

**LIM CHI WANG @ ARNEL LIM, PLAINTIFF-APPELLANT, VS. UCPB
GENERAL INSURANCE COMPANY, INC. DEFENDANT-APPELLEE.**

Ponente: LIBREA-LEAGOGO, J.

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LIBREA-LEAGOGO, J.:

Before this Court is an appeal under Rule 41 of the Rules of Court, assailing the Decision[1] dated 20 December 2013 of the Regional Trial Court, First Judicial Region, Branch 41, Dagupan City, in the case entitled "Lim Chi Wang @ Arnel Lim v. UCPB General Insurance Company, Inc.," docketed as Civil Case No. 2009-0186-D, which ruled in favor of herein defendant-appellee.

Plaintiff-appellant filed his Brief[2] dated 02 July 2014. Defendant-appellee filed its Brief[3] dated 14 August 2014. Per JRD verification[4] dated 10 October 2014, no reply brief was filed as per docket book entry. Thus, the appeal is submitted for decision.

FACTUAL ANTECEDENTS

A Complaint[5] dated September 2009 for Damages from Breach of Contract was filed by plaintiff Lim Chi Wang @ Arnel Lim against UCPB General Insurance Company, Inc., before the Regional Trial Court, First Judicial Region, Dagupan City, docketed as Civil Case No. 2009-0186-D.

Plaintiff alleged, inter alia, that: he is the owner of a warehouse situated in Barangay San Miguel, Calasiao, Pangasinan, covered by Tax Declaration No. 23465; sometime in 17 December 2007, he caused to be insured with defendant for P10,000,000.00, the warehouse/building, finished and unfinished stocks, equipment, tools, spare parts and accessories, and stocks of raw material, among others, as evidenced by Policy No. DGPO8FD-FLS002284; he paid the required premium to the defendant; the term of insurance policy issued by defendant in favor of plaintiff is from 21 January 2008 to 21 January 2009; sometime on 08 February 2008, an amendment on the insurance policy was effected whereby the coverage of the policy was amended in the following manner: Item 1 - Building known as Building No. 2 as described in the Policy - from Php1,000,000.00 to Php3,000,000.00; and Item 2 - Stocks of Finished or Unfinished products as described in the Policy - from Php4,000,000.00 to Php3,000,000.00; on 16 August 2008, while the insurance policy was subsisting and valid, an accidental fire gutted one of the warehouse/buildings described in Item I of the insurance policy, rendering it unusable and destroying the stocks mentioned in Item 2 of the insurance policy, which damages amounted to Php6,000,000.00; the concerned fire officers investigated and they submitted their finding that the cause of the fire was accidental in nature as evidenced by the Fire Investigation Report; pursuant to the insurance policy, plaintiff filed his claim with the defendant and was advised to submit the required papers to the adjuster of the defendant's insurer, which the former did; despite the submission of papers, defendant refused its claim without just and legal cause; although there was offer to pay Php1,277,036.67 for the building only, the stocks were unassessed; there were subsequent dialogues for settlement between the plaintiff and defendant's representatives, but no concrete results ensued; demands were made upon defendant to settle plaintiff's claim, but defendant refused without just and legal cause; and defendant should be ordered to pay plaintiff Php6,000,000.00 plus interests, Php300,000.00 as moral damages, Php50,000.00 attorney's fees, plus Php3,000.00 appearance fee per

hearing, costs of suit and expenses of litigation.

Plaintiff filed a Pre-trial Brief[6] dated 16 November 2009.

Defendant filed an Answer with Counterclaim,[7] dated 18 November 2009. Plaintiff filed a Reply[8] dated 28 November 2009.

Defendant filed a Motion to Admit Amended Answer with Counterclaim dated 11 December 2009.[9] In its Amended Answer with Counterclaim[10] dated 11 December 2009, defendant alleged, inter alia, that: plaintiff has no cause of action against defendant as there was no refusal of the claim yet; it is premature for plaintiff to file the instant case as the parties are still in the negotiation stage; in a letter dated 18 August 2009, Ms. Agripina De Luna ("De Luna," for brevity) of defendant's Claims Department sent a letter to the insured, offering the amounts of Php1,277,036.67 and Php674,995.81, for the insured building and stocks respectively; the letter clearly shows that the defendant's offer to pay is not limited to damages sustained by the building but extends to the stocks contained therein; plaintiff overlooked the fact that the policy is an open policy; the amount reflected in the policy represents the maximum liability of defendant in case of loss and not necessarily the valuation of the property insured; the amount offered by defendant to answer for damages to the insured building and stocks is based on the valuation provided by the adjuster; said valuation is specifically sanctioned by Condition 19 of the Standard Fire Policy and Section 60 of the Insurance Code; the claim of plaintiff that he should be entitled to the amount of Php6,000,000.00 has no basis; the Complaint must be dismissed; and by way of counterclaim, plaintiff should be held liable for attorney's fees of Php300,000.00 and exemplary damages.

