

FRANCISCA EGUARAS, PLAINTIFF AND APPELLEE, VS. THE GREAT EASTERN LIFE ASSURANCE COMPANY, LTD., AND WEST G. SMITH, DEFENDANTS. THE GREAT EASTERN LIFE ASSURANCE COMPANY, LTD., APP...*G.R. No. 10436. January 24, 1916*

Ponente: TORRES, J.

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This is an appeal filed through bill of exceptions by the counsel for the defendant, the Great Eastern Life Assurance Company, Ltd., from the judgment of September 14, 1914, whereby the Court of First Instance of Laguna sentenced it to pay to the plaintiff the sum of P5,000, the value of the insurance policy in question, with legal interest from April 15, 1913, the date when the complaint was filed, and the costs. W. G. Smith was absolved from the complaint, and the claim for damages dismissed, as they were not proven.

On April 14, 1913, counsel for Francisca Eguaras filed a written complaint in the said Laguna court, alleging as a cause of action that about October 14, 1912, her son-in-law Dominador Albay had applied in writing to the defendant insurance company to insure his life for the sum of P5,000, naming as the beneficiary in case of his death the plaintiff Francisca Eguaras; that after compliance with the requisites and the investigation carried on by the defendant company, and it had been satisfied concerning the physical condition of the applicant, it accepted the application for insurance and on November 6, 1912, issued policy No. 5592, Exhibit A, which has been made a part of the complaint, whereby the said insurance company insured the life of the said Dominador Albay in the sum of P5,000, payable in the event of his death to Francisca Eguaras; that on December 6, 1912, said policy No. 5592 being in force, the insured, Dominador Albay, died in the municipality of Santa Cruz, Laguna, and despite the fact that the beneficiary submitted satisfactory proofs of his death and that the defendant company investigated the event, still it refused and continues to refuse to pay to the plaintiff the value of the policy, Exhibit A, thereby causing damages estimated at P1,000. The court was therefore asked to render judgment against the Great Eastern Life Assurance Company, Ltd., and its general agent, West G. Smith, by sentencing them to pay to the plaintiff the sum of P5,000, the value of policy No. 5592, plus the sum of P1,000 for damages inflicted upon them, in addition to the costs of the suit.

The demurrer filed to the foregoing complaint having been overruled, counsel for the insurance company and for West G. Smith replied thereto, admitting the allegations of the complaint with respect to the legal status of the parties, but denying all the rest, and setting forth in special defense that the insurance policy issued in the name of Dominador [Albay] had been obtained through fraud and deceit known and consented to by the interested parties and is therefore completely illegal, void, and ineffective; wherefore he prayed that the defendants be absolved from the complaint, with the costs against the plaintiff.

In answer to the reply of the defendants the plaintiff alleged that the grounds set forth in the special defense had been made the basis of a criminal complaint against the plaintiff, Francisca Eguaras, and Ponciano Remigio for

the crime of frustrated estafa in the Court of First Instance of Laguna, but that they had been acquitted on said complaint, as is demonstrated by the copy of the judgment, marked Exhibit B, which was made an integral part of the answer, and therefore the plaintiff prayed that the relief sought in her complaint be granted.

After trial and examination of the evidence submitted by both parties, the court rendered the judgment that has been set forth, whereto the defendant, The Great Eastern Life Assurance Company, Ltd., saved its exception, and in writing moved for a reopening of the case and a new trial. This motion was denied, with exception on appellant's part, so the corresponding bill of exceptions was filed, approved and forwarded to the clerk of this court.

The question to be determined in this suit consists in whether the life insurance obtained by Dominador Albay, with the assistance of the insurance agent, Ponciano Remigio, is legal and valid or whether on the contrary it was issued through fraud and deceit, and in such case, whether the defendant, The Great Eastern Life Assurance Company, Ltd., is still under obligation to pay the value thereof to the plaintiff.

