STATE OF MICHIGAN

COURT OF APPEALS

AUTO-OWNERS INSURANCE COMPANY,

Plaintiff-Appellee,

v

JOSEPH S. FABIAN, JR. II, KAREN L. FABIAN, JOSEPH FABIAN, JR., FLORENCE FABIAN, and GOBLES PORK, INCORPORATED,

Defendants-Appellants,

and

FARM CREDIT SERVICES,

Defendant-Appellee.

UNPUBLISHED
February 25, 2000

No. 213706
Ottawa Circuit Court
LC No. 95-022461-CZ

Before: Markey, P.J., and Murphy and R. B. Burns*, JJ.

PER CURIAM.

Defendants Fabians and Gobles Pork, Inc. appeal as of right the judgment awarding plaintiff $70,000 plus interest and costs and providing that the judgment would serve as a mortgage securing payment by these defendants. The judgment granted plaintiff relief from the fact that it had made two separate $70,000 payments for a single loss of $70,000. We affirm.

In 1994, fire damaged real property in Ottawa County owned by defendants Joseph S. Fabian, Jr. II and his wife, Karen L. Fabian (Fabians II). Plaintiff insured this property pursuant to a policy that also covered property in Van Buren County, of which Farm Credit Services of West Michigan was sole mortgagee. The policy identified Farm Credit as a mortgagee, but did not similarly name Farmers Home Administration (now Farm Service Agency), even though it was sole mortgagee of the Ottawa County premises. Plaintiff issued a settlement check for $70,000, made payable jointly to Fabians II, d/b/a Gobles Pork, Inc., and, erroneously, to Farm Credit. Fabians II used the check to pay off the

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

mortgage on the Van Buren County property, of which Joseph S. Fabian, Jr. II's parents, defendants Joseph Fabian, Jr. and his wife, Florence Fabian (Fabians I), were mortgagors and Farm Credit was mortgagee. When Farmers Home subsequently demanded payment for the Ottawa County loss, plaintiff issued another $70,000 check and brought suit to recover the amount it had previously paid. The trial court found no cause of action in favor of Farm Credit, but granted plaintiff judgment for $70,000 against the Fabians and Gobles Pork, with the judgment serving as a mortgage between them and plaintiff regarding the Van Buren County property.

I

Defendants first argue that an insurance agency's addition of Farmers Home to the insurance policy as a mortgagee, pursuant to Farmers Home's request after the loss occurred, was invalid because the agency was acting as plaintiff's agent and had no authority from the insureds to effect such a change. Defendants also contend that because the addition was made subsequent to the loss, Farmers Home was not an insured at the time of the loss and, therefore, is not entitled to the proceeds of the policy. Because we affirm the trial court on other grounds, we need not address these issues.

II

Defendants next argue that Gobles Pork, Inc. was the only insured under the policy and that Fabians I received no benefit from the settlement check and, therefore, should not be liable under the trial court's judgment/mortgage. We disagree. Defendants' argument that Gobels Pork held the insurable interest in the Ottawa County property is unconvincing. The insurance policy covering that property named Fabians II, d/b/a Gobels Pork, Inc., as the insureds. Furthermore, Fabian, Jr. II requested that the Ottawa County property be added to the existing insurance policy covering the Van Buren County premises. As the trial court noted, Fabians II "were contractually obligated to insure that property against destruction so as not to impair the value of the collateral. After breaching that contractual obligation for several years, [Fabians II] did insure the property with the plaintiff but mistakenly or intentionally identified the wrong secured party when they added it to the existing policy." A common-sense reading of the policy in light of these facts compels the conclusion that the actual insureds were Fabians II. Furthermore, defendants' contention that Gobels Pork acquired an insurable interest in the Ottawa County property by entering into a buyout arrangement with the federal government is inaccurate because Fabian, Jr. II testified that the buyout never materialized.

Finally, we reject defendants' allegation that Fabians I received no real benefit from the settlement check. Fabians I owed Farm Credit $55,600.95 under a mortgage on the Van Buren County property, with foreclosure imminent. This mortgage balance was paid off via the initial $70,000 settlement check. To say that Fabians I received no tangible benefit from the cancellation of their note and discharge of their mortgage is erroneous. No error appears.

