

**ARTEX DEVELOPMENT CO., INC., PLAINTIFF-APPELLEE, VS.
WELLINGTON INSURANCE CO., INC., DEFENDANT-APPELLANT.**

G.R. No. L-29508. June 27, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

In this appeal from the decision of the Court of First Instance of Rizal at Caloocan City, the Court reiterates the established doctrine that a third party not privy to a contract that contains no stipulations pour autrui in its favor may not sue enforcement of the contract.

Hence, in this case where the lower court ordered defendant insurer to pay plaintiff-insured the balance of the insured's property loss of P3,624,683.43 and its ascertained business interruption loss of P1,748,460.00 with interest and 15% attorney's fees, the Court affirms the correctness of the lower court's ruling that it is no defense for the insurer as against the insured that the insurer had obtained reinsurance from other companies to cover its liability.

Defendant-appellant's lone assignment of error that the lower court should have ruled instead "that plaintiff-appellee's cause of action (as insured) should have been directed against the reinsurers and not against defendant-appellant" is manifestly untenable since there is no privity of contract between the insured and the reinsurers. Plaintiff-appellee as insured can only move for enforcement of its insurance contract with its insurer, the defendant-appellant.

Unless there is a specific grant in, or assignment of, the reinsurance contract in favor of the insured or a manifest intention of the contracting parties to the reinsurance contract to grant such benefit or favor to the insured, the insured, not being privy to the reinsurance contract, has no cause of action against the reinsurer. It is expressly provided in Section 91 the Insurance Act[1] that "(T)he original insured has no interest in a contract of insurance."

The lower court's judgment of April 2, 1968 was rendered on the basis of the parties' stipulation of facts and there is no dispute as to the property and business interruption loss of the insured as thus determined nor as to the partial payments made by defendant-insurer that have greatly reduced the amount still due and owing under the judgment under appeal.

Briefly, the trial court found that "From the evidence and stipulation of facts presented, it appears that the defendant, Wellington Insurance Co., Inc. insured for P24,346,509.00 the buildings, stocks and machinery of plaintiff Artex Development Co., Inc., against loss or damage by fire or lightning (Exh. A) upon payment by plaintiff of the corresponding premiums; that on August 2, 1963, said properties were insured for an additional sum of P883,034.00 (Exh. A-1); that on May 12, 1963 defendant insured plaintiff against business interruption (use and occupancy) for P5,200,000.00 (Exh. B); that on September 22, 1963, the buildings, stocks and machineries of plaintiff's spinning department were burned; that notice of the loss and damage was given the defendant, and the loss was referred to the H. H. Bayne Adjustment Co. and the Allied Adjustment Co.; that as per report of the adjusters, the total property loss of the plaintiff was the sum of P10,106,554.40 and the total

business interruption loss was P3,000,000.00; that defendant has paid to the plaintiff the sum of P6,481,870.07 of the property loss suffered by plaintiff and P1,864,134.08 on its business interruption loss, leaving a balance of P3,624,683.43 and P1,748,460.00, respectively."[2]

On May 29, 1969, counsel for plaintiff-appellee filed a manifestation dated April 10, 1969, bearing the conformity of plaintiff itself under the signature of its president, Domingo G. Castillo, as follows:

"M A N I F E S T A T I O N

"Plaintiff-appellee, through counsel, respectfully manifests that, in view of the Deeds of Discharge dated 10 April 1969 and Collateral Agreement dated 10 April 1969, hereto attached as Annexes 'A' and 'B', the only remaining liability subject of litigation shall be that proportion of the loss reinsured with or through Alexander and Alexander, Inc. of New York, U.S.A., namely, P397,813.00 - the rest having been paid and settled per the said deeds Annexes 'A' and 'B'.

"Quezon City for Manila, 10 April 1969.

"(Signed) NORBERTO J. QUISUMBING

Counsel for Plaintiff-Appellee

P.O. Box No. 226, Manila

"CONFORME:

ARTEX DEVELOPMENT CO., INC.

