

AUCTION IN MALINTA, INC., PETITIONER, VS. WARREN EMBES LUYABEN, RESPONDENT.

G.R. NO. 173979. February 12, 2007

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

Assailed in this petition for review under Rule 45 of the Rules of Court is the May 31, 2005 Decision[1] of the Court of Appeals in CA-G.R. CV No. 78456, which held that venue was properly laid before the Regional Trial Court of Bulanao, Tabuk, Kalinga (Kalinga RTC), and reversed the trial court's September 3, 2002 Resolution[2] dismissing the complaint of respondent Warren Embes Lubayen in Civil Case No. 511, on the ground of improper venue.

The facts show that on October 24, 2001, respondent, a resident of Magsaysay, Tabuk, Kalinga, filed with the Kalinga RTC a complaint[3] for damages against petitioner Auction in Malinta, Inc., a corporation with business address at Malinta, Valenzuela City, and engaged in public auction of heavy equipments, trucks, and assorted machineries. Respondent alleged that in an auction conducted by petitioner on May 29, 2001, he was declared the highest bidder for a wheel loader T.C.M. 75B, series no. 3309. On June 7, 2001, respondent tendered the payment for the said item but petitioner could no longer produce the loader. It offered a replacement but failed to deliver the same up to the filing of the complaint. Hence, respondent instituted this case to recover actual, moral, and exemplary damages plus attorney's fees.

Petitioner filed a motion to dismiss on the ground of improper venue. It argued that the correct venue is the RTC of Valenzuela City pursuant to the stipulation in the Bidders Application and Registration Bidding Agreement which states that:

ALL COURT LITIGATION PROCEDURES SHALL BE CONDUCTED IN THE APPROPRIATE COURTS OF VALENZUELA CITY, METRO MANILA.[4]

In a Resolution dated September 3, 2002, the Kalinga RTC held that the clear intention of the parties was to limit the venue to the proper court of Valenzuela City and thus dismissed respondent's complaint on the ground of improper venue.[5]

Aggrieved, respondent appealed to the Court of Appeals which reversed the Resolution of the Kalinga RTC and reinstated the complaint. The dispositive portion thereof, reads:

WHEREFORE, the Resolution appealed from is hereby REVERSED and SET ASIDE. The case is remanded to the RTC which is ordered to reinstate plaintiff's complaint for damages.

SO ORDERED.[6]

Petitioner's motion for reconsideration was denied; hence, the instant petition.

The sole issue is whether the stipulation in the parties' Bidders Application and Registration Bidding Agreement

effectively limited the venue of the instant case exclusively to the proper court of Valenzuela City.

The Court rules in the negative.

The general rule on the venue of personal actions, as in the instant case for damages^[7] filed by respondent, is embodied in Section 2, Rule 4 of the Rules of Court. It provides:

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 nonresident defendant, where he may be found, at the election of the plaintiff.

The aforequoted rule, however, finds no application where the parties, before the filing of the action, have validly agreed in writing on an exclusive venue.^[8] But the mere stipulation on the venue of an action is not enough to preclude parties from bringing a case in other venues. It must be shown that such stipulation is exclusive. In the absence of qualifying or restrictive words, such as "exclusively" and "waiving for this purpose any other venue,"^[9] "shall only" preceding the designation of venue,^[10] "to the exclusion of the other courts,"^[11] 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.^[12]

This has been the rule since the 1969 case of *Polytrade Corporation v. Blanco*.^[13] It was held therein that the clause - "[t]he parties agree to sue and be sued in the Courts of Manila," does not preclude the filing of suits in the court which has jurisdiction over the place of residence of the plaintiff or the defendant. The plain meaning of the said provision is that the parties merely consented to be sued in Manila considering that there are no qualifying or restrictive words which would indicate that Manila, and Manila alone, is the agreed venue. It simply is permissive and the parties did not waive their right to pursue remedy in the courts specifically mentioned in Section 2 of Rule 4 of the Rules of Court.^[14]

The *Polytrade* doctrine was further applied in the case of *Unimasters Conglomeration, Inc. v. Court of Appeals*,^[15] which analyzed the various jurisprudence rendered after the *Polytrade* case. In *Unimasters*, we held that a stipulation stating that "[a]ll suits arising out of this Agreement shall be filed with/in the proper Courts of Quezon City,"^[16] is only permissive and does not limit the venue to the Quezon City courts. As explained in the said case:

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, 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.^[17]

The rule enunciated in *Unimasters* and *Polytrade* was reiterated in subsequent cases where the following agreements on venue were likewise declared to be merely permissive and do not limit the venue to the place specified therein, to wit:

- "If court litigation becomes necessary to enforce collection, an additional equivalent (sic) to 25% of the principal amount will be charged. The agreed venue for such action is Makati, Metro Manila, Philippines."^[18]

