

1962

# Valera Amundsen v. Mutual Benefit Health and Accident Association : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT  
of the  
STATE OF UTAH

APR 23 1962

VALERA AMUNDSEN,  
*Plaintiff and Appellant,*

vs.

MUTUAL BENEFIT HEALTH  
AND ACCIDENT  
ASSOCIATION,

*Defendant and Respondent.*

Clerk, Supreme Court, Utah

Case No. 9588

RESPONDENT'S BRIEF

APPEAL FROM THE SUMMARY JUDGMENT  
OF THE THIRD DISTRICT COURT OF  
SALT LAKE COUNTY  
HONORABLE A. H. ELLETT, JUDGE

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RESPONDENT'S BRIEF

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STATEMENT OF FACTS

Respondent accepts, generally, the Statement of Facts contained in Appellant's Brief except that it desires to call to the Court's attention that in its answer, among other matters, the Defendant-Respondent alleged.

"Defendant is without sufficient information on which to form an opinion as to the truthfulness of the allegations contained in paragraph 3 (paragraph 3 states that on the date of decedent's death as aforesaid he was the owner and named insured of Policy No. 30-60990 as issued by the Defendant, and in which the Plaintiff was named as beneficiary thereof) and alleges affirmatively that if said policy did exist Defendant has no record thereof, Defendant's records of this date



having been destroyed, Defendant having no means by which to show that a policy was ever issued and if it had been issued whether it was in force at the time of the insured's death or whether payment of death benefits was made."

## STATEMENT OF POINTS

### POINT I.

THE ORDER GRANTING DEFENDANT'S (RESPONDENT'S) MOTION FOR SUMMARY JUDGMENT SHOULD BE SUSTAINED.

## ARGUMENT

### POINT I.

THE ORDER GRANTING DEFENDANT'S (RESPONDENT'S) MOTION FOR SUMMARY JUDGMENT SHOULD BE SUSTAINED.

It is Respondent's position that, based upon the pleadings and the policy, that there is no genuine issue of material fact, and that Respondent is entitled to a judgment as a matter of law, which is a proper basis for granting a motion for summary judgment. *Frederick May & Company vs. Dunn*, 368 P. 2d. 266, Page 268.

*The insured as a matter of law should be charged with having failed to exercise due diligence in obtaining knowledge of the policy and is therefore, negligent as a matter of law.*

The case of *Munz vs. Standard Life and Accident Insurance Company*, 26 Utah 69, 72 P. 182,



upon which Appellant relies, involved a substantially different fact situation than is involved in the case before this Court. In the Munz case, the decedent's death took place on June 29, 1900. On February 23, 1901, the beneficiary gave the required notice of the insured's death, a period of almost eight months later. The Court held that the eight-month interval, in view of the circumstances, was a reasonable interval in which to submit the proof of loss. In the case now before the Court the elapsed period of time between death of the decedent and filing proof of loss was not eight months but thirty-three and a half years.

In *Brown vs. Accident Association*, 18 Utah 265, 55 P. 63, quoted in *Munz vs. Standard Life and Accident Insurance Company*, 26 Utah 69, 72 P. 182, at page 183, the Court stated:

“Doubtless the purpose of such conditions in such a policy is to afford the insurer an opportunity within a reasonable time after the occurrence to inquire into the cause of the accident and ascertain the surrounding facts and circumstances while fresh in the memory of witnesses, so as to determine whether or not liability under the contract exists. The condition in the policy requiring notice to be given within a specified time with full particulars of the accident operates upon the contract of insurance only after the fact of the accident. It is a condition subsequent and must, therefore, receive a reasonable and lib-



eral construction in favor of the beneficiary under the contract."

Respondent admits that under the facts of the Munz case a reasonable and liberal construction of the contract was justified and the delay was justifiably excused, but the delay is so grossly extended in the case at bar that the Court must say as a matter of law that the delay was so protracted that prejudice to the ins<sup>ur</sup>er will be presumed. In the Munz case the Court stated, at page 183:

"The contracting parties doubtless intended that notice and proof should be furnished at the earliest practicable time after the happening of an accident and injury for which the liability would be claimed, *so that the real facts of the case could be ascertained by the insurer before time had effaced them from the memory of witnesses.* The word 'immediate' under such circumstances as are disclosed in this record cannot be construed as excluding all intervening time between the occurrence of the death and the giving of notice. It does not by any fair construction of the policy mean instantly, but 'immediate notice' means notice within a reasonable time under all the circumstances of each particular case, and no doubt ordinarily, unless there are circumstances excusing delay, the notice should be given at once."

