43 Phil. 522

[G. R. No. 17598. June 17, 1922]

HENRY HARDING, PLAINTIFF AND APPELLEE, VS. SAN MIGUEL BREWERY CO., DEFENDANT AND APPELLANT.

D E C I S I O N

STATEMENT

January 12, 1916, D. P. Dunn was the sole owner of a certain business, known as the "Non-Commissioned Officers' Club" at Stotsenburg in the Province of Pampanga, and the building, fixtures, furniture, and dynamo used in connection therewith, and executed to the defendant a mortgage thereon for P9,000 to secure an existing debt, and, among other things, the mortgage recites that until such time as the debt was paid Dunn would keep the property "insured against loss by fire in such companies as the Brewery may designate, *for their full* insurable value, and will indorse the insurance policies to the Brewery so that the latter may be authorized *to receive the insurance money in the event of loss and to retain such part thereof as may be necessary to satisfy any indebtedness still existing*."

At the time of the execution of the mortgage, and in compliance with its terms, at the request and with the approval of the defendant, Dunn authorized and instructed it to insure the property at its full estimated value of P15,000, with loss, if any, payable to the defendant, as its interest may appear, and the remainder to him. It is claimed that, notwithstanding such agreement and instructions, the defendant took out the policies' of insurance in its own name for P15,000 with a provision that the loss, if any, should be payable to the defendant only, as its interest may appear, without any insurance in favor of Dunn for his remaining interest. That at the request of the defendant, he paid premiums on an insured value of P15,000, and that it represented to him that, by the terms of the policies, in the event of loss by fire, it would collect and retain the amount of its mortgage debt, and pay the remainder of the loss to Dunn.

May 27, 1917, with the consent and approval of the defendant, and subject to the terms and conditions of the mortgage, Dunn sold the property to the plaintiff, who thereby acquired all the interests of Dunn and became subrogated to all his rights, including the policies of insurance. That plaintiff never saw the policies which were at all times in the possession of the defendant, and claims that he accepted and relied on the statements and representations of the defendant that the property was insured for the full value of P15,000, and in such a manner that, in the event of loss by fire, the plaintiff's interests were fully protected. After the execution of the tripartite agreement, and on June 20, 1917, the property was totally destroyed by fire, and meanwhile, through payments which had been made on the mortgage debt to the defendant from time to time by the plaintiff and Dunn, its claim was reduced from P9,000 to P3,600. That after the fire, and relying upon the express terms of the policies, the insurance companies denied any liability over and above the amount then due and owing the defendant on its mortgage debt, which was then P3,600, and refused to pay any more. An action was brought by the defendant on the policies against the insurance companies to recover the full amount of P15,000, which resulted in a final decision of this court that, under the terms of the policies, the insurance companies were only liable for P36,000.[1]

The plaintiff then commenced this action against the defendant to recover from it P11,400, the difference between P3,600 and P15,000, claiming and alleging that he was misled and deceived, through the fault and negligence of the defendant, as to the true terms and conditions of the insurance policies, and that, by reason thereof, the defendant should pay him P1 1,400 with interest.

In substance, for answer, the defendant admits the execution of the mortgage and the insurance of the property, and, as a further and separate defense, alleges that on October 8, 1917, it commenced a civil action against the insurance companies to recover upon the policies P15,000, in which Harding, the plaintiff, filed an answer, a copy of which is attached to its plea in this action, and that in such action the plaintiff here, as defendant there, failed and omitted "to set up by counterclaim the alleged rights which he now seeks to assert in this cause of action," and that he is now estopped.

As a further defense, the company alleges that Dunn "ratified and confirmed the action of this defendant in taking out policies of insurance on the property described in paragraph three of said complaint in the form and manner alleged in paragraph six thereof." That, thereafter, the plaintiff also ratified the defendant's action, and that, when plaintiff purchased Dunn's interest, he did not "acquire any right to have said property insured by

this defendant, or any right of action against this defendant because of the form and manner in which said insurance had theretofore been taken out."

The lower court rendered judgment for the plaintiff, as prayed for in his complaint, from which the defendant appeals, assigning seven different errors in substance that the court erred in rendering judgment for the plaintiff, as prayed for in his complaint, and in denying defendant's motion for a new trial.

Johns, J.:

The testimony is conclusive that the premiums on an insurance of P15,000 were paid, and the policies kept in force by either Dunn or the plaintiff, and that they fully complied with the provisions of the mortgage above quoted.

At the time plaintiff purchased the property from Dunn, the defendant wrote him the following letter:

> "We beg to enclose herewith debit note No. 6 for P188.46 as premium paid on P15,000, divided into two policies No. 2366 and No. 1749871 of the Filipinas Insurance Co., and the Law Union & Rock Insurance Co., Ltd., respectively, the same being the amount in which has been insured the premises, furniture, fixtures, etc., of that Club as per agreement with us.
>
> "Kindly note that in case of fire, we will cash the value of these policies and will withdraw the sum advanced to you, and the remainder will be handed then to you."

