

UNIMASTERS CONGLOMERATION, INC., PETITIONER, VS. COURT OF APPEALS AND KUBOTA AGRI-MACHINERY PHILIPPINES, INC., RESPONDENTS.

G.R. No. 119657 (Formerly UDK-11862). February 07, 1997

Ponente: NARVASA, C.J.

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NARVASA, C.J.:

The appellate proceeding at bar turns upon the interpretation of a stipulation in a contract governing venue of actions thereunder arising.

On October 28, 1988 Kubota Agri-Machinery Philippines, Inc. (hereafter, simply KUBOTA) and Unimasters Conglomeration, Inc. (hereafter, simply UNIMASTERS) entered into a "Dealership Agreement for Sales and Services" of the former's products in Samar and Leyte Provinces.[1] The contract contained, among others:

- 1) a stipulation reading: "*** All suits arising out of this Agreement shall be filed with / in the proper Courts of Quezon City," and
- 2) a provision binding UNIMASTERS to obtain (as it did in fact obtain) a credit line with Metropolitan Bank and Trust Co.-Tacloban Branch in the amount of P2,000,000.00 to answer for its obligations to KUBOTA.

Some five years later, or more precisely on December 24, 1993, UNIMASTERS filed an action in the Regional Trial Court of Tacloban City against KUBOTA, a certain Reynaldo Go, and Metropolitan Bank and Trust Company-Tacloban Branch (hereafter, simply METROBANK) for damages for breach of contract, and injunction with prayer for temporary restraining order. The action was docketed as Civil Case No. 93-12-241 and assigned to Branch 6.

On the same day the Trial Court issued a restraining order enjoining METROBANK from "authorizing or effecting payment of any alleged obligation of ** (UNIMASTERS) to defendant ** KUBOTA arising out of or in connection with purchases made by defendant Go against the credit line caused to be established by ** (UNIMASTERS) for and in the amount of P2 million covered by defendant METROBANK ** or by way of charging ** (UNIMASTERS) for any amount paid and released to defendant ** (KUBOTA) by the Head Office of METROBANK in Makati, Metro-Manila **." The Court also set the application for preliminary injunction for hearing on January 10, 1994 at 8:30 o'clock in the morning.

On January 4, 1994 KUBOTA filed two motions. One prayed for dismissal of the case on the ground of improper venue (said motion being set for hearing on January 11, 1994). The other prayed for the transfer of the injunction hearing to January 11, 1994 because its counsel was not available on January 10 due to a prior commitment before another court.

KUBOTA claims that notwithstanding that its motion to transfer hearing had been granted, the Trial Court went ahead with the hearing on the injunction incident on January 10, 1994 during which it received the direct testimony of UNIMASTERS' general manager, Wilford Chan; that KUBOTA's counsel was "shocked" when he

learned of this on the morning of the 11th, but was nonetheless instructed to proceed to cross-examine the witness; that when said counsel remonstrated that this was unfair, the Court reset the hearing to the afternoon of that same day, at which time Wilford Chan was recalled to the stand to repeat his direct testimony. It appears that cross-examination of Chan was then undertaken by KUBOTA's lawyer with the "express reservation that ** (KUBOTA was) not (thereby) waiving and/or abandoning its motion to dismiss;" and that in the course of the cross-examination, exhibits (numbered from 1 to 20) were presented by said attorney who afterwards submitted a memorandum in lieu of testimonial evidence.[2]

On January 13, 1994, the Trial Court handed down an Order authorizing the issuance of the preliminary injunction prayed for, upon a bond of P2,000,000.00.[3] And on February 3, 1994, the same Court promulgated an Order denying KUBOTA's motion to dismiss. Said the Court:

"The plaintiff UNIMASTERS Conglomeration is holding its principal place of business in the City of Tacloban while the defendant ** (KUBOTA) is holding its principal place of business in Quezon City. The proper venue therefore pursuant to Rules of Court would either be Quezon City or Tacloban City at the election of the plaintiff. Quezon City and Manila (sic), as agreed upon by the parties in the Dealership Agreement, are additional places other than the place stated in the Rules of Court. The filing, therefore, of this complaint in the Regional Trial Court in Tacloban City is proper."

