

MULTI-GROWTH CORPORATION, PLAINTIFF-APPELLANT, VS. ASIA TRADERS INSURANCE CORPORATION (NOW ASIA INSURANCE PHILIPPINES CORPORATION) AND ERNESTO SY, DOING BUSINESS UNDER THE NAME ...

Ponente: CRUZ, J.

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CRUZ, J.:

THE CASE

This is an appeal taken from the Decision[1] dated March 16, 2011 issued by the Regional Trial Court of Manila, Branch 50, in Civil Case No. 02-105297 for breach of contract or collection of sum of money and damages, the dispositive portion of which reads, as follows:

x x x

"WHEREFORE, in view of the foregoing, the instant complaint that was filed by plaintiff Multi-Growth Corporation is hereby DISMISSED.

"SO ORDERED."

x x x

THE ANTECEDENTS

Multi-Growth Corporation (Multi-Growth) entered into a contract of insurance with Asia Traders Insurance Corporation (now Asia Insurance Philippines Corporation) which issued in its favor Fire Insurance Policy No. F-000034460 in the amount of P1,200,000.00 for Multi-Growth's stocks as well as on the office equipments, furnitures, fixtures, fittings and electrical appliances contained in its building located at the PTA Compound in Valenzuela City. The fire insurance policy was valid for one (1) year, for the period of 4:00 p.m. of December 14, 1999 to 4:00 p.m. of December 4, 2000.

On April 21, 2000, during the effectivity of the insurance contract, a fire occurred within the PTA compound, where plaintiff's stocks as well as the office equipments, furnitures, fixtures, fittings and electrical appliances supposed to be covered by the insurance policy, were burned. Aside from Multi-Growth, the fire also affected three (3) other establishments namely Multi-Ware, Supremia Trading and GT Pacific.

The Bureau of Fire Protection issued a Memorandum[2] dated August 28, 2000 estimating the amount of damage to Multi-Growth to be P150,000,000.00 more or less. The Memorandum also indicated that Multi-Growth was insured to different insurance companies in the total amount of P112,314,000.00, broken down as follows:

Name of Insurance

Policy Number

Amount

Phil Pryce Ins Corp

F 30973

3 M

CIBELES Ins Corp

80-41523

15 M

Asia Traders Ins Corp

F 034882

15 M

Asia Traders Ins Corp

F 034458

10 M

Asia Traders Ins Corp

F 034460

1.2 M

Asia Traders Ins Corp

SMBP F 000000210

1 M

Western Guarantee Corp

119001

15 M

Phil Fire and Marine Ins

F 0160

2.114 M (4.228 joint w/ Multi-Ware)

Pan Oceanic Ins

176564

25 M (50 joint w/ Multi-Ware)

Pan Oceanic Ins

178070

25 M (50 M joint w/ Multi-Ware)

The probable cause of fire based on the investigation conducted by the Bureau of Fire Protection was "electrical equipment that malfunctioned" and that it was purely accidental in nature.

Multi-Growth filed a total loss claim against Asia Traders for the proceeds under Fire Insurance Policy No. F-000034460. Through a letter dated December 10, 2001, Asia Traders denied Multi-Growth's claim for violation of Policy Conditions Nos. 3,[3] 15[4] and 21.[5] Multi-Growth sought a clarification regarding the denial of its claim. However, in a letter dated October 9, 2002, Asia Traders informed Multi-Growth that it found no new issues that would disturb its previous position denying the previous claim.

On December 9, 2002, Multi-Growth, as the plaintiff, filed a case against Asia Traders and Ernesto Sy, as defendants, for Breach of Contract and/or Collection of Sum of Money with Damages, which was raffled to RTC of Manila, Branch 14.

Ernesto Sy was impleaded as defendant because plaintiff procured, upon advise of Sy and through his company Pan Oceanic Insurance Services, additional fire insurance to cover its stocks allegedly not yet covered by its existing fire insurance policies.

In its Answer with Compulsory Counterclaim,[6] Defendant Asia Traders alleged, among others, that a mere cursory examination of the Policy shows that the coverage of the insurance or co-insurances effected or subsequently arranged by the plaintiff were neither stated nor endorsed in the policy, violating Policy Condition No. 3.

In plaintiff's Reply,[7] it explained that as to the co-insurance, if any, that resulted after the issuance of Fire Policy No. F000034460 and its indorsement, Defendant Asia Traders was duly notified thereof prior to the fire and loss but the same were not reflected in the said policy due to inattention, carelessness, and/or negligence of either or both defendants.

