

PAZ LOPEZ DE CONSTANTINO, PLAINTIFF AND APPELLANT, VS. ASIA LIFE INSURANCE COMPANY, DEFENDANT AND APPELLEE.*G.R. Nos. L-1669-70. August 31, 1950*

Ponente: BENGZON, J.

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These two cases, appealed from the Court of First Instance of Manila, call for decision of the question whether the beneficiary in a life insurance policy may recover the amount thereof although the insured died after repeatedly failing to pay the stipulated premiums, such failure having been caused by the last war in the Pacific.

The facts are these:

First case. In consideration of the sum of P176.04 as annual premium duly paid to it, the Asia Life Insurance Company (a foreign corporation incorporated under the laws of Delaware, U.S.A.), issued on September 27, 1941, its Policy No. 93912 for P3,000, whereby it insured the life of Arcadio Constantino for a term of twenty years. The first premium covered the period up to September 26, 1942. The plaintiff Paz Lopez de Constantino was regularly appointed beneficiary. The policy contained these stipulations, among others:

"This POLICY OF INSURANCE is issued in consideration of the written and printed application herefor, a copy of which is attached hereto and is hereby made a part hereof, and of the payment in advance during the lifetime and good health of the Insured of the annual premium of One Hundred fifty-eight and 4/100 pesos Philippine currency[1] and of the payment of a like amount upon each twenty-seventh day of September hereafter during the term of Twenty years or until the prior death of the Insured. (Italics supplied.)

* * * * *

"All premium payments are due in advance and any unpunctuality in making any such payment shall cause this policy to lapse unless and except as kept in force by the Grace Period condition or under Option 4 below. (Grace of 31 days)"

After that first payment, no further premiums were paid. The assured died on September 22, 1944.

It is admitted that the defendant, being an American corporation, had to close its branch office in Manila by reason of the Japanese occupation, i.e. from January 2, 1942, until the year 1945.

Second case. On August 1, 1938, the defendant Asia Life Insurance Company issued its Policy No. 78145 (Joint Life 20-Year Endowment Participating with Accident Indemnity), covering the lives of the spouses Tomas Ruiz and Agustina Peralta, for the sum of P3000. The annual premium: stipulated in the policy was regularly paid from August 1, 1938, up to and including September 30, 1941. Effective August 1, 1941, the mode of payment of premiums was changed from annual to quarterly, so that quarterly premiums were paid, the last having been delivered on November 18, 1941, said payment covering the period up to January 31, 1942. No further payments were handed to the insurer. Upon the Japanese occupation, insured and the insurer became separated by the lines of war, and it was impossible and illegal for them to deal with each other. Because the insured had borrowed on

the policy an amount of P234.00 in January, 1941, the cash surrender value of the policy was sufficient to maintain the policy in force only up to September 7, 1942. Tomas Ruiz died on February 16, 1945. The plaintiff Agustina Peralta is his beneficiary. Her demand for payment met with defendant's refusal, grounded on non-payment of the premiums.

The policy provides in part:

"This POLICY OF INSURANCE is issued in consideration, of the written and printed application herefor, a copy of which is attached hereto and is hereby made a part hereof, and of the payment in advance during the lifetime and good health of the Insured of the annual premium of Two Hundred and 43/100 pesos Philippine currency and of the payment of a like amount, upon each first day of August hereafter during the term of Twenty years or until the prior death of either of the Insured. (Italic supplied.)

* * * * *

"All premium payments are due in advance and any unpunctuality in making any such payment shall cause this policy to lapse unless and except as kept in force by the Grace Period condition or under Option 4 below. (Grace of 31 days) * * *"

Plaintiffs maintain that, as beneficiaries, they are entitled to receive the proceeds of the policies minus all sums due for premiums in arrears. They allege that non-payment of the premiums was caused by the closing of defendant's offices in Manila during the Japanese occupation and the impossible circumstances created by war.

Defendant on the other hand asserts that the policies had lapsed for non-payment of premiums, in accordance with the contract of the parties and the law applicable to the situation.

The lower court absolved the defendant. Hence this appeal.