Plaintiff filed a Stiff Opposition to the Motion to Admit Amended Answer with Counterclaim[11] dated 27 December 2009. A Reply[12] dated 18 January 2010 was filed by defendant. Plaintiff then filed a Rejoinder[13] dated 28 January 2010. Defendant filed its Pre-trial Brief[14] dated 20 January 2010.

In an Order[15] dated 18 February 2010, the Amended Answer of defendant was admitted. Plaintiff filed a Motion for Reconsideration[16] dated 05 March 2010, to which defendant filed a Comment/Opposition[17] dated 17 March 2010. In an Order[18] dated 11 June 2010, the Motion for Reconsideration was denied.

Defendant filed an Amended Pre-trial Brief[19] dated 05 March 2010. A Motion to Demolish Burned Building[20] dated 10 February 2011 was filed by plaintiff which was granted in the Order[21] dated 15 June 2011.

Pre-trial was held, and as stated in the Order[22] dated 17 March 2011, the parties stipulated on the following facts: identities of the parties; due execution of Policy Contract No. DGP08FD-FLS002284; due execution of Certificate of Payment issued by defendant; existence of Fire Investigation Report; the fire occurred on 16 August 2008; and at the time of the fire, the policy is in force and existing.[23]

Trial ensued.

Plaintiff[24] and Cristobal Corilla[25] ("Corilla," for brevity) were presented as witnesses. Plaintiff filed his Formal Offer of Documentary Exhibits[26] dated 20 April 2012, offering his Exhibits "A" to "M", to which defendant filed a Comment[27] dated 04 May 2012. In an Order[28] dated 28 May 2012, plaintiff's Exhibits "A" to "H" and "J" were admitted, without objection from defendant, while Exhibits "I" and "K" to "M" were also admitted noting defendant's objections.

Defendant presented De Luna[29] as witness. Carlo M. Santos ("Santos," for brevity) executed a Judicial Affidavit[30] and testified in court.[31] Graham L. Tolentino ("Tolentino," for brevity) also executed a Judicial Affidavit[32] and testified in court.[33] Defendant filed its Offer of Documentary Exhibits[34] dated 19 June

2013, offering Exhibits "1", "2", and "4" to "6". Plaintiff filed a Comment/Objection[35] dated 25 June 2013. In an Order[36] dated 17 July 2013, Exhibits "1" and "4" were admitted without objections from plaintiff, while Exhibits "2", "5" and "6" were admitted noting the plaintiff's objections.

Plaintiff filed his Memorandum[37] dated 22 August 2013.

On 20 December 2013, the trial court rendered its assailed Decision,[38] the dispositive portion of which reads:

"WHEREFORE, premises considered, judgment is hereby rendered as follows:

- Dismissing the complaint for lack of cause of action.
- Ordering the plaintiff to pay to the defendant the amount of P100,000.00 as and for attorney's fees and litigation expenses.
- Dismissing all other claims and counterclaims.

No pronouncement as to costs.

SO ORDERED."[39]

Plaintiff filed a Notice of Appeal[40] dated 09 January 2014, which was given due course by the trial court in its Order[41] dated 28 January 2014.

Hence, this appeal.

RULING

Plaintiff-appellant assigns the following errors, viz:

"1.

THE LOWER COURT ERRED IN NOT FINDING THAT THE TOTAL BURNED MACHINE DRY BEJON FROM SEPTEMBER 29, 2007 TO AUGUST 5, 2008 IN THE AMOUNT OF P575,420.00 AND THE SUNDRY BEJON FROM SEPTEMBER 29, 2007 TO AUGUST 5, 2008 IN THE AMOUNT OF P4,003,250.00 AS EVIDENCED BY THE TOTAL INVENTORY WAS (sic) THE ACTUAL DAMAGES SUSTAINED BY THE PLAINTIFF;

2.

THE LOWER COURT IN FINDING THAT THE DEFENDANT DID NOT BREACHED (sic) THE CONTRACT OF INSURANCE BECAUSE OF THEIR (sic) OFFER TO SETTLE PLAINTIFF'S CLAIM IN THE AMOUNT OF P1,277,036.67 FOR THE INSURED BUILDING AND P674,995.81 FOR THE INSURED STOCKS FOR SAID FINDING IS CONTRARY TO THE EVIDENCE ON RECORD FOR SAID OFFER WAS REJECTED BY PLAINTIFF BECAUSE THE AMOUNT WAS EXTREMELY LOW AS COMPARED TO THE ACTUAL DAMAGES SUSTAINED BY THE PLAINTIFF;

3.

THE LOWER COURT ERRED IN FINDING THAT THE POLICY OBTAINED BY PLAINTIFF IS AN OPEN POLICY INSTEAD OF A VALUED POLICY FOR SAID FINDING IS CONTRARY TO THE EVIDENCE ON RECORD, THE LAW AND JURISPRUDENCE;

4.

THE LOWER COURT COMMITTED ERROR IN NOT APPRECIATING THAT A CONTRACT OF INSURANCE IS A CONTRACT OF ADHESION AND THE SAME SHOULD BE INTERPRETED AGAINST THE INSURER;

5.

