Republic of the Philippines
SUPREME COURT
Manila

EN BANC

G.R. No. 137172 April 4, 2001

UCPB GENERAL INSURANCE CO., INC., petitioner,
vs.
MASAGANA TELAMART, INC., respondent.

R E S O L U T I O N

DAVIDE, JR., *C.J.*:

In our decision of 15 June 1999 in this case, we reversed and set aside the assailed decision [1] of the Court of Appeals, which affirmed with modification the judgment of the trial court (a) allowing Respondent to consign the sum of P225,753.95 as full payment of the premiums for the renewal of the five insurance policies on Respondent's properties; (b) declaring the replacement-renewal policies effective and binding from 22 May 1992 until 22 May 1993; and (c) ordering Petitioner to pay Respondent P18,645,000.00 as indemnity for the burned properties covered by the renewal-replacement policies. The modification consisted in the (1) deletion of the trial court's declaration that three of the policies were in force from August 1991 to August 1992; and (2) reduction of the award of the attorney's fees from 25% to 10% of the total amount due the Respondent.

The material operative facts upon which the appealed judgment was based are summarized by the Court of Appeals in its assailed decision as follows:

> Plaintiff [herein Respondent] obtained from defendant [herein Petitioner] five (5) insurance policies (Exhibits "A" to "E", Record, pp. 158-175) on its properties [in Pasay City and Manila] . . . .
>
> All five (5) policies reflect on their face the effectivity term: "from 4:00 P.M. of 22 May 1991 to 4:00 P.M. of 22 May 1992." On June 13, 1992, plaintiffs properties located at 2410-2432 and 2442-2450 Taft Avenue, Pasay City were razed by fire. On July 13, 1992, plaintiff tendered, and defendant accepted, five (5) Equitable Bank Manager's Checks in the total amount of P225,753.45 as renewal premium payments for which Official Receipt Direct Premium No. 62926 (Exhibit "Q", Record, p. 191) was issued by defendant. On July 14, 1992, Masagana made its formal demand for indemnification for the burned insured properties. On the same day, defendant returned the five (5) manager's checks stating in its letter (Exhibit "R" / "8", Record, p. 192) that it was rejecting Masagana's claim on the following grounds:
>
> > "a) Said policies expired last May 22, 1992 and were not renewed for another term;
> >
> > b) Defendant had put plaintiff and its alleged broker on notice of non-renewal earlier; and
> >
> > c) The properties covered by the said policies were burned in a fire that took place last June 13, 1992, or before tender of premium payment."
>
> (Record, p. 5)

Hence Masagana filed this case.

The Court of Appeals disagreed with Petitioner's stand that Respondent's tender of payment of the premiums on 13 July 1992 did not result in the renewal of the policies, having been made beyond the effective date of renewal as provided under Policy Condition No. 26, which states:

> 26. *Renewal Clause*. — Unless the company at least forty five days in advance of the end of the policy period mails or delivers to the assured 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 assured shall be entitled to renew the policy upon payment of the premium due on the effective date of renewal.

Both the Court of Appeals and the trial court found that sufficient proof exists that Respondent, which had procured insurance coverage from Petitioner for a number of years, had been granted a 60 to 90-day credit term for the renewal of the policies. Such a practice had existed up to the time the claims were filed. Thus:

> Fire Insurance Policy No. 34658 covering May 22, 1990 to May 22, 1991 was issued on May 7, 1990 but premium was paid more than 90 days later on August 31, 1990 under O.R. No. 4771 (Exhs. "T" and "T-1"). Fire Insurance Policy No. 34660 for Insurance Risk Coverage from May 22, 1990 to May 22, 1991 was issued by UCPB on May 4, 1990 but premium was collected by UCPB only on July 13, 1990 or more than 60 days later under O.R. No. 46487 (Exhs. "V" and "V-1"). And so were as other policies: Fire Insurance Policy No. 34657 covering risks from May 22, 1990 to May 22, 1991 was issued on May 7, 1990 but premium therefor was paid only on July 19, 1990 under O.R. No. 46583 (Exhs. "W" and "W-1"). Fire Insurance Policy No. 34661 covering risks from May 22, 1990 to May 22, 1991 was issued on May 3, 1990 but premium was paid only on July 19, 1990 under O.R. No. 46582 (Exhs. "X" and "X-1"). Fire Insurance Policy No. 34688 for insurance coverage from May 22, 1990 to May 22, 1991 was issued on May 7, 1990 but premium was paid only on July 19, 1990 under O.R. No. 46585 (Exhs. "Y" and "Y-1"). Fire Insurance Policy No. 29126 to cover insurance risks from May 22, 1989 to May 22, 1990 was issued on May 22, 1989 but premium therefor was collected only on July 25, 1990[sic] under O.R. No. 40799 (Exhs. "AA" and "AA-1"). Fire Insurance Policy No. HO/F-26408 covering risks from January 12, 1989 to January 12, 1990 was issued to Intratrade Phils. (Masagana's sister company) dated December 10, 1988 but premium therefor was paid only on February 15, 1989 under O.R. No. 38075 (Exhs. "BB" and "BB-1"). Fire Insurance Policy No. 29128 was issued on May 22, 1989 but premium was paid only on July 25, 1989 under O.R. No. 40800 for insurance coverage from May 22, 1989 to May 22, 1990 (Exhs. "CC" and "CC-1"). Fire Insurance Policy No. 29127 was issued on May 22, 1989 but premium was paid only on July 17, 1989 under O.R. No. 40682 for insurance risk coverage from May 22, 1989 to May 22, 1990 (Exhs. "DD" and "DD-1"). Fire Insurance Policy No. HO/F-29362 was issued on June 15, 1989 but premium was paid only on February 13, 1990 under O.R. No. 39233 for insurance coverage from May 22, 1989 to May 22, 1990 (Exhs. "EE" and "EE-1"). Fire Insurance Policy No. 26303 was issued on November 22, 1988 but premium therefor was collected only on March 15, 1989 under O.R. NO. 38573 for insurance risks coverage from December 15, 1988 to December 15, 1989 (Exhs. "FF" and "FF-1").

Moreover, according to the Court of Appeals the following circumstances constitute preponderant proof that no timely notice of non-renewal was made by Petitioner:

> (1) Defendant-appellant received the confirmation (Exhibit "11", Record, p. 350) from Ultramar Reinsurance Brokers that plaintiff's reinsurance facility had been confirmed up to 67.5% only on April 15, 1992 as indicated on Exhibit "11". Apparently, the notice of non-renewal (Exhibit "7," Record, p. 320) was sent not earlier than said date, or within 45 days from the expiry dates of the policies as provided under Policy Condition No. 26; (2) Defendant insurer unconditionally accepted, and issued an official receipt for, the premium payment on July 1[3], 1992 which indicates defendant's willingness to assume the risk despite only a 67.5% reinsurance cover[age]; and (3) Defendant insurer appointed Esteban Adjusters and Valuers to investigate plaintiff's claim as shown by the letter dated July 17, 1992 (Exhibit "11", Record, p. 254).

In our decision of 15 June 1999, we defined the main issue to be "whether the fire insurance policies issued by petitioner to the respondent covering the period from May 22, 1991 to May 22, 1992 . . . had been extended or renewed by an implied credit arrangement though actual payment of premium was tendered on a later date and after the occurrence of the (fire) risk insured against." We resolved this issue in the negative in view of Section 77 of the Insurance Code and our decisions in *Valenzuela v. Court of Appeals;* [2] *South Sea Surety and Insurance Co., Inc. v. Court of Appeals*; [3] and *Tibay v. Court of Appeals*. [4] Accordingly, we reversed and set aside the decision of the Court of Appeals.

Respondent seasonably filed a motion for the reconsideration of the adverse verdict. It alleges in the motion that we had made in the decision our own findings of facts, which are not in accord with those of the trial court and the Court of Appeals. The courts below correctly found that no notice of non-renewal was made within 45 days before 22 May 1992, or before the expiration date of the fire insurance policies. Thus, the policies in question were renewed by operation of law and were effective and valid on 30 June 1992 when the fire occurred, since the premiums were paid within the 60- to 90-day credit term.

Respondent likewise disagrees with our ruling that parties may neither agree expressly or impliedly on the extension of credit or time to pay the premium nor consider a policy binding before actual payment. It urges the Court to take judicial notice of the fact that despite the express provision of Section 77 of the Insurance Code, extension of credit terms in premium payment has been the prevalent practice in the insurance industry. Most insurance companies, including Petitioner, extend credit terms because Section 77 of the Insurance Code is not a prohibitive injunction but is merely designed for the protection of the parties to an insurance contract. The Code itself, in Section 78, authorizes the validity of a policy notwithstanding non-payment of premiums.

