

BONIFACIO BROS., INC., ET AL., PLAINTIFFS-APPELLANTS, VS. ENRIQUE MORA, ET AL., DEFENDANTS-APPELLEES.

G.R. No. 20853. May 29, 1967

Ponente: CASTRO, J.

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CASTRO, J.:

This is an appeal from the decision of the Court of First Instance of Manila, Branch XV, in civil case 48823, affirming the decision of the Municipal Court of Manila, declaring the H.S. Reyes, Inc. as having a better right than the Bonifacio Bros. Inc. and the Ayala Auto Parts Company, appellants herein, to the proceeds of motor insurance policy A-0615, in the sum of P2,002.73, issued by the State Bonding & Insurance Co. Inc., and directing payment of the said amount to the H.S. Reyes, Inc.

Enrique Mora, owner of an Oldsmobile sedan model 1956, bearing plate No. QC-8088, mortgaged the same to the H.S. Reyes, Inc., with the condition that the former would insure the automobile, with the latter as beneficiary. The automobile was thereafter insured on June 23, 1959 with the State Bonding & Insurance Co. Inc. and motor car insurance policy A-0615 was issued to Enriqueta Mora, the pertinent provisions of which read:

"1. The Company (referring to the State Bonding & Insurance Co., Inc.) will, subject to the Limits of Liability, indemnify the Insured against loss of or damages to the Motor Vehicle and its accessories and spare parts whilst thereon; (a) by accidental collision or overturning or collision or overturning consequent upon mechanical breakdown or consequent upon wear and tear,

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2. At its own option the Company may pay in cash the amount of the loss or damage or may repair, reinstate, or replace the Motor Vehicle or any part thereof or its accessories or spare parts. The liability of the Company shall not exceed the value of the parts whichever is the less. The Insured's estimate of value stated in the schedule will be the maximum amount payable by the Company in respect of any claim for loss or damage.

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4. The Insured may authorize the repair of the Motor Vehicle necessitated by damage for which the Company may be liable under this Policy provided that: ?

(a) The estimated cost of such repair does not exceed the Authorized Repair Limit,

(b) A detailed estimate of the cost is forwarded to the Company without delay, subject to the condition that 'Loss, if any, is payable to H.S. Reyes, Inc.', by virtue of the fact that said Oldsmobile sedan was mortgaged in favor of the said H.S. Reyes, Inc. and that under a clause in said insurance policy, any loss was made payable to the H.S. Reyes, Inc. as Mortgagee;

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During the effectivity of the insurance contract, the car met with an accident. The insurance company then

assigned the accident to the H.H. Bayne Adjustment Co. for investigation and appraisal of the damage. Enrique Mora, without the knowledge and consent of the H.S. Reyes, Inc., authorized the Bonifacio Bros. Inc. to furnish the labor and materials, some of which were supplied by the Ayala Auto Parts Co. For the cost of labor and materials, Enrique Mora was billed at P2,102.73 through the H.H. Bayne Adjustment Co. The insurance company, after claiming a franchise in the amount of P100, drew a check in the amount of P2,002.73, as proceeds of the insurance policy, payable to the order of Enrique Mora or H.S. Reyes, Inc., and entrusted the check to the H.H. Bayne Adjustment Co. for disposition and delivery to the proper party. In the meantime, the car was delivered to Enrique Mora without the consent of the H.S. Re-yes, Inc., and without payment to the Bonifacio Bros. Inc. and the Ayala Auto Parts Co. of the cost of repairs and materials.

Upon the theory that the insurance proceeds should be paid directly to them, the Bonifacio Bros. Inc. and the Ayala Auto Parts Co. filed on May 8, 1961 a complaint with the Mu-nicipal Court of Manila against Enrique Mora and the State Bonding & Insurance Co. Inc. for the collection of the sum of P2,002.73. The insurance company filed its answer with a counterclaim for interpleader, requiring the Bonifacio Bros. Inc. and the H.S. Reyes, Inc. to interplead in order to deter-mine who has a better right to the insurance proceeds in ques-tion. Enrique Mora was declared in default for failure to ap-pear at the hearing, and evidence against him was received ex parte. However, the counsel for the Bonifacio Bros. Inc., Ayala Auto Parts Co. and State Bonding & Insurance Co. Inc. sub-mitted a stipulation of facts, on the basis of which the Muni-cipal Court rendered a decision declaring the H.S. Reyes, Inc. as having a better right to the disputed amount, and ordering the State Bonding & Insurance Co. Inc. to pay to the H.S.Reyes, Inc. the said sum of P2,002.73. From this decision, the herein appellants elevated the case to the Court of First Instance of Manila before which the stipulation of facts was reproduced. On October 19, 1962 the latter court rendered a decision, affirming the decision of the Municipal Court. The Bonifacio Bros. Inc. and the Ayala Auto Parts Co. moved for reconsideration of the decision, but the trial court denied the motion. Hence, this appeal.

The main issue raised is whether there is privity of contract between the Bonifacio Bros. Inc. and the Ayala Auto Parts Co. on the one hand and the insurance company on the other. The appellants argue that the insurance company and Enrique Mora are parties to the repair of the car as well as the towage thereof performed. The authority for this assertion is to be found, it is alleged, in paragraph 4 of the insurance contract which provides that "the insured may authorize the repair of the Motor Vehicle necessitated by damage for which the company may be liable under the policy provided that (a) the estimated cost of such repair does not exceed the Authorized Repair Limit, and (b) a de-tailed estimate of the cost is forwarded to the company without delay." It is stressed that the H.H.Bayne Adjustment Company's recommendation of payment of the appellants' bill for materials and repairs for which the latter drew a check for P2,002.73 in-dicates that Mora and the H.H.Bayne Adjustment Co. acted for and in representation of the insurance company.