THE LOWER COURT ERRED IN AWARDING THE AMOUNT OF P100,000.00 AS AND FOR ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF THE DEFENDANT FOR SAID FINDING IS NOT SUPPORTED BY THE EVIDENCE ON RECORD AND THE SAME IS CONTRARY TO LAW AND JURISPRUDENCE;

6.

THE LOWER COURT ERRED IN HOLDING THAT PLAINTIFF'S CLAIM SHOULD HAVE BEEN BROUGHT TO THE INSURANCE COMMISSION FOR SAID FINDING IS CONTRARY TO LAW;

7.

THE LOWER COURT ERRED IN DISMISSING THE COMPLAINT FOR THE SAME IS CONTRARY TO THE EVIDENCE ON RECORD, THE LAW AND JURISPRUDENCE." [42]

Plaintiff-appellant contends, inter alia, that: the trial court erred in not awarding him the amount of Php6,000,000.00 as actual damages for the burned building, stocks and raw materials; from defendant-appellee's own witness Santos, the assessed value of the insured building at the time of its loss was Php8,775,000.00; the insured building was almost totally burned, and its structural integrity had been completely affected; he should be paid the amount of Php8,775,000.00 as actual damages for the insured building; on the burned stocks, he testified that as per inventory of stocks, the total amount of the burned stocks was Php4,578,670.00; since these burned stocks were covered by the Fire Insurance Policy issued by defendant-appellee, he is entitled to be paid the amount of Php4,578,670.00 representing the actual value of the burned stocks; in light of the actual damages that he sustained, the amount of Php1,952,032.48 offered by defendant-appellee as full settlement of his claim was extremely low; his rejection of the said offer was justified; the trial court committed error in finding that the policy obtained by him is an open policy based on paragraph 19 of the Fire Insurance Policy submitted by defendant-appellee; he is not a party to the said Fire Insurance Policy, and neither was he a signatory to the same; the policy issued by the defendant-appellee to him is a valued policy wherein the agreements were embodied in Policy No. DGPO8FD-FLSOO2284; the trial court committed grave error in awarding attorney's fees and litigation expenses in the amount of Php100,000.00 as nowhere in the questioned Decision can be found the factual, legal or equitable justification for the same; plaintiff was constrained to file the Complaint due to the unjustified and unreasonable refusal of defendant-appellee to satisfy his valid insurance claim pursuant to the insurance policy; considering that the insurance claim of plaintiff is Php6,000,000.00, it falls within the exclusive jurisdiction of the RTC, hence the finding of the trial court that he should have brought his claim with the Insurance Commission is clearly erroneous; and the trial court erred in dismissing the Complaint for lack of cause of action.

Defendant-appellee ripostes, inter alia, that: the insurance policy is an open policy; paragraph 19 of the fire insurance policy clearly states that it is an open policy as defined in Section 60 of the Insurance Code; an open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss; this means that in the event of loss, whether total or partial, the amount of the loss shall be subject to appraisal and the liability of the company, if established, shall be limited to the actual loss, and in no case shall exceed the amount of the policy; the adjustment company determined the value of the burned building at Php1,277,036.67 and the burned stocks at Php674,995.81; plaintiff-appellant's refusal to accept the settlement amount was based on his mistaken belief that the policy was a valued policy in the amount of Php6,000,000.00; plaintiff-appellant's claim that the total amount of his burned stocks was Php4,578,670.00 is unsubstantiated as found by the trial court; plaintiff-appellant quoted its witness Santos when the latter stated that the assessed value of the insured building at the time of loss was Php8,775,000.00; however, plaintiff-appellant conveniently omitted the

succeeding portions of Santos' testimony to the effect that Santos also determined the gross repair cost of the building, conducted its depreciation value and estimated salvage value, and since the property is underinsured, plaintiff-appellant should only get the ratable proportion of the loss which is Php1,227,036.67; and it did not refuse plaintiff-appellant's claim as in fact it offered Php1,277,036.67 for the burned building and Php674,995.81 for the burned stocks.

The appeal is partly granted.

Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law. It is basic that whoever alleges a fact has the burden of proving it because a mere allegation is not evidence. Generally, the party who denies has no burden to prove. In civil cases, the burden of proof is on the party who would be defeated if no evidence is given on either side. The burden of proof is on the plaintiff if the defendant denies the factual allegations of the complaint in the manner required by the Rules of Court, but it may rest on the defendant if he admits expressly or impliedly the essential allegations but raises affirmative defense or defenses, which if proved, will exculpate him from liability.[43]

(P)reponderance of evidence xxx is meant that the evidence as a whole adduced by one side is superior to that of the other. It refers to the weight, credit and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of evidence" or "greater weight of the credible evidence." It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[44]

Plaintiff-appellant testified, viz:

"Q:

Why do you know the defendant UCPB General Insurance Company, Mr. witness?

A:

Because I have my bihon factory insured at UCPB General Insurance Company, madam.

Q:

How much is the insured value of your warehouse and stocks?

A:

For the two bodegas factory and all of the stocks, finished and unfinished, I have it (sic) insured at Php10,000,000.00, sir.