Respondent also asserts that the principle of estoppel applies to Petitioner. Despite its awareness of Section 77

Petitioner persuaded and induced Respondent to believe that payment of premium on the 60- to 90-day credit term was perfectly alright; in fact it accepted payments within 60 to 90 days after the due dates. By extending credit and habitually accepting payments 60 to 90 days from the effective dates of the policies, it has implicitly agreed to modify the tenor of the insurance policy and in effect waived the provision therein that it would pay only for the loss or damage in case the same occurred after payment of the premium.

Petitioner filed an opposition to the Respondent's motion for reconsideration. It argues that both the trial court and the Court of Appeals overlooked the fact that on 6 April 1992 Petitioner sent by ordinary mail to Respondent a notice of non-renewal and sent by personal delivery a copy thereof to Respondent's broker, Zuellig. Both courts likewise ignored the fact that Respondent was fully aware of the notice of non-renewal. A reading of Section 66 of the Insurance Code readily shows that in order for an insured to be entitled to a renewal of a non-life policy, payment of the premium due on the effective date of renewal should first be made. Respondent's argument that Section 77 is not a prohibitive provision finds no authoritative support.

Upon a meticulous review of the records and reevaluation of the issues raised in the motion for reconsideration and the pleadings filed thereafter by the parties, we resolved to grant the motion for reconsideration. The following facts, as found by the trial court and the Court of Appeals, are indeed duly established:

> 1. For years, Petitioner had been issuing fire policies to the Respondent, and these policies were annually renewed.
>
> 2. Petitioner had been granting Respondent a 60- to 90-day credit term within which to pay the premiums on the renewed policies.
>
> 3. There was no valid notice of non-renewal of the policies in question, as there is no proof at all that the notice sent by ordinary mail was received by Respondent, and the copy thereof allegedly sent to Zuellig was ever transmitted to Respondent.
>
> 4. The premiums for the policies in question in the aggregate amount of P225,753.95 were paid by Respondent within the 60- to 90-day credit term and were duly accepted and received by Petitioner's cashier.

The instant case has to rise or fall on the core issue of whether Section 77 of the Insurance Code of 1978 (P.D. No. 1460) must be strictly applied to Petitioner's advantage despite its practice of granting a 60- to 90-day credit term for the payment of premiums.

Section 77 of the Insurance Code of 1978 provides:

> SECTION 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.

This Section is a reproduction of Section 77 of P.D. No. 612 (The Insurance Code) promulgated on 18 December 1974. In turn, this Section has its source in Section 72 of Act No. 2427 otherwise known as the Insurance Act as amended by R.A. No. 3540, approved on 21 June 1963, which read:

> SECTION 72. An insurer is entitled to payment of premium as soon as the thing insured is exposed to the peril insured against, *unless there is clear agreement to grant the insured credit extension of the premium due*. No policy issued by an insurance company is valid and binding unless and until the premium thereof has been paid. (Italic supplied)

It can be seen at once that Section 77 does not restate the portion of Section 72 expressly permitting an agreement to extend the period to pay the premium. But are there exceptions to Section 77?

The answer is in the affirmative.

The first exception is provided by Section 77 itself, and that is, in case of a life or industrial life policy whenever the grace period provision applies.

The second is that covered by Section 78 of the Insurance Code, which provides:

> SECTION 78. Any 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 premium is actually paid.

A third exception was laid down in *Makati Tuscany Condominium Corporation vs. Court of Appeals*, [5] wherein we ruled that Section 77 may not apply if the parties have agreed to the payment in installments of the premium and

partial payment has been made at the time of loss. We said therein, thus:

> We hold that the subject policies are valid even if the premiums were paid on installments. The records clearly show that the petitioners 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 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 prepaid in full.

Not only that. In *Tuscany*, we also quoted with approval the following pronouncement of the Court of Appeals in its Resolution denying the motion for reconsideration of 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, p. 175). So is an understanding to allow insured to pay premiums in installments not so prescribed. At the very least, both parties should be deemed in estoppel to question the arrangement they have voluntarily accepted.

By the approval of the aforequoted findings and conclusion of the Court of Appeals, *Tuscany* has provided a fourth exception to Section 77, namely, that the insurer may grant credit extension for the payment of the premium. This simply means that if the insurer has granted the insured a credit term for the payment of the premium and loss occurs before the expiration of the term, recovery on the policy should be allowed even though the premium is paid after the loss but within the credit term.

