| **Wells Fargo Bank, N.A. v IPA Asset Mgt. III, LLC** |
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| 2014 NY Slip Op 30971(U) |
| March 28, 2014 |
| Sup Ct, Suffolk County |
| Docket Number: 10-9552 |
| Judge: Daniel Martin |
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[* 1]

SHORT FORM ORDER

INDEX No. 10-9552
CAL. No. 13-00051CO

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 9 - SUFFOLK COUNTY

***PRESENT:***

Hon. DANIEL MARTIN
Justice of the Supreme Court

MOTION DATE 7-25-12 (#012)
MOTION DATE 5-21-13 (#014)
MOTION DATE 6-25-13 (#015)
MOTION DATE 9-17-13 (#016)
ADJ. DATE 9-17-13
Mot. Seq. # 012 - MD # 015 - X MG
# 014 - MD # 016 - MD

---------------------------------------------------------------X

WELLS FARGO BANK, N.A., AS TRUSTEE FOR CARRINGTON MORTGAGE LOAN TRUST, SERIES 2006-NC5 ASSET-BACKED PASS THROUGH CERTIFICATES,

Plaintiff,

- against -

IPA ASSET MANAGEMENT III, LLC, JOSEF C. MANGIARACINA, YOSI NEMAN, GENEVA SETTLEMENT SERVICES, INC., COMMONWEALTH LAND TITLE INSURANCE COMPANY, DLJ EQUITIES, LLC,

Defendants.

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COMMONWEALTH LAND TITLE INSURANCE COMPANY,

Third-Party Plaintiff,

- against -

UNITED GENERAL TITLE INSURANCE COMPANY and FIRST AMERICAN TITLE INSURANCE COMPANY,

Third-Party Defendants.

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Upon the following papers numbered 1 to 39 read on these motions for summary judgment and a motion for contempt/to compel; Notices of Motions/Order to Show Cause and supporting papers 1 - 5, 13 - 21; Notice of Cross Motion and supporting papers 22 - 26; Answering Affidavits and supporting papers 6 - 9, 27 - 29; Replying Affidavits and supporting papers 10 - 11, 30 - 39; Other Oral Argument 12; (~~and after hearing counsel in support and opposed to the motion~~) it is,

***ORDERED*** that motion sequence numbers (#012), (#014), (#015) and (#016) are combined herein for disposition; and it is further

***ORDERED*** that the motion (#012) by third-party defendants United General Title Insurance Company and First American Title Insurance Company for summary judgment dismissing the third-party complaint is denied; and it is further

***ORDERED*** that the motion (#014) by defendant Commonwealth Land Title Insurance Company for summary judgment dismissing the fifth cause of action in plaintiff's complaint for breach of contract is denied; and it is further

***ORDERED*** that the cross motion (#015) by plaintiff for summary judgment is granted in its favor and against defendant Commonwealth Land Title Insurance Company on the fifth cause of action in the complaint for breach of contract; and it is further

***ORDERED*** that the motion (#016) by Commonwealth Land Title Insurance Company for contempt or to compel plaintiff to comply with this court's discovery order is denied as moot.

On August 28, 2008, Evelyn Hernandez purchased the property located at 100 Sycamore Street in Brentwood, New York (the "Property") from Gina Jean-Louis ("Jean-Louis"). For the purchase, Hernandez borrowed $425,000, executing a note, secured by a mortgage on the Property in favor of New Century Mortgage Corporation ("New Century"). On the same date, Hernandez obtained an owner's title insurance policy from defendant Commonwealth Land Title Insurance Company ("Commonwealth") which insured the Property subject to the exclusions and exceptions from coverage listed therein. Commonwealth also issued a policy of title insurance insuring New Century's mortgage as a first lien against the Property (the "Mortgage Policy"). The Mortgage Policy insured New Century, its successors an/or assigns from any possible losses that may occur to the mortgagee by virtue of any loss of lien priority. New Century was thereafter purportedly sold on December 19, 2006 to plaintiff Wells Fargo Bank, N.A., as Trustee for Carrington Mortgage Loan Trust, Series 2006-NC5 Asset-Backed Pass Through Certificates ("plaintiff" or "Wells Fargo"), and has since been serviced by Carrington Mortgage Services ("Carrington").

