

## NINETEENTH DIVISION

[ CA-G.R. CV. No. 04592, July 31, 2014 ]

**ITALKARAT 18, INC., PLAINTIFF-APPELLANT, VS. AIRFREIGHT  
2100, INC., REPRESENTED BY ITS PRESIDENT OR GENERAL  
MANAGER, DEFENDANT-APPELLEE.**

### D E C I S I O N

**LAGURA-YAP, J.:**

The present appeal seeks to nullify the May 30, 2011 *Order*<sup>[1]</sup> issued by Regional Trial Court, Branch 54, Lapu-Lapu City, (RTC) in Civil Case No. R-LLP-10-05686-CV for *Damages, Costs and Attorney's Fees*.

### THE ANTECEDENTS

On November 10, 2010, appellant filed the *Complaint*<sup>[2]</sup> against appellee. It alleged that appellee failed to deliver its (appellant) shipment, tagged with Air Waybill No. 300012376273, to its consignee on time.

On January 28, 2011, appellee filed the *Motion to Dismiss*,<sup>[3]</sup> alleging, among others, that venue was improperly laid. It argued that appellant should have filed the case in Parañaque, not in Lapu-lapu City pursuant to the provision in the air waybill which appellant supposedly signed. It reads:

MANDATORY LAW. These Conditions of Contract are covered by Philippine Laws. Any action that may arise out of the contract shall be filed only in the Courts of Parañaque alone.

On May 30, 2011, the RTC rendered the assailed *Order*, the dispositive portion of which reads:

WHEREFORE, considering the foregoing, the Court hereby GRANTS the *Motion to Dismiss* filed by defendant and orders this case DISMISSED on the ground of improper venue.

Furnish the parties, through counsels, Atty. Gacutno and Atty. Seno, each with a copy of this Order.

SO ORDERED.

On July 22, 2011, appellant filed the *Omnibus Motion for Reconsideration (to the Order dated [May 30, 2011]) and the Presentation of the Original Airwaybill No. 300012376273*. Appellant prayed, among others, that the parties present their respective copies of the waybill, and in the event that the back portion of its copy is blank, the RTC should reinstate the case.

On July 29, 2011, the RTC conducted a hearing. Only appellant's counsel appeared. The RTC directed appellee to file its comment to appellant's motion for reconsideration.<sup>[4]</sup>

An exchange of pleadings soon ensued.

On July 24, 2012, the RTC issued the *Order*,<sup>[5]</sup> denying appellant's motion for reconsideration. The RTC held:

After a careful perusal of the arguments adduced in plaintiffs Motion for Reconsideration on the Order of the Court dated 30 May 2011, dismissing the case for improper venue, the Court finds no cogent reason why it should reconsider the said order. The arguments adduced in the motion are a mere rehash of the arguments which were already passed upon by the Court.

Accordingly, plaintiffs' motion for reconsideration is DENIED for lack of merit.

Hence, this appeal.<sup>[6]</sup>

## **ISSUE**

### **WHETHER VENUE WAS IMPROPERLY LAID.**

#### **THE ARGUMENTS**

Appellant argues that it cannot be bound by the provision of the air waybill because its copy does not have a back portion containing the conditions of the contract. In fact, during the July 29, 2011 hearing, the RTC noted that the back portion of the waybill is blank.

Appellee counters that it is impossible for appellant to be unaware of the terms and conditions of the contract at the back of the waybill, because its representative was made to sign four copies of it with prints at the back. Appellee also contends that appellant admitted the existence of the waybill when it referred to the document in its complaint. Further, appellee asserts that the RTC was correct when it held that:

x x x The front page of the airway bill which contains the details of the transaction was signed a representative of the plaintiff. Right below the space allotted for the sender's signature was printed, "*by signing on this document, I agree to the terms and conditions at the back of this non-negotiable waybill.*" Contrary to plaintiff's claim that there was no showing that he was furnished a copy of the conditions of the contract, a reference to the back part of the waybill and the contents thereof was made, and signing the waybill was constructive notice of and assent to the conditions of the contract printed at the back of the document.

Finally, appellee contends that even if the case was filed not in Parañaque, venue was still not properly laid. Appellee avers that appellant should have filed the case in Cebu City (not Lapu-Lapu), because appellant is residing thereat as shown in its Article of Incorporation. Venue for personal actions shall either be the place of

appellant's residence in Cebu City or that of appellee in Parañaque.

### THE COURT'S RULING

The appeal is **MERITORIOUS**.

The Rules of Court provide that parties to an action may agree in writing on the venue on which an action should be brought. However, a mere stipulation on the venue of an action is not enough to preclude parties from bringing a case in other venues. The parties must be able to show that such stipulation is exclusive. Thus, absent words that show the parties' intention to restrict the filing of a suit in a particular place, courts will allow the filing of a case in any venue, as long as jurisdictional requirements are followed. Venue stipulations in a contract, while considered valid and enforceable, do not as a rule supersede the general rule set forth in Rule 4 of the Revised Rules of Court. In the absence of qualifying or restrictive words, they should be considered merely as an agreement on additional forum, not as limiting venue to the specified place.<sup>[7]</sup>

In this case, appellee contends that the waybill limited the venue exclusively to Parañaque because of the stipulation at the back portion thereof which states: "*any action that may arise out of the contract shall be filed only in the Courts of Parañaque alone.*" To prove this however, appellee presented before the RTC only a plain copy of the waybill.

This is fatal.

The best evidence rule as encapsulated in Rule 130, Section 3,<sup>[8]</sup> states that when the subject of inquiry is the *contents* of a document, the best evidence is the *original document* itself and no other evidence (such as a reproduction, photocopy or oral evidence) is admissible as a general rule. The original is preferred because it reduces the chance of undetected tampering with the document.<sup>[9]</sup>

In this case, the contents of the waybill - the provision on venue - is the subject of the inquiry. Appellant vigorously asserts that it is absent in its copy of the waybill. This is denied by the appellee. Appellee, being the movant, should have presented the original waybill. He who alleges a fact has the burden of proving it.<sup>[10]</sup> The plain copy of the waybill it attached in its motion to dismiss is unworthy of any probative value, being inadmissible in evidence.

Appellee contends that by invoking and basing its cause of action on Air Waybill No. 300012376273, appellant had judicially admitted the completeness, existence and enforceability thereof.

We do not agree. If at all, the admission refers only to the completeness, existence and enforceability of appellant's **own** waybill, which, according to appellant, does not contain a back portion, precisely because, appellant dispute the waybill of appellee. It appears from the allegations of the parties that two waybills exist, appellant's copy which does not contain the conditions of the contract, and that of appellee's where the conditions are printed at the back portion. Certainly, appellant cannot be said to admit the existence of appellee's waybill, because it is the very thing that it disputes.