GULF RESORTS, INC., PETITIONER, VS. PHILIPPINE CHARTER INSURANCE CORPORATION, RESPONDENT.

G.R. No. 156167. May 16, 2005

Ponente: PUNO, J.

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PUNO, J.:

Before the Court is the petition for certiorari under Rule 45 of the Revised Rules of Court by petitioner GULF RESORTS, INC., against respondent PHILIPPINE CHARTER INSURANCE CORPORATION. Petitioner assails the appellate court decision[1] which dismissed its two appeals and affirmed the judgment of the trial court.

For review are the warring interpretations of petitioner and respondent on the scope of the insurance company's liability for earthquake damage to petitioner's properties. Petitioner avers that, pursuant to its earthquake shock endorsement rider, Insurance Policy No. 31944 covers all damages to the properties within its resort caused by earthquake. Respondent contends that the rider limits its liability for loss to the two swimming pools of petitioner.

The facts as established by the court a quo, and affirmed by the appellate court are as follows:

> [P]laintiff is the owner of the Plaza Resort situated at Agoo, La Union and had its properties in said resort insured originally with the American Home Assurance Company (AHAC-AIU). In the first four insurance policies issued by AHAC-AIU from 1984-85; 1985-86; 1986-1987; and 1987-88 (Exhs. "C", "D", "E" and "F"; also Exhs. "1", "2", "3" and "4" respectively), the risk of loss from earthquake shock was extended only to plaintiff's two swimming pools, thus, "earthquake shock endt." (Item 5 only) (Exhs. "C-1"; "D-1," and "E" and two (2) swimming pools only (Exhs. "C-1"; 'D-1", "E" and "F-1"). "Item 5" in those policies referred to the two (2) swimming pools only (Exhs. "1-B", "2-B", "3-B" and "F-2"); that subsequently AHAC(AIU) issued in plaintiff's favor Policy No. 206-4182383-0 covering the period March 14, 1988 to March 14, 1989 (Exhs. "G" also "G-1") and in said policy the earthquake endorsement clause as indicated in Exhibits "C-1", "D-1", Exhibits "E" and "F-1" was deleted and the entry under Endorsements/Warranties at the time of issue read that plaintiff renewed its policy with AHAC (AIU) for the period of March 14, 1989 to March 14, 1990 under Policy No. 206-4568061-9 (Exh. "H") which carried the entry under "Endorsement/Warranties at Time of Issue", which read "Endorsement to Include Earthquake Shock (Exh. "6-B-1") in the amount of P10,700.00 and paid P42,658.14 (Exhs. "6-A" and "6-B") as premium thereof, computed as follows:
>
> Item -P7,691,000.00 - on the Clubhouse only @ .392%;
>
> 1,500,000.00 - on the furniture, etc. contained in the building above-mentioned@ .490%;
>
> 393,000.00- on the two swimming pools, only (against the peril of earthquake shock only) @ 0.100%
>
> 116,600.00- other buildings include as follows:
>
> a) Tilter House- P19,800.00- 0.551%

b) Power House- P41,000.00-0.551%

c) House Shed- P55,000.00 -0.540%

P100,000.00 for furniture, fixtures, lines air-con and operating equipment

that plaintiff agreed to insure with defendant the properties covered by AHAC (AIU) Policy No. 206-4568061-9 (Exh. "H") provided that the policy wording and rates in said policy be copied in the policy to be issued by defendant; that defendant issued Policy No. 31944 to plaintiff covering the period of March 14, 1990 to March 14, 1991 for P10,700,600.00 for a total premium of P45,159.92 (Exh. "I"); that in the computation of the premium, defendant's Policy No. 31944 (Exh. "I"), which is the policy in question, contained on the right-hand upper portion of page 7 thereof, the following:

Rate-Various

Premium - P37,420.60 F/L

2,061.52 – Typhoon

1,030.76 – EC

393.00 – ES

Doc. Stamps 3,068.10

F.S.T.; 776.89

Prem. Tax 409.05

TOTAL 45,159.92;

that the above break-down of premiums shows that plaintiff paid only P393.00 as premium against earthquake shock (ES); that in all the six insurance policies (Exhs. "C", "D", "E", "F", "G" and "H"), the premium against the peril of earthquake shock is the same, that is P393.00 (Exhs. "C" and "1-B"; "2-B" and "3-B-1" and "3-B-2"; "F-02" and "4-A-1"; "G-2" and "5-C-1"; "6-C-1"; issued by AHAC (Exhs. "C", "D", "E", "F", "G" and "H") and in Policy No. 31944 issued by defendant, the shock endorsement provide(sic):

In consideration of the payment by the insured to the company of the sum included additional premium the Company agrees, notwithstanding what is stated in the printed conditions of this policy due to the contrary, that this insurance covers loss or damage to shock to any of the property insured by this Policy occasioned by or through or in consequence of earthquake (Exhs. "1-D", "2-D", "3-A", "4-B", "5-A", "6-D" and "7-C");

that in Exhibit "7-C" the word "included" above the underlined portion was deleted; that on July 16, 1990 an earthquake struck Central Luzon and Northern Luzon and plaintiff's properties covered by Policy No. 31944 issued by defendant, including the two swimming pools in its Agoo Playa Resort were damaged.[2]

