

UNITED MERCHANTS CORPORATION, PETITIONER, VS. COUNTRY BANKERS INSURANCE CORPORATION, RESPONDENT.

G.R. No. 198588. July 11, 2012

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This Petition for Review on Certiorari[1] seeks to reverse the Court of Appeals' Decision[2] dated 16 June 2011 and its Resolution[3] dated 8 September 2011 in CA-G.R. CV No. 85777. The Court of Appeals reversed the Decision[4] of the Regional Trial Court (RTC) of Manila, Branch 3, and ruled that the claim on the Insurance Policy is void.

The Facts

The facts, as culled from the records, are as follows:

Petitioner United Merchants Corporation (UMC) is engaged in the business of buying, selling, and manufacturing Christmas lights. UMC leased a warehouse at 19-B Dagot Street, San Jose Subdivision, Barrio Manresa, Quezon City, where UMC assembled and stored its products.

On 6 September 1995, UMC's General Manager Alfredo Tan insured UMC's stocks in trade of Christmas lights against fire with defendant Country Bankers Insurance Corporation (CBIC) for P15,000,000.00. The Fire Insurance Policy No. F-HO/95-576 (Insurance Policy) and Fire Invoice No. 12959A, valid until 6 September 1996, states:

AMOUNT OF INSURANCE:

FIFTEEN

MILLION PESOS

PHILIPPINE

CURRENCY

x x x

PROPERTY INSURED: On stocks in trade only, consisting of Christmas Lights, the properties of the Assured or held by them in trust, on commissions, or on joint account with others and/or for which they are responsible in the event of loss and/or damage during the currency of this policy, whilst contained in the building of one lofty storey in height, constructed of concrete and/or hollow blocks with portion of galvanized iron sheets, under galvanized iron rood, occupied as Christmas lights storage.[5]

On 7 May 1996, UMC and CBIC executed Endorsement F/96-154 and Fire Invoice No. 16583A to form part of the Insurance Policy. Endorsement F/96-154 provides that UMC's stocks in trade were insured against additional

perils, to wit: “typhoon, flood, ext. cover, and full earthquake.” The sum insured was also increased to P50,000,000.00 effective 7 May 1996 to 10 January 1997. On 9 May 1996, CBIC issued Endorsement F/96-157 where the name of the assured was changed from Alfredo Tan to UMC.

On 3 July 1996, a fire gutted the warehouse rented by UMC. CBIC designated CRM Adjustment Corporation (CRM) to investigate and evaluate UMC’s loss by reason of the fire. CBIC’s reinsurer, Central Surety, likewise requested the National Bureau of Investigation (NBI) to conduct a parallel investigation. On 6 July 1996, UMC, through CRM, submitted to CBIC its Sworn Statement of Formal Claim, with proofs of its loss.

On 20 November 1996, UMC demanded for at least fifty percent (50%) payment of its claim from CBIC. On 25 February 1997, UMC received CBIC’s letter, dated 10 January 1997, rejecting UMC’s claim due to breach of Condition No. 15 of the Insurance Policy. Condition No. 15 states:

If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting in his behalf to obtain any benefit under this Policy; or if the loss or damage be occasioned by the willful act, or with the connivance of the Insured, all the benefits under this Policy shall be forfeited.[6]

On 19 February 1998, UMC filed a Complaint[7] against CBIC with the RTC of Manila. UMC anchored its insurance claim on the Insurance Policy, the Sworn Statement of Formal Claim earlier submitted, and the Certification dated 24 July 1996 made by Deputy Fire Chief/Senior Superintendent Bonifacio J. Garcia of the Bureau of Fire Protection. The Certification dated 24 July 1996 provides that:

This is to certify that according to available records of this office, on or about 6:10 P.M. of July 3, 1996, a fire broke out at United Merchants Corporation located at 19-B Dag[o]t Street, Brgy. Manresa, Quezon City incurring an estimated damage of Fifty-Five Million Pesos (P55,000,000.00) to the building and contents, while the reported insurance coverage amounted to Fifty Million Pesos (P50,000,000.00) with Country Bankers Insurance Corporation.

