

[Texto original en español](#)

102 D.P.R. 224, 1974 WL 36882
(P.R.), 2 P.R. Offic. Trans. 281

Agustín BERROCALES Gómez, Petitioner,

v.

SUPERIOR COURT OF PUERTO RICO, Ponce
Part, Carlos D. Bonaparte, Judge, Respondent;
American Motorists Insurance Co., Intervener.

Supreme Court of Puerto Rico.

No. O-73-419.

Decided May 6, 1974.

1. STATUTES, CUSTOMS, AND EQUITY --
CONSTRUCTION AND APPLICATION OF LAW --
PARTICULAR STATUTES -- SPECIAL LAWS.

The Civil Code is suppletory in matters which are governed by special laws.

2. INSURANCE -- INSURANCE CONTRACT
-- NATURE, REQUISITES, AND VALIDITY --
VALIDITY OF CONTRACT -- ARBITRATION.

A clause in an insurance policy requiring arbitration between the insurance company and the insured for the determination of the rights of the parties according to the policy is null and inoperative in this jurisdiction. Such nullity shall not affect the validity of the other provisions of the policy.

3. CONTRACTS -- IN GENERAL -- REQUISITES
AND VALIDITY -- VALIDITY OF OBJECT --
CONTRAVENTION OF THE LAWS, MORAL, OR
PUBLIC ORDER -- LAWS

Under the provisions of the Civil Code, one cannot enter into a contract in contravention of the laws of the country.

4. ARBITRATION -- ADJUDICATION, DECISION
OR AWARD -- NATURE AND ELEMENTS --
DISQUALIFICATION OF COURTS.

The special circumstances in the case at bar having been examined--a certain clause of compulsory arbitration between the parties which forms part of an insurance policy--the Court concludes that the Insurance Code prevails over the provisions of the Arbitration Law.

PROCEEDING in Certiorari to review certain order of *Carlos D. Bonaparte*, Judge (Ponce), whose effect is to

bind petitioner herein to submit himself to compulsory arbitration, against his will, to decide a claim against an insurance company. *That part of the order, ordering the parties to proceed with the arbitration is set aside, and case is remanded to the trial court for further proceedings not inconsistent with this opinion.*

Frank Rodríguez García for petitioner. *César A. Hernández Colón* for intervener.

***282 Certiorari**

Insurance

PER CURIAM:

On August 31, 1971 the firm Comandante Auto Sales of Bayamón, Puerto Rico, sold a Reo make truck, 1971 model, to Agustín Berrocales Gómez, 68 years old then and resident in the rural zone--Barrio Barinas of Yauco. The price of the truck (\$34,809.20) included a policy with the American Motorists Insurance Company of Chicago, Illinois, whose price was \$2,054.

As a result of certain events which took place in January 1972, and which we need not set forth for the purpose of this opinion, Berrocales requested its insurer to comply with its part of the contract. In view of the attitude assumed by the insurer and/or its agents in Puerto Rico, Berrocales was forced to file a complaint against the former. The Company answered the complaint more than ten months after it was summoned.

After a series of proceedings and of a hearing of a motion for dismissal filed by defendant, the trial court, on August 9, 1972, in denying said motion ordered "that the proceedings of the requirements set forth in the policy be continued." Taken in its context said resolution or order forced plaintiff to submit himself to compulsory arbitration, against his will.¹

***283** Plaintiff appealed before this Court and on November 23, 1973 we agreed to review. We issued the Certiorari requested. The assignment is to the effect that the trial court erred in forcing plaintiff to submit himself to the arbitration proceeding.

[1] The error assigned was committed. The point at issue is basic. The insurance matter is a special matter and it is governed by a special law denominated Insurance Code of

Puerto Rico, Act No. 77 of June 19, 1957; 26 L.P.R.A. § 101 *et seq.* As it is known, the Civil Code is suppletory in matters which are governed by special laws, art. 12 of said Code, 31 L.P.R.A. § 12, but in this case we do not have to resort thereto since the Insurance Code contains express provisions which govern the point herein involved.

Article 11.190 of the Insurance Code, 26 L.P.R.A. § 1119, insofar as pertinent, provides as follows:

***284** “(1) No policy . . . shall contain any condition, stipulation, or agreement:

“(a) Depriving the insured of right of access to the courts for determination of his rights under the policy in event of dispute.

“(b) Depriving the courts of Puerto Rico of jurisdiction of action against the insurer

“(2) Any condition, stipulation, or agreement in violation of this section shall be void, but such voidance shall not affect the validity of the other provisions of the policy.”

In view of the aforesaid provision of law it is necessary to conclude that the clause of the policy requiring the

compulsory arbitration is void and inoperative in Puerto Rico. It shall be considered as if it were not written. To elaborate furthermore, remember that the governing body par excellence of our private law provides that one cannot enter into a contract in contravention of the laws of the country. Civil Code, art. 1207; 31 L.P.R.A. § 3372.

[2] This case is not governed either by the Arbitration Law, Act No. 376 of May 8, 1951, 32 L.P.R.A. § 3201 *et seq.* as the intervener intimates. Besides, as we have stated also, the parties could not agree to a voluntary arbitration when it would have resulted in opposition to the Insurance Code. The Insurance Code is subsequent to the aforesaid Arbitration Law and said Code also regulates a special matter. Therefore in this case, the insurance Code prevails over the provisions of the Arbitration Law.

In view of the foregoing, that part of the order of the trial court issued on August 9, 1972 ordering the parties to proceed with the arbitration will be set aside. The case will be remanded to the trial court for the proper further proceedings not inconsistent with this opinion.

Mr. Chief Justice Trías Monge, Mr. Justice Cadilla Ginorio, and Mr. Justice Iriarry Yunqué took no part in the decision of this case.

Footnotes

- 1 The defendant invoked the following clause of the contract--printed in small letter:
“If the insured and the company fail to agree as to the amount of loss, either may, within 60 days after proof of loss is filed, demand an appraisal of the loss. In such event the insured and the company shall each select a competent appraiser, and the appraisers shall select a competent and desinterested umpire. The appraisers shall state separately the actual cash value and the amount of loss and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The insured and the company shall each pay his chosen appraiser and shall bear equally the other expenses of the appraisal and umpire. The company shall not be held to have waived any of its rights by any act relating to appraisal.”