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Insurance: Recovery by Realty Vendee Beyond Loss

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INSURANCE: RECOVERY BY REALTY VENDEE BEYOND LOSS

Vogel v. Northern Assurance Co., 219 F.2d 409 (3d Cir. 1955)

Upon entering into a contract for the sale of Pennsylvania land, vendor and purchaser insured their respective interests with different insurers. After a fire loss of $12,000 the purchaser completed his part of the contract and received a deed from the vendor, along with an assignment of the vendor's rights against his insurer. The purchaser then brought an action against both insurers and recovered the full value of each policy, a total of $15,000 — $3,000 more than the stipulated loss.[1] On appeal, HELD, since the liability of the insurers became fixed at the time of loss, vendor's insurance contract was not affected by his subsequent receipt of the purchase price. Plaintiff was entitled to recover the full amount of both policies. Judgment affirmed.

In an executory contract for the sale of land, Pennsylvania and the majority of American jurisdictions place the risk of loss upon the purchaser.[2] Under the doctrine of equitable conversion the purchaser has the equitable title and the vendor retains the legal title only as security for the purchase price. Thus the purchaser has an insurable interest up to the full value of the property.[3] The issue in the instant case was whether the purchaser, as vendor's assignee, could recover the vendor's insurance, notwithstanding the fact that the vendor was fully compensated for the loss by the contract of sale.

It is generally held that a contract of insurance is for indemnity only and the insured can recover only if he has sustained a loss.[4] An illustration of this rule is found in an English case decided in the latter part of the past century, in which, in an executory contract for sale, the insured vendor was required to return the proceeds of an insurance policy to the insurer after receiving the full purchase price.[5] Some American courts have deviated from the general rule. In the case of a land sale contract, some courts allow vendors to recover to the extent of their policies even though they have received the full pur-

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[1]Vogel v. Northern Assurance Co., 114 F. Supp. 591 (E.D. Pa. 1953).

[2]*E.g.*, Brady v. Welsh, 200 Iowa 44, 204 N.W. 235 (1925); see Annot., 22 A.L.R. 575 (1923).

[3]*E.g.*, Brady v. Welsh, 200 Iowa 44, 204 N.W. 235 (1925).

[4]*E.g.*, Tauriello v. Aetna Ins. Co., 14 N.J. Super. 530, 82 A.2d 226 (L. 1951); 1 RICHARDS, INSURANCE §64 (5th ed. 1952).

[5]Castellain v. Preston, 11 Q.B.D. 380 (1883).

chase price[6] and even though the purchaser also has insurance on the property.[7]

The courts that allow the vendor to recover after receiving the purchase price do so on the theory that the contract for sale has no legal effect on the insurance contract between the vendor and his insurer.[8] As to the insurer, it is reasoned, the vendor has the whole title, both legal and equitable; the insurance is upon the property, not upon the debt of the unpaid purchase price.[9]

In analogous situations, even if the insured has been saved from actual loss by collateral contracts with third persons courts have deviated from the strict indemnity concept.[10]

In Pennsylvania and a majority of other jurisdictions allowing the vendor to collect on his insurance, he is required to hold the proceeds in trust for the purchaser.[11] Consequently, in the instant case the court said that the purchaser would have received the benefit of the vendor's insurance even without the assignment by the vendor of his claim. Thus in some cases the burden of loss normally placed on the purchaser is shifted to the vendor's insurer.

Whether the purchaser receives the benefit of the contract by an assignment or implied trust, it is just and equitable that he should

[6]Milwaukee Mechanics Ins. Co. v. Maples, 37 Ala. App. 74, 66 So.2d 159, *cert. denied,* 259 Ala. 189, 66 So.2d 173 (1953); Bartling v. German Mut. Ins. Co., 123 N.W. 63 (Iowa 1909); Mark v. Liverpool and London and Globe Ins. Co., 159 Minn. 315, 198 N.W. 1003 (1924); Tiemann v. The Citizens' Ins. Co., 76 App. Div. 5, 78 N.Y. Supp. 620 (1st Dep't 1902); Dubin Paper Co. v. Insurance Co. of North America, 361 Pa. 68, 63 A.2d 85 (1949); Insurance Co. v. Updegraff, 21 Pa. 513 (1853); Evans v. Crawford County Farmers' Mut. Fire Ins. Co., 130 Wis. 189, 109 N.W. 952 (1906); *accord,* Heidisch v. Globe and Republic Ins. Co., 368 Pa. 602, 84 A.2d 566 (1951). *Contra,* Tauriello v. Aetna Ins. Co., 14 N.J. Super. 530, 82 A.2d 226 (L. 1951).

