

TEAL MOTOR COMPANY, INC., PLAINTIFF AND APPELLANT, VS. ORIENT INSURANCE COMPANY, INC., DEFENDANT AND APPELLANT

G. R. No. 36701. March 28, 1934

Ponente: HULL, J.

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HULL, J.:

These seven cases relate to insurance policies covering the goods, wares, and merchandise contained in the building in the Port Area in the City of Manila which was damaged by a fire of unknown origin the afternoon of Sunday, January 6, 1929. At the request of the insured, the companies gave additional time for the filing of the claims of loss. These claims were definitely rejected in writing by the insurance companies through their agents on April 15, 1929.

Among the special defenses of the insurance companies is one based upon a clause in the policies which, with the exception of those of the Atlas Assurance Company, Ltd., among other things provides:

"* * * if the claim be made and rejected, and action or suit be not commenced within three months after such rejection, * * * all benefit under this Policy shall be forfeited."

While these cases were under advisement here, we noticed that the provision relating to the Atlas policy reads:

"* * * if the claim be made and rejected and arbitration proceedings be not commenced in pursuance of the 18th Condition of this Policy within three months after such rejection; all benefit under this Policy shall be forfeited."

No such arbitration proceedings were instituted within the three months' period. Both in the lower court and here attorneys for both sides, although they knew that all of the policies were not uniform, treated these two clauses as having the same practical effect. The majority believe that we should take this case as made and submitted to us and not attempt to make any differentiation on points on which we have not had the assistance of counsel. Nor are we concerned over the fact that these clauses were in small print on the back of the policies as both the president of plaintiff corporation and the attorney for plaintiff testified that they were fully conversant with the terms of the policies.

The seven suits were filed between the 3rd and the 15th day of August, 1929, or more than three months after the rejection by the defendant companies of plaintiff's claim. Suits were brought on the policies covering the building, the first week in June. From March until June at various times, Bachrach, the president of the Teal Motor Company, and Teal had informal conversations principally with Elser, the general agent of a number of the insurance companies, looking to an extrajudicial settlement. Elser was receptive but stated that the Royal Insurance Company, Ltd., represented here by Selkirk, having the largest policies, would have to take the lead in any such negotiations. Selkirk took the position that as the claims had been rejected by the adjusters and that as the matter was in the hands of the attorneys, conversations were of no moment and he would consider nothing but a formal statement. It is presumed that he meant by "formal statement" a definite, concrete proposition in writing.

On May 31, 1929, an article appeared in the daily press, whereupon Elser telephoned plaintiff that any negotiations they might have looking to an extrajudicial settlement were at an end and that they might as well sue. Bachrach testifies that Elser asked him not to sue and places such a request after the 1st of June. This is denied by Elser, and Elser is corroborated by the whole record. What negotiations there were for a settlement were at the request of plaintiff, were of the most informal and inconsequential kind, and could not have had the objective of lulling a shrewd and active business man, advised by competent attorneys, into a confident belief of an extrajudicial settlement so that he would sleep upon his rights.

The trial court held that even at best only the negotiations for compromise that took place some time after the 15th of April and terminated on the 31st of May could be considered and also held that there was ample time from the 1st of June to the 15th of July for plaintiff to formulate and file in the Court of First Instance of Manila its complaints.

Plaintiff was given such time as it deemed necessary to formulate and present its claim of loss. That claim was investigated by the adjusters for several months, and under the contract of insurance, the insured had three months after rejection in which to bring suit. The issues were virtually joined on the presentation of the claims and their rejection by the companies in writing, and three months thereafter is not an unreasonably short time to draft and file in court an appropriate complaint on a contract of fire insurance.

"A provision requiring presentation of claim within three months after fire, and the bringing of action within three months after refusal of claim is valid." (Miller vs. Northern Assur. Co., 1 Porto Rico Fed., 420. See also E. Macias & Co. vs. China Fire Insurance & Co., 46 Phil., 345.)

