

**Unique Design Home Bldrs., Inc. v Stewart Tit.
Ins. Co.**

2007 NY Slip Op 31915(U)

July 4, 2007

Supreme Court, Suffolk County

Docket Number: 0014796/2005

Judge: Emily Pines

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SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION PART 46 SUFFOLK COUNTY

PRESENT: HON. EMILY PINES

UNIQUE DESIGN HOME BUILDERS, INC.,
PLAINTIFF, X

-AGAINST-

STEWART TITLE INSURANCE COMPANY,
ALLIANCE ABSTRACT OF NY, INC., AND GRACE
TOLLIN,

DEFENDANTS.

X

MOTION DATE: 1/08/07, 1/22/07
SUBMITTED: 4/05/07
MOTION NO.: 02-MG
03-MG

Case DISP

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Defendant, Stewart Title Insurance Company, ("Stewart") moves for an order granting Summary Judgment in its favor & dismissing the complaint. Defendant, Alliance Abstract of NY, Inc. ("Alliance") moves separately for an order dismissing the complaint against Alliance. Both motions will be discussed below.

Plaintiff brought this action by serving a Verified Complaint dated June 20, 2005 seeking damages for breach of contract arising under a title insurance policy. Plaintiff entered into a contract of sale to purchase real property from defendant Grace Tollin on March 15, 2002. The contract sale price was \$1,085,000.00. Plaintiff alleges that the contract of sale provided it with a right of access to a public road, specifically, that plaintiff would be able to effect a subdivision of the property with access to the subdivided lots via Huntting Lane.

Alliance alleges that it acts as an agent to Stewart pursuant to an agreement between Alliance and Stewart dated November 16, 1992. Alliance contends that it provided a title report for the subject property to Stewart and Stewart then issued

a title insurance policy to plaintiff at closing. Furthermore, Alliance alleges that plaintiff's attorney hired Alliance for the benefit of plaintiff, knowing that Alliance is not an insurance company, but a company that provides a history of title to land, and a summary of any conditions which may affect said land. Alliance claims that its agency relationship with Stewart was in no way concealed and therefore, it is not liable to plaintiff for damages.

Stewart issued a title insurance policy to plaintiff dated January 17, 2003, policy number O-8831-264874. Stewart alleges that it is in full compliance with its obligations under this policy. According to the record, an action was brought against plaintiff, index number 15624/03 in Supreme Court Suffolk County concerning plaintiff's use of Huntting Lane. Stewart retained the firm of Rivkin, Radler to provide a defense for plaintiff herein, in that action. In addition, Stewart retained Rivkin, Radler to obtain a judicial declaration of the status of Huntting Lane, Index Number 3308/06 in Supreme Court Suffolk County. Pursuant to Court records, both actions are still pending.

Plaintiff brought this action seeking damages for breach of contract claiming lost profits, and for indemnification arising from plaintiff's alleged inability to develop the property. Plaintiff further contends that the language in the policy is ambiguous and should be resolved against Stewart as drafter.

Stewart moves for summary judgment alleging that the complaint is premature. Stewart claims that the policy only provides for damages after a final determination, in any action covered by the policy, has been reached, including any appeals therefrom. According to the record, both actions referred to are still pending before the Supreme Court Suffolk County.

Alliance moves for dismissal claiming that the insurance policy herein was issued by Stewart and at all times Alliance was acting as an agent for Stewart. Alliance further argues that the contract was between plaintiff and Stewart and since there was no privity of contract between plaintiff and Alliance, it has no liability to plaintiff under this policy.

Summary judgment is warranted when there are no issues of fact to be resolved by the trier of fact (see, *Hartford Accident & Indemnity Co. v Wesolowski*, 33 NY2d 169, 172; *Sillman v Twentieth Century Fox Film Corp.*, 3 NY2d 395, 404). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter

of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (see, *Winegrad v New York Univ. Med. Center*, 64 NY2d 851, 853; *Zuckerman v City of New York*, 49 NY2d 557, 562; *Sillman v Twentieth Century Fox Film Corp.*, supra at 404). To defeat the motion, the opponent must present evidentiary facts sufficient to raise a triable issue of fact (see, *Freedman v Chemical Constr. Co.*, 43 NY2d 260, 264). Mere conclusions, expressions of hope, or unsupported allegations or assertions are insufficient to defeat a motion for summary judgment (see, *Zuckerman v City of New York*, supra at 562).

The court finds that the title insurance policy is not reasonably susceptible to more than one interpretation and is, therefore, unambiguous (see, *Chimart Assoc. v Paul*, 66 NY2d 570). When, as here, the parties set down their agreement in a clear, complete document, their writing should be enforced according to its terms (see, *W.W.W. Assocs. v Gianconieri*, 77 NY2d 157, 162; *Automotive Mgmt. Group v SRB Mgmt. Co.*, 239 AD2d 450; *Matter of Ajar*, 237 AD2d 597). In the absence of any ambiguity, there are only documents to interpret, and the issue is one of law to be determined by the court (see, *Automotive Mgmt. Group v SRB Mgmt. Co.*, supra).

In reviewing the policy attached to the motions herein, the Court agrees with Alliance in that Alliance is not the underwriter of the policy and is not in privity of contract with the plaintiff. Furthermore, the underwriting agreement between Alliance and Stewart clearly shows that Alliance's obligations were to Stewart. Alliance was to provide sufficient information to Stewart to determine the insurability of title to this property. Alliance did not have an independent obligation to the plaintiff and did not, as alleged, conceal its agency relationship from plaintiff. Alliance does not hold itself out as a title insurer, but as an abstract company and therefore, the Court finds dismissal of the complaint against Alliance warranted.

The motion by Stewart for Summary Judgment is likewise granted. The policy states that the Company (herein Stewart) shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals therefrom. Until such determination is made in the above referenced action and a proof of loss is submitted to Stewart, an action for damages and indemnity is premature and the Complaint is accordingly dismissed.

Now therefore be it;

ORDERED, that the motion by Alliance for dismissal of the complaint against it is granted in full and be it further;

ORDERED, that the motion by Stewart for Summary Judgement and dismissal of the complaint against it is granted in all respects.

This constitutes the **DECISION** and **ORDER** of the Court.

Dated: June 12, 2007
Riverhead, New York



EMILY PINES
J. S. C.