

Associated Free State of Puerto Rico
COURT OF APPEALS PANEL I
(DJ2019- 1 87F)¹

LUIS FRANCISCO ARROYO
EVELIN SANTOS ORTIZ
LEGAL SOCIETY OF
COMPOSITE GAINS
PORAMBOS

Petitioners

V.

MAPFRE PRAICO
INSURANCE COMPANY

Respondent

KLCE202001099

Certiorari from
the Court of First
Instance, Superior
Chamber of
Fajardo

Civil Num.:
RG2018CV00340

Panel composed of its president, Judge Sanchez Ramos, Judge Candelaria Rosa, Judge Pagan Ocasio, Judge Vazquez Santisteban and Judge Reyes Berrios.

Candelaria Rosa, Judge Speaker

Judgment

In San Juan, Puerto Rico, as of February 10, 2021.

Petitioners are asking us to review a Resolution *issued* by the Court of First Instance, Superior Chamber of Fajardo, on September 21, 2020. Through this, the primary forum denied the motions for summary judgment lodged in the action brought against Mapfre Praico Insurance Company (Mapfre). On the grounds set out below, *certiorari's* order is issued and *the resolution under appeal is revoked*.

The petitioners filed a lawsuit in which Mapfre was charged with non-compliance with the insurance contract and

¹ By DJ Order 2019-187F, Panel I consists of 5 members.

violation of the provisions of the Insurance Code of Puerto Rico, in processing its claim related to the damages caused by Hurricane Maria. After certain procedural steps, and Mapfre's Answer to the Complaint, the petitioners filed a motion for a partial summary judgment or, in the alternative, that there be a seizure of funds on June 18, 2020. There they argued that Mapfre, in issuing the offer of payment, admitted the debt of \$4,408.54, so there was no controversy as to that fact. Thus, on the grounds that it was a liquid and enforceable sum, they requested the primary forum to issue a partial summary judgment ordering the immediate payment or to order a pre-emptive embargo to secure that payment.

Mapfre objected to the petitioners' request and argued that the main dispute in the lawsuit revolved around the amount to be paid. That is to say, it was not a liquid and enforceable sum and there was no need for a pre-emptive embargo to be ordered. It also suggested that the \$4,408.54 payment offer constituted the final adjustment of the claim and that, in the absence of controversy as to the amount offered, summary judgment should be entered in its favor. The petitioners, in turn, opposed Mapfre's approach, and argued that the adjustment consisted of a recognition of debt and that the respondent could not retract it.

After examining the documents submitted by the parties, the Court of First Instance concluded that there is a dispute over the amount to which the petitioners are entitled as part of their complaint. Although there is no controversy that Mapfre offered the sum, the primary forum determined that it did not

become liquid, due and enforceable, since the petitioners did not accept it because they did not consider it all the damages suffered by their property. To the extent that it was established that there is no certainty as to what Mapfre owes and that there is no agreement between the parties on what is being settled, the Court of First Instance denied the request for summary judgment submitted by the parties.

In conformity, the petitioners appear before this Court of Appeals and submit that the primary forum is influenced by not ordering payment of the items that Mapfre established as part of the initial adjustment of the claim, since it is not permissible for it to refuse those items because it is a liquid and enforceable debt. Mapfre, in turn, appeared to support the correction of the appealed opinion.

In our system, *certiorari* is the discretionary vehicle and extraordinary procedure whereby a court of greater hierarchy can rectify legal errors in the field provided by Puerto Rico Rule 52.1 of Civil Procedure, 32 LPRA Ap. V, R. 52.1 (2009); and in accordance with the criteria laid down by Rule 40 of the Rules of Procedure of this Court of Appeal, 4 LPRA Ap. XXII-B, R. 40. In this sense, the function of an appellate court against the revision of controversies through the *certiorari* requires assessing the performance of the forum of first instance and intervention if its performance constituted an abuse of discretion; in the absence of such abuse or of prejudiced action, error or partiality, it is not appropriate to intervene with the determinations of the Court of First Instance. *Zorniak v. Cessna*, 132 DPR 170 (1992); *Lluch v. Spain Service Sta.*, 117 DPR 729 (1986).

Moreover, summary judgment is the procedural mechanism available for resolving disputes in which a trial is not necessary. *Quest Diagnostics v. Mun. San Juan*, 175 DPR 994 (2009). To that end, Rule 36.1 of Civil Procedure, 32 LPR Ap. V, R 36.1, requires the requester of a summary judgment to establish his right clearly and demonstrate that there is no substantial controversy over any material fact, that is, sufficient for it to be addressed in a plenary trial. *Zapata Berrios v. JF Montalvo Cash & Carry*, 189 DPR 414 (2013). It should be noted that the determination on the existence of disputes of facts must be guided by the principle of liberality in favor of the party that opposes a summary judgment. *Ramos Perez v. Univision*, 178 DPR 200 (2010). What this liberal analysis seeks is to avoid the deprivation of the right of every litigant to his day in court when there are disputes of legitimate and substantial facts that must be resolved. *Roig Com. Bank v. Rosario Cirino*, 126 DPR 613 (1990).

