

SUSANA GLARAGA, FOR HERSELF AND AS ADMINISTRATRIX OF THE ESTATE OF JOSE CONCEPCION JUARES, DECEASED, ANGELICA JUARES AND JUAN JUARES, PLAINTIFFS AND APPELLEES, VS. SUN LIFE ASSU...*G. R. No. 25963. December 14, 1926*

Ponente: JOHNS, J.

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July 23, 1924, the defendant, a licensed corporation, duly authorized to do business in the Philippine Islands, issued its insurance policy No. 585625 on the life of Jose Concepcion Juares in and by which it promised and agreed to pay P5,000 to the legal representatives of the insured, if, and upon the condition that, the policy was in legal force and effect at the time of the death of the insured. Jose Concepcion Juares died in January, 1925.

The plaintiff, Susana Glaraga, was duly appointed as administratrix of his estate, and a demand was made upon the company for the amount of the policy and payment refused. Plaintiff alleges that the defendant O. O. Hanson was the agent of the insurance company, who insured the life of Jose Concepcion Juares, and was the identical person to whom the first premium on the policy was paid on June 3, 1924, and that Hanson was one of the agents authorized by the company to collect premiums; that the second premium should have been paid in December, 1924, and that the deceased was prepared to send the amount of it to the defendant at Manila, and that he would have sent it in due time, but that before remitting the money, he received from the defendant Hanson written instructions not to send the amount of the premium to Manila, and stating that he, Hanson, would pay it to the insurance company; that when Hanson came to Negros in the month of January, 1925, he would collect the premium to reimburse himself, and plaintiff avers that Hanson did pay the second premium to the company at its maturity; that after the death of Juares, and before this action was brought, plaintiff made a demand upon the company for the payment of the policy, which was refused. Wherefore, she prays for judgment against the insurance company for P5,000, with legal interest and costs, and that should it develop that Hanson has not paid the insurance company the second premium, which he undertook to pay, that judgment be rendered against him jointly and severally with the company for the full amount of the policy, with legal interest.

As a special defense, the insurance company alleges that by the terms of the policy in question, a premium was payable at the rate of P169.30 for each semester, and was to be paid on the 1st of June and December of each year, or within a period of grace of not more than thirty days following such dates; that the insured paid the first premium on June 1, 1924, but that he failed and neglected to pay the premium which was due on December 1, 1924, or within thirty days thereafter, or at any other time, and that no payment of such premium was ever made by any one; that by the express terms of the policy, the failure of the insured to make the second payment at maturity or within thirty days thereafter caused the policy to lapse and to be thereafter without any force or effect; that by reason of the failure to make such payment, the policy had lapsed and was of no legal force or effect at the

time of the death of the deceased.

For a second special defense, it alleges that the policy expressly provides:

"No persons, except the President, Managing-Director or Secretary has power to alter this contract, to extend the time for paying a premium, to bind the Company by making any promise or by receiving" any representation or information not contained in the application for this policy. No payment made to any person, except in exchange for the Company's official receipt, will be recognized by the Company. This policy does not take effect until the first premium has been actually paid, during the life and good health of the insured."

That this defendant at no time authorized or empowered its codefendant O. O. Hanson or any other person, to modify the terms of the policy, and that Hanson is not an official of the defendant corporation.

For a third special defense, the company alleges that it did not have any knowledge of the alleged promise of its co-defendant Hanson to pay the second premium upon the policy, and that it never received from him any payment whatever on behalf of the insured within the thirty-day period of grace or ever at all, and it prays that the action be dismissed, and that this defendant go hence without day, with costs.

For answer the defendant Hanson admits the allegations made in paragraphs 1, 2, 3, 4 and 5 of plaintiff's amended complaint, the issuance of the policy in question, and the payment of the first premium, and specifically denies all other allegations of the complaint, or that Jose Concepcion Juares ever paid him any premium on the policy during the month of January, 1925, or at any other time, and prays that the action against him be dismissed.

After the evidence was taken upon such issues, the lower court rendered judgment against both defendants for the full amount of the policy, with interest from April 8, 1925, less P169.30, the amount of the second premium.

On its appeal, the defendant insurance company contends that:

"The trial court erred in holding that the failure of the insured to pay the premium on the policy here in question within the time prescribed by the contract did not cause the insurance policy to lapse.

"The trial court erred in holding that an agreement on the part of the solicitor to assume the obligation of the insured to pay his premium is binding upon the insurance company.

