

PAULO ANG AND SALLY C. ANG, PLAINTIFFS AND APPELLEES, VS. FULTON FIRE INSURANCE CO., ET AL., DEFENDANTS. FULTON FIRE INSURANCE CO., DEFENDANT AND APPELLANT.

G.R. No. 15862. July 31, 1961

Ponente: LABRADOR, J.

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LABRADOR, J.:

The present action was instituted by the spouses Paulo Ang and Sally C. Ang against the Fulton Fire Insurance Company and the Paramount Surety and Insurance Company, Inc. to recover from them the face value of a fire insurance policy issued in plaintiffs' favor covering a store owned and operated by them in Laoag, Ilocos Norte. From a judgment of the court ordering the defendant Fulton Fire Insurance Co. to pay the plaintiffs the sum of P10,000.00, with interest, and an additional sum of P2,000.00 as attorney's fees, and costs, the defendants have appealed directly to this Court.

On September 9, 1953, defendant Fulton Fire Insurance Company issued a policy No. F-47630340, in favor of P. & S. Department Store (Sally C. Ang) over stocks of general merchandise, consisting principally of dry goods, contained in a building occupied by the plaintiffs at Laoag, Ilocos Norte. The premium is P500.00 annually. The insurance was issued for one year, but the same was renewed for another year on September 31, 1954. On December 27, 1954, the store containing the goods insured was destroyed by fire. On December 30, following, plaintiffs executed the first claim form. The claim together with all the necessary papers relating thereto, were forwarded to the Manila Adjustment Company, the defendants' adjusters, and received by the latter on January 8, 1955. On January 12, 1955, the Manila Adjustment Company accepted receipt of the claim and requested the submission of the books of accounts of the insured for the year 1953-1954 and a clearance from the Philippine Constabulary and the police. On April 6, 1956, the Fulton Fire Insurance Company wrote the plaintiffs that their claim was denied. This denial of the claim was received by the plaintiffs on April 19, 1956.

On January 13, 1955, plaintiff Paulo Ang and ten others were charged for arson in Criminal Case No. 1429 in the Justice of the Peace Court of Laoag, Ilocos Norte. The case was remanded for trial to the Court of First Instance of Ilocos Norte and there docketed as Criminal Case No. 2017. The said court in a decision dated December 9, 1957, acquitted plaintiff Paulo Ang of the crime of arson.

The present action was instituted on May 5, 1958. The action was originally instituted against both the Fulton Fire Insurance Company and the Paramount Surety and Insurance Company, Inc., but on June 16, 1958, upon motion of the Paramount Surety, the latter was dropped from the complaint.

On May 26, 1958, the defendant Fulton Fire Insurance Company filed an answer to the complaint, admitting the existence of the contract of insurance, its renewal and the loss by fire of the department store and the merchandise contained therein, but denying that the loss by the fire was accidental, alleging that it was occasioned by the wilful act of the plaintiff Paulo Ang himself. It claims that under paragraph 13 of the policy, if the loss or damage is occasioned by the wilful act of the insured, or if the claim is made and rejected but no action is commenced within

12 months after such rejection, all benefits under the policy would be forfeited, and that since the claim of the plaintiffs was denied and plaintiffs received notice of denial on April 18, 1956, and they brought the action only on May 5, 1958, all the benefits under the policy have been forfeited.

On February 12, 1959, plaintiffs filed a reply to the above answer of the Fulton Fire Insurance, alleging that on May 11, 1956, plaintiffs had instituted Civil Case No. 2949 in the Court of First Instance of Manila, to assert the claim; that this case was dismissed without prejudice on September 3, 1957, and that deducting the period within which said action was pending, the present action was still within the 12 months period from April 12, 1956. The court below held that the bringing of the action in the Court of First Instance of Manila on May 11, 1956 tolled the running of the 12 months period within which the action must be filed. Said the court on this point:

"True, indeed, plaintiffs committed a procedural mistake in first suing the agent instead of its principal, the herein defendant, as correctly pointed out by counsel for the defendant, for 'Un agente residente de una compañía de seguros extranjera que comercia en las Islas Filipinas no es responsable, como mandante ni como mandatario, en virtud de contratas de seguro expendidos a nombre de la compañía'. (Macias & Co. vs. Warner, Barnes & Co., 43 Phil. 161). But the mistake being merely procedural, and the defendant not having been misled by the error, 'There is nothing sacred about process or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created not to hinder and delay, but to facilitate and promote the administration of justice.' (Alonso vs. Villamor, 16 Phil., 315, 321; Chua Kiong vs. Whitaker, et al., 46 Phil. 578.)"

