

**FIREMAN'S FUND INSURANCE COMPANY AND FIRESTONE
TIRE AND RUBBER COMPANY OF THE PHILIPPINES,
PLAINTIFF-APPELLANTS, VS. JAMILA & COMPANY, INC. AND
FIRST QUEZON CITY INSURANCE CO., ...**

G.R. No. L-27427. April 07, 1976

Ponente: AQUINO, J.

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AQUINO, J.:

Fireman's Fund and Insurance Company (Fireman's Fund for short) and Firestone Tire and Rubber Company of the Philippines appealed from the order dated October 18, 1966 of the Court of First Instance of Manila, dismissing their complaint against Jamila & Co., Inc. (hereinafter called Jamila) for the recovery of the sum of P11,925 plus interest, damages and attorney's fees (Civil Case No. 65658).

The gist of the complaint is that Jamila or the Veterans Philippine Scouts Security Agency contracted to supply security guards to Firestone; that Jamila assumed responsibility for the acts of its security guards; that First Quezon City Insurance Co., Inc. executed a bond in the sum of P20,000 to guarantee Jamila's obligations under that contract; that on May 18, 1963 properties of Firestone valued at P11,925 were lost allegedly due to the acts of its employees who connived with Jamila's security guard; that Fireman's Fund, as insurer, paid to Firestone the amount of the loss; that Fireman's Fund was subrogated to Firestone's right to get reimbursement from Jamila, and that Jamila and its surety, First Quezon City Insurance Co., Inc., failed to pay the amount of the loss in spite of repeated demands.

Upon defendant's motions, the lower court in its order of July 22, 1966 dismissed the complaint as to Jamila on the ground that there was no allegation that it had consented to the subrogation and, therefore, Fireman's Fund had no cause of action against it.

In the same order the lower court dismissed the complaint as to First Quezon City Insurance Co., Inc. on the ground of res judicata. It appears that the same action was previously filed in Civil Case No. 56311 which was dismissed because of the failure of the same plaintiffs and their counsel to appear at the pre-trial.

Firestone and Fireman's Fund moved for the reconsideration of the order of dismissal. The lower court on September 3, 1966 set aside its order of dismissal. It sustained plaintiffs contention that there was no res judicata as to First Quezon City Insurance Co., Inc. because Civil Case No. 56311 was dismissed without prejudice. Later, First Quezon City Insurance Co., Inc. filed its answer to the complaint.

However, due to inadvertence, the lower court did not state in its order of September 3, 1966 why it set aside its prior order dismissing the complaint with respect to Jamila.

What is now to be recounted shows the lack of due care on the part of the lower court and the opposing lawyers in their management of the case. Such lack of due care has given the case a farcical ambiance and might partially explain the long delay in its adjudication.

Jamila, upon noticing that the order of September 3, 1966 had obliterated its victory without any reason therefor, filed a motion for reconsideration. It had originally moved for the dismissal of the complaint on the ground of lack of cause of action. Its contention was based on two grounds, to wit: (1) that the complaint did not allege that Firestone, pursuant to the contractual stipulation quoted in the complaint, had investigated the loss and that Jamila was represented in the investigation and (2) that Jamila did not consent to the subrogation of Fireman's Fund to Firestone's right to get reimbursement from Jamila and its surety. The lower court in its order of dismissal had sustained the second ground.

Jamila in its motion for the reconsideration of the order of September 3, 1966 invoked the first ground which had never been passed upon by the lower court. Firestone and Fireman's Fund in their opposition joined battle, in a manner of speaking, on that first ground.

But the lower court in its order of October 18, 1966, granting Jamila's motion for reconsideration, completely ignored that first ground. It reverted to the second ground which was relied upon in its order of September 3, 1966. The lower court reiterated its order of July 22, 1966 that Fireman's Fund had no cause of action against Jamila because Jamila did not consent to the subrogation. The court did not mention Firestone, the co-plaintiff of Fireman's Fund.

At this juncture, it may be noted that motions for reconsideration become interminable when the court's order follow a seesaw pattern. That phenomenon took place in this case.

Firestone and Fireman's Fund filed a motion for the reconsideration of the lower court's order of October 18, 1966 on the ground that Fireman's Fund Insurance Company was suing on the basis of legal subrogation whereas the lower court erroneously predicated its dismissal order on the theory that there was no conventional subrogation because the debtor's consent was lacking.

The plaintiff cited article 2207 of the Civil Code which provides that "if the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of, the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract".

The lower court denied plaintiff's motion. They filed a second motion for reconsideration. In that motion they sensibly called the lower court's attention to the fact that the issue of subrogation was of no moment because Firestone, the subrogor, is a party-plaintiff and could sue directly Jamila in its own right. Without resolving that contention, the lower court denied plaintiffs' second motion for reconsideration.

In this appeal Firestone and Fireman's Fund contend that the trial court's dismissal of their complaint is contrary to the aforementioned article 2207 which provides for legal subrogation.