After the earthquake, petitioner advised respondent that it would be making a claim under its Insurance Policy No. 31944 for damages on its properties. Respondent instructed petitioner to file a formal claim, then assigned the investigation of the claim to an independent claims adjuster, Bayne Adjusters and Surveyors, Inc.[3] On July 30, 1990, respondent, through its adjuster, requested petitioner to submit various documents in support of its claim. On August 7, 1990, Bayne Adjusters and Surveyors, Inc., through its Vice-President A.R. de Leon,[4] rendered a preliminary report[5] finding extensive damage caused by the earthquake to the clubhouse and to the two swimming pools. Mr. de Leon stated that "except for the swimming pools, all affected items have no coverage for earthquake shocks."[6] On August 11, 1990, petitioner filed its formal demand[7] for settlement of the damage to all its properties in the Agoo Playa Resort. On August 23, 1990, respondent denied petitioner's claim on the

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ground that its insurance policy only afforded earthquake shock coverage to the two swimming pools of the resort.[8] Petitioner and respondent failed to arrive at a settlement.[9] Thus, on January 24, 1991, petitioner filed a complaint[10] with the regional trial court of Pasig praying for the payment of the following:

> 1.)
>
> The sum of P5,427,779.00, representing losses sustained by the insured properties, with interest thereon, as computed under par. 29 of the policy (Annex "B") until fully paid;
>
> 2.)
>
> The sum of P428,842.00 per month, representing continuing losses sustained by plaintiff on account of defendant's refusal to pay the claims;
>
> 3.)
>
> The sum of P500,000.00, by way of exemplary damages;
>
> 4.)
>
> The sum of P500,000.00 by way of attorney's fees and expenses of litigation;
>
> 5.)
>
> Costs.[11]

Respondent filed its Answer with Special and Affirmative Defenses with Compulsory Counterclaims.[12]

On February 21, 1994, the lower court after trial ruled in favor of the respondent, viz:

> The above schedule clearly shows that plaintiff paid only a premium of P393.00 against the peril of earthquake shock, the same premium it paid against earthquake shock only on the two swimming pools in all the policies issued by AHAC(AIU) (Exhibits "C", "D", "E", "F" and "G"). From this fact the Court must consequently agree with the position of defendant that the endorsement rider (Exhibit "7-C") means that only the two swimming pools were insured against earthquake shock.
>
> Plaintiff correctly points out that a policy of insurance is a contract of adhesion hence, where the language used in an insurance contract or application is such as to create ambiguity the same should be resolved against the party responsible therefor, i.e., the insurance company which prepared the contract. To the mind of [the] Court, the language used in the policy in litigation is clear and unambiguous hence there is no need for interpretation or construction but only application of the provisions therein.
>
> From the above observations the Court finds that only the two (2) swimming pools had earthquake shock coverage and were heavily damaged by the earthquake which struck on July 16, 1990. Defendant having admitted that the damage to the swimming pools was appraised by defendant's adjuster at P386,000.00, defendant must, by virtue of the contract of insurance, pay plaintiff said amount.
>
> Because it is the finding of the Court as stated in the immediately preceding paragraph that defendant is liable only for the damage caused to the two (2) swimming pools and that defendant has made known to plaintiff its willingness and readiness to settle said liability, there is no basis for the grant of the other damages prayed for by plaintiff. As to the counterclaims of defendant, the Court does not agree that the action filed by plaintiff is baseless and highly speculative since such action is a lawful exercise of the plaintiff's right to come to Court in the honest belief that their Complaint is meritorious. The prayer, therefore, of defendant for damages is likewise denied.
>
> WHEREFORE, premises considered, defendant is ordered to pay plaintiffs the sum of THREE HUNDRED

> EIGHTY SIX THOUSAND PESOS (P386,000.00) representing damage to the two (2) swimming pools, with interest at 6% per annum from the date of the filing of the Complaint until defendant's obligation to plaintiff is fully paid.
>
> No pronouncement as to costs.[13]

Petitioner's Motion for Reconsideration was denied. Thus, petitioner filed an appeal with the Court of Appeals based on the following assigned errors:[14]

> - THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF-APPELLANT CAN ONLY RECOVER FOR THE DAMAGE TO ITS TWO SWIMMING POOLS UNDER ITS FIRE POLICY NO. 31944, CONSIDERING ITS PROVISIONS, THE CIRCUMSTANCES SURROUNDING THE ISSUANCE OF SAID POLICY AND THE ACTUATIONS OF THE PARTIES SUBSEQUENT TO THE EARTHQUAKE OF JULY 16, 1990.
>
> - THE TRIAL COURT ERRED IN DETERMINING PLAINTIFF-APPELLANT'S RIGHT TO RECOVER UNDER DEFENDANT-APPELLEE'S POLICY (NO. 31944; EXH "I") BY LIMITING ITSELF TO A CONSIDERATION OF THE SAID POLICY ISOLATED FROM THE CIRCUMSTANCES SURROUNDING ITS ISSUANCE AND THE ACTUATIONS OF THE PARTIES AFTER THE EARTHQUAKE OF JULY 16, 1990.
>
> - THE TRIAL COURT ERRED IN NOT HOLDING THAT PLAINTIFF-APPELLANT IS ENTITLED TO THE DAMAGES CLAIMED, WITH INTEREST COMPUTED AT 24% PER ANNUM ON CLAIMS ON PROCEEDS OF POLICY.

