

PACIFIC BANKING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND ORIENTAL ASSURANCE CORPORATION, RESPONDENTS.

G.R. No. L-41014. November 28, 1988

Ponente: PARAS, J.

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PARAS, J.:

This is a petition for review on certiorari of the decision of respondent Court of Appeals[*] in CA-G.R. No. 41735-R, entitled “Pacific Banking Corporation vs. Oriental Assurance Corporation”, which set aside the decision of the Court of First Instance (CFI) of Manila,[**] which had in turn granted the complaint for a sum of money in Civil Case No. 56889.

As gathered from the records, the undisputed facts of this case are as follows:

On October 21, 1963, Fire Policy No. F-3770 (Exhibit "A"), an open policy, was issued to the Paramount Shirt Manufacturing Co. (hereinafter referred to as the insured, for brevity), by which private respondent Oriental Assurance Corporation bound itself to indemnify the insured for any loss or damage, not exceeding P61,000.00, caused by fire to its property consisting of stocks, materials and supplies usual to a shirt factory, including furniture, fixtures, machinery and equipment while contained in the ground, second and third floors of the building situated at number 256 Jaboneros St., San. Nicolas, Manila, for a period of one year commencing from that date to October 21, 1964.

The insured was at the time of the issuance of the policy and is up to this time, a debtor of petitioner in the amount of not less than Eight Hundred Thousand Pesos (P800,000.00) and the goods described in the policy were held in trust by the insured for the petitioner under trust receipts (Record on Appeal, p. 4).

Said policy was duly endorsed to petitioner as mortgagee/trustor of the properties insured, with the knowledge and consent of private respondent to the effect that “loss if any under this policy is payable to the Pacific Banking Corporation”.

On January 4, 1964, while the aforesaid policy was in full force and effect, a fire broke out on the subject premises destroying the goods contained in its ground and second floors (Record on Appeal, p. 5).

On January 24, 1964, counsel for the petitioner sent a letter of demand to private respondent for indemnity due to the loss of property by fire under the endorsement of said policy (Brief for Plaintiff-Appellee, pp. 16-17).

On January 28, 1964, private respondent informed counsel for the petitioner that it was not yet ready to accede to the latter's demand as the former is awaiting the final report of the insurance adjuster, H.H. Bayne Adjustment Company (Brief for Plaintiff-Appellee, pp. 17-18).

On March 25, 1964, the said insurance adjuster notified counsel for the petitioner that the insured under the policy had not filed any claim with it, nor submitted proof of loss which is a clear violation of Policy Condition No. 11,

and for which reason, determination of the liability of private respondent could not be had (Supra, pp. 19-20).

On April 24, 1964, petitioner's counsel replied to aforesaid letter asking the insurance adjuster to verify from the records of the Bureau of Customs the entries of merchandise taken into the customs bonded warehouse razed by fire as a reliable proof of loss (Supra, pp. 21-22). For failure of the insurance company to pay the loss as demanded, petitioner (plaintiff there-in) on April 28, 1964, filed in the court a quo an action for a sum of money against the private respondent, Oriental Assurance Corporation, in the principal sum of P61,000.00 issued in favor of Paramount Shirt Manufacturing Co. (Record on Appeal, pp. 1-36).

On May 25, 1964, private respondent raised the following defenses in its answer to wit: (a) lack of formal claim by insured over the loss and (b) premature filing of the suit as neither plaintiff nor insured had submitted any proof of loss on the basis of which defendant would determine its liability and the amount thereof, either to the private respondent or its adjuster H.H. Bayne Adjustment Co., both in violation of Policy Condition No. 11 (Record on Appeal, pp. 37-38).