Jamila, in reply, stubbornly argues that legal subrogation under article 2207 requires the debtor's consent; that legal subrogation takes place in the cases mentioned in article 1302 of the Civil Code and the instant case is not among the three cases enumerated in that article, and that there could be no subrogation in this case because according to the plaintiffs the contract between Jamila and Firestone was entered into on June 1, 1965 but the loss complained of occurred on May 18, 1963.

With respect to the factual point raised by Jamila, it should be stated that plaintiffs' counsel gratuitously alleged in their brief that Firestone and Jamila entered into a "contract of guard services" on June 1, 1965. That allegation, which was uncalled for because it is not found in the complaint, created confusion which heretofore did not exist. No copy of the contract was annexed to the complaint.

That confusing statement was an obvious error since it was expressly alleged in the complaint that the loss occurred on May 18, 1963. The fact that such an error was committed is another instance substantiating our previous observation that plaintiffs' counsel had not exercised due care in the presentation of his case.

The issue is whether the complaint of Firestone and Fireman's Fund states a cause of action against Jamila.

We hold that Firestone is really a nominal party in this case. It had already been indemnified for the loss which it had sustained. Obviously, it joined as a party-plaintiff in order to help Fireman's Fund to recover the amount of the loss from Jamila and First Quezon City Insurance Co., Inc. Firestone had tacitly assigned to Fireman's Fund its cause of action against Jamila for breach of contract. Sufficient ultimate facts are alleged in the complaint to sustain that cause of action.

On the other hand, Fireman's Fund's action against Jamila is squarely sanctioned by article 2207. As the insurer, Fireman's Fund is entitled to go after the person or entity that violated its contractual commitment to answer for the loss insured against (Cf. *Philippine Air Lines, Inc. vs. Heald Lumber Co.*, 101 Phil. 1031; *Rizal Surety & Insurance Co. vs. Manila Railroad Company*, L-24043, April 25, 1968, 23 SCRA 205).

The trial court erred in applying to this case the rules on novation. The plaintiffs in alleging in their complaint that Fireman's Fund "became a party in interest in this case by virtue of a subrogation right given in its favor by" Firestone, were not relying on the novation by change of creditors as contemplated in articles 1291 and 1300 to 1303 of the Civil Code but rather on article 2207.

Article 2207 is a restatement of a settled principle of American jurisprudence. Subrogation has been referred to as the doctrine of substitution. It "is an arm of equity that may guide or even force one to pay a debt for which an obligation was incurred but which was in whole or in part paid by another" (83 C.J.S. 576, 578, note 16, citing *Fireman's Fund Indemnity Co. vs. State Compensation Insurance Fund*, 209 Pac. 2d 55).

"Subrogation is founded on principles of justice and equity, and its operation is governed by principles of equity. It rests on the principle that substantial justice should be attained regardless of form, that is, its basis is the doing of complete, essential, and perfect justice between all the parties without regard to form" (83 C.J.S. 579-80).

Subrogation is a normal incident of indemnity insurance (*Aetna L. Ins. Co. vs. Moses*, 287 U.S. 530, 77 L. ed. 477). Upon payment of the loss, the insurer is entitled to be subrogated pro tanto to any right of action which the insured may have against the third person whose negligence or wrongful act caused the loss (44 Am. Jur. 2d 745, citing *Standard Marine Ins. Co. vs. Scottish Metropolitan Assurance Co.*, 283 U.S. 284, 75 L. ed. 1037).

The right of subrogation is of the highest equity. The loss in the first instance is that of the insured but after reimbursement or compensation, it becomes the loss of the insurer (44 Am. Jur. 2d 746, note 16, citing *Newcomb vs. Cincinnati Ins. Co.*, 22 Ohio St. 382).

"Although many policies including policies in the standard form, now provide for subrogation, and thus determine the rights of the insurer in this respect, the equitable right of subrogation as the legal effect of payment inures to the insurer without any formal assignment or any express stipulation to that effect in the policy" (44 Am. Jur. 2d 746). Stated otherwise, when the insurance company pays for the loss, such payment operates as an equitable assignment to the insurer of the property and all remedies which the insured may have for the recovery thereof. That right is not dependent upon, nor does it grow out of, any privity of contract, or upon written assignment of claim, and payment to the insured makes the insurer an assignee in equity (*Shambley vs. Jobe-Blackley Plumbing and Heating Co.*, 264 N. C. 456, 142 SE 2d 18).

Whether the plaintiffs would be able to prove their cause of action against Jamila is another question.

Finding the trial court's order of dismissal to be legally untenable, the same is set aside with costs against defendant-appellee Jamila & Co., Inc.

SO ORDERED.

Barredo, (Acting Chairman), Antonio, Concepcion, Jr., and Martin, JJ., concur.

Fernando, J., on official leave.

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