

SAURA IMPORT & EXPORT CO., INC., PLAINTIFF AND APPELLANT, VS. PHILIPPINES INTERNATIONAL CO., INC., AND PHILIPPINE NATIONAL BANK, DEFENDANTS AND APPELLEES.*G.R. No. 15184. May 31, 1963*

Ponente: PAREDES, J.

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Instant case was certified by the Court of Appeals to Us, it appearing that the issues involved are purely of law.

On December 26, 1952, the Saura Import & Export Co., Inc., mortgaged to the Phil. National Bank, a parcel of land covered by T.C.T. No. 40445 of the Registry of Deeds of Davao, issued in its name, to secure the payment of a promissory note of P27,000.00 (Exhs. P. B-2). On April 30, 1953, the mortgage was amended to guarantee an increased amount, bringing the total mortgaged debt to P37,000.00 (Exhs. P-2, B-3). The provisions of the mortgage contract, pertinent to the resolution of the present case, provide as follows-

"2. * * * he shall insure the mortgage property at all times against fire and earthquake for an amount and with such company satisfactory to the Mortgagee, indorsing to the latter the corresponding policies; he shall keep the mortgaged property in good condition, making repairs and protecting walls that may be necessary; * * *"

* * * * *

Erected on the land mortgaged, was a building of strong materials owned by the mortgagor Saura Import & Export Co., Inc., which had always been covered by insurance, many years prior to the mortgage contract. Pursuant to the requirement, Saura insured the building and its contents with the Philippines International Surety, an insurance firm acceptable to mortgagee Bank, for P29,000.00 against fire for the period of one year from October 2, 1954. As required therefor, the insurance policy was endorsed to the mortgagee PNB, in a Memo which states-

"Loss if any, payable to the Philippine National Bank as their interest may appear, subject to the terms, conditions and warranties of this policy" (Exh. A).

The policy was delivered to the mortgagee Bank by Saura. On October 15, 1954, barely thirteen (13) days after the issuance of the fire insurance policy (October 2, 1954), the insurer cancelled the same, effective as of the date of issue (Exh. A-2). Notice of the cancellation was given to appellee Bank in writing, sent by Registered Mail and personally addressed to Fortunato Domingo, Branch Manager of the appellee Bank's Davao Branch, and was received by the Bank on November 8, 1954. On April 6, 1955, the building and its contents, worth P40,685.69 were burned. On April 11, 1955, Saura filed a claim with the Insurer and mortgagee Bank. Upon the presentation of notice of loss with the PNB, Saura learned for the first time that the policy had previously been cancelled on October 2, 1954, by the Insurer, when Saura's folder in the Bank's file was opened and the notice of cancellation (original and duplicate) sent by the Insurer to the Bank, was found. Upon refusal of the Insurer Philippines International Surety to pay the amount of the Insurance, Civil Case No. 26847 was filed with the Manila CFI

against the Insurer, and the PNB was later included as party defendant, after it had refused to prosecute the case jointly with Saura Import & Export Co., Inc.

At the trial, it was established that neither the Insurer or the mortgagee Bank informed the plaintiff Saura of the cancellation of the policy. On April 30, 1957, the court a quo rendered the following judgment-

"* * * IN VIEW WHEREOF, complaint dismissed; with costs against the plaintiff; but as there is no proof on the counterclaim of the Philippines International Surety, the same is also dismissed".

A motion to reconsider the above judgment, seasonably presented on May 14, 1957, was subsequently denied. The decision rendered and the resolution denying the motion for reconsideration constitute the subject of the instant appeal by plaintiff Saura on three alleged errors, which converge on the correctness of the ruling, wholly dismissing the complaint absolving both the insurance company and the bank from liability.

In the determination of liabilities of the parties herein, let us look into the general principles of insurance, in matters of cancellations of policy by the insurer. Fire insurance policies and other contracts of insurance upon property, in addition to the common provision for cancellation of the policy upon request of the insured, generally provide for cancellation by the insurer by notice to the insured for a prescribed period, which is usually 5 days, and the return of the unearned portion of the premium paid by the insured, such provision for cancellation upon notice being authorized by statutes in some jurisdiction, either specifically or as a provision of an adopted standard form of policy. The purpose of provisions or stipulations for notice to the insured, is to prevent the cancellation of the policy, without allowing the insured ample opportunity to negotiate for other insurance in its stead. The form and sufficiency of a notice of cancellation is determined by policy provisions. In order to form the basis of the cancellation of a policy, notice to the insured need not be in any particular form, in the absence of a statute or policy provision prescribing such form, and it is sufficient, so long as it positively and unequivocally indicates to the insured, that it is the intention of the company that the policy shall cease to be binding. Where the policy contains no provisions that a certain number of days notice shall be given, a reasonable notice and opportunity to obtain other insurance must be given. Actual personal notice to the insured is essential to a cancellation under a provision for cancellation by notice. The actual receipt by the insured of a notice of cancellation is universally recognized as a condition precedent to a cancellation of the policy by the insurer, and consequently a letter containing notice of cancellation which is mailed by the insurer but not received by the insured, is ineffective as cancellation (29 Am. Jur. pp. 732-741).

