

SUGNI SUPERSTORE (TACURONG, SULTAN KUDARAT BRANCH) AND CYNTHIA CRUZ KHEMANI, REPRESENTD BY SHANKER N. KHEMANI, PLAINTIFF-APPELLEES, VS. STANDARD INSURANCE CO., INC., DEFENDANT-A...

Ponente: PEREZ, J.

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PEREZ, J.:

Does the cash-and-carry rule in Section 77 of the Insurance Code of the Philippines prevent a fire insurance policy from becoming binding and effective even if there is a credit arrangement between the parties for the payment of the insurance premium?

In this ordinary appeal[1] defendant-appellant Standard Insurance Co., Inc., seeks review of the 06 July 2004 Decision of the Regional Trial Court, Branch 20, Tacurong City on Civil Case No. 569 for Payment of Fire Insurance Claims with Interest, Attorney's Fees and Expenses for Litigation, finding in favor of plaintiff-appellee Sugni Superstore Co., Inc., the dispositive portion of which reads:

“ALL OF THE FOREGOING CONSIDERED, judgment is hereby rendered in favor of the plaintiffs (particularly Sugni Superstore and Cynthia Cruz Khemani, duly represented by Shanker N. Khemani) and hereby orders the defendant to pay the plaintiffs the following, to wit:

(1) Five Million Pesos (Php 5,000,000.00) for payment of the principal insurance claim for the loss of the stocks-in-trade of the plaintiffs under FIRE POLICY NO. 297097 (dated September 4, 1997), with interest at the legal rate of 12% per annum from December 5 until the principal amount is fully paid and the interest due shall likewise earn interest at the same rate.

(2) Attorney's fees computed at 25% of the principal insurance claim of Five Million Pesos (Php 5,000,000.00).

(3) Two Hundred Thousand Pesos (Php 200,000.00) for exemplary or corrective damages.

(4) Forty Eight Thousand Seven Hundred Seventy Pesos (Php 48,770.00) for other expenses of litigation.

(5) Cost against the defendant.

SO ORDERED.”

The Facts

On 04 September 1997, Sugni Superstore (Sugni), represented by Manohar Khemani, and defendant-appellant Standard Insurance Co., Inc. (Standard), acting through its Cotabato City Branch Manager, Manuel G. Flores (Flores), entered into several contracts of insurance.

Accordingly, on the same date, Standard issued and delivered five insurance policies[2] in favor of Sugni, one of which is Fire Policy No. 297097[3] the enforcement of which is the subject of this case, covering the stocks-in-trade of the Sugni Superstore branch in Tacurong City, Sultan Kudarat. The said policy, with a face

value of Php 5,000,000.00, was valid for a period of one-year starting from its date of issue, or from 04 September 1997 up to 04 September 1998[4], and insured against losses arising from risks of fire or lighting.

No premiums were paid upon receipt of the insurance policies. Khemani claims that Flores, in his capacity as Cotabato City Branch Manager of appellant insurer, granted Sugni a credit term or grace-period of ninety (90) days from the date of policy issue to pay the premium, including on Fire Policy No. 297097. As proof, appellant offered the 01 September 1997 letter[5] of Manuel G. Flores to Manohar Khemani.

In the early evening of 27 November 1997, a fire occurred in Sugni's Tacurong City branch destroying the establishment including all the stocks kept at the second floor. The cause of the fire is unclear, but is not in issue in the pleadings.

Thereafter, two-insurance adjusters, namely, Standard's "in-house adjuster", Gilda U. Patricio and Gemini Adjustment Company made separate investigations and report on the incident.[6] Standard's report summarizes as follows:

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... Fire of still and undetermined cause broke out at Assured's rented building particularly on the second floor on November 27, 1997 at about 6:10 PM. The blaze totally destroyed Assured's stock located on the second floor and partially damaged the ground floor in varying degrees.

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... As a result of the fire, the second floor of the building was totally damaged by the fire together with the stockroom in the rear portion. However, the ground floor level was not burned but was damaged due to exposures to intense heat and severe water damage.

