

[G.R. No. L-6442. September 21, 1954]

TRADERS INSURANCE & SURETY CO., RECURRENTE, CONTRA JUAN GOLANGCO Y OTRA, RECURRIDOS.

D E C I S I O N

PABLO, M.:

Se trata del cobro de una poliza de seguro contra incendio por valor de P10,000. El demandante tenia derecho a recibir Pl,100 mensuales de Melitona Estrella en concepto de alquileres del edificio No. 34 Plaza Sta. Cruz, Manila, por espacio de cinco arios. El demandante aseguro este derecho, pago la prima y la demandada expidio la poliza correspondiente. Dos meses despues de haberse incendiado el edificio, el demandante requirio a la Traders Insurance & Surety Co. el pago del importe del seguro. Como la demandada rehusaba pagarlo, el demandante acudio al Juzgado de Primera Instancia de Manila, el cual dicto sentencia a favor de este. El Tribunal de Apelacion confirmo la sentencia.

En recurso de certiorari, la Traders Insurance & Surety Co. acude a este Tribunal, alegando que el Tribunal de Apelacion cometio dos errores: 1 (a) al dictar sentencia sin una completa conclusion de hechos de todas las cuestiones suscitadas, como requiere el articulo 33 de la Ley No. 296, y 1 (b) al no hacer conclusiones de hecho en cuanto a la aplicacion de la regla de prueba oral; y (2) al dictar sentencia sin conclusiones de hecho en cuanto a los Exhibits 10-H y 10-I.

Cuanto al error 1 (a). ¿Cuales son las cuestiones que habian sido propiamente suscitadas ante el Tribunal de Apelacion? La mejor contestacion es la primera pagina del alegato de la apelante (hoy

recurrente) que dice asi:

BRIEF FOR THE APPELLANT

"ASSIGNMENT OF ERRORS

I

"THE LOWER COURT ERRED IN HOLDING THAT THE FIRE INSURANCE POLICY EXHIBIT 'A' COVERS ALL APPELLEE'S INTERESTS IN THE PREMISES NO. 34 PLAZA STA. CRUZ, MANILA, ESPECIALLY HIS RIGHT TO COLLECT RENTALS THEREFROM.

II

"THE LOWER COURT ERRED IN HOLDING THAT THE APPELLEE HAD INSURABLE INTEREST CONSISTING OP A RIGHT TO RECEIVE RENTALS BOTH AT THE TIME WHEN THE INSURANCE TOOK EFFECT AND WHEN THE LOSS OCCURRED."

Al resolver estas cuestiones el Tribunal de Apelacion, despues de transcribir toda la decision del Juzgado de Primera Instancia, dijo lo siguiente en su decision:

"As stated by the lower court, the basic facts on which both parties base their respective contentions are not disputed, and *we have quoted the decision appealed from in full* because we find that the facts established in the case cannot lead to other conclusions than those arrived at by the trial judge. There is no doubt in our mind that both at the time of the execution of the fire policy (Exhibit A) on April 7, 1949, and on June 5, 1949, when the destruction by fire of the property for which the said policy was issued took place, plaintiff Juan Golangco had an insurable interest on the property insured which

included the rents of premises No. 34 Plaza Sta. Cruz, Manila, Philippines, District 4, Block No. 47; and it is particularly so because the policy prepared and issued by the very defendant specifically states that all insurance covered under said policy, includes the 'rent or other subject matter of insurance in respect of or in connection with any building or any property contained in any building'. Under the evidence on record We cannot alter in the least the decision aforequoted which is hereby adopted by this Court."

Las conclusiones de hecho del Juzgado de Primera Instancia (sin incluir la relacion de hechos) que fueron adoptadas por el Tribunal de Apelacion son las siguientes:

"After considering the manner of testifying of these witnesses, the evasiveness of the witness Limpe, the improbability of his testimony, and the failure of defendant to present Antonio Paredes, the clerk who admittedly investigated the premises in question, the Court finds that plaintiff's version is more credible; that, before the policy (Exhibit A) was issued, plaintiff made full and clear exposal of hia interests in the premises; and that the said fire policy, (Exhibit A) covers all of plaintiff's interests in the premises No. 34 Plaza Sta. Cruz, Manila, especially his right to collect rentals therefrom under the decision of this Court in Civil Case No. 6306 (Exhibit C). This finding is further strengthened by the fact that paragraph 4 of the said fire policy (Exhibit A), above quoted, includes insurance 'on rent'; and accords with rule that a policy is to be interpreted in favor of the assured.

