

NORA LUMIBAO, PETITIONER, VS. THE HONORABLE INTERMEDIATE APPELLATE COURT AND EUGENIO TRINIDAD, RESPONDENTS.*G.R. No. 64677. September 13, 1990*

Ponente: CORTES, J.

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Assailed in this petition for review is a decision of the respondent appellate court rendered in AC-G.R. CV No. 61200 which reversed the decision of the trial court, thereby ordering petitioner to pay private respondent the sum of P46,590.00 with interest thereon from the time of the filing of the complaint below until fully paid.

Both the trial and respondent appellate courts are in agreement as to the factual antecedents of the case, thus:

Petitioner is a life insurance underwriter or agent and a member of a group of insurance underwriters known as Bescon Insurance Agencies, Inc., representing the Manila Bankers Life Insurance Corporation.

Sometime in January 1975, petitioner was able to convince private respondent Eugenio Trinidad, the Vice-President and General Manager and principal stockholder of Victory Liner Inc., to take out a life insurance policy with Manila Bankers Life Insurance Corporation. As a result of a medical examination conducted on private respondent showing that he was a diabetic, the insurance company fixed the annual insurance premium at P93,180.00 for a life insurance policy with a face value of P1,000,000.00. In order to persuade private respondent to take out the policy at the computed premium, petitioner offered to return to him the amount corresponding to her commission out of the first premium payment, which is equivalent to FIFTY percent (50%) thereof. Upon such inducement, private respondent agreed to take the policy; thus, on April 30, 1975, he issued two checks in favor of the insurance company for P46,590.00 each or a total of P93,180.00. Both checks were postdated May 30, 1975 so as to enable petitioner to make arrangements for the return to private respondent of one check corresponding to the amount of her commission.

On June 4, 1975, petitioner received the sum of P51,249.00 from Bescon Insurance Agencies, Inc. as her commission out of the first annual premium paid by private respondent. Yet, petitioner failed to comply with her commitment to pay private respondent P46,590.00. Soon after, private respondent's attorney sent a demand letter dated July 7, 1975. In reply thereto, petitioner, through her counsel, denied that she had entered into such an arrangement with private respondent.

On August 6, 1975, private respondent instituted an action against petitioner for specific performance and damages, docketed as Civil Case No. 3653. In her answer with counterclaim filed on September 29, 1975, petitioner denied that she had made a verbal promise to return to private respondent 50% of his premium.

The trial court, in a decision dated September 15, 1976, made a categorical finding that petitioner had induced private respondent to take out a life insurance policy with Manila Bankers Life Insurance Corporation by promising a rebate of 50% of his first annual premium payment on said policy. However, despite such finding, the trial court ordered the dismissal of private respondent's complaint, holding that it could not grant private

respondent any relief because the agreement entered into between the parties was void for being contrary to the provisions of Pres. Decree No. 612 [otherwise known as the Insurance Code] and public policy. The trial court also dismissed petitioner's counterclaim.

Not satisfied with the decision, petitioner interposed an appeal with respondent appellate court, docketed as AC-G.R. CV No. 61200.

On June 30, 1983, respondent appellate court affirmed the factual findings of the trial court and sustained the dismissal of petitioner's counterclaim. But in a split, decision*, respondent appellate court reversed the trial court's judgment in so far as it dismissed the complaint, and instead ordered petitioner to pay private respondent the sum of P46,590.00, with interest thereon.

Hence, the present petition for review.

After the filing of the comment, reply, rejoinder, and the parties' respective briefs, the Court considered the issues joined and the case submitted for decision.

Two issues are presented for resolution, to wit:

(1) Whether or not respondent appellate court erred in holding that petitioner violated Section 361 of Pres. Decree No. 961;

(2) Whether or not respondent appellate court erred in ordering petitioner to pay private respondent the sum of P46,590.00, with interest thereon.

As to the first issue, the Court holds that the respondent appellate court committed no reversible error in holding that petitioner violated the provisions Section 361 of the Insurance Code of the Philippines, or Pres. Decree No. 961.

A preponderance of evidence on record supports the findings of the trial and appellate courts that petitioner had induced private respondent to take out a life insurance policy from Manila Bankers Life Insurance Corporation by promising him a rebate equivalent to 50% of the first annual premium payment. These factual findings are, therefore, final and binding upon the Court.

