

**BERNARDO ARGENTE, PLAINTIFF AND APPELLANT, VS. WEST COAST LIFE INSURANCE CO., DEFENDANT AND APPELLEE.***G.R. No. 28499. March 19, 1928*

Ponente: MALCOLM, J.

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This is an action upon a joint life insurance policy for P15,000 issued by the defendant, the West Coast Life Insurance Co., on May 15, 1925, in favor of the plaintiff, Bernardo Argente, and his wife, Vicenta de Ocampo, the latter having died on November 18, 1925. Fraud in obtaining the policy was pleaded by way of special defense. On the issue thus suggested, the court adopted the theory of the defendant, and held the insurance policy null and void, with the result that the complaint was dismissed, with costs.

On February 9, 1925, Bernardo Argente signed an application for joint insurance with his wife in the sum of P2,000. The wife, Vicenta de Ocampo, signed a like application for the same policy. Both applications, with the exception of the names and the signatures of the applicants, were written by Jose Geronimo del Rosario, an agent for the West Coast Life Insurance Co. But all the information contained in the applications was furnished the agent by Bernardo Argente.

Pursuant to his application, Bernardo Argente was examined by Dr. Cesareo Sta. Ana, a medical examiner for the West Coast Life Insurance Co., on February 10, 1925, in the office of the Customs House. The result of such examination was recorded in the Medical Examiner's Report, and with the exception of the signature of Bernardo Argente, was in the hand-writing of Doctor Sta. Ana. But the information or answers to the questions contained on the face of the Medical Examiner's Report were furnished the doctor by the applicant, Bernardo Argente.

Pursuant to her application, Vicenta de Ocampo, wife of the plaintiff, was examined by Dr. Cesareo Sta. Ana on February 10, 1925, at her residence in Manila. The result of the medical examination, including, among other things, the answers given by Vicenta de Ocampo to the questions propounded to her by the physician, appears in the Medical Examiner's Report.

On May 9, 1925, Bernardo Argente and his wife submitted to the West Coast Life Insurance Co. an amended application for insurance, increasing the amount thereof to P15,000, and asked that the policy be dated May 15, 1925. The amended application was accompanied by the documents entitled "Short Form Medical Report." In both of these documents appear certain questions and answers.

A temporary policy for P15,000 was issued to Bernardo Argente and his wife as of May 15, 1925, but it was not delivered to Bernardo Argente until July 2, 1925, when the first quarterly premium on the policy was paid. In view of the fact that more than thirty days had elapsed since the applicants were examined by the company's physician, each of them was required to file a certificate of health before the policy was delivered to them.

On November 18, 1925, Vicenta de Ocampo died of cerebral apoplexy. Thereafter Bernardo Argente presented a claim in due form to the West Coast Life Insurance Co. for the payment of the sum of P15,000 the amount of the

joint life insurance policy. Following investigation conducted by the Manager of the Manila office of the insurance company, it was apparently disclosed that the answers given by the insured in their medical examinations with regard to their health and previous illnesses and medical Attendance were untrue. For that reason, the West Coast life Insurance Co. refused to pay the claim of Bernardo Argente, and on May 25, 1926, wrote him to the effect that the claim was rejected because the insurance was obtained through fraud and misrepresentation.

It is admitted that it appears in the Medical Examiner's Report that Bernardo Argente in response to the question asked by the medical examiner, "Have you ever consulted a physician for, or have you ever suffered from any ailment or disease of, the brain or nervous system?" answered "No." To the question, "Have you consulted a physician for any ailment or disease not included in your above answer," answered "Yes. Nature of Ailment, Disease or Injury. Scabies, Number of attacks 1, Date 1911. Duration 1 month, Severity Fair, result and, if within five years, name and address of every physician consulted. Dr. P. Guazon. Cured. Dr. Guazon is dead now." And to the question, "What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? (If none, so state)" answered "No." It is, however, not disputed that on January 10, 11, and 13, 1923, Bernardo Argente was confined in the Philippine General Hospital where he was treated by Dr. Agerico B. M. Sison for cerebral congestion and Bell's Palsy.

It is further admitted that it appears in the Medical Examiner's Report that Vicenta de Ocampo, response to the question asked by the medical examiner, "How frequently, if at all, and in what quantity do you use beer, wine, spirits or other intoxicants?" answered "Beer only in small quantities occasionally." To the question, "Have you ever consulted a physician for or have you ever suffered from any ailment or disease of the brain or nervous system?" answered "No." To the question, "What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? (If none, so state)" answered "None." And to the question, "Are you in good health as far as you know and believe?" answered "Yes." It is, however, not disputed that Vicenta de Ocampo was taken by a patrolman, at the request of her husband, Bernardo Argente, on May 19, 1924, to the Meisic police station, and from there was transferred to the San Lazaro Hospital. In San Lazaro Hospital, her case was diagnosed by the admitting physician as "alcoholism," but later Doctor Domingo made a diagnosis of probable "manic-depressive psychosis," and still, later in Mary Chiles Hospital, made a final diagnosis of "psycho-neurosis."

