

FILIPINAS COMPAÑIA DE SEGUROS, PETITIONER, VS. TAN CHUACO, RESPONDENT.

G.R. No. L-1559. January 31, 1950

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition for a writ of certiorari to review a judgment of the Court of Appeals.

The petitioner is a domestic insurance corporation licensed to engage in the insurance business in the Philippines. The respondent is the owner of a building located in the municipality of Lucena, province of Tayabas, insured for P20,000 and P10,000 in two policies issued by the petitioner.

On 5 January 1942, during the term of the policies just referred to, the building insured was burned and completely destroyed. Notice and proof of loss had been duly made, but as the petitioner refused to pay, an action was brought to recover on the policies. After trial, judgment was rendered against the petitioner for the amount of the two policies with legal interest from the date of the filing of the complaint. The Court of Appeals affirmed the judgment.

Now, the petitioner raises in these proceedings three questions (1) that, under article 8 which provides:

Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy, by or on behalf of the Company.

(a) If the trade or manufacture carried on be altered, or if the nature of the occupation of or other circumstances affecting the building insured or containing the insured property be changed in such a way as to increase the risk of loss or damage by fire.

"the sealing of respondent's property by Japanese forces on December 28, 1941 changed the nature of the occupation thereof in a manner which increased the risk of loss, and that in accordance with the provisions of Article 8 of the policies above quoted, the insurance ceased to attach as of the aforesaid date of December 28, 1941"; (2) that under article 6 of the insurance policies issued "the inferential finding that the fire of January 5, 1942 was of accidental origin, without more, could not make respondent's loss compensable, considering that the contract of the parties specifically required respondent to prove that loss happened independently of the abnormal conditions before he could recover. In other words, that a consuming fire was accidental is not proof of the fact that such fire was not the remote or indirect result of, or contributed to, by the abnormal conditions"; and (3) that, under article 13 of the insurance policies which provides:

All benefits under this policy shall be forfeited:

- (a) If the claim be in any respect fraudulent;
- (b) If any false declaration be made or used in support thereof;
- (c) If any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any

benefit under this policy;

(d) If the loss or damage be occasioned by the wilful act, or with the connivance of the Insured;

(e) If the insured or anyone acting on his behalf shall hinder or obstruct the Company in doing any of the acts referred to in Article 1;

(f) If the claim be made and rejected and an action or suit be not commenced within twelve months after such rejection, or (in case of an Arbitration taking place in pursuance of Article 18 of this Policy) within twelve months after the Arbitrator or Arbitrators or Umpire shall have made their award,

the respondent cannot recover, because he had made fraudulent declaration in his claim submitted to the petitioner denying that there had been a previous fire in the premises in which the insured was interested, whereas at the trial he admitted that there had been a previous fire in which he was an interested party.

As to the first question, the Court of Appeals held:

As to the claim of the appellant that risk of fire or loss was increased by the sealing of the building by the Japanese Forces, the evidence of record discloses the following: The Japanese Army entered Lucena at 5:30 a.m., on December 27, 1941. At that time appellee's building was closed. On December 28, according to the testimony of the principal witness for the defendant, all the stores along Quezon Avenue, including the stores in the building of the appellee, were sealed by the Japanese Army, except those which were open (t.s.n., p. 50). Japanese soldiers asked what were contained in the stores, and, upon being informed, they ordered the placing of posters prohibiting the taking away of materials from the said stores under penalty of death (Id.). There were no disorders during this period of time, that is, between the entry of the Japanese Army and the burning of the building. Looting was rampant until the end of December, but thereafter and up to the date of the burning of the building, only sporadic looting occurred in far away places. The Japanese soldiers patrolled the streets and dispersed people seen in groups. They also arrested and tied and punished people caught looting or stealing.

The appellant and the amici curiae contend that the risk of fire or loss, to which the building was exposed by the sealing thereof, was considerably increased, and that the policies thereupon ceased to attach; that the situation of the building insured was changed in that it became a building containing war materials, which it became the bounden duty of all loyal forces, whether the regular USAFFE or the guerrilla elements to destroy; that said sealing converted it into a veritable arsenal of war materials, thereby increasing the risk and hazard to which it was exposed. In passing upon this defense, the trial court ruled that the stipulation between the parties that no encounter of troops occurred in Lucena before or after its occupation, and that the forces of one and the other side were localized around the fortifications of Bataan and Corregidor, had the effect of bringing the said municipality beyond the zone of war operations at the time in question, for which reason no increase resulted in the risk or hazard to which the building insured was subjected to. Incidentally, it found that the stores in the building insured were sealed, not because they belonged to enemy nationals, but because they were abandoned by the owners and precautionary measures had to be adopted to prevent their being looted.

