VIRGINIA A. PEREZ, PETITIONER, VS. COURT OF APPEALS AND BF LIFEMAN INSURANCE CORPORATION, RESPONDENTS.

G.R. No. 112329. January 28, 2000

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

A contract of insurance, like all other contracts, must be assented to by both parties, either in person or through their agents and so long as an application for insurance has not been either accepted or rejected, it is merely a proposal or an offer to make a contract.

Petitioner Virginia A. Perez assails the decision of respondent Court of Appeals dated July 9, 1993 in CA-G.R. CV 35529 entitled, "BF Lifeman Insurance Corporations, Plaintiff-Appellant versus Virginia A. Perez, Defendant-Appellee," which declared Insurance Policy 056300 for P50,000.00 issued by private respondent corporation in favor of the deceased Primitivo B. Perez, null and void and rescinded, thereby reversing the decision rendered by the Regional Trial Court of Manila, Branch XVI.

The facts of the case as summarized by respondent Court of Appeals are not in dispute.

Primitivo B. Perez had been insured with the BF Lifeman Insurance Corporation since 1980 for P20,000.00. Sometime in October 1987, an agent of the insurance corporation, Rodolfo Lalog, visited Perez in Guinayangan, Quezon and convinced him to apply for additional insurance coverage of P50,000.00, to avail of the ongoing promotional discount of P400.00 if the premium were paid annually.

On October 20, 1987, Primitivo B. Perez accomplished an application form for the additional insurance coverage of P50,000.00. On the same day, petitioner Virginia A. Perez, Primitivo’s wife, paid P2,075.00 to Lalog. The receipt issued by Lalog indicated the amount received was a "deposit."[1] Unfortunately, Lalog lost the application form accomplished by Perez and so on October 28, 1987, he asked the latter to fill up another application form.[2] On November 1, 1987, Perez was made to undergo the required medical examination, which he passed.[3]

Pursuant to the established procedure of the company, Lalog forwarded the application for additional insurance of Perez, together with all its supporting papers, to the office of BF Lifeman Insurance Corporation at Gumaca, Quezon which office was supposed to forward the papers to the Manila office.

On November 25, 1987, Perez died in an accident. He was riding in a banca which capsized during a storm. At the time of his death, his application papers for the additional insurance of P50,000.00 were still with the Gumaca office. Lalog testified that when he went to follow up the papers, he found them still in the Gumaca office and so he personally brought the papers to the Manila office of BF Lifeman Insurance Corporation. It was only on November 27, 1987 that said papers were received in Manila.

Without knowing that Perez died on November 25, 1987, BF Lifeman Insurance Corporation approved the application and issued the corresponding policy for the P50,000.00 on December 2, 1987.[4]

Petitioner Virginia Perez went to Manila to claim the benefits under the insurance policies of the deceased. She was paid P40,000.00 under the first insurance policy for P20,000.00 (double indemnity in case of accident) but the insurance company refused to pay the claim under the additional policy coverage of P50,000.00, the proceeds of which amount to P150,000.00 in view of a triple indemnity rider on the insurance policy. In its letter of January 29, 1988 to Virginia A. Perez, the insurance company maintained that the insurance for P50,000.00 had not been perfected at the time of the death of Primitivo Perez. Consequently, the insurance company refunded the amount of P2,075.00 which Virginia Perez had paid.

On September 21, 1990, private respondent BF Lifeman Insurance Corporation filed a complaint against Virginia A. Perez seeking the rescission and declaration of nullity of the insurance contract in question.

Petitioner Virginia A. Perez, on the other hand, averred that the deceased had fulfilled all his prestations under the contract and all the elements of a valid contract are present. She then filed a counterclaim against private respondent for the collection of P150,000.00 as actual damages, P100,000.00 as exemplary damages, P30,000.00 as attorney's fees and P10,000.00 as expenses for litigation.

