

**GREAT PACIFIC LIFE ASSURANCE COMPANY, PETITIONER, VS.
HONORABLE COURT OF APPEALS, RESPONDENTS.***G.R. No. L-31845. April 30, 1979*

Ponente: DE CASTRO, J.

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The two above-entitled cases were ordered consolidated by the Resolution of this Court dated April 29, 1970, (Rollo, No. L-31878, p. 58), because the petitioners in both cases seek similar relief, through these petitions for certiorari by way of appeal, from the amended decision of respondent Court of Appeals which affirmed in toto the decision of the Court of First Instance of Cebu, ordering "the defendants (herein petitioners Great Pacific Life Assurance Company and Mondragon) jointly and severally to pay plaintiff (herein private respondent Ngo Hing) the amount of P50,000.00 with interest at 6% from the date of the filing of the complaint, and the sum of P10,000.00 as attorney's fees plus costs of suits."

In its original decision, the respondent Court of Appeals set aside the appealed decision of the Court of First Instance of Cebu, and absolved the petitioners from liability on the insurance policy, but ordered the reimbursement to appellee (herein private respondent) the amount of P1,077.75, without interest.

It appears that on March 14, 1957, private respondent Ngo Hing filed an application with the Great Pacific Life Assurance Company (hereinafter referred to as Pacific Life) for a twenty-year endowment policy in the amount of P50,000.00 on the life of his one-year old daughter Helen Go. Said respondent supplied the essential data which petitioner Lapulapu D. Mondragon, Branch Manager of the Pacific Life in Cebu City wrote on the corresponding form in his own handwriting (Exhibit I-M). Mondragon finally type-wrote the data on the application form which was signed by private respondent Ngo Hing. The latter paid the annual premium, the sum of P1,077.75 going over to the Company, but he retained the amount of P1,317.00 as his commission for being a duly authorized agent of Pacific Life. Upon the payment of the insurance premium, the binding deposit receipt (Exhibit E) was issued to private respondent Ngo Hing. Likewise, petitioner Mondragon handwrote at the bottom of the back page of the application form his strong recommendation for the approval of the insurance application. Then on April 30, 1957, Mondragon received a letter from Pacific Life disapproving the insurance application (Exhibit 3-M). The letter stated that the said life insurance application for 20-year endowment plan is not available for minors below seven years old, but Pacific Life can consider the same under the Juvenile Triple Action Plan, and advised that if the offer is acceptable, the Juvenile Non-Medical Declaration be sent to the Company.

The non-acceptance of the insurance plan by Pacific Life was allegedly not communicated by petitioner Mondragon to private respondent Ngo Hing. Instead, on May 6, 1957, Mondragon wrote back Pacific Life again strongly recommending the approval of the 20-year endowment life insurance on the ground that Pacific Life is the only insurance company not selling the 20-year endowment insurance plan to children, pointing out that since 1954 the customers, especially the Chinese, were asking for such coverage (Exhibit 4-M).

It was when things were in such state that on May 28, 1957 Helen Go died of influenza with complication of

broncho-pneumonia. Thereupon, private respondent sought the payment of the proceeds of the insurance, but having failed in his effort, he filed the action for the recovery of the same before the Court of First Instance of Cebu, which rendered the adverse decision as earlier referred to against both petitioners.

The decisive issues in these cases are: (1) whether the binding deposit receipt (Exhibit E) constituted a temporary contract of the life insurance in question; and (2) whether private respondent Ngo Hing concealed the state of health and physical condition of Helen Go, which rendered void the aforesaid Exhibit E.

1. At the back of Exhibit E are condition precedents required before a deposit is considered a **BINDING RECEIPT**. These conditions state that:

"A. If the Company or its agent, shall received the premium deposit xxx and the insurance application, ON or PRIOR to the date of medical examination xxx said insurance shall be in force and in effect from the date of such medical examination, for such period as is covered by the deposit xxx, PROVIDED the company shall be satisfied that on said date the applicant was insurable on standard rates under its rule for the amount of insurance and the kind of policy requested in the application.

D. If the Company does not accept the application on standard rate for the amount of insurance and/or the kind of policy requested in the application but issue, or offers to issue a policy for a different plan and/or amount xxx, the insurance shall not be in force and in effect until the applicant shall have accepted the policy as issued or offered by the Company and shall have paid the full premium thereof. If the applicant does not accept the policy, the deposit shall be refunded.

E. If the applicant shall not have been insurable under Condition A above, and the Company declines to approve the application, the insurance applied for shall not have been in force at any time and the sum paid be returned to the applicant upon the surrender of this receipt." (Emphases Ours).

The aforequoted provisions printed on Exhibit E show that the binding deposit receipt is intended to be merely a provisional or temporary insurance contract and only upon compliance of the following conditions: (1) that the company shall be satisfied that the applicant was insurable on standard rates; (2) that if the company does not accept the application and offers to issue a policy for a different plan, the insurance contract shall not be binding until the applicant accepts the policy offered; otherwise, the deposit shall be refunded; and (3) that if the applicant is not insurable according to the standard rates, and the company disapproves the application, the insurance applied for shall not be in force at any time, and the premium paid shall be returned to the applicant.

Clearly implied from the aforesaid conditions is that the binding deposit receipt in question is merely an acknowledgment, on behalf of the company, that the latter's branch office had received from the applicant the insurance premium and had accepted the application subject for processing by the insurance company; and that the latter will either approve or reject the same on the basis of whether or not the applicant is "insurable on standard rates." Since petitioner Pacific Life disapproved the insurance application of respondent Ngo Hing, the binding deposit receipt in question had never become in force at any time.

Upon this premise, the binding deposit receipt (Exhibit E) is, manifestly, merely conditional and does not insure outright. As held by this Court, where an agreement is made between the applicant and the agent, no liability shall attach until the principal approves the risk and a receipt is given by the agent. The acceptance is merely conditional, and is subordinated to the act of the company in approving or rejecting the application. Thus, in life insurance, a "binding slip" or "binding receipt" does not insure by itself (*De Lim vs. Sun Life Assurance Company of Canada*, 41 Phil. 264).

It bears repeating that through the intra-company communication of April 30, 1957 (Exhibit 3-M), Pacific Life disapproved the insurance application in question on the ground that it is not offering the twenty-year endowment

insurance policy to children less than seven years of age. What it offered instead is another plan known as the Juvenile Triple Action, which private respondent failed to accept. In the absence of a meeting of the minds between petitioner Pacific Life and private respondent Ngo Hing over the 20-year endowment life insurance in the amount of P50,000.00 in favor of the latter's one-year old daughter, and with the non-compliance of the abovequoted conditions stated in the disputed binding deposit receipt, there could have been no insurance contract duly perfected between them. Accordingly, the deposit paid by private respondent shall have to be refunded by Pacific Life.

As held in *De Lim vs. Sun Life Assurance Company of Canada*, supra, "a contract of insurance, like other contracts, must be assented to by both parties either in person or by their agents. x x x. The contract, to be binding from the date of the application, must have been a completed contract, one that leaves nothing to be done, nothing to be completed, nothing to be passed upon, or determined, before it shall take effect. There can be no contract of insurance unless the minds of the parties have met in agreement."

We are not impressed with private respondent's contention that failure of petitioner Mondragon to communicate to him the rejection of the insurance application would not have any adverse effect on the allegedly perfected temporary contract (Respondent's Brief, pp. 13-14). In the first place, there was no contract perfected between the parties who had no meeting of their minds. Private respondent, being an authorized insurance agent of Pacific Life at Cebu branch office, is indubitably aware that said company does not offer the life insurance applied for. When he filed the insurance application in dispute, private respondent was, therefore, only taking the chance that Pacific Life will approve the recommendation of Mondragon for the acceptance and approval of the application in question along with his proposal that the insurance company starts to offer the 20-year endowment insurance plan for children less than seven years. Nonetheless, the record discloses that Pacific Life had rejected the proposal and recommendation. Secondly, having an insurable interest on the life of his one-year old daughter, aside from being an insurance agent and an office associate of petitioner Mondragon, private respondent Ngo Hing must have known and followed the progress on the processing of such application and could not pretend ignorance of the Company's rejection of the 20-year endowment life insurance application.

