

**PHILIPPINE PHOENIX SURETY & INSURANCE COMPANY,
PLAINTIFF-APPELLEE, VS. WOODWORKS, INC.,
DEFENDANT-APPELLANT.**

G.R. No. L-25317. August 06, 1979

Ponente: MELENCIO-HERRERA, J.

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MELENCIO-HERRERA, J.:

This case was certified to this Tribunal by the Court of Appeals in its Resolution of October 4, 1965 on a pure question of law and "because the issues raised are practically the same as those in CA-G.R. No. 32017-R" between the same parties, which case had been forwarded to us on April 1, 1964. The latter case, "Philippine Phoenix Surety & Insurance Inc. vs. Woodworks, Inc.," docketed in this Court as L-22684, was decided on August 31, 1967 and has been reported in 20 SCRA 1270.

Specifically, this action is for recovery of unpaid premium on a fire insurance policy issued by plaintiff, Philippine Phoenix Surety & Insurance Company, in favor of defendant Woodworks, Inc.

The following are the established facts:

On July 21, 1960, upon defendant's application, plaintiff issued in its favor Fire Insurance Policy No. 9749 for P500,000.00 whereby plaintiff insured defendant's building, machinery and equipment for a term of one year from July 21, 1960 to July 21, 1961 against loss by fire. The premium and other charges including the margin fee surcharge of P590.76 and the documentary stamps in the amount of P156.60 affixed on the Policy, amounted to P10,593.36.

It is undisputed that defendant did not pay the premium stipulated in the Policy when it was issued nor at any time thereafter.

On April 19, 1961, or before the expiration of the one-year term, plaintiff notified defendant, through its Indorsement No. F-6963/61, of the cancellation of the Policy allegedly upon request of defendant.[1] The latter has denied having made such a request. In said Indorsement, plaintiff credited defendant with the amount of P3,110.25 for the unexpired period of 94 days, and claimed the balance of P7,483.11 representing "earned premium from July 21, 1960 to 18th April 1961 or, say 271 days." On July 6, 1961, plaintiff demanded in writing for the payment of said amount.[2] Defendant, through counsel, disclaimed any liability in its reply-letter of August 15, 1961, contending, in essence, that it need not pay premium "because the Insurer did not stand liable for any indemnity during the period the premiums were not paid." [3]

On January 30, 1962, plaintiff commenced action in the Court of First Instance of Manila, Branch IV (Civil Case No. 49468), to recover the amount of P7,483.11 as "earned premium." Defendant controverted basically on the theory that its failure "to pay the premium after the issuance of the policy put an end to the insurance contract and rendered the policy unenforceable." [4]

On September 13, 1962, judgment was rendered in plaintiff's favor "ordering defendant to pay plaintiff the sum of

P7,483.11, with interest thereon at the rate of 6% per annum from January 30, 1962, until the principal shall have been fully paid, plus the sum of P700.00 as attorney's fees of the plaintiff, and the costs of the suit." From this adverse Decision, defendant appealed to the Court of Appeals which, as heretofore stated, certified the case to us on a question of law.

The errors assigned read:

"1. The lower court erred in sustaining that Fire Insurance Policy, Exhibit A, was a binding contract even if the premium stated in the policy has not been paid.

"2. That the lower court erred in sustaining that the premium in Insurance Policy, Exhibit B, became an obligation which was demandable even after the period in the Policy has expired.

"3. The lower court erred in not deciding that a premium not paid is not a debt enforceable by action of the insurer."

We find the appeal meritorious.

Insurance is "a contract whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event." [5] The consideration is the "premium". "The premium must be paid at the time and in the way and manner specified in the policy and, if not so paid, the policy will lapse and be forfeited by its own terms." [6]

The provisions on premium in the subject Policy read:

"THIS POLICY OF INSURANCE WITNESSETH, THAT in consideration of - - - MESSRS. WOODWORKS, INC. - - - hereinafter called the Insured, paying to the PHILIPPINE PHOENIX SURETY AND INSURANCE, INC., hereinafter called the Company, the sum of - - - PESOS NINE THOUSAND EIGHT HUNDRED FORTY SIX ONLY - - - the Premium for the first period hereinafter mentioned, x x x"

x x x

"THE COMPANY HEREBY AGREES with the Insured x x x that if the Property above described, or any part thereof, shall be destroyed or damaged by Fire or Lightning after payment of Premium, at any time between 4:00 o'clock in the afternoon of the TWENTY FIRST day of JULY One Thousand Nine Hundred and SIXTY and 4:00 o'clock in the afternoon of the TWENTY FIRST day of JULY One Thousand Nine Hundred and SIXTY ONE, x x x " (Emphasis supplied)

Paragraph "2" of the Policy further contained the following condition:

"2. No payment in respect of any premium shall be deemed to be payment to the Company unless a printed form of receipt for the same signed by an Official or duly-appointed Agent of the Company shall have been given to the Insured."

