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New York Appellate Court Affirms That Declaration That "Arose From" Zoning Regulation Was Excluded From Coverage Under Title Insurance Policy

An appellate court in New York, affirming a trial court's decision, has ruled that a title insurance policy excluded coverage for a "Declaration and Covenants" filed as a condition of a zoning resolution.

The Case

Elliot WR Golf, LLC ("Elliot") and JBGR, LLC, Insure New York Agency, LLC, Hurney WR Golf, LLC, Dempsey WR Golf, LLC, and Walsh WR Golf, LLC (collectively, the "JBGR plaintiffs") alleged that their plan to construct golf villas on certain property being used as a golf course was prevented by a 1997 Declaration and Covenants (the "1997 Declaration") that limited development of the property to 140 residential units. The 1997 Declaration had been filed as a condition of a zoning resolution that required that if a golf course was constructed on the property, a declaration limiting residential development had to be filed. The title report prepared for the purchase of the property did not list the 1997 Declaration under its Schedule B exclusion list.

The plaintiffs claimed that they learned of the 1997 Declaration in 2009, when they were seeking approval to construct additional residential units on the property. The plaintiffs filed a claim under the title insurance policy that had been issued by Chicago Title Insurance Company in 2006, preceding the purchase of the property.

After Chicago Title declined coverage because the 1997 Declaration was not a defect, lien, or encumbrance on title, Elliot and the JBGR plaintiffs filed suit. The parties moved for summary judgment.

The Supreme Court, Suffolk County (New York), granted Chicago Title's motion for summary judgment and denied the plaintiffs' separate summary judgment motions.

Thereafter, Elliot and the JBGR plaintiffs appealed.

The Appellate Court's Decision

The appellate court affirmed.

In its decision, the appellate court explained that a title insurance policy essentially "is a contract by which the title insurer agrees to indemnify its insured for loss occasioned by a defect in title." A title insurance policy, the appellate court added, 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."

Moreover, the appellate court observed, a title insurer's liability to its insured is governed and limited by the agreements, terms, conditions, and provisions contained in the title insurance policy.

The appellate court then ruled that, under the plain terms of the title insurance policy issued by Chicago Title, the 1997 Declaration was excluded from coverage because it "arose from a zoning regulation," for which the policy specifically excluded coverage. The appellate court concluded that although the 1997 Declaration affected the value of the property to the plaintiffs as prospective buyers, "it did not affect the marketability of the title, or create a defect, lien, or encumbrance on the title."

The case is *JBGR, LLC v. Chicago Title Ins. Co.*, No. 35140/11 (N.Y. App. Div., 2d Dep't June 2, 2021).

New York Appellate Court Affirms Decision Dismissing Plaintiff's Action to Quiet Title

An appellate court in New York has affirmed a trial court's decision dismissing an action to quiet title, ruling that a deed had been obtained by false pretenses, and, therefore, was void ab initio.

The Case

In July 2015, Donna Reid filed a lawsuit to quiet title to real property located in Suffolk County, New York. In her complaint, Reid alleged that she had purchased the property for value from Marcia Shepard pursuant to a deed dated August 9, 2006. Reed sought, among other things, to cancel a later quitclaim deed, dated June 3, 2014, transferring Shepard's interest in the property to Wells Fargo Bank, N.A.

The 2014 quitclaim deed had been executed in connection with the settlement of an action commenced by Wells Fargo against Reid, Shepard, and others to foreclose a mortgage on the property. The court in the foreclosure action found that a fraud had been committed against Shepard by certain mortgage brokers.

Wells Fargo moved to dismiss Reid's complaint, contending that the 2006 deed, which had been executed contemporaneously with the mortgage transaction, was void as a result of fraud and that res judicata mandated dismissal of Reid's complaint. Wells Fargo attached a transcript of Reid's prior testimony relating to the 2006 transaction, taken during the criminal trial of one of the mortgage brokers.

The Supreme Court, Suffolk County, granted Wells Fargo's summary judgment motion and directed that Reid's complaint be dismissed.

Reid appealed.

The Appellate Court's Decision

The appellate court affirmed.

