

## **FIFTH DIVISION**

**[ CA-G.R. CV NO. 97139, November 28, 2014 ]**

**MULTI-GROWTH CORPORATION, PLAINTIFF-APPELLANT, VS.  
ASIA TRADERS INSURANCE CORPORATION (NOW ASIA  
INSURANCE PHILIPPINES CORPORATION) AND ERNESTO SY,  
DOING BUSINESS UNDER THE NAME AND STYLE "PAN OCEANIC  
INSURANCES SERVICES", DEFENDANTS-APPELLEES.**

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

**CRUZ, J.:**

#### **THE CASE**

This is an appeal taken from the Decision<sup>[1]</sup> dated March 16, 2011 issued by the Regional Trial Court of Manila, Branch 50, in Civil Case No. 02-105297 for breach of contract or collection of sum of money and damages, the dispositive portion of which reads, as follows:

X X X

"WHEREFORE, in view of the foregoing, the instant complaint that was filed by plaintiff Multi-Growth Corporation is hereby DISMISSED.

"SO ORDERED."

X X X

#### **THE ANTECEDENTS**

Multi-Growth Corporation (Multi-Growth) entered into a contract of insurance with Asia Traders Insurance Corporation (now Asia Insurance Philippines Corporation) which issued in its favor Fire Insurance Policy No. F-000034460 in the amount of P1,200,000.00 for Multi-Growth's stocks as well as on the office equipments, furnitures, fixtures, fittings and electrical appliances contained in its building located at the PTA Compound in Valenzuela City. The fire insurance policy was valid for one (1) year, for the period of 4:00 p.m. of December 14, 1999 to 4:00 p.m. of December 4, 2000.

On April 21, 2000, during the effectivity of the insurance contract, a fire occurred within the PTA compound, where plaintiff's stocks as well as the office equipments, furnitures, fixtures, fittings and electrical appliances supposed to be covered by the insurance policy, were burned. Aside from Multi-Growth, the fire also affected three (3) other establishments namely Multi-Ware, Supremia Trading and GT Pacific.

The Bureau of Fire Protection issued a Memorandum<sup>[2]</sup> dated August 28, 2000 estimating the amount of damage to Multi-Growth to be P150,000,000.00 more or less. The Memorandum also indicated that Multi-Growth was insured to different insurance companies in the total amount of P112,314,000.00, broken down as follows:

<b>Name of Insurance</b>	<b>Policy Number</b>	<b>Amount</b>
Phil Pryce Ins Corp	F 30973	3 M
CIBELES Ins Corp	80-41523	15 M
Asia Traders Ins Corp	F 034882	15 M
Asia Traders Ins Corp	F 034458	10 M
Asia Traders Ins Corp	F 034460	1.2 M
Asia Traders Ins Corp	SMBP F 000000210	1 M
Western Guarantee Corp	119001	15 M
Phil Fire and Marine Ins	F 0160	2.114 M (4.228 joint w/ Multi-Ware)
Pan Oceanic Ins	176564	25 M (50 joint w/ Multi-Ware)
Pan Oceanic Ins	178070	25 M (50 M joint w/ Multi-Ware)

The probable cause of fire based on the investigation conducted by the Bureau of Fire Protection was "electrical equipment that malfunctioned" and that it was purely accidental in nature.

Multi-Growth filed a total loss claim against Asia Traders for the proceeds under Fire Insurance Policy No. F-000034460. Through a letter dated December 10, 2001, Asia Traders denied Multi-Growth's claim for violation of Policy Conditions Nos. 3,<sup>[3]</sup> 15<sup>[4]</sup> and 21.<sup>[5]</sup> Multi-Growth sought a clarification regarding the denial of its claim. However, in a letter dated October 9, 2002, Asia Traders informed Multi-Growth that it found no new issues that would disturb its previous position denying the previous claim.

On December 9, 2002, Multi-Growth, as the plaintiff, filed a case against Asia Traders and Ernesto Sy, as defendants, for Breach of Contract and/or Collection of Sum of Money with Damages, which was raffled to RTC of Manila, Branch 14.

Ernesto Sy was impleaded as defendant because plaintiff procured, upon advise of Sy and through his company Pan Oceanic Insurance Services, additional fire insurance to cover its stocks allegedly not yet covered by its existing fire insurance policies.

In its Answer with Compulsory Counterclaim,<sup>[6]</sup> Defendant Asia Traders alleged, among others, that a mere cursory examination of the Policy shows that the coverage of the insurance or co-insurances effected or subsequently arranged by the plaintiff were neither stated nor endorsed in the policy, violating Policy Condition No. 3.

In plaintiff's Reply,<sup>[7]</sup> it explained that as to the co-insurance, if any, that resulted after the issuance of Fire Policy No. F000034460 and its indorsement, Defendant Asia Traders was duly notified thereof prior to the fire and loss but the same were not reflected in the said policy due to inattention, carelessness, and/or negligence of either or both defendants.

As for Defendant Ernesto Sy, he denied having acted as insurance agent or broker of its Co-Defendant Asia Traders. He declared that he was never a party in the procurement and issuance of the policy subject matter of the case, and that his license with the Insurance Commission was as a broker since 1978 up to June 30, 2001 and became an insurance agent only on July 1, 2000.

Meanwhile, Civil Case No. 105309 entitled "Multi-Ware Manufacturing Corp. v. Reliance Surety & Insurance Corp., et al.", a fire insurance claim case arising out of the same fire that gutted Multi-Growth's stocks and properties, was also raffled to RTC of Manila, Branch 14. The cases were tried jointly pursuant to an Order dated September 4, 2003.

