

**TEAL MOTOR COMPANY, INC., PLAINTIFF AND APPELLEE, VS. THE
CONTINENTAL INSURANCE CO., DEFENDANT AND APPELLANT.
MANILA BUILDING AND LOAN ASSOCIATION, DEFENDANT AND
APPELLEE.**

G. R. No. 36657. March 28, 1934

Ponente: HULL, J.

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HULL, J.:

The plaintiff in these cases is a domestic corporation engaged in the automobile business in the City of Manila. Its principal office and store-rooms, located in the Port Area of the City of Manila were, late Sunday afternoon, January 6, 1929, visited by a severe fire of unknown origin. The Teal Motor Company, Inc., was heavily insured with the various defendant insurance companies, and in June it filed complaints against the insurance companies for the damage to the building and in August filed complaints against the insurance companies on the policies covering the contents thereof.

The defendant Manila Building and Loan Association is a domestic corporation with its head office in the City of Manila. It held a mortgage on the building and, as part security therefor, had a partial assignment of the insurance policies covering the building.

By mutual consent the cases were tried jointly, and after an unnecessarily long and tedious trial, judgment was given against the defendant insurance companies on the policies for damage to the building, in the sum of P125,000, distributed as per the assignments on the policies between the plaintiff and the Building and Loan Association.

Relief was denied on the policies covering the merchandise, on the ground that they were filed out of time. The court also dismissed the cross-complaint of the defendant Building and Loan Association, holding the request for foreclosure premature.

From these decisions of the trial court the insurance companies who were held liable for the damage to the building, appealed. Plaintiff appealed from the decision holding that it could not recover in its actions for damage to the contents, and the Building and Loan Association subsequently perfected an appeal in the cases relating to the building based on the action of the court in holding that its prayer for foreclosure of the mortgage was premature. The latter appeal of the Building and Loan Association will be disposed of in a separate opinion.

While the cases were heard jointly, argued jointly, and while, to a great degree, the same basic facts are present in all cases, for ease of understanding, this court will follow the same practice as the trial court in disposing of the cases relating to the building in one opinion, and the cases relating to the contents of the building in another.

The building, mainly of concrete, was only partially destroyed. There is virtually no dispute as to the original cost or approximate value at the time of the fire. There are wide discrepancies in the estimates of various architects, contractors, and builders as to the cost of restoration of the building to a condition equivalent to that existing

before the fire. A great divergence is caused by the estimates made at various times as to how much of the walls and flooring could be repaired and how much would have to be removed and totally rebuilt.

The trial court, after a careful examination and study of the evidence presented, held that the damage to the building amounted to the sum of P125,000.

Defendants vigorously assert that the building could be restored for slightly over one-half of this sum and that, in fact, the damage to the building was so overestimated that the claim presented should be held false and result in the total rejection of the claim, pursuant to one of the clauses of the insurance contracts.

This contention of defendants is not well taken. In the first place enough of the building remains for inspection to demonstrate to experts the amount and character of the repairs necessary. This makes an entirely different condition than where an exaggerated claim is presented on articles totally destroyed. In the second place, the court, after hearing the witnesses, gave judgment for the amount set forth in the complaint.

We have reviewed the evidence and, in view of its conflicting nature, have determined to be guided by the judgment of the trial court on this point and therefore hold that the damage to the building amounts to P125,000.

After the fire and before judgment was rendered by the trial court, Act No. 3802 was passed and approved December 4, 1930. That Act provides, among other things, that in certain cases of insurance the rate of interest on the proceeds of the policy should be 8 per cent per annum instead of the customary legal rate of 6 per cent. The last clause of the Act reads:

" * * * If the court shall find that there was no justification for the insurer to contest payment, the assured shall be entitled to collect, besides the proceeds of the policy, the interest provided for in this section."

There is no express finding of the court that there was no justification for the assured to contest payment. The mere fact that both the trial court and this court hold that the predominance of the proof justify the payment as claimed, does not necessarily mean that the insurance companies in contesting payment, did so without justification. At the time of refusal to pay they had in their possession information that would tend to prove that the claim was excessive. They had a right to their day in court, and as the evidence does not present sufficient grounds to hold that the defense was captious or dilatory or, in the language of the statute, without justification, we are convinced that the statute does not apply and that the judgment should bear the rate of 6 per cent per annum instead of 8 per cent per annum.

Virtually nothing is known as to how the fire started, and therefore the defense of arson was rejected by the trial court, and the assignment of error based on that finding is not worthy of comment by this court.

Counsel for appellant urges that there was overinsurance on the building's contents but does not allege that there was overinsurance on the building, the subject we are here discussing. The intimation of counsel for appellants that the principal owners of the Teal Motor Company, Inc., were not good risks, does not redound to the benefit of the insurance companies. The insurance companies knew or had an easy method of acquiring exact information of the value of the goods that were insured. They knew the character and reputation of the principal owners of plaintiff company, as they have been business men of prominence in the City of Manila for many years. If it were a fact that insurance companies are willing to overinsure hazardous cases, such companies become, instead of an asset to the community, an actual menace to the law-abiding and honest inhabitants of the community.

There are also assignments of error based on the exclusion of certain exhibits which were properly rejected by the trial court.

With the modification of the rate of interest above-mentioned, the judgment of the Court of First Instance of the

City of Manila, so far as it relates to the insurance companies, defendants, is affirmed. No pronouncement as to costs. So ordered.

Street, Malcolm, Villa-Real, Abad Santos, Imperial, Bntte, and Goddard, JJ., concur.

Justice Vickers voted to affirm the decisions of the lower court with modifications indicated in the opinion in cases Nos. 36657, 36659, and 36660, but was absent when the opinion was promulgated and his name does not appear signed thereto.—STREET, Acting C. J.

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