

JOVITO R. SALONGA, PLAINTIFF AND APPELLEE, VS. WARNER, BARNES & CO., LTD., DEFENDANT AND APPELLANT.*G. R. No. L-2246. January 31, 1951*

Ponente: BAUTISTA ANGELO, J.

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This is an appeal from a decision of the Court of First Instance of Manila ordering the defendant, as agent of Westchester Fire Insurance Company of New York, to pay to the plaintiff the sum of P727.82 with legal interest thereon from the filing of the complaint until paid, and the costs. The case was taken to this court because it involves only questions of law.

On August 28, 1946, Westchester Fire Insurance Company of New York entered into a contract with Tina J. Gamboa whereby said company insured one case of rayon yardage which said Tina J. Gamboa shipped from San Francisco, California, on steamer Clovis Victory, to Manila, Philippines and consigned to Jovito Salonga, plaintiff herein. According to the contract of insurance, the insurance company undertook to pay to the sender or her consignee the damages that may be caused to the goods shipped subject to the condition that the liability of the company will be limited to the actual loss which the insured may suffer not to exceed the sum of P2,000. The ship arrived in Manila on September 10, 1946. On October 7, the shipment was examined by C. B. Nelson and Co., marine surveyors, at the request of the plaintiff, and in their examination the surveyors found a shortage in the shipment in the amount of P1,723.12. On October 9, plaintiff filed a claim for damages in the amount of P1,723.12 against the American President Lines, agents of the ship Clovis Victory, demanding settlement, and when apparently no action was taken on this claim, plaintiff demanded payment thereof from Warner, Barnes & Co., Ltd., as agent of the insurance company in the Philippines, and this agent having refused to pay the claim, on April 17, 1947, plaintiff instituted the present action.

In the meantime, the American President Lines, in a letter dated November 25, 1946, agreed to pay to the plaintiff the amount of P476.17 under its liability in the bill of lading, and when this offer was rejected, the claim was finally settled in the amount of P1,021.25. As a result, the amount claimed in the complaint as the ultimate liability of the defendant under the insurance contract was reduced to P717.82 only.

After trial, at which both parties presented their respective evidence, the court rendered judgment as stated in the early part of this decision. The motion for reconsideration filed by the defendant having been denied, the case was appealed to this court.

Appellant now assigns the following errors:

I

"The trial court erred in finding that the loss or damage of the case of rayon yardage (Pilferage, as found by the marine surveyors) is included in the risks insured against as enunciated in the insurance policy.

II

"The trial court erred in holding that defendant, as agent of Westchester Fire Insurance Company of New York, United States of America, is responsible upon the insurance claim subject to the suit.

III

"The trial court erred in denying defendant's motion for new trial and to set aside the decision." (Appellant's assignments of error).

We will begin by discussing the second error assigned by appellant for the reason that if our view on the question raised is in favor of the claim of appellant there would be no need to proceed with the discussion of the other errors assigned, for that would put an end to the controversy.

As regards the second assignment of error, counsel claims that the defendant cannot be made responsible to pay the amount in litigation because (1) said defendant has no contractual relation with either the plaintiff or his consignor; (2) the defendant is not the real party in interest against whom the suit should be brought; and (3) a judgment for or against an agent in no way binds the real party in interest.

- We are of the opinion that the first point is well taken. It is a well known rule that a contractual obligation or liability, or an action ex-contractu, must be founded upon a contract, oral or written, either express or implied. This is axiomatic. If there is no contract, there is no corresponding liability, and no cause of action may arise therefrom. This is what is provided for in article 1257 of the Civil Code. This article provides that contracts are binding only upon the parties who make them and their heirs, excepting, with respect to the latter, where the rights and obligations are not transmissible, and when the contract contains a stipulation in favor of a third person, he may demand its fulfillment if he gives notice of his acceptance before it is revoked. This is also the ruling laid down by this court in the case of *E. Macias & Co. vs. Warner, Barnes & Co.* (43 Phil. 155) wherein, among others, the court said:

"* * * There is no contract of any kind, either oral or written, between the plaintiff and Warner, Barnes & Company. Plaintiff's contracts are with the insurance companies, and are in writing, and the premiums were paid to the insurance companies and the policies were issued by, and in the name of, the insurance companies, and on the face of the policy itself, the plaintiff knew that the defendant was acting as agent, for, and was representing, the respective insurance companies in the issuance and delivery of the policies. The defendant company did not contract or agree to do anything or to pay the plaintiff any money at any time or on any condition, either as agent or principal.