In its decision, the appellate court explained that a deed obtained by false pretenses is void ab initio. Here, the appellate court continued, Reid's testimony at the prior criminal trial established, among other things, that:

- She had never signed a loan application with respect to the property or made any down payment or mortgage payment;
- Her purported signature on the residential contract of sale was a forgery; and
- She had never intended to live in the property but simply agreed to receive a $10,000 fee for holding the property in her name for up to one year, as part of a plan to help Shepard "refinance" her home to avert a foreclosure.

The appellate court ruled that, contrary to Reid's contention, the evidence was sufficient to establish, prima facie, that the 2006 deed had been obtained by false pretenses, and, therefore, that it was void ab initio. The appellate court concluded that Reid had failed to explain her prior admissions or to raise a triable issue of fact as to the fraudulent nature of the 2006 deed. Therefore, the appellate court affirmed the trial court's decision.

The case is *Reid v. Wells Fargo, N.A.*, No. 12358/15 (N.Y. App. Div. 2d Dep't June 2, 2021).

New Jersey Appellate Court Affirms Decision Subrogating Earlier Recorded Mortgage to Later Recorded Mortgage

An appellate court in New Jersey has affirmed a trial court's decision granting the plaintiff's mortgage priority over a previously recorded mortgage that secured a home equity credit line account.

The Case

On March 15, 2005, Anthony and Catherine Deely executed a $664,000 mortgage to First Interstate Financial Corp. ("FIFC") secured by their residence in Beach Haven, New Jersey (the "Property"), which was recorded on March 23, 2005.

On June 21, 2005, the Deelys executed a mortgage to Fleet National Bank securing an $80,000 home equity credit line account ("HECLA"), which was recorded on August 10, 2005.

The Deelys subsequently refinanced their primary mortgage. American Abstract Agency (the "Title Agency") performed a title search for the refinancing. The closing took place on September 16, 2005 at the Title Agency's office. The Deelys executed a $726,000 mortgage to Mortgage Electronic Registration Systems, Inc. ("MERS") as nominee for The New York Mortgage Company, LLC, which mortgage was recorded on September 26, 2005. Of the loan proceeds, $667,922 was used to pay off and discharge the FIFC mortgage.

On January 2, 2014, MERS assigned the mortgage to New York Mortgage Trust, Inc. The assignment was recorded on January 15, 2014.

On March 23, 2015, New York Mortgage Trust, Inc., assigned the mortgage to the plaintiff in this case (New York Mortgage Trust 2005-3 Mortgage Backed Notes, U.S. Bank as Trustee). The assignment was recorded on April 21, 2015.

At the time of the closing, Bank of America, N.A. (Fleet's successor), advised the Title Agency in writing that the Fleet mortgage had a zero balance after Anthony Deely had made a $16,884.16 payment. The HUD-1 settlement statement stated that the Fleet mortgage was "to be [paid] off prior to closing."

The marked-up title insurance commitment report required payoff of the $80,000 Fleet HECLA mortgage. At closing, the Title Agency's representative marked the Fleet mortgage payoff requirement

as “Removed.” The loan origination file contained a note that the mortgage was paid off on September 16, 2005 at 11:00 a.m.

On November 6, 2007, the Title Agency wrote to Bank of America indicating that, while the $80,000 Fleet mortgage had been paid in full, a discharge of the mortgage had not been recorded. The Title Agency requested that Bank of America discharge the Fleet mortgage. Bank of America did not respond, and the Fleet mortgage was never discharged.

Without notice to the plaintiff, the Deelys increased their credit line on the HECLA account twice and withdrew payments on the line of credit. The credit line was first increased to $110,000 on December 29, 2006 and then increased to $200,000 on July 11, 2007. Both loan modification agreements were notarized by Carol Scholey, the same manager who wrote the letter stating that the Deelys’ HECLA account had been paid off.

On February 1, 2013, the Deelys defaulted on their mortgage with the plaintiff. A September 28, 2015 foreclosure search report listed the Fleet mortgage in first position and the plaintiff’s mortgage in second position.

The plaintiff sued, seeking a judgment that its mortgage had priority over the Fleet mortgage.

Thereafter, the plaintiff moved for summary judgment to have its mortgage declared to be in first position. In support of its motion, the plaintiff submitted the certification of Anne Nachman, the title officer of the Title Agency. Nachman certified that the Title Agency maintained business records “for the purpose of real estate and mortgage transactions” that “are made at or near the time by, or from information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the course of business activity conducted regularly by [the Title Agency].” Nachman further certified that it was the “regular practice of [the Title Agency] to make these records” and the attached records were “true and accurate copies.”

Attached to the certification were a settlement statement, a payoff notation made by the Title Agency in its file, and a payoff letter from Scholey stating that Anthony Deely had "paid the Fleet loan to a zero balance." The payoff letter was required by the Title Agency prior to closing. Also attached were the marked-up title endorsement and commitment. The commitment expressly required the Deelys to "[p]ay and satisfy" the FIFC and Fleet mortgages.

Bank of America argued that material facts were in dispute because the plaintiff "failed to submit admissible evidence that its mortgage was either intended to be superior, or that its mortgage was used to satisfy a prior loan." Bank of America claimed that instead, the plaintiff sought to have the trial court rely on a series of inferences based on a certification of an employee of the Title Agency, that in turn~~,~~ was not based on personal knowledge.

Bank of America also argued that the plaintiff had actual knowledge of Fleet's mortgage. Although the HECLA was paid down to zero, it remained an open-ended line of credit and had never been discharged. In addition, Bank of America pointed out, the assignments of the plaintiff's mortgage had been recorded years after both HECLA modification agreements had been recorded. Bank of America claimed it would not be unjustly enriched if its mortgage was senior to the plaintiff's mortgage because the plaintiff had deliberately loaned new funds to the borrower despite being aware of the Fleet mortgage.

Finally, Bank of America argued that the plaintiff's actual knowledge of the Fleet mortgage precluded the court from subrogating its mortgage to the plaintiff's mortgage.

The trial court determined that Nachman's certification sufficed to admit the documents contained in the Title Agency's loan origination file as business records. Based on those records, the trial court found that the proceeds from the plaintiff's loan had been used to pay off the FIFC loan.

The trial court also found that the marked-up commitment stating that both the FIFC and Fleet mortgages were paid off as required, coupled with the letter from Bank of America indicating there was a zero balance on the HECLA, sufficiently evidenced the plaintiff's intent and requirement to hold a first lien position. The trial court further explained that in this context, "actual knowledge is generally defined as being a lender who makes a loan, knowing that there's an intervening lien, and not requiring that it be paid off."

In the trial court's view, these same documents and Nachman's certification demonstrated "that it was the intent of the parties that those loans be paid off. And, therefore, any absence or omission in not requiring a discharge of [the] mortgage, not just a . . . payoff statement with a zero balance, at most, is negligence." Negligence was "insufficient to bar the application of the doctrine" of equitable subrogation, according to the trial court.

The trial court decided that the plaintiff's mortgage should be equitably subrogated to a first lien position. It granted the plaintiff's motion for summary judgment and denied Bank of America's cross-motion. A final judgment of foreclosure was entered, which provided in part that Bank of America's "mortgage [was] equitably subrogated for the first $667,922.03 pursuant to the order dated November 17, 2017."

Bank of America appealed, contending that the trial court had "incorrectly and prematurely" determined that the plaintiff's mortgage was superior to its mortgage through equitable subrogation.

The Appellate Court's Decision

The appellate court affirmed, holding that Bank of America's earlier recorded mortgage had been properly equitably subrogated to the plaintiff's later recorded mortgage.

In its decision, the appellate court explained that~~,~~ when two parties compete for priority over each other's mortgage, the party that recorded its mortgage first normally will prevail under New Jersey's recording act.

The appellate court then added that~~,~~ despite the general rule prioritizing first-recorded mortgages, an exception "can sometimes occur when a third party advances money to pay off a mortgage." In certain instances, the appellate court continued, courts apply the doctrine of equitable subrogation to ameliorate the "harsh consequences of the recording act" by permitting the third-party lender to inherit, in full or in part, the original lien position of the mortgage that it paid off, even if an intervening lien existed in the meantime."

The appellate court then decided that equitable subrogation "is appropriate when loan proceeds from refinancing satisfies the first mortgage, the second mortgage is paid in full as part of the transaction, and the transaction is based on a discharge of the second mortgage, so long as the junior lienor [in this case, Bank of America], is not materially prejudiced." Under these circumstances, the appellate court ruled, equitable subrogation should not be precluded by the new lender's actual knowledge of the intervening mortgage.