Both orders were challenged as having been issued with grave abuse of discretion by KUBOTA in a special civil action of certiorari and prohibition filed with the Court of Appeals, docketed as CA-G.R. SP No. 33234. It contended, more particularly, that (1) the RTC had "no jurisdiction to take cognizance of ** (UNIMASTERS') action considering that venue was improperly laid," (2) UNIMASTERS had in truth "failed to prove that it is entitled to the ** writ of preliminary injunction;" and (3) the RTC gravely erred "in denying the motion to dismiss." [4]

The Appellate Court agreed with KUBOTA that -- in line with the Rules of Court[5] and this Court's relevant rulings[6] -- the stipulation respecting venue in its Dealership Agreement with UNIMASTERS did in truth limit the venue of all suits arising thereunder only and exclusively to "the proper courts of Quezon City." [7] The Court also held that the participation of KUBOTA's counsel at the hearing on the injunction incident did not in the premises operate as a waiver or abandonment of its objection to venue; that assuming that KUBOTA's standard printed invoices provided that the venue of actions thereunder should be laid at the Court of the City of Manila, this was inconsequential since such provision would govern "suits or legal actions between petitioner and its buyers" but not actions under the Dealership Agreement between KUBOTA and UNIMASTERS, the venue of which was controlled by paragraph No. 7 thereof; and that no impediment precludes issuance of a TRO or injunctive writ by the Quezon City RTC against METROBANK-Tacloban since the same "may be served on the principal office of METROBANK in Makati and would be binding on and enforceable against, METROBANK branch in Tacloban."

After its motion for reconsideration of that decision was turned down by the Court of Appeals, UNIMASTERS appealed to this Court. Here, it ascribes to the Court of Appeals several errors which it believes warrant reversal of the verdict, namely:[8]

- 1) "in concluding, contrary to decisions of this ** Court, that the agreement on venue between petitioner (UNIMASTERS) and private respondent (KUBOTA) limited to the proper courts of Quezon City the venue of any complaint filed arising from the dealership agreement between ** (them);"
- 2) "in ignoring the rule settled in *Philippine Banking Corporation vs. Tensuan*, [9] that 'in the absence of qualifying or restrictive words, venue stipulations in a contract should be considered merely as agreement on additional forum, not as limiting venue to the specified place;" and in concluding, contrariwise, that the

agreement in the case at bar "was the same as the agreement on venue in the Gesmundo case," and therefore, the Gesmundo case was controlling; and

3) "in concluding, based solely on the self-serving narration of ** (KUBOTA that its) participation in the hearing for the issuance of a ** preliminary injunction did not constitute waiver of its objection to venue."

The issue last mentioned, of whether or not the participation by the lawyer of KUBOTA at the injunction hearing operated as a waiver of its objection to venue, need not occupy the Court too long. The record shows that when KUBOTA's counsel appeared before the Trial Court in the morning of January 11, 1994 and was then informed that he should cross-examine UNIMASTERS' witness, who had testified the day before, said counsel drew attention to the motion to dismiss on the ground of improper venue and insistently attempted to argue the matter and have it ruled upon at the time; and when the Court made known its intention (a) "to (resolve first the) issue (of) the injunction then rule on the motion to dismiss," and (b) consequently its desire to forthwith conclude the examination of the witness on the injunction incident, and for that purpose reset the hearing in the afternoon of that day, the 11th, so that the matter might be resolved before the lapse of the temporary restraining order on the 13th, KUBOTA's lawyer told the Court: "Your Honor, we are not waiving our right to submit the Motion to Dismiss." [10] It is plain that under these circumstances, no waiver or abandonment can be imputed to KUBOTA.

The essential question really is that posed in the first and second assigned errors, i.e., what construction should be placed on the stipulation in the Dealership Agreement that "(a)ll suits arising out of this Agreement shall be filed with/in the proper Courts of Quezon City."

Rule 4 of the Rules of Court sets forth the principles generally governing the venue of actions, whether real or personal, or involving persons who neither reside nor are found in the Philippines or otherwise. Agreements on venue are explicitly allowed. "By written agreement of the parties the venue of an action may be changed or transferred from one province to another." [11] Parties may by stipulation waive the legal venue and such waiver is valid and effective being merely a personal privilege, which is not contrary to public policy or prejudicial to third persons. It is a general principle that a person may renounce any right which the law gives unless such renunciation would be against public policy. [12]

Written stipulations as to venue may be restrictive in the sense that the suit may be filed only in the place agreed upon, or merely permissive in that the parties may file their suit not only in the place agreed upon but also in the places fixed by law (Rule 4, specifically). As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.

Since convenience is the *raison d'être* of the rules of venue, [13] it is easy to accept the proposition that normally, venue stipulations should be deemed permissive merely, and that interpretation should be adopted which most serves the parties' convenience. In other words, stipulations designating venues other than those assigned by Rule 4 should be interpreted as designed to make it more convenient for the parties to institute actions arising from or in relation to their agreements; that is to say, as simply adding to or expanding the venues indicated in said Rule 4.

