

GUTIERREZ HERMANOS, PLAINTIFFS AND APPELLEES, VS. ORIA HERMANOS, DEFENDANTS AND APPELLANTS.

G.R. No. 6485. March 17, 1911

Ponente: MORELAND, J.

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MORELAND, J.:

This is an appeal from a judgment of the Court of First Instance of the city of Manila, Hon. Simplicio del Rosario presiding, in favor of the plaintiff and against the defendant for the sum of P12,218.51, with costs.

This is an action to recover the sum of P12,218.51, premiums paid by the plaintiff upon insurance policies covering two vessels belonging to the defendant.

The two commercial houses parties to this action had sustained intimate commercial relations for nine years prior to the commencement of this action, beginning in the year 1900. During that time, the plaintiff, acting for and on behalf of the defendant, obtained from an insurance company in Paris, France, insurance on two vessels known as Serantes and Comillas, owned by the defendant. The insurance was first obtained in the year 1900. The plaintiff secured the insurance on the two ships aforesaid through the intervention of its agents in Paris, Messrs. Movellan & Angulo. The plaintiff continued to keep said vessels insured on behalf of the defendant, causing the policies to be renewed each year for nine years. The insurance premiums were paid by the plaintiff each year up to and including a portion of the year 1909, the sums so paid being charged by the plaintiff on its books against the defendant in its current account. In the month of June of that year the plaintiff began an action against the defendant for the recovery of the amount due upon its current account with the defendant, no reference being made in the complaint in that action to the sum sued for in the action at bar. What the status of that action is we do not know. Later, and on the 18th of March, 1910, the plaintiff began this action for the recovery of premiums paid during the years 1907, 1908, and 1909. During these three years one of the vessels in question, the Serantes, was insured in the name of the plaintiff.

The appellant raises six questions on this appeal, asserting (1) that the vessel Serantes, having been insured in the name of Gutierrez Hermanos, the defendant is not chargeable with the payment of the insurance premiums, although it is admitted that it is the owner of the vessel; (2) that having paid the said insurance premiums after the plaintiff had closed its current account with the defendant, such payments can not be said to have been made on behalf of the defendant, for the reason that the closing of the account and the commencement of an action thereon severed all relations of every kind between the parties and the plaintiff had no authority to act thereafter for the defendant; (3) that at the time of the payment by the plaintiff of the insurance premiums in controversy the insurance-company to which such premiums were paid was owing to the defendant the sum of P8,000 upon a contract of insurance for the payment of repairs made by the defendant on said vessels, which repairs were covered by said policies of insurance, and that the plaintiff having paid, without protest or objection of any kind, said premiums while the claim of defendant for said sum was still pending and unsettled, such act of the plaintiff had precluded the defendant from recovering said sum from such insurance company; (4) that the plaintiff was not acting as the agent of the defendant in securing the insurance for which the premiums in controversy were paid;

(5) that the plaintiff, having already brought an action upon its account current in which should appear the premiums in controversy and all of the other premiums paid prior to the year 1909, the plaintiff can not now maintain a separate action upon the theory that it was acting as the commission agent of the defendant; and (6) that the premiums in controversy paid by the plaintiff resulted in no benefit to the defendant.

Relative to the first Question, it is undoubted from the proofs that the vessel Serantes was insured in the name of the plaintiff, while the Comillas was insured in the name of the defendant. It appears, however, from the letters of the defendant to the plaintiff and by the testimony of Tomas Oria, manager of the defendant company, that the plaintiff in insuring the Serantes acted merely as the commercial agent of the defendant and under its orders; that all of the payments made by the plaintiff of insurance premiums prior to the 1st day of June, 1909, were charged to the defendant in the account current upon the books of the plaintiff; that the plaintiff had charged no commission; and that all of the damages which had occurred to the vessels prior to that time had been paid by the insurance company to the defendant, notwithstanding the fact that the Serantes was insured in the name of the plaintiff. Moreover, we find no terms in the insurance policy which forbid the insurance of the vessel in the name of the plaintiff. Furthermore, it appears from the correspondence between the defendant and the insurance company, through Movellan & Angulo of Paris, that, although it was the fact that the vessel Serantes was insured in the name of the plaintiff, instead of the defendant, a fact known, of course, to the insurance company, the latter, nevertheless, recognized its responsibility to the defendant upon the policy covering the said ship.

