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FIRST DIVISION

[G.R. No. 119655, May 24, 1996]

SPS. ANTONIO A. TIBAY AND VIOLETA R. TIBAY AND OFELIA M. RORALDO, VICTORINA M. RORALDO, VIRGILIO M. RORALDO, MYRNA M. RORALDO ANDROSABELLA M. RORALDO, PETITIONERS, VS. COURTOF APPEALS AND FORTUNE LIFE AND GENERAL INSURANCE CO., INC., RESPONDENTS.

D E C I S I O N[*]

BELLOSILLO, J.:

May a fire insurance policy be valid, binding and enforceable upon mere partial payment of premium?

On 22 January 1987 private respondent Fortune Life and General Insurance Co., Inc. (FORTUNE) issued Fire Insurance Policy No. 136171 in favor of Violeta R. Tibay and/or Nicolas Roraldo on their two-storey residential building located at 5855 Zobel Street, Makati City, together with all their personal effects therein. The insurance was for P600,000.00 covering the period from 23 January 1987 to 23 January 1988. On 23 January 1987, of the total premium of P2,983.50, petitioner Violeta Tibay only paid P600.00 thus leaving a considerable balance unpaid.

On 8 March 1987 the insured building was completely destroyed by fire. Two days later or on 10 March 1987 Violeta Tibay paid the balance of the premium. On the same day, she filed with FORTUNE a claim on the fire insurance policy. Her claim was accordingly referred to its adjuster, Goodwill Adjustment Services, Inc. (GASI), which immediately wrote Violeta requesting her to furnish it with the necessary documents for the investigation and processing of her claim. Petitioner forthwith complied. On 28 March 1987 she signed a non-waiver agreement with GASI to the effect that *any action taken by the companies or their representatives in investigating the claim made by the claimant for his loss which occurred at 5855 Zobel Roxas, Makati on March 8, 1987, or in the investigating or ascertainment of the amount of actual cash value and loss, shall not waive or invalidate any condition of the policies of such companies held by said claimant, nor the rights of either or any of the parties to this agreement, and such action shall not be, or be claimed to be, an admission of liability on the part of said companies or any of them.*[1]

In a letter dated 11 June 1987 FORTUNE denied the claim of Violeta for violation of Policy Condition No. 2 and of Sec. 77 of the Insurance Code. Efforts to settle the case before the Insurance Commission proved futile. On 3 March 1988 Violeta and the other petitioners sued FORTUNE for damages in the amount of P600,000.00 representing the total coverage of the fire insurance policy plus 12% interest per annum, P 100,000.00 moral damages, and attorney's fees equivalent to 20% of the total claim.

On 19 July 1990 the trial court ruled for petitioners and adjudged FORTUNE liable for the total value of the insured building and personal properties in the amount of P600,000.00 plus interest at the legal rate of 6% per annum from the filing of the complaint until full payment, and attorney's fees equivalent to 20% of the total amount claimed plus costs of suit.[2]

On 24 March 1995 the Court of Appeals reversed the court *a quo* by declaring FORTUNE not to be liable to plaintiff-appellees therein but ordering defendant-appellant to return to the former the premium of P2,983.50 plus 12% interest from 10 March 1987 until full payment.[3]

Hence this petition for review with petitioners contending mainly that contrary to the conclusion of the appellate court, FORTUNE remains liable under the subject fire insurance policy inspite of the failure of petitioners to pay their premium in full.

We find no merit in the petition; hence, we affirm the Court of Appeals.

