

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NIMATI HAMDAN)	
)	Case No.
Plaintiff,)	
vs.)	
)	
STEWART TITLE GUARANTY COMPANY, and MONROE TITLE COMPANY, INC.,)	
)	
Defendants.)	

09 CH 16840

COMPLAINT FOR DECLARATORY JUDGMENT

NOW COMES, Plaintiff NIMATI HAMDAN, by and through her attorneys LANGHENRY, GILLEN, LUNDQUIST & JOHNSON, LLC, and for her Complaint for Declaratory Judgment against the Defendants, STEWART TITLE GUARANTY COMPANY and MONROE TITLE COMPANY, INC, states as follows:

ALLEGATIONS COMMON TO ALL COUNTS

1. At all times relevant herein, Plaintiff, NIMATI HAMDAN, was a resident of the State of Illinois residing in Lemont, Illinois, County of Cook.
2. At all time relevant herein, STEWART TITLE GUARANTY COMPANY ("STEWART TITLE") was a Texas corporation doing business in Cook County, Illinois.
3. At times relevant herein MONROE TITLE COMPANY, INC. ("MONROE TITLE") was an Illinois corporation having a registered agent and doing business in Cook County, Illinois.
4. Defendants issued an Owner's Policy of Title Insurance to Plaintiff Nimati Hamdan bearing File Number TM260596; Policy No.: O-9301-1206456; Date of Policy February 26, 2009; referencing property 2716 West Potomac Ave., Chicago, IL 60622.

(hereinafter referred to as the "Policy"). A certified copy of the Policy is attached hereto and incorporated herein as Exhibit A.

5. At all times relevant herein there existed a certain property ("the subject property") located at 2716 Potomac Avenue, Chicago, Illinois 60622-2835, PIN: 16-01-222-036, with the legal description of: LOT 36 IN BLOCK 3 IN THE HUMBOLDT PARK RESIDENCE ASSOCIATION SUBDIVISION OF THE SOUTHWEST ¼ OF THE NORTHEAST ¼ OF SECTION 01, TOWNSHIP 39 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

6. As a result of a Demolition Action filed by the City of Chicago, a Lis Pendens was recorded against the subject property in the office of the Cook County Recorder of Deeds, Document No. 0631718005, by the City of Chicago. [See Exhibit B].

7. At all relevant times, Defendants knew or should have known, either directly or by and through its agents and attorneys that the Lis Pendens was an encumbrance and lien on the subject property.

8. Defendants had direct knowledge of the Lis Pendens recorded against the subject property.

9. A Release of the Lis Pendens was never executed or recorded, and therefore it remained a lien and encumbrance on the subject property.

10. On September 12, 2008, Defendants provided Plaintiff a Commitment for Title Insurance for the subject property. [Exhibit C]

11. The Commitment for Title Insurance failed to identify or disclose the Lis Pendens, Document No. 0631718005, recorded by the City of Chicago.

12. On October 8, 2008, the closing for the subject property occurred at Defendant's Office and was attended by agents and attorneys of Defendants.

13. On or about November, 2008, Plaintiff discovered that the Lis Pendens was a lien and encumbrance on the subject property; and discovered that the City of Chicago had a pending and ongoing demolition action against the subject property. [Exhibit D]

14. On February 16, 2009 and again on March 04, 2009 Plaintiff made a claim under the Policy and tendered her defense and indemnity of the demolition action to Defendants. [Exhibit E]

15. On May 7, 2009, STEWART TITLE responded to Plaintiff's notice and tender letter. STEWART TITLE acknowledged its defense obligations, but denied any indemnity obligations. STEWART TITLE also retained counsel to represent Plaintiff in the demolition action. [Exhibit F]

16. On May 18, 2009, Plaintiff responded to STEWART TITLE'S indemnity denial letter objecting to the partial denial of claim and objecting to STEWART TITLE retaining counsel and controlling the defense of the demolition action as a conflict of interest has arisen in light of STEWART TITLE'S indemnify denial letter. [Exhibit G]

17. Pursuant to Maryland Casualty Co v Peppers, 64 Ill.2d 187 (1976) and its progeny, a conflict of interest has arisen and Plaintiff has the right to retain her own counsel and control her defense of the demolition action.

18. Defendants must further reimburse Plaintiff the reasonable costs of defense for defending the demolition action.

19. Defendants have failed to acknowledge the conflict of interest and have failed to reimburse Plaintiff the reasonable costs of defense.

20. Defendants have also failed to fully investigate indemnity coverage in this matter and have outright denied indemnity without a full investigation.

