

MICHAEL WELCH and
TAMMY WELCH, his wife,

Plaintiffs

vs.

BONNIE NOVIELLO
and BARRY ZARZYCZNY,

Defendants

: IN THE COURT OF COMMON PLEAS OF
: LYCOMING COUNTY, PENNSYLVANIA

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: NO. 02-01,902

: MOTION FOR SUMMARY JUDGMENT

Date: August 26, 2003

OPINION and ORDER

Facts/Procedural Background

This is a declaratory judgment action instituted by Plaintiffs Michael and Tammy Welch (hereafter “Welchs”), who are the buyers in a written sales agreement pursuant to property owned by Defendants Bonnie Noviello and Barry Zarzyczny. Welchs are first seeking a declaration that they are the owners of 395 East Second Avenue, South Williamsport, PA 17702 (hereafter “the property”). Welchs also seek a declaration that they are entitled to the fire insurance proceeds of the policy held by Bonnie Noviello.

Before the Court for determination is Welchs’ Motion for Summary Judgment filed May 21, 2003. Defendant Noviello timely filed a response on June 9, 2003. At the argument held on June 30, 2003, Defendant Zarzyczny joined in Noviello’s response without objection from the other parties. The Court finds that the following are the undisputed, material facts based upon the pleadings, the Summary Judgment Motion, responses, and attached documentation from discovery.

On June 3, 2001, Michael and Tammy Welch (hereafter “Welchs”) entered into an “Agreement of Sale” with Defendants Bonnie Noviello and Barry Zarzyczny for the purchase of real property located at 395 East Second Avenue, South Williamsport, Lycoming County, Pennsylvania. The Agreement of Sale (hereafter “Sales Agreement”) is attached as Exhibit “A” to Defendant Noviello’s Answer, New Matter and Counterclaim. It includes an addendum acknowledged on September 17, 2001. The Sales Agreement set the purchase price at \$55,000, and acknowledges that Welchs paid a sum of \$1,500 to Noviello and Zarazyczny at the execution of the sales agreement. Welchs were entitled to possession at that time. The sales agreement required Welchs to make monthly payments of \$500 commencing on June 2, 2001 and continuing until September 2, 2001. The entire unpaid principal amount was due at the beginning of September.¹ The sales agreement also required Welchs to make \$100 monthly payments for taxes beginning on July 2, 2001.

The sales agreement set September 1, 2001 as the closing date. The sales agreement stated that time was of the essence and the closing could not be extended unless there was mutual consent in writing.

The sales agreement specifically addressed the risk of loss and fire insurance in Paragraph 10, which provides:

10. MAINTENANCE/RISK OF LOSS/PROCUREMENT OF INSURANCE.

¹ The sales agreement states that Welchs were to make the monthly \$500 payments until September 2, 2001, “at which time the entire unpaid amount shall be due and payable.” The next sentence states, “The balance of Fifty-Three Thousand Two Hundred Seventy-Two Dollars and Seventy-Seven Cents (\$53,272.77) plus accrued interest, if not paid sooner, is due and payable, in full, on September 1, 2001.”

Buyers shall maintain the Property (and all items to be sold under this agreement) in its present condition, normal wear and tear excepted.

Buyers shall obtain fire and extended coverage insurance in an amount equal to the replacement costs of the property, but in no event less than Fifty-Five Thousand Dollars (\$55,000.00).

Sellers shall be named as additional insured on the policy of insurance and a copy shall be provided by Buyers to Sellers.

Buyers shall bear the risk of loss from fire or other casualties.

Sales Agreement, ¶10.

With regard to a possible breach of the contract, the sales agreement provided at Paragraph 16, the following:

16. DEFAULT.

(a) In the event of any default by Buyer in the payment of any monthly installment, or payment of real estate taxes, or of an assessment for public improvements of or any sum payable by Buyer pursuant to the terms of this Agreement, Seller may do either or both of the following:

(1) Seller may terminate this Agreement, provided, however, that as a condition precedent to the exercise of such right, Seller shall serve upon Buyer a written notice of termination ("notice"), which notice shall be either served personally or by registered or certified mail sent to the last known address of Buyer. The notice shall specify the nature of the default, and if the default arises from Buyer's failure to keep the premises in good repair pursuant to the provisions of this Agreement, the notice shall contain a reasonably specific statement of the items in disrepair. The notice shall specify the proposed date of termination, but in no case shall such date be less than ten (10) days after the date upon which the notice is served upon or received by Buyer (the "service date") if termination is to take place because of failure by Buyer to have made one or more monthly installments when due, or less than three (3) days after the service date if the termination is to occur because of failure by Buyer to make repairs as aforesaid or for failure to pay an assessment for public improvements. If the default(s) set forth in the notice shall have been cured by Buyer

prior to the proposed date of termination, then and is [sic] such event the contemplated termination shall not take place and this Agreement shall continue in full force and effect. If termination does take place, Seller may nevertheless maintain an action for damages for breach of this Agreement, as well as an action for the recovery of possession of the premises as may be provided by law or in this Agreement or both.

