

JAMES MCGUIRE, PLAINTIFF AND APPELLEE, VS. THE MANUFACTURERS LIFE INSURANCE CO., DEFENDANT AND APPELLANT.

G.R. No. L-3581. September 21, 1950

Ponente: OZAETA, J.

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OZAETA, J.:

This case was submitted to and decided by the Court of First Instance of Samar upon a stipulation of facts, from which it appears that:

On August 13, 1932, the defendant issued an insurance policy on the life of Jaime McGuire for the sum of \$5,000, and an additional sum of \$5,000 as double indemnity accident benefit, payable to the plaintiff as beneficiary. The insured paid the premiums on said policy up to and including that due on July 19, 1940. On June 22, 1940, the insured secured from the defendant a loan of \$760 on said insurance policy. The insured failed to pay the loan with the interest thereon on January 1, 1941, when it became due, or on any other date thereafter. He likewise failed to pay the premiums which fell due on July 19, 1941, as well as those payable thereafter. Paragraphs 6, 7, and 3 of the stipulation of facts read as follows:

"(6) That upon the default of the insured to pay the premiums due on July 19, 1941, and subsequent ones, the defendant insurance company applied the stipulation contained in clause 8 (Automatic Premium Loan) of the Provisions of the policy Exhibit A and said policy was carried on under said non forfeiture clause of the policy up to and including March 1, 1942, the date said policy lapsed, as shown in the letter of the defendant company of January 17, 1946, to plaintiff, a copy of which is hereto attached, marked Exhibit B and is made a part hereof;

"(7) That the insured Jaime McGuire died on August 4, 1943, in a motorcycle accident at Borongan, Samar, Philippines;

"(8) That during the interim period between March 1, 1942, the date the policy lapsed, to August 4, 1943, the date of the death of the insured, the insured attempted to reinstate the policy under the stipulation contained in clause 3 of the 'Provisions' of the same but his attempts failed because of his inability to communicate with defendant's branch office at Manila due to the then existence of war and the occupation of the Philippines by enemy forces from January 1, 1942, to February, 1945."

Upon those facts the trial court rendered judgment in favor of the plaintiff, adjudging the defendant to pay to him the sum of P20,000, minus the premiums due and unpaid up to the date of the death of the insured, with legal interest thereon from the date of the filing of the complaint, and the costs.

The trial court considered erroneous paragraph 6 of the stipulation of facts above quoted to the effect that the policy in question lapsed on March 1, 1942, for failure to pay the premiums due thereafter on account of the war, the trial court being of the opinion that the war legally suspended the obligation of the insured to pay the premiums up to the time of the death of the insured, which occurred during said war, citing the decision of the

Court of Appeals to that effect in *Gubagaras vs. West Coast Life Insurance Company*, CA-G. R. No. 1628, January 6, 1949.

According to the complaint, plaintiff's theory is that, although the policy lapsed on March 1, 1942, the insured had the privilege of reinstating it so as to keep it in force up to the time of his death upon a written application within three years from the date of lapse and upon production of evidence of insurability satisfactory to the company and the payment of all overdue premiums and any other indebtedness to the company, but that the insured was unable to exercise that privilege because of the war. Adopting another theory, the trial court held that it was unnecessary for the plaintiff to invoke the reinstatement clause of the policy because it had not lapsed inasmuch as the failure to pay the premiums was due to the war.

Plaintiff's theory is untenable. Even if the insured had applied for reinstatement within three years after the policy had lapsed, his right thereto was not absolute under the terms of the policy but discretionary on the part of the insurance company, which had the right to deny the reinstatement if it was not satisfied as to the insurability of the insured and if the latter did not pay all overdue premiums and all other indebtedness to the company. After the death of the insured the insurance company could not be compelled to entertain an application for reinstatement of the policy because the conditions to reinstatement could no longer be determined and satisfied.

Aside from the error of the trial court in *motu proprio* setting aside the stipulation of fact that the policy had lapsed on March 1, 1942, its theory that the payment of premiums was legally suspended during the war is contrary to the decision of this court of August 31, 1950, in *Paz Lopez de Constantino vs. Asia Life Insurance Company*, and *Agustina Peralta vs. Asia Life Insurance Company*, G.R. Nos. L-1669 and 1670, *supra*, p. 248. In those cases we rejected the New York rule which holds that war between states in which the parties reside 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; and adopted the United States rule which declares that the contract is not merely suspended, but is abrogated by reason of nonpayment of premiums, since the time of the payments is peculiarly of the essence of the contract. Speaking thru Mr. Justice Bengzon, this court, after a review of various pertinent cases, further said:

"After perusing the Insurance Act, we are firmly persuaded that the nonpayment 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, nonpayment 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 nonpayment of premiums was preserved. Thus the fundamental character of the undertaking to pay premiums and the high importance of the defense of nonpayment thereof, was specifically recognized."

We reiterate the doctrine laid down in the *Asia Life Insurance Company* cases above cited.

It appears that the insured in the present case has used up all the reserve value of the policy in question thru loans in cash and the application of the non forfeiture clause by keeping the policy subsisting until March 1, 1942.

Reversing the judgment appealed from, we absolve the defendant-appellant from the complaint, with costs.

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

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