

GREAT PACIFIC LIFE ASSURANCE COMPANY, petitioner,
vs.
HONORABLE COURT OF APPEALS, respondents.
G.R. No. L-31845 April 30, 1979

LAPULAPU D. MONDRAGON, petitioner,
vs.
HON. COURT OF APPEALS and NGO HING, respondents.
G.R. No. L-31878 April 30, 1979

FIRST DIVISION DECISION
J. DE CASTRO

The Case:

The two above-entitled cases were ordered consolidated by the Resolution of SC, because the petitioners in both cases sought similar relief, through these petitions for certiorari by way of appeal, from the amended decision of the CA which affirmed in toto the decision of the CFI of Cebu, ordering Great Pacific Life Assurance Company and Mondragon jointly and severally to pay Ngo Hing the amount of P50,000.00 with interest at 6% from the date of the filing of the complaint, and the sum of P1,077.75, without interest.

Facts:

Ngo Hing filed an application with the Great Pacific Assurance Company (Grepalife) for a twenty-year endowment policy in the amount of P50,000.00 on the life of his one-year old daughter Helen Go. Said respondent supplied the essential data which petitioner Lapulapu D. Mondragon, Branch Manager of the Grepalife in Cebu City wrote on the corresponding form in his own handwriting. Mondragon finally type-wrote the data on the application form which was signed by private respondent Ngo Hing. The latter paid the annual premium to the Company, but he retained a certain amount as his commission for being a duly authorized agent of Grepalife. Upon the payment of the insurance premium, the binding deposit receipt was issued to private respondent Ngo Hing. Likewise, petitioner Mondragon handwrote at the bottom of the back page of the application form his strong recommendation for the approval of the insurance application.

Then Mondragon received a letter from Grepalife disapproving the insurance application. The letter stated that the said life insurance application for 20-year endowment plan is not available for minors below seven years old, but Grepalife can consider the same under the Juvenile Triple Action Plan, and advised that if the offer is acceptable, the Juvenile Non-Medical Declaration be sent to the company.

The non-acceptance of the insurance plan by Grepalife was allegedly not communicated by Mondragon to Ngo Hing. Instead, Mondragon wrote back Grepalife again strongly recommending the approval of the 20-year

endowment insurance plan to children, pointing out that since 1954 the customers, especially the Chinese, were asking for such coverage.

It was when things were in such state that on May 28, 1957 Helen Go died of influenza with complication of bronchopneumonia. Thereupon, Ngo Hing sought the payment of the proceeds of the insurance, but having failed in his effort, he filed the action for the recovery of the same before the CFI of Cebu, which rendered the adverse decision.

Issues:

(1) whether the binding deposit receipt constituted a temporary contract of the life insurance in question; and

(2) whether private respondent Ngo Hing concealed the state of health and physical condition of Helen Go, which rendered void the aforesaid deposit receipt.

Held:

The provisions printed on the deposit receipt provide that the binding deposit receipt is intended to be merely a provisional or temporary insurance contract and only upon compliance of the following conditions:

(1) that the company shall be satisfied that the applicant was insurable on standard rates; (2) that if the company does not accept the application and offers to issue a policy for a different plan, the insurance contract shall not be binding until the applicant accepts the policy offered; otherwise, the deposit shall be refunded; and (3) that if the applicant is not able according to the standard rates, and the company disapproves the application, the insurance applied for shall not be in force at any time, and the premium paid shall be returned to the applicant.

Clearly implied from the aforesaid conditions is that the binding deposit receipt in question is merely an acknowledgment, on behalf of the company, that the latter's branch office had received from the applicant the insurance premium and had accepted the application subject for processing by the insurance company; and that the latter will either approve or reject the same on the basis of whether or not the applicant is "insurable on standard rates." Since petitioner Grepalife disapproved the insurance application of respondent Ngo Hing, the binding deposit receipt in question had never become in force at any time.

Upon this premise, the binding deposit receipt is, manifestly, merely conditional and does not insure outright. As held by this Court, where an agreement is made between the applicant and the agent, no liability shall attach until the principal approves the risk and a receipt is given by the agent. The acceptance is merely conditional and is subordinated to the act of the company in approving or rejecting the application. Thus, in life

insurance, a "binding slip" or "binding receipt" does not insure by itself (*De Lim vs. Sun Life Assurance Company of Canada*, 41 Phil. 264).

As held in *De Lim vs. Sun Life Assurance Company of Canada, supra*, "a contract of insurance, like other contracts, must be assented to by both parties either in person or by their agents ... The contract, to be binding from the date of the application, must have been a completed contract, one that leaves nothing to be done, nothing to be completed, nothing to be passed upon, or determined, before it shall take effect. There can be no contract of insurance unless the minds of the parties have met in agreement."

2. Relative to the second issue of alleged concealment, the Court is of the firm belief that private respondent had deliberately concealed the state of health and physical condition of his daughter Helen Go. Where private respondent supplied the required essential data for the insurance application form, he was fully aware that his one-year old daughter is typically a mongoloid child. Such a congenital physical defect could never be ensconced nor disguised. Nonetheless, private respondent, in apparent bad faith, withheld the fact material to the risk to be assumed by the insurance company. As an insurance agent of Grepalife, he ought to know, as he surely must have known, his duty and responsibility to such a material fact. Had he diamond said significant fact in the insurance application form Grepalife would have verified the same and would have had no choice but to disapprove the application outright.

The contract of insurance is one of perfect good faith *uberrima fides* meaning good faith, absolute and perfect candor or openness and honesty; the absence of any concealment or demotion, however slight [*Black's Law Dictionary*, 2nd Edition], not for the alone but equally so for the insurer (*Field man's Insurance Co., Inc. vs. Vda de Songco*, 25 SCRA 70). Concealment is a neglect to communicate that which a party knows and ought to communicate (Section 25, Act No. 2427). Whether intentional or unintentional the concealment entitles the insurer to rescind the contract of insurance (Section 26, *Id.*: *Yu Pang Cheng vs. Court of Appeals, et al*, 105 Phil 930; *Satumino vs. Philippine American Life Insurance Company*, 7 SCRA 316). Private respondent appears guilty thereof.

The SC held that no insurance contract was perfected between the parties with the noncompliance of the conditions provided in the binding receipt, and concealment, as legally defined, having been committed by herein private respondent.

Disposition:

The decision appealed from was SET ASIDE, and in lieu thereof, one was entered which absolved petitioners Lapulapu D. Mondragon and Great Pacific Life Assurance Company from their civil liabilities as found by respondent Court and ordered the aforesaid insurance company to reimburse the amount of P1,077.75, without interest, to private respondent, Ngo Hing. Costs against private respondent.

