

CHARLES ABOLAFIA, PLAINTIFF AND APPELLANT, VS. LIVERPOOL AND LONDON AND GLOBE INSURANCE COMPANY, LTD., AND NORTH CHINA INSURANCE COMPANY, DEFENDANTS AND APPELLEES.

G.R. Nos. L-21991 and 21992. October 31, 1924

Ponente: VILLAMOR, J.

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VILLAMOR, J.:

On the 31st of March, 1922, the plaintiff was the holder of policy No. 13356106 O/No. 240 of fire insurance issued by the defendant Liverpool and London and Globe Insurance Company, Ltd., upon a store of the plaintiff No. 335, Calle Echague, City of Manila. The term of this policy was one year, to expire March 31, 1923, and the amount insured P20,000.

On the 8th of July, 1922, the same plaintiff obtained from the defendant Liverpool and London and Globe Insurance Company, Ltd., another policy of fire insurance No. 13628459 O/No. 1715 upon the same store for the sum of P7,500 and for the period of one year, to expire July 8, 1923.

On the 1st of June, 1922, he had the same store insured against fire by the defendant North China Insurance Company, which issued policy No. 23214 O/No. 1664 in favor of the plaintiff for the sum of P10,000 and for the term of one year, expiring June 1, 1923.

The plaintiff paid the premiums upon the aforesaid three policies of fire insurance.

On the night of the 23d or morning of the 24th of September, 1922, a fire occurred on Calle Echague, and the store of the plaintiff was damaged by the fire in the sum of P29,245.59, which he seeks to recover from the defendants through their agent Wise & Company in proportion to the value of the policies issued by them.

The defendants refuse to pay the amounts claimed by the plaintiff, alleging as a defense that the policies issued by them contain the following clause:

"9. The Insurance may be terminated at any time at the request of the Insured, in which case the Company will retain the customary short period rate for the time the Policy has been in force. The Insurance may also at any time be terminated at the option of the Company, on notice to that effect being given to the Insured, in which, case the Company shall be liable to repay on demand a ratable proportion of the premium for the unexpired term from the date of the cancelment."

And that making use of the right granted them by said clause, the defendants allege that on September 22, 1922, and prior to the fire, as stated in the plaintiff's complaint, the defendant companies have taken advantage of the right of election contained in said insurance policies and terminated and cancelled said insurance policies, giving notice to the plaintiff of the termination and cancellation thereof; that afterwards and on said date, the defendants sent the plaintiff by registered mail, postage prepaid, and duly addressed to him, their check for all the premiums to be refunded and to which the plaintiff was entitled under the terms of the policy or for any other account; that later, that is, on the morning of September 23, 1922, and prior to the alleged fire, said plaintiff accepted and

confirmed the cancellation of said insurance policies and the termination of the insurance, and said policies became then and forever null, void, and of no effect and specially at the time the alleged fire occurred, when the plaintiff was no longer insured by the defendants against any loss and had no insurance contract valid and subsisting with the defendants.

After hearing the two cases jointly by agreement of the parties, the lower court absolved the defendants from the complaint, holding that the three policies No. 23214 O/No. 1664 of the North China Insurance Co., Ltd., No. 13628459 O/No. 1715 and No. 133556106 of the Liverpool and London and Globe Insurance Co., Ltd., were no longer in force, the same having been previously cancelled on the morning of September 23, 1922; and having reached this conclusion, it absolved the defendant North China Insurance Co., Ltd., from the complaint in case No. 23129, and the defendant Liverpool and London and Globe Insurance Co., Ltd., from the complaint in case No. 23127. From this judgment the plaintiff appealed by bill of exceptions.

In our opinion, the decisive point in each of these cases is whether or not the insurance policies alleged by the plaintiff were in force on the night of September 23, 1922, when the fire occurred that caused the damages sought to be recovered.

The trial court held that on the morning of September 23, 1922, the aforesaid policies were no longer in force, they having been cancelled by the defendants on the preceding day, that is, on the 22d of that month.

The appellant does not question the right of the defendant companies to terminate the insurance upon the terms of the policies, but contends that no notice of the termination of the insurance was given to the plaintiff, as required by the terms of the policies in question.

These policies contain, among others, the following conditions :

"* * * The insurance may also at any time be terminated at the option of the Company, on notice to that effect being given to the Insured, in which case the Company shall be liable to repay on demand a ratable proportion of the premium for the unexpired term from the date of the cancelment."

As may be seen, no special form is prescribed for giving the notice of the termination of the insurance by the insurance companies, and we believe that when the policy does not expressly provide the manner in which the cancellation of a fire insurance policy should be effected, it must be understood that it may be done in any way admissible in law. Thus in the case of Davidson vs. German Insurance Company of Freeport (13 L. R. A. [N. S.], 884), it was held that:

"Notice, to effect cancellation, need not be in writing. It may be verbal or oral. No particular form of notice is prescribed. It is only necessary that the company positively, distinctly, and unequivocally indicate to the insured that it is its intention that the policy shall cease to be binding as such upon the expiration of five days from the time when its intention is made known to the insured." The same doctrine was upheld in the following cases: Schwarzschild & Sulzberger Co. vs. Phoenix Insurance Co. of Hartford (59 C. C. A., 572; 124 Fed., 52); Phoenix Mutual Fire Insurance Co. of Cincinnati vs. Brecheisen (50 Ohio St., 542; 35 N. E., 53); El Paso Reduction Co. vs. Hartford Fire Insurance Co. (121 Fed., 937).