As for Defendant Ernesto Sy, he denied having acted as insurance agent or broker of its Co-Defendant Asia Traders. He declared that he was never a party in the procurement and issuance of the policy subject matter of the case, and that his license with the Insurance Commission was as a broker since 1978 up to June 30, 2001 and became an insurance agent only on July 1, 2000.

Meanwhile, Civil Case No. 105309 entitled "Multi-Ware Manufacturing Corp. v. Reliance Surety & Insurance Corp., et al.", a fire insurance claim case arising out of the same fire that gutted Multi-Growth's stocks and properties, was also raffled to RTC of Manila, Branch 14. The cases were tried jointly pursuant to an Order dated September 4, 2003.

Defendant Asia Traders filed a Motion to Set Affirmative Defense for Hearing which, after due proceedings, was denied in an Order dated March 10, 2004. The Motion for Reconsideration was likewise denied in an Order dated September 29, 2004.

Plaintiff presented its witnesses in the persons of Frank Ching and Fire Officer Romeo A. Pepito, Jr. of the Bureau of Fire Protection. On July 9, 2007, plaintiff filed its Formal Offer of Evidence.

Defendant Asia Traders presented Aini Ling and Simeon Natividad while Defendant Ernesto Sy testified for himself.

Presiding Judge Cesar Solis inhibited from the case following plaintiff's Motion for his Inhibition. The instant case was re-raffled to Branch 49 of the same court while Civil Case No. 105309 was re-raffled to Branch 50 of the same court which proceeded to try the latter case.

The presiding judge of Branch 49 directed that the instant case be returned to Branch 14. The acting judge of Branch 14 of the same court, in turn, ordered the consolidation of the instant case with Civil Case No. 105309, then being heard by Branch 50 of the same court.

In the meantime, on May 17, 2010, Judge Simon P. Peralta, Presiding Judge of RTC of Manila, Branch 50, issued a Decision in Civil Case No. 105309 in favor of the plaintiff therein, Multi-Ware Manufacturing Corp. and against Reliance Surety & Insurance Co., Inc. holding the latter liable, among others, to pay the amount of P10,000,000.00.

On the other hand, Branch 50 continued to hear the instant case and proceeded with the presentation of defense witnesses Dominador Victorio and Abraham D. Flores. After Defendant Asia Traders' formal offer of evidence was admitted by the RTC, all parties were ordered to file their respective memoranda.

On February 17, 2011, plaintiff filed a motion for extension to file Memorandum, seeking an additional period of 15 days or until March 6, 2011. It wrote a letter-request to the Clerk of Court, Branch 50 of the same court dated February 22, 2011 for clear copies of the transcript of stenographic notes taken last February 16 and June 29, 2006 relative to the testimony of Sr. Insp. Romeo Pepito, Jr. of the Bureau of Fire Protection.

Plaintiff's motion for extension was granted. It turned out that Branch 50 of the same court was not in possession of the requested transcript of stenographic notes of the proceedings while the same was pending before Branch 14 of the same court, so it directed the stenographers of Branch 14 of the same court to submit within 10 days the transcript of stenographic notes in ten (10) hearing dates from October 13, 2005 to December 7, 2007.

On March 4, 2011, plaintiff was constrained to file a Second Motion for Extension of Time to file Memorandum because it has not received the requested transcript of stenographic notes. On March 25, 2011, plaintiff filed a Third Motion for Extension on the same ground. Both motions were not acted upon by Branch 50 of the same court.

On March 16, 2011, a four (4)-page Decision was rendered by the RTC dismissing the complaint.

In resolving the case, the RTC reduced the issues into three (3), viz.:

- a) Whether or not plaintiff violated Policy Condition No. 3 on co-insurance?
- b) Whether or not plaintiff violation Policy Condition No. 15 on false statement and/or fraudulent claims?
- c) Whether or not plaintiff violated Policy Condition No. 21 on arson?