(2) In addition to termination, Seller may also bring action at Law or in Equity to recover damages for all losses resulting from the breach of this Agreement, which damages shall be limited to the recovery of any unpaid monthly installment(s) due to the surrender of the premises, or unpaid assessments or expenditures payable by Buyer under the terms of this Agreement . . . (emphasis added)

Sales Agreement, ¶16.

Welchs made monthly payments, but by September 2nd, had not obtained financing. The closing did not proceed in September 2001, as contemplated by the Agreement. Welchs, Noviello, and Zarzyczny entered into a written addendum to the sales agreement on September 17, 2001. The addendum extended the closing date until December 1, 2001. The addendum stated that all other terms of the sales agreement remained the same. Welchs continued to make monthly payments after the addendum was executed. Again, the closing was not completed on December 1, 2001, since Welchs had yet to obtain the necessary financing.

Following December 1, 2001, Welchs continued to make monthly payments on the purchase price and real estate taxes through July 2002. Whether the monthly payments were made timely or were made in full by Welchs is a point of contention. However, some payment was made and accepted monthly by Noviello and Zarzyczny.

On August 4, 2002, a fire occurred at the property. After the fire, Welchs tendered a payment on August 6, 2002, but Noviello refused it. At no time did Noviello or

Zarzyczny give notice to Welchs of an intent to or take any action to terminate the sales agreement.

Despite the sales agreement term, Welchs failed to obtain fire insurance on the property. Noviello had obtained an insurance policy covering the property with the Cincinnati Insurance Company.² The policy period had commenced March 13, 2000, for another property owned by Noviello. On June 6, 2001 she added to the policy the property subject to the Sales Agreement at 395 East Second Avenue, South Williamsport. Noviello paid the necessary premiums and continued the policy in force through the date of loss. She was the named insured on the policy. The Cincinnati Insurance Company paid Noviello \$57,898.61 in proceeds for the loss under the insurance policy.

Welchs filed their complaint in this Declaratory Judgment action on October 17, 2002 requesting a declaration that:

(a) Plaintiff are the owners of 395 East Second Avenue, South Williamsport, PA 17702; and

(b) Plaintiffs are the owners of the insurance proceeds.

Complaint, ¶12. Noviello filed an Answer and New Matter and Counterclaim on December 22, 2002. Noviello's response asserted Welchs did not make all payments timely, did not purchase fire insurance, and had failed to timely close on the property. For these reasons, Noviello pleaded under New Matter that: (1) Welchs had substantially breached the agreement thereby negating their ownership interest and (2) under the defense of waiver and estoppel had waived their rights and are estopped from asserting their claims under the sales agreement. Noviello

also counterclaimed for a declaration that since she had purchased and paid for the fire insurance she was entitled to the insurance policy proceeds. Zarzyczny filed a similar answer and new matter and counterclaim on July 11, 2003, differing only from that of Noviello by asserting the insurance proceeds should be paid to “them,” that is, to Noviello and Zarzyczny. Based on their pleadings, neither Noviello nor Zarzyczny have counterclaimed seeking any payments or damages from Welchs. Nor have they requested a termination of the sales agreement in their claims for relief.

As noted above, the instant summary judgment motion was filed by Welchs on May 21, 2003. Welchs assert that based upon the foregoing facts they are entitled to summary judgment with a declaration that they are the owners of the property and are entitled to the insurance proceeds. Specifically, Welchs contend that they are the equitable owners of the property. As such, Welchs assert that they are entitled to the benefit of the insurance proceeds. Welchs also assert that they have complied with the terms of the sales agreement by continually making the required monthly payments. Welchs also assert that the parties continued to abide by the terms of the sales agreement after the December 1, 2001 closing date, and because of this argue that Noviello could not disregard the terms of the sales agreement and refuse to accept the August 2002 payment. Under such circumstances, Welchs argue that it would be unjust and inequitable for Noviello and Zarzyczny to receive the insurance proceeds in excess of the purchase price and to retain title to the property.

² Cincinnati Insurance Companies was a named defendant in this action. By agreement of the parties, an order was issued on July 21, 2003 dismissing them from the case.

Noviello and Zarzyczny have joined in their opposition to Welchs motion for summary judgment. In their responses, Noviello and Zarzyczny assert that Welchs are not entitled to summary judgment but make no cross-claim for summary judgment.

First, Noviello and Zarzyczny argue that the Court should exercise its discretion and deny Welchs the declaratory relief they seek contending that Welchs are cloaking a specific performance claim in the guise of a declaratory judgment action to avoid the requirements of a specific performance cause of action.

Second, Noviello and Zarzyczny assert, that even if Welchs can proceed with the declaratory judgment action the requirements of a specific performance claim apply if Welchs are seeking to be declared owners of the property and have title conveyed to them. As such, Noviello and Zarzyczny contend that there are several unspecified disputed issues of fact that would concern a specific performance claim and make summary judgment inappropriate.

Noviello and Zarzyczny also contend that the oral testimony of Welchs in support of summary judgment must be ignored under the *Nanty Glo* doctrine (*Borough of Nanty Glo v. American Surety Co.* 103 A.423 (Pa. 1932)), and that without Welchs' testimony there are genuine issues of fact as to Welchs' meeting their obligations under the terms of the Sales Agreement that would preclude summary judgment for specific performance, including: whether there was a breach of the agreement by Welchs for failing to obtain fire insurance; whether there was an open extension of time for the closing; whether the Welchs exercised reasonable and diligent efforts to obtain financing; whether Welchs have or will tender payment of the balance under the agreement; whether Welchs have an adequate remedy at law; and whether justice and equity would be served by granting Welchs relief.

Finally, Noviello and Zarzyczny contend they have been discharged from their obligations under the Sales Agreement because Welchs breached a material part of the agreement by failing to make regular timely payments, failing to close the transaction on a timely basis, failing to obtain fire insurance, and failing to make timely and current payment of the taxes and utility charges. Therefore, Noviello and Zarzyczny assert that it would be unjust to award Welchs the property and the insurance proceeds when Welchs have failed to timely pay the purchase price and have not proposed to pay it in the future.

Discussion

The issue before the Court is whether Welchs, as buyers in a sales agreement for the sale of a residential property, who failed to obtain fire insurance on the property despite the contract requirement that the buyers procure fire insurance, are entitled to the proceeds of a fire insurance policy held by the seller when a fire damages the home. But before that question can be addressed, Noviello and Zarzyczny have raised a preliminary issue as to whether the Court should exercise its discretion and dismiss Welchs' declaratory judgment petition on the basis that the requested relief is outside the scope of a declaratory judgment action.

The practice and procedures in declaratory judgment actions are to follow that which govern actions in equity as nearly as possible. *See*, Pa. R.C.P. 1601. The provisions of the Declaratory Judgment Act, 42 Pa.C.S. §§7531-7541, govern petitions for declaratory judgment. ***Gmerek v. State Ethics Commission***, 751 A.2d 1241, 1249 (Pa. Cmwlth. 2000), *aff'd by an equally divided court*, 807 A.2d 812 (Pa. 2002). The Declaratory Judgment Act is "broad in scope and is to be liberally construed." ***Cloonan v. Thornburgh***, 519 A.2d 1040, 1046 (Pa. Cmwlth. 1986), *appeal discontinued*, 531 A.2d 1391 (Pa. 1987). The purpose of the

Declaratory Judgment Act is to “ ‘afford relief from uncertainty and insecurity with respect to legal rights, status, and other relations.’” *Juban v. Scherman*, 751 A.2d 1190, 1193 (Pa. Super. 2000) (quoting *Mueller v. State Police Headquarters*, 532 A.2d 900, 905 (Pa. Cmwlth. 1987)). Under the Act, courts have the power to “declare rights, status, and other legal relations whether or not further relief is or could be claimed.” 42 Pa.C.S. §7532. Pursuant to this power, a party to a written contract may have any question of construction determined and obtain a declaration of his rights, status, or other legal relations under the contract. 42 Pa.C.S. §7533.

