

FILIPINAS COMPAniA DE SEGUROS, PETITIONER, VS. CHRISTERN, HUENEFELD & CO., INC., RESPONDENT*G. R. No. L-2294. May 25, 1951*

Ponente: PARAS, C.J.

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On October 1, 1941f the respondent corporation, Christern, Huenefeld & Co., Inc., after payment of corresponding premium, obtained from the petitioner, Filipinas Cia. de Seguros, fire policy No. 29333 in the sum of P100,000, covering merchandise contained in a building located at No. 711 Roman Street, Binondo, Manila. On February 27, 1942, or during the Japanese military occupation, the building and insured merchandise were burned. In due time the respondent submitted to the petitioner its claim under the policy. The salvaged goods were sold at public auction and, after deducting their value, the total loss suffered by the respondent was fixed at P92,650. The petitioner refused to pay the claim on the ground that the policy in favor of the respondent had ceased to be in force on the date the United States declared war against Germany, the respondent corporation (though organized under and by virtue of the laws of the Philippines) being controlled by German subjects and the petitioner being a company under American jurisdiction when said policy was issued on October 1, 1941. The petitioner, however, in pursuance of the order of the Director of the Bureau of Financing, Philippine Executive Commission, dated April 9, 1943, paid to the respondent the sum of P92,650 on April 19, 1943.

The present action was filed on August 6, 1946, in the Court of First Instance of Manila for the purpose of recovering from the respondent the sum of P92,650 above mentioned. The theory of the petitioner is that the insured merchandise were burned after the policy issued in 1941 in favor of the respondent corporation had ceased to be effective because of the outbreak of the war between the United States and Germany on December 10, 1941, and that the payment made by the petitioner to the respondent corporation during the Japanese military occupation was under pressure. After trial, the Court of First Instance of Manila dismissed the action without pronouncement as to costs. Upon appeal to the Court of Appeals, the judgment of the Court of First Instance of Manila was affirmed, with costs. The case is now before us on appeal by certiorari from the decision of the Court of Appeals.

The Court of Appeals overruled the contention of the petitioner that the respondent corporation became an enemy when the United States declared war against Germany, relying on English and American cases which held that a corporation is a citizen of the country or state by and under the laws of which it was created or organized. It rejected the theory that the nationality of a private corporation is determined by the character or citizenship of its controlling stockholders.

There is no question that majority of the stockholders of the respondent corporation were German subjects. This being so, we have to rule that said respondent became an enemy corporation upon the outbreak of the war between the United States and Germany. The English and American cases relied upon by the Court of Appeals have lost their force in view of the latest decision of the Supreme Court of the United States in *Clark vs. Uebersee Finanz Korporation*, decided on December 8, 1947, 92 Law. Ed. Advance Opinions, No. 4, pp. 148-153, in which

the control test has been adopted. In "Enemy Corporations" by Martin Domke, a paper presented to the Second International Conference of the Legal Profession held at The Hague (Netherlands) in August, 1948, the following enlightening passages appear:

"Since World War I, the determination of enemy nationality of corporations has been discussed in many countries, belligerent and neutral. A corporation was subject to enemy legislation when it was controlled by enemies, namely managed under the influence of individuals or corporations themselves considered as enemies. It was the English courts which first in the Daimler case applied this new concept of "piercing the corporate veil", which was adopted by the Peace Treaties of 1919 and the Mixed Arbitral Tribunals established after the First World War.

"The United States of America did not adopt the control test during the First World War. Courts refused to recognize the concept whereby American-registered corporations could be considered as enemies and thus subject to domestic legislation and administrative measures regarding enemy property.

"World War II revived the problem again. It was known that German and other enemy interests were cloaked by domestic corporation structure. It was not only by legal ownership of shares that a material influence could be exercised on the management of the corporation but also by long-term loans and other factual situations. For that reason, legislation on enemy property enacted in various countries during World War II adopted by statutory provisions the control test and determined, to various degrees, the incidents of control. Court decisions were rendered on the basis of such newly enacted statutory provisions in determining enemy character of domestic corporation.

"The United States did not, in the amendments of the Trading with the Enemy Act during the last war, include as did other legislations, the application of the control test and again, as in World War I, courts refused to apply this concept whereby the enemy character of an American or neutral-registered corporation is determined by the enemy nationality of the controlling stockholders.

"Measures of blocking foreign funds, the so called freezing regulations, and other administrative practice in the treatment of foreign-owned property in the United States allowed to a large degree the determination of enemy interests in domestic corporations and thus the application of the control test. Court decisions sanctioned such administrative practice enacted under the First War Powers Act of 1941, and more recently, on December 8, 1947, the Supreme Court of the United States definitely approved of the control theory. In *Clark vs. Uebersee Finanz Korporation, A. G.*, dealing with a Swiss corporation allegedly controlled by German interests, the Court said: 'The property of all foreign interest was placed within the reach of the vesting power (of the Alien Property Custodian) not to appropriate friendly or neutral assets but to reach enemy interests which masqueraded under those innocent fronts. * * * The power of seizure and vesting was extended to all property of any foreign country or national so that no innocent appearing device could become a Trojan horse.'"

