

THE EAST FURNITURE INC., PLAINTIFF AND APPELLANT, VS. THE GLOBE & #038; RUTGERS FIRE INSURANCE CO. OF NEW YORK, DEFENDANT AND APPELLEE.*G. R. No. 35848. November 22, 1932*

Ponente: OSTRAND, J.

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The three above entitled Actions were instituted in the Court of First Instance of Manila on March 25, 1929, to recover the full amount of three fire insurance policies aggregating P20,000. The complaints in each of these cases alleged in substance that the plaintiff is a duly registered partnership engaged in the sale of furniture; that the defendant is a company engaged in the insurance business and duly constituted in accordance with the laws of the Philippine Islands; that the plaintiff insured against fire the articles existing in its establishment situated at Nos. 626 and 628 Rizal Avenue, Manila; that the insurance policies issued by the defendants, respectively, were: Globe & Rutgers, P5,000, in force from July 12, 1928, to July 12, 1929; Commercial Union, P5,000, in force during the same period; and The Continental, P10,000, in force from August 16, 1928, to August 16, 1929; that on March 2, 1929, a fire broke out in plaintiff's establishment, as a result of which the insured articles therein found were destroyed by the fire; that within the period marked in the policies the plaintiff presented to the insurance companies an inventory of the insured furniture which was destroyed by the fire, the value of which, before or at the time of the fire, amounted to P52,061.99; and that of the furniture destroyed by the fire some was saved, of the value of P5,000, more or less.

The defendants in their respective answers interposed a general denial and as special defenses alleged in substance (1) that the fire in question was of intentional origin; (2) that the claims of loss presented by the plaintiff were false and fraudulent; (3) that the furniture in question had been mortgaged by the plaintiff to the Manila Finance and Discount Corporation, so that at the time of the fire the plaintiff was riot the only party interested therein, contrary to the representations made in its claims of loss; and (4) that the plaintiff violated one of the conditions of the policies by refusing to furnish the defendants with a physical inventory of the contents of its store at the time of the fire.

By agreement of the parties the three cases were tried jointly before Judge Concepcion, who after the trial found that the claims presented by the plaintiff were notoriously fraudulent, and, accordingly, sustained defendants' second special defense and dismissed the complaint in each of the three cases, with costs against the plaintiff. As to the first special defense, referring to the origin of the fire, the trial judge merely said that "altho much might be said against the manager of the plaintiff corporation it is not necessary to make a detailed analysis of the proofs with respect to the fire, inasmuch as for the purposes of this decision a consideration of the second special defense is sufficient." The trial court overruled the third and fourth special defenses. From that judgment the plaintiff appealed.

The appellant contends that the trial court erred (1) in finding that the claims presented by the plaintiff to the

insurance companies were fraudulent; (2) in giving weight to the testimony of Captain Lorenzo, deputy chief of the Manila Fire Department, and Isidro Guevara, a furniture manufacturer, as to the value of the articles found in the premises after the fire; and (3) in dismissing plaintiff's complaints.

The appellees sustain the finding of the trial court that appellant's claims of loss were "notoriously fraudulent", and further urge before this court their first special defense, i. e., that the fire in question was of intentional origin.

1. With reference to the origin of the fire, the evidence shows that it started at about 9.55 p. m. in the second floor of the building which was occupied by the plaintiff as office and workshop. That floor was constructed of wood, with a galvanized iron roof. Immediately after the fire was extinguished Captain Lorenzo, the deputy chief of the fire department, investigated its origin and found in the second floor three cans containing gasoline and kapok saturated with gasoline. For this reason, in his official report of that fire (Exhibit 3), he stated the cause to be: "Suspected incendiary. Intentional. Preventable."

Filoteo Miranda, the proprietor and manager of the East Furniture Store, while testifying as a witness for the plaintiff, made no attempt to deny the presence of three cans of gasoline and kapok saturated with gasoline. His only explanation was that "inasmuch as on that occasion I had an automobile, I ordered them to buy gasoline, petroleum, and other combustibles". When further asked to explain the presence of those cans of gasoline in the upper story on the night of the fire, he replied: "How can I explain it, since, as I have said I paid no attention to those cans? The laborers were the ones in charge of that." With regard to the kapok saturated with gasoline, his only explanation was that "in my store mattresses and pillows are sold, and it is possible that someone had taken kapok and saturated it with gasoline".