At the trial, petitioner presented in evidence Exhibit "H", which is a communication dated December 22, 1965 of the insurance adjuster, H.H. Bayne Adjustment Co. to Asian Surety Insurance Co., Inc., revealing undeclared co-insurances with the following: P30,000.00 with Wellington Insurance; P25,000.00 with Empire Surety and P250,000.00 with Asian Surety, undertaken by insured Paramount on the same property covered by its policy with private respondent whereas the only co-insurances declared, in the subject policy are those of P30,000.00 with Malayan, P50,000.00 with South Sea and P25,000.00 with Victory (Brief for the Defendant pp. 13-14).

It will be noted that the defense of fraud and/or violation of Condition No. 3 in the Policy, in the form of non-declaration of co-insurances which was not pleaded in the answer was also not pleaded in the Motion to Dismiss.

At any rate, on June 30, 1967, the trial court denied private respondent's motion on the ground that the defense of lack of proof of loss or defects therein was raised for the first time after the commencement of the suit and that it must be deemed to have waived the requirement of proof of loss (Sections 83 and 84, Insurance Act; Record on Appeal, p. 61).

On September 9, 1967, the case was considered sub-mitted for decision from which order private respondent filed a motion for reconsideration to set the case or further reception of private respondent's additional evidence, "in order to prove that 'insured has committed a violation of condition No. 3 of the policy in relation to the other Insurance Clause' ". (Record on Appeal, pp. 61-69).

On September 30, 1967, the case was set for the continuation of the hearing for the reception merely of the testimony of Alejandro Tan Gatue, Manager of the Adjustment Co., over the vehement opposition of the petitioner (Record on Appeal, p. 129).

On April 18, 1968, the trial court rendered a decision adjudging private respondent liable to the petitioner under the said contract of insurance, the dispositive portion of which reads:

"WHEREFORE, judgment is hereby rendered ordering the defendant to pay the plaintiff P61,000.00, with interest at the rate of 8% per annum from January 4, 1964 to April 28, 1964, and 12% from April 29, 1964, until the amount is fully paid, P6,100.00, as attorney's fees, and the costs.

SO ORDERED." (Record on Appeal, pp. 140-141)

On appeal, the Court of Appeals reversed the decision of the trial court (Decision promulgated on April 23, 1975, Rollo, pp. 21-33).

Petitioner filed a motion for reconsideration of the said decision of the respondent Court of Appeals, but this was denied on July 3, 1975 for lack of merit (Rollo, pp. 54-67), resulting in this petition with the following assigned errors;

I

RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW IN CONCLUDING FRAUD FROM THE BARE FACT THAT THE INSURED PARAMOUNT PROCURED ADDITIONAL INSURANCES OTHER THAN THOSE STATED IN THE POLICY IN SPITE OF THE EXISTENCE OF CONTRARY PRE-SUMPTIONS AND ADMITTED FACT AND CIRCUMSTANCES WHICH NEGATE THE CORRECTNESS OF SAID CONCLUSION.

(a)

The respondent Court did not consider the legal presumption against the existence of fraud, which should be established with such quantum of proof as is required for any crime.

(b)

The record of the case is bereft of proof of such fraud.

(c)

The private respondent insurer did not even plead or in anywise raise fraud as a defense in its answer or motion to dismiss and, therefore, it should have been considered waived.

(d)

The total amount of insurance procured by the insured from the different companies amounted to hardly one-half (1/2) of the value of the goods insured.

II

RESPONDENT COURT ERRED IN NOT HOLDING THAT CONSIDERING THE VOTING ON THE PARTICULAR QUESTION OF FRAUD, THE FINDING OF THE TRIAL COURT THERE-ON SHOULD BE CONSIDERED AFFIRMED.

III

THE CONCURRING OPINION OF MR. JUSTICE CHANCO IS LEGALLY ERRONEOUS IN HOLDING THAT THE ACTION WAS PREMATURELY BROUGHT BECAUSE THE REQUIRED CLAIM UNDER THE INSURANCE LAW HAS NOT BEEN FILED, NOTWITHSTANDING THE LETTER (EXHIBIT "C") OF PETITIONER-APPELLANTS' LAWYER WHICH IS A SUBSTANTIAL COMPLIANCE OF THE LEGAL REQUIREMENTS AND NOT HOLDING THAT PRIVATE RESPONDENT INSURER HAD ALREADY WAIVED THE SUPPOSED DEFECTS IN THE CLAIM FILED BY PETITIONER-APPELLANT FOR ITS FAILURE TO CALL THE ATTENTION OF THE LATTER TO SUCH ALLEGED DEFECTS AND FOR ENDORSING THE CLAIM TO ITS ADJUSTER FOR PROCESSING.

