



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

**MALAYAN INSURANCE
COMPANY, INC.,**

Petitioner,

G.R. No. 200784

Present:

SERENO,* *CJ.*,
VELASCO, JR., *J.*, *Chairperson*,
PERALTA,
MENDOZA, and
LEONEN, *JJ.*

- versus -

PAP CO., LTD. (PHIL. BRANCH),
Respondent.

Promulgated:

AUG 07 2013

Maopano

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DECISION

MENDOZA, J.:

Challenged in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the October 27, 2011 Decision¹ of the Court of Appeals (CA), which affirmed with modification the September 17, 2009 Decision² of the Regional Trial Court, Branch 15, Manila (RTC), and its February 24, 2012 Resolution³ denying the motion for reconsideration filed by petitioner Malayan Insurance Company., Inc. (*Malayan*).

* Designated additional member in lieu of Associate Justice Roberto A. Abad, per Raffle dated July 2, 2012.

¹ *Rollo*, pp. 114-128. Penned by Associate Justice Normandie B. Pizarro and concurred in by Amelita B. Tolentino and Associate Justice Rodel V. Zalameda.

² *Id.* at 725-730.

³ *Id.* at 130-131.

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 (₱15,000,000.00) 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:

⁴ Id. at 115-116.

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 (₱15,000,000.00) 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:

⁵ Id. at 730.

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

⁶ Id. at 127.

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 Code⁸ 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 policy in violation of Section 74 of the Insurance Code⁹ when, contrary to its affirmation in the renewal policy that the insured properties were located at the Sanyo Factory, these were already transferred to the Pace Factory. Malayan adds that PAP is guilty of misrepresentation upon a material fact in violation of Section 45 of the Insurance Code¹⁰ when it informed Malayan that there would be no changes in the original policy, and that the original policy would be renewed on an "as is" basis.

Malayan further argues that PAP failed to discharge the burden of proving that the transfer of the insured properties under the insurance policy was with its knowledge and consent. Granting that PAP informed RCBC of the transfer or change of location of the insured properties, the same is irrelevant and does not bind Malayan considering that RCBC is a corporation vested with separate and distinct juridical personality. Malayan

⁷ Id. at 50-54.

⁸ Section 27. A concealment whether intentional or unintentional entitles the injured party to rescind a contract of insurance.

⁹ Section 74. The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind.

¹⁰ Section 45. If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false. x x x

did not consent to be the principal of RCBC. RCBC did not also act as Malayan's representative.

With regard to the alleged increase of risk, Malayan insists that there is evidence of an increase in risk as a result of the unilateral transfer of the insured properties. According to Malayan, the Sanyo Factory was occupied as a factory of automotive/computer parts by the assured and factory of zinc & aluminum die cast and plastic gear for copy machine by Sanyo Precision Phils., Inc. with a rate of 0.449% under 6.1.2 A, while Pace Factory was occupied as factory that repacked silicone sealant to plastic cylinders with a rate of 0.657% under 6.1.2 A.

PAP's position

On the other hand, PAP counters that there is no evidence of any misrepresentation, concealment or deception on its part and that its claim is not fraudulent. It insists that it can still sue to protect its rights and interest on the policy notwithstanding the fact that the proceeds of the same was payable to RCBC, and that it can collect interest at the rate of 12% per annum on the proceeds of the policy because its claim for indemnity was unduly delayed without legal justification.

The Court's Ruling

The Court agrees with the position of Malayan that it cannot be held liable for the loss of the insured properties under the fire insurance policy.

As can be gleaned from the pleadings, it is not disputed that on May 13, 1996, PAP obtained a ₱15,000,000.00 fire insurance policy from Malayan covering its machineries and equipment effective for one (1) year or until May 13, 1997; that the policy expressly stated that the insured properties were located at "Sanyo Precision Phils. Building, Phase III, Lots 4 & 6, Block 15, EPZA, Rosario, Cavite"; that before its expiration, the policy was renewed¹¹ on an "as is" basis for another year or until May 13, 1998; that the subject properties were later transferred to the Pace Factory also in PEZA; and that on October 12, 1997, during the effectivity of the renewal policy, a fire broke out at the Pace Factory which totally burned the insured properties.

¹¹ *Rollo*, p. 373.

*The policy forbade the removal
of the insured properties unless
sanctioned by Malayan*

Condition No. 9(c) of the renewal policy provides:

9. Under any of the following circumstances the insurance ceases to attach as regards the property affected unless the insured, before the occurrence of any loss or damage, obtains the sanction of the company signified by endorsement upon the policy, by or on behalf of the Company:

x x x x

x x x x

x x x x

(c) If property insured be removed to any building or place other than in that which is herein stated to be insured.¹²

Evidently, by the clear and express condition in the renewal policy, the removal of the insured property to any building or place required the consent of Malayan. Any transfer effected by the insured, without the insurer's consent, would free the latter from any liability.

*The respondent failed to notify, and
to obtain the consent of, Malayan
regarding the removal*

The records are bereft of any convincing and concrete evidence that Malayan was notified of the transfer of the insured properties from the Sanyo factory to the Pace factory. The Court has combed the records and found nothing that would show that Malayan was duly notified of the transfer of the insured properties.

What PAP did to prove that Malayan was notified was to show that it relayed the fact of transfer to RCBC, the entity which made the referral and the named beneficiary in the policy. Malayan and RCBC might have been sister companies, but such fact did not make one an agent of the other. The fact that RCBC referred PAP to Malayan did not clothe it with authority to represent and bind the said insurance company. After the referral, PAP dealt directly with Malayan.

¹² Records, pp, 683-684.

The respondent overlooked the fact that during the November 9, 2006 hearing,¹³ its counsel stipulated in open court that it was Malayan's authorized insurance agent, Rodolfo Talusan, who procured the original policy from Malayan, not RCBC. This was the reason why Talusan's testimony was dispensed with.

Moreover, in the previous hearing held on November 17, 2005,¹⁴ PAP's hostile witness, Alexander Barrera, Administrative Assistant of Malayan, testified that he was the one who procured Malayan's renewal policy, not RCBC, and that RCBC merely referred fire insurance clients to Malayan. He stressed, however, that no written referral agreement exists between RCBC and Malayan. He also denied that PAP notified Malayan about the transfer before the renewal policy was issued. He added that PAP, through Maricar Jardiniano (*Jardiniano*), informed him that the fire insurance would be renewed on an "as is basis."¹⁵

Granting that any notice to RCBC was binding on Malayan, PAP's claim that it notified RCBC and Malayan was not indubitably established. At best, PAP could only come up with the hearsay testimony of its principal witness, Branch Manager Katsumi Yoneda (*Mr. Yoneda*), who testified as follows:

Q What did you do as Branch Manager of Pap Co. Ltd.?
A What I did I instructed my Secretary, because these equipment was bank loan and because of the insurance I told my secretary to notify.

Q To notify whom?
A I told my Secretary to inform the bank.

Q You are referring to RCBC?
A Yes, sir.

x x x x

Q After the RCBC was informed in the manner you stated, what did you do regarding the new location of these properties at Pace Pacific Bldg. insofar as Malayan Insurance Company is concerned?

A After that transfer, we informed the RCBC about the transfer of the equipment and also Malayan Insurance but we were not able to contact Malayan Insurance so I instructed again my secretary to inform Malayan about the transfer.

Q Who was the secretary you instructed to contact Malayan Insurance, the defendant in this case?
A Dory Ramos.

¹³ *Rollo*, TSN, November 9, 2006, pp. 614-625.

¹⁴ *Id.*, TSN, November 17, 2005, pp. 492-562.

¹⁵ *Id.* at 540-541, 559.

Q How many secretaries do you have at that time in your office?

A Only one, sir.

Q Do you know a certain Maricar Jardiniano?

A Yes, sir.

Q Why do you know her?

A Because she is my secretary.

Q So how many secretaries did you have at that time?

A Two, sir.

Q What happened with the instruction that you gave to your secretary Dory Ramos about the matter of informing the defendant Malayan Insurance Co of the new location of the insured properties?

A **She informed me** that the notification was already given to Malayan Insurance.

Q Aside from what she told you how did you know that the information was properly relayed by the said secretary, Dory Ramos, to Malayan Insurance?

A I asked her, Dory Ramos, did you inform Malayan Insurance and **she said yes, sir.**

Q Now after you were told by your secretary, Dory Ramos, that she was able to inform Malayan Insurance Company about the transfer of the properties insured to the new location, do you know what happened insofar this information was given to the defendant Malayan Insurance?

A **I heard** that someone from Malayan Insurance came over to our company.

Q Did you come to know who was that person who came to your place at Pace Pacific?

A I do not know, sir.

Q How did you know that this person from Malayan Insurance came to your place?

A **It is according to the report given to me.**

Q Who gave that report to you?

A Dory Ramos.

Q Was that report in writing or verbally done?

A Verbal.¹⁶ [Emphases supplied]

The testimony of Mr. Yoneda consisted of hearsay matters. He obviously had no personal knowledge of the notice to either Malayan or

¹⁶ Id., TSN, July 14, 2005, pp. 460-464.

RCBC. PAP should have presented his secretaries, Dory Ramos and Maricar Jardiniano, at the witness stand. His testimony alone was unreliable.

Moreover, the Court takes note of the fact that Mr. Yoneda admitted that the insured properties were transferred to a different location only **after** the renewal of the fire insurance policy.

COURT

Q When did you transfer the machineries and equipments before the renewal or after the renewal of the insurance?

A After the renewal.

COURT

Q You understand my question?

