

## FIRST DIVISION

[ G.R. NO. 159507, April 19, 2006 ]

**ANICETO G. SALUDO, JR., PETITIONER, VS. AMERICAN EXPRESS INTERNATIONAL, INC., AND/OR IAN T. FISH AND DOMINIC MASCRINAS, RESPONDENTS.**

### D E C I S I O N

**CALLEJO, SR., J.:**

Before the Court is the Petition for Review on *Certiorari* filed by Aniceto G. Saludo, Jr. seeking to reverse and set aside the Decision<sup>[1]</sup> dated May 22, 2003 of the Court of Appeals in CA-G.R. SP No. 69553. The assailed decision directed the Regional Trial Court (RTC) of Maasin City, Southern Leyte, Branch 25 thereof, to vacate and set aside its Orders dated September 10, 2001 and January 2, 2002 in Civil Case No. R-3172, and enjoined the presiding judge<sup>[2]</sup> thereof from conducting further proceedings in said case, except to dismiss the complaint filed therewith on ground of improper venue. The petition also seeks to reverse and set aside the appellate court's Resolution dated August 14, 2003 denying the motion for reconsideration of the assailed decision.

The factual and procedural antecedents are as follows:

Aniceto G. Saludo, Jr. filed a complaint for damages against the American Express International, Inc. (AMEX) and/or its officers Ian T. Fish, Vice-President and Country Manager, and Dominic Mascrinas, Head of Operations, with the RTC of Maasin City, Southern Leyte. The case was raffled to Branch 25 of the said court.

The complaint alleged, *inter alia*, that plaintiff (herein petitioner Saludo) "is a Filipino citizen, of legal age, and a member of the House of Representatives and a resident of Ichon, Macrohon, Southern Leyte, Philippines." On the other hand, defendant (herein respondent AMEX, Inc.) "is a corporation doing business in the Philippines and engaged in providing credit and other credit facilities and allied services with office address at 4th floor, ACE Building, Rada Street, Legaspi Village, Makati City." The other defendants (herein respondents Fish and Mascrinas) are officers of respondent AMEX, and may be served with summons and other court processes at their office address.

The complaint's cause of action stemmed from the alleged wrongful dishonor of petitioner Saludo's AMEX credit card and the supplementary card issued to his daughter. The first dishonor happened when petitioner Saludo's daughter used her supplementary credit card to pay her purchases in the United States some time in April 2000. The second dishonor occurred when petitioner Saludo used his principal credit card to pay his account at the Hotel Okawa in Tokyo, Japan while he was there with other delegates from the Philippines to attend the Congressional Recognition in honor of Mr. Hiroshi Tanaka.

The dishonor of these AMEX credit cards were allegedly unjustified as they resulted from respondents' unilateral act of suspending petitioner Saludo's account for his failure to pay its balance covering the period of March 2000. Petitioner Saludo denied having received the corresponding statement of account. Further, he was allegedly wrongfully charged for late payment in June 2000. Subsequently, his credit card and its supplementary cards were canceled by respondents on July 20, 2000.

Petitioner Saludo claimed that he suffered great inconvenience, wounded feelings, mental anguish, embarrassment, humiliation and besmirched political and professional standing as a result of respondents' acts which were committed in gross and evident bad faith, and in wanton, reckless and oppressive manner. He thus prayed that respondents be adjudged to pay him, jointly and severally, actual, moral and exemplary damages, and attorney's fees.

In their answer, respondents specifically denied the allegations in the complaint. Further, they raised the affirmative defenses of lack of cause of action and improper venue. On the latter, respondents averred that the complaint should be dismissed on the ground that venue was improperly laid because none of the parties was a resident of Leyte. They alleged that respondents were not residents of Southern Leyte. Moreover, notwithstanding the claim in his complaint, petitioner Saludo was not allegedly a resident thereof as evidenced by the fact that his community tax certificate, which was presented when he executed the complaint's verification and certification of non-forum shopping, was issued at Pasay City. To buttress their contention, respondents pointed out that petitioner Saludo's complaint was prepared in Pasay City and signed by a lawyer of the said city. Respondents prayed for the dismissal of the complaint *a quo*.

