## MISSOURI STATE LIFE INSURANCE COMPANY *v.* ROSS.

Opinion delivered April 4, 1932.

1. INSURANCE—CONSTRUCTION OF CONTRACT.—The construction which parties have placed upon a contract of insurance is entitled to great weight in its interpretation.
2. INSURANCE—ACQUIESCENCE OF INSURED.—Insured's failure to object to the application by the insurer of the "automatic premium loan" to payment of premiums constituted acquiescence therein, and such acquiescence was binding on the beneficiary.
3. INSURANCE—ACQUIESCENCE OF INSURED.—Insured's failure to object to the correctness of insurer's notification of the lapse of his policy constituted acquiescence in forfeiture of the policy, and was binding on the beneficiary.
4. INSURANCE—ACQUIESCENCE OF INSURED.—Where insured acquiesced in the application of the "automatic premium loan" to the payment of premiums, the beneficiary could not contend that the cash surrender value should have been used which would have continued the policy in force until after insured's death.

Appeal from Greene Circuit Court; *Neil Killough*, Judge; reversed.

STATEMENT BY THE COURT.

This suit was brought by Essie M. Ross, the appellee and beneficiary in a life insurance policy issued by appellant company to Charles L. Ross, her husband, on October 7, 1919, for $3,000, upon which the insured was required to pay an annual premium of $76.53.

It was alleged that, while the policy was in full force and effect, the insured died on February 8, 1930, that the

appellee, beneficiary, demanded payment, and the insurance company on March 1, 1930, denied liability on the ground that the policy was not in force at the time of the death of the insured.

The appellant answered admitting the issuance of the policy in the sum of $3,000 on the life of Charles L. Ross, that appellee was named beneficiary therein, that the insured was required to pay $76.53 as premium when the policy was issued and thereafter the sum of $39.81 on the 24th days of September and March respectively in order to keep same in force; denied the policy was in force on February 8, 1930, and that the insured had performed the covenants and agreements required to be performed by him, and denied knowledge and information as to the date of the death of the insured; denied that demand was made for payment, and admitted that it denied liability on the ground that the policy was not in full force and effect, having expired because of nonpayment of premiums prior to the alleged death of the insured; denied indebtedness in any amount under the policy.

On September 24, 1919, the insured made application to the appellant company for insurance in the amount of $5,000 to be issued in two policies, $2,000 and $3,000 respectively, naming his wife as beneficiary. The application provided that the insurance should not take effect until the first premium was paid and the policy delivered to and accepted during applicant's lifetime and while he was in good health; and also: "I make application for the automatic premium loan privilege." Two classes of loans were provided for, one cash equal to the amount of the cash surrender value, and the other the so-called "automatic premium loan" selection, and upon nonpayment of premium for extended insurance.

The insured was not careful in keeping his premiums paid, the one due September 24, 1922, was paid by the insured giving a premium loan note due September 24, 1923, which was charged against the policy as a premium lien. On March 24, 1923, the premium was not paid, and

another premium loan note was given due September 24, 1923, for $41.04, the notes maturing on the next anniversary premium date. They were not paid and were charged against the policy as a premium lien with a year's interest. The next premium due September 24, 1923, was paid, and the premium due on March 24, 1923, was paid by loan. The semiannual premium, $38.91, due September 24, 1924, was not paid, which was charged against the policy as an "automatic premium loan," under the provision of the policy that this could be done provided that there was sufficient surrender value in the policy to do so. The premium loan privilege was exercised several times under the policy up to and including the premium due September 24, 1927. No premiums were paid on the policy during the period from March 24, 1924, through the premium due September 24, 1927, and the policy was continued in force until midnight April 24, 1928, under the "automatic premium loan" provision, and did not have sufficient value to secure another "automatic premium loan" to cover the semi-annual premium becoming due on March 24, 1923. The policy lapsed on March 24, 1923, for failure to pay the premium, and in accordance with the non-forfeiture provision therein the term was extended to November 24, 1928, the "automatic premium loan" not being operative because it did not have sufficient loan value to cover that premium. On March 24, 1928, the unearned interest charged up to September 24, 1923, and a net cash value of $3.73 together with unearned interest carried the policy to November 24, 1928, at which time all insured's interest in the policy expired. The insured died February 8, 1930. There was no loan value existing under the $2,000 policy, which had expired under its last loan extension on March 24, 1926.

