

THE CAPITAL INSURANCE & SURETY CO., INC., PETITIONER, VS. PLASTIC ERA CO., INC., AND COURT OF APPEALS, RESPONDENTS.

G.R. No. L-22375. July 18, 1975

Ponente: MARTIN, J.

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MARTIN, J.:

Petition for review of a decision of the Court of Appeals affirming the decision of the Court of First Instance of Manila in Civil Case No. 47934 entitled "Plastic Era Manufacturing Co., Inc. versus The Capital Insurance and Surety Co., Inc." On December 17, 1960, petitioner Capital Insurance & Surety Co., Inc. (hereinafter referred to as Capital Insurance) delivered to the respondent Plastic Era Manufacturing Co., Inc., (hereinafter referred to as Plastic Era) its open Fire Policy No. 22760[1] wherein the former undertook to insure the latter's building, equipments, raw materials, products and accessories located at Sheridan Street, Mandaluyong, Rizal. The policy expressly provides that if the property insured would be destroyed or damaged by fire after the payment of the premiums, at any time between the 15[th] day of December 1960 and one o'clock in the afternoon of the 15[th]-day of December 1961, the insurance company shall make good all such loss or damage in an amount not exceeding P100,000.00. When the policy was delivered, Plastic Era failed to pay the corresponding insurance premium. However, through its duly authorized representative, it executed the following acknowledgment receipt:

"This acknowledged receipt of Fire Policy) NO. 22760 Premium

(P2,220.88)

x x x x x (I promise to pay)

THIRTY DAYS

(has been paid)

AFTER

on effective date

(Date)"

On January 8, 1961, in partial payment of the insurance premium, Plastic Era delivered to Capital Insurance, a check[2] for the amount of P1,000.00 postdated January 16, 1961 payable to the order of the latter and drawn against the Bank of America. However, Capital Insurance tried to deposit the check only on February 20, 1961 and the same was dishonored by the bank for lack of funds. The records show that as of January 19, 1961 Plastic Era had a balance of P1,193.41 with the Bank of America.

On January 18, 1961 or two days after the insurance premium became due, at about 4:00 to 5:00 o'clock in the morning, the property insured by Plastic Era was destroyed by fire. In due time, the latter notified Capital Insurance of the loss of the insured property by fire[3] and accordingly filed its claim for indemnity thru the Manila Adjustment Company.[4] The loss and or damage suffered by Plastic Era was estimated by the Manila Adjustment Company to be P283,875. However, according to the records the same property has been insured by Plastic Era with the Philamgen Insurance Company for P200,000.00.

In less than a month Plastic Era demanded from Capital Insurance the payment of the sum of P100,000.00 as indemnity for the loss of the insured property under Policy No. 22760 but the latter refused for the reason that, among others, Plastic Era failed to pay the insurance premium.

On August 25, 1961, Plastic Era filed its complaint against Capital Insurance for the recovery of the sum of P100,000.00 plus P25,000.00 for attorney's fees and P20,000.00 for additional expenses. Capital Insurance filed a counterclaim of P25,000.00 as and for attorney's fees.

On November 15, 1961, the trial court rendered judgment, the dispositive portion of which reads as follows:

"WHEREFORE, judgment is rendered in favor of the plaintiff and against the defendant for the sum of P88,325.63 with interest at the legal rate from the filing of the complaint and to pay the costs."

From said decision, Capital Insurance appealed to the Court of Appeals.

On December 5, 1963, the Court of Appeals rendered its decision affirming that of the trial court. Hence, this petition for review by certiorari to this Court.

Assailing the decision of the Court of Appeals petitioner assigns the following errors; to wit:

1. THE COURT OF APPEALS ERRED IN SENTENCING PETITIONER TO PAY PLASTIC ERA THE SUM OF P88,325.63 PLUS INTEREST, AND COST OF SUIT, ALTHOUGH PLASTIC ERA NEVER PAID PETITIONER THE INSURANCE PREMIUM OF P2,220.88.
2. THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER SHOULD HAVE INSTITUTED AN ACTION FOR RESCISSION OF THE INSURANCE CONTRACT ENTERED INTO BETWEEN IT AND PLASTIC ERA BEFORE PETITIONER COULD BE RELIEVED OF RESPONSIBILITY UNDER ITS FIRE INSURANCE POLICY.
3. WE HAVE SHOWN ABOVE THAT PLASTIC ERA'S ACTION WAS UNWARRANTED AND THAT THE PETITIONER SHOULD HAVE BEEN ABSOLVED FROM THE COMPLAINT, AND CONSEQUENTLY, THE LOWER COURT SHOULD HAVE AWARDED PETITIONER A REASONABLE SUM AND AS ATTORNEY'S FEES P25,000.00.

The pivotal issue in this petition is whether or not a contract of insurance has been duly perfected between the petitioner, Capital Insurance, and respondent Plastic Era. Necessarily, the issue calls for a correct interpretation of the insurance policy which states:

"This policy of Insurance Witnesseth That in consideration of PLASTIC ERA MANUFACTURING COMPANY, INC. hereinafter called the Insured, paying to the Capital Insurance & Surety Co., Inc., hereinafter called the

Company, the sum of PESOS TWO THOUSAND ONE HUNDRED EIGHTY EIGHT the premium for the first period hereinafter mentioned, for insuring against Loss' or Damage by only Fire or Lightning, as hereinafter appears, the Property hereinafter described and contained, or described herein and not elsewhere, in the several sums following namely: PESOS ONE HUNDRED THOUSAND ONLY, PHILIPPINE CURRENCY: x x x x THE COMPANY HEREBY AGREES with the Insured but subject to the terms and conditions endorsed or otherwise expressed hereon, which are to be taken as part of this Policy), that if the Property described, or any part thereof, shall be destroyed or damaged by Fire or Lightning after payment of the Premiums, at any time between the 15th day of December One Thousand Nine Hundred and Sixty and 1 o'clock in the afternoon of the 15th day of December One Thousand Nine Hundred and Sixty-One of the last day of any subsequent period in respect of which the insured, or a successor in interest to whom the insurance is by an endorsement hereon declared to be or is otherwise continued, shall pay to the Company and the Company shall accept the sum required for the renewal of this Policy, the Company will pay or make good all such loss or Damage, to an amount not exceeding during any one period of the insurance in respect of the several matters specified, the sum; set opposite thereto respectively, and not exceeding the whole sum of PESOS, ONE HUNDRED THOUSAND ONLY, PHIL., CUR. x x x"

In clear and unequivocal terms the insurance policy provides that it is only upon payment of the premiums by Plastic Era that Capital Insurance agrees to insure the properties of the former against loss or damage in an amount not exceeding P100,000.00.

The crux of the problem then is whether at the time the insurance policy was delivered to Plastic Era on December 17, 1960, the latter was able to pay the stipulated premium. It appears on record that on the day the insurance policy was delivered, Plastic Era did not pay the Capital Insurance, but instead executed an acknowledgment receipt of Policy No. 22760. In said receipt Plastic Era promised to pay the premium within thirty (30) days from the effectivity date of the policy on December 17, 1960 and Capital Insurance accepted it. What then is the effect of accepting such acknowledgment receipt from the Plastic Era? Did the Capital Insurance mean to agree to make good its undertaking under the policy if the premium could be paid on or before January 1, 1961? And what would be the effect of the delivery to Capital Insurance on January 8, 1961, of a postdated check (January 16, 1961) in the amount of P1,000.00, payable to the order of the latter? Could not this have been considered a valid payment of the insurance premium? Pursuant to Article 1249 of the New Civil Code.

"xxx xxx xxx

"The delivery of promissory notes payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired."

xxx xxx xxx

"In the meantime, the action derived from the original obligation shall be held in abeyance."

Under this provision the mere delivery of a bill of exchange in payment of a debt does not immediately effect payment. It simply suspends the action arising from the original obligation in satisfaction of which it was delivered, until payment is accomplished either actually or presumptively.[5] Tender of draft or check in order to effect payment that would extinguish the debtor's liability should be actually cashed.[6] If the delivery of the check of Plastic Era to Capital Insurance were to be viewed in the light of the foregoing, no payment of the premium had been effected, for it is only when the check is cashed that it is said to effect payment.

Significantly, in the case before Us the Capital Insurance accepted the promise of Plastic Era to pay the insurance premium within thirty (30) days from the effective date of the policy. By so doing, it has implicitly agreed to

modify the tenor of the insurance policy and in effect, waived the provision therein that it would only pay for the loss or damage in case the same occurs after the payment of the premium. Considering that the insurance policy is silent as to the mode of payment, Capital Insurance is deemed to have accepted the promissory note in payment of the premium. This rendered the policy immediately operative on the date it was delivered. The view taken in most cases in the United States:

"x x x is that although one of the conditions of an insurance policy is that 'it shall not be valid or binding until the first premium is , paid', if it is silent as to the mode of payment, promissory notes received by the company must be deemed to have been accepted in payment of the premium. In other words, a requirement for the payment of the first or initial premium in advance or actual cash may be waived by acceptance of a promissory note. x x x"[7]

Precisely, this was what actually happened when the Capital Insurance accepted the acknowledgment receipt of the Plastic Era promising to pay the insurance premium within thirty (30) days from December 17, 1960. Hence, when the damage or loss of the insured property occurred, the insurance policy was in full force and effect. The fact that the check issued by Plastic Era in partial payment of the promissory note was later on dishonored did not in any way operate as a forfeiture of its rights under the policy, there being no express stipulation therein to that effect.

