

MANILA MAHOGANY MANUFACTURING CORPORATION, PETITIONER, VS. COURT OF APPEALS AND ZENITH INSURANCE CORPORATION, RESPONDENTS.

G.R. No. 52756. October 12, 1987

Ponente: PADILLA, J.

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PADILLA, J.:

Petition to review the decision* of the Court of Appeals, in CA-G.R. No. SP-08642, dated 21 March 1979, ordering petitioner Manila Mahogany Manufacturing Corporation to pay private respondent Zenith Insurance Corporation the sum of Five Thousand Pesos (P5,000.00) with 6% annual interest from 18 January 1973, attorney's fees in the sum of five hundred pesos (P500.00), and costs of suit, and the resolution of the same Court, dated 8 February 1980, denying petitioner's motion for reconsideration of its decision.

From 6 March 1970 to 6 March 1971, petitioner insured its Mercedes Benz 4-door sedan with respondent insurance company. On 4 May 1970 the insured vehicle was bumped and damaged by a truck owned by San Miguel Corporation. For the damage caused, respondent company paid petitioner five thousand pesos (P5,000.00) in amicable settlement. Petitioner's general manager executed a Release of Claim, subrogating respondent company to all its right of action against San Miguel Corporation.

On 11 December 1972, respondent company wrote Insurance Adjusters, Inc. to demand reimbursement from San Miguel Corporation of the amount it had paid petitioner. Insurance Adjusters, Inc. refused reimbursement, alleging that San Miguel Corporation had already paid petitioner P4,500.00 for the damages to petitioner's motor vehicle, as evidenced by a cash voucher and a Release of Claim executed by the General Manager of petitioner discharging San Miguel Corporation from "all actions, claims, demands and rights of action that now exist or hereafter [sic] develop arising out of or as a consequence of the accident".

Respondent insurance company thus demanded from petitioner reimbursement of the sum of P4,500.00 paid by San Miguel Corporation. Petitioner refused; hence, respondent company filed suit in the City Court of Manila for the recovery of P4,500.00. The City Court ordered petitioner to pay respondent P4,500.00. On appeal, the Court of First Instance of Manila affirmed the City Court's decision in toto, which CFI decision was affirmed by the Court of Appeals, with the modification that petitioner was to pay respondent the total amount of P5,000.00 that it had earlier received from the respondent insurance company.

Petitioner now contends it is not bound to pay P4,500.00, and much more, P5,000.00 to respondent company as the subrogation in the Release of Claim it executed in favor of respondent was conditioned on recovery of the total amount of damages petitioner had sustained. Since total damages were valued by petitioner at P9,486.43 and only P5,000.00 was received by petitioner from respondent, petitioner argues that it was entitled to go after San Miguel Corporation to claim the additional P4,500.00 eventually paid to it by the latter, without having to turn over said amount to respondent. Respondent of course disputes this allegation and states that there was no qualification to its right of subrogation under the Release of Claim executed by petitioner, the contents of said

deed having expressed all the intents and purposes of the parties.

To support its alleged right not to return the P4,500.00 paid by San Miguel Corporation, petitioner cites Art. 2207 of the Civil Code, which states:

"If the plaintiff's property has been insured, and he has received indemnity from the insurance company for the injury or loss arising out of the wrong or breach of contract complained of the insurance company shall be subrogated to the rights of the insured against the wrongdoer or the person who has violated the contract. If the amount paid by the insurance company does not fully cover the injury or loss the aggrieved party shall be entitled to recover the deficiency from the person causing the loss or injury."

Petitioner also invokes Art. 1304 of the Civil Code, stating:

"A creditor, to whom partial payment has been made, may exercise his right for the remainder, and he shall be preferred to the person who has been subrogated in his place in virtue of the partial payment of the same credit."

We find petitioner's arguments to be untenable and without merit. In the absence of any other evidence to support its allegation that a gentlemen's agreement existed between it and respondent, not embodied in the Release of Claim, such Release of Claim must be taken as the best evidence of the intent and purpose of the parties. Thus, the Court of Appeals rightly stated:

"Petitioner argues that the release claim it executed subrogating private respondent to any right of action it had against San Miguel Corporation did not preclude Manila Mahogany from filing a deficiency claim against the wrongdoer. Citing Article 2207, New Civil Code, to the effect that if the amount paid by an insurance company does not fully cover the loss, the aggrieved party shall be entitled to recover the deficiency from the person causing the loss, petitioner claims a preferred right to retain the amount collected from San Miguel Corporation, despite the subrogation in favor of private respondent.

