

K. S. YOUNG, PLAINTIFF AND APPELLEE, VS. THE MIDLAND TEXTILE INSURANCE COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 9370. March 31, 1915

Ponente: JOHNSON, J.

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JOHNSON, J.:

The purpose of the present action is to recover the sum of P3,000 upon an insurance policy. The lower court rendered a judgment in favor of the plaintiff and against the defendant for the sum of P2,708.78, and costs. From that judgment the defendant appealed to this court.

The undisputed facts upon which said action is based are as follows:

- The plaintiff conducted a candy and fruit store on the Escolta, in the city of Manila, and occupied a building at 321 Calle Claveria, as a residence and bodega (storehouse).
- On the 29th of May, 1912, the defendant, in consideration of the payment of a premium of P60, entered into a contract of insurance with the plaintiff (policy No. 509105) by the terms of which the defendant company, upon certain conditions, promised to pay to the plaintiff the sum of P3,000, in case said residence and bodega and contents should be destroyed by fire.
- One of the conditions of said contract of insurance is found in "warranty B" and is as follows: "Warranty B.—It is hereby declared and agreed that during the pendency of this policy no hazardous goods be stored or kept for sale, and no hazardous trade or process be carried on, in the building to which this insurance applies, or in any building connected therewith."
- On the 4th or 5th of February, 1913, the plaintiff placed in said residence and bodega three boxes, 18 by 18 by 20 inches measurement, which belonged to him and which were filled with fireworks.
- 5. On the 18th day of March, 1913, said residence and bodega and the contents thereof were partially destroyed by fire.
- Said fireworks had been given to the plaintiff by the former owner of the Luneta Candy Store; that the plaintiff intended to use the same in the celebration of the Chinese new year; that the authorities of the city of Manila had prohibited the use of fireworks on said occasion, and that the plaintiff then placed the same in said bodega, where they remained from the 4th or 5th of February, 1913, until after the fire of the 18th of March, 1913.
- Both of the parties agree that said fireworks come within the phrase "hazardous goods" mentioned in said "warranty B" of the policy.
- That said fireworks were found in a part of the building not destroyed by the fire; that they in no way contributed to the fire, or to the loss occasioned thereby.

The only question presented by the parties is whether or not the placing of said fireworks in the building insured,

under the conditions above enumerated, they being "hazardous goods," is a violation of the terms of the contract of insurance and especially of "warranty B." "Warranty B" provides that "no hazardous goods be stored" in the building insured. It is admitted by both parties that the fireworks are "hazardous goods." The defendant alleged that they were "stored." The plaintiff contends that under all the facts and circumstances of the case, they were not "stored" in said building, and that the placing of them in the building was not a violation of the terms of the contract. Both the plaintiff and defendant agree that if they were "hazardous goods," and if they were "stored," then the act of the plaintiff was a violation of the terms of the contract of insurance and the defendant was justified in repudiating its liability thereunder.

This leads us to a consideration of the meaning of the word "stored" as used in said "warranty B." While the word "stored" has been variously defined by authors, as well as by courts, we have found no case exactly analogous to the present. The plaintiff says that he placed said fireworks in the bodega after he had been notified that he could not use them on the Chinese new year, in order that he might later send them to a friend in the provinces. Whether a particular article is "stored" or not must, in some degree, depend upon the intention of the parties. The interpretation of the word "stored" is quite difficult, in view of the many decisions upon the various conditions presented. Nearly all of the cases cited by the lower court are cases where the article was being put to some reasonable and actual use, which might easily have been permitted by the terms of the policy, and within the intention of the parties, and excepted from the operation of the warranty, like the present. Said decisions are upon cases like:

- Where merchants have had or kept the "hazardous" articles in small quantities, and for actual daily use, for sale, such as gasoline, gunpowder, etc.;
- Where such articles have been brought on the premises for actual use thereon, and in small quantities, such as oil, paints, etc; and
- Where such articles or goods were used for lighting purposes, and in small quantities.

The author of the Century Dictionary defines the word "store" to be a deposit in a store or warehouse for preservation or safe keeping; to put away for future use, especially for future consumption; to place in a warehouse or other place of deposit for safe keeping. See also the definitions given by the Standard Dictionary, to the same effect.

Said definitions, of course, do not include a deposit in a store, in small quantities, for daily use. "Daily use" precludes the idea of a deposit for preservation or safe keeping, as well as a deposit for future consumption, or safe keeping.

