

**PIONEER INSURANCE AND SURETY CORPORATION, PETITIONER
AND APPELLANT, VS. OLIVA YAP, REPRESENTED BY HER
ATTORNEY-IN-FACT, CHUA SOON POON, RESPONDENT AND
APPELLEE.**

G.R. No. L-36232. December 19, 1974

Ponente: FERNANDEZ, J.

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FERNANDEZ, J.:

This is an appeal by certiorari from the decision of the Court of Appeals dated December 16, 1972, in CA G.R. No. 36669-R, affirming the judgment of the Court of First Instance of Manila (Branch VI) in Civil Case No. 54508, which latter court declared plaintiff Oliva Yap, herein respondent, entitled to recover from defendant Pioneer Insurance & Surety Corporation, herein petitioner, the full amount of the damage insured in Policy No. 4219, which is P25,000.00, plus 12% of said sum from the date of filing of the complaint until full payment, in addition to the sum of P6,000.00 for attorney's fees, and costs.

Respondent Oliva Yap was the owner of a store in a two-story building located at No. 856 Juan Luna Street, Manila, where in 1962 she sold shopping bags and footwear, such as shoes, sandals and step-ins. Chua Soon Poon, Oliva Yap's son-in-law, was in charge of the store.

On April 19, 1962, respondent Yap took out Fire Insurance Policy No. 4216 from petitioner Pioneer Insurance & Surety Corporation with a face value of P25,000.00 covering her stocks, office furniture, fixtures and fittings of every kind and description. Among the conditions in the policy executed by the parties are the following:

"The Insured shall give notice to the Company of any insurance or insurances 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 benefits under this Policy shall be forfeited." (Italics supplied)

"It understood that, except as may be stated on the face of this policy there is no other insurance on the property hereby covered and no other insurance is allowed except by the consent of the Company endorsed hereon. Any false declaration or breach of this condition will render this policy null and void."

At the time of the insurance on April 19, 1962 of Policy No. 4219 in favor of respondent Yap, an insurance policy for P20,000.00 issued by the Great American Insurance Company covering the same properties was noted on said policy as co-insurance (Annex "1-E"). Later, on August 29, 1962, the parties executed Exhibit "1-K", as an endorsement on Policy No. 4219, stating:

"It is hereby declared and agreed that the co-insurance existing at present under this policy is as follows: P20,000.00 - Northwest Ins., and not as originally stated. (Italics supplied)

"Except as varied by this endorsement, all other terms and conditions remain unchanged."

Still later, or on September 26, 1962, respondent Oliva Yap took out another fire insurance policy for P20,000.00 covering the same properties, this time from the Federal Insurance Company, Inc., which new policy was, however, procured without notice to and the written consent of petitioner Pioneer Insurance & Surety Corporation and, therefore, was not noted as a co-insurance in Policy No. 4219.

At dawn on December 19, 1962, a fire broke out in the building housing respondent Yap's above-mentioned store, and the said store was burned. Respondent Yap filed an insurance claim, but the same was denied in petitioner's letter of May 17, 1963 (Exhibit "G"), on the ground of "breach and/or violation of any and/or all terms and conditions" of Policy No. 4219.

On July 17, 1963, Oliva Yap filed with the Court of First Instance of Manila the present complaint, asking, among others, for payment of the face value of her fire insurance policy. In its answer, petitioner alleged that no property belonging to plaintiff Yap and covered by the insurance policy was destroyed by the fire; that Yap's claim was filed out of time; and that Yap took out an insurance policy from another insurance company without petitioner's knowledge and/or endorsement, in violation of the express stipulations in Policy No. 4219, hence, all benefits accruing from the policy were deemed forfeited.

As already stated at the beginning of this opinion, the trial court decided for plaintiff Oliva Yap; and its judgment was affirmed in full by the Court of Appeals.

The vital issue in this appeal is whether or not petitioner should be absolved from liability on Fire Insurance Policy No. 4219 on account of any violation by respondent Yap of the co-insurance clause therein.

