497 Phil. 837

SECOND DIVISION

[G.R. No. 156167, May 16, 2005]

GULF RESORTS, INC., PETITIONER, VS. PHILIPPINE CHARTER INSURANCE CORPORATION, RESPONDENT.

D E C I S I O N

PUNO, J.:

Before the Court is the petition for certiorari under Rule 45 of the Revised Rules of Court by petitioner GULF RESORTS, INC., against respondent PHILIPPINE CHARTER INSURANCE CORPORATION. Petitioner assails the appellate court decision[1] which dismissed its two appeals and affirmed the judgment of the trial court.

For review are the warring interpretations of petitioner and respondent on the scope of the insurance company's liability for earthquake damage to petitioner's properties. Petitioner avers that, pursuant to its earthquake shock endorsement rider, Insurance Policy No. 31944 covers all damages to the properties within its resort caused by earthquake. Respondent contends that the rider limits its liability for loss to the two swimming pools of petitioner.

The facts as established by the court a quo, and affirmed by the appellate court are as follows:

> [P]laintiff is the owner of the Plaza Resort situated at Agoo, La Union and had its properties in said resort insured originally with the American Home Assurance Company (AHAC-AIU). In the first four insurance policies issued by AHAC-AIU from 1984-85; 1985-86; 1986-1987; and 1987-88 (Exhs. "C", "D", "E" and "F"; also Exhs. "1", "2", "3" and "4" respectively), the risk of loss from earthquake shock was extended only to plaintiff's two swimming pools, thus, "earthquake shock endt." (Item 5 only) (Exhs. "C-1"; "D-1," and "E" and two (2) swimming pools only (Exhs. "C-1"; 'D-1", "E" and "F-1"). "Item 5" in those policies referred to the two (2) swimming pools only (Exhs. "1-B", "2-B", "3-B" and "F-2"); that subsequently AHAC(AIU) issued in plaintiff's favor Policy No. 206-4182383-0 covering the period March 14, 1988 to March 14, 1989 (Exhs. "G" also "G-1") and in said policy the earthquake endorsement clause as indicated in Exhibits "C-1", "D-1", Exhibits "E" and "F-1" was deleted and the entry under Endorsements/Warranties at the time of issue read that plaintiff renewed its policy with AHAC (AIU) for the period of March 14, 1989 to March 14, 1990 under Policy No. 206-4568061-9 (Exh. "H") which carried the entry under "Endorsement/Warranties at Time of Issue", which read "Endorsement to Include Earthquake Shock (Exh. "6-B-1") in the amount of P10,700.00 and paid P42,658.14 (Exhs. "6-A" and "6-B") as premium thereof, computed as follows:

Item -P7,691,000.00 -	on the Clubhouse only @ .392%;
1,500,000.00 -	on the furniture, etc. contained in the building above-mentioned@ .490%;
393,000.00-	on the two swimming pools, only (against the peril of earthquake shock only) @ 0.100%
116,600.00-	other buildings include as follows:
a) Tilter House-	P19,800.00- 0.551%
b) Power House-	P41,000.00-0.551%
c) House Shed-	P55,000.00 -0.540%
P100,000.00	for furniture, fixtures, lines air-con and operating equipment

that plaintiff agreed to insure with defendant the properties covered by AHAC (AIU) Policy No. 206-4568061-9 (Exh. "H") provided that the policy wording and rates in said policy be copied in the policy to be issued by defendant; that defendant issued Policy No. 31944 to plaintiff covering the period of March 14, 1990 to March 14, 1991 for P10,700,600.00 for a total premium of P45,159.92 (Exh. "I"); that in the computation of the premium, defendant's Policy No. 31944 (Exh. "I"), which is the policy in question, contained on the right-hand upper portion of page 7 thereof, the following:

