

**ANG GIOK CHIP, DOING BUSINESS UNDER THE NAME AND STYLE OF
HUA BEE KONG SI, PLAINTIFF AND APPELLEE, VS. SPRINGFIELD
FIRE & MARINE INSURANCE COMPANY, DEFENDANT AND
APPELLANT.***G R. No. 33637. December 31, 1931*

Ponente: MALCOLM, J.

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An important question in the law of insurance, not heretofore considered in this jurisdiction and, according to our information, not directly resolved in California from which State the Philippine Insurance Act was taken, must be decided on this appeal for the future guidance of trial courts and of insurance companies doing business in the Philippine Islands. This question, flatly stated, is whether a warranty referred to in the policy as forming part of the contract of insurance and in the form of a rider to the insurance policy, is null and void because not complying with the Philippine Insurance Act. The court has had the benefit of instructive briefs and memoranda from the parties and has also been assisted by a well prepared brief submitted on behalf of amici curiae.

The admitted facts are these: Ang Giok Chip doing business under the name and style of Hua Bee Kong Si was formerly the owner of a warehouse situated at No. 643 Calle Reina Regente, City of Manila. The contents of the warehouse were insured with three insurance companies for the total sum of P60,000. One insurance policy, in the amount of P10,000, was taken out with the Springfield Fire & Marine Insurance Company. The warehouse was destroyed by fire on January 11, 1928; while the policy issued by the latter company was in force.

Predicated on this policy the plaintiff instituted action in the Court of First Instance of Manila against the defendant to recover a proportional part of the loss coming to P8,170.59. Four special defenses were interposed on behalf of the insurance company, one being planted on a violation of warranty F fixing the amount of hazardous goods which might be stored in the insured building. The trial judge in his decision found against the insurance company on all points, and gave judgment in favor of the plaintiff for the sum of P8,188.74. From this judgment the insurance company has appealed, and it is to the first and fourth errors assigned that we would address particular attention.

Considering the result at which we arrive, it is unnecessary for us to discuss three of the four special defenses which were made by the insurance company. We think, however, that it would be a reasonable deduction to conclude that more than 3 per cent of the total value of the merchandise contained in the warehouse constituted hazardous goods, and that this per cent reached as high as 39. We place reliance on the consular invoices and on the testimony of the adjuster, Herridge. Having thus swept to one side all intervening obstacles, the legal question recurs, as stated in the beginning of this decision, of whether or not warranty F was null and void.

To place this question in its proper light, we turn to the policy issued by the Springfield Fire & Marine Insurance Company in favor of the plaintiff. The description of the risk in this policy is as follows:

"Ten thousand pesos Philippine Currency.—On general non-hazardous merchandise, chiefly consisting of chucherias, also produce, Cacao,' Flour, all the property of the Insured, or held by them in trust, on commission or on joint account with others, or for which he is responsible, while contained during the currency of this policy in the godown, situate No. 643 Calle Reina Regente. * * *

"This policy is subject to the hereon attached 'Ordinary Short Period Rate Scale' Warranties A & F, Co-insurances Clause 'and Three Fourths Loss Clause,' which are forming part of same. Co-insurance declared:

"P20,000.—Sun Insurance Office Ltd. (K & S)." (*Italics inserted.*)

Securely pasted on the left hand margin of the face of the policy are five warranties and special clauses. One of them is warranty F, specifically referred to on the face of the policy, reading in part as follows:

"WARRANTY"

"It is hereby declared and agreed that during the currency of this policy no hazardous goods be stored in the Building to which this insurance applies or in any building communicating therewith, provided, always, however, that the Insured be permitted to store a small quantity of the hazardous goods specified below, but not exceeding in all 3 per cent of the total value of the whole of the goods or merchandise contained in said warehouse, viz; * * *."

The applicable law is found in the Insurance Act, Act No. 2427, as amended, section 65 reading:

"Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it."

