

E. MACIAS & CO., IMPORTERS AND EXPORTERS, PLAINTIFF AND APPELLANT, VS. THE CHINA FIRE INSURANCE & CO., LTD., THE YANGTSZE INSURANCE ASSOCIATION, LTD., AND THE STATE ASSURANCE CO...

G.R. No. 21881. October 03, 1924

Ponente: OSTRAND, J.

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OSTRAND, J.:

It appears from the record that during the period from September, 1918,, to February, 1919, the plaintiff corporation applied for and obtained the following policies of insurance against loss by fire in its mercantile establishment in Manila:

(a) Two policies with the China Fire Insurance & Co., Ltd., one dated September 16, 1918, for the sum of P12,000 and the other dated March 21, 1919, for P15,000; (b) one with the Yangtsze Fire Association, Ltd., dated February 3, 1919, for the sum of P10,000; and (c) one with the State Assurance Co., Ltd., dated February 3, 1919, for P15,000.

The firm of Warner, Barnes & Co., Ltd., was the agent in the Philippines for all of the insurance companies mentioned and the policies were obtained through that firm.

On March 25, 1919, while the policies were still in force, a fire occurred in the plaintiff's place of business as a result of which the insured property was more or less damaged and partly destroyed. Claim was made upon the agent, Warner, Barnes & Co., Ltd., for damages but no agreement as to the amount of the loss could be reached and on April 7, 1919, Warner, Barnes & Co., Ltd., acting in its capacity as agent for the insurance companies, rejected the claim of the plaintiff. Thereafter and on June 14, 1919, the plaintiff instituted an action upon the various insurance policies above mentioned against Warner, Barnes & Co., Ltd., in its capacity as agent for the insurance companies. Judgment was rendered by the trial court in favor of the plaintiff and against Warner, Barnes & Co., Ltd., as agent and the case was appealed to this court, where it was given the number R. G. 16492, and where the decision of the lower court was reversed and the complaint dismissed on the ground that the agent of the insurance companies was not the real party in interest and that the action should have been brought against the insurance companies. The decision was promulgated on March 9, 1922, and may be found in 43 Phil., 155.[1]

Thereafter, and on September 30, 1922, the plaintiff instituted the present action against the defendant insurance companies based upon the same facts and cause of action alleged in its complaint against Warner, Barnes & Co., Ltd., in case R. G. No. 16492. The defendants interposed a general denial and set up several special defenses to the effect:

"(a) That plaintiff had failed and refused to render to defendants a claim in writing specifying the articles and items of property damaged or destroyed and of the alleged amount of the loss or damage sustained; (b) that the plaintiff had made a grossly fraudulent claim of alleged damage sustained in direct violation of the stipulations in

the policies of insurance; and (c) that plaintiff had not instituted action or suit against these defendants within the time required by the aforesaid policies of insurance held by plaintiff, viz: within three months after its claim of loss had been finally rejected, viz: April 7, 1919."

The court below sustained the special defense last mentioned and gave judgment for the defendants dismissing the complaint, with the costs, whereupon this appeal was taken by the plaintiff.

The assignments of error raise only one question, namely, whether the court below erred in holding that the action was barred by not having been brought within the time prescribed by the policies of insurance. In this connection the appellant argues that inasmuch as arbitration was made a condition precedent to the bringing of an action on the insurance policies, and no arbitration having been had, the three months limitation provided for in the policies has not as yet commenced. Neither the policies nor the evidence referred to in paragraph VIII of the stipulation of facts are before us and as the pleadings, stipulation of the parties and decision of the trial court contain no specific reference to the arbitration clause, we are not in position to discuss this point. We have only the finding of the trial court that the action was not brought within the period of limitation provided for in the policies.

