

PILAR C. DE LIM, PLAINTIFF AND APPELLANT, VS. SUN LIFE ASSURANCE COMPANY OF CANADA, DEFENDANT AND APPELLEE.

G. R. No. 15774. November 29, 1920

Ponente: MALCOLM, J.

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MALCOLM, J.:

This is an appeal by plaintiff from an order of the Court of First Instance of Zamboanga sustaining a demurrer to plaintiff's complaint, upon the ground that it fails to state a cause of action.

As the demurrer had the effect of admitting the material facts set forth in the complaint, the facts are those alleged by the plaintiff. On July 6, 1917, Luis Lim y Garcia of Zamboanga made application to the Sun Life Assurance Company of Canada for a policy of insurance on his life in the sum of P5,000. In his application Lim designated his wife, Pilar C. de Lim, the plaintiff herein, as the beneficiary. The first premium of P433 was paid by Lim, and upon such payment the company issued what was called a "provisional policy." Luis Lim y Garcia died on August 23, 1917, after the issuance of the provisional policy but before approval of the application by the home office of the insurance company. The instant action is brought by the beneficiary, Pilar C. de Lim, to recover from the Sun Life Assurance Company of Canada the sum of P5,000, the amount named in the provisional policy.

The "provisional policy" upon which this action rests reads as follows:

"Received (subject to the following stipulations and agreements) the sum of four hundred and thirty-three pesos, being the amount of the first year's premium for a Life Assurance Policy on the life of Mr. Luis D. Lim y Garcia of Zamboanga for P5,000, for which an application dated the 6th day of July, 1917, has been made to the Sun Life Assurance Company of Canada.

"The above-mentioned life is to be assured in accordance with the terms and conditions contained or inserted by the Company in the policy which may be granted by it in this particular case for four months only from the date of the application, provided that the Company shall confirm this agreement by issuing a policy on said application when the same shall be submitted to the Head Office in Montreal. Should the Company not issue such a policy, then this agreement shall be null and void ab initio, and the Company shall be held not to have been on the risk at all, but in such case the amount herein acknowledged shall be returned.

[SEAL.] (Sgd.) "T. B. MACAULAY, President.
(Sgd.) "A. F. PETERS, Agent."

Our duty in this case is to ascertain the correct meaning of the document above quoted. A perusal of the same many times by the writer and by other members of the court leaves a decided impression of vagueness in the mind. Apparently it is to be a provisional policy "for four months only from the date of this application." We use the term "apparently" advisedly, because immediately following the words fixing the four months period comes the word "provided" which has the meaning of "if." Otherwise stated, the policy for four months is expressly made subject to the affirmative condition that "the company shall confirm this agreement by issuing a policy on said application when the same shall be submitted to the head office in Montreal." To reinforce the same there

follows the negative condition

"Should the company not issue such a policy, then this agreement shall be null and void ab initio, and the company shall be held not to have been on the risk." Certainly, language could hardly be used which would more clearly stipulate that the agreement should not go into effect until the home office of the company should confirm it by issuing a policy. As we read and understand the so-called provisional policy it amounts to nothing but an acknowledgment on behalf of the company, that it has received from the person named therein the sum of money agreed upon as the first year's premium upon a policy to be issued upon the application, if the application is accepted by the company.

It is of course a primary rule that 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 the 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. Our view is, that a contract of insurance was not here consummated by the parties.

