

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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|----------------------------|---|--------------|
| THE CERTAIN UNDERWRITERS   | : | CIVIL ACTION |
| AT LLOYDS, LONDON,         | : |              |
|                            | : |              |
| Plaintiff,                 | : |              |
|                            | : |              |
| v.                         | : | No. 98-199   |
|                            | : |              |
| GERALDINE HOROWITZ,        | : |              |
| HOME AMERICAN CREDIT, INC. | : |              |
| d/b/a UPLAND MORTGAGE, and | : |              |
| CITY OF COATESVILLE,       | : |              |
|                            | : |              |
| Defendants.                | : |              |

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**MEMORANDUM**

ROBERT F. KELLY, J.

SEPTEMBER 16, 1998

This is an interpleader action pursuant to 28 U.S.C. § 1335. Before the Court is Home American Credit, Inc.'s ("Home American") uncontested Motion for Summary Judgment. For the reasons that follow, the Motion will be granted.

**Background**

On December 17, 1996, Geraldine Horowitz granted a mortgage to Home American on property located at 355 West Lincoln Highway in Coatesville, Pennsylvania ("the Mortgaged Property"). The Mortgage contained the following provision:

4. Insurance. Mortgagor shall keep the Mortgaged Property continuously insured against fire and such other hazards in such amounts as may be required by Lender [American Home] from time to time. All policies of insurance shall be issued by companies acceptable to Lender, and shall contain a standard mortgage clause, in favor of the Lender, and shall provide at least 30 days notice prior to cancellation . . . Each insurance company concerned is hereby authorized and

directed to make payments under any such policies directly to Lender, instead of Lender and Mortgagor jointly, and Mortgagor hereby irrevocably appoints Lender as Mortgagor's attorney-in-fact to endorse in Mortgagor's name on any checks or drafts issued thereon. Lender shall have the right to retain and apply the proceeds of any such insurance, at its reasonable election, to reduction of the obligations, or to restoration and repair of the property damaged.

American Home's Mot. for Summ. J. Ex. A.

The Mortgage further provides that Home American's interest in the Mortgaged Property includes "all awards, damages, payments and/or claims arising out of . . . damage or injury to any part of the Premises." The Mortgage defines the "Premises" to include "all machinery apparatus, equipment, furniture, fixtures, including without limitation trade fixtures, goods, appliances and other property of every kind, nature and description whatsoever, now or hereafter located in, on, or attached to or used in connection with the premises." Horowitz purchased property insurance on the Mortgaged Property from Lloyds of London ("Lloyds") effective December 17, 1996 through December 17, 1997. The insurance contract included the following provision:

10. Loss Payment. We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment.

Home American's Mot. for Summ. J. Ex. B. Despite the provisions of the Mortgage, Horowitz failed to name Home American as a loss payee under the policy.

Shortly after executing the Mortgage, Horowitz permitted it to go into default. All payments subsequent to January of 1997 remain due and owing.

On July 25, 1997, a fire occurred at the Mortgaged Property, damaging both the dwelling and certain contents therein. Instead of notifying Lloyds of Home American's vested interest in the insurance proceeds, Horowitz sought to have the claim expedited and have payment made only to herself. On October 24, 1997, Home American notified Lloyds of its contractual right to the insurance proceeds. Because Horowitz disputed Home American's right to the proceeds, Lloyds filed this interpleader action.

Home American filed its Motion for Summary Judgment on June 26, 1998. The City of Coatesville ("Coatesville") filed a Reply and Cross-Motion on July 10. Coatesville subsequently agreed to withdraw its claim and was dismissed from this action on July 30, 1998. But despite the time that has passed since Home American filed its Motion, Horowitz has neither entered an appearance nor has she responded to the Motion. Thus, Home American's Motion is now uncontested.

#### **Standard**

Summary judgment is appropriate if "there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." FED. R. CIV. P. 56(c). The

moving party has the burden of informing the court of the basis for the motion and identifying those portions of the record that demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The nonmoving party cannot rest on the pleading, but must go beyond the pleadings and "set forth specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); Celotex, 477 U.S. at 324. Summary judgment will not be granted "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). In this case, Horowitz, as the nonmoving party, is entitled to have all reasonable inferences drawn in her favor. J.F. Feeser, Inc. v. Serv-A-Portion, Inc., 909 F.2d 1524, 1531 (3d Cir. 1990), cert. denied, 499 U.S. 921 (1991).

Horowitz has failed to respond to the Motion for Summary Judgment despite the fact that more than two months have passed since it was filed. But Horowitz's failure to respond does not automatically entitle Home American to judgment. Anchorage Assocs. v. Bd. of Tax Review, 922 F.2d 168, 175 (3d Cir. 1990). Rather, the Motion must be evaluated on the merits, and judgment entered in favor of the movant only if "appropriate." Id. Therefore, the Motion may be granted only if Home American is entitled to "judgment as a matter of law." Id.

#### **Discussion**

Under Pennsylvania law, absent an express provision against assignment, a party may assign contractual rights without the consent of the other party to the contract, so long as the assignment does not materially alter the other party's duties and responsibilities. Smith v. Cumberland Group, Ltd., 687 A.2d 1167, 1172 (Pa. Super. 1997). "Where an assignment is effective, the assignee stands in the shoes of the assignor and assumes all of his rights." Id. (citations omitted).

In the Mortgage agreement, Horowitz assigned her right to receive payments under the insurance contract with Lloyds. The Mortgage expressly provides that Lloyds "is hereby authorized and directed to make payments under any such policies directly to Lender [Home American]." Such an assignment does not materially alter Lloyds' duties or rights. Therefore, this was a valid assignment, and Home American assumes all of Horowitz's rights under the insurance contract. The proceeds payable under the insurance contract should be disbursed to Home American.

An appropriate Order follows.

