

WHITE GOLD MARINE SERVICES, INC., PETITIONER, VS. PIONEER INSURANCE AND SURETY CORPORATION AND THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LTD., RESPONDENTS.

G.R. No. 154514. July 28, 2005

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This petition for review assails the Decision[1] dated July 30, 2002 of the Court of Appeals in CA-G.R. SP No. 60144, affirming the Decision[2] dated May 3, 2000 of the Insurance Commission in I.C. Adm. Case No. RD-277. Both decisions held that there was no violation of the Insurance Code and the respondents do not need license as insurer and insurance agent/broker.

The facts are undisputed.

White Gold Marine Services, Inc. (White Gold) procured a protection and indemnity coverage for its vessels from The Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual) through Pioneer Insurance and Surety Corporation (Pioneer). Subsequently, White Gold was issued a Certificate of Entry and Acceptance.[3] Pioneer also issued receipts evidencing payments for the coverage. When White Gold failed to fully pay its accounts, Steamship Mutual refused to renew the coverage.

Steamship Mutual thereafter filed a case against White Gold for collection of sum of money to recover the latter's unpaid balance. White Gold on the other hand, filed a complaint before the Insurance Commission claiming that Steamship Mutual violated Sections 186[4] and 187[5] of the Insurance Code, while Pioneer violated Sections 299,[6] 300[7] and 301[8] in relation to Sections 302 and 303, thereof.

The Insurance Commission dismissed the complaint. It said that there was no need for Steamship Mutual to secure a license because it was not engaged in the insurance business. It explained that Steamship Mutual was a Protection and Indemnity Club (P & I Club). Likewise, Pioneer need not obtain another license as insurance agent and/or a broker for Steamship Mutual because Steamship Mutual was not engaged in the insurance business. Moreover, Pioneer was already licensed, hence, a separate license solely as agent/broker of Steamship Mutual was already superfluous.

The Court of Appeals affirmed the decision of the Insurance Commissioner. In its decision, the appellate court distinguished between P & I Clubs vis-à-vis conventional insurance. The appellate court also held that Pioneer merely acted as a collection agent of Steamship Mutual.

In this petition, petitioner assigns the following errors allegedly committed by the appellate court,

FIRST ASSIGNMENT OF ERROR

THE COURT A QUO ERRED WHEN IT RULED THAT RESPONDENT STEAMSHIP IS NOT DOING

BUSINESS IN THE PHILIPPINES ON THE GROUND THAT IT COURSED . . . ITS TRANSACTIONS THROUGH ITS AGENT AND/OR BROKER HENCE AS AN INSURER IT NEED NOT SECURE A LICENSE TO ENGAGE IN INSURANCE BUSINESS IN THE PHILIPPINES.

SECOND ASSIGNMENT OF ERROR

THE COURT A QUO ERRED WHEN IT RULED THAT THE RECORD IS BEREFT OF ANY EVIDENCE THAT RESPONDENT STEAMSHIP IS ENGAGED IN INSURANCE BUSINESS.

THIRD ASSIGNMENT OF ERROR

THE COURT A QUO ERRED WHEN IT RULED, THAT RESPONDENT PIONEER NEED NOT SECURE A LICENSE WHEN CONDUCTING ITS AFFAIR AS AN AGENT/BROKER OF RESPONDENT STEAMSHIP.

FOURTH ASSIGNMENT OF ERROR

THE COURT A QUO ERRED IN NOT REVOKING THE LICENSE OF RESPONDENT PIONEER AND [IN NOT REMOVING] THE OFFICERS AND DIRECTORS OF RESPONDENT PIONEER.[9]

Simply, the basic issues before us are (1) Is Steamship Mutual, a P & I Club, engaged in the insurance business in the Philippines? (2) Does Pioneer need a license as an insurance agent/broker for Steamship Mutual?

The parties admit that Steamship Mutual is a P & I Club. Steamship Mutual admits it does not have a license to do business in the Philippines although Pioneer is its resident agent. This relationship is reflected in the certifications issued by the Insurance Commission.

Petitioner insists that Steamship Mutual as a P & I Club is engaged in the insurance business. To buttress its assertion, it cites the definition of a P & I Club in *Hyopsung Maritime Co., Ltd. v. Court of Appeals*[10] as "an association composed of shipowners in general who band together for the specific purpose of providing insurance cover on a mutual basis against liabilities incidental to shipowning that the members incur in favor of third parties." It stresses that as a P & I Club, Steamship Mutual's primary purpose is to solicit and provide protection and indemnity coverage and for this purpose, it has engaged the services of Pioneer to act as its agent.