It is demonstrated in the case by evidence submitted by the plaintiff that on October 14, 1912, through the efforts of the defendant company's agent, Ponciano Remigio, Dominador Albay got the insurance company to insure his life for the sum of P5,000 and that through the representations and statements made by said Dominador Albay in his application and the favorable medical examination made by Dr. Jose A. Vidal (record, p. 126), the company agreed to the life insurance sought, and on November 6, 1912, issued the policy No. 5592, the value whereof was payable to the insured's mother-in-law, Francisca Eguaras. One month after said insurance policy had been issued, that is, on December 6, 1912, the insured Dominador Albay died in the municipality of Santa Cruz, Laguna, of intestinal occlusion, according to the certificate of Dr. R. Kamatoy, after an illness of three days, with medical attendance. (Exhibit 8, p. 154; Exhibit B, criminal case No. 2616.) The defendant company, according to the declaration of its own agent in these Islands, despite having received satisfactory proofs of the death of the insured, refused to pay the amount of the insurance, alleging that it had been secured through fraud and deceit and was therefore illegal and void.

The contract of life insurance executed between The Great Eastern Life Assurance Company, Ltd., and Dominador Albay is set forth in the policy itself and in the original and supplementary applications signed apparently by Dominador Albay, it appearing to have been stipulated that "This insurance is granted in consideration of the foregoing statements and agreement in the application presented to obtain this policy, which application forms a part of the present contract." This condition is repeated in Clause VIII of the conditions and the privileges granted to the insured, that "This policy and the application presented to secure it, taken together, constitute the whole contract, which cannot be altered except in writing by the general manager or some person expressly appointed therefor by the board of directors."

Now then, in the supplementary application presented by the insured on October 14, 1912, to the question: "Do you think that you are free from disease and that you have a good constitution?" he answered: "Yes;" and to another question: "Have you suffered from any affection of * * * (c) Chest—Cough, asthma, spitting blood, pleurisy?" the applicant answered: "No." (p. 126.)

The physician of the insurance company in charge of the physical examination of the person applying for insurance in Laguna, Dr. Jose A. Vidal, made the physical examination of the person who presented himself to him as Dominador Albay and in his report to the said company (pp. 126-127), dated October 14, 1912, he recorded that the development, expansion, percussion, and auscultation of the applicant's chest were "normal" and recommended to the company that it could "take the risk" of insuring the applicant Dominador Albay, and on said professional report a certain Lunn, who must be the medical officer of the company, placed his O. K. On the basis

of these medical reports and of the exact and faithful performance of its obligations on the part of the insurance agent, Ponciano Remigio, The Great Eastern Life Assurance Company issued the corresponding policy in favor of Dominador Albay, insuring his life for P5,000. The first premium, amounting to P82.25, was paid on November 6, 1912, and while said policy was in full force and effect the death of the insured Albay occurred the next month.

It appears from the record that the insured had knowledge of the false replies contained in the two applications for insurance and knowingly permitted fraud to be practised upon the insurance company, for in his acknowledgment and consent his mother-in-law was designated as the beneficiary of the insurance, despite the fact that he had children and his mother was still living. In the present case the fraud consisted in the fact that a healthy and robust person was substituted in place of the insured invalid when Dr. Vidal made the physical examination of the one who was seeking to be insured, for the real person who desired to be insured and who ought to have been examined was in bad health on and before the date of executing the insurance contract, of which facts the insured Dominador Albay and the insurance agent Ponciano Remigio had full knowledge.

The insurance company endeavored to prove by means of cross-examination of Ponciano Remigio, while he was testifying as a witness for the plaintiff, and by means of the declaration of another insurance agent, Jose D. Arce, that said Ponciano Remigio had always been in the habit of securing the insurance of sick persons, who died shortly after it was issued, in fraud and to the serious injury of the defendant company; but at the request of the opposite party the court overruled this attempt of the defendant and did not permit proof of specific fraudulent acts performed by its agent Remigio. It is to be observed that the said Remigio has already been convicted of the crime of estafa and sentenced to two months and one day of arresto and to the restitution of P20 to The Insular Life Insurance Company, as stated in the copy of the sentence. (Record, p. 168).