This argument is, in our view, beside the point, because from the undisputed facts and from the pleadings it will be seen that the appellants' alleged cause of action rests exclusively upon the terms of the insurance contract. The appellants seek to recover the insurance proceeds, and for this purpose, they rely upon paragraph 4 of the insurance contract document executed by and between the State Bonding & Insurance Company, Inc. and Enrique Mora. The appellants are not mentioned in the contract as parties thereto; nor is there any clause or provision thereof from which we can infer that there is an obligation on the part of the insurance company to pay the cost of repairs directly to them. It is fundamental that contracts take effect only between the parties thereto, except in some specific instances provided by law where the contract contains some stipulation in favor of a third person.[1] Such stipulation is known as stipulation pour autrui or a provision in favor of a third person not a party to the contract. Under this doctrine, a third person is allowed to avail himself of a benefit granted to him by the terms of the contract, provided that the contracting parties have clearly and deliberately conferred a favor upon such

person.[2] Consequently, a third person not a party to the contract has no action against the parties thereto, and cannot generally demand the enforcement of the same.[3] The question of whether a third person has an enforceable interest in a contract, must be settled by determining whether the contracting parties intended to tender him such an interest by deliberately inserting terms in their agreement with the avowed purpose of conferring a favor upon such third person. In this connection, this Court has laid down the rule that the fairest test to determine whether the interest of a third person in a contract is a stipulation pour autrui or merely an incidental interest, is to rely upon the intention of the parties as disclosed by their contract.[4] In the instant case the insurance contract does not contain any words or clauses to disclose an intent to give any benefit to any repairmen or materialmen in case of repair of the car in question. The parties to the insurance contract omitted such stipulation, which is a circumstance that supports the said conclusion. On the other hand, the "loss payable" clause of the insurance policy stipulates that "Loss, if any, is payable to H.S.Reyes, Inc." indicating that it was only the H.S.Reyes, Inc. which they intended to benefit.

We likewise observe from the brief of the State Bonding & Insurance Company that it has vehemently opposed the assertion or pretension of the appellants that they are privy to the contract. If it were the intention of the insurance company to make itself liable to the repair shop or materialmen, it could have easily inserted in the contract a stipulation to that effect. To hold now that the original parties to the insurance contract intended to confer upon the appellants the benefit claimed by them would require us to ignore the indispensable requisite that a stipulation pour autrui must be clearly expressed by the parties, which we cannot do.

As regards paragraph 4 of the insurance contract, a perusal thereof would show that instead of establishing privity between the appellants and the insurance company, such stipulation merely establishes the procedure that the insured has to follow in order to be entitled to indemnity for repair. This paragraph therefore should not be construed as bringing into existence in favor of the appellants a right of action against the insurance company as such in-tention can never be inferred therefrom.

Another cogent reason for not recognizing a right of action by the appellants against the insurance company is that "a policy of insurance is a distinct and independent contract between the insured and insurer, and third persons have no right either in a court of equity, or in a court of law, to the proceeds of it, unless there be some contract of trust, expressed or implied, by the insured and third person".[5] In this case, no contract of trust, expressed or implied exists. We, therefore, agree with the trial court that no cause of action exists in favor of the appellants in so far as the proceeds of insurance are concerned. The appellants' claim, if at all, is merely equitable in nature and must be made effective through Enrique Mora who entered into a contract with the Bonifacio Bros. Inc. This conclusion is deducible not only from the principle governing the operation and effect of insurance contracts in general, but is clearly covered by the express provisions of section 50 of the Insurance Act which read:

"The insurance shall be applied exclusively to the proper interest of the person in whose name it is made unless otherwise specified in the policy."

The policy in question has been so framed that "Loss, if any, is payable to H.S. Reyes, Inc.," which unmistakably shows the intention of the parties.

The final contention of the appellants is that the right of the H. S. Reyes, Inc. to the insurance proceeds arises only if there was loss and not where there is mere damage as in the instant case. Suffice it to say that any attempt to draw a distinction between "loss" and "damage" is uncalled for, because the word "loss" in insurance law embraces injury or damage.

"Loss in insurance, defined.- The injury or damage sustained by the insured in consequence of the happening of one or more of the accidents or misfortune against which the insurer, in consideration of the premium, has

undertaken to indemnify the insured." (1 Bouv. Ins. No. 1215; Black's Law Dictionary; Cyclopedic Law Dictionary, cited in Martin's Phil. Commercial Laws, Vol. 1, 1961 ed. p. 608)

Indeed, according to sec. 120 of the Insurance Act, a loss may be either total or partial.

ACCORDINGLY, the judgment appealed from is hereby affirmed, at appellants' cost.

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

[1] Art. 1311, Civil Code of the Philippines.

[2] Art. 1311, Id.; see Uy Tam et al., vs. Leonard, 30 Phil. 471.

[3] See Manila Railroad Co. vs. Compañía Transatlantica, 38 Phil. 875.

[4] Uy Tam et al., vs. Leonard, supra.

[5] Lampano vs. Jose, 30 Phil. 537.

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