

A. CHAN LINTE, PLAINTIFF AND APPELLANT, VS. LAW UNION AND ROCK INSURANCE CO., LTD., DEFENDANT AND APPELLEE. A. CHAN LINTE, PLAINTIFF AND APPELLANT, VS. TOKYO MARINE INSURANCE CO...

G. R. No. 16398. December 14, 1921

Ponente: JOHNS, J.

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JOHNS, J.:

The plaintiff is a resident adult of the Philippine Islands, and the defendants are fire insurance companies duly licensed to do business here.

Plaintiff alleges that he was the owner of 30,992.50 kilos of hemp stored in the warehouse in Calbayog, Province of Samar, Philippine Islands, which on the 25th of March, 1916, he requested the defendant Law Union and Rock Insurance Co., Ltd., to insure against loss by fire in the sum of P5,000, and upon that date it issued its policy No. 1,787,379 in favor of the plaintiff against such loss until 4 o'clock p. m., of the 22d of March, 1917, and that the policy was delivered to the plaintiff in consideration of which he paid the company a premium of P87.50. That in consideration of other previous payments, the policy was renewed from time to time and continued in force and effect to and including March 22, 1919; that during the life of the policy the hemp was destroyed by fire in the bodega where it was insured; that its value was P21,296.27; that he at once notified the defendant of the loss, and in all other respects complied with the terms and conditions of the policy, and made a demand for the payment of the full amount of the insurance. That defendant refused and still refuses to pay the same or any part thereof, and plaintiff prays for judgment for P5,000, with interest and costs.

In his amended complaint he alleges that after the commencement of the action, the defendant requested that its liability should be submitted to arbitration, in accord with the provisions of the policy, and that "plaintiff acceded to the requirement made by said defendant as aforesaid, but not that the award of arbitration should be conclusive or final, or deprive the courts of jurisdiction, and by agreement of both plaintiff and defendant Frank B. Ingersoll was named sole arbitrator, and both parties informally presented evidence before him and he made return of arbitration to the effect that said plaintiff had only seven bales of hemp destroyed in the fire of April 10, 1918, as hereinbefore set forth, with which return the said plaintiff is dissatisfied, and comes to this court for proper action under this amended complaint."

For answer the defendant alleges that, claiming a loss under the policy, the plaintiff made a claim against the defendant for P5,000, that a difference arose between them as to the amount of the alleged loss, and that, under the terms of the policy, an arbitrator was agreed upon and selected by the mutual consent of both parties, for the purpose of deciding the alleged difference; that on December 28, 1918, the arbitrator found that only seven bales of hemp of the grade "ovillo" were destroyed.

For supplemental answer to the amended complaint, the defendant further alleges that on July 8, 1919, the arbitrator filed a supplemental report and award wherein he finds from the evidence submitted that the total value

of the seven bales of plaintiff's hemp destroyed by fire on April 10, 1918, was P608.34; that in addition to the defendant's policy, the same property was covered by two other fire insurance policies, by each of which the property in question was insured to the value of P5,000 against loss; that defendant has offered and is now willing to pay plaintiff its one-third of the loss in full satisfaction of its liability.

The other insurance companies are Tokyo Marine Insurance Co., Ltd., and the Chine Fire Insurance Co., Ltd., defendants and appellees.

After the filing of the amended complaint, both parties agreed upon Frank B. Ingersoll as arbitrator, and submitted to him the evidence pro and con. His first finding was made on December 28, 1918, and on July 8, 1919, he filed a supplemental report in which he found the value of the property destroyed to be P608.34.

It was stipulated "that the arbitration clauses of the policies of insurance issued by the Law Union & Rock Insurance Co., Ltd., and the Chine Fire Insurance Co., Ltd., are in terms as follows, to wit:

" If any difference arises as to the amount of any loss or damage, such difference shall independently of all other questions be referred to the decision of an arbitrator, to be appointed in writing by the parties in difference, or, if they cannot agree upon a single arbitrator, to the decision of two disinterested persons as arbitrators, of whom one shall be appointed in writing by each of the parties within two calendar months after having been required so to do in writing by the other party. In case either party shall refuse or fail to appoint an arbitrator within two calendar months after receipt of notice in writing requiring appointment, the other party shall be at liberty to appoint a sole arbitrator; and in case of disagreement between the arbitrators, the difference shall be referred to the decision of an umpire who shall have been appointed by them in writing before entering on the reference and who shall sit with the arbitrators and preside at their meetings. The death of any party shall not revoke or affect the authority or powers of the arbitrator, arbitrators or umpire respectively; and in the event of the death of an arbitrator or umpire, another shall in each case be appointed in his stead by the party or arbitrators (as the case may be), by whom the arbitrator or umpire so dying was appointed. The costs of the reference and of the award shall be in the discretion of the arbitrator, arbitrators or umpire making the award. And it is hereby expressly stipulated and declared that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage if disputed shall be first obtained.

