FILED
MAY 2 3 1989
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FRANCES BRENT,

Plaintiff-Appellant,

vs.

YOUNKERS, INC.,

Defendant-Appellee,

and

FIREMAN'S FUND INSURANCE COMPANY,

Intervenor-Appellee.

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9-120
88-926

Appeal from the Iowa District Court for Polk County (67-39645), Ray A. Fenton, Judge.

Plaintiff appeals from an adverse judgment of the district court. **AFFIRMED.**

Thomas Mann, Jr., Des Moines, for plaintiff-appellant.

Philip H. Dorff, Jr., of Hopkins & Huebner, Des Moines, for defendant-appellee and intervenor-appellee.

Considered by Donielson, P.J., and Hayden and Habhab, JJ.

PER CURIAM 51

Plaintiff, Frances Brent, bought a fur coat from defendant, Younkers, Inc. She also bought, through Younkers, a Fireman's Fund "customer's insurance" policy insuring the coat for its full value of $3,000.

Brent later stored the fur coat in a Younkers fur storage facility operated by a lessee, Evans, Inc. A fire occurred at the storage facility. One hundred and fifty furs were destroyed. Plaintiff's coat was one of those destroyed. Defendant, Younkers, was not an additional named insured on the insurance policy purchased by and issued to plaintiff. Evans, Inc. is a separate company which leased the Fur Department from Younkers, Inc. Intervenor, Fireman's Fund Insurance Company, also insures Evans, Inc., under a separate policy, and Younkers, Inc., is an additional named insured on that policy. On September 30, 1985, intervenor paid a total of $3,000 to plaintiff in full payment and reimbursement under her insurance policy for loss of her fur coat. Plaintiff had stored her fur coat in the storage facility at Younkers, Inc. The storage agreement between plaintiff and defendant provided defendant, Younkers, Inc., agreed to keep the coat in storage, to keep it safe, and that in case of loss, to either repair, replace, or pay plaintiff the amount of loss or damage.

These above facts were stipulated to by the parties.

The trial court entered judgment for plaintiff and against defendant, Younkers, Inc., for $3,000. The trial court further ordered intervenor be subrogated in the judgment in the amount of $3,000, the amount it had paid to plaintiff.

Plaintiff appeals, claiming 1) she is entitled to an additional $3,000 from defendant, 2) intervenor is not entitled to be subrogated to plaintiff's interest, and 3) the trial court considered matters not in evidence.

Our scope of review is for errors at law. Iowa R. App. P. 4.

The trial court, in an order dated August 31, 1988, declared it did not consider any matters in deciding this case that were not in evidence. We have no reason to disbelieve the trial court and we reject plaintiff's allegation in this respect.

Here, intervenor paid in full for the total loss of her fur coat. Payment of a total loss by an insurer works an equitable assignment to the insurer of all remedies which the insured had for recovery of the property's value, and this right is not dependent upon, nor does it grow out of any privity of contract or upon written assignment of the insured's claim, as payment by the insurer to the insured makes the insurer an assignee in equity. Conner v. Thompson Const. & Devel. Co., 166 N.W.2d 109 (Iowa 1969). Furthermore, if, as plaintiff has done in the present case,

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an insured brings suit in his or her own name, the insurance company is entitled to a lien on the plaintiff's recovery, up to the amount of the insurance company's payment under the policy it issued to its insured. See, e.g., United Sec. Ins. Co. v. Johnson, 278 N.W.2d 29 (Iowa 1979).

The trial court's finding intervenor is subrogated to plaintiff's recovery against Younkers is consistent with these recognized rules of law, and is supported by the record evidence.

AFFIRMED.