44 Phil. 98

[G. R. No. 19189. November 27, 1922]

FROILAN LOPEZ, PLAINTIFF AND APPELLANT, VS. SALVADOR V. DEL ROSARIO AND BENITA QUIOGUE DE V. DEL ROSARIO, DEFENDANTS AND APPELLANTS.

D E C I S I O N

MALCOLM, J.:

Both parties to this action appeal from the judgment of Judge Simplicio del Rosario of the Court of First Instance of Manila awarding the plaintiff tire sum of P88,495.21 with legal interest from May 13, 1921, without special finding as to costs.

The many points pressed by contending counsel can be best disposed of by, first, making a statement of the facts; next, considering plaintiff's appeal; next, considering defendant's appeal; and, lastly, rendering judgment.

STATEMENT OF THE FACTS

On and prior to June 6, 1920, Benita Quiogue de V. del Rosario, whom we will hereafter call Mrs. Del Rosario, was the owner of a bonded warehouse situated in the City of Manila. She was engaged in the business of a warehouse keeper, and stored copra and other merchandise in the said building. Among the persons who had copra deposited in the Del Rosario warehouse was Froilan Lopez, the holder of fourteen warehouse receipts in his own name, and the name of Elias T. Zamora. (Exhibits C, D, and R.)

The warehouse receipts, or negotiable warrants, or *quedans* (as they are variously termed) of Lopez named a declared value of P107,990.40 (Exhibits L-1 to L-13). The warehouse receipts provided: (1) For insurance at the rate of 1 per cent per month on the declared value; (2) the company reserves to itself the right to raise and /or lower the rates of storage and /or of insurance on giving one calendar month's notice in writing; (3) this warrant carries no insurance unless so noted on the face hereof, cost of which is in addition to storage; (4) the time for which storage and /or insurance is charged is thirty (30) days; (5)

payment for storage and /or insurance, etc., shall be made in advance, and /or within five (5) days after presentation of bill. It is admitted that insurance was paid by Lopez to May 18, 1920, but not thereafter.

Mrs. Del Rosario secured insurance on the warehouse and its contents with the National Insurance Co., Inc., the Commercial Union Insurance Company, the Alliance Insurance Company, the South British Insurance Co., Ltd., and the British Traders Insurance Co., Ltd., in the amount of P404,800. All the policies were in the name of Sra. Benita Quiogue de V. del Rosario, with the exception of one of the National Insurance Company, Inc., for P40,000, in favor of the Compañia Coprera de Tayabas. (Exhibits N, O, P, R-1 to R-4.)

The warehouse of Mrs. Del Rosario and its contents were destroyed by fire on June 6, 1920. The warehouse was a total loss, while of the copra stored therein, only an amount equal to P49,985 was salvaged.

Following an unsuccessful attempt by Henry Hunter Bayne, Fire Loss Adjuster, to effect a settlement between the insurance companies and Mrs. Del Rosario, the latter, on August 24, 1920, authorized Attorney F. C. Fisher to negotiate with the various insurance companies. (Exhibit A.) As a result, an agreement between Mrs. Del Rosario and the insurance companies to submit the matter to arbitration was executed in September, 1920. (Exhibit B.) Mrs. Del Rosario laid claim before the arbitrators, Messrs. Muir and Campbell, to P419,683.95, and the proceeds of the salvage sale. The arbitrators in their report allowed Mrs. Del Rosario P363,610, which, with the addition of the money received from the salvaged copra amounting to P49,985, and interest, made a total of P414,258, collected by her from the companies. (Exhibits E, F, G, H, and Q.)

Mrs. Del Rosario seems to have satisfied all of the persons who had copra stored in her warehouse, including the stockholders in the Compañia Coprera de Tayabas (whose stock she took over), with the exception of Froilan Lopez, the plaintiff. Ineffectual attempts by Mrs. Del Rosario to effect a compromise with Lopez first for P71,994, later raised to P72,724, and finally reduced to P17,000, were made. (Exhibits Y, 1, 3, 4, 6, 7, 8, 12.) But Lopez stubbornly contended, or, at least, his attorney contended for him, that he should receive not a centavo less than P88,595.43. (Exhibits 4, 5.)

PLAINTIFF'S APPEAL

Plaintiff, by means of his &m assignment of error, lays claim to P88,595.43 in lieu of P88,495.21 allowed by the trial court. The slight difference of P100.22 is asked for so that

plaintiff can participate in the interest money which accrued on the amount received for the salvaged copra. (Exhibits EE and FF.) Defendant makes no specific denial of this claim. We think the additional sum should accrue to the plaintiff.

Plaintiff's second and third assignments of error present the point that the defendant has fraudulently-and even criminally-refrained from paying the plaintiff, and that the plaintiff should recover interest at the rate of 12 per cent per annum. We fail to grasp plaintiff's point of view. "The defendant has not sought to elude her moral and legal obligations. The controversy is merely one which unfortunately all too often arises between litigious persons. Plaintiff has exactly the rights of any litigant, equally situated, and no more.

It has been the constant practice of the court to make article 1108 of the Civil Code the basis for the calculation of interest. Damages in the form of interest at the rate of 12 per cent, as claimed by the plaintiff, are too remote and speculative to be allowed. The deprivation of an opportunity for making money which might have proved beneficial or might have been ruinous is of too uncertain character to be weighed in the even balances of the law. (Civil Code, art. 1108; Gonzales Quiros vs. Palanca Tan-Guinlay [1906], 5 Phil., 675; Tin Fian vs. Tan [1909], 14 Phil., 126; Sun Life Insurance Co. of Canada vs. Rueda Hermanos & Co. and Delgado [1918], 37 Phil., 844; Scævola, *Codigo Civil*, vol. 19, p. 576; 8 R. C. L., 463; 17 C. J., 864.)