On the other hand, because restrictive stipulations are in derogation of this general policy, the language of the parties must be so clear and categorical as to leave no doubt of their intention to limit the place or places, or to fix places other than those indicated in Rule 4, for their actions. This is easier said than done, however, as an examination of precedents involving venue covenants will immediately disclose.

In at least thirteen (13) cases, this Court construed the venue stipulations involved as merely permissive. These are:

1. *Polytrade Corporation v. Blanco*, decided in 1969. [14] In this case, the venue stipulation was as follows:

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

This Court ruled that such a provision "does not preclude the filing of suits in the residence of the plaintiff or the 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. 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."

The Polytrade doctrine was reiterated expressly or implicitly in subsequent cases, numbering at least ten (10).

2. *Nicolas v. Reparations Commission*, decided in 1975.[15] In this case, the stipulation on venue read:

"** (A)ll legal actions arising out of this contract ** may be brought in and submitted to the jurisdiction of the proper courts in the City of Manila."

This Court declared that the stipulation does not clearly show the intention of the parties to limit the venue of the action to the City of Manila only. "It must be noted that 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 interest 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. ** 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."

3. *Lamis Ents. v. Lagamon*, decided in 1981.[16] Here, the stipulation in the promissory note and the chattel mortgage specified Davao City as the venue.

The Court, again citing Polytrade, stated that the provision "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 ** (the affected party) of his right to pursue remedy in the court specifically mentioned in Section 2(b) of Rule 4, Rules of Court. *Renuntiatio non praesumitur*."

4. *Capati v. Ocampo*, decided in 1982.[17] In this case, the provision of the contract relative to venue was as follows:

" ** (A)ll actions arising out, or relating to this contract may be instituted in the Court of First Instance of the City of Naga."

The Court ruled that the parties "did not agree to file their suits solely and exclusively with the Court of First Instance of Naga;" they "merely agreed to submit their disputes to the said court without waiving their right to seek recourse in the court specifically indicated in Section 2 (b), Rule 4 of the Rules of Court."

5. *Western Minolco v. Court of Appeals*, decided in 1988.[18] Here, the provision governing venue read:

"The parties stipulate that the venue of the actions referred to in Section 12.01 shall be in the City of Manila."

The court restated the doctrine that a stipulation in a contract fixing a definite place for the institution of an action arising in connection therewith, does not ordinarily supersede the general rules set out in Rule 4, and should be construed merely as an agreement on an additional forum, not as limiting venue to the specified place.

6. *Moles v. Intermediate Appellate Court*, decided in 1989.[19] In this proceeding, the Sales Invoice of a linotype machine stated that the proper venue should be Iloilo.

This Court held that such an invoice was not the contract of sale of the linotype machine in question;

consequently the printed provisions of the invoice could not have been intended by the parties to govern the sale of the machine, especially since said invoice was used for other types of transactions. This Court said: "It is obvious that a venue stipulation, in order to bind the parties, must have been intelligently and deliberately intended by them to exclude their case from the reglementary rules on venue. Yet, even such intended variance may not necessarily be given judicial approval, as, for instance, where there are no restrictive or qualifying words in the agreement indicating that venue cannot be laid in any place other than that agreed upon by the parties, and in contracts of adhesion."

7. *Hongkong and Shanghai Banking Corp. v. Sherman*, decided in 1989.[20] Here the stipulation on venue read:

" ** (T)his guarantee and all rights, obligations and liabilities arising hereunder shall be construed and determined under and may be enforced in accordance with the laws of the Republic of Singapore. We hereby agree that the Courts in Singapore shall have jurisdiction over all disputes arising under this guarantee **."

This Court held that due process dictates that the stipulation be liberally construed. The parties did not thereby stipulate that only the courts of Singapore, to the exclusion of all the others, had jurisdiction. The clause in question did not operate to divest Philippine courts of jurisdiction.

8. *Nasser v. Court of Appeals*, decided in 1990,[21] in which the venue stipulation in the promissory notes in question read:

" ** (A)ny action involving the enforcement of this contract shall be brought within the City of Manila, Philippines."

The Court's verdict was that such a provision does not as a rule supersede the general rule set out in Rule 4 of the Rules of Court, and should be construed merely as an agreement on an additional forum, not as limiting venue to the specified place.

9. *Surigao Century Sawmill Co., Inc. v. Court of Appeals*, decided in 1993:[22] In this case, the provision concerning venue was contained in a contract of lease of a barge, and read as follows:

" ** (A)ny disagreement or dispute arising out of the lease shall be settled by the parties in the proper court in the province of Surigao del Norte."

The venue provision was invoked in an action filed in the Regional Trial Court of Manila to recover damages arising out of marine subrogation based on a bill of lading. This Court declared that since the action did not refer to any disagreement or dispute arising out of the contract of lease of the barge, the venue stipulation in the latter did not apply; but that even assuming the contract of lease to be applicable, a statement in a contract as to venue does not preclude the filing of suits at the election of the plaintiff where no qualifying or restrictive words indicate that the agreed place alone was the chosen venue.

10. *Philippine Banking Corporation v. Hon. Salvador Tensuan, etc., Circle Financial Corporation, et al.*, decided in 1993.[23] Here, the stipulation on venue was contained in promissory notes and read as follows:

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

This Court held the stipulation to be merely permissive since it did not lay the venue in Valenzuela exclusively or mandatorily. The plain or ordinary import of the stipulation is the grant of authority or permission to bring suit in Valenzuela; but there is not the slightest indication of an intent to bar suit in other competent courts. The Court stated that there is no necessary or customary connection between the words "any legal action" and an intent strictly to limit permissible venue to the Valenzuela courts. Moreover, since the venue stipulations include no qualifying or exclusionary terms, express reservation of the right to elect venue under the ordinary rules was unnecessary in the case at bar. The Court made 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."

11. *Philippine Banking Corporation v. Hon. Salvador Tensuan, etc., Brinell Metal Works Corp., et al.*, decided in 1994:[24] In this case the subject promissory notes commonly contained a stipulation reading:

"I/we expressly submit to the jurisdiction of the courts of Manila, any legal action which may arise out of this promissory note."

the Court restated the rule in Polytrade that venue stipulations in a contract, absent any qualifying or restrictive words, should be considered merely as an agreement on additional forum, not limiting venue to the specified place. They are not exclusive, but rather, permissive. For to restrict venue only to that place stipulated in the agreement is a construction purely based on technicality; on the contrary, the stipulation should be liberally construed. The Court stated: "The later cases of *Lamis Ents v. Lagamon* [108 SCRA 1981], *Capati v. Ocampo* [113 SCRA 794 [1982], *Western Minolco v. Court of Appeals* [167 SCRA 592 [1988], *Moles v. Intermediate Appellate Court* [169 SCRA 777 [1989], *Hongkong and Shanghai Banking Corporation v. Sherman* [176 SCRA 331], *Nasser v. Court of Appeals* [191 SCRA 783 [1990] and just recently, *Surigao Century Sawmill Co. v. Court of Appeals* [218 SCRA 619 [1993], all treaded the path blazed by Polytrade. The conclusion to be drawn from all these is that the more recent jurisprudence shall properly be deemed modificatory of the old ones."

The lone dissent observed: "There is hardly any question that a stipulation of contracts of adhesion, fixing venue to a specified place only, is void for, in such cases, there would appear to be no valid and free waiver of the venue fixed by the Rules of Courts. However, in cases where both parties freely and voluntarily agree on a specified place to be the venue of actions, if any, between them, then the only considerations should be whether the waiver (of the venue fixed by the Rules of Court) is against public policy and whether the parties would suffer, by reason of such waiver, undue hardship and inconvenience; otherwise, such waiver of venue should be upheld as binding on the parties. The waiver of venue in such cases is sanctioned by the rules on jurisdiction."

Still other precedents adhered to the same principle.

12. *Tantoco v. Court of Appeals*, decided in 1977.[25] Here, the parties agreed in their sales contracts that the courts of Manila shall have jurisdiction over any legal action arising out of their transaction. This Court held that the parties agreed merely to add the courts of Manila as tribunals to which they may resort in the event of suit, to those indicated by the law: the courts either of Rizal, of which private respondent was a resident, or of Bulacan, where petitioner resided.

13. *Sweet Lines, Inc. v. Teves*, promulgated in 1987.[26] In this case, a similar stipulation on venue, contained in the shipping ticket issued by Sweet Lines, Inc. (as Condition 14) --

" ** that any and all actions arising out or the condition and provisions of this ticket, irrespective of where it is issued, shall be filed in the competent courts in the City of Cebu"

-- was declared unenforceable, being subversive of public policy. The Court explained that the philosophy on transfer of venue of actions is the convenience of the plaintiffs as well as his witnesses and to promote the ends of justice; and considering the expense and trouble a passenger residing outside of Cebu City would incur to prosecute a claim in the City of Cebu, he would most probably decide not to file the action at all.

On the other hand, in the cases hereunder mentioned, stipulations on venue were held to be restrictive, or mandatory.

1. *Bautista vs. De Borja*, decided in 1966.[27] In this case, the contract provided that in case of any litigation arising therefrom or in connection therewith, the venue of the action shall be in the City of Manila. This Court held that without either party reserving the right to choose the venue of action as fixed by law, it can reasonably be inferred that the parties intended to definitely fix the venue of the action, in connection with the contract sued upon in the proper courts of the City of Manila only, notwithstanding that neither party is a resident of Manila.

2. *Gesmundo v. JRB Realty Corporation*, decided in 1994.[28] Here the lease contract declared that

" ** (V)enue for all suits, whether for breach hereof or damages or any cause between the LESSOR and LESSEE, and persons claiming under each, ** (shall be) the courts of appropriate jurisdiction in Pasay City. .
."

This Court held that: "(t)he language used leaves no room for interpretation. It clearly evinces the parties' intent to limit to the 'courts of appropriate jurisdiction of Pasay City' the venue for all suits between the lessor and the lessee and those between parties claiming under them. This means a waiver of their right to institute action in the courts provided for in Rule 4, sec. 2(b)."

3. *Hoechst Philippines, Inc. v. Torres*,[29] decided much earlier, in 1978, involved a strikingly similar stipulation, which read:

" ** (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."

This Court held: "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."

4. *Villanueva v. Mosqueda*, decided in 1982.[30] In this case, it was stipulated that if the lessor violated the contract of lease he could be sued in Manila, while if it was the lessee who violated the contract, the lessee could be sued in Masantol, Pampanga. This Court held that there was an agreement concerning venue of action and the parties were bound by their agreement. "The agreement as to venue was not permissive but mandatory."

5. *Arquero v. Flojo*, decided in 1988.[31] The condition respecting venue -- that any action against RCPI relative to the transmittal of a telegram must be brought in the courts of Quezon City alone -- was printed clearly in the upper front portion of the form to be filled in by the sender. This Court held that since neither party reserved the right to choose the venue of action as fixed by Section 2 [b], Rule 4, as is usually done if the parties mean to retain the right of election so granted by Rule 4, it can reasonably be inferred that the parties intended to definitely fix the venue of action, in connection with the written contract sued upon, in the courts of Quezon City only.

An analysis of these precedents reaffirms and emphasizes the soundness of the Polytrade principle. Of the essence is the ascertainment of the parties' intention in their agreement governing the venue of actions between them. That ascertainment must be done keeping in mind that convenience is the foundation of venue regulations, and that that construction should be adopted which most conduces thereto. Hence, the invariable construction placed on venue stipulations is that they do not negate but merely complement or add to the codal standards of Rule 4 of the Rules of Court. In other words, unless the parties make very clear, by employing categorical and suitably limiting language, that they wish the venue of actions between them to be laid only and exclusively at a definite place, and to disregard the prescriptions of Rule 4, agreements on venue are not to be regarded as mandatory or restrictive, but merely permissive, or complementary of said rule. The fact that in their agreement the parties specify only one of the venues mentioned in Rule 4, or fix a place for their actions different from those specified by said rule, does not, without more, suffice to characterize the agreement as a restrictive one. There must, to repeat, be accompanying language clearly and categorically expressing their purpose and design that actions between them be litigated only at the place named by them,[32] regardless of

the general precepts of Rule 4; and any doubt or uncertainty as to the parties' intentions must be resolved against giving their agreement a restrictive or mandatory aspect. Any other rule would permit of individual, subjective judicial interpretations without stable standards, which could well result in precedents in hopeless inconsistency.

The record of the case at bar discloses that UNIMASTERS has its principal place of business in Tacloban City, and KUBOTA, in Quezon City. Under Rule 4, the venue of any personal action between them is "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." [33] In other words, Rule 4 gives UNIMASTERS the option to sue KUBOTA for breach of contract in the Regional Trial Court of either Tacloban City or Quezon City.

But the contract between them provides that " ** All suits arising out of this Agreement shall be filed with/in the proper Courts of Quezon City," without mention of Tacloban City. The question is whether this stipulation had the effect of effectively eliminating the latter as an optional venue and limiting litigation between UNIMASTERS and KUBOTA only and exclusively to Quezon City.

In light of all the cases above surveyed, and the general postulates distilled therefrom, the question should receive a negative answer. Absent additional words and expressions definitely and unmistakably denoting the parties' desire and intention that actions between them should be ventilated only at the place selected by them, Quezon City -- or other contractual provisions clearly evincing the same desire and intention -- the stipulation should be construed, not as confining suits between the parties only to that one place, Quezon City, but as allowing suits either in Quezon City or Tacloban City, at the option of the plaintiff (UNIMASTERS in this case).