As the Philippine law was taken verbatim from the law of California, in accordance with well settled canons of statutory construction, the court should follow in fundamental points, at least, the construction placed by California courts on a California law. Unfortunately the researches of counsel reveal no authority coming from the courts of California which is exactly on all fours with the case before us. However, there are certain considerations lying at the basis of California law and certain indications in the California decisions which point the way for the decision in this case.

Section 65 of the Philippine Insurance Act corresponds to section 2605 of the Civil Code of California. The comments of the Code Examiners of California disclose that the language of section 2605 was quite different from that under the Code as adopted in 1872. That language was found too harsh as to insurance companies. The Code Examiners notes state: "The amendment restores the law as it existed previous to the Code: See Parsons on Maritime Law, 106, and Phillips on Insurance, sec. 756." The passage referred to in Phillips on Insurance, was worded by the author as follows:

"Any express warranty or condition is always a part of the policy, but, like any other part of an express contract, may be written in the margin, or contained in proposals or documents expressly referred to in the policy, and so made a part of it."

The annotator of the Civil Code of California, after setting forth these facts, adds:

"* * * The section as it now reads is in harmony with the rule that a warranty may be contained in another instrument than the policy when expressly referred to in the policy as forming a part thereof: * * *."

What we have above stated has been paraphrased from the decision of the California Court of Appeals in the case of Isaac Upham Co. vs. United States Fidelity & Guaranty Co. ([1922], 211 Pac, 809), and thus discloses the attitude of the California courts. Likewise in the Federal courts, in the case of Conner vs. Manchester Assur. Co. ([1904], 130 Fed., 743), section 2605 of the Civil Code of California came under observation, and it was said that

it "is in effect an affirmance of the generally accepted doctrine applicable to such contracts."

We, therefore, think it wrong to hold that the California law represents a radical departure from the basic principles governing the law of insurance. We are more inclined to believe that the codification of the law of California had exactly the opposite purpose, and that in the language of the Federal court it was but an affirmance of the generally accepted doctrine applicable to such contracts. This being true, we turn to two of such well recognized doctrines. In the first place, it is well settled that a rider attached to a policy is a part of the contract, to the same extent and with like effect as if actually embodied therein. (1 Couch, Cyclopaedia of Insurance Law, sec. 159.) In the second place, it is equally well settled that an express warranty must appear upon the face of the policy, or be clearly incorporated therein and made a part thereof by explicit reference, or by words clearly evidencing such intention. (4 Couch, Cyclopaedia of Insurance Law, sec. 862.)

Section 65 of the Insurance Act and its counterpart, section 2605 of the Civil Code of California, will bear analysis as tested by reason and authority. The law says that every express warranty must be "contained in the policy itself." The word "contained," according to the dictionaries, means "included," "inclosed," "embraced," "comprehended," etc. When, therefore, the courts speak of a rider attached to the policy, and thus "embodied" therein, or of a warranty "incorporated" in the policy, it is believed that the phrase "contained in the policy itself" must necessarily include such rider and warranty. As to the alternative relating to "another instrument" "instrument" as here used could not mean a mere slip of paper like a rider, but something akin to the policy itself, which in section 48 of the Insurance Act is defined as "The written instrument, in which a contract of insurance is set forth." In California, every paper writing is not necessarily an "instrument" within the statutory meaning of the term. The word "instrument" has a well defined definition in California, and as used in the Codes invariably means some written paper or instrument signed and delivered by one person to another, transferring the title to, or giving a lien, on property, or giving a right to debt or duty. (Hoag vs. Howard [1880], 55 Cal., 564; People vs. Fraser [1913], 137 Pac., 276.) In other words, the rider, warranty F, is contained in the policy itself, because by the contract of insurance agreed to by the parties it is made to form a part of the same, but is not another instrument signed by the insured and referred to in the policy as forming a part of it.