"That the arbitration clause in the policy issued by the Tokyo Marine Insurance Company, Limited, is as follows, to wit:

"If any difference shall arise with respect to any claim for loss or damage by fire and no fraud be suspected, and the Company does not elect to rebuild, repair, reinstate or replace same, such difference shall be submitted to arbitrators, indifferently chosen; whose award, or that of their umpire, shall be conclusive."

Any liability arising out of the fire should be borne by the defendants in equal parts; that each of them has offered in writing to pay the plaintiff its one-third of the amount of the plaintiff's loss, as ascertained by the arbitrator.

"It is understood that in making this stipulation plaintiff shall not be deemed to have waived his right to contend, as a matter of law or fact, that the award of the arbitrator is not conclusive upon him and that the arbitrator was without authority to supplement or amend his findings after having once rendered decision; and that defendants have not waived their right to contend that such arbitration is conclusive, and that no evidence of the amount of the loss alleged to have been suffered by plaintiff should be considered, but that his right to recovery is limited to the amount of damage found by the arbitrator to have been suffered by him."

On November 6, 1919, "it is hereby stipulated and agreed that the above entitled causes be and they are hereby submitted to the court upon the evidence taken at the trial and the depositions taken in "Samar before the justice of the peace of the municipality of Calbayog, and by him transmitted to the clerk of this court; provided, that

nothing herein contained shall be construed as a waiver of the contention of defendants that the award of the arbitrator is conclusive, and that no evidence of the amount of the loss other than such award should be considered."

After the testimony was taken, the trial court rendered judgment against each of the defendants for P202.78, and that plaintiff should pay the costs of the action, from which he appealed, claiming that the court erred in holding that the decision of the arbitrator is conclusive or in any way binding on the plaintiff; that the arbitrator's decision is in the main supported by the evidence; and that it erred in not awarding judgment for the plaintiff, as prayed for in his complaint.

It will be noted that the policies of the Law Union and Rock Insurance Co., Ltd., and The Chine Fire Insurance Co., Ltd., provide for arbitration and expressly stipulated "that it shall be a condition precedent to any right of action or suit upon this policy that the award by such arbitrator, arbitrators or umpire of the amount of the loss or damage if disputed shall be first obtained," and that the action was brought without making any effort to adjust the loss by arbitration. The policy of Tokyo Marine Insurance Co., Ltd., provides that in the event of a difference it "shall be submitted to arbitrators, indifferently chosen, whose award, or that of their umpire, shall be conclusive."

After the action was brought, and upon the request of the defendant, an arbitrator was chosen to whom the evidence of the loss was submitted. On December 28, 1918, he found that only seven bales of hemp of the grade "ovillo" were destroyed, but did not then make any finding as to its value. July 8, 1919, he made and filed a supplemental report in which he found that the value of the hemp destroyed by the fire on April 10, 1918, was P608.34.

The plaintiff contends; First, that the arbitration clauses are null and void as against public policy; second, that the award of the arbitrator of December 28, 1918, without finding the value of the property destroyed, was final, and that on July 8, 1919, he had no authority to make a supplemental finding as to the value of the property; and, third, that upon the evidence the court should have found for the plaintiff. Upon the first point he cites the case of Wahl and Wahl vs. Donaldson, Sims & Co: (2 Phil, 301), which apparently sustains his contention. That case holds that "a clause in a contract providing that all matters in dispute between the parties shall be referred to arbitrators and to them alone is contrary to public policy and cannot oust the courts of jurisdiction."

In Chang vs. Royal Exchange Assurance Corporation of London (8 Phil., 399), agreement was very similar to the one here with the two defendants above quoted, and it was there held that such a condition for arbitration is valid, and that, unless there was an effort to comply, no action could be maintained.

In Allen vs. Province of Tayabas (38 Phil, 356), it is said:

"* * * It would be highly improper for courts out of untoward jealousy to annul laws or agreements which seek to oust the courts of their jurisdiction * * *. Unless the agreement is such as absolutely to close the doors of the courts against the parties, which agreement would be void (Wahl and Wahl vs. Donaldson, Sims & Co. [1903], 2 Phil., 301), courts will look with favor upon such amicable arrangements and will only with great reluctance interfere to anticipate or nullify the action of the arbitrator. * * *."

