RECEIVED 1-27-82
DAVIDSON COUNTY
CHANCERY COURT

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

BOOK 5903 PAGE 360

CALVIN SCRUGGS,

Plaintiff,

vs

WALTER SWETT AND SUSIE B. SWETT; FIREMAN'S FUND INSURANCE COMPANIES; COMMUNITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF NASHVILLE; and ALFRED C. GALLOWAY, Trustee and Individually,

Defendants.

NO. 80-383-II

ORDER FILED & ENTERED 1-29-82
MINUTE BOOK 119 PAGE 566

ORDER

It appearing to the satisfaction of the Court, as evidenced by signatures of counsel for all parties below, that the Defendant, Fireman's Fund Insurance Companies, has tendered to the Clerk of the Court, $15,000.00 in compromise and full settlement of all claims in this matter.

It further appears to the Court that it is agreed the funds shall be distributed to the Defendants, Walter and Susie B. Swett, in the amount of $5,000.00 and to the Plaintiff, Calvin Scruggs, in the amount of $10,000.00.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that the $15,000.00 tendered by Fireman's Fund Insurance Companies shall be accepted and distributed by the Clerk and Master in the following manner: $5,000.00 to Defendants, Walter and Susie B. Swett, and $10,000.00 to Plaintiff, Calvin Scruggs. Upon payment and disbursement by the Clerk and Master, all claims in this cause are dismissed with prejudice. Further, the final Decree signed January 4, 1982, shall remain the same in all other respects.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this action be, and hereby are taxed, to Defendant, Fireman's Fund Insurance Companies, for which execution will issue, if necessary.

This _____ day of _____, 19____.

C Allen High
Chancellor C. Allen High

APPROVED FOR ENTRY:

Ben C. Fordham
Attorney for Defendants and Counter Plaintiffs,
Walter and Susie B. Swett

James L. Curtis
Attorney for Plaintiff Calvin Scruggs

Richard H. Dinkins
Attorney for Community Federal Savings and Loan
of Nashville and Alfred G. Galloway

William F. Carpenter
Attorney for Fireman's Fund Insurance Companies

RECEIVED 12-31-81
DAVIDSON COUNTY
CHANCERY COURT

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

BOOK 5903 PAGE 362

CALVIN SCRUGGS,

Plaintiff,

vs

NO. 80-383-II

WALTER SWETT AND SUSIE B. SWETT; FIREMAN'S FUND INSURANCE COMPANIES; COMMUNITY FEDERAL SAVINGS AND LOAN ASSOCIATION OF NASHVILLE; and ALFRED C. GALLOWAY, Trustee and Individually,

Defendants.

ORDER FILED & ENTERED 1-4-82
MINUTE BOOK 119 PAGE 359

DECREE

This cause came on to be heard on the 21st and 22nd of December, 1981, before the Honorable C. Allen High, Chancellor, Part II, Chancery Court for Davidson County, Tennessee, upon the various claims of all the parties one to the other, upon oral proof in open Court by all the parties, and upon argument of counsel for all parties whereupon the Court took all matters under advisement except that the Court ruled from the bench that it was clearly the intention of the Defendants Walter and Susie B. Swett to convey Lots 15, 16, 17 and 18 instead of only Lots 16 and 17 of Block 28 on the Map of Fisk University Place of record in Book 421, Pages 4-5, Register's Office for Davidson County, Tennessee, commonly known as 916 32nd Avenue North. On the remaining matters, the Court on December 23, 1981, issued a Memorandum Opinion, which Opinion is attached hereto as Exhibit 1 and is expressly incorporated herein by reference as if fully set out herein.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that title to the property located at 916 32nd Avenue North, and more particularly described as land in Davidson County, Tennessee, being Lots No. 15, 16, 17 and 18 of Block 28 on the Plan of Fisk University Place, as of record in Book 421, Pages 4-5, Register's Office for said county, said lots adjoining and fronting together 100 feet on the easterly side of 32nd Avenue North, formerly India Avenue and running back between parallel lines 150 feet to an alley, be vested in fee simple ownership in the Plaintiff Calvin Scruggs.