It becomes unnecessary, therefore, to dwell at length on the authorities cited in support of the appealed decision. However, we may add that, in *Haw Pia vs. China Banking Corporation*,[*]45 Off. Gaz., (Supp. 9) 229, we already held that the China Banking Corporation came within the meaning of the word "enemy" as used in the Trading with the Enemy Acts of civilized countries not only because it was incorporated under the laws of an enemy country but because it was controlled by enemies.

The Philippine Insurance Law (Act No. 2427, as amended), in section 8, provides that "anyone except a public enemy may be insured." It stands to reason that an insurance policy ceases to be allowable as soon as an insured becomes a public enemy.

"Effect of war, generally.—All intercourse between citizens of belligerent powers which is inconsistent with a state of war is prohibited by the law of nations. Such prohibition includes all negotiations, commerce, or trading with the enemy; all acts which will increase, or tend to increase, its income or resources; all acts of

voluntary submission to it; or of receiving its protection; also, all acts concerning the transmission of money or goods; and all contracts relating thereto are thereby nullified. It further prohibits insurance upon trade with or by the enemy, and upon the life or lives of aliens engaged in service with the enemy; this for the reason that the subjects of one country cannot be permitted to lend their assistance to protect by insurance the commerce or property of belligerent, alien subjects, or to do anything detrimental to their country's interest. The purpose of war is to cripple the power and exhaust the resources of the enemy, and it is inconsistent that one country should destroy its enemy's property and repay in insurances the value of what has been so destroyed, or that it should in such manner increase the resources of the enemy, or render it aid, and the commencement of war determines, for like reasons, all trading intercourse with the enemy, which prior thereto may have been lawful. All individuals, therefore, who compose the belligerent powers, exist, as to each other, in a state of utter exclusion, and are public enemies." (6 Couch, Cyc. of Ins. Law, pp. 5352-5353.)

"In the case of an ordinary fire policy, which grants insurance only from year to year, or for some other specified term it is plain that when the parties become alien enemies, the contractual tie is broken and the contractual rights of the parties, so far as not vested, lost." (Vance, the Law on Insurance, Sec. 44, p. 112.)

The respondent having become an enemy corporation on December 10, 1941, the insurance policy issued in its favor on October 1, 1941, by the petitioner (a Philippine corporation) had ceased to be valid and enforceable, and since the insured goods were burned after December 10, 1941, and during the war, the respondent was not entitled to any indemnity under said policy from the petitioner. However, elementary rules of justice (in the absence of specific provision in the Insurance Law) require that the premium paid by the respondent for the period covered by its policy from December 11, 1941, should be returned by the petitioner.

The Court of Appeals, in deciding the case, stated that the main issue hinges on the question of whether the policy in question became null and void upon the declaration of war between the United States and Germany on December 10, 1941, and its judgment in favor of the respondent corporation was predicated on its conclusion that the policy did not cease to be in force. The Court of Appeals necessarily assumed that, even if the payment by the petitioner to the respondent was involuntary, its action is not tenable in view of the ruling on the validity of the policy. As a matter of fact, the Court of Appeals held that "any intimidation resorted to by the appellee was not unjust but the exercise of its lawful right to claim for and receive the payment of the insurance policy/" and that the ruling of the Bureau of Financing to the effect that "the appellee was entitled to payment from the appellant, was well founded." Factually, there can be no doubt that the Director of the Bureau of Financing, in ordering the petitioner to pay the claim of the respondent, merely obeyed the instructions of the Japanese Military Administration, as may be seen from the following: "In view of the findings and conclusion of this office contained in its decision on Administrative Case dated February 9, 1943 copy of which was sent to your office and the concurrence therein of the Financial Department of the Japanese Military Administration, and following the instructions of said authority, you are hereby ordered to pay the claim of Messrs. Christern, Huenefeld & Co., Inc. The payment of said claim, however, should be made by means of crossed check." (Italics supplied.)

It results that the petitioner is entitled to recover what was paid to the respondent under the circumstances of this case. However, the petitioner will be entitled to recover only the equivalent, in actual Philippine currency, of P92,650 paid on April 19, 1943, in accordance with the rate fixed in the Ballantyne scale.

Wherefore, the appealed decision is hereby reversed and the respondent corporation is ordered to pay to the petitioner the sum of P77,208.33, Philippine currency, less the amount of the premium, in Philippine currency, that should be returned by the petitioner for the unexpired term of the policy in question, beginning December 11, 1941. Without costs. So ordered.

Feria, Pablo, Bengzon, Tuason, Montemayor, Jugo and Bautista Angelo, JJ., concur.

[*] 80 Phil., 604.

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