On the other hand, respondent filed a partial appeal, assailing the lower court's failure to award it attorney's fees and damages on its compulsory counterclaim.

After review, the appellate court affirmed the decision of the trial court and ruled, thus:

> However, after carefully perusing the documentary evidence of both parties, We are not convinced that the last two (2) insurance contracts (Exhs. "G" and "H"), which the plaintiff-appellant had with AHAC (AIU) and upon which the subject insurance contract with Philippine Charter Insurance Corporation is said to have been based and copied (Exh. "I"), covered an extended earthquake shock insurance on all the insured properties.
>
> x x x
>
> We also find that the Court a quo was correct in not granting the plaintiff-appellant's prayer for the imposition of interest – 24% on the insurance claim and 6% on loss of income allegedly amounting to P4,280,000.00. Since the defendant-appellant has expressed its willingness to pay the damage caused on the two (2) swimming pools, as the Court a quo and this Court correctly found it to be liable only, it then cannot be said that it was in default and therefore liable for interest.
>
> Coming to the defendant-appellant's prayer for an attorney's fees, long-standing is the rule that the award thereof is subject to the sound discretion of the court. Thus, if such discretion is well-exercised, it will not be disturbed on appeal (Castro et al. v. CA, et al., G.R. No. 115838, July 18, 2002). Moreover, being the award thereof an exception rather than a rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award (Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Coop., Inc., G.R. No. 136914, January 25, 2002). Therefore, holding that the plaintiff-appellant's action is not baseless and highly speculative, We find that the Court a quo did not err in granting the same.
>
> WHEREFORE, in view of all the foregoing, both appeals are hereby DISMISSED and judgment of the Trial Court hereby AFFIRMED in toto. No costs.[15]

Petitioner filed the present petition raising the following issues:[16]

> - WHETHER THE COURT OF APPEALS CORRECTLY HELD THAT UNDER RESPONDENT'S INSURANCE POLICY NO. 31944, ONLY THE TWO (2) SWIMMING POOLS, RATHER THAN ALL THE PROPERTIES COVERED THEREUNDER, ARE INSURED AGAINST THE RISK OF EARTHQUAKE SHOCK.
>
> - WHETHER THE COURT OF APPEALS CORRECTLY DENIED PETITIONER'S PRAYER FOR DAMAGES WITH INTEREST THEREON AT THE RATE CLAIMED, ATTORNEY'S FEES AND EXPENSES OF LITIGATION.

Petitioner contends:

First, that the policy's earthquake shock endorsement clearly covers all of the properties insured and not only the swimming pools. It used the words "any property insured by this policy," and it should be interpreted as all inclusive.

Second, the unqualified and unrestricted nature of the earthquake shock endorsement is confirmed in the body of the insurance policy itself, which states that it is "[s]ubject to: Other Insurance Clause, Typhoon Endorsement, Earthquake Shock Endt., Extended Coverage Endt., FEA Warranty & Annual Payment Agreement On Long Term Policies."[17]

Third, that the qualification referring to the two swimming pools had already been deleted in the earthquake shock endorsement.

Fourth, it is unbelievable for respondent to claim that it only made an inadvertent omission when it deleted the said qualification.

Fifth, that the earthquake shock endorsement rider should be given precedence over the wording of the insurance policy, because the rider is the more deliberate expression of the agreement of the contracting parties.

Sixth, that in their previous insurance policies, limits were placed on the endorsements/warranties enumerated at the time of issue.

Seventh, any ambiguity in the earthquake shock endorsement should be resolved in favor of petitioner and against respondent. It was respondent which caused the ambiguity when it made the policy in issue.

Eighth, the qualification of the endorsement limiting the earthquake shock endorsement should be interpreted as a caveat on the standard fire insurance policy, such as to remove the two swimming pools from the coverage for the risk of fire. It should not be used to limit the respondent's liability for earthquake shock to the two swimming pools only.

Ninth, there is no basis for the appellate court to hold that the additional premium was not paid under the extended coverage. The premium for the earthquake shock coverage was already included in the premium paid for the policy.

Tenth, the parties' contemporaneous and subsequent acts show that they intended to extend earthquake shock coverage to all insured properties. When it secured an insurance policy from respondent, petitioner told respondent that it wanted an exact replica of its latest insurance policy from American Home Assurance Company (AHAC-AIU), which covered all the resort's properties for earthquake shock damage and respondent agreed. After the July 16, 1990 earthquake, respondent assured petitioner that it was covered for earthquake shock. Respondent's insurance adjuster, Bayne Adjusters and Surveyors, Inc., likewise requested petitioner to submit the necessary documents for its building claims and other repair costs. Thus, under the doctrine of equitable estoppel,

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it cannot deny that the insurance policy it issued to petitioner covered all of the properties within the resort.