"The argument of the defendant that, under section 49 of the Insurance Law, a policy of insurance must specify the interest of the insured in the property insured, if he is not the absolute owner thereof, is not meritorious because it was the defendant, not plaintiff, who prepared that policy, and it cannot take advantage of its own acts to plaintiff's detriment; and, in any case, this provision was substantially complied with by plaintiff when he made a full and clear

statement of his interests to defendant's manager.

"Having found that the policy covered all of plaintiff's interests in the premises described therein, including his right to receive rentals, we must next determine whether he had any insurable interest therein when the policy was issued and when the fire occurred. We find that he did so have. By virtue of the contract between Tomas B. Lianco and the Archbishop, Lianco erected the building of which the premises in question form part and became owner thereof (Exhibit 4-D). He transferred the ownership of the premises in question to Kaw Eng Si (Exhibit D), who in turn transferred it to plaintiff Juan Golangco (Exhibit E). Lianco and the actual occupant of the premises acknowledged plaintiff's right to collect rentals thereon in a compromise agreement which was incorporated in a judicial judgment (Exhibit C). Both at the time of the issuance of the policy and at the time of the fire, plaintiff Golangco was in legal possession of the premises, collecting rentals from its occupant (tr., Nov. 7, 1950, pp. 8, 10). It seems plain that if the premises were destroyed—as they were—by fire, Golangco would be, as he was, directly damnified thereby; and hence he had an insurable interest therein (section 12, Insurance Law).

"Defendant's contrary contentions are without merit. The contract between Lianco and the Archbishop only forbade Lianco from transferring 'his rights as lessee' (Exhibit. 4-D); but the contracts Lianco made in favor of Kaw Eng Si (Exhibit D) and plaintiff Golangco (Exhibit C) did not transfer such rights; and hence no written consent thereto was necessary. At worst, the contract would be voidable, but not a void contract, at the option of the Archbishop; but this would not deprive Golangco of his insurable interest until such option were exercised; and it does not appear that it was ever exercised.

"The ejectment case filed by the Archbishop against Lianco did not remove nor destroy plaintiff's insurable interest: first, because plaintiff was not a party thereto and cannot be bound thereby; and second, because the judgment of the Municipal Court, at least as late as February 14, 1950, had not been executed so far as possession of the premises were concerned (Exhibit G-10). In fact, not even garnishments

were issued against Melitona Estrella, So Eng Si (her husband) or plaintiff Golangco, the actual and legal possessors of the premises (Exhibit F); so that, as far as plaintiff Golangco was concerned, his right to the premises and to the rentals thereon continued to exist on June 5, 1949 when the fire took place.”

Las conclusiones de hecho adoptadas por el Tribunal de Apelacion establecen que el demandante aseguro su interes en el edificio No. 34 Plaza Sta. Cruz, consistente en el derecho de cobrar alquileres y que dicho interes asegurable existia al tiempo del seguro y al ocurrir el incendio.

Carece de base, por tanto, la contencion de la recurrente de que la decision del Tribunal de Apelacion no contiene conclusiones de hecho de las cuestiones debidamente suscitadas.

Error 1 (b). La contencion de la recurrente de que el Tribunal de Apelacion debio de haber hecho constar en su decision las conclusiones de hecho relativas a la aplicacion de la regla sobre prueba oral tampoco tiene fundamento. Si la apelante queria suscitar la indebida admision del testimonio oral del demandante, o si queria pedir el descarte de dicho testimonio, debio de haberlo senalado en la relation de errores, diciendo que el juez erro al admitir el testimonio oral del demandante, o que el juez erro al no descartar el testimonio oral del demandante a pesar de la petition debidamente presentada.

En el parrafo 3 de los argumentos en apoyo del primer error, bajo el titulo de Argument, (pag. 13 del alegato presentado en el Tribunal de Apelacion), es cuando tal cuestion se planteo por primera vez, en vez de suscitarla en la relation de errores: no se planteo, pues, en su debido lugar y en el tiempo oportuno. (Regla 48, art. 17). El Tribunal de Apelacion no es un buzo que tiene que buscar en los argumentos del alegato cuales son los errores cometidos.

En cuanto al segundo error, o sea, que el Tribunal de Apelacion no ha establecido conclusiones de hecho sobre los Exhibits 10-H y 10-I, opinamos que esta despojado de merito, por dos razones: 1.a porque no se

suscito en la relation de errores, y 2.a porque en la decision existen tales conclusiones, aunque no son del agrado de la recurrente. Ella dice en su alegato, pagina SI:

“The Court of Appeals adopted the finding of the trial court that ‘not even garnishment was issued against Melitona Estrella, So Eng Si (her husband), or plaintiff Golangco’. The decision of the Court of Appeals should therefore contain the following finding of fact:

(a) That Exhibits ‘10-H’ and ‘10-I’ clearly prove that notice of garnishment was served on No. 34 Plaza Sta. Cruz (the property in question) and the occupants of No. 34 Plaza Sta. Cruz made return to the said garnishment.”

