SUPREME COURT
SECOND DIVISION

SWEET LINE, INC.,
***Petitioner*,**

-versus-

G.R. No. L-37750
May 19, 1978

HON. BERNARDO TEVES, Presiding Judge, CFI of Misamis Oriental, Branch VII, LEOVIGILDO TANDOG, JR., and ROGELIO TIRO,
***Respondents*.**
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D E C I S I O N

SANTOS, *J.*:

This is an Original Action for Prohibition with Preliminary Injunction filed October 3, 1973 to restrain respondent Judge from proceeding further with Civil Case No. 4091, entitled "Leovigildo D. Tandog, Jr. and Rogelio Tiro vs. Sweet Lines, Inc." after he denied petitioner's Motion to Dismiss the complaint, and the Motion for Reconsideration of said order.[1]

Briefly, the facts of record follow. Private respondents Atty. Leovigildo Tandog and Rogelio Tiro, a contractor by professions, bought tickets Nos. 0011736 and 011737 for Voyage 90 on December

31, 1971 at the branch office of petitioner, a shipping company transporting inter-island passengers and cargoes, at Cagayan de Oro City. Respondents were to board petitioner's vessel, M/S "Sweet Hope" bound for Tagbilaran City via the port of Cebu. Upon learning that the vessel was not proceeding to Bohol, since many passengers were bound for Surigao, private respondents per advice, went to the branch office for proper relocation to M/S "Sweet Town". Because the said vessel was already filed to capacity, they were forced to agree "to hide at the cargo section to avoid inspection of the officers of the Philippine Coastguard." Private respondents alleged that they were, during the trip," "exposed to the scorching heat of the sun and the dust coming from the ship's cargo of corn grits," and that the tickets they bought at Cagayan de Oro City for Tagbilaran were not honored and they were constrained to pay for other tickets. In view thereof, private respondents sued petitioner for damages and for breach of contract of carriage in the alleged sum of P110,000.00 before respondents Court of First Instance of Misamis Oriental.[2]

Petitioner moved to dismiss the complaint on the ground of improper venue. This motion was premised on the condition printed at the back of the tickets, i.e., Condition No. 14, which reads:

> "14. It is hereby agreed and understood that any and all actions arising out of the conditions and provisions of this ticket, irrespective of where it is issued, shall be filed in the competent courts in the City of Cebu."[3]

The motion was denied by the trial court.[4] Petitioner moved to reconsider the order of denial, but to no avail.[5] Hence, this instant petition for prohibition with preliminary injunction, alleging that the respondent judge had departed from the "accepted and usual course of judicial proceeding" and "had acted without or in excess or in error of his jurisdiction or in gross abuse of discretion."[6]

In Our resolution of November 20, 1973, We restrained respondent Judge from proceeding further with the case and required respondents to comment.[7] On January 18, 1974, We gave due course to the petition and required respondents to answer.[8] Thereafter, the parties submitted their respective memoranda in support of their respective contentions.[9]

Presented thus for Our resolution is a question which, to all appearances, is one of first impression, to wit — Is Condition No. 14 printed at the back of the petitioner's passage tickets purchased by private respondents, which limits the venue of actions arising from the contract of carriage to the Court of First Instance of Cebu, valid and enforceable? Otherwise stated, may a common carrier engaged in inter-island shipping stipulate thru a condition printed at the back of passage tickets to its vessels that any and all actions arising out of the contract of carriage should be filed only in a particular province or city, in this case the City of Cebu, to the exclusion of all others?

Petitioner contends that Condition No. 14 is valid and enforceable, since private respondents acceded to it when they purchased passage tickets at its Cagayan de Oro branch office and took its vessel M/S "Sweet Town" for passage to Tagbilaran, Bohol; that the condition fixing the venue of actions in the City of Cebu is proper since venue may be validly waived, citing cases;[10] that is an effective waiver of venue, valid and binding as such, since it is printed in bold and capital letters and not in fine print and merely assigns the place where the action arising from the contract is instituted, likewise citing cases;[11] and that Condition No. 14 is unequivocal and mandatory, the words and phrases "any and all", "irrespective of where it is issued," and "shall" leave no doubt that the intention of Condition No. 14 is to fix the venue in the City of Cebu, to the exclusion of all other places; that the orders of the respondent Judge are an unwarranted departure from established jurisprudence governing the case, and that he acted without or in excess of his jurisdiction in issuing the orders complained of.[12]

