NOT DESIGNATED FOR PUBLICATION

IN RE: GENERAL INSURANCE COMPANY OF AMERICA, CONCURSUS PROCEEDING	*	**NO. 2007-CA-0868**
	*	**COURT OF APPEAL**
	*	**FOURTH CIRCUIT**
	*	**STATE OF LOUISIANA**

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APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2001-3101, DIVISION "D-16"
Honorable Lloyd J. Medley, Judge
* * * * * *
Judge Patricia Rivet Murray
* * * * * *

(Court composed of Judge Patricia Rivet Murray, Judge Max N. Tobias, Jr., Judge David S. Gorbaty)

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(OPTION ONE MORTGAGE CORPORATION)

AFFIRMED

Bryan Ledet appeals the district court's summary judgment holding that Option One Mortgage Corporation ["Option One"] is entitled to the funds which are the subject of this concursus proceeding. For the reasons that follow, we affirm.

FACTS AND PROCEEDINGS BELOW

The concursus proceeding was initiated by General Insurance Company of America ["General"] following an August 20, 2000 fire that damaged insured property located at 1120 Valence Street in New Orleans. General deposited the proceeds of its policy, $74,703.16, into the registry of the court pending resolution of a dispute between Mr. Ledet and Option One as to which of them was entitled to the funds. Option One filed a motion for summary judgment on the basis that General's policy was a Portfolio Security Policy purchased by Option One to insure all the properties upon which it held mortgages, including the Valence Street property. The trial court heard the motion on February 16, 2006, and granted it by written judgment rendered May 11, 2006. Mr. Ledet filed a motion for new trial,

which was denied with written reasons on May 17, 2006. Mr. Ledet now appeals both the May 11 and the May 17 judgments.

DISCUSSION

Appellate courts review summary judgments *de novo* under the same criteria that govern the district court's consideration of whether summary judgment is appropriate. *Schroeder v. Board of Supervisors of Louisiana State University*, 591 So.2d 342, 345 (La. 1991). A motion for summary judgment is properly granted only if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact, and that the mover is entitled to judgment as a matter of law. *Id*.; La. C.C.P. art. 966; *Vermilion Corp. v. Vaughn*, 397 So.2d 490, 493 (La.1981).

Option One asserts that the summary judgment was properly rendered based upon undisputed facts. In support of its motion, Option One submitted affidavits and documents showing the following:

(1) Mr. Ledet transferred his ownership of the Valence Street property to Melvin N. Faucheux on February 11, 1999, by means of an Act of Cash Sale;

(2) Mr. Faucheux on February 11, 1999 granted a mortgage on the property to Gray Mortgage Company [“Gray”] to secure a $105,000 loan;

(3) Option One subsequently acquired the mortgage by assignment from Gray;

(4) On February 17, 1999, the Valence property was added to a blanket policy, entitled "Portfolio Security Policy," which Option One had purchased from General in 1998 to insure property held by Option One as collateral for its loans;

(5) Option One was the sole named beneficiary under the Portfolio Security Policy, the purpose of which was to protect Option One in the event the individual property owners failed to maintain insurance on their properties as required by their mortgages;

(6) The mortgage agreement executed by Mr. Faucheux on the Valence Street property required him to maintain hazard insurance on the property and specifically authorized the mortgagee to obtain insurance to protect its own interest in the event the mortgagor failed to adequately insure the property;

(7) The General policy became applicable because Mr. Faucheux had failed to insure the property from fire.

In opposing the motion for summary judgment, Mr. Ledet failed to introduce any evidence to dispute or contradict the documents submitted by Option One. On appeal, Mr. Ledet makes three arguments as to why Option One should not have been awarded the proceeds paid by the General policy. First, he asserts that there is a genuine issue of fact as to who held the title to the Valence Street property at the time of the fire, contending that Mr. Faucheux had no authority to grant a mortgage on the property because he did not own it. This contention is unequivocally refuted by the documents submitted by Option One, including the February 11, 1999 Act of Sale, the February 11, 1999 mortgage agreement, and the

affidavit of the notary before whom both the Act of Sale and the mortgage were executed.

Mr. Ledet next contends that the granting of summary judgment was improper because the trial court's denial of a prior motion for summary judgment asserted by Option One in 2004 should have served as *res judicata* to preclude the trial court from arriving at a different result herein. In response, Option One argues that at the time it brought its first motion for summary judgment, it had not yet discovered the existence of the recorded Act of Sale between Mr. Ledet and Mr. Faucheux, which resolved all doubt as to the ownership of the property in question at the time of the fire. Therefore, at the time the second motion was brought, there no longer remained an issue of fact as to the ownership of the property, which issue may have precluded the granting of the first motion. Moreover, as this court has held, under Louisiana law the denial of a motion for summary judgment is a non-appealable interlocutory order and is not *res judicata* as to the issues presented in the trial court. See *Landry v. Latter*, 00-0010, p.10 (La. App. 4 Cir. 12/29/00), 780 So.2d 450, 453.

Finally, Mr. Ledet argues that the summary judgment was improper because he and Option One had reached a settlement prior to the granting of Option One's motion. This argument is presumably based upon Option One's indication in its motion that although it and Mr. Ledet had amicably resolved their differences such that Mr. Ledet no longer had any objection to Option One's claim to the proceeds of the General policy, Option One nevertheless had to bring the motion for

summary judgment because of the impossibility of securing the consent of Mr. Faucheux, who was incarcerated, to any such compromise. However, any purported settlement between Option One and Mr. Ledet was negated by Mr. Ledet's opposition to the motion in the trial court and by his appeal to this court. Moreover, Mr. Ledet has presented absolutely no evidence to prove the existence of a settlement agreement, which under Louisiana law must be either reduced to writing or recited in open court and capable of being transcribed from the record. See La. C.C. art. 3071.

CONCLUSION

For the reasons stated, we find no error in the summary judgment rendered by the trial court. Accordingly, we affirm the judgment.

AFFIRMED