

BAY VIEW HOTEL, INC., PLAINTIFF-APPELLANT, VS. KER & CO., LTD., AND PHOENIX ASSURANCE CO., LTD., DEFENDANTS-APPELLEES.

G.R. No. L-28237. August 31, 1982

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

This appeal was originally brought before the Court of Appeals but was certified to this Court pursuant to the appellate court's re-resolution of October 13, 1967 since it involved purely questions of law.

Sometime in January, 1958, plaintiff-appellant Bay View Hotel, Inc., then the lessee and operator of the Manila Hotel, secured a fidelity guarantee bond from defendant-appellee Ker & Co., Ltd., for its accountable employees against acts of fraud and dishonesty. Said defendant-appellee Ker & Co., Ltd., is the Philippine general agent of Phoenix Assurance Co., Ltd., a foreign corporation duly licensed to do insurance business in the Philippines.

When one of the bonded employees, Tomas E. Ablaza, while acting in his capacity as cashier, was discovered by plaintiff-appellant to have had a cash shortage and unremitted collections in the total amount of P42,490.95, it filed claims for payments on the said fidelity guarantee bond but defendant-appellee Ker & Co. denied and refused indemnification and payment. To enforce its claims, plaintiff-appellant instituted its complaint, dated August 30, 1965 docketed as Civil Case No. 63181 of the Court of First Instance of Manila.

In its answer, defendant-appellee Ker & Co. justified its denial of the claims of plaintiff-appellant on various reasons, such as non-compliance with the conditions stipulated in the insurance policy; non-presentation of evidence regarding the various charges of dishonesty and misrepresentation against Tomas E. Ablaza and non-production of the documents to prove the alleged loss. Ker & Co. likewise averred that it was merely an agent and as such it was not liable under the policy.

On June 22, 1966, counsel for Ker & Co. filed a request for admission, furnishing plaintiff-appellant's counsel with a copy thereof requesting admission of the following facts:

"1. On February 14, 1967, the Bay View Hotel, Inc., applied to the Phoenix Assurance Co., Ltd., for a fidelity guarantee bond through a proposal form, a true copy of which is annexed to our answer as Annex 'A' thereof.

"2. Such a policy was actually issued on January 22, 1958 by the Phoenix Assurance Co., Ltd., in favor of the Bay View Hotel, Inc., and was renewed from time to time with amendments. A true copy of the policy as it finally stood at the time of the alleged defalcation is annexed to our answer as Annex 'B' thereof.

"3. This claim filed by the Bay View Hotel, Inc., under this policy was denied on behalf of the Phoenix Assurance Co., Ltd., by a letter dated 18th June, 1965 sent by registered mail to the Bay View Hotel, Inc. on June 22, 1965. A true copy of this letter of denial is annexed to the present request as Annex 'C' hereof."

When plaintiff-appellant failed to make any answer to the re-request for admission within the period prescribed by the rules, defendant-appellee Ker & Co. filed a Motion to Dismiss on Affirmative Defense, dated July 6, 1966,

insisting that since under Sec. 2, Rule 26 of the Rules of Court, plaintiff-appellant was deemed to have impliedly admitted each of the matters enumerated in the request for admission, it followed that the proper party in interest against whom plaintiff-appellant might have a claim was the principal Phoenix Assurance Co. (Phoenix) and not the agent Ker & Co.

Plaintiff-appellant filed an opposition, dated July 19, 1966 arguing that the proper remedy, under the circumstances was not to dismiss the complaint but to amend it in order to bring the necessary or indispensable parties to the suit. Defendant-appellee Ker & Co. filed a reply to the opposition reiterating its stand that since it merely acted as an agent, the case should be dismissed and plaintiff-appellant should file the necessary action against the principal Phoenix.

On August 1, 1966, plaintiff-appellant filed a Motion for Leave to Admit Amended Complaint, attaching copy of the complaint, as amended, this time impleading Phoenix as party defendant. On August 16, 1966, defendants-appellees filed their joint answer to the amended complaint. Again, Ker & Co., Ltd., argued that it was merely an agent and therefore not liable under the policy. On the other hand, Phoenix, averred that under Condition 8 of the insurance policy, plaintiff-appellant was deemed to have abandoned its claim in view of the fact that it did not ask for an arbitration of its claim within twelve (12) months from June 22, 1965 the date of receipt of the denial of the claim.

