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INSURANCE—TRANSFER OF POLICY AS SECURITY IN VIOLATION OF NON-ASSIGNMENT CLAUSE

Plaintiff bank loaned money to a third party and for collateral took a deed of trust upon an automobile. Plaintiff notified Defendant insurance company by letter that it held a lien against the automobile, requesting that its lien be noted on a rider to be attached to the policy. Two days later the automobile was destroyed by fire, and Defendant insurance company paid the third party in full for the automobile. Upon claim for the amount of its lien by Plaintiff bank, Defendant contended (1) that since it had never received the letter and was unaware of the lien and (2) since the policy provided that no assignment should be binding upon it unless its consent was endorsed thereon, and no such consent was endorsed on the policy, it was not liable to Plaintiff bank. The lower court decided in favor of Plaintiff bank.[1] On appeal, *held,* affirmed. The jury's finding that Defendant received the letter must stand; the transfer of a fire insurance policy as collateral security for the payment of a debt is not an assignment within the meaning of the provisions against assignment without consent of insurer endorsed on the policy. *Hartford Fire Insurance Co. v. Mutual Savings and Loan Co.,* 193 Va. 269, 68 S. E. 2nd 541 (1952).

(1) One of Defendant's unsuccessful contentions was that it never received Plaintiff bank's letter, and that it was unaware of the lien. All authorities hold that mailing a letter, properly addressed and stamped, raises a presumption of its receipt by the addressee.[2] Some authorities hold that the positive denial by the addressee of the receipt of such letter renders the presumption of little weight,[3] or may even, if entirely uncontradicted, entirely overcome it.[4] However, Virginia's decisions are to the effect that a denial of receipt of such a letter raises an issue of fact to be determined by the jury.[5] Therefore, the jury in the lower court having found that the letter

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1. The original action was commenced by the holder of Hartford's draft, after a stop payment order. Mutual was brought in as a party plaintiff under Code of Virginia 8-226 (1950) when Hartford filed an affidavit of interpleader.
2. Brotherhood of Railroad Trainmen v. Jennings, 232 Ala. 438, 168 So. 173, 177 (1936); Arnold v. Darby, 49 Ga. App. 629, 176 S.E. 914 (1934); Petition of Liberty Mutual Insurance Co., 298 Mass. 75, 9 N.E.2d 718 (1937).
3. Gibson v. Rouse, 81 Wash. 102, 142 P. 464 (1914).
4. Ripy v. Cloverleaf Life and Casualty Co., 9 F.2d 324 (5th Cir. 1925).
5. Adams v. Plaza Theatre Inc. 186 Va. 402, 43 S.E.2d 47 (1947); Yanago v. Aetna Life Insurance Co., 164 Va. 258, 178 S.E. 904 (1935).

was received, the Supreme Court of Appeals was compelled to accept the verdict and consider the letter as having been received. Practical considerations commend the Virginia view. To permit a person to escape liability by merely denying the receipt of a letter would encourage perjury of a type particularly difficult to uncover.

(2) It has been held that where there is a prohibition in a policy forbidding the assignment of the policy of insurance without the consent of the insurer, the policy may still be the subject of a valid pledge.[6] The reason for this distinction is that such pledge does not affect the personal relationship, i. e., the ownership of the property by the insured, upon the faith of which the policy has been issued.[7] The stipulations in the policy contemplate a general or complete unconditional assignment of the ownership of the policy, and are not intended to work a forfeiture of the rights of the insured where the policy is assigned merely as collateral security for a debt.[8]

Like other contracts, policies of insurance are to be upheld when possible.[9] In case of doubt and uncertainty, the language of the policy is to be construed strictly against the insurer and liberally in favor of the insured.[10] Likewise, language limiting liability will be construed strongly against the insurer.[11] Therefore, the recent *Hartford* case is squarely in line with prior Virginia decisions in applying an equitable rule of construction of contracts to the difficult but important distinction between assignment of the insured property and assignment of an interest in the proceeds of the policy.

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6. Janesville State Bank v. Aetna Life Insurance Co., 200 Min. 312, 274 N.W. 232 (1937); Ellis v. Kreutzinger, 27 Mo. 311 (1858).
7. Central Union Bank v. New York Underwriters Insurance Co., 52 F.2d 823 (4th Cir. 1931).
8. Aetna Insurance Co. v. Smith, McKinnon & Son 117 Miss. 327, 78 So. 289 (1918).
9. Palmetto Fire Insurance Co. v. Fansler, 143 Va. 884, 129 S.E. 727 (1925).
10. Scholz v. Standard Accident Insurance Co., 145 Va. 694, 134 S.E. 728 (1926); Williams v. Metropolitan Life Insurance Co., 139 Va. 341, 123 S.E. 509 (1924).
11. Newsoms v. Commercial Casualty Insurance Co., 147 Va. 471, 137 S.E. 456 (1927).