

A buyer validly contracted in writing to buy improved land from a seller. The contract had no contingencies and was silent as to risk of loss if there was damage to, or destruction of, property improvements between contract and closing, and as to any duty to carry insurance. As soon as the parties signed the contract, the seller (who had already moved out) canceled her insurance covering the land. The buyer did not know this and did not obtain insurance. A few days later, three weeks before the agreed closing date, the building on the land was struck by lightning and burned to the ground.

There is no applicable statute.

In an appropriate action, the buyer asserted the right to cancel the contract and to recover his earnest money. The seller said that because the risk of fire loss had passed to the buyer before the fire, the buyer must perform.

If the seller prevails, what will be the most likely explanation?

- A. Once the parties signed the contract, only the buyer had an insurable interest and so could have protected against this loss.
- B. The buyer's constructive possession arising from the contract gave him the affirmative duty of protecting against loss by fire.
- C. The seller's cancellation of her casualty insurance caused the risk of loss to transfer to the buyer.
- D. Upon execution of the contract, the buyer became the equitable owner of the land under the doctrine of equitable conversion.

Explanation:

A majority of jurisdictions apply the doctrine of **equitable conversion** when a land-sale contract is silent regarding the risk of loss (as seen here). Under this doctrine, the **risk of loss** is placed on the **party with equitable title** at the time the property was destroyed. The **buyer** receives equitable title **once the contract is formed** and **can be specifically enforced**. If no conditions/contingencies appear in the contract (eg, a condition that the buyer secure financing before closing), the contract is specifically enforceable as soon as it is formed. Therefore, the seller likely prevailed because the buyer was the equitable owner of the land when the building was destroyed.

(Choices A, B & C) Unless otherwise provided, a land-sale contract does not impose a duty on either the seller or the buyer to carry property insurance. Therefore, neither the signing of the contract nor the seller's cancellation of the insurance transferred the risk of loss to the buyer.

Educational objective:

Unless otherwise provided, the doctrine of equitable conversion places the risk of loss on the buyer once the land-sale contract is formed and can be specifically enforced.

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