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[G.R. No. 119657, February 07, 1997]

UNIMASTERS CONGLOMERATION, INC., PETITIONER, VS. COURT OF APPEALS AND KUBOTA AGRI-MACHINERY PHILIPPINES, INC., RESPONDENTS.

D E C I S I O N

NARVASA, C.J.:

The appellate proceeding at bar turns upon the interpretation of a stipulation in a contract governing venue of actions thereunder arising.

On October 28, 1988 Kubota Agri-Machinery Philippines, Inc. (hereafter, simply KUBOTA) and Unimasters Conglomeration, Inc. (hereafter, simply UNIMASTERS) entered into a "Dealership Agreement for Sales and Services" of the former's products in Samar and Leyte Provinces.[1] The contract contained, among others:

> 1) a stipulation reading: "** All suits arising out of this Agreement shall be filed with / in the proper Courts of Quezon City," and
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> 2) a provision binding UNIMASTERS to obtain (as it did in fact obtain) a credit line with Metropolitan Bank and Trust Co.-Tacloban Branch in the amount of P2,000,000.00 to answer for its obligations to KUBOTA.

Some five years later, or more precisely on December 24, 1993, UNIMASTERS filed an action in the Regional Trial Court of Tacloban City against KUBOTA, a certain Reynaldo Go, and Metropolitan Bank and Trust Company-Tacloban Branch (hereafter, simply METROBANK) for damages for breach of contract, and injunction with prayer for temporary restraining order. The action was docketed as Civil Case No. 93-12-241 and assigned to Branch 6.

On the same day the Trial Court issued a restraining order enjoining METROBANK from "authorizing or effecting payment of any alleged obligation of ** (UNIMASTERS) to defendant ** KUBOTA arising out of or in connection with purchases made by defendant Go against the credit line caused to be established by ** (UNIMASTERS) for and in the amount of P2 million covered by defendant METROBANK ** or by way of charging ** (UNIMASTERS) for any amount paid and released to defendant ** (KUBOTA) by the Head Office of METROBANK in Makati, Metro-Manila **." The Court also set the application for preliminary injunction for hearing on January 10, 1994 at 8:30 o'clock in the morning.

On January 4, 1994 KUBOTA filed two motions. One prayed for dismissal of the case on the ground of improper venue (said motion being set for hearing on January 11, 1994). The other prayed for the transfer of the injunction hearing to January 11, 1994 because its counsel was not available on January 10 due to a prior commitment before another court.

KUBOTA claims that notwithstanding that its motion to transfer hearing had been granted, the Trial Court went ahead with the hearing on the injunction incident on January 10, 1994 during which it received the direct testimony of UNIMASTERS' general manager, Wilford Chan; that KUBOTA's counsel was "shocked" when he learned of this on the morning of the 11th, but was nonetheless instructed to proceed to cross-examine the witness; that when said counsel remonstrated that this was unfair, the Court reset the hearing to the afternoon of that same day, at which time Wilford Chan was recalled to the stand to repeat his direct testimony. It appears that cross-examination of Chan was then undertaken by KUBOTA's lawyer with the "express reservation that ** (KUBOTA was) not (thereby) waiving and/or abandoning its motion to dismiss;" and that in the course of the cross-examination, exhibits (numbered from 1 to 20) were presented by said attorney who afterwards submitted a memorandum in lieu of testimonial evidence.[2]

On January 13, 1994, the Trial Court handed down an Order authorizing the issuance of the preliminary injunction prayed for, upon a bond of P2,000,000.00.[3] And on February 3, 1994, the same Court promulgated an Order denying KUBOTA's motion to dismiss. Said the Court:

> "The plaintiff UNIMASTERS Conglomeration is holding its principal place of business in the City of Tacloban while the defendant ** (KUBOTA) is holding its principal place of business in Quezon City. The proper venue therefore pursuant to Rules of Court would either be Quezon City or Tacloban City at the election of the plaintiff. Quezon City and Manila (sic), as agreed upon by the parties in the Dealership Agreement, are additional places other than the place stated in the Rules of Court. The filing, therefore, of this complaint in the Regional Trial Court in Tacloban City is proper."