Por lo visto, la recurrente desea que este Tribunal enmiende las conclusiones de hecho del Tribunal de Apelacion sobre los Exhibits 10-H y 10-I, cosa que no podemos hacer. No revisamos las pruebas. De si ha errado o no el Tribunal de Apelacion en dichas conclusiones, no esta en nosotros el enderezarlas. No debemos inmiscuirnos en las funciones que, por disposition de la ley, corresponden a dicho tribunal.

La ley citada por la recurrente dice asi:

“Every decision of the Court of Appeals shall contain complete findings of fact on all issues properly raised before it.”

Pero en
espanol dice asi:

“Toda decision del Tribunal de Apelaciones contendra una relacion completa de los hechos de todas las cuestiones que se susciten ante el

mismo.”

La traduccion al castellano no es exacta. Si nos atuviesemos a la traduccion al espanol, la decision del Tribunal de Apelacion no deberia contener mas que una “relation completa de los hechos de todas las cuestiones” que se hubieren suscitado en el mismo. Faltaria algo, a saber: las conclusiones de hecho del tribunal. La “relation completa de los hechos” no es equivalente a “la relation completa de las conclusiones de hecho”. La relation de hechos “statement of facts” viene a ser la narration de los hechos del asunto para que se sepa en que consiste. La ley en ingles habla de *complete findings of fact* o conclusiones completas de hecho. Las conclusiones de hecho (findings of fact) son las que el tribunal adopta despues de estudiar, discutir y considerar las pruebas contradictorias presentadas en juicio. Como la Ley No. 296 se discutió y se aprobó en ingles, tenemos que adoptar el texto ingles y no la deficiente traduccion al castellano.

El artículo 33 de dicha ley, al hablar de cuestiones que se *susciten debidamente* ante el Tribunal de Apelacion, no quiere decir que este tiene que resolver todas las cuestiones que se susciten en cualquier estado de la causa o en el curso de los argumentos. No es ese el lugar apropiado: hay que suscitarlo en la relation de errores. Notese que emplea las palabras “properly raised” y no raised solamente. No basta suscitar la cuestion: es necesario suscitarla en el lugar y tiempo oportunos. Es una bien establecida practica forense la de que no se considerara ninguna cuestion que no se haya suscitado debidamente en la relation de errores, a menos que se trate de falta de jurisdiction, que se puede suscitar en cualquier estado del asunto. (Enriquez y otros contra Enriquez y otra, 8 Jur. Fil., 574; Capellania de Tambobong contra Antonio, 8 Jur. Fil., 693; Paterno contra Ciudad de Manila, 17 Jur. Fil., 26; Santiago contra Felix, 24 Jur. Fil., 391; Tan Me Nio contra Administrador de Aduanas, 34 Jur. Fil., 992; Granados y Granados contra Bandelaria, 45 Jur. Fil., 530; Gemora contra Concejo Municipal de Hog, 58 Jur. Fil., 377; Sanchez contra Director de Terrenos, 63 Jur. Fil., 403; Tan Si Kiok, et al. vs. Macario Tiacho, 45 Off. Gaz., 2466, 79 Phil., 696; y Villareal vs. The People of the Philippines, 47 Off. Gaz.,

191, 84 Phil., 264.)

“Where an appeal is taken to this court from any court, the appellant shall file with the clerk of the court below, with his petition for appeal, an assignment of errors, which shall set out separately and particularly each error asserted. No appeal shall be allowed unless such an assignment of errors shall accompany the petition.” (Rule 9, Revised Rules of the Supreme Court of the United States, 11 U. S. Supreme Court Reports Digest.)

“The Supreme Court of the United States will not consider a question not raised below, not discussed by the lower court, and not included in the assignment, of errors.” (Pacific States Box & Basket Co. vs. S. T. White, et al., 80 L ed., 138.)

Podriamos enumerar una larga lista de decisiones de los Tribunales Supremos de los estados de la Union Americana que tienen reglamento similar al nuestro; pero los casos citados bastan.

“Error no apuntado en la relacion de errores en una causa civil se conaidera error consentido por la parte interesada.” (Vitug vs. Montemayor, 49 Off. Gaz., 5350.)

Declaramos que una cuestion no especificada en la relacion de errores no esta debidamente planteada, y el Tribunal de Apelacion no esta obligado a resolverla.

Se deniega la petition con costas contra la recurrente.

Paras, C.J., Bengzon, Padilla, Montemayor, Reyes, A., Jugo, Baubista Angelo, Concepcion, y Reyes, J.B.L., MM., estan conformes.

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