One last word, respecting KUBOTA's theory that the Regional Trial Court had "no jurisdiction to take cognizance of ** (UNIMASTERS') action considering that venue was improperly laid." This is not an accurate statement of legal principle. It equates venue with jurisdiction; but venue has nothing to do with jurisdiction, except in criminal actions. This is fundamental. [34] The action at bar, for the recovery of damages in an amount considerably in excess of P20,000.00, is assuredly within the jurisdiction of a Regional Trial Court. [35] Assuming that venue were improperly laid in the Court where the action was instituted, the Tacloban City RTC, that would be a procedural, not a jurisdictional impediment -- precluding ventilation of the case before that Court of wrong venue notwithstanding that the subject matter is within its jurisdiction. However, if the objection to venue is waived by the failure to set it up in a motion to dismiss, [36] the RTC would proceed in perfectly regular fashion if it then tried and decided the action.

This is true also of real actions. Thus, even if a case "affecting title to, or for recovery of possession, or for partition or condemnation of, or foreclosure of mortgage on, real property" [37] were commenced in a province or city other than that "where the property or any part thereof lies," [38] if no objection is seasonably made in a motion to dismiss, the objection is deemed waived, and the Regional Trial Court would be acting entirely within its competence and authority in proceeding to try and decide the suit. [39]

WHEREFORE, the appealed judgment of the Court of Appeals is REVERSED, the Order of the Regional Trial Court of Tacloban City, Branch 6, dated February 3, 1994, is REINSTATED and AFFIRMED, and said Court is DIRECTED to forthwith proceed with Civil Case No. 93-12-241 in due course.

SO ORDERED.

Padilla, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Hermosisima, Jr. Panganiban, and Torres, Jr., JJ., concur.

Regalado, J., See concurring opinion.

[1] The facts set out in this and succeeding paragraphs are taken mainly from the challenged Decision of the Court

of Appeals of January 6, 1995: SEE Rollo, pp.13, 14.

[2] Rollo, pp. 14,15, 65, 111-114.

[3] Id., pp. 111-114

[4] Id., p. 32

[5] Sec. 3, Rule 4

[6] Gesmundo, et al. v. JRB Realty Corporation, et al., 234 SCRA 153 (1994) (citing Hoechst Philippines, Inc. v. Torres, 83 SCRA 297 and Villanueva v. Mosqueda, 115 SCRA 904, and distinguishing the same from Polytrade Corporation v. Blanco, 30 SCRA 18, Western Minolco Corp. v. Court of Appeals, 167 SCRA 592 and Nasser v. Court of Appeals, 191 SCRA 783); and Limjap v. Aninas, 134 SCRA 87

[7] DECISION promulgated on January 6, 1995; reconsideration denied by Resolution of February 28, 1995

[8] Rollo, pp.16-17

[9] 230 SCRA 413, 420-421

[10] Rollo. pp. 45-61

[11] Sec. 3, Rule 4, Rules of Court

[12] Bautista v. De Borja, 18 SCRA 474 [1966], citing Central Azucarera de Tarlac v. De Leon, 56 Phil 169 [1931]

[13] Uy v. Contreras, 237 SCRA 167 [1994]; Sweet Lines, Inc. v. Teves, 83 SCRA 361 [1978]; Nicolas v. Reparations Commission, et al, 64 SCRA 111 [1975]

[14] 30 SCRA 187

[15] 64 SCRA 110, citing Polytrade v. Blanco, 30 SCRA 187 [1969]

[16] 108 SCRA 740

[17] 113 SCRA 794, citing Nicolas v. Reparations Commission, 64 SCRA 110 (fn. 14, supra)

[18] 167 SCRA 592, citing Polytrade Corp. v. Blanco, 30 SCRA 187; Ents v. Lagamon, 108 SCRA 740; Nicolas v. Reparations Commission, 64 SCRA 110, Tantoco v. C.A., et al, 77 SCRA 225

[19] 169 SCRA 777, citing Polytrade Corp. v. Blanco, 30 SCRA 187, and Sweet Lines, Inc. v. Teves, et al., 83 SCRA 361 supra

[20] 176 SCRA 331, citing Polytrade v. Blanco, supra., and Ents v. Lagamon, supra

[21] 191 SCRA 783, citing Western Minolco Corp. v. Court of Appeals, supra

[22] 218 SCRA 619, citing Polytrade Corp. v. Blanco, supra

[23] 228 SCRA 387

[24] 230 SCRA 413, citing inter alia Tantoco v. Court of Appeals, 77 SCRA 225 (1977), etc

[25] 77 SCRA 225 N.B. No reference was made to the Polytrade doctrine

[26]83 SCRA 361. The decision was handed down on May 19, 1987, the day following the promulgation on May 18, 1987 of the judgment in *Hoechst Philippines Inc. v Torres*

[27] 18 SCRA 474

[28] 234 SCRA 153

[29] 83 SCRA 297

[30] 115 SCRA 904

[31] 168 SCRA 540, citing *Bautista v. De Borja*, 18 SCRA 474 [1966] and *Central Azucarera de Tarlac v. De Leon*, 56 Phil. 169 [1931])

[32]E.g. -- "only," "solely," "exclusively in this court," "in no other court save --," "particularly," "nowhere else but/except --," etc.

