Republic of the Philippines
SUPREME COURT
Manila

THIRD DIVISION

G.R. No. 48049 June 29, 1989

EMILIO TAN, JUANITO TAN, ALBERTO TAN and ARTURO TAN, petitioners,
vs.
THE COURT OF APPEALS and THE PHILIPPINE AMERICAN LIFE INSURANCE COMPANY, respondents.

O.F. Santos & P.C. Nolasco for petitioners.

Ferry, De la Rosa and Associates for private respondent.

GUTIERREZ, JR., *J.:*

This is a petition for review on *certiorari* of the Court of Appeals' decision affirming the decision of the Insurance Commissioner which dismissed the petitioners' complaint against respondent Philippine American Life Insurance Company for the recovery of the proceeds from their late father's policy. The facts of the case as found by the Court of Appeals are:

> Petitioners appeal from the Decision of the Insurance Commissioner dismissing herein petitioners' complaint against respondent Philippine American Life Insurance Company for the recovery of the proceeds of Policy No. 1082467 in the amount of P 80,000.00.
>
> On September 23,1973, Tan Lee Siong, father of herein petitioners, applied for life insurance in the amount of P 80,000.00 with respondent company. Said application was approved and Policy No. 1082467 was issued effective November 6,1973, with petitioners the beneficiaries thereof (Exhibit A).
>
> On April 26,1975, Tan Lee Siong died of hepatoma (Exhibit B). Petitioners then filed with respondent company their claim for the proceeds of the life insurance policy. However, in a letter dated September 11, 1975, respondent company denied petitioners' claim and rescinded the policy by reason of the alleged misrepresentation and concealment of material facts made by the deceased Tan Lee Siong in his application for insurance (Exhibit 3). The premiums paid on the policy were thereupon refunded .
>
> Alleging that respondent company's refusal to pay them the proceeds of the policy was unjustified and unreasonable, petitioners filed on November 27, 1975, a complaint against the former with the Office of the Insurance Commissioner, docketed as I.C. Case No. 218.
>
> After hearing the evidence of both parties, the Insurance Commissioner rendered judgment on August 9, 1977, dismissing petitioners' complaint. (Rollo, pp. 91-92)

The Court of Appeals dismissed ' the petitioners' appeal from the Insurance Commissioner's decision for lack of merit

Hence, this petition.

The petitioners raise the following issues in their assignment of errors, to wit:

> A. The conclusion in law of respondent Court that respondent insurer has the right to rescind the policy contract when insured is already dead is not in accordance with existing law and applicable jurisprudence.
>
> B. The conclusion in law of respondent Court that respondent insurer may be allowed to avoid the policy on grounds of concealment by the deceased assured, is contrary to the provisions of the policy

> contract itself, as well as, of applicable legal provisions and established jurisprudence.
>
> C. The inference of respondent Court that respondent insurer was misled in issuing the policy are manifestly mistaken and contrary to admitted evidence. (Rollo, p. 7)

The petitioners contend that the respondent company no longer had the right to rescind the contract of insurance as rescission must allegedly be done during the lifetime of the insured within two years and prior to the commencement of action.

The contention is without merit.

The pertinent section in the Insurance Code provides:

> Section 48. Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right must be exercised previous to the commencement of an action on the contract.
>
> After a policy of life insurance made payable on the death of the insured shall have been in force during the lifetime of the insured for a period of two years from the date of its issue or of its last reinstatement, the insurer cannot prove that the policy is void *ab initio* or is rescindable by reason of the fraudulent concealment or misrepresentation of the insured or his agent.

According to the petitioners, the Insurance Law was amended and the second paragraph of Section 48 added to prevent the insurance company from exercising a right to rescind after the death of the insured.

The so-called "incontestability clause" precludes the insurer from raising the defenses of false representations or concealment of material facts insofar as health and previous diseases are concerned if the insurance has been in force for at least two years during the insured's lifetime. The phrase "during the lifetime" found in Section 48 simply means that the policy is no longer considered in force after the insured has died. The key phrase in the second paragraph of Section 48 is "for a period of two years."

As noted by the Court of Appeals, to wit:

> The policy was issued on November 6,1973 and the insured died on April 26,1975. The policy was thus in force for a period of only one year and five months. Considering that the insured died before the two-year period had lapsed, respondent company is not, therefore, barred from proving that the policy is void *ab initio* by reason of the insured's fraudulent concealment or misrepresentation. Moreover, respondent company rescinded the contract of insurance and refunded the premiums paid on September 11, 1975, previous to the commencement of this action on November 27,1975. (Rollo, pp. 99-100)
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> xxx xxx xxx

The petitioners contend that there could have been no concealment or misrepresentation by their late father because Tan Lee Siong did not have to buy insurance. He was only pressured by insistent salesmen to do so. The petitioners state:

> Here then is a case of an assured whose application was submitted because of repeated visits and solicitations by the insurer's agent. Assured did not knock at the door of the insurer to buy insurance. He was the object of solicitations and visits.
>
> Assured was a man of means. He could have obtained a bigger insurance, not just P 80,000.00. If his purpose were to misrepresent and to conceal his ailments in anticipation of death during the two-year period, he certainly could have gotten a bigger insurance. He did not.
>
> Insurer Philamlife could have presented as witness its Medical Examiner Dr. Urbano Guinto. It was he who accomplished the application, Part II, medical. Philamlife did not.
>
> Philamlife could have put to the witness stand its Agent Bienvenido S. Guinto, a relative to Dr. Guinto, Again Philamlife did not. (pp. 138139, Rollo)
>
> xxx xxx xxx
>
> This Honorable Supreme Court has had occasion to denounce the pressure and practice indulged in by agents in selling insurance. At one time or another most of us have been subjected to that pressure, that practice. This court took judicial cognizance of the whirlwind pressure of insurance selling-especially of the agent's practice of '*supplying* the information, *preparing* and *answering* the application, *submitting* the application to their companies, *concluding* the transactions and otherwise

smoothing out all difficulties.

