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THIRD DIVISION

[G.R. No. 190702, February 27, 2017]

JAIME T. GAISANO, PETITIONER, VS. DEVELOPMENT INSURANCE AND SURETY CORPORATION, RESPONDENT.

D E C I S I O N

JARDELEZA, J.:

This is a petition for review on *certiorari*[1] seeking to nullify the Court of Appeals' (CA) September 11, 2009 Decision[2] and November 24, 2009 Resolution[3] in CA-G.R. CV No. 81225. The CA reversed the September 24, 2003 Decision[4] of the Regional Trial Court (RTC) in Civil Case No. 97-85464. The RTC granted Jaime T. Gaisano's (petitioner) claim on the proceeds of the comprehensive commercial vehicle policy issued by Development Insurance and Surety Corporation (respondent), *viz*.:

> IN VIEW OF THE FOREGOING, the decision appealed from is reversed, and the defendant-appellant ordered to pay the plaintiff-appellee the sum of P55,620.60 with interest at 6 percent per annum from the date of the denial of the claim on October 9, 1996 until payment.
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> SO ORDERED.[5]

I

The facts are undisputed. Petitioner was the registered owner of a 1992 Mitsubishi Montero with plate number GTJ-777 (vehicle), while respondent is a domestic corporation engaged in the insurance business.[6] On September 27, 1996, respondent issued a comprehensive commercial vehicle policy[7] to petitioner in the amount of P1,500,000.00 over the vehicle for a period of one year commencing on September 27, 1996 up to September 27, 1997.[8] Respondent also issued two other commercial vehicle policies to petitioner covering two other motor vehicles for the same period.[9]

To collect the premiums and other charges on the policies, respondent's agent, Trans-Pacific Underwriters Agency (Trans-Pacific), issued a statement of account to petitioner's company, Noah's Ark Merchandising (Noah's Ark).[10] Noah's Ark immediately processed the payments and issued a Far East Bank check dated September 27, 1996 payable to Trans-Pacific on the same day.[11] The check bearing the amount of P140,893.50 represents payment for the three insurance policies, with P55,620.60 for the premium and other charges over the vehicle.[12] However, nobody from Trans-Pacific picked up the check that day (September 27) because its president and general manager, Rolando Herradura, was celebrating his birthday. Trans-Pacific informed Noah's Ark that its messenger would get the check

the next day, September 28.[13]

In the evening of September 27, 1996, while under the official custody of Noah's Ark marketing manager Achilles Pacquing (Pacquing) as a service company vehicle, the vehicle was stolen in the vicinity of SM Megamall at Ortigas, Mandaluyong City. Pacquing reported the loss to the Philippine National Police Traffic Management Command at Camp Crame in Quezon City.[14] Despite search and retrieval efforts, the vehicle was not recovered.[15]

Oblivious of the incident, Trans-Pacific picked up the check the next day, September 28. It issued an official receipt numbered 124713 dated September 28, 1996, acknowledging the receipt of P55,620.60 for the premium and other charges over the vehicle.[16] The check issued to Trans-Pacific for P140,893.50 was deposited with Metrobank for encashment on October 1, 1996.[17]

On October 1, 1996, Pacquing informed petitioner of the vehicle's loss. Thereafter, petitioner reported the loss and filed a claim with respondent for the insurance proceeds of P1,500,000.00.[18] After investigation, respondent denied petitioner's claim on the ground that there was no insurance contract.[19] Petitioner, through counsel, sent a final demand on July 7, 1997.[20] Respondent, however, refused to pay the insurance proceeds or return the premium paid on the vehicle.