The controversial point has never been decided in this jurisdiction, fortunately, this Court has had the benefit of extensive and exhaustive memoranda including those of amici curiae. The matter has received careful consideration, inasmuch as it affects the interest of thousands of policy-holders and the obligations of many insurance companies operating in this country.

Since the year 1917, the Philippine law on Insurance was found in Act No. 2427, as amended, and the Civil Code.[2] Act No. 2427 was largely copied from the Civil Code of California.[3] And this Court has heretofore announced its intention to supplement the statutory laws with general principles prevailing on the subject in the United States.[4]

In *Young vs. Midland Textile Insurance Co.* (30 Phil., 617), we said that "contracts of insurance are contracts of Indemnity upon the terms and conditions specified in the policy. The parties have a right to impose such reasonable conditions at the time of the making of the contract as they may deem wise and necessary. The rate of premium is measured by the character of the risk assumed. The insurance company, for a comparatively small consideration, undertakes to guarantee the insured against loss or damage, upon the terms and conditions agreed upon, and upon no other, and when called upon to pay, in case of loss, the insurer, therefore, may justly insist upon a fulfillment of these terms. If the insured cannot bring himself within the conditions of the policy, he is not entitled to recover for the loss. The terms of the policy constitute the measure of the insurer's liability, and in order to recover the insured must show himself within those terms; and if it appears that the contract has been terminated by a violation, on the part of the insured, of its conditions, then there can be no right of recovery. The compliance of the insured with the terms of the contract is a condition precedent to the right of recovery."

Recall of the above pronouncements is appropriate because the policies in question stipulate that "all premium payments are due in advance and any unpunctuality in making any such payment shall cause this policy to lapse."

Wherefore, it would seem that pursuant to the express terms of the policy, non-payment of premium produces its avoidance.

"The conditions of contracts of insurance, when plainly expressed in a policy, are binding upon the parties and should be enforced by the courts, if the evidence brings the case clearly within their meaning and intent. It tends to bring the law itself into disrepute when, by astute and subtle distinctions, a plain case is attempted to be taken without the operation of a clear, reasonable, and material obligation of the contract. *Mack vs. Rochester German Ins. Co.*, 106 N.Y., 560, 564. (*Young vs. Midland Textile Insurance Co.*, 30 Phil., 617, 622.)

In *Glaraga vs. Sun Life Ass. Co.*, (49 Phil., 737), this Court held that a life policy was avoided because the premium had not been paid within the time fixed, since by its express terms, non-payment of any premium when due or within the thirty-day period of grace, ipso facto caused the policy to lapse. This goes to show that although we take the view that insurance policies should be conserved^[5] and should not lightly be thrown out, still we do not hesitate to enforce the agreement of the parties.

"Forfeitures of insurance policies are not favored, but courts cannot for that reason alone refuse to enforce an insurance contract according to its meaning. (45 C.J.S., p. 150.)

Nevertheless, it is contended for plaintiffs that inasmuch as the non-payment of premium was the consequence of war, it should be excused and should not cause the forfeiture of the policy.

Professor Vance of Yale, in his standard treatise on Insurance, says that in determining the effect of non-payment of premiums occasioned by war, the American cases may be divided into three groups, according as they support the so-called Connecticut Rule, the New York Rule, or the United States Rule.

The first holds the view that "there are two elements in the consideration for which the annual premium is paid—First, the mere protection for the year, and, second, the privilege of renewing the contract for each succeeding year by paying the premium for that year at the time agreed upon. According to this view of the contract, the payment of premiums is a condition precedent, the nonperformance of which, even when performance would be illegal, necessarily defeats the right to renew the contract."

The second rule, apparently followed by the greater number of decisions, holds that "war between states in which the parties reside merely suspends the contract of life insurance, and that, upon tender of all premiums due by the insured or his representative after the war has terminated, the contract revives and becomes fully operative."

The United States rule declares that the contract is not merely suspended, but is abrogated by reason of non-payment of premiums, since the time of the payments is peculiarly of the essence of the contract. It additionally holds that it would be unjust to allow the insurer to retain the reserve value of the policy, which is the excess of the premiums paid over the actual risk carried during the years when the policy had been in force. This rule was announced in the well-known *Satham*^[6] case which, in the opinion of Professor Vance, is the correct rule.^[7]

The appellants and some amici curiae contend that the New York rule should be applied here. The appellee and other amici curiae contend that the United States doctrine is the orthodox view.

