

A. M. TUASON, PLAINTIFF AND APPELLANT, VS. NORTH CHINA INSURANCE COMPANY, LTD., AND THE LIVERPOOL & LONDON & GLOBE INSURANCE COMPANY, LTD., DEFENDANTS AND APPELLANTS.

G.R. No. 22498. December 16, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

About midnight of the 28th of January, 1922, a fire broke out in the Vanity Fair, a mercantile establishment owned by A. M. Tuason, doing business at No. 422, Calle Platerias, City of Manila, devoted to the sale of dry goods and embroidery and to conducting a massage and manicuring parlor and tea room. Due to the promptness and efficiency of the Manila fire department, the fire was placed under control before it had done more than destroy a part of the building with its equipment and merchandise. The presence of dry goods saturated with spirits of turpentine and other very suspicious circumstances, resulted in J. Lorenzo, deputy chief of the fire department, reporting that the cause of the fire was "Incendiary * * * intentional."

At that time, the Vanity Fair was insured with the Liverpool & London & Globe Insurance Company, Ltd., and the North China Insurance Company, Ltd., under seven policies, totalling P200,000. Five of these policies had been taken out by Mr. Tuason on December 14, 1921, and two had been taken out on January 16, 1922.

In two affidavits, accomplished in due form and time, Mr. Tuason laid claim to P191,336.74. When said claim was rejected by the insurance companies, this amount plus P25,000 damages was made the subject of two causes of action against the insurance companies, brought in the Court of First Instance of the City of Manila. The principal defenses set up by the defendants were, first, that all benefit under the policies had been forfeited because false, fraudulent, and fictitious declarations had been made the devices to obtain payment; and, second, that the fire was caused by the willful act of the plaintiff and those instigated by and in connivance with him. A counterclaim and cross-complaint was also alleged but was subsequently not pressed. The trial judge, the Honorable Pedro Concepcion, found with the defendants on their first defense, and accordingly dismissed the complaint, with costs against the plaintiff.

Plaintiff as appellant makes an assignment of nine errors. His first, second, third, fourth, fifth, sixth, eighth, and ninth assignments may be reduced to a single proposition, to the effect that the court erred in finding that the amount of plaintiff's loss was not as much as claimed and that plaintiff's claim was therefore fraudulent. The seventh assignment is that the trial court erred in not rendering judgment against the Liverpool & London & Globe Insurance Co., Ltd., for the value of the furniture, on the ground that the policy covering the furniture was separate from the others and that there was no fraud proved or found by the trial court as to the claim for the furniture. Defendants as appellants rely on the sole assignment that the court erred in its order of March 16, 1924, in which the defendants were ordered to deliver over to the plaintiff the merchandise salvaged from the fire. The foregoing analysis of the situation of the case on appeal denotes the three subjects which should in order receive

our attention.

To prove the extent of his loss, plaintiff relied principally on Exhibit 1, a rough inventory of the Vanity Fair, which strangely enough had escaped the fire, although the other books had been practically consumed by the flames. Then to corroborate Exhibit 1, plaintiff presented his own testimony and that of Vicente Galian, the bookkeeper, Maria Rita Yanguas from whom Tuason purchased embroidery, and Maria Paves, a dressmaker. But the trial judge rejected, and properly in our opinion, Exhibit 1 as entitled to no weight, and gave little credence to the oral testimony offered by the plaintiff.

The defense presented overwhelming evidence which demonstrated beyond cavil that the value of the Vanity Fair as of the date of the fire was not over P30,000. S. E. Preston, manager of the Oriental Trading Company, with experience in textiles and embroideries, who had inspected the merchandise in the Vanity Fair a few days before the fire, gave as his opinion that the total value of the merchandise in the establishment did not exceed P25,000, and that the value of the furniture did not exceed P5,000. O. L. Van derford, chief of the Manila fire department, calculated the total loss as between P25,000 and P30,000. Other witnesses testified along the same line. Messrs. Hoyle and Herridge, expert accountants, in the presence of plaintiff Tuason, made a complete inventory of the merchandise and effects found in the Vanity Fair after the fire, and taking as the basis the valuation placed by the plaintiff himself on the merchandise, arrived at P24,998.27 as a total. Glaring divergences are apparent between the items in the rough inventory and those in Tuason's claim of loss, all intended to bulwark the case for the plaintiff. It would have been nearly a physical impossibility for the small premises occupied by the Vanity Fair to have held merchandise valued at close to P200,000.