Again, referring to the jurisprudence of California, another rule of insurance adopted in that State is in point. It is admitted that the policy before us was accepted by the plaintiff. The receipt of this policy by the insured without objection binds both the acceptor and the insured to the terms thereof. The insured may not thereafter be heard to say that he did not read the policy or know its terms, since it is his duty to read his policy and it will be assumed that he did so. In California Jurisprudence, vol. 14, p. 427, from which these statements are taken with citations to California decisions, it is added that it has been held that where the holder of a policy discovers a mistake made by himself and the local agent in attaching the wrong rider to his application, elects to retain the policy issued to him, and neither requests the issuance of a different one nor offers to pay the premium requisite to insure against the risk which he believed the rider to cover, he thereby accepts the policy.

We are given to understand, and there is no indication to the contrary, that we have here a standard insurance policy. We are further given to understand, and there is no indication to the contrary, that the issuance of the policy in this case with its attached rider conforms to well established practice in the Philippines and elsewhere. We are further given to understand, and there is no indication to the contrary, that there are no less than sixty-nine insurance companies doing business in the Philippine Islands with outstanding policies more or less similar to the one involved in this case, and that to nullify such policies would place an unnecessary hindrance in the transactions of insurance business in the Philippines. These are matters of public policy. We cannot believe that it was ever the legislative intention to insert in the Philippine Law on Insurance an oddity, an incongruity, entirely out of harmony with the law as found in other jurisdictions, and destructive of good business practice.

We have studied this case carefully and having done so have reached the definite conclusion that warranty P, a rider attached to the face of the insurance policy, and referred to in the contract of insurance, is valid and sufficient under section 65 of the Insurance Act. Accordingly, sustaining the first and fourth errors assigned, and it being unnecessary to discuss the remaining errors, the result will be to reverse the judgment appealed from and to order the dismissal of the complaint, without special pronouncement as to costs in either instance.

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

DISSENTING

VILLA-REAL, J.:

I fully concur in the dissenting opinion penned by Justice Imperial, and further say that a rider or slip attached to an insurance policy, though referred to therein as making a part of it, is not one of the forms prescribed by section 65 of the Insurance Law in which an express warranty may be made to appear validly so as to be binding between the insurer and the insured. There are two, and only two forms provided in said section by which an express warranty may be made to appear validly, to wit: by embodiment either in the insurance policy itself or in another instrument signed by the insured and referred to in the policy as making a part of it.

Now the question arises as to whether the rider or slip containing said warranty F attached to the policy in question and referred to therein as making a part thereof is one of the two forms provided in said section 65 of the Insurance Law.

It is admitted that it is not the second form, because not being signed by the insured it does not constitute an instrument. (Hoag vs. Howard [1880], 55 Cal., 564; Peopie vs. Fraser [1913], 137 Pac, 276.) Is it the first form required by law, that is, is it contained in the policy itself? It is so contended in the majority opinion and authorities are cited in support of such contention.

In 1 Couch, Cyclopedia of Insurance Law, par. 159, it is said that "as a general rule, a Fider or slip attached to a policy or certificate of insurance is, prima facie at least, a part of the contract to the same extent, and with like effect, as if actually embodied therein, provided, of course, that it does not violate any statutory inhibition, and has been lawfully, and sufficiently attached, * * *" (See also 32 Corpus Juris, 1159, par. 270).

Does the attachment of a rider or slip containing an express warranty contravene the provisions of section 65 of the Insurance Law? When the law, in order to protect the insured, requires that an express warranty be contained in the policy or in another instrument referred to therein as making a part thereof, it could not have been its intention to permit that such express warranty be contained in a piece of paper not signed by the insured although it is attached to the policy and referred to therein as making a part thereof, because it would be contrary to the requirement that such express warranty be contained in an instrument signed by the insured. It is a general rule of statutory construction that a law should not be so construed as to produce an absurd result. It would certainly be an absurdity if section 65 of the Insurance Law were construed as requiring that an express warranty be contained only in the policy or in another instrument signed by the insured and referred to therein as making a part thereof for the protection of such insured, and at the same time permitting that such express warranty be contained in a piece of paper not signed by the insured but simply attached to the policy and referred to therein as making a part thereof, thus opening the door to fraud,—it being easy to detach such rider or slip and change it with another,—which is precisely what the law is trying to prevent. It will thus be seen that the attachment of a rider or slip containing an express warranty to a policy, although referred to therein as making a part thereof, is contrary to the evident intent and purpose of section 65 of the Insurance Law.