On May 31, 2000, defendant Yosi Nemen ("Nemen") obtained a judgment in the amount of $2,889.75 against previous owners of the Property, Thomas D'Haiti and Jean Hermite D'Haiti (the "D'Haitis"). On September 19, 2002, the judgment was recorded in the land records of Suffolk County as a lien on the Property. In June 2005, the D'Haitis conveyed the Property by deed to Emmanuel Francois, who by deed dated June 30, 2005, conveyed the Property to Jean-Louis. On June 30, 2005, third-party defendant United General Title Insurance Company, which was later acquired by third-party defendant First American Title Insurance Company (hereinafter collectively referred to as "UGT"), issued an owner's policy of title insurance to Jean-Louis. The judgment held by Nemen was not satisfied before each conveyance and remained a validly secured judgment lien against the Property. Neither UGT nor Commonwealth listed the Nemen judgment as an exclusion or exception from coverage under their respective policies.

[* 3]



In March 2006, several title insurance companies, including Commonwealth and UGT, signed a Second Amended and Restated Mutual Indemnification Agreement ("MIA") wherein the signatories therein agreed to indemnify each other. Pursuant to the terms of the MIA, insurers that had issued a title policy on a property, agreed to indemnify subsequent title insurers of the same property for a covered defect in title not shown as an exception or exclusion in the previously issued policy. Specifically, the MIA provides in Section 1 that "[e]ach Company, as an Indemnitor, hereby agrees to indemnify and hold harmless each other Company, as Indemnitee, against loss or damage by reason of a defect, as provided for herein." The MIA further provides that upon an Indemnitee's receipt of either a copy of an executed Indemnitor's policy or a copy of the marked-up title report, it is not required to take any further action to authenticate the validity of the Indemnitor's policy. As is pertinent herein, Section 2 of the MIA reads:

> (b) "Defect", as used herein, means a Covered Defect, (as defined in Section 3 of this Agreement) which is either: (a) not shown as an exception to title in an Indemnitor's Policy, or, (b) if raised as an exception to title in the Indemnitor's Policy, has been afforded insurance that the Covered Defect will not be collected from or enforced against the Land insured.
>
> (e) "Judgment" or "Judgements" means, as used herein...money judgments.

In pertinent part, Section 3, Covered Defects, provides:

> The following matter, if neither satisfied, released, or disposed of in the Public Records (as defined in the Conditions and Stipulations of the Indemnitor's Policy) from the Land to be insured by the Indemnitee at the time it issues a policy of title insurance, are Covered Defects under this Agreement:
>
> ***
>
> (a) (ii) As to title policies issued by an Indemnitee on and after April 1, 2005: Judgments (each Judgment individually a "Lien"), (but not including federal tax liens) filed or docketed against a person or entity out of title, the lien of which has not expired by operation of law, provided no execution has been made, or action commenced to foreclose or to otherwise enforce the mortgage or Lien on the Date of Policy of Indemnitee's policy, and the amount of the Lien does not exceed $500,000....

In the case at bar, pursuant to the terms of the MIA, UGT is the Indemnitor and Commonwealth is the Indemnitee. There is no dispute that the Nemen judgment lien is a Covered Defect that was not shown as an exception or exclusion to title in the UGT policy issued to Jean-Louis. Thus, under the terms of the MIA, Commonwealth could rely on the policy issued by UGT and not list the judgment lien as an exclusion under the title insurance policy issued to Hernandez.

In October 2006, Nemen, by his attorney, sought payment of his judgment lien from Blackacre Title, UGT's settlement agent ("Blackacre") at the Jean-Louis closing. UGT acknowledges that in November 2006 it received notice of the claim. Emails were exchanged during which Blackacre informed UGT that its investigation revealed a mistake had been made, namely that its title searcher

missed the judgment. However, by letters dated December 26, 2006 and January 26, 2007, UGT and Blackacre, respectively, denied the claim because Nemen was a third-party uninsured claimant with no entitlement to payment from UGT. Nevertheless, Nemen was offered but declined a settlement of less than the amount then owed on the judgment lien.

Thereafter, by letter dated September 20, 2007, Commonwealth was informed by Carrington that Nemen's attorney intended to execute on the judgment lien and sell the Property if the lien was not satisfied. Carrington filed a second title claim dated January 8, 2009 with Fidelity Title Insurance Company which had acquired Commonwealth in December 2008. Correspondence and emails were exchanged between Commonwealth and Carrington on March 13, 2009, May 12, 2009, and on August 6, 2009. Commonwealth investigated the claim and discovered that its settlement agent, Geneva Settlement Services, Inc. ("Geneva"), which attended the closing of Hernandez's title, had during its title search, missed the judgment lien against the Property.