* * * * *

"Every cause of action ex-contractu must be founded upon a contract, oral or written, either express or implied.

"Warner, Barnes & Co., as principal or agent, did not make any contract, either oral or written, with the plaintiff. The contracts were made between the respective insurance companies and the insured, and were made by the insurance companies, through Warner, Barnes & Co., as their agent.

"As in the case of a bank draft, it is not the cashier of the bank who makes the contract to pay the money evidenced by the draft, it is the bank, acting through its cashier, that makes the contract. So, in the instant case, it was the insurance companies, acting through Warner, Barnes & Co., as their agent, that made the written contracts with the insured." (*E. Macias & Co. vs. Warner, Barnes & Co.*, 43 Phil., 155, 161, 162.)

Bearing in mind the above rule, we find that the defendant has not taken part, directly or indirectly, in the contract in question. The evidence shows that the defendant did not enter into any contract either with the plaintiff or his

consignor—Tina J. Gamboa. The contract of marine insurance, Exhibit C, was made and executed only by and between the Westchester Fire Insurance Company of New York and Tina J. Gamboa. The contract was entered into in New York. There is nothing therein which may affect, in favor or adversely, the defendant, the fulfillment of which may be demanded by or against it. That contract is purely bilateral, binding only upon Gamboa and the insurance company. When the lower court, therefore, imposed upon the defendant an obligation which it has never assumed, either expressly or impliedly, or when it extended to the defendant the effects of a contract which was entered into exclusively by and between the Westchester Fire Insurance Company of New York and Tina J. Gamboa, the error it has committed is evident. This is contrary to law.

We do not find any material variance between this case and the case of *E. Macias & Co. vs. Warner, Barnes & Co.*, supra, as pointed out by counsel for appellee, in so far as the principle we are considering is concerned. Both cases involve similar facts which call for the application of a similar ruling. In both cases the issue is whether an agent, who acts within the scope of his authority, can assume personal liability for a contract entered into by him in behalf of his principal. And in the *Macias* case we said that the agent did not assume personal liability because the only party bound was the principal. And in this case this principle acquires added force and effect when we consider the fact that the defendant did not sign the contract as agent of the foreign insurance company as the defendant did in the *Macias* case. The *Macias* case, therefore, is on all fours with this case and is decisive of the question under consideration.

- Counsel next contends that Warner, Barnes and Co., Ltd., is not the real party in interest against whom the suit should be brought. It is claimed that this action should have been filed against its principal, the Westchester Fire Insurance Company of New York. This point is also well taken. Section 2, Rule 3 of the Rules of Court requires that "every action must be prosecuted in the name of the real party in interest." A corollary proposition to this rule is that an action must be brought against the real party in interest, or against a party which may be bound by the judgment to be rendered therein (*Salmon & Pacific Commercial Co. vs. Tan Cuevo*, 36 Phil., 556). The real party in interest is the party who would be benefited or injured by the judgment, or the "party entitled to the avails of the suit" (1 Sutherland, *Court Pleading Practice & Forms*, p. 11). And in the case at bar, the defendant issued upon in its capacity as agent of Westchester Fire Insurance Company of New York in spite of the fact that the insurance contract has not been signed by it. As we have said, the defendant did not assume any obligation thereunder either as agent or as a principal. It cannot, therefore, be made liable under said contract, and hence * * * it can be said that this case was filed against one who is not the real party in interest.

We agree with counsel for the appellee that the defendant is a settlement and adjustment agent of the foreign insurance company and that as such agent it has the authority to settle all the losses and claims that may arise under the policies that may be issued by or in behalf of said company in accordance with the instructions it may receive from time to time from its principal, but we disagree with counsel in his contention that as such adjustment and settlement agent, the defendant has assumed personal liability under said policies, and, therefore, it can be sued in its own right. An adjustment and settlement agent is no different from any other agent from the point of view of his responsibility, for he also acts in a representative capacity. Whenever he adjusts or settles a claim, he does it in behalf of his principal, and his action is binding not upon himself but upon his principal. And here again, the ordinary rule of agency applies. The following authorities bear this out:

"An insurance adjuster is ordinarily a special agent for the person or company for whom he acts, and his authority is prima facie coextensive with the business intrusted to him. * * *"

"An adjuster does not discharge functions of a quasi-judicial nature, but represents his employer, to whom he owes faithful service, and for his acts, in the employer's interest, the employer is responsible so long as the acts are done while the agent is acting within the scope of his employment."