Moreover, there is nothing in Section 77 which prohibits the parties in an insurance contract to provide a credit term within which to pay the premiums. That agreement is not against the law, morals, good customs, public order or public policy. The agreement binds the parties. Article 1306 of the Civil Code provides:

> ARTICLE 1306. The contracting parties may establish such stipulations clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

Finally in the instant case, it would be unjust and inequitable if recovery on the policy would not be permitted against Petitioner, which had consistently granted a 60- to 90-day credit term for the payment of premiums despite its full awareness of Section 77. Estoppel bars it from taking refuge under said Section, since Respondent relied in good faith on such practice. Estoppel then is the fifth exception to Section 77.

> WHEREFORE, the Decision in this case of 15 June 1999 is RECONSIDERED and SET ASIDE, and a new one is hereby entered DENYING the instant petition for failure of Petitioner to sufficiently show that a reversible error was committed by the Court of Appeals in its challenged decision, which is hereby AFFIRMED *in toto*.

No pronouncement as to cost.

SO ORDERED.

Bellosillo, Kapunan, Mendoza, Panganiban, Buena, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr. and Sandoval-Gutierrez, JJ ., concur.
Melo, J., I join the dissents of Justice Vitug and Pardo.
Vitug, J., Please see separate opinion.
Pardo, J., I dissent. See attached.

Separate Opinions

VITUG, *J* .:

An essential characteristic of an insurance is its being synallagmatic, a highly reciprocal contract where the rights

and obligations of the parties correlate and mutually correspond. The insurer assumes the risk of loss which an insured might suffer in consideration of premium payments under a risk-distributing device. Such assumption of risk is a component of a general scheme to distribute actual losses among a group of persons, bearing similar risks, who make ratable contributions to a fund from which the losses incurred due to exposures to the peril insured against are assured and compensated.

It is generally recognized that the business of insurance is one imbued with public interest. [1] For the general good and mutual protection of all the parties, it is aptly subjected to regulation and control by the State by virtue of an exercise of its police power. [2] The State may regulate in various respects the relations between the insurer and the insured, including the internal affairs of an insurance company, without being violative of due process. [3]

A requirement imposed by way of State regulation upon insurers is the maintenance of an adequate legal reserve in favor of those claiming under their policies. [4] The law generally mandates that insurance companies should retain an amount sufficient to guarantee the security of its policyholders in the remote future, as well as the present, and to cover any contingencies that may arise or may be fairly anticipated. The integrity of this legal reserve is threatened and undermined if a credit arrangement on the payment of premium were to be sanctioned. Calculations and estimations of liabilities under the risk insured against are predicated on the basis of the payment of premiums, the vital element that establishes the juridical relation between the insured and the insurer. By legislative fiat, any agreement to the contrary notwithstanding, the payment of premium is a condition precedent to, and essential for, the efficaciousness of the insurance contract, except (a) in case of life or industrial life insurance where a grace period applies, or (b) in case of a written acknowledgment by the insurer of the receipt of premium, such as by a deposit receipt, the written acknowledgment being conclusive evidence of the premium payment so far as to make the policy binding. [5]

Section 77 of the Insurance Code provides:

> "SECTION 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."

This provision amended Section 72 of the then Insurance Act by deleting the phrase, "unless there is a clear agreement to grant the insured credit extension of the premium due," and adding at the beginning of the second sentence the phrase, "[n]otwithstanding any agreement to the contrary." Commenting on the new provision, Dean Hernando B. Perez states:

> "Under the former rule, whenever the insured was granted credit extension of the premium due or given a period of time to pay the premium on the policy issued, such policy was binding although premiums had not been paid (Section 72, Insurance Act; 6 Couch 2d. 67). This rule was changed when the present provision eliminated the portion concerning credit agreement, and added the phrase 'notwithstanding any agreement to the contrary' which precludes the parties from stipulating that the policy is valid even if premiums are not paid. Hence, under the present law, the policy is not valid and binding unless and until the premium is paid (Arce vs. Capital Insurance & Surety Co., Inc., 117 SCRA 63). If the insurer wants to favor the insured by making the policy binding notwithstanding the non-payment of premium, a mere credit agreement would not be sufficient. The remedy would be for the insurer to acknowledge in the policy that premiums were paid although they were not, in which case the policy becomes binding because such acknowledgment is a conclusive evidence of payment of premium (Section 78). Thus, the Supreme Court took note that under the present law, Section 77 of the Insurance Code of 1978 has deleted the clause 'unless there is a clear agreement to grant the insured credit extension of the premium due' (Velasco vs. Apostol, 173 SCRA 228)." [6]