Meanwhile, Nemen, by his attorney, commenced enforcement proceedings to collect payment under the judgment lien, and on December 15, 2009 the Property was sold at a sheriff's sale. By deed dated January 8, 2010, the Property was conveyed to defendant Joseph Mangiaracina, who was the successful bidder. By virtue of this deed, the interests of Hernandez and New Century were cut off. Mangiaracina conveyed the Property to IPA Asset Management III, which in turn by deed dated March 8, 2010, conveyed the Property to DLJ Equities, LLC ("DLJ").

The next communication between Commonwealth and Carrington allegedly occurred on February 12, 2010 when Carrington contacted Commonwealth after learning of the sheriff's sale. By letter dated March 2, 2010, Commonwealth advised Carrington that the first title claim filed in 2006 was closed and that Commonwealth was not obligated to indemnify Carrington against its losses. The second claim filed in January 2009, was not mentioned in the letter, and no additional information has been provided to the court regarding the status of same.

On December 22, 2009, Hernandez's counsel corresponded with Commonwealth and submitted a claim under the title insurance policy issued to his client regarding the Nemen judgment lien and the sheriff's sale which had been conducted on December 15, 2009. On December 28, 2009, Commonwealth acknowledged receipt of the claim and by letter dated January 29, 2010, rejected the claim. Commonwealth indicated that since the Property had been sold to a third-party purchaser and a deed issued, Hernandez's interest in the Property had been effectively extinguished. Commonwealth also indicated that since Hernandez had not provided it with timely notice of Nemen's claim, it had been prejudiced because it was deprived of the opportunity to defend against the sheriff's sale. Therefore, Commonwealth wrote, it was only obligated to indemnify Hernandez against the amount of loss which could have been paid to prevent the sale, i.e., $6,080.56, the amount then owed on Nemen's judgment lien. A check for that amount was tendered to Hernandez. Hernandez's counsel disputed Commonwealth's letter, responding that upon being personally served with the notice of the sheriff's sale, his client immediately contacted the title company that issued her policy.

In December 2010, Wells Fargo commenced the instant action to vacate the sheriff's sale (first, second and third causes of action), for negligence against Geneva for failing to discover the existence of the Nemen lien and/or failing to pay the Neman lien prior to, or at the time of the Hernandez closing (fourth cause of action), and for breach of contract of the Mortgage Policy against Commonwealth for failing to pay the judgment lien or defend its interests as the insured (fifth cause of action).

Commonwealth denied liability and commenced a third-party action seeking to be indemnified by UGT under the terms of the MIA for any damages recovered by Wells Fargo. On March 22, 2011, upon the plaintiff's motion a default judgment was entered against Geneva.

Discovery commenced and court conferences were held. At some point before the September 13, 2011 compliance conference, the parties purportedly were able to reach a settlement with DLJ so that the Neman judgment lien would be satisfied and Hernandez's loan with the plaintiff modified and the mortgage restored. However, before the purported settlement agreement was executed, the pending motion by Wells Fargo to set aside the Sheriff's sale was denied, and the cross motion by Mangiaracina and DLJ for summary judgment dismissing so much of the amended complaint as sought to set aside the sheriff's sale and to cancel the notice of pendency was granted by this court's decision and order dated September 28, 2011, and thereafter affirmed on appeal (*see* ***Wells Fargo Bank, NA v IPA Asset Mgt. III, LLC***, 111 AD3d 820, 975 NYS2d 156 [2d Dept 2013]). Specifically, the Appellate Court found that "the Supreme Court properly determined that the notice requirements of CPLR 5236[c] were satisfied" and that the plaintiff's affidavit "was insufficient to rebut the presumption of proper mailing and receipt" of the notice of sheriff's sale (*id.* at 821). Thus, "title to, possession of, or the use or enjoyment of the subject property is no longer at issue" (*id.* at 822). Therefore, as to the plaintiff's amendment complaint, only the fifth cause of action against Commonwealth for breach of contract remains unresolved.

