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Rights of Holder of Possibility of Revertor and Owner of Determinable Fee to Insurance Proceeds from Policy Procured by the Latter - Board of Education v. Winding Gulf Collieries

RIGHTS OF HOLDER OF POSSIBILITY OF REVERTOR AND OWNER OF DETERMINABLE FEE TO INSURANCE PROCEEDS FROM POLICY PROCURED BY THE LATTER

Board of Education v. Winding Gulf Collieries[1]

Allemannia Fire Insurance Company filed a bill of interpleader on behalf of itself and other insurance companies in the United States District Court for the Southern District of West Virginia to determine the proper recipient of the proceeds of blanket insurance policies. Fire had destroyed a building on which these companies carried the risk and the obligation to pay the rightful claimant was acknowledged. Contestants for the proceeds were The Board of Education of the County of Raleigh, West Virginia, (hereinafter called the Board) and Winding Gulf Collieries, a body corporate, (hereinafter called the Collieries). The bases of the Board's claim were that it had caused the property in question to be insured, that the policies covered only its interest therein and that it had paid all the insurance premiums. The Collieries' claim was grounded on the facts that it had a possibility of reverter in the property[2] and that the determinable estate of the Board had ended when the building was destroyed by fire. The Collieries asserted that its interest was protected under the insurance policies and that it should

[1] 152 F. 2d 382 (C. C. A. 4th, 1945); cert. den. 328 U. S. 844, 90 L. ed. 943, 66 S. Ct. 1023 (1946).

[2] In the deed by which the Board took title the following provision appeared after the granting clause: ". . . It is further distinctly understood and agreed . . . that the property hereby conveyed is for public free school purposes only and for no other purpose or purposes . . . and that whenever the said property hereby conveyed shall cease to be used for public free school purposes, the same and every part hereof shall thereupon ipso facto revert to and become reinvested in the said party of the first part, its successors or assigns in fee simple, with like force and effect as if this conveyance had never been made."

receive the proceeds since they represented the building which would have passed in fee to the Collieries upon the termination of the preceding estate. In the insurance contracts the insured was denominated "The Board of Education of the County of Raleigh, as is now or may hereafter be constituted, for account of whom it may concern". The bill of interpleader was filed on a stipulation of facts after both the Collieries and the Board had asserted their respective rights to the entire proceeds. An award in favor of the Collieries in the District Court[3] was reversed upon appeal.

Rights to insurance proceeds of a holder of a possibility of revertor and the owner of a determinable fee were litigated in only one previous reported case, *Hawes v. Lathrop*.[4] Unfortunately, its particular facts limit the significance of that decision. In that case the plaintiff gave to the defendants a deed of trust of a tract of land and improvements for the purpose of establishing a school thereon. The deed provided that if defendants' plan for the school should prove unsuccessful, defendants should so declare by resolution, whereupon title would revert to the plaintiff. The defendant trustees made an addition to the building, insured it in their own names, and collected the proceeds when it was destroyed by fire. Subsequently the trustees passed the resolution that the general plan for the school had proved unsuccessful. Plaintiff objected to the trustees' returning the proceeds to the contributors to the school fund, donors of unqualified gifts of money, and claimed that his equitable right to the proceeds in place of the building was superior to anyone's else. Observing that the trustees had no further duties and that the donors had no equity in the fund, the Court found the plaintiff to have the only plausible claim. The opinion in *Board of Education v. Winding Gulf Collieries* disposed of *Hawes v. Lathrop* in this manner:

> " 'The distinction between these circumstances and those in the instant case are manifest. Here the school continued to exist and it was obviously the duty of the Board of Education to use the insurance money to maintain it for the county. In any event, we are unable to follow the decision of the California court insofar as it may be thought to differ from the views herein expressed'."[5]

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[3] Allemannia Fire Ins. Co. v. Winding Gulf Collieries, 60 F. Supp. 65 (S. D. W. Va., 1945).
[4] 38 Cal. 493 (1869).
[5] 152 F. 2d 382, 386.

Since the case above is apparently the only one in point on the particular question in the main case, comparisons will be made to decisions involving analogous issues. One possible analogy to the present problem is provided by condemnation suits wherein the condemning authority seeks to make proper compensation for taking land in which one person holds a possibility of revertor and another a determinable fee. At least one such case[6] has held that because the land condemned could no longer be used for the designated purpose, the primary estate had ended, and the owner of the revertor received the total award. This is the view most favorable to the Collieries, but the great majority of cases oppose it. Courts have far more frequently employed either the theory of impossibility of performance (i.e. impossibility of using the premises in the prescribed manner) or the theory that the possibility of revertor is of uncertain and insignificant value in giving the owner of the determinable fee the entire award.[7] The Restatement of the Law of Property would allow the contingent owner a partial recovery if the contingency is of probable occurrence and if the holder of the possibility of revertor can show that the significant event will probably occur within a reasonable short period of time.[8] Had the land on which the schoolhouse in the instant case stood been condemned prior to the date of the fire, the rule of the Restatement would seem to favor giving the entire award to the Board[9] provided that (aside from the prospect of condemnation) there was little probability of the Board's abandoning the premises within a reasonably short period of time.

A second type of case that is similar to the one under consideration occurs when life tenants and remaindermen litigate their rights to insurance proceeds from policies which the life tenants have procured. There is general harmony in the decisions that when the life tenant takes out a policy under which a valid claim is later made, some portion of the proceeds will be allotted to the remainderman if any one of the three following conditions exists:

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[6] Lancaster School District v. Lancaster County, 295 Pa. 112, 144 A. 901 (1929). The reasoning of the District Court in Allemannia Fire Ins. Co. v. Winding Gulf Collieries, *supra* n. 3, is similar to the rationale of the cited case.

[7] For a fuller discussion see Comment, *Future Interests—Effect of Eminent Domain Proceedings* (1936) 34 Mich. L. R. 530 and cases cited therein.

[8] RESTATEMENT, PROPERTY, (1936), Sec. 53.

[9] *Ibid.* See especially Comment c and Illustration 2.

1) an agreement on the part of the life tenant to insure for the benefit of the remainderman,[10] 2) a fiduciary relationship between life tenant and remainderman,[11] or 3) an express or inferable intent of the life tenant in procuring the insurance to protect both interests.[12]

If none of these special conditions is present and the life tenant insures in his own name and for his own sole benefit, the legal consequences will be determined according to one of three conflicting rules. These three doctrines are succinctly set forth in *Clark v. Leverett.*[13] The first, or majority rule, is that the life tenant is not required to use the proceeds in rebuilding nor is he in any wise accountable to the remainderman for money so received even though they are in excess of the value of his interest or equal to the whole value of the property.[14] The Restatement adopts this view.[15] According to the second rule the life tenant may recover under the policy which he took out for his own benefit, but if he receive proceeds in excess of the value of his interest, he shall be regarded as trustee for the remainderman for such excess.[16] The third view is that, regardless of the amount of the insurance or the intent of the insured, the proceeds stand in place of the building and must either be used to restore the property destroyed or invested as corpus for the remainderman; the life tenant may take only the interest therefrom.[17] It appears that the theory on which this third class of decisions rests is that a life tenant must be considered generally as a trustee for the remainderman.[18] In the instant case the Court explicitly refused to adopt the third rule and extend it to include fees subject to special limitations. On the other hand, it quoted with approval from cases which expound the majority rule.[19]

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[10] Convis v. Citizens Mut. Fire Ins. Co., 127 Mich. 616, 86 N. W. 994 (1901).

[11] Clark v. Leverett, 159 Ga. 487, 126 S. E. 258, 37 A. L. R. 180 (1924).

[12] Welsh v. London Assur. Corp., 151 Pa. St. 607, 25 A. 142 (1892).

[13] *Supra*, n. 11. See also 17 R. C. L. p. 642, 33 Am. Jur. pp. 837-840, and 46 C. J. S. pp. 21-2. A full discussion of the subject appears in 126 A. L. R. 336 *et seq.* in annotation to Crisp County Lumber Co. v. Bridges, 187 Ga. 484, 200 S. E. 777 (1939).

[14] Harrison v. Pepper, 166 Mass. 288, 44 N. E. 222 (1896). Clark v. Leverett terms this the "Massachussetts Rule".

[15] RESTATEMENT, PROPERTY, (1936) Vol. I, Sec. 123.

[16] Sampson v. Grogan, 21 R. I. 174, 42 A. 712, 44 L. R. A. 711 (1899). This result is called the "Rhode Island Rule" in Clark v. Leverett.

[17] Green v. Green, 50 S. C. 514, 27 S. E. 952 (1897).

[18] So far as has been discovered the Maryland Court of Appeals has not had occasion to decide the foregoing point.

[19] Thompson v. Gearheart, 137 Va. 427, 119 S. E. 67, 35 A. L. R. 36 (1923); Gorman's Estate, 321 Pa. St. 292, 184 A. 86 (1936).

It has been previously stated that one of the three conditions which permit a remainderman to share in the proceeds from a life tenant's insurance policy is an express or inferrable intent on the part of the life tenant in procuring the contract to protect both interests. The Collieries sought to demonstrate an analogous intent on the part of the Board, an intent clearly inferrable (it asserted) from the particular terms of the blanket insurance contracts. It was strongly urged by counsel for the Collieries that denominating the assured "The Board of Education of the County of Raleigh, as is now or may hereafter be constituted, for account of whom it may concern", along with other language in the policy,[20] was a plain indication of the Board's intention to insure the whole interest when the policy was written. The significance of the phrase, "for account of whom it may concern", was at issue. The case quoted by the Court to show the universally accepted view was *Hagan v. Scottish Union & National Ins. Co.*[21] Since *Hooper v. Robinson*[22] expressed the same doctrine and since it originated in the United States District Court for the District of Maryland, it is used here for exposition of the rule. Therein it was held that a contract of insurance may be effected by a person acting as agent for an undisclosed principal by insuring the agent for account of whom it may concern. In such event the proceeds

> ". . . will be applied to the interest of the persons for whom it [*the policy*] was intended by the person who ordered it, provided that the latter had the requisite authority from the former or they subsequently adopted it."[23]

It is apparent from this and other cases that the "adoption" may take place at any time after the policy is effected, even after loss, and it is not at all necessary that the person procuring the policy have a named individual in mind.[24] There is a limitation on the construction of the interest covered under the phrase in question, which is clearly

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[20] Loss, if any was payable to the Board of Education; it was to "be deemed the owner of the property herein named . . . and no defect in the title to such property shall invalidate this insurance." It was further provided that if any of the property should be located on lands not owned by the insured in fee simple, the insurance should not be affected thereby.

[21] 186 U. S. 423, 46 L. Ed. 1229, 22 S. Ct. 862 (1902).

[22] 98 U. S. 528, 25 L. ed. 219 (1879).

[23] 98 U. S. 528, 536-7; 25 L. ed. 219, 220 (1879).

[24] Hagan v. Scottish Ins. Co., *supra* n. 21; Fire Ins. Asso. of Eng. v. Merchants and Miners Trans. Co., 66 Md. 339, 7 A. 905, 59 Am. Rep. 162 (1887); COUCH, ENCYC. OF INS. LAW, p. 472.

stated in the early Maryland case, *Newson v. Douglass*.[25] The Court therein said:

> "But if . . . [he who acted] did not give the order for the insurance with reference to the interest of Newson's representatives, but intended it for his own benefit and not theirs, then the plaintiff is not entitled to recover. For no one can, by subsequent adoption, avail himself of such a policy, who was not at the time in the contemplation of the party procuring the insurance, and for whose benefit it was not intended, notwithstanding any interest he may have had in the thing insured. The policy not being effected with reference to his interest, his interest was not insured, and he of course not concerned in the transaction."[26]

It is plain, therefore, that in the instant case nothing at all is inferrable about the intent of the Board of Education from the mere fact that the words, "for account of whom it may concern", were used; these words only invite inspection of the facts to determine the animus of the named assured in procuring the policy. The Court said in that regard:

> "There was and could have been no intention on the part of the Board of Education to protect the Collieries when it insured the school building in question. It was acting to safeguard the public interest so that in case of the loss of the building means to rebuild it would be available. The phrase, 'for account of whom it may concern', was doubtless used in the policy to make doubly certain that in case of loss the proceeds of insurance would be payable to the public authorities charged with the maintenance of the schools, whoever they might be and by whatever name they might then be known."[27]

The Court evidently felt that none of the other language in the contract indicated anything to the contrary.

A possible difference exists between the Federal and the Maryland courts in ruling on what evidence is admissible to show the intent of the named assured in taking out the insurance. In *Newson v. Douglass*[28] certain letters from one claimant to the individual who actually made the con-

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[25] 7 H. & J. 417 (1826).
[26] *Ibid*, pp. 452-3.
[27] p. 386.
[28] *Supra* n. 25.

tract with the insurance underwriters were ruled admissible for determining their composer's intent in procuring the insurance. The more recent *Fire Ins. Asso. v. The Merchants and Miners* supports the earlier ruling:[29]

> "But such policies [meaning those written 'for account of whom it may concern'] are daily issued, . . . and it has become elementary law in regard to them, that extrinsic evidence may be adduced to show who was in fact the party concerned . . .".

New Orleans & So. American S.S. Co. v. W. R. Grace & Co.,[30] a Federal case, contains a dictum that statements of the person who secures the policy are not admissible, that intent should rather be deduced from the language of the policy read in the light of existing circumstances. But *Lowery v. Conn. Fire Ins. Co.*,[31] heard in a Federal District Court, subsequently held that statements of the party who caused the words to be inserted would be admissible as evidence of his intent in so doing. In the present case intent was discovered only by language and circumstances, but there was no ruling on the point; issues were presented on a stipulation of facts and the question of extrinsic evidence as to intent did not arise.

The Court in *Board of Education v. Winding Gulf Collieries* achieved a result more consonant with the mandates of justice than would have attended a contrary determination. The decision is sound in the fields of insurance and of property law. Rejection of the holding of *Hawes v. Lathrop*[32] rather than showing disagreement with previous authority was an excellent example of putting aside a superficially similar case to follow the basic pattern of the common law.

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[29] 66 Md. 339, 348, 7 A. 905, 908, 59 Am. Rep. 162, 165 (1887).
[30] 26 F. 2d 967, (C. C. A. 2nd 1928).
[31] 5 F. Supp. 325, 329 (E. D. N. Y., 1933); reversed on other grounds, 70 F. 2d 324, (C. C. A. 2nd, 1934).
[32] *Supra* n. 4.