On the other band, private respondents claim that Condition No. 14 is not valid; that the same is not an essential element of the contract of carriage, being in itself a different agreement which requires the mutual consent of the parties to it; that they had no say in its preparation, the existence of which they could not refuse, hence, they had no choice but to pay for the tickets and to avail of petitioner's shipping facilities out of necessity; that the carrier "has been exacting too much from the public by inserting impositions in the passage tickets too burdensome to bear;" that the condition which was printed in fine letters is an imposition on the riding public and does not bind

respondents, citing cases;[13] that while venue of actions may be transferred from one province to another, such arrangement requires the "written agreement of the parties", not to be imposed unilaterally; and that assuming that the condition is valid, it is not exclusive and does not, therefore, exclude the filing of the action in Misamis Oriental.[14]

There is no question that there was a valid contract of carriage entered into by petitioner and private respondents and that the passage tickets, upon which the latter based their complaint, are the best evidence thereof. All the essential elements of a valid contract, i.e., consent, cause or consideration and object, are present. As held in Peralta de Guerrero, et al. vs. Madrigal Shipping Co., Inc.[15]

> "It is a matter of common knowledge that whenever a passenger boards a ship for transportation from one place to another he is issued a ticket by the shipper which has all the elements of a written contract, Namely: (1) the consent of the contracting parties manifested by the fact that the passenger boards the ship and the shipper consents or accepts him in the ship for transportation; (2) cause or consideration which is the fare paid by the passenger as stated in the ticket; (3) object, which is the transportation of the passenger from the place of departure to the place of destination which are stated in the ticket."

It should be borne in mind, however, that with respect to the fourteen (14) conditions — one of which is "Condition No. 14" which is in issue in this case — printed at the back of the passage tickets, these are commonly known as "contracts of adhesion," the validly and/or enforceability of which will have to be determined by the peculiar circumstances obtaining in each case and the nature of the conditions or terms sought to be enforced. For, "(W)hile generally, stipulations in a contract come about after deliberate drafting by the parties thereto, there are certain contracts almost all the provisions of which have been drafted only by one party, usually a corporation. Such contracts are called contracts of adhesion, because the only participation of the party is the signing of his signature or his 'adhesion' thereto. Insurance contracts, bills of lading, contracts of sale of lots on the installment plan fall into this category."[16]

By the peculiar circumstances under which contracts of adhesion are entered into — namely, that it is drafted only by one party, usually the corporation, and is sought to be accepted or adhered to by the other party, in this instance the passengers, private respondents, who cannot change the same and who are thus made to adhere thereto on the "take it or leave it" basis - certain guidelines in the determination of their validity and/or enforceability have been formulated in order to insure that justice and fair play characterize the relationship of the contracting parties. Thus, this Court speaking through Justice J.B.L. Reyes in Qua Chee Gan vs. Law Union and Rock Insurance Co.,[17] and later through Justice Fernando in Fieldman Insurance vs. Vargas,[18] held —

> "The courts cannot ignore that nowadays, monopolies, cartels and concentration of capital, endowed with overwhelming economic power, manage to impose upon parties dealing with them cunningly prepared 'agreements that the weaker party may not change one whit, his participation in the 'agreement' being reduced to the alternative 'to take it or leave it,' labelled since Raymond Saleilles 'contracts by adherence' (contracts d' adhesion) in contrast to those entered into by parties bargaining on an equal footing. Such contracts (of which policies of insurance and international bill of lading are prime examples) obviously call for greater strictness and vigilance on the part of the courts of justice with a view to protecting the weaker party from abuses and imposition, and prevent their becoming traps for the unwary."