We find that the finding of the trial court as to the cause of the sealing of the building is fully justified by the evidence of record. If the Japanese forces only sealed those buildings which were closed, and not those which were open (t.s.n., p. 50), it is evident that their reason for the sealing was because they were closed, and they desired to prevent looting by the sealing.

As regards the supposed increase in the risk, we may state that there were only three possible sources of danger to which the building insured could have been exposed before it was burned on January 5, 1942, namely, by action of USAFFE, guerrilla, or civilian saboteurs. This is a well known fact and the parties have stipulated that at the beginning of the year 1942 the theater of operations between the Japanese Army and the USAFFE forces was shifted to the fortifications around Bataan and Corregidor. There could not have been any danger from the USAFFE forces, because they had withdrawn from Manila and surrounding provinces to Bataan. Neither was there any risk from guerrilla forces because guerrilla units began to organize only after the fall of Bataan in April, 1942. As to saboteurs, whether civilian or military, it is of common knowledge that buildings

or communities are destroyed by fire upon the approach of the enemy. No such acts of sabotage were perpetrated in Lucena or in the province of Tayabas. There was no danger from saboteurs among the civilian population after the Japanese forces occupied Lucena on December 27, 1941, because there is absolutely no evidence of the possible existence of such elements, for, according to the evidence of record, except for looting, there was peace and quiet in the municipality of Lucena upon the coming of the Japanese forces.

Again we fail to understand how sealing alone can increase the risk or hazard to which a building is exposed. Whether sealed or not, if the contents of the building are war materials, of value or use to the contending forces, they would be subject to confiscation or commandeering. Besides, the sealing was an act of the enemy over which the plaintiff-appellee had no influence or control. We, therefore, hold that the policies did not cease to attach by reason thereof.

For the foregoing reasons, this court declares that, while the trial court committed an error in holding that defendant-appellant has waived Article 8 of the policies, the said error is immaterial, as its ruling that no increase in the risk was occasioned by the sealing is correct.

As regards the second question, the Court of Appeals made the following pronouncement:

We find that the trial court did not find that the conditions in Lucena at the time of the loss were abnormal. In reaching this conclusion it held that Lucena ceased to be the theater of war operations upon its occupation; that the conflict became localized around Bataan and Corregidor; and that for these reasons invasion was consummated on December 27, 1941, in so far as Lucena is concerned. It further seems to have held the view; that the term "abnormal conditions" used in the policy means actual warfare, or actual rioting or disturbances, or conditions short thereof. This interpretation is believed to be unjustifiably strict. We understand that it is not, it can not be, actual fighting itself. It should be a situation, a condition of things deviating from the normal or ordinary and produced only by war or invasion, etc. The term "abnormal" means "not conformed to rule or system; deviating from type; anomalous; irregular." (Webster's International Dictionary).

The evidence of record shows that the Japanese forces entered Lucena on December 27, 1941, early in the morning. At the time of the entry many, if not most, of the people had evacuated to barrios or out of the way places¹ in order not to be in the way of the Japanese forces or near them, and by January 5, 1942, only about one-half of the population had returned to town. "We can imagine the feeling of fear or uneasiness that pervaded the people, who were new to the ways of war and to the army of occupation and its idiosyncrasies. The timid stayed away from the town; the bold resorted to looting stores and even the homes. These conditions *vis re* general throughout the islands, and this court takes judicial notice thereof.

In Lucena the stores that were closed were sealed. There were actually no disorders, but looting was rampant till the end of the year and sporadic thereafter for a few days. Japanese soldiers patrolled the streets and dispersed persons seen in groups. They kept guard day and night. Passes were issued to residents until about January 10, 1942.

The court takes judicial notice of the fact that on January 2, 1942, the commanding general of the Japanese forces of occupation enjoined all public and municipal officials to continue in their respective offices. In Lucena, however, this order was evidently not carried out or followed. Instead, a commission of citizens was created upon the written petition of some of them dated January 11, 1942 (Exhibit 10). A government was thereafter organized or authorized by the army of occupation, and it legally and actually superseded the government in existence before the occupation, but which had ceased to function even before the advent of the Japanese Army.