IV

RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW IN NOT

INTERPRETING THE PROVISIONS OF THE POLICY LIBERALLY IN FAVOR OF THE HEREIN PETITIONER-APPELLANT, WHO IS NOT THE INSURED BUT ONLY THE ASSIGNEE/MORTGAGEE OF THE PROPERTY INSURED.

V

RESPONDENT COURT OF APPEALS COMMITTED A GRAVE ERROR OF LAW IN DISMISSING THE CASE AND IN NOT AFFIRMING THE APPEALED DECISION OF THE TRIAL COURT. (Brief for Petitioners, pp. 1-3)

The crux of the controversy centers on two points: (a) unrevealed co-insurances which violated policy conditions No. 3 and (b) failure of the insured to file the required proof of loss prior to court action.

Policy Condition No. 3 explicitly provides:

"3. The Insured shall give notice to the Company of any insurance already effected, or which may subsequently be effected, covering any of the property hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated in or endorsed on this Policy by or on behalf of the Company before the occurrence of any loss or damage, all benefit under this policy shall be forfeited." (Record on Appeal, p. 12)

It is not disputed that the insured failed to reveal before the loss three other insurances. As found by the Court of Appeals, by reason of said unrevealed insurances, the insured had been guilty of a false declaration; a clear misrepresentation and a vital one because where the insured had been asked to reveal but did not, that was deception. Otherwise stated, had the insurer known that there were many co-insurances, it could have hesitated or plainly desisted from entering into such contract. Hence, the insured was guilty of clear fraud (Rollo, p. 25).

Petitioner's contention that the allegation of fraud is but a mere inference or suspicion is untenable. In fact, concrete evidence of fraud or false declaration by the insured was furnished by the petitioner itself when the facts alleged in the policy under clauses "Co-Insurances Declared" and "Other Insurance Clause" are materially different from the actual number of co-insurances taken over the subject property. Consequently, "the whole foundation of the contract fails, the risk does not attach and the policy never becomes a contract between the parties. Representations of facts are the foundation of the contract and if the foundation does not exist, the superstructure does not arise. Falsehood in such representations is not shown to vary or add to the contract, or to terminate a contract which has once been made, but to show that no contract has ever existed (Tolentino, Commercial Laws of the Philippines, p. 991, Vol. II, 8th Ed.). A void or inexistent contract is one which has no force and effect from the very beginning, as if it had never been entered into, and which cannot be validated either by time or by ratification (Tongoy v. C.A., 123 SCRA 99 [1983]; Avila v. C.A 145 SCRA [1986]).

As the insurance policy against fire expressly required that notice should be given by the insured of other insurance upon the same property, the total absence of such notice nullifies the policy (Sta. Ana v. Commercial Union Assurance Co., 55 Phil. 333 [1930]; Union Manufacturing Co., Inc. vs. Philippine Guaranty Co., Inc., 47 SCRA 276 [1972]; Pioneer Ins. & Surety Corp., v. Yap, 61 SCRA 432 [1974]).

The argument that notice of co-insurances may be made orally is preposterous and negates policy condition No. 20 which requires every notice and other communications to the insurer to be written or printed.

Petitioner points out that Condition No. 3 in the policy in relation to the "other insurance clause" supposedly to have been violated, cannot certainly defeat the right of the petitioner to recover the insurance as mortgagee/assignee. Particularly referring to the mortgage clause of the policy, petitioner argues that considering the purpose for which the endorsement or assignment was made, that is, to protect the mortgagee/assignee against any untoward act or omission of the insured, it would be absurd to hold that petitioner is barred from recovering

the insurance on account of the alleged violation committed by the insured (Rollo, Brief for the petitioner, pp. 33-35).