But the appellant maintains that assuming that the contractual limitation began to run on April 7, 1919, the date on which the appellant's claim for damages was rejected, it is still entitled to the benefit of the provisions of section 49 of the Code of Civil Procedure, which reads as follows:

"If, in an action commenced, or attempted to be commenced, in due time, a judgment for the plaintiff be reversed, or if the plaintiff fail otherwise than upon the merits, and the time limited for the commencement of such action has, at the date of such reversal or failure, expired, the plaintiff, or, if he die and the cause of action survive, his representatives may commence a new action within one year after such date, and this provision shall apply to any claim asserted in any pleading by a defendant."

The appellant's argument is that in the first action brought "the plaintiff failed otherwise than upon the merits" and that the present action having been brought within a year from the dismissal of the first, it has been brought in time.

An overwhelming weight of authority is against the appellant's contention. The leading case on the subject is that of *Riddlesbarger vs. Hartford Fire Ins. Co.* (7 Wall., 386), in which the plaintiff had insured, his house in Kansas City, Mo., for £10,000 with defendant company on June 1, 1861. The house was destroyed by fire in March, 1862; in June, 1862, plaintiff brought suit against defendant in the Court of Common Pleas, Jackson County, Mo.; and defendant insurance company appeared and answered to the merits. When the cause was carried over to the June term, 1864, plaintiff dismissed his action, but within one year of such dismissal instituted a second action against defendant in the Court of Common Pleas, County of St. Louis, Mo., from whence the cause was transferred to the Circuit Court of the United States. The policy sued on contained a condition that suit must be brought within twelve months after the loss had occurred, which condition defendant company pleaded in bar of the second action; to this plaintiff pleaded the statute of Missouri which provided that if, in any action commenced within the period mentioned (Period of Limitations) the plaintiff shall "suffer a nonsuit," he may commence a new action within one year afterwards; defendant demurred to this replication. The Supreme Court of the United States said:

"The Statute of Missouri, which allows a party who 'suffers a nonsuit' in an action to bring a new action for the same cause within one year afterwards, does not affect the rights of the parties in this case. In the first place, the statute only applies to cases of involuntary nonsuit, not to cases where the plaintiff of his own motion dismisses the action. It was only intended to cover cases of accidental miscarriage, as from defects in the proofs, or in the parties or pleadings, and like particulars. In the second place, the rights of the parties flow from the contract. That

relieves them from the general limitations of the statute, and as a consequence, from its exceptions also.

"The action mentioned, which must be commenced within the twelve months, is the one which is prosecuted to judgment. The failure of a previous action from any cause cannot alter the case. The contract declares that an action shall not be sustained, unless such action, not some previous action, shall be commenced within the period designated. It makes no provision for any exception in the event of the failure of an action commenced, and the court cannot insert one without changing the contract.

"The questions presented in this case, though new to this court, are not new to the country. The validity of the limitation stipulated in conditions similar to the one in the case at bar, has been elaborately considered in the highest courts of several of the States, and has been sustained in all of them, except in the Supreme Court of Indiana, *Eagle Ins. Co. vs. Lafayette Ins. Co.*, 9 Ind., 443, which followed an adverse decision of Mr. Justice McLean, in the Circuit Court for the district of that State. *French vs. Lafayette Ins. Co.*, 5 McLean, 461. Its validity has also been sustained by Mr. Justice Nelson, in the Circuit Court for the district of Connecticut. *Gray vs. Hartford Ins. Co.*, 1 Blatchf., 280.

" We have no doubt of its validity. The commencement, therefore, of the present action within the period designated, was a condition essential to the plaintiff's recovery; and this condition was not affected by the fact that the action, which was dismissed, had been commenced within that period."

The rule laid down in the *Riddlesbarger* case has been followed by practically all courts in the United States. (*Leigh Ellis & Co. vs. Davis*, 260 U. S., 682; *Harvey vs. Fidelity, etc., Co.*, 200 Fed., 925; 119 C. C. A., 221; *Spinns vs. Mutual Reserve, etc.*, 137 Fed., 169; *Vette vs. Clinton Fire Ins. Co.*, 30 Fed., 668; *O'Laughlin vs. Union etc. Co.*, 11 Fed., 280; *David vs. Phoenix Ins. Co.*, 6 Fed. Cas. No. 3607; *Gray vs. Hartford F. Ins. Co.*, 6 Fed. Cas. No. 3374; *Provident Fund Soc. vs. Howell*, 110 Ala., 508; *Gill vs. Manhattan Ins. Co.*, 11 Ariz., 232; *Woodbury, etc., Assn. vs. Charter Oak Ins. Co.*, 31 Conn., 517; *Brooks vs. Ga. Home Ins. Co.*, 99 Ga., 116; *Hartford Fire Ins. Co. vs. Amos*, 98 Ga., 533; *Underwriters Agency vs. Sutherlin*, 55 Ga., 266; *Brown vs. Savannah Mut. Ins. Co.*, 24 Ga., 97; *Andes Ins. Co. vs. Fish*, 71 111., 620; *Peoria M. & F. Ins. Co. vs. Whitehill*, 25 111., 466; *Merchants' Life Ass. vs. Treat*, 98 111. App., 59; *Ronan vs. Mich. Mut. Life Ins. Co.*,*96 111. App., 355; *Richter vs. Michigan, etc. Ins. Co.*, 66 111. App., 606; *Stephens vs. Phoenix Assur. Co.*, 85 111. App., 671; *Fireman's Fund Ins. Co. vs. Western Refrigerator Co.*, 55 111. App., 329; *Hekla Ins. Co. vs. Schroeder*, 9 III. App., 472; *Caywood vs. Supreme Lodge*, 171 Ind., 410; *Wilhelmi vs. Des Moines Ins. Co.*, 103 Iowa, 532; *Harrison vs. Hartford F. Ins. Co.*, 102 Iowa, 112; *Moore vs. Dayton Ins. Co.*, 72 Iowa, 414; *Stout vs. City Fire Ins. Co.*, 12 Iowa, 371; *State Ins. Co. vs. Stoffels*, 48 Kan., 205; *Loe vs. Union, etc., Ins. Co.*, 22 Ky. Law, 1712; *Smith vs. Herd*, 110 Ky., 56; *Carraway vs. Merchants' Mut. Ins. Co.*, 26 La. Ann., 298; *Lewis vs. Metropolitan Life Ins. Co.*, 180 Mass., 317; *Carlson vs. Metropolitan Life Ins. Co.*, 172 Mass., 142; *Barry, etc. Lumber Co. vs. Citizens' Ins. Co.*, 136 Mich., 42; *Peck vs. German F. Ins. Co.*, 102 Mich., 52; *Steele vs. German F. Ins. Co.*, 92 Mich., 81; *Ghio vs. Western Assur. Co.*, 65 Miss., 532; *Glass vs. Walker*, 66 Mo., 32; *Kein vs. Home Mutual, etc., Ins. Co.*, 42 Mo., 38; *Maynard vs. U. S. Health, etc., Ins. Co.*, 76 N. H., 275; *Tasker vs. Kenton Ins. Co.*, 58 N. H., 465; *Patrick vs. Farmers' Ins. Co.*, 43 N. H., 621; *Sullivan vs. Providential Ins. Co.*, 172 N. Y., 482; *Roach vs. New York, etc., Ins. Co.*, 30 N. Y., 546; *Ripley vs. Aetna Ins. Co.*, 39 N. T., 136; *Williams vs. Philadelphia Fire Assn.*, 119 App. Div. [N. Y.], 573; *Heilig vs. Aetna L. Ins. Co.*, 152 N. C., 358; *Lowe vs. U. S. Mut. Ace. Assn.*, 155 N. C., 18; *Appel vs. Cooper Ins. Co.*, 76 Ohio State, 52; *Northwestern Ins. Co. vs. Phoenix Oil, etc., Co.*, 31 Pa., 448; *Warner vs. Ins. Co. of North America*, 1 Walk., 315; *Edwards vs. Metropolitan L. Ins. Co.*, 5 Kulp, 259; *Brown vs. Hartford Ins. Co.*, 5 R. I., 394; *Suggs vs. Travelers' Ins. Co.*, 71 Tex., 579; *Merchants' Mutual Ins. Co. vs. Lacroix*, 35 Tex., 249; *Schlitz vs. Lowell Mut. Fire Ins. Co.*, 119 Atl., 516; *Morrill vs. New England F. Ins. Co.*, 71 Vt., 281; *Wilson vs. Aetna Ins. Co.*, 27 Vt., 99; *Virginia F. & M. Ins. Co. vs. Wells*, 83

Va., 736; Virginia F. & M. Ins. Co. vs. Aiken, 82 Va., 424; McFarland vs. Aetna F. & M. Ins. Co., 6 W. Va., 437; Griem vs. Fidelity, etc., Co., 99 Wis., 530.)

The opposite view as taken in the case of Omaha Fire Insurance Co. vs. Drennan (56 Neb., 623) and Miller vs. State Ins. Co. of Des Moines (54 Neb., 121). There is also an early Indiana case, Eagle Ins. Co. vs- Lafayette Ins. Co. (9 Ind., 443), which supports the same view, but which was overruled by the later cases of Insurance Co. of North America vs. Brim (111 Ind., 281) and Caywood vs. Supreme Lodge (171 Ind., 410).

We have also found two early Ohio cases which tend to sustain the appellant's contention. In the first of these cases, that of Madison Ins. Co. vs. Fellowes ([1856], 1 Disney, 217), the Supreme Court of Cincinnati held that where a fire policy contains a condition that "all claims under this policy are barred unless prosecuted within one year from the date of the loss," that condition is performed if within a year a suit is brought in good faith for the purpose of enforcing the claim, and if the assured for good cause abandons that suit and promptly brings another, although after the year has elapsed, he is not barred of his right to recover. The second case, Bates vs. Sandusky, etc., Ry. Co. (12 Ohio St. Rep., 620), was decided in 1861 and applied the rule followed in Madison Ins. Co., vs. Fellowes, supra, to a claim against a common carrier. Both cases are earlier than the case of Riddlesbarger vs. Hartford Fire Ins. Co., supra, and both differ from the present case in that both the first and second actions were brought against the same defendants. Ohio seems now to have adopted the doctrine laid down in the Riddlesbarger case (Appel vs. Cooper Ins. Co., supra).

Many of the cases above cited relate only to the general proposition that reasonable contractual limitations of actions will prevail over statutory limitations and do not specifically deal with exceptions to the statutory limitations such as the one found in section 49 of the Code of Civil Procedure. But it seems obvious that if a contractual limitation prevails over the statutory limitation it must also prevail over the exceptions to the statutory limitations; the contract necessarily supersedes the statute and the limitation is in all its phases governed entirely by the former.

It has been so held in the Riddlesbarger case and in a very large number of other cases. In the case of McElroy vs. Continental Insurance Co. of New York (48 Kan., 200), the plaintiff, after dismissing his first action brought within the time specified in the insurance policy, instituted a second action within the time allowed by section 23 of the Code of Civil Procedure of Kansas, which is almost identical with our section 49 and which reads as follows:

"* * * 'If any action be commenced within due time, and a judgment thereon for the plaintiff be reversed, or if the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if he die and the cause of action survive, his representatives, may commence a new action within one year after the reversal or failure,' * * *"

The demurrer of defendant insurance company to plaintiff's second complaint was sustained. In holding that the above quoted Code provision had no application whatsoever to the facts in that case, the court said:

"* * * While it is admitted that parties to a contract may, by express agreement, fix a limitation of time within which any action for its breach shall be commenced, even if the time fixed is less than that allowed by statute, and that in such cases of agreement the statutory limitations do not apply, yet it is insisted that the exceptions to the statutory limitations do apply in such cases. This seems to us to be an unreasonable contention, and not supported by any authority to which our attention has been called. The case of Riddlesbarger vs. Hartford Fire Insurance Co., 7 Wall, 386, says 'that the rights of the parties flow from the contract. That relieves them from the general limitations of the statute, and, as a consequence, from its exceptions also.' In the case of Wilkinson vs. Fire Insurance Co., 72 N. Y., 499, the policy sued upon contained a provision that no suit for the recovery of any

loss thereunder shall be sustainable in any court of law or chancery, unless it shall be commenced within 12 months after the loss occurs, any statute of limitation to the contrary. The action was commenced more than two years after the loss occurred. To avoid the limitation contained in the policy, the plaintiff alleged that the insurance company had been enjoined by a court of competent jurisdiction from paying, and a third party, who claimed to own the policy, from receiving the amount of the loss. Section 105 of the Code of New York contains a provision saving the rights of parties stayed by injunction. The court says: It is to be observed that this claim is not justified by the terms of the contract. The provision fixing the time within which an action must be brought is distinct, definite and unqualified. The contract contains no saving of the right of action after the expiration of a year from the loss for any cause whatever, and unless the bringing of the action within the time limited by the contract was waived by the defendant, or was excused and made impossible by the act of God or of the law, the remedy of the plaintiff has been lost.' The court further says, in commenting upon saving the rights stayed by an injunction: This provision does not aid the plaintiff. The exception has no application where a limitation is prescribed by the contract of the parties, but only applies to cases governed by the limitations in the general law:' citing the case in 7 Wall., and others. The last case is affirmed in *Arthur vs. Homestead Insurance Co.*, 78 N. Y., 462, the facts being similar to the one we are now considering. In the case of *Wilson vs. Aetna Insurance Co.*, 27 Vt., 99, the policy contained the one-year limitation. The loss occurred on the 6th day of May, 1849. On the 1st day of September, 1849, the plaintiff commenced an action on the policy to recover the loss. On the second Tuesday of March, 1851, the plaintiff was obliged, without fault on his part, to submit to a nonsuit. On the 20th of August he commenced this suit. The court says: 'A stipulation in a policy of insurance that no action shall be sustainable unless commenced within twelve months after the loss, is binding, and bars a suit commenced after that time, even though a prior suit was commenced within twelve months, and failed without fault on the part of the plaintiff.' Redfield, C. J., commenting on such a stipulation, remarks: 'This stipulation is too explicit to allow of any escape from its import by construction. It is not that an action shall be commenced within twelve months, but that no recovery shall be had unless such action is commenced within twelve months after the loss. Such action can only signify the action in which recovery is sought. That must be this action, and all actions in which a recovery is claimed, and there is no provision for any exception on account of the failure of any such action. And without such a provision in the contract the court cannot import one without subjecting the contract to virtual disregard at the mere will or caprice of the parties. No court of law could relieve the party from the performance of a condition of this nature, unless it be on proof of the fraud of the other party. If the party could have any relief in such case, which is questionable—too questionable to be hopeful—it would not be here.' To the same effect is the case of *Brown vs. Insurance Co.*, 7 R. I., 301. The court says: 'The statute of limitations has no application in any of its provisions to the clause in question, and, indeed, the only argument against the clause is, that it sets up for the contract a different law of limitation from that which the law imposes. We have held that the contracting parties have a right to do this in reference to a policy of fire insurance, and we know of no right that we have, from a consideration of general equity, to import into their contract qualifying terms which they have not seen fit to adopt.' It seems to us that if it be conceded, as it has been by many courts of last resort, including the Supreme Court of the United States, that the parties to an insurance contract can stipulate as to the time within which an action shall be brought to recover a loss, independent of the limitations prescribed by the statute, then that stipulation alone must govern; because it is both unreasonable and illogical to say that the general limitations, that are almost universal in their operation upon all causes of action, cannot control the conventional limitation fixed in the policy, but that the exceptions to the general limitations prescribed by the statute, that are contingent, incidental, and entirely dependent upon the general limitations, do apply to and control the stipulation of the parties. We are of opinion that the trial court ruled rightly in sustaining the demurrer to the petition, and recommend that the judgment be affirmed."