It also appears from the record that in connection with the fire in question the said Filoteo Miranda caused one Eugenio Lim Pineda to be prosecuted for calumny, alleging that the latter had imputed to the former the commission of a crime, namely, that Miranda had caused his store to be burned or ordered a certain person to set it on fire. Pineda was acquitted by the Court of First Instance of Manila on the ground that it was proven that the imputation made by him against Miranda was true.

The said Eugenio Lim Pineda testified at the trial of these cases that he had known Miranda for about fifteen years; that about six months before the fire in question, Miranda intimated to him that he (Miranda) intended to burn the East Furniture Store because it was on the verge of bankruptcy ; that he communicated this information to attorney Eriberto de Silva, who in turn communicated it to his friend Aurelio Periquet, an insurance agent, and the latter thereupon caused one of the policies—issued by Smith, Bell & Co.—to be cancelled; that on the night of the fire he saw Garcia, the cashier of the plaintiff enter the back door of the building in question, and that ten minutes later the building burned; that witness called Garcia when he came out of the building and said to him: "You have set fire to the building."

Attorney Eriberto de Silva, testifying in these cases, corroborated the testimony of Pineda regarding the cancellation of the Smith-Bell policy through his instrumentality, and further testified that sometime after the cancellation of said policy he called on Miranda in connection with the latter's account with the Philippine Finance

Corporation, on which occasion Miranda asked him why the insurance he (Miranda) had procured from Periquet was cancelled, whereupon he replied: "Look here, Miranda, why should we not cancel that policy when we heard from Mr. Lim Pineda that you people were going to burn this establishment." That Miranda then replied: "That is corildential, please don't repeat to anybody." (Pp. 143-146, trans.)

It further appears from the record that at the time of the fire the plaintiff was heavily indebted to the Manila

Finance & Discount Corporation, to the Bank of the Philippine Islands, and to Attorney Alfonso E. Mendoza.

We are thus led to the conclusion that defendants' first special defense is well founded—that the fire in question was of intentional origin and was caused with the connivance of the plaintiff. Neither the interest of justice nor public policy would be promoted by an omission of the courts to expose and condemn incendiarism once the same is established by competent evidence. It would tend to encourage rather than suppress that great public menace if the courts do not expose the crime to public condemnation when the evidence in a case like the present shows that it has really been committed.

2. We may also consider the damage caused by the fire in relation with defendant's second special defense that plaintiff's claims of loss were false and fraudulent. To each of the proofs of loss which the plaintiff presented to the respective insurance companies four days after the fire was attached an inventory of the furniture claimed to have been in the building at the time of the fire. This inventory contains 506 pieces of furniture and 3,700 board feet of lumber of the alleged total value of P52,061.99. This amount was the total loss claimed to have been suffered by the plaintiff, although we note that in its complaints in these cases as amended it is conceded that some furniture of the value of about P5,000 was saved. The same inventory above referred to was offered by the plaintiff and admitted in evidence, having been marked Exhibits F-1, F-2, F-3, and F-4. To support the validity of this inventory Filoteo Miranda testified that he had taken the date appearing therein from his books of account. Neither he nor any other witness testified as to the correctness of the prices therein set forth, and it was not even shown whether they were cost prices or selling prices. But a comparison between the prices listed in Exhibit F-1 (the inventory of all of plaintiff's stock, supposed, to have been taken on or as of December 31, 1928), and those listed in Exhibit F-3 (the list of furniture sold by the plaintiff from January 4, 1929, to the date of the fire) tends to show that the value claimed against the insurance companies is much higher than the selling price. For instance, Exhibit F-3 (2nd item) shows that during the period from January 4 to March 2, 1929, the plaintiff sold 8 settees for P160 or at P20 each. These 8 settees must have been taken from the stock listed in Exhibit F-1, and an examination of this document reveals that the settees therein listed are valued by the plaintiff at from P32.50 to P110 each.