The Bureau further certifies that no evidence was gathered to prove that the establishment was willfully, feloniously and intentionally set on fire.

That the investigation of the fire incident is already closed being ACCIDENTAL in nature.[8]

In its Answer with Compulsory Counterclaim[9] dated 4 March 1998, CBIC admitted the issuance of the Insurance Policy to UMC but raised the following defenses: (1) that the Complaint states no cause of action; (2) that UMC’s claim has already prescribed; and (3) that UMC’s fire claim is tainted with fraud. CBIC alleged that UMC’s claim was fraudulent because UMC’s Statement of Inventory showed that it had no stocks in trade as of 31 December 1995, and that UMC’s suspicious purchases for the year 1996 did not even amount to P25,000,000.00. UMC’s GIS and Financial Reports further revealed that it had insufficient capital, which meant UMC could not afford the alleged P50,000,000.00 worth of stocks in trade.

In its Reply[10] dated 20 March 1998, UMC denied violation of Condition No. 15 of the Insurance Policy. UMC claimed that it did not make any false declaration because the invoices were genuine and the Statement of Inventory was for internal revenue purposes only, not for its insurance claim.

During trial, UMC presented five witnesses. The first witness was Josie Eborá (Eborá), UMC’s disbursing officer. Eborá testified that UMC’s stocks in trade, at the time of the fire, consisted of: (1) raw materials for its Christmas lights; (2) Christmas lights already assembled; and (3) Christmas lights purchased from local suppliers. These stocks in trade were delivered from August 1995 to May 1996. She stated that Straight Cargo Commercial Forwarders delivered the imported materials to the warehouse, evidenced by delivery receipts. However, for the

year 1996, UMC had no importations and only bought from its local suppliers. Eborá identified the suppliers as Fiber Technology Corporation from which UMC bought stocks worth P1,800,000.00 on 20 May 1996; Fuze Industries Manufacturer Philippines from which UMC bought stocks worth P19,500,000.00 from 20 January 1996 to 23 February 1996; and Tomco Commercial Press from which UMC bought several Christmas boxes. Eborá testified that all these deliveries were not yet paid. Eborá also presented UMC's Balance Sheet, Income Statement and Statement of Cash Flow. Per her testimony, UMC's purchases amounted to P608,986.00 in 1994; P827,670.00 in 1995; and P20,000,000.00 in 1996. Eborá also claimed that UMC had sales only from its fruits business but no sales from its Christmas lights for the year 1995.

The next witness, Annie Pabustan (Pabustan), testified that her company provided about 25 workers to assemble and pack Christmas lights for UMC from 28 March 1996 to 3 July 1996. The third witness, Metropolitan Bank and Trust Company (MBTC) Officer Cesar Martinez, stated that UMC opened letters of credit with MBTC for the year 1995 only. The fourth witness presented was Ernesto Luna (Luna), the delivery checker of Straight Commercial Cargo Forwarders. Luna affirmed the delivery of UMC's goods to its warehouse on 13 August 1995, 6 September 1995, 8 September 1995, 24 October 1995, 27 October 1995, 9 November 1995, and 19 December 1995. Lastly, CRM's adjuster Dominador Victorio testified that he inspected UMC's warehouse and prepared preliminary reports in this connection.

On the other hand, CBIC presented the claims manager Edgar Caguindagan (Caguindagan), a Securities and Exchange Commission (SEC) representative, Atty. Ernesto Cabrera (Cabrera), and NBI Investigator Arnold Lazaro (Lazaro). Caguindagan testified that he inspected the burned warehouse on 5 July 1996, took pictures of it and referred the claim to an independent adjuster. The SEC representative's testimony was dispensed with, since the parties stipulated on the existence of certain documents, to wit: (1) UMC's GIS for 1994-1997; (2) UMC's Financial Report as of 31 December 1996; (3) SEC Certificate that UMC did not file GIS or Financial Reports for certain years; and (4) UMC's Statement of Inventory as of 31 December 1995 filed with the BIR.

