Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

CHARTIS PHILIPPINES INSURANCE, INC. (now AIG PHILIPPINES INSURANCE, INC.),	**G.R. No. 234299**
Petitioner,	Present:
- versus -	PERALTA, *C.J.*, *Chairperson*, CAGUIOA, CARANDANG, ZALAMEDA, GAERLAN, *J.*
CYBER CITY TELESERVICES, LTD.,	Promulgated:
Respondent.	MAR 0 3 2021

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DECISION

CARANDANG, *J.*:

In this Petition for *Certoriari*[1] under Rule 45, Chartis Philippines Insurance Inc. (Chartis) assails the Decision[2] dated February 20, 2017 and Resolution[3] dated September 26, 2017 of the Court of Appeals (CA) in CA-G.R. CV No. 101737. The CA reversed the Order[4] dated September 30, 2011 of the Regional Trial Court (RTC) of Makati City, Branch 139 in Civil Case No. 06-080, rendering summary judgment in favor of Chartis; ordering respondent Cyber City Teleservices, Ltd. (CCTL) to pay the premium for two insurance policies, attorney's fees, and costs of suit; and dismissing CCTL's counterclaim.

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1 *Rollo*, pp. 9-35.

2 Penned by Associate Justice Maria Elisa Sempio Dy, with the concurrence of Associate Justices Ramon M. Bato Jr. and Henri Jean Paul B. Inting (now a Member of this Court); id. at 40-73.

3 Id. at 92-97.

4 Penned by Presiding Judge Benjamin T. Pozon; records, pp. 431-435.

Facts of the Case

Petitioner Chartis, previously called Philam Insurance Co., Inc., is a domestic corporation engaged in the business of insurance. Sometime before the filing of this petition, petitioner again changed its name to AIG Philippines Insurance Inc.[5] Among the insurance products Chartis offers is *professional indemnity insurance*, where, on behalf of the insured, the insurer pays any claim for breach of duty cause by any wrongful professional act committed or allegedly committed by the insured in the course of providing professional services;[6] and *fidelity insurance,* which insures against loss of money, securities, and other property which the insured shall sustain through any fraudulent or dishonest acts committed by any of the insured's employees, whether acting alone or in collusion with others.[7]

Respondent CCTL is a call center agency specializing in customer relationship management (CRM) services. On June 21, 2004, Jardine Lloyd Thompson Insurance Brokers (JLT), acting as broker and agent for CCTL, applied with Chartis for quotations for *professional indemnity insurance* and *fidelity insurance*.[8] Sometime in September 2004, Chartis sent JLT the quotations which were valid until October 6, 2004 for *professional indemnity insurance* and until September 7, 2004, for the *fidelity insurance*.

On January 20, 2005, JLT transmitted "Placing Instructions"[9] to Chartis informing the latter that CCTL had accepted the terms and that Chartis was "on risk with effect from 20 January 2005/12:01 Philippine Time and await your Policy documents." The Placing Instructions provide that the annual premium was agreed to be US$45,060 and US$56,325.00, inclusive of taxes, for fidelity insurance and professional indemnity insurance, respectively. The indemnity limits for both policies were up to an aggregate of US$2,000,000.00. The insurance coverage period for both was from January 20, 2005 to January 20, 2006 and that the premium payment terms is 90 days from the inception of the policies. The Placing Instructions both provide that in accordance with Bureau of Internal Revenue (BIR) M.O. No. 15-2001 and Revenue Regulation No. 9-2000, JTL agreed that no payment of the documentary stamp tax (DST) will be refunded as a result of the cancellation of the policies; and that it guarantees the payment of DST.[10]

On the same day, Chartis issued Policy No. 130100284[11] for *fidelity insurance* and Policy No. 130100285[12] for *professional indemnity insurance.* Chartis paid the DST due for the said policies.[13]

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5 CA *rollo*, pp. 223-237.
6 Records, pp. 255-268.
7 Id. at 269-274.
8 *Rollo*, p. 44.
9 Id. at 45; records, pp. 248-250, 252-254.
10 Id.
11 Records, pp. 269-274.
12 Id. at 255-268.
13 *Rollo*, p. 45, records, pp. 433-435.

As the 90-day period was nearing its end, JLT, in behalf of CCTL, requested extensions of the credit term. In a series of email exchanges with JTL, Chartis agreed to give CCTL more time to pay the premiums and the DST. At first up to April 20, 2005,[14] then to April 30, 2005,[15] then June 3, 2005,[16] and then finally on June 15, 2005.[17] No payment having been made by then, Chartis issued notices of cancellation[18] dated June 15, 2005 which also declared that it was crediting refund premiums in the amounts of US$24,036.00 and US$30,045.00 for the two policies, inclusive of tax. Said amounts are equivalent to the "time-on risk" premiums which reflect the period that Chartis was liable from January 5, 2005 up to the policy cancellations on June 15, 2005. Chartis demanded payment of the premiums in letters dated August 8, 2005, September 14, 2005, and then finally November 8, 2005, all to no avail.[19] As such, it sued CCTL for payment of sum of money with damages.[20]

