

THIRD DIVISION

[G.R. No. 200784, August 07, 2013]

MALAYAN INSURANCE COMPANY, INC., PETITIONER, VS. PAP CO., LTD. (PHIL. BRANCH), RESPONDENT.

DECISION

MENDOZA, J.:

Challenged in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the October 27, 2011 Decision^[1] of the Court of Appeals (CA), which affirmed with modification the September 17, 2009 Decision^[2] of the Regional Trial Court, Branch 15, Manila (RTC), and its February 24, 2012 Resolution^[3] denying the motion for reconsideration filed by petitioner Malayan Insurance Company, Inc. (*Malayan*).

The Facts

The undisputed factual antecedents were succinctly summarized by the CA as follows:

On May 13, 1996, Malayan Insurance Company (Malayan) issued Fire Insurance Policy No. F-00227-000073 to PAP Co., Ltd. (PAP Co.) for the latter's machineries and equipment located at Sanyo Precision Phils. Bldg., Phase III, Lot 4, Block 15, PEZA, Rosario, Cavite (Sanyo Building). The insurance, which was for Fifteen Million Pesos (P15,000,000.00) and effective for a period of one (1) year, was procured by PAP Co. for Rizal Commercial Banking Corporation (RCBC), the mortgagee of the insured machineries and equipment.

After the passage of almost a year but prior to the expiration of the insurance coverage, PAP Co. renewed the policy on an "as is" basis. Pursuant thereto, a renewal policy, Fire Insurance Policy No. F-00227-000079, was issued by Malayan to PAP Co. for the period May 13, 1997 to May 13, 1998.

On October 12, 1997 and during the subsistence of the renewal policy, the insured machineries and equipment were totally lost by fire. Hence, PAP Co. filed a fire insurance claim with Malayan in the amount insured.

In a letter, dated December 15, 1997, Malayan denied the claim upon the ground that, at the time of the loss, the insured machineries and equipment were transferred by PAP Co. to a location different from that indicated in the policy. Specifically, that the insured machineries were transferred in September 1996 from the Sanyo Building to the Pace Pacific Bldg., Lot 14, Block 14, Phase III, PEZA, Rosario, Cavite (Pace

Pacific). Contesting the denial, PAP Co. argued that Malayan cannot avoid liability as it was informed of the transfer by RCBC, the party duty-bound to relay such information. However, Malayan reiterated its denial of PAP Co.'s claim. Distraught, PAP Co. filed the complaint below against Malayan.^[4]

Ruling of the RTC

On September 17, 2009, the RTC handed down its decision, ordering Malayan to pay PAP Company Ltd (*PAP*) an indemnity for the loss under the fire insurance policy as well as for attorney's fees. The dispositive portion of the RTC decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff. Defendant is hereby ordered:

- a) To pay plaintiff the sum of FIFTEEN MILLION PESOS (P15,000,000.00) as and for indemnity for the loss under the fire insurance policy, plus interest thereon at the rate of 12% per annum from the time of loss on October 12, 1997 until fully paid;
- b) To pay plaintiff the sum of FIVE HUNDRED THOUSAND PESOS (PhP500,000.00) as and by way of attorney's fees; [and,]
- c) To pay the costs of suit.

SO ORDERED.^[5]

The RTC explained that Malayan is liable to indemnify PAP for the loss under the subject fire insurance policy because, although there was a change in the condition of the thing insured as a result of the transfer of the subject machineries to another location, said insurance company failed to show proof that such transfer resulted in the increase of the risk insured against. In the absence of proof that the alteration of the thing insured increased the risk, the contract of fire insurance is not affected per Article 169 of the Insurance Code.

The RTC further stated that PAP's notice to Rizal Commercial Banking Corporation (*RCBC*) sufficiently complied with the notice requirement under the policy considering that it was RCBC which procured the insurance. PAP acted in good faith in notifying RCBC about the transfer and the latter even conducted an inspection of the machinery in its new location.

Not contented, Malayan appealed the RTC decision to the CA basically arguing that the trial court erred in ordering it to indemnify PAP for the loss of the subject machineries since the latter, without notice and/or consent, transferred the same to a location different from that indicated in the fire insurance policy.

