

ULPIANO SANTA ANA, PLAINTIFF AND APPELLANT, VS. COMMERCIAL UNION ASSURANCE COMPANY, LTD., DEFENDANT AND APPELLEE.

G.R. No. 32889, November 20, 1930

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

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Four appeals were taken, three of them by Ulpiano Santa Ana, the plaintiff in civil cases, No. 31263 (G. R. No. 32889) and No. 31264 (G. R. No. 32890) of the Court of First Instance of Manila, and intervenor in civil case No. 31322 (G. R. No. 32891) of the same court, and the other by Rafael Garcia, the plaintiff in the civil case, No. 31322 (G. R. No. 32891) of the same court, from the judgment rendered by it, the dispositive part of which is as follows:

"The following defendant companies are hereby absolved without costs: The Commercial Union Assurance Company, Limited in case No. 31263; the Globe and Rutgers Fire Insurance Company of New York in case No. 31264; and the Phoenix Assurance Company, Limited, the Guardian Assurance Company, Limited, and the Filipinas, Compañía de Seguros,' in case No. 31322."

In support of his appeal, Ulpiano Santa Ana assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The trial court erred in finding that the plaintiff and intervenor Ulpiano Sta. Ana did not advise or notify each and every one of the defendant companies of each and every one of the insurance policies issued upon the property in question.

"2. The trial court erred also in holding that Ulpiano Sta. Ana's statement to the effect that the house in question, a wooden structure two stories high, belonging to the first and second groups, with a frontage of twelve meters and a depth of twenty meters, is worth P23,000, is false and was made with intent to defraud the defendant companies, and therefore annuls the insurance policies issued by them upon the aforesaid property.

"3. The trial court likewise erred in estimating the value of the house described above at P6,000.

"4. The trial court lastly, erred in failing to sentence each and every one of the defendant companies to pay the plaintiff and intervenor Ulpiano Sta. Ana the value of the several policies upon the property in question, excepting the amount of P5,000 claimed by the plaintiff Rafael Garcia."

As to Rafael Garcia, he assigns the following alleged errors as committed by the trial court in its judgment, to wit:

"1. The lower court erred in holding that there was not sufficient notice given to the insurance companies of

the other insurance policies covering the same property.

"2. The lower court erred in finding that the insurance on the building for the total value of P21,000 was in excess of the full value of the property and that, therefore, the policy was annulled.

"3. The trial court erred in dismissing the complaint."

In view of the close relation of the three cases with regard to the evidence which had to be adduced, the parties agreed, with the consent of the court, to a joint trial, and the evidence common to the three cases being presented, the following facts were established without contradiction: In the year 1923, Ulpiano Santa Ana built a house of strong materials with a galvanized iron roof on A. Luna Street (now A. Mabini) in the municipality of Pasig, Province of Rizal, in accordance with the plan Exhibit H, and the specifications, Exhibit I.

On the 1st of October, 1925, the plaintiff Ulpiano Santa Ana took out a three-thousand-peso fire insurance policy on the house in the Phoenix Assurance Company (Exhibit C), and a six-thousand-peso policy in the Guardian Assurance Company, Limited (Exhibit D), for a period of one year from that date until 4 o'clock in the afternoon of October 1, 1926, paying the respective premiums of P97.50 and P195 to said companies through their duly authorized Philippine agent, Kerr & Company. (Exhibits C and D.) On November 19, 1925, the plaintiff Ulpiano Santa Ana mortgaged said house to the plaintiff Rafael Garcia for P5,000, for a period of two years, the contract being drawn up as a retro sale (Exhibit A) for the sum of P5,000, and the policies issued by the Phoenix Assurance Company and the Guardian Assurance Company, Limited, were endorsed to the mortgagee, Rafael Garcia (Exhibits C, D, and E). On December 16, 1925, the plaintiff Ulpiano Santa Ana reinsured said house with the defendant companies, the Globe and Rutgers Fire Insurance Company of New York, and the Commercial Union Assurance Company, Limited of London, through their common agent duly authorized to represent them in the Philippine Islands, the Pacific Commercial Company, for the amount of P3,000 each, paying the 90-peso premium due upon each policy, which was to be effective for one year from the aforementioned date until 4 o'clock in the afternoon of December 16, 1926 (Exhibits B and B-I).

On September 20, 1926, Ulpiano Santa Ana took out another insurance policy on the house in question for P6,000 in the "Filipinas, Compania de Seguros," which issued the one-year policy Exhibit E, upon receiving from said plaintiff the amount of P195 as premium thereon.