In the case at bar the Respondent, as pleaded in its Answer, has long ago destroyed its records of the vintage of the policy under which the Appellant claims. From its own records it cannot prove or



disprove that (a) a policy issued, (b) it was in force at the time of the decedent's death, or (c) that the claim has been heretofore paid. Not only has time effaced the facts from any of the witnesses, but it is likely that many of the witnesses have been effaced. To hold that the delay of thirty-three and a half years in filing proof of loss does not bar the claimants as a matter of law would be an invitation for fraud to be practiced by artful and designing persons. The insurer having destroyed its files and records cannot dispute a prima facie case, that is, that there was a policy in force at the date of death and that the beneficiary did not discover the policy until just prior to filing proof of loss. To excuse the intervening delay in the instant case would be tantamount to saying that no policy of insurance can be drawn with limitations or conditions subsequent therein which will ever terminate the liability of the insurer, and that the general statutes of limitations set up by statute can thereby, be circumvented. This departs from the long standing rule that except in the case of fraud, the statute of limitations begins to run from the occurrence of the event which gives rise to the cause of action. *Schmidt v. Merchants*, (N.Y.) 2 N.E. (2) 680, 104 ALR. This is true regardless of the time of knowledge of Plaintiff of such right. *Golden Eagle vs. Imperator*, 93 Wash. 692, 161 P. 848.



Under the facts of the Munz case the Court at Page 184 stated:

“The construction thus put upon the conditions in question secures to the Defendant every advantage and benefit to which it is entitled and which was intended by the provisions of the policy.”

Under the facts of the Munz case this is so. But under the facts of this case, the contrary holding to that of the trial court would do violence to every advantage and benefit to which the Defendant (Respondent) is entitled, and would further do violence to that which was clearly intended by the written provisions of the policy. It would, in short, be writing a new contract of insurance for the Plaintiff, which this Court has repeatedly held it cannot do. The risk to the insurer would be substantially increased. In the Munz case the Court stated a sound rule, at page 184:

“In such a case, under such circumstances, the beneficiary is not required to do what amounts to an impossibility, but must perform the conditions subsequent within a reasonable time after obtaining knowledge of the existence of the policy, or after such knowledge could, *by the exercise of due diligence, have been obtained.*”

Respondent contends that as a matter of law, after thirty-three and a half years, the insured should be charged with having failed to exercise due



diligence to have obtained knowledge of the policy.

*The Provisions of the Policy Bar Appellant's Action.*

There are four provisions in the policy which are pertinent to the problem. These are under the standard provisions. No. 4 states:

“Written notice of injury or sickness on which claim may be based must be given to the association within 20 days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness. *In the event of accidental death immediate notice thereof must be given to the association.*”

The pertinent part of No. 5 reads as follows:

“Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice, and such notice was given as soon as was reasonably possible.

The pertinent part of No. 14 reads as follows:

“No action at law or in equity shall be brought to recover on this policy prior to the expiration of 60 days after proof of loss has been filed in accordance with the requirements of this policy. *Nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.*”

No. 15 reads:

“If any time limitations of this policy with respect to the giving of notice of the



claim or furnishing proof of loss is less than that permitted by the law of the state in which the insured resides at the time this policy is issued, such limitations are hereby extended to agree with the minimum period permitted by such law.”

The above provisions are conditions subsequent which cut off liability of the insurer. A fair construction of them is that if immediate notice, as required by No. 4, cannot be reasonably given that the notice will be acceptable if given as soon as reasonably possible as required by No. 5. However, No. 14 specifically states that no action in law or in equity can be brought at all unless brought within two years from the expiration of the time within the proof of loss is required by the policy. Proof of loss is required immediately or as soon as is reasonably possible, not thirty-three and a half years later.

In any event, No. 15 states that if at any time limitation in the policy is extended by the law of the state (which is not the case in Utah) then such limitation in the policy is extended to agree with the minimum period permitted by such law. It is the position of the Respondent that under No. 15, in no case could the period be extended beyond the period of six (6) years as set forth in Section 78-12-23, U. C. A. 1953 which is the general statute of limitations applicable to actions based upon written contracts.