In resolving this problem, the Court of Appeals stated in its decision:

"5. The plaintiff-appellee has not violated the other insurance clause (Exhibit 1-F) of the insurance Policy No. 4219 that would justify the defendant-appellant, as insurer, to avoid its liability thereunder. It appears on the face of said policy that a co-insurance in the amount of P20,000.00 was secured from the Great American Insurance and was declared by the plaintiff-appellee and recognized by the defendant-appellant. This was later on substituted for the same amount and secured by the Federal Insurance Company. Chua Soon Poon, on being cross-examined by counsel for the defendant-appellant, declared that the Great American Insurance policy was cancelled because of the difference in the premium and the same was changed for that of the Federal (t.s.n., hearing of December 1, 1964, pp. 35-36). Contrary to the assertion of the defendant-appellant, the Great American Insurance policy was not substituted by the Northwest Insurance policy. As admitted by the defendant-appellant in its brief (p. 48), the fire insurance policy issued by the Great American Insurance Company for P20,000.00 (Exhibit 1-E) was cancelled on August 29, 1962. On the other hand, the fire insurance policy issued by the Northwest Insurance & Surety Company for P20,000.00 (Exhibit 1-K) was taken out on July 23, 1962. How then can the Northwest Insurance policy issued on July 23, 1962, be considered as having substituted the Great American policy which was cancelled only on August 29, 1962? The defendant-appellant can be considered to have waived the formal requirement of indorsing the policy of co-insurance since there was absolutely no showing that it was not aware of said substitution and preferred to continue the policy (Gonzales La O vs. Yek Tong Lin Fire and Marine Insurance Co., 55 Phil. 386). Even assuming that the defendant-appellant did not indorse the Federal Insurance policy, there is no question that the same was only a substitution and did not in any way increase the amount of the declared co-insurance. In other words, there was no increase in the risk assumed by the defendant-appellant."

We do not agree with the conclusion of the Court of Appeals.

There was a violation by respondent Oliva Yap of the co-insurance clause contained in Policy No. 4219 that resulted in the avoidance of petitioner's liability. The insurance policy for P20,000.00 issued by the Great American Insurance Company covering the same properties of respondent Yap and duly noted on Policy No.

4219 as co-insurance, ceased, by agreement of the parties (Exhibit "1-L"), to be recognized by them as a co-insurance policy. The Court of Appeals says that the Great American Insurance policy was substituted by the Federal Insurance policy for the same amount, and because it was a mere case of substitution, there was no necessity for its endorsement on Policy No. 4219. This finding, as well as reasoning, suffers from several flaws. There is no evidence to establish and prove such a substitution. If anything was substituted for the Great American Insurance policy, it could only be the Northwest Insurance policy for the same amount of P20,000.00. The endorsement (Exhibit "1-K") quoted above shows the clear intention of the parties to recognize on the date the endorsement was made (August 29, 1962) the existence of only one co-insurance, and that is the Northwest Insurance policy, which according to the stipulation of the parties during the hearing, was issued on August 20, 1962 (t.s.n., January 12, 1965, pp. 3-4) and endorsed only on August 29, 1962. The finding of the Court of Appeals that the Great American Insurance policy was substituted by the Federal Insurance policy is unsubstantiated by the evidence of record and indeed contrary said stipulation and admission of respondent, and is grounded entirely on speculation, surmises or conjectures, hence, not binding on the Supreme Court.[1]

The Court of Appeals would consider petitioner to have waived the formal requirement of endorsing the policy of co-insurance "since there was absolutely no showing that it was not aware of said substitution and preferred to continue the policy." The fallacy of this argument is that, contrary to Section 1, Rule 131 of the Revised Rules of Court, which requires each party to prove his own allegations, it would shift to petitioner, respondent's burden of proving her proposition that petitioner was aware of the alleged substitution, and with such knowledge preferred to continue the policy. Respondent Yap cites *Gonzales La O vs. Yek Tong Lin Fire and Marine Insurance Co., Ltd.*[2] to justify the assumption but in that case, unlike here, there was knowledge by the insurer of violations of the contract to wit: "If, with the knowledge of the existence of other insurances which the defendant deemed violations of the contract, it has preferred to continue the policy, its action amounts to a waiver of the annulment of the contract. ." A waiver must be express. If it is to be implied from conduct mainly, said conduct must be clearly indicative of a clear intent to waive such right. Especially in the case at bar where petitioner is assumed to have waived a valuable right, nothing less than a clear, positive waiver, made with full knowledge of the circumstances, must be required.

By the plain terms of the policy, other insurance without the consent of petitioner would ipso facto avoid the contract. It required no affirmative act of election on the part of the company to make operative the clause avoiding the contract, wherever the specified conditions should occur. Its obligations ceased, unless, being informed of the fact, it consented to the additional insurance.

The validity of a clause in a fire insurance policy to the effect that the procurement of additional insurance without the consent of the insurer renders ipso facto the policy void is well-settled:

"In *Milwaukee Mechanids' Lumber Co., vs. Gibson*, 199 Ark. 542, 134 S.W. 2d 521, 522, a substantially identical clause was sustained and enforced, the court saying: 'The rule in this state and practically all of the states is to the effect that a clause in a policy to the effect that the procurement of additional insurance without the consent of the insurer renders the policy void is a valid provisions. The earlier cases of *Planters Mutual Insurance Co., vs. Green*, 72 Ark. 305, 80 S.W. 151, and *Nabors vs. Dixie Mutual Fire Insurance Co.*, 84 Ark. 184, 105 S.W. 92, are to the same effect.' And see *Vance, Insurance*, 2nd Ed., 725. (*Roach vs. Arkansas Farmers Mut. Fire Ins. Co.*, [Ark. Nov. 14, 1949] 224 S.W. 2d 48, 49.)

"2. Where a policy contains a clause providing that the policy shall be void if insured has or shall procure any other insurance on the property, the procurement of additional insurance without the consent of the insurer avoids the policy." (*Planters' Mut. Ins. Ass'n., vs. Green* [Supreme Court of Arkansas, March 19, 1904] 80 S.W., 151.)

"3. The policy provided that it should be void in case of other insurance 'without notice and consent of this company. . . .' It also authorized the company to terminate the contract at any time, at its option, by giving notice and refunding a ratable proportion of the premium. Held, that additional insurance, unless consented to, or unless a waiver was shown, ipso facto avoided the contract, and the fact that the company had not, after notice of such insurance, cancelled the policy, did not justify the legal conclusion that it had elected to allow it to continue in force." (Johnson vs. American Fire Ins., Co., [Supreme Court of Minnesota, Aug. 12, 1889] 43 N.W., 59)

The aforesaid principles have been applied in this jurisdiction in *General Insurance & Surety Corporation vs. Ng Hua*.^[3] There, the policy issued by the General Insurance & Surety Corporation in favor of respondent Ng Hua contained a provision identical with the provisions in Policy No. 4219 quoted above.^[4] This Court, speaking thru Justice Cesar P. Bengzon, in reversing the judgment of the Court of Appeals and absolving the insurer from liability under the policy, held:

"x x x And considering the terms of the policy which required the insured to declare other insurances, the statement in question must be deemed to be a statement (warranty) binding on both insurer and insured, that there were no other insurance on the property x x x

"The annotation then, must be deemed to be a warranty that the property was not insured by any other policy. Violation thereof entitled the insurer to rescind. (Sec. 69, Insurance Act.) Such misrepresentation is fatal in the light of our views in *Santa Ana vs. Commercial Union Assurance Company, Ltd.*, 55 Phil. 329. The materiality of non-disclosure of other insurance policies is not open to doubt.

"Furthermore, even if the annotation were overlooked, the defendant insurer would still be free from liability because there is no question that the policy issued by General Indemnity has not been stated in nor endorsed on Policy No. 471 of defendant. And as stipulated in the above-quoted provisions of such policy 'all benefit under this policy shall be forfeited.'" (Italics supplied)

The obvious purpose of the aforesaid requirement in the policy is to prevent over-insurance and thus avert the perpetration of fraud. The public, as well as the insurer, is interested in preventing the situation in which a fire would be profitable to the insured. According to Justice Story: "The insured has no right to complain, for he assents to comply with all the stipulation on his side, in order to entitle himself to the benefit of the contract, which, upon reason or principle, he has no right to ask the court to dispense with the performance of his own part of the agreement, and yet to bind the other party to obligations, which, but for those stipulations, would not have been entered into."⁵

In view of the above conclusion, We deem it unnecessary to consider the other defenses interposed by petitioner.

WHEREFORE, the appealed judgment of the Court of Appeals is reversed and set aside and the petitioner absolved from all liability under the policy. Costs against private respondent.

SO ORDERED.

Fernando, Chairman, Barredo, Antonio, and Aquino, JJ., concur.

[1] Ramos, et al., vs. Pepsi-Cola Bottling Company of the Philippines, et al., L-22533, February 9, 1967, 19 SCRA 289, 291-292.

[2] 55 Phil. 386.

[3] 106 Phil., 1117, 1119-1120.

[4] The insured shall give notice to the company of any insurance or insurances 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 or endorsed on this policy by or in behalf of the company before the occurrence of any loss or damage, all benefits under this policy shall be forfeited."

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