

FIRST DIVISION

[G.R. NO. 165500, August 30, 2006]

PHILIPPINE BANK OF COMMUNICATIONS AND ROMEO G. DELA ROSA, PETITIONERS, VS. ELENITA B. TRAZO, RESPONDENT.

D E C I S I O N

CHICO-NAZARIO, J.:

Petitioners are asking Us to reverse, in this Petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, the Decision^[1] of the Court of Appeals dated 25 March 2004 and its Resolution^[2] dated 23 September 2004 denying petitioners' Motion for Reconsideration.

The facts of the case are as follows:

In order to facilitate the payment of her salaries and other monetary benefits from her employer, petitioner Philippine Bank of Communications (PBCOM^[3]), respondent Elenita B. Trazo opened a payroll account with China Banking Corporation (CBC) under Current Account No. 101-003921-9.

On or about 29 December 1997, petitioner Romeo G. dela Rosa, PBCOM assistant vice-president, instructed CBC to credit all accounts under its payroll with the medical and clothing subsidy for the year 1998. Accordingly, respondent Trazo's current account was credited on that date with the amount of ₱7,000.00 for such annual subsidy.

On 31 December 1997, respondent Trazo, then project manager of the information technology and management group, resigned from PBCOM.

Since respondent Trazo severed her employment with PBCOM effective 1 January 1998 and was, therefore, no longer entitled to the medical and clothing subsidy for the year 1998, petitioner dela Rosa wrote William Lim, CBC senior assistant vice-president, on 5 January 1997 authorizing/directing CBC/Lim to debit the sum of ₱7,000.00 from respondent Trazo's current account. Acting upon such authority/directive, CBC/Lim debited said amount from respondent Trazo's account on the same date.

Meanwhile, respondent Trazo drew checks against her current account in favor of Bliss Development Corporation (BDC) and the House of Sara Lee Phils., Inc. However, the checks were dishonored by CBC due to insufficiency of funds, which was occasioned by the ₱7,000.00 debit from her current account.

Availing that PBCOM, through dela Rosa, had no authority to unilaterally order the debiting of her current account and that CBC, through Lim, made such debit without her knowledge and consent resulting in the dishonor of her checks, respondent

Trazo instituted an action for damages against PBCOM, dela Rosa, CBC, and Lim before the Regional Trial Court (RTC) of Quezon City (Branch 79).

Summons was served on CBC and Lim on 19 May 1998 and on petitioners herein, PBCOM and dela Rosa, on 27 May 1998. On 27 May 1998 and 11 June 1998, or before the expiration of the reglementary period for filing their answers, CBC and Lim, and PBCOM and dela Rosa, respectively, filed motions for 15-day extension of time.

On 8 June 1998, respondent Trazo filed a Motion to Declare Defendants China Banking Corporation and William Lim in Default and Opposition to Motion for Extension of Time to File Answer and/or Responsive Pleading. On 15 June 1998, respondent Trazo filed a Motion to Declare Defendants Philippine Bank of Communication and Romeo G. dela Rosa in Default.

On 16 June 1998, CBC and Lim filed a Motion to Dismiss the case on the ground of improper venue. On 24 June 1998, PBCOM and dela Rosa filed their own Motion to Dismiss on the ground that the complaint failed to state a cause of action.

On 7 October 1998, the lower court issued an Omnibus Order granting the motions to dismiss and declaring the motions to declare defendants in default moot and academic. The dispositive portion of the Omnibus Order is as follows:

PREMISES CONSIDERED, the case against defendants China Bank and William Lim is DISMISSED on the ground of improper venue. The case against defendants Philippine Bank of Communications and Romeo G. dela Rosa is DISMISSED for lack of cause of action.^[4]

Respondent Trazo filed with the trial court a Notice of Appeal. In the assailed Decision, the Court of Appeals ruled in favor of respondent Trazo, disposing of the case in the following manner:

WHEREFORE, the omnibus order dated October 7, 1998 of the Regional Trial Court of Quezon City (Branch 79) is REVERSED and SET ASIDE and the complaint REINSTATED. Appellant is given ten (10) days from notice of finality of this decision within which to amend the complaint.^[5]

Petitioners filed their Motion for Reconsideration on 14 April 2004, while CBC and Lim filed their Motion for Reconsideration on 19 April 2004. On 23 September 2004, the Court of Appeals issued the assailed Resolution wherein both motions for reconsideration were denied for lack of merit.

