Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 130421 June 28, 1999

AMERICAN HOME ASSURANCE COMPANY, petitioner,
vs.
ANTONIO CHUA, respondent.

DAVIDE, *JR. C.J.:*

In this petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, petitioner seeks the reversal of the decision [1] of the Court of Appeals in CA-G.R. CV No. 40751, which affirmed *in toto* the decision of the Regional Trial Court, Makati City, Branch 150 (hereafter trial court), in Civil Case No. 91-1009.

Petitioner is a domestic corporation engaged in the insurance business. Sometime in 1990, respondent obtained from petitioner a fire insurance covering the stock-in-trade of his business, Moonlight Enterprises, located at Valencia, Bukidnon. The insurance was due to expire on 25 March 1990.

On 5 April 1990 respondent issued PCIBank Check No. 352123 in the amount of P2,983.50 to petitioner's agent, James Uy, as payment for the renewal of the policy. In turn, the latter delivered Renewal Certificate No. 00099047 to respondent. The check was drawn against a Manila bank and deposited in petitioner's bank account in Cagayan de Oro City. The corresponding official receipt was issued on 10 April. Subsequently, a new insurance policy, Policy No. 206-4234498-7, was issued, whereby petitioner undertook to indemnify respondent for any damage or loss arising from fire up to P200,000 for the period 25 March 1990 to 25 March 1991.

On 6 April 1990 Moonlight Enterprises was completely razed by fire. Total loss was estimated between P4,000,000 and P5,000,000. Respondent filed an insurance claim with petitioner and four other co-insurers, namely, Pioneer Insurance and Surety Corporation, Prudential Guarantee and Assurance, Inc., Filipino Merchants Insurance Co. and Domestic Insurance Company of the Philippines. Petitioner refused to honor the claim notwithstanding several demands by respondent, thus, the latter filed an action against petitioner before the trial court.

In its defense, petitioner claimed there was no existing insurance contract when the fire occurred since respondent did not pay the premium. It also alleged that even assuming there was a contract, respondent violated several conditions of the policy, particularly: (1) his submission of fraudulent income tax return and financial statements; (2) his failure to establish the actual loss, which petitioner assessed at P70,000; and (3) his failure to notify to petitioner of any insurance already effected to cover the insured goods. These violations, petitioner insisted, justified the denial of the claim.

The trial court ruled in favor of respondent. It found that respondent paid by way of check a day before the fire occurred. The check, which was deposited in petitioner's bank account, was even acknowledged in the renewal certificate issued by petitioner's agent. It declared that the alleged fraudulent documents were limited to the disparity between the official receipts issued by the Bureau of Internal Revenue (BIR) and the income tax returns for the years 1987 to 1989. All the other documents were found to be genuine. Nonetheless, it gave credence to the BIR certification that respondent paid the corresponding taxes due for the questioned years.

As to respondent's failure to notify petitioner of the other insurance contracts covering the same goods, the trial court held that petitioner failed to show that such omission was intentional and fraudulent. Finally, it noted that petitioner's investigation of respondent's claim was done in collaboration with the representatives of other insurance companies who found no irregularity therein. In fact, Pioneer Insurance and Surety Corporation and Prudential Guarantee and Assurance, Inc. promptly paid the claims filed by respondent.

The trial court decreed as follows:

> WHEREFORE, judgment is hereby rendered in favor of [respondent] and against the [petitioner] ordering the latter to pay the former the following:
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> 1. P200,000.00, representing the amount of the insurance, plus legal interest from the date of filing of this case;
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> 2. P200,000.00 as moral damages;
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> 3. P200,000.00 as loss of profit;
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> 4. P100,000.00 as exemplary damages;
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> 5. P50,000.00 as attorney's fees; and
>
> 6. Cost of suit.

On appeal, the assailed decision was affirmed *in toto* by the Court of Appeals. The Court of Appeals found that respondent's claim was substantially proved and petitioner's unjustified refusal to pay the claim entitled respondent to the award of damages.

Its motion for reconsideration of the judgment having been denied, petitioner filed the petition in this case. Petitioner reiterates its stand that there was no existing insurance contract between the parties. It invokes Section 77 of the Insurance Code, which provides:

> 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 life or an industrial life policy whenever the grace period provision applies.

and cites the case of *Arce v. Capital Insurance & Surety Co., Inc.*, [2] where we ruled that unless and until the premium is paid there is no insurance.