- "In case of litigation hereunder, venue shall be in the City Court or Court of First Instance of Manila as the case may be for determination of any and all questions arising thereunder." [19]

Then too, the doctrine that absent qualifying or restrictive words, the venue shall either be that stated in the law or rule governing the action or the one agreed in the contract, was applied to an extra-judicial foreclosure sale under Act No. 3135. [20] In *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, [21] where the provision on the venue employed the word "shall" to refer to the place where the foreclosure will be held, the Court ruled that said provision "lack(s) qualifying or restrictive words to indicate the exclusivity of the agreed forum," and therefore "the stipulated place is considered only as an additional, not a limiting venue." [22] The said stipulation reads:

It is hereby agreed that in case of foreclosure of this mortgage under Act 3135, as amended, and Presidential Decree No. 385, the auction sale shall be held at the capital of the province, if the property is within the territorial jurisdiction of the province concerned, or shall be held in the city, if the property is within the territorial jurisdiction of the city concerned. [23]

In the instant case, the stipulation in the parties' agreement, i.e., "all Court litigation procedures shall be conducted in the appropriate Courts of Valenzuela City, Metro Manila," evidently lacks the restrictive and qualifying words that will limit venue exclusively to the RTC of Valenzuela City. Hence, the Valenzuela courts should only be considered as an additional choice of venue to those mentioned under Section 2, Rule 4 of the Rules of Court. Accordingly, the present case for damages may be filed with the (a) RTC of Valenzuela City as stipulated in the bidding agreement; (b) RTC of Bulanao, Tabuk, Kalinga which has jurisdiction over the residence of respondent (plaintiff); or with the (c) RTC of Valenzuela City which has jurisdiction over the business address of petitioner (defendant). The filing of the complaint in the RTC of Bulanao, Tabuk, Kalinga, is therefore proper, respondent being a resident of Tabuk, Kalinga.

The case of *Hoechst Philippines, Inc. v. Torres*, [24] promulgated in 1978, and invoked by petitioner in its motion to dismiss, had already been superseded by current decisions on venue. In the said case, the Court construed the proviso: "[i]n case of any litigation arising out of this agreement, the venue of action shall be in the competent courts of the Province of Rizal," [25] as sufficient to limit the venue to the proper court of Rizal. However, in *Supena v. De la Rosa*, [26] we ruled that *Hoechst* had been rendered obsolete by recent jurisprudence applying the doctrine enunciated in *Polytrade*.

In sum, we find that the Court of Appeals correctly declared that venue in the instant case was properly laid with the RTC of Bulanao, Tabuk, Kalinga.

WHEREFORE, the petition is DENIED. The May 31, 2005 Decision of the Court of Appeals in CA-G.R. CV No. 78456 which reversed the September 3, 2002 Resolution of the Regional Trial Court of Bulanao, Tabuk, Kalinga; reinstated the complaint in Civil Case No. 511; and remanded the case to the said court, is AFFIRMED.

Costs against petitioner.

SO ORDERED.

Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.
Nachura, J., on leave.

[1] Rollo, pp. 22-33. Penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta.

[2] Id. at 48-50. Penned by Judge Milnar T. Lammawin.

[3] Id. at 40-44.

[4] Id. at 45.

[5] Id. at 50.

[6] Id. at 32.

[7] Asset Privatization Trust v. Court of Appeals, 381 Phil. 530, 550 (2000).

[8] SEC. 4. When Rule not applicable. - This Rule shall not apply -

(a)

In those cases where a specific rule or law provides otherwise; or

(b)

Where the parties have validly agreed in writing before the filing of the action on the exclusive venue thereof.

[9] Spouses Lantin v. Lantion, G.R. No. 160053, August 28, 2006.

[10] Spouses Rigor v. Consolidated Orix Leasing and Finance Corporation, 436 Phil. 243, 251 (2002).

[11] San Miguel Corporation v. Monasterio, G.R. No. 151037, June 23, 2005, 461 SCRA 88, 90.

[12] Spouses Lantin v. Lantion, *supra*.

[13] 140 Phil. 604 (1969).

[14] Id. at 607-608.

[15] 335 Phil. 415 (1997).

[16] Id. at 420.

[17] Id. at 433-434.

[18] Mangila v. Court of Appeals, 435 Phil. 870, 883-884 (2002).

[19] Philippine Bank of Communications v. Trazo, G.R. No. 165500, August 30, 2006.

[20] "An Act to Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages"

[21] 400 Phil. 1349 (2000).

[22] Id. at 1362.

[23] Id. at 1361.

[24] G.R. No. L-44351, May 18, 1978, 83 SCRA 297.

[25] Id. at 299.

[26] 334 Phil. 671, 680-681 (1997). See also Philippine Banking Corporation v. Tensuan, G.R. No. 104649,

February 28, 1994, 230 SCRA 413, 419-420.

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