Defendant Asia Traders filed a Motion to Set Affirmative Defense for Hearing which, after due proceedings, was denied in an Order dated March 10, 2004. The Motion for Reconsideration was likewise denied in an Order dated September 29, 2004.

Plaintiff presented its witnesses in the persons of Frank Ching and Fire Officer Romeo A. Pepito, Jr. of the Bureau of Fire Protection. On July 9, 2007, plaintiff filed its Formal Offer of Evidence.

Defendant Asia Traders presented Aini Ling and Simeon Natividad while Defendant Ernesto Sy testified for himself.

Presiding Judge Cesar Solis inhibited from the case following plaintiff's Motion for his Inhibition. The instant case was re-raffled to Branch 49 of the same court while Civil Case No. 105309 was re-raffled to Branch 50 of the same court which proceeded to try the latter case.

The presiding judge of Branch 49 directed that the instant case be returned to Branch 14. The acting judge of Branch 14 of the same court, in turn, ordered the consolidation of the instant case with Civil Case No. 105309, then being heard by Branch 50 of the same court.

In the meantime, on May 17, 2010, Judge Simon P. Peralta, Presiding Judge of RTC of Manila, Branch 50, issued a Decision in Civil Case No. 105309 in favor of the plaintiff therein, Multi-Ware Manufacturing Corp. and against Reliance Surety & Insurance Co., Inc. holding the latter liable, among others, to pay the amount of P10,000,000.00.

On the other hand, Branch 50 continued to hear the instant case and proceeded with the presentation of defense witnesses Dominador Victorio and Abraham D. Flores. After Defendant Asia Traders' formal offer of evidence was admitted by the RTC, all parties were ordered to file their respective memoranda.

On February 17, 2011, plaintiff filed a motion for extension to file Memorandum, seeking an additional period of 15 days or until March 6, 2011. It wrote a letter-

request to the Clerk of Court, Branch 50 of the same court dated February 22, 2011 for clear copies of the transcript of stenographic notes taken last February 16 and June 29, 2006 relative to the testimony of Sr. Insp. Romeo Pepito, Jr. of the Bureau of Fire Protection.

Plaintiff's motion for extension was granted. It turned out that Branch 50 of the same court was not in possession of the requested transcript of stenographic notes of the proceedings while the same was pending before Branch 14 of the same court, so it directed the stenographers of Branch 14 of the same court to submit within 10 days the transcript of stenographic notes in ten (10) hearing dates from October 13, 2005 to December 7, 2007.

On March 4, 2011, plaintiff was constrained to file a Second Motion for Extension of Time to file Memorandum because it has not received the requested transcript of stenographic notes. On March 25, 2011, plaintiff filed a Third Motion for Extension on the same ground. Both motions were not acted upon by Branch 50 of the same court.

On March 16, 2011, a four (4)-page Decision was rendered by the RTC dismissing the complaint.

In resolving the case, the RTC reduced the issues into three (3), viz.:

- a) Whether or not plaintiff violated Policy Condition No. 3 on co-insurance?
- b) Whether or not plaintiff violation Policy Condition No. 15 on false statement and/or fraudulent claims?
- c) Whether or not plaintiff violated Policy Condition No. 21 on arson?

The brief disquisition of the RTC is reproduced below as follows:

x x x

"Policy Condition No. 3 provides as follows:

'The insured **shall give notice** to the company of any insurance or insurances already affected, or which may subsequently be effected, covering any of the property or properties consisting of stocks in trade, goods in process and/or inventories only hereby insured, and unless such notice be given and the particulars of such insurance or insurances be stated herein or endorsed in this policy pursuant to Section 50 of the Insurance Code, by or on behalf of the company before the occurrence of any loss or damage, all benefits under this policy **shall be deemed forfeited**, provided however, that this condition shall not apply when the total

insurance or insurances in force at the time of loss or damage is not more than P200,000.00." (Emphasis supplied)

"Records of this case clearly reveals that plaintiff procured the subject fire insurance policy from defendant Asia Insurance without disclosing that it later on acquired another fire insurance policy from Prudential Guarantee and Assurance Inc., involving the same coverage. With this finding alone, defendant Asia Insurance had justifiably denied the claim of plaintiff for its insurance claim.

"This Court thus finds it irrelevant to discuss further the other issues that were raised by the herein parties." (*Emphasis in the original*)

x x x

Shortly after the Decision was promulgated, Judge William Simon Peralta retired on March 24, 2011. On April 7, 2011, plaintiff filed a Notice of Appeal which was given due course in an Order dated May 3, 2011, by Acting Presiding Judge Rosalyn D. Mislos-Loja.

### **THE ASSIGNED ERRORS**

Plaintiff comes to Us, as Our Appellant, assigning the following errors, to wit:

#### **I**

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR IN HASTILY DECIDING THE INSTANT CASE WITHOUT THE COMPLETE TRANSCRIPT OF RECORDS, CONSIDERING THAT A SUBSTANTIAL PORTION OF THE PROCEEDINGS WERE NOT EVEN HEARD AND TRIED BY IT, BUT BY RTC-MANILA, BRANCH 14.

#### **II**

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR, EVEN GRAVE ABUSE OF DISCRETION, IN RENDERING A FOUR (4)-PAGE DECISION WITHOUT CITING THE FACTS AND THE LAW UPON WHICH IT IS BASED.

#### **III**

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR IN HOLDING THAT APPELLANT COMMITTED VIOLATION OF POLICY CONDITION NO. 3 ON CO-INSURANCE DESPITE UTTER LACK OF COMPETENT EVIDENCE TO SUPPORT SUCH STANCE.

#### **IV**

THE HONORABLE TRIAL COURT COMMITTED A MANIFEST AND GRAVE ERROR IN NOT HOLDING THAT APPELLEES ARE LIABLE TO PAY P1.2