The only book the plaintiff produced and offered in evidence to support Miranda's testimony as to the validity of the inventory in question is Exhibit J. This appears to be a new book, only the first six pages of which contain entries, the first page consisting of a statement of assets and liabilities as of December 31, 1928, and the second to the sixth pages consisting of a list of furniture and its price, from which list the inventory in question appears to have been copied. The remaining 194 pages of said book are entirely blank. This seems to us significant in view of Miranda's testimony that at the end of the two preceding years, 1927 and 1926, he took a physical inventory similar to that found in Exhibit J, and in view of his inability to account for the whereabouts of those alleged previous inventories. The appellees contend that Exhibit J is not genuine but was evidently prepared by the plaintiff for the purpose of bolstering up its claim against the insurance companies; and we believe such a conclusion is warranted by the facts and circumstances which appear in the record.

Turning now to the evidence for the defense, we find from the uncontradicted testimony of Captain Lorenzo, who had directed the task of extinguishing the fire, that it lasted only twelve minutes and caused no damage to the first floor of the building where most of the insured furniture was located. Said witness also testified that he found but few pieces of furniture in the second floor and that he believed none had been completely burned.

The record shows that from March 2, 1929, the date of the fire, to April 20, 1929, when the sheriff sold the furniture left in the building at the instance of plaintiff's mortgages, the Manila Finance & Discount Corporation, the premises in question were guarded by an Indian watchman whom the insurance companies placed there to prevent anybody from taking away any part of its contents. It appears from the evidence for the defense that on

April 4, 1929, at the request of the insurance companies, a furniture manufacturer named Isidro Guevara, with the assistance of Julian Dacanay, an employee of the adjusters, made an inventory of all the damaged and undamaged furniture found in the building after the fire. That inventory, which was offered in evidence as Exhibit 5, contains 202 pieces of furniture, the cost price of which according to Guevara's appraisal is the total sum of P4,184.60. It will be recalled that the plaintiff claimed that at the time of the fire there were 506 pieces of furniture in the building of the total value of P52,061.99. , No contention is advanced on behalf of the appellant to the effect that Guevara's inventory is not a complete list of all the damaged and undamaged furniture found in the building after the fire. The contention on its behalf in this regard is that said inventory is not reliable (a) because Guevara was not a competent appraiser of furniture, and (b) because some of the furniture found in the building at the time of the fire may have been completely consumed by the fire.

With regard to the competency of the witness Guevara to appraise the furniture in question, he testified, and the trial court found, that he had been engaged in the manufacture of furniture in Manila for eighteen years. His testimony that the cost price of all the furniture found in the building after the fire was P4,184.60 appears to be reasonable, as the same furniture was subsequently sold by the sheriff at public auction and brought only the sum of P2,650.

With reference to appellant's contention that Guevara's inventory is not reliable because some of the furniture found in the building at the time of the fire may have been completely consumed by the fire, we think the question may be narrowed down to this: Was it possible that the plaintiff had 506 pieces of furniture in the building at the time of the fire when after the fire only 202 pieces were found in the premises ? Considering the undisputed fact that most of the insured furniture was located in the ground floor of the building, which was not damaged by the fire, and that the fire lasted only twelve minutes and damaged only the second floor where comparatively few pieces of furniture were found at the time of the fire; and considering the testimony of Captain Lorenzo and Isidro Guevara to the effect that, judging from the condition of the remains of the fire, they believed not a single piece of furniture was completely consumed by the fire, we do not hesitate to answer that question in the negative. During the twelve minutes the fire lasted, an enormous quantity of water was being pumped in by the firemen to extinguish it. Judging, then, from the duration and intensity of the fire in question, we cannot bring ourselves to believe it possible for some 304 pieces of wooden furniture to have been entirely consumed without leaving any vestige.

Regardless of any difference of opinion as to the value of the insured furniture and the extent of the damage caused thereto by the fire in question, the fact that the insured only had approximately 202 pieces of furniture in the building at the time of the fire and sought to compel the insurance companies to pay for 506 pieces conclusively shows that its claim was not honestly conceived. The trial court's conclusion that said claim is notoriously fraudulent, is correct.

