

**PARIS-MANILA PERFUME CO., ALSO KNOWN AS PARIS-MANILA
PERFUMERY CO., PLAINTIFF AND APPELLEE, VS. PHOENIX
ASSURANCE CO., LTD., DEFENDANT AND APPELLANT.**

G. R. No. 25845. December 17, 1926

Ponente: JOHNS, J.

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JOHNS, J.:

STATEMENT

Plaintiff alleges that it is a domestic corporation engaged in the manufacture of perfumery and toilet articles. That the defendant is a corporation organized under the laws of Great Britain, and engaged in the fire insurance business in the Philippine Islands. That on May 22, 1924, it issued to plaintiff its fire insurance policy No. 841163 in the sum of P13,000 upon the property of the plaintiff at No. 1 Calle Cisneros, Cavite, insuring plaintiff's property against fire for that amount; that with the knowledge of the defendant, the property was also insured in two other companies, one for P12,000, and the other for P5,000; that on July 4, 1924, the property covered by the insurance was completely destroyed by fire for the total loss to the plaintiff of P38,025.56; that under its policy with the defendant, it promptly presented its claim; that the defendant wrongfully and unjustly refused to pay it; that on September 29, 1924, plaintiff requested the defendant to appoint an arbitrator under the provisions of section 17 of the policy, which was also denied; that at the time the policy was issued, plaintiff had paid the full amount of the premium up to May 22, 1925, and it prays for judgment against the defendant for P13,000, with legal interest from July 4, 1924, and costs.

For answer the defendant makes a specific denial of paragraphs 1, 3, 4, and 5, and admits that the plaintiff, as a corporation, presented its claim against the defendant, and that payment was refused, and admits that plaintiff requested the defendant to specify the reason for its refusal, and that plaintiff has made a demand for arbitration, and that defendant denied any liability and refused arbitration, and as a special defense alleges that the policy in question was issued "to one Peter Johnson, as proprietor of Paris-Manila Perfumery Co.," and that the company was not the insured named in the policy, and that the insurance was of no legal force and effect with the company. As a second special defense, it is alleged that "the policy of insurance did not cover any loss or damage occasioned by explosion," and that the loss was occasioned by an explosion, and was not covered by the policy. As a third special defense, it is alleged that the policy provides that, if the claim is fraudulent, and that any false declaration was made or used to obtain it, all benefits are thereby forfeited; that the claim of the plaintiff is fraudulent as to the quantity and value of the insured property at the time of the fire. As a fourth special defense, it is alleged that the policy becomes forfeited if a loss is occasioned by the willful act or connivance of the insured, and that the loss in question was caused by the willful act of Peter Johnson, and it prays that plaintiff's complaint be dismissed, with costs.

Upon such issues, the evidence was taken, and the lower court rendered judgment in favor of the plaintiff for P13,000, with legal interest from November 7, 1924, the date of the filing of the complaint, and costs.

On appeal the defendant assigns the following errors:

"I. The lower court erred in finding and concluding that defendant-appellant issued a policy of insurance to and in the name of plaintiff-appellee.

"II. The lower court erred in finding and concluding that Peter Johnson was the sole proprietor, or else the principal stockholder of Paris-Manila Perfume Co., plaintiff-appellee.

"III. The lower court erred in finding and concluding that the explosion referred to and excepted in defendant-appellant's policy of insurance concerned only an explosion where no fire ensues.

"IV. The lower court erred in finding and concluding that the claim presented by plaintiff-appellee as not 'necesariamente' fraudulent.

"V. The lower court erred in overruling defendant-appellant's objection to the admission of Exhibit C in evidence.

"VI. The lower court erred in overruling defendant-appellant's objection to the admission of Exhibit D in evidence.

"VII. The lower court erred in overruling defendant-appellant's objection to the admission of Exhibits E and F in evidence.

"VIII. The lower court erred in overruling defendant-appellant's objection to the admission of Exhibit G in evidence.

"IX. The lower court erred in overruling defendant-appellant's objection to the admission of Exhibits H and H-I in evidence.

"X. The lower court erred in overruling defendant-appellant's objection to the admission of Exhibits J, K, L, N, and O in evidence.

"XI. The lower court erred in finding and concluding that the weight and preponderance of all of the proofs submitted upon the trial did not sustain the contention of defendant-appellant that the fire was occasioned by the willful act, or with the connivance, of the Insured.