In its Answer with Compulsory Counterclaim, CCTL claimed that it did not authorize any person or entity to accept Chartis' offer or to bind it to any insurance contract. Moreover, CCTL invoked Section 77 of the Insurance Code and argued that since no payment of premiums had been made, the policies took no effect at all. In its counter-claim, CCTL argued that complaint was baseless and as such, it is entitled to damages and costs of suit.[21]

Trial ensued. After Chartis had formally offered its evidence, CCTL filed a Motion for Summary Judgment, arguing that there was no longer any genuine question of fact. CCTL submitted that the only issue to be resolved is whether there was a binding policy of insurance on which Chartis may base its claim for premiums.[22] CCTL argued that based on Chartis' own evidence and admissions that the premiums were not paid, then under Section 77 of the Insurance Code, the policies were neither valid nor binding.[23] Chartis agreed that the case was ripe for adjudication, but maintained that the policies were valid and binding, citing *UCPB General Ins. Co., Inc. v. Masagana Telamart, Inc.*,[24] where We held that as an exception to Section 77, the insurer may grant credit extension for the payment of the premium.[25] Thus, Chartis argued that it may recover the premiums under the policies, because it gave CCTL a 90-day period and then until June 15, 2005 to pay the premiums. For that period, it was already exposed to the risk insured against. Chartis also argued that it would not have paid the DST, knowing that the same is non-refundable, if it was not due on validly issued policies.[26] Furthermore, Chartis pointed out that under Section 78 of the Insurance Code, if the policies contain an

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14 Records, p. 277.
15 Id. at 278.
16 Id. at 280.
17 Id. at 281.
18 Id. at 282, 283.
19 Id. at 284-289.
20 Records, pp. 1-5.
21 Id. 89-94.
22 *Rollo*, pp. 363-369.
23 Id. at 363-369.
24 408 Phil. 423 (2001).
25 Id. at 433.
26 CA *rollo*, pp. 387-397.

acknowledgment of the receipt of the premiums, then the policies are binding. The *professional indemnity* policy states: "In consideration of the payment of the Premium specified in the schedule x x x."[27] Thus, Chartis argues that it has acknowledged receipt of the premium and the policy should be considered binding.[28]

Ruling of the Regional Trial Court

The RTC granted CCTL's Motion for Summary Judgment and based on the above facts, held that Chartis is entitled to the relief prayed for.[29] While under Section 77 of the Insurance Code, no policy or contract of insurance is valid and binding unless the premium has been paid, the RTC found that Chartis had granted CCTL an extension of credit for the payment of premium. This is one of the exceptions to the above rule as held in the case of *UCPB General Ins. Co., Inc. v. Masagana Telamart, Inc.*[30] Therefore, the RTC ruled that there was a valid and binding insurance contract between the parties on the basis of which Chartis is entitled to payment of premium with interest.[31] The RTC also held that CCTL is liable to reimburse Chartis for the taxes it had paid for the policies and also for attorney's fees in accordance with Article 2208 of the Civil Code, because Chartis was compelled to litigate or incurred expenses to protect its interest by reason of CCTL's unjustified failure to pay.[32] Thus, in its Order[33] dated September 30, 2011, the RTC rendered summary judgment as follows:

> **WHEREFORE,** premises considered, the instant motion is hereby **GRANTED.** Judgment is hereby rendered in favor of the plaintiff Chartis Philippines, Inc. (Philam Insurance Co., Inc.) and against defendant Cyber City Teleservices, Ltd. Ordering the latter to pay the former the following:
> (a) The amount of Forty Seven Thousand Three Hundred Four Dollars (US$ 47,304.00) or its peso equivalent representing the earned premium, as well as the taxes paid, for the two (2) policies plus twelve percent (12%) legal interest commencing from the date of filing of the complaint until fully paid;
> (b) The amount of P100,000.00 as attorney's fees; and
> (c) The amount of P60,713.32 representing the costs of suit.
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> Defendant's compulsory counterclaim are hereby DISMISSED for lack of merit.
>
> Furnish copies of this Order to the parties and their respective counsels.
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> **SO ORDERED.**[34] (Emphasis in the original)

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27 Records, p. 257.
28 CA *rollo*, pp. 387-397.
29 Records, p. 435.
30 Supra note 24.
31 Records, pp. 433-434.
32 Id. at 434.
33 Supra note 4.
34 Records, p. 435.

CCTL filed a motion for reconsideration.[35] Chartis opposed and moved for execution pending execution.[36] The RTC denied both motions.[37]

Ruling of the Court of Appeals

CCTL appealed, asking the CA to reverse the RTC and to grant its counterclaim.[38] In its assignment of errors, CCTL argued that the RTC's summary judgment was based on disputed facts. CCTL maintained that it never requested for credit terms on its own or through JTL. Neither did it clothe JTL with authority nor held out JTL as its agent. In sum, CCTL argued that the RTC had treated its Motion for Summary Judgment as an implied admission of Chartis' material allegations. CCTL clarified that it only moved for summary judgment because the parties were agreed on the fact that no premium was paid, on the basis of which the RTC should have ruled that there was no binding policy to support Chartis' claim. On such disputed matters as the granting of a credit extension through JTL, CCTL argued that it should have been given the chance to present evidence to contradict Chartis' allegation.[39] Nevertheless, CCTL maintained that under Section 77 of the Insurance Code, there is no valid and binding insurance contract that would make it liable to pay the premiums.[40]

In its Appellee's Brief,[41] Chartis pointed out that CCTL had moved for summary judgment after the trial court had admitted Chartis' documentary evidence and after it had given CCTL several opportunities to adduce evidence. By filing said motion, CCTL should be deemed to have waived its right to adduce evidence.[42] Chartis agreed that the case was ripe for judgment because the only issue left to be determined was purely legal: the proper application of Section 77 of the Insurance Code. CCTL should not be permitted to change its stance just because the RTC did not render summary judgment in its favor.[43] Chartis argued that the RTC was correct in all aspects and so, asked the CA to affirm it *in toto*.[44]

The CA partly granted CCTL's appeal. The dispositive portion of the assailed Decision[45] states:

> **WHEREFORE**, the appeal is **PARTLY GRANTED.** The Order dated September 30, 2011 of Branch 139, Regional Trial Court of Makati City is **VACATED** and **SET ASIDE.**

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35 Id. at 445-450.
36 Id. at 453-458.
37 Id. at 479-481.
38 CA *rollo*, pp. 31-57.
39 Id. at 43-54.
40 Id. at 54-56.
41 Id. at 75-105.
42 Id. at 86-87.
43 Id. at 87-89.
44 Id. at 105.
45 Supra note 2.

The Complaint dated January 20, 2006 is hereby **DISMISSED.**

SO ORDERED.[46] (Emphasis in the original)

The CA ruled that it was proper for the RTC render summary judgment. The CA emphasized that it was CCTL who moved for summary judgment, yet it made no reservation that it was or will be contesting the authority of JTL its purported agent. Upon reviewing the motion, the CA observed that CCTL explicitly argued that "summary judgment is proper in the instant case as there is no genuine issue of fact."[47] As such, the CA ruled that "CCTL had in effect submitted the whole case ripe for summary judgment because the only issue left for the trial court to settle was whether or not the insurance policies were without any legal effect, pursuant to Section 77."[48]

The CA held that none of the exceptions to Section 77 applies in this case. The CA's understood Our holding in *Makati Tuscany Condominium v. Court of Appeals*[49] to mean that a policy is valid and binding if the insured had paid initial installments on the premium. Because there was no payment at all in this case, the exception enunciated in *Makati Tuscany* does not apply.[50] The CA also did not find *UCPB*[51] binding. We held in that case that the insured may recover on the policy if the premium is paid after the loss but within the credit term. In this case, the credit term and extensions lapsed without the premiums being paid.[52] The CA held that Chartis' remedy is not to demand the payment of premiums, but to put an end to and render the insurance policies are not binding.[53]

The CA also held that the provisions in the policies which allow Charits to demand for the payment of the insurance premiums on a prorated basis are void as contrary to law, morals, good customs, public order, and policy. Because the Insurance Code requires payment of premiums for the validity of the policies, such provisions cannot be considered effective.[54]

Furthermore, the CA ruled that Section 78 does not apply because "in consideration of" is not synonymous with an acknowledgment of receipt of premiums. Thus, the policies are not binding on such ground.[55]

However, the CA found no evidence of bad faith in Chartis' institution of an action against CCTL. Thus, for lack of evidence, the CA did not grant CCTL's claim for actual damages, exemplary damages, and attorney's fees.[56]

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46 *Rollo*, p. 73.
47 Id. at 63.
48 Id. at 66.
49 289 Phil. 942 (1992).
50 *Rollo*, p. 69.
51 Supra note 24.
52 *Rollo*, p. 70.
53 Id. at 71.
54 Id.
55 Id. at 70.
56 Id. at 71-72.

Chartis moved for reconsideration,[57] but the same was denied.[58] Hence, this petition.

Petitioner's Arguments

Chartis maintains that the policies are valid and binding because it had extended a credit to CCTL. Because it was on risk, Chartis argues that it would not have reneged on its obligation to indemnify CCTL had loss occurred during the credit term. As such, it may recover premiums based on the period that it was on risk as provided for in a short-rate cancellation table in the policies, which must be presumed to be valid as they same had been approved by the Insurance Commission in accordance with Section 226 of the Insurance Code.[59] Consequently, the time-on risk provisions are not only valid but reinforces the understanding between the parties that if Chartis was on risk for a given period, then CCTL is obligated to pay the corresponding premiums.[60] Chartis also maintains that it should be repaid the DST remitted, as per agreed under the policies.[61]