Petitioner, however, argues that in view of the last paragraph of Article 1358 of the New Civil Code, which provides that contracts where the amount involved exceeds five hundred pesos must appear in writing, the courts below erred in giving weight and credence to the testimonies of private respondent and his witnesses which sought to prove that she had promised such rebate.

This contention is patently erroneous. Petitioner's reliance on Article 1358 is misplaced for the apparent reason that this article does not lay down any evidentiary rule which precludes oral testimony as a means of proving that parties have entered into a contract or agreement involving an amount of more than five hundred pesos.

Neither can it be gainsaid that petitioner, an insurance agent, is enjoined by law from inducing prospective clients to take out insurance by offering rebates from the premiums specified in the insurance policies.

Section 361 of Pres. Decree No. 612 states:

No insurance company doing business in the Philippines or any agent thereof, no insurance broker, and no employee or other representative of any such insurance company, agent, or broker, shall make, procure or negotiate any contract of insurance or agreement as to policy contract, other than is plainly expressed in the policy or other written contract issued or to be issued as evidence thereof, or shall directly or indirectly, by giving or sharing a commission or in any manner whatsoever, pay or allow or offer to pay or allow to the

insured or to any employee of such insured, either as an inducement to the making of such insurance or after such insurance has been effected, any rebate from the premium which is specified in the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or shall give or offer to give any valuable consideration or inducement of any kind, directly or indirectly, which is not specified in such policy or contract of insurance; nor shall any such company, or any agent thereof, as to any policy or contract of insurance issued, make any discrimination against any Filipino in the sense that he is given less advantageous rates, dividends or other policy conditions or privileges than are accorded to other nationals because of his race [Underscoring supplied.]

Furthermore, Section 363 of Pres. Decree No. 612 provides that violation of the above section constitutes a ground for the immediate revocation of the license issued to the erring insurance company, agent or broker and the imposition of a fine not exceeding five hundred pesos.

It is evident that petitioner's promise to pay private respondent an amount equivalent to 50% of the first premium payment, which would be taken out of her commission on the insurance policy, is covered squarely by the express provisions of Section 361.

Having disposed of the first issue, the Court will now proceed to tackle the issue pertaining to the enforceability of the rebate agreement between petitioner and private respondent.

After deliberating on the arguments adduced in the a pleadings, the Court finds that respondent appellate court committed reversible error of law in ordering petitioner to pay private respondent the promised rebate of P46,590.00.

Firstly, without legal justification, respondent appellate court contravened a basic rule in appellate procedure.

It is well-settled in this jurisdiction that whenever an appeal is taken in a civil case, an appellee who has not himself appealed may not obtain from the appellate court any affirmative relief other than the ones granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed, and he can assign errors in his brief if such is required to strengthen the views expressed by the court a quo. These assigned errors in turn may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in the appellee's favor and giving him other affirmative reliefs [Bunge Corporation v. Elena Camenforte & Co., 91 Phil. 861 (1952); Andaya v. Manansala, 107 Phil. 1151 (1960); Enecilla v. Magsaysay, G.R. No. L-21568, May 19, 1966, 17 SCRA 125.]

In the case at bar, while petitioner interposed her appeal from the adverse decision rendered by the trial court dismissing her counterclaim, private respondent inexplicably failed to appeal from the same decision which dismissed his complaint as well. It was, therefore, grave error on the part of respondent appellate court, in reversing the trial court's decision, to grant private respondent affirmative relief other than that found in the appealed judgment.

Secondly, prescending from the earlier discussion declaring the collateral agreement for rebate between the parties a prohibited transaction under Section 361 of Pres. Decree No. 961, the Court must conclude that respondent appellate court gravely erred in compelling petitioner to comply with her promised undertaking.

By virtue of Article 1409 (7) of the New Civil Code, the rebate agreement between the petitioner and private respondent is deemed a contract void ab initio, and consequently, does not give rise to enforceable rights and obligations as between the parties thereto.

However, respondent appellate court opined that since the prohibition against rebate agreements under Section

361 of Pres. Decree No. 612, and the penalty imposed therefor under Section 363, refer only to insurance agents, brokers or companies, Article 1412 (2) of the New Civil Code provides the legal basis for allowing private respondent, the party who is not at fault, to recover the amount of P46,590.00 from petitioner.

