

TAI TONG CHUACHE & CO., PETITIONER, VS. THE INSURANCE COMMISSION AND TRAVELLERS MULTI-INDEMNITY CORPORATION, RESPONDENTS.

G.R. No. 55397. February 29, 1988

Ponente: GANCAYCO, J.

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GANCAYCO, J.:

This petition for review on certiorari seeks the reversal of the decision of the Insurance Commission in IC Case #367[1] dismissing the complaint[2] for recovery of the alleged unpaid balance of the proceeds of the Fire Insurance Policies issued by herein respondent insurance company in favor of petitioner-intervenor.

The facts of the case as found by respondent Insurance Commission are as follows:

"Complainants acquired from a certain Rolando Gonzales a parcel of land and a building located at San Rafael Village, Davao City. Complainants assumed the mortgage of the building in favor of S.S.S., which building was insured with respondent S.S.S. Accredited Group of Insurers for P25,000.00.

On April 19, 1975, Azucena Palomo obtained a loan from Tai Tong Chuache, Inc. in the amount of P100,000.00. To secure the payment of the loan, a mortgage was executed over the land and the building in favor of Tai Tong Chuache & Co. (Exhibit "1" and "1-A"). On April 25, 1975, Arsenio Chua, representative of Thai Tong Chuache & Co. insured the latter's interest with Travellers Multi-Indemnity Corporation for P100,000.00 (P70,000.00 for the building and P30,000.00 for the contents thereof) (Exhibit "A-a", contents thereof) (Exhibit "A-a").

On June 11, 1975, Pedro Palomo secured a Fire Insurance Policy No. F-02500 (Exhibit "A"), covering the building for P50,000.00 with respondent Zenith Insurance Corporation. On July 16, 1975, another Fire Insurance Policy No. 8459 (Exhibit "B") was procured from respondent Philippine British Assurance Company, covering the same building for P50,000.00 and the contents thereof for P70,000.00.

On July 31, 1975, the building and the contents were totally razed by fire.

Adjustment Standard Corporation submitted a report as follow

x x x

x x x Thus the apportioned share of each company is as follows:

Policy No.

Company

Risk

Insures

Pays

MIRO/

Zenith

Building

P50, 000

P 7,610.93

F-02500

Insurance

Corp.

F-84590

Phil.

Household

70,000

24,655.31

British

Assco. Co.

Inc.

FFF & F5

50,000

39, 186. 10

FIC-15381

SSS

Accredited

Group of

Insurers

Building

P25, 000

P8, 805.47

Totals

P195, 000

P 90, 257.81

We are showing hereunder another apportionment of the loss which includes the Travellers Multi?Indemnity

policy for reference purposes.

Policy No.

Company

Risk

Insures

Pays

MIRO/

Zenith

F-02500

Insurance

Corp.

Building

P50, 000

P 11, 877.14

F-84590

Phil.

British

Assco. Co.

I-Buliding

70, 000

16, 628.00

II-Building

FFF & P.E.

50, 000

24, 918. 79

PVC-15181

SSS

Accredited

Group of

Building

25,000

5, 938.50

Insurers

F-599 DV

Insurers

1-Ref

30,000

14,467.31

Multi

II-Building

70,000

16,628.00

Totals

P295, 000

P90, 257. 81

Based on the computation of the loss, including the Travellers Multi-Indemnity, respondents, Zenith Insurance, Phil. British Assurance and S.S.S. Accredited Group of Insurers, paid their corresponding shares of the loss. Complainants were paid the following: P41,546.79 by Philippine British Assurance Co., P11,877.14 by Zenith Insurance Corporation, and P5,936.57 by S.S.S. Group of Accredited Insurers (Par. 6, Amended Complaint). Demand was made from respondent Travellers Multi-Indemnity for its share in the loss but the same was refused. Hence, complainants demanded from the other three (3) respondents the balance of each share in the loss based on the computation of the Adjustment Standards Report excluding Travellers Multi-Indemnity in the amount of P30,894.31 (P5,732.79 - Zenith Insurance: P22,294.62, Phil. British: and P2,866.90, SSS Accredited) but the same was refused, hence, this action.

In their answers, Philippine British and Zenith Insurance Corporation admitted the material allegations in the complaint, but denied liability on the ground that the claim of the complainants had already been waived, extinguished or paid. Both companies set up counterclaim in the total amount of P91,546.79.