On October 9, 1997, petitioner filed a complaint for collection of sum of money and damages[21] with the RTC where it sought to collect the insurance proceeds from respondent. In its Answer,[22] respondent asserted that the non-payment of the premium rendered the policy ineffective. The premium was received by the respondent only on October 2, 1996, and there was no known loss covered by the policy to which the payment could be applied.[23]

In its Decision[24] dated September 24, 2003, the RTC ruled in favor of petitioner. It considered the premium paid as of September 27, even if the check was received only on September 28 because (1) respondent's agent, Trans-Pacific, acknowledged payment of the premium on that date, September 27, and (2) the check that petitioner issued was honored by respondent in acknowledgment of the authority of the agent to receive it.[25] Instead of returning the premium, respondent sent a checklist of requirements to petitioner and assigned an underwriter to investigate the claim.[26] The RTC ruled that it would be unjust and inequitable not to allow a recovery on the policy while allowing respondent to retain the premium paid.[27] Thus, petitioner was awarded an indemnity of P1,500,000.00 and attorney's fees of P50,000.00.[28]

After respondent's motion for reconsideration was denied,[29] it filed a Notice of Appeal.[30] Records were forwarded to the CA.[31]

The CA granted respondent's appeal.[32] The CA upheld respondent's position that an insurance contract becomes valid and binding only after the premium is paid pursuant to Section 77 of the Insurance Code (Presidential Decree No. 612, as amended by Republic Act No. 10607).[33] It found that the premium was not yet

paid at the time of the loss on September 27, but only a day after or on September 28, 1996, when the check was picked up by Trans-Pacific.[34] It also found that none of the exceptions to Section 77 obtains in this case.[35] Nevertheless, the CA ordered respondent to return the premium it received in the amount of P55,620.60, with interest at the rate of 6% *per annum* from the date of the denial of the claim on October 9, 1996 until payment.[36]

Hence petitioner filed this petition. He argues that there was a valid and binding insurance contract between him and respondent.[37] He submits that it comes within the exceptions to the rule in Section 77 of the Insurance Code that no contract of insurance becomes binding unless and until the premium thereof has been paid. The prohibitive tenor of Section 77 does not apply because the parties stipulated for the payment of premiums.[38] The parties intended the contract of insurance to be immediately effective upon issuance, despite non-payment of the premium, because respondent trusted petitioner.[39] He adds that respondent waived its right to a pre-payment in full of the terms of the policy, and is in *estoppel*.[40]

Petitioner also argues that assuming he is not entitled to recover insurance proceeds, but only to the return of the premiums paid, then he should be able to recover the full amount of P140,893.50, and not merely P55,620.60.[41] The insurance policy covered three vehicles yet respondent's intention was merely to disregard the contract for only the lost vehicle.[42] According to petitioner, the principle of mutuality of contracts is violated, at his expense, if respondent is allowed to be excused from performance on the insurance contract only for one vehicle, but not as to the two others, just because no loss is suffered as to the two. To allow this "would be to place exclusively in the hands of one of the contracting parties the right to decide whether the contract should stand or not x x x."[43]

For failure of respondent to tile its comment to the petition, we declared respondent to have waived its right to file a comment in our June 15, 2011 Resolution.[44]

The lone issue here is whether there is a binding insurance contract between petitioner and respondent.

II

We deny the petition.

Insurance is a contract whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.[45] Just like any other contract, it requires a cause or consideration. The consideration is the premium, which must be paid at the time and in the way and manner specified in the policy.[46] If not so paid, the policy will lapse and be forfeited by its own terms.[47]

The law, however, limits the parties' autonomy as to when payment of premium may be made for the contract to take effect. The general rule in insurance laws is that unless the premium is paid, the insurance policy is not valid and binding.[48] Section

77 of the Insurance Code, applicable at the time of the issuance of the policy, provides:

> Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid, except in the case of a life or an industrial life policy whenever the grace period provision applies.

