Republic of the Philippines
SUPREME COURT
Manila

FIRST DIVISION

G.R. No. L-67835 October 12, 1987

MALAYAN INSURANCE CO., INC. (MICO), petitioner,
vs.
GREGORIA CRUZ ARNALDO, in her capacity as the INSURANCE COMMISSIONER, and CORONACION PINCA, respondents.

CRUZ, *J.:*

When a person's house is razed, the fire usually burns down the efforts of a lifetime and forecloses hope for the suddenly somber future. The vanished abode becomes a charred and painful memory. Where once stood a home, there is now, in the sighing wisps of smoke, only a gray desolation. The dying embers leave ashes in the heart.

For peace of mind and as a hedge against possible loss, many people now secure fire insurance. This is an aleatory contract. By such insurance, the insured in effect wagers that his house will be burned, with the insurer assuring him against the loss, for a fee. If the house does burn, the insured, while losing his house, wins the wagers. The prize is the recompense to be given by the insurer to make good the loss the insured has sustained.

It would be a pity then if, having lost his house, the insured were also to lose the payment he expects to recover for such loss. Sometimes it is his fault that he cannot collect, as where there is a defect imputable to him in the insurance contract. Conversely, the reason may be an unjust refusal of the insurer to acknowledge a just obligation, as has happened many times.

In the instant case the private respondent has been sustained by the Insurance Commission in her claim for compensation for her burned property. The petitioner is now before us to dispute the decision, [1] on the ground that there was no valid insurance contract at the time of the loss.

The chronology of the relevant antecedent facts is as follows:

On June 7, 1981, the petitioner (hereinafter called (MICO) issued to the private respondent, Coronacion Pinca, Fire Insurance Policy No. F-001-17212 on her property for the amount of P14,000.00 effective July 22, 1981, until July 22, 1982. [2]

On October 15,1981, MICO allegedly cancelled the policy for non-payment, of the premium and sent the corresponding notice to Pinca. [3]

On December 24, 1981, payment of the premium for Pinca was received by DomingoAdora, agent of MICO. [4]

On January 15, 1982, Adora remitted this payment to MICO,together with other payments. [5]

On January 18, 1982, Pinca's property was completely burned. [6]

On February 5, 1982, Pinca's payment was returned by MICO to Adora on the ground that her policy had been cancelled earlier. But Adora refused to accept it. [7]

In due time, Pinca made the requisite demands for payment, which MICO rejected. She then went to the Insurance Commission. It is because she was ultimately sustained by the public respondent that the petitioner has come to us for relief.

From the procedural viewpoint alone, the petition must be rejected. It is stillborn.

The records show that notice of the decision of the public respondent dated April 5, 1982, was received by MICO on April 10, 1982. [8] On April 25, 1982, it filed a motion for reconsideration, which was denied on June 4, 1982. [9] Notice of this denial was received by MICO on June 13, 1982, as evidenced by Annex "1" duly authenticated by the Insurance Commission. **10** The instant petition was filed with this Court on July 2, 1982. **11**

The position of the petition is that the petition is governed by Section 416 0f the Insurance Code giving it thirty days wthin which to appeal by certiorari to this Court. Alternatively, it also invokes Rule 45 of the Rules of Court. For their part, the public and private respondents insist that the applicable law is B.P. 129, which they say governs not only courts of justice but also quasi-judicial bodies like the Insurance Commission. The period for appeal under this law is also fifteen days, as under Rule 45.

The pivotal date is the date the notice of the denial of the motion for reconsideration was received by MICO.

MICO avers this was June 18, 1982, and offers in evidence its Annex "B," **12** which is a copy of the Order of June 14, 1982, with a signed rubber-stamped notation on the upper left-hand corner that it was received on June 18, 1982, by its legal department. It does not indicate from whom. At the bottom, significantly, there is another signature under which are the ciphers "6-13-82," for which no explanation has been given.

Against this document, the private respodent points in her Annex "1," **13** the authenticated copy of the same Order with a rubber-stamped notation at the bottom thereof indicating that it was received for the Malayan Insurance Co., Inc. by J. Gotladera on "6-13-82." The signature may or may not habe been written by the same person who signed at the bottom of the petitioner's Annex "B."

