

CATHAY INSURANCE CO., INC., EMPIRE INSURANCE CO., UNION INSURANCE SOCIETY OF CANTON, LTD., PARAMOUNT INSURANCE CORP., PHILIPPINE BRITISH INSURANCE CO., & PHILIPPINE FIRST INSURA...

G.R. No. 85624. June 05, 1989

Ponente: GRIÑO-AQUINO, J.

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GRIÑO-AQUINO, J.:

It has been the sad experience of many who sought protection from disaster or tragedy through insurance, to realize that insurance is quite easy to buy but difficult to collect. Insurance companies are prone to invent excuses to avoid their just obligations (*American Home Ins. Co. vs. Court of Appeals*, 109 SCRA 180). This case is one such instance.

Eight (8) years after Emilia Chan Lugay's Cebu Filipina Press was destroyed by fire in broad daylight, she is still waiting to collect the proceeds of seven (7) fire policies which the petitioners sold to her.

The petitioners are the six (6) insurance companies that issued fire insurance policies for the total sum of P4,000,000 to the Cebu Filipina Press of Cebu City, as follows:

1. Cathay Insurance Company for P1,000,000 under Fire Insurance Policy No. F-31056 dated June 10, 1981 renewing Policy No. F-27942 (Exh. B-5), covering the period from June 20, 1981 to June 20, 1982 (Exh. B);
2. Empire Insurance Company for P500,000 under Fire Insurance Policy No. YASCO/F-1101 dated March 7, 1981, renewing Policy No. F-1095 (Exh. C-5), covering the period from March 19, 1981 to March 19, 1982 (Exh. C);
3. Union Insurance Society of Canton, Ltd. for P500,000 under Fire Insurance Policy No. NU-0530 dated May 5, 1981, renewing Policy No. MU-223903 (Exh. D-5), covering the period from May 21, 1981 to May 21, 1982 (Exh. D);
4. Paramount Insurance Corp. for P500,000 under Fire Insurance Policy No. 25311 dated July 1, 1981, covering the period from July 15, 1981 to July 15, 1982 (Exh. E);
5. Philippine British Insurance Company for P500,000 under Fire Insurance Policy No. PB-107861 dated July 6, 1981, renewing Policy No. PB-933 11 (Exh. F-5), covering the period from July 10, 1981 to July 10, 1982 (Exh. F).
6. Philippine British Insurance Company for P500,000 under another Fire Insurance Policy No. PB-107848 dated July 1, 1981, renewing Policy No. PB-102653 (Exh G-5), covering the period from July 5, 1981 to July 5, 1982 (Exh. G); and
7. Philippine First Insurance Company for P500,000 under Fire Insurance Policy No. CEB-G-0515 dated January

28, 1981, covering the period from February 15, 1981 to February 15, 1982 (Exh. H). (p. 76, Rollo.)

The fire policies described the insured property as "stocks of printing materials, papers and general merchandise usual to the Assured's trade" (p. 53, Rollo) stored in a one-storey building of strong materials housing the Cebu Filipina Press located at UNNO Pres. Quirino cor. Don V. Sotto Sts., Mabolo, Cebu City. The co-insurers were indicated in each of the policies. All, except one policy (Paramount's), were renewals of earlier policies issued for the same property.

On December 18, 1981, at around ten o'clock in the morning, the Cebu Filipina Press was razed by electrical fire together with all the stocks and merchandise stored in the premises.

On January 15, 1982, Mrs. Lugay, owner and operator of the printing press, submitted sworn Statements of Loss and Formal Claims to the insurers, through their adjusters. She claimed a total loss of P4,595,000.

She submitted proofs of loss required by the adjusters. After nearly ten (10) months of waiting for the insurers to pay her claim, she sued to collect on December 15, 1982. The insurance companies denied liability, alleging violation of certain conditions of the policy, misdeclaration, and even arson which was not seriously pressed for, come the pre-trial, the petitioners offered to pay 50% of her claim, but she insisted on full recovery.

After the trial on the merits, the court rendered judgment in her favor, as follows:

"x x x directing payment by Cathay Insurance Company Inc., the amount of P1,000,000.00, by Empire the amount of P500,000.00, by Union Insurance Society of Canton Limited the amount of P500,000.00, by Paramount Insurance Company, the amount of P500,000.00, by Philippine British Insurance Company, Inc., the amount of P500,000.00, by Philippine First Insurance Company, Inc., the amount of P500,000.00 and by the Philippine British Insurance the amount of P500,000.00; for all the defendants jointly and severally to pay P48,000.00 representing expenses of the plaintiff, and a separate amount of 20% of the P4,000,000.00 representing fees of counsel; and interests at the rate of twice the ceiling being prescribed by the Monetary Board starting from the time when the case was filed; and finally, with costs. (Decision, Court of Appeals, pp. 1-3)" (p. 77, Rollo.)

On appeal to the Court of Appeals, the decision was affirmed in toto (pp. 52-67, Rollo). Hence, this petition for review under Rule 45 of the Rules of Court wherein the petitioners allege that the Court of Appeals erred:

1. in holding that the private respondent's cause of action had already accrued when the complaint was filed on December 16, 1982 and in not holding that the action is premature;
2. in finding that sufficient proofs of loss had been presented by the private respondent;
3. in not holding that the private respondent's claim for loss was inflated;
4. in awarding damages to the private respondent in the form of interests equivalent to double the interest ceiling set by the Monetary Board despite absence of a finding of unreasonable withholding or refusal to pay the claim; and
5. in awarding exorbitant attorney's fees.