In the action of Walter and Susie B. Swett vs Fireman's Fund Insurance Companies, the Court finds that Walter and Susie B. Swett were the

named insureds on a policy of fire insurance obtained by Community Federal Savings & Loan of Nashville with Fireman's Fund which had been in force for several years before the date of the conveyance of the property by Walter and Susie B. Swett to the Plaintiff Calvin Scruggs on March 30, 1972 and had also been in full force and effect on the date of the fire, December 4, 1978, having a face value at that time of $15,000.00. The Court finds that a proof of loss was duly filed on February 21, 1979. The Court further finds that the Defendants Walter and Susie B. Swett had an insurable interest in the property on the date of the original insuring of the property and further had an insurable interest in the property on December 4, 1978, and that the failure of Community Federal to notify Fireman's Fund Insurance Companies of any change in ownership as required by the mortgage clause of the policy did not defeat recovery on the policy by the named insureds Walter and Susie B. Swett.

In the case of Walter and Susie B. Swett vs Calvin Scruggs, the Court finds that the Plaintiff Calvin Scruggs admitted he owed the Defendants Walter and Susie B. Swett $5,000.00 as the remaining balance on his original agreement to pay $15,000.00 to purchase the property located at 916 32nd Avenue, North.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Walter and Susie B. Swett have judgment against the Defendant Fireman's Fund Insurance Companies in the amount of $15,000.00 plus pre-judgment interest of ten percent from April 21, 1979, to date, and further that Walter and Susie B. Swett have judgment against Calvin Scruggs for $5,000.00 remaining owed on the purchase price of the property located at 916 32nd Avenue North. Upon receipt by Walter & Susie B. Swett of the monies owed by Fireman's Fund Insurance Companies under this decree, Walter and Susie B. Swett shall hold in trust and pay over to Calvin Scruggs all sums in excess of those amounts owed by Calvin Scruggs to Walter and Susie B. Swett under this decree.

The Court further finds that any and all other actions, cross claims or counterclaims asserted in any of the pleadings in this action should be dismissed.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that any and all other actions, cross claims or counterclaims asserted in any of the pleadings in this action are dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the costs of this action be, and hereby are taxed, to Defendant Fireman's Fund Insurance Companies, for which execution will issue, if necessary.

This _____ day of _____, 19____.

Chancellor C. Allen High

APPROVED FOR ENTRY:

Ben C. Fordham
Attorney for Defendants and Counter Plaintiffs
Walter and Susie B. Swett

CERTIFICATE OF SERVICE

I certify that a copy of this Decree has been mailed to Mr. James L. Curtis, Attorney at Law, 1411 Parkway Towers, Nashville, Tennessee 37219; Mr. Richard L. Dinkins, Attorney at Law, 203 2nd Avenue North, Nashville, Tennessee 37201 and to Mr. William F. Carpenter, Attorney at Law, One Commerce Place, Nashville, Tennessee 37239, this 31st day of December, 1981.

CALVIN SCRUGGS	)	
	)	IN THE CHANCERY COURT,
VS. NO. 80-383-II	)	PART II,
	)	AT NASHVILLE.
WALTER SWETT, ET AL	)	

MEMORANDUM

This is an action by a homeowner (Scruggs) against the former owners (Swett), the insurance company that carried the fire insurance on the home (Fireman's Fund), the mortgagee (Community Federal Savings and Loan), and the mortgagee's president (Galloway).

The owner's suit resulted in a barrage of answers cross and counter-claims.

FINDINGS OF FACT

On March 30, 1972, Scruggs purchased a house located at 916 - 32nd Avenue, North, Nashville, from the Swetts. He paid $1,500.00 toward the $15,000.00 purchase price and assumed an existing first mortgage at Community Federal. (Ex. 1). The existing deed of trust called for the monthly installment payments to include a 1% service fee and 1/12 of the taxes and insurance premium. (Ex. 14).

