

SHARRUF & CO., KNOWN ALSO AS SHARRUF & ESKENAZI, SALOMON SHARRUF AND ELIAS ESKENAZI, PLAINTIFFS AND APPELLEES, VS. BALOISE FIRE INSURANCE CO., SUN INSURANCE OFFICE, LTD., AND SP...

G. R. No. 44119. March 30, 1937

Ponente: VILLA-REAL, J.

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VILLA-REAL, J.:

This is an appeal taken by the defendant companies Baloise Fire Insurance Co., Sun Insurance Office Ltd., and Springfield Insurance Co., represented by Kuenzle & Streiff, Inc., from the judgment of the Court of First Instance of Manila, the dispositive part of which reads as follows:

"Wherefore, judgment is rendered ordering the defendant insurance companies to pay to the plaintiffs Salomon Sharruf and Elias Eskenazi the total amount of P40,000 plus interest thereon at 8 per cent per annum from the date of the filing of the complaint, with the costs of the trial. The defendants shall pay this judgment jointly in proportion to the respective policies issued by them. The plaintiffs Salomon Sharruf and Elias Eskenazi shall recover the judgment share and share alike, deducting from the portion of the plaintiff Elias Eskenazi the sum of P3,000 which belongs and shall be turned over to the intervenor E. Awad & Co., Inc. It is so ordered."

In support of their appeal the appellants assign the following alleged errors as committed by the court a quo in its decision in question, to wit:

"1. The lower court erred in holding, that Salomon Sharruf and Elias Eskenazi had personality to sue, either as a partnership or individually, and therefore, an insurable interest.

"2. The lower court erred in holding, that the fire that broke out in the premises at Nos. 299-301 Muelle de la Iridustria of this city, occupied by the alleged plaintiffs, was not of incendiary origin.

"3. The lower court erred in holding, that the 'idea of using petroleum in the fire in question, surged after the fire for the purpose of making it appear as a part of the evidence.'

"4. The lower court erred in holding, that the claim of loss filed by the alleged plaintiffs was not fraudulent, but merely inaccurate, due to the peculiar circumstances of the case, such as the loss of invoices and sales-slips.

"5. The lower court erred in sentencing the defendants to pay jointly to the alleged plaintiffs the sum of P40,000, with interest thereon at the rate of 8 per cent per year and costs.

"6. The lower court erred in overruling defendants' motion for new trial and in failing to dismiss the case altogether, with costs against the alleged plaintiffs."

The preponderance of the evidence shows the existence of the following facts:

In the months of June and July, 1933, the plaintiffs Salomon Sharruf and Elias Eskenazi were doing business under the firm name of Sharruf & Co. As they had applied to the defendant companies for insurance of the

merchandise they had in stock, the latter sent their representative P. E. Schiess to examine and assess it. On July 25, 1933, the defendant insurance companies" issued insurance policies Exhibits D, E, and F in the total amount of P25,000 in the name of Sharruf & Co. On August 15, 1933, the defendant Springfield Insurance Co. issued an additional policy (Exhibit G) in the sum of P15,000 in favor of said firm Sharruf & Co., raising the total amount of the insurance on said merchandise to P40,000. On August 26, 1933, the plaintiffs executed a contract of partnership between themselves (Exhibit A) wherein they substituted the name of Sharruf & Co. with that of Sharruf & Eskenazi, stating that Elias Eskenazi contributed to the partnership, as his capital, goods valued at P26,299.94 listed in an inventory Exhibit B. It was likewise stated in said contract that Salomon Sharruf brought to said partnership, as his capital, goods valued at P24,205.10, appearing in the inventories Exhibits C and C-1. The total value of the merchandise contributed by both partners amounted to P50,505.04. Part of said merchandise, most of which were textiles, was sold for P8,000, leaving goods worth P43,000. In all there were from 60 to 70 bolts of silk. All the goods, most of which were aluminum kitchen utensils, various porcelain and glass wares, and other articles of stucco, were contained in about 39 or 40 cases. The last time the plaintiffs were in the building was on September 19, 1933, at 4 o'clock in the afternoon. Up to the month of September 1933, about 30 or 40 cases of merchandise belonging to the plaintiffs were in Robles' garage at No. 1012 Mabini Street.

