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[G.R. No. 137172, April 04, 2001]

UCPB GENERAL INSURANCE CO. INC., PETITIONER, VS. MASAGANA TELAMART, INC., RESPONDENT.

R E S O L U T I O N

DAVIDE JR., C.J.:

In our decision of 15 June 1999 in this case, we reversed and set aside the assailed decision[1] of the Court of Appeals, which affirmed with modification the judgment of the trial court (a) allowing Respondent to consign the sum of P225,753.95 as full payment of the premiums for the renewal of the five insurance policies on Respondent's properties; (b) declaring the replacement-renewal policies effective and binding from 22 May 1992 until 22 May 1993; and (c) ordering Petitioner to pay Respondent P18,645,000.00 as indemnity for the burned properties covered by the renewal-replacement policies. The modification consisted in the (1) deletion of the trial court's declaration that three of the policies were in force from August 1991 to August 1992; and (2) reduction of the award of the attorney's fees from 25% to 10% of the total amount due the Respondent.

The material operative facts upon which the appealed judgment was based are summarized by the Court of Appeals in its assailed decision as follows:

> Plaintiff [herein Respondent] obtained from defendant [herein Petitioner] five (5) insurance policies (Exhibits "A" to "E", Record, pp. 158-175) on its properties [in Pasay City and Manila]....
>
> All five (5) policies reflect on their face the effectivity term: "from 4:00 P.M. of 22 May 1991 to 4:00 P.M. of 22 May 1992." On June 13, 1992, plaintiff's properties located at 2410-2432 and 2442-2450 Taft Avenue, Pasay City were razed by fire. On July 13, 1992, plaintiff tendered, and defendant accepted, five (5) Equitable Bank Manager's Checks in the total amount of P225,753.45 as renewal premium payments for which Official Receipt Direct Premium No. 62926 (Exhibit "Q", Record, p. 191) was issued by defendant. On July 14, 1992, Masagana made its formal demand for indemnification for the burned insured properties. On the same day, defendant returned the five (5) manager's checks stating in its letter (Exhibit "R"/"8", Record, p. 192) that it was rejecting Masagana's claim on the following grounds:
>
> "a) Said policies expired last May 22, 1992 and were not renewed for another term;
>
> b) Defendant had put plaintiff and its alleged broker on notice of non-renewal earlier; and

c) The properties covered by the said policies were burned in a fire that took place last June 13, 1992, or before tender of premium payment."

(Record, p. 5)

Hence Masagana filed this case.

The Court of Appeals disagreed with Petitioner's stand that Respondent's tender of payment of the premiums on 13 July 1992 did not result in the renewal of the policies, having been made beyond the effective date of renewal as provided under Policy Condition No. 26, which states:

26. Renewal Clause. -- Unless the company at least forty five days in advance of the end of the policy period mails or delivers to the assured at the address shown in the policy notice of its intention not to renew the policy or to condition its renewal upon reduction of limits or elimination of coverages, the assured shall be entitled to renew the policy upon payment of the premium due on the effective date of renewal.

Both the Court of Appeals and the trial court found that sufficient proof exists that Respondent, which had procured insurance coverage from Petitioner for a number of years, had been granted a 60 to 90-day credit term for the renewal of the policies. Such a practice had existed up to the time the claims were filed. Thus:

> Fire Insurance Policy No. 34658 covering May 22, 1990 to May 22, 1991 was issued on May 7, 1990 but premium was paid more than 90 days later on August 31, 1990 under O.R. No. 4771 (Exhs. "T" and "T-1"). Fire Insurance Policy No. 34660 for Insurance Risk Coverage from May 22, 1990 to May 22, 1991 was issued by UCPB on May 4, 1990 but premium was collected by UCPB only on July 13, 1990 or more than 60 days later under O.R. No. 46487 (Exhs. "V" and "V-1"). And so were as other policies: Fire Insurance Policy No. 34657 covering risks from May 22, 1990 to May 22, 1991 was issued on May 7, 1990 but premium therefor was paid only on July 19, 1990 under O.R. No. 46583 (Exhs. "W" and "W-1"). Fire Insurance Policy No. 34661 covering risks from May 22, 1990 to May 22, 1991 was issued on May 3, 1990 but premium was paid only on July 19, 1990 under O.R. No. 46582 (Exhs. "X' and "X-1"). Fire Insurance Policy No. 34688 for insurance coverage from May 22, 1990 to May 22, 1991 was issued on May 7, 1990 but premium was paid only on July 19, 1990 under O.R. No. 46585 (Exhs. "Y" and "Y-1"). Fire Insurance Policy No. 29126 to cover insurance risks from May 22, 1989 to May 22, 1990 was issued on May 22, 1989 but premium therefor was collected only on July 25, 1990[*sic*] under O.R. No. 40799 (Exhs. "AA" and "AA-1"). Fire Insurance Policy No. HO/F-26408 covering risks from January 12, 1989 to January 12, 1990 was issued to Intratrade Phils. (Masagana's sister company) dated December 10, 1988 but premium therefor was paid only on February 15, 1989 under O.R. No. 38075 (Exhs. "BB" and "BB-1"). Fire Insurance Policy No. 29128 was issued on May 22, 1989 but premium was paid only on July 25, 1989 under O.R. No. 40800 for insurance coverage from May 22, 1989 to May 22, 1990 (Exhs. "CC" and "CC-1"). Fire Insurance Policy No. 29127 was issued on May 22, 1989 but premium was paid only on July 17, 1989 under O.R. No. 40682 for

> insurance risk coverage from May 22, 1989 to May 22, 1990 (Exhs. "DD" and "DD-1"). Fire Insurance Policy No. HO/F-29362 was issued on June 15, 1989 but premium was paid only on February 13, 1990 under O.R. No. 39233 for insurance coverage from May 22, 1989 to May 22, 1990 (Exhs. "EE" and "EE-1"). Fire Insurance Policy No. 26303 was issued on November 22, 1988 but premium therefor was collected only on March 15, 1989 under O.R. NO. 38573 for insurance risks coverage from December 15, 1988 to December 15, 1989 (Exhs. "FF" and "FF-1").

Moreover, according to the Court of Appeals the following circumstances constitute preponderant proof that no timely notice of non-renewal was made by Petitioner:

> (1) Defendant-appellant received the confirmation (Exhibit "11", Record, p. 350) from Ultramar Reinsurance Brokers that plaintiff's reinsurance facility had been confirmed up to 67.5% only on April 15, 1992 as indicated on Exhibit "11". Apparently, the notice of non-renewal (Exhibit "7," Record, p. 320) was sent not earlier than said date, or within 45 days from the expiry dates of the policies as provided under Policy Condition No. 26; (2) Defendant insurer unconditionally accepted, and issued an official receipt for, the premium payment on July 1[3], 1992 which indicates defendant's willingness to assume the risk despite only a 67.5% reinsurance cover[age]; and (3) Defendant insurer appointed Esteban Adjusters and Valuers to investigate plaintiff's claim as shown by the letter dated July 17, 1992 (Exhibit "11", Record, p. 254).

In our decision of 15 June 1999, we defined the main issue to be "whether the fire insurance policies issued by petitioner to the respondent covering the period from May 22, 1991 to May 22, 1992... had been extended or renewed by an implied credit arrangement though actual payment of premium was tendered on a later date and after the occurrence of the (fire) risk insured against." We resolved this issue in the negative in view of Section 77 of the Insurance Code and our decisions in *Valenzuela v. Court of Appeals*[2]; *South Sea Surety and Insurance Co., Inc. v. Court of Appeals*[3]; and *Tibay v. Court of Appeals*.[4] Accordingly, we reversed and set aside the decision of the Court of Appeals.

Respondent seasonably filed a motion for the reconsideration of the adverse verdict. It alleges in the motion that we had made in the decision our own findings of facts, which are not in accord with those of the trial court and the Court of Appeals. The courts below correctly found that no notice of non-renewal was made within 45 days before 22 May 1992, or before the expiration date of the fire insurance policies. Thus, the policies in question were renewed by operation of law and were effective and valid on 30 June 1992 when the fire occurred, since the premiums were paid within the 60- to 90-day credit term.