About 3 o'clock in the morning of October 1, 1926, that is, twelve hours before the expiration of the policies issued by the Phoenix Assurance Company and the Guardian Assurance Company, Limited for P3,000 and P6,000 respectively, a fire broke out in the insured house, where Ulpiano Santa Ana and his family lived, starting in the ceiling of the living room where the plaintiff and his family were at that time sleeping, consuming the dwelling and every combustible object within, including jewelry and clothing. Ulpiano Santa Ana gave notice in due time of the loss to each and every one of the companies in which he had insured the house and demanded payment of the respective policies; the assurance companies refused payment on the ground that the claim of P21,000 filed by him was fraudulent, being in excess of the real value of the insured property; that none of said companies had been informed of the existence of the other policies in the other companies, and that the fire was intentional. Ulpiano Santa Ana therefore brought the actions which gave rise to these cases.

The first question to decide is one of fact, that raised in the first assignment of error by both appellant Ulpiano Santa Ana and appellant Rafael Garcia, and upon the solution of which depends the right of plaintiff and intervenor Ulpiano Santa Ana to collect the insurance upon his property from the insurance companies.

The trial court thus expressed itself upon this point in its opinion:

"It appears that whereas it has been provided in English and Spanish in notices attached to the insurance

policies issued by the Phoenix Assurance Co., Ltd., and the Guardian Assurance Company upon the first of October, 1925, and by the Globe and Rutgers Fire Insurance Company of New York, and the Commercial Union, Company, upon the 19th of December of the same year, that no other insurance should be admitted upon the property thereby assured without the consent of said companies duly given by endorsement, and whereas the first two policies were taken out on one and the same date, namely, October 1st, and the last two likewise upon one and the same date, that is, December 16, 1925, the insured plaintiff, Ulpiano Santa Ana, has not stated in the last two policies that his property had previously been insured with the Phoenix and the Guardian Assurance Company, and still less in the insurance policy of the 'Compañía Filipinas' taken out on September 20 of the following year, 1926, nor has he obtained upon the first two policies the necessary endorsements for the three subsequent insurance policies. It should be noted that clause three of the 'Filipinas' policy drawn up in Spanish, and the English policies issued by the four other companies, provide that any outstanding insurance upon the whole or a portion of the objects thereby assured must be declared by the insured in writing and he must cause the company to add or insert it in the policy, without which such policy shall be null and void, and the insured will not be entitled to indemnity in case of loss.

"Ulpiano Santa Ana maintains that he gave the required notice to all the insurance companies: To Kerr & Company through their sub-agent, Mariano Morelos; to the Pacific Commercial Company through their employee, Guillermo de Leon; and to the 'Filipinas, Compañía de Seguros' through their agent, Juan Grey; telling them he had paid for other insurance on the same property. But he has been contradicted in this by all the persons mentioned, and this deprives his allegations of probative force, especially considering that such advices or notices, so basic and essential to the existence and validity of the policies, must be given in writing as required in the note attached to the four policies above mentioned, and must be endorsed upon each of them, so that in case of necessity, as in the instant one, when a loss occurs, the insured may clearly show that he has fulfilled this indispensable requisite, since all companies, to which people apply for insurance upon property already assured, have an interest in knowing what other policies issued by other companies the insured already holds, for the purpose of knowing just what interest the applicant has in the preservation of the property, and the care and precaution to be taken for the prevention of loss.

"Thus it is that Mr. Pedro Casas, could not but testify that if he had known ten days before the loss occurred when he was asked to issue a policy, that the property intended to be assured for P9,000 with the 'Filipinas' Company was already insured in four other firms for P15,000, he would not have given a single centavo; for when he went to inspect the house a few days before issuing the P6,000 policy, he appraised the property at that sum, and at first would give no more than P5,000 (pages 352, 353 and 354, s. n.). The witness, who is the manager of said company, has been appraising realty for insurance since 1913. His testimony is therefore of value in this case."

We have carefully gone over the record with this point in mind, and have found nothing to justify us in departing from the findings of the court below.

Without deciding whether notice of other insurance upon the same property must be given in writing, or whether a verbal notice is sufficient to render an insurance valid which requires such notice, whether oral or written, we hold that in the absolute absence of such notice when it is one of the conditions specified in the fire insurance policy, the policy is null and void.

Since the ruling upon the first question, adversely to the two appellants, is decisive in the case before us, we need not go into the other errors assigned in their briefs by appellants Ulpiano Santa Ana and Rafael Garcia.

Wherefore, the judgment appealed from is affirmed, with costs against the appellants.

Let a copy of this opinion be united to each of the three cases thus adjudged. So ordered.

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

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