Ruling of the CA

On October 27, 2011, the CA rendered the assailed decision which affirmed the RTC decision but deleted the attorney's fees. The decretal portion of the CA decision reads:

WHEREFORE, the assailed dispositions are MODIFIED. As modified, Malayan Insurance Company must indemnify PAP Co. Ltd the amount of Fifteen Million Pesos (PhP15,000,000.00) for the loss under the fire insurance policy, plus interest thereon at the rate of 12% per annum from the time of loss on October 12, 1997 until fully paid. However, the Five Hundred Thousand Pesos (PhP500,000.00) awarded to PAP Co., Ltd. as attorney's fees is DELETED. With costs.

SO ORDERED.^[6]

The CA wrote that Malayan failed to show proof that there was a prohibition on the transfer of the insured properties during the efficacy of the insurance policy. Malayan also failed to show that its contractual consent was needed before carrying out a transfer of the insured properties. Despite its bare claim that the original and the renewed insurance policies contained provisions on transfer limitations of the insured properties, Malayan never cited the specific provisions.

The CA further stated that even if there was such a provision on transfer restrictions of the insured properties, still Malayan could not escape liability because the transfer was made during the subsistence of the original policy, not the renewal policy. PAP transferred the insured properties from the Sanyo Factory to the Pace Pacific Building (*Pace Factory*) sometime in September 1996. Therefore, Malayan was aware or should have been aware of such transfer when it issued the renewal policy on May 14, 1997. The CA opined that since an insurance policy was a contract of adhesion, any ambiguity must be resolved against the party that prepared the contract, which, in this case, was Malayan.

Finally, the CA added that Malayan failed to show that the transfer of the insured properties increased the risk of the loss. It, thus, could not use such transfer as an excuse for not paying the indemnity to PAP. Although the insurance proceeds were payable to RCBC, PAP could still sue Malayan to enforce its rights on the policy because it remained a party to the insurance contract.

Not in conformity with the CA decision, Malayan filed this petition for review anchored on the following

GROUND

I

THE COURT OF APPEALS HAS DECIDED THE CASE IN A MANNER NOT IN ACCORDANCE WITH THE LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT AFFIRMED THE DECISION OF THE TRIAL COURT AND THUS RULING IN THE QUESTIONED DECISION AND RESOLUTION THAT PETITIONER MALAYAN IS LIABLE UNDER THE INSURANCE CONTRACT BECAUSE:

A. CONTRARY TO THE CONCLUSION OF THE COURT OF APPEALS, PETITIONER MALAYAN WAS ABLE TO PROVE AND IT IS NOT DENIED, THAT ON THE FACE OF THE RENEWAL

POLICY ISSUED TO RESPONDENT PAP CO., THERE IS AN AFFIRMATIVE WARRANTY OR A REPRESENTATION MADE BY THE INSURED THAT THE "LOCATION OF THE RISK" WAS AT THE SANYO BUILDING. IT IS LIKEWISE UNDISPUTED THAT WHEN THE RENEWAL POLICY WAS ISSUED TO RESPONDENT PAP CO., THE INSURED PROPERTIES WERE NOT AT THE SANYO BUILDING BUT WERE AT A DIFFERENT LOCATION, THAT IS, AT THE PACE FACTORY AND IT WAS IN THIS DIFFERENT LOCATION WHEN THE LOSS INSURED AGAINST OCCURRED. THESE SET OF UNDISPUTED FACTS, BY ITSELF ALREADY ENTITLES PETITIONER MALAYAN TO CONSIDER THE RENEWAL POLICY AS AVOIDED OR RESCINDED BY LAW, BECAUSE OF CONCEALMENT, MISREPRESENTATION AND BREACH OF AN AFFIRMATIVE WARRANTY UNDER SECTIONS 27, 45 AND 74 IN RELATION TO SECTION 31 OF THE INSURANCE CODE, RESPECTIVELY.

