

**SCOTTISH UNION & NATIONAL INSURANCE COMPANY;
LONDON AND SCOTTISH ASSURANCE CORPORATION, LTD.; AND ST.
PAUL FIRE & MARINE INSURANCE COMPANY, PETITIONERS, VS.
HIGINIO B. MACADAEG,...**

G.R. Nos. L-5717 and L-5751 to L-5756. August 30, 1952

Ponente: BENGZON, J.

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BENGZON, J.:

The petitioners are three of seven defendants in as many civil cases of the Manila court of first instance, now on appeal, and the respondent Yu Him & Co., is the plaintiff therein.

As a result of the fire that destroyed its warehouse and goods in May 1949, Yu Hun & Co. filed in 1949 and 1950 the above suits seeking to recover the total sum of P240,000 from the defendants, foreign insurance corporations who had issued insurance policies covering the said properties.

After a protracted trial characterized by several delaying incidents, on December 28, 1951 the respondent Judge rendered judgment the dispositive part of which reads partly as follows:

"IN VIEW OF THE FOREGOING, the Court hereby renders judgment in favor of the plaintiff and against each and everyone of the defendants as follows:

In Civil Case No. 9251, defendant Scottish Union National Insurance Co., shall pay the plaintiff, Yu Hun & Co., the sum of P50,000 plus 8 per cent interest thereon in accordance with section 91-B of the Insurance Act from the date of the filing of the complaint up to full payment thereof. Defendant shall also pay the costs.

In Civil Case No. 11136 defendant, London & Scottish Insurance Corp. Ltd., shall pay the plaintiff, Yu Hun & Co., the sum of P5,000, plus 8 per cent interests thereon in accordance with section 91-B of the complaint up to full payment thereof. Defendant shall also pay the costs.

In Civil Case No. 11137, defendant, St. Paul's Fire & Marine Insurance Co., shall pay to the plaintiff, Yu Hun & Co., the amount of P5,000 plus 8 per cent interests thereon in accordance with section 91-B of the Insurance Act from the date of the filing of the complaint up to full payment thereof. Defendant shall pay the costs."

On January 30, 1952, all defendants filed a motion for reconsideration and/or new trial, which was denied on February 18, 1952.

But on January 28, 1952, Yu Hun & Co. submitted an urgent petition for execution pending appeal, under the provisions of section 2, Rule 39 of the Rules of Court. And notwithstanding vigorous opposition, the respondent judge directed the issuance of writs of execution against the petitioners, the London & Scottish Assurance Corporation, the Scottish Union and Insurance Co. and the St. Paul's Fire and Marine Insurance Co.

Wherefore, charging grave abuse of discretion, the last-mentioned corporations promptly interposed this petition for prohibition and certiorari with prayer for preliminary injunction. As requested, we issued the restraining writ

upon presentation of a suitable bond.

The disputed order reads as follows:

"Petition for advanced execution of judgment is before this Court for consideration.

Section 2, Rule 39, of the Rules of Court, allows the issuance of an advanced writ of execution for "good cause." This so-called "good cause" does not have a definite meaning. It must be interpreted in accordance with the circumstances of a particular case. It is the opinion of this Court that when there is danger for the judgment to be ineffective if and when it becomes final, there is good cause to issue an advanced writ of execution.

The defendants in these cases are all foreign corporations; they may cease business operation and, as a matter of fact, defendants Scottish Union and National Insurance Co., London and Scottish Assurance Corporation, Ltd., and St. Paul's Fire and Marine Insurance Co. did cease business operation. It may be stated in this connection, that these defendants ceased operation in the Philippines in accordance with law and that other companies assumed their obligations. This, of course, is perfectly legal in so far as business transaction is concerned. The question involved, however, is the right of the plaintiff to be secure. Immediate relief must be given to, the prevailing party as soon as the judgment of the Court becomes executory. Any delay to the granting of that relief should be discouraged.