By:

(Signed) DOMINGO G. CASTILLO

President"[3]

The amended documents recited further that:

"1. Artex hereby acknowledges receipt of the sum of P3,600,000.00 in Philippine currency paid by Minet on behalf of itself and Wellington and Minet & Co. in full and final settlement of all or any claims Artex may have against Wellington, Minet and Minet & Co. in respect of the losses resulting from the said fire of 22nd September 1963 the Policies of Insurance and the Contracts of Reinsurance specified in the said Deeds of Discharge and discharges Wellington, Minet and Minet & Co. jointly and severally from all actions, proceedings, claims, demands, costs and expenses in respect thereof including the said judgment obtained in the Court of First Instance of Rizal and additionally Artex waives in favor of Minet and Minet & Co. Artex's right of recourse against them under Article 1177 of the Civil Code of the Philippines."[4]

Upon the parties' joint motion dated May 22, 1969 for a temporary suspension of the proceedings by virtue of such payment, the Court per its resolution of June 30, 1969 resolved to suspend the proceedings until July 30, 1969.[5] The Court also noted defendant-appellant's manifestation dated June 18, 1969, to the effect that "the statement in plaintiff-appellee's Manifestation that the only remaining amount of its claim subject of litigation is the proportion of the loss reinsured with Alexander and Alexander, Inc. of New York, U.S.A. in the amount of P397,813.00 because the reinsurers of defendant-appellant made additional partial payments, is true and correct but without prejudice to the legal question presented in defendant-appellant's brief."[6]

Thereafter, plaintiff-appellee filed on August 8, 1969 its brief, and prayed for affirmance of the appealed judgment with modification, as follows:

"In the light of the foregoing discussion, the lower court did not commit any error in its appealed decision, which must accordingly be sustained and affirmed. It is however respectfully prayed that the same be modified as to the amount of liability adjudged against defendant-appellant in favor of plaintiff-appellee, in accordance with their 'Collateral Agreement' executed by them on April 10, 1969 (Annex 'B' of manifestation of the same date, filed in this Court on 29 May 1969), which should now be fixed at P397,813.00, plus of course 12% interest per annum thereof for late payment until 10 April 1969, attorney's fees of 15% of the recovery, expenses of litigation and costs of suit, already adjudged by the lower court, no writ of execution to issue however on any adjudged liability until after three (3) years from 10 April 1969, pursuant to the same 'Collateral Agreement' of the parties."

On the sole issue of law raised by defendant-appellant in its brief, the Court finds, as above indicated, that no single clause in the reinsurance contracts has been cited by defendant-insurer that would justify its claim that they contained a stipulation pour autrui in favor of plaintiff-insured, and whereby "plaintiff-appellee is deemed to have agreed to look solely to the reinsurers for indemnity in case of loss." [7]

Article 1311 of our Civil Code expresses the universal rule that "Contracts take effect only between the parties, their assigns and heirs" (with the heir being "not liable beyond the value of the property he received from the decedent,") and provides for the exception of stipulations pour autrui or in favor of a third person not a party to the contract, in this wise:

"If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person." (Art. 1311, Civil Code, second paragraph)

The Court has stressed since the early case of *Uy Tam vs. Leonard* [8] that the intent of the contracting parties to benefit third party by means of such stipulations pour autrui must be clearly expressed, and hence, a clause in a contractor's bond executed solely in favor of the City of Manila and conditioned to pay for all labor and materials cannot be construed as a stipulation pour autrui available to materialmen who supplied certain materials to the contractor for use in the performance of the latter's contract with the city.

In *Bonifacio Bros, Inc. vs. Mora* [9] the Court reiterated the same established doctrine, holding that the clause in a motor vehicle insurance policy authorizing the owner of the damaged vehicle to contract for its repair does not mean that the repairman may collect the cost of the repair directly from the insurer, there being no clause "from which we can infer that there is an obligation on the part of the insurance company to pay the cost of repairs directly to them," and that the mortgagee of the car (expressly named in the insurance policy as beneficiary of any loss payable thereunder) had a better right than the repairman to the insurance proceeds.

Plaintiff-insured, not being a party or privy to defendant - insurer's reinsurance contracts, therefore, could not directly demand enforcement of such reinsurance contracts. Defendant-appellant's contention that the insured should be deemed to have agreed to look solely to the reinsurers for indemnity in case of loss, since it was evident that with its mere P500,000 - paid-up capital stock, it had to secure reinsurance coverage for the over P24-million fire insurance coverage of the policy issued by it to plaintiff-insured, is manifestly untenable.