Respondents contend that although Steamship Mutual is a P & I Club, it is not engaged in the insurance business in the Philippines. It is merely an association of vessel owners who have come together to provide mutual protection against liabilities incidental to shipowning.[11] Respondents aver *Hyopsung* is inapplicable in this case because the issue in *Hyopsung* was the jurisdiction of the court over *Hyopsung*.

Is Steamship Mutual engaged in the insurance business?

Section 2(2) of the Insurance Code enumerates what constitutes "doing an insurance business" or "transacting an insurance business". These are:

(a)

making or proposing to make, as insurer, any insurance contract;

(b)

making, or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;

(c)

doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing

of an insurance business within the meaning of this Code;

(d)

doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.

...

The same provision also provides, the fact that no profit is derived from the making of insurance contracts, agreements or transactions, or that no separate or direct consideration is received therefor, shall not preclude the existence of an insurance business.[12]

The test to determine if a contract is an insurance contract or not, depends on the nature of the promise, the act required to be performed, and the exact nature of the agreement in the light of the occurrence, contingency, or circumstances under which the performance becomes requisite. It is not by what it is called.[13]

Basically, an insurance contract is a contract of indemnity. In it, one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.[14]

In particular, a marine insurance undertakes to indemnify the assured against marine losses, such as the losses incident to a marine adventure.[15] Section 99[16] of the Insurance Code enumerates the coverage of marine insurance.

Relatedly, a mutual insurance company is a cooperative enterprise where the members are both the insurer and insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion to their interest.[17] Additionally, mutual insurance associations, or clubs, provide three types of coverage, namely, protection and indemnity, war risks, and defense costs.[18]

A P & I Club is "a form of insurance against third party liability, where the third party is anyone other than the P & I Club and the members." [19] By definition then, Steamship Mutual as a P & I Club is a mutual insurance association engaged in the marine insurance business.

The records reveal Steamship Mutual is doing business in the country albeit without the requisite certificate of authority mandated by Section 187[20] of the Insurance Code. It maintains a resident agent in the Philippines to solicit insurance and to collect payments in its behalf. We note that Steamship Mutual even renewed its P & I Club cover until it was cancelled due to non-payment of the calls. Thus, to continue doing business here, Steamship Mutual or through its agent Pioneer, must secure a license from the Insurance Commission.

Since a contract of insurance involves public interest, regulation by the State is necessary. Thus, no insurer or insurance company is allowed to engage in the insurance business without a license or a certificate of authority from the Insurance Commission.[21]

Does Pioneer, as agent/broker of Steamship Mutual, need a special license?

Pioneer is the resident agent of Steamship Mutual as evidenced by the certificate of registration[22] issued by the Insurance Commission. It has been licensed to do or transact insurance business by virtue of the certificate of authority[23] issued by the same agency. However, a Certification from the Commission states that Pioneer does not have a separate license to be an agent/broker of Steamship Mutual.[24]

Although Pioneer is already licensed as an insurance company, it needs a separate license to act as insurance agent for Steamship Mutual. Section 299 of the Insurance Code clearly states:

SEC. 299 . . .

No person shall act as an insurance agent or as an insurance broker in the solicitation or procurement of applications for insurance, or receive for services in obtaining insurance, any commission or other compensation from any insurance company doing business in the Philippines or any agent thereof, without first procuring a license so to act from the Commissioner, which must be renewed annually on the first day of January, or within six months thereafter. . .

Finally, White Gold seeks revocation of Pioneer's certificate of authority and removal of its directors and officers. Regrettably, we are not the forum for these issues.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The Decision dated July 30, 2002 of the Court of Appeals affirming the Decision dated May 3, 2000 of the Insurance Commission is hereby **REVERSED AND SET ASIDE**. The Steamship Mutual Underwriting Association (Bermuda) Ltd., and Pioneer Insurance and Surety Corporation are **ORDERED** to obtain licenses and to secure proper authorizations to do business as insurer and insurance agent, respectively. The petitioner's prayer for the revocation of Pioneer's Certificate of Authority and removal of its directors and officers, is **DENIED**. Costs against respondents.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Ynares-Santiago, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 28-41. Penned by Associate Justice Delilah Vidallon-Magtolis, with Associate Justices Candido V. Rivera, and Sergio L. Pestaño concurring.

[2] CA Rollo, pp. 43-51.

[3] Id. at 103.