Cabrera and Lazaro testified that they were hired by Central Surety to investigate UMC's claim. On 19 November 1996, they concluded that arson was committed based from their interview with barangay officials and the pictures showing that blackened surfaces were present at different parts of the warehouse. On cross-examination, Lazaro admitted that they did not conduct a forensic investigation of the warehouse, nor did they file a case for arson.

For rebuttal, UMC presented Rosalinda Batallones (Batallones), keeper of the documents of UCPB General Insurance, the insurer of Perfect Investment Company, Inc., the warehouse owner. When asked to bring documents related to the insurance of Perfect Investment Company, Inc., Batallones brought the papers of Perpetual Investment, Inc.

The Ruling of the Regional Trial Court

On 16 June 2005, the RTC of Manila, Branch 3, rendered a Decision in favor of UMC, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and ordering defendant to pay plaintiff:

- a) the sum of P43,930,230.00 as indemnity with interest thereon at 6% per annum from November 2003 until fully paid;
- b) the sum of P100,000.00 for exemplary damages;
- c) the sum of P100,000.00 for attorney's fees; and
- d) the costs of suit.

Defendant's counterclaim is denied for lack of merit.

SO ORDERED.[11]

The RTC found no dispute as to UMC's fire insurance contract with CBIC. Thus, the RTC ruled for UMC's entitlement to the insurance proceeds, as follows:

Fraud is never presumed but must be proved by clear and convincing evidence. (see *Alonso v. Cebu Country Club*, 417 SCRA 115 [2003]) Defendant failed to establish by clear and convincing evidence that the documents submitted to the SEC and BIR were true. It is common business practice for corporations to have 2 sets of reports/statements for tax purposes. The stipulated documents of plaintiff (Exhs. 2 – 8) may not have been accurate.

The conflicting findings of defendant's adjuster, CRM Adjustment [with stress] and that made by Atty. Cabrera & Mr. Lazaro for Central Surety shall be resolved in favor of the former. Definitely the former's finding is more credible as it was made soon after the fire while that of the latter was done 4 months later. Certainly it would be a different situation as the site was no longer the same after the clearing up operation which is normal after a fire incident. The Christmas lights and parts could have been swept away. Hence the finding of the latter appears to be speculative to benefit the reinsurer and which defendant wants to adopt to avoid liability.

The CRM Adjustment report found no arson and confirmed substantial stocks in the burned warehouse (Exhs. QQQ) [underscoring supplied]. This is bolstered by the BFP certification that there was no proof of arson and the fire was accidental (Exhs. PPP). The certification by a government agency like BFP is presumed to be a regular performance of official duty. "Absent convincing evidence to the contrary, the presumption of regularity in the performance of official functions has to be upheld." (*People vs. Lapira*, 255 SCRA 85) The report of UCPB General Insurance's adjuster also found no arson so that the burned warehouse owner PIC was indemnified.[12]

Hence, CBIC filed an appeal with the Court of Appeals (CA).

The Ruling of the Court of Appeals

On 16 June 2011, the CA promulgated its Decision in favor of CBIC. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing premises, the instant appeal is GRANTED and the Decision of the Regional Trial Court, of the National Judicial Capital Region, Branch 3 of the City of Manila dated June 16, 2005 in Civil Case No. 98-87370 is REVERSED and SET ASIDE. The plaintiff-appellee's claim upon its insurance policy is deemed avoided.

SO ORDERED.[13]

The CA ruled that UMC's claim under the Insurance Policy is void. The CA found that the fire was intentional in origin, considering the array of evidence submitted by CBIC, particularly the pictures taken and the reports of Cabrera and Lazaro, as opposed to UMC's failure to explain the details of the alleged fire accident. In addition, it found that UMC's claim was overvalued through fraudulent transactions. The CA ruled:

We have meticulously gone over the entirety of the evidence submitted by the parties and have come up with a conclusion that the claim of the plaintiff-appellee was indeed overvalued by transactions which were fraudulently concocted so that the full coverage of the insurance policy will have to be fully awarded to the plaintiff-appellee.