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In a letter dated 04 December 1997,[7] Sugni informed Standard, through Flores, of the loss resulting from the 27 November 1997 fire. Subsequently, Standard received a report regarding the notice of loss from its Cotabato City Branch regarding Sugni's insurance claim.

After receiving the report regarding Sugni's insurance claim, Standard instructed its Head Office Auditor/Investigator to determine the merits of the insurance claim.

After finding that Sugni had not paid the premium for the insurance policies including Fire Policy No. 297097, Standard denied the former's claim in a letter dated 23 December 1997.[8]

The 23 December 1997 letter was received by Sugni on 14 January 1998 as evidenced by the postal office's Registry Return Card.[9] The same letter was sent via fax earlier on 7 January 1998 and it was received by Sugni on the same day, as evidenced by the Fax Confirmation Report.[10]

In a letter[11] to Standard dated 08 January 1998, Sugni, through its General Manager Khemani, asked the former to reconsider the denial of Sugni's claim.

Standard, in its 15 September 1998 reply letter[12] to Sugni, rejected the former's request for reconsideration of its decision to deny the former's insurance claim. Apart from delivery via registered mail, the said letter was also sent via fax on 16 September 1998, as evidenced by the Fax Confirmation Report.[13]

After the second denial of its insurance claims, Sugni, in its 06 October 1998 letter,[14] once more, appealed to Standard to reconsider its decision.

Standard, in its 04 November 1998 reply letter[15] to Sugni, reiterated its reason for denying the insurance claim for non-payment of premium and rejected the former's second request for reconsideration. The said reply letter was likewise sent through registered mail and by fax. The Fax Confirmation Report[16] reveals that the reply letter was sent to Sugni on 04 and 05 November 1998.

On 27 January 1999, Sugni sought the assistance of the Insurance Commission and referred its insurance claim to the former in a letter[17] dated 25 January 1999 for settlement.

The Insurance Commission conducted mediation proceedings between the parties, which dragged for some months, until the Commission terminated the proceedings due to the parties' failure to settle amicably, as evidenced by a 29 July 1999 letter[18] of Teodoro S. Mendoza, Attorney V, Chief, Public Assistance and Information Division.

With the termination of the mediation proceedings with the Insurance Commission, Sugni, on 14 March 2000, filed a Complaint[19] for Payment of Fire Insurance Claims with Interest, Damages, Attorney's Fees and Expenses of Litigation.

In its Answer,[20] Standard maintained its stand that Sugni had not paid the insurance premium on Fire Policy No. 297097 at the time of policy issue or even within the credit period if indeed there was one ; thus, the insurance contract is not binding and has no force at the time of the occurrence of the loss. Additionally, Standard sets up the defense that Sugni had not given timely notice of the loss and did not file an action within the allowable period in the policy.

Trial ensued.

On 06 July 2004, the court a quo found in favor of Sugni and rendered the assailed Decision finding Standard liable under Fire Policy No. 297097 and ordering the former to pay the former's claims in the complaint.

Aggrieved by the Decision of the court a quo, Standard filed this present appeal before this Court.

The Issues

In its brief, Standard submitted the following issues to be resolved by this Court:

1. WHETHER OR NOT APPELLEES HAVE PAID THE PREMIUM FOR THE FIRE INSURANCE POLICY. COROLLARILY, WHETHER OR NOT APPELLEES HAVE A CAUSE OF ACTION AGAINST STANDARD BASED ON THE INSURANCE POLICY.
2. WHETHER OR NOT APPELLEES WERE GRANTED ALLEGED 90-DAY CREDIT EXTENSION TO PAY THE PREMIUM ON THE FIRE INSURANCE POLICY. COROLLARILY WHETHER OR NOT THEY PAID THE PREMIUM WITHIN THE GRACE PERIOD.
3. WHETHER OR NOT APPELLEE'S ACTION IN THE TRIAL COURT HAD LONG PRESCRIBED AT THE TIME IT WAS FILED AND SHOULD HAVE BEEN DISMISSED ON THE GROUND OF PRESCRIPTION FOR FAILURE OF THE APPELLEES TO BRING THE SUIT WITHIN ONE YEAR FROM NOTICE OF DENIAL OF THEIR INSURANCE CLAIM.
4. WHETHER OR NOT THE APPELLEES ARE ENTITLED TO THE AWARD OF EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES UNDER THE CIRCUMSTANCES. IF SO, WHETHER OR NOT THE AMOUNTS AWARDED THEREFOR ARE GROSSLY EXCESSIVE.