Rate-Various

Premium -	P37,420.60 F/L 2,061.52 – Typhoon 1,030.76 – EC 393.00 – ES
Doc. Stamps	3,068.10
F.S.T.;	776.89
Prem. Tax	409.05
TOTAL	45,159.92;

that the above break-down of premiums shows that plaintiff paid only P393.00 as premium against earthquake shock (ES); that in all the six insurance policies (Exhs. "C", "D", "E", "F", "G" and "H"), the premium against the peril of earthquake shock is the same, that is P393.00 (Exhs. "C" and "1-B"; "2-B" and "3-B-1" and "3-B-2"; "F-02" and "4-A-1"; "G-2" and "5-C-1"; "6-C-1"; issued by AHAC (Exhs. "C", "D", "E", "F", "G" and "H") and in Policy No. 31944 issued by defendant, the shock endorsement provide(sic):

In consideration of the payment by the insured to the company of the

> sum included additional premium the Company agrees, notwithstanding what is stated in the printed conditions of this policy due to the contrary, that this insurance covers loss or damage to shock to any of the property insured by this Policy occasioned by or through or in consequence of earthquake (Exhs. "1-D", "2-D", "3-A", "4-B", "5-A", "6-D" and "7-C");
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> that in Exhibit "7-C" the word "included" above the underlined portion was deleted; that on July 16, 1990 an earthquake struck Central Luzon and Northern Luzon and plaintiff's properties covered by Policy No. 31944 issued by defendant, including the two swimming pools in its Agoo Playa Resort were damaged.[2]

After the earthquake, petitioner advised respondent that it would be making a claim under its Insurance Policy No. 31944 for damages on its properties. Respondent instructed petitioner to file a formal claim, then assigned the investigation of the claim to an independent claims adjuster, Bayne Adjusters and Surveyors, Inc.[3] On July 30, 1990, respondent, through its adjuster, requested petitioner to submit various documents in support of its claim. On August 7, 1990, Bayne Adjusters and Surveyors, Inc., through its Vice-President A.R. de Leon,[4] rendered a preliminary report[5] finding extensive damage caused by the earthquake to the clubhouse and to the two swimming pools. Mr. de Leon stated that "except for the swimming pools, all affected items have no coverage for earthquake shocks."[6] On August 11, 1990, petitioner filed its formal demand[7] for settlement of the damage to all its properties in the Agoo Playa Resort. On August 23, 1990, respondent denied petitioner's claim on the ground that its insurance policy only afforded earthquake shock coverage to the two swimming pools of the resort.[8] Petitioner and respondent failed to arrive at a settlement.[9] Thus, on January 24, 1991, petitioner filed a complaint[10] with the regional trial court of Pasig praying for the payment of the following:

> 1.) The sum of P5,427,779.00, representing losses sustained by the insured properties, with interest thereon, as computed under par. 29 of the policy (Annex "B") until fully paid;
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> 2.) The sum of P428,842.00 per month, representing continuing losses sustained by plaintiff on account of defendant's refusal to pay the claims;
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> 3.) The sum of P500,000.00, by way of exemplary damages;
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> 4.) The sum of P500,000.00 by way of attorney's fees and expenses of litigation;
>
> 5.) Costs.[11]

Respondent filed its Answer with Special and Affirmative Defenses with Compulsory Counterclaims.[12]

On February 21, 1994, the lower court after trial ruled in favor of the respondent, *viz*:

The above schedule clearly shows that plaintiff paid only a premium of P393.00 against the peril of earthquake shock, the same premium it paid against earthquake shock only on the two swimming pools in all the policies issued by AHAC(AIU) (Exhibits "C", "D", "E", "F" and "G"). From this fact the Court must consequently agree with the position of defendant that the endorsement rider (Exhibit "7-C") means that only the two swimming pools were insured against earthquake shock.

Plaintiff correctly points out that a policy of insurance is a contract of adhesion hence, where the language used in an insurance contract or application is such as to create ambiguity the same should be resolved against the party responsible therefor, i.e., the insurance company which prepared the contract. To the mind of [the] Court, the language used in the policy in litigation is clear and unambiguous hence there is no need for interpretation or construction but only application of the provisions therein.

From the above observations the Court finds that only the two (2) swimming pools had earthquake shock coverage and were heavily damaged by the earthquake which struck on July 16, 1990. Defendant having admitted that the damage to the swimming pools was appraised by defendant's adjuster at P386,000.00, defendant must, by virtue of the contract of insurance, pay plaintiff said amount.