While the aforementioned appeal was pending, UGT made the instant motion for summary judgment dismissing the third-party complaint (#012); Commonwealth moved for summary judgment dismissing plaintiff's fifth cause of action (#014); and the plaintiff cross-moved for summary judgment in its favor on the fifth cause of action (#015). Thereafter, Commonwealth made another motion (#016) seeking to have the plaintiff held in contempt for failing to comply with a discovery order.

Motion sequence number (#012) pertains to the MIA. In support of its motion, UGT argues that Commonwealth lost its indemnification rights when it failed to provide UGT with prompt notice of its claim for indemnification, had actual notice of the sheriff's sale but failed to give UGT notice thereof thereby preventing UGT from curing the defect in title and prejudicing UGT's rights, and that Commonwealth failed to mitigate its damages by failing to pay off the relatively small Nemen judgment lien or take action to avoid the sale. In opposition, Commonwealth argues, UGT missed the Nemen judgment lien during its title search, but upon becoming aware of it, UGT determined in January 2007 that it was not obligated to pay the judgment lien because Nemen was not its insured. Thus, Commonwealth maintains, any prejudice suffered by UGT was of its own making. Additionally, Commonwealth maintains that as the subsequent insurer under the terms of the MIA, it is entitled to be indemnified and held harmless by UGT for the title defect in the policy issued to Hernandez.

As stated above, there is no dispute that the Nemen judgment lien is a covered defect that was not shown as an exception or exclusion to title in UGT's policy. Thus, under the terms of the MIA, Commonwealth could rely on UGT's policy and not list the lien as an exception or exclusion in the policy issued to Hernandez. However, during oral argument, counsel for UGT explained that there is a distinction between a claim and a defect. As applied here, the claim is the sheriff's sale, which UGT maintains it did not receive notice of until after the sale was completed. UGT's counsel, however, did not provide an explanation regarding notice of the defect in title, i.e., the Nemen judgment lien. Rather, counsel focused on the fact that at the time UGT received the letter from Nemen's attorney, UGT's insured, Jean-Louis, had already sold the Property to Hernandez. Thus, counsel argued, UGT's title insurance policy issued to Jean-Louis had terminated prior to receiving the claim from Nemen. In any

event, counsel pointed out, Nemen was not a covered insured. Therefore, coverage was declined. Counsel argued that if Commonwealth wanted to exercise its rights under the MIA, it had to give written notice so that UGT would have an opportunity to deal with the judgment lien. Counsel argued that UGT first received notice in June 2011 when the instant third-party action was commenced. Referring to the terms of the MIA and case law, counsel argued that as notice is a condition precedent, and proper notice was not given by Commonwealth, summary judgment should be granted in UGT's favor as a matter of law.

During oral argument Commonwealth's counsel conceded that it never gave UGT notice of the defect because Commonwealth was not aware an issue existed with the prior policy written by UGT. In any event, counsel argued, referring to the language of the MIA, the failure to provide notice will not prejudice the rights of an Indemnitee unless the Indemnitor is prejudiced.

UGT and Commonwealth both agree that Section 4 of the MIA contains the applicable notice requirements:

> (c) An Indemnitee shall give notice of a claim hereunder to the Indemnitor in the manner required of the Insured under the Indemnitor's Policy. An Indemnitor will process a claim made in accordance with the terms of this Agreement promptly and in good faith. The failure to provide notice as required will not prejudice the rights of an Indemnitee unless the Indemnitor is prejudiced thereby.

UGT's underlying title insurance policy issued to Jean-Louis required prompt notice be given of a claim. Thus, under the terms of the MIA, Commonwealth was also required to give UGT prompt notice. Commonwealth's failure to promptly notify defendant of the Nemen Judgment is not excused by the fact that UGT received notice of the defect in title from another source (*see* ***Resmac 2 LLC v Madison Realty Capital, LP***, 86 AD3d 440, 927 NYS2d 328 [1st Dept 2011]). Nevertheless, UGT did not establish that it was prejudiced by Commonwealth's failure, and thus, pursuant to the terms of the MIA, Commonwealth's failure to provide prompt notice will not prejudice its rights under the MIA (*see id.*). Indeed, UGT had actual notice of the defect as early as October 2006 when it was contacted by Nemen's attorney. Assuming, without deciding, for purposes of this analysis that coverage was not available pursuant to UGT's underlying title insurance policy issued to Jean-Louis, it is clear that UGT knew in October 2006 that it could be held liable for the defect to subsequent title insurers who were signatories to the MIA. Thus, Commonwealth's failure to provide notice as required under the terms of the MIA did not prejudice UGT's rights to investigate and deal with the Nemen judgment lien in October 2006. Therefore, based upon the unambiguous terms of the MIA, UGT is not entitled to summary judgment dismissing the third-party complaint. Accordingly, UGT's motion for summary judgment (#012) must be denied.