Paragraph "10" of the Policy also provided:

"10. This insurance may be terminated at any time at the request of the Insured, in which case the Company will retain the customary short period rate for the time the policy has been in force. This insurance may also at any time be terminated at the option of the Company, on notice to that effect being given to the Insured, in which case the Company shall be liable to repay on demand a ratable proportion of the premium for the unexpired term from the date of the cancelment."

Clearly, the policy provides for pre-payment of premium. Accordingly, "when the policy is tendered the insured must pay the premium unless credit is given or there is a waiver, or some agreement obviating the necessity for prepayment." [7] To constitute an extension of credit there must be a clear and express agreement therefor." [8]

From the Policy provisions, we fail to find any clear agree-ment that a credit extension was accorded defendant. And even if it were to be presumed that plaintiff had extended credit from the circumstances of the unconditional delivery of the Policy without prepayment of the premium, yet it is obvious that defendant had not accepted the insurer's offer to extend credit, which is essential for the validity of such agreement.

"An acceptance of an offer to allow credit, if one was made, is as essential to make a valid agreement for credit, to change a conditional delivery of an insurance policy to an unconditional delivery, as it is to make any other contract. Such an acceptance could not be merely a mental act or state of mind, but would require a promise to pay made known in some manner to defendant." [9]

In this respect, the instant case differs from that involving the same parties entitled Philippine Phoenix Surety & Insurance Inc. vs. Woodworks, Inc., [10] where recovery of the balance of the unpaid premium was allowed inasmuch as in that case "there was not only a perfected contract of insurance but a partially performed one as far as the payment of the agreed premium was con-cerned." This is not the situation obtaining here where no partial payment of premiums has been made whatsoever.

Since the premium had not been paid, the policy must be deemed to have lapsed.

"The non-payment of premiums does not merely suspend but puts an end to an insurance contract, since the time of the payment is peculiarly of the essence of the contract." [11]

"x x x the rule is that under policy provisions that upon the failure to make a payment of a premium or assessment at the time provided for, the policy shall become void or forfeited, or the obligation of the insurer shall cease, or words to like effect, because the contract so prescribes and because such a stipulation is a material and essential part of the contract. This is true, for instance, in the case of life, health and accident, fire and hail insurance policies." [12]

In fact, if the peril insured against had occurred, plaintiff, as insurer, would have had a valid defense against recovery under the Policy it had issued. Explicit in the Policy itself is plaintiff's agreement to indemnify defendant for loss by fire only "after payment of premium," supra. Compliance by the insured with the terms of the contract is a condition precedent to the right of re-covery.

"The burden is on an insured to keep a policy in force by the payment of premiums, rather than on the insurer to exert every effort to prevent the insured from allowing a policy to elapse through a failure to make premium payments. The continuance of the insurer's obligation is conditional upon the payment of premiums, so that no recovery can be had upon a lapsed policy, the contractual relation between the parties having ceased." [13]

Moreover, "an insurer cannot treat a contract as valid for the purpose of collecting premiums and invalid for the purpose of indemnity." [14]

The foregoing findings are buttressed by section 77 of the Insurance Code (Presidential Decree No. 612, promulgated on December 18, 1974), which now provides that no contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, notwithstanding any agreement to the contrary.

WHEREFORE, the judgment appealed from is reversed, and plaintiff's complaint hereby dismissed.

SO ORDERED.

Teehankee, (Chairman), Fernandez, Guerrero, and De Castro, JJ., concur.
Makasiar, J., no part.

[1] Exhibits "E" and "F", parag. 6, Complaint.

[2] Exhibit "C".

[3] Exhibit "D".

[4] Parag. 7, Answer.

[5] Sec.2, Act No. 2427 (The Insurance Law).

[6] Glaraga vs. Sun Life Assurance Co., 49 Phil. 737 (1926).

[7] Couch on Insurance, 2nd Vol. I, p. 376, par. (9:4).

[8] Rogers vs. Great-West L.A. Co. CA 8 Minn 158 F 2d 474.

[9] Gillen v. Bayfield, 329 Mo. 681, 46 S.W. 2d 571, cited in Insurance Law and Practice by John Alan Appleman, Vol. 14, p. 270.

[10] 20 SCRA 1270 (1967).

[11] National Leather Co., Inc., vs. U.S. Life Insurance Co., 87 Phil. 410 (1950).

[12] Mutual Fire Co. vs. Maple, 60 Or 359, 119 p. 484; 43 Am. Jur. 2d., pp. 630-631.

[13] Insurance Law & Practice by J John Alan Appleman, Vol. 14, p. 381.

[14] Insurance Law & Practice by John Alan Appleman, Vol. 15, p. 331.

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