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.[4] The consideration is the premium, which must be paid at the time and in the way and manner specified in the policy, and if not so paid, the policy will lapse and be forfeited by its own terms.[5]

> The pertinent provisions in the Policy on premium read-
>
> *THIS POLICY OF INSURANCE WITNESSETH, THAT only after payment to the Company in accordance with Policy Condition No. 2 of the total premiums by the insured as stipulated above for the period aforementioned for insuring against Loss or Damage by Fire or Lightning as herein appears, the Property herein described x x x*
>
> *2. This policy including any renewal thereof and/or any endorsement thereon is not in force until the premium has been fully paid to and duly receipted by the Company in the manner provided herein.*
>
> *Any supplementary agreement seeking to amend this condition prepared by agent, broker or Company official, shall be deemed invalid and of no effect.*
>
> *xxx*
>
> *Except only in those specific cases where corresponding rules and regulations which are or may hereafter be in force provide for the payment of the stipulated premiums in periodic installments at fixed percentage, it is hereby declared, agreed and warranted that this policy shall be deemed effective, valid and binding upon the Company only when the premiums therefor have actually been paid in full and duly acknowledged in a receipt signed by any authorized official or*

representative/agent of the Company in such manner as provided herein, (Italics supplied).[6]

Clearly the Policy provides for payment of premium in full. Accordingly, where the premium has only been partially paid and the balance paid only after the peril insured against has occurred, the insurance contract did not take effect and the insured cannot collect at all on the policy. This is fully supported by Sec. 77 of the Insurance Code which 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 (*Italics supplied*).

Apparently the crux of the controversy lies in the phrase "unless and until the premium thereof has been paid." This leads us to the manner of payment envisioned by the law to make the insurance policy operative and binding. For whatever judicial construction may be accorded the disputed phrase must ultimately yield to the clear mandate of the law. The principle that where the law does not distinguish the court should neither distinguish assumes that the legislature made no qualification on the use of a general word or expression. In *Escosura v. San Miguel Brewery, Inc.,*[7] the Court through Mr. Justice Jesus G. Barrera, interpreting the phrase "with pay" used in connection with leaves of absence with pay granted to employees, ruled -

> x x x the legislative practice seems to be that when the intention is to distinguish between full and partial payment, the modifying term is used x x x

Citing C. A. No. 647 governing maternity leaves of married women in government, R. A. No. 679 regulating employment of women and children, R.A. No. 843 granting vacation and sick leaves to judges of municipal courts and justices of the peace, and finally, Art. 1695 of the New Civil Code providing that every househelp shall be allowed four (4) days vacation each month, which laws simply stated "with pay," the Court concluded that it was undisputed that in all these laws the phrase "with pay" used without any qualifying adjective meant that the employee was entitled to full compensation during his leave of absence.

Petitioners maintain otherwise. Insisting that FORTUNE is liable on the policy despite partial payment of the premium due and the express stipulation thereof to the contrary, petitioners rely heavily on the 1967 case of Philippine Phoenix and Insurance Co., Inc. v. Woodworks, Inc.[8] where the Court through Mr. Justice Arsenio P. Dizon sustained the ruling of the trial court that partial payment of the premium made the policy effective during the whole period of the policy. In that

case, the insurance company commenced action against the insured for the unpaid balance on a fire insurance policy. In its defense the insured claimed that nonpayment of premium produced the cancellation of the insurance contract. Ruling otherwise the Court held-

> It is clear x x x that on April 1, 1960, Fire Insurance Policy No. 9652 was issued by appellee and delivered to appellant, and that on September 22 of the same year, the latter paid to the former the sum of P3,000.00 on account of the total premium of P6,051.95 due thereon. There is, consequently, no doubt at all that, as between the insurer and the insured, there was not only a perfected contract of insurance but a partially performed one as far as the payment of the agreed premium was concerned. Thereafter the obligation of the insurer to pay the insured the amount, for which the policy was issued in case the conditions therefor had been complied with, arose and became binding upon it, while the obligation of the insured to pay the remainder of the total amount of the premium due became demandable.

The 1967 *Phoenix* case is not persuasive; neither is it decisive of the instant dispute. For one, the factual scenario is different. In *Phoenix* it was the insurance company that sued for the balance of the premium, i.e., it recognized and admitted the existence of an insurance contract with the insured. In the case before us, there is, quite unlike in *Phoenix,* a specific stipulation that *(t)his policy xxx is not in force until the premium has been fully paid and duly receipted by the Company x x x.* Resultantly, it is correct to say that in Phoenix a contract was perfected upon partial payment of the premium since the parties had not otherwise stipulated that prepayment of the premium in full was a condition precedent to the existence of a contract.

