

RAFAEL (REX) VERENDIA, PETITIONER, VS. COURT OF APPEALS AND FIDELITY & SURETY CO. OF THE PHILIPPINES, RESPONDENT.*G.R. No. 76399. January 22, 1993*

Ponente: MELO, J.

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The two consolidated cases involved herein stemmed from the issuance by Fidelity and Surety Insurance Company of the Philippines (Fidelity for short) of its Fire Insurance Policy No. F-18876 effective between June 23, 1980 and June 23, 1981 covering Rafael (Rex) Verendia's residential building located at Tulip Drive, Beverly Hills, Antipolo, Rizal in the amount of P385,000.00. Designated as beneficiary was the Monte de Piedad & Savings Bank. Verendia also insured the same building with two other companies, namely, The Country Bankers Insurance for P56,000.00 under Policy No. PDB-80-1913 expiring on May 12, 1981, and The Development Insurance for P400,000.00 under Policy No. F-48867 expiring on June 30, 1981.

While the three fire insurance policies were in force, the insured property was completely destroyed by fire on the early morning of December 28, 1980. Fidelity was accordingly informed of the loss and despite demands, refused payment under its policy, thus prompting Verendia to file a complaint with the then Court of First Instance of Quezon City, praying for payment of P385,000.00, legal interest thereon, plus attorney's fees and litigation expenses. The complaint was later amended to include Monte de Piedad as an "unwilling defendant" (p. 16, Record).

Answering the complaint, Fidelity, among other things, averred that the policy was avoided by reason of over-insurance; that Verendia maliciously represented that the building at the time of the fire was leased under a contract executed on June 25, 1980 to a certain Roberto Garcia, when actually it was Marcelo Garcia who was the lessee.

On May 24, 1983, the trial court rendered a decision, per Judge Rodolfo A. Ortiz, ruling in favor of Fidelity. In sustaining the defenses set up by Fidelity, the trial court ruled that Paragraph 3 of the policy was also violated by Verendia in that the insured failed to inform Fidelity of his other insurance coverages with Country Bankers Insurance and Development Insurance.

Verendia appealed to the then Intermediate Appellate Court and in a decision promulgated on March 31, 1986, (CA-G.R. No. CV No. 02895, Coquia, Zosa, Bartolome, and Ejercito (P), JJ.), the appellate court reversed for the following reasons: (a) there was no misrepresentation concerning the lease for the contract was signed by Marcelo Garcia in the name of Roberto Garcia; and (b) Paragraph 3 of the policy contract requiring Verendia to give notice to Fidelity of other contracts of insurance was waived by Fidelity as shown by its conduct in attempting to settle the claim of Verendia (pp. 32-33, Rollo of G.R. No. 76399).

Fidelity received a copy of the appellate court's decision on April 4, 1986, but instead of directly filing a motion for reconsideration within 15 days therefrom, Fidelity filed on April 21, 1986, a motion for extension of 3 days within which to file a motion for reconsideration. The motion for extension was not filed on April 19, 1986 which

was the 15th day after receipt of the decision because said 15th day was a Saturday and of course, the following day was a Sunday (p. 14, Rollo of G.R. No. 75605). The motion for extension was granted by the appellate court on April 30, 1986 (p. 15, *ibid.*), but Fidelity had in the meantime filed its motion for reconsideration on April 24, 1986 (p. 16, *ibid.*).

Verendia filed a motion to expunge from the record Fidelity's motion for reconsideration on the ground that the motion for extension was filed out of time because the 15th day from receipt of the decision which fell on a Saturday was ignored by Fidelity, for indeed, so Verendia contended, the Intermediate Appellate Court has personnel receiving pleadings even on Saturdays.

The motion to expunge was denied on June 17, 1986 (p. 27, *ibid.*) and after a motion for reconsideration was similarly brushed aside on July 22, 1986 (p. 30, *ibid.*), the petition herein docketed as G.R. No. 75605 was initiated. Subsequently, or more specifically on October 21, 1986, the appellate court denied Fidelity's motion for reconsideration and account thereof. Fidelity filed on March 31, 1986, the petition for review on certiorari now docketed as G.R. No. 76399. The two petitions, inter-related as they are, were consolidated (p. 54, Rollo of G.R. No. 76399) and thereafter given due course.

