AMERICAN HOME ASSURANCE COMPANY, PETITIONER, VS. TANTUCO ENTERPRISES, INC., RESPONDENT.

G.R. No. 138941. October 08, 2001

Ponente: PUNO, J.

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PUNO, J.:

Before us is a Petition for Review on Certiorari assailing the Decision of the Court of Appeals in CA-G.R. CV No. 52221 promulgated on January 14, 1999, which affirmed in toto the Decision of the Regional Trial Court, Branch 53, Lucena City in Civil Case No. 92-51 dated October 16, 1995.

Respondent Tantuco Enterprises, Inc. is engaged in the coconut oil milling and refining industry. It owns two oil mills. Both are located at its factory compound at Iyam, Lucena City. It appears that respondent commenced its business operations with only one oil mill. In 1988, it started operating its second oil mill. The latter came to be commonly referred to as the new oil mill.

The two oil mills were separately covered by fire insurance policies issued by petitioner American Home Assurance Co., Philippine Branch.[1] The first oil mill was insured for three million pesos (P3,000,000.00) under Policy No. 306-7432324-3 for the period March 1, 1991 to 1992.[2] The new oil mill was insured for six million pesos (P6,000,000.00) under Policy No. 306-7432321-9 for the same term.[3] Official receipts indicating payment for the full amount of the premium were issued by the petitioner's agent.[4]

A fire that broke out in the early morning of September 30,1991 gutted and consumed the new oil mill. Respondent immediately notified the petitioner of the incident. The latter then sent its appraisers who inspected the burned premises and the properties destroyed. Thereafter, in a letter dated October 15, 1991, petitioner rejected respondent's claim for the insurance proceeds on the ground that no policy was issued by it covering the burned oil mill. It stated that the description of the insured establishment referred to another building thus: "Our policy nos. 306-7432321-9 (Ps 6M) and 306-7432324-4 (Ps 3M) extend insurance coverage to your oil mill under Building No. 5, whilst the affected oil mill was under Building No. 14."[5]

A complaint for specific performance and damages was consequently instituted by the respondent with the RTC, Branch 53 of Lucena City. On October 16, 1995, after trial, the lower court rendered a Decision finding the petitioner liable on the insurance policy thus:

> "WHEREFORE, judgment is rendered in favor of the plaintiff ordering defendant to pay plaintiff:
>
> (a) P4,406,536.40 representing damages for loss by fire of its insured property with interest at the legal rate;
>
> (b) P80,000.00 for litigation expenses;
>
> (c) P300,000.00 for and as attorney's fees; and
>
> (d) Pay the costs.
>
> SO ORDERED."[6]

Petitioner assailed this judgment before the Court of Appeals. The appellate court upheld the same in a Decision promulgated on January 14, 1999, the pertinent portion of which states:

> "WHEREFORE, the instant appeal is hereby DISMISSED for lack of merit and the trial court's Decision dated October 16, 1995 is hereby AFFIRMED in toto.
>
> SO ORDERED."[7]

Petitioner moved for reconsideration. The motion, however, was denied for lack of merit in a Resolution promulgated on June 10, 1999.

Hence, the present course of action, where petitioner ascribes to the appellate court the following errors:

> "(1) The Court of Appeals erred in its conclusion that the issue of non-payment of the premium was beyond its jurisdiction because it was raised for the first time on appeal."[8]
>
> "(2) The Court of Appeals erred in its legal interpretation of 'Fire Extinguishing Appliances Warranty' of the policy."[9]
>
> "(3) With due respect, the conclusion of the Court of Appeals giving no regard to the parole evidence rule and the principle of estoppel is erroneous."[10]

The petition is devoid of merit.

The primary reason advanced by the petitioner in resisting the claim of the respondent is that the burned oil mill is not covered by any insurance policy. According to it, the oil mill insured is specifically described in the policy by its boundaries in the following manner:

> "Front: by a driveway thence at 18 meters distance by Bldg. No. 2.
> Right: by an open space thence by Bldg. No. 4.
> Left: Adjoining thence an imperfect wall by Bldg. No. 4.
> Rear: by an open space thence at 8 meters distance."