Applying that principle to this case, the appellate court explained that~~,~~ as a direct result of the plaintiff refinancing the FIFC first mortgage, it had been paid in full and discharged of record and the Fleet mortgage balance had been paid off. The appellate court stated:

> At all relevant times, plaintiff, the Title Agency, and the title insurer, understood and required that the Fleet mortgage was to be discharged. The closing documents and endorsement reflect that understanding. The unexpected absence of a discharge of the Fleet mortgage was, at most, negligence. [Bank of America] should not be unjustly enriched as a result of this type of mistake.

The appellate court added that~~,~~ by limiting the first lien priority of the plaintiff's mortgage to the balance due on the FIFC mortgage at closing, the superior lien balance owed by the Deelys had not been increased. In addition, the appellate court continued, as part of the transaction, the HECLA balance had been satisfied. Under these circumstances, it found, Bank of America was "not materially prejudiced" by having the plaintiff's mortgage assume the superior position.

The appellate court observed that~~,~~ denying equitable subrogation would place Bank of America in first lien position, "an inequitable result" that was contrary to the parties' expectations. "Issuing a payoff quote and having the HECLA balance paid in full hardly bespeaks an expectation that its lien position would be materially improved by the refinancing," the appellate court said.

The appellate court concluded that the trial court's factual findings were "amply supported" by the record and its legal conclusions were correct. The trial court had not abused its discretion in applying the doctrine of equitable subrogation to accord the plaintiff a first priority position, the appellate court ruled.

The case is *New York Mortgage Trust 2005-3 Mortgage-Backed Notes v. Deely*, 246 A.3d 838 (N.J. App. Div. 2021).

Arizona Appellate Court Affirms Ruling in Favor of Title Agency and Title Insurer

An appellate court in Arizona has affirmed a trial court's decision in favor of a title agency and a title insurer, rejecting, among other things, a property owner's "marketability" claim.

The Case

In December 2013, Villages at Country Club, LLC ("VACC") purchased land in Mesa, Arizona (the "Property"), planning to develop single family residences for sale. The property had been partially

developed with triple-plex townhomes intended to be leased as residences. VACC's predecessor-in-interest recorded covenants, conditions, and restrictions ("CC&Rs") stating that the "declarant intends to lease portions of the Lots to be used as the sites for residential dwellings." The Property was subject to a plat (the "Plat") that incorporated this restriction.

The 2013 purchase agreement named Chicago Title Agency ("CTA") as the escrow agent, and CTA procured a title insurance policy (the "Policy") for VACC from Chicago Title Insurance Company. The Policy insured a fee simple interest in the Property. It insured against title defects, including unmarketability of title, subject to certain exceptions and exclusions. VACC also negotiated with Chicago Title and received expanded coverage through additional policy endorsements.

Before closing on the Property, VACC discussed with city employees its intent to resize the lots and change the building elevations, which would require an amendment to the Plat. After these discussions, VACC purchased the Property, acquiring a fee simple interest in the Property.

VACC began construction, completing residences on 19 lots that VACC then sold as separate, fee simple properties.

Thereafter, sometime in 2014, a residential developer expressed an interest in purchasing 333 single-family residential lots within the Property. VACC and the developer entered into a purchase agreement in July 2014 to that effect.

In the fall of 2014, the developer's title agency discovered that the Property was platted as one large lot, rather than individual lots. The developer determined that the Plat, incorporating the CC&Rs, contemplated that the Property would only be leased, and not subdivided into individual lots as VACC intended. Over the following eight months, VACC, the city of Mesa, and the developer worked to amend the Plat to permit the sale of individual lots. The developer eventually contracted with VACC to purchase the lots in installment contracts, rather than as a one-time purchase.

Before Mesa's approval of the amended Plat, in January 2015, VACC made a claim under the Policy, asserting that the Property was unmarketable and seeking to recover the costs associated with amending the Plat. Chicago Title investigated the claim and denied coverage based on its view that the Property was marketable.

VACC sued CTA and Chicago Title, seeking compensatory and punitive damages for alleged breach of the Policy, breach of the duty of good faith and fair dealing, breach of fiduciary duty, and bad faith.

After discovery, Chicago Title and CTA filed a joint motion for summary judgment, arguing that title was marketable and that the Policy excepted from coverage any costs arising from amending the Plat. Additionally, they argued that Chicago Title's denial of coverage was reasonable.

In a separate motion, CTA also argued that it should be dismissed from the litigation because it was not a party to the Policy.

