Michigan Law Review

Volume 49 | Issue 5

1951

INSURANCE-LOAN CONTRACT WHICH PROVIDES FOR CANCELLATION OF DEBT IN EVENT OF NAMED CONTINGENCIES AS AN INSURANCE CONTRACT

Wendell B. Will
University of Michigan Law School

INSURANCE—LOAN CONTRACT WHICH PROVIDES FOR CANCELLATION OF DEBT IN EVENT OF NAMED CONTINGENCIES AS AN INSURANCE CONTRACT—In consideration of plaintiff's promise to pay $720 to defendant in twelve monthly installments, defendant promised to advance $600. Plaintiff's obligation was to be cancelled in case of his death, and his obligation to pay installments was to be suspended while plaintiff was disabled because of illness or accident. Plaintiff warranted his good health and agreed that the contract was neither usurious nor one of insurance. The contract having been executed, plaintiff sought recovery under the Texas usury statute. The trial court held that of the $120 paid in excess of the loan, $60 was for maximum legal interest, $12 for maximum legal service charge, and $48 for the issuance of an insurance contract, that there was no usury, but that since the contract was issued in violation of Texas insurance law,[1] $48 should be returned to the plaintiff. On appeal, *held,* the contract is neither usurious nor one of insurance, since it ". . . does not provide for the payment of a sum of money in the event of death, sickness, etc. . . ." Moreover, "the parties stipulated . . . that the contract was not to be construed as a policy of insurance." And since "the contract does not provide for a beneficiary, is not assignable, and does not provide for the payment of premiums," it is merely a contract of waiver in which the defendant conditionally promises to waive his rights. Upon motion for rehearing by plaintiff and filing of a brief as amicus curiae by the District Attorney of Dallas,[2] the court reaffirmed its holding that the contract was not one of insurance, but asserted the question to be immaterial since plaintiff's death would legally have cancelled the debt and it would be inequitable to allow plaintiff to recover the $48 when he had received the protection contained in defendant's conditional promise. *Denton v. Ware,* (Tex. 1950) 288 S.W. (2d) 867.

Since most, if not all, states require insurers to meet certain statutory requirements, and since it is advantageous as a business stimulant to include in loan contracts and in conditional sales contracts provisions which cancel payments in case of illness or which cancel the entire obligation in case of death, the question of whether these provisions are "insurance" clauses ceases to be merely academic. When answering the question, "Must this 'insurer' comply with this regulatory statute?" it is advisable to have some workable definition of an insurance contract which can be applied to the contract under consideration. Often the regulatory statute itself contains the definition to be used, and if such is not the case, the common law definition should be employed.[3] In the

[1] Although the report shows no reference to any statutes regarding insurance contracts, it would seem that the defendant did not comply with the provisions in Tex. Civ. Stat. Ann. (Vernon, 1925) tit. 78, and that therefore the contract was issued illegally.

[2] It would seem this was done by the district attorney to determine the desirability of prosecuting under Tex. Civ. Stat. Ann. (Vernon, 1925) tit. 78.

[3] At common law an insurance contract is broadly defined as a contract by which one party for a consideration assumes particular risks of the other party. See cases collected in 44 C.J.S. 471. Those statutes which do give definitions are necessarily general and do not vary considerably from generally recognized common law definitions. These definitions must be read and interpreted expansively since all types of insurance contracts could not

case under consideration it would seem that the court's requirement of premium payment is met, since a premium is merely consideration for shifting of the risk.[4] The fact that consideration for the acceptance by the defendant of the insured risks is mixed with consideration for his other promises should make no difference. Stipulation by the parties that the contract is not to be one of insurance should not remove it from this category if it is in fact such, for to hold otherwise would allow the parties to defeat the purpose of the regulatory statute.[5] Absence of a provision for payment of money in the event of the insured contingencies should likewise not remove the contract from the group otherwise considered insurance contracts, when the insurer is obligated to perform some other valuable act.[6] It is clear that cancellation of a debt is such a valuable act.[7] The plaintiff, in case of illness or accident, or his estate, in case of death, is the beneficiary. It is therefore submitted that contracts such as this *are* insurance contracts. The purpose of the conditional promise is to shift the risk of inability to pay because of illness, accident, or death from one party to the other. However, it may be doubted that, as a matter of legislative policy, insurers under this type of insurance contract ought, or are intended to be, regulated. For if it is the purpose of these statutes to make certain that the insurer has on hand sufficient reserves to meet anticipated claims, then there is no need for regulation in this type of case, because insolvency would not impair ability of the "insurer" to cancel a debt.

Wendell B. Will

have been contemplated at the time. See State v. Hogan, 8 N.D. 301, 78 N.W. 1051 (1899).

[4] See generally 44 C.J.S. 1302.

[5] People v. Raschli, 275 N.Y. 26, 9 N.E. (2d) 763 (1937); Hunt, Insurance Commissioner of Pennsylvania v. Public Mut. Ben. Foundation, (3d Cir. 1938) 94 F. (2d) 749, cert. den. 305 U.S. 616, 59 S.Ct. 74 (1938); State ex rel. Martin, Atty. Gen. v. Dane County Mutual Benefit Association, 247 Wis. 220, 19 N.W. (2d) 303 (1945).

[6] Ollendorf Watch Co. v. Pink, Supt. of Insurance, 279 N.Y. 32, 17 N.E. (2d) 676 (1938); State ex rel. Duffy, Atty. Gen. v. Western Auto Supply Co., 134 Ohio St. 163, 16 N.E. (2d) 256 (1938).

[7] Atty. Gen. v. C. E. Osgood Co., 249 Mass. 473, 144 N.E. 371 (1924); Missouri, K. and T. Trust Co. v. Krumseig, (8th Cir. 1896) 77 F. 32 (dictum); State v. Beardsley, 88 Minn. 20, 92 N.W. 472 (1902).