LEROY WALTERS,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 99-01,805
	:	
TUSCARORA WAYNE INSURANCE COMPANY,	:	
	:	
Defendant	:	PETITION FOR INTERPLEADER
	:	
vs.	:	
	:	
CITY OF WILLIAMSPORT,	:	
	:	
Additional Defendant	:	

Date: October 20, 2000

OPINION and ORDER

The matter before the Court concerns the claim of Plaintiff Leroy L. Walters (hereinafter "Plaintiff") for $7,800.00 withheld from an insurance payment by Defendant Tuscarora Wayne Insurance Company (hereinafter "Tuscarora") and Defendant City of Williamsport (hereinafter "City"). The dispute arose after a fire occurred at Plaintiff's property located at 312-316[1] Campbell Street, Williamsport, Pennsylvania in late 1995.[2] The total claim for loss resulting from the fire was $58,500.00. Tuscarora, Defendant's insurance carrier, paid the claim; however, pursuant to 40 Pa.C.S. §638, Municipal certificate required prior to payment of fire loss claims, Tuscarora withheld $7,800.00 from the amount paid directly to

[1] Plaintiff claims the address is 312-316 Campbell Street; the City claims the address is 314-316 Campbell Street; however, in a copy of a letter submitted to this Court (attached to Plaintiff's Brief), written to Plaintiff by the City of Williamsport Bureau of Codes, reference is made to the property located at 312-316 Campbell Street.

[2] Plaintiff fixes the time of fire in November of 1995; City believes it occurred in December of 1995. No precise date was proven; Plaintiff and the City indicated at hearing agreement that the fire occurred at "the end" of 1995.

Plaintiff and issued a separate check for this amount payable to both Plaintiff and the City.[3] The check has never been cashed, as neither Plaintiff nor the City will relinquish their claim to it and sign off in favor of the other. In order to recover the money, Plaintiff instituted the instant action by a Writ of Summons filed November 10, 1999. After Tuscarora filed a Notice of Intent to Enter Judgment of Non Pros June 26, 2000, Plaintiff filed a Complaint July 6, 2000, in which Plaintiff claims the $7,800.00 has been wrongfully withheld from him. On September 20, 2000, this Court granted the Petition for Interpleader filed by Tuscarora, ordering the insurance company issue a check payable to counsel for both Plaintiff and the City, to be held in an escrow account until the matter is decided. Accordingly, the dispute is now between Plaintiff and the City.

Section 638(a) provides as follows:

> (a) No insurance company, association or exchange doing business in this Commonwealth shall pay a claim of a named insured for fire damage to a structure located within a municipality where the amount recoverable for the fire loss to the structure under all policies exceeds seven thousand five hundred dollars ($7,500) unless the insurance company, association or exchange is furnished with a certificate pursuant to subsection (b) of this section and unless there is compliance with the procedures set forth in subsections (c) and (d) of this section.

Subsection (b) sets forth that the insurance company is to be apprised by the municipality's treasurer whether there are any delinquent taxes, assessments, penalties, user charges against the property or any costs incurred by the municipality concerning removing, repairing or securing the damaged building/structure on the property; if the loss exceeds 60% of the

[3] At hearing on October 10, 2000, testimony revealed that a third payee, Meridian Bank (as mortgagee) was also involved; however, the bank no longer has a claim involving the subject premises as Plaintiff subsequently sold the property.

aggregate limits of liability, upon receiving certification from the municipal treasurer the insurance company is to pay the treasurer the amount due. The insurance company and municipality must further follow the procedures in subsections (c) and (d). Subsection (c) establishes the formula for calculating the amount to be withheld and orders that the withholding is authorized only if the municipality has adopted an ordinance authorizing the procedure set forth in subsections (c) and (d), including designating the municipal officer who shall carry out the escrow duties of the section. Subsection (d) states that the money shall be placed in a separate fund to be used solely as security against the total cost of removing, repairing or securing incurred by the municipality; further, the municipality is also required to contact the insured to certify the receipt of the money and that the statutory procedures shall be followed. The most significant procedure established by the statute under subsection (d) is that the money is to be "returned" to the insured, ". . . where the repairs, removal or securing of the building or other structure have been completed and the required proof received. . . ", less any costs incurred by the municipality. 40 P.S. §638(d).

Here, Plaintiff does not dispute that the City has appropriately adopted the provision of the statute as City ordinances. To this effect, the City submitted to the Court copies of Williamsport City Code Articles 1523, Escrow Procedures for Payment of Fire Insurance Proceeds, and 1525, Payment of Taxes from Fire Insurance Proceeds. These ordinances appoint the City Treasurer as the designated officer to carry out all responsibilities relating to escrow procedures authorized under Section 508 of Act 98 of 1992, 40 P.S. §638.

