

SECOND DIVISION

[G.R. No. 111685, August 20, 2001]

DAVAO LIGHT & POWER CO., INC., PETITIONER, VS. THE HON. COURT OF APPEALS, HON. RODOLFO M. BELLAFLOR, PRESIDING JUDGE OF BRANCH 11, RTC-CEBU AND FRANCISCO TESORERO, RESPONDENTS.

D E C I S I O N

DE LEON, JR., J.:

Before us is a petition for review on *certiorari* assailing the Decision dated August 31, 1993 rendered by the Sixteenth Division^[1] of the Court of Appeals in CA-G.R. SP No. 29996, the dispositive portion of which states:

WHEREFORE, the petition for review filed by Davao Light & Power Co., Inc. is hereby DENIED DUE COURSE and the same is DISMISSED.

IT IS SO ORDERED.

The antecedent facts are:

On April 10, 1992, petitioner Davao Light & Power Co., Inc. filed a complaint for damages^[2] against private respondent Francisco Tesorero before the Regional Trial Court of Cebu City, Branch 11. Docketed as CEB-11578, the complaint prayed for damages in the amount of P11,000,000.00.

In lieu of an answer, private respondent filed a motion to dismiss^[3] claiming that: (a) the complaint did not state a cause of action; (b) the plaintiff's claim has been extinguished or otherwise rendered moot and academic; (c) there was non-joinder of indispensable parties; and (d) venue was improperly laid. Of these four (4) grounds, the last mentioned is most material in this case at bar.

On August 3, 1992, the trial court issued a Resolution^[4] dismissing petitioner's complaint on the ground of improper venue. The trial court stated that:

The plaintiff being a private corporation undoubtedly Banilad, Cebu City is the plaintiff's principal place of business as alleged in the complaint and which for purposes of venue is considered as its residence. xxx.

However, in defendant's motion to dismiss, it is alleged and submitted that the principal office of plaintiff is at "163-165 P. Reyes Street, Davao City as borne out by the Contract of Lease (Annex 2 of the motion) and

another Contract of Lease of Generating Equipment (Annex 3 of the motion) executed by the plaintiff with the NAPOCOR.

The representation made by the plaintiff in the 2 aforementioned Lease Contracts stating that its principal office is at "163-165 P. Reyes Street, Davao City" bars the plaintiff from denying the same.

The choice of venue should not be left to plaintiff's whim or caprices [sic]. He may be impelled by some ulterior motivation in choosing to file a case in a court even if not allowed by the rules of venue.

Another factor considered by the Courts in deciding controversies regarding venue are considerations of judicial economy and administration, as well as the convenience of the parties for which the rules of procedure and venue were formulated xxx.

Considering the foregoing, the Court is of the opinion that the principal office of plaintiff is at Davao City which for purposes of venue is the residence of plaintiff.

Hence, the case should be filed in Davao City.

The motion on the ground of improper venue is granted and the complaint DISMISSED on that ground.

SO ORDERED.

Petitioner's motion for reconsideration^[5] was denied in an Order^[6] dated October 1, 1992.

From the aforesaid resolution and order, petitioner originally filed before this Court on November 20, 1992 a petition for review on *certiorari* docketed as G.R. No. 107381.^[7] We declined to take immediate cognizance of the case, and in a Resolution dated January 11, 1993,^[8] referred the same to the Court of Appeals for resolution. The petition was docketed in the appellate court as CA-G.R. SP No. 29996.

On August 31, 1993, the Court of Appeals rendered the assailed judgment^[9] denying due course and dismissing the petition. Counsel for petitioner received a copy of the decision on September 6, 1993.^[10] Without filing a motion for reconsideration, petitioner filed the instant petition, assailing the judgment of the Court of Appeals on the following grounds:

5.01. Respondent Court of Appeals denied petitioner procedural due process by failing to resolve the third of the above-stated issues.

5.02. Petitioner's right to file its action for damages against private respondent in Cebu City where its principal office is located, and for which it paid P55,398.50 in docket fees, may not be negated by a

supposed estoppel absent the essential elements of the false statement having been made to private respondent and his reliance on good faith on the truth thereof, and private respondent's action or inaction based thereon of such character as to change his position or status to his injury, detriment or prejudice.

The principal issue in the case at bar involves a question of venue. It is to be distinguished from jurisdiction, as follows:

Venue and jurisdiction are entirely distinct matters. Jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction over the subject-matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection. In either case, the court may render a valid judgment. Rules as to jurisdiction can never be left to the consent or agreement of the parties, whether or not a prohibition exists against their alteration.^[11]

It is private respondent's contention that the proper venue is Davao City, and not Cebu City where petitioner filed Civil Case No. CEB-11578. Private respondent argues that petitioner is estopped from claiming that its residence is in Cebu City, in view of contradictory statements made by petitioner prior to the filing of the action for damages. First, private respondent adverts to several contracts^[12] entered into by petitioner with the National Power Corporation (NAPOCOR) where in the description of personal circumstances, the former states that its principal office is at "163-165 P. Reyes St., Davao City." According to private respondent the petitioner's address in Davao City, as given in the contracts, is an admission which should bind petitioner.

In addition, private respondent points out that petitioner made several judicial admissions as to its principal office in Davao City consisting principally of allegations in pleadings filed by petitioner in a number of civil cases pending before the Regional Trial Court of Davao in which it was either a plaintiff or a defendant.^[13]

Practically the same issue was addressed in *Young Auto Supply Co. v. Court of Appeals*.^[14] In the aforesaid case, the defendant therein sought the dismissal of an action filed by the plaintiff, a corporation, before the Regional Trial Court of Cebu City, on the ground of improper venue. The trial court denied the motion to dismiss; on certiorari before the Court of Appeals, the denial was reversed and the case was dismissed. According to the appellate tribunal, venue was improperly laid since the address of the plaintiff was supposedly in Pasay City, as evidenced by a *contract of sale, letters* and several *commercial documents* sent by the plaintiff to the defendant, even though the plaintiff's articles of incorporation stated that its principal office was in Cebu City. On appeal, we reversed the Court of Appeals. We reasoned out thus: