

NATIONAL LEATHER CO., INC., PLAINTIFF AND APPELLANT, VS. THE UNITED STATES LIFE INSURANCE CO., DEFENDANT AND APPELLEE.*G.R. No. L-2668. September 30, 1950*

Ponente: REYES, J.

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This is an appeal from a decision of the Court of First Instance of Manila dismissing plaintiff's action for the recovery of the proceeds of a life insurance policy. Though the amount sought to be recovered is only P10,000, the case has been elevated to this Court by agreement of the parties upon representation that only questions of law are involved.

It appears from the stipulation of facts that plaintiff is a Philippine corporation with offices in the city of Manila, while defendant is a foreign life insurance company incorporated under the laws of New York, U.S.A., and licensed to do business in the Philippines (except during the period of the Japanese occupation) with main office in New York but with a branch office in Manila. On April 14, 1939, plaintiff insured with the defendant the life of Pedro Alejandrino for \$5,000 under a 10-year term non-participating policy in consideration of the payment to the defendant, in advance, of the sum of \$23.11 as quarterly premium beginning April 14, 1939 and the payment of a like sum every quarter thereafter, also in advance, for a period of 10 years or until the prior death of said Pedro Alejandrino. The stipulated quarterly premiums on the policy were regularly paid up to October 14, 1941, when the last quarterly premium payment was made, covering the period from that date to January 14, 1942. Thereafter no more premiums were paid, it appearing that, because defendant was an American corporation, its branch office in Manila was closed when that city was occupied by the Japanese forces on January 2, 1942, and it had remained closed during the entire period of enemy occupation. It was not reopened until March, 1945. Pedro Alejandrino died on September 23, 1943, that is, beyond the period covered by the premiums paid by the insured. But just the same, after the liberation of Manila in 1945, plaintiff, as the beneficiary named in the policy, made a claim for the proceeds thereof and tendered a check for P323.54, the total unpaid premiums from January 14, 1942, to October 14, 1943. Defendant however, rejected the claim and returned the check on the ground that the policy had ceased to be in force as of January 14, 1942, for non-payment of the stipulated premiums. It was to secure the judicial enforcement of this claim that plaintiff brought the present action and took this appeal when its complaint was dismissed by the court below.

Among the provisions of the policy issued by the defendant to plaintiff are the following:

"This Policy is issued in consideration of the application therefor, copy of which application is attached hereto and made a part hereof, and of the payment, on or before delivery hereof, of the quarterly premium of TWENTY-THREE DOLLARS AND ELEVEN CENTS (\$23.11) and of the payment of a like amount upon each 14th day of April, July, October and January hereafter during the term of Ten years or until the prior death of the Insured."

* * * * *

"Payment of Premiums.—Except as herein provided the payment of a premium or installment shall not maintain this Policy in force beyond the date when the next premium or installment thereof is payable.

"All premiums are payable in advance at the Shanghai or New York City Office or to any agent of the Company upon delivery, on or before date due, of a receipt signed by an executive officer, viz: the Chairman of the Board of Directors, President, Vice-President, Secretary, Assistant Secretary, Actuary, Assistant Actuary or Cashier of the Company and countersigned by said agent.

"A grace of one month or thirty days (whichever period is the longer) shall be granted for the payment of every premium after the first, during which time the insurance shall continue in force. If death occur within the days of grace the unpaid portion of the premium for the then current policy year shall be deducted from the amount payable hereunder.

"Upon written request therefor, approved by the Company at its Shanghai or New York City Office, premium payments may be changed at any anniversary of this Policy so as to be payable annually, semi-annually, or quarterly in accordance with the published rates in force at the date of issue of this Policy. If this Policy become a claim by death any unpaid portion of the annual premium for the policy year in which death occurs shall be an indebtedness to be deducted from the amount payable hereunder.