Thereafter, respondents filed an Opposition to *Ex-Parte* Motion (to Set Case for Pre-Trial) and Motion for Preliminary Hearing (on Affirmative Defense of Improper Venue) to which petitioner Saludo filed his Comments and/or Objections to the Affirmative Defense of Improper Venue. He asserted that any allegation refuting his residency in Southern Leyte was baseless and unfounded considering that he was the congressman of the lone district thereof at the time of the filing of his complaint. He urged the court *a quo* to take judicial notice of this particular fact. As a member of Congress, he possessed all the qualifications prescribed by the Constitution including that of being a resident of his district. He was also a member of the Integrated Bar of the Philippines-Southern Leyte Chapter, and has been such ever since his admission to the Bar. His community tax certificate was issued at Pasay City only because he has an office thereat and the office messenger obtained the same in the said city. In any event, the community tax certificate is not determinative of one's residence.

In the Order dated September 10, 2001, the court *a quo* denied the affirmative defenses interposed by respondents. It found the allegations of the complaint sufficient to constitute a cause of action against respondents. The court *a quo* likewise denied respondents' affirmative defense that venue was improperly laid. It reasoned, thus:

x x x [T]he fact alone that the plaintiff at the time he filed the complaint was and still is, the incumbent Congressman of the Lone District of Southern Leyte with residence at Ichon, Macrohon, Southern Leyte, is

enough to dispell any and all doubts about his actual residence. As a high-ranking government official of the province, his residence there can be taken judicial notice of. As such his personal, actual and physical habitation or his actual residence or place of abode can never be in some other place but in Ichon, Macrohon, Southern Leyte. It is correctly stated by the plaintiff, citing the case of *Core v. Core*, 100 Phil. 321 that, "residence, for purposes of fixing venue of an action, is synonymous with domicile. This is defined as the permanent home, the place to which, whenever absent for business or pleasure, one intends to return, and depends on the facts and circumstances, in the sense that they disclose intent. A person can have but one domicile at a time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. Venue could be at place of his residence. (*Masa v. Mison*, 200 SCRA 715 [1991])[3]

Respondents sought the reconsideration thereof but the court *a quo* denied the same in the Order dated January 2, 2002. They then filed with the appellate court a petition for *certiorari* and prohibition alleging grave abuse of discretion on the part of the presiding judge of the court *a quo* in issuing the September 10, 2001 and January 2, 2002 Orders. Upon respondents' posting of a bond, the appellate court issued on March 14, 2002 a temporary restraining order which enjoined the presiding judge of the court *a quo* from conducting further proceedings in Civil Case No. R-3172.

On May 22, 2003, the appellate court rendered the assailed decision granting respondents' petition for *certiorari* as it found that venue was improperly laid. It directed the court *a quo* to vacate and set aside its Orders dated September 10, 2001 and January 2, 2002, and enjoined the presiding judge thereof from further proceeding in the case, except to dismiss the complaint.

The appellate court explained that the action filed by petitioner Saludo against respondents is governed by Section 2, Rule 4 of the Rules of Court. The said rule on venue of personal actions basically provides that personal actions may be commenced and tried where plaintiff or any of the principal plaintiffs resides, or where defendant or any of the principal defendants resides, at the election of plaintiff.

Venue was improperly laid in the court *a quo*, according to the appellate court, because not one of the parties was a resident of Southern Leyte. Specifically, it declared that petitioner Saludo was not a resident thereof. The appellate court pronounced that, for purposes of venue, 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.[4]

The appellate court quoted the following discussion in *Koh v. Court of Appeals*[5] where the Court distinguished the terms "residence" and "domicile" in this wise:

x x x [T]he term *domicile* is not exactly synonymous in legal contemplation with the term *residence*, for it is [an] established principle in Conflict of Laws that *domicile* refers to the relatively more permanent abode of a person while *residence* applies to a temporary stay of a

person in a given place. In fact, this distinction is very well emphasized in those cases where the Domiciliary Theory must necessarily supplant the Nationality Theory in cases involving stateless persons.

x x x x

*"There is a difference between domicile and residence. Residence is used to indicate a place of abode, whether permanent or temporary; domicile denotes a fixed permanent residence to which when absent, one has the intention of returning. A man may have a residence in one place and a domicile in another. Residence is not domicile, but domicile is residence coupled with intention to remain for an unlimited time. A man can have but one domicile for one and the same purpose at any time, but he may have numerous places of residence. His place of residence generally is his place of domicile, but is not by any means, necessarily so since no length of residence without intention of remaining will constitute domicile."*<sup>[6]</sup>  
(Italicized for emphasis)