Q:

When did you obtain your insurance over your warehouse and stock?

A:

It was insured on January 1, 2008, sir.

x x x x

Q:

What is the effectivity of your fire insurance with defendant UCPB?

A:

The period of insurance is in (sic) January 1, 2008 up to January 21, 2009, sir.

Q:

By the way you said your warehouse and stocks were insured with UCPB General Insurance, do you have proof that it was in fact insured?

A:

I have the policy, sir.

Q:

A:

x x x x

Q:

What happened to the policy marked (sic) Exhibit 'A'?

A:

When I filed my claim they did not pay me, sir.

Q:

Why, what happened to your warehouse and your stocks which was (sic) insured with defendant UCPB insurance company?

A:

It (sic) was (sic) burned, sir.

Q:

By the way is your initial policy amended?

A:

Yes, sir.

Q:

Will you please tell the Honorable Court what was the amendment of your policy?

A:

Item 1 was amended from Php1,000,000.00 to Php2,000,000.00, item 2 was amended from Php2,000,000.00 to Php3,000,000.00, Item 3 was amended (sic) Php4,000,000.00, Item 4, as is and item 5 was amended from Php1,000,000.00 to Php2,000,000.00.

Q:

Is that amendment covered by endorsement issued by defendant UCPB insurance?

A:

Yes, sir.

x x x x

ATTY. PALMA:

Q:

You testified that you insured your warehouse and stocks for Php1,000,000.00 have you paid the premium?

A:

Yes, sir

x x x x

Q:

By the way who owns the warehouse insured with defendant UCPB and the lot where the said building was constructed?

A:

Sir, I am the owner of the warehouse and the lot.

x x x x

Q:

Now you said you are a businessman and owned the warehouse and operating the same, is your business registered mr. witness?

A:

Yes, sir.

Q:

What is the name of your business?

A:

Sir, my business name is New Calasiao Bihon factory.

x x x x

Q:

A while ago you testified that your warehouse and stocks was (sic) gutted by fire, when was that?

A:

I forgot the exact date, I think it is (sic) on August 16, 2008, sir.

x x x x

Q:

Is (sic) the fire that burned your warehouse and stocks investigated by authorities?

A:

Yes, sir.

Q:

Do you have proof?

A:

Yes, sir.

x x x x

Q:

Aside from the Fire Investigation Report that was conducted by responding firemen, are there other report (sic) prepared in connection with the burning of your warehouse and stocks?

A:

There is a final investigation report, sir.

x x x x

Q:

After the firemen of the Fire Department conducted their investigation, what happened next?

A:

I filed a claim with UCPB Insurance, sir.

Q:

You said you filed your claim for insurance with defendant UCPB Insurance have you complied with the requirements relative to your claim?

A:

Yes, sir.

x x x x

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Q:

What happened to your claim, mr. witness?

A:

They just offered me the amount of Php2,000,000.00 which I rejected, sir

Q:

Why did you rejected (sic) the offer of Php2,000,000.00?

A:

Sir, because under my policy they should pay me Php6,000,000.00 instead of Php2,000,000.00.

Q:

What did you do when the offer is only Php2,000,000.00 and your claim is Php6,000,000.00?

A:

Sir, after a few meetings with the Insurance Company they still stand (sic) for their position so I just filed a case in RTC or in the court.

x x x x

Q:

You said a while ago that you rejected the offer of Php2,000,000.00 by the UCPB and as a consequence you filed this case, before this case was filed by your former lawyer what did your lawyer do relative to the rejection?

A:

He wrote a letter addressed to the Insurance Company, sir.

Q:

You are referring to the letter dated August 3, 2009 by your former lawyer wherein you rejected the offer of Php2,000,000.00?

A:

Yes, sir. This is the letter made by Atty. Bolinas addressed to the Insurance Company.

x x x x

Q:

Mr. witness you said that you refused the offer because your total claim is Php6,000,000.00 and the offer is only Php2,000,000.00, how much is the total cost of the burned products?

A:

Sir, my total burned finished products is (sic) amounting to almost Php9,770,437.00

x x x x

Q:

You said a while ago that you estimated the cost of the burned finished products amounting to Php9,000,000 plus, how did you arrive of (sic) that amount?

A:

SIr, I have a record of the inventory.

Q:

I'm showing to you (sic) inventory of the stocks which was (sic) burned in connection with this case previously marked as Exhibit 'OO' and series are you referring to this inventory of the stocks?