The brief disquisition of the RTC is reproduced below as follows:

x x x

"Policy Condition No. 3 provides as follows:

"The insured shall give notice to the company of any insurance or insurances already affected, or which may subsequently be effected, covering any of the property or properties consisting of stocks in trade, goods in process and/or inventories only hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated herein or endorsed in this policy pursuant to Section 50 of the Insurance Code, by or on behalf of the company before the occurrence of any loss or damage, all benefits under this policy shall be deemed forfeited, provided however, that this condition shall not apply when the total insurance

or insurances in force at the time of loss or damage is not more than P200,000.00." (Emphasis supplied)

"Records of this case clearly reveals that plaintiff procured the subject fire insurance policy from defendant Asia Insurance without disclosing that it later on acquired another fire insurance policy from Prudential Guarantee and Assurance Inc., involving the same coverage. With this finding alone, defendant Asia Insurance had justifiably denied the claim of plaintiff for its insurance claim.

"This Court thus finds it irrelevant to discuss further the other issues that were raised by the herein parties." (Emphasis in the original)

x x x

Shortly after the Decision was promulgated, Judge William Simon Peralta retired on March 24, 2011. On April 7, 2011, plaintiff filed a Notice of Appeal which was given due course in an Order dated May 3, 2011, by Acting Presiding Judge Rosalyn D. Mislos-Loja.

THE ASSIGNED ERRORS

Plaintiff comes to Us, as Our Appellant, assigning the following errors, to wit:

I

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR IN HASTILY DECIDING THE INSTANT CASE WITHOUT THE COMPLETE TRANSCRIPT OF RECORDS, CONSIDERING THAT A SUBSTANTIAL PORTION OF THE PROCEEDINGS WERE NOT EVEN HEARD AND TRIED BY IT, BUT BY RTC-MANILA, BRANCH 14.

II

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR, EVEN GRAVE ABUSE OF DISCRETION, IN RENDERING A FOUR (4)-PAGE DECISION WITHOUT CITING THE FACTS AND THE LAW UPON WHICH IT IS BASED.

III

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR IN HOLDING THAT APPELLANT COMMITTED VIOLATION OF POLICY CONDITION NO. 3 ON CO-INSURANCE DESPITE UTTER LACK OF COMPETENT EVIDENCE TO SUPPORT SUCH STANCE.

IV

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR IN NOT HOLDING THAT APPELLEES ARE LIABLE TO PAY P1.2 MILLION TO APPELLANT PLUS 24% INTEREST PER ANNUM, ATTORNEY'S FEES AND COST OF SUIT.

OUR RULING

We discuss the errors in seriatim.

Plaintiff-appellant argues that the rule that "nothing is wrong or irregular when a judge who did not hear and try the case decides it" applies only if the full record of the case was available for his perusal.

Plaintiff-appellant alleges that as of February 25, 2011, the transcript of stenographic notes (TSNs) in 10 hearing dates from October 13, 2005 until December 7, 2007 were not in the folders of the case as transmitted to the RTC of Manila, Branch 50, and that as of March 25, 2011, the same TSNs were still not with the court's custody constraining plaintiff-appellant to file a second motion for extension of time to file Memorandum.

Records show that as of February 25, 2011, the TSNs of the ten (10) hearing dates were not with Branch 50 of the said court, prompting Presiding Judge William Simon P. Peralta to order the stenographers to submit to the branch

of the said court the said TSNs.

In plaintiff's Second Motion for Extension of Time to File Plaintiff's Memorandum[8] filed on March 4, 2011, it reasoned:

x x x

"4. Plaintiff has not yet received the requested transcript of stenographic notes taken last February 16 and June 29, 2006, relative to the testimony of Sr. Ins. Romeo Pepito, Jr. of the Bureau of Fire Protection. Plaintiff, thus, foresees that it might not be able to file its Memorandum on March 5, 2011."

x x x

In its Third Motion for Extension of Time to File Plaintiff's Memorandum, it reasoned:

x x x

"2. The undersigned foresees that he may not be able to file the same on March 25, 2011 because the requested transcript of stenographic notes taken last February 16 and June 29, 2006, relative to the testimony of Sr. Ins. Romeo Pepito, Jr. of the Bureau of Fire Protection, are not yet available."

x x x

In neither of the motions was there a clear allegation that Branch 50 of the RTC of Manila was not yet in custody of the TSNs at the time of filing of the said motion. What can only be clearly deduced therefrom was that their requested copies were not yet available to them. To make an imputation that the records of the trial court are incomplete, there must be sufficient proof. Mere allegation that it was incomplete at the time the Decision was rendered is not enough. There is simply no showing that the missing TSNs were not already available to the said court when it promulgated its Decision on March 16, 2011. We note that the alleged missing TSNs are part of the records transmitted to Us on appeal. There is therefore no reason to question the RTC's Decision on the ground that the records are incomplete when the Decision was rendered.