III

Defendants also contend that the collective knowledge of plaintiff's agents and employees regarding the existence of a mortgage on the Ottawa County property in favor of Farmers Home should

be imputed to plaintiff, thus precluding its recovery on a theory of mistaken payment. The trial court addressed this matter as follows:

> All parties acknowledged the rule of law that a payment made under a mistake of material fact may be recovered. *Montgomery Ward [&] Co v Williams*, 330 Mich 275[; 47 NW2d 607] (1951); *General Motors [Corp] v Enterprise [Heat & Power] Co*, 350 Mich 176[; 86 NW2d 257] (1957). This is true even if there is negligence on the part of the party making the payment if the party who received the payment is not equitably prejudiced by the receipt [sic] of the payment. *General Motors, supra* [at 181.] In *Montgomery Ward, supra*, it could be said that the mistaken payments came about because of the payor's managing agent's improper claims forms. In this case the plaintiff's agent was understandingly confused by the similarity of the names of the two lenders. Defendant Fabian II was clearly the cause of the misunderstanding by submitting a proof of loss naming [Farm] Credit as the secured party.

Defendants rely on *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197; 476 NW2d 392 (1991), and *Montgomery Ward & Co, supra*, to support their position. In *Upjohn*, the Court ruled that measurements made by Upjohn employees regarding the unusually low level of by-product in a tank constituted sufficient information available to Upjohn, through its various employees, to allow the Court, applying the imputed-collective-knowledge standard, to find, as a matter of law, that Upjohn must have expected the tank to be leaking. *Id.* at 213-215. In *Montgomery Ward*, *supra* at 284-285, the Court affirmed a jury verdict for the defendant, the plaintiff's employee, holding that a company insurance payment could not be recovered where made with full knowledge of all the circumstances upon which it was demanded, and without any artifice, fraud or deception on the part of the payee or duress of the person or goods of the plaintiff-payor. Noting blackletter law that money voluntarily paid with full knowledge of the facts cannot be recovered on the ground that payment was made under a misapprehension of the legal rights and obligations of the payor, the Court concluded that the plaintiff "should be held chargeable with the knowledge gained by its manager from the oral notice of injury he received on April 23, 1945. The verdict of the jury finds support in defendant's testimony. We are not inclined to substitute our conclusions on questions of fact for those of a jury where there is competent evidence to support their verdict." *Id.* at 285.

Plaintiff relies on cases such as *Couper v Metropolitan Life Ins Co*, 250 Mich 540, 544-545; 230 NW 929 (1930); *Pingree v Mutual Gas Co*, 107 Mich 156, 159-160; 65 NW 6 (1895) and *Adams v Auto Club Ins Ass'n*, 154 Mich App 186, 194; 397 NW2d 262 (1986). In *Couper*, the defendant, because of an error by one of its employees, mistakenly paid the plaintiff $700 more than the plaintiff was entitled under an insurance policy. The facts in *Couper* were complicated by the duplicity of the plaintiff's father's trial testimony and by the fact that the defendant's agent admitted that the mispayment had been made despite the fact that all of the claim papers showing the correct inception date of the disability had gone through his hands to the home office, with his full knowledge of everything contained in them. *Id.* at 544. The Court reversed a verdict for the plaintiff and remanded with directions to enter a judgment for the defendant, commenting, "It is well settled law that a payment,

although voluntarily made, if made under a mistake of a material fact, may be recovered, even if the mistake be due to a lack of investigation." *Id.*

In *Pingree, supra* at 159-160, the Court ruled in favor of a consumer who paid excessively high gas charges in ignorance of the fact that they were excessive, where an ordinance provided that the gas company could not charge consumers more than an average of the rates charged in certain cities. Concerning the allegation that the plaintiff was negligent in not ascertaining the excessiveness of the charges, the Court remarked:

> But mistake of fact usually arises from lack of investigation. The fact in the present case was not one with which the defendant had nothing to do. Its duty was to know the fact. It presented the bills containing the excessive charges. . . . [T]he rule is general that money paid under a mistake of material facts may be recovered back, although there was negligence on the part of the person making the payment. [*Id*. at 160.]