First, We turn to the backdrop of the plaintiff-appellee's case, thus, [o]n September 6, 1995 its stocks-in-trade were insured for Fifteen Million Pesos and on May 7, 1996 the same was increased to 50 Million Pesos. Two months thereafter, a fire gutted the plaintiff-appellee's warehouse.

Second, We consider the reported purchases of the plaintiff-appellee as shown in its financial report dated December 31, 1996 vis-à-vis the testimony of Ms. Eborá thus:

1994- P608,986.00

1995- P827,670.00

1996- P20,000,000.00 (more or less) which were purchased for a period of one month.

Third, We shall also direct our attention to the alleged true and complete purchases of the plaintiff-appellee as well as the value of all stock-in-trade it had at the time that the fire occurred. Thus:

Exhibit Source Amount (pesos) Dates Covered

Exhs. "P"- "DD", inclusive

Fuze Industries Manufacturer Phils.

19,550,400.00

January 20, 1996

January 31, 1996

February 12, 1996

February 20, 1996

February 23, 1996

Exhs. "EE"- "HH", inclusive

Tomco Commercial Press

1,712,000.00

December 19, 1995

January 24, 1996

February 21, 1996

November 24, 1995

Exhs. "II"- "QQ", inclusive

Precious Belen Trading

2,720,400.00

January 13, 1996

January 19, 1996

January 26, 1996

February 3, 1996

February 13, 1996

February 20, 1996

February 27, 1996

Exhs. "RR"- "EEE", inclusive

Wisdom Manpower Services

361,966.00

April 3, 1996

April 12, 1996

April 19, 1996
April 26, 1996
May 3, 1996
May 10, 1996
May 17, 1996
May 24, 1996
June 7, 1996
June 14, 1996
June 21, 1996
June 28, 1996
July 5, 1996

Exhs. "GGG"- "NNN", inclusive

Costs of Letters of Credit for imported raw materials

15,159,144.71

May 29, 1995
June 15, 1995
July 5, 1995
September 4, 1995
October 2, 1995
October 27, 1995
January 8, 1996
March 19, 1996

Exhs. "GGG-11" - "GGG-24",
"HHH-12", "HHH-22",
"III-11", "III-14",
"JJJ-13", "KKK-11", "LLL-5"

SCCFI statements of account

384,794.38

June 15, 1995
June 28, 1995
August 1, 1995
September 4, 1995
September 8, 1995
September 11, 1995
October 30, 199[5]
November 10, 1995
December 21, 1995

TOTAL

44,315,024.31

Fourth, We turn to the allegation of fraud by the defendant-appellant by thoroughly looking through the pieces of evidence that it adduced during the trial. The latter alleged that fraud is present in the case at bar as shown by the discrepancy of the alleged purchases from that of the reported purchases made by plaintiff-appellee. It had also averred that fraud is present when upon verification of the address of Fuze Industries, its office is

nowhere to be found. Also, the defendant-appellant expressed grave doubts as to the purchases of the plaintiff-appellee sometime in 1996 when such purchases escalated to a high 19.5 Million Pesos without any contract to back it up.[14]

On 7 July 2011, UMC filed a Motion for Reconsideration,[15] which the CA denied in its Resolution dated 8 September 2011. Hence, this petition.

The Issues

UMC seeks a reversal and raises the following issues for resolution:

I.

WHETHER THE COURT OF APPEALS MADE A RULING INCONSISTENT WITH LAW, APPLICABLE JURISPRUDENCE AND EVIDENCE AS TO THE EXISTENCE OF ARSON AND FRAUD IN THE ABSENCE OF “MATERIALLY CONVINCING EVIDENCE.”

