

SECOND DIVISION

[G.R. No. 136914, January 25, 2002]

**COUNTRY BANKERS INSURANCE CORPORATION, PETITIONER,
VS. LIANGA BAY AND COMMUNITY MULTI-PURPOSE
COOPERATIVE, INC., RESPONDENT.**

D E C I S I O N

DE LEON, J.:

Before us is a petition for review on certiorari of the Decision^[1] of the Court of Appeals^[2] dated December 29, 1998 in CA-G.R. CV Case No. 36902 affirming *in toto* the Decision^[3] dated December 26, 1991 of the Regional Trial Court of Lianga, Surigao del Sur, Branch 28, in Civil Case No. L-518 which ordered petitioner Country Bankers Insurance Corporation to fully pay the insurance claim of respondent Lianga Bay and Community Multi-Purpose Cooperative, Inc., under Fire Insurance Policy No. F-1397, for loss sustained as a result of the fire that occurred on July 1, 1989 in the amount of Two Hundred Thousand Pesos (P200,000.00), with interest at twelve percent (12%) per annum from the date of filing of the complaint until fully paid, as well as Fifty Thousand Pesos (P50,000.00) as actual damages, Fifty Thousand Pesos (P50,000.00) as exemplary damages, Five Thousand Pesos (P5,000.00) as litigation expenses, Ten Thousand Pesos (P10,000.00) as attorney's fees, and the costs of suit.

The facts are undisputed:

The petitioner is a domestic corporation principally engaged in the insurance business wherein it undertakes, for a consideration, to indemnify another against loss, damage or liability from an unknown or contingent event including fire while the respondent is a duly registered cooperative judicially declared insolvent and represented by the elected assignee, Cornelio Jamero.

It appears that sometime in 1989, the petitioner and the respondent entered into a contract of fire insurance. Under Fire Insurance Policy No. F-1397, the petitioner insured the respondent's stocks-in-trade against fire loss, damage or liability during the period starting from June 20, 1989 at 4:00 p.m. to June 20, 1990 at 4:00 p.m., for the sum of Two Hundred Thousand Pesos (P200,000.00).

On July 1, 1989, at or about 12:40 a.m., the respondent's building located at Barangay Diatagon, Lianga, Surigao del Sur was gutted by fire and reduced to ashes, resulting in the total loss of the respondent's stocks-in-trade, pieces of furnitures and fixtures, equipments and records.

Due to the loss, the respondent filed an insurance claim with the petitioner under its Fire Insurance Policy No. F-1397, submitting: (a) the Spot Report of Pfc. Arturo V. Juarbal, INP Investigator, dated July 1, 1989; (b) the Sworn Statement of Jose

Lomocso; and (c) the Sworn Statement of Ernesto Urbiztondo.

The petitioner, however, denied the insurance claim on the ground that, based on the submitted documents, the building was set on fire by two (2) NPA rebels who wanted to obtain canned goods, rice and medicines as provisions for their comrades in the forest, and that such loss was an excepted risk under paragraph No. 6 of the policy conditions of Fire Insurance Policy No. F-1397, which provides:

This insurance does not cover any loss or damage occasioned by or through or in consequence, directly or indirectly, of any of the following occurrences, namely:

xxx

xxx

xxx

(d) Mutiny, riot, military or popular uprising, insurrection, rebellion, revolution, military or usurped power.

Any loss or damage happening during the existence of abnormal conditions (whether physical or otherwise) which are occasioned by or through or in consequence, directly or indirectly, of any of said occurrences shall be deemed to be loss or damage which is not covered by this insurance, except to the extent that the Insured shall prove that such loss or damage happened independently of the existence of such abnormal conditions.

Finding the denial of its claim unacceptable, the respondent then instituted in the trial court the complaint for recovery of "loss, damage or liability" against petitioner. The petitioner answered the complaint and reiterated the ground it earlier cited to deny the insurance claim, that is, that the loss was due to NPA rebels, an excepted risk under the fire insurance policy.

In due time, the trial court rendered its Decision dated December 26, 1991 in favor of the respondent, declaring that:

Based on its findings, it is therefore the considered opinion of this Court, as it so holds, that the defenses raised by defendant-Country Bankers has utterly crumbled on account of its inherent weakness, incredibility and unreliability, and after applying those helpful tools like common sense, logic and the Court's honest appraisal of the real and actual situation obtaining in this area, such defenses remains (sic) unimpressive and unconvincing, and therefore, the defendant-Country Bankers has to be irreversibly adjudged liable, as it should be, to plaintiff-Insolvent Cooperative, represented in this action by its Assignee, Cornelio Jamero, and thus, ordering said defendant-Country Bankers to pay the plaintiff-Insolvent Cooperative, as follows:

1. To fully pay the insurance claim for the loss the insured-plaintiff sustained as a result of the fire under its Fire Insurance Policy No. F-1397 in its full face value of P200,000.00 with interest of 12% per annum from date of filing of the complaint until the same is fully paid;

2. To pay as and in the concept of actual or compensatory damages in the total sum of P50,000.00;
3. To pay as and in the concept of exemplary damages in the total sum of P50,000.00;
4. To pay in the concept of litigation expenses the sum of P5,000.00;
5. To pay by way of reimbursement the attorney's fees in the sum of P10,000.00; and
6. To pay the costs of the suit.

For being unsubstantiated with credible and positive evidence, the "counterclaim" is dismissed.

IT IS SO ORDERED.

Petitioner interposed an appeal to the Court of Appeals. On December 29, 1998, the appellate court affirmed the challenged decision of the trial court in its entirety. Petitioner now comes before us via the instant petition anchored on three (3) assigned errors,^[4] to wit:

- 1. THE HONORABLE COURT OF APPEALS FAILED TO APPRECIATE AND GIVE CREDENCE TO THE SPOT REPORT OF PFC. ARTURO JUARBAL (EXH. 3) AND THE SWORN STATEMENT OF JOSE LOMOCOSO (EXH. 4) THAT THE RESPONDENT'S STOCK-IN-TRADE WAS BURNED BY THE NPA REBELS, HENCE AN EXCEPTED RISK UNDER THE FIRE INSURANCE POLICY.**
- 2. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING PETITIONER LIABLE FOR 12% INTEREST PER ANNUM ON THE FACE VALUE OF THE POLICY FROM THE FILING OF THE COMPLAINT UNTIL FULLY PAID.**
- 3. THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THE PETITIONER LIABLE FOR ACTUAL AND EXEMPLARY DAMAGES, LITIGATION EXPENSES, ATTORNEYS FEES AND COST OF SUIT.**

A party is bound by his own affirmative allegations. This is a well-known postulate echoed in Section 1 of Rule 131 of the Revised Rules of Court. Each party must prove his own affirmative allegations by the amount of evidence required by law which in civil cases, as in this case, is preponderance of evidence, to obtain a favorable judgment.^[5]

In the instant case, the petitioner does not dispute that the respondent's stocks-in-trade were insured against fire loss, damage or liability under Fire Insurance Policy No. F- 1397 and that the respondent lost its stocks-in-trade in a fire that occurred on July 1, 1989, within the duration of said fire insurance. The petitioner, however, posits the view that the cause of the loss was an excepted risk under the terms of

the fire insurance policy.

Where a risk is excepted by the terms of a policy which insures against other perils or hazards, loss from such a risk constitutes a defense which the insurer may urge, since it has not assumed that risk, and from this it follows that an insurer seeking to defeat a claim because of an exception or limitation in the policy has the burden of proving that the loss comes within the purview of the exception or limitation set up. If a proof is made of a loss apparently within a contract of insurance, the burden is upon the insurer to prove that the loss arose from a cause of loss which is excepted or for which it is not liable, or from a cause which limits its liability.^[6] Stated otherwise, since the petitioner in this case is defending on the ground of non-coverage and relying upon an exemption or exception clause in the fire insurance policy, it has the burden of proving the facts upon which such excepted risk is based, by a preponderance of evidence.^[7] But petitioner failed to do so.

The petitioner relies on the Sworn Statements of Jose Lomocso and Ernesto Urbiztondo as well as on the Spot Report of Pfc. Arturo V. Juarbal dated July 1, 1989, more particularly the following statement therein:

xxx investigation revealed by Jose Lomocso that those armed men wanted to get can goods and rice for their consumption in the forest PD investigation further disclosed that the perpetrator are member (sic) of the NPA PD end... x x x

A witness can testify only to those facts which he knows of his personal knowledge, which means those facts which are derived from his perception.^[8] Consequently, a witness may not testify as to what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. Such is the hearsay rule which applies not only to oral testimony or statements but also to written evidence as well.^[9]

The hearsay rule is based upon serious concerns about the trustworthiness and reliability of hearsay evidence inasmuch as such evidence are not given under oath or solemn affirmation and, more importantly, have not been subjected to cross-examination by opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability on which the worth of the out-of-court statement depends.^[10]

Thus, the Sworn Statements of Jose Lomocso and Ernesto Urbiztondo are inadmissible in evidence, for being hearsay, inasmuch as they did not take the witness stand and could not therefore be cross-examined.

There are exceptions to the hearsay rule, among which are entries in official records.^[11] To be admissible in evidence, however, three (3) requisites must concur, to wit:

- (a) that the entry was made by a public officer, or by another person specially enjoined by law to do so;
- (b) that it was made by the public officer in the performance