

E. MACIAS & CO., IMPORTERS AND EXPORTERS, PLAINTIFF AND APPELLANT, VS. WARNER, BARNES & CO., IN ITS CAPACITY AS AGENTS OF “THE CHINA FIRE INSURANCE CO.,” OF “THE YANG-TSZE” AND ...

G. R. No. 16492. March 09, 1922

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STATEMENT

The plaintiff is a corporation duly registered and domiciled in Manila. The defendant is a corporation duly licensed to do business in the Philippine Islands, and is the resident agent of insurance companies "The China Fire Insurance Company, Limited, of Hongkong," "The Yang-Tsze Insurance Association Limited, of Shanghai," and "The State Assurance Company, Limited, of Liverpool." The plaintiff is an importer of textures and commercial articles for wholesale. In the ordinary course of business, it applied for, and obtained, the following policies against loss by fire:

Policy No. 4143, issued by The China Fire Insurance Co, Ltd., for..... P12,000

Policy No. 4382, issued by The China Fire Insurance Co., Ltd., for..... 15,000

Policy No. 326, issued by The Yang-Tsze Insurance Ass'n., Ltd., for..... 10,000

Policy No. 796111, issued by The State Assurance Co., Ltd., for..... 8,000

Policy No. 4143, for P12,000, recites that Mrs. Rosario Vizcarra, having paid to the China Fire Insurance Company, Limited, P102 for insuring against loss or damage by fire certain merchandise the description of which follows, "the company agrees with the insured that, if the property above described, or any part thereof, shall be destroyed or damaged by fire between September 16, 1918, and September 16, 1919," etc., "the company will, out of its capital, stock and funds, pay or make good all such loss or damage, not exceeding" the amount of the policy. This policy was later duly assigned to the plaintiff.

Policy No. 4382, for P15,000, was issued by the same company to, and in the name of, the plaintiff.

Policy No. 326, for P10,000, was issued to, and in the name of the plaintiff by The Yang-Tsze Insurance Association, Limited, and recites that the premium of P125 was paid by the plaintiff to the association, and that, in the event of loss by fire between certain dates, "the funds and property of the said association shall be subject and liable to pay, reinstate, or make good to the said assured, their heirs, executors, or administrators, such loss or damage as shall be occasioned by fire to the property above-mentioned and hereby insured," not exceeding the amount of the policy.

Policy No. 796111, for P8,000, was issued by The State Assurance Company, Limited, to the plaintiff for a premium of P100, which was paid to the Assurance Company through the defendant, its authorized agent, and recites that "the company agrees with the insured that in the event of loss by fire between certain dates, the company will, out of its capital, stock and funds, pay the amount of such loss or damage," not exceeding the

amount of the policy, and it is attested by the defendant, through its "Cashier and Accountant and Manager, Agents, State Assurance Co., Ltd.," authorized agents of the Assurance Company.

Policy No. 4143 is attested "on behalf of the The China Fire Insurance Company, Limited," by the cashier and accountant and manager of the defendant, as agents of The China Fire Insurance Company, Limited. The same is true as to policy No. 4382.

Policy No. 326 recites the payment of a premium of P125 by the plaintiff to The Yang-Tsze Insurance Association, Limited, and that, in the event of loss, "the funds and property of the said association shall be subject and liable to pay, reinstate, or make good to the said assured, their heirs, executors, or administrators, such loss or damage as shall be occasioned by fire or lightning to the property" insured, not exceeding the amount of the policy, and it is attested by the defendant, through "its cashier and accountant and manager, as agents of the association "under the authority of a Power of Attorney from The Yang-Tsze Insurance Association, Limited," "to sign, for and on behalf of the said Association, etc."

March 25, 1919, and while the policies were in force, a loss occurred in which the insured property was more or less damaged by fire and the use of water resulting from the fire.

The plaintiff made a claim for damages under its policies, but could not agree as to the amount of loss sustained. It sold the insured property in its then damaged condition, and brought this action against Warner, Barnes & Co., in its capacity as agents, to recover the difference between the amount of the policies and the amount realized from the sale of the property, and in the first cause of action, it prayed for judgment for P23,052.99, and in the second cause of action P9,857.15.

