

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002110-MR

SHELTER MUTUAL INSURANCE COMPANY

APPELLANT

v. APPEAL FROM CALLOWAY CIRCUIT COURT
HONORABLE JOHN. T. DAUGHADAY, JUDGE
ACTION NO. 01-CI-00256

MARTHA KEMP, EXECUTOR OF THE ESTATE OF
ROBERT H. KEMP, DECEASED, and
AREA BANCSHARES CORPORATION

APPELLEE

OPINION
AFFIRMING

** ** * * *

BEFORE: BAKER, GUIDUGLI, AND PAISLEY, JUDGES.

BAKER, JUDGE: Shelter Mutual Insurance Company ("Shelter") brings this appeal from a September 13, 2002, summary judgment of the Calloway Circuit Court. We affirm.

Martha Kemp and Robert Kemp ("the Kemps") purchased a farm insurance policy from Shelter. They also purchased a rider to the insurance policy for coverage upon a tobacco barn in the amount of \$50,000.00. The rider contained a "tobacco firing

clause" which provided that Shelter would not be liable for loss to the barn or to its contents if such loss was caused from tobacco firing. It appears that the Kemps could have purchased a tobacco firing permit from Shelter to extend coverage in the event of a loss due to firing tobacco; however, the Kemps did not purchase the firing permit from Shelter.

Subsequently, the barn was completely destroyed by fire while tobacco was being fired in it. Shelter denied the Kemps coverage under the policy because the Kemps failed to purchase a firing permit. As a result, the mortgagee, Peoples' Bank of Murray, Kentucky, ("Peoples Bank") instituted an action against Shelter to recover under the policy. The circuit court granted summary judgment in favor of the Peoples Bank against Shelter in the sum of \$50,000.00. An appeal was taken to the Court of Appeals, and this Court affirmed in Appeal No. 2000-CA-000010-MR.

Thereafter, Shelter instituted this lawsuit against the Kemps and Peoples' Bank of Murray, Kentucky, n/k/a Area Bancshares Corporation ("the Bank"). Therein, Shelter sought to be subrogated to the rights of the mortgagee (the Bank) and sought recovery against the Kemps in the sum of \$50,000.00 plus interest of \$6,339.00. The circuit court ultimately entered summary judgment against Shelter. The court concluded that in the absence of fraud or an illegal act on behalf of the Kemps,

Shelter was not entitled to be subrogated of the rights of the mortgagee. This appeal follows.

Shelter contends that the circuit court committed error by entering summary judgment. Summary judgment is proper where there exists no material issue of fact and movant is entitled to judgment as a matter of law. See Steelvest, Inc. v. Scansteel Serv. Ctr., Inc., Ky., 807 S.W.2d 476 (1991).

Shelter seeks to be subrogated to the rights of the mortgagee through conventional subrogation (subrogation by contract) and through equitable subrogation (subrogation by operation of law). It is well-established that subrogation is an equitable doctrine and "seeks to impose the ultimate responsibility for wrong or loss on the party who, in equity and good conscience, ought to bear it." 73 Am. Jur. 2d Subrogation § 2 (1998).

The farm insurance policy contained the following standard subrogation clause:

Whenever we shall pay the mortgagee (or trustee) any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability that, as to the mortgagor or owner, no liability therefore existed, we shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt; or may at our option pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest accrued,

and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee to recover the full amount of said mortgagee's (or trustee's) claim.

Under the above subrogation clause, Shelter seeks to be subrogated to the rights of the mortgagee whenever it pays the mortgagee for loss under the policy and whenever no liability existed under the policy as to the mortgagor. We think such interpretation overly broad.

The interpretation and construction of a contract is a matter of law for the court. Moreover, contracts of insurance are adhesive and should be strictly interpreted against the insurer. See American Hardware Mutual Insurance v. Mitchell, Ky., 870 S.W.2d 783 (1994).

Here, we decline to interpret the subrogation clause so as to give Shelter the unfettered right of subrogation in the absence of fraud or illegal conduct on behalf of its insureds. If Shelter intends to enjoy such an unfettered right of subrogation, it must give the insureds clear and unequivocal notification of such intention.

As conventional subrogation is grounded in equity, we also do not believe that the Kemps should bear the loss in this case. The Kemps engaged in no fraud or illegal act that voided coverage under the policy. Instead, they simply chose not to

purchase additional coverage so as to be covered when tobacco was being fired.

For the above reasons, we likewise reject Shelter's claim of equitable subrogation.

Upon the whole, we hold that the circuit court correctly entered summary judgment dismissing Shelter's claim.

For the foregoing reasons, the summary judgment of the Calloway Circuit Court is affirmed.

ALL CONCUR.

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