Both orders were challenged as having been issued with grave abuse of discretion by KUBOTA in a special civil action of certiorari and prohibition filed with the Court of Appeals, docketed as CA-G.R. SP No. 33234. It contended, more particularly, that (1) the RTC had "no jurisdiction to take cognizance of ** (UNIMASTERS') action considering that venue was improperly laid," (2) UNIMASTERS had in truth "failed to prove that it is entitled to the ** writ of preliminary injunction;" and (3) the RTC gravely erred "in denying the motion to dismiss."[4]

The Appellate Court agreed with KUBOTA that -- in line with the Rules of Court[5] and this Court's relevant rulings[6] -- the stipulation respecting venue in its Dealership Agreement with UNIMASTERS did in truth limit the venue of all suits arising thereunder only and exclusively to "the proper courts of Quezon City."[7] The Court also held that the participation of KUBOTA's counsel at the hearing on the injunction incident did not in the premises operate as a waiver or abandonment of its objection to venue; that assuming that KUBOTA's standard printed invoices provided that the venue of actions thereunder should be laid at the Court of the City of Manila, this was inconsequential since such provision would govern "suits or legal actions between petitioner and its buyers" but not actions under the Dealership Agreement between KUBOTA and UNIMASTERS, the venue of which was controlled by paragraph No. 7 thereof; and that no impediment precludes issuance of a TRO or injunctive writ by the Quezon City RTC against METROBANK-Tacloban since the same

"may be served on the principal office of METROBANK in Makati and would be binding on and enforceable against, METROBANK branch in Tacloban."

After its motion for reconsideration of that decision was turned down by the Court of Appeals, UNIMASTERS appealed to this Court. Here, it ascribes to the Court of Appeals several errors which it believes warrant reversal of the verdict, namely:[8]

> 1) "in concluding, contrary to decisions of this ** Court, that the agreement on venue between petitioner (UNIMASTERS) and private respondent (KUBOTA) limited to the proper courts of Quezon City the venue of any complaint filed arising from the dealership agreement between ** (them);"
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> 2) "in ignoring the rule settled in Philippine Banking Corporation vs. Tensuan,[9] that 'in the absence of qualifying or restrictive words, venue stipulations in a contract should be considered merely as agreement on additional forum, not as limiting venue to the specified place;" and in concluding, contrariwise, that the agreement in the case at bar "was the same as the agreement on venue in the Gesmundo case," and therefore, the Gesmundo case was controlling; and
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> 3) "in concluding, based solely on the self-serving narration of ** (KUBOTA that its) participation in the hearing for the issuance of a ** preliminary injunction did not constitute waiver of its objection to venue."

The issue last mentioned, of whether or not the participation by the lawyer of KUBOTA at the injunction hearing operated as a waiver of its objection to venue, need not occupy the Court too long. The record shows that when KUBOTA's counsel appeared before the Trial Court in the morning of January 11, 1994 and was then informed that he should cross-examine UNIMASTERS' witness, who had testified the day before, said counsel drew attention to the motion to dismiss on the ground of improper venue and insistently attempted to argue the matter and have it ruled upon at the time; and when the Court made known its intention (a) "to (resolve first the) issue (of) the injunction then rule on the motion to dismiss," and (b) consequently its desire to forthwith conclude the examination of the witness on the injunction incident, and for that purpose reset the hearing in the afternoon of that day, the 11th, so that the matter might be resolved before the lapse of the temporary restraining order on the 13th, KUBOTA's lawyer told the Court: "Your Honor, we are not waiving our right to submit the Motion to Dismiss."[10] It is plain that under these circumstances, no waiver or abandonment can be imputed to KUBOTA.

The essential question really is that posed in the first and second assigned errors, i.e., what construction should be placed on the stipulation in the Dealership Agreement that "(a)ll suits arising out of this Agreement shall be filed with/in the proper Courts of Quezon City."

Rule 4 of the Rules of Court sets forth the principles generally governing the venue of actions, whether real or personal, or involving persons who neither reside nor are found in the Philippines or otherwise. Agreements on venue are explicitly allowed. "By written agreement of the parties the venue of an action may be changed or transferred from one province to another."[11] Parties may by stipulation waive the

legal venue and such waiver is valid and effective being merely a personal privilege, which is not contrary to public policy or prejudicial to third persons. It is a general principle that a person may renounce any right which the law gives unless such renunciation would be against public policy.[12]

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 (Rule 4, specifically). As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.