A Yes, Your Honor.¹⁷ [Emphasis supplied]

This enfeebls PAP's position that the subject properties were already transferred to the Pace factory before the policy was renewed.

*The transfer from the Sanyo Factory
to the PACE Factory increased the risk.*

The courts below held that even if Malayan was not notified thereof, the transfer of the insured properties to the Pace Factory was insignificant as it did not increase the risk.

Malayan argues that the change of location of the subject properties from the Sanyo Factory to the Pace Factory increased the hazard to which the insured properties were exposed. Malayan wrote:

With regards to the exposure of the risk under the old location, this was occupied as factory of automotive/computer parts by the assured, and factory of zinc & aluminum die cast, plastic gear for copy machine by Sanyo Precision Phils., Inc. with a rate of 0.449% under 6.1.2 A. But under Pace Pacific Mfg. Corporation this was occupied as factory that repacks silicone sealant to plastic cylinders with a rate of 0.657% under 6.1.2 A. Hence, there was an increase in the hazard as indicated by the increase in rate.¹⁸

¹⁷ Id. at 484.

¹⁸ Records, Vol. II, p. 692.

The Court agrees with Malayan that the transfer to the Pace Factory exposed the properties to a hazardous environment and negatively affected the fire rating stated in the renewal policy. The increase in tariff rate from 0.449% to 0.657% put the subject properties at a greater risk of loss. Such increase in risk would necessarily entail an increase in the premium payment on the fire policy.

Unfortunately, PAP chose to remain completely silent on this very crucial point. Despite the importance of the issue, PAP failed to refute Malayan's argument on the increased risk.

*Malayan is entitled to rescind
the insurance contract*

Considering that the original policy was renewed on an "as is basis," it follows that the renewal policy carried with it the same stipulations and limitations. The terms and conditions in the renewal policy provided, among others, that the location of the risk insured against is at the Sanyo factory in PEZA. The subject insured properties, however, were totally burned at the Pace Factory. Although it was also located in PEZA, Pace Factory was not the location stipulated in the renewal policy. There being an unconsented removal, the transfer was at PAP's own risk. Consequently, it must suffer the consequences of the fire. Thus, the Court agrees with the report of Cunningham Toplis Philippines, Inc., an international loss adjuster which investigated the fire incident at the Pace Factory, which opined that "[g]iven that the location of risk covered under the policy is not the location affected, the policy will, therefore, not respond to this loss/claim."¹⁹

It can also be said that with the transfer of the location of the subject properties, **without notice and without Malayan's consent, after** the renewal of the policy, PAP clearly committed concealment, misrepresentation and a breach of a material warranty. Section 26 of the Insurance Code provides:

Section 26. A neglect to communicate that which a party knows and ought to communicate, is called a concealment.

Under Section 27 of the Insurance Code, "a concealment entitles the injured party to rescind a contract of insurance."

¹⁹ Id. at 231.

Moreover, under Section 168 of the Insurance Code, the insurer is entitled to rescind the insurance contract in case of an alteration in the use or condition of the thing insured. Section 168 of the Insurance Code provides, as follows:

Section 68. An alteration in the use or condition of a thing insured from that to which it is limited by the policy made without the consent of the insurer, by means within the control of the insured, and increasing the risks, entitles an insurer to rescind a contract of fire insurance.

Accordingly, an insurer can exercise its right to rescind an insurance contract when the following conditions are present, to wit:

- 1) the policy limits the use or condition of the thing insured;
- 2) there is an alteration in said use or condition;
- 3) the alteration is without the consent of the insurer;
- 4) the alteration is made by means within the insured's control; and
- 5) the alteration increases the risk of loss.²⁰


In the case at bench, all these circumstances are present. It was clearly established that the renewal policy stipulated that the insured properties were located at the Sanyo factory; that PAP removed the properties without the consent of Malayan; and that the alteration of the location increased the risk of loss.

WHEREFORE, the October 27, 2011 Decision of the Court of Appeals is hereby **REVERSED** and **SET ASIDE**. Petitioner Malayan Insurance Company, Inc. is hereby declared **NOT** liable for the loss of the insured machineries and equipment suffered by PAP Co., Ltd.


SO ORDERED.


JOSE CATRAL MENDOZA
Associate Justice

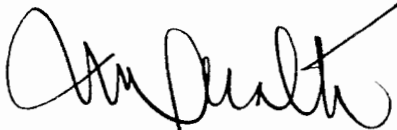
²⁰ Rodriguez, The Insurance Code of the Philippines Annotated, Fifth Edition, p. 289.

WE CONCUR:

MARIA LOURDES P. A. SERENO
Chief Justice



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson




DIOSDADO M. PERALTA
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice

ATTESTATION

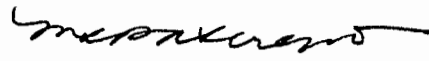
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson, Third Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


MARIA LOURDES P. A. SERENO
Chief Justice