The plaintiff, Bernardo Argente, while readily conceding most of the facts herein narrated, yet alleges that both he and his wife revealed to the company's physician, Doctor Sta. Ana, all the facts concerning their previous illnesses and medical attendance, but that Doctor Sta. Ana, presumably acting in collusion with the insurance agent, Jose Geronimo del Rosario, failed to record them in the medical reports. The evidence on these points consists of the testimony of the plaintiff and his subordinate clerk, Apolonio Espiritu, on the one hand, and of the testimony of Doctor Sta. Ana and Jose Geronimo del Rosario on the other. On the question of fact thus raised, the trial judge found with the insurance company. In so doing, we believe that His Honor gave proper inclination to the weight of the proof. There appears no motive whatever on the part of Doctor Sta. Ana to falsify the Medical Examiner's Reports and thereby not only jeopardize his career as a physician, but also gravely implicate himself criminally.

What has heretofore been stated in this decision is gleaned to a great extent from the carefully prepared decision of the trial judge, the Honorable George R. Harvey. The court found from the evidence that the representations made by Bernardo Argente and by his wife in their applications to the defendant for life insurance were false with respect to their state of health during the period of five years preceding the date of such applications, and that they knew the representations made by them in their applications were false. The court further found from the evidence that the answers given by Bernardo Argente and his wife at the time of the medical examination by Doctor Sta.

Ana were false with respect to the condition of their health at that time and for a period of several years prior thereto. Based on these findings which must here be accepted since the stenographic transcript is incomplete, the question arises as to the state of the law in relation thereto.

One ground for the rescission of a contract of insurance under the Insurance Act is "a concealment," which in section 25 is defined as "A neglect to communicate that which a party knows and ought to communicate." Appellant argues that the alleged concealment was immaterial and insufficient to avoid the policy. We cannot agree. In an action on a life insurance policy where the evidence conclusively shows that the answers to questions concerning diseases were untrue, the truth or falsity of the answers become the determining factor. If the policy was procured by fraudulent representations, the contract of insurance apparently set forth therein was never legally existent. It can fairly be assumed that had the true facts been disclosed by the assured, the insurance would never have been granted.

In Joyce, *The Law of Insurance*, second edition, volume 3, Chapter LV, is found the following:

"Concealment exists where the assured has 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.

"Another rule is that if the assured undertakes to state all the circumstances affecting the risk, a full and fair statement of all is required.

"It is also held that the concealment must, in the absence of inquiries, be not only material, but fraudulent, or the fact must have been intentionally withheld; so it is held under English law that if no inquiries are made and no fraud or design to conceal enters into the concealment the contract is not avoided. And it is determined that even though silence may constitute misrepresentation or concealment it is not of itself necessarily so as it is a question of fact. Nor is there a concealment justifying a forfeiture where the fact of insanity is not disclosed no questions being asked concerning the same. \* \* \*

"But it would seem that if a material fact is actually known to the assured, its concealment must of itself necessarily be a fraud, and if the fact is one which the assured ought to know, or is presumed to know, the presumption of knowledge ought to place the assured in the same position as in the former case with relation to material facts; and if the jury in such cases find the fact material, and one tending to increase the risk, it is difficult to see how the inference of a fraudulent intent or intentional concealment can be avoided. And it is declared that if a material fact is concealed by assured it is equivalent to a false representation that it does not exist and that the essentials are the truth of the representations whether they were intended to mislead and did insurer accept them as true and act upon them to his prejudice. So it is decided that under a stipulation voiding the policy for concealment or misrepresentation of any material fact or if his interest is not truly stated or is other than the sole and unconditional ownership the facts are unimportant that insured did not intend to deceive or withhold information as to encumbrances even though no questions were asked. And if insured while being examined for life insurance and knowing that she had heart disease, falsely stated that she was in good health, and though she could not read the application, it was explained to her and the questions asked through an interpreter, and the application like the policy contained a provision that no liability should be incurred unless the policy was delivered while the insured was in good health, the court properly directed a verdict for the insurer, though a witness who was present at the examination, testified that the insured was not asked whether she had heart disease.