Petitioner emphasizes that when the fire occurred on 6 April 1990 the insurance contract was not yet subsisting pursuant to Article 1249 [3] of the Civil Code, which recognizes that a check can only effect payment once it has been cashed. Although respondent testified that he gave the check on 5 April to a certain James Uy, the check, drawn against a Manila bank and deposited in a Cagayan de Oro City bank, could not have been cleared by 6 April, the date of the fire. In fact, the official receipt issued for respondent's check payment was dated 10 April 1990, four days after the fire occurred.

Citing jurisprudence, [4] petitioner also contends that respondent's non-disclosure of the other insurance contracts rendered the policy void. It underscores the trial court's neglect in considering the Commission on Audit's certification that the BIR receipts submitted by respondent were, in effect, fake since they were issued to other persons. Finally, petitioner argues that the award of damages was excessive and unreasonable considering that it did not act in bad faith in denying respondent's claim.

Respondent counters that the issue of non-payment of premium is a question of fact which can no longer be assailed. The trial court's finding on the matter, which was affirmed by the Court of Appeals, is conclusive.

Respondent refutes the reason for petitioner's denial of his claim. As found by the trial court, petitioner's loss adjuster admitted prior knowledge of respondent's existing insurance contracts with the other insurance companies. Nonetheless, the loss adjuster recommended the denial of the claim, not because of the said contracts, but because he was suspicious of the authenticity of certain documents which respondent submitted in filing his claim.

To bolster his argument, respondent cites Section 66 of the Insurance Code, [5] which requires the insurer to give a notice to the insured of its intention to terminate the policy forty-five days before the policy period ends. In the instant case, petitioner opted not to terminate the policy. Instead, it renewed the policy by sending its agent to respondent, who was issued a renewal certificate upon delivery of his check payment for the renewal of premium. At this precise moment the contract of insurance was executed and already in effect. Respondent also claims that it is standard operating procedure in the provinces to pay insurance premiums by check when collected by insurance agents.

On the issue of damages, respondent maintains that the amounts awarded were reasonable. He cites numerous trips he had to make from Cagayan de Oro City to Manila to follow up his rightful claim. He imputes bad faith on petitioner who made enforcement of his claim difficult in the hope that he would eventually abandon it. He further emphasizes that the adjusters of the other insurance companies recommended payment of his claim, and they complied therewith.

In its reply, petitioner alleges that the petition questions the conclusions of law made by the trial court and the Court of Appeals.

Petitioner invokes respondent's admission that his check for the renewal of the policy was received only on 10 April 1990, taking into account that the policy period was 25 March 1990 to 25 March 1991. The official receipt was dated 10 April 1990. Anent respondent's testimony that the check was given to petitioner's agent, a certain James Uy, the latter points out that even respondent was not sure if Uy was indeed its agent. It faults respondent for not producing Uy as his witness and not taking any receipt from him upon presentment of the check. Even assuming that the check was received a day before the concurrence of the fire, there still could not have been payment until the check was cleared.

Moreover, petitioner denies respondent's allegation that it intended a renewal of the contract for the renewal certificate clearly specified the following conditions:

> Subject to the payment by the assured of the amount due prior to renewal date, the policy shall be renewed for the period stated.
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> Any payment tendered other than in cash is received subject to actual cash collection.
>
> Subject to no loss prior to premium and payment. If there be any loss, is not covered [*sic*].

Petitioner asserts that an insurance contract can only be enforced upon the payment of the premium, which should have been made before the renewal period.

Finally, in assailing the excessive damages awarded to respondent petitioner stresses that the policy in issue was limited to a liability of P200,000; but the trial court granted the following monetary awards: P200,000 as actual damages; P200,000 as moral damages; P100,000 as exemplary damages; and P50,000 as attorney's fees.

The following issues must be resolved: *first*, whether there was a valid payment of premium, considering that respondent's check was cashed after the occurrence of the fire; *second*, whether respondent violated the policy by his submission of fraudulent documents and non-disclosure of the other existing insurance contracts; and finally, whether respondent is entitled to the award of damages.

The general rule in insurance laws is that unless the premium is paid the insurance policy is not valid and binding. The only exceptions are life and industrial life insurance. [6] Whether payment was indeed made is a question of fact which is best determined by the trial court. The trial court found, as affirmed by the Court of Appeals, that there was a valid check payment by respondent to petitioner. Well-settled is the rule that the factual findings and conclusions of the trial court and the Court of Appeals are entitled to great weight and respect, and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked certain facts or circumstances which would substantially affect the disposition of the case. [7] We see no reason to depart from this ruling.