21. Defendant's actions were done with malice and/or in willful, wanton and reckless

disregard for the rights of Plaintiff.

22. Plaintiff has sustained actual damages and losses, including but not limited to:
- a) defending the demolition action, including attorneys fees, court costs, potential fines and penalties;
 - b) removing the encumbrance and lien on title;
 - c) demolition of the subject building;
 - d) loss of use of property and rental income;
 - e) an inability to rebuild another three-story apartment building as the current zoning laws only allow for a two-story building;
 - f) constructing a new building.

23. Plaintiff's actual damages and losses far exceed the applicable policy limits of \$220,000.00 afforded under the policy.

COUNT I
DECLARATORY JUDGMENT

24. Plaintiffs realleges and restates paragraphs 1-23, as full set forth herein.
25. The pertinent provisions of the Policy is found under COVERED RISKS:

Subject to the exclusions from coverage, the exceptions from coverage contained in schedule B, and the conditions, Stewart Title Guaranty Company, a Texas corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

* * *

2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from...

* * *

5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting or related to
(a) the occupancy, use or enjoyment of the Land

* * *

If a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent the violation of enforcement referred to in that notice.

6 Any enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

26. The Lis Pendens, document No. 0631718005, recorded by the City of Chicago is a defect in or lien or encumbrance on the Title.

27 Defendant STEWART TITLE admits that the Commitment for Title Insurance and Policy failed to identify, disclose or raise as an exception the Lis Pendens, document No. 0631718005, recorded by the City of Chicago.

28 Defendant STEWART TITLE admits and acknowledges its duty to defend obligations under the Policy.

29 The Lis Pendens falls within the scope of the Policy and is a Covered Risk under the Policy.

30. There are no exclusions or exceptions applicable to the facts and circumstances herein.

31 Defendants are obligated to pay under the policy all actual damages and losses, including costs, attorney fees and expenses incurred by Plaintiff.

32. There may be other provisions of the Policy which may dictate that Defendants are obligated to provide coverage and indemnify Plaintiff for the losses and damages herein.

33. One or more of the Policy provisions apply to the facts and circumstances herein; therefore Defendants' Policy does provide coverage and/or a duty to defend and indemnify Plaintiff for her actual losses and damages.

34 An actual controversy exists among the parties in that Plaintiff contends a conflict of interest has arisen and that Plaintiff has the right to retain her own counsel and control her own defense of the demolition action; and that Defendants are to reimburse Plaintiff for the

reasonable costs of defense; and that Defendants owe a duty to indemnify under the policy, and Defendants contend otherwise.

WHEREFORE, the Plaintiff prays as follows:

- A. That the Court determine and adjudicate the rights of the parties under the policy;
- B. That the Court determine and adjudicate that a conflict has arisen and that Plaintiff has the right to select her own counsel and control her own defense in the demolition action; and that Defendants are to reimburse Plaintiff for the reasonable costs of defense;
- C. That the Court determine and adjudicate that Defendant is obligated and has a duty to indemnify Plaintiff for all losses and damages, including costs, fees and expenses;
- D. That the Court determined and adjudicate, and declare and enter a finding that the Defendant has failed to meet its obligations under the policy;
- E. That the Court determine and adjudicate that the *lis pendens* and associated loss and damages falls within the scope of the Policy and is a Covered Risk under the Policy;
- F. That the Court determine and adjudicate that the exclusions and exceptions are not applicable herein; and
- G. That the Court grant such other relief as it may deem appropriate.

COUNT II
Vexatious and Unreasonable Denial of Coverage

- 35 Plaintiff reallege and restate paragraphs 1-34, as full set forth herein.
- 36 Defendants owe a duty to the Plaintiff to exercise ordinary and reasonable care.
- 37 Plaintiff made a claim for defense and indemnity under the policy on the Defendants.
- 38 Defendant incompetently, dishonestly and fraudulently evaluated and denied coverage.
- 39 Defendant's denial was vexatious, unreasonable and in bad faith.
- 40 Plaintiff suffered and continues to suffer specific and actual damages and losses.

WHEREFORE, the Plaintiff, prays as follows:

- A. Enter judgment against the Defendants for all actual, punitive, consequential and other damages to which Plaintiff is entitled;
- B. Enjoin the Defendant from denying coverage under the policy;
- C. Find that the Defendants owe to duty to indemnify;
- D. Award attorneys' fees, litigation expenses, statutory damages, penalties, other costs and costs pursuant to 215 ILCS 5/155; and
- E. Grant such other relief deemed just and appropriate.

NIMATI HAMDAN, Plaintiff.

By: 

One of Her Attorneys

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