

ALFONSO G. LOPEZ, PLAINTIFF AND APPELLANT, VS. FILIPINAS COMPAÑIA DE SEGUROS, DEFENDANT AND APPELLEE.

G.R. No. 19613. April 30, 1966

Ponente: REGALA, J.

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REGALA, J.:

This is an appeal by the plaintiff-appellant, Alfonso G. Lopez, from an order of the Court of First Instance of Manila, dated January 25, 1962, dismissing his complaint against the defendant-appellee, Filipinas Compañia de Seguros.

Prior to April 22, 1959, the plaintiff applied with the defendant company for the insurance of his property consisting of a Biederman truck tractor and a Winter Weils trailer from loss or damage in the amount of P26,000.00 and P10,000.00, respectively. In connection with the above application, the defendant company inquired of the plaintiff the following:

- "5. Has any company in respect of the insurance of any car or vehicle
- (a) declined, cancelled or refused to renew your insurance?
- (b) increased your premium on renewal?

To both questions, the plaintiff answered: "none," though the truth was at that time, the American International Underwriters of the Philippines (AIU) had already declined a similar application for insurance by the plaintiff in respect of the above-described vehicles.

On April 22, 1959, the defendant-appellee issued to the plaintiff-appellant two Commercial Vehicle Comprehensive Policies covering the above properties. On August 30, 1959, while the said policies were in force, the aforementioned vehicles figured in an accident at Bagabag, Nueva Vizcaya, resulting in the total loss of the tractor and partial damage to the trailer. Accordingly, the plaintiff gave notice of the same to the defendant company and made demand upon the latter for the payment to him of P27,962.00, the total amount of damages resulting from the accident.

On April 28, 1960, the defendant-appellant rejected the above claim by reason of, among others, the claimant's alleged "concealment of a material fact," namely: that the insured property previously been declined insurance by another company.

In view of the rejection of his claim by the defendant company, the plaintiff-appellant filed on May 27, 1960 with the Office of the Insurance Commissioner a complaint against the said company. On June 7, 1960, the Assistant Insurance Commissioner requested the defendant company to give its side of the above complaint and, thereafter, or on August 1, 1960, the said official "transmitted to the plaintiff, thru his counsel, the 'self-explanatory letters' dated June 12, 1960 of the American International Underwriters of the Philippines, Inc., and June 21, 1960 of the defendant, which the said office had received from said parties in connection with plaintiff's complaint, with the suggestion that in view of the reluctant attitude of plaintiff 'towards the company's proposal for the matter to be settled thru arbitration, and considering the informative facts disclosed' in the letter of the AIUPI, plaintiff should

pursue his case to the Court which has proper competence to resolve said matter."

On August 16, 1961, the plaintiff-appellant informed by letter the Office of the Insurance Commissioner that he was willing to submit his claim to arbitration and, in the premises, suggested that the Assistant Insurance Commissioner be designated as the sole arbitrator of the same. On September 1, 1960, the Insurance Commissioner informed the plaintiff-appellant of his willingness to act as the single arbitrator, provided that both parties to the dispute manifest in writing their conformity thereto and to abide by the arbitrator's award. The defendant-appellee, on the other hand, informed the Insurance Commissioner on September 22, 1960 that it could not consent to the above proposal since "the claim of the plaintiff cannot be resolved by arbitration, as recourse to arbitration referred to in the policy contract, envisioned only differences or disputes, 'with respect to the amount of the company's liability,' and not to cases where the company does not admit its liability to the insured." With this rejection, the plaintiff-appellant filed his complaint with the Court of First Instance of Manila on September 19, 1961.

