JOSE Q. LIZAMA, Plaintiff
v.
BANK OF AMERICA, Defendant

Civil Action No. 1008

Trial Division of the High Court

Mariana Islands District

August 29, 1972

Action for recovery of full payment paid on new auto loan. The Trial Division of the High Court, D. Kelly Turner, Associate Justice, held that where purchaser of new auto with 30-month bank loan failed, through lack of experience and understanding, to notify bank he was switching loan insurance from bank's company to another after first year of loan, as allowed by financing agreement, and failed to give policy with endorsement in bank's favor to bank and to purchase insurance for last six months of loan, and bank was apparently indifferent to purchaser's lack of sophistication and renewed insurance for the rest of the loan, and bank could prove that it purchased the last six months' insurance, but not that it purchased insurance for the second year, and purchaser was refused title upon demand for it after making all payments on time, on the ground he owed bank for the insurance bank purchased, both parties were at fault and purchaser would be ordered to pay last six months' insurance purchased by bank, bank to then turn over title to the vehicle to purchaser.

1. Contracts—Breach

Where purchaser of new auto through bank loan switched insurance protecting bank to another firm, as allowed by the financing agreement, but did not comply with agreement in that he failed to give the policy to the bank until the last payment, did not have an endorsement in bank's favor, and did not purchase insurance for the last six months of the loan, he was in substantial default; but there was no harm where he made all the payments, and his failures could be treated as technical and due to lack of experience and understanding of his obligations.

2. Evidence—Burden of Proof

Where bank failed to prove purchase of insurance protecting bank in regard to second year of auto loan, it could not recover cost of premium from purchaser, who had, as allowed by financing agreement, purchased the second year's insurance with another firm without giving bank required notice.

3. Contracts—Mutual Breach or Fault

Where purchaser of new auto with 30-month bank loan failed, through lack of experience and understanding, to notify bank he was switching loan insurance from bank's company to another after first year of loan, as allowed by financing agreement, and failed to give policy with endorsement in bank's favor to bank and to purchase insurance for last six months of loan, and bank was apparently indifferent to purchaser's lack of sophistication and renewed insurance for the rest of the loan, and bank could prove that it purchased the last six months' insurance, but not that it purchased insurance for the second year, and purchaser was refused title upon demand for it after making all payments on time, on the ground he owed bank for the insurance bank purchased, both parties were at fault and purchaser would be ordered to pay last six months' insurance purchased by bank, bank to then turn over title to the vehicle to purchaser.

Assessor:	IGNACIO B. BENEVENTE, *Presiding Judge of the District Court*
Reporter:	NANCY K. HATTORI
Counsel for Plaintiff:	OLIVER G. RICKETSON, ESQ.
Counsel for Defendant:	GEOFFREY E. RUSSELL, ESQ.

TURNER, *Associate Justice*

Plaintiff purchased a Datsun sedan from J. C. Tenorio Enterprises and financed it through the defendant bank on a thirty-month contract. The agreement required insurance for the bank's protection and the thirty payments included the premium for the first year's insurance. Plaintiff regularly made his monthly payments at the bank and, at the end of the first year, purchased insurance with another insurance firm which he was permitted to do under the financing agreement.

[1] Plaintiff did not comply with the contract with the bank in two particulars with respect to the insurance for the second year: (1) He did not deliver the policy to the bank until he made the thirtieth monthly payment, July 8, 1971, approximately six months after the expiration of the

second year insurance; and (2) Plaintiff did not have an endorsement in favor of the bank.

Also, plaintiff did not purchase insurance for the last six months of financing—January to July, 1971. In this respect, he was in substantial default on the contract. The delay in furnishing the bank with the second year policy and failing to have it endorsed to the benefit of the bank, in view of the fact there was no loss on the policy, may be compared to the call in professional basketball—"no harm, no foul"—for a rule infraction not affecting the game.

[2] The defendant bank, not having been given notice by plaintiff of his purchase of insurance, renewed the policy it held for the first year of the contract. The bank failed to show what, if any, amount it paid as premium. Without such proof it cannot recover. The court might assume a premium was paid but declines to do so without proof under the circumstances of this case.

The bank did show in its proof that it paid $297.70 for the third year insurance, as against the first year premium of $207.33, but did not give a reason for the difference in amount. It also disclosed in its evidence that it cancelled the third year insurance in October 1971, three months after the thirtieth installment payment and the simultaneous demand for title, even though according to its records, plaintiff owed a balance of the insurance premiums for two years as the "unpaid balance" of the loan. Upon cancellation, the bank received a $56.56 premium refund which it credited against the amount it claimed to be due from plaintiff.

This review of the evidence demonstrates that both the plaintiff and the bank were at fault in this transaction. The plaintiff did not do all the things he was required to do under the contract. His failures may be treated as technical and were due to lack of experience and understanding of

his obligations. As far as he understood his obligations, plaintiff performed them.

The bank's failures were due to apparent indifference to the lack of sophistication of their borrower and total reliance on a printed contract prepared for use in California. The plaintiff appeared regularly once a month for thirty months in the bank and no one, apparently, made any effort to inquire if he understood insurance requirements protecting the loan.

When the plaintiff demanded his car title at the end of thirty months, the bank demanded payment of two years of insurance premiums, claiming they were the "balance due on the loan." When plaintiff brought suit for recovery of his payments (without asking in lieu thereof his car title) the bank counterclaimed.

[3] Since both parties were at fault, it is only fair both should share the loss. Plaintiff must pay the last six months' insurance purchased by the bank in accordance with the contract. He is entitled to his car title when he makes the payment. The bank did not prove purchase of insurance for the second year. It asserted in its pleadings that it renewed the first year's policy. It did not make any inquiry as to what, if anything, the borrower had done with respect to insurance. It is,

Ordered, Adjudged and Decreed:

1. That plaintiff is denied the relief prayed for in his complaint.

2. That defendant bank is entitled to recover on its counterclaim the sum of two hundred forty-one dollars and fourteen cents ($241.14).

3. That upon receipt of the judgment amount herein awarded it, the bank shall deliver to plaintiff, free and clear of all liens and encumbrances, the title to the 1969 Datsun Utility Sedan, Model UL521, Number J-743054, purchased

by plaintiff from J. C. Tenorio Enterprises pursuant to the Bank of America Contract Number 97014.

4. No costs are awarded.