Condition 12 of each of the insurance policies sued upon provides that "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 wilful act, or with the connivance of the Insured,— all benefit under this policy shall be forfeited." This case is governed by the decisions of this court in *Yu Cua vs. South British Insurance Co.* (41 Phil., 134); *Go Lu vs. Yorkshire Insurance Co.* (43 Phil., 633); *Tuason vs. North China Insurance Co.* (47 Phil., 14); *Tan It vs. Sun Insurance Office* (51 Phil., 212); *Prats & Co. vs. Phoenix Insurance Co.* (52 Phil., 807); and *Philippine National Bank and J. M. Po Pauco vs. Guardian Assurance Co., Ltd.* (G. R. Nos. 28763, 28765, and 28766).[1]

The judgment appealed from is affirmed, with costs against the appellant. So ordered.

Street, J., concurs.

MALCOLM, HULL, and VICKERS, JJ., concurring in the result:

We agree on the ground that it has been established that the plaintiff's claims of loss were false and fraudulent. This was the finding of the trial judge, and a clear preponderance of the evidence supports that conclusion. This result influenced the trial judge to refrain from expressing any opinion regarding the other special defense of incendiarism, and in this view we fully concur.

BUTTE, J., dissenting:

The conclusion that the claim presented by the plaintiff and appellant to the insurance companies was fraudulent because it was excessive and the conclusion that the fire in question was of an intentional origin and caused with the connivance of the plaintiff seem to be entirely warranted by the résumé of the evidence made in the foregoing opinion. I have made a careful examination of the entire record and I am convinced that said résumé of the evidence gives very scant and inadequate consideration to the case of the other side as actually presented in the record. Moreover, evidence is relied upon which is clearly incompetent and improper; for example, the ex parte report of the Chief of the Fire Department from which the following was quoted: "Suspected incendiary. Intentional. Preventable." The acquittal of Lim Pineda in the criminal prosecution for slander is not competent evidence and indeed it was not admitted by the court below. Furthermore, Lim Pineda's testimony that he saw Garcia enter the building ten minutes before the fire was refuted by Garcia's testimony, corroborated by an impartial witness, that he was at the stadium at the time of the fire and had no connection with it. This evidence is not mentioned nor are the facts mentioned which impeach the credibility of the witness conclusively. The first extract of Attorney Silva's testimony quoted and relied upon was ordered stricken by the court below and was clearly improper because no predicate had been laid for it. The second extract was so meaningless that when he was asked what was to be kept "confidential" he testified that he did not know.

There is no direct evidence whatever that the plaintiff and appellant set his building on fire to collect the insurance. Nor can I reconcile the suspicion that gasoline was put in the building in open cans to start the fire, with the finding that the same gasoline was found unconsumed after the conflagration.

As to the second special defense of the insurance companies that the plaintiff's claim of loss was fraudulent, I confess that I have more doubt with regard to the facts on this point. Again I think the foregoing opinion has not adequately stated the evidence of both sides. The claim of P52,061.99 was undoubtedly unreasonably high. The policies aggregated P20,000. It is a matter of common knowledge and borne out by many insurance cases which have been considered by this court, that the insured expects insurance companies to beat down his claim; and the respective claims of the insurer and the insured then become a matter of negotiation and adjustment. Under these circumstances, it is not surprising that the insured puffs the amount of his loss. If the amount claimed exceeds the limit of the ordinary puffing, it may be so disproportionate to the fair value of the property lost as to give ground for an inference of an attempt to defraud. I think the present case was very close to that line. But in view of the facts that one of the defendants' own witnesses estimated the loss at P20,000, and that the plaintiff's inventory which appears to have been kept in due course of business shows a value of P42,501.49 two months before the fire, I feel disposed to give the benefit of the doubt to the insured. Suspicion of fraud is not enough—for, I daresay, there never was a fire where some circumstance could not be found that could be alleged as a ground for an inference of fraud.

AVANCEÑA, C. J.: I concur with this dissenting opinion of Justice Butte.

VILLA-REAL, J.: I concur with dissenting opinion of Justice Butte.

ABAD SANTOS, J.: I concur in the dissenting opinion of Justice Butte. Judgment affirmed.

[1]Promulgated October 3, 1928, not reported.

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