Respondent's Arguments

In its Comment,[62] CCTL makes no mention of the CA's ruling about summary judgment. However, as to whether the policies are valid and binding, CCTL maintains that the CA appreciated the case correctly and reiterates that Chartis has misunderstood Our rulings in *Makati Tuscany* and *UCPB*.[63] As regards the DST, CCTL cites *Phil. Home Assurance Corp. v. Court of Appeals*[64] and argues that said tax is due upon the mere issuance of the policies without regard as to whether premiums have been paid.[65] The payment of DST, therefore, is not relevant as to whether the policies are valid and binding. CCTL maintains that the payment of the DST is Chartis' sole responsibility.[66]

Issues

The resolution of the petition hinges on the following issues:

1) Whether petitioner is entitled to payment of the premiums;
2) Whether the "time on risk" provisions are contrary to law, morals, and/or public policy; and
3) Whether CCTL is obligated to reimburse petitioner for the documentary stamps tax paid by Chartis.

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57 Id. at 75-89.
58 Supra note 3.
59 *Rollo*, pp. 18-28.
60 Id. at 30.
61 Id. at 25-26.
62 Id. at 175-183.
63 Id. at 176-177.
64 361 Phil. 368 (1999).
65 *Rollo*, pp. 177-178.
66 Id. at 181-182.

Ruling of the Court

The petition is meritorious.

I. A contract of insurance is valid and binding when the insurer extends credit to the insured as to the premium; the insurer is entitled to payment of premium as soon as the parties are agreed that the thing insured is exposed to the peril insured against.

Section 2(1) of P.D. 612, otherwise known as the Insurance Code, defines a contract of insurance as an agreement where the insurer undertakes for a consideration (the premium) to indemnify the insured against loss, damage, or liability arising from an unknown or contingent event. The issues in this case concern the proper understanding of the circumstances in which a policy or contract of insurance may be considered as valid and binding in relation to the insurer's right to the premium. For such a purpose, a historical review is necessary to harmonize and clarify the development of our statutes and case law on the subject.

Section 72 of the Insurance Act of 1914 (Act No. 2427) provided that "[a]n insurer is entitled to payment of the premium soon, as the thing insured is exposed to the peril insured against." Upon the enactment of R.A. 3540 on June 20, 1963, the legislature allowed for the granting of credit extensions on the premium due, but it also explicitly required the payment of premiums to make a policy valid and binding, *viz.*:

> Section 1. Section Seventy-two of the Insurance Act, (Act No. 2427) As amended, is hereby amended to read as follows:
>
> Section 72. An insurer is entitled to payment of the 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.** (Emphasis and underscoring supplied)

In *Velasco v. Hon. Apostol*,[67] We held that under Section 72 of the Insurance Act, as amended, "the insurance policy in question would be valid and binding notwithstanding the non-payment of the premium if there was a clear agreement to grant to the insured credit extension. Such agreement may be express or implied."[68] Similarly, in *Philippine Phoenix Surety & Insurance Co. v. Woodworks, Inc.*,[69] which was also decided on the basis of Insurance Act and which the CA cited, We held that "when the policy is tendered the

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67 255 Phil. 219 (1989).
68 Id. at 225.
69 181 Phil. 1 (1979).

insured must pay the premium **unless credit is given or there is a waiver, or some agreement obviating the necessity for prepayment**. To constitute an extension of credit there must be a clear and express agreement therefor."[70]

Then in 1974, P.D. 612 came to effect and repealed the Insurance Act of 1914. The regime changed. Section 77 of P.D. 612 removed all mention of credit extensions and explicitly stated that the only instance when the parties may be bound to the policy despite non-payment of the premium is when the grace period provision applies in life or industrial life policies, *viz.*:

> 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.**[71](Emphasis and underscoring supplied).

In *Spouses Tibay v. Court of Appeals*,[72] We discussed the rationale behind the second sentence of Section 77, that in an insurance contract, both the insured and insurer undertake risks. On one hand, there is the insured, a member of a group exposed to a particular peril, who contributes premiums under the risk of receiving nothing in return in case the contingency does not happen; on the other, there is the insurer, who undertakes to pay the entire sum agreed upon in case the contingency happens. **This risk-distributing mechanism operates under a system where, by prompt payment of the premiums, the insurer is able to meet its legal obligation to maintain a legal reserve fund needed to meet its contingent obligations to the public. The premium, therefore, is the *elixir vitae* or source of life of the insurance business.**[73]

There were some who were of view that Section 77 effectively removed any possibility of making policies binding upon a credit agreement. This view holds that the policy is binding despite non-payment in only two instances: (1) in case of life or industrial life insurance where the grace period applies; and (2) when there is a written acknowledgment of the premium which is conclusive on the insurer so far as to make the policy binding.[74] However, this view is not supported by how jurisprudence had developed. In the 1992 case of *Makati Tuscany Condominium v. Court of Appeals*,[75] We held that a policy is binding although the premium is paid on installments. In the same case, We approved the CA's observation that Section 77 merely precludes the parties from stipulating that the policy is valid even if premiums are not paid, but

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70 Id. at 5, citing Couch on Insurance, 2nd Vol. I, p. 376, par. (9:4); and *Rogers v. Great-West L.A. Co.*, CA 8 Minn 158 F 2d 474. Emphasis supplied.