To the same effect and import, and, in recognition of the peculiar character of contracts of this kind, the protection of the disadvantaged is expressly enjoined by the New Civil Code —

> "In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, is ignorance, indigence, mental weakness, tender age and other handicap, the courts must be vigilant for his protection."[19]

Considered in the light of the foregoing norms and in the context of circumstances prevailing in the inter-island shipping industry in the country today, We find and hold that Condition No. 14 printed at the

back of the passage tickets should be held as void and unenforceable for the following reasons — first, under circumstances obtaining in the inter-island shipping industry, it is not just and fair to bind passengers to the terms of the conditions printed at the back of the passage tickets, on which Condition No. 14 is printed in fine letters, and second, Condition No. 14 subverts the public policy on transfer of venue of proceedings of this nature, since the same will prejudice rights and interests of innumerable passengers in different parts of the country who, under Condition No. 14, will have to file suits against petitioner only in the City of Cebu.

> 1. It is a matter of public knowledge, of which We can take judicial notice, that there is a dearth of and acute shortage in inter-island vessels plying between the country's several islands, and the facilities they offer leave much to be desired. Thus, even under ordinary circumstances, the piers are congested with passengers and their cargo waiting to be transported, The conditions are even worse at peak and/or the rainy seasons, when passengers literally scramble to secure whatever accommodations may be availed of, even through circuitous routes, and/or at the risk of their safety — their immediate concern, for the moment, being to be able to board vessels with the hope of reaching their destinations. The schedules are — as often as not if not more so — delayed or altered. This was precisely the experience of private respondents when they were relocated to M/S "Sweet Town" from M/S "Sweet Hope" and then allegedly "exposed to the scorching heat of the sun and the dust coming from the ship's cargo of corn grits," because even the latter vessel was filled to capacity.
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> Under these circumstances, it is hardly just and proper to expect the passengers to examine their tickets received from crowded/congested counters, more often than not during rush hours, for conditions that may be printed thereon, much less charge them with having consented to the conditioner so printed, especially if there are a number of such conditions in fine print, as in this case.[20]

Again, it should be noted that Condition No. 14 was prepared solely at the instance of the petitioner; respondents had no say in its preparation. Neither did the latter have the opportunity to take the same into account prior to the purchase of their tickets. For, unlike the small print provisions of insurance contracts — the common example of contracts of adherence — which are entered into by the insured in full awareness of said conditions, since the insured is afforded the opportunity to examine and consider the same, passengers of inter-island vessels do not have the same chance, since their alleged adhesion is presumed only from the fact that they purchased the passage tickets.

It should also be stressed that shipping companies are franchise holders of certificates of public convenience and, therefore, possess a virtual monopoly over the business of transporting passengers between the ports covered by their franchise. This being so, shipping companies, like petitioner, engaged in inter-island shipping, have a virtual monopoly of the business of transporting passengers and may thus dictate their terms of passage, leaving passengers with no choice but to buy their tickets and avail of their vessels and facilities. Finally, judicial notice may be taken of the fact that the bulk of those who board these inter-island vessels come from the low-income groups and are less literate, and who have little or no choice but to avail of petitioner's vessels.

2. Condition No. 14 is subversive of public policy on transfers of venue of actions. For, although venue may be changed or transferred from one province to another by agreement of the parties in writing pursuant to Rule 4, Section 3, of the Rules of Court, such an agreement will not be held valid where it practically negates the action of the claimants, such as the private respondents herein. The philosophy underlying the provisions on transfer of venue of actions is the convenience of the plaintiffs as well as his witnesses and to promote the ends of justice.[21] Considering the expense and trouble a passenger residing outside of Cebu City would incur to prosecute a claim in the City of Cebu, he would most probably decide not to file the action at all. The condition will thus defeat, instead of enhance, the ends of justice. Upon the other hand,

petitioner has branches or offices in the respective ports of call of its vessels and can afford to litigate in any of these places. Hence, the filing of the suit in the CFI of Misamis Oriental, as was done in the instant case, will not cause inconvience to, much less prejudice, petitioner.

Public policy is "that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."[22] Under this principle "freedom of contract or private dealing is restricted by law for the good of the public."[23] Clearly, Condition No. 14, if enforced, will be subversive of the public good or interest, since it will frustrate in meritorious cases, actions of passenger claimants outside of Cebu City, thus placing petitioner company at a decided advantage over said persons, who may have perfectly legitimate claims against it. The said condition should, therefore, be declared void and unenforceable, as contrary to public policy — to make the courts accessible to all who may have need of their services.

