# ANG KEK CHEN, PETITIONER, VS. SPOUSES ATTY. ELEAZAR S. CALASAN AND LETICIA B.CALASAN, RESPONDENTS.

*G.R. NO. 161685. July 24, 2007*

Ponente: VELASCO, JR., J.

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**VELASCO, JR., J.:**

In this Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Court, the distinction between "actual residence" and "domicile" comes once again under review.

The Facts

Petitioner Ang Kek Chen resides at 1287-1291 Jose Abad Santos Avenue corner Padre Algue Street, Tondo, 1012 Manila.[1] He is not a lawyer, and has filed pleadings with this Court on his own behalf.

Respondent Atty. Eleazar S. Calasan was born in Aparri, Cagayan on September 8, 1947. He has been a registered voter in Aparri, Cagayan since 1969. He owns real property, his ancestral home, which was donated to him by his mother, situated on Quirino Street, Aparri, Cagayan.[2] However, respondent Atty. Calasan also has a house and lot in Las Piñas, Metro Manila, which he and his family live in; has a business address at 10/F Manufacturers Building, Plaza Sta. Cruz, 1003 Manila; applied for and received a commission as notary public from the Manila Regional Trial Court (RTC); and secured a Community Tax Certificate in Las Piñas City, Metro Manila.

Respondent Atty. Calasan was the counsel of one Jaime U. Lim, an opponent of petitioner. Petitioner alleged that his residence had been damaged by the corporation of which Jaime U. Lim was president.

While Atty. Calasan was acting as counsel for Jaime Lim, petitioner wrote a letter and filed a counter-affidavit which respondent Atty. Calasan believed maligned him, with copies furnished various people, among them high officials of the Philippine government. Atty. Calasan then filed criminal cases for libel against petitioner in Aparri, Cagayan, among them Crim. Case Nos. 07-1168 and VI-1094, which were dismissed.

Petitioner responded by filing his own administrative cases against respondent Atty. Calasan, among them Administrative Case Nos. 5444 and 6233, alleging serious gross misconduct on the part of Atty. Calasan and praying for his disbarment. It is noted that even among his pleadings in this particular case, even in his final memorandum, he made references to what he believed were betrayals of the attorney's oath by Atty. Calasan, and with repeated calls for Atty. Calasan's disbarment.

On December 4, 2001, respondents spouses Atty. Eleazar S. Calasan and Leticia B. Calasan filed a complaint for damages with the Aparri, Cagayan RTC against petitioner and his spouse for alleged malicious imputations against Atty. Calasan made by petitioner, and it was docketed as Civil Case No. 08-418.[3]

On January 8, 2002, petitioner filed a Motion to Dismiss on the following grounds: (1) that the court had no jurisdiction over the subject matter of the claim; (2) that the venue was improperly laid; (3) that the pleading asserting the claim stated no cause of action; (4) that a condition precedent for filing claim had not been complied

with; (5) that the claim was barred by the statute of limitations; and (6) that the claim or demand set forth in plaintiff's pleadings had been abandoned or otherwise extinguished.[4]

In the February 26, 2002 Order, the Aparri, Cagayan RTC, Branch 8 dismissed the complaint on the ground that the venue had been improperly laid.[5] Respondents fared no better in their Motion for Reconsideration of that dismissal, as the motion was denied in the March 20, 2002 Order.[6]

The Case in the Court of Appeals

Respondents brought the matter to the Court of Appeals (CA) via a Petition for Certiorari under Rule 65, dated April 5, 2002.[7] This was docketed as CA-G.R. SP No. 70335.

Respondents raised one issue in their petition, thus:

> RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND IN DISMISSING THE COMPLAINT FOR ALLEGED IMPROPER VENUE AND THERE IS NO OTHER ADEQUATE, PLAIN AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW OTHER THAN THIS PETITION.[8]

In a Decision promulgated on August 12, 2002, the Special Fifth Division of the CA dismissed the petition for lack of merit.[9]

On August 26, 2002, respondents filed their Motion for Reconsideration[10] of the CA Decision, which was granted by the CA in its November 21, 2002 Resolution, the dispositive portion of which reads as follows:

> WHEREFORE, the motion for reconsideration is hereby GRANTED. Our decision dated August 12, 2002 is SET ASIDE and a new one entered SETTING ASIDE the trial court's order dated February 26, 2002 and March 20, 2002. The trial Judge is hereby ORDERED to proceed with the trial of Civil Case no. 08-418 with utmost dispatch.
>
> SO ORDERED.[11]

Dissatisfied with the result, Ang Kek Chen filed the present petition on March 5, 2004.