71 The cited version was applicable at the time the complaint was filed.

72 326 Phil. 931 (1996).

73 Id. at 946-947.

74 Separate Opinion of Justice Vitug, citing Insurance Code and Insolvency Law by Hernando B. Perez, 1999 Rev. Ed.; supra note 24 at 436.

75 Supra note 49.

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.[76]

Then came our 2001 Resolution in *UCPB General Ins. Co., Inc. v. Masagana Telamart, Inc.*,[77] which reaffirmed *Makati Tuscany.* We held that the policy is binding upon an insurer who granted a 60 to 90-day credit term to the insured.[78] In the 2017 case of *Gaisano v. Development Insurance and Surety Corporation*,[79] We enumerated the exceptions to the second sentence of Section 77 identified by the court in *UCPB*, *viz.*:

> (1) in case of life or industrial life policy, whenever the grace period provision applies, as expressly provided by Section 77 itself;
> (2) where the insurer acknowledged in the policy or contract of insurance itself the receipt of premium, even if premium has not been actually paid, as expressly provided by Section 78 itself;
> (3) where the parties agreed that premium payment shall be in installments and partial payment has been made at the time of loss, as held in *Makati Tuscany Condominium Corp. v. Court of Appeals*;
> (4) where the insurer granted the insured a credit term for the payment of the premium, and loss occurs before the expiration of the term, as held in *Makati Tuscany Condominium Corp.*; and
> (5) where the insurer is in estoppel as when it has consistently granted a 60 to 90-day credit term for the payment of premiums.[80] (Citations omitted)

The last exception now appears to be expressly provided for by law. Congress enacted R.A. 10607, which took effect in 2013 (after Chartis had filed its complaint) and which added a clause in Section 77 expressly providing for credit extensions, *viz.*:

> 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, **or whenever under the broker and agency agreements with duly licensed intermediaries, a ninety (90)-day credit extension is given. No credit extension to a duly licensed intermediary should exceed ninety (90) days from date of issuance of the policy**. (Emphasis and underscoring supplied)

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76 Supra note 49 at 946-947.
77 Supra note 24.
78 Supra note 24 at 432-434.
79 806 Phil. 450 (2017).
80 Id. at 462.

Ever since the Insurance Act was amended by R.A. 3540, most of Our case law has focused on the necessity of paying the premium to make the policy valid and binding. Not much has been said on the primordial provision, as expressed in Section 72 of the Insurance Act, that "[a]n insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against." Jurisprudence does not readily indicate when the insurer is entitled to payment of the premium in relation to the exceptions to Section 77. Thus, as discussed in the antecedents, the parties have wildly differing appreciations of case law. However, We can resolve the instant petition by making some logical and necessary inferences.

The common factor in the exceptions to Section 77, as enumerated in *UCPB*, is that the premium is considered paid by express provision of law (in the case of the grace period for life insurance), by agreement of the parties, or for equitable reasons (such as when the insurer is in estoppel). For such reasons, the policy or contract of insurance becomes binding although no money physically changed hands. As long as the parties are agreed as to who is bearing the cost of the insurance at the inception of the policy, then said policy becomes binding. It is worth noting that the text of Section 77 does not expressly require "actual transfer of cash" to bind the parties. It merely requires that the premium be "paid," which may be done on credit. The term "credit" presupposes a creditor-debtor relationship, and may be said to imply ability, by reason of property or estates to make a promised payment. It is the correlative debt or indebtedness, and that which is due to any person as distinguished from that which he asks.[81] When the parties agree to a credit term, as under the fourth exception enumerated in *Gaisano*, it simply means that the insurer, for a time, agrees to shoulder the cost of the insurance with the expectation that the insured would later reimburse him. The premium, therefore, is considered paid between the parties although no actual transfer of money occurred. The premium being paid on credit, a valid and binding contract of insurance arises, and the insurer becomes liable to indemnify the insured upon the occurrence of the peril insured against. Meanwhile, the premium takes on the nature of a debt that the insured must pay the insurer.

In *UCPB*, the Court was asked to consider the prevalent practice in the insurance industry of extending credit terms. It was because of this and the fact that insurance can be sold on credit that We articulated the fourth exception. In so holding, We did not create new doctrine in insurance law, but merely reiterated one that has been long accepted, even in the American jurisdiction. As one eminent authority (Professor W.R. Vance) explains:

> If the payment of the first premium is made a condition precedent to the liability of the insurer, the party insured cannot recover either on a preliminary oral contract or on the written policy unless such condition has been fulfilled or waived. **So, if the premium is agreed to be paid at some time subsequent to the making of the contract, the insurer's liability attaches at once. A promise to pay**

[81] *Republic of the Philippines v P.N.B, et al.* 113 Phil. 828, 830-831 (1961).