"XII. The lower court erred in finding and concluding that the fire was caused by a firecracker.

"XIII. The lower court erred in concluding that plaintiff-appellee was entitled to judgment upon the facts found by the lower court.

"XIV. The lower court erred in rendering judgment in favor of plaintiff-appellee, and in refusing to render its judgment dismissing the complaint of plaintiff-appellee and absolving defendant-appellant therefrom.

"XV. The lower court erred in denying defendant-appellant's motion for a new trial."

JOHNS, J.;

It is admitted that the policy in question was issued on May 22, 1924.

Upon its face it recites:

"This Policy of Insurance Witnesseth. That in consideration of Messrs. Paris-Manila Perfumery Co. (Peter Johnson, Prop.), Cavite, P. I., hereinafter called the insured paying to the Phoenix Assurance Company, Limited, hereinafter called the company, the sum of pesos two hundred ninety-two and 50/100, Philippine currency."

It also appears that the premium on the policy was paid to the defendant by a company check, which was signed by Johnson, and that the policy in question was prepared by the defendant.

The real cause of the fire is more or less a matter of conjecture, upon which there is little, if any, evidence.

In appellant's brief, it is said:

"The cause of the explosion was and is unknown and wholly a matter of conjecture. Neither Peter Johnson nor Francisco Banta (the only persons in the building at the time) claimed that either of them saw anything explode. (Words in parenthesis inserted by me.)"

Both Johnson and Banta testified that they heard an explosion, and when they looked around, they saw fire and felt heat. There is no evidence as to whether the fire was started before or after the explosion. Neither is there any competent testimony as to the cause of the explosion.

The factory where the fire occurred was filled with numerous kinds of essences and oils used in the manufacture of perfumery and with a quantity of alcohol and manufactured perfumes, all of which were of a highly inflammable nature, and the fire may have started from any one of a number of reasons. But in the final analysis, the fact remains that there was a fire, and that plaintiff's property was destroyed. It is true that it may be that the explosion was the primary cause of the fire, but that is only a matter of conjecture, and upon that point, the burden of proof was upon the defendant.

Defendant relies upon section 6 of the policy, as follows:

"6. Unless otherwise expressly stated in the policy the insurance does not cover—

" (h) Loss or damage occasioned by explosion; but loss or damage by explosion of gas for illuminating or domestic purposes in a building in which gas is not generated and which does not form part of any gas works, will be deemed to be loss by fire within the meaning of this policy."

In answer to that, plaintiff relies upon section 5, which is as follows:

"5. The insurance does not cover—

* * * * *

" (d) Loss or damage occasioned directly or indirectly, approximately or remotely by or through or in consequence of:

"(1) Earthquake, hurricane, volcanic eruption or other convulsion of nature, and the company shall not be liable for loss or damage arising during or within a reasonable time after any of the said occurrences, unless it be proved by the insured to the satisfaction of the company that such loss or damage was not in any way occasioned by or through or in consequence of any of the said occurrences."

It will be noted that section 5 excludes not only the damages which may immediately result from an earthquake, but also any damage which may follow the earthquake, and that section 6 excludes only the damages which are the direct result of the explosion itself, and that it does not except damages which occurred from the fire occurring after the explosion, even though the explosion may have been the primary cause of the fire. But assuming, without deciding, that if it be a fact that the fire resulted from an explosion that that fact, if proven, would be a complete defense, the burden of the proof of that fact is upon the defendant, and upon that point, there is a failure of proof. There is no competent evidence as to whether the explosion caused the fire or the fire caused the explosion.

The defendant has assigned numerous and different errors, but exclusive of the first and second, they are largely questions of fact and objections to the admissibility of the evidence, and upon all of the material questions of fact,

the lower court found for the plaintiff. That is to say, the lower court found as a fact that there was no fraud in the insurance, and that the value of the property destroyed by the fire was more than the amount of the insurance. The defendant having issued its policy which was in legal force and effect at the time of the fire, it is bound by its terms and conditions, and the property having been destroyed, the burden of proof was upon the defendant to show that it was exempt from liability under the terms and conditions of the policy, and upon that point, there is a failure of proof.

The judgment of the lower court is affirmed, with costs. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, Romualdez, and Villa-Real, JJ., concur.

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