

**SUMMIT GUARANTY & INSURANCE COMPANY, INC.,
PETITIONER, VS. THE HONORABLE COURT OF APPEALS (TENTH
DIVISION), HONORABLE GREGORIA CRUZ ARNALDO, IN HER
CAPACITY AS INSURANCE COMMIS-...**

G.R. No. L-51539. December 14, 1981

Ponente: CONCEPCION, JR., J.

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CONCEPCION, JR., J.:

Petition for certiorari, prohibition and mandamus, with a prayer for a restraining order, to annul and set aside the orders of the respondent Court of Appeals issued in Case CA-G.R. No. SP-09113, entitled: "Summit Guaranty & Insurance Co., Inc., petitioner, versus Hon. Insurance Commissioner and Leonardo Certeza, respondents", as well as the decision of the Insurance Commissioner in I.C. Case No. 631, entitled: "Leonardo Certeza, complainant, versus Summit Guaranty Insurance Co., Inc., respondent", to restrain the Insurance Commissioner from further proceeding with I.C. Case No. 631, and to direct the said Insurance Commissioner to dismiss the complaint against the petitioner.

The undisputed facts show that the Certeza & Sons, Inc. acquired from Felipe Uy a Toyota jeep with Motor No. 12 RC36-9122, insured with the herein petitioner, Summit Guaranty & Insurance Co., Inc., under a private car comprehensive Policy No. 181764 for third-party liability in the amount of P20,000.00 for the period from October 19, 1976 to October 19, 1977. The said policy was endorsed by the insurance company to Certeza & Sons, Inc. per Indorsement No. PC-0043/77, effective January 13, 1977.

On August 20, 1977, the insured vehicle, while travelling along E. Lopez St., Jaro, Iloilo, driven by Rico Certeza, side-swiped a pedestrian and collided with a jeepney owned by a certain Daniel Dorillo. The accident caused the death of George Certeza, a passenger in the insured vehicle, injuries to the pedestrian Tony Posa, and injuries to passengers in the jeepney.

The injured were taken to the Iloilo Mission Hospital and Gov. Benito Lopez Memorial Hospital Medical and hospitalization expenses incurred therein amounted to P15,000.00, more or less, which Leonardo Certeza settled by executing two (2) promissory notes in the amount of P8,344.80 for the injured pedestrian Tony Posa and P6,344.80 for the passengers of the other vehicle, in favor of the Iloilo Mission Hospital and Gov. Benito Lopez Memorial Hospital, respectively. Subsequently, demand for payment of the hospitalization and medical expenses of the injured and in-demnity for the death of George Certeza in the amount of P20,000.00 was made upon the insurance company. When the insurance company failed to pay, a complaint against the insurance company was filed with the Insurance Commission on January 31, 1978, docketed therein as I.C. Case No. 631.[1]

After appropriate proceedings, judgment was rendered against the insurance company on February 9, 1979, as follows:

"In view of the foregoing, judgment is hereby rendered ordering respondent company to indemnify

complainant the sum of P20,000 with interest provided for in Section 244 of the Insurance Code (P.D. 612) from the date the complaint was filed until fully satisfied, plus the sum of P1,000 as attorney's fees, with costs."[2]

From the above judgment, the petitioner appealed to the Court of Appeals, docketed therein as CA-G.R. No. SP-09113[3] and on May 10, 1979, the respondent appellate court dismissed the petition for review.[4] The petitioner moved for the reconsideration of the resolution,[5] but its motion was denied on May 31, 1979.[6] Whereupon, the petitioner filed the present recourse.

The petitioner claims that the resolutions issued by the respondent Court of Appeals on May 10 and 31, 1979 in CA-G.R. No. SP-09113 are null and void for having been issued without jurisdiction; and that the Insurance Commission erred in ordering petitioner to pay the private respondent Leonardo Certeza the value of the policy.

The petitioner argues that the Court of Appeals has no appellate jurisdiction over decisions, rulings and orders of the Insurance Commissioner.

The contention is meritorious. Section 416 of the Insurance Code, as amended by Presidential Decree No. 1455 which took effect on June 11, 1978, provides that appeals from decisions, orders, and rulings of the Insurance Commissioner should be addressed to the Supreme Court. The pertinent portion of said Section reads, as follows:

"Any decision, order or ruling rendered by the Commissioner after a hearing shall have the force and effect of a judgment. Any party may appeal from a final order, ruling or decision of the Commissioner by filing with the Commissioner within thirty days from receipt of copy of such order, ruling or decision a notice of appeal and with the Supreme Court twelve printed or mimeographed copies of a petition for certiorari or review of such order, ruling or decision, as the case may be. A copy of the petition shall be served upon the Commissioner and upon the adverse party, and proof of service thereof attached, to the original of the petition." (Underlining for emphasis)