We have read and re-read the principal cases upholding the different theories. Besides the respect and high regard we have always entertained for decisions of the Supreme Court of the United States, we cannot resist the conviction that the reasons expounded in its decision of the *Satham* case are logically and juridically sound. Like the instant case, the policy involved in the *Satham* decision specifies that non-payment on time shall cause the policy to cease and determine. Reasoning out that punctual payments were essential, the Court said:

"* * * it must be conceded that promptness of payment is essential in the business of life insurance. All the calculations of the insurance company are based on the hypothesis of prompt payments. They not only calculate on the receipt of the premiums when due, but on compounding interest upon them. It is on this basis that they are enabled to offer assurance at the favorable rates they do. Forfeiture for non-payment is a necessary means of protecting themselves from embarrassment. Unless it were enforceable, the business would be thrown into utter confusion. It is like the forfeiture of shares in mining enterprises, and all other hazardous undertakings. There must be power to cut off unprofitable members, or the success of the whole scheme is endangered. The insured parties are associates in a great scheme. This associated relation exists whether the company be a mutual one or not. Each is interested in the engagements of all; for out of the co-existence of many risks arises the law of average, which underlies the whole business. An essential feature of this scheme is the mathematical calculations referred to, on which the premiums and amounts assured are based. And these calculations, again, are based on the assumption of average mortality, and of prompt payments and compound interest thereon. Delinquency cannot be tolerated nor redeemed, except at the option of the company. This has always been the understanding and the practice in this department of business. Some companies, it is true, accord a grace of thirty days, or other fixed period, within which the premium in arrear may be paid, on certain conditions of continued good health, etc. But this is a matter of stipulation, or of discretion, on the part of the particular company. When no stipulation exists, it is the general understanding that time is material, and that the forfeiture is absolute if the premium be not paid. The extraordinary and even desperate efforts sometimes made, when an insured person is in extreme distress to meet a premium coming due, demonstrates the common view of this matter.

"The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture if such be the terms of the contract, as is the case here. Courts cannot with safety vary the stipulation of the parties by introducing equities for the relief of the insured against their own negligence."

In another part of the decision, the United States Supreme Court considers and rejects what is, in effect, the New York theory in the following words and phrases:

"The truth is, that the doctrine of the revival of contracts suspended during the war is one based on considerations of equity and justice, and cannot be invoked to revive a contract which it would be unjust or inequitable to revive.

"In the case of life insurance, besides the materiality of time in the performance of the contract, another strong reason exists why the policy should not be revived. The parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company. The business of insurance is founded on the law of averages; that of life insurance eminently so. The average rate of mortality is the basis on which it rests. By spreading their risks over a large number of cases, the companies calculate on this average with reasonable certainty and safety. Anything that interferes with it deranges the security of the business. If every policy lapsed by reason of the war should be revived, and all the back premiums should be paid, the companies would have the benefit of this average amount of risk. But the good risks are never heard from; only the bad are sought to be revived, where the person insured is either dead or dying. Those in health can get new policies cheaper than to pay arrearages on the old. To enforce a revival of the bad cases; whilst the company necessarily lose the cases which are desirable, would be manifestly unjust. An insured person, as before stated, does not stand isolated and alone. His case is connected with and co-related to the cases of all others insured by the same company. The nature of the business, as a whole, must be looked at to understand the general equities of the parties."

The above considerations certainly lend themselves to the approval of fair-minded men. Moreover, if, as alleged, the consequences of war should not prejudice the insured, neither should they bear down on the insurer.

Urging adoption of the New York Theory, counsel for plaintiff point out that the obligation of the insured to pay

premiums was excused during the war owing to impossibility of performance, and that consequently no unfavorable consequences should follow from such failure.

The appellee answers, quite plausibly, that the periodic payment of premiums, at least those after the first, is not an obligation of the insured, so much so that it is not a debt enforceable by action of the insurer.