In *Adams, supra* at 194, this Court stated, "At common law, it was recognized that a payment made under a mistake of fact when not legally payable may be recovered provided the payment has not caused such a change in the position of the payee that it would be unjust to require a refund." The Court in *Adams* cited *General Motors Corp v Enterprise Heat & Power Co,* 350 Mich 176; 86 NW2d 257 (1957), wherein the Supreme Court held at pp 182-183, that a mutual mistake involving overpayment on a construction contract was one regarding an existing fact, was material to the entire transaction, and entitled the overpaying party to a refund.

Reviewing the facts in light of this case law, and mindful that findings of fact by the trial court may not be set aside unless clearly erroneous, MCR 2.613(C), we concur with the trial court's ruling for plaintiff. An important factor supporting this conclusion is the trial court's factual finding that plaintiff's claims representative was genuinely unaware of the fact that the insurance agency and certain of plaintiff's employees had added Farmers Home as mortgagee to the existing insurance policy covering the Ottawa County property, and that he honestly interpreted telephone calls made to him by Farmers Home as emanating from Farm Credit. Another element in this determination is the unfortunate conduct of Fabian, Jr. II. He failed to maintain insurance on the Ottawa County property for ten years although required by contract with Farmers Home to do so, failed to disclose to plaintiff or the insurance agency that Farmers Home was mortgagee of the Ottawa County property, never revealed that Farm Credit had nothing to do with that property, even though he knew that was true, and falsely swore on two proofs of loss that Farm Credit had an interest in the Ottawa County property at the time of the loss. Based on all of the evidence, we believe that *Upjohn* and *Montgomery Ward* are distinguishable and that the trial court should be affirmed on this issue.

IV

Defendants next argue that the language of Farmers Home's mortgages on the Ottawa County property was insufficient to create an equitable lien on the part of Farmers Home to the insurance proceeds paid for the fire loss. Therefore, plaintiff cannot legitimately claim that it is equitably entitled to

recoup money it paid to Farm Credit, on the theory that it was obligated to pay Farmers Home pursuant to the latter's purported right to the proceeds. The trial court decided otherwise. Under the unusual facts and circumstances of this case, we need not alter the result reached by the trial court.

Paragraph (8) of the covenants and agreements contained in the mortgages issued by Farmers Home, as mortgagee, to Fabians II, as mortgagors, and covering the Ottawa County property requires Fabians II "[t]o keep the property insured as required by and under insurance policies approved by the Government and, at its request, to deliver such policies to the Government." This clause should be contrasted with that appearing in Farm Credit's mortgage to Fabians I, covering the Van Buren County property, requiring insurance coverage and "any policy evidencing such insurance to be deposited with, and loss thereunder to be payable to, mortgagee as its interest may appear." The trial court recognized this difference, stating, "However: the FHA mortgages do not expressly require that the mortgagor must list FHA as a mortgagee on all insurance policies purchased by the mortgagor covering the mortgaged property."

The law governing this issue is stated in 4 Couch, Insurance, 3d, § 65:2, pp 65-9 & 65-10:

> The mere existence of the mortgage relationship does not, in itself, entitle the mortgagee to all or any part of the proceeds of insurance procured by the mortgagor. The mortgagee has no interest in the proceeds unless the mortgagee is named in some way in the contract of insurance or in the mortgage as being entitled to the proceeds of the insurance, or unless the policy has been assigned to him or her, or the mortgagor has agreed with him or her that he or she is entitled to the proceeds, or the mortgagor agreed to procure insurance for his or her benefit.