Instead of filing an answer, SSS Accredited Group of Insurers informed the Commission in its letter of July 22, 1977 that the herein claim of complainants for the balance had been paid in the amount of P5,938.57 in full, based on the Adjustment Standards Corporation Report of September 22, 1975.

Travellers Insurance, on its part, admitted the issuance of the Policy No. 599 DV and alleged as its special and affirmative defenses the following, to wit: that Fire Policy No. 599 DV, covering the furniture and building of complainants was secured by a certain Arsenio Chua, mortgage creditor, for the purpose of protecting his mortgage credit against the complainants; that the said policy was issued in the name of Azucena Palomo, only to indicate that she owns the insured premises; that the policy contains an endorsement in favor of Arsenio Chua as his mortgage interest may appear to indicate that insured was Arsenio Chua and the complainants; that the premiums due on said fire policy was paid by Arsenio Chua; that respondent Travellers is not liable to pay complainants.

On May 31, 1977, Tai Tong Chuache & Co. filed a complaint in intervention claiming the proceeds of the fire Insurance Policy No. F-559 DV, issued by respondent Travellers Multi-Indemnity.

Travellers Insurance, in answer to the complaint in intervention, alleged that the Intervenor is not entitled to indemnity under its Fire Insurance Policy for lack of insurable interest before the loss of the insured premises and that the complainants, spouses Pedro and Azucena Palomo, had already paid in full their mortgage indebtedness to the intervenor.”[3]

As adverted to above respondent Insurance Commission dismissed spouses Palomos' complaint on the ground that the insurance policy subject of the complaint was taken out by Tai Tong Chuache & Company, petitioner herein, for its own interest only as mortgagee of the insured property and thus complainants as mortgagors of the insured property have no right of action against herein respondent. It likewise dismissed petitioner's complaint in intervention in the following words:

"We move on the issue of liability of respondent Travellers Multi-Indemnity to the Intervenor-mortgagee. The complainant testified that she was still indebted to Intervenor in the amount of P100,000.00. Such allegation has not however, been sufficiently proven by documentary evidence. The certification (Exhibit 'E-e') issued by the Court of First Instance of Davao, Branch 11, indicate that the complainant was Antonio Lopez Chua and not Tai Tong Chuache & Company.”[4]

From the above decision, only intervenor Tai Tong Chuache filed a motion for reconsideration but it was likewise denied hence, the present petition.

It is the contention of the petitioner that respondent Insurance Commission decided an issue not raised in the pleadings of the parties in that it ruled that a certain Arsenio Lopez Chua is the one entitled to the insurance proceeds and not Tai Tong Chuache & Company.

This Court cannot fault petitioner for the above erroneous interpretation of the decision appealed from considering the manner it was written.[5] As correctly pointed out by respondent insurance commission in their comment, the decision did not pronounce that it was Arsenio Lopez Chua who has insurable interest over the insured property. Perusal of the decision reveals however that it readily absolved respondent insurance company from liability on the basis of the commissioner's conclusion that at the time of the occurrence of the peril insured against petitioner as mortgagee had no more insurable interest over the insured property. It was based on the inference that the credit secured by the mortgaged property was already paid by the Palomos before the said property was gutted down by fire. The foregoing conclusion was arrived at on the basis of the certification issued by the then Court of First Instance of Davao, Branch II that in a certain civil action against the Palomos, Antonio Lopez Chua stands as the complainant and not petitioner Tai Tong Chuache & Company.

We find the petition to be impressed with merit. It is a well known postulate that the case of a party is constituted by his own affirmative allegations. Under Section 1, Rule 131[6] each party must prove his own affirmative allegations by the amount of evidence required by law which in civil cases as in the present case is preponderance of evidence. The party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence as required by law to obtain a favorable judgment.[7] Thus, petitioner who is claiming a right over the insurance must prove its case. Likewise, respondent insurance company to avoid liability under the policy by setting up an affirmative defense of lack of insurable interest on the part of the petitioner must prove its own affirmative allegations.

