

TAN IT, PLAINTIFF AND APPELLANT, VS. SUN INSURANCE OFFICE, DEFENDANT AND APPELLANT.*G.R. No. 27874. December 12, 1927*

Ponente: MALCOLM, J.

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This is an action on a policy of fire insurance for the recovery of the sum of P23,895.64. The insurance company pleaded false swearing and fraud by way of defense. The judgment rendered in the Court of First Instance of Manila in effect found with the plaintiff on the law and with the defendant on the facts, with the result that the defendant was ordered to pay the plaintiff P13,113, with legal interest beginning with May 4, 1926, and with costs. Neither party being satisfied with the judgment, they have perfected appeals, the plaintiff to obtain the full amount sued for, and the defendant to avoid any recovery.

On November 25, 1924, the Sun Insurance Office issued to the Chinese merchant, Tan It, a policy of fire insurance covering certain goods and merchandise then deposited in the bodega situated at Nos. 326-340 Calle Nueva, Binondo, Manila. The policy was good for one year. It stipulated that in case of fire the insurer was to pay the insured three-fourths of the value of the goods, but in no case exceeding P30,000. The policy contained other clauses, particularly one relating to fraudulent claims.

On November 1, 1925, a fire of unknown origin destroyed a portion of the goods and merchandise covered by the insurance policy. On November 3, 1925, Tan It presented a verified claim of the alleged loss suffered by him on account of the fire. On November 5, 1925, the representatives of the insurance company, consisting of Messrs. Arthur Ruh from Kuenzle & Streiff, Inc., the agency of the insurance company; James C. Glegg and Carlos Lintag from Hunter Bayne & Co., fire adjusters; and D. J. Awad and M. Goldstein, merchants, proceeded to the scene of the fire, and in the presence and with the assistance of Tan It, made a physical inventory of the pieces of merchandise existing in the bodega. Subsequently, the salvaged merchandise was sold for P3,000, which was deposited in a bank on behalf of whom it may concern. The parties having found it impossible to arrive at an amicable settlement, the instant suit is the result.

The four errors assigned by plaintiff as appellant merit slight consideration. What they are intended to do is to challenge the correctness of the findings of fact made in the trial court. The decision enumerated certain points which indicated to the court that the claim made by the plaintiff was exaggerated. The facts as depicted by the photographs are a reasonably correct representation of the condition of the premises immediately after the fire, and constitute evidence of a satisfactory and conclusive nature. We are content to let the matter rest here although, to tell the truth, a great deal more could be added, if necessary, by way of support to the pronouncements made in the lower court.

As to the appeal perfected by the defendant, its specification of five alleged errors may be boiled down to the fundamental issue in the case, which is whether or not Tan It's claim was merely erroneous and exaggerated as found by the trial court, or fraudulent and thus voidable as contended by the insurance company.

Clause 13 of the contract of insurance provides that "If the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, * * * all benefit under this Policy shall be forfeited." With this clause in the policy to the forefront, a few figures should be set down to elucidate the situation. Plaintiff's verified claim totalled P31,860.85, of which, in accordance with the terms of the policy, three-fourths was asked, or P23,895.64. Defendant's inventory of the goods found after the fire came to P13,113. The difference between plaintiff's claim and defendant's estimate of the loss, which was confirmed in the trial court, was P18,747.85. In connection with these figures, plaintiff suggests too low a valuation by the representatives of the defendant. Computed at plaintiff's valuation, the goods inventoried by the defendant's committee would amount to P19,346.30. There would, however, still remain a considerable void between the two amounts, of P12,514.55. Plaintiff's additional effort to account for the discrepancy between the two inventories by endeavoring to show that certain goods were not inventoried by defendant and that other goods were completely burned, has not been successful.

A false and material statement made with an intent to deceive or defraud avoids an insurance policy. (Yu Cua vs. South British Insurance Co. [1920], 41 Phil., 134; Go Lu vs. Yorkshire Insurance Co. [1922], 43 Phil., 633; Tuason vs. North China Insurance Co. and Liverpool & London & Globe Insurance Co. [1924], 47 Phil., 14; Insurance Act No. 2427, sec. 44.) That has become the settled doctrine in the Philippines. It should not now be departed from out of a spirit of sympathy in one particular case. It is well for those who are unfortunate enough to have losses by fire to know that they can only hope to recoup themselves by fair dealing. No court could, for a moment, subscribe to a confirmation of a fire insurance claim dishonestly made.

While the contrast between the claim and the loss in the three cited cases may be more startling than in the case at bar, the same principle governs. In the Yu Cua case, the claim was fourteen times bigger than the real loss; in the Go Lu case, eight times; and in the Tuason case, six times. In the Tan It case before us, the difference under one hypothesis is about 50 per cent, and under another hypothesis, about 25 per cent. Still that constitutes a serious discrepancy between the true value of the property and that sworn to in the proofs of loss, and is an outstanding fact to be considered as bearing upon the presence of fraud. It is more than an honest misstatement, more than inadvertence or mistake, more than a mere error in opinion, more than a slight exaggeration, and in connection with all the surrounding circumstances, discloses a material overvaluation made intentionally and wilfully. We might condone one who overvalues his loss to offset counter-undervaluation by an insurance company, but we cannot forgive one who asks for reimbursement for goods alleged to have been consumed by fire when no such goods were in the place to be consumed.

In resume, therefore, we agree with the trial court in his appreciation of the evidence, but we are constrained to disagree in his application of the law, as heretofore uniformly interpreted by our decisions, to the facts. It is to be presumed that the P3,000 obtained from the sale of the salvaged goods will, without more ado, be turned over to Tan It.

In accordance with the foregoing pronouncements, the judgment appealed from will be modified by directing that the plaintiff recover nothing from his complaint. Without special finding as to costs in either instance, it is so ordered.

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

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