There is also no merit to plaintiff-appellant's accusation that the Decision was without any citation of facts and the law upon which it was based.

Section 14, Article VIII of the Constitution provides: "No decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based." Section 1, Rule 36 of the Rules of Court also requires that a judgment or final order determining the merits of the case "shall be in writing, personally and directly prepared by the judge, stating clearly and distinctly the facts and the law on which it is based, signed by him, and filed with the clerk of court." This requirement is an assurance to the parties that, in reaching judgment, the judge did so through the processes of legal reasoning. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached. It is precisely prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal.[9]

A mere cursory reading of the RTC's decision readily shows its ratio decidendi or how it arrived at its conclusion, albeit brief. Plaintiff-appellant was even able to raise as an error the trial court's finding that plaintiff-appellant violated Policy Condition No. 3 on co-insurance.

It is plaintiff-appellant's contention that, in order to constitute a violation of the provision on co-insurance, the other existing insurance contracts must be upon the same subject matter and with the same interest and risk. Plaintiff-appellant claims that there is nothing which proves that the properties allegedly insured with other insurance companies involve the same subject matter, the same interest and risk as that insured with

defendant-appellee.

In civil cases, a party who alleges a fact has the burden of proving it. He who alleges has the burden of proving his allegation by preponderance of evidence or greater weight of credible evidence.[10] The reason for this rule is that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[11]

In the Policy Information[12], it was indicated:

x x x

"PROPERTY INSURED

:

Item 1 - P1,000,000.00 -

On stocks in trade consisting principally of plastic products all usual to the insured's business, including those held by them in trust, on commission or in joint account with others and/or for which they are responsible in case of loss or damage, and;

Item 2 - 200,000.00 -

On office equipments, furniture, fixtures, fittings, electrical appliances of every kind and description all usual to the insured's business, whilst contained in the building described hereunder.

TOTAL P1,200,000.00

"CO-INSURANCE DECLARED : ' N i l '"

x x x

Based on the investigation, plaintiff-appellant had procured fire insurance from other insurance companies such as Phil Pryce Insurance Corp., Cibeles Insurance Corp., Asia Traders Insurance Corp., Western Guarantee Corp., Philippine Fire and Marine Insurance and Pan Oceanic Insurance. However, there was no indication that Defendant-Appellee Asia Traders was notified of these other insurance policies.

Plaintiff-appellant does not deny the existence of other insurance policies but alleges that the other insurance policies cover a different subject matter, interest and risk.

In plaintiff-appellant's September 4, 2002 letter to defendant-appellee, through Willy Antiporda,[13] it questioned the denial of its claim, specifically with respect to Condition No. 3 in the following wise:

x x x

"Condition 3 of the Policy - This pertains to the non-declaration or under-declaration of existing insurance policies. Your respective agents have been aware of the existing insurance policies before the fire. Mr. Ernesto Sy, for instance, was honest enough to admit his knowledge of existing insurances and our intention in buying insurance thru his office. He even confirmed it in writing."

x x x

If indeed the other insurance policies do not cover the same subject matter, interest and risk, it is strange that plaintiff-appellant did not deem it necessary to raise such matter in its response to the denial of its claim. In fact, aside from its mere denial, no evidence at all was presented in the instant case to back up plaintiff-appellant's allegation that its claim falls outside the ambit of Policy Condition No. 3.

During the cross-examination of Simeon Natividad, field investigator of CRM Adjustment Corporation who conducted the investigation in relation to plaintiff-appellant's claim against Defendant-Appellee Asia Traders, he testified that:

x x x

"Atty. Reyes

Q

:

In relation to what you have identified as insurance policies, could you please tell the Court if there is any policy of which you have identified whether it was issued to Multi-Growth Corp. or Multi-Ware Manufacturing that covers the same property as embodied in this insurance policy no. 03-4460 and being tried by this case?

Simeon Natividad

A

:

Two (2) policy of Prudential Guarantee that covers the property of Multi-Ware Manufacturing and Multi-Growth Corp.

Court

:

There are two (2) policies?

A

:

Yes, Your Honor.

Q

:

Which one of the two policies covers also the Php1.2 million worth of property?