Under the circumstances of the instant cases, justice and equity demand that the right of the plaintiff be protected and secured. The only way to secure and protect such right is the issuance of a writ of execution or for the defendants to file their respective bonds to stay execution. This holds true, however, in so far as defendants Scottish Union and National Insurance Co., London and Scottish Assurance Corporation, Ltd., and St. Paul's Fire and Marine Insurance Co. are concerned. They have ceased business without giving" notice to the Court, and the assuming companies also failed to do the same. In so far as the latter are concerned, the Court has no jurisdiction over them. And the Court feels that it would have been a demonstration of good faith on the part of defendants Scottish Union and National Insurance Co., London and Scottish Assurance Corporation, Ltd., and St. Paul's Fire and Marine Insurance Co. and the assuming companies had they given notice to the Court of their transaction."

There is no question that, with the approval of the Insurance Commissioner, on June 30, 1951, the London and Scottish Assurance Corporation and the St. Paul's Fire and Marine Insurance Co.—each sued for P5,000 in their respective cases—withdrawed from business in the Philippines and all their outstanding risks were assumed by Northern Assurance Co. Ltd. and Firemen's Fund Insurance Co. under Rep. Act No. 447. There is also no question that on November 25, 1950 the Scottish Union and National Insurance Co. with P50,000 involved in its case, withdrew from business in the Philippines and all its liabilities were assumed by the Commercial Union Assurance Co. under the provisions of Rep. Act No. 447 with the approval of the Insurance Commissioner.

It is admitted by the parties that, pending appeal, the trial court has discretion to direct execution of its own judgment, provided there are good reasons therefore expressed in its order of execution (Sec. 2 Rule 39). Therefore the issue in this litigation is narrowed down to whether the petitioners' withdrawal from business in this country during the pendency of the case constitutes a sufficiently good reason for decreeing execution notwithstanding the appeal. Inasmuch as appellate courts will not interfere with the lower court's discretion unless abuse thereof is shown,[1] the question should perhaps be framed negatively: Is that withdrawal not a good reason for execution?

The respondent judge in the contested directive explains that "when there is danger for the judgment to be ineffective if and when it becomes final, there is good cause to issue an advanced writ of execution." That appears to be good law. In fact, petitioners, making no effort to dispute the legal proposition, merely deny that the

circumstances show the existence of the danger apprehended by His Honor.

Under the Insurance Law, when a foreign insurance corporation applies for permission to engage in business in the Philippines it must deposit with the Insurance Commissioner "for the benefit and security" of its policyholders and creditors in the Philippines securities and bonds for the total amount of P250,000 (Sec. 178 as amended), valuables which said officer is required to retain until the day when such corporation ceases to do business in this jurisdiction and applies, and is permitted by said Commissioner, to get them back. (Sec. 179)

Republic Act No. 447 prescribes the procedure to be followed upon cessation of business: The foreign insurer must apply. Its application must be published in two newspapers. It must discharge its liabilities to policy-holders and creditors in this country, and cause its policies insuring Philippine residents to be taken up by other qualified insurers. Then "the Insurance Commissioner shall make an examination of the books and records of the withdrawing company and if upon such examination he finds that the insurer has no outstanding liabilities to residents of the Philippines, he shall permit the insurer to withdraw."

We are told that petitioners obtained the permit to withdraw under Rep. Act No. 447. We must assume that they have secured from the Commissioner or will secure from him the return of the bonds and securities they had deposited at the beginning of their business operations. And the probable result will be that when Yu Hun & Co. finally wins his P60,000 suit on appeal, there will be no leviable assets of the foreign insurers (petitioners) in this country. Because it is generally known that these securities on deposit are the only properties here of these foreign insurance companies.

Therefore it may not be held that his honor was clearly mistaken in requiring execution in advance on the ground that upon petitioner's withdrawal there is danger for Yu Hun's judgment to be ineffective.

The situation would be no different from the case where the debtor who is defendant-appellant in a litigation is found to be liquidating his properties preparatory to transferring his permanent residence to foreign countries.

Anyway these foreign insurers have a remedy: file a bond.[2]

But it might be argued, that having withdrawn under Rep. Act No. 447 with the permission of the Insurance Commissioner, the petitioners should not be prejudiced by such withdrawal. In reply they must be reminded that one of the conditions precedent for such withdrawal is that they shall "discharge their liabilities to policyholders and creditors in this country." (Sec. 202-C) They have failed to discharge their liabilities to Yu Hun & Co. Granting that upon issuing the permit, the Insurance Commissioner must have been convinced that the petitioners "had no outstanding liabilities to residents of the Philippines," yet there is nothing in the law to make his findings conclusive upon the courts. They could not be, because they are based only upon the "examination of the books and records of the withdrawing company."