However, it argues that this specific boundary description clearly pertains, not to the burned oil mill, but to the other mill. In other words, the oil mill gutted by fire was not the one described by the specific boundaries in the contested policy.

What exacerbates respondent's predicament, petitioner posits, is that it did not have the supposed wrong description or mistake corrected. Despite the fact that the policy in question was issued way back in 1988, or about three years before the fire, and despite the "Important Notice" in the policy that "Please read and examine the policy and if incorrect, return it immediately for alteration," respondent apparently did not call petitioner's attention with respect to the misdescription.

By way of conclusion, petitioner argues that respondent is "barred by the parole evidence rule from presenting evidence (other than the policy in question) of its self-serving intention (sic) that it intended really to insure the burned oil mill," just as it is "barred by estoppel from claiming that the description of the insured oil mill in the policy was wrong, because it retained the policy without having the same corrected before the fire by an endorsement in accordance with its Condition No. 28."

These contentions can not pass judicial muster.

In construing the words used descriptive of a building insured, the greatest liberality is shown by the courts in giving effect to the insurance.[11] In view of the custom of insurance agents to examine buildings before writing policies upon them, and since a mistake as to the identity and character of the building is extremely unlikely, the

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courts are inclined to consider that the policy of insurance covers any building which the parties manifestly intended to insure, however inaccurate the description may be.[12]

Notwithstanding, therefore, the misdescription in the policy, it is beyond dispute, to our mind, that what the parties manifestly intended to insure was the new oil mill. This is obvious from the categorical statement embodied in the policy, extending its protection:

"On machineries and equipment with complete accessories usual to a coconut oil mill including stocks of copra, copra cake and copra mills whilst contained in the new oil mill building, situate (sic) at UNNO. ALONG NATIONAL HIGH WAY, BO. IYAM, LUCENA CITY UNBLOCKED."[13] (emphasis supplied.)

If the parties really intended to protect the first oil mill, then there is no need to specify it as new.

Indeed, it would be absurd to assume that respondent would protect its first oil mill for different amounts and leave uncovered its second one. As mentioned earlier, the first oil mill is already covered under Policy No. 306-7432324-4 issued by the petitioner. It is unthinkable for respondent to obtain the other policy from the very same company. The latter ought to know that a second agreement over that same realty results in its overinsurance.

The imperfection in the description of the insured oil mill's boundaries can be attributed to a misunderstanding between the petitioner's general agent, Mr. Alfredo Borja, and its policy issuing clerk, who made the error of copying the boundaries of the first oil mill when typing the policy to be issued for the new one. As testified to by Mr.Borja:

> Q:
>
> What did you do when you received the report?
>
> A:
>
> I told them as will be shown by the map the intention really of Mr. Edison Tantuco is to cover the new oil mill that is why when I presented the existing policy of the old policy, the policy issuing clerk just merely (sic) copied the wording from the old policy and what she typed is that the description of the boundaries from the old policy was copied but she inserted covering the new oil mill and to me at that time the important thing is that it covered the new oil mill because it is just within one compound and there are only two oil mill[s] and so just enough, I had the policy prepared. In fact, two policies were prepared having the same date one for the old one and the other for the new oil mill and exactly the same policy period, sir."[14] (emphasis supplied)

It is thus clear that the source of the discrepancy happened during the preparation of the written contract.

These facts lead us to hold that the present case falls within one of the recognized exceptions to the parole evidence rule. Under the Rules of Court, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading, among others, its failure to express the true intent and agreement of the parties thereto.[15] Here, the contractual intention of the parties cannot be understood from a mere reading of the instrument. Thus, while the contract explicitly stipulated that it was for the insurance of the new oil mill, the boundary description written on the policy concededly pertains to the first oil mill. This irreconcilable difference can only be clarified by admitting evidence aliunde, which will explain the imperfection and clarify the intent of the parties.

