

## SECOND DIVISION

[ G.R. NO. 161685, July 24, 2007 ]

**ANG KEK CHEN, PETITIONER, VS. SPOUSES ATTY. ELEAZAR S. CALASAN AND LETICIA B. CALASAN, RESPONDENTS.**

### DECISION

**VELASCO, JR., J.:**

In this Petition for Review on Certiorari under Rule 45 of the 1997 Revised Rules of Court, the distinction between "actual residence" and "domicile" comes once again under review.

#### The Facts

Petitioner Ang Kek Chen resides at 1287-1291 Jose Abad Santos Avenue corner Padre Algue Street, Tondo, 1012 Manila.<sup>[1]</sup> He is not a lawyer, and has filed pleadings with this Court on his own behalf.

Respondent Atty. Eleazar S. Calasan was born in Aparri, Cagayan on September 8, 1947. He has been a registered voter in Aparri, Cagayan since 1969. He owns real property, his ancestral home, which was donated to him by his mother, situated on Quirino Street, Aparri, Cagayan.<sup>[2]</sup> However, respondent Atty. Calasan also has a house and lot in Las Piñas, Metro Manila, which he and his family live in; has a business address at 10/F Manufacturers Building, Plaza Sta. Cruz, 1003 Manila; applied for and received a commission as notary public from the Manila Regional Trial Court (RTC); and secured a Community Tax Certificate in Las Piñas City, Metro Manila.

Respondent Atty. Calasan was the counsel of one Jaime U. Lim, an opponent of petitioner. Petitioner alleged that his residence had been damaged by the corporation of which Jaime U. Lim was president.

While Atty. Calasan was acting as counsel for Jaime Lim, petitioner wrote a letter and filed a counter-affidavit which respondent Atty. Calasan believed maligned him, with copies furnished various people, among them high officials of the Philippine government. Atty. Calasan then filed criminal cases for libel against petitioner in Aparri, Cagayan, among them Crim. Case Nos. 07-1168 and VI-1094, which were dismissed.

Petitioner responded by filing his own administrative cases against respondent Atty. Calasan, among them Administrative Case Nos. 5444 and 6233, alleging serious gross misconduct on the part of Atty. Calasan and praying for his disbarment. It is noted that even among his pleadings in this particular case, even in his final memorandum, he made references to what he believed were betrayals of the attorney's oath by Atty. Calasan, and with repeated calls for Atty. Calasan's

disbarment.

On December 4, 2001, respondents spouses Atty. Eleazar S. Calasan and Leticia B. Calasan filed a complaint for damages with the Aparri, Cagayan RTC against petitioner and his spouse for alleged malicious imputations against Atty. Calasan made by petitioner, and it was docketed as Civil Case No. 08-418.<sup>[3]</sup>

On January 8, 2002, petitioner filed a Motion to Dismiss on the following grounds: (1) that the court had no jurisdiction over the subject matter of the claim; (2) that the venue was improperly laid; (3) that the pleading asserting the claim stated no cause of action; (4) that a condition precedent for filing claim had not been complied with; (5) that the claim was barred by the statute of limitations; and (6) that the claim or demand set forth in plaintiff's pleadings had been abandoned or otherwise extinguished.<sup>[4]</sup>

In the February 26, 2002 Order, the Aparri, Cagayan RTC, Branch 8 dismissed the complaint on the ground that the venue had been improperly laid.<sup>[5]</sup> Respondents fared no better in their Motion for Reconsideration of that dismissal, as the motion was denied in the March 20, 2002 Order.<sup>[6]</sup>

### **The Case in the Court of Appeals**

Respondents brought the matter to the Court of Appeals (CA) via a Petition for Certiorari under Rule 65, dated April 5, 2002.<sup>[7]</sup> This was docketed as CA-G.R. SP No. 70335.

Respondents raised one issue in their petition, thus:

RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION AND IN DISMISSING THE COMPLAINT FOR ALLEGED IMPROPER VENUE AND THERE IS NO OTHER ADEQUATE, PLAIN AND SPEEDY REMEDY IN THE ORDINARY COURSE OF LAW OTHER THAN THIS PETITION.<sup>[8]</sup>

In a Decision promulgated on August 12, 2002, the Special Fifth Division of the CA dismissed the petition for lack of merit.<sup>[9]</sup>

On August 26, 2002, respondents filed their Motion for Reconsideration<sup>[10]</sup> of the CA Decision, which was granted by the CA in its November 21, 2002 Resolution, the dispositive portion of which reads as follows:

**WHEREFORE**, the motion for reconsideration is hereby **GRANTED**. Our decision dated August 12, 2002 is **SET ASIDE** and a new one entered **SETTING ASIDE** the trial court's order dated February 26, 2002 and March 20, 2002. The trial Judge is hereby **ORDERED** to proceed with the trial of Civil Case no. 08-418 with utmost dispatch.

SO ORDERED.<sup>[11]</sup>

Dissatisfied with the result, Ang Kek Chen filed the present petition on March 5, 2004.

