

**EASTERN ASSURANCE & SURETY CORPORATION, PETITIONER,
VS. HON. EMETERIO C. CUI (IN HIS OFFICIAL CAPACITY AS JUDGE,
COURT OF FIRST INSTANCE OF MANILA, BRANCH XXV) AND
LORETA B. PAN...**

G.R. No. 54452. July 20, 1981

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review on certiorari the order, dated October 30, 1978, of the respondent judge in Civil Case No. 115385, Court of First Instance of Manila.

The facts of the case, briefly, are the following:

On April 21, 1977, Transunion Corporation and Rey M. Pan doing business under the name of Pan Phil Trading entered into a dealership agreement for the sale of merchandise. Pursuant thereto Pan Phil Trading had to file a P20,000 surety bond and it complied by presenting a surety bond of Eastern Assurance & Surety Corporation.

On May 15, 1978, Transunion filed a complaint (Civil Case No. 115385, CFI, Manila) against Rey M. Pan, Pan Phil Trading and Eastern Assurance & Surety Corporation for the full payment of merchandise delivered in the amount of P10,841.54.

After Eastern Assurance & Surety Corporation had filed its Answer with Crossclaim, it filed a motion to file a third-party complaint against Loreta B. Pan, wife of Rey M. Pan. The reason given in the motion is that movant has a legal right against Loreta B. Pan. It appears that in consideration of the surety bond, the Pan spouses executed an Indemnity Agreement in favor of Eastern Assurance & Surety Corporation.

On July 24, 1978, the respondent judge granted the motion and admitted the third-party complaint.

Subsequently, Loreta B. Pan filed a motion to dismiss the third-party complaint on the ground that venue was improperly laid. She invoked paragraph 7 of the Indemnity Agreement which reads:

"7. WAIVER OF VENUE OF ACTION: - We [meaning Rey M. Pan and Loreta B. Pan] hereby agree that any question which may arise between the Company and the undersigned by reason of this document and which has to be submitted to the court of justice, shall be brought before the court of competent jurisdiction of Quezon City, waiving for this purpose any other proper venue."

Notwithstanding the opposition of Eastern Assurance & Surety Corporation, the respondent judge in his order dated October 30, 1978, peremptorily dismissed the third-party complaint on the ground that the motion to dismiss was "well-taken." The respondent judge, may his tribe vanish, did not elaborate. A motion to reconsider the order of dismissal was denied in a similar fashion.

We have to grant the petition despite the comment of the respondent judge to the petition for review that in dismissing the third-party complaint he had to uphold the policy of upholding the sanctity of contracts in

preference to the policy against multiplicity of suits. He even cites Roscoe Pound's Scope and Purpose of Sociological Jurisprudence in 24 Harvard Law Review 607.

What the respondent judge and even petitioner's counsel failed to perceive is that paragraph 7 of the Indemnity Agreement was imposed on the Pan spouses by the petitioner surety company for its benefit and convenience and therefore the latter could waive the provision by filing its complaint, not in Quezon City, but in Manila. There is, therefore, no sanctity of contract to uphold.

But even if we assume that paragraph 7 of the Indemnity Agreement created a reciprocal obligation, it does not necessarily follow that it is applicable to the present situation.

It has to be remembered that a third-party complaint is but ancillary to the main action and is a procedural device to avoid multiplicity of suits. Because of its nature the prescriptions on jurisdiction and venue applicable to ordinary suits may not apply. Thus a third-party complaint has to yield to the jurisdiction and venue of the main action. This view is supported by our decision in Republic vs. Central Surety & Insurance Co., G.R. L-27802, Oct. 26, 1968, 25 SCRA 641, where we said:

"3. Upon the third issue, the Surety takes the position that if the trial court acquired jurisdiction over the main case, 'it follows that it could also take cognizance of the third-party complaint which derives its life from the complaint.'

"The Surety has a point here. It is true that the third-party complaint was filed after the effectivity date of Republic Act 3828. It is likewise true that the demand therein made does not exceed P10,000, and, therefore, is not within the jurisdiction of the Court of First Instance if it were an independent action. But the third-party complaint is an ancillary suit which depends on the jurisdiction of the court over the main action. Since the trial court had acquired jurisdiction over the complaint, it necessarily follows that it likewise had jurisdiction over the third-party complaint which is but an incident thereof. This must be so because jurisdiction over the main case embraces all incidental matters arising therefrom and connected therewith. A contrary rule would result in 'split jurisdiction' which is not favored, and in multiplicity of suits, a situation obnoxious to the orderly administration of justice. The court acquired jurisdiction over the third-party complaint, provided it had jurisdiction over the main case, for the reason that the third-party complaint is but a continuation thereof, its purpose being to seek 'contribution, indemnity, subrogation or any other relief, in respect to his opponent's claim.'" (At pp. 648-649. See also Talisay-Silay Milling Co., Inc., and J. Amado Araneta vs. The Court of Industrial Relations and Central Azucarera del Danao, L-21582., Nov. 29, 1966, 18 SCRA 894.)

WHEREFORE, finding the petition to be well-taken, the same is hereby granted; the order of the respondent judge dismissing the third-party complaint is rescinded. Cost against respondents.

SO ORDERED.

Barredo, (Chairman), Aquino, Fernandez, and De Castro, JJ., concur.

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