

TAN CHAY HENG, PLAINTIFF AND APPELLEE, VS. THE WEST COAST LIFE INSURANCE COMPANY, DEFENDANT AND APPELLANT.

G.R. No. 27541. November 21, 1927

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STATEMENT

Plaintiff alleges that he is of age and a resident of Bacolod, Occidental Negros; that the defendant is a foreign insurance corporation duly organized by the laws of the Philippines to engage in the insurance business, its main office of which is in the City of Manila; that in the month of April, 1925, on his application the defendant accepted and approved a life insurance policy on Tan Caeng for the sum of P10,000 in which the plaintiff was the sole beneficiary; that the policy was issued upon the payment by the said Tan Caeng of the first year's premium amounting to P936; that in and by its terms, the defendant agreed to pay the plaintiff as beneficiary the amount of the policy upon the receipt of the proofs of the death of the insured while the policy was in force; that without any premium being due or unpaid, Tan Caeng died on May 10, 1925; that in June, 1925, plaintiff submitted the proofs of the death of Tan Caeng with a claim for the payment of the policy which the defendant refused to pay, for which he prays for a corresponding judgment, with legal interest from the date of the policy, and costs.

In February, 1926, the defendant filed an answer to the complaint in which it made a general and specific denial, and then announced its intention to file an amended answer, alleging special defense, and on August 31, 1926, it filed the following:

"AMENDED ANSWER

"Comes now the defendant, by its undersigned attorneys, and with leave of court amends its answer to plaintiff's complaint herein by making it read as follows:

"I

"That it admits paragraph 1 of said complaint.

"II

"That it denies each and every other allegation contained in each and every other paragraph of said complaint.

"SPECIAL DEFENSE

"By way of special defense, defendant alleges:

"I

"That the insurance policy on the life of Tan Caeng, upon which plaintiff's action is based, was obtained by the plaintiff in confabulation with one Go Chulian, of Bacolod, Negros Occidental; Francisco Sanchez of the same place; and Dr. V. S. Locsin, of La Carlota, Negros Occidental, thru fraud and deceit perpetrated against this defendant in the following manner, to wit:

"1. That on or about the 22d day of February, 1925, in the municipality of Pulupandan, Occidental Negros, the present plaintiff and the said Go Chulian, Francisco Sanchez and Dr. V. S. Locsin, conspiring and confederating together for the purpose of defrauding and cheating the defendant in the sum of P10,000, caused one Tan Caeng to sign an application for insurance with the defendant in the sum of P10,000, in which

application it was falsely represented to the defendant that the said Tan Caeng was single and was a merchant, and that the plaintiff Tan Chai Heng, the beneficiary, was his nephew, whereas in truth and in fact, and as the plaintiff and his said coconspirators well knew, the said Tan Caeng was not single but was legally married to Marcelina Patalita with whom he had several children; and that he was not a merchant but was a mere employee of another Chinaman by the name of Tan Quina from whom he received only a meager salary, and that the present plaintiff was not a nephew of the said Tan Caeng.

"2. That on said date, February 22, 1925, the said Tan Caeng was seriously ill, suffering from pulmonary tuberculosis of about three years' duration, which illness was incurable and was well known to the plaintiff and his said coconspirators.

"3. That on or about the same date, February 22, 1925, the said Dr. V. S. Locsin, in his capacity as medical examiner for the defendant insurance company, pursuant to the conspiracy above mentioned, prepared and falsified the necessary medical certificate, in which it was made to appear, among other things, that the said Tan Caeng had never used morphine, cocaine or any other drug; that he was then in good health and had never consulted any physician ; that he had never spit blood; and that there was no sign of either present or past disease of his lungs; whereas in truth and in fact, as the plaintiff and his said conspirators well knew, the said Tan Caeng was addicted to morphine, cocaine, and opium and had been convicted and imprisoned therefor, and was then, and for about three years prior thereto had been suffering from pulmonary tuberculosis.

"4. That on or about the same date, to wit, February 22, 1925, the plaintiff and his said coconspirators, pursuant to the conspiracy above mentioned, caused a confidential report to the defendant insurance company to be signed by one VI Sy Yock Kian, who was an employee of Go Chulian, in which confidential report, among other things, it was falsely represented to the defendant insurance company that the said Tan Caeng was worth about P40,000, had an annual income of from eight to ten thousand pesos net, had the appearance of good health, and never had tuberculosis; that the plaintiff and his said coconspirators well knew, that said representations were false; and that they were made for the purpose of deceiving the defendant and inducing it to accept the said application for insurance.