Between the two dates, the court chooses to believe June 13, 1982, not only because the numbers "6-13-82" appear on both annexes but also because it is the date authenticated by the administrative division of the Insurance Commission. Annex "B" is at worst self-serving; at best, it might only indicate that it was received on June 18, 1982, by the legal department of MICO, after it had been received earlier by some other of its personnel on June 13, 1982. Whatever the reason for the delay in transmitting it to the legal department need not detain us here.

Under Section 416 of the Insurance Code, the period for appeal is thirty days from notice of the decision of the Insurance Commission. The petitioner filed its motion for reconsideration on April 25, 1981, or fifteen days such notice, and the reglementary period began to run again after June 13, 1981, date of its receipt of notice of the denial of the said motion for reconsideration. As the herein petition was filed on July 2, 1981, or nineteen days later, there is no question that it is *tardy by four days.*

Counted from June 13, the fifteen-day period prescribed under Rule 45, assuming it is applicable, would end on June 28, 1982, or also *four days* from July 2, when the petition was filed.

If it was filed under B.P. 129, then, considering that the motion for reconsideration was filed on the fifteenth day after MICO received notice of the decision, only one more day would have remained for it to appeal, to wit, June 14, 1982. That would make the petition *eighteen days* late by July 2.

Indeed, even if the applicable law were still R.A. 5434, governing appeals from administrative bodies, the petition would still be tardy. The law provides for a fixed period of ten days from notice of the denial of a seasonable motion for reconsideration within which to appeal from the decision. Accordingly, that ten-day period, counted from June 13, 1982, would have ended on June 23, 1982, making the petition filed on July 2, 1982, *nine days* late.

Whichever law is applicable, therefore, the petition can and should be dismissed for late filing.

On the merits, it must also fail. MICO's arguments that there was no payment of premium and that the policy had been cancelled before the occurence of the loss are not acceptable. Its contention that the claim was allowed without proof of loss is also untenable.

The petitioner relies heavily on Section 77 of the Insurance Code providing that:

> SEC. 77. An insurer is entitled to 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.

The above provision is not applicable because payment of the premium was in fact eventually made in this case. Notably, the premium invoice issued to Pinca at the time of the delivery of the policy on June 7, 1981 was stamped "Payment Received" of the amoung of P930.60 on "12-24-81" by Domingo Adora. **14** This is important because it suggests an understanding between MICO and the insured that such payment could be made later, as agent Adora had assured Pinca. In any event, it is not denied that this payment was actually made by Pinca to Adora, who remitted the same to MICO.

The payment was made on December 24, 1981, and the fire occured on January 18, 1982. One wonders: suppose the payment had been made and accepted in, say, August 1981, would the commencement date of the

policy have been changed to the date of the payment, or would the payment have retroacted to July 22, 1981? If MICO accepted the payment in December 1981 and the insured property had not been burned, would that policy not have expired just the same on July 22, 1982, pursuant to its original terms, and not on December 24, 1982?

It would seem from MICO's own theory, that the policy would have become effective only upon payment, if accepted and so would have been valid only from December 24, 1981m but only up to July 22, 1981, according to the original terms. In others words, the policy would have run for only eight months although the premium paid was for one whole year.

It is not disputed that the preium was actually paid by Pinca to Adora on December 24, 1981, who received it on behalf of MICO, to which it was remitted on January 15, 1982. What is questioned is the validity of Pinca's payment and of Adora's authority to receive it.

MICO's acknowledgment of Adora as its agent defeats its contention that he was not authorized to receive the premium payment on its behalf. It is clearly provided in Section 306 of the Insurance Code that:

> SEC. 306. xxx xxx xxx
>
> Any insurance company which delivers to an insurance agant or insurance broker a policy or contract of insurance shall be demmed 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.

And it is a well-known principle under the law of agency that:

> Payment to an agent having authority to receive or collect payment is equivalent to payment to the principal himself; such payment is complete when the money delivered is into the agent's hands and is a discharge of the indebtedness owing to the principal. [15]

There is the petitioner's argument, however, that Adora was not authorized to accept the premium payment because six months had elapsed since the issuance by the policy itself. It is argued that this prohibition was binding upon Pinca, who made the payment to Adora at her own riskl as she was bound to first check his authority to receive it. [16]

MICO is taking an inconsistent stand. While contending that acceptance of the premium payment was prohibited by the policy, it at the same time insists that the policy never came into force because the premium had not been paid. One surely, cannot have his cake and eat it too.