[33] Sec. 2 (b)

[34] Venue is a procedural, not a jurisdictional matter. SEE *Moran*, Comments on the Rules, Vol. 1, 1979 ed., pp. 235-236, citing *Luna v. Carandang*, 26 SCRA 306 (1968) and *Caltex (Phil.) Inc. v. Go*, 24 SCRA 1013 (1968); *Regalado*, Remedial Law Compendium, Vol. 1, 5th Revised Ed., p. 77, citing *Vda. de Suan, et al. v. Cui, et al.*, L-35336, Oct. 27, 1983. In criminal cases, venue is jurisdictional. *Peo. v. Mercado*, 65 Phil. 665 (1938); *Peo v. Intia, et al.*, 70 SCRA 460 (1976), citing *Lopez v. City Judge*, 18 SCRA 616 (1966), in turn citing *U.S. v. Pagdayuman*, 5 Phil. 265 (1905), *Beltran v. Ramos*, 96 Phil. 149 (1954), *Ragpala v. Justice of the Peace of Tubod*, 109 Phil. 373 (1960), *Peo. v Yumang*, 11 SCRA 297 (1964), and *Peo. v. San Antonio*, 14 SCRA 63 (1965).

[35] Sec.19 (8), B.P. 129, The Judiciary Reorganization Act of 1980

[36] Sec. 4, Rule 4

[37] Sec. 19 (2) provides that cases of this nature are within the Regional Trial Courts' "exclusive original jurisdiction * * except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts **."

[38] Sec.2 (a), Rule 4

[39] Sec. 19 (2), B.P. 129, pertinently provides that "Regional Trial Courts shall exercise exclusive original jurisdiction ** ** In all civil actions which involve title to, or possession of, real property, or any interest therein, except actions for forcible entry into and unlawful detainer of lands and buildings **." SEE *Eusebio v. Eusebio*, 70 SCRA 268 (1978); *Luna v. Carandang*, supra, and *Caltex (Phil.), Inc. v. Go*, supra; *Claridades v. Mercader*, 17 SCRA 1 (1966); *Ocampo v. Domingo*, 38 SCRA (1971).

SEPARATE CONCURRING OPINION

REGALADO, J.:

I find no plausible reason to withhold concurrence from the opinion meticulously crafted by the Chief Justice which provides a taxonomy of cases for future decisions. It has figuratively parted the jurisprudential waves, laying on one side a catalogue of holdings on the strict binding effect of a venue stipulation and, on the other,

those rulings on when it may be disregarded. This concurring opinion merely suggests, therefore, some parametric qualifications on the applicability of the first type, that is, the agreement which demands literal compliance by the parties.

Summarized, the rule is that if the parties to a contract merely agree on the venue of any case arising therefrom, in addition to or aside from the legal venue provided therefor by the Rules of Court or the law, that stipulation is merely permissive and the parties may choose to observe the same or insist on the alternative venues in the Rules or the law.

If, on the other hand, such venue stipulation contains qualifying, restrictive, mandatory or exclusionary terms indicating that the additional forum shall be the unalterable venue of prospective suits *ex contractu* between them, then such agreement shall necessarily be observed to the exclusion of and shall bar resort to another forum which would otherwise have been the reglementary prescription of venue for the case.

Of the latter genre are the use of such qualifying words like exclusively, only, solely, limited to, in no other place, to the exclusion of, or other terms indicative of a clear and categorical intent to lay the venue at a specific place and thereby waiving the general provisions of the Rules or the law on venue or proscribing the filing of suit in any other competent court.

These guidelines should accordingly be drawn from the decision in this case, viz.: (1) the agreement on venue shall, in the first instance, be normally considered as merely permissive; (2) to be restrictive, the language or terminology employed in the stipulation must be unequivocal and admit of no contrary or doubtful interpretation; (3) in case of irreconcilable doubt, the venue provision shall be deemed to be permissive; and (4) in ascertaining the intent in that provision which reasonably admits of more than one meaning, the construction should be adopted which most conduces to the convenience of the parties.

In addition to the foregoing, the writer suggests, by way of caveat, the matter of adhesion contracts and restrictions of public policy as qualifying or delimiting the application of the mandatory effect of restrictive venue stipulations.

