

NG GAN ZEE, PLAINTIFF-APPELLEE, VS. ASIAN CRUSADER LIFE ASSURANCE CORPORATION, DEFENDANT-APPELLANT.

G.R. No. L-30685. May 30, 1983

Ponente: ESCOLIN, J.

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ESCOLIN, J.:

This is an appeal from the judgment of the Court of First Instance of Manila, ordering the appellant Asian-Crusader Life Assurance Corporation to pay the face value of an insurance policy issued on the life of Kwong Nam, the deceased husband of appellee Ng Gan Zee. Misrepresentation and concealment of material facts in obtaining the policy were pleaded to avoid the policy. The lower court rejected the appellant's theory and ordered the latter to pay appellee "the amount of P20,000.00, with interest at the legal rate from July 24, 1964, the date of the filing of the complaint, until paid, and the costs."

The Court of Appeals certified this appeal to Us, as the same involves solely a question of law.

On May 12, 1962, Kwong Nam applied for a 20-year endowment insurance on his life for the sum of P20,000.00, with his wife, appellee Ng Gan Zee, as beneficiary. On the same date, appellant, upon receipt of the required premium from the insured, approved the application and issued the corresponding policy. On December 6, 1963, Kwong Nam died of cancer of the liver with metastasis. All premiums had been religiously paid at the time of his death.

On January 10, 1964, his widow Ng Gan Zee presented a claim in due form to appellant for payment of the face value of the policy. On the same date, she submitted the required proof of death of the insured. Appellant denied the claim on the ground that the answers given by the insured to the questions appearing in his application for life insurance were untrue.

Appellee brought the matter to the attention of the Insurance Commissioner, the Hon. Francisco Y. Mandamos, and the latter, after conducting an investigation, wrote the appellant that he had found no material concealment on the part of the insured and that, therefore, appellee should be paid the full face value of the policy. This opinion of the Insurance Commissioner notwithstanding, appellant refused to settle its obligation.

Appellant alleged that the insured was guilty of misrepresentation when he answered "No" to the following question appearing in the application for life insurance—

"Has any life insurance company ever refused your application for insurance or for reinstatement of a lapsed policy or offered you a policy different from that applied for? If, so, name company and date."

In its brief, appellant rationalized its thesis thus:

". . . As pointed out in the foregoing summary of the essential facts in this case, the insured had in January, 1962, applied for reinstatement of his lapsed life insurance policy with the Insular Life Insurance Co., Ltd. but this was declined by the insurance company, although later on approved for reinstatement with a very high premium as a result of his medical examination. Thus notwithstanding, the said insured answered 'No' to the

[above] question propounded to him, . . ."[1]

The lower court found the argument bereft of factual basis; and We quote with approval its disquisition on the matter—

"On the first question there is no evidence that the Insular Life Assurance Co., Ltd. ever refused any application of Kwong Nam for insurance. Neither is there any evidence that any other insurance company has refused any application of Kwong Nam for insurance."

". . . The evidence shows that the Insular Life Assurance Co., Ltd. approved Kwong Nam's request for reinstatement and amendment of his lapsed insurance policy on April 24, 1962 [Exh. 'L-2'; Stipulation of Facts, Sept. 22, 1965]. The Court notes from said application for reinstatement and amendment, Exh. 'L', that the amount applied for was P20,000.00 only and not for P50,000.00 as it was in the lapsed policy. The amount of the reinstated and amended policy was also for P20,000.00. It results, therefore, that when on May 12, 1962 Kwong Nam answered 'No' to the question whether any life insurance company ever refused his application for reinstatement of a lapsed policy he did not misrepresent any fact."

". . . The evidence shows that the application of Kwong Nam with the Insular Life Assurance Co., Ltd. was for the reinstatement and amendment of his lapsed insurance policy—Policy No. 369531 - not an application for a 'new' insurance policy. The Insular Life Assurance Co., Ltd. approved the said application on April 24, 1962. Policy No. 369531 was reinstated for the amount of P20,000.00 as applied for by Kwong Nam [Exhs. 'L', 'L-1' and 'L-2']. No new policy was issued by the Insular Life Assurance Co., Ltd. to Kwong Nam in connection with said application for reinstatement and amendment. Such being the case, the Court finds that there is no misrepresentation on this matter."[2]

Appellant further maintains that when the insured was examined in connection with his application for life insurance, he gave the appellant's medical examiner false and misleading information as to his ailment and previous operation. The alleged false statements given by Kwong Nam are as follows:

"Operated on for a Tumor [mayoma] of the stomach. Claims that Tumor has been associated with ulcer of stomach. Tumor taken out was hard and of a hen's egg size. Operation was two [2] years ago in Chinese General Hospital by Dr. Yap. Now, claims he is completely recovered."

