

VICENTE E. TANG, PETITIONER, VS. HON. COURT OF APPEALS AND PHILIPPINE AMERICAN LIFE INSURANCE COMPANY, RESPONDENTS.

G.R. No. L-48563. May 25, 1979

Ponente: ABAD SANTOS, J.

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ABAD SANTOS, J.:

This is a petition to review on certiorari of the decision of the Court of Appeals (CA-G.R. No. 55407-R, June 8, 1978) which affirmed the decision of the Court of First Instance of Manila in Civil Case No. 90062 wherein the petitioner herein was the plaintiff and Philippine American Life Insurance Co. the herein respondent was the defendant. The action was for the enforcement of two insurance policies that had been issued by the defendant company under the following circumstances.

On September 25, 1965, Lee See Guat, a widow, 61 years old, and an illiterate who spoke only Chinese, applied for an insurance on her life for P60,000 with the respondent Company. The application consisted of two parts, both in the English language. The second part of her application dealt with her state of health and because her answers indicated that she was healthy, the Company issued her Policy No. 0690397, effective October 23, 1965, with her nephew Vicente E. Tang, herein petitioner, as her beneficiary.

On November 15, 1965, Lee See Guat again applied with the respondent Company for an additional insurance on her life for P40,000. Considering that her first application had just been approved, no further medical examination was made but she was required to accomplish and submit Part I of the application which reads: "I/WE HEREBY DECLARE AND AGREE that all questions, statements and answers contained herein, as well as those made to or to be made to the Medical Examiner in Part II are full, complete and true and bind all parties in interest under the policy herein applied for; that there shall be no contract of insurance unless a policy is issued on this application and the full first premium thereon, according to the mode of payment specified in answer to question 4D above, actually paid during the lifetime and good health of the Proposed Insured." Moreover, her answers in Part II of her previous application were used in appraising her insurability for the second insurance. On November 28, 1965, Policy No. 695632 was issued to Lee See Guat with the same Vicente E. Tang as her beneficiary.

On April 20, 1966, Lee See Guat died of lung cancer. Thereafter, the beneficiary of the two policies, Vicente E. Tang claimed for their face value in the amount of P100,000 which the insurance company refused to pay on the ground that the insured was guilty of concealment and misrepresentation at the time she applied for the two policies. Hence, the filing of Civil Case No. 90062 in the Court of First Instance of Manila which dismissed the claim because of the concealment practised by the insured in violation of the Insurance Law.

On appeal, the Court of Appeals, affirmed the decision. In its decision, the Court of Appeals stated, *inter alia*: "There is no doubt that she deliberately concealed material facts about her physical condition and history and/or conspired with whoever assisted her in relaying false information to the medical examiner, assuming that the examiner could not communicate directly with her."

The issue in this appeal is the application of Art. 1332 of the Civil Code which stipulates:

"Art. 1332. When one of the parties is unable to read, or if the contract is in a language not understood by him, and mistake or fraud is alleged, the person enforcing the contract must show that the terms thereof have been fully explained to the former."

According to the Code Commission: "This rule is especially necessary in the Philippines where unfortunately there is still a fairly large number of illiterates, and where documents are usually drawn up in English or Spanish." (Report of the Code Commission, p. 136.) Art. 1332 supplements Art. 24 of the Civil Code which provides that "In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the court must be vigilant for his protection."

It is the position of the petitioner that because Lee See Guat was illiterate and spoke only Chinese, she could not be held guilty of concealment of her health history because the applications for insurance were in English and the insurer has not proved that the terms thereof had been fully explained to her.

It should be noted that under Art. 1332 abovequoted, the obligation to show that the terms of the contract had been fully explained to the party who is unable to read or understand the language of the contract, when fraud or mistake is alleged, devolves on the party seeking to enforce it. Here the insurance company is not seeking to enforce the contracts; on the contrary, it is seeking to avoid their performance. It is petitioner who is seeking to enforce them even as fraud or mistake is not alleged. Accordingly, respondent company was under no obligation to prove that the terms of the insurance contracts were fully explained to the other party. Even if we were to say that the insurer is the one seeking the performance of the contracts by avoiding paying the claim, it has to be noted as above stated that there has been no imputation of mistake or fraud by the illiterate insured whose personality is represented by her beneficiary the petitioner herein. In sum, Art. 1332 is inapplicable to the case at bar. Considering the findings of both the CFI and Court of Appeals that the insured was guilty of concealment as to her state of health, we have to affirm.

WHEREFORE, the decision of the Court of Appeals is hereby affirmed. No special pronouncement as to costs.

SO ORDERED.

Concepcion, Jr., and Santos, JJ., concur.

Antonio, (Actg. Chairman)*, J., concurs in a separate opinion.

Aquino, J., in the result.

* Justice Antonio P. Barredo is on leave.

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CONCURRING OPINION

ANTONIO, J.:

I concur. In a contract of insurance each party "must communicate to the other, in good faith, all facts within his knowledge which are material to the contract, and which the other has not the means of ascertaining * * *" (section 27, Act 2427, as amended. Italics supplied). As a general rule, a failure by the insured to disclose conditions affecting the risk, of which he is aware makes the contract voidable at the option of the insurer (45 C.J.S. 153). The reason for this rule is that insurance policies are traditionally contracts "uberrimae fidei" which means most abundant good faith; absolute and perfect candor or openness and honesty; the absence of any concealment or deception however slight. Here, the Court of Appeals found that the insured "deliberately concealed material facts about her physical condition and history and/or concealed with whoever assisted her in relaying false information to the medical examiner * * *".

Certainly, petitioner cannot assume inconsistent positions by attempting to enforce the contract of insurance for the purpose of collecting the proceeds of the policy and at the same time nullify the contract by claiming that he executed the same thru fraud or mistake.

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