Before we can even begin to look into the merits of the main case which is the petition for review on certiorari, we must first determine whether the decision of the appellate court may still be reviewed, or whether the same is beyond further judicial scrutiny. Stated otherwise, before anything else, inquiry must be made into the issue of whether Fidelity could have legally asked for an extension of the 15-day reglementary period for appealing or for moving for reconsideration.

As early as 1944, this Court through Justice Ozaeta already pronounced the doctrine that the pendency of a motion for extension of time to perfect an appeal does not suspend the running of the period sought to be extended (*Garcia vs. Buenaventura* 74 Phil. 611 [1944]). To the same effect were the rulings in *Gibbs vs. CFI of Manila* (80 Phil. 160 [1948]), *Bello vs. Fernando* (4 SCRA 138 [1962]), and *Joe vs. King* (20 SCRA 1120 [1967]).

The above cases notwithstanding and because the Rules of Court do not expressly prohibit the filing of a motion for extension of time to file a motion for reconsideration in regard to a final order or judgment, magistrates, including those in the Court of Appeals, held sharply divided opinions on whether the period for appealing which also includes the period for moving to reconsider may be extended. The matter was not definitely settled until this Court issued its Resolution in *Habaluyas Enterprises, Inc. vs. Japson* (142 SCRA 208 [1986]), declaring that beginning one month from the promulgation of the resolution on May 30, 1986 -

“ . . . the rule shall be strictly enforced that no motion for extension of time to file a motion for new trial or reconsideration shall be filed . . . ” (at p. 212.)

In the instant case, the motion for extension was filed and granted before June 30, 1986, although, of course, Verendia's motion to expunge the motion for reconsideration was not finally disposed until July 22, 1986, or after the dictum in *Habaluyas* had taken effect. Seemingly, therefore, the filing of the motion for extension came before its formal proscription under *Habaluyas*, for which reason we now turn our attention to G.R. No. 76399.

Reduced to bare essentials, the issues Fidelity raises therein are: (a) whether or not the contract of lease submitted by Verendia to support his claim on the fire insurance policy constitutes a false declaration which would forfeit his benefits under Section 13 of the policy and (b) whether or not, in submitting the subrogation receipt in evidence, Fidelity had in effect agreed to settle Verendia's claim in the amount stated in said receipt.[1]

Verging on the factual, the issue of the veracity or falsity of the lease contract could have been better resolved by the appellate court for, in a petition for review on certiorari under Rule 45, the jurisdiction of this Court is limited

to the review of errors of law. The appellate court's findings of fact are, therefore, conclusive upon this Court except in the following cases: (1) when the conclusion is a finding grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly absurd, mistaken, or impossible; (3) when there is grave abuse of discretion in the appreciation of facts; (4) when the judgment is premised on a misapprehension of facts; (5) when the findings of fact are conflicting; and (6) when the Court of Appeals in making its findings went beyond the issues of the case and the same are contrary to the admissions of both appellant and appellee (*Ronquillo v. Court of Appeals*, 195 SCRA 433 [1991]). In view of the conflicting findings of the trial court and the appellate court on important issues in these consolidated cases and it appearing that the appellate court judgment is based on a misapprehension of facts, this Court shall review the evidence on record.

The contract of lease upon which Verendia relies to support his claim for insurance benefits, was entered into between him and one Robert Garcia, married to Helen Cawinian, on June 25, 1980 (Exh. "1"), a couple of days after the effectivity of the insurance policy. When the rented residential building was razed to the ground on December 28, 1980, it appears that Robert Garcia (or Roberto Garcia) was still within the premises. However, according to the investigation report prepared by Pat. Eleuterio M. Buenviaje of the Antipolo police, the building appeared to have "no occupant" and that Mr. Roberto Garcia was "renting on the otherside (sic) portion of said compound" (Exh. "E"). These pieces of evidence belie Verendia's uncorroborated testimony that Marcelo Garcia, whom he considered as the real lessee, was occupying the building when it was burned (TSN, July 27, 1982, p. 10).

Robert Garcia disappeared after the fire. It was only on October 9, 1981 that an adjuster was able to locate him. Robert Garcia then executed an affidavit before the National Intelligence and Security Authority (NISA) to the effect that he was not the lessee of Verendia's house and that his signature on the contract of lease was a complete forgery. Thus, on the strength of these facts, the adjuster submitted a report dated December 4, 1981 recommending the denial of Verendia's claim (Exh. "2").