It is unquestionable that the person who on October 14, 1912, presented himself to Dr. Vidal to be examined under the name of Dominador Albay, and who signed the supplementary application before said physician, was not the real Dominador Albay, who died on December 6, 1912. In case No. 2616, prosecuted against Ponciano Remigio, Castor Garcia, and Francisca Eguaras for frustrated estafa, part of which was exhibited at the hearing in this suit, Dr. Vidal testified that on October 14, 1912, while he was in the employ of the defendant company as a physician, he proceeded to examine, in San Pablo, Laguna, a person presented to him by the insurance agent, Ponciano Remigio, who said that such person was named Dominador Albay and desired to be insured; that after he had conducted the examination for the space of about an hour the person examined by him signed the supplementary application (Exhibit F) with the name of Dominador Albay; that the person whom he examined and who signed the application with the name of Dominador Albay, if he were not mistaken, was the individual he saw before him, the accused Castor Garcia. When he was urged to state positively whether he had any doubt that the person he had examined was the accused Castor Garcia, he first asked permission to examine the latter's body, and finally reaffirmed that, judging from the general appearance of the accused, Castor Garcia, the latter was the very person he had examined in San Pablo and that he had assured Major Grove of the Constabulary and the attorney of the defendant company that said Garcia was the person who had presented himself to him, saying that his name was Dominador Albay. He further stated that about March 24, 1913, Ponciano Remigio had visited his house in Manila to request that he should testify in favor of said Remigio, who at the same time had offered him P600 not to identify the person of Castor Garcia at the trial. Major Grove of the Constabulary affirmed under oath at the trial of the same case that on April 4, 1913, when Dr. Vidal and the accused Castor Garcia were in his house, Dr. Vidal had told him that he had not the least doubt that Castor Garcia was the person whom he had examined in San Pablo.

Attorney O'Brien, among other things, stated in a sworn declaration, that Ponciano Remigio interviewed him in his office about March 15, 1914, telling him that the signatures affixed to the original application for insurance

and the supplementary application signed before Dr. Vidal at the time of the physical examination were false, and then indicated where he could get documents with authentic signatures of the said Albay. Remigio further told him that he (Remigio) was disgusted with his accomplices because they could not reach an agreement regarding the distribution among them of the amount of the policy when it should be collected. All the statements of said Remigio were made before him under oath as a notary public in the presence of Jose D. Arce, which statements were annotated in the memorandum, Exhibit 3, he being unable to draw up a formal document for signature as the day of the interview was Sunday and he had no stenographer in his office. Jose D. Arce corroborated the statements of the foregoing witness, and added that as the said Ponciano Remigio lodged in his house, the latter had told him the details of the substitution of another person in place of Dominador Albay at the examination made by the physician of the company, and that the cedula of said Albay and two letters (pp. 171, 173), in which authentic signatures of Albay appeared, were delivered to Attorney O'Brien by Albay's mother, named Manuela Flores. Captain Barrows of the Constabulary testified how Ponciano Remigio had promised O'Brien in a conference held by the three in his house in Santa Cruz some ten days before the trial, that on the day of the trial he would testify that the person who had signed the applications with the name of Dominador Albay was Castor Garcia, who was then outside of the Philippine Islands (p. 35). It is true that said Remigio denied all this in his testimony given at the trial in favor of the plaintiff; but it is to be observed that the said Remigio in March, 1914, told Attorney O'Brien in his office in Manila that the person who had signed the insurance applications had left the Philippines, but afterwards he stated to said O'Brien and Barrows that the person mentioned was Castor Garcia, and if the said Remigio did not so testify at the trial it was through fear of being prosecuted for perjury.