Against the above complaint, the defendant-appellee filed on September 29, 1961 a motion to dismiss on the ground of prescription. The latter argued that the plaintiff's claim had already prescribed since it was not filed within twelve months from its rejection by the insurance company as stipulated under paragraph 9 of the General Conditions of Commercial Vehicle Comprehensive Policy Nos. 5598 and 5599, to wit:

"If a claim be made and rejected and an action or suit be not commenced within twelve months after such rejection or (in case of an arbitration taking place as provided herein) within twelve months after the arbitrator, arbitrators, or umpire shall have made their award then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recovered hereunder."

On January 25, 1962, the court a quo sustained the above motion and dismissed the complaint. Thus, the instant appeal.

The principal issue raised in this appeal is simple: Was the complaint filed by the plaintiff-appellant with the Office of the Insurance Commissioner on May 27, 1960 a commencement of an "action or suit" within the meaning and intent of general condition quoted above? If it was, then the plaintiff's complaint has not yet prescribed since the complaint filed with the said office was made on May 27, 1960 or just about a month after his claim was rejected by the defendant-appellee on April 28, 1960. On the other hand, if the abovequoted condition refers alone to an "action or suit" filed with a court of justice, as the Order appealed from urges and as the herein appellee maintains, then, indeed, must the finding of prescription in this incident be upheld. For, while the plaintiff's claim was rejected on April 28, 1960 by the insurance company, the "action or suit" thereon with a court of justice was filed some 17 months later, September 19, 1961.

We find for the appellee.

In 1 Moran 86 (1963 ed.), the following jurisprudence is expressed:

"Action is the act by which one sues another in a court of justice for the enforcement or protection of a right, or the prevention or redress of a wrong. Special proceeding is the act by which one seeks to establish the status or right of a party, or a particular fact. Hence, an action is distinguished from special proceeding in that the former is a formal demand of a right by one against another, while the latter is but a petition for a declaration of a status, right or fact." (Italics supplied).

The above distinction was laid down in connection with the definition of "action" in Rule 2, Section 1 of the Rules of Court that:

"SEC. 1. Action defined.—Action means an ordinary suit in a Court of Justice by which one party prosecutes

another for the enforcement or protection of a right, or the prevention or redress of a wrong." (*Italics supplied*).

Also, in 1 Am. Jur. 407, as cited in Francisco, Civil Procedure, p. 91, a suit is defined as:

"Suit is the prosecution or pursuit of some claim or demand in a court of justice, or any proceeding in a court of justice in which a plaintiff pursues his remedy to recover a right or claim." (*Italics supplied*)

Upon the authorities, therefore, it is settled that the terms "action" and "suit" are synonymous. Moreover, it is clear that the determinative or operative fact which converts a claim into an "action or suit" is the filing of the same with a "court of justice." Filed elsewhere, as with some other body or office not a court of justice, the claim may not properly be categorized under either term.

Apart from the foregoing, however, there is yet one other reason why the appellant's recourse to the Office of the Insurance Commissioner could not have been an "action or suit" which could have halted the running of the prescriptive period stipulated in the insurance policies involved. An "action or suit" is essentially "for the enforcement or protection of a right, or the prevention or redress of a wrong." (Rule 2, Sec. 1, Rules of Court). There is nothing in the Insurance Law, Act No. 2427, as amended, nor in any of its allied legislations, which empowers the Insurance Commissioner to adjudicate on disputes relating to an insurance company's liability to an insured under a policy issued by the former to the latter. The validity of an insured's claim under a specific policy, its amount, and all such other matters as might involve the interpretation and construction of the insurance policy, are issues which only a regular court of justice may resolve and settle. Consequently, the complaint filed by the appellant herein with the Office of the Insurance Commission could not have been an "action or suit."

The other assignments of error in the appellant's brief spring from or are consequences of the latter's view that the claim be filed with the Office of the Insurance Commissioner was an "action or suit" within the contemplation of paragraph 9 of the general condition earlier quoted. With our ruling above, therefore, the necessity to pass on them becomes inconsequential.

Wherefore, the order appealed from is hereby affirmed, with costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., and Zaldivar, JJ., concur.

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