The procedure outlined in Rep. Act 447 is intended to govern the conduct of the insurance Commissioner where petitions are made for return of the deposit upon withdrawal of foreign insurers. It does not attempt to regulate the liquidation of liabilities of such foreign insurers, nor the rights of claimants against them. Of course there is no doubt that if the Insurance Commissioner is advised that there are unpaid claimants against the foreign insurers he will refuse to allow withdrawal or the return of the securities deposited with him or such portion thereof as may be necessary to satisfy the local claimants. Yet it would be incorrect to assert that whenever he allows the return of such securities, there are factually and legally no unpaid claimants.

The petitioners contend that when the Insurance Commissioner, pursuant to law, approves the withdrawal of a foreign insurance company from business in the Philippines the courts may not contest the discretion exercised by him and substitute their own judgment therefore "declaring that the outstanding risks of the withdrawing company

are not sufficiently protected by the measures taken" by said officer. The contention must be overruled, because the matter now at issue does not concern "outstanding risks" but accrued "liabilities", which the law requires to be discharged before withdrawal. (Sec. 202-C Insurance Law as amended by Rep. Act No. 447) The statute does not authorize a foreign insurer to assign to another insurer its accrued liabilities to a policy-holder, foisting a new debtor upon the latter. And even supposing it does permit such assignment, there is no denying that once the substitution is accomplished, the judgment which Yu Hun & Co. would get in the above cases would practically become useless, since it would be unenforceable by execution against the new debtor, who is not a party to the case. Thus the frustration or circumvention of the action would entirely be owing to the voluntary act of the petitioners, who neither advised the court nor secured the consent of Yu Hun & Co. to the substitution. Consequently it was meet and proper to adopt measures calculated to forestall such frustration, especially after the Court had found the petitioners unreasonably delayed settlement of Yu Hun's claim for losses.

Premises considered, the petition is denied, and the preliminary injunction heretofore issued is hereby dissolved. Costs in favor of respondents. So ordered.

Paras, C. J., Pablo, Padilla, Tuason, Montemayor, Bautista Angelo, and Labrador, JJ., concur.

[1] Gamay vs. Gutierrez David, 48 Phil. 768.

[2] Mapua vs. Gutierrez David, 43 Off. Gaz. 2039.

RESOLUTION

Nov. 19, 1952

BENGZON, J.:

The petitioners, thru counsel, wrote a letter to the Insurance Commissioner enclosing copy of our decision and after expressing the opinion that it approved a review of his administrative acts, they invited him to "apprise" "the Supreme Court of what he considers to be the proper interpretation of Republic Act No. 447". Then the petitioners submitted to the Commissioner several questions already touched upon in our decision.

The Commissioner could have properly declined to answer the inquiries upon the excuses that, (a) the matters were subjudice, (b) he did not want to appear as taking sides^[1] in a judicial controversy between policyholders and insurers, because his office is supposed to be impartial to both and (c) anyway, the core of the controversy related to execution of a court's judgment which is a subject peculiarly within the jurisdiction of the courts. He could have adopted the attitude that the incidental pronouncements on the workings of Republic Act 447 were not binding on his office, the same not having been party to the litigation.

But he must have realized that if he chose to disregard the indications in our decision, and as a result, a policy-holder is prejudiced by reason of his having allowed a defendant insurer to withdraw its securities, notwithstanding the court proceedings against such insurer, he might face a litigation for damages (article 27, New Civil Code). So, we take it, his action in giving answers designed to be presented to this court, amounts to no more than a desire to submit his views for judicial confirmation, if according to law.

The issue is now clearer with the statements made by the insurance commissioner:

Yu Hun & Co, sued to recover on fire policies issued by the petitioners, who are foreign insurance companies. Although the fire has occurred, the insurers deny liability. Pending the court's decision, the insurers apply for

permission to withdraw under the terms of sections 202-A to 202-E of the Insurance Act as amended by Republic Act No. 447.