> **a premium will support a promise to indemnify as well as a cash payment. "Insurance can be sold on credit as well as anything else."**[82](Emphasis and underscoring supplied.)

The second sentence of Section 77 is not, in itself, a ground for the insured to evade paying premiums. The insured cannot cite said provision and say that it is not obliged to pay the premiums due under a policy, because that policy is not binding since it never paid the premium.[83] Not only does that argument misunderstand case law, but the circularity in its reasoning is obvious. Unfortunately, in reversing the RTC, the CA employed the exact same argument when it held as follows:

> Since no payment for the insurance premiums was ever made, then the insurance policies produced no legal effect. x x x With the lapse of the insurance policies through the non-payment of premiums by the insured (Cyber City), there were no more insurance contracts to speak of. x x x Accordingly, there is thus no basis to require the payment of insurance premiums x x x.[84]

The policy behind the second sentence of Section 77 of the Insurance Code is not to put it entirely upon the will of the insured whether or not to pay the premium when the insurer's liability has already attached. For one, that would constitute a potestative condition that would render the obligation to pay premiums – and indeed, the very concept of insurance – nugatory. A potestative condition is one the fulfillment of which is dependent solely upon the will of the obligor.[85] For another, the second sentence of Section 77 must be read together with the first, which provides that the insurer is entitled to the "payment of the premium as soon as the thing insured is exposed to the peril insured against." It is not difficult to imagine the havoc it would wreak on the insurance industry if We rule, as CCTL presumes, that the insured may choose not to pay the premium after the insurer was already at risk. The risk-distributing mechanism of insurance would fall apart.

We must hasten to add that unlike in *Makati Tuscany*, no loss actually occurred in this case; however, it is of no matter. It is not the occurrence or non-occurrence of loss which entitles the insurer to the payment of premium. While, the insurer's obligation to indemnify the insured is conditioned on the *actual occurrence of the peril insured against*,[86] the insured's obligation to pay the premium is conditioned on the *mere exposure of the thing insured to the peril insured against*.[87] When the parties have agreed to a credit term and loss occurred, the question of whether the insurer should indemnify depends on whether the insured was able to pay the credit on time. Thus, in *Makati Tuscany*, because the loss and payment of premium both occurred before the

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82 Vance on Insurance, p. 176. (1904).
83 *Rollo*, p. 179.
84 Id. at 71.
85 Article 1182, New Civil Code; see also *Catungal v. Rodriguez*, 661 Phil. 484, 507 (2011), citing *Romero v. Court of Appeals*, 320 Phil. 269, 282 (1995).
86 INSURANCE CODE, Section 2(a).
87 INSURANCE CODE, Section 77.

expiration of the credit term, the insurer was liable to indemnify. Of course, the same is true if payment was made before the end of the credit term, but the loss occurred after. If loss and payment both happened after the end of the credit term, then the insurer would have had no obligation to indemnify. From the perspective of the insurer, the insured must pay the premium during the credit term, even though no loss occurred, because mere exposure to the peril insured against is what entitles the insurer to the payment of premiums.

We may thus make the following summation: *first*, if the insured paid the premium, the insurer's liability attaches correspondingly. There is a valid and binding policy or contract of insurance and the insured may demand indemnification in case of loss. There is no credit on the premium to speak of and, therefore, none which the insurer can demand because he has already been paid. *Second*, if the insured did not pay the premium and the parties did not agree that the insurer's liability has attached, then there is no valid or binding contract of insurance. The insured cannot demand indemnification if loss occurs and neither can the insurer demand payment of the premium. *Third*, if the insured did not actually pay the premium but the parties have agreed that the insurer's liability has attached, then the insured is considered to have extended credit on the premium. When the insured accepts the terms of the credit, there is a valid and binding contract of insurance. The insured must pay the premium before the end of the credit term; otherwise, he cannot demand indemnification in case of loss. The insurer may demand the premium, whether or not loss occurred.

The instant case falls under the third situation. We agree with the RTC's finding that the premiums were advanced on credit. The parties had agreed that Chartis was already liable to indemnify CCTL if the contingencies occurred from January 20, 2005 onward, even though CCTL had not actually paid the premium. Chartis bore upon itself the costs of the policies in advance. CCTL was deemed to have paid the premium on credit and was supposed to make actual payment within a 90-day period. This is evidenced by the Placing Instructions transmitted by JLT to Chartis:

> We are pleased to inform you that **the Client [CCTL] has accepted the terms you offered in respect of the risk detailed below.** We confirm that **you are on risk with effect from 20 January 2005**/12:01 AM Philippine Time and await your Policy documents. x x x **PREMIUM PAYMENT TERMS: 90 days from inception of policy.**[88]
> (Emphasis and underscoring supplied).

It is worth remembering, at this point, that neither party now contests the factual bases on which the RTC rendered its summary judgment, including the relationship of agency between JTL and CCTL. The trial court categorically found – and the CA affirmed – that it was through JTL that CCTL procured the insurance and that the former, in behalf of the latter, requested a credit extension four times through several e-mail exchanges with

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88 Records, pp. 248, 252.

