

JESUSITO D. LEGASPI, DOING BUSINESS UNDER THE NAME AND STYLE OF J.D. LEGASPI CONSTRUCTION, PETITIONER, VS. SOCIAL SECURITY SYSTEM (SSS), RESPONDENT.

G.R. No. 160653. July 23, 2008

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

Jesusito D. Legaspi, as owner and manager of J.D. Legaspi Construction (petitioner), entered into a Construction Agreement with the Social Security System (respondent) in June 1997 for the construction of a four-storey building in Baguio City which will serve as respondent's branch office. The contract price was P88,348,533.74.

In an unfortunate turn of events, the Philippine peso collapsed as against the U.S. Dollar in 1997.[1] Thus, the cost of imported materials which petitioner was contracted to use and install on the project shot up, and petitioner incurred expenses more than the original contract price. Petitioner had several meetings with respondent's representatives during which he informed them of his difficulty in meeting his obligations under the contract due to the devaluation of peso. After several failed meetings, petitioner sent a letter to respondent requesting an adjustment in the contract price, which was denied by respondent. This constrained petitioner to file a complaint for payment of sum of money plus damages with the Regional Trial Court (RTC) of Makati City, docketed as Civil Case No. 00-1354.

Instead of filing an answer, respondent, represented by the Office of the Solicitor General, filed a Motion to Dismiss on the grounds that venue was improperly laid and petitioner had no cause of action. On the ground of improper venue, it was respondent's argument that the Construction Agreement provided that all actions may be brought before the proper court in Quezon City and that petitioner waived any other venue.

Respondent also contended that petitioner's allegations in his Complaint stated no cause of action. According to respondent, petitioner sought to amend the contract by increasing the stipulated contract price; however, this cannot be done since amendments or modifications are not allowed in bidded government contracts, specially since the contract expressly provided for a "no escalation" clause. Respondent also argued that an adjustment of the price would be disadvantageous to the government.

In its Order[2] dated July 18, 2001, the RTC denied respondent's Motion to Dismiss. It was the RTC's ruling that the venue was properly laid since petitioner's action was not based on the Construction Agreement which was faithfully complied with by petitioner; rather, it was a collection suit for the increase in the price of imported materials and equipment furnished and installed to complete the construction. The RTC also ruled that petitioner's cause of action was based on Article 1267 of the Civil Code[3] provision on price adjustment and not on the terms and conditions of the Construction Agreement. The RTC was also of the view that respondent's claim of lack of cause of action should be properly raised and proved in a regular trial and not merely by pleadings. [4]

Respondent moved to reconsider the Order but this was denied by the RTC in an Order[5] dated September 25, 2001.

Respondent then filed a petition for certiorari with the Court of Appeals (CA), and in the assailed Decision[6] dated August 26, 2003, respondent's petition was granted and the RTC was ordered to dismiss Civil Case No. 00-1354, to wit:

WHEREFORE, the writ of certiorari prayed for is hereby GRANTED, and the respondent trial court is ordered to DISMISS the complaint of JESUSITO D. LEGASPI in Civil Case No. 00-1354, without prejudice to the filing of said complaint in the proper court.

SO ORDERED.[7]

Petitioner sought reconsideration of the assailed Decision, which was denied by the CA in its Resolution dated October 27, 2003.[8]

Hence, the present petition for review on certiorari under Rule 45 of the Rules of Court, raising as sole ground, viz:

THE HONORABLE COURT OF APPEALS PLAINLY ERRED AND ACTED CONTRARY TO EXISTING LAW AND JURISPRUDENCE IN ORDERING THE DISMISSAL OF THE CIVIL CASE BEFORE THE COURT A QUO CONSIDERING THAT VENUE IS PROPERLY LAID.[9]

Petitioner insists that the venue provision in the Construction Agreement does not apply. He argues that his cause of action does not arise from the agreement, nor was it for the performance of any of the obligations under the agreement. According to petitioner, his action was for additional payment due to the extraordinary devaluation of the peso at the time; and is based on Article 1267 of the Civil Code, not on any provision of the Construction Agreement. Petitioner believes that his action is personal in nature such that Section 2, Rule 4 of the Rules of Court applies, and he has the option to file the same where he or respondent resides.

Respondent counters that petitioner's claim, while anchored on Article 1267 of the Civil Code, emanated from the Construction Agreement; hence, the restrictive provision on venue applies. Respondent also reiterates its argument that petitioner does not have any cause of action against respondent.

As a general rule, venue of personal actions is governed by Section 2, Rule 4 of the Rules of Court, to wit:

Sec. 2. Venue of personal actions. - All other actions may be commenced and tried where the plaintiff or any of the principal plaintiffs resides, or where the defendant or any of the principal defendants resides, or in the case of a non-resident defendant, where he may be found, at the election of the plaintiff.

The parties, however, are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. 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. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.[10]

As regards restrictive stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words, such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," or words of similar import, the stipulation should be deemed as merely an agreement on an additional forum, not as limiting venue to the specified place. [11]

In the present case, the Construction Agreement provides:

ARTICLE XIV - JUDICIAL REMEDIES

All actions and controversies that may arise from this Agreement involving but not limited to demands for the

specific performance of the obligations as specified in the clauses contained herein and/or as resolved or interpreted by the CLIENT pursuant to the third paragraph of Article I hereof may be brought by the parties before the proper courts in Quezon City where the main office of the CLIENT is located, the CONTRACTOR hereby expressly waiving any other venue.

x x x x[12] (Emphasis supplied)

The venue is specific - Quezon City - and accompanied by the words "the CONTRACTOR hereby expressly waiving any other venue," which connote exclusivity of the designated venue. These terms clearly stipulate exclusively the venue where actions arising from the Construction Agreement should be filed.

