

MACONDRAY & CO., PLAINTIFF AND APPELLANT, VS. THE CONNECTICUT FIRE INSURANCE COMPANY OF HARTFORD, DEFENDANT AND APPELLEE.

G. R. No. L-5184. May 29, 1953

Ponente: PARAS, C.J.

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PARAS, C.J.:

This is an appeal by the plaintiff from the following decision of the Court of First Instance of Manila:

"This is a suit to collect from the defendant a sum of money representing the value of certain goods which were damaged or lost, covered by an insurance policy issued by the defendant.

"The plaintiff alleges that on or about December 13, 1946 a certain cargo consisting of 1982 cartons of mackerel in tins. 'American Wonder' brand, was loaded on the vessel M/V Temoraire in New York consigned to the plaintiff in Manila; that this cargo was insured against all risks, as per certificate of insurance No. 365064 issued by the defendant in favor of the Banton Corporation for \$27,343, equivalent to P54,686; that the insurance policy was duly indorsed by the Banton Corporation to the plaintiff, payable to the latter's order; that of said shipment, 131 cartons were lost or missing and 1,851 cartons were damaged, the plaintiff thereby suffering a loss in the sum of \$18,096.12; and that in spite of repeated demands the defendant refused and failed to pay said amount.

"The defendant answered denying specifically certain material allegations of the complaint, and by way of special defense alleges that the loss and damage of the cargo was due to the inherent vice of the insured goods and that such loss and damage are not covered by the terms of the insurance policy. The defendant alleges other special defenses which need not be considered here for the purpose of the decision.

"The cargo consigned to the plaintiff Macondray & Co., Inc., consisting of 1892 cartons of mackerel in tins, was covered by Ocean Cargo Certificate No. 365064 (Exhibit F) issued by the defendant in favor of the Banton Corporation for the sum of \$27,343. The cargo arrived in Manila on or about January 26, 1947. It is claimed that 131 cartons were lost and the rest were damaged. As to the cause of the damage, Maurice Furstenburg was the only witness who testified on that point. In the course of his cross examination Mr. Furstenburg stated that he could not say whether the damage was due to insufficient packing or to any definite cause. The questions propounded to him and his answers thereto are as follows:

'Q. Can you say, or can you state whether or not the damage was due partly to the insufficient packing?

'A. No; I could not say that.

'Q. Can you say what was the cause of the damage?

'A. I can not.'

"The plaintiff relies on the Ocean Cargo Certificate No. 365064 issued by the defendant, presented in evidence as Exhibit F in support of its claim against the defendant. The said certificate does not embody all the terms and conditions of the contract, and is subject to all the terms of a certain open policy therein mentioned, as may be seen from the following certificate contained in said Exhibit F, to wit:

'THIS IS TO CERTIFY, that on the thirteenth day of December, 1946, we, the undersigned, insured under Open Policy No. 6128 for THE BANTON CORPORATION the sum of twenty-seven thousand three hundred forty-three and 00/100 Dollars on 1982 ctns. mackerel in tins * * *.'

"The plaintiff did not present Open Policy No. 6128 and thereby failed to establish that the loss and damage, if any, suffered by the cargo are recoverable from the defendant. In other words, there is no sufficient evidence that loss and damage caused by undetermined origin, as the evidence in this case purports to show, are covered by the policy. Furthermore the said Exhibit F expressly states that—

'Unless otherwise expressly stated hereon, this insurance only covers the risk of breakage, leakage or rust when cause by stranding, sinking, burning or collision of the vessel.'

"Upon the face of this Ocean Cargo Certificate No. 365064 (Exhibit F) it would seem that the alleged loss and damage suffered by the cargo are not covered by the contract. The defendant presented no evidence in support of its defense and submitted the case upon the evidence presented by the plaintiff.

"From the facts above stated the Court believes that the plaintiff has failed to establish its alleged right to recover. WHEREFORE, the defendant is absolved from all liability under the complaint, with costs against the plaintiff."

The four assignments of error contained in plaintiff-appellant's brief narrow down to the contention that its claim is rested on, and should be decided in the light of, the provisions of Certificate of Insurance No. 365064; more particularly the following clause: "This certificate is subject to all the terms of the Open Policy, provided, however, that the rights of a bona fide holder of this certificate for value shall not be prejudiced by any terms of the open policy which are in conflict with the terms of this certificate." Upon the other hand the defendant-appellee, sustained by the trial court, insists that Certificate No. 365064 is subject to the terms of Open Policy No. 6128, and cites the fact that said Certificate opened with the statement that "We, the undersigned, insured under Open Policy No. 6128 for THE BANTON CORPORATION * * *" and recited that "This certificate is subject to all the terms of the open policy, provided, however, that the rights of a bona fide holder of this certificate for value shall not be prejudiced by any terms of the open policy which are in conflict with the terms of this certificate." Again, while the defendant-appellee invokes the clause of Certificate No. 365064 to the effect that "Unless otherwise expressly stated hereon this insurance only covers the risk of breakage, leakage or rust when caused by stranding, sinking, burning or collision of the vessel," the plaintiff-appellant argues that the insurance under said certificate was "Against all risks of physical loss or damage irrespective of percentage from any external cause other than the risk excluded by the F. C. & S. (Free of Capture & Seizure) warranty and S. R. & C. C. (Strikes, Riots and Civil Commotions) warranty unless otherwise provided for herein," in relation especially to the provision that "the rights of a bona fide holder of this certificate for value shall not be prejudiced by any terms of the open policy which are in conflict with the terms of this certificate."

The trial court is correct in holding that the Certificate of Insurance No. 365064 is subject to the terms of Open Policy No. 6128. As the cause of the loss or damage was not established by the appellant and a copy of the open policy was not presented in evidence, to show whether said loss or damages recoverable from the appellee under the contract of insurance, the appellant's claim cannot prosper. The express statement that Certificate No. 365064 was subject to the open policy would be meaningless if, as pretended by the appellant, the terms of the latter may be entirely ignored.

It is urged for the appellant, that as the open policy was relied upon by the appellee in its answer, the latter was bound to produce a copy thereof; and that as the appellant has already proved the loss or damage to the cargo insured, it was incumbent upon the appellee to prove that said loss or damage was caused by a risk not covered by the insurance. This contention is rather novel, since the plaintiff can neither win its suit merely because of the

weakness, of the defendant's evidence, nor require the latter to prove plaintiff's cause of action. As Certificate No. 365064 contains obviously conflicting clauses, we cannot say that one or the other is controlling, and recourse has to be made to the terms of Open Policy No. 6128—a step that cannot be accomplished for lack of corresponding evidence.

The appellant contends, however, that the trial court erred in denying admission of Exhibits G to J, T, M, N, and O. Even disregarding appellee's allegation that "All these exhibits were self-serving, hearsay documents to which defendant was not a party and which in most cases not even properly identified," it is not pretended that said documents would conclusively prove the terms of the open policy.

Wherefore, the appealed judgment is affirmed, and it is so ordered with costs against the appellant.

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

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