Dr. Gertrudo Reyes stated at the trial that in March, 1912, he had been consulted by Dominador Albay regarding the cough he had and after a medical examination witness had reached the conclusion that the person concerned was suffering from tuberculosis in the first stage, although it does not appear that said physician made a microscopic analysis of the patient's sputum; but there is circumstantial evidence in the case that said Dominador Albay died of tuberculosis, for his own mother, Manuela Flores, so affirmed in the affidavit (p. 199) drawn up before a notary on April 17, 1914, although said affidavit was not admitted as evidence because she repudiated its contents in the court. The motive for this change of front on the part of the said Manuela Flores seems to have been due to the fact that the insurance company was unwilling to give her and her husband money for the statements they would make in the court, for in the letter (Exhibit 9) of Leodegario V. Lambonga, Manuela Flores' husband, addressed to Jose D. Arce on August 26, 1914, Lambonga informed Arce that they would not appear the next day, not saying where, because they first wanted to agree upon the sum that they would receive in the event Smith, defendant's agent, should win the case, and accordingly to execute "an instrument we can hold to" (literal). Jose Valencia testified that on November 27, 1912, he went to the municipal building to sign a declaration in the name of Dominador Albay because the latter was then ill and could not leave his house—a fact admitted by the plaintiff. Attorney O'Brien also testified that Ponciano Remigio had assured him that Dominador Albay was suffering from tuberculosis, and also that Remigio had told him that there was a physician in Santa Cruz, who must have been Dr. Reyes, that could attest that said Albay was really affected with tuberculosis.

It is immaterial that Albay may have died of intestinal occlusion, as Dr. Kamatoy affirms in the death certificate (p. 154), because said ailment does not demonstrate that Albay was not suffering from some other chronic disease; or that in the month of October, 1912, when he applied for insurance on his life, he was not affected by a malady that would have been sufficient cause for his rejection by the physicians of the insurance company.

To secure the insurance on the life of Dominador Albay, the parties interested used a person who signed the name of Dominador Albay as the insured in all the documents connected with his application, for the signatures to the letter and the document relating to the insurance, exhibited at the trial, and signed by "Dominador Albay" (pp. 50, 54), are different from the authentic signatures of the real Dominador Albay which appear in the official

documents and the instruments of conveyance of realty. (Exhibits 12,13, 15, pp. 207-211 of the record.) The signatures on these three documents of an official nature, as well as those on the letters (Exhibits 7 and 8; pp. 171,173) addressed by the said Albay to his sister Odang and his relative Lambonga, although not admitted as evidence because they were not duly identified are the genuine signatures of the real Dominador Albay, who was accustomed to fashion his letters in the Spanish style of handwriting. The documents exhibited under the letters D, E, F, and G by the plaintiff, which bear the signatures of "Dominador Albay," appear to have been signed by the same hand, and therefore it is not strange that the signatures on these documents are similar, for it is to be observed that the characters in these signatures are firm and strong, demonstrating that the person who made them had learned to write in the American schools, where the style of handwriting taught is very different from the Spanish.

Plaintiff's claim is based especially on the genuineness of the signature of "Dominador Albay" in the elector's oath (Exhibit G, p. 124), which was signed before the board of election inspectors on May 4, 1912, and duly identified by the chairman of said board, Proceso Maximo, on the contention that if the signature on said elector's oath is genuine, those which appear on the insurance applications, Exhibits E and F (pp. 125-127), and that affixed to the letter, Exhibit D (p. 50), addressed by said Albay in November, 1912, to the insurance company in returning a provisional receipt, must also be true and genuine. But if the real Dominador Albay wrote in the Spanish style in the months of January, February, and March of the year 1912, as demonstrated by the signatures affixed to the documents Exhibits 7, 8, and 15, it is impossible to believe that he should have radically changed his form of writing, two months later by adopting a different handwriting, as can be seen in the alleged signature, said to be authentic, in the elector's oath, Exhibit G, written on May 4, 1912, and subsequently imitated in the months of October and November of the same year in the Exhibits E, F, and D. The signatures that appear on the papers referring to the insurance are so different from those which appear on the other documents which unquestionably bear the signature of the real Dominador Albay that, in consideration of the short time which elapsed between the last genuine signature in March, 1912, when he sold a tract of land, and his oath as elector in May of the same year, 1912, and the great difference that exists between the two signatures, we can do no less than reach the conclusion already stated that there was a person who passed himself off. as Dominador Albay and said person was the one who went on signing the documents relating to the alleged insurance of Dominador Albay, who died on December 6, 1912.