At this juncture, We find it fit to quote with approval, the very apt observation of then Appellate Associate Justice Ruperto G. Martin who later came up to this Court, from his dissenting opinion to the amended decision of the respondent court which completely reversed the original decision, the following:

"Of course, there is the insinuation that neither the memorandum of rejection (Exhibit 3-M) nor the reply thereto of appellant Mondragon reiterating the desire of applicant's father to have the application considered as one for a 20-year endowment plan was ever duly communicated to Ngo Hing, father of the minor applicant. I am not quite convinced that this was so. Ngo Hing, as father of the applicant herself, was precisely the "underwriter who wrote this case" (Exhibit H-1). The unchallenged statement of appellant Mondragon in his letter of May 6, 1957 (Exhibit 4-M), specifically admits that said Ngo Hing was "our associate" and that it was the latter who "insisted that the plan be placed on the 20-year endowment plan." Under these circumstances, it is inconceivable that the progress in the processing of the application was not brought home to his knowledge. He must have been duly apprised of the rejection of the application for a 20-year endowment plan otherwise Mondragon would not have asserted that it was Ngo Hing himself who insisted on the application as originally filed, thereby implicitly declining the offer to consider the application under the Juvenile Triple Action Plan. Besides, the associate of Mondragon that he was, Ngo Hing should only be presumed to know what kind of policies are available in the company for minors below 7 years old. What he and Mondragon were apparently trying to do in the premises was merely to prod the company into going into the business of issuing endowment policies for minors just as other insurance companies allegedly do. Until such a definite policy is, however, adopted by the company, it can hardly be said that it could have been bound at all under the binding slip for a plan of insurance that it could not have, by then, issued at all." (Amended Decision, Rollo, pp.

52-53).

2. Relative to the second issue of alleged concealment, this Court is of the firm belief that private respondent had deliberately concealed the state of health and physical condition of his daughter Helen Go. When private respondent supplied the required essential data for the insurance application form, he was fully aware that his one-year old daughter is typically a mongoloid child. Such a congenital physical defect could never be ensconced nor disguised. Nonetheless, private respondent, in apparent bad faith, withheld the fact material to the risk to be assumed by the insurance company. As an insurance agent of Pacific Life, he ought to know, as he surely must have known, his duty and responsibility to supply such a material fact. Had he divulged said significant fact in the insurance application form, Pacific Life would have verified the same and would have had no choice but to disapprove the application outright.

The contract of insurance is one of perfect good faith (*uberrima fides* meaning good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception, however slight [Black's Law Dictionary, 2nd Edition], not for the insured alone but equally so for the insurer (*Fieldman's Insurance Co., Inc. vs. Vda de Songco*, 25 SCRA 70). Concealment is a neglect to communicate that which a party knows and ought to communicate (Section 25, Act No. 2427). Whether intentional or unintentional, the concealment entitles the insurer to rescind the contract of insurance (Section 26, *id.*; *Yu Pang Cheng vs. Court of Appeals, et al.*, 105 Phil. 930; *Saturnino vs. Philippine American Life Insurance Company*, 7 SCRA 316). Private respondent appears guilty thereof.

We are thus constrained to hold that no insurance contract was perfected between the parties with the non-compliance of the conditions provided in the binding receipt, and concealment, as legally defined, having been committed by herein private respondent.

WHEREFORE, the decision appealed from is hereby set aside, and in lieu thereof, one is hereby entered absolving petitioners Lapulapu D. Mondragon and Great Pacific Life Assurance Company from their civil liabilities as found by respondent Court and ordering the aforesaid insurance company to reimburse the amount of P1,077.75, without interest, to private respondent, Ngo Hing. Costs against private respondent.

SO ORDERED.

Teehankee, (Chairman), Makasiar, Guerrero, and Melencio-Herrera, JJ., concur.
Fernandez, J., took no part.

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