University of Baltimore Law Review

Volume 11
Issue 3 *Spring 1982*

Article 6

1982

Casenotes: Insurance — Where Spouse Deliberately Damages Jointly Owned Property, the Innocent Spouse May Recover under a Fire Insurance Policy Which Protects the Interests of Each Spouse. St. Paul Fire & Marine Insurance Co. v. Molloy, 291 Md. 139, 433 A.2d 1135 (1981)

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INSURANCE — WHERE SPOUSE DELIBERATELY DAMAGES JOINTLY OWNED PROPERTY, THE INNOCENT SPOUSE MAY RECOVER UNDER A FIRE INSURANCE POLICY WHICH PROTECTS THE INTERESTS OF EACH SPOUSE. *St. Paul Fire & Marine Insurance Co. v. Molloy,* 291 Md. 139, 433 A.2d 1135 (1981).

Charles and Diane Molloy owned a house, as tenants by the entirety, which was substantially damaged by fire on January 22, 1978.[1] The fire allegedly originated when an ember from Mr. Molloy's cigarette fell onto a pile of clothing on the floor of a closet.[2] Mr. Molloy fell asleep shortly thereafter and awoke to a house full of smoke. Due to heavy smoke he was unable to reach the phone in the kitchen. He left the house, driving a distance of four and one half miles past neighbors' houses and several business establishments to a restaurant where he stopped and notified the fire department.[3] Sometime later he returned home finding the fire extinguished. When approached by a county fire inspector, Mr. Molloy fled.[4] On his return he was approached by a police officer. Again he fled, but was subsequently apprehended. A charge of arson was *nol prossed* by the state's attorney.[5]

The Molloys filed a claim against St. Paul Fire and Marine Insurance Company. St. Paul denied liability based on Mr. Molloy's actions during and immediately after the fire.[6] The Molloys filed suit and were

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1. St. Paul Fire & Marine Ins. Co. v. Molloy, 291 Md. 139, 140, 433 A.2d 1135, 1136 (1981).
2. *Id.* at 141, 433 A.2d at 1136.
3. Brief for Appellee at 3-4, St. Paul Fire & Marine Ins. Co. v. Molloy, 291 Md. 139, 433 A.2d 1135 (1981). Mr. Molloy glanced across the street as he backed his car out of the driveway. When he failed to see his neighbor's car he looked to his next-door neighbors. As a result of family disputes the Molloys were not on speaking terms with their next-door neighbors. Molloy drove off intending to stop at the grocery store around the corner but he discovered that he did not have any change for the telephone. Driving at 70-80 miles per hour Molloy headed toward a McDonald's Restaurant where he thought he would be allowed to use the phone. He passed numerous business establishments including a Seven-Eleven Store because the parking lots were congested. *Id.*
4. St. Paul Fire & Marine Ins. Co. v. Molloy, 291 Md. 139, 142, 433 A.2d 1135, 1137 (1981). Molloy claimed he drove away because he was jealous when he saw his wife in front of their home with a man who was a family friend. *Id.*
5. Brief for Appellant at 3, St. Paul Fire & Marine Ins. Co. v. Molloy, 291 Md. 139, 433 A.2d 1135 (1981). Based on an investigation by the Prince George's County Fire Marshall a charge of arson was filed against Charles Molloy. *Id.*
6. St. Paul Fire & Marine Ins. Co. v. Molloy, 291 Md. 139, 143, 433 A.2d 1135, 1137 (1981). The insurance company wrote the Molloys a letter which denied liability. They informed the insureds that the company was

> not liable for this loss of January 22, 1978, by reason of the neglect of the insured to use all reasonable means to save and preserve the property at and after the loss. (See lines 11 through 22 of the 165 line Standard Fire Policy). The insurance company, of course, reserves its rights to invoke any other terms, conditions, or exclusions of the policy which may be applicable to this loss upon facts not known or which may later be discovered.

Id.

awarded $87,614.28.[7] St. Paul appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court's decision.[8] The Court of Appeals of Maryland granted certiorari and held that an insurer's defense of neglect encompasses the defense of arson and that where the insurance policy designates husband and wife as "named insured," the policy covers each named insured's interest separately.[9]

Courts in many jurisdictions have had occasion to decide whether a co-owner of property may recover under an insurance policy where another co-owner has violated policy provisions against deliberate burning.[10] The majority of courts follow the traditional view that property law should be applied to issues of this nature[11] whereby the fraud of one co-owner voids the policy as to the other,[12] because jointly held property creates joint obligations. This viewpoint has been criticized for ignoring fundamental rules of contract interpretation.[13]

The modern view, adopted by courts in several jurisdictions, holds that the nature of property ownership is irrelevant.[14] The insurance contract is personal in nature and disputes should be settled with reference to the traditional rules of contract interpretation and with emphasis on the intent of the parties.[15] Where ambiguities exist the trier of fact is given the opportunity to decide questions of interpretation.[16]

Courts which adopt the modern view consistently hold that where there are joint interests in an insurance policy, each insured should be allowed to recover up to the limit of his or her individual interest.[17] There are two lines of reasoning upon which courts rely when holding that interests are several rather than joint. Where property was held

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7. *Id.* at 144, 433 A.2d at 1137. At the close of evidence the trial judge instructed the jury that the defense of arson had been waived and that they were to treat Mr. and Mrs. Molloy's interest in their property separately.
8. St. Paul Fire & Marine Ins. Co. v. Molloy, 46 Md. App. 570, 420 A.2d 994 (1980), *rev'd,* 291 Md. 139, 433 A.2d 1135 (1981).
9. St. Paul Fire & Marine Ins. Co. v. Molloy, 291 Md. 139, 144, 433 A.2d 1135, 1137 (1981).
10. Mercantile Trust Co. v. New York Underwriters Ins. Co., 376 F.2d 502 (7th Cir. 1967); Steigler v. Insurance Co. of North America, 384 A.2d 398 (Del. 1978); Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329 (Me. 1978); Hoyt v. New Hampshire Fire Ins. Co., 92 N.H. 242, 29 A.2d 121 (1942); Howell v. Ohio Cas. Ins. Co., 130 N.J. Super. 350, 327 A.2d 240 (1974); Rockingham Mut. Ins. Co. v. Hummel, 219 Va. 803, 250 S.E.2d 774 (1979); Klemens v. Badger Mut. Ins. Co., 8 Wis. 2d 565, 99 N.W.2d 865 (1959).
11. Steigler v. Insurance Co. of North America, 384 A.2d 398, 399 (Del. 1978).
12. *See* Annot., 24 A.L.R.3d 450, 451-52 (1969).
13. *See* Comment, *Spouse's Fraud As Bar to Insurance Recovery,* 21 WM. & MARY L. REV. 543-55 (1979).
14. *See* Annot., 24 A.L.R.3d 450, 453-55 (1969).
15. *See, e.g.,* Steigler v. Insurance Co. of North America, 384 A.2d 398, 400-01 (Del. 1978).
16. Bond v. Pennsylvania Nat'l Mut., 289 Md. 379, 384, 424 A.2d 765, 768 (1981).
17. Steigler v. Insurance Co. of North America, 384 A.2d 398, 398-402 (Del. 1978); Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329, 331-32 (Me. 1978); Hoyt v. New Hampshire Fire Ins. Co., 92 N.H. 242, 243, 29 A.2d 121, 122 (1942).

jointly the Supreme Court of New Hampshire reasoned that simple contract interpretation should allow each insured to receive the benefit of his or her bargain.[18] Other courts have applied the rationale of public policy to reach the same result.[19] The Supreme Judicial Court of Maine held in favor of an innocent co-insured by noting that there is no public policy against allowing an insured indemnity where a co-insured has violated the policy without the other insured's direction or participation.[20]

Prior to *St. Paul Fire & Marine Insurance Co. v. Molloy,*[21] the Court of Appeals of Maryland touched upon this issue when it decided a case involving a mortgagor and mortgagee.[22] The court, finding separate interests to justify payment to the innocent mortgagee, held that neither insured can be affected by the independent fraud of the other.[23]

In *St. Paul,* the court of appeals addressed two issues. The first concerned the matter of St. Paul's denial of liability based on non-preservation of the property.[24] The court had previously held that insurance companies may waive defenses and such waivers may be either expressed or implied.[25] While St. Paul failed to mention arson as a defense in its letter to the Molloys, the court, nevertheless, found that the arson defense was implied in the general denial based on non-preservation.[26] Therefore, there was no waiver since intentional destruction of property in any situation would be seen as a form of non-preservation.[27]

The second issue raised, one of first impression in Maryland, was whether a person who holds property jointly can be barred from recovering under a fire insurance policy where the co-insured is suspected of fraud. Essentially, the issue was whether the interests of the insureds in the policy were joint or several. Analyzing both the traditional and the modern approaches, the Maryland court adopted the latter, citing traditional rules of contract interpretation as the basis for deciding such issues.[28] Discussing the nature of the property ownership is unnecessary, according to the court, because the issue lies in the insurance contract, not in the property owned. A reasonable interpretation of the contract, giving the insured the benefit of any ambiguity, protects the insured's interest in the policy. Thus, the court concluded that the responsibility for fraud in the Molloys' insurance contract being separate,

18. Hoyt v. New Hampshire Fire Ins. Co., 92 N.H. 242, 243, 29 A.2d 121, 122 (1942).
19. Steigler v. Insurance Co. of North America, 384 A.2d 398, 398-402 (Del. 1978); Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329, 331-32 (Me. 1978).
20. Hildebrand v. Holyoke Mut. Fire Ins. Co., 386 A.2d 329, 331-32 (Me. 1978).
21. 291 Md. 139, 433 A.2d 1135 (1981).
22. Rent-A-Car Co. v. Globe & Rutgers Fire Ins. Co., 158 Md. 169, 148 A. 252 (1930).
23. *Id.* at 182, 148 A. at 257.
24. 291 Md. 139, 144-46, 433 A.2d 1135, 1138-39 (1981).
25. Rubenstein v. Jefferson Nat'l Life, 268 Md. 388, 392, 302 A.2d 49, 52 (1973).
26. 291 Md. 139, 146, 433 A.2d 1135, 1138 (1981).
27. *Id.* at 146, 433 A.2d at 1139.
28. *Id.* at 151-53, 433 A.2d at 1141-42.

the husband's liability may not be imputed to the wife.[29]

By adopting the modern view, the Court of Appeals of Maryland has joined a growing minority of jurisdictions which recognize that cases of this nature present issues of contract interpretation and not issues of strict property law.[30] The result of this holding is that the insurance policy is seen as a purely personal contract between the insurance company and the policyholder.[31]

Following this decision, Maryland courts will apply traditional rules of contract interpretation in settling disputes between insureds and insurance companies. By giving the parties the benefit of their intentions it places co-insureds and insurance companies on a more equal and independent footing. The decision prevents an artificial suretyship from being created or implied by not allowing one co-insured's interest to be affected by the acts or omissions of another insured as long as the insurance contract does not specifically state that the interests are joint.[32] Fairness and equity are also served by the court's holding. It would be unfair to hold an innocent party liable for the wrongs of a co-owner. Subsequent cases should be decided through an analysis of the policy language to determine whether obligations and responsibilities are joint or several.

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29. *Id.* at 153, 433 A.2d at 1142.
30. *See, e.g.,* Morgan v. Cincinnati Ins. Co., 411 Mich. 267, 307 N.W.2d 53 (1981). This is a decision on similar facts where the court approached the issue from a strict contract interpretation viewpoint.
31. *See* 12 J. APPLEMAN, INSURANCE LAW AND PRACTICE § 7006, at 68 (1981).
32. Morgan v. Cincinnati Ins. Co., 411 Mich. 267, 269, 307 N.W.2d 53, 55 (1981).