Petitioner, however, is estopped, on ground of public policy, from invoking the plea of lack of jurisdiction after submitting itself to the jurisdiction of the Court of Appeals and assailing its jurisdiction only after an adverse judgment was rendered against the petitioner. It appears that Presidential Decree No. 1455, transferring jurisdiction over appeals from decisions, orders and rulings of the Insurance Commissioner to the Supreme Court, was enacted on June 11, 1978, long before the Insurance Commissioner rendered a decision against the petitioner on February 2, 1979. This decree notwithstanding, petitioner filed a notice of appeal, serving notice that it is appealing the judgment of the Insurance Commissioner to the Court of Appeals,[7] and filed with the Court of Appeals, an urgent motion for extension of time within which to submit a petition for review.[8] The motion was granted,[9] and the petitioner submitted its petition for review with the Court of Appeals on April 25, 1979.[10] No-where in its petition for review did the petitioner raise the question of lack of jurisdiction. Petitioner merely claimed therein that the Insurance Commissioner erred in finding private respondent entitled to the payment of indemnity. Then, after the Court of Appeals had dismissed the petition on May 10, 1979, the petitioner filed a motion for the reconsideration of the resolution.[11] Again, the petitioner did not question the jurisdiction of the Court of Appeals. On the contrary, the petitioner maintained "that this Honorable Tribunal (Court of Appeals) acquired jurisdiction over the case from the time the notice of appeal from the decision was filed seasonably by herein petitioner with the Office of the Insurance Commissioner." It is only in the petition under consideration that the petitioner has raised for the first time the issue of lack of jurisdiction. The petitioner can not be permitted to belatedly raise the issue of lack of jurisdiction. In the case of *Tijam vs. Sibonghanoy*,[12] this Court said:

"A party may be estopped or barred from raising a question in different ways and for different reasons. Thus we speak of estoppel in pais, or estoppel by deed or by record, and of estoppel by laches.

"Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

"The doctrine of laches or of 'stale demands' is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.

"It has been held that a party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction (Dean vs. Dean, 136 Or. 694, 86 A.L.R. 79). In the case just cited, by way of explaining the rule, it was further said that the question whether the court had jurisdiction either of the subject-matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such a practice can not be tolerated - obviously for reasons of public policy.

"Furthermore, it has also been held that after voluntarily submitting a cause and encountering an adverse decision on the merits, it is too late for the loser to question the jurisdiction or power of the court (Pease vs. Rathbun-Jones, etc.; 243 U.S. 273, 61 L.Ed. 715, 37 S.Ct. 283; St. Louis etc. vs. McBride, 141 U.S. 127, 35 L.Ed. 659). And in Littleton vs. Burges, 16 Wyo. 58, the Court said that it is not right for a party who has affirmed and invoked the jurisdiction of a court in a particular matter to secure an affirmative relief, to afterwards deny that same jurisdiction to escape a penalty.

"Upon this same principle is what We said in the three cases mentioned in the resolution of the Court of Appeals of May 20, 1963 (supra) - to the effect that we frown upon the 'undesirable practice' of a party submitting his case for decision and then accepting the judgment, only if favorable, and attacking it for lack of jurisdiction, when adverse - as well as in *Pindangan etc. vs. Dans, et al.*, G.R. L-14591, September 26, 1962; *Montelibano, et al. vs. Bacolod-Murcia Milling Co., Inc.*, G.R. L-15092; *Young Men Labor Union etc. vs. The Court of Industrial Relations, et al.*, G.R. No. L-20307, Feb. 26, 1965, and *Mejia vs. Lucas*, 100 Phil. p. 277."

At any rate, the defense of the petitioner that it is exempt from liability under the insurance contract is without merit. The excepted risk provision in the insurance policy reads, as follows:

"(1) death of or bodily injury to any person in the employment of the insured arising out of and in the course of such employment or death or bodily injury to any person being a member of the Insured's household who is a passenger in the Motor Vehicle."

Under the aforequoted provision, the insurer is exempt from liability in cases of: (1) death or injury to any person in the employment of the insured arising out of and in the course of such employment; and (2) death or injury to a member of the Insured's household who is a passenger in the motor vehicle.

In the instant case, there is no evidence that the deceased George Certeza was an employee of the insured Certeza & Sons, Inc. and that his death arose out of and in the course of employment, as to exempt the petitioner from liability. The claim of the petitioner that "It is the burden of private respondent to prove that GEORGE CERTEZA who is his son is not an employee of this family corporation,"[13] is untenable. Section 1, Rule 131 of the Revised Rules of Court provides that "each party must prove his own affirmative allegation." The rule imposes upon the defendant who alleges an affirmative matter in avoidance of plaintiff's claim or cause of action, upon which the issue is taken by the plaintiff, the burden of establishing the facts which are thus alleged by presenting proof in support thereof.[14] Thus, in the case of *Paris-Manila Perfume Co. vs. Phoenix Assurance Company*,[15] where a fire insurance company issued a policy insuring certain property against loss by fire, but

did not cover any loss or damage occasioned by an explosion, and the insured property was destroyed by fire during the life of the policy, and the insurance company contended that the fire was the result of an explosion which was the primary cause of the fire, the Court held that the burden of proof of that fact is on the insurance company, and for want of proof, the insurance company is liable.