Eleventh, that it is proper for it to avail of a petition for review by certiorari under Rule 45 of the Revised Rules of Court as its remedy, and there is no need for calibration of the evidence in order to establish the facts upon which this petition is based.

On the other hand, respondent made the following counter arguments:[18]

First, none of the previous policies issued by AHAC-AIU from 1983 to 1990 explicitly extended coverage against earthquake shock to petitioner's insured properties other than on the two swimming pools. Petitioner admitted that from 1984 to 1988, only the two swimming pools were insured against earthquake shock. From 1988 until 1990, the provisions in its policy were practically identical to its earlier policies, and there was no increase in the premium paid. AHAC-AIU, in a letter[19] by its representative Manuel C. Quijano, categorically stated that its previous policy, from which respondent's policy was copied, covered only earthquake shock for the two swimming pools.

Second, petitioner's payment of additional premium in the amount of P393.00 shows that the policy only covered earthquake shock damage on the two swimming pools. The amount was the same amount paid by petitioner for earthquake shock coverage on the two swimming pools from 1990-1991. No additional premium was paid to warrant coverage of the other properties in the resort.

Third, the deletion of the phrase pertaining to the limitation of the earthquake shock endorsement to the two swimming pools in the policy schedule did not expand the earthquake shock coverage to all of petitioner's properties. As per its agreement with petitioner, respondent copied its policy from the AHAC-AIU policy provided by petitioner. Although the first five policies contained the said qualification in their rider's title, in the last two policies, this qualification in the title was deleted. AHAC-AIU, through Mr. J. Baranda III, stated that such deletion was a mere inadvertence. This inadvertence did not make the policy incomplete, nor did it broaden the scope of the endorsement whose descriptive title was merely enumerated. Any ambiguity in the policy can be easily resolved by looking at the other provisions, specially the enumeration of the items insured, where only the two swimming pools were noted as covered for earthquake shock damage.

Fourth, in its Complaint, petitioner alleged that in its policies from 1984 through 1988, the phrase "Item 5 – P393,000.00 – on the two swimming pools only (against the peril of earthquake shock only)" meant that only the swimming pools were insured for earthquake damage. The same phrase is used in toto in the policies from 1989 to 1990, the only difference being the designation of the two swimming pools as "Item 3."

Fifth, in order for the earthquake shock endorsement to be effective, premiums must be paid for all the properties covered. In all of its seven insurance policies, petitioner only paid P393.00 as premium for coverage of the swimming pools against earthquake shock. No other premium was paid for earthquake shock coverage on the other properties. In addition, the use of the qualifier "ANY" instead of "ALL" to describe the property covered was done deliberately to enable the parties to specify the properties included for earthquake coverage.

Sixth, petitioner did not inform respondent of its requirement that all of its properties must be included in the earthquake shock coverage. Petitioner's own evidence shows that it only required respondent to follow the exact provisions of its previous policy from AHAC-AIU. Respondent complied with this requirement. Respondent's only deviation from the agreement was when it modified the provisions regarding the replacement cost endorsement. With regard to the issue under litigation, the riders of the old policy and the policy in issue are identical.

Seventh, respondent did not do any act or give any assurance to petitioner as would estop it from maintaining that

only the two swimming pools were covered for earthquake shock. The adjuster's letter notifying petitioner to present certain documents for its building claims and repair costs was given to petitioner before the adjuster knew the full coverage of its policy.

Petitioner anchors its claims on AHAC-AIU's inadvertent deletion of the phrase "Item 5 Only" after the descriptive name or title of the Earthquake Shock Endorsement. However, the words of the policy reflect the parties' clear intention to limit earthquake shock coverage to the two swimming pools.

Before petitioner accepted the policy, it had the opportunity to read its conditions. It did not object to any deficiency nor did it institute any action to reform the policy. The policy binds the petitioner.

Eighth, there is no basis for petitioner to claim damages, attorney's fees and litigation expenses. Since respondent was willing and able to pay for the damage caused on the two swimming pools, it cannot be considered to be in default, and therefore, it is not liable for interest.

We hold that the petition is devoid of merit.

In Insurance Policy No. 31944, four key items are important in the resolution of the case at bar.

First, in the designation of location of risk, only the two swimming pools were specified as included, viz:

> ITEM 3 – 393,000.00 – On the two (2) swimming pools only (against the peril of earthquake shock only)[20]

Second, under the breakdown for premium payments,[21] it was stated that:

PREMIUM RECAPITULATION

ITEM NOS. AMOUNT RATES PREMIUM

x x x

3 393,000.00 0.100%-E/S 393.00[22]

Third, Policy Condition No. 6 stated:

6. This insurance does not cover any loss or damage occasioned by or through or in consequence, directly or indirectly of any of the following occurrences, namely:--

> (a) Earthquake, volcanic eruption or other convulsion of nature. [23]

Fourth, the rider attached to the policy, titled "Extended Coverage Endorsement (To Include the Perils of Explosion, Aircraft, Vehicle and Smoke)," stated, viz:

> ANNUAL PAYMENT AGREEMENT ON
> LONG TERM POLICIES
>
> THE INSURED UNDER THIS POLICY HAVING ESTABLISHED AGGREGATE SUMS INSURED IN EXCESS OF FIVE MILLION PESOS, IN CONSIDERATION OF A DISCOUNT OF 5% OR 7 ½ % OF THE NET PREMIUM x x x POLICY HEREBY UNDERTAKES TO CONTINUE THE INSURANCE UNDER THE ABOVE NAMED x x x AND TO PAY THE PREMIUM.
>
> Earthquake Endorsement
>
> In consideration of the payment by the Insured to the Company of the sum of P. . . . . additional premium the Company agrees, notwithstanding what is stated in the printed conditions of this Policy to the

> contrary, that this insurance covers loss or damage (including loss or damage by fire) to any of the property insured by this Policy occasioned by or through or in consequence of Earthquake.
>
> Provided always that all the conditions of this Policy shall apply (except in so far as they may be hereby expressly varied) and that any reference therein to loss or damage by fire should be deemed to apply also to loss or damage occasioned by or through or in consequence of Earthquake.[24]

Petitioner contends that pursuant to this rider, no qualifications were placed on the scope of the earthquake shock coverage. Thus, the policy extended earthquake shock coverage to all of the insured properties.

It is basic that all the provisions of the insurance policy should be examined and interpreted in consonance with each other.[25] All its parts are reflective of the true intent of the parties. The policy cannot be construed piecemeal. Certain stipulations cannot be segregated and then made to control; neither do particular words or phrases necessarily determine its character. Petitioner cannot focus on the earthquake shock endorsement to the exclusion of the other provisions. All the provisions and riders, taken and interpreted together, indubitably show the intention of the parties to extend earthquake shock coverage to the two swimming pools only.

A careful examination of the premium recapitulation will show that it is the clear intent of the parties to extend earthquake shock coverage only to the two swimming pools. Section 2(1) of the Insurance Code defines a contract of insurance as an agreement whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. Thus, an insurance contract exists where the following elements concur:

> - The insured has an insurable interest;
>
> - The insured is subject to a risk of loss by the happening of the designated peril;
>
> - The insurer assumes the risk;
>
> - Such assumption of risk is part of a general scheme to distribute actual losses among a large group of persons bearing a similar risk; and
>
> - In consideration of the insurer's promise, the insured pays a premium.[26] (Emphasis ours)

An insurance premium is the consideration paid an insurer for undertaking to indemnify the insured against a specified peril.[27] In fire, casualty, and marine insurance, the premium payable becomes a debt as soon as the risk attaches.[28] In the subject policy, no premium payments were made with regard to earthquake shock coverage, except on the two swimming pools. There is no mention of any premium payable for the other resort properties with regard to earthquake shock. This is consistent with the history of petitioner’s previous insurance policies from AHAC-AIU. As borne out by petitioner’s witnesses:

CROSS EXAMINATION OF LEOPOLDO MANTOHAC TSN, November 25, 1991
pp. 12-13

> Q.
>
> Now Mr. Mantohac, will it be correct to state also that insofar as your insurance policy during the period from March 4, 1984 to March 4, 1985 the coverage on earthquake shock was limited to the two swimming pools only?
>
> A.
>
> Yes, sir. It is limited to the two swimming pools, specifically shown in the warranty, there is a provision here that it was only for item 5.

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Q.

More specifically Item 5 states the amount of P393,000.00 corresponding to the two swimming pools only?

A.

Yes, sir.

CROSS EXAMINATION OF LEOPOLDO MANTOHAC TSN, November 25, 1991

pp. 23-26

Q.

For the period from March 14, 1988 up to March 14, 1989, did you personally arrange for the procurement of this policy?

A.

Yes, sir.

Q.

Did you also do this through your insurance agency?

A.

If you are referring to Forte Insurance Agency, yes.

Q.

Is Forte Insurance Agency a department or division of your company?

A.

No, sir. They are our insurance agency.

Q.

And they are independent of your company insofar as operations are concerned?

A.

Yes, sir, they are separate entity.

Q.

But insofar as the procurement of the insurance policy is concerned they are of course subject to your instruction, is that not correct?

A.

Yes, sir. The final action is still with us although they can recommend what insurance to take.

Q.

In the procurement of the insurance police (sic) from March 14, 1988 to March 14, 1989, did you give written instruction to Forte Insurance Agency advising it that the earthquake shock coverage must extend to all properties of Agoo Playa Resort in La Union?

A.

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No, sir. We did not make any written instruction, although we made an oral instruction to that effect of extending the coverage on (sic) the other properties of the company.

Q.

And that instruction, according to you, was very important because in April 1987 there was an earthquake tremor in La Union?

A.

Yes, sir.

Q.

And you wanted to protect all your properties against similar tremors in the [future], is that correct?

A.

Yes, sir.

Q.

Now, after this policy was delivered to you did you bother to check the provisions with respect to your instructions that all properties must be covered again by earthquake shock endorsement?

A.

Are you referring to the insurance policy issued by American Home Assurance Company marked Exhibit "G"?