On August 24, 1966, defendants-appellees filed a motion for summary judgment which the trial court granted in its decision of November 4, 1966, ordering the dismissal of the case. After denial of its motion for reconsideration, plaintiff-appellant filed the present appeal, raising the following assignment of errors:

"I

The lower court erred and acted with grave abuse of discretion in extending the legal effects, if any, of the request for admission filed by Ker & Co., Ltd. to the Phoenix Assurance Co., Ltd., which was not a party-defendant at the time said request was filed and for whom no similar request was ever filed.

"II

The lower court erred and acted with grave abuse of discretion in giving legal effects to a request for admission by the defendant-appellee under the original complaint after the said original complaint was, with leave of court, amended.

"III

The lower court erred and acted with grave abuse of discretion in holding that Condition No. 8 of the Policy No. FGC-5018-P requires that should there be a controversy in the payment of the claims, it should be submitted to an arbitration despite the admissions by the parties and the established fact that Condition No. 8 of said Policy No. FGC-5018-P provides for Arbitration 'if any dispute shall arise as to the amount of company's liability.'

"IV

The lower court erred and acted with grave abuse of discretion in granting the Motion for Summary Judgment and dismissing the complaint."

The first two errors assigned may be taken jointly. Plaintiff-appellant argues that since the implied admission was made before the amendment of its complaint so as to include Phoenix, it follows that Phoenix has no right to avail of these admissions, and that the trial court committed a grave abuse of discretion in extending to Phoenix the legal effects of the request for admission filed solely by Ker & Co.

The argument is untenable. Admission is in the nature of evidence and its legal effects were already part of the records of the case and therefore could be availed of by any party even by one subsequently impleaded. The amendment of the complaint per se cannot set aside the legal effects of the request for admission since its materiality has not been affected by the amendment. If a fact is admitted to be true at any stage of the proceedings, it is not stricken out through the amendment of the complaint. To allow a party to alter the legal effects of the request for admission by the mere amendment of a pleading would constitute a dangerous and undesirable precedent. The legal effects of plaintiff-appellant's failure to answer the request for admission could and should have been corrected below by its filing a motion to be relieved of the consequences of the implied admission with respect to respondent Phoenix.

Moreover, since an agent may do such acts as may be conducive to the accomplishment of the purpose of the agency, admissions secured by the agent within the scope of the agency ought to favor the principal. This has to be the rule, for the acts or declarations of an agent of the party within the scope of the agency and during its existence are considered and treated in turn as the declarations, acts and representations of his principal^[1] and may be given in evidence against such party.

Plaintiff-appellant insists that since the motion for summary judgment was filed on behalf of defendant-appellee Ker & Co. alone, there was no motion for summary judgment as far as Phoenix was concerned and the trial court's decision dismissing the case should not have included the principal Phoenix.

But the motion for summary judgment was filed after the complaint had been amended and answer thereto had been filed. The issues, therefore, with respect to Phoenix had already been likewise joined. Moreover, a reading of the said motion for summary judgment, more particularly the prayer thereof, shows that Phoenix did join Ker & Co. in moving for the dismissal of the case and prayed "that the present action be dismissed as against Ker & Co., Ltd., because being purely and simply the agent of the insurer, it is not liable under the policy and as against the Phoenix Assurance Co., Ltd. because by failing to seek an arbitration within twelve months from the date of its receipt of the denial of its claim on June 22, 1965, plaintiff, Bay View Hotel, Inc., is deemed under condition 8 of the policy, to have abandoned its claim against said defendant Phoenix Assurance Co., Ltd."