"The complaint, Exh. 'C', was dismissed by the Court, without prejudice (Exh. 'H-1') on September 3, 1957, and motion for reconsideration dated September 12, 1957 was denied (Exh. 'H-2') on September 21, 1957. The instant complaint was filed on May 8, 1958. The Rules of Court (See 132 thereof) is applicable in the computation of time. Now, as correctly pointed out by the plaintiffs' counsel, by simple mathematical computation, the present action was filed less than nine (9) months after the notice of rejection received by plaintiffs on April 19, 1956, because the filing of the original complaint stopped the running of the period." (Decision, pp. 42-43, R.O.A.)

In view of the reasons thus above quoted, the court rendered decision in favor of the plaintiffs.

On the appeal before this Court, defendant-appellant argues that the court below erred in holding that the filing of the previous suit tolled or suspended the running of the prescriptive period.

The clause subject of the issue is paragraph 13 of the policy, which reads as follows:

"13. If the claim be in any respect fraudulent, or if any false declaration is made or used in support thereof, or if any fraudulent means or devices are used by the Insured or any one acting on his behalf to obtain any benefit under this Policy, or, if the loss or damage be occasioned by the wilful act or with the connivance of the Insured, or, if the claim be made and rejected and an action or suit be not commenced within twelve months after such rejection or (in case of arbitration taking place in pursuance of the 18th condition of this Policy) within twelve months after the arbitrator or arbitrators or umpire shall have made their award all benefit under this Policy shall be forfeited." (Italics supplied). (Decision, p. 10, R.O.A.)

The appellant cites in support of its contention the cases of *E. Macias & Co. vs. Warner, Barne & Co., Ltd.*, 43 Phil., 551; *E. Macias & Co. vs. China Fire Insurance Co.*, 46 Phil., 345 and *Castillo, etc. vs. Metropolitan Insurance Co.*, 85 Phil., 678; 47 Off. Gaz., 4568).

In answer to appellant's contention, counsel for appellees contends that the action of the plaintiffs against the defendant had not yet prescribed at the time of the bringing of the action, because the period of prescription was interrupted by the filing of the first action against the Paramount Surety & Insurance Co., in accordance with Article 1155 of the Civil Code. Counsel further argues that the basis of the prescription of an action is the

abandonment by a person of his right of action or claim, so that any act of said person tending to show his intention not to abandon his right of action or claim, as the filing of the previous action in the case at bar, interrupts the period of prescription. Furthermore, counsel argues, the dismissal of the previous action is without prejudice, which means that plaintiffs have the right to file another complaint against the principal.

The basic error committed by the trial court is its view that the filing of the action against the agent of the defendant company was "merely a procedural mistake of no significance or consequence, which may be overlooked." The condition contained in the insurance policy that claims must be presented within one year after rejection is not merely a procedural requirement. The condition is an important matter, essential to a prompt settlement of claims against insurance companies, as it demands that insurance suits be brought by the insured while the evidence as to the origin and cause of destruction have not yet disappeared. It is in the nature of a condition precedent to the liability of the insurer, or in other terms, a resolatory clause, the purpose of which is to terminate all liabilities in case the action is not filed by the insured within the period stipulated.

The bringing of the action against the Paramount Surety & Insurance Company, the agent of the defendant company, can not have any legal effect except that of notifying the agent of the claim. Beyond such notification, the filing of the action can serve no other purpose. There is no law giving any effect to such action upon the principal. Besides, there is no condition in the policy that the action must be filed against the agent, and this Court can not by interpretation extend the clear scope of the agreement beyond what is agreed upon by the parties.

The case of *E. Macias & Co. vs. China Fire Insurance & Co.* has settled the issue presented by the appellees in the case at bar definitely against their claim. In that case we declared that the contractual limitation in an insurance policy prevails over the statutory limitation, as well as over the exceptions to the statutory limitations; that the contract necessarily supersedes the statute (of limitations) and the limitation is in all phases governed by the former. (*E. Macias & Co. vs. China Fire Insurance & Co.*, 46 Phil., p. 345-353.) As stated in said case and in accordance with the decision of the Supreme Court of the United States in *Riddlesbarger vs. Hartford Fire Insurance Co.* (7 Wall., 386), the rights of the parties flow from the contract of insurance, hence they are not bound by the statute of limitations nor by exemptions thereto. In the words of our own law, their contract is the law between the parties, and their agreement that an action on a claim denied by the insurer must be brought within one year from the denial, governs, not the rules on the prescription of actions.

The judgment appealed from is hereby set aside and the case dismissed, with costs against plaintiffs-appellees.

Bengzon, C. J., Padilla, Concepcion, Reyes, J. B. L., Barrera, Paredes, Dizon, De Leon, and Natividad, JJ., concur.

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