deprive either party of its right to elect, or option to have resort to, another competent court as expressly permitted by Section 2(b) of Rule 4 of the Rules of Court, should such party choose to initiate a suit. The stipulation here merely operated to confer or confirm a right upon a party to elect recourse to the courts of Valenzuela or, alternatively, to go before any of the tribunals envisaged by the rules on venue, i.e., the courts of Makati, Quezon City and Bulacan.[10]

In principle, the stipulation on venue here involved must be distinguished from stipulations which purport to require or compel the parties to lay venue of an action in a specified place, and in that particular place only. The latter type of venue stipulation must clearly indicate, through qualifying and restrictive words, that the parties deliberately intended to exclude causes or actions from the operation of the ordinary permissive rules on venue,[11] and that they intended contractually to designate a specific venue to the exclusion of any other court also competent and accessible to the parties under the ordinary rules on the venue of actions. Stipulations of this exclusionary nature may, under certain circumstances, be characterized as unreasonable or as contrary to public policy[12] and, accordingly, not judicially enforceable.

In practice, the task, as noted earlier, of this Court when confronted with issues of this kind is always basically that of contract interpretation. In the case at bar, neither qualifying nor restrictive words (e.g., "must," "only" or "exclusively") were employed which could yield an ????? on the part of the parties mandatorily to restrict the venue of actions arising out of the promissory notes to the courts of Valenzuela only. Private respondents suggest that the use of the words "any legal action" expressed a supposed agreement to bar actions before any court other than a Valenzuela court. We do not agree, for we see no necessary or customary connection between the words "any legal action" and an intent strictly to limit permissible venue to the Valenzuela courts. Intent so to establish an inflexible restriction of otherwise permissible venue to one single place is not lightly to be presumed or inferred from stipulations which, like that here before us, include no qualifying or exclusionary terms. Express reservation of the right to elect venue under the ordinary rules was, accordingly, unnecessary in the case at bar.

Such is the thrust of the great bulk of the caselaw of this Court where this issue was directly raised and discussed.

In *Polytrade Corporation v. Blanco*,[13] the stipulation on venue there involved read:

"The parties agree to sue and be sued in the courts of Manila"

The Court, in upholding that stipulation and ruling that venue had been properly laid in the then Court of First Instance of Bulacan (the place of defendant's residence), speaking through Mr. Justice Sanchez, said:

"x x x. 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.* "[14] (Underscoring supplied)

In *Nicolas v. Reparations Commission*, [15] the stipulation on venue provided that:

"All legal actions arising out of this contract x x x may be brought in and submitted to the jurisdiction of the proper courts in the City of Manila." [16]

This Court read the above stipulation as merely permissive, relying upon and reinforcing *Polytrade*:

"x x x the venue in personal actions is fixed for the convenience of the plaintiff and his witnesses and to promote the ends of justice. We cannot conceive how the interests of justice may be served by confining the situs of the action to Manila, considering that the residences or offices of all the parties, including the situs of the acts sought to be restrained or required to be done, are all within the territorial jurisdiction of Rizal.

While the parties have agreed to submit their dispute to the jurisdiction of the Manila courts, there is nothing in the language used x x x which clearly shows that the intention of the parties was to limit the venue of the action to the City of Manila only. Such agreements should be construed reasonably and should not be applied in such a manner that it would work more to the inconvenience of the parties without promoting the ends of justice." [17] (Underscoring supplied)

In *Lamis Enterprises v. Lagamon*, [18] the promissory note sued on had the following stipulation:

"In case of litigation, jurisdiction shall be vested in the courts of Davao City." [19]

The collection suit was instituted in the then Court of First Instance of Tagum, Davao. The Supreme Court rejected the defense of improper venue and held:

"x x x it is alleged that the proper venue for Civil Case No. 1395 should be Davao City where the plaintiff resides and as stipulated in the promissory note dated February 26, 1979 and in the chattel mortgage dated February 27, 1979. However, the respondent judge found that Maningo has not only legal residence but also physical and actual residence in Busaon, Tagum, Davao and we are not inclined to disturb this finding. Anent the claim that Davao City had been stipulated as the venue, suffice it to say that a stipulation as to venue does not preclude the filing of suits in the residence of plaintiff or defendant under Section 2(b), Rule 4, Rules of Court, in the absence of qualifying or restrictive words in the agreement which would indicate that the place named is the only venue agreed upon by the parties. The stipulation did not deprive Maningo of his right to pursue remedy in the court specifically mentioned in Section 2(b) of Rule 4, Rules of Courts, *Renuntiatio non praesumitur.* x x x." [20] (Underscoring supplied)

In *Western Minolco v. Court of Appeals*, [21] the clause on venue read:

"The parties stipulate that the venue of the actions referred to in Section 12.01 [Article XII of the Agreement] shall be in the City of Manila."

The initial action was commenced in the Court of First Instance of Baguio and Benguet. This Court took the occasion to reiterate once more the *Polytrade* doctrine:

"x x x In any event, it is not entirely amiss to restate the doctrine that stipulations in a contract, which specify a definite place for the institution of an action arising in connection therewith, do not, as a rule, supersede the general rules on the matter set out in Rule 4 of the Rules of Court, but should be construed merely as an agreement on an additional forum, not as limiting venue to the specified place." [22] (Underscoring supplied)

It is not necessary to pretend that the decisions of the Supreme Court have been absolutely consistent in this regard. There have been a few decisions -- notably *Bautista v. de Borja*[23] and *Hoechst Philippines v. Torres*[24] -- which are not easy to reconcile with the line of cases beginning with *Polytrade* discussed above. It is useful therefore to make clear that to the extent *Bautista* and *Hoechst Philippines* are inconsistent with *Polytrade* (an en banc decision later in time than *Bautista*) and subsequent cases reiterating *Polytrade*, *Bautista* and *Hoechst Philippines* have been rendered obsolete by the *Polytrade* line of cases.

