

No. 60

HAIL INSURANCE—COMPROMISE OF PREMIUMS

Held: Where a person pays hail insurance premium, subsequent compromise of such indebtedness with Board of Hail Insurance, where fact of such prior payment is not disclosed to Board, is invalid.

March 26, 1941.

Board of County Commissioners
Fallon County
Baker, Montana

Gentlemen:

In your letter of recent date you present the following factual situation:

X owes a delinquent state hail insurance premium. Y holds a chattel mortgage on X's personal property. The Sheriff sells such personal property under foreclosure of the chattel mortgage and from the proceeds pays the delinquent hail insurance premium to the County Treasurer on December 2nd. Subsequently, X offers to pay a fraction of his delinquent hail insurance premium in full settlement of the state hail insurance claim. On January 7, the State Board of Hail Insurance, having no knowledge that the premium has been paid in full to the County Treasurer, accepts X's compromise offer. X and Y (whose chattel mortgage foreclosure did not net him the amount of X's indebtedness to him) each claim an amount from the county equal to the difference between the original hail insurance premium and the compromise figure.

We shall assume the personal property covered by the chattel mortgage consisted in part, at least, of crops upon which the state hail insurance premium was a lien, under Chapter 39 of the Revised Codes of Montana, 1935.

The State Board of Hail Insurance may compromise hail insurance premiums (Vol. 18, Opinions of the Attorney General, No. 95).

Such compromise is in legal effect an accord.

In 1 C. J. 569, the following language is found:

"If the accord and satisfaction is procured by fraud on the debtor's part—as, for instance, by false representations or by the suppression of material facts—it is not binding, since fraud vitiates all contracts; and hence, in an action on the original obligation, the effect of the accord and satisfaction may be avoided by showing these facts."

To the same effect see:

Dobinson v. McDonald, 92 Cal. 33, 27 Pac. 1098;

U. S. v. Golden, 34 Fed. (2nd) 367.

Here it appears the debtor, with knowledge that his hail insurance premium had been paid in full to the County Treasurer, attempted to settle his indebtedness for a small fraction of the amount thereof, failed to make a full disclosure of the facts, and the Board of Hail Insurance, without knowledge of the fact of prior payment, agreed to accept the offer.

No full disclosure having been made by the debtor, the agreement is not valid.

It follows, therefore, that neither X nor Y is entitled to the sum he is claiming—and the full amount of the premium should be transmitted to the State Treasurer as in other cases.

Sincerely yours,

JOHN W. BONNER
Attorney General