"The court erred in rendering judgment against the defendant insurance company and in denying defendant's motion for a new trial."

The defendant Hanson contends that:

"I. The trial court erred in holding Exhibit D authentic.

"II. The trial court erred in holding the defendant, O. O. Hanson liable."

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The testimony is conclusive that the second premium was never paid to the defendant company.

Assuming that fact to be true, plaintiff contends that Hanson, who was the agent of the company, wrote to the deceased during his lifetime the letter or postscript, known in the record as Exhibit D, as follows:

"I am going to pay your policy. Have money ready when I come in January.—Your brother—Hanson."

The defendant Hanson vigorously denies that he ever wrote it. That is a purely question of fact upon which the trial court found for the plaintiff.

Although there is a sharp conflict as to whether Hanson wrote the letter, there is ample evidence to sustain the

finding of the trial court upon that point, and this opinion will be written on the assumption that Hanson did write the letter as plaintiff alleges.

The remaining question is the legal force and effect of the letter, and as to whether or not it is binding upon the defendant company.

The testimony is conclusive that the second premium was never paid to the defendant company by any one. The policy is in writing, and it was issued and delivered to the deceased in June, 1924, and, among other things, upon its face, recites:

"II. Days of Grace.—Thirty days of grace are allowed for the payment of renewal premiums, without interest charge, during which times the insurance shall continue in full force. If any premium is not paid within the days of grace this policy shall thereupon become void, subject, however, to the non-forfeiture provision of section VIII hereunder.

"VIII. Automatic non-forfeiture.—At the time of the non-payment of any premium on this policy, after it shall have been two full years in force, if the reserve on it according to the British Offices OM (5)3 per cent table as shown in the table of values attached hereto, or the balance of said reserve after deducting any indebtedness to the Company and the interest and revival and expense charge accrued and accruing thereon, and on the premium then falling due to the end of the period covered by said premium, shall exceed the amount of the said premium the policy shall not lapse. Should, however, said reserve or the balance thereof be insufficient to cover such premium and accessories, as above, the policy shall thereupon lapse and become void unless said premium be paid within the thirty days of grace."

By its express terms, the non-payment of any premium when due or within the thirty-day period of grace, ipso facto causes the policy to lapse, and relieves the insurance company from all liability.

The policy in question was issued in June, 1924, and, exclusive of the first no other premium was ever paid. Among other things, the policy further provides:

"No persons, except the President, Managing-Director or Secretary has power to alter this contract, to extend the time for paying a premium, to bind the Company by making any promise or by receiving any representation or information not contained in the application for this policy. No payment made to any person, except in exchange for the company's official receipt, will be recognized by the Company. This policy does not take effect until the first premium has been actually paid, during the life and good health of the insured."

By the simple reading of the policy, the deceased would or should have known that by its express provisions, a payment made to any person, except in exchange for the company's official receipt would not be recognized by the company, and that no person, except the President, Managing-Director or Secretary, had any power to alter the contract or to extend the time for the payment of the premium, or to bind the company itself by the making of any promise, and that if the premium was not paid within the thirty-day period of grace, his policy would lapse and become null and void.

In the letter Exhibit D, Hanson did not state or represent that he had paid the premium on the policy, but in it he says:

"I am going to pay your policy. Have money ready when I come in January."

That is to say, that Hanson represented to the deceased that he would pay the amount of the premium to the company, and advised the deceased to have the money ready to repay him "when I come in January." There is no claim or pretense that in the writing of that letter Hanson claimed that he was acting for, or representing, the company, either as its agent or otherwise. It is true that upon the receipt of the letter, the deceased relied upon the

promise which Hanson made to pay the premium. But that promise was the promise of Hanson, and of Hanson only, and was made by him to the deceased, and was made by him only. If Hanson had surrendered the official receipt of the company for the premium to the deceased at the time he wrote Exhibit D, another and a different question would be presented. But there is neither allegation nor proof that the official receipt for the premium was ever delivered to the deceased.