Because it is the finding of the Court as stated in the immediately preceding paragraph that defendant is liable only for the damage caused to the two (2) swimming pools and that defendant has made known to plaintiff its willingness and readiness to settle said liability, there is no basis for the grant of the other damages prayed for by plaintiff. As to the counterclaims of defendant, the Court does not agree that the action filed by plaintiff is baseless and highly speculative since such action is a lawful exercise of the plaintiff's right to come to Court in the honest belief that their Complaint is meritorious. The prayer, therefore, of defendant for damages is likewise denied.

WHEREFORE, premises considered, defendant is ordered to pay plaintiffs the sum of THREE HUNDRED EIGHTY SIX THOUSAND PESOS (P386,000.00) representing damage to the two (2) swimming pools, with interest at 6% per annum from the date of the filing of the Complaint until defendant's obligation to plaintiff is fully paid.

No pronouncement as to costs.[13]

Petitioner's Motion for Reconsideration was denied. Thus, petitioner filed an appeal with the Court of Appeals based on the following assigned errors:[14]

A. THE TRIAL COURT ERRED IN FINDING THAT PLAINTIFF-APPELLANT CAN ONLY RECOVER FOR THE DAMAGE TO ITS TWO SWIMMING POOLS UNDER ITS FIRE POLICY NO. 31944, CONSIDERING ITS PROVISIONS, THE CIRCUMSTANCES SURROUNDING THE ISSUANCE OF SAID POLICY AND THE ACTUATIONS OF THE PARTIES

SUBSEQUENT TO THE EARTHQUAKE OF JULY 16, 1990.

B. THE TRIAL COURT ERRED IN DETERMINING PLAINTIFF-APPELLANT'S RIGHT TO RECOVER UNDER DEFENDANT-APPELLEE'S POLICY (NO. 31944; EXH "I") BY LIMITING ITSELF TO A CONSIDERATION OF THE SAID POLICY ISOLATED FROM THE CIRCUMSTANCES SURROUNDING ITS ISSUANCE AND THE ACTUATIONS OF THE PARTIES AFTER THE EARTHQUAKE OF JULY 16, 1990.

C. THE TRIAL COURT ERRED IN NOT HOLDING THAT PLAINTIFF-APPELLANT IS ENTITLED TO THE DAMAGES CLAIMED, WITH INTEREST COMPUTED AT 24% PER ANNUM ON CLAIMS ON PROCEEDS OF POLICY.

On the other hand, respondent filed a partial appeal, assailing the lower court's failure to award it attorney's fees and damages on its compulsory counterclaim.

After review, the appellate court affirmed the decision of the trial court and ruled, thus:

> However, after carefully perusing the documentary evidence of both parties, We are not convinced that the last two (2) insurance contracts (Exhs. "G" and "H"), which the plaintiff-appellant had with AHAC (AIU) and upon which the subject insurance contract with Philippine Charter Insurance Corporation is said to have been based and copied (Exh. "I"), covered an extended earthquake shock insurance on all the insured properties.
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> We also find that the Court a quo was correct in not granting the plaintiff-appellant's prayer for the imposition of interest – 24% on the insurance claim and 6% on loss of income allegedly amounting to P4,280,000.00. Since the defendant-appellant has expressed its willingness to pay the damage caused on the two (2) swimming pools, as the Court a quo and this Court correctly found it to be liable only, it then cannot be said that it was in default and therefore liable for interest.
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> Coming to the defendant-appellant's prayer for an attorney's fees, long-standing is the rule that the award thereof is subject to the sound discretion of the court. Thus, if such discretion is well-exercised, it will not be disturbed on appeal (Castro et al. v. CA, et al., G.R. No. 115838, July 18, 2002). Moreover, being the award thereof an exception rather than a rule, it is necessary for the court to make findings of facts and law that would bring the case within the exception and justify the grant of such award (Country Bankers Insurance Corp. v. Lianga Bay and Community Multi-Purpose Coop., Inc., G.R. No. 136914, January 25, 2002). Therefore, holding that the plaintiff-appellant's action is not baseless and highly speculative, We find that the Court a quo did not err in granting the same.