It should be further noted that, in the correspondence passing between the plaintiff and the defendant, it is continually recognized that the insurance of the vessel Serantes, as well as the Comillas, was made for and on behalf and in benefit of the defendant; In that correspondence the plaintiff was continually asking defendant for funds with which to pay the insurance premiums on said vessel, as well as on the Comillas. (Art. 246, Commercial Code and art. 717, Civil Code.)

Relative to the second question raised by the appellant, namely, that the plaintiff having closed the current account with the defendant prior to the payment of the insurance premiums which are the subject-matter of this action, it could not, thereafter, begin a separate action to recover for the payment of said premiums, it appears that the objection urged in this question is directed rather at a method of procedure than to a question of substantive law. From this point of view the defendant has some cause for complaint. Under the practice prevailing in the Islands under the Code of Civil Procedure, the plaintiff should have brought one action instead of two, combining its claim upon the account current with its claim for the payment of the insurance premiums involved in this suit. The payment of the insurance premiums in controversy having been made after the commencement of the action upon the account-current, the plaintiff, instead of beginning a separate action for the recovery of said premiums, would have followed a better practice if it had amended its complaint in the other action or added thereto a supplementary complaint. It was not, however, as a matter of law, obliged to do this, but it could have been forced to do so by the defendant if it had taken the proper steps. It is undoubted that it would have been the duty of the trial court, upon proper motion of the defendant, to consolidate the two actions into one. The defendant, however, not having taken any steps whatever to accomplish this result, can not be heard to raise that question in the manner in which it seeks to raise it.

As to the second and fourth questions raised by the appellant, little needs to be said. The whole case as presented, both by the oral testimony and the exhibits, demonstrates beyond shadow of doubt that the plaintiff was acting as the agent of the defendant in placing the insurance upon the vessels in question and that such act redounded to its benefit. The idea presented in argument of counsel for appellant, that all relations were broken off and terminated by the commencement of the action upon the account current by the plaintiff in March, 1909, and that, therefore, the plaintiff could do nothing whatever on behalf of the defendant thereafter, wholly loses its force when we

observe that, in reality, the plaintiff did not do anything on behalf of the defendant after that time. What it did and all it did was to fulfill a contract which it had made with the insurance company prior to the beginning of that action. The plaintiff had secured the insurance of the two vessels during the years 1907, 1908, and 1909, and had agreed to pay the insurance company the premiums thereon. The three contracts for those years had been made by the plaintiff and it had become liable to fulfill the same on its part prior to the commencement of the action on the 30th of March, 1909. The payment thereafter of the insurance premiums for those three years is no proof that the plaintiff was still exercising a relation which existed after the commencement of that action, but indicates simply that it was completing an obligation which it had made when that relation was admittedly in force.

As to the third question raised by the appellant, involving the proposition that the plaintiff had paid the insurance premiums at a time when there was pending between the defendant and the insurance company a claim for P8,000 on account of repairs made to said vessels, and that, therefore, the payment by the plaintiff resulted in an injury rather than a benefit to the defendant, it need only be said that there is no proof in the record which is sufficient to sustain the allegation that there was pending a claim between the defendant and the insurance company for any sum which could in any way be affected by the payment of insurance premiums made by the plaintiff. We can imagine a situation in which the objections made by the defendant in this regard would be well founded, but there is absolutely nothing in the record upon which we can found any decision touching that question adverse to the plaintiff.

For these reasons, we see no other course than to affirm the judgment of the learned trial court, which we hereby do, without special finding as to costs. So ordered.

Arellano, C. J., Mapa, Carson, and Trent, JJ., concur.

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