Atty. Mejia: Yes.

Witness:

A.

I examined the policy and seeing that the warranty on the earthquake shock endorsement has no more limitation referring to the two swimming pools only, I was contented already that the previous limitation pertaining to the two swimming pools was already removed.

Petitioner also cited and relies on the attachment of the phrase “Subject to: Other Insurance Clause, Typhoon Endorsement, Earthquake Shock Endorsement, Extended Coverage Endorsement, FEA Warranty & Annual Payment Agreement on Long Term Policies”[29] to the insurance policy as proof of the intent of the parties to extend the coverage for earthquake shock. However, this phrase is merely an enumeration of the descriptive titles of the riders, clauses, warranties or endorsements to which the policy is subject, as required under Section 50, paragraph 2 of the Insurance Code.

We also hold that no significance can be placed on the deletion of the qualification limiting the coverage to the two swimming pools. The earthquake shock endorsement cannot stand alone. As explained by the testimony of Juan Baranda III, underwriter for AHAC-AIU:

DIRECT EXAMINATION OF JUAN BARANDA III[30]
TSN, August 11, 1992
pp. 9-12

Atty. Mejia:

We respectfully manifest that the same exhibits C to H inclusive have been previously marked by counsel for

defendant as Exhibit[s] 1-6 inclusive. Did you have occasion to review of (sic) these six (6) policies issued by your company [in favor] of Agoo Playa Resort?

WITNESS:

Yes[,] I remember having gone over these policies at one point of time, sir.

Q.

Now, wach (sic) of these six (6) policies marked in evidence as Exhibits C to H respectively carries an earthquake shock endorsement[?] My question to you is, on the basis on (sic) the wordings indicated in Exhibits C to H respectively what was the extent of the coverage [against] the peril of earthquake shock as provided for in each of the six (6) policies?

x x x

WITNESS:

The extent of the coverage is only up to the two (2) swimming pools, sir.

Q.

Is that for each of the six (6) policies namely: Exhibits C, D, E, F, G and H?

A.

Yes, sir.

ATTY. MEJIA:

What is your basis for stating that the coverage against earthquake shock as provided for in each of the six (6) policies extend to the two (2) swimming pools only?

WITNESS:

Because it says here in the policies, in the enumeration "Earthquake Shock Endorsement, in the Clauses and Warranties: Item 5 only (Earthquake Shock Endorsement)," sir.

ATTY. MEJIA:

Witness referring to Exhibit C-1, your Honor.

WITNESS:

We do not normally cover earthquake shock endorsement on stand alone basis. For swimming pools we do cover earthquake shock. For building we covered it for full earthquake coverage which includes earthquake shock?

COURT:

As far as earthquake shock endorsement you do not have a specific coverage for other things other than swimming pool? You are covering building? They are covered by a general insurance?

WITNESS:

Earthquake shock coverage could not stand alone. If we are covering building or another we can issue earthquake shock solely but that the moment I see this, the thing that comes to my mind is either insuring a swimming pool, foundations, they are normally affected by earthquake but not by fire, sir.

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DIRECT EXAMINATION OF JUAN BARANDA III
TSN, August 11, 1992
pp. 23-25

Q.

Plaintiff's witness, Mr. Mantohac testified and he alleged that only Exhibits C, D, E and F inclusive [remained] its coverage against earthquake shock to two (2) swimming pools only but that Exhibits G and H respectively entend the coverage against earthquake shock to all the properties indicated in the respective schedules attached to said policies, what can you say about that testimony of plaintiff's witness?

WITNESS:

As I have mentioned earlier, earthquake shock cannot stand alone without the other half of it. I assure you that this one covers the two swimming pools with respect to earthquake shock endorsement. Based on it, if we are going to look at the premium there has been no change with respect to the rates. Everytime (sic) there is a renewal if the intention of the insurer was to include the earthquake shock, I think there is a substantial increase in the premium. We are not only going to consider the two (2) swimming pools of the other as stated in the policy. As I see, there is no increase in the amount of the premium. I must say that the coverage was not broaden (sic) to include the other items.

COURT:

They are the same, the premium rates?

WITNESS:

They are the same in the sence (sic), in the amount of the coverage. If you are going to do some computation based on the rates you will arrive at the same premiums, your Honor.

CROSS-EXAMINATION OF JUAN BARANDA III
TSN, September 7, 1992
pp. 4-6

ATTY. ANDRES:

Would you as a matter of practice [insure] swimming pools for fire insurance?

WITNESS:

No, we don't, sir.

Q.

That is why the phrase "earthquake shock to the two (2) swimming pools only" was placed, is it not?

A.

Yes, sir.

ATTY. ANDRES:

Will you not also agree with me that these exhibits, Exhibits G and H which you have pointed to during your direct-examination, the phrase "Item no. 5 only" meaning to (sic) the two (2) swimming pools was deleted from the policies issued by AIU, is it not?

x x x

ATTY. ANDRES:

As an insurance executive will you not attach any significance to the deletion of the qualifying phrase for the policies?

