

ALICIA S. GONZALES, PLAINTIFF AND APPELLEE, VS. ASIA LIFE INSURANCE COMPANY, DEFENDANT AND APPELLANT.*G.R. No. L-5188. October 29, 1952*

Ponente: BENGZON, J.

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On April 15, 1940, the defendant American Corporation issued its twenty-year endowment policy insuring the life of Celso R. Gonzales and designating the plaintiff Alicia S. Gonzales, as beneficiary. The premium was payable annually on or before April 15. The premiums for the first two years were duly paid. The premium accruing April 15, 1942 was not actually paid. But according to the court of first instance of Iloilo, where this case was tried, "On or before April 15, 1942 the premium for the third policy year was tendered to the branch office of the company in Iloilo City, but was not accepted because at the time it was tendered the office was closing for the day on account of the threat of bombing by Japanese planes. There is some controversy between the parties as to this fact, the defendant denying that tender of payment was ever made, while on the other hand the plaintiff's witness Carlos Soriano, who was the one who had been delegated by the insured to make the payment, could not remember the precise date when he offered it. But that there was tender of payment of the third-year premium on or before its due date, which however was not accepted for the reason already referred to, may reasonably be inferred from the fact that the plaintiff's statement to that effect in her claim-letter written to the defendant on November 2, 1945 (Ex. 1), was not challenged or denied by the latter's agent in Iloilo, who simply transmitted said letter to the Manila office for adjudication of the claim on the basis of what was therein stated."

On September 22, 1942 Celso R. Gonzales died.

After the liberation, in January 1947 this suit was instituted. The defense was base on non-payment of the premium, and the consequent lapse of the policy before the insured's death. The Hon. Querube Macalintal allowed the plaintiff beneficiary to recover on the grounds: (1) that the premium for April 15, 1942 had been tendered on or before that date but was refused, and (2) because non-payment of that premium was excused by the occurrence of the war, the American insurance company having closed its Iloilo office on and after April 16, 1942.

There is no question that under the terms of the policy, non-payment of premiums on time would cause the lapse thereof. There is also no question that the annual premium for same policy was due and payable on April 15, 1942 there being no allegation or claim that cash surrender value had accumulated from which the premium could be advanced by the insurer.

Appellant's sole assignment of error is that the trial court erred in not holding that the policy lapsed by reason of non-payment of premiums. The only argument in support of this assignment is our decision in *Constantino vs. Asia Life Insurance Company*, 87 Phil., 248; 47 Off. Gaz., Suppl. 12, p. 428 and others, holding that the war was no excuse for non-payment of premiums. In the face of our rulings the lower court's decision^[1] following a contrary doctrine must be held erroneous.

However, it does not follow that defendant is entitled to reversal. His Honor declared that the premium had been

tendered on or before April 15, 1942, the insurer refusing to accept it, "because the office was closing for the day on account of the threat of bombing by Japanese planes." That is a finding of fact which we find no reason to disturb. The refusal to accept payment was not justified. The insurer, therefore, may not assert non-payment of the premium as a defense to an action on the policy.

"The act of the insurer or his agent in refusing the tender of a premium properly made, will necessarily estop the insurer from claiming a forfeiture from non-payment." (Vance on Insurance 2d Ed. p. 294 citing Meyer vs. Ins. Co. 29 Am. Rep., 200; Continental Ins. Co. vs. Miller 30 N. E., 718)

According to Corpus Juris, Vol. 32, tender to an agent authorized to receive payment of premiums is obviously sufficient to prevent a forfeiture for non-payment, (p. 1311)

"When the assured was involved in no default, but was at the place when and where payment was to be made, ready and willing to pay, but was prevented by the disability of the company to receive payment, from, whatever cause, he having had no agency in producing it, the company is not entitled to claim the forfeiture, or to be relieved from its obligation to pay the sum assured." (Manhattan L. Ins. Co. vs. Warwick, supra.) (Note, Corpus Juris Vol. 32 p. 1306)

Again the situation here described bears some similarity to the case where the insured made efforts to pay at the office of the insurer but could not pay due to the absence of the latter's agent.

"Absence from office.—While inability of insured to make payment at the office of insurer because of the absence of its representatives does not excuse nonpayment where it does not appear that the effort to make payment was made during reasonable office hours, where insured has made reasonable efforts to pay during office hours but is prevented by such absence, nonpayment is excused." (Corpus Juris Sec, Vol. 45, p. 474)

Wherefore, it is proper to affirm the decision requiring the insurer to pay with legal interest, the value of the policy minus the amount of the premium unpaid on September 22, 1942.

The question whether the insurer was justified in contesting the claim and should pay the beneficiary legal interest for the duration of the delay,[2] may properly be overlooked, because plaintiff has not appealed. Judgment affirmed, with costs.

Paras, C. J., Pablo, Padilla, Montemayor, Jugo, Bautista Angelo, and Labrador, JJ., concur.

[1] Rendered before publication of our views.

[2] Section 91-A Insurance Act as amended.

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