

**UNION MANUFACTURING CO., INC. AND THE REPUBLIC BANK,
PLAINTIFFS, REPUBLIC BANK, PLAINTIFF-APPELLANT, VS.
PHILIPPINE GUARANTY CO., INC., DEFENDANT-APPELLEE.**

G.R. No. L-27932. October 30, 1972

Ponente: FERNANDO, J.

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FERNANDO, J.:

In a suit arising from a fire insurance policy, the insurer, Philippine Guaranty Co., Inc., defendant in the lower court and now appellee, was able to avoid liability upon proof that there was a violation of a warranty. There was no denial thereof from the insured, Union Manufacturing Co., Inc. With such a legally crippling blow, the effort of the Republic Bank, the main plaintiff and now the sole appellant, to recover on such policy as mortgagee, by virtue of the cover note in the insurance policy providing that it is entitled to the payment of loss or damages as its interest may appear, was in vain. The defect being legally incurable, its appeal is likewise futile. We affirm.

As noted in the decision, the following facts are not disputed: "(1) That on January 12, 1962, the Union Manufacturing Co., Inc. obtained certain loans, overdrafts and other credit accommodations from the Republic Bank in the total sum of P415,000.00 with interest at 9% per annum from said date and to secure the payment thereof, said Union Manufacturing Co., Inc. executed a real and chattel mortgages on certain properties, which are more particularly described and listed at the back of the mortgage contract * * *; (2) That as additional condition of the mortgage contract, the Union Manufacturing Co., Inc. undertook to secure insurance coverage over the mortgaged properties for the same amount of P415,000.00 distributed as follows: (a) Buildings, P30,000.00; (b) Machineries, P300,000.00; and (c) Merchandise Inventory, P85,000.00, giving a total of P415,000.00; (3) That as Union Manufacturing Co., Inc. failed to secure insurance coverage on the mortgaged properties since January 12, 1962, despite the fact that Cua Tok, its general manager, was reminded of said requirement, the Republic Bank procured from the defendant, Philippine Guaranty Co., Inc. an insurance coverage on loss against fire for P500,000.00 over the properties of the union Manufacturing Co., Inc., as described in defendant's 'Cover Note' dated September 25, 1962, with the annotation that loss or damage, if any, under said Cover Note is payable to Republic Bank as its interest may appear, subject however to the printed conditions of said defendant's Fire Insurance Policy Form; (4) That on September 27, 1962, Fire Insurance Policy No. 43170 * * * was issued for the sum of P500,000.00 in favor of the assured, Union Manufacturing Co., Inc., for which the corresponding premium in the sum of P8,328.12, which was reduced to P6,688.12, was paid by the Republic Bank to the defendant, Philippine Guaranty Co., Inc. * * *; (5) That upon the expiration of said fire policy on September 25, 1963, the same was renewed by the Republic Bank upon payment of the corresponding premium in the same amount of P6,663.52 on September 26, 1963; (6) That in the corresponding voucher * * *, it appears that although said renewal premium was paid by the Republic Bank, such payment was for the account of Union Manufacturing Co., Inc. and that the cash voucher for the payment of the first premium was paid also by the Republic Bank but for the account of Union Manufacturing Co., Inc.; (7) That sometime on September 6, 1964, a fire occurred in the premises of the Union Manufacturing Co., Inc.; (8) That on October 6, 1964, the Union Manufacturing Co., Inc.

filed its fire claim with the defendant Philippine Guaranty Co., Inc., thru its adjuster, H. H. Bayne Adjustment Co., which was denied by said defendant in its letter dated November 27, 1964 * * *, on the following grounds: 'a. Policy Condition No. 3 and/or the 'Other Insurance Clause' of the policy was violated because you did not give notice to us the other insurance which you had taken from New India for P80,000.00, Sincere Insurance for P25,000.00 and Manila Insurance for P200,000.00 with the result that these insurances, of which we became aware of only after the fire, were not endorsed on our policy; and (b) Policy Condition No. 11 was not complied with because you have failed to give to our representatives the required documents and other proofs with respect to your claim and matters touching on our liability, if any, and the amount of such liability; (9) That as of September, 1962, when the defendant Philippine Guaranty Co., Inc., issued Fire Insurance Policy No. 43170 * * * in the sum of P500,000.00 to cover the properties of the Union Manufacturing Co., Inc., the same properties were already covered by Fire Policy No. 1533 of the Sincere Insurance Company for P25,000.00 for the period from October 7, 1961 to October 7, 1962 * * *; and by insurance policies Nos. F-2314 * * * and F-2590 * * * of the Oceanic Insurance Agency for the total sum of P300,000.00 and for the periods respectively, from January 27, 1962 to January 27, 1963, and from June 1, 1962 to June 1, 1963; and (10) That when said defendant's Fire Insurance Policy No. 43170 was already in full force and effect, the Union Manufacturing Co., Inc. without the consent of the defendant, Philippine Guaranty Co., Inc., obtained other insurance policies totalling P305,000.00 over the same properties prior to the fire, to wit: (1) Fire Policy No. 250 of New India Assurance Co., Ltd., for P80,000.00 for the period from May 27, 1964 to May 27, 1965 * * *; (2) Fire Policy No. 3702 of the Sincere Insurance Company for P25,000.00 for the period from October 7, 1963 to October 7, 1964 * * *; and (3) Fire Policy No. 6161 of Manila Insurance Co. for P200,000.00 for the period from May 15, 1964 to May 15, 1965 * * *." [1] There is in the cover note [2] and in the fire insurance policy [3] the following warranty: "[Co-Insurance Declared]: Nil." [4]