As to the essential public services, the evidence shows that there was no police department and that the Japanese soldiers guarded the streets and kept peace and order. The fire department by January 5 had not yet been organized and there was no equipment, except the hose. Curfew was maintained for many days after the entry of the Japanese soldiers in the town and it continued even after the date of the fire on January 5. The

electrical service that furnished light in the town had been suspended and it was not resumed until February 3.

The above conditions and circumstances conclusively prove, to our mind, that conditions in Lucena on and before January 5, 1942, the date when the fire occurred, were abnormal. Abnormal conditions do not necessarily imply disorders, fighting, looting, etc. The existence of a regularly organized government with its police, health, and fire departments is a sign of normalcy in a community. The absence thereof is a sign of abnormal conditions. These are clearly reflected also in the conduct of the people, in the closing of their homes, their absence from the town, the fact that they retired to barrios at night for rest, etc. This is not strange as the army of occupation was new to the people and it had quaint and peculiar rules, and soldiers were fierce, cruel and unadapted to the ways of the people who had lived under a free and democratic atmosphere. We, therefore, agree with the appellant and amici curiae that the trial court erred in not finding that the fire occurred during the existence of abnormal conditions directly caused by war and invasion.

The above error, however, has not been in any manner prejudicial to the interests of the defendant-appellant, inasmuch as the court proceeded in the decision of the case on the theory that the plaintiff had the burden of proof, and actually succeeded in proving that fire occurred from causes independent of the abnormal conditions, although the reason that it gives why the plaintiff has such an obligation is because he has made a negative allegation in his pleading to the effect that the fire had no relation with the war, invasion, civil commotion, etc. * * * (underscoring supplied.)

The next question to decide is: Did the fire occur independently of the abnormal conditions? The evidence submitted by plaintiff shows that a few days before the fire there was peace and order in Lucena; that the Japanese soldiers were the ones who- preserved peace and order, patrolling the streets and posting sentries at strategic points; that people behaved well, although they used to retire to the barrios to pass the nights; that looting was already stopped by the time the fire occurred; that the plaintiff-appellee's building was closed and the stores located therein were also closed and sealed; and that the Japanese soldiers and the people all helped in putting out the fire.

On the other hand, the testimonies of the witnesses for the defendant-appellant show that the fire originated in the kitchen of Perrera's panciteria, which was located in a building beside plaintiff-appellee's building; that Perrera's building was closed and its owner had evacuated on December 26; that he left in charge of the place his encargada, Crisanta. Malubay, to take charge of the house; that in the morning of January 5 she was in the panciteria and saw that everything was in order therein, the chairs and utensils intact; that in front of the Tan Chuaco building, there were Japanese trucks and bicycles parked, but the building was not occupied by them; that the fire was discovered in the kitchen of the panciteria, and the encargada and her husband entered the place through a window to get their clothing as the door to the place was locked; that Perrera's panciteria was separated from the Tan Chuaco building by a narrow alley, so narrow that the roofs of both houses almost touched each other and covered the alley; and that on the upper floor Perrera's was separated from the alley by galvanized iron sheets, and on the lower by wooden gratings only.

One witness for the defendant, Pedro Asi, testified that upon seeing the fire he saw two individuals running away from the scene, seemingly fearful, and that he followed them on consciously. Another witness, the husband of the caretaker of Perrera's place, also testified that the sacks of rice that used to be inside Perrera's place were no longer there in the afternoon of the first; but this supposed fact was denied by his wife, who said that there was no rice lost or scattered on the floor of the kitchen. This witness also stated that the lock of the door facing one of the streets was forced open.

The trial court found that the fire which caused the loss of the building had no direct or indirect relation, either proximately or remotely, with the abnormal conditions alleged by the defendant, and held that it was, therefore, the result of causes independent of said-abnormal conditions (Record on Appeal, p. 39). A careful consideration of the facts and circumstances shown at the trial discloses, to our mind, no reason for disturbing the above finding of fact. The fire originated from the kitchen of the panciteria at about one-thirty in the

afternoon. In the morning, the caretaker (encargada) of the panciteria was in the kitchen with her husband and did not notice anything peculiar or extraordinary therein. It is not disclosed whether they used the kitchen and whether they stayed there till noon. There were then many Japanese soldiers patrolling, and the people were quiet and peaceful, either through timidity or fear of the Japanese. The fire could not have possibly been of an incendiary origin, as the house was closed when the fire started and the things that the encargada saw in the morning in the kitchen were still there when the fire was discovered, (underscoring supplied.)