There is, likewise, no evidence that the deceased George Certeza was a member of the household of the insured. While Leonardo Certeza, the father of the deceased is an officer in the Certeza & Sons, Inc., it cannot be implied that the deceased is a member of the household of the insured since the insured is a corporation that has a personality separate and distinct from its officers and stockholders.

WHEREFORE, the petition should be, as it is hereby, DENIED. The judgment of the Insurance Commission in I.C. Case No. 631, entitled: "Leonardo Certeza, complainant, versus Summit Guaranty & Insurance Company, Inc., respondent," is AFFIRMED. The temporary restraining order heretofore issued is hereby lifted and set aside. With costs against the petitioner Summit Guaranty & Insurance Co., Inc.

SO ORDERED.

Barredo, (Chairman), Abad Santos, De Castro, and Ericta, JJ., concur.

Aquino, J., see concurring opinion.

Escolin, J., no part.

[1] Rollo, pp. 7, 12-13.

[2] Id., p. 12.

[3] Id., pp. 16, 22.

[4] Id., p. 33.

[5] Id., p. 38.

[6] Id., p. 50.

[7] Id., p. 16.

[8] Id., p. 17.

[9] Id., p. 31.

[10] Id., pp. 19-29.

[11] Id., p. 38.

[12] L-21450, April 15, 1968, 23 SCRA 29, 35, reiterated in Rodriguez vs. Court of Appeals, L-29264, August 29, 1969, 29 SCRA 419, 429.

[13] Rollo, p. 3.

[14] 20 Am Jur 142.

[15] 49 Phil. 753.

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CONCURRING OPINION

AQUINO, J.:

I concur in the result. The petitioner sought a review of the Insurance Commissioner's decision requiring it to pay Leonardo Certeza the sum of P20, 000 plus interest and attorney's fees of P1,000 on the basis of a car insurance policy endorsed to Certeza & Sons, Inc. of which Leonardo is the president.

The jurisdiction to review that decision is lodged in this Court by section 416 of the Insurance Code as amended by Presidential Decree No. 1455 which took effect on June 11, 1978.

The petitioner mistakenly filed its petition for review on April 26, 1979 with the Court of Appeals. The mistake may be attributed to the fact that originally section 416 provided that the Court of Appeals had the power to review the decisions of the Insurance Commissioner. The Court of Appeals erroneously assumed jurisdiction over the case.

It granted the petitioner an extension up to April 25, 1979 within which to file its petition for review. The petition was filed one day late, The Appellate Court passed upon its merits.

The Court of Appeals in its resolution of May 10, 1979 upheld the Insurance Commissioner's decision. It dismissed the petition. That resolution became final and executory because it was not seasonably appealed to this Court. Entry of judgment was made by the Court of Appeals.

On September 28, 1979, or more than three months after that resolution became executory, the petitioner filed in this Court the special civil actions of certiorari, prohibition and mandamus to annul the proceedings in the Court of Appeals on the ground of lack of jurisdiction.

The petition is meritorious. The Court of Appeals had no appellate jurisdiction to entertain the petition for review, much less resolve it. So, its resolution dismissing the petition for lack of merit is void. (*Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue*, 98 Phil 290.)

But it does not follow that after the resolution of the Court of Appeals is declared void for lack of jurisdiction we can review at this stage the Insurance Commissioner's decision. We can no longer review it because the petition before us is the special civil action of certiorari, mandamus and prohibition, not a petition for the review of the Insurance Commissioner's decision.

Such a petition for review cannot be filed anymore in this Court because the period for filing it had long expired. The Insurance Commissioner's decision, right or wrong, is now final and executory. Our nullification of the resolution of the Court of Appeals simply means that the Insurance Commissioner's decision stands and is not subject to review.

The petitioner contends that the Court of Appeals should have transferred the case to this Court, as mandated by section 31 of the Judiciary Law and section 3, Rule 50 of the Rules of Court. That contention is correct especially considering that Leonardo Certeza called the attention of the Court of Appeals to its lack of jurisdiction.

And we could have reviewed the Insurance Commissioner's decision had the petitioner seasonably interposed an appeal from the said resolution of the Court of Appeals. But it did not do so. And, as repeatedly stated, for its

failure to make a timely appeal, the Insurance Commissioner's decision became executory and it cannot be reviewed now by this Court.

Had the Insurance Commissioner's decision been appealed to this Court, petitioner's contention that Leonardo Certeza cannot recover for the death of his son George may be sustained. That is so because in this case the Insurance Commissioner allowed Leonardo Certeza to claim the insurance, although he was not the insured party. The insured party was Certeza & Sons, Inc.

The Insurance Commissioner adjudicated the amount of the insurance to Leonardo Certeza as to whom the deceased George Certeza could be considered a member of his household and, there-fore, not covered by the third-party liability of the petitioner. George was not a third party as to his father, Leonardo, the claimant of the insurance.

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