The Court's Ruling

First Issue: Perfection of the

insurance contract.

In resolving the first core issue, it is imperative to determine whether or not a credit extension is allowed under the Insurance Code of the Philippines; whether or not Flores was authorized to give the same; and if he was, whether or not Sugni paid the premium within the grace or credit period?

Section 77 of the Insurance Code
of the Philippines does not
invalidate all credit arrangements
for payment of insurance premiums

This issue does not plow new ground.

Appellant claims that Section 77 of the Insurance Code states a rule without exception – no insurance policy is valid or binding unless the premium on the policy has been paid. Corollarily then, any agreement, arrangement or other term in the agreement of the insurer and the insured providing a period of grace to pay the premium after the issuance of the insurance policy is invalid and prevents the insurance from taking effect.

We disagree.

In *UCPB v. Masagana Telemart*,^[21] the Supreme held that there are exceptions to Section 77 one of which is when a credit term is agreed upon by the parties. That ruling states:

Section 77 of the Insurance Code of 1978 provides:

SECTION 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

This Section is a reproduction of Section 77 of P.D. No. 612 (The Insurance Code) promulgated on 18 December 1974. In turn, this Section has its source in Section 72 of Act No. 2427 otherwise known as the Insurance Act as amended by R.A. No. 3540, approved on 21 June 1963, which read:

SECTION 72. An insurer is entitled to payment of premium as soon as the thing insured is exposed to the peril insured against, unless there is clear agreement to grant the insured credit extension of the premium due. No policy issued by an insurance company is valid and binding unless and until the premium thereof has been paid. (Italic supplied)

It can be seen at once that Section 77 does not restate the portion of Section 72 expressly permitting an agreement to extend the period to pay the premium. But are there exceptions to Section 77?

The answer is in the affirmative.

The first exception is provided by Section 77 itself, and that is, in case of a life or industrial life policy whenever the grace period provision applies.

The second is that covered by Section 78 of the Insurance Code, which provides:

SECTION 78. Any acknowledgment in a policy or contract of insurance of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until premium is actually paid.

A third exception was laid down in *Makati Tuscany Condominium Corporation vs. Court of Appeals*, wherein we ruled that Section 77 may not apply if the parties have agreed to the payment in installments of the premium and

partial payment has been made at the time of loss. We said therein, thus:

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Not only that. In Tuscany, we also quoted with approval the following pronouncement of the Court of Appeals in its Resolution denying the motion for reconsideration of its decision:

While the import of Section 77 is that prepayment of premiums is strictly required as a condition to the validity of the contract, We are not prepared to rule that the request to make installment payments duly approved by the insurer would prevent the entire contract of insurance from going into effect despite payment and acceptance of the initial premium or first installment. Section 78 of the Insurance Code in effect allows waiver by the insurer of the condition of prepayment by making an acknowledgment in the insurance policy of receipt of premium as conclusive evidence of payment so far as to make the policy binding despite the fact that premium is actually unpaid. Section 77 merely precludes the parties from stipulating that the policy is valid even if premiums are not paid, but does not expressly prohibit an agreement granting credit extension, and such an agreement is not contrary to morals, good customs, public order or public policy (De Leon, *The Insurance Code*, p. 175). So is an understanding to allow insured to pay premiums in installments not so prescribed. At the very least, both parties should be deemed in estoppel to question the arrangement they have voluntarily accepted.

By the approval of the aforequoted findings and conclusion of the Court of Appeals, Tuscany has provided a fourth exception to Section 77, namely, that the insurer may grant credit extension for the payment of the premium. This simply means that if the insurer has granted the insured a credit term for the payment of the premium and loss occurs before the expiration of the term, recovery on the policy should be allowed even though the premium is paid after the loss but within the credit term.

Moreover, there is nothing in Section 77 which prohibits the parties in an insurance contract to provide a credit term within which to pay the premiums. That agreement is not against the law, morals, good customs, public order or public policy. The agreement binds the parties. Article 1306 of the Civil Code provides:

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Finally in the instant case, it would be unjust and inequitable if recovery on the policy would not be permitted against Petitioner, which had consistently granted a 60- to 90-day credit term for the payment of premiums despite its full awareness of Section 77. Estoppel bars it from taking refuge under said Section, since Respondent relied in good faith on such practice. Estoppel then is the fifth exception to Section 77.”

To this day the ruling in Masagana is the controlling interpretation of Section 77 of the Insurance Code, and appellant has forwarded no argument to exempt this case from this doctrinal ruling or why the exceptions to the cash-and-carry rule should be revisited or changed in the light of the particular facts of this case.

To recall, the cash-and-carry rule in insurance is so-called because the insured must pay the premium upon the issuance of the insurance policy, or as the law states, from the moment the thing insured is exposed to the peril insured against. Thus generally, no policy issued by an insurance company is valid and binding until actual payment of the premium.[22] It was put in place to secure the integrity of the legal reserve fund that insurance companies are mandated by law to maintain.[23] The premium paid by the insured to insurers is the lifeblood of the latter so that they can continue to function in the most efficient and professional manner in serving the public and eliminate fly-by-night practices in the insurance industry. “It is undisputed that premium is elixir vitae of the insurance business because by law the insurer must maintain a legal reserve fund meet its contingent obligations to the public, hence, the imperative need for its prompt payment and full satisfaction. It must be emphasized here at all actuarial calculations and various tabulations of probabilities of losses under the risks insured against are

based on the sound hypothesis of prompt payment of premiums.”[24]

Free market principles however allow such practice, particularly when the insurance coverage is huge and the premium due is substantial. At the end of the day providing insurance is still a business enterprise operating for profit. Upon this bedrock rule of cash-and-carry, insurance firms are able to immediately offer the assurance of security to the public at favorable rates and terms.[25]

Thus, as stated in Masagana, there are exceptions to this rule, and one of the exceptions is where a credit term had been agreed upon. This simply means that if the insurer has granted the insured a credit term for the payment of the premium and loss occurs before the expiration of the term, recovery on the policy should be allowed even though the premium is paid after the loss but within the credit term.[26]

The doctrine laid down in Masagana illustrates law giving way to realities of the market environment. Credit term agreements are allowed under the Masagana ruling because the strict and unyielding application of Section 77 of the Insurance Code is susceptible to the constitutional objection that it unduly restricts the freedom to contract particularly of the insured who may be the innocent victim of an unscrupulous insurer desiring to collect the whole premium for a reduced period of coverage.[27]

Therefore We cannot sustain Standard’s claim that since no premium was paid at the time of the issuance of the policy, the same was not valid and effective at the time of the loss.

This brings Us to the question of whether or not Flores was authorized to enter into a 90-day credit term extension with Sugni.

Flores was authorized to grant a 90-day grace period to Sugni.

Appellant disowns the authority of Branch Manager Flores to grant a credit term or grace period of 90 days, as it will determine whether the contract of insurance entered into on 04 September 1997 is effective and valid at the time of loss on 27 November 1997.

In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence.[28] Since Sugni is claiming that it was granted a credit term, it had the burden to prove by relevant and competent evidence that Manuel G. Flores was authorized to extend to them the said credit term, or at least led to rely on the existence of such authority.

A review of the evidence on record reveals that Manuel G. Flores was authorized by Standard to extend credit terms to its customers.

During his direct testimony on 03 April 2001, Manuel G. Flores himself testified that he was authorized by Standard to grant credit terms of 90 days to their customers and said that the authority was reduced in writing.[29] But when he was recalled to the witness stand on 22 June 2001, Manuel G. Flores said that he cannot locate the document supposedly authorizing him to grant credit terms, as follows:

“Q:

Also yesterday you were ordered by this Honorable court to bring that certain authority which is mentioned earlier in your testimony sometime in April 3, allowing you or granting you the authority to give a 90 day grace period for the payment of the premiums in case of the fire insurance policy because during your testimony on April 3, 2001, you said that have the paper with you, do you have that document with you?

A:

I have tried my diligent effort to locate it in my personal file but I was not able to locate it, I believe it's in my file in the office but I do not have access anymore in the office.”[30]

The failure of Flores to present his written authority after testifying under oath that appellant had issued him such authority cannot be allowed to prejudice Sugni. After all the document if indeed one existed as Flores affirmed under oath should have been in the custody of the insurance company or Flores himself.

But even though Flores failed to present the written authority, his claim of authority to extend credit term of 90 days to Sugni and his other clients still holds water under the doctrine of apparent authority. Apparent authority, or what is sometimes referred to as the "holding out" theory, or doctrine of ostensible agency, imposes liability, not as the result of the reality of a contractual relationship, but rather because of the actions of a principal or an employer in somehow misleading the public into believing that the relationship or the authority exists.[31] At the very least, prudent business sense would have prompted appellant to inquire from Flores if the premium had been paid on 4 September 1997 when the insurance policies were issued and delivered if indeed Flores had no authority to grant a grace period as an exception to Section 77, and not just on 23 December 1997 after the occurrence of the loss insured against and only when it denied the claim after finding out that no premium was paid in the course of claim evaluation. This is so because when an insurance company delivers to an insurance agent or broker a policy or contract of insurance it shall be deemed to have authorized the latter to receive on its behalf payment of any premium which is due on such policy or contract of insurance at the time of its issuance or delivery or which becomes due thereon.[32]

Defense witness Edena B. Enfestan testified before the trial court about Standard's practice of giving their customers grace period for the payment of the premium, which reads:

“Q.

Please tell the Honorable Court, if Standard Insurance maintain the policy of giving grace period within which to pay premium to your insured?

A.

Yes, as a matter of marketing practice, sir.

Q.

You mentioned that marketing practice that Standard Insurance is there any condition given to the insured if ever grace period is given for the payment of premium?

A.

yes, sir.

Q.

Can you tell the Honorable Court what is the condition to the grace period given?

A.

the company Standard Insurance allows grace period for the clients for the payment of premium and strict payment should be made within the grace period before the happening of any peril or event that is insured against the policy, sir.[33]

When she returned to the witness stand for cross-examination, defense witness again admitted that Standard extends credit terms for their customers, her testimony as follows:

“Q.

Did the Court get you right that your company even without yet payment of premium, your company will already release the fire policy with your client?

A.

Yes, your honor. The regular client, normally they talked about how much premium to be paid and if the two parties agreed, the branch or our agency could issue the insurance policy.

Q.

Even without yet paying the premium, your company thru your branch will immediately release the fire policy contract to your client?

A.

Yes, your honor, because they could acknowledge the payment right after the issuance thru official receipt of premium payments signifying that we have already received the payment, whether in cash or in form of check.

Q.

Will you agree if the court will say that you are releasing the fire policy contract even without yet receiving premium payment because there are instances that your company will give grace period to the client to pay the premium?

A.

Yes, your honor.”[34]

There is therefore preponderant proof that as a marketing strategy to entice prospective clients, it is evident that Standard gave their branch managers the discretion of allowing clients to pay premiums within a certain grace period or at least made it appear that they have such authority. Thus, Standard is estopped from questioning the authority of Flores to grant the credit extension to Sugni.

The payment was made beyond the 90-day grace period.

The rule is now settled that if the loss arising from the peril insured against occurs during the grace period, the

liability of the insurer shall arise even if at the time of the loss the premium has not yet been paid provided that the insured pays the premium due before the grace period ends.

The grace period given to appellee for the payment of the premium due on Fire Policy No. 297097 was 90 days from policy issue, or until 3 December 1997.

Appellant claims that Sugni did not pay the insurance premium within that grace period.

