

VICTORIA HIDALGO VDA. DE CARRERO, ET AL., PLAINTIFFS AND APPELLANTS, VS. THE MANUFACTURERS LIFE INSURANCE CO., DEFENDANT AND APPELLEE.

G.R. No. L-3032. October 10, 1950

Ponente: TUASON, J.

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TUASON, J.:

The question passed by this appeal is identical with that decided recently (August 30, 1950) in Paz Lopez Constanton vs. Asia Life Insurance Co., G.R. No. L-1670, supra, p. 248. In fact, counsel for appellants herein tell us that the Asia Life Insurance cases have been filed as a test case for the case at be and others of similar nature, adding that if the Statham doctrine is upheld in the test case "judgment here must perforce be affirmed."

The parties submitted a stipulation of facts in the lower court, the pertinent paragraphs of which are as follows:

"That the plaintiffs are of legal age and residents of Manila. Philippines; and that defendant is a life insurance corporation, organized under and by virtue of the laws of the Dominion of Canada and, duly licensed to engage in insurance business in the Philippines at all times material to the case, with principal place of business at Toronto, Canada, and branch office at Manila, Philippines;

"That on February 7, 1934, defendant's Manila Branch Office issued a policy on the life of Juan Carrero y Borrás, Philippine citizen, under and pursuant to the terms and conditions set forth in policy No. 632496, attached hereto as Exhibit 'A', signed and sealed at Toronto, Canada;

"That semi-annual premiums on said policy up to and including that due on September 10, 1941, were duly paid by the insured; and receipts similar to Exhibit 'B' were issued by defendant to the insured; and that the policy, Exhibit 'A' was in full force and effect when Japanese forces occupied the City of Manila, on January 2, 1942;

"That on June 23, 1941, the insured obtained a cash loan of \$6,000 on his policy as evidenced by the voucher and agreement hereto attached and made a part hereof as Exhibit 'C' and 'D', respectively; and that since said cash loan exceeded the cash value of \$5,500 available at the time, the sum of \$500 thereof was transferred against the other policy on the life of the same insured bearing No. 632495 as evidenced by the voucher and agreement hereto attached and marked Exhibit 'A' is actually \$5,500.00;

"That the semi-annual premiums on the policy, Exhibit 'A', which became due during the years 1942, 1943 and 1944 were not paid;

"That Juan Carrero y Borrás died in the Court of Manila on February 17, 1945; that he was a resident of , and had actually lived in the Philippines since prior to February 7, 1934, up to the time of his death; and that plaintiffs were also residents, and were living in, the Philippines, during the period of enemy invasion;

"That on or about January 2, 1942 because of the entry of Japanese forces into the City of Manila and subsequent occupation of the same, defendant was forced to close its branch office in the City of Manila; that the defendant was required to submit and did submit its records to the Finance Section of the Japanese Military

Administration, by virtue of an order from the said Japanese Military Administration; that defendant's office in the City of Manila remained closed until October 1, 1945; and that during the period from January 2, 1942 to February 17, 1945; the defendant's agent in the Philippines to whom payments of premiums could have been made by Juan Carrero y Borrás, against official receipts of defendant with facsimile of the General-Manager and signature printed thereon and counter-signed by said agent, was in the custody of the Japanese Imperial Forces; while the cashier, who was also authorized to receive payment was not holding office at the time;

"That under the laws and regulation promulgated by the Japanese Military Administration during the period of enemy occupation, it was not legal for Juan Carrero y Borrás to pay to defendant in the Philippines, and it would have been illegal for defendant itself to receive in the Philippines, payments of premiums due on the policy, Exhibit 'A', defendant contending, however, that payment could have been legally made to the Fiance Section of the Japanese Military Administration, while plaintiffs contend that the Finance Section of the Japanese Military Administration never set up an office nor designated any person or company to collect premiums or loans or interest, due from foreign insurance companies, nor was a demand ever made upon policy-holders to pay their corresponding life insurance premiums, or loans, or interests, to said custodian or his nominee or agent; and that, as a matter of fact, it was not legally possible for defendant itself, during the period of enemy occupation, to have received payments of premiums in the Philippines from Juan Carrero y Borrás, even, if such payments had been tendered in United States Currency or in Philippine currency;

"That during the period of enemy occupation it was not legally and physically possible for Juan Carrero y Borrás to remit the amount of the premiums due on his policy to defendant's office in Toronto, Canada, nor was it legally and physically possible for him to have left the Philippines for Toronto, Canada, in order to make the payment of premiums there;

* * * * *

"That among the 'Particulares' and 'Estipulaciones' of the Insurance Policy, Exhibit 'A', are the following:

- Prima pagadera y Fecha en que Vence—Setecientos cuatro Dolares a la entrega de esta Poliza y una suma igual en lo sucesivo cada día diez de SEPTIEMBRE y MARZO hasta que se hayan pagado las primas de VEINTE AÑOS completos.