To demonstrate the insured's misrepresentation, appellant directs Our attention to:

[1] The report of Dr. Fu Sun Yuan, the physician who treated Kwong Nam at the Chinese General Hospital on May 22, 1960, i.e., about 2 years before he applied for an insurance policy on May 12, 1962. According to said report, Dr. Fu Sun Yuan had diagnosed the patient's ailment as 'peptic ulcer' for which an operation, known as a 'sub-total gastric resection' was performed on the patient by Dr. Pacifico Yap; and

[2] The Surgical Pathology Report of Dr. Elias Pantangco showing that the specimen removed from the patient's body was 'a portion of the stomach measuring 12 cm. and 19 cm. along the lesser curvature with a diameter of 15 cm. along the greatest dimension.

On the bases of the above undisputed medical data showing that the insured was operated on for "peptic ulcer", involving the excision of a portion of the stomach, appellant argues that the insured's statement in his application that a tumor, "hard and of a hen's egg size," was removed during said operation, constituted material concealment.

The question to be resolved may be propounded thus: Was appellant, because of insured's aforesaid representation, misled or deceived into entering the contract or in accepting the risk at the rate of premium agreed upon?

The lower court answered this question in the negative, and We agree.

Section 27 of the Insurance Law [Act 2427] provides:

"Sec. 27. Such party to a contract of insurance 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, and as to which he makes no warranty."[3]

Thus, "concealment exists where the assured had knowledge of a fact material to the risk, and honesty, good faith, and fair dealing requires that he should communicate it to the assurer, but he designedly and intentionally withholds the same."[4]

It has also been held "that the concealment must, in the absence of inquiries, be not only material, but fraudulent, or the fact must have been intentionally withheld."[5]

Assuming that the aforesaid answer given by the insured is false, as claimed by the appellant, Sec. 27 of the Insurance Law, above-quoted, nevertheless requires that fraudulent intent on the part of the insured be established to entitle the insurer to rescind the contract. And as correctly observed by the lower court, "misrepresentation as a defense of the insurer to avoid liability is an 'affirmative' defense. The duty to establish such a defense by satisfactory and convincing evidence rests upon the defendant. The evidence before the Court does not clearly and satisfactorily establish that defense."

It bears emphasis that Kwong Nam had informed the appellant's medical examiner that the tumor for which he was operated on was "associated with ulcer of the stomach." In the absence of evidence that the insured had sufficient medical knowledge as to enable him to distinguish between "peptic ulcer" and "a tumor", his statement that said tumor was "associated with ulcer of the stomach," should be construed as an expression made in good faith of his belief as to the nature of his ailment and operation. Indeed, such statement must be presumed to have been made by him without knowledge of its incorrectness and without any deliberate intent on his part to mislead the appellant.

While it may be conceded that, from the viewpoint of a medical expert, the information communicated was imperfect, the same was nevertheless sufficient to have induced appellant to make further inquiries about the ailment and operation of the insured.

Section 32 of Insurance Law [Act No. 2427] provides as follows:

"Section 32. The right to information of material facts may be waived either by the terms of insurance or by neglect to make inquiries as to such facts where they are distinctly implied in other facts of which information is communicated."

It has been held that where, "upon the face of the application, a question appears to be not answered at all or to be imperfectly answered, and the insurers issue a policy without any further inquiry, they waive the imperfection of the answer and render the omission to answer more fully immaterial."[6]

As aptly noted by the lower court, "if the ailment and operation of Kwong Nam had such an important bearing on the question of whether the defendant would undertake the insurance or not, the court cannot understand why the defendant or its medical examiner did not make any further inquiries on such matters from the Chinese General Hospital or require copies of the hospital records from the appellant before acting on the application for insurance. The fact of the matter is that the defendant was too eager to accept the application and receive the insured's premium. It would be inequitable now to allow the defendant to avoid liability under the circumstances."

Finding no reversible error committed by the trial court, the judgment appealed from is hereby affirmed, with costs against appellant Asian-Crusader Life Assurance Corporation.

SO ORDERED.

Makasiar (Chairman), Aquino, Concepcion Jr., Guerrero and De Castro, JJ., concur.
Abad Santos, J., I reserve my vote.

[1] p. 15, Appellant's Brief.

[2] pp. 88-89, Record on Appeal.

[3] New Section 28 of the Philippine Insurance Code [PD No. 612].

[4] *Argente vs. West Coast Life Insurance Co.*, 51 Phil. 725, citing Joyce, *Law of Insurance*, 2nd Ed., Vol. III, Chapter LV.

[5] *Id.*

[6] *Phoenix Mutual Life Insurance Co. vs. Raddin*, 120 U.S. 183, S.C. Reporter's Ed.

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