

45 Phil. 123

[ G.R. No. 20341. September 01, 1923 ]

**DOMINGO GARCIA AND THE PHILIPPINE NATIONAL BANK, PLAINTIFFS AND APPELLEES, VS. THE HONGKONG FIRE & MARINE INSURANCE CO., LTD., DEFENDANT AND APPELLANT.**

**D E C I S I O N**

STATEMENT

After formal pleas, the plaintiffs allege that on the 19th of March, 1918, in the City of Manila, the plaintiff, Domingo Garcia, then a merchant and owner of a bazaar known as "Las Novedades" in the district of Legaspi, municipality and Province of Albay, entered into a contract with the defendant whereby it insured his merchandise in the sum of P15,000 at a premium of P300 per annum; that in consideration of such premium, the defendant issued its fire insurance policy No. 1951 in favor of the plaintiff, not on the merchandise in the building, but on the building which contained the merchandise; that for such reason the policy does not contain the true agreement and intent of the parties; that the plaintiff was not the owner of, and did not have any interest in, the building; and that the policy was so issued through error, carelessness and negligence of the defendant.

That on August 30, 1919, Garcia executed a mortgage to the plaintiff Bank on the merchandise insured by the defendant, and that with the consent of the defendant, the plaintiff endorsed the policy to the Bank; that on February 6, 1920, and while the policy was in force and effect, a fire took place which destroyed the merchandise in the building of the value of P20,000, together with the building itself; that demand was made upon the defendant for the payment of P15,000, as provided for in the policy, and that payment was refused. Wherefore, plaintiffs pray judgment for that amount, with legal interest from the date of

the filing of the complaint, and costs.

For answer, the defendant admits the formal allegations of the complaint, and denies generally and specifically all other allegations.

As a result of the trial, the lower court rendered judgment for the plaintiff, as prayed for in the complaint, from which the defendant appeals and contends that the lower court erred in denying its motion to make the complaint more definite and certain; in permitting Garcia over its objection to testify to the contents of certain documents; in refusing to strike them from the record; in finding that the defendant, through its agent, knew that it was the merchandise which was insured and not the building; in failing to find the plaintiffs, and Garcia in particular, guilty of negligence; in finding that the defendant committed error in making out the policy to cover the building rather than the merchandise; in rendering the judgment; and in denying defendant's motion for a new trial.

**JOHNS, J.:**

It appears that the policy was in the English language, of which the plaintiff Garcia is ignorant. When he received it he noticed that the amount P15,000 was correct, and never personally made any further investigation. He was the exclusive owner of the merchandise in the building which, at the time of the fire, was of the probable value of P20,000. He did not own or claim any interest in the building. Desiring to have his merchandise insured for P15,000, he wrote a letter to "El Pilar," requesting that firm to have it insured, as a result of which, the policy in question was issued and delivered to him, and it was issued on the building which Garcia did not own, and did not cover the merchandise which he did own. Desiring to obtain a loan from the Philippine National Bank, Garcia later delivered and assigned the policy to the plaintiff Bank as collateral security for a loan. Upon receipt of the policy, and as one of the conditions for the making of the loan, the Bank, through its manager, addressed the following letter to the agents of the defendant on August 6, 1919:

"We beg to advise that the merchandise insured by you against fire in favor of Mr. Domingo Garcia of Legaspi, Albay, P. I., for P15,000 for which you issued policy No. 1951, has been mortgaged to this bank together with the policy to

secure a credit and loans not to exceed P6,000 in all.

“We would appreciate very much if you have our claims against the property and policy covering it, on account of the mortgage, entered in your records and advise us accordingly.

“Hoping to hear from you soon, we are,

“Very truly yours,”

This was answered by the agents August 14, 1919, as follows:

“We beg to acknowledge receipt of your esteemed favor of the 6th inst., informing us that the Hongkong Fire Insurance Company, Ltd.’s Policy in the name of Mr. Domingo Garcia, for the sum of P15,000 has been mortgaged to your goodselves. In order that this transaction may be officially recorded, it will be necessary to make an endorsement upon the original policy, and we shall be glad, therefore, if you will return this document to us as soon as convenient.

“We are, Dear Sirs,

“Yours faithfully.”

