

**EQUITABLE INSURANCE AND CASUALTY COMPANY, INC., PLAINTIFF
AND APPELLEE, VS. RURAL INSURANCE AND SURETY COMPANY,
INC., DEFENDANT AND APPELLANT.***G.R. No. 17436. January 31, 1962*

Ponente: BARRERA, J.

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On May 26, 1959, plaintiff Equitable Insurance and Casualty Company, Inc. filed with the Court of First Instance of Manila a complaint (Civil Case No. 40232) against defendant Rural Insurance and Surety Company, Inc. alleging, as first cause of action, that on November 11, 1957, plaintiff and defendant entered into a reciprocal facultative reinsurance agreement, wherein they agreed to cede to each other, by way of facultative reinsurance on policies of insurance or reinsurance issued by their respective fire insurance departments on risks situated in the Philippines, subject to the stipulations of the agreement; that pursuant to said agreement, plaintiff on January 29, 1958, reinsured for P2,000.00 with defendant as per Reinsurance Application No. 58/038 and accepted by defendant on the same date, the stock covered by fire insurance Policy No. 5880 issued by plaintiff in behalf of Messrs. Jean Farmers' Cooperative Marketing Association, Inc.; that on July 4, 1958, the stock insured and covered by said Policy No. 5880 was burned, and the share of the loss assumed by defendant as per reinsurance agreement was computed at P2,024.87 including adjuster's fee, for which plaintiff sent to defendant for payment by the latter, a statement of account dated March 12, 1959; that despite repeated demands by plaintiff, defendant refused and failed to pay the sum of P2,024.87. On the second cause of action, plaintiff alleged that pursuant to the same reinsurance agreement, plaintiff on March 24, 1958 reinsured in the sum of P2,000.00 with defendant as per Reinsurance Application No. 58/115 and accepted by defendant on the same date, stock covered by fire insurance Policy No. 6026, issued by plaintiff in behalf of Electric and Lamp Supplies (Mr. Pedro Casipe); that on October 13, 1958, said stock was burned and the share, of loss assumed by defendant as per reinsurance agreement with plaintiff was computed at P1,334.80 including adjuster's fee, for which plaintiff likewise sent a statement of account dated February 4, 1959, to defendant with the request that the same be paid; that notwithstanding repeated demands, defendant refused and failed to pay plaintiff; and that for defendant's failure to pay its share of the losses assumed by it, plaintiff has been compelled to institute the present action and to incur attorney's fees and expenses of litigation amounting to P500.00. Plaintiff prayed for judgment ordering the defendant to pay said sums of P2,024.80 and P1,334.80 with legal interest thereon from the date of the filing of the complaint until fully paid, P500.00 as attorney's fees, and the costs of the suit.

On June 9, 1959, defendant filed a motion to dismiss said complaint, on the ground that states no cause of action, as pursuant to Article VIII of the Reinsurance Agreement between the parties, before a court action can be brought the parties agreed to submit all disputes to a board of arbitrators. To this motion, plaintiff duly filed an opposition. On June 6, 1959, the court denied said motion to dismiss for lack of merit and required defendant to answer.

On June 20, 1959, defendant filed its answer alleging as affirmative defenses that paragraph 3, Article III of the

Reciprocal Reinsurance Agreement between the parties is controlled by Article VIII thereof; that the nature of the agreement is "self-liquidating between the parties" the reinsurer becoming a reinsured, and the reinsured becoming reinsurer; and that said agreement has not yet been abrogated, so that plaintiff's liability to defendant is not yet known, nor the liability of defendant to plaintiff. Defendant prayed that the complaint be dismissed and that plaintiff be ordered to pay to it attorney's fees in the sum of P700.00 and the costs of the suit.

On July 8, 1959, plaintiff filed a motion for judgment on the pleadings, which was opposed by defendant on July 13. On July 15, 1959, the court issued an order denying said motion.

Instead of going into a formal hearing, the parties on August 12, 1959, submitted the case for decision on the following stipulation of facts:

"1. That the defendant admits the allegations contained in paragraphs 1, 2, 8, 4, and all other allegations of the complaint, including the letter of the Assistant Insurance Commissioner, addressed to Miss Anunciacion Aznar, President of the Rural Insurance & Surety Co., dated May 4, 1959, which reads as follows:

'MADAM:

'We are enclosing herewith copy of the self-explanatory letter of Mr. S. A. Santos, General Manager of the above-subject company, dated April 11, 1959, with the request that we be favored with your comments thereon at an early date.

'Kindly give your preferential attention hereto.'

"2. That plaintiff admits that the issues and/or dispute subject of the present complaint were not submitted to a Board of Arbitrators and umpire, as provided in paragraph VIII of Annex 'A' to the complaint, but instead the matter was referred to the Insurance Commissioner as evidenced by the letter of said office quoted above." (Italics supplied).