DEFENDANT'S APPEAL

Counsel for defendant have adroitly and ingeniously attempted to avoid all liability. However, we remain unimpressed by many of these arguments.

Much time has been spent by counsel for both parties in discussing the question, of whether the defendant acted as the agent of the plaintiff, in taking out insurance on the contents of the *bodega*, or whether the defendant acted as a reinsurer of the copra. Giving a natural expression to the terms of the warehouse receipts, the first hypothesis is the correct one. The agency can be deduced from the warehouse receipts, the insurance policies, and the circumstances surrounding the transaction.

After all, however, this is not so vitally important, for it might well be—although we do not have to decide—that under any aspect of the case, the defendant would be liable. The law is that a policy effected by a bailee and covering by its terms his own property and property held in trust, inures, in the event of a loss, equally and proportionately to the benefit of all the owners of the property insured. Even if one secured insurance covering his own goods

and goods stored with him, and even if the owner of the stored goods did not request or know of the insurance, and did not ratify it before the payment of the loss, yet it has been held by a reputable court that the warehouseman is liable to the owner of such stored goods for his share. (Snow vs. Carr [1878], 61 Ala., 363; 32 Am. Rep., 3; Broussard vs. South Texas Rice Co. [1910], 103 Tex., 535; Ann, Cas., 1913-A, 142, and note; Home Insurance Co. of New York vs. Baltimore Warehouse Co. [1876], 93 U. S., 527.)

Moreover, it has next escaped our notice that in two documents, one the agreement for arbitration, and the other the statement of claim of Mrs. Del Rosario, against the insurance companies, she acknowledged her responsibility to the owners of the stored merchandise, against risk of loss by fire. (Exhibits B and C-3.) The award of the arbitrators covered not alone Mrs. Del Rosario's warehouse but the products stored in the warehouse by Lopez and others.

Plaintiff's rights to the insurance money have not been forfeited by failure to pay the insurance provided for in the warehouse receipts. A preponderance of the proof does not demonstrate that the plaintiff ever ordered the cancellation of his insurance with the defendant. Nor is it shown that the plaintiff ever refused to pay the insurance when the bills were presented to him, and that notice of an intention to cancel the insurance was ever given the plaintiff.

The record of the proceedings before the board of arbitrators, and its report and findings, were properly taken into consideration by the trial court as a basis for the determination of the amount due from the defendant to the plaintiff. In a case of contributing policies, adjustments of loss made by an expert or by a board of arbitrators may be submitted to the court not as evidence of the facts stated therein, or as obligatory, but for the purpose of assisting the court in calculating the amount of liability. (Home Insurance Co. vs. Baltimore Warehouse Co., *supra*.)

Counsel for the defendant have dwelt at length on the phraseology of the policies of the National Insurance Company, Inc. Special emphasis has been laid upon one policy (Exhibit 9) in the name of the Compañia Coprera de Tayabas. In this connection it may be said that three members of the court, including the writer of this opinion, have been favorably impressed by this argument, and would have preferred at least to eliminate the policy for which premiums were paid, not by Mrs. Del Rosario on behalf of Lopez and others, but by the Compañia Coprera de Tayabas. A majority, of the court, however, believe that all the assets should be marshalled and that the plaintiff should receive the benefit accruing from

the gross amount realized from all the policies. Consequently, no deduction for this claim can be made.

The remaining contention of the defendant that the plaintiff cannot claim the benefits of the agency without sharing in the expenses, is well taken. Although the plaintiff did not expressly authorize the agreement to submit the matter to arbitration, yet on his own theory of the case, Mrs. Del Rosario was acting as his agent in securing insurance, while he benefits from the amicable adjustment of the insurance claims. As no intimation is made that the expenses were exorbitant, we necessarily accept the statement of the same appearing in Exhibits Q and 8.

Of the insurance money, totalling P414,258, P382,558 was for copra and the remainder for buildings, corn, etc. The expenses for collecting the P414,258 totalled P33,600. 382,558/414,258 of P33,600 equals P31,028.85, the proportionate part of the expenses with reference to the copra. Of the expenses amounting, as we have said, to P31,028.85, plaintiff would be liable for his proportionate share or 88,595.43/382,558.00 of P31,028.85 orP7,185.875.

The parties finally agree that the plaintiff at the time of the fire was indebted to the defendant for storage and insurance in the sum of P315.90.

JUDGMENT

In resume, the result is to sustain plaintiff's first assignment of error and to overrule his second and third assignments of error, to overrule defendant's assignments of error 1, 2, 3, and 4 in *toto* and to accede to defendant's assignments of error 5, 6, and 7 in part. If our mathematics are correct, and the amounts can be figured in several different ways, plaintiff is entitled to P88,595.43 minus P7,185.88, his share of the expenses, minus P315.90, due for insurance and storage, or approximately a net amount of P81,093.65, with legal interest. This sum the defendant must disgorge. Wherefore, judgment is modified and the plaintiff shall have and recover from the defendants the sum of P81,093.65, with interest at 6 per cent per annum from May 13, 1921, until paid. Without special finding as to costs in either instance, it is so ordered.

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

Johnson, J., did not take part.

Date created: June 06, 2014