

## EQUITY AND THE INSURER

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In the *Notes and Selected Cases on Insurance Law* by Campos and Campos (195 ), an interesting legal question was posed. Suppose, asked the authors, based on a presumption of death, the court orders the insurer to pay the proceeds of a policy to the beneficiaries of the insured. Later, the insured turns out to be alive. Can the insurance company recover what it had paid?

In *New York Life Insurance Co. v. Chittenden & Eastman*,<sup>1</sup> the bone of contention was: If the insured had been absent for a period of seven years and the insurer paid the proceeds of the policy to the beneficiaries by virtue of a court judgment. Hence the query: subsequently reappears, on the ground that it was paid under mistake? It was held that the insurer having paid it voluntarily and there having been no fraud or concealment on the part of the beneficiaries, recovery based on mistake cannot be had.

The reason behind the decision is clear enough. The insurer paid the proceeds voluntarily, the presumption of death being known by it to be doubtful. But in the question posed earlier, the insurer did not pay voluntarily. It was forced to hand over the proceeds to the beneficiaries by virtue of a court judgment. Hence the query: Can the insurer recover? No case has been decided on this point, either in the Philippines or in the United States. But if one should arise, I believe the court should allow the insurer to recover, the ground of equity, good faith on the part of the beneficiaries, notwithstanding. Is it equitable for the beneficiaries to receive something by virtue of a fact which subsequently turned out to be false? A fact from which the decision of the court was based? *Nemo cum alterius detrimento locupletari potest*. No one should unjustly enrich himself at the expense of another.

The ordinary meaning of the word *unjustly* is "contrary to justice or that which is right."<sup>2</sup> In *Sheasgreen Holding Co. v. Dworsky*,<sup>3</sup> it was held that the word *unjustly* as used in the maxim, "No one shall be allowed to enrich himself unjustly at the expense of another," means "unlawfully." And the term "unlawfully" may

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<sup>1</sup> 112 N.W. 509.

<sup>2</sup> *Yates v. Huson*, 8 App. D.C. 93, 99; 66 C.J. 33, Note 52.

<sup>3</sup> 23 N.W. 395, 396; 181 Minn. 79.

mean the infringement of the moral law and not necessarily of the civil law.<sup>4</sup>

Under the doctrine of unjust enrichment, everyone who, without valid ground, enriched himself at the expense of another must restore the amount of his enrichment to the latter.<sup>5</sup> And unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. Under such circumstances, the law implies an agreement or obligation on the part of the one who has such money or benefits to pay the same over on demand and this is all the privity between him and the rightful owner which the law requires to uphold a suit for its recovery.<sup>6</sup> In *Federal Corp. v. Radtke Wis.*,<sup>7</sup> the Court held that recovery in actions for money had and received is ordinarily permitted only when there has been an "unjust enrichment," that is—the receipt by one person from another of a benefit, the retention of which would be unjust. But it was in the case of *Chamblis v. Hass*<sup>8</sup> where it was established that independent of statutory provision, the law implies a promise to restore to the party from whom it was exacted, payment under a judgment subsequently reversed or set aside.

In the problem at hand, the beneficiaries, in all probability, will contend that to allow the insurer to recover will amount to a correction or amendment of the judgment in substance—something which the court cannot do because judgment has become final and the court has lost jurisdiction over the case except to make corrections of clerical errors, mistakes or omissions plainly due to inadvertence or negligence. But this contention can be easily answered because our own Supreme Court, in *De la Costa v. Cleopas*,<sup>9</sup> held that if after finality of the judgment, facts and circumstances transpire which render its execution unjust, the interested party may ask the court to modify the judgment to harmonize the same with justice and the facts.

<sup>4</sup> *Baton Rouge Bldg. Trader Council v. T. L. James and Co.*, 10 So. 2d. 606, 624; 201 La. 749.

<sup>5</sup> Dikitanan, Rosalinda, *The Doctrine of Unjust Enrichment: A Brief Study in Applied Comparative Law*, 36 PHIL. L. J. 452.

<sup>6</sup> *Bough v. Darley*, 184 P. 2d. 335; *Hummel v. Hummel*, 14 N.E. 2d. 923, 927.

<sup>7</sup> 281 N.W. 921, 923.

<sup>8</sup> 101 N.W. 153.

<sup>9</sup> 67 Phil. 686.