Sugni contends that its last day of payment for the premium is on 04 December 1997 premised on the fact that the fire insurance policy was issued on 04 September 1997. However, a review on this matter reveals that the last day of the 90-day grace period was actually on 03 December 1997^[35], which means that even if Sugni paid on 04 December 1997, as it was asserting, the payment is one day late.

But even assuming that the last day of the grace period is 04 December 1997, the check prepared for the payment of the fire insurance policy covering the Tacurong City branch was delivered only on 08 December 1997 as evidenced by the check voucher^[36] issued by Sugni.

And even if the check was delivered on 04 December 1997 as appellee claims still it will not constitute as payment. The delivery of promissory notes payable to order, or bills of exchange or other mercantile document shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.^[37] Settled is the rule that a check is only a substitute for money and not money, the delivery of such an instrument does not by itself operate as payment.^[38]

Second Issue: Prescription of action.

A clause in the insurance contract fixing the time when an action or suit to enforce the policy is the law between the parties.

Condition No. 27 of Fire Policy No. 297097 provides that:

“27. Action or suit clause- If a claim be made and rejected and an action or suit be not commenced either in the Insurance Commission or any court of competent jurisdiction within twelve (12) months from receipt of notice of such rejection, or in case of arbitration taking place as provided herein within twelve (12) months after due notice of the award made by the arbitrator or arbitrators or umpire, then the claim shall for all purposes be deemed to be abandoned and shall not thereafter be recoverable thereunder.”

Standard posits that the date on which the twelve (12) month period for filing the action for insurance claim should be reckoned from the day Sugni received the 23 December 1997 letter of rejection, or from 14 January 1998.

In answer to Standard's position, Sugni asserted that the 12 month period should be reckoned from its receipt of the 29 July 1999 letter of Atty. Teodoro S. Mendoza of the Insurance Commission, which terminated the mediation process between the parties after negotiations for settlement of the claim failed.

We agree with Standard.

Condition No. 27 is clear and categorical leaving no room for interpretation. Sugni has 12 months from receipt of the notice of rejection to commence an action or suit to collect on the insurance contract in a court of competent jurisdiction or in the Insurance Commission.

Here, the insurance claim was brought before the Insurance Commission on 27 January 1999 for mediation or assistance, which did not constitute a suit or action considering that the Commissioner has no authority to adjudicate claims and complaints involving any loss, damage or liability under any kind of policy or contract of

insurance where the amount of any such loss, damage or liability, excluding interest, cost and attorneys fees being claimed or sued upon, exceeding in any single claim one hundred thousand pesos.[39] Here, the face value of the fire insurance policy is P5,000,000.00. But even if we are to assume that the proceedings before the Insurance Commission is the suit or action contemplated by Condition No. 27, the same is still filed out of time since appellee resorted to the Insurance Commission only on 27 January 1999 or more than 12 months from 14 January 1998, through a letter executed by Sugni's Cynthia Cruz Khemani.[40]

There is also no dispute that the date of filing of the complaint before the court a quo was on 14 March 2000, or more than two years from the day Sugni received the 23 December 1997 letter by Standard on 14 January 1998, which rejected its claim for indemnification.

To rule otherwise would run counter to the principle declared in *Ang v. Fulton Fire Insurance, Co.*,[41] where the Supreme Court ruled that the condition providing for a specific period to file an action for insurance claim is essential for the prompt resolution of the said claim to ensure that the evidence in relation to the origin and cause of the loss insured against have not yet disappeared, to wit:

"The basic error committed by the trial court is its view that the filing of the action against the agent of the defendant company was "merely a procedural mistake of no significance or consequence, which may be overlooked." The condition contained in the insurance policy that claims must be presented within one year after rejection is not merely a procedural requirement. The condition is an important matter, essential to a prompt settlement of claims against insurance companies, as it demands that insurance suits be brought by the insured while the evidence as to the origin and cause of destruction have not yet disappeared. It is in the nature of a condition precedent to the liability of the insurer, or in other terms, a resolutory cause, the purpose of which is to terminate all liabilities in case the action is not filed by the insured within the period stipulated."