"In the absence of express agreement or stipulation to that effect in the policy, the non-payment at maturity of a note given for and accepted as premium on a policy does not operate to forfeit the rights of the insured even though the note is given for an initial premium, nor does the fact that the collection of the note had been enjoined by the insured in any way affect the policy."[8]

"x x x If the check is accepted as payment of the premium even though it turns out to be worthless, there is payment which will prevent forfeiture."[9]

By accepting its promise to pay the insurance premium within thirty (30) days from the effectivity date of the policy - December 17, 1960 Capital Insurance had in effect extended credit to Plastic Era. The payment of the premium on the insurance policy therefore became an independent obligation the non-fulfillment of which would entitle Capital Insurance to recover. It could just deduct the premium due and unpaid upon the satisfaction of the loss under the policy.[10] It did not have the right to cancel the policy for non-payment of the premium except by putting Plastic Era in default and giving it personal notice to that effect. This Capital Insurance failed to do.

"x x x Where credit is given by an insurance company for the payment of the premium it has no right to cancel the policy for non-payment except by putting the insured in default and giving him personal notice. x x x "[11]

On the contrary Capital Insurance had accepted a check for P1,000.00 from Plastic Era in partial payment of the premium on the insurance policy. Although the check was due for payment on January 16, 1961 and Plastic Era had sufficient funds to cover it as of January 19, 1961, Capital Insurance decided to hold the same for thirty-five (35) days before presenting it for payment. Having held the check for such an unreasonable period of time, Capital Insurance was estopped from claiming a forfeiture of its policy for non-payment even if the check had been dishonored later.

"Where the check is held for ant unreasonable time before presenting it for payment, the insurer may be held estopped from claiming a forfeiture if the check is dishonored."[12]

Finally, it is submitted by petitioner that:

"We are here concerned with a case of reciprocal obligations and respondent having failed to comply with its obligation to pay the insurance premium due on the policy within thirty days from December 17, 1960, petitioner was relieved of its obligation to pay anything under the policy, without the necessity of first

instituting an action for rescission of the contract of insurance entered into by the parties."

But precisely in this case, Plastic Era has complied with its obligation to pay the insurance premium and therefore Capital Insurance is obliged to make good its undertaking to Plastic Era.

WHEREFORE, finding no reversible error in the decision appealed from, We hereby affirm the same in toto. Costs against the petitioner.

SO ORDERED.

Castro, Makasiar, Esguerra, and Muñoz-Palma, JJ., concur.

Teehankee, J., on leave.

[1] Exhibit "A"

[2] Exhibit 4.

[3] Exhibit 1.

[4] Exhibit 2.

[5] U.S. vs. Badoya, 14 Phil. 397, 63.

[6] Hidalgo et al. vs. Tuazon, Inc, 101 Phil. 363.

[7] Sec. 409, 29 Am. Jur., p. 346.

[8] Hodgson v. Marine Ins. CO. (U.S.) 5 Cranch 100.3 L Ed. 48; Massachusetts Ben. L. Asso. v. Robinson, 104 Ga 256.30 SE 918; Union Trust Co. v. Chicago Nat. L. Ins. Co., 267 Ill. App. 470; Inter-Southern L. Ins. Co. v. Duff, 184 Ky 227, 211 SW 738; Trade Ins. Co. v. Barraciff, 45 NJL 543; Arkansas Ins. Co. v. Cox, 21 Okla, 873, 98 P 552; 43 Am Jur. 2d p. 633.

[9] 29 Am. Jur. p. 342.

[10] 29 A Am. Jur. New "Insurance", Sec. 587, op. 882 n2; 29-A Am Jur. New "Insurance", Sec. '1541, p. 645 n20.

[11] Fernum v. Phoenix Ins. Co., 83 Cal. 246, 23 p. 869, 43 Am Jur. p. 579.

[12] Dulberg v. Equitable Life Assur. Soc. 277 NY 17, 12 NI 2d 23843 Am Jur p. 1059.

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