It is obvious that petitioner has missed all together the import of subject mortgage clause which specifically provides:

"Mortgage Clause"

"Loss, if any, under this policy, shall be payable to the PACIFIC BANKING CORPORATION Manila mortgagee/trustor, as its interest may appear, it being hereby understood and agreed that this insurance as to the interest of the mortgagee/trustor only herein, shall not be invalidated by any act or neglect - except fraud or misrepresentation, or arson - of the mortgagor or owner/trustee of the property insured; provided, that in case the mortgagor or owner/trustee neglects or refuses to pay any premium, the mortgagee/trustor shall, on demand pay the same." (Rollo, p. 26)

The paragraph clearly states the exceptions to the general rule that insurance as to the interest of the mortgagee, cannot be invalidated; namely: fraud, or misrepresentation or arson. As correctly found by the Court of Appeals, concealment of the aforementioned co-insurances can easily be fraud, or in the very least, misrepresentation (Rollo, p. 27).

Undoubtedly, it is but fair and just that where the insured who is primarily entitled to receive the proceeds of the policy has by its fraud and/or misrepresentation, forfeited said right, with more reason, petitioner which is merely claiming as indorsee of said insured, cannot be entitled to such proceeds.

Petitioner further stressed that fraud which was not pleaded as a defense in private respondent's answer or motion to dismiss, should be deemed to have been waived.

It will be noted that the fact of fraud was tried by express or at least implied consent of the parties. Petitioner did not only object to the introduction of evidence but on the contrary, presented the very evidence that proved its existence.

Be that as it may, it is established that the Supreme Court has ample authority to go beyond the pleadings where in the interest of justice and the promotion of public policy, there is a need to make its own finding to support its conclusion. Otherwise stated, the Court can consider a fact which surfaced only after trial proper (*Maharlika Publishing Corp. v. Tagle*, 142 SCRA 561 [1986]).

Generally, the cause of action on the policy accrues when the loss occurs. But when the policy provides that no action shall be brought unless the claim is first presented extrajudicially in the manner provided in the policy, the cause of action will accrue from the time the insurer finally rejects the claim for payment (*Eagle Star Insurance v. Chia Yu*, 55 Phil. 701 [1955]).

In the case at bar, policy condition No. 11 specifically provides that the insured shall on the happening of any loss or damage give notice to the company and shall within fifteen (15) days after such loss or damage deliver to the private respondent (a) a claim in writing giving particular account as to the articles or goods destroyed and the amount of the loss or damage and (b) particulars of all other insurances, if any. Likewise, insured was required "at his own expense to produce, procure and give to the company all such further particulars, plans, specifications, books, vouchers, invoices, duplicates or copies thereof, documents, proofs and information with respect to the claim". (Record on Appeal, pp. 18-20).

The evidence adduced shows that twenty-four (24) days after the fire, petitioner merely wrote letters to private respondent to serve as notice of loss, thereafter, the former did not furnish the latter whatever pertinent

documents were necessary to prove and estimate its loss. Instead, petitioner shifted upon private respondent the burden of fishing out the necessary information to ascertain the particular account of the articles destroyed by fire as well as the amount of loss. It is noteworthy that private respondent and its adjuster notified petitioner that insured had not yet filed a written claim nor submitted the supporting documents in compliance with the requirements set forth in the policy. Despite the notice, the latter remained unheedful. Since the required claim by insured, together with the preliminary submittal of relevant documents had not been complied with, it follows that private respondent could not be deemed to have finally rejected petitioner's claim and therefore the latter's cause of action had not yet arisen. Compliance with condition No. 11 is a requirement sine qua non to the right to maintain an action as prior thereto no violation of petitioner's right can be attributable to private respondent. This is so, as before such final rejection, there was no real necessity for bringing suit. Petitioner should have endeavored to file the formal claim and procure all the documents, papers, inventory needed by private respondent or its adjuster to ascertain the amount of loss and after compliance await the final rejection of its claim. Indeed, the law does not encourage unnecessary litigation (*Eagle Star Insurance Co., Ltd., et al. v. Chia Yu*, p. 701, *supra*).