If the fire started from the kitchen, it must have been purely an ordinary and accidental fire. We cannot give any importance to the fact that Pedro Asi saw two people running away from him when he first saw the fire, as he was going to the fire, because by that time the fire was already big and the two whom he saw running could not have possibly-been the authors. Besides, it is usual for people to see persons running on these occasions for varied reasons. Neither can we give credence to the alleged looting of the rice indicated by witnesses Proceso Pineda, because this statement of his was denied by his wife, the real encargada, who says she was the only one who went into the panciteria on the afternoon of the fire. Even if the looting of the rice had taken place, it can not be assumed therefrom that the looter set fire to the building, (underscoring supplied.)

It is, furthermore, useful to note that the building known as Perrera's place was very close to plaintiff-appellee's building, only about more than a meter away, and on the lower floor it had a wooden grating that separated it from the insured building. With this fact in mind, it is difficult to believe that the presence of a fire department would have been of much help. Indeed, defendant-appellant's counsel themselves admit that the fire could have occurred even if a fire department was in existence. The risk caused by the proximity of the building to the contiguous building is not a new one, and must have already been considered at the time of issuing the policy.

Our conclusion from all the above considerations is that the evidence of record, whether furnished by the plaintiff or by the defendant, disclose that the fire in question was purely an ordinary and accidental one, unrelated to war, invasion, civil commotion, or to -the abnormal conditions arising therefrom. It could have occurred just as well in times of peace and under normal conditions, as it actually occurred under abnormal conditions. In the language of the policy and as concluded by the trial court, it occurred independently, of war, invasion, civil commotion, or of the abnormal conditions produced thereby. Resuming what we have stated above, we declare that, while we agree with the appellant that the trial court should have proceeded by first finding whether conditions were or were not normal and that it committed an error in holding that the fire occurred during normal conditions, its conclusion that the fire occurred independently of the abnormal conditions is not incorrect. (underscoring supplied.)

On the third question, the Court of Appeals held:

As to the third assignment of error, the record discloses that the plaintiff-appellee had a previous building on the land on which the insured building was built, which had also been destroyed by fire from neighboring buildings. On the basis of this fact, it is claimed on defendant-appellant's behalf that the plaintiff-appellee should be considered as having forfeited all benefits under the policies, in accordance with Article 13 thereof. Three objections are raised against this claim, namely, that it had not been raised in defendant-appellant's answer; that it has been waived and appellant is estopped from asserting it now, especially for the first time on this appeal; and that the misstatement is immaterial and not fraudulent.

The first objection is procedural, but it is a valid one because plaintiff-appellee was not aware of this defense and had no opportunity to introduce evidence to counteract it. The second objection is also well founded, as the defendant-appellant by its letter rejecting the claim disclaimed liability only under Article 6, thus making plaintiff-appellee believe that the defense was on Article 6 alone (32 C.J. p. 1354). We also sustain the third objection, as the previous fire that appellee failed to mention in answering the questions appearing in the claims application is certainly immaterial and irrelevant, in so far as the fire in question is concerned (32 C.J. p. 1271).

The findings of the Court of Appeals (1) that the sealing of, and the placing of posters on, the building by the Japanese Forces did not increase the hazard or risk to which the building was exposed and, therefore, the insurance did not cease to attach under article 8 of the policies; and (2) that the fire which destroyed the building "was purely an ordinary and accidental one, unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom," are binding and conclusive upon this Court.[1] It has not been shown that the findings of fact made by the Court of Appeals are arbitrary, whimsical, manifestly mistaken, illogical, or absurd, so as to warrant this Court to step in in the exercise of its supervisory power.[2] And as to the defense based on article 13, the same is not set up in the special defenses, unlike the one under article 3 which is set up in the 4th and 5th special defenses and the other under article 6 set up in the 2nd special defense. This Court cannot determine whether the defense under article 13 is included in that of article 11 pleaded in the 6th special defense because the policies are not before it.