[4] SEC. 186. No person, partnership, or association of persons shall transact any insurance business in the Philippines except as agent of a person or corporation authorized to do the business of insurance in the Philippines, unless possessed of the capital and assets required of an insurance corporation doing the same kind of business in the Philippines and invested in the same manner; nor unless the Commissioner shall have granted to him or them a certificate to the effect that he or they have complied with all the provisions of law which an insurance corporation doing business in the Philippines is required to observe.

Every person, partnership, or association receiving any such certificate of authority shall be subject to the insurance laws of the Philippines and to the jurisdiction and supervision of the Commissioner in the same manner as if an insurance corporation authorized by the laws of the Philippines to engage in the business of insurance specified in the certificate.

[5] SEC. 187. No Insurance Company shall transact any insurance business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Commissioner upon application therefor and payment by the company concerned of the fees hereinafter prescribed.

. . .

[6] SEC. 299. No insurance company doing business in the Philippines, nor any agent thereof, shall pay any commission or other compensation to any person for services in obtaining insurance, unless such person shall have first procured from the Commissioner a license to act as an insurance agent of such company or as an insurance broker as hereinafter provided.

No person shall act as an insurance agent or as an insurance broker in the solicitation or procurement of applications for insurance, or receive for services in obtaining insurance, any commission or other compensation from any insurance company doing business in the Philippines or any agent thereof, without first procuring a license so to act from the Commissioner, . . .

[7] SEC. 300. Any person who for compensation solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiating of such insurance shall be an insurance agent within the intent of this section and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance agent is subject.

[8] SEC. 301. Any person who for any compensation, commission or other thing of value acts or aids in any manner 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.

[9] Rollo, pp. 144-145.

[10] No. L-77369, 31 August 1988, 165 SCRA 258, 260.

[11] Rollo, p. 176.

[12] THE INSURANCE CODE OF THE PHILIPPINES, Section 2(2).

[13] 43 AM JUR. 2d Insurance Sec. 4 (1982).

[14] RUFUS B. RODRIGUEZ, THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED 4 (4th ed., 1999), citing BUIST M. ANDERSON, VANCE ON INSURANCE 83 (3rd ed., 1951).

[15] EDUARDO F. HERNANDEZ AND ANTERO A. PEÑASALES, PHILIPPINE ADMIRALTY AND MARITIME LAW 612 (1st ed., 1987).

[16] SEC. 99. Marine insurance includes:

(1) Insurance against loss of or damage to:

(a) Vessels, craft, aircraft, vehicles, goods, freights, cargoes, merchandise, effects, disbursements, profits, moneys, securities, choses in action, evidences of debt, valuable papers, bottomry, and respondentia interests and all other kinds of property and interests therein, in respect to, appertaining to or in connection with any and all risks or perils of navigation, transit or transportation, or while being assembled, packed, crated, baled, compressed or similarly prepared for shipment or while awaiting shipment, or during any delays, storage, transshipment, or reshipment incident thereto, including war risks, marine builder's risks, and all personal property floater risks.

(b) Person or property in connection with or appertaining to a marine, inland marine, transit or transportation insurance, including liability for loss of or damage arising out of or in connection with the construction, repair, operation, maintenance or use of the subject matter of such insurance (but not including life insurance or surety bonds nor insurance against loss by reason of bodily injury to any person arising out of the ownership, maintenance, or use of automobiles).

(c) Precious stones, jewels, jewelry, precious metals, whether in course of transportation or otherwise.

(d) Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their

furniture and furnishings, fixed contents and supplies held in storage); piers, wharves, docks and slips, and other aids to navigation and transportation, including dry docks and marine railways, dams and appurtenant facilities for the control of waterways.

(2) "Marine protection and indemnity insurance," meaning insurance against, or against legal liability of the insured for loss, damage, or expense incident to ownership, operation, chartering, maintenance, use, repair, or construction of any vessel, craft or instrumentality in use in ocean or inland waterways, including liability of the insured for personal injury, illness or death or for loss of or damage to the property of another person.

[17] Supra, note 13 at Sec. 65.

[18] HOWARD BENNETT, THE LAW OF MARINE INSURANCE 236 (1996).

[19] Supra, note 15 at 733.

[20] Supra, note 5.

[21] Supra, note 12 at Sec. 187.

[22] CA Rollo, p. 154.

[23] Id. at 153.

[24] Id. at 112. Certification issued by the Insurance Commission which certified that Pioneer is not a registered broker for any foreign corporation.

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