On October 25, 1991, the trial court rendered a decision in favor of petitioner, the dispositive portion of which reads as follows:

> WHEREFORE PREMISES CONSIDERED, judgment is hereby rendered in favor of defendant Virginia A. Perez, ordering the plaintiff BF Lifeman Insurance Corporation to pay to her the face value of BF Lifeman Insurance Policy No. 056300, plus double indemnity under the SARDI or in the total amount of P150,000.00 (any refund made and/or premium deficiency to be deducted therefrom).
>
> SO ORDERED.[5]

The trial court, in ruling for petitioner, held that the premium for the additional insurance of P50,000.00 had been fully paid and even if the sum of P2,075.00 were to be considered merely as partial payment, the same does not affect the validity of the policy. The trial court further stated that the deceased had fully complied with the requirements of the insurance company. He paid, signed the application form and passed the medical examination. He should not be made to suffer the subsequent delay in the transmittal of his application form to private respondent's head office since these were no longer within his control.

The Court of Appeals, however, reversed the decision of the trial court saying that the insurance contract for P50,000.00 could not have been perfected since at the time that the policy was issued, Primitivo was already dead.[6] Citing the provision in the application form signed by Primitivo which states that:

> "x x x there shall be no contract of insurance unless and until a policy is issued on this application and that the policy shall not take effect until the first premium has been paid and the policy has been delivered to and accepted by me/us in person while I/we, am/are in good health"

the Court of Appeals held that the contract of insurance had to be assented to by both parties and so long as the application for insurance has not been either accepted or rejected, it is merely an offer or proposal to make a contract.

Petitioner's motion for reconsideration having been denied by respondent court, the instant petition for certiorari was filed on the ground that there was a consummated contract of insurance between the deceased and BF Lifeman Insurance Corporation and that the condition that the policy issued by the corporation be delivered and received by the applicant in good health, is potestative, being dependent upon the will of the insurance company, and is therefore null and void.

The petition is bereft of merit.

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Insurance is a contract whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils.[7] A contract, on the other hand, is a meeting of the minds between two persons whereby one binds himself, with respect to the other to give something or to render some service.[8] Under Article 1318 of the Civil Code, there is no contract unless the following requisites concur:

> (1) Consent of the contracting parties;
>
> (2) Object certain which is the subject matter of the contract;
>
> (3) Cause of the obligation which is established.

Consent must be manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. The offer must be certain and the acceptance absolute.

When Primitivo filed an application for insurance, paid P2,075.00 and submitted the results of his medical examination, his application was subject to the acceptance of private respondent BF Lifeman Insurance Corporation. The perfection of the contract of insurance between the deceased and respondent corporation was further conditioned upon compliance with the following requisites stated in the application form:

> "there shall be no contract of insurance unless and until a policy is issued on this application and that the said policy shall not take effect until the premium has been paid and the policy delivered to and accepted by me/us in person while I/We, am/are in good health."[9]

The assent of private respondent BF Lifeman Insurance Corporation therefore was not given when it merely received the application form and all the requisite supporting papers of the applicant. Its assent was given when it issues a corresponding policy to the applicant. Under the abovementioned provision, it is only when the applicant pays the premium and receives and accepts the policy while he is in good health that the contract of insurance is deemed to have been perfected.

It is not disputed, however, that when Primitivo died on November 25, 1987, his application papers for additional insurance coverage were still with the branch office of respondent corporation in Gumaca and it was only two days later, or on November 27, 1987, when Lalog personally delivered the application papers to the head office in Manila. Consequently, there was absolutely no way the acceptance of the application could have been communicated to the applicant for the latter to accept inasmuch as the applicant at the time was already dead. In the case of Enriquez vs. Sun Life Assurance Co. of Canada,[10] recovery on the life insurance of the deceased was disallowed on the ground that the contract for annuity was not perfected since it had not been proved satisfactorily that the acceptance of the application ever reached the knowledge of the applicant.

Petitioner insists that the condition imposed by respondent corporation that a policy must have been delivered to and accepted by the proposed insured in good health is potestative being dependent upon the will of the corporation and is therefore null and void.

We do not agree.

