FILED
AUG 27 1986
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

278

LOUIS K. RISKEN,

Plaintiff-Appellant,

vs.

ABE D. CLAYMAN and JOSEPH HYMAN, Trustees of the Betty Clayman Trust,

Defendants-Appellees.

Filed August 27, 1986

5-705
85-541

Appeal from the Iowa District Court for Polk County (No. CE 21-12423) - Dick Strickler, Judge.

Plaintiff vendee appeals from trial court's order in a declaratory judgment action. **REVERSED.**

Gerald B. Feuerhelm, Des Moines, for plaintiff-appellant.

James G. Prescott, Des Moines, for defendants-appellees.

Heard by Oxberger, C.J., and Hayden and Sackett, JJ., but considered en banc. Oxberger, C.J., takes no part.

SACKETT, J. 279

Plaintiff Louis Risken appeals from an order rendered by Judge Dick Strickler, Polk County District Court, ruling that a previous order rendered by Judge Ray Hanrahan was res judicata for the case and ordering him to tender certain insurance proceeds to Defendants Abe Clayman and Joseph Hyman as trustees of the Betty Clayman Trust. Plaintiff contends he was entitled to the insurance proceeds paying for a fire loss on real estate being sold on an installment sales contract. Defendants obtained the property in a forfeiture action. We agree.

In 1980, the defendants sold a parcel of real estate to Bill and Virginia Couch on an installment real estate contract. The Couches made payments totaling $15,200 towards the purchase price, including a $5,000 down payment. In December, 1981, Couches conveyed their interest in the property to plaintiff[1]. The installment sale contract set forth the following regarding insurance:

> 5. INSURANCE. Sellers agree to carry existing insurance until the date of possession and Buyers agree to accept the insurance recovery instead of replacing or repairing buildings or improvements. Thereafter until final settlement, Buyers agree to keep the improvements upon said premises insured against loss by fire, tornado and extended coverage for a sum not less than $32,500.00 or the balance owing under this Contract, whichever is less, with insurance payable to the Sellers and Buyers as their interests may appear and to deliver policies therefor to Sellers.

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[1]Plaintiff is the assignee of the original vendees. Neither party argues the duties of plaintiff under the contract are different from those of the original vendees. While the minority of this court would go beyond the stipulated facts and determine plaintiff made no payment to the original vendor for their interest, we find the plaintiff to be in the same position as assignee, with reference to this defendant, whether he paid the original purchaser for the interest or it was gifted to him.

In January, 1983, plaintiff entered into an insurance contract covering the buildings on the property with U.S. Fire Insurance Company. In March, 1983, a fire occurred on the premises resulting in a loss of $18,980.43. A check from U.S. Fire was issued for this amount, payable to both plaintiff and the defendants.

On May 13, 1983, defendants served plaintiff with a notice of forfeiture of the real estate contract for delinquent installment payments and nonpayment of real estate taxes. Plaintiff commenced an action in Polk County District Court, No. CE 19-11011, to enjoin the forfeiture. Plaintiff asked the district court to order the insurance proceeds be used to pay the contract delinquencies. The district court ruled there was a substantial default on the contract and allowed the forfeiture to stand. No appeal was taken from that order.

Plaintiff subsequently filed a petition for declaratory judgment, raising the question of who was entitled to the insurance proceeds. The parties stipulated to the following facts:

> (A) That following the fire, the property's value was $40,000 without repair of the structure;
> (B) The court, in CE 19-11011 [the earlier action], concluded that the insurance proceeds could not be used to pay Defendants the delinquency on the contract with the balance paid to the Plaintiff for the reason that such a disposition of the insurance proceeds would not be in accord with the insurance provision (paragraph 5) of the contract of the parties; and
> (C) That action CE 19-11011 made no specific disposition of the insurance proceeds.

Judge Strickler ruled that Judge Hanrahan's previous order was res judicata as to the case and ordered plaintiff to tender the insurance proceeds to the defendants. This appeal followed.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the findings of fact of the trial court, especially when considering the credibility

of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7); Kendall v. Lowther, 356 N.W.2d 181, 183 (Iowa 1984).

I.

Plaintiff contends that the trial court erred in ruling the issue of entitlement to the insurance proceeds had been decided in the earlier action and was barred by res judicata. Plaintiff argues the only issue presented in the first action was whether the insurance proceeds could be used to satisfy the plaintiff's delinquent payments on the contract to prevent forfeiture. Defendants claim that the issue of who should receive the insurance proceeds was an inherent part of the ruling in the earlier action and therefore plaintiff is barred from relitigating this issue on the basis of res judicata.

The doctrine of res judicata has historically been a cornerstone of the Anglo-American body of law:

> The doctrine of res judicata is that an existing final judgment rendered upon the merits, without fraud or collusion by a court of competent jurisdiction, is conclusive of rights, questions, and facts in issue as to the parties and their privies, in all other actions in the same way or any other judicial tribunal of concurrent jurisdiction.

Jorge Const. Co. v. Weigel Excavating & Grading Co., 343 N.W.2d 439, 443 (Iowa 1984) (citing In re Ramsay's Estate, 240 Iowa 50, 59, 35 N.W.2d 651, 656 (1949)). For reasons of clarity, the Iowa courts use the terms "issue preclusion" and "claim preclusion" in place of the generic term res judicata. Israel v. Farmers Mutual Ins. Ass'n, 339 N.W.2d 143, 146 (Iowa 1983).

A. Issue Preclusion. We first look at issue preclusion. Issue preclusion prevents parties to a prior action in which judgment has been entered from relitigating in a subsequent action issues raised and resolved in the previous action. Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1981). Four prerequisites are required before the doctrine of issue preclusion can properly

be applied in any given case:

> (1) the issue concluded must be identical;
>
> (2) the issue must have been raised and litigated in the prior action;
>
> (3) the issue must have been material and relevant to the disposition of the prior action; and
>
> (4) the determination of the issue in the prior action must have been necessary and essential to the resulting judgment.

Matter of Estate of Bruene, 350 N.W.2d 209, 213 (Iowa Ct. App. 1984).

1. **The issue concluded must be identical.** Plaintiff, in his petition for declaratory judgment, framed the issues as follows:

> 9. That on January 20, 1984 the Polk County District Court ruled that there was substantial default on the contract and that forfeiture was appropriate. In its ruling the Court specifically made no ruling disposing of the insurance proceeds.
>
> 10. That there now remains the question of who is entitled to the insurance proceeds. Each party now asserts an adverse claim as a legal right to said proceeds and thus an actual present controversy exists herein.
>
> 11. That unless a construction and interpretation of the contract and the insurance policy is made by the Court and an adjudication is made to guide the parties in future conduct to preserve their respective legal rights, such rights will be in jeopardy and the Plaintiff will suffer irreparable loss and damage.

Judge Hanrahan, in his decree filed January 20, 1984, set forth the issues to be decided in that action:

> He [plaintiff] asks that the defendants be enjoined from enforcement of the forfeiture, that a constructive trust be declared in favor of the plaintiff on the $18,980.43 insurance proceeds, that the Court require defendants and plaintiff to endorse the insurance draft, "Directing plaintiff to pay and defendants to accept therefrom those sums, if any, which are currently owing defendants by plaintiff under the contract, and deliver the balance to the plaintiff."

In concluding that plaintiff was in substantial and deliberate default, the trial

court ruled plaintiff was not entitled to have the insurance proceeds applied to cure the forfeiture. The trial court also found:

> [T]he defendants have asked for no affirmative relief as to the insurance proceeds. As to the insurance proceeds, the only issue raised by the pleadings is whether or not the plaintiff should be afforded the relief he asks; namely, that the proceeds be used to pay defendants the delinquency on the contract with the balance paid to the plaintiff.

However, defendants contend the issue of ownership of the proceeds raised in plaintiff's present petition was also the same issue raised in the prior action. Defendants assert their proposition is supported by language in Judge Hanrahan's decree:

> The insurance provision (of the contract) must be considered together with the entire real estate contract between the parties. The defendants, by virtue of the real estate contract, are beneficiaries of the insurance contract between Risken and the insurance company. (emphasis added)

Upon an examination of the entire record, we determine despite the reference in the decree to the defendants being beneficiaries of the insurance contract, the issue in the first cause of action was whether the insurance proceeds could be applied to the balances owing to avoid forfeiture while the issue in the instant case is which party is entitled to the insurance proceeds after the contract had been forfeited. Judge Hanrahan expressly stated in his decree that the only issue to be decided was whether the insurance proceeds could be applied to balances owing. In addition, both parties stipulated to the following facts:

> 12. The Court, in CE 19-11011, concluded that the insurance proceeds could not be used to pay Defendants the delinquency on the contract with the balance paid to the Plaintiff for the reason that such a disposition of the insurance proceeds would not be in accord with the insurance provision (paragraph 5) of the contract of the parties.
>
> 13. That action CE 19-11011 made no specific disposition of the insurance proceeds.

