

**THE MANUFACTURERS LIFE INSURANCE CO., PLAINTIFF AND
APPELLANT, VS. BIBIANO L. MEER, IN THE CAPACITY AS
COLLECTOR OF INTERNAL REVENUE, DEFENDANT AND APPELLEE.**

G. R. No. L-2910. June 29, 1951

Ponente: BENGZON, J.

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BENGZON, J.:

Appeal from a decision of the Honorable Buenaventura Ocampo, then judge of the Manila court of first instance, dismissing plaintiff's complaint to recover money paid under protest for taxes. The case was submitted upon a stipulation of facts, supplemented by documentary evidence.

The plaintiff, the Manufacturers Life Insurance Company in a corporation duly organized in Canada with head office at Toronto. It is duly registered and licensed to engage in life insurance business in the Philippines, and maintains a branch office in Manila. It was engaged in such business in the Philippines for more than five years before and including the year 1941. But due to the exigencies of the war it closed the branch office at Manila during 1942 up to September 1945.

In the course of its operations before the war, plaintiff issued a number of life insurance policies in the Philippines containing stipulations referred to as nonforfeiture clauses, as follows:

" '8. Automatic Premium Loan.—This Policy shall not lapse for non-payment of any premium after it has been three full years in force, if, at the due date of such premium, the Cash Value of this Policy and of any bonus additions and dividends left on accumulation (after deducting any indebtedness to the Company and the interest accrued thereon) shall exceed the amount of said premium. In which event the company will, without further request, treat the premium then due as paid, and the amount of such premium, with interest from its actual due date at six per cent per annum, compounded yearly, and one per cent, compounded yearly, for expenses, shall be a first lien on this Policy in the Company's favour in priority to the claim of any assignee or any other person. The accumulated lien may at any time, while the Policy is in force, be paid in whole or in part.

'When the premium falls due and is not paid in cash within the month's grace, if the Cash Value of this policy and of any bonus additions and dividends left on accumulation (after deducting any accumulated indebtedness) be less than the premium then due, the Company will, without further requests, continue this insurance in force for a period * * *.

'10. Cash and Paid-Up Insurance Values.—At the end of the third policy year or thereafter, upon the legal surrender of this Policy to the Company while there is no default in premium payments or within two months after the due date of the premium in default, the Company will (1) grant a cash value as specified in Column (A) increased by the cash value of any bonus additions and dividends left on accumulation, which have been allotted to this Policy, less all indebtedness to the Company on this Policy on the date of such surrender, or (2) endorse this Policy as a Non-Participating Paid-up Policy for the amount as specified in Column (B) of the Table of Guaranteed Values * * *.

'11. Extended Insurance.—After the premiums for three or more full years have been paid hereunder in cash, if any subsequent premium is not paid when due, and there is no indebtedness to the Company, on the written request of the Insured * * *."

From January 1, 1942 to December 31, 1946 for failure of the insured under the above policies to pay the corresponding premiums for one or more years, the plaintiff's head office at Toronto, applied the provisions of the automatic premium loan clauses; and the net amount of premiums so advanced or loaned totalled P1,069,254.98. On this sum the defendant Collector of Internal Revenue assessed P17,917.12—which plaintiff paid supra protest—. The assessment was made pursuant to section 255 of the National Internal Revenue Code as amended, which partly provides:

"SEC. 255. Taxes on insurance premiums.—There shall be collected from every person, company, or corporation (except purely cooperative companies or associations) doing insurance business of any sort in the Philippines a tax of one per centum of the total premiums collected * * * whether such premiums are paid in money, notes, credits, or any substitute for money but premiums refunded within six months after payment on account of rejection of risk or returned for other reason to person insured shall not be included in the taxable receipts * * *."

It is the plaintiff's contention that when it made premium loans or premium advances, as above stated, by virtue of the non-forfeiture clauses, it did not collect premiums within the meaning of the above sections of the law, and therefore it is not amenable to the tax therein provided.

The plaintiff conveniently divides that issue into five minor issues, to wit:

"(a) Whether or not premium advances made by plaintiff-appellant under the automatic premium loan clause of its policies are 'premiums collected' by the Company subject to tax;

"(b) Whether or not, in the application of the automatic premium loan clause of plaintiff-appellant's policies, there is 'payment in money, notes, credits, or any substitutes for money';

"(c) Whether or not the collection of the alleged deficiency premium taxes constitutes double taxation;

"(d) Whether the making of premium advances, granting for the sake of argument that it amounted to collection of premiums, were done in Toronto, Canada, or in the Philippines; and

"(e) Whether or not the fact that plaintiff-appellant was not doing business in the Philippines during the period from January 1, 1942 to September 30, 1945, inclusive, exempts it from payment of premium taxes corresponding to said period."

These points will be considered in their order. The first two may best be taken up together in the light of a practical illustration offered by appellant:

"Suppose that 'A', 30 years of age, secures a 20-year endowment policy for P5,000 from plaintiff-appellant Company and pays an annual premium of P250. 'A' pays the first ten yearly premiums amounting to P2,500 and on this amount plaintiff-appellant pays the corresponding taxes under section 255 of the National Internal Revenue Code. Suppose also that the cash value of said policy after the payment of the 10th annual premium amounts to P1, 000." When on the eleventh year the annual premium fell due and the insured remitted no money within the month's grace, the insurer treated the premium then over due as paid from the cash value, the amount being a loan to the policyholder ([1]) who could discharge it at any time with interest at 6 per cent. The insurance contract, therefore, continued in force for the eleventh year.