WITNESS:

My answer to that would be, the deletion of that particular phrase is inadvertent. Being a company underwriter, we do not cover. . it was inadvertent because of the previous policies that we have issued with no specific attachments, premium rates and so on. It was inadvertent, sir.

The Court also rejects petitioner's contention that respondent's contemporaneous and subsequent acts to the issuance policy falsely gave the petitioner assurance that the coverage of the earthquake shock endorsement included all its properties in the resort. Respondent only insured the properties as intended by the petitioner. Petitoner's own witness testified to this agreement. viz:

CROSS EXAMINATION OF LEOPOLDO MANTOHAC
TSN, January 14, 1992
pp. 4-5

Q.

Just to be clear about this particular answer of yours Mr. Witness, what exactly did you tell Atty. Omlas (sic) to copy from Exhibit "H" for purposes of procuring the policy from Philippine Charter Insurance Corporation?

A.

I told him that the insurance that they will have to get will have the same provisions as this American Home Insurance Policy No. 206-4568061-9.

Q.

You are referring to Exhibit "H" of course?

A.

Yes, sir, to Exhibit "H".

Q.

So, all the provisions here will be the same except that of the premium rates?

A.

Yes, sir. He assured me that with regards to the insurance premium rates that they will be charging will be limited to this one. I (sic) can even be lesser.

CROSS EXAMINATION OF LEOPOLDO MANTOHAC
TSN, January 14, 1992
pp. 12-14

Atty. Mejia:

Q.

Will it be correct to state[,] Mr. Witness, that you made a comparison of the provisions and scope of coverage of Exhibits “I” and “H” sometime in the third week of March, 1990 or thereabout?

A.

Yes, sir, about that time.

Q.

And at that time did you notice any discrepancy or difference between the policy wordings as well as scope of coverage of Exhibits "I" and "H" respectively?

A.

No, sir, I did not discover any difference inasmuch (sic) as I was assured already that the policy wordings and rates were copied from the insurance policy I sent them but it was only when this case erupted that we discovered some discrepancies.

Q.

With respect to the items declared for insurance coverage did you notice any discrepancy at any time between those indicated in Exhibit "I" and those indicated in Exhibit "H" respectively?

A.

With regard to the wordings I did not notice any difference because it was exactly the same P393,000.00 on the two (2) swimming pools only against the peril of earthquake shock which I understood before that this provision will have to be placed here because this particular provision under the peril of earthquake shock only is requested because this is an insurance policy and therefore cannot be insured against fire, so this has to be placed.

The verbal assurances allegedly given by respondent's representative Atty. Umlas were not proved. Atty. Umlas categorically denied having given such assurances.

Finally, petitioner puts much stress on the letter of respondent's independent claims adjuster, Bayne Adjusters and Surveyors, Inc. But as testified to by the representative of Bayne Adjusters and Surveyors, Inc., respondent never meant to lead petitioner to believe that the endorsement for earthquake shock covered properties other than the two swimming pools, viz:

DIRECT EXAMINATION OF ALBERTO DE LEON (Bayne
Adjusters and Surveyors, Inc.)
TSN, January 26, 1993
pp. 22-26

Q.

Do you recall the circumstances that led to your discussion regarding the extent of coverage of the policy issued by Philippine Charter Insurance Corporation?

A.

I remember that when I returned to the office after the inspection, I got a photocopy of the insurance coverage policy and it was indicated under Item 3 specifically that the coverage is only for earthquake shock. Then, I remember I had a talk with Atty. Umlas (sic), and I relayed to him what I had found out in the policy and he confirmed to me indeed only Item 3 which were the two swimming pools have coverage for earthquake shock.

x x x

Q.

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> Now, may we know from you Engr. de Leon your basis, if any, for stating that except for the swimming pools all affected items have no coverage for earthquake shock?
>
> x x x
>
> A.
>
> I based my statement on my findings, because upon my examination of the policy I found out that under Item 3 it was specific on the wordings that on the two swimming pools only, then enclosed in parenthesis (against the peril[s] of earthquake shock only), and secondly, when I examined the summary of premium payment only Item 3 which refers to the swimming pools have a computation for premium payment for earthquake shock and all the other items have no computation for payment of premiums.

In sum, there is no ambiguity in the terms of the contract and its riders. Petitioner cannot rely on the general rule that insurance contracts are contracts of adhesion which should be liberally construed in favor of the insured and strictly against the insurer company which usually prepares it.[31] A contract of adhesion is one wherein a party, usually a corporation, prepares the stipulations in the contract, while the other party merely affixes his signature or his "adhesion" thereto. Through the years, the courts have held that in these type of contracts, the parties do not bargain on equal footing, the weaker party's participation being reduced to the alternative to take it or leave it. Thus, these contracts are viewed as traps for the weaker party whom the courts of justice must protect.[32] Consequently, any ambiguity therein is resolved against the insurer, or construed liberally in favor of the insured.[33]

The case law will show that this Court will only rule out blind adherence to terms where facts and circumstances will show that they are basically one-sided.[34] Thus, we have called on lower courts to remain careful in scrutinizing the factual circumstances behind each case to determine the efficacy of the claims of contending parties. In Development Bank of the Philippines v. National Merchandising Corporation, et al.,[35] the parties, who were acute businessmen of experience, were presumed to have assented to the assailed documents with full knowledge.