This general rule has been stated analogously in Anno: *Right of holder of mortgage or lien to proceeds of property insurance payable to owner not bound to carry insurance for former's benefit*, 9 ALR2d 299, § 2, p 301, as follows:

> Regarding a policy of property damage insurance as purely a matter of personal contract between the insurer and the insured, the courts, . . . adhere to the rule (except in a few isolated cases, or where express statutory provisions to the contrary control), that the holder of a mortgage or other lien on property has no right to the proceeds of insurance taken out thereon by the owner and made payable to himself, where such owner has not bound himself to carry insurance for the former's benefit. The point has also been made in some of the cases that the mortgage or other lien was on the property itself, and did not extend to the proceeds of insurance thereon; likewise, that the proceeds of a policy of insurance represent a debt resulting from the contract of insurance, and not the property.
>
> It has been observed by the courts in some instances that if a lienor desired to protect himself from loss, he might have negotiated a policy for his own benefit, and have protected himself from loss.

Finally, *Cottrell v Clark*, 126 Mich App 276, 280-281; 337 NW2d 58 (1983), states:

> When a mortgagor is contractually bound to obtain fire insurance *for the benefit of a mortgagee*, but fails to list the mortgagee on the policy, benefits payable to the mortgagor under the policy may be subject to an equitable lien in favor of the mortgagee. . . . . Such equitable liens, however, have been imposed only on the proceeds actually due and payable to the mortgagor. A lien may not be imposed on funds not otherwise payable to the mortgagor. [Emphasis added.]

Earlier, this Court had noted that the "mortgage agreement between the Clarks and Cottrells required the Clarks to insure the property for the Cottrells' benefit." *Id.* at 278. Because the Farmers Home mortgages do not contain similar language, *Cottrell* does not support plaintiff's position.

The interpretation of this mortgage language was not adjudicated at trial, and we find it unnecessary to do so on appeal. The trial court's holding is independently sustainable on the ground that plaintiff was equitably obligated to pay Farmers Home because (1) it was plaintiff's standard practice to include the mortgagee's name on claim checks, (2) plaintiff had added Farmers Home to the policy as mortgagee before the claim was paid, and (3) plaintiff's claims representative assured a representative of Farmers Home that the mortgagee's name would be on the claim check. As a result, plaintiff was equitably obligated to pay Farmers Home for the loss.

V

Defendants further contend that because Farm Credit accepted the insurance proceeds from a loss on property regarding which it had no interest as a mortgagee, there exists no rational basis for the trial court's assertion that it would be inequitable to place Farm Credit back in its original position. The trial court found that "Farm Credit knew that [Fabians I] had not suffered a casualty loss and knew of no reason for them to be named on the check, but they took the check in payment of the mortgage on [Fabians I's] farm." The court then held that "[Farm] Credit, on the other hand, did not have any part in the misrepresentation and it would be inequitable to place them back in the position of having again to accept the credit risks of their loan." The trial court made "[b]rief, definite, and pertinent findings and conclusions on the contested matters . . . without overelaboration of detail or particularization of facts," MCR 2.517(A)(2). Furthermore, its determination that it would be inequitable to reinstate Farm Credit's mortgage on the Van Buren County property does not appear clearly erroneous. MCR 2.613(C).

VI

Defendants also argue that the trial court failed to render findings of fact or conclusions of law regarding certain particulars in this case, thus violating MCR 2.517. We disagree. In actions tried without a jury, the trial court's findings and conclusions regarding contested matters are sufficient if brief, definite, and pertinent, without over-elaboration of detail or particularization of facts. MCR 2.517(A)(2); *People v Lewis*, 168 Mich App 255, 268; 423 NW2d 637 (1988). Findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the

law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995).

Our review of the record compels the conclusion that the court's compliance with MCR 2.517(A)(2) is adequate and permits our review of the issues that defendants raise. No prejudicial error occurred.

VII

Lastly, defendants argue that the mortgage included in the trial court's judgment is faulty because it does not mirror the terms of the original mortgage between Fabians I and Farm Credit. Although the court's judgment/mortgage is not identical to the Farm Credit mortgage that was discharged, the difference does not require reversal. We do not believe that the trial court, when formulating the remedy in this case, was bound by any principle of law or equity demanding strict parity between the two mortgages. The court-imposed mortgage sufficiently parallels the original mortgage to preclude reversal on the ground of disparity.

Affirmed.

/s/ Jane E. Markey
/s/ William B. Murphy
/s/ Robert B. Burns