At about 12.41 o'clock on the morning of September 22, 1933, the fire alarm bell rang in the different fire stations of the city. The firemen of the San Nicolas Fire Station, headed by Captain Charles A. Baker, were the first to arrive at the scene of the fire, followed by Captain Thomas F. McIntyre of the Santa Cruz Fire Station, who arrived at 12.44 o'clock. Having found the door at No. 301, Muelle de la Industria Street, where the building was in flames, locked, the firemen pumped water on the upper part of the building and later broke open the door through which they entered the premises. They then saw an inflamed liquid flowing towards the sidewalk, the flames thereon blazing more intensely every time water fell on them. The liquid apparently came from under the staircase of said floor. They likewise noted that the entire space occupied by the staircase was in flames except the adjoining room. After the fire had been extinguished, an earthen pot (Exhibit 15) containing ashes and the residue of a certain substance, all of which smelled of petroleum, was found by detective Manalo near the railing of the stairway of the second floor. At about 8.30 o'clock that same morning, detective Irada found no other earthen pot (Exhibit 16), one-fourth full of water that smelled of petroleum, under the staircase of the first floor; straw and excelsior, that also smelled of petroleum, around said pot, a red rag (Exhibit 18) in front of the toilet, and a towel which also smelled of petroleum on the garbage, rags and other things stuffed into the petroleum can, Exhibit 21. On the following day, September 23, 1933, photographs were taken of the condition of the different parts of the building and of the goods found therein. Said photographs are: Exhibit 1, showing the interior of the first floor partially burned, with the staircase, the doorway, the wooden partition wall and pieces of wood scattered on the floor supposed to be from the door that was demolished; Exhibit 2, showing about 8 or 9 scorched cases, some closed and others open; Exhibit 3, showing the space or hall of the upper floor partially damaged by the fire at the place occupied by the staircase, with chairs piled up and unburnt, pieces of wood and debris apparently from the cement partition wall beside the staircase and the attic; Exhibit 4, showing the same space taken from another angle, with the partition wall of cement and stone and some broken railings of the stairway; Exhibit 5, showing a room with partially burnt partition wall, with a wardrobe and a table in the background, another table in the center, a showcase near the wall with porcelain and iron articles on top thereof and fallen and burnt window shutters on the floor; Exhibit 6, showing an open unburnt showcase containing necklaces with imitation stones and other jewelry; Exhibit 7, showing piled up chairs and boxes and the burned and destroyed upper part of the partition wall and attic; Exhibit 8, presenting a showcase with a burnt top, containing kitchen utensils, tableware, dinner pails and other articles; Exhibit 9, presenting a half-open trunk with protruding ends of cloth, other pieces of cloth scattered on the floor, a step of the staircase and a bench; Exhibit 10, showing the partially destroyed attic and wires wound around the beams; Exhibit 11, presenting another view of the same attic from another angle. On

the 27th of said month and year, the following photographs were taken: Exhibit 12, presenting a close-up of the beams and electric wires in the same attic shown in Exhibit 10; Exhibit 13, presenting a close-up of the wires found in the attic, with an electric bulb hanging from a beam, and the burnt beams; and Exhibit 14, showing Nos. 14 and 18 wires entwined with one another on the first floor, with the burnt posts and partition walls. Electrical Engineer Joseph Mora, who inspected the electric wiring on September 25, 1933, was of the opinion that the wires wound around the beam and a nail might have caused the fire, but he could not assure whether any of the wires was burned due to an electrical discharge that passed through it, or whether or not the fire started from the lighting system. In the burned building the plaintiffs kept petroleum used for cleaning the floor.

The first question to be decided in the present appeal, which is raised in the first assignment of alleged error, is whether or not Salomon Sharruf and Elias Eskenazi had juridical personality to bring this action, either individually or collectively, and whether or not they had insurable interest'.

As already seen, Salomon Sharruf and Elias Eskenazi were doing business under the firm name of Sharruf & Co. in whose name the insurance policies were issued, Elias Eskenazi having paid the corresponding premiums.