"Under an Oklahoma decision, the annual premium due is not a debt. It is not an obligation upon which the insurer can maintain an action against insured; nor is its settlement governed by the strict rule controlling payment of debts. So, the court in a Kentucky case declares, in the opinion, that it is not a debt, * * * The fact that it is payable annually or semi-annually, or at any other stipulated time, does not of itself constitute a promise to pay, either express or implied. In case of non-payment, the policy is forfeited, except so far as the forfeiture may be saved by agreement, by waiver, estoppel, or by statute. The payment of the premium is entirely optional, while a debt may be enforced at law, and the fact that the premium is agreed to be paid is without force, in the absence of an unqualified and absolute agreement to pay a specified sum at some certain time. In the ordinary policy there is no promise to pay, but it is optional with the insured whether he will continue the policy or forfeit it." (3 Couch, Cyc. on Insurance, Sec. 623, p. 1996)

"It is well settled that a contract of insurance is sui generis. While the insured by an observance of the conditions, may hold the insurer to his contract, the latter has not the power or right to compel the insured to maintain the contract relation with it longer than he chooses. Whether the insured will continue it or not is optional with him. There being no obligation to pay for the premium, they did not constitute a debt." Noble vs. Southern States M. D. Ins. Co., 157 Ky. 46, 162 S. W., 528.) (Italics ours.)

It should be noted that the parties contracted not only for peacetime conditions but also for times of war, because the policies contained provisions applicable expressly to wartime days. The logical inference, therefore, is that the parties contemplated uninterrupted operation of the contract even if armed conflict should ensue.

For the plaintiffs, it is again argued that in view of the enormous growth of insurance business since the Statham decision, it could now be relaxed and even disregarded. It is stated "that the relaxation of rules relating to insurance is in direct proportion to the growth of the business. If there were only 100 men, for example, insured by a Company or a mutual Association, the death of one will distribute the insurance proceeds among the remaining 99 policy-holders. Because the loss which each survivor will bear will be relatively great, death from certain agreed or specified causes may be deemed not a compensable loss. But if the policy-holders of the Company or Association should be 1,000,000 individuals, it is clear that the death of one of them will not seriously prejudice each one of the 999,999 surviving insured. The loss to be borne by each individual will be relatively small."

The answer to this is that as there are (in the example) one million policy-holders, the "losses" to be considered will not be the death of one but the death of ten thousand, since the proportion of 1 to 100 should be maintained. And certainly such losses for 10,000 deaths will not be "relatively small."

After perusing the Insurance Act, we are firmly persuaded that the non-payment of premiums is such a vital defense of insurance companies that since the very beginning, said Act 2427 expressly preserved it, by providing that after the policy shall have been in force for two years, it shall become incontestable (i.e. the insurer shall have no defense) except for fraud, non-payment of premiums, and military or naval service in time of war (sec. 184(b), Insurance Act). And when Congress recently amended this section (Rep. Act 171), the defense of fraud was eliminated, while the defense of non-payment of premiums was preserved. Thus the fundamental character of the undertaking to pay premiums and the high importance of the defense of non-payment thereof, was specifically recognized.

In keeping with such legislative policy, we feel no hesitation to adopt the United States Rule, which is in effect a

variation of the Connecticut rule for the sake of equity. In this connection, it appears that the first policy had no reserve value, and that the equitable values of the second had been practically returned to the insured in the form of loan and advance for premium.

For all the foregoing, the lower court's decision absolving the defendant from all liability on the policies in question, is hereby affirmed, without costs.

Moran, C.J., Ozaeta, Paras, Pablo, Montemayor, Tuason, and Reyes, JJ., concur.

[1] Plus P18 for accident benefits.

[2] Enriquez vs. Sun Life, 41 Phil. 269.

[3] Ang Giok Chip vs. Springfield Fire, 56 Phil., 375

[4] Gercio vs. Sun Life, 48 Phil., 53.

[5] Sun Life Ass. Co. vs. Ingersoll, 42 Phil., 331.

[6] New York Life Ins. vs. Statham, 93 U. S. 24, 23 Law. ed. 789.

[7] Op. cit. p. 293. It is also the rule in West Virginia and Georgia. It adds to the Connecticut doctrine the duty to return the reserve value of the policy.

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