In the case of *Isaac Upham Co. vs. United States Fidelity & Guaranty Co.* (211 Pac, 809), cited in the majority opinion, the question was whether a warranty contained in an application for insurance, which was not referred to in the policy as making a part thereof, incorporated said warranty in the said policy and was valid. The Supreme Court of California held that it was not, for lack of such reference. Of course an application for insurance is a document signed by the insured, and an express warranty contained therein if referred to in the policy as making a part thereof, will be considered as contained therein in accordance with law.

In the case of *Conner vs. Manchester Assur. Co.* (130 Fed., 743), also cited in the majority opinion, the question was whether an open policy was a warranty and the Circuit Court of Appeals for the Northern District of California held that it was not, and further said that "section 2605 of the Civil Code of California (from which section 65 of the Insurance Law was taken) was evidently intended to express in statutory form the rule that no express warranty made by the insured shall affect the contract of insurance, unless it be contained in the policy or in the application, or some other instrument signed by the insured and made a part of the contract, and is in effect a firm affirmation of the generally accepted doctrine applicable to such contracts." It will be seen from this statement that the court in enumerating the forms in which an express warranty may be expressed or made to appear does not mention any paper which is not signed by the insured.

The fact that for many years it has been the practice of the insurance companies to use riders or slips of papers containing express warranties without the signature of the insured in violation of the law is no reason why such practice should be permitted to continue when its legality is questioned.

In view of the foregoing consideration, I am constrained to dissent from the opinion of the majority.

DISSENTING

IMPERIAL, J., with whom concurs AVANCEÑA, C. J., :

The decision of this case depended principally, but wholly, on the validity of the warranty F, Exhibit A-2. This instrument consists of a slip of paper pasted on the margin of a page of the fire insurance policy. It contains the stipulation that the insured is permitted to store in the building concerned the hazardous goods specified, to an amount not exceeding three per cent of the total value of the merchandise stored. The policy makes reference to this rider as follows: "This policy is subject to the hereon attached 'Ordinary Short Period Rate Scale,' Warranties A and F, Co-insurances clause and 'Three Fourths Loss Clause' which are forming part of the same"; but the rider is not signed by the insured.

Section 65 of Act No. 2427 (Insurance Law) reads as follows:

"Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it."

An express warranty, then, made at or before the execution of the policy, like warranty F, is valid only if it is contained in the policy itself, or in another instrument signed by the insured and referred to in the policy as forming a part thereof. Examining warranty F, it may be seen that it does not form an integral part of the policy but appears on another slip of paper pasted on the policy; it is therefore an instrument other than the policy and comes under the second paragraph provided for in section 65. And, according to this provision, warranty F cannot be valid or binding, for the simple reason that it is not signed by the insured, and has no weight, notwithstanding the fact that reference is made to it in a general way in the body of the policy. This reference is not equivalent to including it in the policy, for the simple reason, as we have said, that it was made in a general way. It is mentioned simply as warranty F, without giving any idea of its contents. The term of the rider might be changed

and the heading "Warranty F" retained, and, following the appellant's line of reasoning, it might, with equal plausibility, be defended as the express warranty agreed upon, because it was headed "Warranty F." It is just such alterations as this that the law seeks to prevent in requiring that all warranties of the kind are to be signed by the insured and referred to in the policy.

Setting aside for the moment the legal question of the validity of the warranty, and assuming warranty F to be valid, we have to consider another circumstance which indicates that the insured did not violate it. The trial court found that at the time of the fire, the inflammable goods in the warehouses or building of the insured did not exceed the amount permitted by the insurance company, that is, three per cent of the total value of the merchandise stored. This finding is borne out by the evidence, and there is no reason for changing it and making another.

For these reasons, I believe the judgment appealed from should be affirmed in its entirety.

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