502 Phil. 692

FIRST DIVISION

[G.R. No. 154514, July 28, 2005]

WHITE GOLD MARINE SERVICES, INC., PETITIONER, VS. PIONEER INSURANCE AND SURETY CORPORATION AND THE STEAMSHIP MUTUAL UNDERWRITING ASSOCIATION (BERMUDA) LTD., RESPONDENTS.

DECISION

QUISUMBING, J.:

This petition for review assails the **Decision**[1] dated July 30, 2002 of the Court of Appeals in CA-G.R. SP No. 60144, affirming the **Decision**[2] dated May 3, 2000 of the Insurance Commission in I.C. Adm. Case No. RD-277. Both decisions held that there was no violation of the Insurance Code and the respondents do not need license as insurer and insurance agent/broker.

The facts are undisputed.

White Gold Marine Services, Inc. (White Gold) procured a protection and indemnity coverage for its vessels from The Steamship Mutual Underwriting Association (Bermuda) Limited (Steamship Mutual) through Pioneer Insurance and Surety Corporation (Pioneer). Subsequently, White Gold was issued a Certificate of Entry and Acceptance.[3] Pioneer also issued receipts evidencing payments for the coverage. When White Gold failed to fully pay its accounts, Steamship Mutual refused to renew the coverage.

Steamship Mutual thereafter filed a case against White Gold for collection of sum of money to recover the latter's unpaid balance. White Gold on the other hand, filed a complaint before the Insurance Commission claiming that Steamship Mutual violated Sections 186[4] and 187[5] of the Insurance Code, while Pioneer violated Sections 299,[6] 300[7] and 301[8] in relation to Sections 302 and 303, thereof.

The Insurance Commission dismissed the complaint. It said that there was no need for Steamship Mutual to secure a license because it was not engaged in the insurance business. It explained that Steamship Mutual was a Protection and Indemnity Club (P & I Club). Likewise, Pioneer need not obtain another license as insurance agent and/or a broker for Steamship Mutual because Steamship Mutual was not engaged in the insurance business. Moreover, Pioneer was already licensed, hence, a separate license solely as agent/broker of Steamship Mutual was already superfluous.

The Court of Appeals affirmed the decision of the Insurance Commissioner. In its decision, the appellate court distinguished between P & I Clubs *vis-à-vis* conventional insurance. The appellate court also held that Pioneer merely acted as

a collection agent of Steamship Mutual.

In this petition, petitioner assigns the following errors allegedly committed by the appellate court,

FIRST ASSIGNMENT OF ERROR

> THE COURT A QUO ERRED WHEN IT RULED THAT RESPONDENT STEAMSHIP IS NOT DOING BUSINESS IN THE PHILIPPINES ON THE GROUND THAT IT COURSED . . . ITS TRANSACTIONS THROUGH ITS AGENT AND/OR BROKER HENCE AS AN INSURER IT NEED NOT SECURE A LICENSE TO ENGAGE IN INSURANCE BUSINESS IN THE PHILIPPINES.

SECOND ASSIGNMENT OF ERROR

> THE COURT A QUO ERRED WHEN IT RULED THAT THE RECORD IS BEREFT OF ANY EVIDENCE THAT RESPONDENT STEAMSHIP IS ENGAGED IN INSURANCE BUSINESS.

THIRD ASSIGNMENT OF ERROR

> THE COURT A QUO ERRED WHEN IT RULED, THAT RESPONDENT PIONEER NEED NOT SECURE A LICENSE WHEN CONDUCTING ITS AFFAIR AS AN AGENT/BROKER OF RESPONDENT STEAMSHIP.

FOURTH ASSIGNMENT OF ERROR

> THE COURT A QUO ERRED IN NOT REVOKING THE LICENSE OF RESPONDENT PIONEER AND [IN NOT REMOVING] THE OFFICERS AND DIRECTORS OF RESPONDENT PIONEER.[9]

Simply, the basic issues before us are (1) Is Steamship Mutual, a P & I Club, engaged in the insurance business in the Philippines? (2) Does Pioneer need a license as an insurance agent/broker for Steamship Mutual?

The parties admit that Steamship Mutual is a P & I Club. Steamship Mutual admits it does not have a license to do business in the Philippines although Pioneer is its resident agent. This relationship is reflected in the certifications issued by the Insurance Commission.

Petitioner insists that Steamship Mutual as a P & I Club is engaged in the insurance business. To buttress its assertion, it cites the definition of a P & I Club in *Hyopsung Maritime Co., Ltd. v. Court of Appeals*[10] as "an association composed of shipowners in general who band together for the specific purpose of providing insurance cover on a mutual basis against liabilities incidental to shipowning that the members incur in favor of third parties." It stresses that as a P & I Club, Steamship Mutual's primary purpose is to solicit and provide protection and indemnity coverage and for this purpose, it has engaged the services of Pioneer to act as its agent.

Respondents contend that although Steamship Mutual is a P & I Club, it is not engaged in the insurance business in the Philippines. It is merely an association of vessel owners who have come together to provide mutual protection against

liabilities incidental to shipowning.[11] Respondents aver *Hyopsung* is inapplicable in this case because the issue in *Hyopsung* was the jurisdiction of the court over *Hyopsung*.

Is Steamship Mutual engaged in the insurance business?

Section 2(2) of the Insurance Code enumerates what constitutes "doing an insurance business" or "transacting an insurance business". These are:

> (a) making or proposing to make, as insurer, any insurance contract;
> (b) making, or proposing to make, as surety, any contract of suretyship as a vocation and not as merely incidental to any other legitimate business or activity of the surety;
> (c) doing any kind of business, including a reinsurance business, specifically recognized as constituting the doing of an insurance business within the meaning of this Code;
> (d) doing or proposing to do any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Code.
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> . . .

The same provision also provides, the fact that no profit is derived from the making of insurance contracts, agreements or transactions, or that no separate or direct consideration is received therefor, shall not preclude the existence of an insurance business.[12]

The test to determine if a contract is an insurance contract or not, depends on the nature of the promise, the act required to be performed, and the exact nature of the agreement in the light of the occurrence, contingency, or circumstances under which the performance becomes requisite. It is not by what it is called.[13]

Basically, an insurance contract is a contract of indemnity. In it, one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event.[14]

In particular, a marine insurance undertakes to indemnify the assured against marine losses, such as the losses incident to a marine adventure.[15] Section 99[16] of the Insurance Code enumerates the coverage of marine insurance.

Relatedly, a mutual insurance company is a cooperative enterprise where the members are both the insurer and insured. In it, the members all contribute, by a system of premiums or assessments, to the creation of a fund from which all losses and liabilities are paid, and where the profits are divided among themselves, in proportion to their interest.[17] Additionally, mutual insurance associations, or clubs, provide three types of coverage, namely, protection and indemnity, war risks, and defense costs.[18]

A P & I Club is "a **form of insurance** against third party liability, where the third party is anyone other than the P & I Club and the members."[19] By definition then,