The difference between the formal claim of approximately P190,000, or, deducting the amount asked for the furniture, of over P170,000, and P30,000, the top figure conceded by impartial witnesses, is so great as to indicate false statements made intentionally and willfully. Such facts bring into view the twelfth condition of the policies providing: "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; or, if the loss or damage be occasioned by the willful act, or with the connivance of the insured * * * all benefit under this policy shall be forfeited." This clause, with its unfortunate relation to the proven facts, calls for the application of the doctrine that false and material statements made with an intent to deceive or defraud, avoid the insurance policies. (Yu Cua vs. South British Insurance Co. [1920], 41 Phil., 134; Go Lu vs. Yorkshire Insurance Co. [1922], 43 Phil., 633; Insurance Act, No. 2427, sec. 44.)

The judgment of the trial court on the facts and the law was not only not clearly against the weight of the evidence and not against the law, but was exactly in accord with the facts and the law.

Plaintiff's seventh assignment of error relates to his right to recover P16,322.38, under the policy issued by one of the defendants on the furniture alone. Plaintiff's argument on this point is plausible and, had independent action been brought on the policy in question, might be sustainable. In support of plaintiff's contention is the finding of the trial court, accepting as proven the existence and value of the furniture. But we have to delve a little deeper into the case in order to dig out the controlling circumstances.

Plaintiff sued the defendants jointly on seven policies. Two causes of action made up plaintiff's complaint, one to secure the total amount of the loss, and the other to secure additional damages. As part of the first cause of action was the claim on the insurance policy covering the furniture. When defendants' demurrer on the ground of misjoinder of parties was overruled, it was necessary for them to make a single defense. And this the defendants did as before shown.

It is now too late for plaintiff to attempt to separate fraud in the claim of loss for the merchandise from that in the

claim for the furniture. As fraud in any part of a formal statement of loss taints the whole, as fraud or false swearing entering into some of the items operates to defeat a recovery upon any part of the policy, so should fraud in statements where the insured sees fit to bring an action against all of the insurers destroy any part of the claims included in the whole. (5 Joyce, *The Law of Insurance*, pp. 5549, 5554.) It is further open to doubt if, notwithstanding the conclusion of the trial judge, the value of the furniture reached to anywhere near P16,000. But even if we should find with appellant on this point, it would necessarily be incumbent upon us to decide if the fire was of incendiary origin, and on this subject, we incline to the view that the less said, the better.

There remains for consideration the defendants' attack on the court's order of March 15, 1924, requiring the defendants to deliver over to the plaintiff the merchandise which was saved from the fire. As disclosed by the bill of exceptions, both parties at different times presented motions of similar character. Defendants' purpose evidently is to recoup an amount equal to the expenses of P15,017.12, incurred in looking after the salvaged goods.

The eleventh clause of each of the policies of insurance authorizes the company to take possession of or require to be delivered to it any property insured in the building or on the premises at the time of the loss or damage. The company may also sell or dispose of, for the account of whom it may concern, any salvaged or other property taken possession of or removed. But there is no word in the policies which indicates that when the company takes advantage of this option, it shall be at the expense of the insured. Admittedly, the merchandise belongs to the plaintiff. It is for the plaintiff to say as to the disposition to be made of the merchandise. The insurers cannot refuse to pay the insurance and, at the same time, appropriate the property of the insured. If the insurance companies, to protect their own interests, desired to retain the goods as evidence in the case, it should be at their expense and not at the expense of the insured.

It will be noted that we have said little about the origin of the fire in the Vanity Fair. And the reason is that any discussion of this malodorous topic is unnecessary. In broad terms, we rest our judgment on the well reasoned decision and orders of the lower court.

For all the foregoing, the judgment appealed from is affirmed without express pronouncement as to costs in this instance. So ordered.

Street, Avancena, Villamor, Ostrand, Johns, and Romualdez, JJ., concur.

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