

PEDRO ARCE, PLAINTIFF-APPELLEE, VS. THE CAPITAL INSURANCE & SURETY CO., INC., DEFENDANT-APPELLANT.

G.R. No. L-28501. September 30, 1982

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

In Civil Case No. 66466 of the Court of First Instance of Manila, The Capital Insurance and Surety Co., Inc., (COMPANY) was ordered to pay Pedro Arce (INSURED) the proceeds of a fire insurance policy. Not satisfied with the decision, the COMPANY appealed to this Court on questions of law.

The INSURED was the owner of a residential house in Tondo, Manila, which had been insured with the COMPANY since 1961 under Fire Policy No. 24204. On November 27, 1965, the COMPANY sent to the INSURED Renewal Certificate No. 47302 to cover the period December 5, 1965 to December 5, 1966. The COMPANY also requested payment of the corresponding premium in the amount of P38.10.

Anticipating that the premium could not be paid on time, the INSURED, thru his wife, promised to pay it on January 4, 1966. The COMPANY accepted the promise but the premium was not paid on January 4, 1966. On January 8, 1966, the house of the INSURED was totally destroyed by fire.

On January 10, 1966, INSURED's wife presented a claim for indemnity to the COMPANY. She was told that no indemnity was due because the premium on the policy was not paid. Nonetheless the COMPANY tendered a check for P300.00 as financial aid which was received by the INSURED's daughter, Evelina R. Arce. The voucher for the check which Evelina signed stated that it was "in full settlement (ex gratia) of the fire loss under Claim No. F-554 Policy No. F-24202." Thereafter the INSURED and his wife went to the office of the COMPANY to have his signature on the check identified preparatory to encashment. At that time the COMPANY reiterated that the check was given "not as an obligation, but as a concession" because the renewal premium had not been paid. The INSURED cashed the check but then sued the COMPANY on the policy.

The court a quo held that since the COMPANY could have demanded payment of the premium, mutuality of obligation requires that it should also be liable on its policy. The court a quo also held that the INSURED was not bound by the signature of Evelina on the check voucher because he did not authorize her to sign the waiver.

The appeal is impressed with merit.

The trial court cited *Capital Insurance and Surety Co., Inc. vs. Delgado*, L-18567, Sept. 30, 1963, 9 SCRA 177, to support its first proposition. In that case, this Court said:

"On the other hand, the preponderance of the evidence shows that appellee issued fire insurance policy No. C-1137 in favor of appellants covering a certain property belonging to the latter located in Cebu City; that appellants failed to pay a balance of P583.95 on the premium charges due, notwithstanding demands made upon them. As with the issuance of the policy to appellants the same became effective and binding upon the contracting parties, the latter can not avoid the obligation of paying the premiums agreed upon. In fact,

appellant Mario Delgado, in a letter marked in the record as Exhibit G, expressly admitted his unpaid account for premiums and asked for an extension of time to pay the same. It is clear from the foregoing that appellants are under obligation to pay the amount sued upon." (At p. 180.)

Upon the other hand, Sec. 72 of the Insurance Act, as amended by R.A. No. 3540 reads:

"SEC. 72. An insurer is entitled to payment of premium as soon as the thing insured is exposed to the perils insured against, unless there is clear agreement to grant credit extension for the premium due. No policy issued by an insurance company is valid and binding unless and until the premium thereof has been paid." (Underscoring supplied.) (p. 11, Appellant's Brief.)

Moreover, the parties in this case had stipulated:

"IT IS HEREBY DECLARED AND AGREED that notwithstanding anything to the contrary contained in the within policy, this insurance will be deemed valid and binding upon the Company only when the premium and documentary stamps therefor have actually been paid in full and duly acknowledged in an official receipt signed by an authorized official/representative of the Company." (pp. 45-46, Record on Appeal.)

It is obvious from both the Insurance Act, as amended, and the stipulation of the parties that time is of the essence in respect of the payment of the insurance premium so that if it is not paid the contract does not take effect unless there is still another stipulation to the contrary. In the instant case, the INSURED was given a grace period to pay the premium but the period having expired with no payment made, he cannot insist that the COMPANY is nonetheless obligated to him.

It is to be noted that Delgado was decided in the light of the Insurance Act before Sec. 72 was amended by the addition of the underscored portion, *supra*. Prior to the amendment, an insurance contract was effective even if the premium had not been paid so that an insurer was obligated to pay indemnity in case of loss and correlatively he had also the right to sue for payment of the premium. But the amendment to Sec. 72 has radically changed the legal regime in that unless the premium is paid there is no insurance.

With the foregoing, it is not necessary to dwell at length on the trial court's second proposition that the INSURED had not authorized his daughter Evelina to make a waiver because the INSURED had nothing to waive; his policy ceased to have effect when he failed to pay the premium.

We commiserate with the INSURED. We are well aware that many insurance companies have fallen into the condemnable practice of collecting premiums promptly but resort to all kinds of excuses to deny or delay payment of just claims. Unhappily the instant case is one where the insurer has the law on its side.

WHEREFORE, the decision of the court a quo is reversed; the appellee's complaint is dismissed. No special pronouncement as to costs.

SO ORDERED.

Barredo, (Chairman), Aquino, Concepcion, Jr., Guerrero, De Castro, and Escolin, JJ., concur.

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