In the case of *Harrison vs. Hartford Fire Ins. Co.* (102 Iowa, 112), after plaintiff's first case had been dismissed as

premature and a second suit was brought within the time fixed in the saving clauses of section 2851, Iowa Code, but after the time specified in the insurance policy, the court said:

"The policy in suit contained this among other provisions: 'No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.' Defendant claims that this provision is a bar to plaintiff's action. It will be noticed that this action was commenced 2 years, 9 months, and 21 days after the fire, and more than 2 years and six months after the 90 days in which plaintiff must have given notice and proofs of loss. Such a stipulation as that contained in this policy is valid in every state in the Union save Indiana. See *Carter vs. Insurance Co.*, 12 Iowa, 287; *Vore vs. Insurance Co.*, 76 Iowa, 548, 41 N. W. Rep., 309; *Moore vs. Insurance Co.*, 72 Iowa, 414, 34 N. W. Rep., 183; *Housinkveld vs. Insurance Co.*, 95 Iowa, 504, 64 N. W. Rep., 594; *Riddlesbarger vs. Insurance Co.*, 7 Wall., 391; *Insurance Co. vs. Whitehill*, 25 111., 382; and cases cited in 2 Wood, Insurance, sec. 460. There is no claim that this condition has been waived; hence plaintiff's action is barred unless there be something in his claim that section 2537 of the Code applies. That section is found in chapter 2 of title 17 of the Code of 1873, relating to limitation of actions, and is as follows: 'If after the commencement of an action the plaintiff fail therein for any cause except negligence in its prosecution, and a new suit be brought within six months thereafter, the second suit shall for the purpose herein contemplated be a continuation of the first.' Statutes similar to this exist in many of the states, and the question has frequently arisen whether such a statute is applicable to a contract limitation such as the one in the policy in suit. The general tenor of the authorities is to the effect that it is not, for the reason that the rights of the parties arise out of contract which relieves them from the general limitations of the statute, and as a consequence from its exceptions also. See *Riddlesbarger vs. Insurance Co.*, supra; *Arthur vs. Insurance Co.*, 78 N. Y., 462; *Association vs. Norris* (Pa. sup.) 8 Atl. Rep., 638; *McElroy vs. Insurance Co.* (Kan. sup.) 29 Pac. Rep., 478; *McIntyre vs. Insurance Co.* (Mich.) 17 N. W. Rep., 781; *Insurance Co. vs. Hooking* (Pa. sup.) 18 Atl. Rep., 614; *Wilson vs. Insurance Co.*, 27 Vt., 99; May, Insurance, sec. 483."

For the reasons stated and upon the authorities cited, we are constrained to hold that the failure of the plaintiff to sue the defendant insurance companies within the time limited in the insurance policies is fatal to his action and that the question is in nowise affected by section 49 of the Code of Civil Procedure. To so hold may bear harshly on the plaintiff in this particular case, but in matters of insurance law the importance of securing uniformity in judicial interpretation is such that we feel bound to follow the rule adopted by practically every court in the land. It may be observed that the question as to the reasonableness of a three months contractual limitation is not raised in the present case.

The judgment appealed from is affirmed, without costs. So ordered.

Johnson, Street, Malcolm, Avanceña, Villamor, and Romualdez, JJ., concur.

[1] *E. Maciasn & Co. vs. Warner, Barnes & Co.*

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