## The Issues

Petitioner, who is not represented by counsel, presents the issues in the case as follows:

(A) WHETHER OR NOT, the Petition for Certiorari was **CORRECTLY DISMISSED** by the Honorable Court of Appeals in CA G.R. SP No. 70335 in its decision promulgated on August 12, 2002, **ANNEX "C"** of this Petition, thereby upholding the correct Decision of the respondent Judge that the venue of the out-of-town complaint for libel is improperly laid.

(B) CONSEQUENTLY, WHETHER OR NOT, the decision **ANNEX "C"** of this Petition, was **ERRONEOUSLY REVERSED** by the Honorable Court of Appeals in its resolutions dated November 21, 2004 and January 21, 2004.

(C) WHETHER OR NOT, the Petition for Certiorari filed by the respondents (then petitioners) **can substitute for their LOST APPEAL**.<sup>[12]</sup>

The petition has merit.

This case will be resolved on the core issue—the interpretation and application of the third paragraph of Article 360 of the Revised Penal Code, the portion of which reads:

The criminal and civil action for damages in cases of written defamations as provided for in this chapter, shall be filed simultaneously or separately with the Court of First Instance of the province or city where the libelous article is printed and first published or where any of the offended parties **actually resides** at the time of the commission of the offense x x x (emphasis supplied).

Respondents claim that their actual residence is in Aparri, Cagayan. The trial court made the following findings on the matter:

True, plaintiffs are residents and domiciled in Aparri, Cagayan. In fact, they are registered voters of Aparri, Cagayan. However, they also admit that they have a residential house in Las Piñas and it is in Las Piñas where they stay most of the time due to their profession and occupation. In short, plaintiffs are habitual residents of Las Piñas and not in Aparri, Cagayan. Aparri is plaintiffs' legal residence and place of domicile. However, to the Court's opinion, plaintiffs' actual residence is in Las Piñas, Metro-Manila [sic] as they are habitually residing thereat due to their profession and occupation.<sup>[13]</sup>

When respondents raised this matter to the CA via a petition for certiorari, the findings of the trial court were upheld by the appellate court in its August 12, 2002 Decision, when it said:

Petitioners thus appear to have misread the provisions of Article 360 of the Revised Penal Code, as amended, when they filed their criminal and civil complaints in Aparri, Cagayan. Clearly, the civil and criminal

complaint should be filed in the Regional Trial Court of Manila, where petitioners reside or where the article was first printed or published. But since petitioners opted to choose place of residence, we shall now discussed [sic] where petitioners properly resides [sic]. In procedural law, specifically for purposes of venue it has been held that the residence of a person is his personal, actual or physical habitation or his actual residence or place of abode, which may not necessarily be his legal residence or domicile provided he resides therein with continuity and consistency. Applying this, petitioners clearly were residents of Manila for they have a residential house in Las Piñas where they stay thereat due to their profession and occupation.<sup>[14]</sup>

The CA noted the findings of the other Aparri RTC branches in the dismissals of criminal cases for libel filed by respondents against petitioner to conclude that respondents had their actual residence in Las Piñas.

In Criminal Case No. 07-1168 decided by the Aparri Cagayan RTC, Branch 7, the trial court, despite finding that Atty. Calasan's domicile was in Aparri, Cagayan, dismissed the criminal information against petitioner, stating, thus:

Under the circumstances, therefore, the situation of private complainant does not fall within the conceptual meaning of the term "residence" as explained in the cases mentioned above. His situation is that he owns a house in Aparri and comes home at least once a month. However, his presence in the place of his residence, although consistent, is admittedly not continuous. For this reason, the complainant's stay at his house in Aparri may only be considered as occasional or intermittent. The requirement is that his stay in his place of abode must not only be consistent but also continuous. Therefore, his stay in Aparri is not "residence" for purposes of determining venue in libel cases.<sup>[15]</sup>

In Criminal Case No. VI-1094 decided by the Aparri, Cagayan RTC, Branch 6, the trial court likewise dismissed the information against petitioner, holding that:

The Court does not believe that the offended party is only temporarily residing in Manila for the following reasons: Seventy percent of his cases are cases in Metro Manila; he has his law office in Metro Manila but he has none in Aparri, Cagayan; he and his family reside in Las Pinas [sic] though he has an ancestral house in Aparri, Cagayan. His presence in Aparri is seldom, while he is most of the time in Metro Manila. The offended party, therefore, is actually residing in Las Pinas [sic] and he should have filed the libel case in Las Pinas [sic], Metro Manila.<sup>[16]</sup>

Considering the foregoing findings of these trial courts, as well as the findings of the Aparri, Cagayan RTC, Branch 8 in Civil Case No. 08-418, the CA found that respondents were residents of Las Piñas.

However, upon a Motion for Reconsideration from respondents, the CA set aside its earlier Decision, its findings reading as follows:

We have closely examined the records and we find that petitioners' residence is in Aparri, Cagayan.