Concurring with the view of the trial court that these cases were not brought within time, it is unnecessary to discuss and pass upon the question whether or not there were overinsurance and false claims of loss in these cases.

The judgment appealed from is affirmed. No pronouncement as to costs. So ordered.

Street, Malcolm, Goddard, and Diaz, JJ., concur.

Justice Vickers voted to affirm the decisions of the lower court in these cases, with modification, but was absent at the time of the promulgation of the opinion and his name does not appear signed thereto.—STREET, Acting C. J.

CONCURRING AND DISSENTING

IMPERIAL, J.,

I concur with the majority in the disposition of cases G. R. Nos. 36701, 36702, 367Q3, 36704, 36706 and 36707.

I dissent as regards the case G. R. No. 36705. In my opinion judgment should be rendered in this cause in favor of the appellant for the Atlas policies do not contain any limitation concerning the commencement of action.

BUTTE, J., with whom concurs ABAD SANTOS, J., dissenting (Cases Nos. 36701-36704, 36706, 36707) :

The insurance policies here involved contain in small print on the back thereof the following paragraphs:

"13. 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; or, if the Insured or anyone acting on his behalf shall hinder or obstruct the Company in doing any of

the acts referred to in Condition 12; or, if the claim be made and rejected and an action or suit be not commenced within three months after such rejection, or (in case of an Arbitration taking place in pursuance of the 18th Condition of this Policy) within three months after the Arbitrator or Arbitrators or Umpire shall have made their award, all benefit under this Policy shall be forfeited."

"19. In no case whatever shall the Company be liable for any loss or damage after the expiration of twelve months from the happening of the loss or damage unless the claim is the subject of pending action or arbitration."

The opinion of the majority takes no note of paragraph 19 above quoted but rests its judgment upon the forfeiture clause of paragraph 13. I think the forfeiture in this case is harsh, inequitable and unconscionable, having regard to all the circumstances. There is not a scintilla of evidence in the record tending to show that the insurance companies have suffered the slightest loss or damage by reason of the short delay in the filing of these suits. On the other hand, the plaintiff is penalized by this technical forfeiture to the extent of more than P300,000 including even the balance of the unearned premiums.

There is much conflict of evidence in the record as to whether or not the negotiations for a compromise and settlement without litigation had the effect of lulling the plaintiff into inaction. It seems clear that these negotiations were not definitely terminated until May 31, 1929. The effect of our judgment in this case is to cut down the three months period—short as it is—by half.

It is familiar law that the courts do not look with favor upon forfeiture in the nature of penalties. In the present case the plaintiff is heavily penalized, not for failure to perform any promise, obligation or duty but for mere delay in the exercise of a privilege, which the plaintiff derives from the law of the land, not from the defendants.

In the case of the Treasurer of the Philippine Islands vs. Rodis (40 Phil., 850), this court considered the forfeiture clause in a franchise to construct and operate a street railway in Cebu, by which the defendant was required to deposit with the Insular Treasurer the sum of ₱ 0,000 as security for the performance of his obligations under the franchise. The street railway not having been completed within the period prescribed by said franchise, suit was brought to forfeit the deposit. This court reversed the judgment of forfeiture and ordered all but ₱1,000 to be returned to the defendant. The court applied article 1154 of our Civil Code which provides as follows:

"The judge shall equitably mitigate the penalty if the principal obligation should have been partly or irregularly performed by the debtor." If this court may equitably mitigate a penalty arising from a breach of an express obligation, it may and should, a fortiori, equitably relieve a party from a forfeiture which does not grow out of any breach of obligation express or implied having due regard to all the circumstances of the case and the usages of equity. (Cf. Article 6, Civil Code.)

