Michigan Law Review

Volume 54 | Issue 4

1956

Insurance - Recovery - Land Contract Purchaser Allowed Recovery on Both Vendee's and Vendor's Policies in Excess of Loss

Jerome K. Walsh, Jr.
University of Michigan Law School

Recommended Citation
Jerome K. Walsh, Jr., *Insurance - Recovery - Land Contract Purchaser Allowed Recovery on Both Vendee's and Vendor's Policies in Excess of Loss*, 54 MICH. L. REV. 565 (1956).
Available at: https://repository.law.umich.edu/mlr/vol54/iss4/12

INSURANCE—RECOVERY—LAND CONTRACT PURCHASER ALLOWED RECOVERY ON BOTH VENDEE'S AND VENDOR'S POLICIES IN EXCESS OF LOSS—An owner of realty entered into a contract to sell the land to the plaintiff. The vendor then took out fire insurance on his interest in the amount of $6,000 and the plaintiff obtained a policy covering his interest in the sum of $12,000, with a "three-fourths value" clause. Before performance of the contract and transfer of title, a fire occurred which caused $12,000 damage to the property. After the plaintiff paid the full contract price and took title to the property, he demanded and received an assignment of the claim under the vendor's policy. Plaintiff then brought suit on both insurance policies and won judgments of $6,000 on the claim assigned to him by the vendor and $9,000 on his own policy.[1] On appeal, *held,* affirmed. Under Pennsylvania law both vendor and purchaser have insurable interests to the full value of the property, and since the insurer's liability is fixed at the time of the loss, the fact that the vendor was later indemnified by performance of the contract cannot serve to release his insurance company. *Vogel v. Northern Assurance Co.,* (3d Cir. 1955) 219 F. (2d) 409.

[1] Vogel v. Northern Assurance Co., (D.C. Pa. 1953) 114 F. Supp. 591, noted in 102 UNIV. PA. L. REV. 677 (1954).

In view of the fact that, under Pennsylvania law, the purchaser under a land contract bears the risk of destruction of the property,[2] there was no serious question of the right of the purchaser to recover under his own policy.[3] The striking result in the principal case follows from allowing the purchaser to recover under the vendor's policy. The opinion of the court recognizes the incongruity of allowing a $15,000 recovery on a $12,000 loss, but felt bound by previous Pennsylvania decisions which have held that at the time of the loss, as between the vendor and his insurer, the vendor is still the owner of the property, and that the insurer may not avail himself of contractual rights which the insured may have in order to defeat recovery under the policy.[4] Although this theory is in direct conflict with the oft-repeated principle that fire insurance is indemnity insurance only,[5] it should be noted that it was first devised to deal with a fact situation quite unlike the principal case. The case which gave rise to the theory,[6] and most of the later cases which have employed it,[7] involved an insured vendor and an uninsured purchaser in a jurisdiction where the risk of casualty loss is on the purchaser from the time the contract is signed. In order to place the loss on the vendor's insurer who had been paid to bear the risk rather than on the uninsured purchaser, the courts first found the insurer liable to the vendor for the damage, and then impressed the insurance proceeds with a fictional trust for the benefit of the purchaser.[8] The great majority of the jurisdictions in this country which have encountered the fact situation just described have given the uninsured purchaser the benefit of the vendor's insurance.[9] The English courts, on the other hand, once applied a strict indemnity theory to this situation. The vendor's insurer was held liable only to the extent of the vendor's actual loss, and if payment were made to the vendor under the policy, the insurer was subrogated to his rights under the land contract.[10] This view is certainly more in line with classic insurance doctrines. It has

2 Siter, James & Co.'s Appeal, 26 Pa. 178 (1856).

3 The court dismissed defendants' argument based on an "other insurance" clause in the purchaser's policy on the ground that such clauses apply only to other insurance on the same interest. Principal case at 413.

4 Insurance Co. v. Updegraff, 21 Pa. 513 (1853); Reed v. Lukens, 44 Pa. 200 (1863); Dubin Paper Co. v. Ins. Co. of North America, 361 Pa. 68, 63 A. (2d) 85 (1949).

5 VANCE, INSURANCE, 3d ed., §14 (1951); 1 RICHARDS, INSURANCE, 5th ed., §13, p. 47 (1952).

6 Insurance Co. v. Updegraff, note 4 supra.

7 Reed v. Lukens, note 4 supra; Dubin Paper Co. v. Ins. Co. of North America, note 4 supra. But cf. Heidisch v. Globe & Republic Ins. Co. of America, 368 Pa. 602, 84 A. (2d) 566 (1951).

8 The court in the principal case stated by way of dictum that the purchaser could have compelled the insurance company to pay the proceeds to the vendor, and then had the vendor declared a trustee of the proceeds for his benefit. Since the vendor had assigned his claim to the plaintiff, the only question at issue was the validity of the claim. For a discussion of the doctrine of equitable conversion as it affects the purchaser's right to the vendor's insurance, see 23 KY. L. J. 505 (1935).

9 See 37 A.L.R. 1324 (1925).

10 Rayner v. Preston, 18 Ch. D. 1 (1881); Castellain v. Preston, 11 Q.B.D. 380 (1883); Phoenix Assurance Co. v. Spooner, [1905] 2 K.B. 753.

been widely applied in this country in the analogous situation where a mortgagee has insurance on the mortgaged property.[11] The mortgagee's interest is held to be a security interest only, and his insurer is allowed subrogation under the mortgage to the extent of payments it has made on the insurance policy.[12] However, only a few American courts[13] have applied this theory to the vendor-purchaser situation and dissatisfaction with its harsh results led to a statutory change in England.[14] It would seem that the inequitable result reached by leaving the loss on the uninsured purchaser, while releasing the insurance company which has been paid to bear the risk, certainly justifies a departure from the indemnity principle.[15] But whatever may be the justification for giving an uninsured purchaser the benefit of the vendor's insurance, it would not appear to apply to the principal case where the purchaser was himself insured. On the contrary, the very opportunity for a double recovery would seem to militate against such an outcome. It is regrettable that the court found it necessary to extend a doctrine that is, at best, a fiction based on policy considerations to a case where such considerations dictate an opposite result. A doctrine designed to prevent a windfall to the insurer should not be allowed to give an unearned profit to the purchaser. "Most creditors are content if their debt be paid once; all ought to be."[16]

Jerome K. Walsh, Jr.

[11] See, Rarrick, "Right of Insurer to be Subrogated to the Rights of Mortgagee," 31 ILL. B. J. 331 (1943).

[12] See, e.g.: Le Doux v. Dettmering, 316 Ill. App. 98, 43 N.E. (2d) 862 (1942); Leyden v. Lawrence, 79 N.J. Eq. 113, 81 A. 121 (1911).

[13] King v. Preston, 11 La. Ann. 95 (1856); White v. Gilman, 138 Cal. 375, 71 P. 436 (1903); McCoy v. Continental Ins. Co., 326 Mich. 261, 40 N.W. (2d) 146 (1949). See also the strong dicta in Brownell v. Board of Education, 239 N.Y. 369, 146 N.E. 630 (1925).

[14] "Where after the date of any contract for sale . . . of property, money becomes payable under any policy of insurance maintained by the vendor in respect to any damage to . . . property included in the contract, the money shall, on completion of the contract, be held . . . by the vendor on behalf of the purchaser. . . ." 15 Geo. 5, c. 20, §47 (1925).

[15] A noted text-writer offers the further suggestion that the common belief in the market place is that the building is insured rather than the interest of the owner, and that the courts should give effect to this belief by treating the insurance proceeds as a substitute for the destroyed property. VANCE, INSURANCE, 3d ed., §131 (1951). But see Brownell v. Board of Education, note 13 supra, where Judge Pound criticizes this suggestion.

[16] Arnfeld & Son v. Guardian Assurance Co., 172 Pa. 605 at 609, 34 A. 580 (1896), cited to the court by counsel for the defendants in the principal case.