In *Phoenix,* by accepting the initial payment of P3,000.00 and then later demanding the remainder of the premium without any other precondition to its enforceability as in the instant case, the insurer in effect had shown its intention to continue with the existing contract of insurance, as in fact it was enforcing its right to collect premium, or exact specific performance from the insured. This is not so here. By express agreement of the parties, no *vinculum juris* or bond of law was to be established until full payment was effected prior to the occurrence of the risk insured against.

In *Makati Tuscany Condominium Corp. v. Court of Appeals*[9] the parties mutually agreed that the premiums could be paid in installments, which in fact they did for three (3) years, hence, this Court refused to invalidate the insurance policy. In giving effect to the policy, the Court quoted with approval the Court of Appeals-

> The obligation to pay premiums when due is ordinarily an indivisible obligation to pay the entire premium. Here, the parties x x x agreed to make the premiums payable in installments, and there is no pretense that the parties never envisioned to make the insurance contract binding between them. It was renewed for two succeeding years, the second and third policies being a renewal/replacement for the previous one. And the

> insured never informed the insurer that it was terminating the policy because the terms were unacceptable.
>
> While it maybe true that under Section 77 of the Insurance Code, the parties may not agree to make the insurance contract valid and binding without payment of premiums, there is nothing in said section which suggests that the parties may not agree to allow payment of the premiums in installment, or to consider the contract as valid and binding upon payment of the first premium. Otherwise we would allow the insurer to renege on its liability under the contract, had a loss incurred (sic) before completion of payment of the entire premium, despite its voluntary acceptance of partial payments, a result eschewed by basic considerations of fairness and equity x x x.

These two (2) cases, *Phoenix* and *Tuscany,* adequately demonstrate the waiver, either express or implied, of prepayment in full by the insurer: impliedly, by suing for the balance of the premium as inPhoenix, and expressly, by agreeing to make premiums payable in installments as in Tuscany. But contrary to the stance taken by petitioners, there is no waiver express or implied in the case at bench. Precisely, the insurer and the insured expressly stipulated that *(t)his policy including any renewal thereof and/or any indorsement thereon is not in force until the premium has been fully paid to and duly receipted by the Company x x x and that this policy shall be deemed effective, valid and binding upon the Company only when the premiums therefor have actually been paid in full and duly acknowledged.*

Conformably with the aforesaid stipulations explicitly worded and taken in conjunction with Sec. 77 of the Insurance Code the payment of partial premium by the assured in this particular instance should not be considered the payment required by the law and the stipulation of the parties. Rather, it must be taken in the concept of a deposit to be held in trust by the insurer until such time that the full amount has been tendered and duly receipted for. In other words, as expressly agreed upon in the contract, full payment must be made before the risk occurs for the policy to be considered effective and in force.

Thus, no *vinculum juris* whereby the insurer bound itself to indemnify the assured according to law ever resulted from the fractional payment of premium. The insurance contract itself expressly provided that the policy would be effective only when the premium was paid in full. It would have been altogether different were it not so stipulated. Ergo, petitioners had absolute freedom of choice whether or not to be insured by FORTUNE under the terms of its policy and they freely opted to adhere thereto.

Indeed, and far more importantly, the cardinal polestar in the construction of an insurance contract is the intention of the parties as expressed in the policy.[10] Courts have no other function but to enforce the same. The rule that contracts of insurance will be construed in favor of the insured and most strongly against the insurer should not be permitted to have the effect of making a plain agreement ambiguous and then construe it in favor of the insured.[11] Verily, it is elemental law that the payment of premium is requisite to keep the policy of insurance in force. If the premium is not paid in the manner prescribed in the policy as intended by the