It, therefore, clearly appears that the scope and extent of the functions of an adjustment and settlement agent do not include personal liability. His functions are merely to settle and adjust claims in behalf of his principal if those claims are proven and undisputed, and if the claim is disputed or is disapproved by the principal, like in the instant case, the agent does not assume any personal liability. The recourse of the insured is to press his claim against the principal.

- This brings us to the consideration of the third point. It is claimed that a judgment, for or against an agent, in no way binds the real party in interest. In our opinion this point is also well taken, for it is but a sequel to the principle we have pointed out above. The reason is obvious. An action is brought for a practical purpose, nay to obtain actual and positive relief. If the party sued upon is not the proper party, any decision that may be rendered against him would be futile, for it cannot be enforced or executed. The effort that may be employed will be wasted. Such would be the result of this case if it will be allowed to proceed against the defendant, for even if a favorable judgment is obtained against it, it cannot be enforced because the real party is not involved. The defendant cannot be made to pay for something it is not responsible. Thus, in the following authorities it was held:

"* * * Section 114 of the Code of Civil Procedure requires an action to be brought in the name of the real party in interest; and a corollary proposition requires that an action shall be brought against the persons or entities which are to be bound by the judgment obtained therein. An action upon a cause of action pertaining to his principal cannot be brought by an attorney-in-fact in his name (Arroyo vs. Limjuco and Gonzalo, 19 Phil., 12). Actions must be brought by the real parties in interest and against the persons who are to be bound by the judgment obtained therein," (Salmon & Pacific Commercial Co. vs. Tan Cuelco, 36 Phil., 557-558.)

* * * * *

"An action to set aside an instrument of transfer of land should be brought in the name of the real party in interest. An apoderado or attorney in fact is not a real party. He has no interest in the litigation and has absolutely no right to bring the defendant into court or to put him to the expense of a suit, and there is no provision of law permitting action to be brought in such manner. A judgment for or against the apoderado in no way binds or affects the real party, and a decision in the suit would be utterly futile. It would touch no interest, adjust no question, bind no one, and settle no litigation. Courts should not be required to spend their time solemnly considering and deciding cases where no one could be bound and no interest affected by such deliberation and decision." (Arroyo vs. Granada and Gentero, 18 Phil., 484.)

If the case cannot be filed against the defendant as we have pointed out, What then is the remedy of the plaintiff under the circumstances? Is the case of the plaintiff beyond remedy? We believe that the only way by which the plaintiff can bring the principal into this case or make it come under the courts in this jurisdiction is to follow the procedure indicated in section 14, Rule 7, of the Rules of Court concerning litigations involving foreign corporations. This rule says that if the defendant is a foreign corporation and it has not designated an agent in the Philippines on whom service may be made in case of litigation, such service may be made on any agent it may have in the Philippines. And in our opinion the Westchester Fire Insurance Company of New York comes within the import of this rule for even if it has not designated an agent as required by law, it has however a settling agent who may serve the purpose. In other words, an action may be brought against said insurance company in the Philippines and the process may be served on the defendant to give our courts the necessary jurisdiction. This is the way we have pointed out in the case of General Corporation of the Philippines & Mayon Investment Co. vs. Union Insurance Society of Canton Ltd. et al., (87 Phil., 313).

In view of the foregoing, we are of the opinion and so hold that the lower court erred in holding the defendant responsible for the loss or damage claimed in the complaint. And having arrived at this conclusion, we do not deem it necessary to pass upon the other errors assigned by the appellant.

Wherefore, the decision appealed from is hereby reversed. The complaint is hereby dismissed, with costs against the appellee.

Moran, C. J., Paras, Feria, Pablo, Bengzon, Padilla, Tuason, Montemayor, Reyes and Jugo, JJ., concur.

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