

BERNOLI P. ARQUERO, PETITIONER, VS. HONORABLE NAPOLEON J. FLOJO, PRESIDING JUDGE, BRANCH VI, REGIONAL TRIAL COURT, SECOND JUDICIAL REGION; APARRI, CAGAYAN AND RADIO COMMUNICATIO...

G.R. No. 68111. December 20, 1988

Ponente: PARAS, J.

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PARAS, J.:

On November 27, 1983, the petitioner and private respondent Radio Communications of the Philippines, Inc. (RCPI), entered into a contract for services for the transmission of a telegraphic message thru RCPI's branch office in Aparri, Cagayan to Atty. Eleazar S. Calasan at his office address in Quiapo, Manila. The text of the telegram contract form for transmission (as well as the telegram itself) reads:

"Send the following message subject to the condition that the RCPI shall not be liable for any damage howsoever same may arise except for the refund of telegraph tolls. The sender agrees that as a condition precedent for a cause of action against the RCPI any complaint relative to the transmittal of this telegram must be brought to the attention of the company within three months from date, and that venue thereof shall be in the courts of Quezon City alone and in no other courts.

ATTY. CALASAN
ROOM 401 PAYAWAL BLDG.
709 PATERNO, QUIAPO, MANILA

COCNGRATULATIONS PREPARE ONE XEROX COPY DECISION SEE YOU BONI'S BIRTHDAY.

BERNOLI"

(Annex "D", p. 16, Rollo)

Atty. Eleazar S. Calasan received a copy of the telegram the next day but he was made to pay the sum of P7.30 for delivery charges. Thereafter, on November 30, 1983, at the birthday party of Asst. Fiscal Bonifacio Sison in Quezon City, Atty. Calasan confronted and censured the petitioner anent the said telegram. Despite the petitioner's explanation that the telegram had been duly paid for he was branded as a "stingy mayor who cannot even afford to pay the measely sum of P7.30 for the telegram," (p. 2 Memorandum; p. 55, Rollo) in the presence of many persons.

Thus, the petitioner filed an action for damages against RCPI before the Regional Trial Court of Aparri, Cagayan. RCPI filed a motion to dismiss on the ground of improper venue, contending that pursuant to the service contract, the parties had agreed that the venue of any action which may arise out of the transmittal of the telegram shall be in the courts of Quezon City alone.

On February 13, 1984, the trial court dismissed the case and denied the motion for reconsideration re said

dismissal.

Hence, the instant petition. Citing the case of *Sweet Lines Inc. v. Bernardo Teves et al.*, SCRA 361, the petitioner claims that the condition with respect to venue appearing on the ready printed form of RCPI's telegram for transmission is void and unenforceable because the petitioner had no hand in its preparation. The Court there held that contracts of adhesion, where the provisions have been drafted only by one party and the only participation of the other party is the signing of his signature or his adhesion thereto, are contrary public policy as they are injurious to the public or public good.

WE DISAGREE.

The agreement of the parties in the case at bar as to venue is not contrary to law, public order, public policy, morals or good customs.

The parties do not dispute that in the written contract sued upon, it was expressly stipulated that any action relative to the transmittal of the telegram against the RCPI must be brought in the Courts of Quezon City alone. We note that neither party to the contract reserved the right to choose the venue of action as fixed by law (i.e., where the plaintiff or defendant resides, at the election of the plaintiff [par. 'b'], Section 2, Rule 4, Revised Rules of Court), as is usually done if the parties purported to retain that right of election granted by the Rules. Such being the case, 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, Section 3. Rule 4, Revised Rules of Court sanctions such stipulation by providing that "by written agreement of the parties the venue of action may be changed or transferred from one province to another." (*Bautista vs. de Borja*, 18 SCRA 474) As aptly held in the case of *Central Azucarera de Tarlac vs. De Leon*, 56 Phil. 169, -

"By said agreement the parties waived the legal venue, and such waiver is valid and legally effective, because it was merely a personal privilege they waived, which is not contrary to public policy or to the prejudice of third persons. It is a general principle that a person may renounce any right which the law give unless such renunciation is expressly prohibited or the right conferred is of such nature that its renunciation would be against public policy"

In *Sweet Lines, Inc. vs. Teves et al.* supra, the Supreme Court, in declaring the stipulation which limited the venue of actions as void and unenforceable held:

"By the peculiar circumstances under which contracts of adhesion are entered into - namely, that it is drafted only by one party, usually the corporation, and is sought to be accepted or adhered to by the other party, in this instance the passengers, private respondents, who cannot change the smile and who are thus made to adhere hereto on the 'take it or leave it' basis - certain guidelines in the determination of their validity and/or enforceability have been formulated in order to insure that justice and fair play characterize the relationship of the contracting parties.

"It is a matter of public knowledge of which we can take judicial notice, that there is a dearth of and acute shortage in inter-island vessels plying between the country's several islands, and the facilities they offer leave much to be desired. Thus, even under ordinary circumstances, the piers are congested with passengers and their cargo waiting to be transported. The conditions are even worse at peak and/or the rainy seasons, when passengers literally scramble to secure whatever accommodations may be availed of, even through circuitous routes, and/or at the risk of their safety. x x x Under these circumstances, it is hardly just and proper to expect the passengers to examine their tickets received from crowded/congested counters, more often than not during rush hours, for conditions that may be printed thereon, much less charge them with having consented to the conditions, so printed, especially if there are a number of such conditions in fine print, as in this case.

'It should also be stressed that shipping companies are franchise holders of certificates of public convenience and, therefore, possess a virtual monopoly over the business of transporting passengers between the ports covered by their franchise. This being so, shipping companies, like petitioner, engaged in inter-island shipping, have a virtual monopoly of the business of transporting passengers and may thus dictate their terms of passage, leaving passengers with no choice but to buy their tickets and avail of their vessels and facilities. Finally, judicial notice may be taken of the fact that the bulk of those who board these inter-island vessels come from the low-income groups and are less literate, and who have little or no choice but to avail of petitioner's vessels."

In the instant case, the condition with respect to venue in the telegram form for transmission was printed clearly in the upper front portion of the form. Considering to petitioner's educational attainment (being a lawyer by profession and the Municipal Mayor of Sta. Teresita Cagayan), he must be charged with notice of the condition limiting the venue to Quezon City and by affixing his signature thereon, he signified his assent thereto. Thus, the ruling in *Sweet Lines Inc. vs. Teves, et al.* is not applicable in this case.

WHEREFORE, the petition is hereby DISMISSED for lack of merit.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, and Regalado, JJ., concur.
Sarmiento, J., on leave.

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