Why the appellant Republic Bank could not recover, as payee, in case of loss as its "interest may appear subject to the terms and conditions, clauses and warranties" of the policy was expressed in the appealed decision thus: "However, inasmuch as the Union Manufacturing Co., Inc. has violated the condition of the policy to the effect that it did not reveal the existence of other insurance policies over the same properties, as required by the warranty appearing on the face of the policy issued by the defendant and that on the other hand said Union Manufacturing Co., Inc. repre-sented that there were no other insurance polities at the time of the issuance of said defendant's policy, and it appearing furthermore that while the policy of the defendant was in full force and effect the Union Manufacturing Co., Inc. secured other fire insurance policies without the written consent of the defendant endorsed on the policy, the conclusion is inevitable that both the Republic Bank and Union Manufacturing Co., Inc. cannot recover from the same policy of the defendant because the same is null and void." [5] The tone of confidence apparent in the above excerpts from the lower court decision is understandable. The conclusion reached by the lower court finds support in authoritative precedents. It is far from easy, therefore, for appellant Republic Bank to impute to such a decision a failure to abide by the law. Hence, as noted at the outset, the appeal cannot prosper. An affirmance is indicated.

It is to Santa Ana vs. Commercial Union Assurance Co., [6] a 1930 decision, that one turns to for the first explicit formulation as to the controlling principle. As was made clear in the opinion of this Court, penned by Justice Villa-Real: "Without deciding whether notice of other insurance upon the same property must be given in writing, or whether a verbal notice is sufficient to render an insurance valid which requires such notice, whether oral or written, we hold that in the absolute absence of such notice when it is one of the conditions specified in the fire insurance policy, the policy is null and void." [7] The next year, in Ang Giok Chip vs. Springfield Fire & Marine Ins. Co., [8] the conformity of the insured to the terms of the policy, implied from the failure to express any disagreement with what is provided for, was stressed in these words of the ponente, Justice Malcolm: "It is

admitted that the policy before us was accepted by the plaintiff. The receipt of this policy by the insured without objection binds both the acceptor and the insured to the terms thereof. The insured may not thereafter be heard to say that he did not read the policy or know its terms, since it is his duty to read his policy and it will be assumed that he did so." [9] As far back as 1915, in *Young vs. Midland Textile Insurance Company*, [10] it was categorically set forth that as a condition precedent to the right of recovery, there must be compliance on the part of the insured with the terms of the policy. As stated in the opinion of the Court through Justice Johnson: "If the insured has violated or failed to perform the conditions of the contract, and such a violation or want of performance has not been waived by the insurer, then the insured cannot recover. Courts are not permitted to make contracts for the parties. The function and duty of the courts consist simply in enforcing and carrying out the contract actually made. While it is true, as a general rule, that contracts of insurance are construed most favorably to the insured, yet contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous they must be taken and understood in their plain, ordinary and popular sense." [11] More specifically, there was a reiteration of this *Santa Ana* ruling in a decision by the then Justice, later Chief Justice, Bengzon, in *General Insurance & Surety Corp. vs. Ng Hua*. [12] Thus: "The annotation then, must be deemed to be a warranty that the property was not insured by any other policy. Violation thereof entitles the insurer to rescind. (Sec. 69, Insurance Act) Such misrepresentation is fatal in the light of our views in *Santa Ana vs. Commercial Union Assurance Company, Ltd.* * * *. The materiality of non-disclosure of other insurance policies is not open to doubt." [13] As a matter of fact, in a 1966 decision, *Misamis Lumber Corp. vs. Capital Ins. & Surety Co., Inc.*, [14] Justice J. B. L. Reyes, for this Court, made manifest anew its adherence to such a principle in the face of an assertion that thereby a highly unfavorable provision for the insured would be accorded recognition. This is the language used: "The insurance contract may be rather onerous ('one sided', as the lower court put it), but that in itself does not justify the abrogation of its express terms, terms which the insured accepted or adhered to and which is the law between the contracting parties." [15]

There is no escaping the conclusion then that the lower court could not have disposed of this case in a way other than it did. Had it acted otherwise, it clearly would have disregarded pronouncements of this Court, the compelling force of which cannot be denied. There is, to repeat, no justification for a reversal.

WHEREFORE, the decision of the lower court of March 31, 1967 is affirmed. No costs.

Concepcion, C.J., Zaldivar, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

Ruiz Castro and Teehankee, JJ., reserve their votes.

Makalintal, J., on official leave.

[1] Decision of the lower court, Record on Appeal, pp. 116-120.

[2] Exhibit A.

[3] Exhibit C.

[4] Decision of the lower court, Record on Appeal, p. 120.

[5] *Ibid.*, 128-129.

[6] 55 Phil. 329.

[7] *Ibid.*, 335.

[8] 56 Phil. 375.

[9] Ibid., 381.

[10] 30 Phil. 617.

[11] Ibid., 622.

[12] 106 Phil. 117 (1960).

[13] Ibid., 1119.

[14] L-21380, May 20, 1966, 17 SCRA 228.

[15] Ibid., 231.

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