



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

SUN LIFE OF CANADA
(PHILIPPINES), INC.,
Petitioner,

G.R. No. 183272

Present:

- versus -

CARPIO, *Chairperson,*
PERALTA,*
DEL CASTILLO,
REYES,** *and*
LEONEN, *JJ.*

SANDRA TAN KIT and
The Estate of the Deceased
NORBERTO TAN KIT,
Respondents.

Promulgated:

OCT 7 5 2014 *DK Delcastillo*

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DECISION

DEL CASTILLO, J.:

The Court of Appeals' (CA) imposition of 12% interest on the ₱13,080.93 premium refund is the only matter in question in this case.

This Petition for Review on *Certiorari*¹ assails the October 17, 2007 Decision² of CA in CA-G.R. CV No. 86923, which, among others, imposed a 12% *per annum* rate of interest reckoned from the time of death of the insured until fully paid, on the premium to be reimbursed by petitioner Sun Life of Canada (Philippines), Inc. (petitioner) to respondents Sandra Tan Kit (respondent Tan Kit) and the Estate of the Deceased Norberto Tan Kit (respondent estate). Likewise assailed in this Petition is the CA's June 12, 2008 Resolution³ denying petitioner's Motion for Reconsideration of the said Decision.

Factual Antecedents

Respondent Tan Kit is the widow and designated beneficiary of Norberto *Mora*

* Per Raffle dated October 8, 2014.

** Per Special Order No. 1844 dated October 14, 2014.

¹ *Rollo*, pp. 12-24.

² *CA rollo*, pp. 99-113; penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Vicente Q. Roxas and Ramon R. Garcia.

³ *Id.* at 158-159.

Tan Kit (Norberto), whose application for a life insurance policy,⁴ with face value of ₱300,000.00, was granted by petitioner on October 28, 1999. On February 19, 2001, or within the two-year contestability period,⁵ Norberto died of disseminated gastric carcinoma.⁶ Consequently, respondent Tan Kit filed a claim under the subject policy.

In a Letter⁷ dated September 3, 2001, petitioner denied respondent Tan Kit's claim on account of Norberto's failure to fully and faithfully disclose in his insurance application certain material and relevant information about his health and smoking history. Specifically, Norberto answered "No" to the question inquiring whether he had smoked cigarettes or cigars within the last 12 months prior to filling out said application.⁸ However, the medical report of Dr. Anna Chua (Dr. Chua), one of the several physicians that Norberto consulted for his illness, reveals that he was a smoker and had only stopped smoking in August 1999. According to petitioner, its underwriters would not have approved Norberto's application for life insurance had they been given the correct information. Believing that the policy is null and void, petitioner opined that its liability is limited to the refund of all the premiums paid. Accordingly, it enclosed in the said letter a check for ₱13,080.93 representing the premium refund.

In a letter⁹ dated September 13, 2001, respondent Tan Kit refused to accept the check and insisted on the payment of the insurance proceeds.

On October 4, 2002, petitioner filed a Complaint¹⁰ for Rescission of Insurance Contract before the Regional Trial Court (RTC) of Makati City.

Ruling of the Regional Trial Court

In its November 30, 2005 Decision,¹¹ the RTC noted that petitioner's physician, Dr. Charity Salvador (Dr. Salvador), conducted medical examination on Norberto. Moreover, petitioner's agent, Irma Joy E. Javelosa (Javelosa), answered "NO" to the question "*Are you aware of anything about the life to be insured's lifestyle, hazardous sports, habits, medical history, or any risk factor that would*

⁴ With Policy No. 030500710; records, pp. 45-52.

⁵ As provided under Section 48 of the Insurance Code *viz*:

Sec. 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.

⁶ See Death Certificate, records, p. 7.

⁷ Id. at 8.

⁸ Id. at 6.

⁹ Id. at 10.

¹⁰ Id. at 1-5.

¹¹ Id. at 240-244; penned by Judge Cesar O. Untalan.

have an adverse effect on insurability?” in her Agent’s Report. Javelosa also already knew Norberto two years prior to the approval of the latter’s application for insurance. The RTC concluded that petitioner, through the above-mentioned circumstances, had already cleared Norberto of any misrepresentation that he may have committed. The RTC also opined that the affidavit of Dr. Chua, presented as part of petitioner’s evidence and which confirmed the fact that the insured was a smoker and only stopped smoking a year ago [1999], is hearsay since Dr. Chua did not testify in court. Further, since Norberto had a subsisting insurance policy with petitioner during his application for insurance subject of this case, it was incumbent upon petitioner to ascertain the health condition of Norberto considering the additional burden that it was assuming. Lastly, petitioner did not comply with the requirements for rescission of insurance contract as held in *Philamcare Health Systems, Inc. v. Court of Appeals*.¹² Thus, the dispositive portion of the RTC Decision:

WHEREFORE, in view of the foregoing considerations, this court hereby finds in favor of the [respondents and] against the [petitioner], hence it hereby orders the [petitioner] to pay the [respondent], Sandra Tan Kit, the sum of Philippine Pesos: THREE HUNDRED THOUSAND (₱300,000.00), representing the face value of the insurance policy with interest at six percent (6%) per annum from October 4, 2002 until fully paid.

Cost de officio.

SO ORDERED.¹³

Petitioner moved for reconsideration,¹⁴ but was denied in an Order¹⁵ dated February 15, 2006.

Hence, petitioner appealed to the CA.

Ruling of the Court of Appeals

On appeal, the CA reversed and set aside the RTC’s ruling in its Decision¹⁶ dated October 17, 2007.

¹² 429 Phil. 82, 93 (2002); It was held therein that the cancellation of health care agreements as in insurance policies requires the concurrence of the following conditions:

- “1. Prior notice of cancellation to insured;
2. Notice must be based on the occurrence after effective date of the policy of one or more of the grounds mentioned;
3. Must be in writing, mailed or delivered to the insured at the address shown in the policy;
4. Must state the grounds relied upon provided in Section 64 of the Insurance Code and upon request of insured, to furnish facts on which cancellation is based.”

¹³ Records, p. 243.

¹⁴ Id. at 255-266.

¹⁵ Id. at 288-289.

¹⁶ CA *rollo*, pp. 99-113.

From the records, the CA found that prior to his death, Norberto had consulted two physicians, Dr. Chua on August 19, 2000, and Dr. John Ledesma (Dr. Ledesma) on December 28, 2000, to whom he confided that he had stopped smoking only in 1999. At the time therefore that he applied for insurance policy on October 28, 1999, there is no truth to his claim that he did not smoke cigarettes within 12 months prior to the said application. The CA thus held that Norberto is guilty of concealment which misled petitioner in forming its estimates of the risks of the insurance policy. This gave petitioner the right to rescind the insurance contract which it properly exercised in this case.

In addition, the CA held that the content of Norberto's medical records are deemed admitted by respondents since they failed to deny the same despite having received from petitioner a Request for Admission pursuant to Rule 26 of the Rules of Court.¹⁷ And since an admission is in the nature of evidence the legal effects of which form part of the records, the CA discredited the RTC's ruling that the subject medical records and the affidavits executed by Norberto's physicians attesting to the truth of the same were hearsay.

The dispositive portion of the CA Decision reads:

WHEREFORE, the foregoing considered, the instant appeal is hereby GRANTED and the appealed Decision REVERSED and SET ASIDE, and in lieu thereof, a judgment is hereby rendered GRANTING the complaint *a quo*.

Accordingly, [petitioner] is ordered to reimburse [respondents] the sum of ₱13,080.93 representing the [premium] paid by the insured **with interest at the rate of 12% per annum from the time of the death of the insured until fully paid.**

SO ORDERED.¹⁸

The parties filed their separate motions for reconsideration.¹⁹ While respondents questioned the factual and legal bases of the CA Decision, petitioner, on the other hand, assailed the imposition of interest on the premium ordered

¹⁷ Rule 26. ADMISSION BY ADVERSE PARTY

SECTION 1. *Request for Admission.* – At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

Sec. 2. *Implied admission.* – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall not be less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters of which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

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¹⁸ CA *rollo*, p. 112; emphasis supplied.

¹⁹ Id. at 114-121 and 123-128.

refunded to respondents.

However, the appellate court denied the motions in its June 12, 2008 Resolution,²⁰ viz:

WHEREFORE, the foregoing considered, the separate motions for reconsideration filed by the [petitioner] and the [respondents] are hereby DENIED.

SO ORDERED.²¹

Only petitioner appealed to this Court through the present Petition for Review on *Certiorari*.

Issue

The sole issue in this case is whether petitioner is liable to pay interest on the premium to be refunded to respondents.

The Parties' Arguments

Petitioner argues that no interest should have been imposed on the premium to be refunded because the CA Decision does not provide any legal or factual basis therefor; that petitioner directly and timely tendered to respondents an amount representing the premium refund but they rejected it since they opted to pursue their claim for the proceeds of the insurance policy; that respondents should bear the consequence of their unsound decision of rejecting the refund tendered to them; and, that petitioner is not guilty of delay or of invalid or unjust rescission as to make it liable for interest. Hence, following the ruling in *Tio Khe Chio v. Court of Appeals*,²² no interest can be assessed against petitioner.

Respondents, on the other hand, contend that the reimbursement of premium is clearly a money obligation or one that arises from forbearance of money, hence, the imposition of 12% interest *per annum* is just, proper and supported by jurisprudence. While they admit that they refused the tender of payment of the premium refund, they aver that they only did so because they did not want to abandon their claim for the proceeds of the insurance policy. In any case, what petitioner should have done under the circumstances was to consign the amount of payment in court during the pendency of the case.

²⁰ Id. at 158-159.

²¹ Id. at 159.

²² 279 Phil. 127 (1991).

Our Ruling

Tio Khe Chio is not applicable in this case.

Petitioner avers that *Tio Khe Chio*, albeit pertaining to marine insurance, is instructive on the issue of payment of interest. There, the Court pointed to Sections 243 and 244 of the Insurance Code which explicitly provide for payment of interest when there is *unjustified refusal or withholding of payment of the claim by the insurer*,²³ and to Article 2209²⁴ of the New Civil Code which likewise provides for payment of interest when the debtor is in *delay*.

The Court finds, however, that *Tio Khe Chio* is not applicable here as it deals with payment of interest on the insurance *proceeds* in which the claim therefor was either unreasonably denied or withheld or the insurer incurred delay in the payment thereof. In this case, what is involved is an order for petitioner to refund to respondents the insurance *premium* paid by Norberto as a consequence of the rescission of the insurance contract on account of the latter's concealment of material information in his insurance application. Moreover, petitioner did not unreasonably deny or withhold the insurance proceeds as it was satisfactorily established that Norberto was guilty of concealment.

Nature of interest imposed by the CA

There are two kinds of interest – monetary and compensatory.

²³ Sections 243 and 244 provide as follows:

SEC. 243. The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

SEC. 244. In case of any litigation for the enforcement of any policy or contract of insurance, it shall be the duty of the Commissioner or the Court, as the case may be, to make a finding as to whether **the payment of the claim of the insured has been unreasonably denied or withheld**; and in the affirmative case, the insurance company shall be adjudged to pay damages which shall consist of attorney's fees and other expenses incurred by the insured person by reason of such **unreasonable denial or withholding of payment** plus interest of twice the ceiling prescribed by the Monetary Board of the amount of the claim due the insured, from the date following the time prescribed in section two hundred forty-two or in section two hundred forty-three, as the case may be, until the claim is fully satisfied; *Provided*, That the failure to pay any such claim within the time prescribed in said sections shall be considered *prima facie* evidence of unreasonable delay in payment. (Emphases supplied)

²⁴ Article 2209. **If the obligation consists in the payment of a sum of money and the debtor incurs in delay**, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six per cent per annum. (Emphasis supplied)

“Monetary interest refers to the compensation set by the parties for the use or forbearance of money.”²⁵ No such interest shall be due unless it has been expressly stipulated in writing.²⁶ “On the other hand, compensatory interest refers to the penalty or indemnity for damages imposed by law or by the courts.”²⁷ The interest mentioned in Articles 2209 and 2212²⁸ of the Civil Code applies to compensatory interest.²⁹

Clearly and contrary to respondents’ assertion, the interest imposed by the CA is not monetary interest because aside from the fact that there is no use or forbearance of money involved in this case, the subject interest was not one which was agreed upon by the parties in writing. This being the case and judging from the tenor of the CA, to wit:

Accordingly, [petitioner] is ordered to reimburse [respondents] the sum of ₱13,080.93 representing the [premium] paid by the insured **with interest at the rate of 12% per annum from time of death of the insured until fully paid.**³⁰

there can be no other conclusion than that the interest imposed by the appellate court is in the nature of compensatory interest.

The CA incorrectly imposed compensatory interest on the premium refund reckoned from the time of death of the insured until fully paid

As a form of damages, compensatory interest is due only if the obligor is proven to have failed to comply with his obligation.³¹

In this case, it is undisputed that simultaneous to its giving of notice to respondents that it was rescinding the policy due to concealment, petitioner tendered the refund of premium by attaching to the said notice a check representing the amount of refund. However, respondents refused to accept the same since they were seeking for the release of the proceeds of the policy. Because of this discord, petitioner filed for judicial rescission of the contract. Petitioner, after receiving an adverse judgment from the RTC, appealed to the CA. And as may be recalled, the appellate court found Norberto guilty of concealment and thus upheld the rescission of the insurance contract and consequently decreed

²⁵ *Asia Trust Development Bank v. Tuble*, G.R. No. 183987, July 25, 2012, 677 SCRA 519, 536.

²⁶ *Siga-an v. Villanueva*, 596 Phil. 760, 769 (2009).

²⁷ *Asia Trust Development Bank v. Tuble*, supra note 25.

²⁸ Art. 2212. Interest due shall earn legal interest from the time it is judicially demanded although the obligation may be silent upon this point.

²⁹ *Siga-an v. Villanueva*, supra note 26 at 772.

³⁰ CA rollo, p. 112. Emphasis supplied.

³¹ *Asia Trust Development Bank v. Tuble*, supra note 25.

the obligation of petitioner to return to respondents the premium paid by Norberto. Moreover, we find that petitioner did not incur delay or unjustifiably deny the claim.

Based on the foregoing, we find that petitioner properly complied with its obligation under the law and contract. Hence, it should not be made liable to pay compensatory interest.

Considering the prevailing circumstances of the case, we hereby direct petitioner to reimburse the premium paid within 15 days from date of finality of this Decision. If petitioner fails to pay within the said period, then the amount shall be deemed equivalent to a forbearance of credit.³² In such a case, the rate of interest shall be 6% *per annum*.³³

WHEREFORE, the assailed October 17, 2007 Decision of the Court of Appeals in CA-G.R. CV No. 86923 is **MODIFIED** in that petitioner Sun Life of Canada (Philippines), Inc. is ordered to reimburse to respondents Sandra Tan Kit and the Estate of the Deceased Norberto Tan Kit the sum of ₱13,080.93 representing the premium paid by the insured within fifteen (15) days from date of finality of this Decision. If the amount is not reimbursed within said period, the same shall earn interest of 6% *per annum* until fully paid.

SO ORDERED.


MARIANO C. DEL CASTILLO
Associate Justice

WE CONCUR:


ANTONIO T. CARPIO
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


BIENVENIDO L. REYES
Associate Justice

³² *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 458.

³³ *Id.*



MARVIC M.V.F. LEONEN
Associate Justice

ATTESTATION

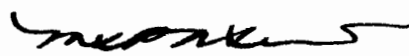
I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



ANTONIO T. CARPIO
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



MARIA LOURDES P. A. SERENO
Chief Justice