II.

WHETHER THE COURT OF APPEALS MADE A RULING INCONSISTENT WITH LAW, APPLICABLE JURISPRUDENCE AND EVIDENCE WHEN IT FOUND THAT PETITIONER BREACHED ITS WARRANTY.[16]

The Ruling of the Court

At the outset, CBIC assails this petition as defective since what UMC ultimately wants this Court to review are questions of fact. However, UMC argues that where the findings of the CA are in conflict with those of the trial court, a review of the facts may be made. On this procedural issue, we find UMC’s claim meritorious.

A petition for review under Rule 45 of the Rules of Court specifically provides that only questions of law may be raised. The findings of fact of the CA are final and conclusive and this Court will not review them on appeal,[17] subject to exceptions as when the findings of the appellate court conflict with the findings of the trial court.[18] Clearly, the present case falls under the exception. Since UMC properly raised the conflicting findings of the lower courts, it is proper for this Court to resolve such contradiction.

Having settled the procedural issue, we proceed to the primordial issue which boils down to whether UMC is entitled to claim from CBIC the full coverage of its fire insurance policy.

UMC contends that because it had already established a prima facie case against CBIC which failed to prove its defense, UMC is entitled to claim the full coverage under the Insurance Policy. On the other hand, CBIC contends that because arson and fraud attended the claim, UMC is not entitled to recover under Condition No. 15 of the Insurance Policy.

Burden of proof is the duty of any party to present evidence to establish his claim or defense by the amount of evidence required by law,[19] which is preponderance of evidence in civil cases.[20] The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of proof to obtain a favorable judgment.[21] Particularly, in insurance cases, once an insured makes out a prima facie case in its favor, the burden of evidence shifts to the insurer to controvert the insured’s prima facie case.[22] In the present case, UMC established a prima facie case against CBIC. CBIC does not dispute that UMC’s stocks in trade were insured against fire under the Insurance Policy and that the warehouse, where UMC’s stocks in trade were stored, was gutted by fire on 3 July 1996, within the duration of the fire insurance. However, since CBIC alleged an excepted risk, then the burden of evidence shifted to CBIC to prove such exception.

An insurer who seeks to defeat a claim because of an exception or limitation in the policy has the burden of establishing that the loss comes within the purview of the exception or limitation.[23] If loss is proved apparently within a contract of insurance, the burden is upon the insurer to establish that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability.[24] In the present case, CBIC failed to discharge its primordial burden of establishing that the damage or loss was caused by arson, a limitation in the policy.

In prosecutions for arson, proof of the crime charged is complete where the evidence establishes: (1) the corpus delicti, that is, a fire caused by a criminal act; and (2) the identity of the defendants as the one responsible for the crime.[25] Corpus delicti means the substance of the crime, the fact that a crime has actually been committed.[26] This is satisfied by proof of the bare occurrence of the fire and of its having been intentionally caused.[27]

In the present case, CBIC's evidence did not prove that the fire was intentionally caused by the insured. First, the findings of CBIC's witnesses, Cabrera and Lazaro, were based on an investigation conducted more than four months after the fire. The testimonies of Cabrera and Lazaro, as to the boxes doused with kerosene as told to them by barangay officials, are hearsay because the barangay officials were not presented in court. Cabrera and Lazaro even admitted that they did not conduct a forensic investigation of the warehouse nor did they file a case for arson.[28] Second, the Sworn Statement of Formal Claim submitted by UMC, through CRM, states that the cause of the fire was "faulty electrical wiring/accidental in nature." CBIC is bound by this evidence because in its Answer, it admitted that it designated CRM to evaluate UMC's loss. Third, the Certification by the Bureau of Fire Protection states that the fire was accidental in origin. This Certification enjoys the presumption of regularity, which CBIC failed to rebut.