WHEREFORE, the petition for prohibition is **DISMISSED**. The restraining order issued on November 20, 1973, is hereby **LIFTED** and **SET ASIDE**. Costs against petitioner.

Fernando, *J.*, *(Chairman)*, Aquino, Concepcion, Jr., *JJ.*, concur.

Antonio, *J.*, reserves his vote.

SEPARATE OPINIONS

BARREDO, J.: concurring:

I concur in the dismissal of the instant petition.

Only a few days ago, in Hoechst Philippines, Inc. vs. Francisco Torres, et al., G. R. No. L-44351, promulgated May 18, 1978, We made it clear

that although generally, agreements regarding change of venue are enforceable, there may be instances where for equitable considerations and in the better interest of justice, a court may justify the laying of the venue in the place fixed by the rules instead of following written stipulation of the parties.

In the particular case at bar, there is actually no written agreement as to venue between the parties in the sense contemplated in Section 3 of Rule 4, which governs the matter. I take it that the importance that a stipulation regarding change of the venue fixed by law entails is such that nothing less than mutually conscious agreement as to it must be what the rule means. In the instant case, as well pointed out in the main opinion, the ticket issued to private respondents by petitioner constitutes at best a "contract of adhesion". In other words, it is not that kind of a contract where the parties sit down to deliberate, discuss and agree specifically on all its terms, but rather, one which respondents took no part at all in preparing, since it was just imposed upon them when they paid for the fare for the freight they wanted to ship. It is common knowledge that individuals who avail of common carriers hardly read the fine prints on such tickets to note anything more than the price thereof and the destination designated therein.

Under these circumstances, it would seem that, since this case is already in respondent court and there is no showing that, with its more or less known resources as owner of several inter-island vessels plying between the different ports of the Philippines for sometime already, petitioner would be greatly inconvenienced by submitting to the jurisdiction of said respondent court, it is best to allow the proceedings therein to continue. I cannot conceive of any juridical injury such a step can cause to anyone concerned.

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[1] Rollo, p. 2.
[2] Id., p. 12, Annex "B".
[3] Id., p. 18, Annex "C".
[4] Id., p. 20, Annex "D".
[5] Id., pp. 21 and 26, Annexes "E" and "F".
[6] Rollo, p. 5; Petition, pars. 8, 9 & 10.
[7] Id., p. 30.
[8] Id., p. 47.

[9] Id., pp. 66 and 76.
[10] Manila Railroad Company vs. Attorney General, 20 Phil. 523; Central Azucarera de Tarlac vs. de Leon, 56 Phil. 129; Marquez Lim Cay vs. Del Rosario, 55 Phil. 622; Abuton vs. Paler, 64 Phil. 519; De la Rosa vs. De Borja, 53 Phil. 990; Samson vs. Carratela, 50 Phil. 647, See Rollo, p. 77.
[11] Central Azucarera de Tarlac vs. de Leon, supra; Air France vs. Carrascoso, 18 SCRA, (Sept. 28, 1966), p. 155, Id., pp. 77 and 80.
[12] Rollo, pp. 81-81, Memorandum of Petitioner.
[13] Shewaram vs. PAL, Inc., G.R. No. L-20099, July 7, 1966, 17 SCRA 606-612; Mirasol vs. Roberto Dollar and Company, 53 Phil. 124, See Rollo, p. 79.
[14] Rollo, pp. 66-70, Memorandum of Respondents, citing Polytrade Corporation vs. Blanco, 30 SCRA 187-191.
[15] 106 Phil. 485 (1959).
[16] Paras, Civil Code of the Philippines, Seventh ed., Vol. I, p. 80.
[17] 98 Phil. 95 (1955).
[18] L-24833, 25 SCRA 70 (1968).
[19] Civil Code, Art. 24.
[20] Condition No. 14 is the last condition printed at the back of the 4 x 6 inches passage tickets.
[21] See Nicolas vs. Reparations Commission, et al., G. R. No. L-28649 (21 May 1975), 64 SCRA 111, 116.
[22] Ferrazini vs. Gsell, 34 Phil. 711-712 (1916).
[23] Id., p. 712.