In substance, this is a statement and representation to the plaintiff that the property was insured for P15,000, and that, in the event of a loss by fire, the defendant would collect the full amount of the policies, out of which it would satisfy its own mortgage debt, and then pay the balance of the loss to the plaintiff. Based upon that letter, the plaintiff paid the full amount of the premium of P188.46 for an insurance of P15,000 on the property, and paid all the premiums and kept the policies in full force up to and including the date of the fire. After the fire, and under the provisions of the policies, it became necessary to submit proofs of loss, and, in compliance therewith, the defendant requested the plaintiff to make out and submit such proofs. It appears that there was some delay in doing this, as a result of which the defendant wrote the plaintiff the following letter:

> "There has been ample time given you to produce plans and specifications to conform with the requirements of the Insurance Companies. As we cannot wait any longer, you are advised that, if on the 10th of September next, said specifications, also a detailed valuation of the furniture, fixtures, machinery, etc., are not submitted, we will have to file our claim with the Insurance Companies for our interests in the said property, and you will have to attend to the business of obtaining the balance from the Insurance Companies, yourself."

This letter clearly shows that, at the time it was written, the defendant then understood that the plaintiff's interests were fully insured, and that, under the terms of the policies, he was entitled to receive any amount which would remain after the amount of the insurance for P15,000 due upon defendant's mortgage debt was paid in full. This is further evidenced by the fact that after the final proofs were submitted, the defendant commenced an action on the policies against the insurance companies to recover the full amount of P15,000 upon which the plaintiff had paid the premium.

The plaintiff's place of business was at Stotsenburg, and the defendant's at Manila, who at all times had the physical possession and control of the policies, which were never seen by the plaintiff, and, for aught that appears in the record, all that he knew about their terms and provisions were the statements and representation's of the defendant, which were made in the letter above quoted.

At the time the mortgage was given, the defendant's claim was for P9,000, upon which payments were made from time to time, so that when the fire occurred the amount of the mortgage debt was only P3,600. Yet, during all of this time, the plaintiff was paying premiums to, and at the request of, the defendant on an insurance of P15,000, and made such payments under the provisions of the mortgage, and the defendant alone had possession of the policies.

In all things and respects, plaintiff and Dunn complied with the provisions of the mortgage, and kept performed their part of the contract. As a result of payments, the mortgage debt was reduced from P9,000 to P3,600. They paid premiums upon an insurance for P15,000, and it is very apparent that, in the making of such payments, the plaintiff was acting in good faith-, and that he relied upon the statements and representations of the defendant, that the property was insured for P15,000, and that, in the event of a destruction by fire, the defendant would retain the amount of its debt, and that any balance of the P15,000

"remaining would be paid to the plaintiff, and under the relations existing between them, the plaintiff had a right to rely upon such statements and representations.

It also clearly appears that the defendant itself thought and understood that the property was insured for P15,000, and that, in the event of a loss by fire, the plaintiff would have and receive any amount which remained over and above the defendant's mortgage debt. This is clearly evidenced by each of the letters above quoted, and the further fact that the defendant commenced an action against the insurance companies to recover P15,000.

The facts are peculiar, and the law of this case is more or less *sui generis*. It is very apparent that the plaintiff was acting in good faith, and that he was misled and deceived by the statements and representations of the defendant, who had the actual possession of the policies, and that plaintiff relied upon such statements and representations, and that, upon the payment of the premiums, he had a right to rely upon the statements made in the letter, because the policies were in possession of the defendant and never were submitted to the plaintiff for inspection.

The contention of the defendant, that plaintiff is estopped and cannot maintain this action, is not tenable. The case of the defendant was brought against the insurance companies to recover the full amount of P15,000, and the only question there involved was the amount of the liability of the companies under the policies. Here, plaintiff's claim is not against the insurance companies, but against the defendant. There is no estoppel.

Under the relation existing between them, with the policies in its possession, the defendant had no legal right to make any false statements or to mislead or deceive the plaintiff as to the terms or provisions of the policies. With the policies in its possession, and, under the relations existing between them, the defendant, having made such statements and representations, and the plaintiff relying thereon and having paid premiums to the defendant for an insurance of P15,000, in the interest of justice and fair dealing, the defendant should pay the plaintiff the amount of damages which he sustained by reason of such false statements.

Judgment of the lower court is affirmed, with costs. So ordered.

Araullo, C. J., Avanceña, Villamor, Ostrand, and *Romualdez, JJ.,* concur.

[1]San Miguel Brewery vs. Law Union & Rock Ins. Co., 40 Phil., 674.

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