We do not share MICO's view that there was no existing insurance at the time of the loss sustained by Pinca because her policy never became effective for non-payment of premium. Payment was in fact made, rendering the policy operative as of June 22, 1981, and removing it from the provisions of Article 77, Thereafter, the policy could be cancelled on any of the supervening grounds enumerated in Article 64 (except "nonpayment of premium") provided the cancellation was made in accordance therewith and with Article 65.

Section 64 reads as follows:

> SEC. 64. No policy of insurance other than life shall be cancelled by the insurer except upon prior notice thereof to the insured, and no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following:
>
> (a) non-payment of premium;
>
> (b) conviction of a crime arising out of acts increasing the hazard insured against;
>
> (c) discovery of fraud or material misrepresentation;
>
> (d) discovery of willful, or reckless acts or commissions increasing the hazard insured against;
>
> (e) physical changes in the property insured which result in the property becoming uninsurable;or
>
> (f) a determination by the Commissioner that the continuation of the policy would violate or would place the insurer in violation of this Code.

As for the method of cancellation, Section 65 provides as follows:

> SEC. 65. All notices of cancellation mentioned in the preceding section shall be in writing, mailed or delivered to the named insured at the address shown in the policy, and shall state (a) which of the grounds set forth in section sixty-four is relied upon and (b) that, upon written request of the named

insured, the insurer will furnish the facts on which the cancellation is based.

A valid cancellation must, therefore, require concurrence of the following conditions:

(1) There must be prior notice of cancellation to the insured; [17]

(2) The notice must be based on the occurrence, after the effective date of the policy, of one or more of the grounds mentioned;[18]

(3) The notice must be (a) in writing, (b) mailed, or delivered to the named insured, (c) at the address shown in the policy; [19]

(4) It must state (a) which of the grounds mentioned in Section 64 is relied upon and (b) that upon written request of the insured, the insurer will furnish the facts on which the cancellation is based. [20]

MICO's claims it cancelled the policy in question on October 15, 1981, for non-payment of premium. To support this assertion, it presented one of its employees, who testified that "the original of the endorsement and credit memo" — presumably meaning the alleged cancellation — "were sent the assured by mail through our mailing section" [21] However, there is no proof that the notice, assuming it complied with the other requisites mentioned above, was actually mailed to and received by Pinca. All MICO's offers to show that the cancellation was communicated to the insured is its employee's testimony that the said cancellation was sent "by mail through our mailing section." without more. The petitioner then says that its "stand is enervated (sic) by the legal presumption of regularity and due performance of duty." [22] (not realizing perhaps that "enervated" means "debilitated" not "strengthened").

On the other hand, there is the flat denial of Pinca, who says she never received the claimed cancellation and who, of course, did not have to prove such denial Considering the strict language of Section 64 that no insurance policy shall be cancelled except upon prior notice, it behooved MICO's to make sure that the cancellation was actually sent to and received by the insured. The presumption cited is unavailing against the positive duty enjoined by Section 64 upon MICO and the flat denial made by the private respondent that she had received notice of the claimed cancellation.

It stands to reason that if Pinca had really received the said notice, she would not have made payment on the original policy on December 24, 1981. Instead, she would have asked for a new insurance, effective on that date and until one year later, and so taken advantage of the extended period. The Court finds that if she did pay on that date, it was because she honestly believed that the policy issued on June 7, 1981, was still in effect and she was willing to make her payment retroact to July 22, 1981, its stipulated commencement date. After all, agent Adora was very accomodating and had earlier told her "to call him up any time" she was ready with her payment on the policy earlier issued. She was obviously only reciprocating in kind when she paid her premium for the period beginning July 22, 1981, and not December 24, 1981.