The Issues

Petitioner, who is not represented by counsel, presents the issues in the case as follows:

> (A) WHETHER OR NOT, the Petition for Certiorari was CORRECTLY DISMISSED by the Honorable Court of Appeals in CA G.R. SP No. 70335 in its decision promulgated on August 12, 2002, ANNEX "C" of this Petition, thereby upholding the correct Decision of the respondent Judge that the venue of the out-of-town complaint for libel is improperly laid.
>
> (B) CONSEQUENTLY, WHETHER OR NOT, the decision ANNEX "C" of this Petition, was ERRONEOUSL REVERSED by the Honorable Court of Appeals in its resolutions dated November 21, 2004 and January 21, 2004.
>
> (C) WHETHER OR NOT, the Petition for Certiorari filed by the respondents (then petitioners) can substitute for their LOST APPEAL.[12]

The petition has merit.

This case will be resolved on the core issue—the interpretation and application of the third paragraph of Article 360 of the Revised Penal Code, the portion of which reads:


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> The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where the libelous article is printed and first published or where any of the offended parties actually resides at the time of the commission of the offense x x x (emphasis supplied).

Respondents claim that their actual residence is in Aparri, Cagayan. The trial court made the following findings on the matter:

> True, plaintiffs are residents and domiciled in Aparri, Cagayan. In fact, they are registered voters of Aparri, Cagayan. However, they also admit that they have a residential house in Las Piñas and it is in Las Piñas where they stay most of the time due to their profession and occupation. In short, plaintiffs are habitual residents of Las Piñas and not in Aparri, Cagayan. Aparri is plaintiffs' legal residence and place of domicile. However, to the Court's opinion, plaintiffs' actual residence is in Las Piñas, Metro-Manila [sic] as they are habitually residing thereat due to their profession and occupation.[13]

When respondents raised this matter to the CA via a petition for certiorari, the findings of the trial court were upheld by the appellate court in its August 12, 2002 Decision, when it said:

> Petitioners thus appear to have misread the provisions of Article 360 of the Revised Penal Code, as amended, when they filed their criminal and civil complaints in Aparri, Cagayan. Clearly, the civil and criminal complaint should be filed in the Regional Trial Court of Manila, where petitioners reside or where the article was first printed or published. But since petitioners opted to choose place of residence, we shall now discussed [sic] where petitioners properly resides [sic]. In procedural law, specifically for purposes of venue it has been held that the residence of a person is his personal, actual or physical habitation or his actual residence or place of abode, which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency. Applying this, petitioners clearly were residents of Manila for they have a residential house in Las Piñas where they stay thereat due to their profession and occupation.[14]

The CA noted the findings of the other Aparri RTC branches in the dismissals of criminal cases for libel filed by respondents against petitioner to conclude that respondents had their actual residence in Las Piñas.

In Criminal Case No. 07-1168 decided by the Aparri Cagayan RTC, Branch 7, the trial court, despite finding that Atty. Calasan's domicile was in Aparri, Cagayan, dismissed the criminal information against petitioner, stating, thus:

> Under the circumstances, therefore, the situation of private complainant does not fall within the conceptual meaning of the term "residence" as explained in the cases mentioned above. His situation is that he owns a house in Aparri and comes home at least once a month. However, his presence in the place of his residence, although consistent, is admittedly not continuous. For this reason, the complainant's stay at his house in Aparri may only be considered as occasional or intermittent. The requirement is that his stay in his place of abode must not only be consistent but also continuous. Therefore, his stay in Aparri is not "residence" for purposes of determining venue in libel cases.[15]

In Criminal Case No. VI-1094 decided by the Aparri, Cagayan RTC, Branch 6, the trial court likewise dismissed the information against petitioner, holding that:

