

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

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

Ponente: DIZON, J.

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DIZON, J.:

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 and Surety Company 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, the Delgados interposed an appeal to this court.

In our decision promulgated on March 30, 1963, we stated the facts established by the evidence as follows:

"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 Sanciango 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 premium 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 appellee to recover from them the sum of P583.95, representing the premium charges an Fire Insurance Policy No. C-1137, the further sum of P16.79 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 further 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."

The above facts notwithstanding, we set aside the appealed decision and dismissed the case without costs, on the ground that the Court of First Instance of Cebu had no original jurisdiction over the case and all proceedings had thereat were void.

In due time, appellee filed a motion for reconsideration, the pertinent portions of which read as follows:

"2. That this Honorable Court is justified in the foregoing conclusion for the reason that the Record on Appeal merely indicated thru inadvertence and omission that this case was filed in the Court of First Instance of Cebu;

"2. That this Honorable Court is justified in the foregoing con-thru Atty. Eufrosino L. Ramos there appears on Page 1 the following (1) That plaintiff filed with the above-named Court of First Instance of Cebu, Philippines

a Complaint dated November 28, 1955 for the recovery of a sum of money docketed as Civil Case No. R-4372 which Complaint reads as follows: * * *

"That the foregoing allegation in the Record on Appeal is misleading erroneous, and not in accordance with the true facts but the same escaped the notice of the plaintiff so that no objection was filed to the Record on Appeal; and the trial court did not also notice the error and therefore approved the Record on Appeal (pages 13 & 14, Record on Appeal);

"4. That the true fact is that the Complaint dated Nov. 28, 1955 quoted on pages 2 and 3 is a Complaint filed in the Municipal Court of Cebu City in Civil Case No. R-2327; that this is shown by the allegation of venue in paragraph 5 of said complaint dated) November 28, 1955 which would not be necessary in a Complaint filed in the Court of First Instance as said Paragraph 5 of the Complaint reads: '(5) that the insurance policy issued by the plaintiff to the defendants was issued in Cebu City and this court has jurisdiction over this case pursuant to sub- paragraph (b), Sec. 2, Rule 4, Rules of Court' (page 3, Record on Appeal);

"5. That there is attached hereto a Certification of the Clerk of Court of the Court of First Instance of Cebu that Civil Case No. R-4372 is a case on appeal from the Municipal Court of Cebu City being Civil Case No. R-2327 of said Municipal Court and the Complaint in the Municipal Court was dated November 28, 1955; that the Certification of the Clerk of Court of the Court of First Instance of Cebu is attached hereto and made an integral part hereof duly marked as Exh. 'A'; that this court can take judicial cognizance of all proceedings before it and in the lower courts; that the interest of justice require that the true facts that this case, started in the Municipal Court should be made to prevail over an error in the Record on Appeal; that this Honorable Court if not satisfied with the attached Certification an require the Clerk of Court of the Court of First Instance of Cebu to elevate to it fill of the original records of this case so that it can ascertain for itself that it actually originated in the Municipal Court of Cebu City;"

Appellants filed an opposition to said motion for reconsideration, alleging, firstly, that it is now too late to correct the record on appeal; secondly, that appellee is not entitled to relief, because of its failure to object in the lower court to the approval of the record on appeal, incomplete and inaccurate as it was when filed in said court; and lastly, that "the defendants-appellants are not bound to pay premiums on an insurance policy which would not have been honored anyway because they did not pay the premiums."

It appearing now that the present action was in fact commenced in the Municipal Court of Cebu City where it was docketed as Civil Case No. R-2327, it is clear that the ground upon which we set aside the appealed decision can not be maintained.

On the other hand, the preponderance of the evidence shows that appellee issued fire insurance policy No. C-1137 in favor of appellants, covering a certain property belonging to the latter located in Cebu City; that appellants failed to pay a balance of P583.95 on the premium charges due, notwithstanding demands made upon them. As with the issuance of the policy to appellants the same became effective and binding upon the contracting parties, the latter can not avoid the obligation of paying the premiums agreed upon. In fact,, appellant Mario Delgado, in a letter marked in the record as Exhibit G, expressly admitted his unpaid account for premiums and asked for an extension of time to pay the same. It is clear from the foregoing that appellants are under obligation to pay the amount sued upon.

Wherefore, our original decision is hereby set aside, and the appealed decision is affirmed, with costs.

Bengzon, C. J., Padilla, Barrera, Paredes, Regala and Makalintal, JJ., concur.

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