Petitioner, however, contends that the case does not arise from the Construction Agreement; hence, it may be filed in Makati City, which is his place of residence.

Contrary to petitioner's contention, the allegations in his complaint indubitably show that his cause of action arose from the Construction Agreement, viz:

12. Defendant should be ordered to pay the just and fair price for the construction of its building in Baguio, considering that the foreign currency crisis that hit the country was manifestly beyond the contemplation of the parties. Hence, a re-negotiation of the contract price would be just and reasonable under the circumstances.

13. Plaintiff's request for price adjustment is based on Article 1267 of the New Civil Code, which states:

x x x x

15. Clearly, the 65% increase in price for the imported components of the project was manifestly beyond the contemplation of the parties. Hence, plaintiff's request for price adjustment should not be considered as falling under the prohibition stated in Article III of the Construction Agreement. Following the principle enunciated in Article 1267 of the Civil Code, plaintiff should be released from the obligation to complete the project at the original contract price, specifically by granting plaintiff a price adjustment in the amount equivalent to the difference between the unit prices as stated in the plans and the actual cost of the purchase.[13]

Petitioner's claim for price adjustment rests on the basic operative facts that the Construction Agreement originally pegged the contract price at P88, 348,533.74, and that the devaluation of the peso in 1997 brought about an increase in the costs of imported materials and furnishings to be used in the construction.

Petitioner also alleges in his Complaint that his request for price adjustment should not be considered as falling under the prohibition clause in Article III of the Construction Agreement, to wit:

ARTICLE III - CONTRACT PRICE

The CLIENT shall pay the CONTRACTOR for the full, faithful and complete performance of the works called for under this Agreement, a fixed amount of EIGHTY EIGHT MILLION THREE HUNDRED FORTY EIGHT THOUSAND FIVE HUNDRED THIRTY THREE PESOS AND 74/100 (P88,348,533.74), Philippine Currency, the manner of payment of which shall be in accordance with Article V hereof subject to the retention of six percent (6%) withholding tax to be remitted directly by the CLIENT to the Bureau of Internal Revenue. The Contract price shall not be subject to escalation. All costs and expenses over and above thereof, except as provided for in Article IV shall be for the account of the CONTRACTOR. [14]

Ineluctably, the allegations in the Complaint relating to petitioner's request for price adjustment clearly originate from the Construction Agreement. Article 1267 of the Civil Code is merely the law upon which petitioner's claim for price adjustment is anchored. What is essential is the factual substance of his claim, as alleged in the Complaint, which should be taken into account in determining whether or not it arose from the Construction Agreement.

As correctly ruled by the CA which the Court adopts as its own:

Although the court was correct in holding that Mr. Legaspi's prayer for price adjustment is anchored on the Civil Code, the controversy in this case started when J.D. Legaspi Construction claimed difficulty of performance due to change of circumstances. In effect, Mr. Legaspi is assailing the "no escalation clause" of the project cost indicated in the contract. If the action proceeds, the court in determining whether Mr. Legaspi has the right to claim will necessarily have to determine the intent of the parties in assuming the contractual risks by necessarily referring to the Construction Agreement. Undoubtedly, Mr. Legaspi's action refers to a dispute arising out of and relating to the provisions of the Agreement. Therefore, the venue stipulation will have to be applied.[15]

The Court also agrees with the CA that petitioner has a cause of action against respondent.

A motion to dismiss based on lack of cause of action hypothetically admits the truth of the allegations in the complaint. The allegations in a complaint are sufficient to constitute a cause of action against the defendants if, hypothetically admitting the facts alleged, the court can render a valid judgment upon the same in accordance with the prayer therein.[16] The complaint filed by petitioner sets forth the ultimate facts upon which his claim for price adjustment is based. Respondent's allegation that petitioner is not entitled to it is a matter of defense, properly raised in an answer which will then be accordingly threshed out in full-blown proceedings. Thus, the CA was correct when it ruled that the complaint does not have to establish or allege facts proving the existence of a cause of action at the outset, as this will have to be done at the trial on the merits of the case.[17]

WHEREFORE, the petition is DENIED for lack of merit.

Costs against petitioner.

SO ORDERED.

Quisumbing, Ynares-Santiago,(Chairman,) Nachura, and Reyes,. JJ., concur.

* In lieu of Justice Minita V. Chico-Nazario, per Special Order No. 508 dated June 25, 2008.

[1] Also known as the 1997-1998 Asian Financial Crisis.

[2] Rollo, pp. 166-168.

[3] Article 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

[4]Rollo, p. 167.

[5] Id. at 184-185.

[6] Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Bernardo P. Abesamis and Arturo D. Brion (now a Member of the Court), concurring; CA rollo, pp. 484-492.

[7] Id. at 491-492.

[8] Id. at 515.

[9] Rollo, pp. 15-16.

[10] Unimasters Conglomeration, Inc. v. Court of Appeals, 335 Phil. 415, 424 (1997).

[11] Auction in *Malinta, Inc. v. Luyaben*, G.R. No. 173979, February 12, 2007, 515 SCRA 569, 572-573.

[12] *Rollo*, p. 55.

[13] *Id.* at 98-99.

[14] *Id.* at 48.

[15] *CA rollo*, pp. 490-491.

[16] *Philippine Bank of Communications v. Trazo*, G.R. No. 165500, August 30, 2006, 500 SCRA 242, 256.

[17] *Universal Aquarius Inc. v. Q.C. Human Resources Management Corporation*, G.R. No. 155990, September 12, 2007, 533 SCRA 38, 47.

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