

THIRD DIVISION

[G.R. No. 160653, July 23, 2008]

**JESUSITO D. LEGASPI, DOING BUSINESS UNDER THE NAME AND
STYLE OF J.D. LEGASPI CONSTRUCTION, PETITIONER, VS.
SOCIAL SECURITY SYSTEM (SSS), RESPONDENT.**

D E C I S I O N

AUSTRIA-MARTINEZ, J.:

Jesunito D. Legaspi, as owner and manager of J.D. Legaspi Construction (petitioner), entered into a Construction Agreement with the Social Security System (respondent) in June 1997 for the construction of a four-storey building in Baguio City which will serve as respondent's branch office. The contract price was P88,348,533.74.

In an unfortunate turn of events, the Philippine peso collapsed as against the U.S. Dollar in 1997. ^[1] Thus, the cost of imported materials which petitioner was contracted to use and install on the project shot up, and petitioner incurred expenses more than the original contract price. Petitioner had several meetings with respondent's representatives during which he informed them of his difficulty in meeting his obligations under the contract due to the devaluation of peso. After several failed meetings, petitioner sent a letter to respondent requesting an adjustment in the contract price, which was denied by respondent. This constrained petitioner to file a complaint for payment of sum of money plus damages with the Regional Trial Court (RTC) of Makati City, docketed as Civil Case No. 00-1354.

Instead of filing an answer, respondent, represented by the Office of the Solicitor General, filed a Motion to Dismiss on the grounds that venue was improperly laid and petitioner had no cause of action. On the ground of improper venue, it was respondent's argument that the Construction Agreement provided that all actions may be brought before the proper court in Quezon City and that petitioner waived any other venue.

Respondent also contended that petitioner's allegations in his Complaint stated no cause of action. According to respondent, petitioner sought to amend the contract by increasing the stipulated contract price; however, this cannot be done since amendments or modifications are not allowed in bidded government contracts, specially since the contract expressly provided for a "no escalation" clause. Respondent also argued that an adjustment of the price would be disadvantageous to the government.

In its Order^[2] dated July 18, 2001, the RTC denied respondent's Motion to Dismiss. It was the RTC's ruling that the venue was properly laid since petitioner's action was not based on the Construction Agreement which was faithfully complied with by petitioner; rather, it was a collection suit for the increase in the price of imported

materials and equipment furnished and installed to complete the construction. The RTC also ruled that petitioner's cause of action was based on Article 1267 of the Civil Code^[3] provision on price adjustment and not on the terms and conditions of the Construction Agreement. The RTC was also of the view that respondent's claim of lack of cause of action should be properly raised and proved in a regular trial and not merely by pleadings. ^[4]

Respondent moved to reconsider the Order but this was denied by the RTC in an Order^[5] dated September 25, 2001.

Respondent then filed a petition for *certiorari* with the Court of Appeals (CA), and in the assailed Decision^[6] dated August 26, 2003, respondent's petition was granted and the RTC was ordered to dismiss Civil Case No. 00-1354, to wit:

WHEREFORE, the writ of certiorari prayed for is hereby GRANTED, and the respondent trial court is ordered to DISMISS the complaint of JESUSITO D. LEGASPI in Civil Case No. 00-1354, without prejudice to the filing of said complaint in the proper court.

SO ORDERED.^[7]

Petitioner sought reconsideration of the assailed Decision, which was denied by the CA in its Resolution dated October 27, 2003.^[8]

Hence, the present petition for review on *certiorari* under Rule 45 of the Rules of Court, raising as sole ground, viz:

THE HONORABLE COURT OF APPEALS PLAINLY ERRED AND ACTED CONTRARY TO EXISTING LAW AND JURISPRUDENCE IN ORDERING THE DISMISSAL OF THE CIVIL CASE BEFORE THE COURT A QUO CONSIDERING THAT VENUE IS PROPERLY LAID.^[9]

Petitioner insists that the venue provision in the Construction Agreement does not apply. He argues that his cause of action does not arise from the agreement, nor was it for the performance of any of the obligations under the agreement. According to petitioner, his action was for additional payment due to the extraordinary devaluation of the peso at the time; and is based on Article 1267 of the Civil Code, not on any provision of the Construction Agreement. Petitioner believes that his action is personal in nature such that Section 2, Rule 4 of the Rules of Court applies, and he has the option to file the same where he or respondent resides.

Respondent counters that petitioner's claim, while anchored on Article 1267 of the Civil Code, emanated from the Construction Agreement; hence, the restrictive provision on venue applies. Respondent also reiterates its argument that petitioner does not have any cause of action against respondent.

As a general rule, venue of personal actions is governed by Section 2, Rule 4 of the Rules of Court, to wit:

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 non-resident defendant, where he may be found, at the election of the plaintiff.

The parties, however, are not precluded from agreeing in writing on an exclusive venue, as qualified by Section 4 of the same rule. 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. As in any other agreement, what is essential is the ascertainment of the intention of the parties respecting the matter.^[10]

As regards *restrictive* stipulations on venue, jurisprudence instructs that it must be shown that such stipulation is exclusive . In the absence of qualifying or restrictive words, such as "exclusively," "waiving for this purpose any other venue," "shall only" preceding the designation of venue, "to the exclusion of the other courts," 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.^[11]

In the present case, the Construction Agreement provides:

ARTICLE XIV - JUDICIAL REMEDIES

All actions and controversies that may arise from this Agreement involving but not limited to demands for the specific performance of the obligations as specified in the clauses contained herein and/or as resolved or interpreted by the CLIENT pursuant to the third paragraph of Article I hereof may be brought by the parties before the proper courts in Quezon City where the main office of the CLIENT is located, **the CONTRACTOR hereby expressly waiving any other venue.**

x x x x^[12] (Emphasis supplied)

The venue is specific - Quezon City - and accompanied by the words "the CONTRACTOR hereby expressly waiving any other venue," which connote exclusivity of the designated venue. These terms clearly stipulate exclusively the venue where actions arising from the Construction Agreement should be filed.

Petitioner, however, contends that the case does not arise from the Construction Agreement; hence, it may be filed in Makati City, which is his place of residence.

Contrary to petitioner's contention, the allegations in his complaint indubitably show that his cause of action arose from the Construction Agreement, viz:

12. Defendant should be ordered to pay the just and fair price for the construction of its building in Baguio, considering that the foreign currency crisis that hit the country was manifestly beyond the contemplation of the parties. Hence, a re-negotiation of the contract price would be just and reasonable under the circumstances.

13. Plaintiff's request for price adjustment is based on Article 1267 of the New Civil Code, which states: