

**LEE BOG & COMPANY, PLAINTIFF AND APPELLEE, VS. THE
HANOVER FIRE INSURANCE COMPANY OF THE CITY OF NEW YORK,
ET AL., DEFENDANTS AND APPELLANTS. REPUBLIC OF THE
PHILIPPINES, ET AL....**

G.R. No. L-10305. February 28, 1961

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

This is an appeal from a decision of the Court of First Instance of Pangasinan holding defendants-appellants liable for the face value of the fire insurance policies issued respectively by them, with numbers and for amounts as follows:

Policy
Number

Issuing Company
Amount

1016372

Hanover Fire Insurance Company

P55,000.00

2282

Alliance Ins. & Surety Co.

22,000.00

3361

Empire Insurance Co.

15,000.00

6741

Phil. American Gen. Ins. Co.

20,000.00

17540945

Commercial Union Ass. Co., Ltd.

5,000.00

216634

British Traders Ins. Co., Ltd.

5,000.00

47/21670

South British Ins. Co., Ltd.

5,000.00

10PH-1180

Insurance Co. of North Americ

5,000.00

F-13140

Century Ins. Co., Inc.

15,000.00

5864

People's Surety & Ins. Co.

18,000.00

1016873

Hanover Fire Ins. Company

66,000.00

Total

P230,000.00

The assured in these policies is plaintiff-appellee Lee Bog & Company. The insurance covered "stock of rice and palay (loose and/or sacks), the property of the assured or held by him in trust, on commission or on joint account, with others and/or for which he is responsible in case of loss", while contained during the currency of the policies in the building of the assured in Binalonan, Pangasinan, otherwise known as the Binalonan, Pangasinan Rice Mill. There was a common "simple loss payable clause" in favor of the Bureau of Commerce in all the policies issued by defendants-appellants, except Policy No. 1016373, issued by the Hanover Fire Insurance Company, which also contained a "simple loss payable clause" but in favor of the People's Surety & Insurance Co., Inc. Said clause provides that "loss, if any, under this policy, is payable to the Bureau of Commerce, Manila, as its interest may appear, subject to the terms, conditions, clauses, and warranties of this policy."

The Republic of the Philippines intervened in behalf of the Bureau of Commerce as trustee to receive payment, in case of loss under the first ten above-mentioned policies. Crispin A. Fernandez and Quirino C. Martinez also intervened as alleged depositors of the appellee for the purpose of recovering from the latter and the appellants, jointly and severally, the value of their alleged deposits in the aggregate sum of P8,390.00.

In this instant appeal, it is argued that the lower court erred in considering the claims on the bonded palay belonging to depositors separately and independently from the claim on the unbonded palay belonging to the appellee because the policies sued upon were concurrent and each and all of them covered, in their entirety, inseparably and indivisibly, the stock of rice and palay kept in the insured's warehouse, whether belonging to the insured or to its depositors. As there is, however, a difference between bonded and unbonded palay and one is distinct from the other, each subject must really be treated separately. The palay insured by the appellee under the aforesaid ten policies included no more than such of the palay as the warehouse received as deposits. The palay insured by the appellee payable to the Bureau of Commerce in case of loss covered only the palay that was received as deposits. This is the object of the requirement of law that "every person licensed, under this Act, to engage in the business of receiving rice for storage shall insure the rice as received and stored against fire." This is the very reason why plaintiff-appellee insured said palay. The appellants cannot pretend that they and appellee were not aware of the fact that the subject matter of the insurance policies upon which the intervenor-appellee is suing was solely the palay covered by the Bonded Warehouse Act. Upon the other hand, policy No. 1016373 issued by the Hanover Fire Insurance Company, which does not contain a clause common to the aforementioned ten policies, referred only to the unbonded deposits of the appellee.

Under the second assignment of error, appellants contend that appellee has failed to establish its loss; that the claims were for about three times the actual loss and therefore fraudulent; that appellee employed fraudulent means and devices to obtain undue benefits under the policies by combining and commingling with sacks of rice and palay approximately the same quantity of rice bran and/or rice husk; and that appellee had presented false supporting declarations.

Appellee's evidence of loss (Lee Bog's testimony, Exhibits M, M-1 to M-110, Exhibit R Column C-19, the testimony found on pp. 147-150, 204-207, 350, 549-550, t. s. n., Exhibits N, N-1) has satisfactorily established the amounts claimed. The quantity of bonded palay lost and destroyed has been proved by the corresponding quedans (negotiable warehouse receipts), Exhibits M, M-1 to H-110 and AQ. As shown by these receipts, the outstanding deposits as of May 3, 1953, after deducting the withdrawals, amounted to 659,513.5 kilos, which at 44 kilos a cavan, would be equivalent to 14,989 cavan of palay. These figure tally with the quantity of palay stated in the

proof of loss covering the bonded palay.

As regards the unbonded palay or that belonging to the appellee, the amount of loss may verily be determined from the purchase of palay and sales of milled rice that had been regularly recorded in the columnar cash book (Exhibit R) at the place of transaction by a certified public accountant. After simple arithmetical processes, the remaining palay at the time of the fire would be 14,514.7 cavanese. Appellant's argument that fraud is manifested by the fact that the quantity of palay is still short by 68.3 cavanese on the basis of 14,583 cavanese stated in the proof of loss involves an insignificant error if due consideration is taken of the circumstance that it does not exactly and necessarily take two cavanese of palay to mill a cavan of rice. The type of palay and the dryness of husks affect the process.

Moreover, the testimony of the managing partner of the appellee company and of Agustin de Vera and Segismundo Millan, both commercial agents of the Bureau of Commerce at the time assigned in Pangasinan, confirms the physical existence of the claimed quantity of palay, as their estimates more or less approximate the actual loss. Naturally, numerical precision may not be expected, because those estimates were based merely on a physical observation of the big pile existing before the fire. It is sufficient that they show little discrepancy with the figures recorded in the books of the appellee.

The mathematical computations of witnesses Filomeno and Magpili are "rough estimates" and therefore some allowance for such technical factors as "staggering," "shrinkage" and "angle of repose" should be duly taken into account; and where said estimates do not show too wide a difference, there would be no justification in discrediting appellee's claims.

We also overrule the contention that the appellee used fraudulent means or devices to obtain benefits under the policies. The conclusion that, because the samples of the debris taken from the warehouse after the fire consisted of darak and rice husks, these must have been contained in the sacks stored in the warehouse, is untenable. In the first place, it is not unusual to find such debris because their unburned material formed the protective lining of the sacks of palay. Secondly, the samples were taken only from the sides of the pile and not from its core. Thirdly, considering (as appellee argues) the size of the pile, 1,411.84 cubic meters, and the time it took the fire to consume the mass of palay, the samples taken are too insignificant to be representative. Lastly, the motive for such alleged fraud is missing. Appellee company was having a thriving business at the time of the fire.

In the light of the foregoing considerations, the decision appealed from is hereby affirmed with costs against appellants. So ordered.

Bengzon, Acting C.J., Padilla, Concepcion, Reyes, J.B.L., Barrera, Paredes, and Dizon, JJ., concur.

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