

ANTONINA LAMPANO, PLAINTIFF AND APPELLEE, VS. PLACIDA A. JOSE ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 9401. March 30, 1915*

Ponente: TRENT, J.

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The defendant, Mariano R. Barretto, constructed a house for the other defendant, Placida A. Jose, on land described as No. 72, plot F, Estate of Nagtahan, district of Sampaloc, city of Manila, for the agreed price of P6,000. Subsequent thereto and on November 12, 1912, Placida A. Jose sold the house to the plaintiff, Antonina Lampano, for the sum of P6,000. On March 22, 1913, the house was destroyed by fire. At the time of the fire Antonina Lampano still owed Placida A. Jose the sum of P2,000, evidenced by a promissory note, and Placida A. Jose still owed Mariano R. Barretto on the cost of the construction the sum of P2,000. After the completion of the house and sometime before it was destroyed, Mariano R. Barretto took out an insurance policy upon it in his own name, with the consent of Placida A. Jose, for the sum of P4,000. After its destruction, he collected P3,600 from the insurance company, having paid in premiums the sum of P301.50.

The plaintiff alleged in her complaint that there was a verbal agreement between her and Placida A. Jose, at the time of the purchase and sale of the house, to the effect that the latter agreed to deliver to her the insurance policy on the building; that she did not learn that the policy was in the name of Barretto until after the fire; and that neither Placida A. Jose nor Mariano R. Barretto has any right to the insurance or to the money received therefrom. She prayed for judgment against each of them for the sum of P3,600, the amount of the insurance collected.

To this complaint the defendant, Placida A. Jose, answered, denying that she agreed to transfer the policy of insurance to the plaintiff and alleging (a) that the insurance was taken out and paid for by Barretto before the sale of the house to the plaintiff; (b) that Barretto did this because he had constructed the house and she was owing him therefor; and (c) that the insurance was entirely for the personal account and in the exclusive interest of Barretto. In her cross-complaint she asked for judgment against the plaintiff for the sum of P2,000, the balance due on the purchase price. Barretto answered, reciting the facts giving rise to his taking out the insurance on the house and denying any obligation to the plaintiff in connection therewith.

Judgment was entered against Barretto and in favor of Placida A. Jose for the sum of P1,298.50, being the difference between the amount collected by Barretto on the insurance and the amount yet due him for the construction of the house, including the premiums paid. Judgment was also entered in favor of the defendant, Placida A. Jose, against the plaintiff for the sum of P2,000, being the balance of the purchase price of the house. The plaintiff was authorized to offset this judgment against her for P2,000 by the P2,000 which the court declared had been paid the defendant, Placida A. Jose, by Barretto out of the insurance money. A final judgment was entered in favor of the plaintiff against the defendant, Placida A. Jose, for the sum of P1,298.50, being the amount of the judgment against Barretto. From this judgment Barretto alone appealed.

The court found that there was no privity of contract between the plaintiff and the defendant Barretto. In

consequence, no judgment was entered in favor of the plaintiff against the defendant. The court decided the respective rights of the two defendants to the insurance money and entered judgment against Barretto and in favor of Placida A. Jose for the sum of P1,298.50. This was done upon the theory that the insurance policy was held in trust for Placida A. Jose, and that any balance, resulting: after deducting the amount owing upon the construction contract and paid for premiums, belonged to her. Neither by the pleadings nor upon the trial was there any claim made by Placida A. Jose against Barretto for the insurance money, nor for any participation therein. Placida A. Jose's answer specifically alleged that such insurance was for Barretto's personal account and in his exclusive right. Her testimony is equally positive upon this point. She says:

"Q. Was the house insured when you sold it to Antonina Lampano?—A. It was insured by Mariano Barretto because he is the one who constructed that house.

"Q. Did you have any interest in that insurance?—A. I Was indebted to him and he insured the house in his own name from 1911.

"Q. Did you have any right, interest or participation in that insurance?—A. I have none.

"Q. Who was paying the premiums on that insurance?— A. M. Barretto."

The result is that there was no controversy between the defendants concerning this insurance, nor was any issue presented which required an adjudication of their respective rights thereto. So far as Barretto was concerned, the only issue raised, either by the pleadings or at the trial, was, Has the plaintiff any right to recover from Barretto any portion of the insurance money?

