GREAT PACIFIC LIFE ASSURANCE CORP., PETITIONER VS. COURT OF APPEALS AND MEDARDA V. LEUTERIO, RESPONDENTS.

G.R. No. 113899. October 13, 1999

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review, under Rule 45 of the Rules of Court, assails the Decision[1] dated May 17, 1993, of the Court of Appeals and its Resolution[2] dated January 4, 1994 in CA-G.R. CV No. 18341. The appellate court affirmed in toto the judgment of the Misamis Oriental Regional Trial Court, Branch 18, in an insurance claim filed by private respondent against Great Pacific Life Assurance Co. The dispositive portion of the trial court's decision reads:

> "WHEREFORE, judgment is rendered adjudging the defendant GREAT PACIFIC LIFE ASSURANCE CORPORATION as insurer under its Group policy No. G-1907, in relation to Certification B-18558 liable and ordered to pay to the DEVELOPMENT BANK OF THE PHILIPPINES as creditor of the insured Dr. Wilfredo Leuterio, the amount of EIGHTY SIX THOUSAND TWO HUNDRED PESOS (P86,200.00); dismissing the claims for damages, attorney's fees and litigation expenses in the complaint and counterclaim, with costs against the defendant and dismissing the complaint in respect to the plaintiffs, other than the widow-beneficiary, for lack of cause of action."[3]

The facts, as found by the Court of Appeals, are as follows:

A contract of group life insurance was executed between petitioner Great Pacific Life Assurance Corporation (hereinafter Grepalife) and Development Bank of the Philippines (hereinafter DBP). Grepalife agreed to insure the lives of eligible housing loan mortgagors of DBP.

On November 11, 1983, Dr. Wilfredo Leuterio, a physician and a housing debtor of DBP applied for membership in the group life insurance plan. In an application form, Dr. Leuterio answered questions concerning his health condition as follows:

> "7. Have you ever had, or consulted, a physician for a heart condition, high blood pressure, cancer, diabetes, lung, kidney or stomach disorder or any other physical impairment?
>
> Answer: No. If so give details _____.
>
> 8. Are you now, to the best of your knowledge, in good health?
>
> Answer: [x] Yes [ ] No."[4]

On November 15, 1983, Grepalife issued Certificate No. B-18558, as insurance coverage of Dr. Leuterio, to the extent of his DBP mortgage indebtedness amounting to eighty-six thousand, two hundred (P86,200.00) pesos.

On August 6, 1984, Dr. Leuterio died due to "massive cerebral hemorrhage." Consequently, DBP submitted a death claim to Grepalife. Grepalife denied the claim alleging that Dr. Leuterio was not physically healthy when he

applied for an insurance coverage on November 15, 1983. Grepalife insisted that Dr. Leuterio did not disclose he had been suffering from hypertension, which caused his death. Allegedly, such non-disclosure constituted concealment that justified the denial of the claim.

On October 20, 1986, the widow of the late Dr. Leuterio, respondent Medarda V. Leuterio, filed a complaint with the Regional Trial Court of Misamis Oriental, Branch 18, against Grepalife for "Specific Performance with Damages."[5] During the trial, Dr. Hernando Mejia, who issued the death certificate, was called to testify. Dr. Mejia's findings, based partly from the information given by the respondent widow, stated that Dr. Leuterio complained of headaches presumably due to high blood pressure. The inference was not conclusive because Dr. Leuterio was not autopsied, hence, other causes were not ruled out.

On February 22, 1988, the trial court rendered a decision in favor of respondent widow and against Grepalife. On May 17, 1993, the Court of Appeals sustained the trial court's decision. Hence, the present petition. Petitioners interposed the following assigned errors:

> "1. THE LOWER COURT ERRED IN HOLDING DEFENDANT-APPELLANT LIABLE TO THE DEVELOPMENT BANK OF THE PHILIPPINES (DBP) WHICH IS NOT A PARTY TO THE CASE FOR PAYMENT OF THE PROCEEDS OF A MORTGAGE REDEMPTION INSURANCE ON THE LIFE OF PLAINTIFF'S HUSBAND WILFREDO LEUTERIO ONE OF ITS LOAN BORROWERS, INSTEAD OF DISMISSING THE CASE AGAINST DEFENDANT-APPELLANT [Petitioner Grepalife] FOR LACK OF CAUSE OF ACTION.
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> 2. THE LOWER COURT ERRED IN NOT DISMISSING THE CASE FOR WANT OF JURISDICTION OVER THE SUBJECT OR NATURE OF THE ACTION AND OVER THE PERSON OF THE DEFENDANT.
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> 3. THE LOWER COURT ERRED IN ORDERING DEFENDANT-APPELLANT TO PAY TO DBP THE AMOUNT OF P86,200.00 IN THE ABSENCE OF ANY EVIDENCE TO SHOW HOW MUCH WAS THE ACTUAL AMOUNT PAYABLE TO DBP IN ACCORDANCE WITH ITS GROUP INSURANCE CONTRACT WITH DEFENDANT-APPELLANT.
>
> 4. THE LOWER COURT ERRED IN - HOLDING THAT THERE WAS NO CONCEALMENT OF MATERIAL INFORMATION ON THE PART OF WILFREDO LEUTERIO IN HIS APPLICATION FOR MEMBERSHIP IN THE GROUP LIFE INSURANCE PLAN BETWEEN DEFENDANT-APPELLANT OF THE INSURANCE CLAIM ARISING FROM THE DEATH OF WILFREDO LEUTERIO."[6]