We note, finally, that no one of the private respondents has claimed to have been put to undue hardship or inconvenience as a result of the institution of the action in Makati. Venue relates to the trial and touches more upon the convenience of the parties rather than upon the substance or merits of the case.[25]

WHEREFORE, the Petition for Review on Certiorari is hereby GRANTED DUE COURSE and the Orders dated 3 August 1992 and 28 August 1992 of public respondent Judge Salvador S. Tensuan are hereby REVERSED and SET ASIDE. The case is hereby REMANDED to the court of origin for resolution on the merits, with all deliberate dispatch. No pronouncement as to costs.

SO ORDERED.

Bidin, Romero, Melo, and Vitug, JJ., concur.

[1] Per the complaint, a resident of Baliwag, Bulacan.

[2] Per the complaint, with address at c/o Rural Bank of Bustos, Inc., Bustos, Bulacan.

[3] Per the complaint, a resident of Valenzuela, Metro Manila.

[4] Per the complaint, residing at Valenzuela, Metro Manila.

[5] Per the complaint, a resident of Philam Homes, Quezon City.

[6] Per the complaint, residing at Meycauayan, Bulacan.

[7] Per the complaint, with address at Rural Bank of del Pilar, Inc., Plaridel, Bulacan.

[8] Annex "E" of the Petition, Rollo, p. 26.

[9] Section 3, Rule 4 of the Rules of Court.

[10] See *Polytrade vs. Blanco*, 30 SCRA 187 (1969); *Nicolas vs. Reparations*, 64 SCRA 110 (1975); *Tantoco vs. Court of Appeals*, 77 SCRA 225 (1977); *Lamis Ents. vs. Lagamon*, 108 SCRA 740 (1981); *Capati vs. Ocampo*, 113 SCRA 794 (1982). See also *Western Minolco vs. Court of Appeals*, 167 SCRA 592 (1988); *Nasser vs. Court of Appeals*, 191 SCRA 783 (1990).

[11] See *Moles vs. Intermediate Appellate Court*, 169 SCRA 777 (1989).

[12] See *Sweet Lines vs. Teves*, 83 SCRA 361 (1978).

[13] 30 SCRA 187 (1969).

[14] 30 SCRA at 191. The Court cited *Engel v. Schubert Theatrical Co.* (151 N.Y.S. 593 [1915]) where the agreement on venue read:

"In case of dispute, both contracting parties agree to submit to the jurisdiction of the Vienna courts."

The New York court's ruling, quoted with approval by our Supreme Court, was:

"By the clause in question, the parties do not agree to submit their disputes to the jurisdiction of the Viennese court, 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 jurisdiction exclusively, it is entirely plain that such agreements, should be strictly construed, and should not be extended by implication." (Underscoring supplied)

[15] 64 SCRA 110 (1975).

[16] 64 SCRA at 111.

[17] 64 SCRA at 116.

[18] 108 SCRA 740 (1981).

[19] 108 SCRA at 743.

[20] 108 SCRA at 753.

[21] 167 SCRA 592 (1988).

[22] 167 SCRA at 593.

[23] 18 SCRA 475 (1966). In *Bautista v. de Borja*, the venue stipulation read:

"[I]n case of any litigation, arising [t]herefrom or in connection [t]herewith, the venue of the action shall be in the City of Manila."

The Court read the above stipulation as an agreement to definitely fix the venue of actions arising out of the written contracts sued upon, in the proper courts of the City of Manila and granted dismissal of the complaint. The Court did not seek to analyze the stipulation; not finding any clause reserving to the parties the right of election, the Court surmised that the agreement was one requiring venue to be laid in one place only, to the exclusion of other competent tribunals.

[24] 83 SCRA 297 (1978). In *Hoechst Philippines v. Torres* (a Division case), the venue clause provided:

"[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."

The Supreme Court, through Mr. Justice Barredo, followed the case of *Bautista v. de Borja* (supra) and interpreted the venue clause as an agreement requiring venue to be laid in only one place, i.e., the Province of Rizal, and sustained the trial court's dismissal of the action for improper venue. The Court said that

"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." (83 SCRA at 301) (Underscoring supplied)

The contract involved was a standard distribution agreement relating to products of Hoechst Philippines. Barredo, J. added that there was

"justification also for petitioner [*Hoechst Philippines*] to see to it that all suits against it be concentrated in the

Province of Rizal [principal place of business of Hoechst Philippines]. If otherwise, considering the nationwide extent of its business, it would be greatly inconvenience if it had to appear in so many provinces everytime an action is filed against it [on a distribution agreement]." (83 SCRA at 302).

Private respondent did not controvert the trial court's reading of the venue clause. Instead, private respondent sought to have the stipulation set aside as contrary to public policy, alleging that Hoechst Philippines was a multinational company and that the stipulation prejudiced small-time distributors like private respondent.

[25] Manila Railroad Co. vs. Attorney General, 20 Phil. 523 (1911).

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