This position is untenable.

There are indeed instances where the law recognizes the right of an innocent party to recover what he has paid or delivered under the agreement [See Articles 1411-1417 of the New Civil Code], but contrary to the ruling of respondent appellate court, the case at bar does not fall under any of the legal exceptions. Respondent appellate court erred in citing Article 1412, par.(2) of the New Civil Code as legal basis for compelling petitioner to comply with her promise to pay private respondent the sum of P46,590.00.

Article 1412, par.(2), states that:

If the act in which the unlawful or forbidden cause consists does not constitute a criminal offense, the following rules shall be observed:

* * *

(2) When only one of the contracting parties is at fault, he cannot recover what he had given by reason of the contract, or ask for the fulfillment of what has been promised him. The other, who is not at fault, may demand the return of what he has given without any obligation to comply with his promise.

The article contemplates of a situation where the party who is not at fault, in the performance of his undertaking with the party who is at fault, has paid or delivered property to the latter. This is not the case between private respondent and petitioner.

The agreement between the parties consists of an undertaking on the part of private respondent to take out a life insurance policy with Manila Bankers Life Insurance Corporation and, on the part of petitioner, to give private respondent a rebate on the first premium payment. There is no indication on record that petitioner, when she made the promise, had acted with the knowledge and under the authority of the insurance company. But it is clear that the premium of P93,180.00 was actually paid to the insurance company in consideration of the policy taken out. Private respondent's checks were issued for the account of Manila Bankers Life Insurance Corporation and so encashed by the insurance company as the payee. Private respondent thus cannot "demand the return of what he has given" from petitioner because he did not, strictly-speaking, pay the amount of P93,180.00 to petitioner.

Public policy considerations serve to underscore further the Court's foregoing ruling that petitioner's promise of rebate, which is expressly prohibited by law, may not be enforced for compliance by the courts.

Section 361 of Pres. Decree No. 612 is similar to the so-called "anti-discrimination" statutes found other jurisdictions which regulate the activities in the insurance industry. The purpose of these statutes is the prevention of unfair discriminatory practices by insurance companies, agents and brokers in order to ensure that equal terms are fixed for policyholders of the same insurable class and equal expectation of life. In aid and furtherance of this desirable policy, the statutes prohibit such practices involving rebates or preferential treatment with respect to the cost of the policy or the benefits allowed for the premium [See *Laun v. Pacific Mutual Life Ins. Co. of California*, 111 NW 660 (1907); *Bernblum v. Travelers Ins. Co. of Hartford, Connecticut*, 105 SW 2d 941 (1937); *Chatz v. Bloom*, 54 NE 2d 889 (1944); *Mahone v. Hartford Life and Accident Insurance Company*, 561 P 2d 142 (1976).] It follows that to enforce contracts or agreements directly forbidden under these statutes, thereby allowing recovery thereunder, would be subversive of the very public policy which the law was designed and intended to uphold. True, the statutes, like Sections 361 and 363 of Pres. Decree No. 961, in terms, are addressed to the insurance companies, agents and brokers, and is enacted for the protection of policyholders, but this is for the

general body of policyholders who would suffer by the enforcement of the prohibited agreements, and not for those who have entered into such agreements and are seeking to profit by its terms [See *Smathers v. Bankers' Life Ins. Co.*, 65 SE 746 (1909); *Richmond v. Conservative Life Ins. Co.*, 165 NW 286 (1917); *Sovereign Camp v. Waggoner*, 173 So. 424 (1937).]

WHEREFORE, the assailed decision of respondent appellate court in AC-G.R. CV No. 61200 is SET ASIDE, and the trial court's decision in Civil Case No. 3653 is hereby REINSTATED. Let the Insurance Commissioner be furnished a copy of this decision for appropriate administrative action against petitioner pursuant to Section 363 of Pres. Decree No. 961.

SO ORDERED.

Gutierrez, Jr., Feliciano, and Bidin, JJ., concur.
Fernan, C.J., on leave.

* The majority opinion was penned by Associate Appellate Justice Eduardo P. Caguioa, with Associate Appellate Justices Ma. Rosario Quetulio-Losa, and Marcelino R. Veloso concurring. Associate Appellate Justices Ramon G. Gaviola, Jr. and Mariano A. Zosa dissented in separate opinions.

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