Implicit in an agreement on venue, as in any contract or its terms, is the legal imperative that the consent of the parties thereto were voluntarily, freely and intelligently given. Now, as explained by a commentator, a contract of adhesion is one in which a party imposes a ready-made form of contract which the other party may accept or reject, but which the latter cannot modify. These are the contracts where all the terms are fixed by one party and the other has merely "to take it or leave it."

It is there admitted that these contracts usually contain a series of stipulations which tend to increase the obligations of the adherent, and to reduce the responsibilities of the offeror. There is such economic inequality between the parties to these contracts that the independence of one of them is entirely paralyzed. Yet, although other writers believe that there is no true contract in such cases because the will of one of the parties is suppressed, our commentator says that this is not juridically true. His view is that the one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.[1]

This conclusion would not seem to square with what this Court stated in *Qua Chee Gan vs. Law Union and Rock Insurance Co., Ltd.*[2] It was there pointed out that by reason of the exclusive control by one party in a contract of adhesion over the terms and phraseology of the contract, any ambiguity must be held strictly against the one who caused it to be prepared and liberally in favor of the other party. In fact, this rule has since become a statutory provision.[3]

By analogy, these pronouncements in the aforesaid case would inveigh against a rigid application of an

exclusive venue stipulation where what is involved is a contract of adhesion, to wit:

"x x x The courts cannot ignore that nowadays monopolies, cartels and concentrations of capital, endowed with overwhelming economic power, manage to impose upon parties dealing with them cunningly prepared 'agreements' that the weaker party may not change one whit, his participation in the 'agreement' being reduced to the alternative to take it or leave it, labelled x x x 'contracts by adherence' (contracts d'adhesion), in contrast to those entered into by parties bargaining on an equal footing, such contracts x x x obviously call for greater strictness and vigilance on the part of courts of justice with a view to protecting the weaker party from abuses and imposition, and prevent their becoming traps for the unwa(r)y" (authorities omitted).

I respectfully submit, therefore, that while the enunciated rule on restrictive venue stipulations should ordinarily be respected, a greater caution on a case-to-case basis must be adopted by the courts where such stipulation is contained in a contract of adhesion. Not only should they consider the disadvantaged position of the adherent but, more importantly, the fact that the *raison d'être* for rules of venue is to afford due process, greater convenience and more ready access to the court in favor of the adhering contracting party.

I also submit that the rule on restrictive venue stipulations should not apply where it would be violative of a settled and important policy of the State. Thus, for instance, in the cited case of *Hongkong and Shanghai Banking Corporation vs. Sherman*,^[4] aside from the agreement that the contract should be determined in accordance with the laws of Singapore, that contract also contained this provision: "We hereby agree that the Courts in Singapore shall have jurisdiction over all disputes arising under this guarantee x x x"

While it is true that in civil cases venue is a procedural, and not a jurisdictional, matter and the former may be the subject of stipulation, the quoted portion of the contract not only refers to the venue of prospective suits but actually trenches on the jurisdiction of our courts. Of course, in that case this Court did not enforce the quoted portion of the agreement but on the theory that a literal interpretation shows that the parties did not thereby stipulate that only the courts of Singapore, to the exclusion of all others, had jurisdiction. In other words, that agreement was not enforced because it was not a restrictive or mandatory provision.

Suppose, however, that stipulation had been couched in an exclusive and mandatory form? Since the ostensible venue aspect was interlinked with the jurisdiction of the foreign court, it would oust Philippine courts of jurisdiction and violate a fundamental national policy. Although in a different setting and on laws then obtaining but nonetheless upon a rationale applicable hereto, this Court has long declared as null and void any agreement which would deprive a court of its jurisdiction.^[5] In fact, the matter of the jurisdiction of courts cannot be the subject of a compromise.^[6] For that matter, the agreement in question, even on the issue of venue alone, would also greatly inconvenience the Philippine litigant or even altogether deny him access to the foreign court, for financial or other valid reasons, as to amount to denial of due process.

Exclusive jurisdiction of foreign courts over causes of action arising in the Philippines may be the subject of a treaty, international convention, or a statute permitting and implementing the same. Definitely, however, such jurisdiction and venue designation cannot and should not be conferred on a foreign court through a contractual stipulation even if restrictive in nature.

[1] Tolentino, A., *Civil Code of the Philippines*, Vol. IV, 1987 ed., 503-504.

[2] 98 Phil. 85 (1955).

[3] Art. 1377, *Civil Code*.

[4] 176 SCRA 331 (1989).

[5]Molina vs. De la Riva, 6 Phil. 12 (1906).

[6] Art. 2035 (5), Civil Code.

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