Hence, the instant Petition, where petitioners PBCOM and Trazo bring before us the following issues:

A.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE COMPLAINT STATED A CAUSE OF ACTION FOR DAMAGES AGAINST PETITIONERS ARISING OUT OF THE ALLEGED UNLAWFUL DEBITING OF RESPONDENT'S CHINABANK ACCOUNT, NOTWITHSTANDING THAT IT WAS CHINABANK WHICH DEBITED

THE ACCOUNT, NOT PETITIONERS.

B.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN HOLDING THAT THE COMPLAINT PLEADED A CAUSE OF ACTION FOR ABUSE OF RIGHTS AGAINST PETITIONERS.

C.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN ORDERING THE AMENDMENT OF THE COMPLAINT DESPITE THE COMPLAINT'S ABSOLUTE FAILURE TO STATE A CAUSE OF ACTION AGAINST PETITIONERS.

D.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE VENUE CLAUSE IN THE APPLICATION FOR NEW CURRENT ACCOUNTS IS NOT EXCLUSIVE.^[6]

Only CBC, and not petitionersPBCOM and dela Rosa, can movefor dismissal on the ground of improper venue.

The Application for New Current Accounts, which embodies the terms and conditions of respondent Trazo's relationship with CBC, contains a stipulation on venue, to wit:

In case of litigation hereunder, venue shall be in the City Court or Court of First Instance of Manila as the case may be for determination of any and all questions arising thereunder.^[7]

The RTC of Quezon City dismissed the complaint against CBC and Lim based on this stipulation, but the Court of Appeals reversed said dismissal. According to the Court of Appeals, absent any qualifying or restrictive words, a stipulation on venue should be considered merely as an agreement on an additional forum, and not to be considered as limiting venue to the specified place.^[8]

Before proceeding any further, it bears to point out that among the multiple defendants in the case filed by respondent Trazo, only CBC and its officer Lim can assert the alleged impropriety of venue since they are privy to and covered by the contract containing the venue stipulation. Indeed, the dispositive portion of the RTC decision shows that the dismissal on the ground of improper venue was effective only as against CBC and Lim. As CBC and Lim did not appeal the decision of the Court of Appeals reversing the RTC ruling, such decision has become final and executory as regards its disposition on the issue regarding venue.

Nevertheless, We agree with the Court of Appeals that it was incorrect for the RTC to dismiss the complaint on the ground of improper venue. The parties must be able

to show that the stipulation is *exclusive*. Thus, sans words expressing the parties' intention to restrict the filing of a suit in a particular place, courts will allow the filing of a case in any of the venues prescribed by law or stipulated by the parties, as long as the jurisdictional requirements are followed.^[9] The subject clause contains no qualifying nor restrictive words, such as "must," or "exclusively," as would indicate the parties' intention "mandatorily to restrict the venue of actions to the courts of (Manila) only."^[10] In the 8 December 2000 case of *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*,^[11] where the venue stipulation contained the word "shall,"^[12] we held that the stipulations of the parties "lack qualifying or restrictive words to indicate the exclusivity of the agreed forum,"^[13] and therefore "the stipulated place is considered only as an additional, not a limiting venue."^[14] Consequently, the dismissal by the RTC of the complaint against CBC and Lim on ground of improper venue is erroneous, and was correctly reversed by the Court of Appeals.