It will be recalled that respondent insurance company did not assail the validity of the insurance policy taken out by petitioner over the mortgaged property. Neither did it deny that the said property was totally razed by fire within the period covered by the insurance. Respondent, as mentioned earlier advanced an affirmative defense of lack of insurable interest on the part of the petitioner alleging that before the occurrence of the peril insured against the Palomos had already paid their credit due the petitioner. Respondent having admitted the material allegations in the complaint, has the burden of proof to show that petitioner has no insurable interest over the

insured property at the time the contingency took place. Upon that point, there is a failure of proof. Respondent, it will be noted, exerted no effort to present any evidence to substantiate its claim, while petitioner did. For said respondent's failure, the decision must be adverse to it.

However, as adverted to earlier, respondent Insurance Commission absolved respondent insurance company from liability on the basis of the certification issued by the then Court of First Instance of Davao, Branch II, that in a certain civil action against the Palomos, Arsenio Lopez Chua stands as the complainant and not Tai Tong Chuache. From said evidence respondent commission inferred that the credit extended by herein petitioner to the Palomos secured by the insured property must have been paid. Such is a glaring error which this Court cannot sanction. Respondent Commission's findings are based upon a mere inference.

The record of the case shows that the petitioner to support its claim for the insurance proceeds offered as evidence the contract of mortgage (Exh. 1) which has not been cancelled nor released. It has been held in a long line of cases that when the creditor is in possession of the document of credit, he need not prove non-payment for it is presumed.[8] The validity of the insurance policy taken by petitioner was not assailed by private respondent. Moreover, petitioner's claim that the loan extended to the Palomos has not yet been paid was corroborated by Azucena Palomo who testified that they are still indebted to herein petitioner.[9]

Public respondent argues however, that if the civil case really stemmed from the loan granted to Azucena Palomo by petitioner the same should have been brought by Tai Tong Chuache or by its representative in its own behalf. From the above premise respondent concluded that the obligation secured by the insured property must have been paid.

The premise is correct but the conclusion is wrong. Citing Rule 3, Sec. 2[10] respondent pointed out that the action must be brought in the name of the real party in interest. We agree. However, it should be borne in mind that petitioner being a partnership may sue and be sued in its name or by its duly authorized representative. The fact that Arsenio Lopez Chua is the representative of petitioner is not questioned. Petitioner's declaration that Arsenio Lopez Chua acts as the managing partner of the partnership was corroborated by respondent insurance company.[11] Thus Chua as the managing partner of the partnership may execute all acts of administration[12] including the right to sue debtors of the partnership in case of their failure to pay their obligations when it became due and demandable. Or at the very least, Chua being a partner of petitioner Tai Tong Chuache & Company is an agent of the partnership. Being an agent, it is understood that he acted for and in behalf of the firm.[13] Public respondent's allegation that the civil case filed by Arsenio Chua was in his capacity as personal creditor of spouses Palomo has no basis.

The respondent insurance company having issued a policy in favor of herein petitioner which policy was of legal force and effect at the time of the fire, it is bound by its terms and conditions. Upon its failure to prove the allegation of lack of insurable interest on the part of the petitioner, respondent insurance company is and must be held liable.

IN VIEW OF THE FOREGOING, the decision appealed from is hereby SET ASIDE and ANOTHER judgment is rendered ordering private respondent Travellers Multi-Indemnity Corporation to pay petitioner the face value of Insurance Policy No. 599-DV in the amount of P100,000.00. Costs against said private respondent.

SO ORDERED.

Teehankee, C.J., Narvasa, Cruz, and Griño-Aquino, JJ., concur.

[1] Penned by Commissioner Gregoria Cruz-Arnaldo.

[2] Filed by Pedro Palomo and Azucena Paloma.

[3] Pages 30-34, Rollo.

[4] Pages 35-36, Rollo.

[5] See Supra.

[6] Revised Rules of Court.

[7] Vol. 6, Moran, Revised Rules of court, Page 4, 1980 Ed.

[8] Veloso vs. Veloso, 8 Phil. 83; Merchant vs. International Banking Corporation, 9 Phil. 554; Miller vs. Jones, 9 Phil. 648; Chua vs. Vargas, 11 Phil. 219; Gana vs. Sheriff of Laguna, et al., 32 Phil. 236.

[9] Pages 4, 6, Decision, I.C. Case No. 367.

[10] Revised Rules of Court.

[11] Page 4, Decision, Supra. (Respondent referred to the petitioner and Arsenio Lopez Chua interchangeably).

[12] Art. 1800 Civil Code.

[13] Bachrach vs. a Protectora, 37 Phil. 441, 1918.

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