Plaintiff first argues that the City failed to follow the procedures set forth in the statute at subsections (c) and (d). We cannot agree. The City adopted the statute by ordinance

as required, retained the appropriate amount of insurance proceeds in escrow, and notified Plaintiff he was not in compliance with applicable building codes. *See* Plaintiff's Exhibit E. Plaintiff has somewhat argued that he is entitled to the escrow fund because the notice provisions of the law were not followed. Subsection (d) does require that the municipality is to contact the insured to inform him that the proceeds have been received and of the applicable procedures to be followed by the insured. Of course, here the insured received the check, so there would have been no need to notify him. Even if we were to find the City was not strictly in compliance with the notice provisions of the statute, it is clear that Plaintiff was aware that the money was being held in escrow until he brought the property up to code; accordingly, he had actual notice. For example, at hearing October 10, 2000, Plaintiff testified that he received the original $7,800.00 check at the time he received the larger check for the balance. He asked the City (and Meridian Bank) to sign the $7,800.00 check so he could receive the funds, but the City refused. Plaintiff further testified that the check became non-negotiable after six months and a second check was issued, *this time* sent to the city of Williamsport. Plaintiff also demonstrated awareness of the City's position and the withheld check by including paragraphs in the contractual language pursuant to his sale of the property that read as follows:

> 4. Mr. James Shively, Codes Officer, has urged in the past and most recently on or about April 14, 1998 that Allen Brush wants to own the property located at 312-316 Campbell Street; that LeRoy Walters sell [sic] it to him and that the codes will not release LeRoy Walters' insurance money because "the roof is defective and has to be torn off and replaced" and that the reconstruction by Robert Steppe included building over burned timbers.
>
> 5. In addition, Shively said that the roof is defective because it does not have birdsmouth joinder of the roof rafters with the side walls. He is [sic] also stated that he is not satisfied with the roof trim workmanship or the valley framing.

See Plaintiff's Exhibit C.[4] It is clear that Plaintiff had notice of the withheld money, and was aware of the work necessary for the City to release the funds.

Plaintiff also claims the money is wrongfully withheld because the City failed to prosecute pursuant to their ordinances within the applicable statute of limitations. Plaintiff's position is based on the theory that any failure to comply with the zoning and building code ordinances of the City is punishable as a summary offense after issuance of a citation. 53 P.S. §66601(c.1)(2) provides that ordinances regulating, *inter alia*, building, housing and safety ordinances are to be enforced as summary offenses. Pursuant to 42 Pa.C.S. §5552(a), prosecution for the offense must occur within two years after it is committed. Therefore, Plaintiff argues that since more than two years has elapsed from the fire, or from the date the check was issued, or at least from April 1998 when the City had knowledge of the property's defective roof, the City has lost the ability to prosecute the Plaintiff and must surrender the money.

We disagree. The function of the City ordinances, as provided by 40 P.S. §638, is to implement the statute itself. It is the statute that is being enforced. The statute provides for no time restrictions. The statute does not condition retention of the money upon the initiation of a timely prosecution. Instead, the City's retention of what may be a sizeable amount of money is conditioned on the Plaintiff as property owner making necessary repairs to his fire-damaged structure. This is a remedy in addition to any prosecution. Indeed, it may be a far more effective remedy as the size of the amount retained, in this case $7,800, is often

greater than the maximum fine that could be imposed, and in this case is more than seven times the $1,000 maximum fine that could be imposed for violation of each section of the applicable ordinances. *See* Ordinance Subsections 1523.99; 1525.99.

Moreover, as the City correctly argues, they are not requesting forfeiture of the funds to the City, a situation that would arguably give greater support to Plaintiff's position. Rather, they are simply requesting that the money remain in escrow until Plaintiff causes the necessary repairs to be made to the building, or until the City tires of the delay and proceeds to either do the repairs or condemn the property, as such is warranted by its condition. The authority to hold the money in escrow until such repairs are effected is given to the City by the statute. The only time limit imposed under the statute is under the control of Plaintiff; as soon as the property is brought up to code, the money is to be released.

Accordingly, the following Order is entered:

[4] The Court notes that Plaintiff's counsel delivered to the Court a copy of the Mortgage pursuant to the sale, which has been placed in the Court file. It is unknown whether this document was also filed of record and/or served upon the City.

ORDER

Pursuant to 40 P.S. §638, the City of Williamsport is HEREBY authorized to continue to retain the disputed amount of $7,800.00 in escrow until such time as Plaintiff has satisfied the Codes requirements regarding the property at 312-316 Campbell Street, Williamsport, Pa. At the election of the City, the escrow account currently at Sovereign Bank pursuant to the Court's previous Order of September 20, 2000, may be closed and the money deposited in a separate escrow account with the City Treasurer as provided by 40 P.S. §638 and the applicable City ordinances.

BY THE COURT:

William S. Kieser, Judge

cc: Court Administrator
Norman Lubin, Esquire
John C. Youngman, Jr., Esquire
Judges
Nancy M. Snyder, Esquire
Gary L. Weber, Esquire (Lycoming Reporter)