A:

This is only a part of the inventory not the whole inventory, sir."[45]

In the present case, plaintiff-appellant and defendant-appellee entered into an Insurance Contract on 17 December 2007 as evinced by a Policy Schedule[46] (Exh. "A") for Fire and Lightning, under Policy No. DGP08FD-FLS002284. The same insured New Calasiao Bijon Factory located at Brgy. San Miguel, Calasiao, Pangasinan. As stated therein, the period of insurance is from 21 January 2008 to 21 January 2009, in the amount

of Php10,000,000.00. The said policy was signed by defendant-appellee. It appears that Item No. 1 which covers the Building only was insured for Php1,000,000.00; Item No. 2 which covered stocks of finished and unfinished products was insured for Php4,000,000.00; Item No. 3 was insured for Php3,000,000.00; Item No. 4 covering machineries and equipment was insured for Php1,000,000.00; and Item No. 5 covering stocks on raw materials was insured for Php1,000,000.00.[47]

An Endorsement[48] (Exh. "B") for Policy No. DGP08FD-FLS002284 was issued on 08 February 2008 which provides that the policy was subject to the following amendments: "Item 1- from Php 1,000,000.00 to Php 3,000,000.00(;); Item 2 – from Php 4,000,000.00 to Php 3,000,000.00(;); Item 3 – from Php 3,000,000.00 to Php 1,000,000.00(;); Item 4 – as is (;) Item 5- from Php 1,000,000.00 to Php 2,000,000.00". [49]

A Certification[50] (Exh. "C") dated 27 August 2009 was issued by defendant-appellee which stated that the "corresponding Premium and Taxes of Fire Insurance Policy No. DGP08FD-FLS002284 with Term of Insurance of January 21, 2008 to January 21, 2009 issued in the name of NEW CALASIAO BIJON FACTORY c/o CHI-WANG C. LIM in the amount of xxx (P53,129.68) Only, xxx has been paid xxx as evidenced by General Agency Receipt No. 159938 dated February 2, 2008".[51]

On 16 August 2008, a fire loss occurred involving the subject properties of plaintiff-appellant. Based on the Fire Investigation Report[52] (Exh. "H") of the Bureau of Fire Protection of Calasiao, Pangasinan Fire Station, "a fire transpired in a New Calasiao Bijon Factory located at Sitio Parongking Bray. (sic) San Miguel, Calasiao, Pangasinan. The establishment involved was xxx owned by a certain Lim Chi Wang alias Arnel Lim xxx Investigation conducted by this station revealed that the fire originated /started at the stock room where finished products of bijon were being kept and were ready for delivery to market."[53] In its Findings, "the probable cause of fire was electrical due to short circuit and it was accidental in nature."[54] As per the Fire Incident Report[55] (Exh. "H-1") prepared by the Fire/Arson Investigator, the "fire destroyed the building and stocks of finished products of bijon, the office and two delivery truck (sic). It also destroyed a conveyor machine, a drying machine and other items."[56] In this case, the affected properties are Building No. 2, covered by item no. 1; and stocks inside Building 2, covered by item 2 of Insurance Policy No. DGPO8FD-FLSOO2284.[57]

Subsequently, a Sworn Statement of Claim[58] (Exh. "D") was made by plaintiff-appellant to defendant-appellee and in a letter[59] dated 28 October 2008, he forwarded a list of documents for claims.

In a letter[60] (Exh. "2") dated 18 August 2009, which referred to Policy No. DGPO8FD-FLSOO2284 and Claim No. F0800044, defendant-appellee informed plaintiff-appellant that it is enclosing "UCPB Checks No. 207265 and 207300 amounting to Ps 1,277,036.67 and Ps 674,995.81 xxx as full and final settlement of damaged building and stocks for above-captioned claim."[61]

A letter[62] (Exh. "M") dated 03 August 2009, was made by plaintiff-appellant to defendant-appellee, providing therein that the settlement offer in the amount of Php1,277,036.67 is not acceptable and that the amount of Php6,000,000.00 is being demanded from the latter.

In the present case, We find that no error was committed by the trial court in dismissing the Complaint of plaintiff-appellant.

(A) contract of insurance is an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.[63] Here, the insurance policy entered into by the parties is an open policy. (A)n open policy is one in which the value of the thing insured is not agreed upon but is left to be ascertained in case of loss. This means that the actual loss, as determined, will represent the total indemnity due the insured from the insurer except only that the total indemnity shall not exceed

the face value of the policy.[64] (C)ontracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense.[65]

In the present case, the Policy Schedule (Exhibit "A")[66] relating to an amendment of condition 29 of the Fire Policy Contract, provides that "the amount of any loss or damage for which the company may be liable under this Policy shall be paid within thirty (30) days after proof of loss is received by the company and ascertainment of the loss or damage is either made by agreement between the insured and the company or by arbitration." [67] Clearly, plaintiff-appellant's entitlement to collect from the insurance policy is conditioned upon the ascertainment of the loss or damage of the insured properties.

The said Policy Schedule (Exhibit "A")[68] of plaintiff-appellant refers to defendant-appellee's Fire Insurance Policy[69] (Exh. "1-A"). Section 19 thereof provides that the same is an open policy "as defined in Section 60 of the Insurance Code. In the event of loss, whether total or partial, it is understood that the amount of the loss shall be subject to appraisal and the liability of the Company, if established, shall be limited to the actual loss, subject to the applicable terms, conditions, warranties, and clauses of this policy, and in no case shall exceed the amount of the policy." [70] Clearly, the insurance contract between the subject parties is an open policy. Thus, upon the happening of the fire incident on 16 August 2008, plaintiff-appellant cannot automatically collect the face amount of the policy in the amount of Php6,000,000.00 without first ascertaining or appraising the loss or damage.