The main issue raised by plaintiff-appellant is with respect to Condition No. 8 of the insurance policy, photostatic copy of which was submitted to the trial court and reproduced as follows:

"If any dispute shall arise as to the amount of company's liability under this Policy the matter shall if required by either party be referred to the decision of two neutral persons as arbitrators one of whom shall be named by each party or of an umpire who shall be appointed by said arbitrators before entering on the reference and in case either party or his representatives shall neglect or refuse for the space of two months after request in writing from the other party so to do to name an arbitrator the arbitrator of the other party may proceed alone. And it is hereby expressly agreed and declared that it shall be a condition precedent to any right of action or upon this Policy that the award by such administrator or umpire of the amount of the loss shall first be obtained. The costs of and connected with the arbitration shall be in the discretion of the arbitrators, or umpire."^[2]

Plaintiff-appellant maintains that Condition No. 8 of the policy provides for arbitration only "if any dispute should arise as to the amount of company's liability" consequently, the reference to arbitration is not a condition precedent to the filing of the suit contrary to the insurer company's posture. Plaintiff-appellant points out that in the instant case, there is a total and complete negation of liability. There is no dispute as to the amount of company's liability because this presupposes an admission of responsibility although not to the extent of the cost thereof, while here the insurer denies liability wholly and totally.

We find in favor of plaintiff-appellant. The provisions of Condition No. 8, more specifically the portion thereof

which reads, "if any dispute shall arise as to the amount of company's liability under this policy x x x," do not appear to require any extended interpretation. Condition No. 8 requires arbitration only as to disputes regarding the amount of the insurer's liability but not as to any dispute as to the existence or non-existence of liability. Thus, Condition No. 8 comes into play only if the insurer admits liability but cannot agree with the insured as to the amount thereof and cannot be invoked in cases like that at bar where the insurer completely denies any liability. Defendants-appellees' contention that plaintiff-appellant's failure to request arbitration proceedings is a bar to its filing of the suit at bar against the insurer company cannot be sustained, specially considering the established principle that contracts of adhesion such as the insurance policy in question are to be strictly construed in case of doubt against the insurer.

As to appellee Ker & Co., Ltd., however, there appears to be no serious contradiction as to the fact that it merely acted as the agent of its principal, Phoenix. Considering that there was full disclosure of such agency since the insurance policy was actually issued by Phoenix, We find no error in the dismissal of the case against said defendant Ker & Co., Ltd.

Accordingly, the dismissal of the case against Ker & Co., Ltd., is hereby affirmed and maintained, while the dismissal of the case against Phoenix Assurance Co., Ltd. is hereby set aside and the case is remanded to the court of origin for further proceedings and determination on the merits. No costs.

Makasiar, Melencio-Herrera, Plana, Relova, and Gutierrez, Jr., JJ., concur.
Vasquez, J., see his concurring opinion.

[1] Sec. 26, Rule 130, Rules of Court.

[2] Emphasis supplied.

CONCURRING OPINION

VASQUEZ, J.:

I concur in the resolution of the issues in regard to the respective liabilities of Ker & Co., Ltd. and Phoenix assurance Co., Ltd. However, I do not subscribe to the view expressed in the following paragraph of the main opinion:

"Moreover, since an agent may do such acts as may be conducive to the accomplishment of the purpose of the agency, admissions secured by the agent within the scope of the agency ought to favor the principal. This has to be the rule, for the act or declarations of an agent of the party within the scope of the agency and during its existence are considered and treated in turn as the declarations, acts and representations of his principal and may be given in evidence against such party".

The authority cited for this view, to wit, Section 26, Rule 130 of the Rules of Court, reveals that the same is being justified under one of the recognized exceptions to the rule of *res inter alios acta*. To my mind, this rule of evidence finds no application herein.

Section 26 of Rule 130 allows the admission against the principal of any act or declaration of the agent within the scope of his authority during its existence. It has no reference to a principal using in his favor an admission secured by the agent from a third party. In the case at bar, Phoenix is not being held bound or made liable by any

act or declarations of Ker. Instead, Phoenix seeks to profit from something done by Ker. While this may be correct, its justification must be based on some legal ground other than Section 26 of Rule 130. The act or declaration involved herein is that of petitioner Bay View. The question is not whether such act or declaration is admissible in evidence against some other entity with which Bay View is in privity, but rather, whether it may be utilized by Phoenix against Bay View itself. Clearly, *res inter alios acta* does not come into play herein.

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