Moreover, Dominador Albay's age, according to the application and the insurance policy, was 40 years in 1912, while according to his personal cedula he was only 32 years of age in 1911, so that when he was insured he must have been only 33.

It is therefore proven that the signatures on the insurance applications reading "Dominador Albay" are false and forged; that the person who presented himself to Dr. Vidal to be examined was not the real Dominador Albay, but another different person; that at the time of the application for insurance and the issuance of the policy which is the subject matter of this suit the real Dominador Albay was informed of all those machinations, wherefore it is plain that the insurance contract between the defendant and Dominador Albay is null and void because it is false, fraudulent and illegal.

Article 1269 of the Civil Code states:

"There is deceit when by words or insidious machinations on the part of one of the contracting parties the other is induced to execute a contract which without them he would not have made."

It is essential to the nature of the deceit, to which the foregoing article refers, that said deceit be prior to or contemporaneous with the consent that is a necessary requisite for perfecting the contract, but not that it may have occurred or happened thereafter. A contract is therefore deceitful, for the execution whereof the consent of one of

the parties has been secured by means of fraud, because he was persuaded by words or insidious machinations, statements or false promises, and a defective consent wrung from him, even though such do not constitute estafa or any other criminal act subject to the penal law.

The defendant company accepted the application for insurance made by Dominador Albay and executed the contract comprised under articles 416 to 431 of the Code of Commerce, although for the perfecting thereof the insured, Albay, as he was not in good health, by connivance with the insurance company's agent, presented Castor Garcia to the physician Vidal, who was commissioned by the company to examine applicants for life insurance and in view of the favorable report of the said physician, who reported and certified that the person examined by him under the name of Dominador Albay was in good health and possessed the qualifications required by said insurance company for perfecting the contract, so the company freely and willingly consented to the execution thereof, effectively induced thereto by the result of the medical examination and of the favorable professional report issued in view of the appearance of an individual who was in good health, but different from the invalid who was seeking to be insured and who died one month and twenty-three days after the insurance had been granted.

The fraud which gave rise to the mistaken consent, given by the defendant company to the application for insurance made by Albay and to the execution of the contract through deceit, is plain and unquestionable. This fraud consisted in the substitution at the examination of Castor Garcia in place of the insured Dominador Albay, and as the deceit practiced in the said contract is of a serious nature, the same is ipso facto void and ineffective, in accordance with the provisions of article 1270 of the Civil Code.

If there had been no substitution, if the insured Dominador Albay had been the person who appeared and was examined by the physician Vidal, said Albay being manifestly different from Castor Garcia, the said physician would not have affirmed at the trial that it was Garcia who presented himself for the physical examination, accompanied by the insurance company's agent, at his residence in San Pablo, and he would have failed to recognize him when he saw him in the court, nor is any mistake on the physician's part possible as the inspection and physical examination of the individual lasted for something like the space of an hour.

The supposition that Dominador Albay was not ill in October, 1912, would not explain why he did not present himself in person to be examined by the physician Vidal; and when he failed to do so and by agreement with the agent Remigio was willing to be substituted by Castor Garcia to the end that in any event no defect or personal quality should be discovered to hinder the perfecting of the insurance contract, such a change in the person constitutes one of the means of fraud which, although it may not partake of the nature of a crime, essentially nullifies the insurance contract executed.