A

:

Both policies, your Honor, for Multi-growth and or Multi-Ware, your Honor."[14]

x x x

To reiterate, the rule is that, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. In civil cases, the party having the burden of proof must produce a preponderance of evidence thereon, with plaintiff having to rely on the strength of his own evidence and not upon the weakness of the defendant's. The concept of "preponderance of evidence" refers to evidence which is of greater weight, or more convincing, that which is offered in opposition to it; at bottom, it means probability of truth.[15]

Aside from merely arguing that the different fire insurances it procured covered different subject matter, risks and interests, it failed to present evidence to support its claim, given the established fact that there exists more than one insurance policy in its name.

The terms of the contract are clear and unambiguous. The insured is specifically required to disclose to the insurer any other insurance and its particulars which he may have effected on the same subject matter.[16] Clearly, there was a violation by the plaintiff-appellant of Policy Condition No. 3 that forfeits the benefits from the subject insurance policy.

As for the claim against Defendant-Appellee Ernesto Sy, it was clear from the Affidavit in Lieu of Direct Examination[17] executed by Mr. Frank V. Ching, plaintiff-appellant's President and General Manager, that he procured the subject fire insurance policy from Mr. Ricky Uy, one of the agents of Defendant-Appellee Asia Traders. Ernesto Sy came into the picture only when plaintiff-appellant allegedly secured from him another fire insurance policy. Mr. Ching claimed that Mr. Sy represented that he would coordinate with Asia Traders with respect to informing the latter of the additional insurance policy. Since Mr. Sy has nothing to do whatsoever in connection with the procurement of the subject fire insurance policy from Defendant-Appellee Asia Traders, he cannot be considered as an insurance agent or insurance broker of Defendant-Appellee Asia Traders as defined Section 300[18] and 301[19] of the Insurance Code.

That done, We find no good reason to discuss more at length the last assignment of error.

WHEREFORE, premises considered, the appeal is DISMISSED for lack of merit. The Decision dated March 16, 2011 issued by the Regional Trial Court of Manila, Branch 50, in Civil Case No. 02-105297 is AFFIRMED.

SO ORDERED.

Abdulwahid, (Chairperson), and Barza, JJ., concur.

[1] Rollo, pp. 61-64.

[2] Record, pp. 381-386.

[3] 3. The insured shall give notice to the company of any insurance or insurances already affected, or which may subsequently be effected, covering any of the property or properties consisting of stocks in trade, goods in process and/or inventories only hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated herein or endorsed in this policy pursuant to Section 50 of the Insurance Code, by or on behalf of the company before the occurrence of any loss or damage, all benefits under this policy shall be deemed forfeited, provided however, that this condition shall not apply when the total insurance or insurances in force at the time of loss or damage is not more than P200,000.00."

[4] If the claim be in any respect fraudulent or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under this Policy; or if the loss or damage be occasioned by the willful act, or with the connivance of the insured, all benefit under this Policy shall be forfeited.

[5] The following provision of Section 6 of the Arson Law shall form an integral part of this Policy. x x x

[6] Record, pp. 33-45.

[7] Id., pp. 47-52.

[8] Id., pp. 588-591.

[9] Dandoy v. Court of Appeals, G.R. No. 150089, August 28, 2007.

[10] Dela Llana v. Biong, G.R. No. 182356, December 4, 2013, citing Eulogio v. Spouses Apeles, G.R. No. 167884, January 20, 2009.

[11] Id., citing Real v. Belo, 542 Phil. 111, 122 (2007), citing Domingo v. Robles, G.R. No. 153743, March 18, 2005, 453 SCRA 812, 818; and Ongpauco v. CA, G.R. No. 134039, December 21, 2004, 447 SCRA 395, 400.

[12] Exhibit "A-4" at Record, pp. 16-17.

[13] Record, pp. 26-29.

[14] TSN dated November 23, 2007, pp. 66-67.

[15] Vitarich Corp. v. Losin, G.R. No. 181560, November 15, 2010, citing Jison v. Court of Appeals, G.R. No. 124853, February 24, 1998.

[16] New Life Enterprises v. Court of Appeals, G.R. No. 94071, March 31, 1992.

[17] Record, pp. 375-380.

[18] Sec. 300. Any person who for compensation solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiating of such insurance shall be an insurance agent within the intent of this section and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance agent is subject.

[19] Sec. 301. Any person who for any compensation, commission or other thing of value acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself, shall be an insurance broker within the intent of this Code, and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance broker is subject.

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