Synthesized below are the assigned errors for our resolution:

> 1. Whether the Court of Appeals erred in holding petitioner liable to DBP as beneficiary in a group life insurance contract from a complaint filed by the widow of the decedent/mortgagor?
>
> 2. Whether the Court of Appeals erred in not finding that Dr. Leuterio concealed that he had hypertension, which would vitiate the insurance contract?
>
> 3. Whether the Court of Appeals erred in holding Grepalife liable in the amount of eighty six thousand, two hundred (P86,200.00) pesos without proof of the actual outstanding mortgage payable by the mortgagor to DBP.

Petitioner alleges that the complaint was instituted by the widow of Dr. Leuterio, not the real party in interest, hence the trial court acquired no jurisdiction over the case. It argues that when the Court of Appeals affirmed the trial court's judgment, Grepalife was held liable to pay the proceeds of insurance contract in favor of DBP, the indispensable party who was not joined in the suit.

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To resolve the issue, we must consider the insurable interest in mortgaged properties and the parties to this type of contract. The rationale of a group insurance policy of mortgagors, otherwise known as the "mortgage redemption insurance," is a device for the protection of both the mortgagee and the mortgagor. On the part of the mortgagee, it has to enter into such form of contract so that in the event of the unexpected demise of the mortgagor during the subsistence of the mortgage contract, the proceeds from such insurance will be applied to the payment of the mortgage debt, thereby relieving the heirs of the mortgagor from paying the obligation.[7] In a similar vein, ample protection is given to the mortgagor under such a concept so that in the event of death; the mortgage obligation will be extinguished by the application of the insurance proceeds to the mortgage indebtedness.[8] Consequently, where the mortgagor pays the insurance premium under the group insurance policy, making the loss payable to the mortgagee, the insurance is on the mortgagor's interest, and the mortgagor continues to be a party to the contract. In this type of policy insurance, the mortgagee is simply an appointee of the insurance fund, such loss-payable clause does not make the mortgagee a party to the contract.[9]

Section 8 of the Insurance Code provides:

> "Unless the policy provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to a mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his, prior to the loss, which would otherwise avoid the insurance, will have the same effect, although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee therein named, with the same effect as if it had been performed by the mortgagor."

The insured private respondent did not cede to the mortgagee all his rights or interests in the insurance, the policy stating that: "In the event of the debtor's death before his indebtedness with the Creditor [DBP] shall have been fully paid, an amount to pay the outstanding indebtedness shall first be paid to the creditor and the balance of sum assured, if there is any, shall then be paid to the beneficiary/ies designated by the debtor."[10] When DBP submitted the insurance claim against petitioner, the latter denied payment thereof, interposing the defense of concealment committed by the insured. Thereafter, DBP collected the debt from the mortgagor and took the necessary action of foreclosure on the residential lot of private respondent.[11] In Gonzales La O vs. Yek Tong Lin Fire & Marine Ins. Co.[12] we held:

> "Insured, being the person with whom the contract was made, is primarily the proper person to bring suit thereon. * * * Subject to some exceptions, insured may thus sue, although the policy is taken wholly or in part for the benefit of another person named or unnamed, and although it is expressly made payable to another as his interest may appear or otherwise. * * * Although a policy issued to a mortgagor is taken out for the benefit of the mortgagee and is made payable to him, yet the mortgagor may sue thereon in his own name, especially where the mortgagee's interest is less than the full amount recoverable under the policy, * * *.'
>
> And in volume 33, page 82, of the same work, we read the following:
>
> 'Insured may be regarded as the real party in interest, although he has assigned the policy for the purpose of collection, or has assigned as collateral security any judgment he may obtain."[13]

And since a policy of insurance upon life or health may pass by transfer, will or succession to any person, whether he has an insurable interest or not, and such person may recover it whatever the insured might have recovered,[14] the widow of the decedent Dr. Leuterio may file the suit against the insurer, Grepalife.

The second assigned error refers to an alleged concealment that the petitioner interposed as its defense to annul the insurance contract. Petitioner contends that Dr. Leuterio failed to disclose that he had hypertension, which might have caused his death. 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 assured, but he designedly and intentionally withholds the same.[15]

Petitioner merely relied on the testimony of the attending physician, Dr. Hernando Mejia, as supported by the information given by the widow of the decedent. Grepalife asserts that Dr. Mejia's technical diagnosis of the cause of death of Dr. Leuterio was a duly documented hospital record, and that the widow's declaration that her husband had "possible hypertension several years ago" should not be considered as hearsay, but as part of res gestae.