By weight of authority, estoppel cannot create a contract of insurance, [7] neither can it be successfully invoked to create a primary liability, [8] nor can it give validity to what the law so proscribes as a matter of public policy. [9] So essential is the premium payment to the creation of the *vinculum juris* between the insured and the insurer that it would be doubtful to have that payment validly excused even for a fortuitous event. [10]

The law, however, neither requires for the establishment of the juridical tie, nor measures the strength of such tie by, any specific amount of premium payment. A part payment of the premium, if accepted by the insurer, can thus perfect the contract and bring the parties into an obligatory relation. [11] Such a payment puts the contract into full binding force, not merely *pro tanto*, thereby entitling and obligating the parties by their agreement. Hence, in case of loss, full recovery less the unpaid portion of the premium (by the operative act of legal compensation), can be had by the insured and, correlatively, if no loss occurs the insurer can demand the payment of the unpaid balance of the premium. [12]

In the instant case, no juridical tie appears to have been established under any of the situations hereinabove

discussed.

WHEREFORE, I vote to deny the motion for reconsideration.

Melo, J ., concurs.

PARDO, *J* ., dissenting:

The majority resolved to grant respondent's motion for reconsideration of the Court's decision promulgated on June 15, 1999. By this somersault, petitioner must now pay respondent's claim for insurance proceeds amounting to P18,645,000.00, exclusive of interests, plus 25% of the amount due as attorney's fees, P25,000.00 as litigation expenses, and costs of suit, covering its Pasay City property razed by fire. What an undeserved largess! Indeed, an unjust enrichment at the expense of petitioner; even the award of attorney's fees is bloated to 25% of the amount due.

We cannot give our concurrence. We beg to dissent. We find respondent's claim to be fraudulent:

First: Respondent Masagana surreptitiously tried to pay the overdue premiums *before giving written notice to petitioner of the occurrence of the fire* that razed the subject property. This failure to give notice of the fire immediately upon its occurrence blatantly showed the fraudulent character of its claim. The fire totally destroyed the property on *June 13, 1992*; the written notice of loss was given only more than a month later, on *July 14, 1992*, the day *after* respondent *surreptitiously paid* the overdue *premiums*. Respondent very well knew that the policy was not renewed on time. Hence, the surreptitious attempt to pay overdue premiums. Such act revealed a reprehensible disregard of the principle that insurance is a contract *uberrima fides*, the most abundant good faith. [1] Respondent is required by law and by express terms of the policy to give immediate written notice of loss. This must be complied with in the utmost good faith.

Another badge of fraud is that respondent deviated from its previous practice of coursing its premium payments through its brokers. This time, respondent Masagana went directly to petitioner and paid through its cashier *with manager's checks*. Naturally, the cashier routinely accepted the premium payment because he had *no written notice of the occurrence of the fire*. Such fact was concealed by the insured and not revealed to petitioner at the time of payment.

Indeed, if as contended by respondent, there was a clear agreement regarding the grant of a credit extension, respondent would have given immediate written notice of the fire that razed the property. This clearly showed respondent's attempt to *deceive* petitioner into believing that the subject property still existed and the risk insured against had not happened.

Second: The claim for insurance benefits must fall as well because the failure to give timely written notice of the fire was a material misrepresentation affecting the risk insured against.

Section 1 of the policy provides:

> "All benefits under the policy shall be forfeited if the claim be in any respect fraudulent, or if any false declaration be made or used in support thereof, or if any false declaration be made or used in support thereof, or if any fraudulent means or devices are used by the insured or any one acting on his behalf to obtain any benefit under the policy." [2]

In the factual milieu, the purported practice of giving 60 to 90-day credit extension for payment of premiums was a disputed fact. But it is a given fact that the written notice of loss *was not immediately given. It was given only the day after the attempt to pay the delayed premiums*.

At any rate, the purported credit was a mere verbal understanding of the respondent Masagana of an agreement between the insurance company (petitioner) and the insurance brokers of respondent Masagana. The president of respondent Masagana *admitted* that the insurance *policy did not* contain any *proviso* pertaining to the *grant of credit* within which to pay the premiums. Respondent Masagana merely deduced that a credit agreement existed based on previous years' practice that they had of delayed payments accepted by the insurer as reflected on the face of the receipts issued by UCPB evidencing the payment of premiums.

> "Q: You also claim that you have 60 to 90 days credit arrangement with UCPB; is that correct?,
>
> A: Yes, ma'am.
>
> Q: I'm showing to you the policy which had previously been marked in evidence as Exhibit "A", "B", "C", "D", & "E"' for the plaintiff and likewise, marked as exhibits "1", "2", "3", "4", & "5" for the defendant. Could

you show us, Mr. witness where in these policies does it show that you are actually given 60 to 90 days credit arrangement with UCPB?

A: Well, it's verbal with your company, and Ansons Insurance Brokerage. It is not written.

Q: It is not written in the policy?

A: Yes.

Q: You merely have verbal agreement with Ansons Insurance Brokerage?

A: Yes; as shown in our mode of payment; in our vouchers and the receipts issued by the insurance company." [3]

It must be stressed that a verbal understanding of respondent Masagana cannot amend an insurance policy. In insurance practice, amendments or even corrections to a policy are done by written endorsements or tickets appended to the policy.

However, the date on the face of the receipts does not refer to the date of actual remittance by respondent Masagana to UCPB of the premium payments, but merely to the date of remittance to UCPB of the premium payments by the insurance brokers of respondent Masagana.

"Q: You also identified several receipts; here; official receipts issued by UCPB General Insurance Company, Inc., which has been previously marked as Exhibits "F", "G", "H", "I", and "J" for the plaintiff; is that correct?

A: Yes.

Q: And, you would agree with me that the dates indicated in these particular Official Receipts (O. R.), merely indicated the dates when UCPB General Insurance Company issued these receipts? Do you admit that, Mr. Witness?

A: That was written in the receipts.

Q: But, you would also agree that this did not necessarily show the dates when you actually forwarded the checks to your broker, Anson Insurance Agency, for payment to UCPB General Insurance Co. Inc., isn't it?

A: The actual support of this would be the cash voucher of the company, Masagana Telamart Inc., the date when they picked up the check from the company.

Q: And are these cash voucher with you?

A: I don't know if it is in the folder or in our folder, now.

Q: So, you are not certain, whether or not you actually delivered the checks covered by these Official Receipts to UCPB General Insurance, on the dates indicated?

A: I would suppose it is few days earlier, when they picked up the payment in our office." [4]

Hence, what has been established was the *grant* of *credit to the insurance brokers, not to the assured*. The insurance company *recognized the payment* to the insurance brokers *as payment to itself*, though the actual remittance of the premium payments to the principal might be made later. Once payment of premiums is made to the insurance broker, the assured would be covered by a valid and binding insurance policy*, provided the loss occurred after payment to the broker has been made*.

Assuming arguendo that the 60 to 90 day-credit-term has been agreed between the parties, respondent could not still invoke estoppel to back up its claim. "Estoppel is unavailing in this case," [5] thus spoke the Supreme Court through the pen of Justice Hilario G. Davide, Jr., now Chief Justice. *Mutatis mutandi*, he may well be speaking of this case. He added that "[E]stoppel can not give validity to an act that is prohibited by law or against public policy." [6] The actual payment of premiums is a condition precedent to the validity of an insurance contract other than life insurance policy. [7] Any agreement to the contrary is void as against the law and public policy. Section 77 of the Insurance Code 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 a life or an industrial life policy whenever the grace period provision applies." [Emphasis

supplied]

An incisive reading of the afore-cited provision would show that the emphasis was on the conclusiveness of the acknowledgment in the policy of the receipt of premium, notwithstanding the absence of actual payment of premium, because of estoppel. Under the doctrine of estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. "A party may not go back on his own acts and representations to the prejudice of the other party who relied upon them." [8]

This is the only case of estoppel which the law considers a valid exception to the mandatory requirement of pre-payment of premium. The law recognized that the contracting parties, in entering a contract of insurance, are free to enter into stipulations and make personal undertakings so long as they are not contrary to law or public policy. However, the law is clear in providing that the acknowledgment must be contained in the policy or contract of insurance. Anything short of it would not fall under the exception so provided in Section 78.

Hence, because of respondent's failure to pay the premiums prior to the occurrence of the fire insured against, no valid and binding insurance policy was created to cover the loss and destruction of the property. The fire took place on June 13, 1992, twenty-two (22) days after the expiration of the policy of fire insurance. The tender of payment of premiums was made only thirty (30) days after the occurrence of the fire, or on July 13, 1992. Respondent Masagana did not give immediate notice to petitioner of the fire as it occurred as required in the insurance policy. Respondent Masagana tried to tender payment of the premiums overdue surreptitiously before giving notice of the occurrence of the fire. More importantly, the parties themselves expressly stipulated that the insurance policy would not be binding on the insurer unless the premiums thereon had been *paid in full*. Section 2 of the policy provides:

> "2. *This policy including any renewal and/or endorsement thereon is not in force until the premium has been fully paid and duly receipted by the Company in the manner provided therein*.
>
> "Any supplementary agreement seeking to amend this condition prepared by agent, broker or company official, shall be deemed invalid and of no effect.
>
> "No payment in respect of any premium shall be deemed to be payment to the Company unless a printed form of receipt for the same signed by an Official or duly appointed Agent of the Company shall have been given to the Insured, except when such printed receipt is not available at the time of payment and the company or its representative accepts the premium in which case a temporary receipt other than the printed form may be issued in lieu thereof. "Except only on those specific cases where corresponding rules and regulations which now we are or may hereafter be in force provide for the payment of the stipulated premiums in periodic installments at fixed percentages, it is hereby *declared, agreed and warranted that this policy shall be deemed effective valid and binding upon the Company when the premiums thereof 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*." [9] [emphasis supplied]

Thus, the insurance policy, including any renewal thereof or any endorsements thereon *shall* not come in force until the premiums have been fully paid and duly received by the insurance Company. No payment in respect of any premiums shall be deemed to be payment to the Insurance Company unless a printed form of receipt for the same signed by an Official or duly appointed Agent of the Company shall be given to the insured.

The case of *Tibay v. Court of Appeals* [10] is in point. The issue raised therein was: "May a fire insurance policy be valid, binding and enforceable upon mere partial payment of premium?" In the said case, Fortune Life and General Insurance Co., Inc. issued Fire Insurance Policy No. 136171 in favor of Violeta R. Tibay and/or Nicolas Roraldo, on a two-storey residential building located at 5855 Zobel Street, Makati City, together with all the 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, Violeta Tibay only paid P600.00, thus leaving a substantial balance unpaid. On March 8, 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 for the proceeds of the fire insurance policy.

In denying the claim of insurance, the Court ruled that "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. [11] As expressly stipulated in the contract, full payment must be made before the risk occurs for the policy to be considered effective and in force. "No *vinculum juris* whereby the insurer bound itself to indemnify the assured according to law ever resulted from the fractional payment of premium." [12]

The majority cited the case of *Makati Tuscany Condominium Corp. vs. Court of Appeals* [13] to support the contention that the insurance policies subject of the instant case were valid and effective. However, the factual situation in that case was different from the case at bar.

In *Tuscany*, the Court held that the insurance policies were valid and binding because there was partial payment of the premiums and a clear understanding between the parties that they had intended the insurance policies to be binding and effective notwithstanding the staggered payment of the premiums. On the basis of equity and fairness, the Court ruled that there was a perfected contract of insurance upon the partial payment of the premiums, notwithstanding the provisions of Section 77 to the contrary. The Court 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 prepaid in full.

There is no dispute that like in any other contract, the parties to a contract of insurance enjoy the freedom to stipulate on the terms and conditions that will govern their agreement so long as they are not contrary to law, morals, good customs, public order or public policy. However, the agreement containing such terms and conditions must be clear and definite.

In the case at bar, there was no clear and definite agreement between petitioner and respondent on the grant of a credit extension; neither was there partial payment of premiums for petitioner to invoke the exceptional doctrine in *Tuscany*.

Hence, the circumstances in the above cited case are totally different from the case at bar, and consequently, not applicable herein.

Insurance is an aleatory contract whereby one undertakes for a consideration to indemnify another against loss, damage or liability arising from an unknown or contingent event. [14] The consideration is the premium, which must be paid at the time and in the manner specified in the policy, and if not so paid, the policy will lapse and be forfeited by its own terms. [15]

With regard to the contention that the absence of notice of non-renewal of the policy resulted to the automatic renewal of the insurance policy, we find the contention untenable. As above discussed, the law provides that only upon payment of the insurance premium will the insurance policy bind the insurer to the peril insured against and hold it liable under the policy in case of loss.

Even in the absence of notice of non-renewal, the assured would be bound by the law that a non life insurance policy takes effect only on the date payment of the premium was made.

Verily, it is elemental law that the payment of premium is a mandatory requisite to make the policy of insurance effective. If the premium is not paid in the manner prescribed in the policy as intended by the parties, the policy is void and ineffective. [16]

Basically a contract of indemnity, an insurance contract is the law between the parties. Its terms and conditions constitute the measure of the insurer's liability and compliance therewith is a condition precedent to the insured's right to recovery from the insurer. [17]

IN VIEW WHEREOF, I vote to DENY the respondent's motion for reconsideration, for lack of merit.

Melo, Puno and Quisumbing, JJ ., concur.

Footnotes

[1] Rollo, 38.

[2] 191 SCRA 1 [1990].

[3] 244 SCRA 744 [1995].

[4] 257 SCRA 126 [1996] (erroneously stated in the decision as 275 SCRA 126).

[5] 215 SCRA 463 [1992].

VITUG, *J.*:

[1] Hartford Acci. & Indem. Co. vs. N.O. Leson Mfg. Co., 291 US 352, 78 L Ed, 840, 54 S Ct. 392.

[2] United States vs. South-Eastern Underwriters Asso., 322 US 533, 88 L Ed 1440, 64 S Ct 1162, reh den 323 US 811, 89 L Ed 646, 65 S Ct, 26; Hinckley vs. Bechtel Corp. (1st Dist.), 41 Cal App 3d 206, 116 Cal Rptr 33.

[3] 43 Am Jur 2d; Merchants Mut. Auto Liability Ins. Co. vs. Smart, 267 US 126, 69 L Ed 538, 45 S Ct 320; California State Auto Asso. Inter-Ins. Bureau vs. Maloney 341 US 105, 95 L Ed 788, 71 S Ct 601; State Farm Mut. Auto. Ins. Co. vs. Duel, 324 US 154, 89 L Ed 812 65 S Ct 573 reh den 324 US 887.

[4] Tibay vs. Court of Appeals, 257 SCRA 126.

[5] Secs. 77-78, Insurance Code; Acme vs. Court of Appeals, 134 SCRA 155; South Sea Surety and Insurance Company, Inc. vs. Court of Appeals, 244 SCRA 744.

[6] Insurance Code and Insolvency Law by Hernando B. Perez, 1999 Rev. Ed.

[7] Ames. vs. Auto Owners' Ins. Co.; 195 N.W. 686, 225 Mich. 44; 45 C.J.S. 674.

[8] C.E. Carnes & Co. vs. Employers' Liability Assur. Corp., Limited of London, England, C.C.A. La, 101 F2d 739; 45 CJS 674.

[9] Development Bank of the Philippines vs. Court of Appeals, 284 SCRA 14.

[10] See Constantino vs. Asia Life Insurance Co., 87 Phil. 248.

[11] See Philippine Phoenix Surety and Insurance, Inc. vs. Woodworks, Inc., 20 SCRA 1271.

[12] See Makati Tuscany Condominium vs. Court of Appeals, 215 SCRA 463.

PARDO, *J.*, dissenting:

[1] Velasco v. Apostol, 173 SCRA 228, 236 [1989].

[2] Section 15, Policy Conditions, RTC Record, p. 25.

[3] TSN, December 8, 1992, pp. 24-25.

[4] TSN, December 8, 1992, pp. 14-17.

[5] Development Bank of the Philippines v. Court of Appeals, 348 Phil. 15, 32 [1998].

[6] *Ibid*.

[7] American Home Assurance Co. v. Chua, 309 SCRA 250, 259 [1999].

[8] Ayala Corporation v. Ray Burton Development Corp., 355 Phil. 475, 496 [1998].

[9] Section 2, Policy Conditions, RTC Record, p. 16.

[10] 326 Phil. 931 [1996].

[11] Tibay v. Court of Appeals, *supra*, Note 10, p. 136.

[12] *Ibid*., p. 138.

[13] 215 SCRA 462 [1992].

[14] Article 2010, Civil Code.

[15] Tibay v. Court of Appeals, *supra*, Note 10, p. 133.

[16] Tibay v. Court of Appeals, *supra*, Note 10, pp. 138-139.

[17] Verendia v. Court of Appeals, 217 SCRA 417, 422-243 [1993].