Contrary to UMC's allegation, CBIC's failure to prove arson does not mean that it also failed to prove fraud. *Qua Chee Gan v. Law Union*[29] does not apply in the present case. In *Qua Chee Gan*,[30] the Court dismissed the allegation of fraud based on the dismissal of the arson case against the insured, because the evidence was identical in both cases, thus:

While the acquittal of the insured in the arson case is not *res judicata* on the present civil action, the insurer's evidence, to judge from the decision in the criminal case, is practically identical in both cases and must lead to the same result, since the proof to establish the defense of connivance at the fire in order to defraud the insurer "cannot be materially less convincing than that required in order to convict the insured of the crime of arson" (*Bachrach vs. British American Assurance Co.*, 17 Phil. 536). [31]

In the present case, arson and fraud are two separate grounds based on two different sets of evidence, either of which can void the insurance claim of UMC. The absence of one does not necessarily result in the absence of the other. Thus, on the allegation of fraud, we affirm the findings of the Court of Appeals.

Condition No. 15 of the Insurance Policy provides that all the benefits under the policy shall be forfeited, if the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, to wit:

15. If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting in his behalf to obtain any benefit under this Policy; or if the loss or damage be occasioned by the willful act, or with the connivance of the Insured, all the benefits under this Policy shall be forfeited.

In *Uy Hu & Co. v. The Prudential Assurance Co., Ltd.*,[32] the Court held that where a fire insurance policy provides that "if the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting on his behalf to obtain any benefit under this Policy," and the evidence is conclusive that the proof of claim which the insured submitted was

false and fraudulent both as to the kind, quality and amount of the goods and their value destroyed by the fire, such a proof of claim is a bar against the insured from recovering on the policy even for the amount of his actual loss.

In the present case, as proof of its loss of stocks in trade amounting to P50,000,000.00, UMC submitted its Sworn Statement of Formal Claim together with the following documents: (1) letters of credit and invoices for raw materials, Christmas lights and cartons purchased; (2) charges for assembling the Christmas lights; and (3) delivery receipts of the raw materials. However, the charges for assembling the Christmas lights and delivery receipts could not support its insurance claim. The Insurance Policy provides that CBIC agreed to insure UMC's stocks in trade. UMC defined stock in trade as tangible personal property kept for sale or traffic.[33] Applying UMC's definition, only the letters of credit and invoices for raw materials, Christmas lights and cartons may be considered.

The invoices, however, cannot be taken as genuine. The invoices reveal that the stocks in trade purchased for 1996 amounts to P20,000,000.00 which were purchased in one month. Thus, UMC needs to prove purchases amounting to P30,000,000.00 worth of stocks in trade for 1995 and prior years. However, in the Statement of Inventory it submitted to the BIR, which is considered an entry in official records,[34] UMC stated that it had no stocks in trade as of 31 December 1995. In its defense, UMC alleged that it did not include as stocks in trade the raw materials to be assembled as Christmas lights, which it had on 31 December 1995. However, as proof of its loss, UMC submitted invoices for raw materials, knowing that the insurance covers only stocks in trade.

Equally important, the invoices (Exhibits "P"- "DD") from Fuze Industries Manufacturer Phils. were suspicious. The purchases, based on the invoices and without any supporting contract, amounted to P19,550,400.00 worth of Christmas lights from 20 January 1996 to 23 February 1996. The uncontroverted testimony of Cabrera revealed that there was no Fuze Industries Manufacturer Phils. located at "55 Mahinhin St., Teacher's Village, Quezon City," the business address appearing in the invoices and the records of the Department of Trade & Industry. Cabrera testified that:

A: Then we went personally to the address as I stated a while ago appearing in the record furnished by the United Merchants Corporation to the adjuster, and the adjuster in turn now, gave us our basis in conducting investigation, so we went to this place which according to the records, the address of this company but there was no office of this company.

Q: You mentioned Atty. Cabrera that you went to Diliman, Quezon City and discover the address indicated by the United Merchants as the place of business of Fuze Industries Manufacturer, Phils. was a residential place, what then did you do after determining that it was a residential place?