"The basis of the rule vitiating the contract in cases of concealment is that it misleads or deceives the insurer into accepting the risk, or accepting it at the rate of premium agreed upon. The insurer, relying upon the belief that the assured will disclose every material fact within his actual or presumed knowledge, is misled into a belief that the circumstance withheld does not exist, and he is thereby induced to estimate the risk upon a false basis that it does not exist.' The principal question, therefore, must be, was the assurer misled or deceived into

entering a contract obligation or in fixing the premium of insurance by a withholding of material information or facts within the assured's knowledge or presumed knowledge?

"It therefore follows that the assurer in assuming a risk is entitled to know every material fact of which the assured has exclusive or peculiar knowledge, as well as all material facts which directly tend to increase the hazard or risk which are known by the assured, or which ought to be or are presumed to be known by him. And a concealment of such facts vitiates the policy. 'It does not seem to be necessary \* \* \* that the \* \* \* suppression of the truth should have been willful.' If it were but an inadvertent omission, yet if it were material to the risk and such as the plaintiff should have known to be so, It would render the policy void. But it is held that if untrue or false answers are given in response to inquiries and they relate to material facts the policy is avoided without regard to the knowledge or fraud of assured, although under the statute statements are representations which must be fraudulent to avoid the policy. So under certain codes the important inquiries are whether the concealment was willful and related to a matter material to the risk. \*\*\*\*\*

"If the assured has exclusive knowledge of material facts, he should fully and fairly disclose the same, whether he believes them material or not/ But notwithstanding this general rule it will not infrequently happen, especially in life risks, that the assured may have a knowledge actual or presumed of material facts, and yet entertain an honest belief that they are not material. \* \* \* The determination of the point whether there has or has not been a material concealment must rest largely in all cases upon the form of the questions propounded and the exact terms of the contract. Thus, where in addition to specifically named diseases the insured was asked whether he had had any sickness within ten years, to which he answered 'No,' and it was proven that within that period he had had a slight attack of pharyngitis, it was held a question properly for the jury whether such an inflammation of the throat was a 'sickness' within the intent of the inquiry, and the court remarked on the appeal decision that if it could be held as a matter of law that the policy was thereby avoided, then it was a mere device on the part of insurance companies to obtain money without rendering themselves liable under the policy. \* \* \*

" \* \* \* The question should be left to the jury whether the assured truly represented the state of his health so as not to mislead or deceive the insurer; and if he did not deal in good faith with the insurer in that matter, then the inquiry should be made, Did he know the state of his health so as to be able to furnish a proper answer to such questions as are propounded? A Massachusetts case, if construed as it is frequently cited, would be opposed to the above conclusion; but, on the contrary, it sustains it, for the reason that symptoms of consumption had so far developed themselves within a few months prior to effecting the insurance as to induce a reasonable belief that the applicant had that fatal disease, and we should further construe this case as establishing the rule that such a matter cannot rest alone upon the assured's belief irrespective of what is a reasonable belief, but that it ought to be judged by the criterion whether the belief is one fairly warranted by the circumstances. A case in Indiana, however, holds that if the assured has some affection or ailment of one or more of the organs inquired about so well defined and marked as to materially derange for a time the functions of such organ, as in the case of Bright's disease, the policy will be avoided by a nondisclosure, irrespective of the fact whether the assured knew of such ailment or not. \* \* \*"

Lastly, appellant contends that even if the insurance company had a right to rescind the contract, such right cannot now be enforced in view of the provisions of section 47 of the Insurance Act providing "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." This section was derived from section 2583 of the California Civil Code, but in contrast thereto, makes use of the imperative "must" instead of the permissive "may." Nevertheless, there are two answers to the problem as propounded. The first is that the California law as construed by the code examiners, at whose recommendation it was adopted, conceded that "A failure to exercise the right (of rescission), cannot, of course, prejudice any defense to the action which the concealment may furnish." (Codes of California Annotated; *Tan Chay Heng vs. West Coast Life Insurance*

Company [1927], p. 80, ante.) The second answer is that the insurance company more than one month previous to the commencement of the present action wrote the plaintiff and informed him that the insurance contract was void because it had been procured through fraudulent representations, and offered to refund to the plaintiff the premium which the latter had paid upon the return of the policy for cancellation. As held in California as to a fire insurance policy, where any of the material representations are false, the insurer's tender of the premium and notice that the policy is canceled, before the commencement of suit thereon, operate to rescind the contract of insurance. (Rankin vs. Amazon Insurance Co. [1891], 89 Cal., 203.)

We are content to rest our judgment on the findings of the trial court, and on the law governing those facts, with the result that the various assignments of error are found to be without persuasive merit.

Judgment affirmed, with the costs of this instance against the appellant.

Villamor, Ostrand, Johns, Romualdez, and Villa-Real, JJ., concur.

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