Therefore, the issue raised in the present case is not the same as that raised in the previous action.

2. The issue must have been raised and litigated in the prior case. As we noted above, the only issue raised and litigated in the earlier action was whether plaintiff was entitled to have the insurance proceeds applied to the balances owing under the real estate contract to avoid forfeiture. Defendants never raised the issue of disposition of the insurance proceeds upon forfeiture, and both parties stipulated that no disposition had been made.

3. The issue must have been material and relevant to the disposition of the prior action. The crux of plaintiff's claim in the prior action was whether under the real estate contract it was permissible for plaintiff to have defendants apply the insurance proceeds to the remaining debt still owed them by plaintiff and not whether either party should have sole right to the insurance proceeds.

4. Was the determination made of the issue in the prior action necessary and essential to the resulting judgment. The issue of whether the insurance proceeds should be applied to the unpaid contract installments was necessary to the resulting judgment in the earlier action. The issue of who was entitled to the proceeds if they were not used to satisfy the indebtedness was not essential.

Based on these facts we find the plaintiff did not assert the same issue in CE 19-11011 which he now asserts. The court in CE 19-11011 did not award the insurance proceeds to either party and thus there was no adjudication of either party's right to the insurance proceeds.

B. Claim Preclusion. We next address the issue of whether plaintiff's present action was barred by the doctrine of claim preclusion. In B & B Asphalt Co. v. T. S. McShane Co., 242 N.W.2d 279, 286 (Iowa 1976), the court discussed the effects of claim preclusion:

> Claim preclusion under the doctrine of res judicata is based on the principle that a party may not split or try is claim piecemeal, but must put in issue and try his entire claim or put forth his entire defense in the case on trial. [citations omitted] An adjudication in a former suit between the same parties on the same claim is final as to all matters which could have been presented to the court for determination. A party must litigate all matters growing out of his claim at one time and not in separate actions. [citations omitted]

In the application of claim preclusion to situations where it is claimed a prior judgment bars a subsequent action, the court has said:

> . . . [T]he principle is incorporated in Restatement of Judgments § 63:
>
> > "Where a judgment on the merits is rendered in favor of the defendant, the plaintiff is precluded from subsequently maintaining an action on the same cause of action although he presents a ground for the relief asked other than those presented in the original action, except where the defendant's fraud or misrepresentation prevented the plaintiff from presenting such other ground in the original action."
>
> It is necessary to determine whether plaintiff's first and second actions were the same claim or cause of action within the meaning of this principle.
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> Guidance in making that determination exists in Williamson v. Columbia Gas & Electric Co., 186 F.2d 464 (3 Cir. 1950), cert. denied, 341 U.S. 921, 71 S.Ct. 743, 95 L.Ed. 1355 (1951). In Williamson, the plaintiff brought separate actions seeking the same recovery on different theories. The first action was based on allegations of conspiracy in violation of the Sherman Act, the second on allegations of violation of the Clayton Act. The court held a dismissal of the second action was a bar to the first action. In doing so the court said:
>
> > "As pointed out above, the acts complained of and the demand for recovery are the same. The only thing that is different is the theory of recovery. The same witnesses and documents will be necessary in the trial in both cases. No material fact is alleged in action No. 1 that was not alleged in action No. 2, save the allegations of conspiracy. Everything that plaintiff was entitled to

> ask for from defendant was included in action No. 2." Id. at 470.

B & B Asphalt Co. v. T.S. McShane Co., 242 N.W.2d at 286. Thus, under Iowa law, where a judgment on the merits is rendered in favor of the defendant, a plaintiff is precluded from subsequently maintaining an action on the same cause of action, even though his or her present grounds for relief are different from those alleged in an original action, absent defendant's fraud or misrepresentation. Id. at 286. The precluded party, however, must have been afforded a full legal opportunity for investigation and determination of the merits. Smith v. Updegraff, 744 F.2d 1354, 1362 (8th Cir. 1984).