In the instant case, it will be noted that sometime after the action was commenced and upon the request of the defendants, the plaintiff agreed to arbitrate under the terms and provisions of the policies; that the parties mutually agreed upon an arbitrator; and that each appeared before him and offered his or its evidence upon the questions in dispute. There is no claim or pretense that the proceedings were not honestly and fairly conducted. Having formally agreed and submitted to an arbitration after the action was commenced, it may well be doubted whether the plaintiff can at this time question the validity of the proceedings, except upon the ground of fraud or mistake.

Ruling Case Law, vol. 2, p. 359, says that when the subject-matter of a pending suit is submitted to arbitration without rule of court "there is a conflict among the authorities as to whether or not the mere submission effects a discontinuance of the action. The majority rule is that the parties themselves show an intent to discontinue the pending suit by substituting another tribunal, so that a submission furnishes ground for a discontinuance."

On page 352 of the same volume, it is said:

"Arbitration as a method of settling disputes and controversies is recognized at common law. The award of the arbitrators is binding on the parties, but, in the absence of statute, the successful party can only enforce his rights thereunder by a suit at law. Thus the only gain by a common law arbitration is the substitution of the definite findings of the award as the basis of a suit, in the place of the former unsettled rights of the parties. In an action on the award the award itself is conclusive evidence of all matters therein contained, provided the arbitrators have not exceeded the powers delegated to them by the agreement of submission. The courts regard matters submitted as concluded by the award, and in an action thereon they will not review the merits of the arbitrators' findings."

Corpus Juris, vol. 5, p. 16, says:

"The settlement of controversies by arbitration is an ancient practice at common law. In its broad sense it is a substitution, by consent of parties, of another tribunal for the tribunals provided by the ordinary processes of law; a domestic tribunal, as contradistinguished from a regularly organized court proceeding according to the course of the common law, depending upon the voluntary act of the parties disputant in the selection of judges of their own choice. Its object is the final disposition, in a speedy and inexpensive way, of the matters involved, so that they may not become the subject of future litigation between the parties."

On page 20, it is said:

"4. APPROVED METHOD OF SETTLEMENT; FAVORED BY CONSTRUCTION.—Although arbitration was recognized at the common law as a mode of adjusting matters in dispute, especially such as concerned personal chattels and personal wrongs, yet, from efforts perceptible in the earlier cases to construe arbitration proceedings and awards so as to defeat them, it would seem that they were not originally favored by the courts. This hostility, however, has long since disappeared, and, by reason of the fact that the proceeding represents a method of the parties' own choice and furnishes a more expeditious and less expensive means of settling controversies than the ordinary course of regular judicial proceedings, it is the policy of the law to favor arbitration. Therefore every reasonable intendment will be indulged to give effect to such proceedings, and in favor of the regularity and integrity of the arbitrators' acts." On page 43, it is said:

"Where a contract contains a stipulation, not that all questions arising thereunder, whether as to the validity or effect of such contract, or otherwise, shall be submitted to arbitration, but that the decision of arbitrators on a certain question or questions, such as the quantity, quality, or price of materials or workmanship, the value of work, the amount of loss or damage, or the like, shall be a condition precedent to the right of action on the contract itself, no fixed sum being stated in the contract, such stipulation will be enforced, because the parties to a contract have a right to adopt whatever method they see fit for determining such questions, and until the method adopted has been pursued, or some sufficient reason given for not pursuing it, no action can be brought on the contract. 'Freedom to contract for arbitration to this extent,' it has been said, 'imports no invasion of the province of the courts, and there is no ground upon which a right so essential to the convenient transaction of modern business affairs can be denied,' nor is such agreement objectionable as being against public policy. In order to give effect to such an agreement it must of course appear that the matter proposed to be referred is a difference, within the meaning of the agreement."

In the instant case, there was no dispute about the policy of insurance or the fire. The only real difference was the amount of the loss which plaintiff sustained, and that was the only question submitted to arbitration. In December,

the arbitrator found the amount of plaintiff's hemp which was destroyed, but did not find its value.

Hence the award on the question submitted was not complete or final. In the finding of the actual value of the hemp, there was no change or revision of any previous finding. It was simply the completion by the arbitrator of an unfinished work. No formal notice was served on the arbitrator, and he was not removed or discharged, and until such time as his duties were fully performed, or he was discharged, he would have the legal right to complete his award. The plaintiff, having agreed to arbitration after the action was commenced and submitted his proof to the arbitrator, in the absence of fraud or mistake, is estopped and bound by the award. Where a plaintiff has commenced an action to recover upon an insurance policy, and then voluntarily submits the amount of his loss to arbitration, he cannot ignore or nullify the award and treat it as void upon the ground that he is dissatisfied with the decision.

Judgment is affirmed, with costs to the appellee. So ordered.

Araullo, C. J., Johnson, Street, Malcolm, Avancena, Villamor, and Romualdez, JJ., concur.

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