In our opinion the record contains conclusive evidence that the plaintiff was actually and positively notified of the cancellation of his policies by the defendants before the fire occurred on the night of September 23, 1922. So it appears from the testimony of the witnesses Noman T. Raid, A. R. Porter, A. P. Blackistone, R. Gaskell, C. Castaner, R. Bernardo, and Juan Reyes. But it is argued that the notice given was not valid, because no payment was tendered of the proportionate part of the premiums for the unexpired term at the same time of giving the notice.

It appears that on the evening of September 22, the accountant of Wise & Company, C. Castaner, took to the plaintiff's store the notice of the cancellation of the aforesaid policies and the check for the sum of P581 whereby the defendants intended to refund a part of the premiums paid by the plaintiff, but did not find him; that the plaintiff's brother, who was then in charge of the store, refused to receive the notice of cancellation with the check; that thereupon the manager of Wise & Company, agent of the defendants, sent the letter Exhibit 3 with the aforesaid check by registered mail, the notice of the registered letter having been delivered at the store of the plaintiff on the morning of September 23d by an employee of the Bureau of Posts, but the plaintiff failed to take it, notwithstanding that his store was a short distance from the Bureau of Posts. But aside from these facts and considering the terms of the policies hereinbefore set out, we believe that the return of the ratable proportion of premiums for the unexpired period is not a condition precedent to the cancellation of the policies. In this case of cancellation of insurance, the obligation of the insurance companies is to return the proportionate part of the premiums upon demand of the insured.

The policies we have before us clearly provide that in case the companies make the cancellation by giving notice thereof, "the Company shall be liable to repay on demand a ratable proportion of the premium for the unexpired term from the date of the cancelment."

According to article 1281 of the Civil Code, if the terms of a contract are plain and leave no room for doubt as to the intention of the contracting parties the literal meaning must control. In *Feliciano vs. Limjuco and Calacalzada* (41 Phil., 147), this court said:

"Contracts, which are the private laws of the contracting parties, should be fulfilled according to the literal sense of their stipulations, if their terms are clear and leave no room for doubt as to the intention of the contracting parties (art. 1281, Civ. Code), for contracts are obligatory, no matter what their form may be, whenever the essential requisites for their validity are present. (Art. 1278, Civ. Code.) * * *"

And in *Young vs. Midland Textile Insurance Co.* (30 Phil., 617), this court held:

"Contracts of insurance are contracts of indemnity, upon the terms and conditions specified therein. Parties have a right to impose such reasonable conditions at the time of the making of the contract as they deem wise and necessary. The rate of premium is measured by the character of the risk assumed. The insurer, for a comparatively small consideration, undertakes to guarantee the insured against loss or damage, upon the terms and conditions agreed upon, and upon no other. When the insurer is called upon to pay, in case of loss, he may justly insist upon a fulfillment of the terms of the contract. If the insured cannot bring himself within the terms and conditions of the contract, he is not entitled to recover for any loss suffered. The terms of the contract constitute the measure of the insurer's liability. If the contract has been terminated, by a violation of its terms on the part of the insured, there can be no recovery. Compliance with the terms of the contract is a condition precedent to the right of recovery.

"Courts cannot make contracts for the parties. While contracts of insurance are construed most favorably to the insured, yet they must be construed according to the sense and meaning of the terms which the parties themselves have used. Astute and subtle distinctions should not be permitted, when the language of the contract is plain and unambiguous. Such distinctions tend to bring the law itself into disrepute."

In the case of *Mangrum & Otter vs. Law Union & Rock Insurance Co.*, (157 Pac, 239), decided April, 1916 (L. R. A. [N. S.], 1916 F., 440), a question similar to the one before us was raised.

The clause of the policy there under consideration is as follows:

"* * * 'This policy shall be canceled at any time at the request of the insured, or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or

cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate, except that when this policy is canceled by this company by giving notice, it shall retain only the pro rata premium."

The Supreme Court of California said:

"The policy used in the transaction between the plaintiff and the defendant is of the kind known as the 'New York standard form and the New York court of appeals has interpreted it to mean that cancellation of a policy by the insurer may only be accomplished by giving the prescribed notice and by restoring the unearned premium. The opinions of that distinguished court always command great respect, and when they deal with the law of the Empire state and the proper interpretation of a contract drawn under the sanction of that law, such opinions are clothed with peculiar authority; but we find that other courts of great dignity, including the United States circuit court for the southern division of New York, have held a different view of this contract, or of policies not essentially differing from it, and that some of the learned judges of the New York court of appeals have dissented from the interpretation of the agreement given by the majority of their associates. Our own examination of the subject has impelled us to accept the doctrine of the courts that hold the return of the premium not an essential element of the annulment of the policy."

Under the unequivocal terms of the policies in question we are of the opinion, and so hold, that the return of the premiums is not an essential requisite for the validity of the cancellation.

For all of the foregoing, the judgment appealed from must be, as is hereby, affirmed with the costs against the appellant. So ordered.

Johnson, Street, Malcolm, Avancena, Ostrand, and Romualdez, JJ., concur.

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