We cannot apply the general rule on contracts of adhesion to the case at bar. Petitioner cannot claim it did not know the provisions of the policy. From the inception of the policy, petitioner had required the respondent to copy verbatim the provisions and terms of its latest insurance policy from AHAC-AIU. The testimony of Mr. Leopoldo Mantohac, a direct participant in securing the insurance policy of petitioner, is reflective of petitioner’s knowledge, viz:

> DIRECT EXAMINATION OF LEOPOLDO MANTOHAC[36]
> TSN, September 23, 1991
> pp. 20-21
>
> Q.
>
> Did you indicate to Atty. Omlas (sic) what kind of policy you would want for those facilities in Agoo Playa?
>
> A.
>
> Yes, sir. I told him that I will agree to that renewal of this policy under Philippine Charter Insurance Corporation as long as it will follow the same or exact provisions of the previous insurance policy we had with American Home Assurance Corporation.
>
> Q.
>
> Did you take any step Mr. Witness to ensure that the provisions which you wanted in the American Home

> Insurance policy are to be incorporated in the PCIC policy?
>
> A.
>
> Yes, sir.
>
> Q.
>
> What steps did you take?
>
> A.
>
> When I examined the policy of the Philippine Charter Insurance Corporation I specifically told him that the policy and wordings shall be copied from the AIU Policy No. 206-4568061-9.

Respondent, in compliance with the condition set by the petitioner, copied AIU Policy No. 206-4568061-9 in drafting its Insurance Policy No. 31944. It is true that there was variance in some terms, specifically in the replacement cost endorsement, but the principal provisions of the policy remained essentially similar to AHAC-AIU's policy. Consequently, we cannot apply the "fine print" or "contract of adhesion" rule in this case as the parties' intent to limit the coverage of the policy to the two swimming pools only is not ambiguous.[37]

IN VIEW WHEREOF, the judgment of the Court of Appeals is affirmed. The petition for certiorari is dismissed. No costs.

SO ORDERED.

Austria-Martinez, Callejo, Sr., Tinga, and Chico-Nazario, JJ., concur.

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[1] The decision was penned by Justice Jose L. Sabio, Jr., of the 10[th] Division of the Court of Appeals.

[2] Rollo, pp. 10-12.

[3] Original Records, p. 50.

[4] Vice-President for the Fire, Engineering and Allied Claims Division.

[5] Original Records, pp. 44-48.

[6] Original Records, p. 47.

[7] Id., p. 49.

[8] Id., p. 50.

[9] Id., pp. 50-54.

[10] Id., pp. 1-7.

[11] Id., pp. 6-7.

[12] Original Records, pp. 28-42.

[13] Original Records, pp. 400-401.

[14] CA Rollo, p. 42.

[15] CA Rollo, pp. 184-186.

[16] Rollo, p. 402.

[17] Rollo, pp. 408-409.

[18] Rollo, pp. 348-395.

[19] Exhibit “9.”

[20] Original Records, p. 17.

[21] Original Records, p. 17.

[22] Original Records, p. 68.

[23] Rollo, p. 70.

[24] Original Records, p. 71.

[25] Ruiz v. Sheriff of Manila, 34 SCRA 83 (1970); National Union Fire Insurance Company of Pittsburg v. Stolt-Nielsen Philippines, Inc., 184 SCRA 682 (1990).

[26] See Vance, pp. 1-2, cited in Agbayani, Commercial Laws of the Philippines, vol. 2, (1986), p. 6; Philamcare Health Systems, Inc. v. Court of Appeals, 379 SCRA 356 (2002).

[27] 43 Am. Jur. 2d 878.

[28] De Leon, Hector S., The Insurance Code of the Philippines (1992), p. 194.

[29] Exhibits “I” and “I-2.”

[30] The underwriter for Phil-American Insurance Corporation (formerly AIU) who reviewed the Agoo Playa Resort insurance policies.

[31] Western Guaranty Corporation v. Court of Appeals, 187 SCRA 652 (1990); Verendia v. Court of Appeals, 217 SCRA 417 (1993).

[32] Philippine National Bank v. Court of Appeals, 196 SCRA 536 (1991).

[33] Verendia v. Court of Appeals, 217 SCRA 417 (1993); New Life Enterprises v. Court of Appeals, 207 SCRA 669 (1992); Sun Insurance Office, Ltd. v. Court of Appeals, 211 SCRA 554 (1992).

[34] Pan American World Airways, Inc. v. Rapadas, 209 SCRA 67 (1992); BPI Credit Corporation v. Court of Appeals, 204 SCRA 601 (1991); Serra v. Court of Appeals, 229 SCRA 60 (1994).

[35] 40 SCRA 624 (1971).

[36] Testimony of the vice president for corporate affairs and corporate secretary of petitioner, TSN, September 23, 1991.

[37] Sweet Lines, Inc. v. Teves, 83 SCRA 361 (1978); Tan v. Court of Appeals, 174 SCRA 403 (1989).

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