

STATE OF MICHIGAN
COURT OF APPEALS

JAMES E. KIRBY,

Plaintiff/Counter Defendant-
Appellee,

v

RAYMOND D. OLIVER,

Defendant/Counter Plaintiff-
Appellant,

and

CITIZENS BANK,

Defendant,

and

JAMES E. KIRBY, JR., TAMARA WERTH,
KELLI KIRBY, MICHAEL KIRBY, ROBIN
OLIVER, TERESA OLIVER, and RACHELLE
OLIVER,

Third-Party Defendants-Appellees.

UNPUBLISHED

March 19, 2002

No. 227218

Genessee Circuit Court

LC No. 98-062178-PD

Before: Bandstra, P.J. and Murphy and Murray, JJ.

PER CURIAM.

Defendant Raymond Oliver appeals as of right from the circuit court's order finding that plaintiff was the lawful owner of a policy insuring the life of defendant. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the circuit court erred by finding that he failed to tender an offer to buy the policy insuring his life within the ninety-day period set by the transfer agreement between the parties. Defendant argues that the evidence showed that he demanded the opportunity to obtain his policy within the ninety-day period and that plaintiff waived the

requirement of a timely offer to purchase by rejecting his proposal to exchange policies. Defendant also argues that plaintiff cannot hold a policy on his life since he has no insurable interest in defendant's life. We find no error.

The challenged findings of fact were not clearly erroneous. The plain language of ¶ 5(a) of the 1988 transfer agreement stated that, "[i]f no purchase of such insurance policy is made . . . within ninety (90) days after the date when such Principal Owner [plaintiff] has received the full purchase price for his equity interest, the Trustee may distribute the policy or policies on the life of such Principal Owner [defendant] . . . to the owner of such policy [plaintiff]." Both defendant and plaintiff testified that defendant did not tender an offer to purchase the policy on his life owned by plaintiff within ninety days after plaintiff received payment for his shares under the 1997 settlement agreement. Nor is there any evidence to suggest that plaintiff waived the ninety-day deadline set by ¶ 5(a); in fact, the evidence indicates that plaintiff relied upon the ninety-day deadline to assert that he remained the owner of the policy.

Whether plaintiff lacks an insurable interest in defendant's life is an issue which can only be raised by and on behalf of the insurer. *Secor v Pioneer Foundry Co, Inc*, 20 Mich App 30, 33; 173 NW2d 780 (1969). Accordingly, defendant lacks standing to argue that plaintiff has no insurable interest. Furthermore, since plaintiff had an insurable interest when he purchased the policy he may maintain that policy and collect the proceeds even if that interest terminates at some point in the future. *Id.*, 37-38 The circuit court did not err by concluding that plaintiff could legally own a policy insuring defendant's life.

We affirm.

/s/ Richard A. Bandstra
/s/ William B. Murphy
/s/ Christopher M. Murray