A potestative condition depends upon the exclusive will of one of the parties. For this reason, it is considered void. Article 1182 of the New Civil Code states: When the fulfillment of the condition depends upon the sole will of the debtor, the conditional obligation shall be void.

In the case at bar, the following conditions were imposed by the respondent company for the perfection of the contract of insurance:

> (a)

a policy must have been issued;

(b)

the premiums paid; and

(c)

the policy must have been delivered to and accepted by the applicant while he is in good health.

The condition imposed by the corporation that the policy must have been delivered to and accepted by the applicant while he is in good health can hardly be considered as a potestative or facultative condition. On the contrary, the health of the applicant at the time of the delivery of the policy is beyond the control or will of the insurance company. Rather, the condition is a suspensive one whereby the acquisition of rights depends upon the happening of an event which constitutes the condition. In this case, the suspensive condition was the policy must have been delivered and accepted by the applicant while he is in good health. There was non-fulfillment of the condition, however, inasmuch as the applicant was already dead at the time the policy was issued. Hence, the non-fulfillment of the condition resulted in the non-perfection of the contract.

As stated above, a contract of insurance, like other contracts, must be assented to by both parties either in person or by their agents. So long as an application for insurance has not been either accepted or rejected, it is merely an offer or proposal to make a contract. The contract, to be binding from the date of application, must have been a completed contract, one that leaves nothing to be done, nothing to be completed, nothing to be passed upon, or determined, before it shall take effect. There can be no contract of insurance unless the minds of the parties have met in agreement.[11]

Prescinding from the foregoing, respondent corporation cannot be held liable for gross negligence. It should be noted that an application is a mere offer which requires the overt act of the insurer for it to ripen into a contract. Delay in acting on the application does not constitute acceptance even though the insured has forwarded his first premium with his application. The corporation may not be penalized for the delay in the processing of the application papers. Moreover, while it may have taken some time for the application papers to reach the main office, in the case at bar, the same was acted upon less than a week after it was received. The processing of applications by respondent corporation normally takes two to three weeks, the longest being a month.[12] In this case, however, the requisite medical examination was undergone by the deceased on November 1, 1987; the application papers were forwarded to the head office on November 27, 1987; and the policy was issued on December 2, 1987. Under these circumstances, we hold that the delay could not be deemed unreasonable so as to constitute gross negligence.

A final note. It has not escaped our notice that the Court of Appeals declared Insurance Policy 056300 for P50,000.00 null and void and rescinded. The Court of Appeals corrected this in its Resolution of the motion for reconsideration filed by petitioner, thus:

> "Anent the appearance of the word ‘rescinded’ in the dispositive portion of the decision, to which defendant-appellee attaches undue significance and makes capital of, it is clear that the use of the words ‘and rescinded’ is, as it is hereby declared, a superfluity. It is apparent from the context of the decision that the insurance policy in question was found null and void, and did not have to be ‘rescinded’."[13]

True, rescission presupposes the existence of a valid contract. A contract which is null and void is no contract at all and hence could not be the subject of rescission.

WHEREFORE, the decision rendered by the Court of Appeals in CA-G.R. CV No. 35529 is AFFIRMED insofar

as it declared Insurance Policy No. 056300 for P50,000.00 issued by BF Lifeman Insurance Corporation of no force and effect and hence null and void. No costs.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and Pardo, JJ., concur.

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[1] Exh. "B".

[2] Exh. "A".

[3] Exh. "C".

[4] Exh. "D".

[5] RTC Records, p. 260-A.

[6] Rollo, pp. 29-37.

[7] Black, Henry Campbell. Black’s Law Dictionary, 6th Edition, 1990, p. 802.

[8] Article 1305 of the New Civil Code.

[9] Exh. "A-5".

[10] 41 Phil. 269 (1920)

[11] De Lim v. Sun Life Assurance Co. of Canada, 41 Phil. 263 at 266 (1920)

[12] TSN, May 14, 1991, p. 29.

[13] Rollo, p. 39.

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