The court will now address Commonwealth's motion (#014) and plaintiff's cross motion (#015) for summary judgment. Commonwealth moves for summary dismissal of the fifth cause of action in the plaintiff's amended complaint arguing that, although requested, plaintiff failed to establish that it is an insured under the Mortgage Policy originally issued to New Century. It is also argued that plaintiff failed to advise Commonwealth that actual notice was received of the sheriff's sale. These failures by plaintiff, Commonwealth maintains, were material breaches under the provisions of the Mortgage Policy requiring the insured to cooperate with investigations and provide notice, thereby precluding recovery on its claim. Therefore, Commonwealth argues that its motion should be granted.

In opposition and in support of its cross motion for summary judgment, plaintiff argues there is no issue of material fact that it is an insured under the Mortgage Policy, that Commonwealth by letter dated September 20, 2007 was provided with timely notice of an adverse claim covered under the Mortgage Policy, and that it has not been indemnified by Commonwealth for the losses suffered as a result of the enforcement of the judgment lien against the Property, i.e., the sheriff's sale. Plaintiff argues that having established these undisputed facts, it is entitled to summary judgment in its favor against Commonwealth on the fifth cause of action for breach of contract.

In response, Commonwealth argues that the cross motion is untimely. Substantively, Commonwealth argues plaintiff has not provided "any conclusive admissible evidence" that it is a successor-in-interest to or an assignee of New Century's stake in the mortgage loan and thus is a successor or assign to New Century's right under the Mortgage Policy. Moreover, Commonwealth argues that it received an assignment of mortgage dated February 2010, after the date of the sheriff's sale which is insufficient to establish plaintiff's standing. Commonwealth argues, even assuming plaintiff could establish its standing under the Mortgage Policy, simply informing Commonwealth that Nemen claimed to be a judgment creditor with a lien against the Property did not give rise to an obligation by Commonwealth to pay the judgment lien.

As an initial matter, although the cross motion made by the plaintiff is untimely, it was made on virtually identical grounds as the timely motion, to wit, whether Commonwealth is obligated to indemnify plaintiff pursuant to the subject Mortgage Policy. Therefore, the cross motion will be considered (*see* ***McCallister v 200 Park, L.P.***, 92 AD3d 927, 939 NYS2d 538 [2d Dept.2012]; ***Lennard v Khan***, 69 AD3d 812, 893 NYS2d 572 [2d Dept 2010]).

As to the substantive arguments, "a policy of title insurance is a contract by which the title insurer agrees to indemnify its insured for loss occasioned by a defect in title" (***L. Smirlock Realty Corp. v Title Guar. Co.***, 52 NY2d 179, 188, 437 NYS2d 57 [1981]; *see* ***Appleby v Chicago Tit. Ins. Co.***, 80 AD3d 546, 914 NYS2d 257 [2d Dept 2011]). "A policy of title insurance insures 'against loss by reason of defective titles and encumbrances and insur[es] the correctness of searches for all instruments, liens or charges affecting the title to such property' " (***Citibank v Commonwealth Land Tit. Ins. Co.***, 228 AD2d 635, 636, 645 NYS2d 826 [2d Dept 1996], quoting Insurance Law § 1113 [a] [18]). Since the title insurer's liability to its insured is based, in essence, on contract law, that liability is governed and limited by the agreements, terms, conditions, and provisions contained in the title insurance policy (*see* ***Property Hackers, LLC v Stewart Tit. Ins. Co.***, 96 AD3d 818, 949 NYS2d 70 [2d Dept 2012]; ***Citibank v Commonwealth Land Tit. Ins. Co.***, *supra*). In general, a title insurer "'will be liable for hidden defects and all matters affecting title within the policy coverage and not excluded or specifically excepted from said coverage'" (***Citibank v Commonwealth Land Tit. Ins. Co.***, *supra* at 637, quoting 5A Warren's Weed, New York Real Property, Title Insurance, § 1.03 [6] at 15 [4th ed]).

