

THE CAPITAL INSURANCE AND SURETY COMPANY, INC., PLAINTIFF AND APPELLEE, VS. MARIO DELGADO, ET AL., DEFENDANTS AND APPELLANTS.

G.R. No. L-18567. March 30, 1963

Ponente: DIZON, J.

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DIZON, J.:

Appeal from the decision of the Court of First Instance of Cebu in Civil Case No. R-4372 sentencing Mario Delgado and Leonor Delgado Dee to pay, jointly and severally, to the Capital Insurance & Surety Co. Inc., the sum of P583.95, with legal interest thereon from the filing of the complaint until paid in full plus the sum of P116.79, as attorney's fees and costs.

Appellee, Capital Insurance & Surety Co. Inc., an insurance company duly organized under the laws of the Philippines, issued on August 1, 1953, its Fire Insurance Policy No. C-1137 for P30,000, whereby it insured several personal properties of appellants located at Saneiangko Street, Cebu City, for a period of one year, at an annual premium of P337.50. On August 8, 1953, a bill for the premium charges of P337.50, plus P5.10 for documentary stamps was sent to the latter, but the same remained unpaid. This notwithstanding, on August 31, 1954, a renewal certificate (No. C-1238) of Policy No. C-1137 was issued by appellee covering the period from August 1, 1954 to August 1, 1955 at the same rate of premium.

On October 25, 1954, appellee's assistant manager, Virgilio Formoso, wrote appellant Mario Delgado reminding him of the unpaid premiums in the total sum of P685.20. In reply thereto, Delgado promised to pay the unpaid charges on or before November 10th of the same year. As he failed to do so, appellant filed the present action with the Court of First Instance of Cebu against appellants to recover from them the sum of P583.95, representing the premium charges on Fire Insurance Policy No. C-4137, the further sum of P116.79 as attorney's fees, and, costs.

Appellants' answer alleged that they did not insure their property against fire with appellee, and disclaimed liability on the latter ground that, as they failed to pay the corresponding premium, no contract of insurance was consummated and therefore appellee had no cause of action against them.

It is beyond question that appellee's action is merely to recover from appellants the principal sum of P583.95, with interest thereon at the legal rate from November 28, 1955 until full payment, plus the additional sum of P116.79 as attorney's fees, and the costs of suit. Such being the case, the Court of First Instance of Cebu had no original jurisdiction over the subject matter and all proceedings had in the case are void.

Wherefore, the appealed decision is hereby set aside, and the case is dismissed without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J.B.L., Barrera, Paredes, Regala and Makalintal, JJ., concur.

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