Plaintiff argues that the issue of who has the right to the insurance proceeds was not part of the first cause of action because such an issue did not arise until the contract was forfeited. Defendants contend in essence that Judge Hanrahan's decree ordering forfeiture disposed of the issue. Defendants claim that a decision as to whom the insurance proceeds belonged was inherent in the determination of whether the insurance proceeds could be applied to the debt, that the prior case resulted in the insurance proceeds being awarded to them and that the present suit is just a new theory of recovery.

However, we determine the cause of action in the prior action was whether under the real estate contract, taken together with the insurance provision, the plaintiff could compel the defendants to apply the insurance proceeds towards payment of the balances due to prevent forfeiture. Crucial to this determination was the nature and extent of plaintiff's default and a consideration of the insurance clause as it related to the entire real estate contract. In the present cause of action none of these claims have again been raised for adjudication. Rather, the main thrust of the instant case is whether a vendor who has elected to commence forfeiture against a vendee and the land has been returned to the vendor,

has thereby surrendered his rights to the insurance proceeds and the proceeds are to be awarded to the vendee. The recovery sought in each case is different.

We therefore conclude plaintiff's present action was not barred by the doctrine of claim preclusion because there was no final adjudication of the claim regarding the insurance proceeds in the first cause of action. See Mulkins v. Board of Supervisors of Page County, 374 N.W.2d 410, 414 (Iowa 1985).

II.

The second issue on appeal is whether the trial court was correct in awarding to the defendants the entire insurance proceeds. Plaintiff contends that because defendants chose to proceed with forfeiture of the real estate contract rather than applying the proceeds to the remaining indebtedness, that once defendants took back the property, plaintiff's liability for the unpaid purchase money was extinguished and therefore the defendants possessed no interest in the insurance proceeds.

Defendants, on the other hand, argue the forfeiture resulted in their being entitled to the entire proceeds. They contend the proceeds are theirs because had the improvements not burned when the court ordered the contract forfeited they would have received the land with improvements. The defendants are correct in their assertion that had the improvements not burned the improvements would have been forfeited with the contract. However, we do not accept that defendants' contention also determined the disposition of the insurance proceeds. When the buildings burned they were gone from the real estate. Defendants' security interest in the building was replaced by a chose in action to compel payment of the insurance proceeds. Defendants' interest in the insurance proceeds was measured by the balance due on the installment contract. Kintzel v. Wheatland Insurance Ass'n, 203 N.W.2d 799, 803-04 (Iowa 1973); Farmers Sav. Bank, Joice v. Gerhart, 372 N.W.2d 238, 242 (Iowa 1985).

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In Kintzel, the court discussed the interests of a mortgagee in the insurance proceeds in relation to a contract provision which provided that insurance proceeds be payable to the parties "as their interests appear." Kintzel, 203 N.W.2d at 803-04. The Kintzel court stated that "[i]rrespective of the policy terms, our rule [is] that a mortgagee, by a covenant or condition in the mortgage, may acquire an interest in a policy of insurance issued to the mortgagor . . . ." Id. The court also stated that the mortgagee's interest under the contract is measured by the unpaid purchase price, reinforced by the mortgagor's obligation to keep the premises insured for the mortgagee's benefit for a sum not less than the unpaid balance of the purchase price. Id. at 803. See Farmers Sav. Bank, Joice v. Gerhart, 372 N.W.2d 238, 242 (Iowa 1985); First Trust Stock Land Bank of Chicago v. Duroe, 212 Iowa 795, 799, 237 N.W. 319, 321 (1931).

When a mortgagor/vendee has defaulted in the performance of a contract for the purchase of real estate, the mortgagee/vendor may elect from a number of remedies:

> (1) keep good their tender of performance, demand the balance of the purchase price, and sue for specific performance;
>
> (2) terminate the contract because of vendee's breach; keep their land, and sue for damages for the breach;
>
> (3) rescind the contract in toto; or
>
> (4) enforce a forfeiture.