The plaintiff sought to recover from Barretto all of the P3,600, but she is now contented with a judgment against Placida A. Jose for P1,298.50. Her right to recover this amount of the insurance rests upon an alleged verbal agreement between herself and Placida A. Jose to the effect that the latter agreed, at the time of the purchase and sale of the house, to transfer to her the insurance policy, the policy being held in trust by Barretto for the benefit of the Jose woman. The plaintiff does not contend that Barretto participated in this sale, or even had any knowledge of it, until sometime after it was consummated. Placida A. Jose denies that she agreed to transfer the policy to the plaintiff, and the deed of purchase and sale makes no mention of such an agreement. The policy is not mentioned in this document, although it was agreed that the vendor would transfer to the vendee all of the former's right, title, and interest in the leasehold to the land upon which the house was built. It would seem that if the vendor agreed to transfer the policy, this agreement would have been inserted in the document of purchase and sale, the same as that with reference to the lease. The trial court did not find that such an agreement existed and we think the plaintiff has failed to establish this verbal agreement.

If Barretto had an insurable interest in the house, he could insure this interest for his sole protection. The policy was in the name of Barretto alone. It was, therefore, a personal contract between him and the company and not a contract which ran with the property. According to this personal contract the insurance policy was payable to the insured without regard to the nature and extent of his interest in the property, provided that he had, as we have said, an insurable interest at the time of the making of the contract, and also at the time of the fire. Where different, persons have different interests in the same property, the insurance taken by one in his own right and in his own interest does not in any way inure to the benefit of another. This is the general rule prevailing in the United States and we find nothing different in this jurisdiction. (19 Cyc, 883.)

In the case of *Shadgett vs. Phillips & Crew Co.*, reported in 56 L. R. A., 461, Mrs. Shadgett received a piano as a gift from her husband and insured it. She knew that it was the obligation of her husband to insure the piano for the benefit of the vendor. The court held, however, that the vendor (mortgagee) was not entitled to the proceeds of the insurance as "there was no undertaking on the part of Mrs. Shadgett to either insure for complainant's benefit, or

to assume her husband's obligation to so insure, and mere knowledge of that obligation did not impose it upon her."

The court further said: "The contract of insurance was" wholly between the defendant and the insurance company, and was personal, in the sense that the money agreed to be paid in case of loss was not to stand in the place of the piano itself, but was a mere indemnity against the loss of defendant's interest therein. If her interest was small, on account of incumbrances existing in favor of the complainant, that fact was for the consideration only of the insurer and defendant, for complainant has no concern with the adjustment of the loss between them. We know of no principle, either of law or equity, which would bind defendant to carry out her donor's contract to insure, in the absence of any agreement on her part to do so, even though the property in her hands was subject to complainant's rights therein as a conditional vendor."

The court further says: "A contract of insurance made for the insurer's (insured) indemnity only, as where there is no agreement, express or implied, that it shall be for the benefit of a third person, does not attach to or run with the title to the insured property on a transfer thereof personal as between the insurer and the insured. In such case strangers to the contract cannot acquire in their own right any interest in the insurance money, except through an assignment or some contract with which they are connected."

In *Vandergraaff vs. Medlock* (3 Porter, 389; 29 Am. Dec, 256), it was held that the mortgagee is not entitled to the proceeds of an insurance policy procured by the mortgages, there being no agreement that such insurance should be effected by the latter for the benefit of the former. The court says: "It is well settled that a policy of insurance is a distinct independent contract between the insured and insurers, and third persons have no right either in a court of equity, or in a court of law, to the proceeds of it, unless there be some contract or trust, expressed or implied, between the insured and third persons."

In *Burlingame vs. Goodspeed* (10 L. R. A., 495), the court says that where a mortgagee at his own expense and without any agreement or understanding with the mortgagor obtains insurance upon his interest as a mortgagee and collects the money from the insurer after a loss, he is not bound to account for it to the mortgagor.

In the case at bar Barretto assumed the responsibility for the insurance. The premiums, as we have indicated, were paid by him without any agreement or right to recoup the amount paid therefor should no loss result to the property. It would not, therefore, be in accordance with law and his contractual obligations to compel him to account for the insurance money, or any part thereof, to the plaintiff, who assumed no risk whatever.

That Barretto had an insurable interest in the house, we think there can be no question. He constructed the building, furnishing all the materials and supplies, and insured it after it had been completed (pars. 3 and 5, art. 1923, Civil Code; *Manresa*, Vol. 12, pp. 692-695; citing decision of the supreme court of Spain of December 30, 1896).

For the foregoing reasons the judgment appealed from, in so far as it affects the appellant, is reversed and he is absolved. Without costs. So ordered.

Arellano, C. J., Torres, Johnson, Moreland, and Araullo, JJ., concur.

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