

ALERT

JULY 9, 2009

GLOBAL INSURANCE GROUP

News Concerning
Recent Insurance Coverage Issues



TITLE INSURANCE: WASHINGTON SUPREME COURT HOLDS NO COVERAGE FOR EASEMENTS NOT DISCLOSED BY PUBLIC RECORDS OR ARISING AFTER ISSUANCE OF POLICY

Katina C. Thornock • 206.224.1292 • kthornock@cozen.com

In *Campbell v. Ticor Title Insurance Company*, 2009 WL 1709577, ---P.3d ---, (Wash No. 80999-2, June 18, 2009), the Washington Supreme Court held that a title insurer had no duty to defend a policyholder where the policy excluded coverage for easements not disclosed by the public record or arising after issuance of the policy. The Court addressed the issue of whether a title company had a duty to defend an insured-landowner in a suit against the landowner to reform the landowner's deed. The petitioners, the Campbells, purchased Lot A which had once been part of a larger parcel of land that was split into three lots: Lot A, Lot B and Lot C. At the time of the subdivision, the original owners of the larger parcel of land granted a pedestrian easement benefiting Lot C and burdening Lot B to enable access to a dock near a lake. The easement was intended to run adjacent to Lot A, along the property line between the home on Lot B and the Campbells' home on Lot A. When the Campbells purchased their home, they obtained title insurance from Ticor Title Insurance Company ("Ticor"). In 2002, a recorded survey of the original subdivided parcel showed that the easement ran through the home on Lot B.

After the Edwards subsequently purchased Lot C, they learned that the easement was blocked by the home on Lot B. The Edwards sued to reform the Campbells' deed to burden Lot A with a new pedestrian easement granting Lot C access to the lake. The Campbells tendered defense of the suit to Ticor. Ticor denied coverage on the basis that the policy excluded coverage where the public records failed to disclose the easement and for encumbrances attaching or created after the date the policy issued. The Campbells then sued Ticor for breach of the duties to defend and indemnify, bad faith and violation of the Washington State Consumer Protection Act. The trial court granted summary judgment in favor of Ticor

finding that it had no duty to defend the Campbells under the title policy. The Court of Appeals affirmed.

The Supreme Court addressed whether the allegations in the Edwards' complaint were conceivably covered under the Ticor policy, thus triggering Ticor's duty to defend. The allegations affecting the Campbells' property specifically concerned reformation of the deed to Lot A to accommodate Lot C's pedestrian easement. Applying the general rules of policy interpretation in Washington, which require a strict and narrow construction of policy exclusions, the Court noted that the title policy expressly excluded easements not disclosed in the public records. Apparently, the existence of the easement was not revealed in Ticor's search of the public records pertaining to Lot A, the Campbells' property.

The Campbells argued that the existence of the easement was disclosed by the public records. However, the Court recognized that even if Ticor reviewed public records for the lots as originally subdivided along with the subsequent grant of easement, the easement never affected Lot A and was not intended to do so. Even if the public records included more than the specific records for Lot A, that did not establish coverage because the easement did not affect Lot A. There was no reasonable basis to interpret the policy's language as covering any easement disclosed by the public record regardless of whether it affected the title at issue. The absence of any record showing any easement affecting Lot A undermined the Campbells' duty to defend claim given the policy exclusion.

Additionally, the Supreme Court found that there was no coverage pursuant to the policy exclusion pertaining to defects, liens, encumbrances, adverse claims or other matters attaching or created subsequent to the date of the policy. The Court noted that the easement dispute arose after the

date of the policy, once a survey revealed that the property line between Lots A and B ran through the home on Lot B and the easement was intended to run along that property line. The Court stated that the Edwards' success on the reformation claim, if any, will be due to the findings of the later conducted survey rather than anything disclosed in the public records at the time of policy issuance.

The Court rejected the Campbells' argument that coverage under the title policy should exist where the possibility that the easement might affect the subject property was not disclosed on its face. The Court stated that such an argument would render the policy exclusions meaningless and provide coverage even though the policy excluded property disputes arising from surveys conducted after the issuance of the insurance policy.

The Court also rejected the Campbells' argument that the subject Complaint necessarily alleged that the recorded easement burdened their property, otherwise, there would be no basis for seeking any relief against the Campbells or their property. The Court clarified that the allegation was that the original parcel owners intended to provide Lot C a pedestrian easement to the lake. The Edwards' eventual success in reforming the Campbell's deed, if any, would simply reflect

a court's determination that the original owners' intent to grant an easement to Lot C is best effectuated by burdening the Campbells' land. Such a decision would not mean that the original grant of easement disclosed a burden on the Campbells' land that is covered by the title policy purchased from Ticor.

In a unanimous opinion, the Court upheld the trial and appellate courts, holding that the title policy plainly excluded easements not disclosed by the public record or arising after the date the policy issued. Accordingly, there was no conceivable coverage of the Campbells' claims and Ticor owed no duty to defend. This ruling is important because the Court applied an exclusion in accordance with the plain language of the policy to deny a defense to an insured. Despite the deference the Washington courts have given to the policyholder in duty to defend disputes, the Court will not construe an insurance contract in any manner that contradicts its general purpose or results in hardship or absurdity.

To discuss any questions you may have regarding the opinion addressed in this Alert, title insurance coverage or how it may apply to your particular circumstances, please contact Katina Thornock (kthornock@cozen.com, 206.224.1292).