Abodeely v. Cavras, 221 N.W.2d 494, 497-98 (Iowa 1974). When the mortgagee/vendor exercises his or her option to declare a forfeiture, and thus terminates the contract, "the vendor cannot, in respect to this same default, thereafter change his position and at the same time or at another time proceed on a theory based on affirmance by suing for damages for breach of contract or for specific performance . . . ." Id. at 498. In Gray v. Bowers, 332 N.W.2d 323, 325 (Iowa

1983), the court explained this rule:

> This conclusion has reference to our holding in Abodeely v. Cavras, 221 N.W.2d 494, 497-98 (Iowa 1974) that when a vendor exercises a right of forfeiture against a defaulting vendee, the liability of the latter for the unpaid purchase money is extinguished. While it is true that this result is triggered by the election of a remedy, i.e., the forfeiture of the contract, the end result is not dependent on the doctrine of election of remedies. Such result instead flows from the fact that the contract between the parties has been terminated, thereby extinguishing any right to recover the unpaid purchase price. The same result has been reached in cases involving abandonment or rescission of the contract. [citations omitted] We are reluctant to permit circumvention of this result by means of contract clauses which reserve to the vendor a right to receive additional payment after forfeiture. (emphasis added)

Plaintiff contends when defendants elected to enforce a forfeiture they got the land and lost all further rights under the contract. Thus, plaintiff asserts the insurance proceeds are his. To address plaintiff's argument we need first determine the interest of defendants in the insurance contract. The extent and nature of defendants' interest in the insurance contract is determined from the sales contract. See Kintzel, 203 N.W.2d at 803. The sales contract provided the interest of defendants was measured by the unpaid purchase price, reinforced by the buyer's obligation to keep the premises insured for the seller's benefit "for a sum not less than $32,500 or the balance owing under this contract, whichever is less. . ." See Kintzel, 203 N.W.2d at 803.

The defendants had an equitable lien upon the insurance proceeds to the extent of the unpaid purchase price. See Farmers Sav. Bank, Joice, 372 N.W.2d at 242; First Trust Stock Land Bank of Chicago v. Duroe, 212 Iowa 795, 799, 237 N.W. 319, 321 (1931). When defendants elected to forfeit the real estate contract against the defaulting plaintiff, the plaintiff's liability for the unpaid purchase price was extinguished. Gray, 332 N.W.2d at 325; Abodeely v. Cavras,

221 N.W.2d 494, 497-98 (Iowa 1983); First National Bank v. LaBarron, 201 Iowa 853, 855-56, 208 N.W. 364, 366 (1926).

In Farmers Sav. Bank, Joice v. Gerhart, 372 N.W.2d 238, 243 (Iowa 1985), the court examined the rights of parties to insurance proceeds in a mortgage foreclosure action:

> The great weight of authority follows the rule that denies a mortgagee the right to insurance proceeds from losses predating the foreclosure sale when the mortgagee bids the outstanding amount of the judgment. (citations omitted). Whitestone Savings & Loan Ass'n v. Allstate Insurance Co., 28 N.Y.2d 332, 337, 270 N.E.2d 694, 697, 321 N.Y.2d 862, 866 (1971). The basic reason for this rule was stated in Whitestone as follows:
>
> > Because a mortgage is entitled to one satisfaction of his debt and no more, the bidding in of the debt to purchase the mortgaged property, thus cutting off other lower bidders, has always constituted a satisfaction of the debt. . . . The point is that the mortgagee has voluntarily converted the debt into the property and has done so by taking the property in satisfaction of the debt. It could have bid less, thus leaving a deficiency for which the mortgagor would be obligated and from which there would survive an insurable interest. It could have bid more, in which event there would have been a surplus in favor of the mortgagor or subsequent lienors but no insurable interest surviving in the mortgagee as mortgagee.
>
> 28 N.Y.2d at 335, 270 N.E.2d at 696, 321 N.Y.S.2d at 864 (citations omitted). The facts in the present case differ slightly because the mortgagee has recovered the insurance proceeds and held them prior to the foreclosure sale. Despite this, precedent still favors the mortgagor's right to the proceeds if the sale stands. (emphasis added).

When defendants elected to forfeit the real estate contract they voluntarily converted the debt into the property and in doing so took the property in satisfaction of the debt. Defendants' lien on the insurance proceeds is determined by the unpaid purchase price and the plaintiff's liability for the unpaid purchase

price having been extinguished by the forfeiture plaintiff is entitled to the insurance proceeds.[2] We reverse the trial court on this issue and direct defendants to endorse and tender the insurance check to plaintiff.

Because of our holding we need not address plaintiff's further argument that to give defendants the insurance proceeds plus the forfeited real estate clearly results in defendants receiving a windfall.[3]

REVERSED

All judges concur except Donielson, J., who dissents.