We call attention to what this Honorable Court said in Insular Life v. Feliciano, et al., 73 Phil. 201; at page 205:

> It is of common knowledge that the selling of insurance today is subjected to the whirlwind *pressure* of modern salesmanship.
>
> Insurance companies send detailed instructions to their agents to solicit and procure applications.
>
> These agents are to be found all over the length and breadth of the land. They are stimulated to more active efforts by contests and by the keen competition offered by the other rival insurance companies.
>
> *They supply all the information, prepare and answer the applications, submit the applications to their companies, conclude the transactions, and otherwise smooth out all difficulties*.
>
> The agents in short do what the company set them out to do.
>
> The *Insular Life* case was decided some forty years ago when the pressure of insurance salesmanship was not overwhelming as it is now; when the population of this country was less than one-fourth of what it is now; when the insurance companies competing with one another could be counted by the fingers. (pp. 140-142, Rollo)
>
> xxx xxx xxx
>
> In the face of all the above, it would be unjust if, having been subjected to the whirlwind pressure of insurance salesmanship this Court itself has long denounced, the assured who dies within the two-year period, should stand charged of fraudulent concealment and misrepresentation." (p. 142, Rollo)

The legislative answer to the arguments posed by the petitioners is the "incontestability clause" added by the second paragraph of Section 48.

The insurer has two years from the date of issuance of the insurance contract or of its last reinstatement within which to contest the policy, whether or not, the insured still lives within such period. After two years, the defenses of concealment or misrepresentation, no matter how patent or well founded, no longer lie. Congress felt this was a sufficient answer to the various tactics employed by insurance companies to avoid liability. The petitioners' interpretation would give rise to the incongruous situation where the beneficiaries of an insured who dies right after taking out and paying for a life insurance policy, would be allowed to collect on the policy even if the insured fraudulently concealed material facts.

The petitioners argue that no evidence was presented to show that the medical terms were explained in a layman's language to the insured. They state that the insurer should have presented its two medical field examiners as witnesses. Moreover, the petitioners allege that the policy intends that the medical examination must be conducted before its issuance otherwise the insurer "waives whatever imperfection by ratification."

We agree with the Court of Appeals which ruled:

> On the other hand, petitioners argue that no evidence was presented by respondent company to show that the questions appearing in Part II of the application for insurance were asked, explained to and understood by the deceased so as to prove concealment on his part. The same is not well taken. The deceased, by affixing his signature on the application form, affirmed the correctness of all the entries and answers appearing therein. It is but to be expected that he, a businessman, would not have affixed his signature on the application form unless he clearly understood its significance. For, the presumption is that a person intends the ordinary consequence of his voluntary act and takes ordinary care of his concerns. [Sec. 5(c) and (d), Rule 131, Rules of Court].
>
> The evidence for respondent company shows that on September 19,1972, the deceased was examined by Dr. Victoriano Lim and was found to be diabetic and hypertensive; that by January, 1973, the deceased was complaining of progressive weight loss and abdominal pain and was diagnosed to be suffering from hepatoma, (t.s.n. August 23, 1976, pp. 8-10; Exhibit 2). Another physician, Dr. Wenceslao Vitug, testified that the deceased came to see him on December 14, 1973 for consolation and claimed to have been diabetic for five years. (t.s.n., Aug. 23,1976, p. 5; Exhibit 6) Because of the concealment made by the deceased of his consultations and treatments for hypertension, diabetes and liver disorders, respondent company was thus misled into accepting the risk and approving his application as medically standard (Exhibit 5- C) and dispensing with further medical investigation and examination (Exhibit 5-A). For as long as no adverse medical history is revealed in the application form, an applicant for insurance is presumed to be healthy and physically fit and no further medical investigation or examination is conducted by respondent company. (t.s.n.,

> April 8,1976, pp. 6-8). (Rollo, pp. 96-98)

There is no strong showing that we should apply the "fine print" or "contract of adhesion" rule in this case. (Sweet Lines, Inc. v. Teves, 83 SCRA 361 [1978]). The petitioners cite:

> It is a matter of common knowledge that large amounts of money are collected from ignorant persons by companies and associations which adopt high sounding titles and print the amount of benefits they agree to pay in large black-faced type, following such undertakings by fine print conditions which destroy the substance of the promise. All provisions, conditions, or exceptions which in any way tend to work a forfeiture of the policy should be construed most strongly against those for whose benefit they are inserted, and most favorably toward those against whom they are meant to operate. (Trinidad v. Orient Protective Assurance Assn., 67 Phil. 184)

There is no showing that the questions in the application form for insurance regarding the insured's medical history are in smaller print than the rest of the printed form or that they are designed in such a way as to conceal from the applicant their importance. If a warning in bold red letters or a boxed warning similar to that required for cigarette advertisements by the Surgeon General of the United States is necessary, that is for Congress or the Insurance Commission to provide as protection against high pressure insurance salesmanship. We are limited in this petition to ascertaining whether or not the respondent Court of Appeals committed reversible error. It is the petitioners' burden to show that the factual findings of the respondent court are not based on substantial evidence or that its conclusions are contrary to applicable law and jurisprudence. They have failed to discharge that burden.

WHEREFORE, the petition is hereby DENIED for lack of merit. The questioned decision of the Court of Appeals is AFFIRMED.

SO ORDERED.

Fernan, (C.J., Chairman), Bidin and Cortes, JJ., concur.

Feliciano, took no part.

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