Declaratory relief is unavailable unless an actual controversy exists, is imminent, or is inevitable. *Silo v. Ridge*, 728 A.2d 394, 398 (Pa. Cmwlth. 1999). Declaratory judgment is not available as a matter of right. *Gmerek*, 751 A.2d at 1249. “The issuance of a declaratory judgment is a matter of judicial discretion which should only be exercised to illuminate an existing right, status or legal relation.” *Cloonan*, 519 A.2d at 1046. The court can refuse to enter a declaratory judgment or decree “where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.” 42 Pa.C.S. §7537; *P.J.S. v. Pennsylvania State Ethics Comm’n*, 669 A.2d 1105, 1108 (Pa. Cmwlth. 1996). However, the availability of an alternative remedy is not sufficient grounds for refusing to proceed under the Declaratory Judgment Act. 42 Pa.C.S. §§7537, 7541; *P.J.S.*, 669 A.2d at 1108.

The Court will not dismiss the declaratory judgment petition since it is a permissible vehicle for the resolution of the issue in the case *sub judice*. An actual controversy exists between the parties as to who is entitled to the insurance proceeds. Whether Welchs are

entitled to the insurance proceeds is dependant upon the rights and status of the parties under the sales agreement. Determining who is entitled to the insurance proceeds requires the Court to determine and declare a party's rights under the contract, which is permitted pursuant to 42 Pa. C.S. §7533. The resolution of this issue would terminate the controversy concerning the right to the fire insurance proceeds. This action also is the proper venue for determining whether Welchs are entitled to obtain a deed and legal title to the property (specific performance of the contract) to the extent the relief requested in the Declaratory Judgment Petition is to be declared "Owners" of the property because under the issues presented the Court, upon ascertaining the facts, can determine the rights of the parties to the written contract and doing so will resolve the matter in controversy. Therefore, the Court will not exercise its discretion and dismiss the action as improper under the Declaratory Judgment Act.

Now addressing the main issue. The Court will partially grant Welchs motion for summary judgment. Welchs are the equitable owners of the property. As such, under the applicable law, Welchs are entitled to the insurance proceeds that exceed the unpaid purchase price and other amounts owed to Noviello and Zarzyczny under the sales agreement. Whether or not Welchs have paid all sums due under the sales agreement and are otherwise entitled to specific performance is uncertain. Therefore, the Court is limiting its determination of ownership to equitable owners and makes no determination regarding specific performance and transfer of title or full ownership of the property to Welchs.

A party may move for summary judgment after the pleadings are closed. Pa. R.C.P. 1035.2. Summary judgment may be properly granted "when the uncontraverted allegations in the pleadings, depositions, answers to interrogatories, admissions of record, and

submitted affidavits demonstrate that no genuine issue of material fact exists, and that the moving party is entitled to judgment as a matter of law.” *Rauch v. Mike-Mayer*, 783 A.2d 815, 821 (Pa. Super. 2001); *Godlewski v. Pars Mfg. Co.*, 597 A.2d 106, 107 (Pa. Super. 1991). The moving party has the burden of proving that there are no genuine issues of material fact. *Rauch*, 783 A.2d at 821. In determining a motion for summary judgment, the court must examine the record “ ‘in the light most favorable to the non-moving party accepting as true all well pleaded facts in its pleading and giving that party the benefit of all reasonable inferences.’” *Godlewski*, 597 A.2d at 107 (quoting *Hower v. Whitmak Assoc.*, 538 A.2d 524 (Pa. Super. 1988)). Summary judgment will only be entered in cases that “are free and clear from doubt” and any “doubt must be resolved against the moving party.” *Garcia v. Savage*, 586 A.2d 1375, 1377 (Pa. Super. 1991).

The general legal principles that control the disposition of the case are clearly established. When an agreement for the sale of real estate is entered into, the doctrine of equitable conversion splits title to the real property between the buyer and seller. *See, Byrne v. Kanig*, 332 A.2d 472, 474 (Pa. Super. 1974). Once a contract for the sale of real property is executed, the buyer becomes the equitable owner of the real property entitled to all the advantages of ownership and generally responsible for losses to the property. *Synes Appeal*, 164 A.2d 221, 227 (Pa. 1960). The seller of the real estate retains legal title to the property as security for payment of the unpaid purchase price. *Zitzelberger v. Salvatire*, 458 A.2d 1021, 1023 (Pa. Super. 1983). This doctrine is based on the maxim that “equity regards that as done which has been agreed to be done, and which the parties to the agreement have in their power to do.” *Ibid.* Equity treats the property as sold by virtue of the sales agreement with the buyer

as the owner of the property entitled to the benefits and bearer of any loss while the seller holds legal title to the property as trustee. *Byrne*, 332 A.2d at 474.