The trial court granted CTA's motion and granted summary judgment in favor of Chicago Title. VACC appealed.

The Appellate Court's Decision

The appellate court affirmed.

In its decision, the appellate court first ruled that although CTA's name appeared on one page of the Policy, it was not a party to the contract and, therefore, the trial court had not erred by granting summary judgment in favor of CTA.

The appellate court then rejected VACC's main contention that title to the Property was unmarketable because the lease restriction in the Plat did not allow for the sale of individual lots and the Policy covered costs incurred because of such unmarketability. It ruled that the Policy "did not provide insurance for a specific use and instead insured title *subject to* the conditions in the Plat." As the

appellate court pointed out, the Policy expressly excluded “loss or damage, and . . . costs, attorneys’ fees or expenses that arise” because of “easements, covenants, conditions, and restriction as set forth on the plat.”

Adding that VACC had not asserted that anyone else claimed an ownership interest in the Property, or that anything prevented VACC from conveying the same interest it had acquired when it purchased the Property, the appellate court ruled that the trial court had “properly rejected VACC’s marketability claim.”

Finally, the appellate court also was not persuaded by VACC’s argument that, under the “reasonable expectations” doctrine, the parties’ intent controlled and that, here, the parties intended that the Policy would cover VACC’s ability to sell the Property in individual units. The appellate court explained that VACC had reviewed the exceptions to coverage and had requested (and had been granted) specific changes to certain exceptions and also had requested (and also had been granted) the removal of some exceptions in the Policy. Because the Policy was a negotiated agreement, the appellate court held that “the reasonable expectations doctrine does not apply and the Policy terms control, excluding VACC’s claims of coverage.”

The case is *VACC LLC v. Chicago Title Ins. Co.*, Nos. 1 CA-CV 19-0508, 1 CA-CV 20-0075 (consolidated) (Ariz. Ct. App. Feb. 23, 2021).

Title Insurer Need Not Defend “Adverse Possession” Claim, New York Appellate Court Rules

An appellate court in New York, affirming a trial court’s decision, has ruled that a title insurer was not obligated to defend and indemnify property owners in connection with an action asserting a claim for adverse possession.

The Case

The plaintiffs in this case, David N. Melamed and Mahvash M. Danielian, owned certain real property in Roslyn Harbor, New York, adjacent to property owned by Susan F. Abeles.

Abeles commenced an action against the plaintiffs, seeking a judgment declaring Abeles the owner by adverse possession of a portion of the land owned by the plaintiffs.

The plaintiffs demanded that their title insurer, First American Title Insurance Company, defend and indemnify them in the Abeles action.

After First American refused that demand, the plaintiffs filed suit, seeking a declaration that First American was obligated to defend and indemnify them in the Abeles action and for damages arising from their legal expenses in defending the Abeles action.

The plaintiffs moved for summary judgment and First American cross-moved for summary judgment and a declaration that it was not obligated to defend and indemnify the plaintiffs in the Abeles action.

The Supreme Court, Nassau County, denied the plaintiffs' motion and granted First American's cross motion.

The plaintiffs appealed.

The Appellate Court's Decision

The appellate court affirmed, agreeing with the lower court's determination that First American was not required to defend and indemnify the plaintiffs in the Abeles action.

In its decision, the appellate court explained that the plaintiffs' title insurance policy included an exception for claims arising from the rights of persons in possession. The appellate court then ruled that Abeles' claim for possession of a portion of the plaintiffs' property by adverse possession "was a claim arising from the rights of persons in possession."

The appellate court stated that, contrary to the plaintiffs' contention, there was "no other reasonable interpretation of this exception to the policy."

Moreover, the appellate court continued, because there was "no possible factual or legal basis on which" First American "might eventually be obligated to indemnify" the plaintiffs, it was not required to defend them in the Abeles action.

The appellate court concluded that because the plaintiffs' demand for First American to defend and indemnify them in the Abeles action "fell squarely" within the exception from coverage, it agreed with the trial court's determination denying their motion for summary judgment on the complaint and granting First American's cross motion for summary judgment declaring that it was not obligated to defend and indemnify the plaintiffs in the Abeles action.

The case is *Melamed v. First American Title Ins. Co.*, 190 A.D.3d 724 (N.Y. App. Div. 2d Dep't 2021).