* * * * *

"Reinstatement.—If this Policy shall lapse in consequence of default in payment of any premium, it may be reinstated at any time upon evidence of insurability satisfactory to the Company and the payment of all overdue premiums with interest at six per centum per annum to the date of reinstatement."

As correctly stated by the appellee, the sole question at issue in this case is whether or not a life insurance policy lapses pursuant to its terms because of non-payment of the stipulated premium when such nonpayment occurred at a time when the insurer and the assured were separated by the lines of war. This question, though new in this jurisdiction, has already been determined in the recent decision of this Court in the case of Paz Lopez de Constantino vs. Asia Life Insurance Company, G. R. No. L-1669[*], and that of Agustina Peralta vs. Asia Life Insurance Company, G. R. No. L-1670 (August 31, 1950)[*]. It would, therefore, be idle to discuss the question again, it being sufficient for the purposes of the present action that we quote the following from that decision:

"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 New York Rule, or the United States Rule.

"The first holds the view that 'there are two elements in the consideration for which the annual premium is paid—First, the mere protection for the year, and, second, the privilege of renewing the contract for each succeeding year by paying the premium for that year at the time agreed upon. According to this view of the contract, the payment of premiums is a condition precedent, the nonperformance of which, even when performance would be illegal, necessarily defeats the right to renew the contract.'

"The second rule, apparently followed by the greater number of decisions, holds that 'war between states in which the parties reside merely 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.'

"The United States rule declares that the contract is not merely suspended, but is abrogated by reason of non-payment of premiums, since the time of the payments 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[6] case which, in the opinion of Professor Vance, is the

correct rule [7].

"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 decision of the *Statham* case are logically and juridically sound. Like the instant case, the policies involved in the *Statham* decision specifies 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 shares 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. 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 mortality, and of prompt payments and compound interest thereon. Delinquency cannot be tolerated nor redeemed, except at the option of the company. This has always been the understanding and the practice in this department of business. Some companies, it is true, accord a grace of thirty days, or other fixed period, within 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 be not paid. The extra-ordinary and even desperate efforts sometimes made, when an insured person is in extreme is to meet a 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.'

"In another part of the decision, the United States Supreme Court considers and rejects what is, in effect, the New York theory in the following words and phrases:

'The truth is, that the doctrine of the revival of contracts suspended during the war is one based on considerations of equity and justice, and cannot be invoked to revive a contract which it would be unjust or inequitable to revive.

'In the case of life insurance, besides the materiality of time in the performance of the contract, another strong reason exists why the policy should not be revived. The parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company. The business of insurance is founded on the law of averages; that of life insurance eminently so. The average rate of mortality is the basis on which it rests. By spreading their risks over a large number of cases, the companies calculate on this average with reasonable certainty and safety. Anything that interferes with it deranges the security of the business. If every policy lapsed by reason of the war should be revived, and all the back premiums be paid, the companies would

have the benefit of this average amount of risk. But the good risks are never heard from; only the bad are sought to be revived, where the person insured is either dead or dying. Those in health can get new policies cheaper than to pay arrearage on the old. To enforce a revival of the bad cases, whilst the company necessarily lose the cases which are desirable, would be manifestly unjust. An insured person, as before stated, does not stand isolated and alone. His case is connected with and co-related to the cases of all others insured by the same company. The nature of the business, as a whole, must be looked at to understand the general equities of the parties."

"The above consideration 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.

"Urging adoption of the New York Theory, counsel for plaintiff point out that the obligation of the insured to pay premiums was excused during the war owing to Impossibility of performance, and that consequently no unfavorable consequences should follow from such failure.

"The appellee answers, quite plausibly, that the periodic payment of premiums, at least those after the first, is not an obligation of the insured, so much so that it is not a debt enforceable by action of the insurer.