The insurance commissioner believes that such permission may be granted provided the insurers caused another insurance company doing business in this country to assume whatever liabilities the withdrawing petitioners may have in the pending suits.

The law, in our opinion, does not justify such belief. Under section 202-D of Republic Act No. 447, the Commissioner may permit the foreign insurer to withdraw (and get back the securities it has deposited for the benefit of policyholders)[2] only when he finds that such foreign insurer "has no outstanding liabilities to residents of the Philippines". Being "fully aware" of the pending cases of Yu Hun & Co. against these petitioners, the Commissioner may not declare that these petitioners have no "outstanding liabilities" to residents of the Philippines, unless, assuming judicial powers and with abuse of discretion, the Commissioner should administratively decide that the aforementioned suits are entirely without foundation.

But the Commissioner argues that, inasmuch as the "liabilities" of the petitioners to Yu Hun have been "reinsured", the withdrawal may be permitted.

Section 202-C which the Commissioner invokes, reads as follows:

"SECTION 202-C.—Every foreign insurance company which withdraws from the Philippines shall, prior to such withdrawal, discharge its liabilities to policyholders and creditors in this country. In case of its policies insuring residents of the Philippines, it shall cause the primary liabilities under such policies to be reinsured and assumed by another insurance company authorized to transact business in the Philippines. In the case of such policies as are subject to cancellation by the withdrawing company, it may cancel such policies pursuant to the terms thereof in lieu of such reinsurance and assumption of liabilities."

Carefully analyzed, the section consists of three parts. The first speaks of liabilities of the foreign insurer to policyholders and creditors. The second and third obviously refer to its outstanding policies, i.e. policies on which no claim has as yet arisen, because the risk insured against has not yet happened. In other words the first refers to accrued liabilities (outstanding claims) to be discharged; the second and third to contingent liabilities (outstanding risks) to be reinsured.

The situation of the herein petitioners and Yu Hun & Co. is governed by the first part—not by the second nor the third, that expressly relate to "policies insuring residents". The third, permitting "cancellation" obviously contemplates outstanding policies on which the risk has not yet happened, because evidently the insurer may not cancel a policy on which a claim has already accrued by the occurrence of the risk. Wherefore, the inference becomes unavoidable that "policies insuring residents" in the second and third parts imply policies as to which the risk insured against has not yet happened. And the requirement that the foreign insurer "reinsure", backs this interpretation because, usually the subject-matter of the original insurance "must be in existence at the time the contract of reinsurance is made". (32 C. J., p. 46).

But let us suppose it is correct to hold, as the Commissioner holds that the herein petitioners' liabilities to Yu Hun may be considered as "primary liabilities" in the second part of section 202-C, *supra*. [2a]

There is no doubt that the whole idea of Republic Act 447 is to require the foreign insurer to show that it has no more responsibilities to any resident here, and may therefore go home with its securities.

Now the second part of section 202-C requires the foreign insurer to "reinsure." Our insurance act defines reinsurance as "one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance" (Section 88). This kind of reinsurance is not, obviously, what section 202-C

contemplates, because the foreign insurer is not thereby relieved of local responsibility. Yet the term reinsurance is also sometimes "applied to a contract between two insurers by which the one assumes the risks of the other and becomes substituted to its contracts, so that on the assent of the original policyholders, the liability of the first insurer ceases, and the liability of the second is substituted". (46 C. J. S., p. 196). This is naturally the kind of "reinsurance" contemplated in the second part of section 202-C,[3] i.e., a reinsurance that frees the original insurer from liability. However, as *Corpus Juris Secundum* implies, in such kind of reinsurance, the assent of the original policyholder is essential. "The original insurer will be released only when the insured agrees with the insurer and reinsurer that he will accept the reinsurer." [3a] Yu Hun & Co. has not agreed.