In the instant case, based on the testimony of plaintiff-appellant himself during his cross-examination, his insurance claim in the amount of Php6,000,000.00 lacks factual basis. He testified, viz:

"Q:

Mr. Witness, the building is covered by a tax declaration, is that correct?

A:

Yes, Sir.

x x x x

Q:

Now Mr. Witness, how many building (sic) are constructed on the lot where your Bijon factory is located?

A:

Two (2) big warehouses, Sir

Q:

There are buildings 1 and 2, am I correct?

A:

Yes, Sir.

Q:

And only building 2 was burned down, am I correct?

A:

Yes, Sir.

Q:

Mr. Witness, I am showing to you this tax declaration no. 23465 previously marked as Exhibit 'QQ'. Can you tell the Honorable Court if this tax declaration covers only building 2 or only building 1?

A:

This tax declaration covers only building 2, Sir.

Q:

Is this the latest tax declaration for the building, Mr. Witness?

A:

Yes, Sir.

Q:

You would agree with me that as per this tax declaration the assessed value of the building... I withdraw the question. You would agree with me that as per this tax declaration, the market value of the machineries on the building is Php590,000.00 and the market value of the building as per the tax declaration is Php1,100,000.00?

Atty. Palma:

The best evidence is the tax declaration, it is already there.

Atty. Evangelista:

And by the way, the amount stated there is only for purposes of taxes?

A:

Yes, Sir.

Q:

Mr. Witness, when did you construct building 2?

A:

Well, around Year 2000, Sir.

Q:

And which was gutted by fire, when?

A:

August 16, 2008, Sir.

Q:

So, the building was somewhere 8 years when it was burned down, am I correct?

A:

Yes, Sir.

Q:

Meaning, it was not brand new, am I correct?

A:

Yes, Sir.

Q:

Now Mr. Witness, aside from what you stated awhile ago, the amount stated in the policy of the building which is 3 Million, do you have any other document to support the value of the building at the time of its loss in August 2008?

A:

No, Sir.

Q:

Let us go to the stocks contain (sic) in building 2. You said you are claiming 3 Million for the stocks. Again, the amount is stated in the policy, am I correct?

A:

Yes, Sir.

Q:

And you have no knowledge as to the actual value of the stocks that were burned down, am I correct?

A:

I have a copy for the stocks inventory in my computer, Sir.

Q:

Can you present it now?

A:

Yes, Sir.

Atty. Evangelista:

Witness, Your Honor showing to this representation a print out.

A:

It is just a part of the inventory.

Atty. Palma:

The inventory has been marked as Exhibit 'LL' and series.

Atty. Evangelista:

I am showing to you Exhibit 'LL' and series, is this the print out of the inventory which you said?

A:

Yes, Sir, this is only a part of the inventory.

Q:

And based on your print out, how much is the total lost (sic) stocks in August 2008?

Atty. Palma:

The best evidence is the document.

Atty. Evangelista:

I am asking it, Your Honor for the record.

COURT:

Witness answer.

A:

Php575,420.00 for the machine drier, Sir.

Atty. Evangelista:

You would agree with me that the amount of Php575,420.00 which you claim is the total inventory for the machine drier for this Bijon covers the period (sic) September 29, 2007 to August 5, 2008, is that correct?

A:

Yes, Sir.

Q:

You would also agree with me that the insurance policy covers only the period from January 21, 2008 to January 21, 2009, am I correct?

A:

Yes, Sir.

x x x x

Q:

Also Mr. Witness, even after the loss occurred during the coverage of the insurance policy, the insurance company is only liable to the extent of the actual loss, am I correct?

A:

Yes, Sir.

Q:

Now, according to you, the total inventory of the machine drier of your Bijon is Php4,250,000.00. You would agree with me that this amount covers the total inventory of your machine drier for the Bijon from August 2007 to August 2008 as per Exhibit 'LL'?

A:

Yes, Sir.

Q:

Meaning, there are stocks included in this computation of 4 Million in the Year 2007 even before the effectivity of the insurance policy?

A:

No, Sir.

Q:

What do you mean?

A:

This inventory is the actual inventory of the actual stocks burned because I was required by the insurance company to give an estimate of the stocks for three years back, Sir.

Q:

Mr. Witness, this print out came from your computer, am I correct?

A:

Yes, Sir.

Q:

And you have other contractors in your computer?

A:

Yes, Sir.

Q:

And you made this print out after the loss occurred, am I correct?

A:

Yes, Sir.

Q:

Aside from this print out which came from your computer which is under your other contractor, there are no other documents to support that the actual value of the stocks lost and gutted by a (sic) fire was Php4,250,000.00 upwards?