- B. RESPONDENT PAP CO. WAS NEVER ABLE TO SHOW THAT IT DID NOT COMMIT CONCEALMENT, MISREPRESENTATION OR BREACH OF AN AFFIRMATIVE WARRANTY WHEN IT FAILED TO PROVE THAT IT INFORMED PETITIONER MALAYAN THAT THE INSURED PROPERTIES HAD BEEN TRANSFERRED TO A LOCATION DIFFERENT FROM WHAT WAS INDICATED IN THE INSURANCE POLICY.**
- C. IN ANY EVENT, RESPONDENT PAP CO. NEVER DISPUTED THAT THERE ARE CONDITIONS AND LIMITATIONS TO THE RENEWAL POLICY WHICH ARE THE REASONS WHY ITS CLAIM WAS DENIED IN THE FIRST PLACE. IN FACT, THE BEST PROOF THAT RESPONDENT PAP CO. RECOGNIZES THESE CONDITIONS AND LIMITATIONS IS THE FACT THAT ITS ENTIRE EVIDENCE FOCUSED ON ITS FACTUAL ASSERTION THAT IT SUPPOSEDLY NOTIFIED PETITIONER MALAYAN OF THE TRANSFER AS REQUIRED BY THE INSURANCE POLICY.**
- D. MOREOVER, PETITIONER MALAYAN PRESENTED EVIDENCE THAT THERE WAS AN INCREASE IN RISK BECAUSE OF THE UNILATERAL TRANSFER OF THE INSURED PROPERTIES. IN FACT, THIS PIECE OF EVIDENCE WAS UNREBUTTED BY RESPONDENT PAP CO.**

II

THE COURT OF APPEALS DEPARTED FROM, AND DID NOT APPLY, THE LAW AND ESTABLISHED DECISIONS OF THE HONORABLE COURT WHEN IT IMPOSED INTEREST AT THE RATE OF TWELVE PERCENT (12%) INTEREST FROM THE TIME OF THE LOSS UNTIL FULLY PAID.

- A. JURISPRUDENCE DICTATES THAT LIABILITY UNDER AN INSURANCE POLICY IS NOT A LOAN OR FORBEARANCE OF MONEY FROM WHICH A BREACH ENTITLES A PLAINTIFF TO AN AWARD OF INTEREST AT THE RATE OF TWELVE PERCENT (12%) PER ANNUM.**
- B. MORE IMPORTANTLY, SECTIONS 234 AND 244 OF THE INSURANCE CODE SHOULD NOT HAVE BEEN APPLIED BY THE COURT OF APPEALS BECAUSE THERE WAS NEVER ANY FINDING THAT PETITIONER MALAYAN UNJUSTIFIABLY REFUSED OR WITHHELD THE PROCEEDS OF THE INSURANCE POLICY BECAUSE IN THE FIRST PLACE, THERE WAS A LEGITIMATE DISPUTE OR DIFFERENCE IN OPINION ON WHETHER RESPONDENT PAP CO. COMMITTED CONCEALMENT, MISREPRESENTATION AND BREACH OF AN AFFIRMATIVE WARRANTY WHICH ENTITLES PETITIONER MALAYAN TO RESCIND THE INSURANCE POLICY AND/OR TO CONSIDER THE CLAIM AS VOIDED.**

III

THE COURT OF APPEALS HAS DECIDED THE CASE IN A MANNER NOT IN ACCORDANCE WITH THE LAW AND APPLICABLE DECISIONS OF THE HONORABLE COURT WHEN IT AGREED WITH THE TRIAL COURT AND HELD IN THE QUESTIONED DECISION THAT THE PROCEEDS OF THE INSURANCE CONTRACT IS PAYABLE TO RESPONDENT PAP CO. DESPITE THE EXISTENCE OF A MORTGAGEE CLAUSE IN THE INSURANCE POLICY.

IV

THE COURT OF APPEALS ERRED AND DEPARTED FROM ESTABLISHED LAW AND JURISPRUDENCE WHEN IT HELD IN THE QUESTIONED DECISION AND RESOLUTION THAT THE INTERPRETATION MOST FAVORABLE TO THE INSURED SHALL BE ADOPTED.^[7]

Malayan basically argues that it cannot be held liable under the insurance contract because PAP committed concealment, misrepresentation and breach of an affirmative warranty under the renewal policy when it transferred the location of the insured properties without informing it. Such transfer affected the correct estimation of the risk which should have enabled Malayan to decide whether it was willing to assume such risk and, if so, at what rate of premium. The transfer also affected Malayan's ability to control the risk by guarding against the increase of the risk brought about by the change in conditions, specifically the change in the location of the risk.

Malayan claims that PAP concealed a material fact in violation of Section 27 of the Insurance Code^[8] when it did not inform Malayan of the actual and new location of the insured properties. In fact, before the issuance of the renewal policy on May 14, 1997, PAP even informed it that there would be no changes in the renewal policy. Malayan also argues that PAP is guilty of breach of warranty under the renewal