[7]Dubin Paper Co. v. Insurance Co. of North America, 361 Pa. 68, 63 A.2d 85 (1949).

[8]Milwaukee Mechanics Ins. Co. v. Maples, *supra* note 6; Dubin Paper Co. v. Insurance Co. of North America, *supra* note 7; 3 RICHARDS, INSURANCE §562 (5th ed. 1952).

[9]*E.g.,* Dubin Paper Co. v. Insurance Co. of North America, 361 Pa. 68, 63 A.2d 85 (1949).

[10]New England Gas and Elec. Ass'n v. Ocean Accident and Guarantee Corp., 330 Mass. 640, 116 N.E.2d 671 (1953); Foley v. Manufacturers' Fire Ins. Co., 152 N.Y. 131, 46 N.W. 318 (1897); Alexandra Restaurant, Inc. v. New Hampshire Ins. Co. 272 App. Div. 346, 71 N.Y.S.2d 515 (1st Dep't 1947), *aff'd,* 297 N.Y. 858, 79 N.E.2d 268 (1948).

[11]*E.g.,* Brady v. Welsh, 200 Iowa 44, 204 N.W. 235 (1925); Dubin Paper Co. v. Insurance Co. of North America, 361 Pa. 68, 63 A.2d 85 (1949); 1 RICHARDS, INSURANCE §154 (5th ed. 1952).

receive the benefit at the expense of an insurer who has agreed to bear the risk of loss to the property. The total recovery under all policies, however, should not exceed the total loss. A fair result could be attained by allowing the purchaser to take advantage of the vendor's insurance only to the extent that he has not been fully compensated for his loss by his own insurance.

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LABOR LAW: EXCLUSIVE BARGAINING AGENTS UNDER STATE RIGHT-TO-WORK STATUTES

Piegts v. Local 437, Amalgamated Meat Cutters and Butchers, AFL 81 So.2d 835 (La. 1955)

Plaintiff employed two meat cutters, both of whom were members of Local 437, in his grocery store. When plaintiff refused to sign a contract designating the defendant union as sole bargaining agent for the meat department, the two meat cutters went on strike and picketed plaintiff's store. The employer sought injunctive relief from the picketing on the ground that the proposed contract violated the Louisiana right-to-work statute. Upon the lower court's refusal to grant an injunction, plaintiff appealed. HELD, a contract designating a union as sole bargaining agent for all employees in a bargaining unit abridges the right of the nonunion minority to bargain directly. Judgment reversed, two justices dissenting.

In the Taft-Hartley Act Congress yielded its plenary power over interstate commerce to the extent that states can ban union shop agreements otherwise sanctioned by the act.[1] Following this invitation seventeen states have enacted right-to-work legislation in the past ten years.[2] The constitutionality of these laws has been upheld both on state[3] and federal[4] levels. The relevant provision of the Louisiana statute,[5] which is almost identical with the Florida constitutional

[1]61 STAT. 151 (1947), 29 U.S.C. 164(b) (1952).

[2]See Kuhlman, *Right to Work Laws: The Virginia Experience*, 6 LAB. L.J. 453 (1955).

[3]Local 519, United Ass'n of Journeymen v. Robertson, 44 So.2d 899 (Fla. 1950).

[4]Lincoln Fed. Labor Union, AFL v. Northwestern Iron & Metal Co., 335 U.S. 525 (1949); AFL v. American Sash & Door Co., 335 U.S. 538 (1949).

[5]LA. STAT. ANN. §23:881-88 (1954).