As between the seller and the seller's insurance company, the seller remains the owner of the property until the sale is final. *Dubin Paper Co. v. Ins. Co. of North America*, 63 A.2d 85, 94 (Pa. 1949). The seller is entitled to receive the insurance proceeds from the insurance company for a loss by fire occurring between the agreement of sale and closing, but the seller holds the proceeds as trustee for the buyer. *Id.* at 95. The buyer's right to the insurance proceeds is derived from the sales agreement. *Id.* at 94.

Under the doctrine of equitable conversion, the buyer normally bears the risk of loss. *Patrick & Wilkins Co. v. Reliance Ins. Co.*, 456 A.2d 1348, 1351 (Pa. 1983). "Because the vendee must pay the full contract price whatever the condition of the property, our case law has long held that, although a vendor is legally entitled to recover the proceeds of his insurance policy if the property is destroyed, the vendor's equitable entitlement to the proceeds extends only to the unpaid balance of the purchase price; any excess is deemed to be held 'in trust' for the vendee." *Ibid.* A seller would be unjustly enriched if he were allowed to receive the contract price plus indemnification for a loss that he did not bear. *Ibid.* Because of this, the seller holds the insurance proceeds in a constructive trust and must relinquish to the buyer the proceeds in excess of the outstanding purchase price. *Ibid; Zitzelberger*, 458 A.2d at 1023.

The *Dubin Paper* case is particularly instructive and controls the outcome this dispute. In *Dubin*, a seller and buyer had entered into a written sales agreement for the purchase of real estate for the sum of \$25,000. The buyer obtained two insurance policies with a combined coverage of \$25,000. The buyer discovered that the value of the property was

more than the purchase price, but did not obtain additional insurance since the seller had two policies with \$36,000 worth of coverage on the property. A fire occurred and damaged the property. The buyer filed a claim with his insurance companies and they paid him \$25,000 under the policies. The buyer also sought to obtain the proceeds of the insurance policies held by the seller. The buyer brought a bill in equity seeking to compel the insurance companies to pay the proceeds to the seller's executors and a declaration that the executors held the proceeds as trustees for the buyer.

The Supreme Court concluded that even though the buyer had already received the insurance proceeds from the policies he held on the property the buyer was still entitled to the proceeds of the insurance policies held by the seller. The Supreme Court ruled that the sales agreement makes the buyer the equitable owner of the property and the seller holds the property as trustee with a right to retain the property until the purchase price is paid. *Dubin*, 63 A.2d at 91. The insurance company is obligated to pay the seller the proceeds of the insurance policy because the sales agreement does not alter their relationship and the seller is still to be regarded as the owner of the property. *Ibid*. However, as between the seller and the buyer, the property no longer belongs to the seller, so he cannot appropriate the money for himself. *Ibid*. The seller holds the property in trust for the buyer and consequently holds the insurance proceeds, which act as compensation for the loss of that property, in trust for the buyer. *See, Ibid*.

In the case *sub judice*, the parties entered into a written sales agreement on June 3, 2001 for the purpose of buying and selling the property. Once the sales agreement was entered into, Welchs became the equitable owners of the property with all the rights there to

and bearing the risk of loss. Noviello and Zarzyczny held the property in trust and as security for the unpaid purchase price. Welchs are entitled to the insurance proceeds because they are the equitable owners of the property. Any insurance proceeds received by Noviello and Zarzyczny above the unpaid purchase price or other amounts due from Welchs under the Sales Agreement must be held in a constructive trust for Welchs.

The fact that the sales agreement required Welchs to obtain fire insurance on the property does not alter this conclusion. The sales agreement expressed the intentions of the parties as would relate to the property. Welchs intended to buy the property and Noviello and Zarzyczny intended to sell the property. The result was that, by virtue of equitable conversion, the sales agreement split the title to the property giving Welchs equitable title and Noviello and Zarzyczny retaining the property as a security on the purchase price.

Following the execution of the sales agreement, Noviello and Zarzyczny's remaining interest in the property was as security for the unpaid purchase price owed by the Welchs. At that time, the insurable interest held by Noviello and Zarzyczny became the right to the payment of the purchase price and other amounts owed under the Sales Agreement. Therefore, Noviello and Zarzyczny are entitled to the proceeds of any insurance they have received up to the amount of the unpaid purchase price because that was their interest and entitlement. However, Noviello and Zarzyczny are not entitled to any proceeds over that amount because they have no interest in them. They relinquished any interest in those proceeds by executing the sales agreement. If equity regards as done what was intended, then it would regard Noviello and Zarzyczny's interest in the property as being the intended \$55,000 purchase price.