'Under an Oklahoma decision, the annual premium due is not a debt. It is not an obligation upon which the insurer can maintain an action against insured; nor is its settlement governed by the strict rule controlling payment of debts. So, the court in a Kentucky case declares, in the opinion, that it is not a debt, * * * The fact that it is payable annually or semi-annually, or at any other stipulated time, does not of itself constitute a promise to pay, either express or implied. In case of non-payment, the policy is forfeited, except so far as the forfeiture may be saved by agreement, by waiver, estoppel, or by statute. The payment of the premium is entirely optional, while a debt may be enforced at law, and the fact that the premium is agreed to be paid is without force, in the absence of an unqualified and absolute agreement to pay a specified sum at some certain time. In the ordinary policy there is no promise to pay, but it is optional with the insured whether he will continue the policy or forfeit it. (3 Couch, Cyc.on Insurance, Sec. 623, p. 1996).

'It is well settled that a contract of insurance is sui generis. While the insured by an observance of the conditions may hold the insurer to his contract, the latter has not the power contract relation with it longer than he chooses. Whether the insured will continue it or not is optional with him. There being no obligation to pay for the premium, they did not constitute a debt.' (Noble vs. Southern States M. D. Inc. Co., 157 Ky. 46, 162 S. M, 528.) (Italic supplied.)

"It should be noted that the parties contracted not only for peacetime conditions but also for times of war, because the policies contained provisions applicable expressly to wartime days. The logical inference, therefore, is that the parties contemplated uninterrupted operation of the contract even if armed conflict should ensue.

"For the plaintiffs, it is again argued that in view of the enormous growth of insurance business since the Statham decision, it could now be relaxed and even disregarded. It is stated 'that the relaxation of rules relating to insurance is in direct proportion to the growth .of the business. If there were only 100 men, for example, insured by a company or a mutual association, the death of one will distribute the insurance proceeds among the remaining 99 policy-holders. Because the loss which each survivor will bear will be relatively great, death from certain agreed or specified causes may be deemed not a compensable loss. But if the policy-holders of the Company or Association should be 1,000,000 individuals, it is clear that the death of one of them will not seriously prejudice each of the 999,999 surviving insured. The loss to be borne by each individual will be relatively small.'

"The answer to this is that as there are (in the example) one million policy-holders, the 'losses' to be considered will not be the death of one but the death of ten thousand, since the proportion of 1 to 100 should be maintained.

And certainly such losses for 10,000 deaths will not be 'relatively small.'

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

"In keeping with such legislative policy, we feel no hesitation to adopt the United States Rule, which is in effect a variation of the Connecticut rule for the sake of equity. In this connection, it appears that the first policy had no reserve value, and that the equitable values of the second had been practically returned to the insured in the form of loan and advance for premium."

We see nothing in the present case which would justify a departure from the ruling laid down in the above decision, according to which the nonpayment of premiums does not merely suspend put puts an end to an insurance contract, "since the time of the payment is peculiarly of the essence of the contract." The rule is not affected by the fact that the nonpayment is due to war or that the insured has not been negligent. There is, therefore, nothing to the argument that in this case plaintiff's failure to make premium payments after January 14, 1942, should be excused as being due, not to its own negligence, but to defendant's omission to make arrangements for the receipt of premiums that were to fall due during the period of enemy occupation. And, besides, as the trial court says in its decision," * * * It is unreasonable to expect the defendant to send notice of its closing to the thousands of its insured in the Philippines immediately before and after the fall of Manila, because then such a step would be impracticable owing to the confusion and disorder occasioned by the war. Besides, even if such a notice were actually sent, defendant could not have received payments of insurance premiums because its offices were closed and its American officials interned upon orders of the Japanese authorities."

In view of the foregoing, the decision below is affirmed, with costs.

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

[*] Supra, p. 248.

[6] New York Life Ins. vs. Statham, 93 U. S. 24, 23 L. ed. 789;

[7] Op. cit. p. 293. It is also the rule in West Virginia and Georgia. It adds to the Connecticut doctrine the duty to return the reserve value of the policy.

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