Here, plaintiff incurred a loss due to an undisclosed, ultimately superior encumbrance, one of the very occurrences for which its predecessor-in-interest, New Century, secured coverage from Commonwealth (***Citibank v Commonwealth Land Tit. Ins. Co.***, *supra*, citing *see* 5A Warren's Weed, New York Real Property, Title Insurance, § 4.03 [3] [b] [4th ed]). Once advised of a title problem, the insurer has the option of paying the insured's loss, clearing the defects within a reasonable time, or showing that the defects do not exist (*see* 15A Couch on Insurance § 57:172, § 57:177; Appleman, Insurance Law and Practice § 5214). Thus, Commonwealth's vigorous attestations as to the plaintiff's failure to provide it with notice of the sheriff's sale is not persuasive as Commonwealth had notice of the

defect several years before the sale took place. Moreover, as pointed out by the plaintiff, Section 3 of the Mortgage Policy explicitly provides for the insured to notify Commonwealth promptly in writing

> (ii) in case knowledge shall come to an insured hereunder of any claim of title or interest which is adverse to the title to the estate or interest or the lien of the insured mortgage, as insured, and which might cause loss or damage for which the Company may be liable by virtue of this policy....

The letter provided by Carrington to Commonwealth in November 2007 clearly satisfies this notice provision. Moreover, contrary to Commonwealth's argument, this is not a case where a potential claim existed and a lawsuit had yet to be commenced (*cf.* ***Valcon Am. Corp. v CTIAbstract of Westchester***, 28 Misc3d 1228[A], 958 NYS2d 64 [Sup Ct, Orange County 2010]).

Commonwealth's argument that plaintiff breached the cooperation clause of the Mortgage Policy by failing to provide proof of its ownership of the indebtedness or proof that it was an insured is not persuasive. To establish a breach of a cooperation clause, "the insurer must show that the insured 'engaged in an unreasonable and willful pattern of refusing to answer material and relevant questions or to supply material and relevant documents'"(***New York Cent. Mut. Fire Ins. Co. v Rafailov***, 41 AD3d 603, 604, 840 NYS2d 358 [2d Dept 2007], quoting ***James & Charles Dimino Wholesale Seafood v Royal Ins. Co.***, 238 AD2d 379, 379, 656 NYS2d 325 [2d Dept 1997]). An insured's duty to cooperate with the insurer may be satisfied by substantial compliance (*see* ***V.M.V. Mgt. Co., Inc. v Peerless Ins.***, 15 AD3d 647, 791 NYS2d 136 [2d Dept 2005]).

Although Commonwealth requested proof of standing under the Mortgage Policy on two separate occasions by letters dated March 13 and August 6, 2009, Commonwealth has failed to demonstrate that plaintiff engaged in a pattern of willful and unreasonable conduct and refused to produce documents. Indeed, the parties communicated with each other numerous times beginning in October 2006, with plaintiff explaining in its claim letter its status as an insured. Furthermore, Commonwealth has failed to show that the documents and information which were not produced were material and relevant to the investigation or settlement of the plaintiff's claim. Additionally, based upon the testimony of the representatives deposed on behalf of Commonwealth, the public records were being searched. A modicum of investigative effort on the part of Commonwealth would have revealed that its original insured, New Century, had declared bankruptcy and that there was a Pooling and Servicing Agreement dated as of December 1, 2006 between New Century and Wells Fargo. Therefore, Commonwealth is not entitled to summary judgment dismissing the plaintiff's fifth cause of action for summary judgment. In fact, the evidence presented demonstrates that the plaintiff is the insured under the Mortgage Policy, that Commonwealth was provided notice of the judgment lien as required under Section 3 of the Mortgage Policy, and that the losses suffered by the plaintiff are covered thereunder but have not been paid by Commonwealth in breach of the Mortgage Policy. Thus, plaintiff is entitled to summary judgment on its cross motion and against Commonwealth on its fifth cause of action for breach of contract.

The motion by Commonwealth seeking contempt or to compel plaintiff to comply with this court's discovery order is denied as moot. In any event, during the pendency of the motion, the parties mutually agreed on a schedule to take the remaining depositions, and all of the documents requested had been produced.

Accordingly, motions (#012), (#014) and (#016) are denied, and the cross motion (#015) is granted.

Dated: MARCH 28, 2014

Daniel Martin
J.S.C.

____ **FINAL DISPOSITION** __X__ **NON-FINAL DISPOSITION**