On the contrary the medical findings were not conclusive because Dr. Mejia did not conduct an autopsy on the body of the decedent. As the attending physician, Dr. Mejia stated that he had no knowledge of Dr. Leuterio's any previous hospital confinement.[16] Dr. Leuterio's death certificate stated that hypertension was only "the possible cause of death." The private respondent's statement, as to the medical history of her husband, was due to her unreliable recollection of events. Hence, the statement of the physician was properly considered by the trial court as hearsay.

The question of whether there was concealment was aptly answered by the appellate court, thus:

> "The insured, Dr. Leuterio, had answered in his insurance application that he was in good health and that he had not consulted a doctor or any of the enumerated ailments, including hypertension; when he died the attending physician had certified in the death certificate that the former died of cerebral hemorrhage, probably secondary to hypertension. From this report, the appellant insurance company refused to pay the insurance claim. Appellant alleged that the insured had concealed the fact that he had hypertension.
>
> Contrary to appellant's allegations, there was no sufficient proof that the insured had suffered from hypertension. Aside from the statement of the insured's widow who was not even sure if the medicines taken by Dr. Leuterio were for hypertension, the appellant had not proven nor produced any witness who could attest to Dr. Leuterio's medical history...
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> x x x
>
> Appellant insurance company had failed to establish that there was concealment made by the insured, hence, it cannot refuse payment of the claim."[17]

The fraudulent intent on the part of the insured must be established to entitle the insurer to rescind the contract.[18] Misrepresentation as a defense of the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the insurer.[19] In the case at bar, the petitioner failed to clearly and satisfactorily establish its defense, and is therefore liable to pay the proceeds of the insurance.

And that brings us to the last point in the review of the case at bar. Petitioner claims that there was no evidence as to the amount of Dr. Leuterio's outstanding indebtedness to DBP at the time of the mortgagor's death. Hence, for private respondent's failure to establish the same, the action for specific performance should be dismissed. Petitioner's claim is without merit. A life insurance policy is a valued policy.[20] Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.[21] The mortgagor paid the premium according to the coverage of his insurance, which states that:

> "The policy states that upon receipt of due proof of the Debtor's death during the terms of this insurance, a death benefit in the amount of P86,200.00 shall be paid.
>
> In the event of the debtor's death before his indebtedness with the creditor shall have been fully paid, an

> amount to pay the outstanding indebtedness shall first be paid to the Creditor and the balance of the Sum Assured, if there is any shall then be paid to the beneficiary/ies designated by the debtor."[22] (Emphasis omitted)

However, we noted that the Court of Appeals' decision was promulgated on May 17, 1993. In private respondent's memorandum, she states that DBP foreclosed in 1995 their residential lot, in satisfaction of mortgagor's outstanding loan. Considering this supervening event, the insurance proceeds shall inure to the benefit of the heirs of the deceased person or his beneficiaries. Equity dictates that DBP should not unjustly enrich itself at the expense of another (Nemo cum alterius detrimenio protest). Hence, it cannot collect the insurance proceeds, after it already foreclosed on the mortgage. The proceeds now rightly belong to Dr. Leuterio's heirs represented by his widow, herein private respondent Medarda Leuterio.

WHEREFORE, the petition is hereby DENIED. The Decision and Resolution of the Court of Appeals in CA-G.R. CV 18341 is AFFIRMED with MODIFICATION that the petitioner is ORDERED to pay the insurance proceeds amounting to Eighty-six thousand, two hundred (P86,200.00) pesos to the heirs of the insured, Dr. Wilfredo Leuterio (deceased), upon presentation of proof of prior settlement of mortgagor's indebtedness to Development Bank of the Philippines. Costs against petitioner.

SO ORDERED.

Mendoza, Buena, and De Leon Jr., JJ., concur.

Bellosillo, (Chairman), J., on official leave.

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[1] Rollo, pp. 36-42.

[2] Id. at 44.

[3] Id. at 36.

[4] Id. at 37.

[5] Civil Case 10788.

[6] Rollo, pp. 18-19.

[7] Serrano vs. Court of Appeals, 130 SCRA 327, 335 (1984).

[8] Ibid.

[9] 43 Am Jur 2d, Insurance Section 766; citing Hill vs. International Indem. Co. 116 Kan 109, 225 P 1056, 38 ALR 362.

[10] Rollo, p. 12.

[11] Id. at 180.

[12] 55 Phil. 386 (1930), citing Corpus Juris, volume 26 pages 483 et seq.

[13] Id. at 391, citing Corpus Juris, volume 26 pages 483 at seq.

[14] Section 181, Philippine Insurance Code.

[15] Argente vs. West Coast Life Insurance Co., 51 Phil. 725, 731 (1928). Section 26, Philippine Insurance Code.-

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A neglect to communicate that which a party knows and ought to communicate is called a concealment.

[16] Rollo, p. 40.

[17] Id. at 39-40.

[18] Ng Gan Zee vs. Asian Crusader Life Assurance Corp, 122 SCRA 461, 466 (1983)

[19] Ibid.

[20] Third Edition, Lohel A. Martirez, Philippine Insurance Code Annotated, p. 380, citing Belvin vs. Connecticut Mutual Life Ins., 23 Comm. 244.

[21] Section 183. Philippine Insurance Code.

[22] Rollo, p. 12.

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