

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

**SOVEREIGN BANK** : **No. 06-01773**  
**Plaintiff** :  
**vs.** :  
 :  
 :  
**CLARK’S AG CENTER, INC.,** :  
**NORMAN VENEMA and JULIA A.** :  
**CLARK-VENEMA, husband and wife** :  
**Defendants** : **1925(a) Opinion**

**OPINION IN SUPPORT OF ORDER IN  
COMPLIANCE WITH RULE 1925(a) OF  
THE RULES OF APPELLATE PROCEDURE**

This opinion is written in support of this Court's Order entered January 11, 2007. The Court relies on and incorporates by reference its Orders entered on January 11, 2007 and February 26, 2007.

In addition, the Court would note the following: In order to recover on a theory of fraudulent misrepresentation, Plaintiff must prove by clear and convincing evidence that: (1) the Venemas made a representation; (2) which was material to the transaction; (3) falsely, with knowledge of its falsity, or recklessness as to whether it was true or false; (4) with the intent of misleading Sovereign into relying on it; (5) Sovereign justifiably relied on the misrepresentation; and (6) Sovereign sustained injury, which was proximately caused by its reliance. See Porreco v. Porreco, 571 Pa. 61, 69, 811 A.2d 566, 570 (Pa. 2002). The Court found Sovereign did not meet its burden of proof with respect to elements 4 through 6. Although the Court discussed the Venemas intent and credibility and Sovereign’s lack of proof regarding injury in the Orders entered January 11, 2007 and February 26, 2007, the Court would like to supplement those orders with a brief discussion

regarding Sovereign's reliance on the Venemas representation.

The Court found that Sovereign's reliance on the "limited title affidavit" was not justifiable. In Porreco, the Pennsylvania Supreme Court stated: "To be justifiable, reliance upon the representation of another must be reasonable. While the nature of the relationship may affect the reasonableness of one's reliance, we hesitate to find reliance justified where the party claiming reliance had an adequate opportunity to verify the allegedly fraudulent statements." 571 Pa. at 69-70, 811 A.2d at 571 (citations omitted). Porreco involved a 19 year old fiancé accepting her decades older groom-to-be's representations regarding the value of her engagement ring in a prenuptial agreement. When she subsequently discovered that her allegedly \$21,000 engagement ring was actually a cubic zirconium and she attempted to challenge the validity of the pre-nuptial agreement based on a fraudulent misrepresentation, the Pennsylvania Supreme Court found her reliance was not justifiable because she could have had the ring appraised. Here, Sovereign easily could have conducted a title search to verify whether there were any mortgages, liens, judgments or encumbrances affecting the property in question, and it would have done so as a matter of course had the mortgage in question exceeded \$250,000 (N.T., November 16, 2007, at pp. 39-41).<sup>1</sup> Certainly a sophisticated business entity such as Sovereign Bank should not be able to blindly rely on statements that could be easily verified through a title search when an inexperienced 19-year old cannot rely on her much older and more experienced groom-to-be's representations and must obtain an appraisal of her engagement ring.

Even if Sovereign proved fraud against the Venemas, the Court does not

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<sup>1</sup> The Court discussed Sovereign's failure to conduct a title search when discussing the doctrine of equitable subrogation but failed to mention it when discussing Sovereign's fraud claim.

believe it would be entitled to priority over Clark's Ag Center, Inc. (CACI). CACI paid valuable consideration for the assignment of PNC's judgment. Prior to obtaining the assignment, CACI conducted a title search and determined that PNC's judgment preceded Sovereign's re-financed mortgage and, being first in time, would have priority. There was no indication that CACI participated in the alleged fraud or had any knowledge of it. If Sovereign were permitted to prevail, CACI, through no fault of its own, could lose the \$230,000 it paid PNC for the assignment of its judgment. Sovereign still has recourse against the Venemas if they fail to re-pay the loan.

DATE: \_\_\_\_\_

By The Court,

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Kenneth D. Brown, P. J.

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