Appellant relies on Joyce on Insurance. Beginning at page 253, of Volume I, Joyce states the general rules concerning the agent's receipt pending approval or issuance of policy. The first rule which Joyce lays down is this: If the act of acceptance of the risk by the agent and the giving by him of a receipt, is within the scope of the agent's authority, and nothing remains but to issue a policy, then the receipt will bind the company. This rule does not apply, for while here nothing remained but to issue the policy, this was made an express condition to the contract. The second rule laid down by Joyce is this: Where an agreement is made between the applicant and the agent whether by signing an application containing such condition, or otherwise, that no liability shall attach until the principal approves the risk and a receipt is given by the agent, such acceptance is merely conditional, and is subordinated to the act of the company in approving or rejecting; so in life insurance a "binding slip" or "binding receipt" does not insure of itself. This is the rule which we believe applies to the instant case. The third rule announced by Joyce is this: Where the acceptance by the agent is within the scope of his authority a receipt containing a contract for insurance for a specified time which is not absolute but conditional, upon acceptance or rejection by the principal, covers the specified period unless the risk is declined within that period. The case cited by Joyce to substantiate the last principle is that of *Goodfellow vs. Times & Beacon Assurance Com.* (17 U. C. Q. B., 411), not available.

The two cases most nearly in point come from the federal courts and the Supreme Court of Arkansas.

In the case of *Steinle vs. New York Life Insurance Co.* ([1897], 81 Fed., 489) the facts were that the amount of the first premium had been paid to an insurance agent and a receipt given therefor. The receipt, however, expressly declared that if the application was accepted by the company, the insurance shall take effect from the date of the application but that if the application was not accepted, the money shall be returned. The trite decision of the circuit court of appeals was, "On the conceded facts of this case, there was no contract of life insurance perfected and the judgment of the circuit court must be affirmed."

In the case of *Cooksey vs. Mutual Life Insurance Co.* ([1904], 73 Ark., 117) the person applying for the life insurance paid an amount equal to the first premium, but the application and the receipt for the money paid, stipulated that the insurance was to become effective only when the application was approved and the policy issued. The court held that the transaction did not amount to an agreement for preliminary or temporary insurance. It was said:

"It is not an unfamiliar custom among life insurance companies in the operation of the business, upon receipt of an application for insurance, to enter into a contract with the applicant in the shape of a so-called 'binding receipt' for temporary insurance pending the consideration of the application, to last until the policy be issued or the application rejected, and such contracts are upheld and enforced when the applicant dies before the issuance of a policy or final rejection of the application. It is held, too, that such contracts may rest in parol. Counsel for appellant insists that such a preliminary contract for temporary insurance was entered into in this instance, but we do not think so. On the contrary, the clause in the application and the receipt given by the solicitor, which are to be read together, stipulate expressly that the insurance shall become effective only when the 'application shall be approved and the policy duly signed by the secretary at the head office of the company and issued.' It constituted no agreement at all for preliminary or temporary insurance; *Mohrstadt vs. Mutual Life Ins. Co.*, 115 Fed., 81, 52 C. C. A., 675; *Steinle vs. New York Life Ins. Co.*, 81 Fed., 489, 26 C. C. A., 491." (See further *Weinfeld vs. Mutual Reserve Fund Life Ass'n.* [1892], 53 Fed., 203; *Mohrstadt vs. Mutual Life Insurance Co.* [1902], 115 Fed., 81; *Insurance Co. vs. Young's Administrator* [1875], 90 U. S., 85; *Chamberlain vs. Prudential Insurance Company of America* [1901], 109 Wis., 4; *Shawnee Mut. Fire Ins. Co. vs. McClure* [1913], 39 Okla., 535; *Dorman vs. Connecticut Fire Ins. Co.* [1914], 51 Okla., 509; contra, *Starr vs. Mutual Life Ins. Co.* [1905], 41 Wash., 228.)

We are of the opinion that the trial court committed no error in sustaining the demurrer and dismissing the case. It is to be noted, however, that counsel for appellee admits the liability of the company for the return of the first premium to the estate of the deceased. It is not to be doubted but that the Sun Life Assurance Company of Canada will immediately, on the promulgation of this decision, pay to the estate of the late Luis Lim y Garcia the sum of P433.

The order appealed from, in the nature of a final judgment is affirmed, without special finding as to costs in this instance. So ordered.

Mapa, C. J., Johnson, Araullo, Avanceña and Villamor, JJ., concur.

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