On May 22, 1928, the company wrote Ross that the policy had lapsed for nonpayment of premium due March 24, 1928, giving the amount of the indebtedness against the policy which reduced the nonforfeiture value to continued insurance to November 24, 1928, for which

time the policy is now held good. This letter was sent to the insured nearly two years before his death and almost six months prior to the expiration of the continued insurance granted, and he did nothing towards reinstating the policy, and made no objection to the amount of the indebtedness claimed to be due on the policy. He was continually notified by the company of his failure to pay premiums, had paid none since March 24, 1924, and on a notice that he had not paid the premium due on September 24, 1924, upon which there was a loan and interest due, he was invited to use the reverse side of the letter for a reply. He did so on November 25, 1924, saying that he wanted to drop the $2,000 policy and carry on the $3,000 policy and any value under the $2,000 policy he wanted applied on the $3,000 policy. On December 5, 1924, in response to this letter, he was definitely notified that no such arrangement could be made as suggested because the "automatic premium loan" provision had become operative, under which the policies had been kept in force to March 24, 1925.

The insured paid no premium after March 24, 1924, and that premium was paid by money borrowed from the company. There was a memorandum on the policy from which it appeared that, if at a certain time the loan value had been used to pay extended insurance, it would have extended the policy and continued it in force until a few days after the death of the insured.

The case was tried without a jury, and from the judgment against it the insurance company has prosecuted this appeal.

*Allen May, J. R. Burcham, Chas. Frierson, Jr.,* and *Chas. D. Frierson,* for appellant.

*Wm. F. Kirsch,* for appellee.

KIRBY, J., (after stating the facts). Appellant insists that the insurance company, under the policy and application therefor, upon default in the payment of premiums without any further written request for "automatic premium loan" had the right to charge the delinquent premiums against the insured as such "auto-

matic premium loans," and, having done so, even if it had no such right without the written request, its action having been acquiesced in by the insured, the beneficiary was thereafter precluded from recovering anything under the lapsed policy upon the theory that, if it had issued extended insurance instead of payment of premiums under the "automatic premium loan" provision, the policy would have been continued in force until after the death of the insured.

The parties both evidently understood and construed the contract alike in the application of the "automatic premium loans" to the payment of premiums, the insured being regularly notified thereof and making no objections whatever to such procedure; and their construction of the contract is entitled to great weight in the correct interpretation. *Craig* v. *Golden Rule Life Ins. Co.,* 184 Ark. 48, 41 S. W. (2d) 769.

The insured paid very few premiums except with the benefit of the "automatic premium loan," and was repeatedly notified of the failure to pay such premiums and finally of the lapse of the policy almost two years before his death. He evidently recognized the correctness of the claims of his failure to pay the insurance premiums when due and the application by the appellant company of the "automatic premium loans" to their payment, and made no objection whatever at any time to such procedure nor any protest or objection to the correctness of the company's notification of the lapse of the policy on September 24, 1928.

Certainly this was acquiescence in the application of the "automatic premium loans" by the company to keep the insurance in force as well as in the correctness of its notification of the forfeiture of the policy because of the failure to pay the premiums, and was binding on the beneficiary who must stand in the shoes of the insured and be bound under the terms of the policy issued.

She could not, therefore, upon learning after insured's death that the application of the cash surrender value of the policy at a particular time during its life

to the purchase of extended insurance, instead of its being used for the payment of premiums under the "automatic premium loan" provision, as was done with acquiescence of the insured, change the application of the cash surrender value to the purchase of extended insurance in order to keep the policy in force beyond the date of the insured's death, entitling her to recover thereon. *Mass. Mut. Life Ins. Co.* v. *Jones,* 44 Fed. (2d) 540.

It follows that the court erred in holding otherwise, and must be reversed on that account, and, the cause appearing to have been fully developed, it will be dismissed. It is so ordered.