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[2]The result defendants urge would make forfeiture more advantageous than foreclosure.

[3] The parties stipulated the forfeited property was worth $40,000. The balance owing at time of forfeiture was about $32,000.

DONIELSON, J. (dissenting)

I respectfully dissent. While I concur with the majority's treatment of the res judicata issues in Division I and discussion of legal authority found in the entitlement to proceeds in Division II, I cannot agree with the result in this case. The majority has conveniently skirted the fundamental equitable issue by holding that defendant's lien on the insurance proceeds was determined by the unpaid purchase price so that when defendants chose to foreclose, plaintiff's liability on the purchase price was extinguished and plaintiff therefore became entitled to the insurance proceeds.

The majority then indicates that "because of our holding we need not address plaintiff's further argument that to give defendants the insurance proceeds plus the forfeited real estate clearly results in defendants receiving a windfall." Given the specific facts of this case along with the latitude provided an appellate court by de novo equitable review, I find the result in this case to be unwarranted. In effect, Risken will receive a $40,000 windfall because the record establishes that he never paid <u>any</u> money for this property. Thus, I do not think allowing the defendants to receive the insurance proceeds would be an oppressive burden on this particular plaintiff.

The majority does not discuss the decision of the original trial court. Judge Strickler's order from March 20, 1985, provides:

> By virtue of Judge Ray Hanrahan's order, dated January 20, 1983 in case #CE 19-11011, the within requested court decision is Res Judicata.
>
> IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiff's claim for proceeds herein is denied; that Plaintiff herein shall forthwith endorse the draft in issue and tender same to Defendants.
>
> Costs herein taxed to Plaintiff.

I believe the reference to Judge Hanrahan's decision clearly entitles an appellate

court in an equity action to look at the factual basis provided in the referred to decision. Judge Hanrahan's order is part of the record and appendix. Even stipulated fact number 8 specifically discusses Judge Hanrahan's order. Thus, I disagree with the majority's claim that to refer to Judge Hanrahan's order is to "go beyond the stipulated facts."

I believe that after reviewing such facts, the trial court's decision should not be disturbed because as between Risken or the trustees of the Betty Clayman Trust receiving the proceeds, Risken deserves absolutely nothing.

In July of 1980, the real estate was sold on contract by the trustees of the Betty Clayman Trust to a third party, Mr. and Mrs. Couch. Risken was not a party to this transaction. The purchase price was $37,500, so the Couch's paid $5,000 down and agreed to have insurance coverage on the remaining value of the property which was $32,500. This contract was to be paid in full by August of 1985. The trial court found the Couch's made 30 monthly contract payments of $335 from July 1980 through December of 1982.

In December of 1981, the Couch's conveyed their interest to Risken. This transaction was not of record until January of 1983, nearly twelve months later. Risken claimed he paid $10,000 in cash to the Couchs. The trial court did not accept this as fact and concluded no payment was ever made. No explanation appeared in the record as to why this transaction occurred. Moreover, no payments were made by Risken for monthly rent from January of 1983 through May of 1983. Risken never paid any taxes. Not surprisingly, Risken did, however, pay the insurance premiums for the property. In March of 1983, the fire at issue occurred. Thereafter, the seller sought forfeiture because Risken had defaulted. Another unexplained fire occurred in June of 1983.

If the proceeds could be awarded to either the trustees or the Couchs, I would have no difficulty awarding the Couchs the insurance proceeds because

they paid $15,200 on the contract. Risken, however, never made any down payment, nor a single monthly payment. Had Risken made any down payment or made any monthly payment, then I undoubtedly would concur with the majority. Based on this factual situation, however, I cannot justify awarding these proceeds to this particular plaintiff. I find authority for my disposition in Farmers Savings Bank v. Gerhart, 372 N.W.2d 238 (Iowa 1985), where the court provided additional remedial relief to adjust the equities in a case involving fire to a mortgaged premises and stated, "[e]quity jurisdiction allows a court the necessary flexibility to determine the equities between the parties. A court of equity has the power to impose equitable terms upon a party as a condition to equitable relief." Id. at 245.

Albeit, one party will receive a windfall, but I believe Risken is less deserving of a $40,000 windfall than are defendants. Equity demands that Risken should not get $40,000 because he never paid anything for the property and will not lose any money if he does not receive any of the insurance proceeds.