A:

Yes, Sir." [71] (Emphasis supplied)

Here, considering that the insurance contract is an open policy and plaintiff-appellant failed to substantiate his claim in the amount of Php6,000,000.00, We find no cogent reason to disturb the findings of the trial court in denying his claim. A perusal of the inventory[72] (Exh. "I" to "I-15") presented by plaintiff-appellant shows that the same is unsupported by any other competent document. Thus, as aptly pointed out by the trial court, "xxx plaintiff is claiming for the amount of of (sic) damages (sic) Php6,000,000.00 for the burned building and stocks of finished and/or unfinished products. In support of his claim, he submitted as evidence (sic) Total Inventory of Machine Dry Bijon from September 29, 2007 to August 5, 2008 in the amount of Php575,420.00 and Total Inventory of Sundry Bijon from September 29, 2007 to August 5, 2008 in the amount of Php4,003,250.00. A

perusal of the said inventories reveal that they are not supported by any document that would prove that there as (sic) such stocks in the building at the time of the occurrence of the fire which documents may consists (sic) of but not limited to purchase invoices that would show the purchase of raw materials for the manufacture of bijon, receipts that would prove payments of such purchases, statement of account and book of account. Plaintiff admitted that the inventories were prepared by him and are computer print outs but he cannot present any document upon which he based his inventories and in arriving in the said amount of damages. The Court therefore finds no basis, legal and factual, for the award of the said amount."[73]

In this case, We find that defendant-appellant was not remiss in its duty when the fire incident occurred on 16 August 2008, as testified to by De Luna, the General Claims Manager, viz:

"Q:

After the plaintiff filed the claim, what did you and your department do if any?

A:

When we received the notice of claim of the insured, our company assigned it to our independent adjuster for investigation, gathering of information and collecting of necessary documents, sir.

Q:

After the investigation, gathering of information and collecting of necessary documents, what happened next?

A:

The adjuster rendered evaluation report and submitted it to us, and we processed, evaluated and reviewed the recommendation of the adjuster, sir.

Q:

What is the recommendation of the adjuster?

A:

The adjuster recommends is (sic) to consider the claim of the insured and settle the evaluated amount based on the evaluation list, sir.

Q:

What is the evaluation amount?

A:

The evaluated amount of the damaged building in the amount of P1,0277,036.67 (sic) while on the stocks the adjuster evaluated in the amount of P674,995.80 sir.

Q:

What did you do with this report and recommendations of the adjuster to settle with the plaintiff in the amount that you mentioned?

A:

We offered these amounts to the insured or to the plaintiff, sir.

x x x x

Q:

Madam witness, after making this offer to the plaintiff, what did the plaintiff do if any?

A:

The plaintiff rejected our offer, sir.

Q:

Why, what did the plaintiff want?

A:

The plaintiff did not accept the amount that we have offered, sir.

x x x x

Q:

In this letter addressed to Atty. Francisco Nob, the plaintiff is claiming a total of P3,000,000.00 for the building and P3,000,000.00 for the damaged goods, what can you say to that? And why UCPB General Insurance offered lesser amount?

A:

Because it is based on the documents presented to the UCPB General Insurance by the insured, sir.

Q:

What else?

A:

Based on the report of the Adjuster and the investigation of the adjuster, sir.

Q:

What is the insurance policy obtained by this Bijon Factory?

A:

The policy obtained by Bijon Factory is an open policy which is subject for appraisal and adjustment of the lost (sic), sir.

Q:

When you said open policy, what specifically do you mean by that?

A:

Open policy in case of a lost (sic), the damaged property should be subjected for evaluation, adjustment and appraisal with all the applicable depreciation excluding the add and on, sir."[74] (Emphasis supplied)

Based on the Judicial Affidavit of adjuster Santos, he determined that insofar as the burned building is concerned, plaintiff-appellant is entitled to Php 1,227,036.67.[75] In the Judicial Affidavit of adjuster Tolentino, the value of the subject stocks at the time of its loss as per his assessment is Php 674,995.82.[76] These assessments were reduced in writing as evinced by the Second Report on Fire Insurance Claim[77] dated 04 March 2009 (Exh. "5") and Fifth and Final Report on Fire Insurance Claim[78] dated 11 November 2009 (Exh. "6").

In its letter[79] dated 18 August 2009 (Exh. "2"), defendant-appellee offered these amounts and enclosed UCPB Checks 207265 and 207300 in the amounts of Php 1,277,036.67 and Php 674,995.81, respectively. As correctly found by the trial court, "xxx plaintiff failed to prove that the defendant breached the contract, i.e. Fire Insurance Policy xxx his claim under the said contract was acted upon by the defendant as per the letter (sic) August 18, 2009 and he was being paid of his claim for the damages on the insured building and stocks after the required appraisal in accordance with the conditions embodied in the Fire Insurance Policy xxx As shown by the evidence for the defendant, the amount offered by it to answer for damages to the insured building and stocks is based on the appraisal and valuation provided by the independent appraiser and adjuster after considering the documents submitted by the plaintiff, and other pertinent documents. xxx It is clear that defendant was willing and ready to fulfill its obligation under the contract by paying the damages on the insured building and stocks based on the valuation/appraisal of the adjuster/appraiser but was rejected by plaintiff. There being no evidence that the defendant breached the contract, i.e., fire insurance policy, the plaintiff has no cause of action against it for damages." [80]

However, with respect to the award of attorney's fees and expenses of litigation in the amount of Php100,000.00 in favor of defendant-appellee, We delete the same.