In the present case no claim is made that the "hazardous goods" were placed in the bodega for present or daily use. It is admitted that they were placed in the bodega "for future use," or for future consumption, or for safe keeping. The plaintiff makes no claim that he deposited them there with any other idea than "for future use"--for future consumption. It seems clear to us that the "hazardous goods" in question were "stored" in the bodega, as that word is generally defined. That being true, suppose the defendant had made an examination of the premises, even in the absence of a fire, and had found the "hazardous goods" there, under the conditions above described, would it not have been justified, then and there, in declaring the policy null and of no effect by reason of a violation of its terms on the part of the plaintiff? If it might, then may it not repudiate its liability, even after the fire? If the "warranty" is a term of the contract, will not its violation cause a breach and justify noncompliance or a repudiation?

Contracts of insurance are contracts of indemnity upon the terms and conditions specified in the policy. The

parties have a right to impose such reasonable conditions at the time of the making of the contract as they may deem wise and necessary. The rate of premium is measured by the character of the risk assumed. The insurance company, for a comparatively small consideration, undertakes to guarantee the insured against loss or damage, upon the terms and conditions agreed upon, and upon no other, and when called upon to pay, in case of loss, the insurer, therefore, may justly insist upon a fulfillment of these terms. If the insured cannot bring himself within the conditions of the policy, he is not entitled to recover for the loss. The terms of the policy constitute the measure of the insurer's liability, and in order to recover the insured must show himself within those terms; and if it appears that the contract has been terminated by a violation, on the part of the insured, of its conditions, then there can be no right of recovery. The compliance of the insured with the terms of the contract is a condition precedent to the right of recovery. If the insured has violated or failed to perform the conditions of the contract, and such a violation or want of performance has not been waived by the insurer, then the insured cannot recover. Courts are not permitted to make contracts for the parties. The function and duty of the courts consist simply in enforcing and carrying out the contracts actually made. While it is true, as a general rule, that contracts of insurance are construed most favorably to the insured, yet contracts of insurance, like other contracts, are to be construed according to the sense and meaning of the terms which the parties themselves have used. If such terms are clear and unambiguous they must be taken and understood in their plain, ordinary and popular sense. (*Imperial Fire Ins. Co. vs. County of Coos*, 151 U. S., 452; *Kyte vs. Commercial Union Assurance Co.*, 149 Mass., 116, 122.) The conditions of contracts of insurance, when plainly expressed in a policy, are binding upon the parties and should be enforced by the courts, if the evidence brings the case clearly within their meaning and intent. It tends to bring the law itself into disrepute when, by astute and subtle distinctions, a plain case is attempted to be taken without the operation of a clear, reasonable, and material obligation of the contract. (*Mack vs. Rochester German Ins. Co.*, 106 N. Y., 560, 564.)

The appellant argues, however, that in view of the fact that the "storing" of the fireworks on the premises of the insured did not contribute in any way to the damage occasioned by the fire, he should be permitted to recover—that the "storing" of the "hazardous goods" in no way caused injury to the defendant company. That argument, however, is beside the question, if the "storing" was a violation of the terms of the contract. The violation of the terms of the contract, by virtue of the provisions of the policy itself, terminated, at the election of either party, the contractual relations. (*Kyte vs. Commercial Union Assurance Co.*, 149 Mass., 116, 122.) The plaintiff paid a premium based upon the risk at the time the policy was issued. Certainly it cannot be denied that the placing of the fire-crackers in the building insured increased the risk. The plaintiff had not paid a premium based upon the increased risk, neither had the defendant issued a policy upon the theory of a different risk. The plaintiff was enjoying, if his contention may be allowed, the benefits of an insurance policy upon one risk, whereas, as a matter of fact, it was issued upon an entirely different risk. The defendant had neither been paid nor had issued a policy to cover the increased risk. An increase of risk which is substantial and which is continued for a considerable period of time, is a direct and certain injury to the insurer, and changes the basis upon which the contract of insurance rests. (*Kyte vs. Commercial Union Assurance Co.* (supra); *Frost's Detroit Lumber Works vs. Millers' Mutual Ins. Co.*, 37 Minn., 300, 302; *Moore vs. Phoenix Ins. Co.*, 62 N. H., 240; *Ferree vs. Oxford Fire & Life Ins. Co.*, 67 Pa. State, 373.)

Therefore and for the foregoing reasons, the judgment of the lower court is hereby revoked and the defendant is hereby relieved from any responsibility under said complaint, and, without any finding as to costs, it is so ordered.

Arellano, C. J., Torres, Carson, Trent, and Araullo, JJ., concur.
Moreland, J., concurs in the result.

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