In the case of *Lim Cuan Sy vs. Northern Assurance Co.* (55 Phil., 248), this court said:

"A policy insuring merchandise against fire is not invalidated by the fact that the name of the insured in the policy is incorrectly written 'Lim Cuan Sy' instead of 'Lim Cuan Sy & Co.', the latter being the proper legal designation of the firm, where it appears that the designation 'Lim Cuan Sy' was commonly used as the name of the firm in its business dealings and that the error in the designation of the insured in the policy was not due to any fraudulent intent on the part of the latter and did not mislead the insurer as to the extent of the liability assumed."

In the present case, (while it is true that at the beginning the plaintiffs had been doing business under the firm name of "Sharruf & Co.", insuring their business in said name, and upon executing the contract of partnership (Exhibit A) on August 26, 1933, they changed the title thereof to "Sharruf & Eskenazi," the membership of the partnership in question remained unchanged, the same and only members of the former, Salomon Sharruf and Elias Eskenazi, being the ones composing the latter, and it does not appear that in changing the title of the partnership they had the intention of defrauding the herein defendant insurance companies. Therefore, under the above-cited doctrine the responsibility of said defendants to the plaintiffs by virtue of the respective insurance policies has not been altered. If this is true, the plaintiffs have juridical personality to bring this action.

The second question to be decided is that raised in the second assignment of alleged error, which, consists in whether or not the fire which broke out in the building at Nos. 299-301 Muelle de la Industria, occupied by the plaintiffs, is of incendiary origin.

In maintaining the affirmative, the appellants call attention to the earthen pots Exhibits 15 and 16, the first found by detective Manalo beside the railing of the stairway of the upper floor and the second found by detective Irada on the first floor, both containing liquid, ashes and other residues which smelled of petroleum; a red rag (Exhibit 18) found by detective Irada in front of the toilet; the partially burnt box (Exhibit 20); and the old can, (Exhibit 21) containing garbage. The fact that the liquid found by the detectives in the earthen jars smelled of petroleum, does not constitute conclusive evidence that they had been used as containers for petroleum to burn the house. Said smell could have very well come from the strips of China wood of which boxes from abroad are made, the resin of which smells of petroleum, or from the rags found therein which might have been used to clean the floor by saturating them with petroleum. There being petroleum for cleaning the floor in the building, it is not strange that when the house caught fire the petroleum also caught fire, the flames floating on the water coming out from under the door from the pumps. There is neither direct nor strong circumstantial evidence that the plaintiffs

personally or through their agents placed petroleum in the building in order to burn it, because it was locked on the outside and nobody was staying therein. As it cannot be assumed that the petroleum might have burned by itself, it is probable that the fire might have originated from the electric wiring, although electrical engineer Mora stated that he could not assure whether any of the wires was burned due to an electric discharge passing through it, or whether or not the fire was caused by the lighting system.

Upon consideration of all the evidence and circumstances surrounding the fire, this court finds no evidence sufficient to warrant a finding that the plaintiffs are responsible for the fire.

With respect to the question whether or not the claim of loss filed by the plaintiffs is fraudulent, it is alleged by them that the total value of the textiles contained in cases deposited inside the building when the partnership Sharruf & Eskenazi was formed was P12,000; that of the fancy jewelry with imitation stones from P15,000 to P17,000, and that of the kitchen utensils and tableware made of aluminum, bronze and glass P10,676 (Exhibits B, C, and G—1). If, as said plaintiffs claim, they had already sold articles, mostly textiles, valued at P8,000, a small quantity of cloth must have been left at the time the fire occurred. In their claim, however, the textiles allegedly consumed by fire and damaged by water are assessed by them at P12,000. The claim of P12,000 is certainly not attributable to a mere mistake in estimate and counting because if they had textiles worth only P12,000 before the fire and they sold goods, mostly textiles, worth P8,000, surely textiles in the same amount of P12,000 could not have been burned and damaged after the fire. Of the kitchen utensils and tableware made of aluminum, bronze and glass, of which, according to the evidence for the plaintiffs, they had a stock valued at P10,676 (Exhibit B), there were found after the fire articles worth only P1,248.80 (Exhibit K). Therefore, utensils valued at P9,427.20 were lacking. A considerable amount of kitchen utensils made of nonflammable and fireproof material could not, by the very nature of things have been totally consumed by the fire. At most, said articles would have been damaged, as the rest, and would have left traces of their existence. The same may be said of the fancy jewels with imitation stones, and others of which the plaintiffs claim to have had a stock worth from P15,000 to P17,000 at the time of the fire, of which only a few valued at P3,471.16, were left after the fire (Exhibit K). According to said plaintiffs, all the articles, for the alleged loss of which indemnity is sought, were contained in about 40 cases kept on the upper and lower floors of the building, in showcases and wardrobes. According to the testimony of the fire station chiefs, corroborated by the photographs of record, the flames caused more damage in the upper part of the rooms than in the lower part thereof; since, of the ten or eleven cases found inside the building after the fire, only a few were partially burned and others scorched. Judging from their appearance, the goods were damaged more by water than by fire. According to the inventory made by White & Page, adjusters of the insurance companies, in the presence of the plaintiffs themselves and according to data supplied by the latter, the total value thereof, aside from the articles not included in the inventories Exhibits B, C, and C-I, assessed at P744.50, amounts to only P8,077.35. If the plaintiffs' claim that at the time of the fire there were about 40 cases inside the burnt building were true, as ten or eleven of them were found after the fire, traces of the thirty or twenty-nine cases allegedly burnt would be found, since experience has shown that during the burning of a building all the cases deposited therein are not so reduced to ashes that the least vestige thereof cannot be found. In the case of *Go Lu vs. Yorkshire Insurance Co.* (43 Phil., 633), this court laid down the following doctrine:

"This court will legally presume that in an ordinary fire fifty bales or boxes of bolt goods of cloth cannot be wholly consumed or totally destroyed, and that in the very nature of things some trace or evidence will be left remaining of their loss or destruction."

The plaintiffs, upon whom devolve the legal obligation to prove the existence, at the time of the fire, of the articles and merchandise for the destruction of which they claim indemnity from the defendant companies, have not complied with their duty because they have failed to prove by a preponderance of evidence that when the fire took place there were in the burnt building articles and merchandise in the total amount of the insurance policies

or that the textiles and other damaged and undamaged goods found in the building after the fire were worth P40,000. On the contrary, their own witness, Robles, testified that up to the month of September, 1933, there were about 39 or 40 cases belonging to the plaintiffs in his garage on Mabini Street indicating thereby that the cases of merchandise examined by the agent of the insurance companies on July 25 and August 15, 1933, and for which the insurance policies were issued, were taken from the burned building where they were found. So great is the difference between the amount of articles insured, which the plaintiffs claim to have been in the building before the fire, and the amount thereof shown by the vestige of the fire to have been therein, that the most liberal human judgment can not attribute such difference to a mere innocent error in estimate or counting but to a deliberate intent to demand of the insurance companies payment of an indemnity for goods not existing at the time of the fire, thereby constituting the so-called "fraudulent claim" which, by express agreement between the insurers and the insured, is a ground for exemption of the insurers from civil liability.

Therefore, as the herein plaintiffs-appellees have acted in bad faith in presenting a fraudulent claim, they are not entitled to the indemnity claimed by them by virtue of the insurance policies issued by the defendant-appellant companies in their favor.

For the foregoing considerations, this court is of the opinion and so holds: (1) that when the partners of a general partnership doing business under the firm name of "Sharruf & Co." obtain insurance policies issued to said firm and the latter is afterwards changed to "Sharruf & Eskenazi", which are the names of the same and only partners of said firm "Sharruf & Co.", continuing the same business, the new firm acquires the rights of the former under the same policies; (2) that when the evidence relative to the cause of a fire and the author thereof is so vague and doubtful, the insured cannot be attributed incendiary intervention therein for the mere fact that he had the keys to the unoccupied building in his possession; (3) that a person who presents a claim for damages caused by fire to articles and goods not existing at the time of the fire does so fraudulently and his claim is fraudulent, and (4) that when, immediately after a fire that broke out inside a completely locked building, lasting scarcely 27 minutes, only about ten or eleven partly burned and scorched cases, some containing textiles and wrapping paper and others, statues of saints, have been found without any trace of the destruction of other cases by said fire, it can neither logically nor reasonably be inferred that 40 of said cases were inside the building when the fire broke out.

Wherefore, the appealed judgment is reversed, and the defendant companies are absolved from the complaint which is dismissed, with costs to the appellees. So ordered.

Avancena, C. J., Abad Santos, Imperial, Diaz, Laurel, and Concepcion, JJ., concur.

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