Chartis.[89] However, Chartis could no longer bear the risk of indemnifying a delinquent insured, so it cancelled the policies on June 15, 2005. At that point, Chartis had been at risk of indemnifying for five months. CCTL cannot renege on its promise to pay the premiums after enjoying that period of coverage. In *Great Pacific Life Insurance Corp. v. Court of Appeals*,[90] We held that the insurer must return the premium to the insured because the former was never at risk.[91] This case is the inverse: the insured must pay the premium because the insurer was at risk. Similarly, in *UCPB*, We said it would be unjust and inequitable if the insured, after incurring loss, cannot recover on a policy to which it had been consistently granted a credit term for the payment of premiums.[92] This case is the inverse: it would be unjust and equitable if the insurer, after taking on the risk of indemnifying, cannot recover the premiums on policies for which it had consistently granted credit terms.

It is of no moment that the credit terms and the extensions do not appear on the policies themselves, but on separate documents, *i.e.*, the Placing Instructions, because as Vance puts it:

> It is not necessary that a writing of any kind shall be fully set forth in the body of the any given contract in order to become a part of it. By proper reference indicating clearly that the parties intend to be bound by the terms of a separate paper, it can be made a part of the written contract just as completely as if copied in full on its face. x x x The separate papers thus incorporated in the policy are most frequently the application and the survey that sometimes accompanies the application for property insurance. Premium notes given upon the delivery of the policy or thereafter are also often thus made parts of the contract.[93]

The Placing Instructions contain a summary of CCTL's application, Chartis' offer, and CCTL's acceptance. The terms therein, including the credit term, are binding upon the parties. The communications between JTL and Chartis are sufficient proof that the parties intended to be bound by the terms stated on the Placing Instructions as well as the CCTL's further requests for extension. Although these documents are informal, they nevertheless evidence a binding agreement[94] and do not appear to be incompatible with the formal written policies. In fact, the policy for *professional indemnity insurance* states that the written proposal form which, together with its attachments and all underwriting information, is incorporated in and forms part of this contract.

That said, We agree with the CA that Section 78 does not apply and is, therefore, not a basis by which Chartis can demand payment of the premium. While We agree that there is nothing in the policies that is worded in such a way as to conform with an 'acknowledgment of receipt,' there is a more

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89 Id. at 433; *rollo*, pp. 67-69.
90 263 Phil. 443 (1990).
91 Id. at 447.
92 Supra note 24 at 434.
93 Supra note 82 at 183, citing *Clark v. Insurance Co.*, 8 How. U.S. 235 and *Sheldon v. Insurance Co.*, 22 Conn. 235, 58 Am. Dec. 424.
94 Supra note 82 at 159-160.

fundamental reason why Chartis cannot invoke Section 78: it is conceptually incompatible with the fourth exception in *UCPB*. One cannot demand a debt under the fourth exception and at the same time acknowledge to have already received it under Section 78.

The policies being valid and binding, CCTL is obligated to reimburse Chartis for the DST the latter had paid. It is clear from the policies[95] and the Placing Instructions[96] that the amounts due on the policies consist of the premiums and taxes. CCTL's reliance on *Phil. Home Assurance Corp. v. CA*[97] is misplaced. The issue in that case was whether insurance companies may claim tax refunds before the Bureau of Internal Revenue for DST paid on policies that have been issued but had not yet taken effect. We ruled that the liability for DST arise upon the mere issuance of the policies.[98] The said case says nothing on whether parties to an insurance can or cannot agree that it will be insured who pays the taxes due on the policy. As it is, there appears to be nothing that legally prevents the parties to make a stipulation to such effect. As discussed above, CCTL's obligation to pay under the policies includes the DST.

II. Earned premiums due to the insurer may be computed pro rata or according to short rate period agreed upon by the parties.

The CA ruled that the provisions in the subject policies allowing Chartis to recover the premiums on a prorated basis are void for being contrary to law, morals, or public policy.[99] We do not agree. We find the said provisions to be fair and consistent with Sections 79[100] and 80[101] of the Insurance Code, which provide:

> Section 79. A person insured is entitled to a return of premium, as follows:
>
> (a) To the whole premium if no part of his interest in the thing insured be exposed to any of the perils insured against;
>
> (b) Where the insurance is made for a definite period of time and the insured surrenders his policy, **to such portion of the premium as corresponds with the unexpired time, at a pro rata rate, unless a short period rate has been agreed upon and appears on the face of the policy**, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued; Provided, That no holder of a life insurance policy may avail himself of the privileges of this paragraph without sufficient cause as otherwise provided by law. (Emphasis and underscoring supplied).

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95 Records, pp. 255-269.
96 Id. at 247-254.
97 361 Phil. 368 (1999).
98 Id. at 373-374.
99 *Rollo*, p. 71.
100 Now Section 80(a).
101 Now Section 81.

