



The Docket: California Appellate Court Affirms Dismissal of Claim Against Title Insurer

Publication:

The Docket

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The Docket is a monthly TitleNews Online feature provided by ALTA's Title Counsel Committee, which reviews significant court rulings and other legal developments, and explains the relevance to the title insurance industry.

Michael O'Donnell and Michael Crowley, attorneys with the law firm Riker, Danzig, Scherer, Hyland & Perretti LLP, provided today's review of a recent decision by the California Court of Appeals that held the issuance of a preliminary title report does not require the insurance company to issue a policy. O'Donnell can be reached at modonnell@riker.com. Crowley can be reached at mcrowley@riker.com.

Citation: *Abikasis v. Provident Title Co.*, 2016 WL 3611016 (Cal. Ct. App. June 28, 2016)

Facts: In this case before the California Court of Appeals, the defendant title insurance company issued a preliminary title report stating that it was prepared to issue a title policy subject to certain exceptions, including a *lis pendens*

filed against the plaintiff property owners arising from a separate litigation. The *lis pendens* was filed by Nevada Equity Partners LLC (NEP), who was a co-owner of the property with the plaintiffs.

The preliminary report required that the *lis pendens* be released before a policy would be issued. After the report was issued, NEP's attorney sent a notarized withdrawal of *lis pendens* to the escrow company involved in the purchase. However, the attorney included instructions to not record the withdrawal until (i) the escrow company received confirmation that the separate litigation had settled; and (ii) the escrow company disbursed \$525,000 to NEP as part of the settlement.

Before it received this confirmation, however, the escrow company received a seizure warrant from the DEA on these funds, based on allegations that the money was derived from marijuana trafficking. The title insurance company then demanded that NEP's counsel send new instructions unconditionally authorizing the recording of the withdrawal of *lis pendens* and rescinding the demand for the disbursement of funds, at which point it would record the withdrawal and issue the policy.

These requested instructions apparently were not sent, the title insurance company never issued a policy, and the sale of the property failed. The plaintiffs sued the title insurance company for breach of contract and negligence, arguing that it breached its contractual duty to issue the policy and was negligent in not recording the withdrawal of *lis pendens* at NEP's counsel's request.

Holding: The trial court dismissed the complaint, as well as the two amended complaints filed by the plaintiffs. On appeal, the appellate court affirmed. First, it affirmed the dismissal of the breach of contract claim, finding that the first page of the preliminary title report expressly "disclaim[ed] an intent to be contractually bound" and that previous California decisions likewise had found that a preliminary report is not a contract. Second, it affirmed the dismissal of the negligence claim, holding that the preliminary report simply advised plaintiffs of the proposed terms of the title insurance policy, and that "plaintiffs' unwillingness to accept those terms cannot be a basis for liability" against the title insurer.

Relevance to the title industry: This decision reemphasizes that the relationship between a title insurer and an insured—or, here, a potential insured—is purely contractual. Absent extraordinary circumstances, title insurance companies are not liable for negligence arising from the issuance of or failure to issue a title policy.

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