A: We went to the owner of the alleged company as appearing in the Department of Trade & Industry record, and as appearing a certain Chinese name Mr. Huang, and the address as appearing there is somewhere in Binondo. We went personally there together with the NBI Agent and I am with them when the subpoena was served to them, but a male person approached us and according to him, there was no Fuze Industries Manufacturer, Phils., company in that building sir.[35]

In *Yu Ban Chuan v. Fieldmen's Insurance, Co., Inc.*, [36] the Court ruled that the submission of false invoices to the adjusters establishes a clear case of fraud and misrepresentation which voids the insurer's liability as per condition of the policy. Their falsity is the best evidence of the fraudulent character of plaintiff's claim.[37] In *Verendia v. Court of Appeals*, [38] where the insured presented a fraudulent lease contract to support his claim for insurance benefits, the Court held that by its false declaration, the insured forfeited all benefits under the policy provision similar to Condition No. 15 of the Insurance Policy in this case.

Furthermore, UMC's Income Statement indicated that the purchases or costs of sales are P827,670.00 for 1995 and P1,109,190.00 for 1996 or a total of P1,936,860.00.[39] To corroborate this fact, Eborá testified that:

Q: Based on your 1995 purchases, how much were the purchases made in 1995?

A: The purchases made by United Merchants Corporation for the last year 1995 is P827,670.[00] sir

Q: And how about in 1994?

A: In 1994, it's P608,986.00 sir.

Q: These purchases were made for the entire year of 1995 and 1994 respectively, am I correct?

A: Yes sir, for the year 1994 and 1995.[40] (Emphasis supplied)

In its 1996 Financial Report, which UMC admitted as existing, authentic and duly executed during the 4 December 2002 hearing, it had P1,050,862.71 as total assets and P167,058.47 as total liabilities.[41]

Thus, either amount in UMC's Income Statement or Financial Reports is twenty-five times the claim UMC seeks to enforce. The RTC itself recognized that UMC padded its claim when it only allowed P43,930,230.00 as insurance claim. UMC supported its claim of P50,000,000.00 with the Certification from the Bureau of Fire Protection stating that "x x x a fire broke out at United Merchants Corporation located at 19-B Dag[o]t Street, Brgy. Manresa, Quezon City incurring an estimated damage of Fifty- Five Million Pesos (P55,000,000.00) to the building and contents x x x." However, this Certification only proved that the estimated damage of P55,000,000.00 is shared by both the building and the stocks in trade.

It has long been settled that a false and material statement made with an intent to deceive or defraud voids an insurance policy.[42] In *Yu Cua v. South British Insurance Co.*,[43] the claim was fourteen times bigger than the real loss; in *Go Lu v. Yorkshire Insurance Co.*,[44] eight times; and in *Tuason v. North China Insurance Co.*,[45] six times. In the present case, the claim is twenty five times the actual claim proved.

The most liberal human judgment cannot attribute such difference to mere innocent error in estimating or counting but to a deliberate intent to demand from insurance companies payment for indemnity of goods not existing at the time of the fire.[46] This constitutes the so-called "fraudulent claim" which, by express agreement between the insurers and the insured, is a ground for the exemption of insurers from civil liability.[47]

In its Reply, UMC admitted the discrepancies when it stated that "discrepancies in its statements were not covered by the warranty such that any discrepancy in the declaration in other instruments or documents as to matters that may have some relation to the insurance coverage voids the policy." [48]

On UMC's allegation that it did not breach any warranty, it may be argued that the discrepancies do not, by themselves, amount to a breach of warranty. However, the Insurance Code provides that "a policy may declare that a violation of specified provisions thereof shall avoid it." [49] Thus, in fire insurance policies, which contain provisions such as Condition No. 15 of the Insurance Policy, a fraudulent discrepancy between the actual loss and that claimed in the proof of loss voids the insurance policy. Mere filing of such a claim will exonerate the insurer.[50]

Considering that all the circumstances point to the inevitable conclusion that UMC padded its claim and was guilty of fraud, UMC violated Condition No. 15 of the Insurance Policy. Thus, UMC forfeited whatever benefits it may be entitled under the Insurance Policy, including its insurance claim.