In holding that petitioner Saludo is not a resident of Maasin City, Southern Leyte, the appellate court referred to his community tax certificate, as indicated in his complaint's verification and certification of non-forum shopping, which was issued at Pasay City. Similarly, it referred to the same community tax certificate, as indicated in his complaint for deportation filed against respondents Fish and Mascrinas. Under Republic Act No. 7160,<sup>[7]</sup> the community tax certificate shall be paid in the place of residence of the individual, or in the place where the principal office of the juridical entity is located.<sup>[8]</sup> It also pointed out that petitioner Saludo's law office, which was also representing him in the present case, is in Pasay City. The foregoing circumstances were considered by the appellate court as judicial admissions of petitioner Saludo which are conclusive upon him and no longer required proof.

The appellate court chided the court *a quo* for stating that as incumbent congressman of the lone district of Southern Leyte, judicial notice could be taken of the fact of petitioner Saludo's residence thereat. No evidence had yet been adduced that petitioner Saludo was then the congressman of Southern Leyte and actual resident of Ichon, Macrohon of the said province.

The appellate court held that, based on his complaint, petitioner Saludo was actually residing in Pasay City. It faulted him for filing his complaint with the court *a quo* when the said venue is inconvenient to the parties to the case. It opined that under the rules, the possible choices of venue are Pasay City or Makati City, or any place in the National Capital Judicial Region, at the option of petitioner Saludo.

It stressed that while the choice of venue is given to plaintiff, said choice is not left to his caprice and cannot deprive a defendant of the rights conferred upon him by the Rules of Court.<sup>[9]</sup> Further, fundamental in the law governing venue of actions that the situs for bringing real and personal civil actions is fixed by the rules to attain the greatest possible convenience to the party litigants by taking into consideration the maximum accessibility to them - *i.e.*, to both plaintiff and defendant, not only to one or the other - of the courts of justice.<sup>[10]</sup>

The appellate court concluded that the court *a quo* should have given due course to

respondents' affirmative defense of improper venue in order to avoid any suspicion that petitioner Saludo's motive in filing his complaint with the court *a quo* was only to vex and unduly inconvenience respondents or even to wield influence in the outcome of the case, petitioner Saludo being a powerful and influential figure in the said province. The latter circumstance could be regarded as a "specie of forum shopping" akin to that in *Investors Finance Corp. v. Ebarle*<sup>[11]</sup> where the Court mentioned that the filing of the civil action before the court in Pagadian City "was a specie of forum shopping" considering that plaintiff therein was an influential person in the locality.

The decretal portion of the assailed Decision dated May 22, 2003 of the appellate court reads:

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the challenged orders must be, as they hereby are, VACATED and SET ASIDE and the respondent judge, or any one acting in his place or stead, is instructed and enjoined to desist from further proceeding in the case, except to dismiss it. The temporary restraining order earlier issued is hereby converted into a writ of preliminary injunction, upon the posting this time by petitioners [herein respondents], within five (5) days from receipt of this decision, of a bond in the amount of Five Million Pesos (P5,000,000.00), to answer for all damages that private respondent [herein petitioner] may sustain by reason of the issuance of such injunction should the Court finally decide that petitioners are not entitled thereto. Private respondent, if he so minded, may refile his case for damages before the Regional Trial Court of Makati City or Pasay City, or any of the Regional Trial Courts of the National Capital Judicial Region. Without costs.

SO ORDERED.<sup>[12]</sup>

Petitioner Saludo sought the reconsideration of the said decision but the appellate court, in the Resolution dated August 14, 2003, denied his motion for reconsideration. Hence, he filed the instant petition for review with the Court alleging that:

The Court of Appeals, (Special Fourth Division), in promulgating the afore-mentioned Decision and Resolution, has decided a question of substance in a way probably not in accord with law or with applicable decisions of this Honorable Court.

(a) the Court of Appeals erred in not taking judicial notice of the undisputed fact that herein petitioner is the incumbent congressman of the lone district of Southern Leyte and as such, he is a residence (sic) of said district;

(b) the Court of Appeals erred in dismissing the complaint on the basis of improper venue due to the alleged judicial admission of herein petitioner;

(c) the Court of Appeals in dismissing the complaint ignored applicable decisions of this Honorable Court; and