Anent petitioner's argument that the respondent is barred by estoppel from claiming that the description of the insured oil mill in the policy was wrong, we find that the same proceeds from a wrong assumption. Evidence on

record reveals that respondent's operating manager, Mr. Edison Tantuco, notified Mr. Borja (the petitioner's agent with whom respondent negotiated for the contract) about the inaccurate description in the policy. However, Mr. Borja assured Mr. Tantuco that the use of the adjective new will distinguish the insured property. The assurance convinced respondent that, despite the impreciseness in the specification of the boundaries, the insurance will cover the new oil mill. This can be seen from the testimony on cross of Mr. Tantuco:

> "ATTY. SALONGA:
>
> Q:
>
> You mentioned, sir, that at least in so far as Exhibit A is concern you have read what the policy contents.(sic)
>
> Kindly take a look in the page of Exhibit A which was marked as Exhibit A-2 particularly the boundaries of the property insured by the insurance policy Exhibit A, will you tell us as the manager of the company whether the boundaries stated in Exhibit A-2 are the boundaries of the old (sic) mill that was burned or not.
>
> A:
>
> It was not, I called up Mr. Borja regarding this matter and he told me that what is important is the word new oil mill. Mr. Borja said, as a matter of fact, you can never insured (sic) one property with two (2) policies, you will only do that if you will make to increase the amount and it is by indorsement not by another policy, sir."[16]

We again stress that the object of the court in construing a contract is to ascertain the intent of the parties to the contract and to enforce the agreement which the parties have entered into. In determining what the parties intended, the courts will read and construe the policy as a whole and if possible, give effect to all the parts of the contract, keeping in mind always, however, the prime rule that in the event of doubt, this doubt is to be resolved against the insurer. In determining the intent of the parties to the contract, the courts will consider the purpose and object of the contract.[17]

In a further attempt to avoid liability, petitioner claims that respondent forfeited the renewal policy for its failure to pay the full amount of the premium and breach of the Fire Extinguishing Appliances Warranty.

The amount of the premium stated on the face of the policy was P89,770.20. From the admission of respondent's own witness, Mr. Borja, which the petitioner cited, the former only paid it P75,147.00, leaving a difference of P14,623.20. The deficiency, petitioner argues, suffices to invalidate the policy, in accordance with Section 77 of the Insurance Code.[18]

The Court of Appeals refused to consider this contention of the petitioner. It held that this issue was raised for the first time on appeal, hence, beyond its jurisdiction to resolve, pursuant to Rule 46, Section 18 of the Rules of Court.[19]

Petitioner, however, contests this finding of the appellate court. It insists that the issue was raised in paragraph 24 of its Answer, viz.:

> "24. Plaintiff has not complied with the condition of the policy and renewal certificate that the renewal premium should be paid on or before renewal date."

Petitioner adds that the issue was the subject of the cross-examination of Mr. Borja, who acknowledged that the paid amount was lacking by P14,623.20 by reason of a discount or rebate, which rebate under Sec. 361 of the Insurance Code is illegal.

The argument fails to impress. It is true that the asseverations petitioner made in paragraph 24 of its Answer

ostensibly spoke of the policy's condition for payment of the renewal premium on time and respondent's non-compliance with it. Yet, it did not contain any specific and definite allegation that respondent did not pay the premium, or that it did not pay the full amount, or that it did not pay the amount on time.

Likewise, when the issues to be resolved in the trial court were formulated at the pre-trial proceedings, the question of the supposed inadequate payment was never raised. Most significant to point, petitioner fatally neglected to present, during the whole course of the trial, any witness to testify that respondent indeed failed to pay the full amount of the premium. The thrust of the cross-examination of Mr. Borja, on the other hand, was not for the purpose of proving this fact. Though it briefly touched on the alleged deficiency, such was made in the course of discussing a discount or rebate, which the agent apparently gave the respondent. Certainly, the whole tenor of Mr. Borja's testimony, both during direct and cross examinations, implicitly assumed a valid and subsisting insurance policy. It must be remembered that he was called to the stand basically to demonstrate that an existing policy issued by the petitioner covers the burned building.