Again, the policy expressly recites that the amount of the premiums are to be paid in pesos which, without the consent of the company, could not be paid any other manner. Upon this point, Corpus Juris, vol. 32, p. 1201, says:

"In cash or otherwise.—In the absence of provisions in the policy or contract of insurance permitting payment in some other manner, premiums are payable in cash, and an agent has no implied authority to accept payments except in cash, although he may accept that portion which is equivalent to his commission either in property, or in the form of a note, instead of cash; but a payment other than in cash may become effective by consent, estoppel, or ratification. However, if payment in cash is waived by the company or by its agent having authority to make such waiver, or if the policy or contract of insurance permits it, the company may accept payment in property or by check, draft, or order, or by note; and under such circumstances payment may be made also by the application of dividends, profits, or other funds in the hands of the company belonging to insured, or by a proper entry in a mutual account kept between the company or its authorized agent and insured or his authorized agent, but not by such entry in an account kept between insured and the agent individually and not as the authorized representative of the company, unless the authority of the agent is sufficiently ample to bind the company by such a transaction. An arrangement by the agent for the company, who is also cashier of a bank, that the premium should be charged against insured's account at the bank, does not invalidate the policy. The fact that the company charges a premium to its agent is not equivalent to payment as between the company and insured."

In the instant case, there is no evidence that the defendant Company ever ratified or approved Exhibit D or any part of it, or that it ever knew that it was written. Neither is there any evidence that Hanson or any one else paid the premium in question, or that the defendant company extended the time for its payment. The writing of Exhibit D was not the act of the company or even that of its agent, and even if it purported to be the act of the agent of the company, it might well be doubted whether it would be binding upon the company, in the absence of ratification or approval.

The lower court cites and relies upon the opinion of this court in *Harding vs. Commercial Union Assurance Co.* (38 Phil., 464), in which the syllabus says:

"Where it appears that the proposal form, while signed by the insured, was made out by the person authorized to solicit the insurance, the facts stated in the proposal, even if incorrect, will not be regarded as warranted by the insured, in the absence of willful misstatement. Under such circumstances the proposal is to be regarded as the act of the insurer."

And on page 472, the opinion says:

" * * * The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy, rarely sees or knows anything about the company or its officers by whom it is issued, but looks to and relies upon the agent who has persuaded him to effect insurance as the full and complete representative of the company, in all that is said or done in making the contract. * * * But to apply such a doctrine, in its full force, to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims."

That is good law, and is in accord with the modern weight of authority, but is not in point upon the question

involved on this appeal.

There is a marked distinction between the legal force and effect of the powers and duties of a life insurance agent in soliciting insurance and what he says or does before the policy is issued and his powers and duties, and the legal force of what he says and does after the policy is issued. In the one case, the powers and duties of the agent, and as to what he says and does are all previous to the issuance of the policy, and when the policy is once issued, the insurance company is then estopped to deny the authority of its agent, and in that case, there is no written contract between the insured and the insurance company. In the other case, the policy has been written, signed by the respective parties, and issued and delivered to the insured, and there is a written contract with provisions which specifically define and limit the powers and duties of the agent.

Therein lies the fundamental distinction between this case and that of *Harding vs. Commercial Union Assurance Co.*

In the instant case, there was a written contract between the defendant company and the insured, which was duly signed and accepted by both parties, and it specifically defines how, when and to whom, and in what manner the premiums are to be paid, and specifies and limits the powers and duties of the agent to the delivery of the official receipt of the company upon the payment to him of the amount of the premium.

All of such provisions in the policy are intended to prohibit the doing of the very thing which was done in this case. It might be true that, if Hanson was vested with all of the powers of a general agent of the company, such a contract made by him would then be binding upon the company, but there is no claim or pretense that Hanson was anything more than a special agent with limited powers and duties as to the receipt of premiums which are specifically defined by the express provisions of the policy. Neither is there any allegation or proof of any established usage or custom as to the manner or method by which Hanson collects premiums which would be binding upon the company.

For all of such reasons, we are clearly of the opinion that the policy had lapsed, and was of no legal force and effect at the time of the death of the deceased.

As to the defendant Hanson, the proof is conclusive that the deceased had the money and was able, ready and willing to pay the premium at the time he received Exhibit D. After its receipt, he relied upon Hanson to pay the premium, and for that reason, and that reason only, the deceased failed to pay the premium. Because of the fact that Hanson failed to keep his promise to pay the premium, it was never paid, which resulted in the loss to the deceased of the full amount of the policy. Hanson having promised and agreed to pay the premium, and the deceased having relied upon that promise, and Hanson having failed to pay the premium, the judgment as to him must be affirmed, with costs.

The judgment against the defendant company, Sun Life Assurance Company of Canada, is reversed, and the complaint dismissed, with costs against the plaintiff and in favor of the defendant company. So ordered.

Avanceña, C. J., Johnson, Street, Malcolm, Ostrand, and Villa-Real, JJ., concur.

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