On October 16, 1959, the Court rendered a decision the dispositive part of which reads:

"IN VIEW OF ALL THE FOREGOING, judgment is hereby rendered in favor of the plaintiff Equitable Insurance & Casualty Co. Inc. and against the defendant Rural Insurance & Surety Co., Inc., ordering the latter to pay to the former the sum of P2,024.87, under the first cause of action, with legal interest from the date of the filing of the complaint until fully paid; the sum of P1,334.80, under the second cause of action with legal interest from the date of the filing of the complaint, until fully paid; plus the further sum of P500.00 as attorney's fees and the costs of the suit."

From this decision, defendant appealed to the Court of Appeals which elevated the case to us, no question of fact being involved.

Under his first assignment of error, defendant-appellant insists that the trial court erred in failing to rule that plaintiff-appellee has no causes of action against it, the matter not having been referred to the decision of two arbitrators or umpire, which, it is claimed, is the condition precedent agreed upon in Article VIII of the Reinsurance Agreement entered into between the parties, to wit:

"ARTICLE VIII

"In the event of any question arising as to the meaning of, or any way connected with or relating to this Agreement, whether before or after its termination, the parties shall endeavor to arrive at a satisfactory compromise by amicable settlement rather than by court action. The dispute shall be referred to the decision of two arbitrators, of whom one shall be appointed in writing by each of the parties within thirty (30) days after having been required so to do by the other party in writing, and in case of disagreement between the

arbitrators, to the decision of the umpire to be appointed by them in writing before entering on the reference. Each party shall submit its case with all particulars within thirty days after their appointment. The seat of arbitration shall be in Manila, Philippines, and the expenses of arbitration shall be borne in equal proportion by the parties. The decision of the arbitrators or umpire, as the case may be, shall be final and binding on both the Company and the Reinsurer. The arbitrators and umpire shall not be bound by the strict rules of evidence and by judicial formalities in making the award."

It is contended that this agreement, not being contrary to law, moral or public policy but, on the other hand, dictated by "wisdom and propriety in insurance contracts because losses by fire can duly be determined by competent men who have technical knowledge on how to determine losses by fire", non-compliance therewith is fatal to the claim of plaintiff-appellee.

We find no merit in this contention. Under the abovequoted provision of the Reinsurance Agreement, it would seem clear that the requirement of submitting for decision to two arbitrators or an umpire the matter of losses by fire or the liability of the parties thereto arises only if and when the same is disputed by one of the parties. It does not appear in the instant case that appellant did dispute appellee's claims. Consequently, appellant may not invoke said provision in avoidance of its liability to appellee. On this point, the trial court correctly made the following observations, to which we fully agree and adopt as our own:

"It is true that paragraph (Article) VIII of said Reciprocal Facultative Reinsurance Agreement required that 'in the event of any question arising as to the meaning of, or any way connected with or relating to this Agreement, whether before or after its termination, the parties shall endeavor to arrive at a satisfactory compromise by amicable settlement rather than by court action'; and that the dispute should be referred to the decision of two arbitrators and umpire, as provided therein. However, in this particular case, there is absolutely no dispute between the two parties, because in the stipulation of facts, the defendant has admitted that plaintiff has paid its liability to the insured as per its fire insurance policies specified in the two causes of action of the complaint. Defendant has likewise, admitted its liability as reinsurer under the Reciprocal Facultative Reinsurance Agreement (Annex 'A' to the complaint) to pay to the plaintiff its proportional shares, the amounts of which are not disputed. Indeed, according to the complaint as admitted by the defendant, statements of account as to the amounts of its share as reinsurer and, for all that appears, said defendant has never questioned the correctness of said amounts. It is, likewise, admitted by the defendant in the stipulation of facts, that because of its failure to pay said amounts, the plaintiff, on April 11, 1959, complained to the Assistant Insurance Commissioner, for official intervention, but said defendant has continued to ignore plaintiff's demands for reimbursement under the reinsurance policies.

"Moreover, as decided by the Court of Appeals in the case of Buenaventura Maligad vs. United Assurance Co. Inc., 55 Off. Gaz., 6041:

'If in the course of the settlement of a loss, the action of the company or its agents amounts to a refusal to pay, the company will be deemed to have waived the condition precedent with reference to arbitration, and a suit upon the policy will lie. (*Chang vs. Assurance Corporation*, 8 Phil., 399)'. Italics supplied.

In the second and last assignment of error, appellant claims that "the court a quo erred in failing to rule that in a facultative obligation the right to choose an alternative remedy lies only with the debtor, who in this case is the herein defendant-appellant", and in support thereof, cites Article 1206 of the New Civil Code.

We find no connection whatsoever between this article and the agreement subject to this action, except the word "facultative" used in both. The term "facultative" is used in reinsurance contracts, and it is so used in this particular case, merely to define the right of the reinsurer to accept or not to accept participation in the risk insured. But once the share is accepted, as it was in the case at bar, the obligation is absolute and the liability assumed thereunder can be discharged by one and only way—payment of the share of the losses. There is no

alternative nor substitute prestation.

Wherefore, finding no error in the judgment appealed from of the trial court, the same is hereby affirmed, with costs against the defendant-appellant. So ordered.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L., Paredes, Dizon, and De Leon, JJ., concur.

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