> The Court does not believe that the offended party is only temporarily residing in Manila for the following reasons: Seventy percent of his cases are cases in Metro Manila; he has his law office in Metro Manila but he has none in Aparri, Cagayan; he and his family reside in Las Pinas [sic] though he has an ancestral house in Aparri, Cagayan. His presence in Aparri is seldom, while he is most of the time in Metro Manila. The offended party, therefore, is actually residing in Las Pinas [sic] and he should have filed the libel case in Las Pinas [sic], Metro Manila.[16]

Considering the foregoing findings of these trial courts, as well as the findings of the Aparri, Cagayan RTC, Branch 8 in Civil Case No. 08-418, the CA found that respondents were residents of Las Piñas.

However, upon a Motion for Reconsideration from respondents, the CA set aside its earlier Decision, its findings reading as follows:

> We have closely examined the records and we find that petitioners' residence is in Aparri, Cagayan.
>
> As stated, an individual does not lose the domicile even if he has lived and maintained residences in different places. Residence, it bears repeating, implies a factual relationship to a given place for various purposes. The absence from legal residence or domicile to pursue a profession, to study or to do other things of a temporary or semi permanent nature does no [sic] constituent loss of residence. Thus, the assertion by the trial court that they could not have been a resident [sic] of Aparri, Cagayan is misplaced.[17]

The CA erred in its findings.

The trial court did not find that respondents were not residents of Aparri, Cagayan. It specifically stated that they were in fact "residents and domiciled in Aparri, Cagayan."[18]

The crucial distinction that must be made is between "actual residence" and "domicile." The case of Garcia Fule v. Court of Appeals had already made the distinction in 1976. The pertinent portion of the case reads as follows:

> But, the far-ranging question is this: What does the term "resides" mean? x x x We lay down the doctrinal rule that the term "resides" connotes ex vi termini "actual residence" as distinguished from "legal residence or domicile." This term "resides," like the terms "residing" and "residence," is elastic and should be interpreted in the light of the object or purpose of the statute or rule in which it is employed. In the application of venue statutes and rules—x x x residence rather than domicile is the significant factor. Even where the statute uses the word "domicile" still it is construed as meaning residence and not domicile in the technical sense. Some cases make a distinction between the terms "residence" and "domicile" but as generally used in statutes fixing venue, the terms are synonymous, and convey the same meaning as the term "inhabitant." In other words, "resides" should be viewed or understood in its popular sense, meaning the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. No particular length of time of residence is required though; however, the residence must be more than temporary.[19]

It is clear that in granting respondents' Motion for Reconsideration, the CA accepted the argument of respondent Atty. Calasan that "residence" is synonymous with "domicile."

In Saludo, Jr. v. American Express International, Inc., the term "residence" was equated with "domicile" as far as election law was concerned. However the case also stated that:

> for purposes of venue, the less technical definition of "residence" is adopted. Thus, it is understood to mean as "the personal, actual or physical habitation of a person, actual residence or place of abode. It signifies physical presence in a place and actual stay thereat. In this popular sense, the term means merely residence, that is, personal residence, not legal residence or domicile. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile."[20]

There is clearly a distinction between the two terms, "residence" and "domicile," which shall be applied in this civil action for damages.

Art. 360 of the Revised Penal Code does not use the term "domicile" in providing for venue in the filing of the

criminal case and the civil action for damages. The applicable clause of Art. 360 in this case states that "where any of the offended parties actually resides at the time of the commission of the offense x x x (emphasis supplied)." It is thus essential to determine where the offended parties, the respondents in this case, actually resided during the year 2000, the time of the commission of the offense.

The published matters, subjects of this civil action, are a counter affidavit dated June 9, 2000 and a letter dated June 19, 2000, both from petitioner, neither of which was submitted to persons in Aparri, Cagayan. To prove respondent Atty. Calasan's residence at the time, which petitioner alleged was No. 8 Galaxy Avenue, Mapayapa Village, Las Piñas City, Metro Manila, Atty. Calasan's Community Tax Certificates (CTCs) for the years 2000 and 2001 were presented.[21] Respondent Atty. Calasan did not deny that he had such an address in Las Piñas, which is only the import of the CTCs. He claimed that the Las Piñas residential unit was constructed out of convenience and necessity for his family and his profession. There is no denial that he and his family lived at that particular address during the time of the publication of petitioner's documents. That is actually enough to qualify it as a residence, even without the intention to maintain it as legal residence.

