Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. 95546 November 6, 1992

MAKATI TUSCANY CONDOMINIUM CORPORATION, petitioner,
vs.
THE COURT OF APPEALS, AMERICAN HOME ASSURANCE CO., represented by American International Underwriters (Phils.), Inc., respondent.

BELLOSILLO, *J.:*

This case involves a purely legal question: whether payment by installment of the premiums due on an insurance policy invalidates the contract of insurance, in view of Sec. 77 of P.D. 612, otherwise known as the Insurance Code, as amended, which provides:

> Sec. 77. An insurer is entitled to the payment of the premium as soon as the thing 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.

Sometime in early 1982, private respondent American Home Assurance Co. (AHAC), represented by American International Underwriters (Phils.), Inc., issued in favor of petitioner Makati Tuscany Condominium Corporation (TUSCANY) Insurance Policy No. AH-CPP-9210452 on the latter's building and premises, for a period beginning 1 March 1982 and ending 1 March 1983, with a total premium of P466,103.05. The premium was paid on installments on 12 March 1982, 20 May 1982, 21 June 1982 and 16 November 1982, all of which were accepted by private respondent.

On 10 February 1983, private respondent issued to petitioner Insurance Policy No. AH-CPP-9210596, which replaced and renewed the previous policy, for a term covering 1 March 1983 to 1 March 1984. The premium in the amount of P466,103.05 was again paid on installments on 13 April 1983, 13 July 1983, 3 August 1983, 9 September 1983, and 21 November 1983. All payments were likewise accepted by private respondent.

On 20 January 1984, the policy was again renewed and private respondent issued to petitioner Insurance Policy No. AH-CPP-9210651 for the period 1 March 1984 to 1 March 1985. On this renewed policy, petitioner made two installment payments, both accepted by private respondent, the first on 6 February 1984 for P52,000.00 and the second, on 6 June 1984 for P100,000.00. Thereafter, petitioner refused to pay the balance of the premium.

Consequently, private respondent filed an action to recover the unpaid balance of P314,103.05 for Insurance Policy No. AH-CPP-9210651.

In its answer with counterclaim, petitioner admitted the issuance of Insurance Policy No. AH-CPP-9210651. It explained that it discontinued the payment of premiums because the policy did not contain a credit clause in its favor and the receipts for the installment payments covering the policy for 1984-85, as well as the two (2) previous policies, stated the following reservations:

> 2. Acceptance of this payment shall not waive any of the company rights to deny liability on any claim under the policy arising before such payments or after the expiration of the credit clause of the policy; and
>
> 3. Subject to no loss prior to premium payment. If there be any loss such is not covered.

Petitioner further claimed that the policy was never binding and valid, and no risk attached to the policy. It then pleaded a counterclaim for P152,000.00 for the premiums already paid for 1984-85, and in its answer with amended counterclaim, sought the refund of P924,206.10 representing the premium payments for 1982-85.

After some incidents, petitioner and private respondent moved for summary judgment.

On 8 October 1987, the trial court dismissed the complaint and the counterclaim upon the following findings:

> While it is true that the receipts issued to the defendant contained the aforementioned reservations, it is equally true that payment of the premiums of the three aforementioned policies (being sought to be refunded) were made during the lifetime or term of said policies, hence, it could not be said, inspite of the reservations, that no risk attached under the policies. Consequently, defendant's counterclaim for refund is not justified.
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> As regards the unpaid premiums on Insurance Policy No. AH-CPP-9210651, in view of the reservation in the receipts ordinarily issued by the plaintiff on premium payments the only plausible conclusion is that plaintiff has no right to demand their payment after the lapse of the term of said policy on March 1, 1985. Therefore, the defendant was justified in refusing to pay the same. [1]

Both parties appealed from the judgment of the trial court. Thereafter, the Court of Appeals rendered a decision [2] modifying that of the trial court by ordering herein petitioner to pay the balance of the premiums due on Policy No. AH-CPP-921-651, or P314,103.05 plus legal interest until fully paid, and affirming the denial of the counterclaim. The appellate court thus explained —

> The obligation to pay premiums when due is ordinarily as indivisible obligation to pay the entire premium. Here, the parties herein 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.
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> While it may be 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 a basic considerations of fairness and equity.
>
> To our mind, the insurance contract became valid and binding upon payment of the first premium, and the plaintiff could not have denied liability on the ground that payment was not made in full, for the reason that it agreed to accept installment payment. . . . [3]

Petitioner now asserts that its payment by installment of the premiums for the insurance policies for 1982, 1983 and 1984 invalidated said policies because of the provisions of Sec. 77 of the Insurance Code, as amended, and by the conditions stipulated by the insurer in its receipts, disclaiming liability for loss for occurring before payment of premiums.

It argues that where the premiums is not actually paid in full, the policy would only be effective if there is an acknowledgment in the policy of the receipt of premium pursuant to Sec. 78 of the Insurance Code. The absence of an express acknowledgment in the policies of such receipt of the corresponding premium payments, and petitioner's failure to pay said premiums on or before the effective dates of said policies rendered them invalid. Petitioner thus concludes that there cannot be a perfected contract of insurance upon mere partial payment of the premiums because under Sec. 77 of the Insurance Code, no contract of insurance is valid and binding unless the premium thereof has been paid, notwithstanding any agreement to the contrary. As a consequence, petitioner seeks a refund of all premium payments made on the alleged invalid insurance policies.

We hold that the subject policies are valid even if the premiums were paid on installments. The records clearly show that petitioner 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 (3) 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 prepared in full.

We therefore sustain the Court of Appeals. We quote with approval the well-reasoned findings and conclusion of

the appellate court contained in its Resolution denying the motion to reconsider its Decision —

> While the import of Section 77 is that prepayment of premiums is strictly required as a condition to the validity of the contract, We are not prepared to rule that the request to make installment payments duly approved by the insurer, would prevent the entire contract of insurance from going into effect despite payment and acceptance of the initial premium or first installment. Section 78 of the Insurance Code in effect allows waiver by the insurer of the condition of prepayment by making an acknowledgment in the insurance policy of receipt of premium as conclusive evidence of payment so far as to make the policy binding despite the fact that premium is actually unpaid. Section 77 merely precludes the parties from stipulating that the policy is valid even if premiums are not paid, but does not expressly prohibit an agreement granting credit extension, and such an agreement is not contrary to morals, good customs, public order or public policy (De Leon, the Insurance Code, at p. 175). So is an understanding to allow insured to pay premiums in installments not so proscribed. At the very least, both parties should be deemed in estoppel to question the arrangement they have voluntarily accepted. [4]

The reliance by petitioner on *Arce vs. Capital Surety and Insurance Co.* [5] is unavailing because the facts therein are substantially different from those in the case at bar. In *Arce*, no payment was made by the insured at all despite the grace period given. In the case before Us, petitioner paid the initial installment and thereafter made staggered payments resulting in full payment of the 1982 and 1983 insurance policies. For the 1984 policy, petitioner paid two (2) installments although it refused to pay the balance.

It appearing from the peculiar circumstances that the parties actually intended to make three (3) insurance contracts valid, effective and binding, petitioner may not be allowed to renege on its obligation to pay the balance of the premium after the expiration of the whole term of the third policy (No. AH-CPP-9210651) in March 1985. Moreover, as correctly observed by the appellate court, where the risk is entire and the contract is indivisible, the insured is not entitled to a refund of the premiums paid if the insurer was exposed to the risk insured for any period, however brief or momentary.

WHEREFORE, finding no reversible error in the judgment appealed from, the same is AFFIRMED. Costs against petitioner.

SO ORDERED.

Cruz, Padilla and Griño-Aquino, JJ., concur.

Medialdea, J., is on leave.

Footnotes

1 *Rollo*, p. 85.

2 Penned by Mme. Justice Minerva P. Gonzaga-Reyes, concurred by Mr. Justice Ricardo J. Francisco and Mme. Justice Salome A. Montoya.

3 Decision, pp. 6-7; *Rollo*, pp. 36-37.

4 *Rollo*, pp. 41-42.

5 No. L-28501, September 30, 1982, 117 SCRA 63.