

**SOUTH SEA SURETY AND INSURANCE COMPANY, INC., PETITIONER,
VS. HON. COURT OF APPEALS AND VALENZUELA HARDWOOD AND
INDUSTRIAL SUPPLY, INC., RESPONDENTS.**

G.R. No. 102253. June 02, 1995

Ponente: VITUG, J.

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VITUG, J.:

Two issues on the subject of insurance are raised in this petition, that assails the decision of the Court of Appeals (in CA-G.R. No. CV-20156), the first dealing on the requirement of premium payment and the second relating to the agency relationship of parties under that contract.

The court litigation started when Valenzuela Hardwood and Industrial Supply, Inc. ("Hardwood"), filed with the Regional Trial Court of the National Capital Judicial Region, Branch 171 in Valenzuela, Metro Manila, a complaint for the recovery of the value of lost logs and freight charges from Seven Brothers Shipping Corporation or, to the extent of its alleged insurance cover, from South Sea Surety and Insurance Company.

The factual backdrop is described briefly by the appellate court thusly:

"It appears that on 16 January 1984, plaintiff [Valenzuela Hardwood and Industrial Supply, Inc.] entered into an agreement with the defendant Seven Brothers whereby the latter undertook to load on board its vessel M/V Seven Ambassador the former's lauan round logs numbering 940 at the port of Maconacon, Isabela for shipment to Manila.

"On 20 January 1984, plaintiff insured the logs against loss and/or, damage with defendant South Sea Surety and Insurance Co., Inc. for P2,000,000.00 and the latter issued its Marine Cargo Insurance Policy No. 84/24229 for P2,000,000.00 on said date.

"On 24 January 1984, the plaintiff gave the check in payment of the premium on the insurance policy to Mr. Victorio Chua.

"In the meantime, the said vessel M/V Seven Ambassador sank on 25 January 1984 resulting in the loss of the plaintiff's insured logs.

"On 30 January 1984, a check for P5,625.00 (Exh. 'E') to cover payment of the premium and documentary stamps due on the policy was tendered to the insurer but was not accepted. Instead, the South Sea Surety and Insurance Co., Inc. cancelled the insurance policy it issued as of the date of inception for non-payment of the premium due in accordance with Section 77 of the Insurance Code.

"On 2 February 1984, plaintiff demanded from defendant South Sea Surety and Insurance Co., Inc. the payment of the proceeds of the policy but the latter denied liability under the policy. Plaintiff likewise filed a formal claim with defendant Seven Brothers Shipping Corporation for the value of the lost logs but the latter denied the claim."^[1]

In its decision, dated 11 May 1988, the trial court rendered judgment in favor of plaintiff Hardwood.

On appeal perfected by both the shipping firm and the insurance company, the Court of Appeals affirmed the judgment of the court a quo only against the insurance corporation; in absolving the shipping entity from liability, the appellate court ratiocinated:

"The primary issue to be resolved before us is whether defendants shipping corporation and the surety company are liable to the plaintiff for the latter's lost logs.

"It appears that there is a stipulation in the charter party that the ship owner would be exempted from liability in case of loss.

"The court a quo erred in applying the provisions of the Civil Code on common carriers to establish the liability of the shipping corporation. The provisions on common carriers should not be applied where the carrier is not acting as such but as a private carrier.

"Under American jurisprudence, a common carrier undertaking to carry a special cargo or chartered to a special person only, becomes a private carrier.

"As a private carrier, a stipulation exempting the owner from liability even for the negligence of its agent is valid (*Home Insurance Company, Inc. vs. American Steamship Agencies, Inc.*, 23 SCRA 24).

"The shipping corporation should not therefore be held liable for the loss of the logs." [2]

In this petition for review on certiorari brought by South Sea Surety and Insurance Co., Inc., petitioner argues that it likewise should have been freed from any liability to Hardwood. It faults the appellate court (a) for having supposedly disregarded Section 77 of the Insurance Code and (b) for holding Victorio Chua to have been an authorized representative of the insurer.

Section 77 of the Insurance Code provides:

"SEC. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies."

