

**LUIS DEL CASTILLO, IN HIS CAPACITY AS ADMINISTRATOR OF
INTESTATE ESTATE OF THE DECEASED ANDRES GRIMALT Y
PASTOR, PLAINTIFF AND APPELLANT, VS. METROPOLITAN
INSURANCE COMPANY, DEF...**

G.R. No. L-2038. March 04, 1950

Ponente: MORAN, C.J.

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MORAN, C.J.:

This is an appeal taken from a decision of the Court of First Instance of Manila absolving the defendant Metropolitan Insurance Company from the complaint filed by Luis del Castillo as administrator of the estate of the deceased Andres Grimalt y Pastor.

According to the stipulation of facts submitted by the parties, the deceased Andres Grimalt y Pastor, was the owner of "Panaderia la Magdalena" situated between O'Donnel and Misericordia streets in the city of Manila which was insured against fire and lightning and covered by Policies nos. 21489, 21105 and 21106 issued by the Metropolitan Insurance Company which were in full force and effect at the time said property was partially destroyed by fire. Said Policies have their face value of p15,000.00, P30,000.00, and P40,000.00 respectively and were worded identically there having been paid by the insured to the defendant company as premiums the amounts of P300 for Policy No. 21489, P600 for Policy No. 21105 and P800 for Policy No. 21106 for the period comprised between September 23, 1941, and September 23, 1942.

Paragraph six (6) of each of these Policies is as follows:

"This insurance does not cover any loss or damage which either in origin or extent is directly or indirectly, proximately or remotely, occasioned by or contributed to by any of the following occurrences, or which, either in origin or extent directly or indirectly, proximately or remotely, arises out of or in connection with any of such occurrences, namely:

"(1) Earthquake, volcanic eruption, typhoon, hurricane, tornado, cyclone, or other convulsion of nature or atmospheric disturbance.

"(2) War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), mutiny, riot, civil commotion, insurrection, rebellion, revolution, conspiracy, military naval or usurped power, martial law or state of siege, or any of the events or causes which determine the proclamation or maintenance of martial law or state of siege.

"Any loss or damage happening during the existence of abnormal conditions (whether physical or otherwise), directly or indirectly, proximately or remotely, occasioned by or contributed to by or arising out of or in connection with any of the said occurrences shall be deemed to be loss or damage which is not covered by this insurance, except to the extent that the Insured shall prove that such loss or damage happened independently of the existence of such abnormal conditions.

"In any action, suit or other proceeding, where the Company alleges that by reason of the provisions of this condition any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the Insured."

Early in the afternoon of January 2, 1942, a fire broke out in a grocery store owned by Yu Dian Chiang, then being looted, and caught and destroyed two doors of the "Panaderia la Magdalena" building, thus causing a damage in the amount of P62,000.

The main issue here is whether or not the defendant, Metropolitan Insurance Company, is liable for the damage thus caused to the bakery above mentioned.

As above indicated, one of the conditions stipulated in the Policies is that any loss or damage caused by war or invasion or "any loss or damage happening during the existence of abnormal conditions (whether physical or otherwise) directly or indirectly, proximately or remotely, occasioned by or contributed to by or arising out of or in connection with any of the said occurrences shall be deemed to be loss or damage which is not covered by this insurance" and that "where the Company alleges that by reason of the provisions of this condition any loss or damage is not covered by this insurance, the burden of proving that such loss or damage is covered shall be upon the Insured".

Insurance companies, generally, are willing to assume only ordinary risks or losses that may happen under ordinary conditions or in times of peace. Insurance companies are entitled to protect themselves and maintain their stability in the interest of the people whom they insure and accordingly they should avoid assuming extra-ordinary risks due to unusual and peculiarly destructive causes which are disproportionate to the amount of premium paid. It is for this reason that extraordinary causes of loss for which no augmented premium has been paid are excluded from the coverage of the Policies issued by the defendant company. (See *Aetna Ins. Co. vs. Boom* 95 U.S. 117; 24 Law. Ed. 395, 398; cited with approval in *Woogmaster vs. Liverpool & London Globe Ins. Co.*, 45 N. E. [2d], 394, 396; *Am. Mfg. Corp. vs. Nat. Union Fire Insurance Co.*, 14 So. [2d], 430, 438; *Holmes vs. Employer's Liability Ass. Corp. Ltd. of London, Eng.*, 43 N. E. [2d] 746, 753).

On January 2, 1942, when the bakery owned by plaintiff was destroyed partially by fire, the conditions in Manila were entirely abnormal on account of the war. In the stipulation of facts submitted by the parties, It is stated that in the city of Manila from December 29, 1941 up to January 3, 1942, due undoubtedly to the evacuation of the Philippine and U.S. Army and to the imminence of Japanese invasion, the conditions of peace and order were totally abnormal and beyond control for they were characterized by panic and confusion and accompanied by unchecked looting, uncontrolled mobs, and outbreaks of fire. From December 8, 1941 to January 4, 1942 there had been at least fifty (50) fires in Manila and on January 2, 1942 there had been at least eight (8) fires in the city. And on January 6, a fire gutted the building opposite and directly in front of the bakery owned by plaintiff. Since 2/3 of the population and 2/3 of the police force of the city had evacuated to the provinces, many houses were left without vigilance and were the subject of general looting, and fire, in several instances, was the consequence. Looting and robbery were rampant in the city because only a handful of policemen were left and they were generally ignored by the mob of looters. Fires breaking out in houses being looted were beyond control because a great portion of Manila's firemen had also evacuated to the provinces or failed to report for duty in fear of imminent danger and calls for assistance received no response from the fire department.

The fire which destroyed partially the bakery in question, came from a grocery that was being looted. Such fire was the effect of abnormal conditions caused by war.

There is another reason why plaintiff's action should be dismissed. In paragraph thirteen (13) of the Policies it is stipulated that "if the claim is made and rejected and an action or suit be not commenced within twelve (12)

months after such rejection * * * all benefit under this Policy shall be forfeited." According to the stipulation of facts, plaintiff's claim was rejected on February 1942, and yet the complaint in this case was filed on May 22, 1946. The action, therefore, is barred by the limitation agreed upon by the parties.

Judgment is affirmed with costs against appellant.

Ozaeta, Pablo, Bengzon, Padilla, Tuason, Reyes, and Torres, JJ., concur.

Montemayor, J., concurs in the result.

Moran, C.J.:

Mr. Justice Paras voted for affirmance.

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