"Although petitioner's right to file a deficiency claim against San Miguel Corporation is with legal basis, without prejudice to the insurer's right of subrogation, nevertheless when Manila Mahogany executed another release claim (Exhibit K) discharging San Miguel Corporation from "all actions, claims, demands and rights of action that now exist or hereafter arising out of or as a consequence of the accident" after the insurer had paid the proceeds of the policy -- the compromise agreement of P5,000.00 being based on the insurance policy -- the insurer is entitled to recover from the insured the amount of insurance money paid (*Metropolitan Casualty Insurance Company of New York v. Badler*, 229 N.Y.S. 61, 132 Misc. 132, cited in *Insurance Code and Insolvency Law with comments and annotations*, H.B. Perez 1976, p. 151). Since petitioner by its own acts released San Miguel Corporation, thereby defeating private respondent's right of subrogation, the right of action of petitioner against the insurer was also nullified. (*Sy Keng & Co. v. Queensland Insurance Co., Ltd.*, 54 O.G. 391.) Otherwise stated: private respondent may recover the sum of P5,000.00 it had earlier paid to petitioner[1]".

As held in *Phil Air Lines v. Heald Lumber Co.*,[2]

If a property is insured and the owner receives the indemnity from the insurer, it is provided in [Article 2207 of the New Civil Code] that the insurer is deemed subrogated to the rights of the insured against the wrongdoer and if the amount paid by the insurer does not fully cover the loss, then the aggrieved party is the one entitled to recover the deficiency. xxx Under this legal provision, the real party in interest with regard to the portion of the indemnity paid is the insurer and not the insured.[3] (Emphasis supplied)

The decision of the respondent court ordering petitioner to pay respondent company, not the P4,500.00 as originally asked for, but P5,000.00, the amount respondent company paid petitioner as insurance, is also in accord with law and jurisprudence. In disposing of this issue, the Court of Appeals held:

"xxx petitioner is entitled to keep the sum of P4,500.00 paid by San Miguel Corporation under its clear right to file a deficiency claim for damages incurred, against the wrongdoer, should the insurance company not fully pay for the injury caused (Article 2207, New Civil Code). However, when petitioner released San Miguel Corporation from any liability, petitioner's right to retain the sum of P5,000.00 no longer existed, thereby entitling private respondent to recover the same. (Emphasis supplied)

As has been observed:

"x x x.

"The right of subrogation can only exist after the insurer has paid the insured, otherwise the insured will be deprived of his right to full indemnity. If the insurance proceeds are not sufficient to cover the damages suffered by the insured, then he may sue the party responsible for the damage for the the [sic] remainder. To the extent of the amount he has already received from the insurer, the insurer enjoy's [sic] the right of subrogation.

"Since the insurer can be subrogated to only such rights as the insured may have, should the insured, after receiving payment from the insurer, release the wrongdoer who caused the loss, the insurer loses his rights against the latter. But in such a case, the insurer will be entitled to recover from the insured whatever it has paid to the latter, unless the release was made with the consent of the insurer[4]". (Emphasis supplied)

And even if the specific amount asked for in the complaint is P4,500.00 only and not P5,000.00, still, the respondent Court acted well within its discretion in awarding P5,000.00, the total amount paid by the insurer. The Court of Appeals rightly reasoned as follows:

"It is to be noted that private respondent, in its complaint, prays for the recovery, not of P5,000.00 it had paid under the insurance policy but P4,500.00 San Miguel Corporation had paid to petitioner. On this score, We believe the City Court and Court of First Instance erred in not awarding the proper relief. Although private respondent prays for the reimbursement of P4,500.00 paid by San Miguel Corporation, instead of P5,000.00 paid under the insurance policy, the trial court should have awarded the latter, although not prayed for, under the general prayer in the complaint "for such further or other relief as may be deemed just or equitable" (Rule 6, Sec. 3, Revised Rules of Court; *Rosales v. Reyes Ordoveza*, 25 Phil. 495; *Cabigao v. Lim*, 50 Phil. 844; *Baguioro v. Barrios and Tupas*, 77 Phil. 120)".

WHEREFORE, premises considered, the petition is DENIED. The judgment appealed from is hereby AFFIRMED with costs against petitioner.

SO ORDERED.

Yap, (Chairman), Melencio-Herrera, Paras, and Sarmiento, JJ., concur.

* Penned by Justice Simeon M. Gopengco, with the concurrence of Justices Mama D. Busran and Isidro C. Borromeo.

[1] Rollo at 45-46

[2] 101 Phil. 1031 (1957)

[3] Id at 1035

[4] Campos and Campos, NOTES AND SELECTED CASES ON INSURANCE LAW 492 (1960)

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