Assuming that plaintiff-insured could avail of the reinsurance contracts and directly sue the reinsurers for payment of the loss, still such assumption would not in any way affect or cancel out defendant-insurer's direct contractual liability to plaintiff-insured under the insurance policy to indemnify plaintiff for the property losses. Plaintiff's right as insured to sue defendant as insurer directly and solely would thereby not be affected or curtailed in any way, without prejudice to defendant in turn filing a third party complaint or separate suit against its reinsurers. Thus, in *Naga Development Corp. vs. Court of Appeals* [10] the Court held that the contractor

remain liable to the supplier for materials delivered, notwithstanding arrangements made on its GSIS loan for the GSIS to issue treasury warrants on account of such loan, directly in favor of the supplier, since "such an arrangement obviously cannot destroy or modify the direct legal responsibility of the (contractor) to the (supplier) to pay for what the latter gave and rendered to the former."

On April 4, 1973, plaintiff-appellee filed a manifestation informing the Court that in Republic of the Philippines vs. Wellington Insurance Co., Inc., docketed as Civil Case No. 88046 of the Court of First Instance of Manila, an order was issued on September 18, 1972 for the liquidation of said insurance company, herein defendant-appellant; that the Insurance Commissioner was designated receiver and as such issued on November 4, 1972 an order for the filing of claims against said defendant; that accordingly plaintiff filed its verified statement of claim wherein it asked the Insurance Commissioner "to move to dismiss the above-entitled appeal as filed only for delay."

Requested by the Court to file their comments, defendant through counsel admitted the fact of liquidation proceedings but denied any dilatory motive in its appeal, stating that "although it does not raise any issue of fact in (this) appeal, yet the question of law raised (herein) is of first impression in this jurisdiction" and of "utmost importance" to insurance companies taking out reinsurance policies.

The Insurance Commissioner, in her manifestation of May 18, 1973, confirmed the fact of her taking over "title to all of the property, contracts, rights of action and all of the books and records of the (defendant) insurance company" as receiver-liquidator pursuant to Section 175-B of the Insurance Act claiming the sole right now to officially represent and act for defendant company and asserting "exclusive jurisdiction to determine this claim" even as against this Court which, according to her, should be deemed to have "ceased to have jurisdiction over the subject of this pending action," but at the same time not moving to dismiss the appeal, as suggested by plaintiff, and instead manifesting that "the Insurance Commissioner is absolutely without any knowledge information sufficient to form a belief as to the truth or veracity of Plaintiff Appellee's imputation to Defendant-Appellant that the latter had filed the above-entitled appeal only for delay." [11]

Since the claim at bar of plaintiff against defendant is merely for the balance of a proven undisputed claim (as to amount) — long tried and decided as per the trial court's judgment of April 2, 1968 before the liquidation order issued only last year on September 18, 1972 - the Court has herein resolved and disposed of the sole issue of law raised in this appeal. Plaintiff's judgment claim as now judicially determined will have to be satisfied in compliance with the requirements of the Insurance Act governing distribution of assets, priorities of payments of proven claims, etc., insurance companies under liquidation and with prior authorization of the court in the liquidation proceedings pending in the Manila Court of First Instance.

ACCORDINGLY, as prayed for by plaintiff-appellee in its brief, the judgment of the lower court is affirmed, with the modification that the remaining liability of defendant-appellant to plaintiff-appellee in accordance with their "collateral agreement" of April 10, 1969 is fixed at P397,813.00, with twelve (12%) percent interest per annum until 10 April 1969, attorney's fees of fifteen (15%) percent of the recovery, and costs of suit.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Barredo, Makasiar, and Esguerra, JJ., concur.
Fernando and Antonio, JJ., took no part.

[1] Act 2427 of the Philippine Legislature, as amended. Cf. Vol. 1 CPS 353.

[2] Decision, Rec. on Appeal, pp. 121, 133-134.

[3] Record, p. 44.

[4] Record, pp. 46-47.

[5] Record, p. 105.

[6] Record, p. 99.

[7] Appellant's brief, p. 27.

[8] 30 Phil. 471 (1915).

[9] 20 SCRA 261 (May 29, 1967), per Castro, J.

[10] 41 SCRA 105 (Sept. 30, 1971), per Castro, J.; notes in italics supplied.

[11] Record, at pp. 134-135.

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