It is strenuously contended that the sealing of, and the placing of posters on, the building insured increased the risk, because the latter "concerns itself with probabilities and possibilities from the prospective point of view," and "cannot be retrospective, for insurance contracts are never consummated after the known happening of the event." The contention as to the increase in the risk due to a change in the condition of the building insured was overruled by the Court of Appeals, and in so doing it took into consideration the fact that the building insured was sealed and that posters were placed thereon by the Japanese forces. As already stated, that conclusion cannot be reviewed.

The Court of Appeals set out at length the evidence submitted by the parties and from such evidence it concluded that the loss was occasioned by a cause independent of, and "unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom," or the existence of abnormal conditions prevailing in Lucena. Counsel for the petitioner contend that such conclusion is inferred from the fact that the fire "was purely an ordinary and accidental one." The contention is not well taken, because the Court of Appeals found that the fire was "unrelated to war, invasion, civil commotion, or to the abnormal conditions arising therefrom." In *Royal Insurance Co. vs. Ruperto Martin*, 192 U.S., 149; S.C. Rep. ed. 149-167; 48 Law. ed. 385-391, the Supreme Court of the United States held:

We come now to the merits of the case; our attention being first directed to the questions arising under that clause of the policy providing that it shall not cover "loss or damage by fire happening during the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law within the country or locality in which the property insured is situated, * * *.

As the words of the policy are those of the company, they should be taken most strongly against it, and the interpretation should be adopted which is most favorable to the insured, if such interpretation be not inconsistent with the words used. *First Nat. Bank vs. Hartford F. Ins. Co.* 95 U.S. 673, 678, 679, 24 L. ed. 563, 565; *Liverpool & L. & G. Ins. Co. vs. Kearney*, 180 U.S. 132, 136, 45 L. ed. 460, 462, 21 Sup. Ct. Rep. 326; *Texas & P.R. Co. vs. Reiss*, 183 U.S. 621, 626, 46 L. ed. 358, 360, 22 Sup. Ct. Rep. 253. In this view the above words should be held to mean that the policy covered loss by fire occurring during the existence of (if not occasioned by nor connected with) any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power, or martial law, in the general locality where the property insured was situated, * * * Now, whether there was any substantial connection between the fire and military or other disturbance of the kind specified existing in the locality where the property was situated was a question of fact, and it was properly left to the jury. * * *.

* * * It is to be taken that the jury found, upon the whole evidence, that the loss was occasioned by causes independent of the existence of any invasion, foreign enemy, rebellion, insurrection, riot, civil commotion, military or usurped power or martial law. The facts under this issue having been fairly submitted to the jury, its

finding cannot be disturbed.

The petition for a writ of certiorari is dismissed, with costs against the petitioner.

Moran, C.J., Ozaeta, Paras, Pablo, Bengzon, Tuason, Reyes, and Torres, JJ., concur.

Montemayor, J., no part.

[1] Guico vs. Mayuga, 63 Phil. 328; Mateo vs. Collector of Customs et al., 63 Phil. 470; Mamuyac vs. Abena, 38 Off.Gaz., 84; Hodges vs. People, 40 Off.Gaz., No. 3, (1st Supp.), 227; Mora Electric Co. vs. Matik, 40 Off.Gaz., (2nd Supp.) 93; Meneses vs. Commonwealth of the Philippines, 40 Off.Gaz., (7th Supp.) 41; Diaz vs. People of the Philippines, G.R. No. 46285, 40 Off.Gaz., No. 7, (3d Supp.), 22; Onglengco vs. Ozaeta et al. 40 Off.Gaz., (7th Supp.) 186; Hernandez vs. Manila Electric Co., 40 Off.Gaz., (10th Supp.) 35; Gerio vs. Gerio, 40 Off.Gaz., (10th Supp.) 53; Garcia de Ramos vs. Yatco, 40 Off.Gaz., {10th Supp.) 124; People vs. Benitez, 1 Off.Gaz., 880; Sabirre vs. Quijano, 2 Off.Gaz., 388; Luna vs. Linatoc, 2 Off.Gaz., No. 7, 680; and Coingco vs. Flores, G.R. Nos. L-2147 & L-2148, 46 Off. Gaz., 1566. [2] Luna vs. Linatoc, 2 Off.Gaz., (No. 7) 680.

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