The numbers and amounts of the policies and the names of the insurance companies are set forth and alleged in the complaint.

The answer admits that the defendant is the resident agent of the insurance companies, the issuance of the policies, and that a fire occurred on March 25, 1919, in the building in which the goods covered by the insurance policies were stored, and that to extinguish the fire three packages of goods were damaged by water not to exceed P500, and denies generally all other material allegations of the complaint.

As a further and separate defense, the defendant pleads certain provisions in the policies, among which was a written notice of loss, and all other insurance and certain detailed information. It is then alleged-

"That although frequently requested to do so, plaintiff failed and refused to deliver to defendant or to any other person authorized to receive it, any claim in writing specifying the articles or items of property damaged or destroyed and of the alleged amount of the loss or damage caused thereto.

"That defendant was at all times ready and willing to pay, on behalf of the insurance companies by whom said policies were issued, and to the extent for which each was proportionately liable, the actual damage to plaintiff's goods covered by the risks insured against, upon compliance within the time limited, with the terms of the clause of the contracts of insurance above set forth."

Defendant prays judgment for costs.

Before the trial, counsel for the defendant objected to the introduction of any evidence in the case, and moved "that judgment be entered for the defendant on the pleadings upon the ground that it appears from the averments of the complaint that the plaintiff has had no contractual relations with the defendant, and that the action has not been brought against the real party in interest." The objection and motion was overruled and exception duly taken. After trial the court found that there was due the plaintiff from the three insurance companies P18,493.29, with

interest thereon at the rate of 6 per cent per annum, from the date of the commencement of the action, and costs, and rendered the following judgment:

"It is, therefore, ordered that judgment be entered against Warner, Barnes & Co., Ltd., in its capacity as agent and representative in the Philippine Islands for The China Fire Insurance Company, Ltd., The Yang-Tsze Insurance Association, Ltd., and The State Assurance Co., Ltd., for the payment to the plaintiff, E. Macias & Co., of the sum of P18,493.29, the amount of this judgment to be prorated by Warner, Barnes & Co., among the three insurance companies above-mentioned by it represented, in proportion to the interest insured by each of said three insurance companies, according to the policies issued by them in favor of the plaintiff, and sued upon in this action."

The defendant then filed a motion to set aside the judgment and for a new trial, which was overruled and exception taken. From this judgment the defendant appealed, claiming that "the court erred in overruling defendant's motion for judgment on the pleadings; that the court erred in giving judgment for the plaintiff; that the court erred in denying defendant's motion for a new trial," and specifying other assignments which are not material to this opinion. Plaintiff also appealed.

Johns, J.:

The material facts are not in dispute. It must be conceded that the policies in question were issued by the different insurance companies, through the defendant as their respective agent; that they were issued in consideration of a premium which was paid by the insured to the respective companies for the amount of the policies, as alleged; that the defendant was, and is now, the resident agent in Manila of the companies, and was authorized to solicit and do business for them as such agent; that each company is a foreign corporation. The principal office and place of business of The China Fire Insurance Company is at Hongkong ; of The Yang-Tsze Insurance Association is at Shanghai ; and of The State Assurance Company is at Liverpool. As such foreign corporations they were duly authorized and licensed to do insurance business in the Philippine Islands, and, to that end and for that purpose, the defendant corporation, Warner, Barnes & Co., was the agent of each company.

All of the policies are in writing, and recite that the premium was paid by the insured to the insurance company which issued the policy, and that, in the event of a loss, the insurance company which issued it will pay to the insured the amount of the policy.

This is not a case of an undisclosed agent or an undisclosed principal. It is a case of a disclosed agent and a disclosed principal.

