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**Newfoundland and Labrador Court of Appeal Determines Holder of Unexecuted Mortgage is Entitled to Benefit of Insurer's Standard Mortgage Clause**

- Reported Case: Wiseman's Sales & Services Ltd. v. Atlantic Insurance Co.
- Citation: 2007 NLCA 15
- At issue: Whether the standard mortgage clause in an insurance policy is applicable to a vendor with an unregistered vendor-take-back second mortgage arranged on the sale of a business.
- The Court: Newfoundland & Labrador Court of Appeal
- Judgment Rendered: March 1, 2007
- Factual Summary: Vendor sold a dealership (real property and inventory) to a purchaser. A portion of the purchase was financed by way of a vendor take-back mortgage for \$100,000. The vendor accepted that it held a second mortgage on the property, but the mortgage was never executed and was never registered. The purchaser made payments on the mortgage for approximately four years, at which point the dealership was destroyed by fire. The insurer acknowledged that the vendor was a loss payee (along with three other loss payees), but argued the vendor was not a mortgagee, so that the standard mortgage clause did not apply for the benefit of the vendor.
- Disposition By Lower Court: The trial judge decided the vendor was not a mortgagee and was not entitled to the benefit of the standard mortgage clause, despite the fact that it appeared the vendor intended to take a second mortgage over the property. The vendor's status as a loss payee meant that its rights were derived from the insured (the purchaser), and the vendor could only collect under the insurance policy if the purchaser could collect under the policy. The vendor was merely an unsecured creditor and not a mortgagee.
- Appellate Decision: The mortgage was an equitable mortgage (an agreement to advance money under a legal mortgage creates an equitable mortgage), and the equitable mortgagee is entitled to exercise the same remedies as the holder of a legal mortgage. The vendor's right to recover under the insurance policy is not dependent on the purchaser's right to recover, and the vendor is as much a beneficiary of the standard mortgage clause as the first mortgage holder. Appeal allowed.