Undoubtedly, the payment of the premium is a condition precedent to, and essential for, the efficaciousness of the contract. The only two statutorily provided exceptions are (a) in case the insurance coverage relates to life or industrial life (health) insurance when a grace period applies and (b) when the insurer makes a written acknowledgment of the receipt of premium, this acknowledgment being declared by law to be then conclusive evidence of the premium payment (Secs. 77-78, Insurance Code). The appellate court, contrary to what the petition suggests, did not make any pronouncement to the contrary. Indeed, it has said:

"Concerning the issue as to whether there is a valid contract of insurance between plaintiff-appellee and defendant-appellant South Sea Surety and Insurance Co., Inc., Section 77 of the Insurance Code explicitly provides that notwithstanding any agreement to the contrary, no policy issued by an insurance company is valid and binding unless and until the premium thereof has been paid. It is therefore important to determine whether at the time of the loss, the premium was already paid." [3]

No attempt to becloud the issues can disguise the fact that the sole question raised in the instant petition is really evidentiary in nature, i.e., whether or not Victorio Chua, in receiving the check for the insurance premium prior to the occurrence of the risk insured against has so acted as an agent of petitioner. The appellate court, like the trial court, has found in the affirmative. Said the appellate court:

"In the instant case, the Marine Cargo Insurance Policy No. 84/24229 was issued by defendant insurance company on 20 January 1984. At the time the vessel sank on 25 January 1984 resulting in the loss of the

insured logs, the insured had already delivered to Victorio Chua the check in payment of premium. But, as Victorio Chua testified, it was only in the morning of 30 January 1984 or 5 days after the vessel sank when his messenger tendered the check to defendant South Sea Surety and Insurance Co., Inc. (TSN, pp. 3-27, 16-17, 22 October 1985).

"The pivotal issue to be resolved to determine the liability of the surety corporation is whether Mr. Chua acted as an agent of the surety company or of the insured when he received the check for insurance premiums.

"Appellant surety company insists that Mr. Chua is an administrative assistant for the past ten years and an agent for less than ten years of the Columbia Insurance Brokers, Ltd. He is paid a salary as administrative assistant and a commission as agent based on the premiums he turns over to the broker. Appellant therefore argues that Mr. Chua, having received the insurance premiums as an agent of the Columbia Insurance Broker, acted as an agent of the insured under Section 301 of the Insurance Code which provides as follows:

"Section 301. Any person who for any compensation, commission or other thing of value, acts or aids in soliciting, negotiating or procuring the making of any insurance contract or in placing risk or taking out insurance, on behalf of an insured other than himself, shall be an insurance broker within the intent of this Code, and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance broker is subject."

"The appellees, upon the other hand, claim that the second paragraph of Section 306 of the Insurance Code provides as follows:

"Section 306. x x x Any insurance company which delivers to an insurance agent or insurance broker a policy or contract of insurance shall be deemed to have authorized such agent or broker to receive on its behalf payment of any premium which is due on such policy of contract of insurance at the time of its issuance or delivery or which becomes due thereon."

"On cross-examination in behalf of South Sea Surety and Insurance Co., Inc., Mr. Chua testified that the marine cargo insurance policy for the plaintiff's logs was delivered to him on 21 January 1984 at his office to be delivered to the plaintiff.

"When the appellant South Sea Surety and Insurance Co., Inc. delivered to Mr. Chua the marine cargo insurance policy for the plaintiff's logs, he is deemed to have been authorized by the South Sea Surety and Insurance Co., Inc. to receive the premium which is due on its behalf.

"When therefore the insured logs were lost, the insured had already paid the premium to an agent of the South Sea Surety and Insurance Co., Inc., which is consequently liable to pay the insurance proceeds under the policy it issued to the insured." [4]

We see no valid reason to discard the factual conclusions of the appellate court. Just as so correctly pointed out by private respondent, it is not the function of this Court to assess and evaluate all over again the evidence, testimonial and documentary, adduced by the parties particularly where, such as here, the findings of both the trial court and the appellate court on the matter coincide.

WHEREFORE, the resolution, dated 01 February 1993, granting due course to the petition is RECALLED, and the petition is DENIED. Costs against petitioner.

SO ORDERED.

Feliciano, (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 39-40.

[2] Rollo, p. 42.

[3] Rollo, p. 42.

[4] Rollo, pp. 43-44.

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