According to the trial court the renewal certificate issued to respondent contained the acknowledgment that premium had been paid. It is not disputed that the check drawn by respondent in favor of petitioner and delivered to its agent was honored when presented and petitioner forthwith issued its official receipt to respondent on 10 April 1990. Section 306 of the Insurance Code provides that any insurance company which delivers a policy or contract of insurance to an insurance agent or insurance broker shall be deemed to have authorized such agent or broker to receive on its behalf payment of any premium which is due on such policy or contract of insurance at the time of its issuance or delivery or which becomes due thereon. [8] In the instant case, the best evidence of such authority is the fact that petitioner accepted the check and issued the official receipt for the payment. It is, as well, bound by its agent's acknowledgment of receipt of payment.

Sec. 78 of the Insurance Code explicitly provides:

> An 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 the premium is actually paid.

This Section establishes a legal fiction of payment and should be interpreted as an exception to Section 77. [9]

Is respondent guilty of the policy violations imputed against him? We are not convinced by petitioner's arguments. The submission of the alleged fraudulent documents pertained to respondent's income tax returns for 1987 to 1989. Respondent, however, presented a BIR certification that he had paid the proper taxes for the said years. The trial court and the Court of Appeals gave credence to the certification and it being a question of fact, we hold that said finding is conclusive.

Ordinarily, where the insurance policy specifies as a condition the disclosure of existing co-insurers, non-

disclosure thereof is a violation that entitles the insurer to avoid the policy. This condition is common in fire insurance policies and is known as the "other insurance clause." The purpose for the inclusion of this clause is to prevent an increase in the moral hazard. We have ruled on its validity and the case of *Geagonia v. Court of Appeals* [10] clearly illustrates such principle. However, we see an exception in the instant case.

Citing Section 29 [11] of the Insurance Code, the trial court reasoned that respondent's failure to disclose was not intentional and fraudulent. The application of Section 29 is misplaced. Section 29 concerns concealment which is intentional. The relevant provision is Section 75, which provides that:

> A policy may declare that a violation of specified provisions thereof shall avoid it, otherwise the breach of an immaterial provision does not avoid the policy.

To constitute a violation the other existing insurance contracts must be upon the same subject matter and with the same interest and risk. [12] Indeed, respondent acquired several co-insurers and he failed to disclose this information to petitioner. Nonetheless, petitioner is estopped from must invoking this argument. The trial court cited the testimony of petitioner's loss adjuster who admitted previous knowledge of the co-insurers. Thus,

> COURT:
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> Q The matter of additional insurance of other companies, was that ever discussed in your investigation?
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> A Yes, sir.
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> Q In other words, from the start, you were aware the insured was insured with other companies like Pioneer and so on?
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> A Yes, Your Honor.
>
> Q But in your report you never recommended the denial of the claim simply because of the non-disclosure of other insurance? [*sic*]
>
> A Yes, Your Honor.
>
> Q In other words, to be emphatic about this, the only reason you recommended the denial of the claim, you found three documents to be spurious. That is your only basis?
>
> A Yes, Your Honor. [13] [Emphasis supplied]

Indubitably, it cannot be said that petitioner was deceived by respondent by the latter's non-disclosure of the other insurance contracts when petitioner actually had prior knowledge thereof. Petitioner's loss adjuster had known all along of the other existing insurance contracts, yet, he did not use that as basis for his recommendation of denial. The loss adjuster, being an employee of petitioner, is deemed a representative of the latter whose awareness of the other insurance contracts binds petitioner. We, therefore, hold that there was no violation of the "other insurance" clause by respondent.

Petitioner is liable to pay its share of the loss. The trial court and the Court of Appeals were correct in awarding P200,000 for this. There is, however, merit in petitioner's grievance against the damages and attorney's fees awarded.

There is no legal and factual basis for the award of P200,000 for loss of profit. It cannot be denied that the fire totally gutted respondent's business; thus, respondent no longer had any business to operate. His loss of profit cannot be shouldered by petitioner whose obligation is limited to the object of insurance, which was the stock-in-trade, and not the expected loss in income or profit.