Under the circumstances described, did the insurer collect the amount of P250 as the annual premium for the eleventh year on the said policy? The plaintiff says no; but the defendant and the lower court say yes. The latter

have, in our opinion, the correct view. In effect the Manufacturers Life Insurance Co. loaned to "A" on the eleventh year, the sum of P250 and the latter in turn paid with that sum the annual premium on his policy. The Company therefore collected the premium for the eleventh year.

"How could there be such a collection" plaintiff argues "when as a result thereof, insurer becomes a creditor, acquires a lien on the policy and is entitled to collect interest on the amount of the unpaid premiums?"

Wittingly or unwittingly, the "premium" and the "loan" have been interchanged in the argument. The insurer "became a creditor" of the loan, but not of the premium that had already been paid. And it is entitled to collect interest on the loan, not on the premium.

In other words, "A" paid the premium for the eleventh year; but in turn he became a debtor of the company for the sum of P250. This debt he could repay either by later remitting the money to the insurer or by letting the cash value compensate for it. The debt may also be deducted from the amount of the policy should "A" die thereafter during the continuance of the policy.

Proceeding along the same line of argument counsel for plaintiff observes "that there is no change, much less an increase, in the amount of the assets of plaintiff-appellant after the application of the automatic premium loan clause. Its assets remain exactly the same after making the advances in question. It being so, there could have been no collection of premium * * *." We cannot assent to this view, because there was an increase. There was the new credit for the advances made. True, the plaintiff could not sue the insured to enforce that credit. But it has means of satisfaction out of the cash surrender value.

Here again it may be urged that if the credit is paid out of the cash surrender value, there were no new funds added to the company's assets. Cash surrender value "as applied to a life insurance policy, is the amount of money the company agrees to pay to the holder of the policy if he surrenders it and releases his claims upon it. The more premiums the insured has paid the greater will be the surrender value; but the surrender value is always a lesser sum than the total amount of premiums paid." (Cyclopedia Law Dictionary 3d. ed. 1077.)

The cash value or cash surrender value is therefore an amount which the insurance company holds in trust^[2] for the insured to be delivered to him upon demand. It is therefore a liability of the company to the insured. Now then, when the company's credit for advances is paid out of the cash value or cash surrender value, that value and the company's liability is thereby diminished pro tanto.

Consequently, the net assets of the insurance company increased correspondingly; for it is plain mathematics that the decrease of a person's liabilities means a corresponding increase in his net assets.

Nevertheless let us grant for the nonce that the operation of the automatic loan provision contributed no additional cash to the funds of the insurer. Yet it must be admitted that the insurer agreed to consider the premium paid on the strength of the automatic loan. The premium was therefore paid by means of a "note" or "credit" or "other substitute for money" and the tax is due because section 255 above quoted levies taxes according to the total premiums collected by the insurer "whether such premiums are paid in money, notes, credits or any substitute for money.

In connection with the third, issue, appellant refers to its example about "A" who failed to pay the premium on the eleventh year and the insurer advanced P250 from the cash value. Then it reasons out that "if the amount of P250 is deducted from the cash value of P1,000 of the policy, then taxing this P250 anew as premium collected, as was done in the present case, will amount to double taxation since taxes had already been collected on the cash value of P1,000 as part of the P2,500 collected as premiums for the first ten years." The trouble with the argument is that it assumes all advances are necessarily repaid from the cash value. That is true in some cases. In others the

insured subsequently remits the money to repay the advance and to keep unimpaired the cash reserve of his policy.

As a matter of fact of the total amount advanced (P1,069,254.98) P158,666.63 had actually been repaid at the time of assessment notice. Besides, the premiums paid and on which taxes had already been collected, were those for the ten years. The tax demanded is on the premium for the eleventh year.

In any event there is no constitutional prohibition against double taxation.

On the fourth issue the appellant takes the position that as the advances of premiums were made in Toronto, such premiums are deemed to have been paid there—not in the Philippines— and therefore those payments are not subject to local taxation. The thesis overlooks the actual fact that the loans are made to policyholders in the Philippines, who in turn pay therewith the premium to the insurer thru the Manila branch. Approval of appellant's position will enable foreign insurers to evade the tax by contriving to require that premium payments shall be made at their head offices. What is important, the law does not contemplate premiums collected in the Philippines. It is enough that the insurer is doing insurance business in the Philippines, irrespective of the place of its organization or establishment.

This brings forth the appellant's last contention that it was not "engaged in business" in the Philippines during the years 1942 to September 1945, and that as section 255 applies only to companies "doing insurance business in the Philippines" this tax was improperly demanded.

It is our opinion that although during those years the appellant was not open for new business because its branch office was closed, still it was practically and legally, operating in this country by collecting premiums on its outstanding policies, incurring the risks and/or enjoying the benefits consequent thereto, without having previously taken any steps indicating withdrawal in good faith from this field of economic activity ([3]).

As a matter of fact, in objecting to the payment of the tax, plaintiff-appellant never insisted, before the Bureau of Internal Revenue, that it was not engaged in business in this country during those years.

Wherefore, finding no prejudicial error in the appealed decision, we hereby affirm it with costs.

Paras, C. J., Feria, Pablo, Padilla, Tuason Montemayor, Reyes and Jugo, JJ., concur.

[1] It is a lien on the policy.

[2] CF. *Sun Life vs. Ingersoll*, 42 Phil., 331.

[3] *Mutual Reserve Fund Life Asso. vs. Phelps*, 190 U. S., 147; 47 L. ed. 987; *Connecticut Mut. Life Inc. vs. Spratley* (172 U. S. 602, 43 L. ed. 569); *State vs. Columbian Nat. Life Ins. Co.* 141 Wis., 557; 124 N. W. 502; *Annot* 137 A. L. R., p. 1139.

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