**Respondent Trazo's
complaint contains
a cause of action
against petitioners
PBCOM and dela
Rosa.**

As discussed above, the RTC dismissed the complaint, insofar as it operates against CBC and Lim, on the ground of improper venue. In the same Omnibus Order, the RTC also dismissed the same complaint on the ground of failure to state a cause of action, this time, insofar as the complaint operates against petitioners PBCOM and dela Rosa. The Court of Appeals, in reversing the Order of the RTC dismissing the complaint on the ground of failure to state a cause of action, held:

Par. 13 of the complaint recites appellant's alleged cause of action against [PBCOM and dela Rosa]. It reads:

"13. Upon further personal inquiry with [PBCOM], [respondent Trazo] found out that on January 5, 1998 [petitioner] ROMEO G. DE LA ROSA, without [respondent Trazo's] knowledge, consent and approval, wrote a letter and authorized/directed x x x CHINABANK and WILLIAM LIM `to debit the account of Elenita Trazo under C/A #101-003921-9 in the amount of PESOS: SEVEN THOUSAND PESOS ONLY - ₱7,000.00 representing her medical and clothing subsidy for the year 1998." He even acknowledged and admitted that [respondent Trazo] resigned from PBCom effective December 31, 1997. He further stated that CHINABANK make the `Manager's check payable to Philippine Bank of Communications.' x x x."

Crucial to appellant's action against [PBCOM and dela Rosa] is the issue of whether the latter had the right to authorize/direct [CBC and Lim] to debit the amount of ₱7,000.00 from appellant's current account and, if so, whether appellant was entitled to notice of such authority/directive.

In authorizing/directing [CBC and Lim] to debit appellant's current account, [PBCOM and dela Rosa] had, in effect, sought to recover,

without resorting to a court action, an amount erroneously credited to her. And because appellant was not given the courtesy of a notice of such authority/directive, she was lulled into the belief that her funds at CBC were sufficient to cover the checks she was issuing.

Nevertheless, the lower court ruled that the averment in par. 13 of the complaint is insufficient to make out a cause of action against [PBCOM and dela Rosa] on the theory that the "debit (of) the amount of P7,000.00 from the account of [respondent Trazo] x x x cannot be attributed as the fault of (PBCOM) since the fiduciary relationship exists only between (CBC) and [respondent Trazo] as its depositor and the primary responsibility whether to deposit or not lies with (CBC) alone."

However, the lower court did not consider whether the act of authorizing/directing CBC/Lim to debit appellant's current account without giving notice to her constitutes a cause of action against [PBCOM and dela Rosa], for abuse of rights.

The modern tendency is to depart from the classical and traditional theory and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit (*Sea Commercial Company, Inc. vs. Court of Appeals*, 319 SCRA 210). But even supposing that the asserted act of [PBCOM and dela Rosa] is insufficient to make out a case of abuse of rights, the lower court could have simply ordered appellant to amend the complaint. Thus, Sec. 1, Rule 10, in relation to Sec. 3, Rule 16, *id.*, allows amendment of pleadings before a responsive pleading is served.

Amendment of the complaint, by way of supplementing and amplifying facts as would carve out a clear abuse of rights situation, would prevent multiplicity of suits. This is so because of Our ruling that the dismissal of the complaint against [CBC and Lim] on ground of improper venue is erroneous, with the effect that the complaint against them is reinstated. However, affirmance of the dismissal of the complaint against [PBCOM and dela Rosa] anchored on failure to state a cause of action would trigger the filing of a new action against the latter, thereby spawning two suits, *i.e.*, the instant action and the new one.

Amendment, not dismissal, of the complaint is proper to avoid multiplicity of suits (*Eugenio, Sr. vs. Velez*, 185 SCRA 425). The policy in this jurisdiction is that amendment of pleadings is favored and liberally allowed in the interest of substantial justice. Amendment of the complaint may be allowed even if an order for its dismissal has been issued provided that the motion to amend is filed before the order of dismissal acquired finality (*Tirona vs. Alejo*, 367 SCRA 17). Rules of Procedure, after all, are but tools designed to facilitate the attainment of justice (*Valenzuela vs. Court of Appeals*, 363 SCRA 779).^[15]

Petitioners argue that the afore-quoted paragraph 13 shows that PBCOM and dela Rosa merely requested CBC to debit the account of respondent Trazo, and that nothing in said paragraph shows that PBCOM and dela Rosa were actually responsible for the alleged unlawful debiting of respondent's account.^[16]