In *Tibay v. Court of Appeals*,[49] we emphasized the importance of this rule. We explained that in an insurance contract, both the insured and insurer undertake risks. On one hand, there is the insured, a member of a group exposed to a particular peril, who contributes premiums under the risk of receiving nothing in return in case the contingency does not happen; on the other, there is the insurer, who undertakes to pay the entire sum agreed upon in case the contingency happens. This risk-distributing mechanism operates under a system where, by prompt payment of the premiums, the insurer is able to meet its legal obligation to maintain a legal reserve fund needed to meet its contingent obligations to the public. The premium, therefore, is the *elixir vitae* or source of life of the insurance business:

> In the desire to safeguard the interest of the assured, it must not be ignored that the contract of insurance is primarily a risk-distributing device, a mechanism by which all members of a group exposed to a particular risk contribute premiums to an insurer. From these contributory funds are paid whatever losses occur due to exposure to the peril insured against. Each party therefore takes a risk: the insurer, that of being compelled upon the happening of the contingency to pay the entire sum agreed upon, and the insured, that of parting with the amount required as premium. without receiving anything therefor in case the contingency does not happen. To ensure payment tor these losses, the law mandates all insurance companies to maintain a legal reserve fund in favor of those claiming under their policies. It should be understood that the integrity of this fund cannot be secured and maintained if by judicial fiat partial offerings of premiums were to be construed as a legal *nexus* between the applicant and the insurer despite an express agreement to the contrary. For what could prevent the insurance applicant from deliberately or willfully holding back full premium payment and wait for the risk insured against to transpire and then conveniently pass on the balance of the premium to be deducted from the proceeds of the insurance? x x x
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> x x x
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> And so it must be. For it cannot be disputed that premium is the *elixir vitae* of the insurance business because by law the insurer must maintain a legal reserve fund to meet its contingent obligations to the public, hence, the imperative need for its prompt payment and full satisfaction. It must be emphasized here that all actuarial calculations and various tabulations of probabilities of losses under the risks insured against are based on the sound hypothesis of prompt payment of premiums. Upon

> this bedrock insurance firms are enabled to other the assurance of security to the public at favorable rates. x x x[50] (Citations omitted.)

Here, there is no dispute that the check was delivered to and was accepted by respondent's agent, Trans-Pacific, only on September 28, 1996. No payment of premium had thus been made at the time of the loss of the vehicle on September 27, 1996. While petitioner claims that Trans-Pacific was informed that the check was ready for pick-up on September 27, 1996, the notice of the availability of the check, by itself, does not produce the effect of payment of the premium. Trans-Pacific could not be considered in delay in accepting the check because when it informed petitioner that it will only be able to pick-up the check the next day, petitioner did not protest to this, but instead allowed Trans-Pacific to do so. Thus, at the time of loss, there was no payment of premium yet to make the insurance policy effective.

There are, of course, exceptions to the rule that no insurance contract takes effect unless premium is paid. In *UCPB General Insurance Co., Inc. v. Masagana Telamart, Inc.*,[51] we said:

> It can be seen at once that Section 77 does not restate the portion of Section 72 expressly permitting an agreement to extend the period to pay the premium. But are there exceptions to Section 77?
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> The answer is in the affirmative.
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> The first exception is provided by Section 77 itself, and that is, in case of a life or industrial life policy whenever the grace period provision applies.
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> The second is that covered by Section 78 of the Insurance Code, which provides:
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> > SEC. 78. Any acknowledgment in a policy or contract of insurance of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until premium is actually paid.
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> A third exception was laid down in *Makati Tuscany Condominium Corporation vs. Court of Appeals*, wherein we ruled that Section 77 may not apply if the parties have agreed to the payment in installments of the premium and partial payment has been made at the time of loss. We said therein, thus:
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> > We hold that the subject policies are valid even if the premiums were paid on installments. The records clearly show that the petitioners and private respondent intended subject insurance policies to be binding and effective notwithstanding the staggered payment of the premiums. The initial insurance contract entered into in 1982 was renewed in 1983, then in 1984. In those three years, the insurer accepted all the installment payments. Such acceptance of payments speaks loudly of the insurer's intention to honor the policies it issued to petitioner. Certainly, basic principles of equity and fairness would not allow the insurer to continue collecting and