It is clearly improper to construe the second part of section 202-C as permitting the foreign insurer—without the consent of the insured—to transfer to another insurer his accrued liabilities under a policy, because it is fundamental in our civil laws[4] that the debtor (insurer) may not have himself substituted by another without the consent of the creditor (the policyholder).[5]

In addition to the foregoing considerations, Republic Act No. 447 should not be so interpreted as to permit foreign insurers to escape the results of pending actions against them by withdrawing from the Philippines with all the securities they have deposited, provided they get the sanction of the Commissioner. That would be giving the Commissioner discretion to frustrate orders of courts in litigations against foreign insurers and to liberate the latter from claims of local policyholders, whose interest it is his principal duty to protect, and for whose benefit he is given such broad powers of supervision over insurance companies as are seldom conferred upon parallel administrative agencies. And although this court has refused to heed pleas for preference of resident policyholders in litigations against foreign insurers,[6] it is not disposed to permit any foreign insurer to evade or frustrate efforts to collect from them in our courts.

The explanatory note of House Bill No. 165 which was enacted into Republic Act No. 447 is clear.

"Furthermore, in the event that claims would be taken to court, although our courts have jurisdiction over said claims, Philippine policyholders would be greatly inconvenienced in the execution of a favorable judgment. It is then not unlikely that the intervention of our Government, thru our diplomatic representatives abroad, would have to be sought to enforce judgments of our courts against such insurance company as might have withdrawn from this country.

Under this bill, however, a foreign insurance company operating in the Philippines will not be allowed to withdraw from, this country until after it shall have discharged its liabilities to policyholders and creditors in the Philippines." (Italics ours.)

Undesirable consequences flowing from the Commissioner's attitude are not far to seek. If Yu Hun & Co. obtains judgment against one of petitioners, say the Scottish Union and National Insurance Co., it may not obtain execution directly against the substitute Commercial Union Ass. Co., as the latter is not a party to the litigation. If that substitute refuses to pay,[7] Yu Hun & Co., has to sue again. Pending: the suit, the substitute may transfer its liability to another foreign insurer, and let Yu Hun & Co., afterwards implied such second substitute, only to be foiled by another "reinsurance", and so on, ad infinitum. And the insurance commissioner may not stop such substitutions and withdrawals of foreign insurers, if his view on reinsuring "liabilities" is upheld.

Another possibility. Five or more foreign insurers, sued in our courts upon policies aggregating half a million pesos decide to withdraw, by "reinsuring" all their liabilities with another foreign insurer. When judgment is obtained against all, execution against the substitute may only be levied on the securities it has deposited here the maximum amount of which is P250,000 only. Under the view of the Commissioner, such "reinsuring" (without the consent of policyholders) could be done with disastrous effects upon resident policyholders. Of course we know that such lone "reinsurer" has or may have other assets in its home office. But shall we require—contrary to

the purposes of Republic Act 447—our residents to pursue their remedy outside of the Philippines?

If it be argued that the Commissioner in that case would not permit "reinsuring" by five or more foreign insurers with one insurer only, the reply is that Republic Act No. 447 does not empower such officer to select the "reinsurer."

The motion for reconsideration will be denied.

Let a copy of this resolution be furnished the Insurance Commissioner, and the Honorable, the Secretary of Finance. So ordered.

Paras, C. J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] He is practically testifying as witness for petitioners without Yu Hun & Co., having an opportunity to cross-examine him.

[2] Section 179 Insurance Act.

[2a] No definition of "primary" liability in Insurance Act. Since "primary" equals "original" the word probably refers to original insurance (Sec. 88)—not reinsurance. It may also mean insurance which is specific—not general. (Consolidated Shippers Inc., vs. Pacific Employers Ins., Co. et al., 112 Pac. Rep. 2d 673; New Amsterdam Casualty Co., vs. Hartford Accident & Indemnity Co., 18 Fed. Supp. 707.) Whether one or the other, it makes no difference in this connection.

[3] Supposing as we said, the interpretation given by the Commissioner to "primary liabilities" is correct.

[3a] Weil vs. Fed. Life Ins. 264 Ill. 425, 106 N. E. 246 Vance on Insurance 2d ed. p. 950.

[4] And a majority of the legislators who introduced the bill that became Republic Act No. 447 were lawyers.

[5] Article 1205 Civil Code; article 1293 New Civil Code. Unconstitutional impairment of obligations of contracts might even be asserted.

[6] Constantino vs. Asia Life, 47 Off. Gaz., Suppl. 12 p. 428.

[7] It might allege that although it had assumed "all the liabilities" of the Scottish Union, Yu Hun's claim was not one of them.

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