It is plain to see that all these grounds of the petition for review present factual issues which, in view of the provision in Section 2, Rule 45 of the Rules of Court that "only questions of law may be raised" this Court may not inquire into by conducting a tedious reassessment of the "maze of testimonial and documentary evidence" (p. 57, Rollo) of the parties. Referring to the evidence presented at the trial of this case, the Court of Appeals said:

"We are impressed indeed with the patience, diligence and perseverance of the trial judge in wading through the voluminous documents, making an exhaustive examination and detailed evaluation of the evidence, and

thus emerging from the maze of testimonial and documentary evidence with accuracy of perception in determining the merits of the respective claims of the litigants. Accordingly, We are constrained to honor and stamp our imprimatur to the findings of fact and conclusions of the trial court since, admittedly, it was in a better position than We are to examine the real evidence, as well as to observe the demeanor of the witnesses while testifying in the case (Chase vs. Buencamino, Sr., 136 SCRA 365)." (p. 57, Rollo.)

The finding of the trial court and the Court of Appeals that the insured's cause of action had already accrued before she filed her complaint is supported by Section 243 of the Insurance Code which fixes a maximum period of 90 days after receipt of the proofs of loss by the insurer for the latter to pay the insured's claim.

"Sec. 243. The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. x x x" (Insurance Code.)

As the fire which destroyed the Cebu Filipina Press occurred on December 19, 1981 and the proofs of loss were submitted from January 15, 1982 through June 21, 1982 in compliance with the adjusters' numerous requests for various documents, payment should have been made within 90 days thereafter, or on or before September 21, 1982. Hence, when the assured filed her complaint on December 15, 1982, her cause of action had already accrued.

There is no merit in the petitioners' contention that the proofs of loss were insufficient because respondent Emilia Chan Lugay failed to comply with the adjuster's request for the submission of her bank statements. Condition No. 13 of the insurance policy on proofs of loss, provides:

"13. The insured shall give immediate written notice to the company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed damaged and undamaged property, showing in detail quantities, costs, actual cash value and the amount of loss claimed; AND WITHIN SIXTY DAYS AFTER THE LOSS, UNLESS SUCH TIME IS EXTENDED IN WRITING BY THE COMPANY, THE INSURED SHALL RENDER TO THE COMPANY A PROOF OF LOSS signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not covering any of said property, any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any buildings herein described and the several parts thereof were occupied at the time of the loss and whether or not they stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured as often as may be reasonably required shall exhibit to any person designated by the Company all that remains of any property therein described, and submit to examination under oath by any person named by the Company, and subscribe the same; as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof originals be lost. At such reasonable time and place as may be designated by the Company or its representative, and shall permit extracts and copies thereof to be made.

"No claim under this policy shall be payable unless the terms of this condition have been complied with." (pp. 55-56, Rollo.)

Condition No. 13, as the Court of Appeals observed, does not require the insured to produce her bank statements. Therefore, the insured was not obligated to produce them and the insurers had no right to ask for them. Condition

No. 13 was prepared by the insurers themselves, hence, it "should be taken most strongly" (p. 58, Rollo) against them.

The Court of Appeals found that the insured "fully complied with the requirements of Condition No. 13" (p. 58, Rollo). The adjuster's demand for the assured's bank statements (which under the law on the secrecy of bank deposits, she need not disclose) would add more requirements to Condition No. 13 of the insurance contract, and, as pointed out by the Appellate Court, "would amount to giving the insurers limitless latitude in making unreasonable demands if only to evade and avoid liability" (p. 58, Rollo).

Nor was the claim inflated. Both the trial court and the Court of Appeals noted that the proofs were ample and "more than enough x x x for defendants (insurers) to do a just assessment supporting the 1981 fire claim for an amount exceeding four million pesos" (p. 60, Rollo).

The trial court's award (which was affirmed by the Court of Appeals) of double interest on the private respondent's claim is lawful and justified under Sections 243 and 244 of the Insurance Code which provide:

"Sec. 243. x x x Refusal or failure to pay the loss or damage within the time prescribed will entitle the assured to collect interest on the proceeds of the for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, x x x."

"Sec. 244. In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether the payment of the claim of the insured has been unreasonably denied or withheld; and in the affirmative case, the insurance company shall adjudged to pay damages which shall contest of attorney's fees and other expenses incurred by the insured person by reason of such unreasonable denial or withholding of payment plus interest of twice the ceiling prescribed by the Monetary Board of the amount of claim due the insured, x x x." (Underscoring supplied; p. 66, Rollo.)

Section 243 of the Insurance Code is in fact embodied in provision No. 29 of the policies issued by the petitioners to the private respondents (p. 82, Rollo).

The petitioners' contention that the charging of double interest was improper because no unreasonable delay in the processing of the fire claim was proven, is refuted by the trial court's explicit finding that "there was a delay that was not reasonable in processing the claim and doing payments" (p. 81, Rollo). Under Section 244, a prima facie evidence of unreasonable delay in payment of the claim is created by the failure of the insurer to pay the claim within the time fixed in both Sections 242 and 243 of the Insurance Code.

As provided in Section 244 also, by reason of the delay and the consequent filing of this suit by the insured, the insurers "shall be adjudge to pay damages which shall consist of attorney's fees and other expenses incurred by the insured." In view of the not insubstantial value of the private respondent's claims and the considerable time and effort expended by them and their counsel in prosecuting these claims for the past eight (8) years, We hold that attorney's fees were properly awarded to the private respondents. However, an award equivalent to ten (10%) percent of the proceeds of the policies would be more reasonable than the 20% awarded by the trial court and the Appellate Court.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. No. CV-12100 is affirmed, except the award of attorney's fees to the private respondents which is hereby reduced to ten (10%) percent of the proceeds of the insurance policies sued upon. Costs against the petitioners.

SO ORDERED.

Narvasa, (Chairman), Cruz, and Gancayco, JJ., concur.

Medialdea, J., on leave.

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