The policies on their face show that the defendant was the agent of the respective companies, and that it was acting as such agent in dealing with the plaintiff. That in the issuance and delivery of the policies, the defendant was doing business in the name of, acting for, and representing, the respective insurance companies. The different policies expressly recite that, in the event of a loss, the respective companies agree to compensate the plaintiff for the amount of the loss. The defendant company did not insure the property of the plaintiff, or in any manner agree to pay the plaintiff the amount of any loss. There is no contract of any kind, either oral or written, between the plaintiff and Warner, Barnes & Co. Plaintiff's contracts are with the insurance companies, and are in writing, and the premiums were paid to the insurance companies and the policies were issued by, and in the name of, the insurance companies, and on the face of the policy itself, the plaintiff knew that the defendant was acting as agent for, and was representing, the respective insurance companies in the issuance and delivery of the policies. The defendant company did not contract or agree to do anything or to pay the plaintiff any, money at any time or on any condition, either as agent or principal.

There is a very important distinction between the power and duties of a resident insurance agent of a foreign

company and that of an executor, administrator, or receiver. An insurance agent as such is not responsible for, and does not have, any control over the corpus or estate of the corporate property, as does an executor, administrator, or receiver. Subject only to the order of the court, such officers are legal custodians and have actual possession of the corporate property. It is under their control and within their jurisdiction.

As stated by counsel for Warner, Barnes & Co., an attorney of record for an insurance company has greater power and authority to act for, and bind, the company than does a soliciting agent of an insurance company. Yet, no attorney would contend that a personal action would lie against local attorneys who represent a foreign corporation to recover on a contract made by the corporation. On the same principle by which plaintiff seeks to recover from the defendant, an action could be maintained against the cashier of any bank on every foreign draft which he signed for, and on behalf of, the bank.

Every cause of action ex contractu must be founded upon a contract, oral or written, either express or implied.

Warner, Barnes & Co., as principal or agent, did not make any contract, either oral or written, with the plaintiff. The contracts were made between the respective insurance companies and the insured, and were made by the insurance companies, through Warner, Barnes & Co., as their agent.

As in the case of a bank draft, it is not the cashier of the bank who makes the contract to pay the money evidenced by the draft, it is the bank, acting through its cashier, that makes the contract. So, in the instant case, it was the insurance companies, acting through Warner, Barnes & Co., as their agent, that made the written contracts with the insured.

The trial court attached much importance to the fact that in the further and separate answer, an admission was made "that defendant was at all times ready and willing to pay, on behalf of the insurance companies by whom each was proportionately liable, the actual damage" sustained by the plaintiff covered by the policies upon the terms and conditions therein stated.

When analyzed, that is nothing more than a statement that the companies were ready and willing to prorate the amount when the losses were legally ascertained. Again, there is no claim or pretense that Warner, Barnes & Co. had any authority to act for, and represent the, insurance companies in the pending action, or to appear for them or make any admission which would bind them. As a local agent, it could not do that without express authority. That power could only be exercised by an executive officer of the company, or a person who was duly authorized to act for, and represent, the company in legal proceedings, and there is no claim or pretense, either express or implied, that the defendant had any such authority.

Plaintiff's cause of action, if any, is direct against the insurance companies that issued the policies and agreed to pay the losses.

The only defendant in the instant case is "Warner, Barnes & Co., in its capacity as agents of" the insurance companies. Warner, Barnes & Co. did not make any contract with the plaintiff, and are not liable to the plaintiff on any contract, either as principal or agent. For such reason, plaintiff is not entitled to recover its losses from Warner, Barnes & Co., either as principal or agent. There is no breach of any contract with the plaintiff by Warner, Barnes & Co., either as agent or principal, for the simple reason that Warner, Barnes & Co., as agent or principal, never made any contract, oral or written, with the plaintiff. This defense was promptly raised before the taking of the testimony, and again renewed on the motion to set aside the judgment.

Plaintiff's own evidence shows that any cause of action it may have is against the insurance companies which issued the policies.

The complaint is dismissed, and the judgment of the lower court is reversed, and one will be entered here in favor of Warner, Barnes & Co., Ltd., against the plaintiff, for costs in both this and the lower court. So ordered.

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

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