While it is a cardinal principle of insurance law that a contract of insurance is to be construed liberally in favor of the insured and strictly against the insurer company,[51] contracts of insurance, like other contracts, are to be

construed according to the sense and meaning of the terms which the parties themselves have used.[52] If such terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense. Courts are not permitted to make contracts for the parties; the function and duty of the courts is simply to enforce and carry out the contracts actually made.[53]

WHEREFORE, we DENY the petition. We AFFIRM the 16 June 2011 Decision and the 8 September 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 85777.

SO ORDERED.

Brion, Perez, Sereno, and Reyes, JJ., concur.

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] Rollo, pp. 37-62. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Rosalinda Asuncion-Vicente and Romeo F. Barza, concurring.

[3] Id. at 65-66.

[4] Id. at 207-210. Penned by Judge Antonio I. De Castro.

[5] Id. at 14.

[6] Id. at 83.

[7] Id. at 74-80.

[8] Id. at 92.

[9] Id. at 123-128.

[10] Id. at 130-132.

[11] Id. at 210.

[12] Id. at 209.

[13] Id. at 61-62.

[14] Id. at 54-56.

[15] Id. at 344-355.

[16] Id. at 16-17.

[17] Microsoft Corp. v. Maxicorp. Inc., 481 Phil. 550 (2004) citing Amigo v. Teves, 96 Phil. 252 (1954).

[18] Id. citing Ramos, et al. v. Pepsi-Cola Bottling Co. of the Phils., et al., 125 Phil. 701 (1967).

[19] Rules of Court, Rule 131, Sec.1.

[20] Rules of Court, Rule 133, Sec.1.

[21] DBP Pool of Accredited Insurance Companies v. Radio Mindanao Network, Inc., 516 Phil. 110 (2006).

[22] Id. citing Jison v. Court of Appeals, 350 Phil. 138 (1998).

[23] Id.

[24] Id.; Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Cooperative, Inc., 425 Phil. 511 (2002).

[25] Gonzales, Jr. v. People, G.R. No. 159950, 12 February 2007, 515 SCRA 480.

[26] People v. De Leon, G.R. No. 180762, 4 March 2009, 580 SCRA 617.

[27] People v. Oliva, 395 Phil. 265 (2000).

[28] Rollo, p. 171.

[29] 98 Phil. 85 (1955).

[30] Id.

[31] Id. at 98-99.

[32] 51 Phil. 231 (1927).

[33] Rollo, p. 60.

[34] Governed by Rule 130 of the Rules of Court. Section 44, Rule 130 of the Rules of Court states:

Sec. 44. Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

[35] Rollo, p. 189.

[36] 121 Phil. 1275 (1965).

[37] Id.

[38] G.R. No. 75605, 22 January 1993, 217 SCRA 417.

[39] Rollo, p. 186.

[40] Id.

[41] Id. at 191.

[42] Tan It v. Sun Insurance Office, 51 Phil. 212 (1927), citing Yu Cua v. South British Insurance Co., 41 Phil. 134 (1920); Go Lu v. Yorkshire Insurance Co., 43 Phil. 633 (1922); Tuason v. North China Insurance Co., 47 Phil. 14 (1924).

[43] 41 Phil. 134 (1920).

[44] 43 Phil. 633 (1922).

[45] 47 Phil. 14 (1924).

[46] Sharruf & Co. v. Baloise Fire Insurance, Co., 64 Phil. 258 (1937).

[47] Id.

[48] Rollo, p. 385.

[49] The Insurance Code, Sec. 75.

[50] *Yu Cua v. South British Insurance Co.*, supra note 43.

[51] *Pacific Banking Corporation v. Court of Appeals*, 250 Phil. 1 (1988).

[52] *Id.*

[53] *Id.*

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