"5. That after the said application for insurance, medical certificate and confidential report had been prepared and falsified, as aforesaid, the plaintiff and his said coconspirators caused the same to be forwarded to the defendant at its office in Manila, the medical certificate thru the said Dr. V. S. Locsin as medical examiner, and said application for insurance and confidential report thru the said Francisco Sanchez in his capacity as one of the agents of the defendant insurance company in the Province of Occidental Negros; that the defendant, believing that the representations made in said document were true, and relying thereon, provisionally accepted the said application for insurance on the life of Tan Caeng in the sum of P10,000 and issued a temporary policy pending the final approval or disapproval of said application by defendant's homeoffice in San Francisco, California, where in case of approval a permanent policy was to be issued; that such permanent policy was never delivered to the plaintiff because defendant discovered the fraud before its delivery.

"6. That the first agreed annual premium on the insurance in question of P936.50 not having been paid within sixty (60) days after the date of the supposed medical examination of the applicant as required by the regulations of the defendant insurance company, of which regulations the said Francisco Sanchez as agent of the defendant had knowledge, the plaintiff and his said coconspirators in order to secure the delivery to them of said temporary policy, and in accordance with said regulations of the defendant company, caused the said Tan Caeng on April 10, 1925 to sign the following document:

""WEST COAST LIFE INSURANCE COMPANY

""SAN FRANCISCO, CALIFORNIA

" 'HEALTH CERTIFICATE FOR RE-INSTATEMENT

" 'I herewith request the West Coast Life Insurance Company to re-instate Policy No. _____ issued

by it upon my life, the first unpaid premium on which became due _____, 19_____.

" 'I certify and state that I am now in good and sound health, that since the date of my examination under the application on which said policy was written, I have had no injury, sickness, disease, impairment of health or symptom thereof, and that since said date I have neither consulted a physician nor made any application for life insurance that has not been granted in exact kind and amount applied for, except:

" 'NADA

" '(State fully all exceptions to all above statements. If no exceptions insert "NONE.")

" 'I agree that, if said policy re-instated, it shall be only on condition of the truth of the above statements and such re-instatement shall not operate as a waiver on the part of said Company of its right to refuse to accept any future overdue premiums or installments thereof.

""Witness: (Sgd.) Tan Chai Heng

" 'TAN CAENG

" 'Signature of Applicant.

" 'Dated at Pulupandan on this 10 day of April, 1925.' that the statements and representations contained in the application for reinstatement above set forth with regard to the health and physical condition of the said Tan Caeng were false and known to the plaintiff and his said coconspirators to be false; that the said temporary policy was delivered by defendant to the insured on April 10, 1925, in the belief that said statements and representations were true and in reliance thereon.

"7. That on May 10, 1925, that is to say, two months and a half after the supposed medical examination above referred to, and exactly one month after the date of the health certificate for reinstatement above set forth, the said Tan Caeng died in Valladolid, Occidental Negros, of pulmonary tuberculosis, the same illness from which he was suffering at the time it is supposed he was examined by Dr. V. S. Locsin, but that the plaintiff and his said coconspirators, pursuant to their conspiracy, caused the said Dr. V. S. Locsin to state falsely in the certificate of death that the said Tan Gaeng had died of cerebral hemorrhage.

"II

"That the plaintiff Tan Chai Heng, on the dates hereinabove mentioned, was, like V. Sy Yock Kian who signed the confidential report above mentioned, an employee of the said Go Chulian; that the latter was the ringleader of a gang of malefactors who, during, and for some years previous to the dates above mentioned, were engaged in the illicit enterprise of procuring fraudulent life insurances from the present defendant, similar to the one in question, and which enterprise was capitalized by him by furnishing the funds with which to pay the premium on said fraudulent insurance; that the said Go Chulian was the one who furnished the money with which to pay the first and only annual premium on the insurance here in question, amounting to P936.50; that the said Go. Chulian, on August 28, 1926, was convicted by the Court of First Instance of the City of Manila, in criminal case No. 31425 of that court, of the crime of falsification of private documents in connection with a fraudulent insurance, similar to the present, committed against this defendant in the month of September, 1924; that in the same case the said Francisco Sanchez was one of the coaccused of the said Go Chulian but was discharged from the complaint, because he offered himself and was utilized as a state's witness; that there is another civil action now pending against Go Chulian and Sanchez in the Court of First Instance of Manila (civil case No. 28680), in which the present defendant is the plaintiff, for the recovery of the amounts of two insurance policies aggregating P19,000, fraudulently obtained by the said Go Chulian and Sanchez upon the lives of one Tan Deco, who was also suffering from and died of tuberculosis, and one Tan Anso, who was suffering from and died of beriberi.

"III

"That by reason of all the facts above set forth, the temporary policy of insurance on the life of Tan Caeng for the sum of P10,000 upon which the present action is based is null and void.

"Wherefore, defendant prays that it be absolved from plaintiff's complaint, with costs against the plaintiff."