Under the agreement, Community Federal was to,

and did, obtain in the name of the Swetts a fire insurance policy with Fireman's Fund. This policy remained in force for several years before the sale of the property to Scruggs.

Under the purchase agreement Scruggs was to pay $150.00 per month to Community Federal to be applied to the first mortgage, escrow fund for taxes and insurance and the balance to be placed in the Swetts' savings account.

The arrangement continued over several years with Scruggs making his monthly payments to Community Federal who forwarded the insurance premiums to the insurance company's agent without changing the insurance policy from the Swetts to Scruggs.

On one occasion, after a renewal policy has been mailed to Swett, he returned it to Mrs. Jackson who handled insurance for Community Federal. He told her "this is supposed to be Mr. Scruggs'."

On December 4, 1978, the property was damages by fire and was an effective total loss.

At the time of the loss the first mortgage had been paid in full and the balance due on the original purchase to the Swetts was approximately $5,000.00.

The Swetts duly filed a proof of loss and the claim was denied.

CONCLUSIONS OF LAW

Fireman's Fund asserts the fire policy was void cause they were not notified of the change of ownership. Cases cited by the insurance company in support of their position involve policies that have a clause requiring sole and unconditional ownership of the property insured. No such clause was in this policy.

The only provision in the policy before the Court that requires notice of change of ownership is in the mortgagee clause. That is a separate contract between the mortgagee and the insurance company. It does not affect the rights of the named insureds.

The insurance company takes the alternative position that if the policy is not void the named insureds, Swetts, had no insurable interest.

A vendor retains an insurable interest in the property so long as he has any interest therein. In other words, so long as he would suffer by its destruction as where he has a vendor's lien. A vendor of land has an equitable lien for the unpaid purchase price.

The Court is of the opinion, therefore, the named insureds had an insurable interest in the property at the time of its destruction. This being a valued policy the Swetts are entitled to recover the face amount of $15,000.00 plus

interest from sixty days after filing the proof of loss.

The amount in excess of the vendor's lien will be held in trust and paid over to the vendee, Scruggs.

If the Court is wrong in deciding that these parties can recover under the policy of insurance, then they should recover from Community Federal.

Community Federal undertook to look after the insurance and was, therefore, under a duty to perform it properly. If notice of change of ownership was required, Community Federal was under a duty to give such notice and was, therefore, negligent in failing to not do so.

The proper measure of damages is in the amount the insuror would have been obligated to pay.

The action against Galloway personally will be dismissed. He was acting as an agent for a disclosed principal.

Mr. Fordham should should prepare a decree in accordance with this Memorandum.

C. ALLEN HIGH, CHANCELLOR

December 23, 1981

cc: James L. Curtis
Ben Fordham
Richard Dinkins
William F. Carpenter, Jr.

[redacted] of [redacted] including attorney's fees and expenses of any litigation which

RUSH G.9.7.3.5.2

CERTIFICATE OF THE CLERK AND MASTER

IDENTIF. REFERENCE

JUN 25 3 48 PM '82

FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TN

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

BOOK 5903 PAGE 369

I, CHRISTINA NORRIS, CLERK AND MASTER of the Chancery Court of Davidson County, Tennessee, do hereby certify that the foregoing is a full, true and correct copy of the DECREE FILED AND ENTERED 1/4/82 in Minute Book 119, Page 359 and EXHIBIT I TO DECREE FILED AND ENTERED 1/4/82 and ORDER ENTERED AND FILED 1/29/82, Minute Book 119, Page 566. of said Court, in the cause wherein CALVIN SCRUGGS, PLAINTIFF ( ), VS. WALTER SWETT AND SUSIE B SWETT, et al, DEFENDANT (S), FILE NO. 80-383-II, as the same appears of record and now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said Court at my office in the Courthouse at Nashville, Tennessee, this the 25th day of June, 1982, and 206th year of American Independence.

CHRISTINA NORRIS, CLERK AND MASTER

BY: [signature]
DEPUTY CLERK AND MASTER

6/25 10:00 - CHECK

1866