FEDERAL STANDARD ABSTRACT
TITLE NEWS

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Title Company Has No Duty to Provide a Defense for or Indemnify a Policyholder in a Quiet Title Action when Policyholder Conveyed Title Prior to the Commencement of Litigation

The matter of Washington Temple Church of God in Christ, Inc. v. Global Properties and Associates, Inc., et al, 2012 NY Slip Op 51997 (U) (Sup. Ct., Kings County) provides a fact scenario that is troublesome to those in the title insurance industry and is one that with the practice of due diligence should never happen. On September 27, 1976, the City of New York transferred title in a public auction to property designated as Block 1212, Lot 4 in Kings County to the Washington Temple Church of God in Christ, Inc. (hereinafter "Washington Temple"). That deed was recorded on October 21, 1976. After its purchase of the property, Washington Temple continuously held the property as a vacant lot used for parking. However, by a deed dated March 22, 1977, the City of New York mistakenly transferred the same property at another public auction to a Darrell A. Shavers. That deed was recorded on June 1, 1977. Mr. Shavers died on July 28, 2001. By deed dated December 24, 2012, Geraldine Shaver as Administratrix of Mr. Shavers' Estate and Individually, and by a quitclaim deed dated January 7, 2005, Regina V. Shavers and Darrell V. Shavers, Jr., transferred title to the property to Global Properties and Associates, Inc. (hereinafter "Global") for $180,000.00. Both deeds were recorded on April 1, 2005. At the time of Global's purchase, United General Title Insurance Company (hereinafter "United General") issued a title insurance policy to Global. By deed dated June 1, 2005, Global transferred title to the property to a Mr. Harry Spitzer for $400,000.00. That deed was recorded on June 13, 2005.

Shortly after Global purchased the property, Global posted a sign on the property stating that any vehicles parked at the property would be towed. On September 27, 2005, Washington Temple commenced its quiet title action against Global, Mr. Spitzer and the City of New York. On January 10, 2006, February 5, 2008 and February 15, 2008, Global submitted title claims to United General, seeking a defense to the Washington Temple quiet title action. Each title claim was denied by United General due to Global's conveyance of title to Mr. Spitzer. United General relied upon paragraph 2 of the Conditions and Stipulations of the policy which stated in pertinent part as follows: "The coverage of this policy shall continue in force as of Date of Policy in favor of an insured only so long as the insured retains an estate or interest in the land, or holds an indebtedness secured by a purchase money mortgage given by a purchaser from the insured, or only so long as the insured shall have liability by reason of covenants of warranty made by the insured in any transfer or conveyance of the estate or interest in the land…" As a result of the title claim denials, Global filed a fourth-party action against United

General. The action alleged four causes of action, two in contract, one in negligence and the fourth in indemnification arising under the title policy issued by United General to Global. United General subsequently filed a motion for summary judgment to dismiss Global's fourth-party complaint.

United General in its summary judgment motion argued that since Global sold the property to Spitzer before the litigation commenced and the contract of sale to Spitzer did not include any warranties of title and the deed conveying title to Spitzer was a bargain and sale deed with covenants against grantor's acts, United General has no liability to Global under the title policy. Furthermore, United General argued that the negligence action could not succeed since any negligence claim merged into the policy pursuant to its terms. Paragraph 15(b) of the title policy stated that "any claim of loss or damage, whether or not based on negligence, and which arises out of the status of the title to the estate or interest covered by or any action asserting such claim, shall be restricted by this policy.

The Supreme Court, Kings County, by way of a decision and opinion rendered by Justice David Schmidt, granted summary judgment in favor of United General. In granting summary judgment, the Court cited relevant case law to support his decision. Where a "plaintiff's claims under the insurance policies fall within the policies' exclusions…defendant insurance companies are relieved of their obligations to defend and indemnify." Zandri Constr. Co. v. Stanley H. Calkins, Inc., 54 N.Y.2d 935, 936 (1981). "Where an action reveals that it did not concern events covered under the terms of the policy of title insurance issued by the insurer, the insurer did not breach its contract with the insured when it refused to defend or indemnify them in the action." Ghaly v. First Am. Title Ins. Co., 260 A.D.2d 535 (App. Div. 1999). "To be relieved of its duty to defend on the basis of a policy exclusion, an insurer must establish that the exclusion is stated in clear and unmistakable language, is subject to no other reasonable interpretation, and applies in the particular case." Great Am. Restoration Servs. v. Scottsdale Ins. Co., 78 A.D.3d 773, 776 (App. Div. 2010), quoting Belt Painting v. TIG Ins. Co., 100 N.Y.2d 377, 383 (2003). In addition, the Court found that the negligence cause of action brought by Global could not stand because of United General's provision in paragraph 15(b) of the policy. In a case such as this where the title policy states that all actions or proceedings against the insurer must be based on the provisions of the policy, the Court found that "any other action or actions or rights of action that the insured may have or may bring against this company in respect of other services rendered in connection with the issuance of this policy, shall be deemed to have merged in and be restricted to its terms and conditions." Chu v. Chicago Title Ins. Co., 89 A.D.2d 574 (App. Div. 1982), citing Smirlock Realty v. Title Guar. Co., 70 A.D.2d 455 (1979).

Given the existing case law and the relevant provisions of United General's policy, the Court held that United General's obligation to provide coverage to Global ceased when Global conveyed its title to the property to Mr. Spitzer with a deed that did not have a warranty of title. The Court found that the exclusion of coverage in the title policy was clear and unequivocal, as such United General had no duty to defend Global. The Court further held that the negligence claim

merged into the title policy, resulting in a denial of the negligence claim.

United General in this matter was fortunate that Global conveyed title to Mr. Spitzer without any warranties as to title. Had Global found out about the cloud of title that existed prior to conveying title to Mr. Spitzer and Global then made a title claim under the title policy, it is very likely that United General would have been obligated to indemnify or defend Global. Additionally, if the deed conveying title to Spitzer had been a warranty deed, United General would have also been obligated to indemnify or defend Global. It is to be noted that Ticor Title Insurance Company, the company that issued a title insurance policy to Mr. Spitzer, may be obligated to give to Mr. Spitzer the purchase price of $400,000.00 if Global is not ordered to pay back to Spitzer the purchase price. At this time, the matter as to Global, Spitzer and Ticor is still pending. By a Supreme Court decision, dated May 16, 2007, it was found that Washington Temple was the owner of the property at issue. The Appellate Division upheld the decision. 55 A.D.3d 727 (App. Div. 2008).

The long and short of this case is that title companies have to exercise extreme care when conducting their title searches. It was truly inexcusable for United General and its agent(s) to have not found the deed from the City of New York to Washington Temple that was recorded on October 21, 1976. Had United General and its agent(s) done a much better job in its title search, there would not have been the 2005 conveyances to Global in the first place. United General should have found that there was a cloud on title and determined that Washington Temple was the rightful owner of the property at issue. If there were to be litigation at that point, it should have been between the City of New York and Mr. Darrell A. Shavers or his Estate. A great deal of litigation and legal fees and costs could have been averted had United General and its agent(s) properly done their work.