With this array of circumstantial evidence derived from facts duly proven as a result of the present suit, we get, if not a moral certainty, at least a full conviction that when Castor Garcia presented himself to be examined by the physician Vidal in place of Dominador Albay, serious deceit occurred in perfecting the insurance contract, for had the agent of the company not been deceived it would not have granted the insurance applied for by Albay, nor would it have executed the contract by virtue whereof payment is claimed of the value of the policy obtained through fraud; and consequently on such assumptions it is improper, nor is it permitted by the law, to order collection of the amount claimed.

With reference to the effect produced by the final judgment rendered in the case for estafa in connection with this suit, it is unquestionable that said judgment does not give rise to the presumption of *res adjudicata*, applicable to the present case (art. 1252, Civil Code), nor does it constitute an estoppel to the matters litigated in the said criminal case for estafa, and consequently there cannot be applied in the present suit the principle laid down in the

decision of *Penalosa vs. Tuason* (22 Phil. Rep., 303), for the reason that said case was instituted by virtue of an information on the charge that the deceitful acts executed by the company's agent and others interested in the result of the fraud constitute the crime of estafa to the injury of the said insurance company, even though the court acquitted the accused on account of the lack of satisfactory proof of the acts ascribed to them and of their guilt, while the exception taken by the defendant company is based on the nullity of the insurance contract because deceit occurred in the perfecting and execution thereof.

In view of that acquittal the beneficiary of the insurance, Francisca Eguaras, instituted the present suit against The Great Eastern Life Assurance Company, Ltd., claiming payment of the sum of P5,000, the value of policy No. 5592, Exhibit A, which claim the defendant opposed with the contention that said policy was void and illegal because it had been obtained by means of deceit and fraud.

The judgment of acquittal rendered in the criminal case for estafa against the said Francisca Eguaras does not produce the effect of *res adjudicata* in the present suit to the extent that because she was acquitted of the crime of estafa she has necessarily acquired as a plaintiff the right to collect the value of the insurance, or that the insurance company cannot contend that the insurance contract is null and void because it was executed by means of deceit, which upon being proven, as it has been in this case, invalidates the contract that gave rise to the obligation to pay the value of said policy.

In the said criminal case the question raised was whether the acts performed by Eguaras and her co-accused partook of the nature of the crime of estafa, and when it was decided in the negative, the said Eguaras was not therefore unquestionably entitled to collect the value of the insurance, for after deceit had once been proven in the contract, no. obligation rested upon the insurance company to pay the sum stipulated.

In the present civil suit it is not a question whether the acts performed by Eguaras and others interested in the proceeds of the insurance were criminal, but whether in taking out the insurance on the life of Dominador Albay there occurred in the operation deceit and fraud of a civil nature, in the form and under the conditions defined by the Civil Code.

In a contract executed with the requisites fixed in article 1261, one of the contracting parties may have given his consent through error, violence, intimidation, or deceit, and in any of such cases the contract is void, even though, despite this nullity, no crime was committed. (Article 1265, Civil Code.) There may not have been estafa in the case at bar, but it was conclusively demonstrated by the trial that deceit entered into the insurance contract, fulfillment whereof is claimed, and therefore the conclusions reached by the court in the judgment it rendered in the criminal proceedings for estafa do not affect this suit, nor do they influence the decision proper herein, nor can they produce in the present suit, over the exception of the defendant, the force of *res adjudicata*.

For all the foregoing reasons the first part of the judgment appealed from, with reference to the payment of P5,000 to the plaintiff, must be reversed and the defendant, The Great Eastern Life Assurance Company, Ltd., absolved from the complaint, as we do absolve it; and we affirm the second part of said judgment in so far as it absolves W. G. Smith and dismisses the petition for damages; without special finding as to the costs in both instances. So ordered.

Arellano, C. J., Johnson, Carson, Moreland, and Trent, JJ., concur.

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