> **Section 80. If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums, so far as that particular risk is concerned.** (Emphasis and underscoring supplied).

The foregoing provisions refer to the concepts of "earned premium" and "unearned premium". As the period of coverage passes, a portion of the premium is "earned" and demandable by the insurer under Section 80. Meanwhile, the unearned premium "is that portion of a premium which has not been earned by reason of the fact that the policy has been cancelled and is the premium for the unexpired term of the policy."[102] Under Section 213[103] of the Insurance Code, unearned premiums are considered a "liability" of the insurer—not an asset. Pursuant to Section 79, if the insured had paid the whole premium at the inception of the contract, but surrenders the policy before the coverage period ends, the insurer must return the unearned premium.

Generally, the earned premium is computed by dividing the whole premium by the total number of days in coverage period and then multiplying the result by the number of elapsed days. In a typical annual policy, the premium is divided by 365 days and the result is multiplied by the number of days that the insurer was at risk. Hence, Section 79(b) provides for a "*pro rata* rate". However, the parties may agree on a "short period rate," where the premium is divided by a period of less than a year (although the coverage period may in fact be one year). For example, the parties may agree that the whole premium is earned nine months into an annual policy. In this case, both subject policies provide for a short period rate cancellation table if the policies are cancelled by CCTL. If it is Chartis who cancels, the parties agreed to compute the earned premium *pro rata*.[104]

In its Order[105] dated September 30, 2011, it is not clear how the RTC arrived at US$47,304.00 as representing the premiums due and documentary stamps tax paid by Chartis or whether it applied the *pro rata* rate or the short rate. However, considering that this is a question of fact, which is beyond the ambit of a petition under Rule 45, and the amount not having been controverted by the parties, We see no reason to disturb the same. Settled is the rule that only questions of law may be raised in a Rule 45 petition,[106] subject to certain exceptions which the parties have neither invoked nor argued to be applicable to this case.

Under Article 2208(2) and (5) of the Civil Code, attorney's fees may be awarded when a party incurs expenses to protect its interests or the defendant acted in evident bad faith in refusing to satisfy the plaintiffs plainly

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102 *Downey v. Humphreys*, 102 Cal. App. 323, as cited in DePaul College of Law, *Return of Unearned Premiums and Cancellation of Insurance Policies*, 2 DePaul L. Rev. 58 (1952). Accessed at <https://via.library.depaul.edu/law-review/vol2/iss1/5> on February 15, 2021.

103 Now Section 219, as amended by R.A. 10607.

104 Records, pp. 267, 274.

105 Supra note 4.

106 *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 766 (2013).

valid, just and demandable claim.[107] As discussed above, CCTL was obligated to pay the premiums, but unjustly refused to do so despite several letters of demand. CCTL was repeatedly given an extension of the credit term upon the request of its broker-agent, but broke its promise to pay. As such, Chartis was constrained to incur expenses to protect its interests by filing suit. Thus, we affirm the RTC's award of attorney's fees and expenses of litigation to be proper.

III. The amount of legal interest must be adjusted in accordance with the ruling in Nacar v. Gallery Frames.

In the case of *Nacar v. Gallery Frames*,[108] the Court modified the ruling in *Eastern Shipping Lines v. Court of Appeals*[109] to embody the adjustment of the legal interest rate as implemented under Bangko Sentral Ng Pilipinas Circular No. 799. We held that beginning July 1, 2013, when an obligation is breached and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due shall be that which may have been stipulated in writing. In the absence of such a stipulation, the interest rate shall be 6% *per annum* to be computed from judicial or extrajudicial demand. The 12% *per annum* legal interest rate shall apply only until June 30, 2013.[110] The legal interest rate imposed by the RTC must be modified to conform with the foregoing.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 20, 2017 and the Resolution dated September 26, 2017 of the Court of Appeals in CA-G.R. CV No. 101737 are hereby **REVERSED** and **SET ASIDE**.

The Order dated September 30, 2011 of the Regional Trial Court of Makati City, Branch 139 in Civil Case No. 06-080 is hereby **REINSTATED with MODIFICATION**. Respondent Cyber City Teleservices, Ltd. is **ORDERED** to pay petitioner Chartis Philippines Insurance, Inc. (now AIG Philippines Insurance, Inc.) the following:

> (1) US$47,304.00 or its peso equivalent, representing the premiums due and documentary stamps tax paid, plus twelve percent (12%) interest *per annum* from the date of filing of the complaint (January 20, 2006) until June 30, 2013; and six percent (6%) interest *per annum* from July 1, 2013 until full payment thereof;
> (2) ₱100,000.00 as attorney's fees; and
> (3) ₱60,713.32 as costs of suit.

SO ORDERED.

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107 *Sps. Timado v. Rural Bank of San Jose, Inc.*, 789 Phil. 453, 460 (2016).
108 716 Phil. 267 (2013).
109 304 Phil. 236 (1994).
110 Supra note 108.

ROSMARI D. CARANDANG
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, 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.

DIOSDADO M. PERALTA
Chief Justice