To this special defense, the plaintiff, claiming that it was a cross-complaint, filed a general demurrer upon the ground that it does not state facts sufficient to constitute a cause of defense.

After exhaustive arguments and on September 16, 1926, the court rendered the following decision:

"After considering the demurrer filed by the plaintiff to the special defense contained in the amended answer of the defendant, dated August 31, 1926, without prejudice to writing a more extensive decision, said demurrer is sustained, and the defendant is given a period of five days within which to amend its aforesaid answer.

"So ordered."

To which the defendant duly excepted.

As a result of the trial under the general issues, the lower court rendered judgment for the plaintiff for P10,000, with legal interest from January 4, 1926, and costs, to which the defendant duly excepted and filed a motion for a new trial, which was overruled. On appeal the defendant assigns the following errors:

"The trial court erred—

"1. In sustaining plaintiff's demurrer to the special defense contained in defendant's amended answer.

"2. In holding, in effect, that an insurer cannot avoid a policy which has been procured by fraud unless he brings an action to rescind it before he is sued thereon.

"3. In rejecting all proofs offered by the defendant during the trial for the purpose of defeating plaintiff's fraudulent claim.

"4. In not absolving the defendant from plaintiff's complaint."

JOHNS, J.:

It will thus be noted that the premium was paid on April 10, 1925, at which time the temporary policy was issued; that the plaintiff's action was commenced on January 4, 1926; that the original answer of the defendant, consisting of a general and specific denial, was filed on February 27, 1926; and that its amended answer was filed on August 31, 1926.

Based upon those facts the plaintiff vigorously contended in the lower court and now contends in this court, that section 47 of the Insurance Act should be applied, and that when so applied, defendant is barred and estopped to plead and set forth the matters alleged in its special defense. That section is as follows:

"Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract."

The defendant contended in the lower court and now contends in this court, that section 47 does not apply to the new matters alleged in the special defense. If in legal effect defendant's special defense is in the nature of an act to rescind "a contract of insurance," then such right must be exercised prior to an action to enforce the contract. That is the real question involved in this appeal.

Defendant's original answer was a general and specific denial. In other words, it specifically denied that it ever issued the policy in question, or that it ever agreed with Tan Caeng in the event of his death to pay P10,000 to the

plaintiff or any one else. In its amended answer the defendant again makes a general and specific denial, and alleges the reasons, the specific facts, and the reasons why it never made or entered into the contract alleged in the complaint, and based upon those alleged facts, defendant contends that it never did enter into any contract of insurance on the life of Tan Caeng.

The word "rescind" has a well defined legal meaning, and as applied to contracts, it presupposes the existence of a contract to rescind.

Words & Phrases, volume 7, page 6139, says:

"To rescind is to abrogate, annul, avoid, or cancel a contract.

"The word 'rescind' as used in a statement by a party to a contract as follows, 'I hereby terminate and rescind my said written contract,' is synonymous with the word 'terminate,' and the rescission therefore relates only to the unfulfilled part, and not to the entire agreement, making the party rescinding liable on notes executed pursuant to the contract which matured before the rescission.

"The rescission is the unmaking of a contract, requiring the same concurrence of wills as that which made it, and nothing short of this will suffice. There is a wide difference between the rescission of a contract and its mere termination or cancellation.

"After a contract has been broken, whether by an inability to perform it, or by a rescinding against right or otherwise, the party not in fault may sue the other for the damages suffered, or, if the parties can be placed in statu quo, he may, should he prefer, return what he has received, and recover in a suit the value of what he has paid or done. The latter remedy is termed 'rescission.' "

In the instant case, it will be noted that even in its prayer, the defendant does not seek to have the alleged insurance contract rescinded. It denies that it ever made any contract of insurance on the life of Tan Caeng, or that any such a contract ever existed, and that is the question which it seeks to have litigated by its special defense. In the very nature of things, if the defendant never made or entered into the contract in question, there is no contract to rescind, and, hence, section 47 upon which the lower court based its decision in sustaining the demurrer does not apply. As stated, an action to rescind a contract is founded upon and presupposes the existence of the contract which is sought to be rescinded. If all of the material matters set forth and alleged in the defendant's special plea are true, there was no valid contract of insurance, for the simple reason that the minds of the parties never met and never agreed upon the terms and conditions of the contract. We are clearly of the opinion that, if such matters are known to exist by a preponderance of the evidence, they would constitute a valid defense to plaintiff's cause of action. Upon the question as to whether or not they are or are not true, we do not at this time have or express any opinion, but we are clear that section 47 does not apply to the allegations made in the answer, and that the trial court erred in sustaining the demurrer.

The judgment of the lower court is reversed and the case is remanded for such other and further proceedings as are not inconsistent with this opinion, with costs against the plaintiff. So ordered.

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

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