It should be noted that, in the context of a claim against an insurer, it is the Insurance Code of Puerto Rico that determines how the offer must be given in order for it to be a valid one. In this regard, it regulates that such an offer made by an insurer must be the result of a rapid, fair and equitable adjustment, and for a reasonable amount under the claimant's right. Article 27.161 of the Insurance Code, subparagraphs (6) and (8), 26 LPR sec. 2716a. In turn, the Regulations of the Insurance Code, provide:

Any communication on payment, action or offer of transaction of benefits to a claiming insured person not including all amounts to be included in accordance with the claim filed by the claiming insured person, which is included within the

policy limits, and investigated by the insurer, may be regarded as a communication that makes a false representation of the provisions of a policy. Article 4(b) of Rule XLVII of the Regulations of the Insurance Code, Regulation 2080 of 6 April 1976.

Finally, Article 1123 of the Civil Code of Puerto Rico of 1930, 31 LPRA sec. 3173, states that "when the debt has a liquid and an illiquid part, the creditor may demand and make the debtor pay the former without waiting for the latter to be settled".² As resolved, a debt is settled when the amount of money due is true and determined. *Ramos de SzendRey v. Colon Figueroa*, 153 DPR 534 (2001). Debt is also deemed to be due where the obligation is not subject to any cause of nullity and its fulfillment may be demanded. *Guadalupe v. Rodriguez*, 70 DPR 958 (1950).

After carefully reviewing the case file before us, and contrary to what is reasoned by the primary forum, we resolve that the sum claimed by the petitioners includes a liquid and an illiquid part. Thus, to the extent that the \$4,408.54 payment offer constituting Mapfre's final adjustment is a certain and determined amount of money, not subject to any cause of invalidity, and is therefore considered a liquid and enforceable debt. The appellant, in turn, is prevented from impugning that fact, in so far as it was the insurer itself which concluded that that was the amount to which the petitioners were entitled and therefore issued the check as part of the final adjustment of the complaint submitted;

² It can be noted that the Civil Code of 1930 was repealed on 28 November 2020 by Law No. 55-2020 establishing the new Civil Code of Puerto Rico. However, it was the repealed version that was in force at the time of the dispute in the file.

to claim something else now, on the pretext that petitioners claim a larger sum that remains in dispute, would amount to going against their own actions. This is because an insurer's final offer is not equivalent to a transaction offer, or a trading position, from which they can be generated in other contexts that are not subject to intense and specific regulation from the insurance field. *Carpets & Rugs v. Tropical Reps*, 175 DPR 614, 635 (2009). Therefore, an insurer cannot "retract" an adjustment, unlike if such an adjustment were considered to be a typical offer aimed at translating or ending a dispute in a field other than insurance. *Carpets & Rugs*, 175 DPR to pag. 635. In other words, **unlike other trade ambitions**, "in the face of a claim", an insurer cannot "den[y] items that it understands in its initial adjustment to come". *Carpets & Rugs*, 175 DPR to pag. 636. It is precisely from the foregoing that a communication from an insurer, such as an offer or final adjustment of a claim, is considered admissible in evidence, since it is not a position of "negotiation leading [to a possible] transaction contract". *Carpets & Rugs*, 175 DPR to pag. 638. Instead, this offer is considered as part of **the "insurance obligation[under the Insurance Code of Puerto Rico to finally resolve a claim by an insured person ... "**. *Carpets & Rugs*, 175 DPR at page 639 (supplied emphasis).

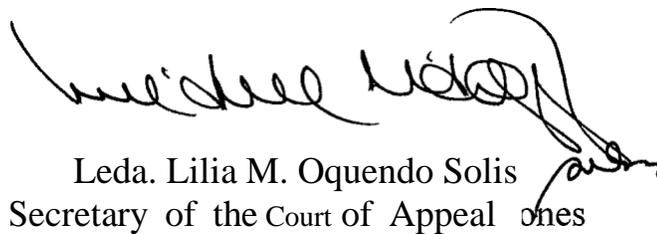
In order to achieve, in accordance with the above rules and the considerations set out above, petitioners are entitled to pay that liquidated party without waiting for the forum under appeal to award in their favor the sum on which there is controversy. The above, of course

it does not have the present case and does not set up a payment infinito, but instead entails the transfer of the partial sum of money which the appellant itself estimates to be due, regardless of whether that amount is determined in the course of the proceedings as a total or, on the contrary, whether the Court of First Instance subsequently awards a larger sum.

As stated, we issue the requested *order for certiorari* and revoke the *resolution under appeal*. Mapfre is therefore ordered to immediately issue the payment for the sum of \$4,408.54 in favor of petitioners, while returning the case

Court of First Instance for the continuation of proceedings as resolved here.

He agrees with it and is commanded by the Court and certified by the Secretary of the Court of Appeals.



Leda. Lilia M. Oquendo Solis
Secretary of the Court of Appeals