They are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. The award of attorney's fees is the exception rather than the general rule. As such, it is necessary for the trial court to make findings of facts and law that would bring the case within the exception and justify the grant of such award. The matter of attorney's fees cannot be mentioned only in the dispositive portion of the decision. They must be clearly explained and justified by the trial court in the body of its decision.[81] Here, save for a single sentence on attorney's fees and litigation expenses found in its Decision,[82] the trial court failed to make findings of facts and law that would bring the case within the exception and justify the grant of the same.

Considering the foregoing disquisition, We find no necessity to pass upon the other matters raised by plaintiff-appellant.

WHEREFORE, premises considered, the appeal is PARTLY GRANTED. The Decision dated 20 December 2013 of the Regional Trial Court, First Judicial Region, Branch 41, Dagupan City, in Civil Case No. 2009-0186-D is AFFIRMED with MODIFICATION in that the award of attorney's fees and litigation expenses in the amount of Php100,000.00 is DELETED. Other dispositions stay. No pronouncement as to costs.

SO ORDERED.

Diamante, and Sadang, JJ., concur.

[1] Rollo, pp. 31-40; penned by Hon. Emma M. Torio

[2] Id. at 11-30

[3] Id. at 45-52

[4] Id. at 54 (dorsal side)

[5] Record, pp. 2-8

[6] Id. at 55-59

[7] Id. at 31-35

- [8] Id. at 49-51
- [9] Id. at 60-62
- [10] Id. at 64-70
- [11] Id. at 80-83
- [12] Id. at 89-91
- [13] Id. at 111-114
- [14] Id. at 96-99
- [15] Id. at 116-117
- [16] Id. at 122-125
- [17] Id. at 140-141
- [18] Id. at 150
- [19] Id. at 127-131
- [20] Id. at 201-202
- [21] Id. at 243
- [22] Id. at 208-210
- [23] Id. at 210
- [24] TSNs, dated 28 June 2011, pp. 1-15; 09 August 2011, pp. 1-7; 25 October 2011, pp. 1-3; and 13 December 2011, pp. 1-3
- [25] Id., 09 February 2012, pp. 1-10
- [26] Exhibits for the Plaintiff, pp. 1-6
- [27] Record, pp. 266-267
- [28] Id. at 270-271
- [29] TSN, dated 02 October 2012 , pp. 1-11
- [30] Record, p. 300-305
- [31] TSN, dated 02 April 2013, pp. 1-7
- [32] Record, pp. 315-318
- [33] TSN, dated 18 June 2013, pp. 1-21
- [34] Exhibits for the Defendant, pp. 1-3
- [35] Record, pp. 324-326
- [36] Id. at 328
- [37] Id. at 334-343

- [38] Id. at 348-357
- [39] Id. at 357
- [40] Id. at 361
- [41] Id. at 363
- [42] Rollo, pp. 12-14
- [43] BJDC Construction, etc. v. Nena E. Lanuzo, et al., G.R. No. 161151, 24 March 2014
- [44] Id.
- [45] TSN, 28 June 2011, pp. 4-14
- [46] Exhibits for the Plaintiff, pp. 8-11
- [47] Id. at p. 8-9
- [48] Id. at 12
- [49] Id.
- [50] Id. at 13
- [51] Id.
- [52] Id. at 18
- [53] Id.
- [54] Id.
- [55] Id. at 19
- [56] Id.
- [57] Exhibits for the Defendant, p. 20
- [58] Exhibits for the Plaintiff, p. 38
- [59] Id. at 39
- [60] Exhibits for the Defendant, p. 12
- [61] Id.
- [62] Exhibits for the Plaintiff, p. 40
- [63] Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue, G.R. No. 167330, 12 June 2008
- [64] Development Insurance Corporation v. Intermediate Appellate Court, et al., G.R. No. L-71360, 16 July 1986
- [65] Cf. Alpha Insurance and Surety Co. v. Arsenia Sonia Castor, G.R. No. 198174, 02 September 2013
- [66] Exhibits for the Plaintiff, pp. 8-11
- [67] Id. at 9
- [68] Id. at 8-11

[69] Exhibits for the Defendant, pp. 10-11

[70] Id. at 11

[71] TSN, dated 09 August 2011, pp. 4-7

[72] Exhibits for the Plaintiff, pp. 20-35

[73] Record, p. 355

[74] TSN, dated 02 October 2012, pp. 4-7

[75] Record, p. 303

[76] Id. at 317

[77] Exhibits for the Defendant, pp. 16-23

[78] Id. at 24-25

[79] Id. at 12

[80] Record, pp. 355-356

[81] S.C. Megaworld Construction and Development Corporation v. Engr. Luis U. Parada, etc., G.R. No. 183804, 11 September 2013

[82] Record, p. 356

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