Fifth Circuit Affirms District Court's Decision Finding No Coverage of Claim for Liens

The U.S. Court of Appeals for the Fifth Circuit has affirmed a decision by the U.S. District Court for the Northern District of Texas in favor of a title insurer that title insurance policies it issued did not cover a claim for liens asserted against the insured.

The Case

Hall CA-NV, LLC, purchased title insurance from Old Republic National Title Insurance Company. The parties contracted using standard title insurance policy forms designed by the American Land Title Association ("ALTA").

During the contracting process, Hall agreed to the removal of Covered Risk 11(a), the standard protection against losses from mechanic's liens arising out of work begun on or before the policy date. That provision usually protects the insured against any loss incurred as a result of:

> The lack of priority of the lien of the Insured Mortgage . . . over any statutory lien for services, labor, or material arising from construction of an improvement or work related to the Land when the improvement or work is . . . contracted for or commenced on or before Date of Policy.

Hall also expressly agreed to a separate, much more limited mechanic's lien provision.

Thereafter, Hall sued Old Republic, asserting that other contractual provisions – namely, Covered Risks 2 and 10 – covered the losses that Covered Risk 11(a) would have covered.

Old Republic objected to Hall's attempt to shoehorn the coverage of Covered Risk 11(a) into other provisions of the title insurance policy. Old Republic pointed out that Hall's interpretation of Covered Risks 2 and 10 would render Covered Risk 11(a) surplusage – and that it also would make the parties' decision to remove and replace Covered Risk 11(a) meaningless.

Hall sued in the U.S. District Court for the Northern District of Texas, asserting various contract, statutory, and common law claims against Old Republic for failing to indemnify Hall.

The district court granted Old Republic's motion for summary judgment, and Hall appealed to the Fifth Circuit.

The Fifth Circuit's Decision

The Fifth Circuit affirmed.

In its decision, the circuit court explained that any doubt about whether Covered Risks 2 and 10 could possibly be read to cover the lien losses at issue in this case was removed by the fact that the parties also signed standard ALTA forms. In so doing, the Fifth Circuit continued, the parties specifically

contracted to eliminate one coverage provision of the standard-form insurance policy: Covered Risk 11(a).

In other words, the Fifth Circuit reasoned, the parties took a standard-form ALTA contract and used a standard-form addendum to specifically remove the provision that would have provided Hall coverage in this case. According to the Fifth Circuit, this fact "alone" should doom Hall's claim that the remaining provisions of the insurance policies somehow covered the lien losses.

The Fifth Circuit agreed with Old Republic that reading Covered Risks 2 and 10 to cover a loss specifically covered by the (removed) Covered Risk 11(a) "would render Covered Risk 11(a) in the standard-form ALTA contract surplusage."

The circuit court then rejected Hall's argument to the effect that:

> The standard contract employs a "belt-and-suspenders" approach to insuring the type of mechanic's lien losses at issue here. So it should not matter if parties decide to ditch the belt (Covered Risk 11(a)), so long as they keep the suspenders (Covered Risks 2 and 10).

In rejecting that argument, the Fifth Circuit said that it was "reluctant to say that the parties' alteration of a standard-form contract" was meaningless, and that it was especially reluctant to do so in this case, "where the parties' alteration doesn't just 'delete[]' Covered Risk 11(a) – it replaces the provision with substantially narrower coverage."

In summary, the Fifth Circuit said that the insuring clauses did not cover Hall's lien losses (and therefore that it did not have to review the district court's conclusion that an exclusion in Old Republic's title insurance policies barred coverage of the claim for liens and work performed after the issuance of the policies).

The circuit court concluded that because Hall was not entitled to indemnification for the lien losses, it could not show that Old Republic had acted in bad faith in denying its claim, and because Hall alleged no other harm apart from the lien losses, Hall could not demonstrate that Old Republic had caused it any harm in violation of the Texas Insurance Code (assuming that the Texas Insurance Code applied, and that Old Republic had breached its provisions).

The case is *Hall CA-NV, L.L.C. v. Old Republic National Title Ins. Co.*, 990 F.3d 933 (5th Cir. 2021).

Rivkin Radler Comment

We reported on the district court decision in the Summer 2020 issue of *The Title Reporter*, *available at* https://4d7dwndq5eq103jrq1ajiqwh-wpengine.netdna-ssl.com/wp-content/uploads/2020/07/Title-Reporter-June-2020.pdf.