The policy in question (Exh. A), does not provide for the notice, its form or period. The insurance Law, Act No. 2427, does not likewise provide for such notice. This being the case, it devolves upon the Court to apply the generally accepted principles of insurance, regarding cancellation of the insurance policy by the insurer. From what has been heretofore stated, actual notice of cancellation in a clear and unequivocal manner, preferably in writing, in view of the importance of an insurance contract, should be given by the insurer to the insured, so that the latter might be given an opportunity to obtain other insurance for his own protection. The notice should be personal to the insured and not to and/or through any unauthorized person by the policy. In the case at bar, the defendant insurance company, must have realized the paramount importance of sending a notice of cancellation, when it sent the notice of cancellation of the policy to the defendant bank (as mortgagee), but not to the insured with which it (insurance company) had direct dealing. It was the primary duty of the defendant-appellee insurance company to notify the insured, but it did not. It should be stated that the house and its contents were burned on April 6, 1955, at the time when the policy was enforced (October 2, 1954 to October 2, 1955); and that under the facts, as found by the trial court, to which We are bound, it is evident that both the insurance company and the appellee bank failed, wittingly or unwittingly, to notify the insured appellant Saura of the cancellation made.

Of course, the defendant insurance company contends that it gave notice to the defendant-appellee bank as

mortgagee of the property, and that was already a substantial compliance with its duty to notify the insured of the cancellation of the policy. But notice to the bank, as far as appellant herein is concerned, is not effective notice.

"If a mortgage or lien exists against the property insured, and the policy contains a clause stating that loss, if any, shall be payable to such mortgagee or the holder of such lien as his interest may appear, notice of cancellation to the mortgagee or lien holder alone is ineffective as a cancellation of the policy as to the owner of the property." (Connecticut Ins. Co. vs. Caummisar, 218, Ky. 378, 291 SW 776, cited in 29 Am. Jur. p. 743).

Upon authority of the above case, therefore, the liability of the insurance company becomes a fact.

It may be argued that in the appeal brief of appellant, no error has been assigned against the insurance company and no prayer is found therein asking that it be made liable. It must be noted, however, that the case was dismissed by the lower court and the main object of the appeal is to secure a reversal of the said judgment. This Court is clothed with ample authority to review matters, even if they are not assigned as errors in the appeal, if it finds that their consideration is necessary in arriving at a just decision of the case. Thus it was held:

"While an assignment of error which is required by law or rule of court has been held essential to appellate review, and only those assigned will be considered, there are a number of cases which appear to accord to the appellate court a broad discretionary power to waive the lack of proper assignment of errors and consider errors not assigned. And an unassigned error closely related to an error properly assigned, or upon which the determination of the question raised by the error properly assigned is dependent, will be considered by the appellate court notwithstanding the failure to assign it as error." (Hernandez vs. Andal, 78 Phil. 198-199).

Although assigned errors apparently appear to be directed against the appellee bank alone, they in essence, seek a reversal of the decision on dismissal, entered by the lower court, which in the main has for its purpose the finding of liability on the policy. In the course of our examination of the records of the case, the decision and the errors assigned, We found that liability attached principally upon the insurance company, for its failure to give notice of the cancellation of the policy to herein appellant itself.

Because of the conclusions reached, We find it unnecessary to discuss the errors assigned against appellee bank.

WHEREFORE, the decision appealed from is hereby REVERSED, and another is entered, condemning the defendant-appellee Philippines International Surety Co., Inc., to pay Saura Import & Export Co., Inc., appellant herein, the sum of P29,000.00, the amount involved in Policy No. 429, subject-matter of the instant case. Without costs.

Bengzon, C. J., Padilla, Bautista Angelo, Concepcion, Reyes, J. B. L., Barrera, Dizon, Regala, and Makalintal, JJ., concur.

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