MICO's suggests that Pinca knew the policy had already been cancelled and that when she paid the premium on December 24, 1981, her purpose was "to renew it." As this could not be done by the agent alone under the terms of the original policy, the renewal thereof did not legally bind MICO. which had not ratified it. To support this argument, MICO's cites the following exchange:

> Q: Now, Madam Witness, on December 25th you made the alleged payment. Now, my question is that, did it not come to your mind that after the lapse of six (6) months, your policy was cancelled?
>
> A: I have thought of that but the agent told me to call him up at anytime.
>
> Q: So if you thought that your policy was already intended to revive cancelled policy?
>
> A: Misleading, Your Honor.
>
> Hearing Officer: The testimony of witness is that, she thought of that.
>
> Q: I will revise the question. Now, Mrs. Witness, you stated that you thought the policy was cancelled. Now, when you made the payment of December 24, 1981, your intention was to revive the policy if it was already cancelled?
>
> A: Yes, to renew it. [23]

A close study of the above transcript will show that Pinca meant to renew the policy *if* it had really been already cancelled but not if it was stffl effective. It was all conditional. As it has not been shown that there was a valid cancellation of the policy, there was consequently no need to renew it but to pay the premium thereon. Payment was thus legally made on the *original* transaction and it could be, and was, validly received on behalf of the

insurer by its agent Adora. Adora. incidentally, had not been informed of the cancellation either and saw no reason not to accept the said payment.

The last point raised by the petitioner should not pose much difficulty. The valuation fixed in fire insurance policy is conclusive in case of total loss in the absence of fraud, [24] which is not shown here. Loss and its amount may be determined on the basis of such proof as may be offered by the insured, which need not be of such persuasiveness as is required in judicial proceedings. [25] If, as in this case, the insured files notice and preliminary proof of loss and the insurer fails to specify to the former all the defects thereof and without unnecessary delay, all objections to notice and proof of loss are deemed waived under Section 90 of the Insurance Code.

The certification [26] issued by the Integrated National Police, Lao-ang, Samar, as to the extent of Pinca's loss should be considered sufficient. Notably,MICO submitted no evidence to the contrary nor did it even question the extent of the loss in its answer before the Insurance Commission. It is also worth observing that Pinca's property was not the only building bumed in the fire that razed the commercial district of Lao-ang, Samar, on January 18, 1982. [27]

There is nothing in the Insurance Code that makes the participation of an adjuster in the assessment of the loss imperative or indespensable, as MICO suggests. Section 325, which it cites, simply speaks of the licensing and duties of adjusters.

We see in this cases an obvious design to evade or at least delay the discharge of a just obligation through efforts bordering on bad faith if not plain duplicity, We note that the motion for reconsideration was filed on the fifteenth day from notice of the decision of the Insurance Commission and that there was a feeble attempt to show that the notice of denial of the said motion was not received on June 13, 1982, to further hinder the proceedings and justify the filing of the petition with this Court fourteen days after June 18, 1982. We also look askance at the alleged cancellation, of which the insured and MICO's agent himself had no knowledge, and the curious fact that although Pinca's payment was remitted to MICO's by its agent on January 15, 1982, MICO sought to return it to Adora only on February 5, 1982, after it presumably had learned of the occurrence of the loss insured against on January 18, 1982. These circumstances make the motives of the petitioner highly suspect, to say the least, and cast serious doubts upon its candor and bona fides.

WHEREFORE, the petition is DENIED. The decision of the Insurance Commission dated April 10, 1981, and its Order of June 4, 1981, are AFFIRMED in full, with costs against the petitioner. This decision is immediately executory.

SO ORDERED.

Teehankee, C.J., Narvasa and Paras, JJ., concur.

Gancayco, J, is on leave.

Footnotes

1 I.C. Case No. 2698.

2 Rollo, p. 2.

3 *Ibid*., p. 3.

4 Decision, p. 6.

5 *Ibid.*

6 *Id*., p. 19, Rollo, pp. 3, 38.

7 Rollo, pp. 3-4.

8 *Ibid*., p. 41.

9 Annex "B", Petition; Rollo, p. 34.

10 Rollo, p. 106.

11 *Ibid*., pp. 2, 95, 100.

12 *Id*., p.58.

13 *Id*., p. 106.

14 *Id*., pp. 12-13, 31; Original Records. p. 7.

15 Maryland Casualty Co. v. U.S. 342, 64 ed 291, 13 Am. Jur. 2d. p. 630:

16 Memorandum for the Petitioner, p. 8.

17 Insurance Code, Sec. 64.

18 *Ibid*.

19 *Id*., Sec. 65.

20 *Id*.

21 Memorandum for the Petitioner, p. 12.

22 *Ibid*., p. 13.

23 *Id*., pp. 13-14.

24 Insurance Code, Secs. 171 and 156; Harding v. Commercial Union Insurance Co., Phil. 484.

25 Insurance Code, Sec. 89.

26 Exh. "C".

27 Original Records, p. 9.