The parties did not intend for Noviello and Zarzyczny to acquire a windfall by receiving more than their interest. *See, Shaffer*, 520 A.2d at 53. The insurance policies on the property covered Noviello and Zarzyczny's interest in the property. Their interest in the property was the purchase price. The insurance covered the unpaid purchase price, and Noviello and Zarzyczny hold no interest in the proceeds over the amount of the unpaid purchase price. Noviello and Zarzyczny have had their interests compensated by receiving what they would have expected under the sales agreement, i.e., the amount of the unpaid purchase price in insurance proceeds. That is what was intended to be done and has been done.

Under *Dubin Paper*, *supra*, even if Welchs had obtained insurance they likely would still be able to obtain the insurance proceeds under Noviello's policy. As in *Dubin Paper*, Noviello holds the insurance proceeds in trust for Welchs. The requirement in the sales agreement for Welchs to obtain insurance does not alter this. The failure to obtain fire insurance may be the basis for a breach of contract claim against Welchs, but it does not alter their status as equitable owners of the property or deprive them of their rights as such. Welchs' right to the insurance proceeds was established by the sales agreement and equitable conversion. Welchs are the equitable owners of the property and Noviello holds the insurance proceeds in excess of the unpaid purchase price in trust for them. Any alleged breach of contract on Welchs part does not affect the rights established by equitable conversion.

In the overall picture, the alleged breach may affect what Welchs take home in the end. If the Welchs have breached the agreement, then Noviello and Zarzyczny can pursue the appropriate remedy under the Sales Agreement to find redress. Generally, Pennsylvania law provides that upon a breach of a real estate installment sales agreement a seller can sue for:

damages measured by the contract price minus the fair market value of the property at the time of the breach, less payments made; sue for specific performance; or sue for the purchase price and other damages, conditioned upon the transfer of the property. *Olmo v. Matos*, 653 A.2d 1, 3 (Pa. Super. 1994), *appeal denied*, 664 A.2d 542 (Pa. 1994). Welchs have a right to the insurance proceeds, but the amount they actually walk away with may be dependant upon the action taken by Noviello and Zarzyczny concerning the alleged breach of contract.

While the Court can enter a summary judgment declaring that Welchs are entitled to the insurance proceeds that exceed the unpaid balance of the purchase price and other sums owed under the Sales Agreement, the Court cannot declare Welchs the owners of the property at this time there are disputed, material facts concerning Welchs making all payments due under the Sales Agreement and otherwise meeting its terms and conditions. The request for a declaration that Welchs are entitled to a deed from Noviello and Zarzyczny is governed by the requirements of specific performance since Welchs would be asking the Court to compel Noviello and Zarzyczny to convey title by deed as required by the sales agreement. The disputed issue will need to be determined at trial.

Conclusion

The Court will partially grant Welchs' Motion for Summary Judgment. By equitable conversion, the sales agreement grants the buyer equitable title to the property. *Byrne*, 332 A.2d at 474. The sales agreement executed between Welchs and Noviello on June 3, 2001 granted Welchs equitable title to the property. Therefore, Welchs are the equitable owners of the property. Welchs are entitled to the insurance proceeds in excess of the purchase

price and other amounts owed to Noviello and Zarzyczny under the sales agreement. Noviello holds these proceeds in trust for Welchs.

It will be necessary for the Court to take testimony to determine the amounts owed to Noviello and Zarzyczny, if any, in order to determine the amount of money each party shall receive from the balance of the insurance proceeds and also to determine if Welchs are to be declared record title owners of the property.

ORDER

It is hereby ORDERED that Plaintiffs Michael and Tammy Welch's Motion for Summary Judgment filed May 21, 2003 is partially granted.

The motion is granted in that Plaintiffs are entitled to the insurance proceeds of policies held by Bonnie Noviello that exceed the unpaid balance of the purchase price and other amounts that may be owed to Defendant Bonnie Noviello and Barry Zarzyczny under the sales agreement for the property located at 395 East Second Avenue, South Williamsport, PA 17702.

The motion is also granted in that Plaintiffs are the equitable owners of the property located at 395 East Second Avenue, South Williamsport, PA 17702.

The Motion is otherwise denied.

BY THE COURT:

William S. Kieser, Judge

cc: Joseph F. Orso, III, Esquire
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