- Pago de las Primas. * * * * Todas las primas son pagaderas, sea a la Oficina Principal de la Compañía, o sea a un Agente o Cajero a cambio del recibo oficial de la Compañía firmado pro un Agente o Cajero de la Compañía.* * *

"That prior to the war, insurance premiums on local policies payable to defendant in United States currency were paid at defendant's branch office in the City of Manila, in its equivalent in Philippine Currency;

"That Juan Carrero y Borrás had the financial ability and was willing and ready to pay the premiums corresponding to said policy, Exhibit 'A', during the period of enemy occupation; and that in the Intestate Estate of Juan Carrero, No. 70047 of the Court of the Court of First Instance of Manila, a provisional Inventory was filed on September 19, 1946, wherein the properties were valued at P274,153.78;

"That on December 31, 1941, the cash reserve value of policy, Exhibit 'A', issued to Juan Carrero y Borrás is approximately \$5,500.00; against which the cash loan of \$5,500.00 mentioned in Paragraph IV hereof was granted;"

In the Asia Life Insurance Co. cases, *supra*, we followed the Federal or *statham* rule in preference to the so-called Connecticut or New York rule, as one that more accords with the peculiar nature of insurance contracts, in that actual payment of the premiums is of the essence of the policy; that premium is not a debt on which the insurer can be sued, but a privilege performance of which is a condition precedent to the continuance of the policy, according to the express agreement of the parties.

There is no use going into this appeal beyond quoting from this Court's decision in the aforesaid Asia Life Insurance cases, where the same issues were thoroughly discussed. There, the Court, speaking through Mr. Justice Bengzon, says:

In *Glaraga vs. Sun Life Ass. Co.*, 49 Phil., 737, this Court held that a life policy was avoided because the premium had not been paid within the time fixed, since by its express terms, non-payment of any premium when due or within the thirty-day period of grace, ipso facto caused the policy to lapse. This goes to show that served and should not lightly be thrown out, will we do not hesitate to enforce the agreement of the parties.

Forfeitures of insurance policies are not favored, but courts cannot for that reason alone refuse to enforce an insurance contract according to its meaning. (45 C. J. S., p. 150.)

Nevertheless, it is contended for plaintiffs that inasmuch as the non-payment of premiums was the consequence of war, it should be excused and should not cause the forfeiture of the policy.

Professor Vance of Yale, in his standard treatise on Insurance, says that in determining the effect of non-payment of premiums occasioned by war, the American cases may be divided into three groups, according as they support the so-called Connecticut Rule, the York Rule, or the United States Rule.

* * * * *

The United States rule declares that the contract is not merely suspended, but is abrogated by reason of non-payment of premium, since the time of the payment is peculiarly of the essence of the contract. It additionally holds that it would be unjust to allow the insurer to retain the reserve value of the policy, which is the excess of the premiums paid over the actual risk carried during the years when the policy had been in force. This rule was announced in the well-known *Statham* case which, in the opinion of Professor Vance, is the correct rule.

The appellants and some amici curiae contend that the New York rule should be applied here. The appellee and other amici curiae contend that the United States doctrine is the orthodox view.

We have read and re-read the principal cases upholding the different theories. Besides the respect and high regard we have always entertained for decisions of the Supreme Court of the United States, we cannot resist the conviction that the reasons expounded in its decisions of the *Statham* case are logically and juridically sound. Like the instant case, the policies involved in the *Statham* decision specify that non-payment on time shall cause the policy to cease and determine. Reasoning out that punctual payments were essential, the Court said:

* * * it must be conceded that promptness of payment is essential in the business of life insurance. All the calculations of the insurance company are based on the hypothesis of prompt payments. They not only calculate on the receipt of the premiums when due, but on compounding interest upon them. It is on this basis that they are enabled to offer assurance at the favorable rates they do. Forfeiture for non-payment is a necessary means of protecting themselves from embarrassment. Unless it were enforceable, the business would be thrown into utter confusion. It is like the forfeiture of share in mining enterprises, and all other hazardous undertakings. There must be power to cut off unprofitable members, or the success of the whole scheme is endangered. The insured parties are associates in a great scheme is endangered. The insured parties are associated in a great scheme. This associated relation exists whether the company be a mutual one or not. Each is interested in the engagements of all; for out of the co-existence of many risks arises the law of average, which underlies the whole business. An essential feature of this scheme is the mathematical calculations referred to, on which the premiums and amounts assured are based. And these calculations again, are based on the assumption of average morality, therefore. Delinquency cannot be tolerated nor redeemed, except at the portion of the company. This has always been the understanding and the practice of this department of business. Some companies, it is true, accord a grace of thirty days, or other fixed period, with which the premium in arrear may

be paid, on certain conditions of continued good health, etc. But this is a matter of stipulation, or of discretion, on the part of the particular company. When no stipulation exists, it is the general understanding that time is material, and that the forfeiture is absolute if the premium coming due, demonstrates the common view of this matter.

The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture if such be the terms of the contract, as is the case here. Courts cannot with safety vary the stipulation of the parties by introducing equities for the relief of the insured against their own negligence.

* * * * *

The above considerations certainly lend themselves to the approval of fair-minded men. Moreover, if, as alleged, the consequences of war should not prejudice the insured, neither should they bear down on the insurer.

In view of the foregoing considerations, the judgment appealed from, holding that the insurance policy in question lapsed by reason of non-payment of premiums due, is hereby affirmed, with costs of this appeal against the appellants.

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

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