August 18, 1919, the Bank wrote the following letter to the agents:

“Complying with your request of the 13th ultimo, we beg to inclose herewith policy No. 1951 in favor of Mr. Domingo Garcia, Legaspi, Albay, for P15,000, which has been mortgaged to this Bank to secure a credit and loan of not to exceed P6,000 in all, for your proper indorsement.

“Trusting to have your prompt action in this matter, we are,

“Very respectfully yours.”

September 1, 1919, the agents wrote the Bank as follows:

“We beg to acknowledge receipt of your favour of the 18th ultimo, enclosing Hongkong Fire Insurance Co., Ltd.’s Policy No. 1951, in the name of Mr. Domingo Garcia, and in accordance with your request have endorsed same in your favour, and beg to return the document herewith. Please be good enough to acknowledge safe receipt in due course and oblige.

“Yours faithfully.”

It clearly appears that where the word “merchandise” was written in the letter of August 6th above quoted, some other word had been previously written and erased, and the word “merchandise” was then written, as it now appears.

It is contended that when the letter was written, the Bank, which then had the possession of the policy, knew that it covered the building and did not insure the merchandise. That, having such knowledge, it was the duty of the Bank to notify the defendant, and having failed to do so, it cannot now contend that the policy was issued through a mistake. The fact remains that the defendant, through its agents, received this letter, and that it recites:

“We beg to advise that the merchandise insured by you against fire in favor of Mr. Domingo Garcia, etc.”

That was a personal notice to the defendant of the fact that the policy was on the merchandise. It is pointed out that the Bank and not the defendant then had the policy, and, for such reason, the Bank did not have notice of the error. Although the policy was in possession of the Bank, the defendant had among its own records all of the data and information upon which the policy was issued, and, as a matter of fact, its agents knew or should have known the kind of property insured.

It is possible that when the Bank wrote the letter, it knew of the error in

the issuance of the policy. But that is a matter of inference or conjecture only. Outside of the appearance of the letter itself, there is no evidence that the Bank had any knowledge of the error.

Garcia had his dealings with the officials of the branch Bank at Legaspi where he was doing business as a merchant, of which the officials of that Bank had knowledge. Under such facts, the presumption of knowledge, if any, on the part of the Bank would be that the policy was on the merchandise. Be that as it may, when the defendant received the letter from the Bank, it knew from its own records that the policy was issued on the building, and, as a matter of fair dealing, it should have notified the Bank that the policy was on the building. It will be noted that the letters in question were all written several months before the fire.

In the final analysis, Garcia wanted insurance upon a stock of goods, which he owned, and he received and paid for a policy on a building, which he did not own, and while the policy was in force and effect, both the building, which he did not own, and the stock of merchandise, which he did own, were completely destroyed by fire. Garcia was a well-known merchant, and his merchandise was in the building described in the policy.

For some unknown reason, the party who applied for the insurance at the instance and request of Garcia was not called as a witness, and, as stated, the answer of the defendant is confined to a general denial, and it did not offer any evidence.

In a well-written opinion, the trial court analyzed the evidence and made findings of fact upon which it rendered judgment for the plaintiff. It is claimed that the letters and the copy of the telegram introduced in evidence were hearsay and not competent. If for no other purpose, they were competent to show that Garcia wanted insurance on his merchandise and the reasons why he wanted it.

The defense is purely technical, and is founded upon the contention that plaintiff cannot recover, because the policy covers loss on a building, and does not cover loss of merchandise.

It is very apparent that a mistake was made in the issuance of the

policy.

In its opinion the trial court says:

“Under these circumstances it seems clear and manifest that the insured, as well as the manager of the National Bank at Legaspi, who was interested in the policy, because the same secured a loan of P6,000 made to Domingo Garcia, and the corporation of Wise & Co., Ltd., which represented the insurance company, have been in the belief that it was not the building but the merchandise that was insured, for the reason that none of them paid attention to the context of the policy.”

The opinion of the trial court further points out that, under the pleadings and proof, there is ground for the contention that the plaintiff would be entitled to recover on the policy for the loss of the building.

All things considered, the judgment of the lower court is affirmed, with costs. So ordered.

*Araullo, C.J., Johnson, Malcolm, Avanceña,*  
*Villamor, and Romualdez, JJ., concur.*

*Street, J.,*

dissents.