In the present instance, I think some regard should be had to paragraph 19 of the policies above quoted and some effort should be made to give it effect and meaning in the present case. The judgment of the majority annihilates all rights and benefits of the insured under the policy after three months from the "rejection of the claim". By paragraph 19, supra, the insurance companies, inferentially at least, indicated their liability for a period of twelve months from the happening of the loss; and such a construction of the contract might reasonably have been relied upon by the insured. The complete termination of the defendant's liability by the alleged forfeiture on July 15, 1929, is irreconcilable with the implication of their continuing liability which did not terminate until January 6, 1930, one year after the fire." * * * Courts are reluctant to declare and enforce a forfeiture if, by reasonable interpretation, it can be avoided. * * * (6 R. C. L., 906.) To give effect to both paragraphs 13 and 19, the final rejection of the claim should be deemed to take place when all liability of the defendants terminated, i. e. "twelve months from the happening of the loss." * * * As forfeitures are not favored either in equity or in law, provisions for forfeitures are to receive, when the intent is doubtful, a strict construction against those for whose benefit they

are introduced. * * * (Ibid., 906.)

In the case of *E. Macias & Co. vs. China Fire Insurance & Co.* (46 Phil., 345), cited in the opinion of the court, the claim was rejected on April 7, 1919, and the suit was brought on September 30, 1922, more than one year and two months after the three months limitation period expired, and we said in our decision:

"* * * It may be observed that the question as to the reasonableness of a three months contractual limitation is not raised in the present case."

In the other case cited by the majority, *Miller vs. Northern Assurance Co.* (1 Porto Rico Federal Reports, 420), the suit was brought more than fifteen years after the fire occurred and insurance became due.

Whether this forfeiture should be enforced or not and, if enforced, upon what terms, rests in the sound discretion and sense of justice of the court, having regard to all the facts and circumstances and the relative positions of the parties. I cannot find a single equitable circumstance that warrants the harsh penalty which has been inflicted on the plaintiff in these cases.

DISSENTING

VILLA-REAL, J., dissenting:

I fully concur in the above dissenting opinion of Justice Butte. I reiterate my opinion, previously expressed, that this court has no jurisdiction to entertain the appeals in all these cases and their companions for the reason that new trial having been granted and had, the original decision was ipso facto vacated, and a new one should have been rendered. The jurisdiction of this court over these cases being appellate and revisory, it can revise only a valid decision and not one that has become null and void. The parties cannot by consent grant it a jurisdiction which by law it does not possess.

In the case of *Del Rosario vs. Villegas* (49 Phil., 634), this court, construing section 147 of Act No. 190, held:

"Once a new trial is granted, the original judgment is set aside and the case is exactly in the position it occupied before, and the parties stand as if the case had never been tried. If a new trial is granted in general terms, it reopens all the issues in the cause and amendments to the pleadings may be permitted. The court, however, can limit the issues to be discussed at the new trial and the parties to intervene in it, as well as the evidence to be presented." Butte, J., dissenting (Case No. 36705) :

The insurance policies in this case, unlike the policies in cases G. R. Nos. 36701, 36702, 36703, 36704, 36706 and 36707, contain no provision for the forfeiture of the policies if suit be not commenced within three months after rejection of the claim.

This fact was overlooked by the trial court and by attorneys of both appellants and appellees, who stated that the policies in all said cases contained identical forfeiture clauses.

In G. R. No. 36705 there is no basis for even a technical forfeiture. No forfeiture was claimed on the ground that there had been no arbitration.

It is adding insult to injury to penalize the plaintiff with a technical forfeiture in this case on the sole ground of an oversight (of which all concerned were alike guilty) in failing to give a more thorough microscopic examination to the small print on the back of all the policies. It was a natural mistake because it is a matter of common knowledge—and borne out by these cases—that as a general rule the insurance policies used by affiliated companies are identical in form. If the Atlas Company, its agents and attorneys, knew that their policies contained no such

forfeiture clause, they would be guilty of both suppressio veri and suggestio falsi, if they still insisted on having a forfeiture in this case on a limitation clause which does not exist.

Such a forfeiture would be doubly unconscionable.

VILLA-REAL, J., with whom concurs ABAD SANTOS, J.:

I also concur in the above additional dissenting opinion of Justice Butte.

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