Respondents' legal residence or domicile has been established as being in Aparri, Cagayan. The finding of the trial court that the actual residence of respondents was in Las Piñas is not inconsistent with the establishment of respondents' domicile in Aparri. To state that respondents' actual residence was in Las Piñas does not mean that they have abandoned their legal residence. The case of Koh v. Court of Appeals stated:

> This Court held in the case of Uytengsu vs. Republic, 50 O.G. 4781, October 1954, reversing its previous stand in Larena v. Ferrer, 61 Phil. 36 and Nuval v. Guray 52 Phil 645, that—
> "There is a difference between domicile and residence. Residence is used to indicate a place of abode, whether permanent or temporary; domicile denotes a fixed permanent residence to which when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with the intention to remain for an unlimited time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means, necessarily so since no length of residence without any intention of remaining will constitute domicile."[22] (Italics supplied.)

In respondents' case, they maintained a residence in Las Piñas in the year 2000, and their domicile in Aparri, Cagayan which was maintained year after year. As mentioned in Koh, one may have both a residence and a domicile. One need not abandon one's domicile to acquire a separate residence, if this separate residence is not intended to be legal residence as well. The ideas of "domicile" and "actual residence" may even at times refer to one and the same place, but not so in this particular case, where there are two particular and distinct places referred to.

Thus, the trial court was correct in dismissing the complaint because it found that the offended parties actually resided for the greater part of the year 2000 in Las Piñas, even if their legal residence was in Aparri, Cagayan. To reiterate, for purposes of determining venue, "residence" is not synonymous with "domicile." One may reside in a place apart from one's legal residence, without changing domicile, and that residence would constitute "actual residence" for purposes of determining venue.

In passing, it must be noted that petitioner is not a lawyer, and it may be instructive for him to consult counsel before filing pleadings or praying for results that have no legal basis, if for purposes of clarity alone. As for his prayer that respondent Atty. Calasan be disbarred, this petition is not the proper remedy for such. Should he still wish to pursue such an action, he must follow the proper procedure, which would grant respondent Atty. Calasan due process. The fact that petitioner, who is not an attorney, was allowed to plead his case before this Court does not exempt him from proper procedure, which would put opposing lawyers at an unfair disadvantage.


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WHEREFORE, premises considered, the questioned November 21, 2002 Resolution of the CA in CA-G.R. SP No. 70335 is hereby REVERSED and SET ASIDE and its August 12, 2002 Decision is REINSTATED and AFFIRMED. Consequently, the February 26, 2002 Order of the Aparri, Cagayan RTC, Branch 8, dismissing the complaint in Civil Case No. 08-418, is likewise hereby AFFIRMED. Costs against respondents.

**SO ORDERED.**

Quisumbing, (Chairperson), Carpio, Carpio-Morales, and Tinga, JJ., concur.

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[1] Rollo, p. 10.

[2] Id. at 53-54.

[3] CA rollo, p. 21.

[4] Id. at 69-70.

[5] Id. at 13-14. The Order was penned by Judge Conrado F. Manauis.

[6] Id. at 15-16.

[7] Id. at 2-20.

[8] Id. at 5.

[9] Rollo, pp. 72-77. The Decision was penned by Associate Justice Eugenio S. Labitoria and concurred in by Associate Justices Teodoro P. Regino and Mariano C. Del Castillo.

[10] Id. at 78-81.

[11] Id. at 95.

[12] Id. at 18.

[13] Id. at 46-47.

[14] Id. at 75.

[15] Id. at 59.

[16] Id. at 68.

[17] Id. at 94.

[18] Id. at 46.

[19] G.R. No. L-40502, November 29, 1976, 74 SCRA 189, 199-200.

[20] G.R. No. 159507, April 19, 2006, 487 SCRA 462, 480-481.

[21] Records, p. 61.

[22] No. L-40428, December 17, 1975, 70 SCRA 298, 305.

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