Sugni's contention that the period of filing an action for insurance claim has been interrupted by their letters of appeal or for reconsideration on 8 January 1998 and on 6 October 1998 is unavailing. The filing of those letters of appeal has no legal effect on the period of filing as stipulated in the contract of insurance since there was no exception stating that the filing of the letters would stop the running of the period. A contract is law between the parties, and whatever rights the parties may claim should flow from the stipulations found in the contract of insurance otherwise such rights may rendered nugatory by the unilateral act of only one of the parties. To hold otherwise in this case will be to place solely in the hands of the insured the time when a suit or action on an insurance claim should be brought since the latter could simply change or extend such period by making a plea for the insurer to reconsider the denial of the claim.

Finally, the fact that Sugni did not seek assistance of a counsel before the filing of the complaint in court cannot be appreciated in its favor. As an entity engaged in business, it should have sought counsel's opinion regarding legal matters such as this, as it was the prudent and expected thing to do from a business enterprise; hence, when it pursued its claim without assistance of a counsel, it took the risk of not having been sufficiently informed of its rights and obligations under the fire insurance policy and should bear the adverse consequences of its decision, rather than make it an excuse for non-filing in the allowable period.

In sum, We find that the insured failed to pay the premium on Fire Insurance Policy No. 297097 within the grace period thus the insurance contract did not become binding and effective, and that the suit or action to enforce payment was filed beyond the 12-month period allowed under Condition No. 27 of the said policy.

WHEREFORE, foregoing premises considered, the 06 July 2004 Decision of the Regional Trial Court, Branch 20, Tacurong City is hereby REVERSED and SET ASIDE. Civil Case No. 569 for Payment of Fire Insurance Claims with Interest, Attorney's Fees and Expenses for Litigation is hereby DISMISSED.

SO ORDERED.

[*]Borja, J., Ch., and Inting, JJ., concur.

[1][*]Designated as new member, per Raffle dated February 04, 2015, in view of the inhibition of Justice Edgardo A. Camello.

Rollo, pp.43-84.

[2] Rollo. p. 199.

[3] Records, pp. 6-7.

[4] Rollo, pp.198-199.

[5] Records, p. 30.

[6] Records, pp. 810-812 & 801-803.

[7] Records, p.33.

[8] Records, p.584.

[9] Records, p. 587.

[10] Records. p. 588.

[11] Records, p. 805.

[12] Records, p. 589.

[13] Records, p. 591.

[14] Records, p. 808.

[15] Records, p. 592

[16] Records, p. 594.

[17] Records, p. 595.

[18] Records, p. 37.

[19] Records, pp.1-4.

[20] Records, pp. 15-21.

[21] G.R. No. 137172, 04 April 2001.

[22] Sec. 77, R.A. 10607.

[23] Tibay v. Court of Appeals and Fortune Life and General Insurance Co., Inc., G.R. No. 119655, 26 May 1996.

[24] Id.

[25] Id.

[26] UCPB v. Masagana Telemart, G.R. No. 137172, 04 April 2001.

[27] De Leon, De Leon, Jr., The Insurance Code of the Philippines Annotated, 2010 edition, p.251.

- [28] Tamani v. Salvador, G.R. No. 171497, 04 April 4 2011 .
- [29] TSN of Manuel G. Flores, 03 April 2001, p. 27.
- [30] TSN of Manuel G. Flores, 22 June 2001, p. 7.
- [31] Megan Sugar Corporation v. Regional Trial Court of Iloilo, et al., G.R. No. 170352, 01 June 2011.
- [32] Section 306, Insurance Code.
- [33] TSN of Edena B. Enfestan, 08 February 2001, pp. 32-33.
- [34] TSN of Edena B. Enfestan, 21 February 2001, pp. 27-28.
- [35] Art. 13, Civil Code. "...In computing a period, the first day shall be excluded, and the last day included.
- [36] Records, p.816.
- [37] Art. 1249, Civil Code.
- [38] BPI Express Card Corp. v Court of Appeals, G.R. No. 120639, 25 September 1998.
- [39]Section 416, Insurance Code of the Philippines.
- [40] Rollo, pp. 97-98.
- [41] G.R. No. L-15862, 31 July 1961.

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