

DEVELOPMENT INSURANCE CORPORATION, PETITIONER, VS. INTERMEDIATE APPELLATE COURT, AND PHILIPPINE UNION REALTY DEVELOPMENT CORPORATION, RESPONDENTS.*G.R. No. 71360. July 16, 1986*

Ponente: CRUZ, J.

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A fire occurred in the building of the private respondent and it sued for recovery of damages from the petitioner on the basis of an insurance contract between them. The petitioner allegedly failed to answer on time and was declared in default by the trial court. A judgment of default was subsequently rendered on the strength of the evidence submitted ex parte by the private respondent, which was allowed full recovery of its claimed damages. On learning of this decision, the petitioner moved to lift the order of default, invoking excusable neglect, and to vacate the judgment by default. Its motion was denied. It then went to the respondent court, which affirmed the decision of the trial court in toto. The petitioner is now before us, hoping presumably that it will fare better here than before the trial court and the Intermediate Appellate Court. We shall see.

On the question of default, the record argues mightily against it. It is indisputable that summons was served on it, through its senior vice-president, on June 19, 1980. On July 14, 1980, ten days after the expiration of the original 15-day period to answer (excluding July 4), its counsel filed an ex parte motion for an extension of five days within which to file its answer. On July 18, 1980, the last day of the requested extension - which at the time had not yet been granted - the same counsel filed a second motion for another 5-day extension, fourteen days after the expiry of the original period to file its answer. The trial court nevertheless gave it five days from July 14, 1980, or until July 19, 1980, within which to file its answer. But it did not. It did so only on July 26, 1980, after the expiry of the original and extended periods, or twenty-one days after the July 5, deadline. As a consequence, the trial court, on motion of the private respondent filed on July 28, 1980, declared the petitioner in default. This was done almost one month later, on August 25, 1980. Even so, the petitioner made no move at all for two months thereafter. It was only on October 27, 1980, more than one month after the judgment of default was rendered by the trial court on September 26, 1980, that it filed a motion to lift the order of de-fault and vacate the judgment by default.[1]

The pattern of inexcusable neglect, if not deliberate delay, is all too clear. The petitioner has slumbered on its right and awakened too late. While it is true that in *Trajano v. Cruz*,[2] which it cites, this Court declared "that judgments by default are generally looked upon with disfavor," the default judgment in that case was set aside precisely because there was excusable neglect. Summons in that case was served through "an employee in petitioners' office and not the person in-charge," whereas in the present case summons was served on the vice-president of the petitioner who however refused to accept it. Furthermore, as Justice Guerrero noted, there was no evidence showing that the petitioners in *Trajano* intended to unduly delay the case.

Besides, the petitioners in *Trajano* had a valid defense against the complaint filed against them, and this justified a

relaxation of the procedural rules to allow full hearing on the substantive issues raised. In the instant case, by contrast, the petitioner must just the same fail on the merits even if the default orders were to be lifted. As the respondent Court observed, "Nothing would be gained by having the order of default set aside considering the appellant has no valid defense in its favor." [3]

The petitioner's claim that the insurance covered only the building and not the elevators is absurd, to say the least. This Court has little patience with puerile arguments that affront common sense, let alone basic legal principles with which even law students are familiar. The circumstance that the building insured is seven stories high and so had to be provided with elevators - a legal requirement known to the petitioner as an insurance company - makes its contention all the more ridiculous.

No less preposterous is the petitioner's claim that the elevators were insured after the occurrence of the fire, a case of shutting the barn door after the horse had escaped, so to speak. [4] This pretense merits scant attention. Equally undeserving of serious consideration is its submission that the elevators were not damaged by the fire, against the report of the arson investigators of the INP [5] and, indeed, its own expressed admission in its answer [6] where it affirmed that the fire "damaged or destroyed a portion of the 7th floor of the insured building and more particularly a Hitachi elevator control panel." [7]

There is no reason to disturb the factual findings of the lower court, as affirmed by the Intermediate Appellate Court, that the heat and moisture caused by the fire damaged although they did not actually burn the elevators. Neither is this Court justified in reversing their determination, also factual, of the value of the loss sustained by the private respondent in the amount of P508,867.00.

The only remaining question to be settled is the amount of the indemnity due to the private respondent under its insurance contract with the petitioner. This will require an examination of this contract, Policy No. RY/F-082, as renewed, by virtue of which the petitioner insured the private respondent's building against fire for P2,500,000.00. [8]

The petitioner argues that since at the time of the fire the building insured was worth P5,800,000.00, the private respondent should be considered its own insurer for the difference between that amount and the face value of the policy and should share pro rata in the loss sustained. Accordingly, the private respondent is entitled to an indemnity of only P67,629.31, the rest of the loss to be shouldered by it alone. In support of this contention, the petitioner cites Condition 17 of the policy, which provides:

"If the property hereby insured shall, at the breaking out of any fire, be collectively of greater value than the sum insured thereon then the insured shall be considered as being his own insurer for the difference, and shall bear a ratable proportion of the loss accordingly. Every item, if more than one, of the policy shall be separately subject to this condition."

However, there is no evidence on record that the building was worth P5,800,000.00 at the time of the loss; only the petitioner says so and it does not back up its self-serving estimate with any independent corroboration. On the contrary, the building was insured at P2,500,000.00, and this must be considered, by agreement of the insurer and the insured, the actual value of the property insured on the day the fire occurred. This valuation becomes even more believable if it is remembered that at the time the building was burned it was still under construction and not yet completed.

The Court notes that Policy RY/F-082 is an open policy and is subject to the express condition that:

"Open Policy

This is an open policy as defined in Section 57 of the Insurance Act. In the event of loss, whether total or

partial, it is understood that the amount of the loss shall be subject to appraisal and the liability of the company, if established, shall be limited to the actual loss, subject to the applicable terms, conditions, warranties and clauses of this Policy, and in no case shall exceed the amount of the policy."

As defined in the aforesated provision, which is now Section 60 of the Insurance Code, "an open policy is one in which the value of the thing insured is not agreed upon but is left to be ascertained in case of loss." This means that the actual loss, as determined, will represent the total indemnity due the insured from the insurer except only that the total indemnity shall not exceed the face value of the policy.

The actual loss has been ascertained in this case and, to repeat, this Court will respect such factual determination in the absence of proof that it was arrived at arbitrarily. There is no such showing. Hence, applying the open policy clause as expressly agreed upon by the parties in their contract, we hold that the private respondent is entitled to the payment of indemnity under the said contract in the total amount of P508,867.00.

The refusal of its vice-president to receive the private respondent's, complaint, as reported in the sheriff's return, was the first indication of the petitioner's intention to prolong this case and postpone the discharge of its obligation to the private respondent under their agreement. That intention was revealed further in its subsequent acts - or inaction - which indeed enabled it to avoid payment for more than five years from the filing of the claim against it in 1980. The petitioner has temporized long enough to avoid its legitimate responsibility; the delay must and does end now.

WHEREFORE, the appealed decision is affirmed in full, with costs against the petitioner.

SO ORDERED.

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

[1] Record on Appeal, pp. 2-3.

[2] 80 SCRA 712.

[3] Decision, p. 8.

[4] Rollo, pp. 110-111; p. 115.

[5] Exh. E.

[6] Rollo, p. 50.

[7] Rollo, p. 52.

[8] Exh. I.

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