Finally, petitioner contends that respondent violated the express terms of the Fire Extinguishing Appliances Warranty. The said warranty provides:

> "WARRANTED that during the currency of this Policy, Fire Extinguishing Appliances as mentioned below shall be maintained in efficient working order on the premises to which insurance applies:
>
> - PORTABLE EXTINGUISHERS
> - INTERNAL HYDRANTS
> - EXTERNAL HYDRANTS
> - FIRE PUMP
> - 24-HOUR SECURITY SERVICES
>
> BREACH of this warranty shall render this policy null and void and the Company shall no longer be liable for any loss which may occur."[20]

Petitioner argues that the warranty clearly obligates the insured to maintain all the appliances specified therein. The breach occurred when the respondent failed to install internal fire hydrants inside the burned building as warranted. This fact was admitted by the oil mill's expeller operator, Gerardo Zarsuela.

Again, the argument lacks merit. We agree with the appellate court's conclusion that the aforementioned warranty did not require respondent to provide for all the fire extinguishing appliances enumerated therein. Additionally, we find that neither did it require that the appliances are restricted to those mentioned in the warranty. In other words, what the warranty mandates is that respondent should maintain in efficient working condition within the premises of the insured property, fire fighting equipments such as, but not limited to, those identified in the list, which will serve as the oil mill's first line of defense in case any part of it bursts into flame.

To be sure, respondent was able to comply with the warranty. Within the vicinity of the new oil mill can be found the following devices: numerous portable fire extinguishers, two fire hoses,[21] fire hydrant,[22] and an emergency fire engine.[23] All of these equipments were in efficient working order when the fire occurred.

It ought to be remembered that not only are warranties strictly construed against the insurer, but they should, likewise, by themselves be reasonably interpreted.[24] That reasonableness is to be ascertained in light of the factual conditions prevailing in each case. Here, we find that there is no more need for an internal hydrant considering that inside the burned building were: (1) numerous portable fire extinguishers, (2) an emergency fire engine, and (3) a fire hose which has a connection to one of the external hydrants.

IN VIEW WHEREOF, finding no reversible error in the impugned Decision, the instant petition is hereby

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DISMISSED.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Pardo, and Ynares-Santiago, JJ., concur.
Kapunan, J., on official leave.

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[1] Decision, CA-G.R. CV No. 52221, p. 1; Rollo, p. 27.

[2] Exhibit K, Folder of Exhibits, p. 54.

[3] Exhibit C, Folder of Exhibits, p. 22.

[4] O.R. No. 1043, Exhibit E, Folder of Exhibits, p. 32; O.R. No. 1044, Exhibit Q, Folder of Exhibits, p. 70.

[5] Exhibit H, Folder of Exhibit, p. 35.

[6] Decision, Civil Case No. 92-15, RTC, Branch 53, Lucena City, p.14; Original Record, p. 168.

[7] Decision, CA-G.R. CV No. 52221, p. 6; Rollo, p. 32.

[8] Verified Petition for Review, p. 99; Rollo, p. 17.

[9] Petition, p.11; Rollo, p.19.

[10] Petition, p.14; Rollo, p. 23.

[11] See Martinez, Philippine Insurance Code Annotated, p. 324, citing Richard vs. Ins. Co., 27 N.W. 586 (1886), which gives the following illustration: A policy upon a "school house" was held sufficient to identify the building insured in which a school was kept, although it was not an ordinary school house; the term "store" was held to be a sufficient description of a building used as a restaurant and bakery.

[12] Vance on Insurance, p. 816-817.

[13] Exhibit C-2, Folder of Exhibits, p. 24.

[14] TSN, March 31, 1993, pp. 31-32.

[15] Rule 130, Section 9, Rules of Court.

[16] TSN, April 20, 1993, pp. 25-26.

[17] Vance on Insurance 809 (3[rd] ed., 1951).

[18] The provision states:

Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

[19] Now Rule 44, Section 15 of the 1997 Rules of Civil Procedure:

Sec. 15. Questions that may be raised on appeal. - Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.

[20] Exhibit C-4-C, Folder of Exhibits, p. 29.

[21] Exhibits T, T-1 and T-13, Folder of Exhibits, pp. 73 and 77.

[22] Exhibit T-12, Folder of Exhibits, p. 77.

[23] Exhibit T-14, Folder of Exhibits, p. 77.

[24] See Qua Chee Gan v. Law Union and Rock Insurance Co., Ltd., 98 Phil. 85 (1955).

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