Verily, petitioner prematurely filed Civil Case No. 56889 and dismissal thereof was warranted under the circumstances.

While it is a cardinal principle of insurance law that a policy or contract of insurance is to be construed liberally in favor of the insured and strictly as against the insurer company (*Eagle Star Insurance Co., Ltd., et al. v. Chia Yu*, p. 702, *supra*; *Taurus Taxi Co., Inc. v. The Capital Ins. & Surety Co., Inc.*, 24 SCRA 458 [1968]; *National Power Corp. v. CA*, 145 SCRA 533 [1986], yet, contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense (*Young v. Midland Textile Ins. Co.*, 30 Phil. 617 [1919]; *Union Manufacturing Co., Inc. v. Phil. Guaranty Co., Inc.*, p. 277 *supra*; *Pichel v. Alonzo*, 111 SCRA 341 [1982]; *Gonzales v. CA*, 124 SCRA 630 [1983]; *GSIS v. CA*, 145 SCRA 311 [1986]; *Herrera v. Petrophil Corp.*, 146 SCRA 385 [1986]).

Contracts of insurance are contracts of indemnity upon the terms and conditions specified in the policy. The parties have a right to impose such reasonable conditions at the time of the making of the contract as they may deem wise and necessary. The agreement has the force of law between the parties. The terms of the policy constitute the measure of the insurer's liability, and in order to recover, the insured must show himself within those terms. The compliance of the insured with the terms of the policy is a condition precedent to the right of recovery (*Stokes v. Malayan Insurance Co., Inc.*, 127 SCRA 766 [1984]).

It appearing that insured has violated or failed to perform the conditions under No. 3 and 11 of the contract, and such violation or want of performance has not been waived by the insurer, the insured cannot recover, much less the herein petitioner. Courts are not permitted to make contracts for the parties; the function and duty of the courts is simply to enforce and carry out the contracts actually made (*Young v. Midland Textile Ins. Co.*, 30 Phil. 617 [1915]; *Union Manufacturing Co. Inc. v. Phil. Guaranty Co. Inc.*, p. 276 *supra*).

Finally, the established rule in this jurisdiction that findings of fact of the Court of Appeals when supported by substantial evidence, are not reviewable on appeal by certiorari, deserves reiteration. Said findings of the appellate court are final and cannot be disturbed by the Supreme Court except in certain cases (*Lereos v. CA*, 117 SCRA 395 [1982]; *Dalida v. CA*, 117 SCRA 480 [1982]; *Director of Lands v. CA*, 117 SCRA 346 [1982]; *Montesa v. CA*, 117 SCRA 770 [1982]; *Sacay v. Sandiganbayan*, 142 SCRA 609 [1986]; *Guita v. CA*, 139 SCRA 576 [1985]; *Manlapaz v. CA*, 147 SCRA 238-239 [1987])

PREMISES CONSIDERED, the petition is DISMISSED for lack of merit, and the decision appealed from is AFFIRMED. No costs.

SO ORDERED.

Melencio-Herrera, (Chairperson), Padilla, Sarmiento, and Regalado, JJ., concur.

[*] Penned by Hon. Magno S. Gatmaitan, then Associate Justice, Court of Appeals, with the concurrence of then Associate Justices Hon. Efren I. Plana & Francisco Ma. Chanco, and Hon. Crisolito Pascual & Hon. Sixto A. Domondon, then Associate Justices, dissenting.

[**] Penned by Hon. Jose L. Moya, then Presiding Judge, CFI of Manila, Branch X.

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