Since convenience is the raison d'etre of the rules of venue,[13] it is easy to accept the proposition that normally, venue stipulations should be deemed permissive merely, and that interpretation should be adopted which most serves the parties' convenience. In other words, stipulations designating venues other than those assigned by Rule 4 should be interpreted as designed to make it more convenient for the parties to institute actions arising from or in relation to their agreements; that is to say, as simply adding to or expanding the venues indicated in said Rule 4.

On the other hand, because restrictive stipulations are in derogation of this general policy, the language of the parties must be so clear and categorical as to leave no doubt of their intention to limit the place or places, or to fix places other than those indicated in Rule 4, for their actions. This is easier said than done, however, as an examination of precedents involving venue covenants will immediately disclose.

In at least thirteen (13) cases, this Court construed the venue stipulations involved as merely permissive. These are:

1. Polytrade Corporation v. Blanco, decided in 1969.[14] In this case, the venue stipulation was as follows:

"The parties agree to sue and be sued in the Courts of Manila."

This Court ruled that such a provision "does not preclude the filing of suits in the residence of the plaintiff or the defendant. The plain meaning is that the parties merely consented to be sued in Manila. Qualifying or restrictive words which would indicate that Manila and Manila alone is the venue are totally absent therefrom. It simply is permissive. The parties solely agreed to add the courts of Manila as tribunals to which they may resort. They did not waive their right to pursue remedy in the courts specifically mentioned in Section 2(b) of Rule 4."

The Polytrade doctrine was reiterated expressly or implicitly in subsequent cases, numbering at least ten (10).

2. Nicolas v. Reparations Commission, decided in 1975.[15] In this case, the stipulation on venue read:

"** (A)ll legal actions arising out of this contract ** may be brought in and submitted to the jurisdiction of the proper courts in the City of Manila."

This Court declared that the stipulation does not clearly show the intention of the parties to limit the venue of the action to the City of

Manila only. "It must be noted that the venue in personal actions is fixed for the convenience of the plaintiff and his witnesses and to promote the ends of justice. We cannot conceive how the interest of justice may be served by confining the situs of the action to Manila, considering that the residences or offices of all the parties, including the situs of the acts sought to be restrained or required to be done, are all within the territorial jurisdiction of Rizal. ** Such agreements should be construed reasonably and should not be applied in such a manner that it would work more to the inconvenience of the parties without promoting the ends of justice."

3. Lamis Ents. v. Lagamon, decided in 1981.[16] Here, the stipulation in the promissory note and the chattel mortgage specifed Davao City as the venue.

The Court, again citing Polytrade, stated that the provision "does not preclude the filing of suits in the residence of plaintiff or defendant under Section 2(b), Rule 4, Rules of Court, in the absence of qualifying or restrictive words in the agreement which would indicate that the place named is the only venue agreed upon by the parties. The stipulation did not deprive ** (the affected party) of his right to pursue remedy in the court specifically mentioned in Section 2(b) of Rule 4, Rules of Court. Renuntiato non praesumitur."

4. Capati v. Ocampo, decided in 1982.[17] In this case, the provision of the contract relative to venue was as follows:

" ** (A)ll actions arising out, or relating to this contract may be instituted in the Court of First Instance of the City of Naga."

The Court ruled that the parties "did not agree to file their suits solely and exclusively with the Court of First Instance of Naga;" they "merely agreed to submit their disputes to the said court without waiving their right to seek recourse in the court specifically indicated in Section 2 (b), Rule 4 of the Rules of Court."

5. Western Minolco v. Court of Appeals, decided in 1988.[18] Here, the provision governing venue read:

"The parties stipulate that the venue of the actions referred to in Section 12.01 shall be in the City of Manila."

The court restated the doctrine that a stipulation in a contract fixing a definite place for the institution of an action arising in connection therewith, does not ordinarily supersede the general rules set out in Rule 4, and should be construed merely as an agreement on an additional forum, not as limiting venue to the specified place.

6. Moles v. Intermediate Appellate Court, decided in 1989.[19] In this proceeding, the Sales Invoice of a linotype machine stated that the proper venue should be Iloilo.

This Court held that such an invoice was not the contract of sale of the linotype machine in question; consequently the printed provisions of the