Neither can we approve the award of moral and exemplary damages. At the core of this case is petitioner's alleged breach of its obligation under a contract of insurance. Under Article 2220 of the Civil Code, moral damages may be awarded in breaches of contracts where the defendant acted fraudulently or in bad faith. We find no such fraud or bad faith. It must again be stressed that moral damages are emphatically not intended to enrich a plaintiff at the expense of the defendant. Such damages are awarded only to enable the injured party to obtain means, diversion or amusements that will serve to obviate the moral suffering he has undergone, by reason of the defendant's culpable action. Its award is aimed at the restoration, within the limits of the possible, of the spiritual *status quo ante*, and it must be proportional to the suffering inflicted. [14] When awarded, moral damages must not be palpably and scandalously excessive as to indicate that it was the result of passion, prejudice or corruption on the part of the trial court judge. [15]

The law [16] is likewise clear that in contracts and quasi-contracts the court may award exemplary damages if the defendant

acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner. Nothing thereof can be attributed to petitioner which merely tried to resist what it claimed to be an unfounded claim for enforcement of the fire insurance policy.

As to attorney's fees, the general rule is that attorney's fees cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. [17] In short, the grant of attorney's fees as part of damages is the exception rather than the rule; counsel's fees are not awarded every time a party prevails in a suit. It can be awarded only in the cases enumerated in Article 2208 of the Civil Code, and in all cases it must be reasonable. [18] Thereunder, the trial court may award attorney's fees where it deems just and equitable that it be so granted. While we respect the trial court's exercise of its discretion in this case, the award of P50,000 is unreasonable and excessive. It should be reduced to P10,000.

WHEREFORE, the instant petition is partly GRANTED. The challenged decision of the Court of Appeals in CA-G.R. No. 40751 is hereby MODIFIED by a) deleting the awards of P200,000 for loss of profit, P200,000 as moral damages and P100,000 as exemplary damages, and b) reducing the award of attorney's fees from P50,000 to P10,000.

No pronouncement as to costs.

Melo, Kapunan, Pardo and Santiago, JJ., concur.

Footnotes

1 Per Cui, E.J., with Montenegro, E. and De la Rama, J., JJ. concurring. Annex of Petition, *Rollo*, 16-26.

2 117 SCRA 63 [1982].

3 Art. 1249. The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency which is legal tender in the Philippines.

> The delivery of promissory noted payable to order, or bills of exchange or other mercantile documents shall produce the effect of payment only when they have been cashed, or when through the fault of the creditor they have been impaired.

In the meantime, the action derived from the original obligation shall be held in abeyance.

4 General Insurance & Surety Corporation v. Ng Hua, 106 Phil. 1117 [1960]; and Union Manufacturing Co., Inc. v. Philippine Guaranty Co., Inc., 47 SCRA 271 [1972].

5 Sec. 66. In case of insurance other than life, unless the insurer at least forty-five days in advance of the end of the policy period mails or delivers to the named insured 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 named insured shall be entitled to renew the policy upon payment of the premium due on the effective date of the renewal. Any policy written for a term of less than one year shall be considered as if written for a term of one year. Any policy written for a term longer than one year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one year.

6 Sec. 77, insurance Code.

7 Borillo v. Court of Appeals, 209 SCRA 130, 140 [1992]; Gobonsong, Jr. v. Court of Appeals, 246 SCRA 472, 474-475 [1995]; Vda. de Alcantara v. Court of Appeals, 252 SCRA 457, 468 [1996].

8 *See* Malayan Insurance Co. v. Amaldo, 154 SCRA 672, 678 [1987].

9 RUFUS R. RODRIGUEZ, The Insurance Code of the Philippines Annotated, 3rd ed., 162.

10 241 SCRA 152, 160 [1995], *citing* General Insurance & Surety Corporation v. Ng Hua, 106 Phil. 1117 [1960]; Union Manufacturing Co., Inc., v. Philippine Guaranty Co., Inc., 47 SCRA 271 [1972]; Pioneer Insurance & Surety Corporation v. Yap, 61 SCRA 426 [1974].

11 Sec. 29. An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

12 Geagonia v. Court of Appeals, *supra* note 10.

13 TSN, 27 November 1991, 29-30.

14 Visayan Sawmill Company, Inc. v. Court of Appeals, 219 SCRA 378, 392 [1993], *citing* authorities.

15 People v. Wenceslao, 212 SCRA 560, 569 [1992].

16 Art. 2232, Civil Code.

17 Firestone Tire & Rubber Company of the Philippines v. Chaves, 18 SCRA 356, 358 [1966]; Philippine Air Lines v. Miano, 242 SCRA 235, 240 [1995].

18 Philtranco Service Enterprises Inc. v. Court of Appeals, 273 SCRA 562, 575 [1997].

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