*Has the Statute of Limitations Run? If not  
Has Appellant Been Guilty of Laches?*

An important point to be considered here is whether or not prejudice can be said to have resulted to Respondent by reason of the delay. Appellant's Brief cites the case of *Sanderson vs. Postal Life Insurance Company of New York*, 87 Fed. 2d. 58 (CCA 10 Colorado) as authority for the contention that the statute of limitations does not begin to run until proof of loss has been filed. The Sanderson case supra, was discussed in the case of *Navigazione Alta Italia vs. Columbia Casualty Company*, 256 Fed. 2d. page 26, where contrary result was obtained. At page 28 and 29 the Court states:

“The arguments presented and the authorities cited by Appellant such as *Sanderson vs. Postal Life Insurance Company*, 10th Circuit, 87 F. 2d. 58, and *Standard Accident Insurance Company vs. Alexander*, 5th Circuit, 103 F. 2d. 500, are wholly inapposite, indeed unrelated to the facts of this case. Without exception the cases it relies on deal with the situations in which the failures to comply with the conditions of the policy consisted of mere delay in giving notice; a delay from which no real prejudice resulted. *C. F. Young vs. Travelers Insurance Company*, 5th Circuit, 119 F. 2d 877 cited and relied on by Appellant, which at page 880 well states the controlling principal here. Pointing out that the vital question in notice cases is whether prejudice has resulted from the delay, the Court



concluding in a thorough discussion of that question said of it,

‘In its nature it was one to which the doctrine of prejudice vel non has peculiar application. There was no prejudice. The notice clause was not breached.’

Respondent here contends that as alleged in its Answer it is prejudice because of the great lapse of time. It does not have the records to defend itself. Suppose that a claimant contended that he had not discovered the policy until after 50 years had elapsed, could any Court still say that his failure to give notice was excused. Mere long lapse of time will result in prejudice. This in and of itself is sufficient to establish negligence by failing to exercise a right. Prejudice to Respondent must be presumed.

In the case of *Schanzenback vs. American Life Insurance Company* (S. Dak.) 237 NW 737, 75 ALR page 1501, the insured died on the 14th day of February, 1917. The action was commenced on the 27th day of September, 1926 — almost 10 years after the death of the insured, and the Defendant, among other defenses, pleaded the statute of limitations. The policy contained a provision that:

“No action shall be maintained on this policy unless brought within 6 years from the time that the beneficiary or claimant shall have knowledge of the death of the insured.”

The Plaintiff, as in the instant case, had knowledge of the death of the insured, but sought to ex-



cuse her long delay in bringing the action on the ground that she did not know of the existence of the policy until the expiration of the six-year period fixed by the statute of limitations; that therefore, it was impossible for her to make proof of death and commence the action. The Court at page 1503 stated:

“Was the cause of action barred? The action was not commenced within the time limited by the policy, namely within six years after the death of the insured was known to the beneficiary. Nor within six years after the cause of action accrued (the time limit fixed by the statutes) unless as Respondent contends the cause of action did not accrue under the terms of the policy until proof of death had been furnished to the company. Appellant urges that the proof of death is a part of the remedy and that the cause of action accrued on the death of the insured. Irrespective of who may be right, both agree that proof of death must be made within a reasonable time after death where, as in this case, the policy does not fix a time limit. It certainly cannot be seriously contended that nine years after death is a reasonable time in which to make proof of death, not that three years is. It is plain that more than six years elapsed after a reasonable time to make proof of death before this action was commenced unless the peculiar circumstances rendered the delay of more than nine years reasonable . . . If the facts are such that the Respondent ought to have known she cannot be excused simply because she did not know. We must accept the



verdict of the jury that she did not know. But that does not meet the issue. The undisputed facts overwhelmingly show that she ought to have known. There is no pretext that appellant was guilty of any fraud or concealment."

The Court concluded that whether the cause of action accrued upon the death of the insured or not until a reasonable time thereafter allotted to make proof of death, it accrued much more than six years prior to the commencement of the action and the cause of action was barred by the statute of limitations.

Relief in justifiable cases of the strict rule of law at the running of the statute of limitations regardless of whether the claimant knew of his right comes from equity. 34 Am. Jur. Sec. 230, page 186.

But equity has a companion doctrine known as laches. Historically, before there were fixed periods for commencement of suit, pleas in limitation were allowed long before there were any statutes on the subject. Courts applied them upon the theory of a fiction to the effect that after a long lapse of time during which the claimant made no assertion of his rights the presumption was raised that the obligation had been paid or discharged, and in the case of real estate that a conveyance had been executed but lost. 34 Am. Jur. Sec. 2, page 14.

The defense of laches involved, in addition to mere lapse of time, circumstances from which the



Defendant could be prejudiced, “or there must be such lapse of time that it may be reasonably supposed that such prejudice will occur if the remedy is allowed”. 34 Am. Jur. Sec. 5, page 15.

## CONCLUSION

Respondent respectfully states that the trial court’s ruling granting Respondent’s Motion for Summary Judgment must be affirmed because (a) Appellant was negligent as a matter of law because in exercise of reasonable care Appellant should have discovered the policy, (b) and Appellant failed to comply with written terms of the policy, and (c) because the statute of limitations has run, or because of prejudice through lapse of time the doctrine of laches defeats Appellant’s claim.

Respectfully submitted,

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