Ironically, during the trial, Verendia admitted that it was not Robert Garcia who signed the lease contract. According to Verendia, it was signed by Marcelo Garcia, cousin of Robert, who had been paying the rentals all the while. Verendia, however, failed to explain why Marcelo had to sign his cousin's name when he in fact was paying for the rent and why he (Verendia) himself, the lessor, allowed such a ruse. Fidelity's conclusions on these proven facts appear, therefore, to have sufficient bases: Verendia concocted the lease contract to deflect responsibility for the fire towards an alleged "lessee", inflated the value of the property by the alleged monthly rental of P6,500 when in fact, the Provincial Assessor of Rizal had assessed the property's fair market value to be only P40,300.00, insured the same property with two other insurance companies for a total coverage of around P900,000, and created a dead-end for the adjuster by the disappearance of Robert Garcia.

Basically a contract of indemnity, an insurance contract is the law between the parties (*Pacific Banking Corporation vs. Court of Appeals* 168 SCRA 1 [1988]). Its terms and conditions constitute the measure of the insurer's liability and compliance therewith is a condition precedent to the insured's right to recovery from the insurer (*Oriental Assurance Corporation vs. Court of Appeals*, 200 SCRA 459 [1991], citing *Perla Compania de Seguros, Inc. vs. Court of Appeals*, 185 SCRA 741 [1991]). As it is also a contract of adhesion, an insurance contract should be liberally construed in favor of the insured and strictly against the insurer company which usually prepares it (*Western Guaranty Corporation vs. Court of Appeals*, 187 SCRA 652 [1980]).

Considering, however, the foregoing discussion pointing to the fact that Verendia used a false lease contract to support his claim under Fire Insurance Policy No. F-18876, the terms of the policy should be strictly construed against the insured. Verendia failed to live by the terms of the policy, specifically Section 13 thereof which is expressed in terms that are clear and unambiguous, that all benefits under the policy shall be forfeited "if the

claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the Insured or anyone acting in his behalf to obtain any benefit under the policy". Verendia, having presented a false declaration to support his claim for benefits in the form of a fraudulent lease contract, he forfeited all benefits therein by virtue of Section 13 of the policy in the absence of proof that Fidelity waived such provision (*Pacific Banking Corporation vs. Court of Appeals*, supra). Worse yet, by presenting a false lease contract, Verendia reprehensibly disregarded the principle that insurance contracts are *uberrimae fidae* and demand the most abundant good faith (*Velasco vs. Apostol*, 173 SCRA 228 [1989]).

There is also no reason to conclude that by submitting the subrogation receipt as evidence in court, Fidelity bound itself to a "mutual agreement" to settle Verendia's claims in consideration of the amount of P142,685.77. While the said receipt appears to have been a filled-up form of Fidelity, no representative of Fidelity had signed it. It is even incomplete as the blank spaces for a witness and his address are not filled up. More significantly, the same receipt states that Verendia had received the aforesaid amount. However, that Verendia had not received the amount stated therein, is proven by the fact that Verendia himself filed the complaint for the full amount of P385,000.00 stated in the policy. It might be that there had been efforts to settle Verendia's claims, but surely, the subrogation receipt by itself does not prove that a settlement had been arrived at and enforced. Thus, to interpret Fidelity's presentation of the subrogation receipt in evidence as indicative of its accession to its "terms" is not only wanting in rational basis but would be substituting the will of the Court for that of the parties.

WHEREFORE, the petition in G.R. No. 75605 is DISMISSED. The petition in G.R. No. 76399 is GRANTED and the decision of the then Intermediate Appellate Court under review is REVERSED and SET ASIDE and that of the trial court is hereby REINSTATED and UPHELD.
SO ORDERED.

Gutierrez, Jr., (Chairman), Bidin, Davide, Jr., and Romero, JJ., concur.

[1] Fidelity appears to have agreed with the appellate court that it had waived Verendia's failure to abide by policy condition No. 3 on disclosure of other insurance policies by its failure to assign it as an error in the petition in G.R. No. 76399. It must have likewise realized the futility of assigning it as an error because on the first page of the policy the following is typewritten: "Other insurances allowed, the amounts to be declared in the event of loss or when required."

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