Respondent likewise disagrees with our ruling that parties may neither agree expressly or impliedly on the extension of credit or time to pay the premium nor consider a policy binding before actual payment. It urges the Court to take judicial notice of the fact that despite the express provision of Section 77 of the Insurance Code, extension of credit terms in premium payment has been the prevalent practice in the insurance industry. Most insurance companies, including Petitioner, extend credit terms because Section 77 of the Insurance Code is not a prohibitive injunction but is merely designed for the protection of the parties to an insurance

contract. The Code itself, in Section 78, authorizes the validity of a policy notwithstanding non-payment of premiums.

Respondent also asserts that the principle of estoppel applies to Petitioner. Despite its awareness of Section 77 Petitioner persuaded and induced Respondent to believe that payment of premium on the 60- to 90-day credit term was perfectly alright; in fact it accepted payments within 60 to 90 days after the due dates. By extending credit and habitually accepting payments 60 to 90 days from the effective dates of the policies, it has implicitly agreed to modify the tenor of the insurance policy and in effect waived the provision therein that it would pay only for the loss or damage in case the same occurred after payment of the premium.

Petitioner filed an opposition to the Respondent's motion for reconsideration. It argues that both the trial court and the Court of Appeals overlooked the fact that on 6 April 1992 Petitioner sent by ordinary mail to Respondent a notice of non-renewal and sent by personal delivery a copy thereof to Respondent's broker, Zuellig. Both courts likewise ignored the fact that Respondent was fully aware of the notice of non-renewal. A reading of Section 66 of the Insurance Code readily shows that in order for an insured to be entitled to a renewal of a non-life policy, payment of the premium due on the effective date of renewal should first be made. Respondent's argument that Section 77 is not a prohibitive provision finds no authoritative support.

Upon a meticulous review of the records and reevaluation of the issues raised in the motion for reconsideration and the pleadings filed thereafter by the parties, we resolved to grant the motion for reconsideration. The following facts, as found by the trial court and the Court of Appeals, are indeed duly established:

1. For years, Petitioner had been issuing fire policies to the Respondent, and these policies were annually renewed.

2. Petitioner had been granting Respondent a 60- to 90-day credit term within which to pay the premiums on the renewed policies.

3. There was no valid notice of non-renewal of the policies in question, as there is no proof at all that the notice sent by ordinary mail was received by Respondent, and the copy thereof allegedly sent to Zuellig was ever transmitted to Respondent.

4. The premiums for the policies in question in the aggregate amount of P225,753.95 were paid by Respondent within the 60- to 90-day credit term and were duly accepted and received by Petitioner's cashier.

The instant case has to rise or fall on the core issue of whether Section 77 of the Insurance Code of 1978 (P.D. No. 1460) must be strictly applied to Petitioner's advantage despite its practice of granting a 60- to 90-day credit term for the payment of premiums.

Section 77 of the Insurance Code of 1978 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.

This Section is a reproduction of Section 77 of P.D. No. 612 (The Insurance Code) promulgated on 18 December 1974. In turn, this Section has its source in Section 72 of Act No. 2427 otherwise known as the Insurance Act as amended by R.A. No. 3540, approved on 21 June 1963, which read:

> SEC. 72. An insurer is entitled to payment of premium as soon as the thing insured is exposed to the peril insured against, unless there is clear agreement to grant the insured credit extension of the premium due. No policy issued by an insurance company is valid and binding unless and until the premium thereof has been paid. (Underscoring supplied)

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?

The answer is in the affirmative.

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.

The second is that covered by Section 78 of the Insurance Code, which provides:

> 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.

A third exception was laid down in *Makati Tuscany Condominium Corporation vs. Court of Appeals*,[5] 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:

> 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 accepting the premiums, although paid on installments, and later deny liability on the lame excuse that the premiums were not prepaid in full.

Not only that. In *Tuscany*, we also quoted with approval the following pronouncement of the Court of Appeals in its Resolution denying the motion for reconsideration of its decision: