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Construction Of Assignment Of Insurance As Security

In *Walzer v. Walzer*⁸ the decedent assigned his life insurance policy to a bank as collateral for a loan. Prior to his death the decedent changed the beneficiary under the policy, such change in beneficiary being made subject to the rights of the assignee bank in compliance with the terms of the assignment. On the death of the decedent the bank collected its indebtedness from the insurance proceeds so that now the beneficiary is seeking reimbursement from the decedent's estate of the amount the bank deducted. This Court, affirming the Appellate Division,⁹ held that the beneficiary has a right to collect from the estate by subrogation.

Where a life insurance policy is assigned as collateral for a debt the beneficiary under the policy has the primary right to the proceeds of the policy and the assignee merely holds the policy as security for the loan.¹⁰ Although the primary obligation for the debt remains the estate of the insured, the assignee also has a right to resort to the proceeds of the insurance policy to collect the indebtedness.¹¹ The beneficiary's primary right to the proceeds remains unaffected whether the assignee elects to collect from the proceeds or from the estate.¹² In the event collection is made from the insurance proceeds the beneficiary has the right to be subrogated to the assignee's claim against the estate.¹³

In respect to this rule it is further recognized that the insured has the right to designate the assignee as the one primarily entitled to the proceeds thereby limiting the rights of the beneficiary to only that amount remaining after the debt has been paid.¹⁴ Whether the insured meant to so restrict the rights of the beneficiary is a question of intent to be ascertained by interpreting the writings between the parties. The crucial problem involved in the instant case is that when the insured changed the beneficiary he made the new beneficiary subject to the rights of the assignee. In construing this change in beneficiary, the Court reasoned that since the assignee was not made the primary beneficiary when the assignment was first made, it must have acquired all the protection it deemed necessary. Therefore, the making of the new beneficiary subject to the rights of the assignee was meant to do nothing more than to apprise the beneficiary of the prior assignment, and did not indicate an intention to change the position of the

8. *Walzer v. Walzer*, 3 N.Y.2d 8, 163 N.Y.S.2d 632 (1957).

9. 1 A.D.2d 482, 151 N.Y.S.2d 550 (1st Dep't 1956).

10. *Matter of Stafford*, 278 App. Div. 612, 101 N.Y.S.2d 904 (3rd Dep't 1951).

11. *Matter of Kelly's Estate*, 251 App. Div. 847, 296 N.Y. Supp. 923 (2d Dep't 1937).

12. *Matter of Cummings' Estate*, 200 Misc. 467, 105 N.Y.S.2d 104 (Surr. Ct. 1951).

13. *Matter of Stafford*, 278 App. Div. 612, 101 N.Y.S.2d 904 (3rd Dep't 1951).

14. *Matter of Kelekian*, 281 App. Div. 877, 120 N.Y.S.2d 530 (1st Dep't 1953).

assignee to that of primary beneficiary. Thus, in absence of the insured's intent to the contrary, the beneficiary's primary right to the proceeds remains unaffected.

It is apparent from this decision that it will take more than the mere fact that the new beneficiary was made subject to the rights of the assignee before the court will find that the assignee was made the primary beneficiary. This will be so if the insured clearly indicated his intention to alter the relationship¹⁵ or where insured designated the old beneficiary as the new beneficiary. The court further indicates that it is reluctant, in the absence of a legislative act, to have the law on insurance proceeds subject to an assignment conform to the law on estate property specifically bequeathed, where the legatee must satisfy any lien without recourse to the estate.¹⁶

Liability For Injuries To Insured's Spouse

Section 167(3) of the New York Insurance Law provides that no policy or contract shall be deemed to insure against any liability of an insured because of death or injuries to his or her spouse or because of injury to, or destruction of, property of his or her spouse unless express provision relating thereto is included in the policy.

In *New Amsterdam Casualty Company v. Stecker*¹⁷ an automobile insurance company sought a declaratory judgment as to whether it was obligated to defend one of its New York policy holders in an action instituted by the insured's husband in a Connecticut court as the result of an accident occurring in that state; or pay any judgment obtained by insured's husband as the result of such suit. The Court, unanimously affirming the Appellate Division,¹⁸ held that section 167 (3) of the New York Insurance Law relieved the insurance company of liability.

In the present instance the problem of performance of a contract was not involved so that there was no question as to whether the law of the state where the accident occurred applied. Rather, the crucial problem was in determining just what the respective obligations and duties were under the contract. In determining the obligations and duties of a contract, the contract must be interpreted in accordance with the laws of the state in which the contract was made.¹⁹ Once the respective obligations and duties have been ascertained then the performance of these duties may be sought in a foreign court, in accordance with the *lex fori*. Since this contract was issued in New York State, section 167 (3)

15. *Ibid.*

16. N.Y. DECEDENT ESTATE LAW §20; N.Y. REAL PROPERTY LAW §250.

17. 3 N.Y.2d 1, 163 N.Y.S.2d 626 (1957).

18. 1 A.D.2d 629, 152 N.Y.S.2d 879 (1st Dep't 1956).

19. *Auten v. Auten*, 308 N.Y. 155, 124 N.E.2d 99 (1954).