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Federal District Court in New York Grants Summary Judgment in Favor of Title Insurer

A federal district court in New York granted summary judgment in favor of a title insurance company and its affiliate in a case alleging that they breached their fiduciary duty and engaged in deceptive business practices under New York General Business Law ("GBL") § 349 by funding the defense of an adversary in a state court quiet title action.

The Case

As the court explained, in June 2002, Edward Murphy purchased a home in Sag Harbor, NY (the "Property"). To finance the purchase of the Property, Murphy executed a mortgage with Washington Mutual Bank ("WAMU") in the amount $1,496,000. In connection with Murphy's purchase of the Property, Commonwealth Land Title Insurance Company ("Commonwealth") issued Murphy a title insurance policy containing the following exclusions:

(1) A provision that expressly excepted from coverage loss or damage arising "by reason of the mortgage";

(2) An exclusion applicable to all encumbrances "attaching or created subsequent to Date of Policy [June 4, 2002]"; and

(3) An exclusion for all matters "created, suffered, assumed or agreed to" by the insured.

After Murphy allegedly failed to pay his mortgage, WAMU commenced a foreclosure action against him in a New York state court. In August 2008, a foreclosure judgment was entered and in

November 2008 the Property was sold to JPMorgan Chase Bank ("JP Morgan Chase"), the successor to WAMU.

Subsequently, in October 2009, JP Morgan Chase sold the Property to Paul Luciano. In conjunction with Luciano's purchase of the Property, Fidelity National Title Insurance Company ("Fidelity National") issued Luciano a title insurance policy. Fidelity National and Commonwealth are wholly-owned subsidiaries of Fidelity National Financial, Inc. ("FNF").

In April 2015, a New York appellate court vacated the foreclosure order, finding that service of process had been improperly executed at the Property because Murphy had elected to receive notice at his primary residency in Manhattan.

Then, in July 2016, Murphy sued JP Morgan Chase and Luciano in a New York state court seeking, among other things, damages for waste, wrongful foreclosure, violations of GBL§ 349, and an order vacating Luciano's deed to the Property (the "2016 Action").

That month, Luciano filed a claim with Fidelity National, which accepted the claim and afforded coverage for the 2016 Action. Subject to a reservation of rights, Fidelity National funded Luciano's defense in the 2016 Action.

In September 2016, Murphy submitted a claim with Commonwealth for coverage in the 2016 Action. Commonwealth denied Murphy's claim.

Thereafter, through discovery in the 2016 Action, Murphy obtained a copy of Luciano's Fidelity National title insurance policy and became aware that Luciano's insurer was an affiliate of Commonwealth and FNF.

After the New York court hearing the 2016 Action ruled in favor of Luciano, finding that he was a bona fide purchaser, Murphy sued Commonwealth and FNF. He asserted that FNF "pit[] two of its insureds against each other," and, instead of "reconcil[ing] this conflict of interest and their loyalties by defending Mr. Murphy, or by indemnifying him . . . picked winners and losers and engaged in a conflict

of interest by defending Mr. Luciano's title and possession against Mr. Murphy's title and right of possession and access." At a pre-motion conference, the court held that with regard to Murphy's breach of contract claims, Murphy's complaint did "not state a plausible claim because of the existence of three exclusions in the policy, any one of which . . . would effectively bar the [breach of contract] claims."

Murphy's complaint also asserted claims against Commonwealth for violations of GBL § 349 and breach of fiduciary duty.

The defendants moved for summary judgment.

The Court's Decision

The court granted the defendants' summary judgment motion.

In its decision, the court first addressed Murphy's § 349 claim.

The court explained that, in New York, when an insurer and insured have a potential conflict of interest, the insurer's duty to defend includes a duty to provide independent defense counsel to the insured, whose reasonable fee is to be paid by the insurer but who is to be appointed by the insured. The court added that if there is a conflict of interest between two of an insurer's policyholders in an action – and the insurer has an obligation to provide both with a defense – then the conflict is resolved by providing separate counsel of their choice for each policyholder.

The court then pointed out that failure to advise of a duty to provide an independent defense may give rise to a GBL § 349 claim.

Here, the court continued, Commonwealth properly denied coverage to Murphy in the 2016 Action because it fell under three exclusions in Murphy's title insurance policy. Thus, the court reasoned, no conflict of interest necessitating the appointment of independent counsel arose because Commonwealth had no obligation to defend Murphy in the 2016 Action to begin with. Accordingly, the court held, Murphy's GBL § 349 claim failed as a matter of law.

The court reached the same result with respect to Murphy's breach of fiduciary duty claim.

The court explained that, in New York, insurance companies normally do not owe a fiduciary duty to their insureds, absent "some special relationship." Here, the court found, Murphy failed to allege any facts giving rise to a "special relationship" between himself and Commonwealth.

The court concluded that because Commonwealth had no obligation to defend Murphy in the 2016 Action and because Murphy failed to allege any special circumstances giving rise to a relationship of trust and confidence between the parties, Murphy's claims failed as a matter of law.

The case is *Murphy v. Commonwealth Land Title Ins. Co.*, No. 20-CV-2793 (GRB)(ST) (E.D.N.Y. Aug. 12, 2022).

Texas Appellate Court Reverses Trial Court Ruling Against Title Insurer

An appellate court in Texas reversed a trial court's decision finding that a title insurer breached a title insurance policy and awarding damages. The appellate court concluded that there was "legally and factually insufficient evidence" that the insurer had breached the contract.

The Case

On May 23, 2006, Guy March and Sandra March, a married couple, acquired real property in San Antonio, TX (the "Property"). On May 31, 2017, Sandra March died intestate. Melissa Wallace, Sandra March's daughter from a previous marriage, served as Sandra March's independent administrator in the heirship proceedings. On July 27, 2017, the probate court signed an heirship judgment declaring that Guy March and Wallace each owned a 50 percent interest in the Property.

On August 14, 2017, Guy March purported to convey the entire Property to Top Drawer Property Solutions, LLC ("Top Drawer") by warranty deed. As part of the sale, Guy March obtained a mortgage payoff statement indicating a payoff in the amount of $341,783.84. The sale price of the Property was $350,000. Funds from the sale of the Property were used to pay off the prior mortgage, which encumbered the entire Property, outstanding homeowners association ("HOA") dues, outstanding

county taxes, and agent commissions. Guy March received $5,694.29 from the sale of the Property, and Wallace received nothing from the sale.

Top Drawer received a title policy from Fidelity National Title Insurance Company ("Fidelity National") dated August 16, 2017, insuring fee simple title to the entire Property. In September 2017, Top Drawer filed a claim with Fidelity National asserting that Top Drawer did not have fee simple title to the Property as insured by Fidelity National because of Wallace's 50 percent outstanding interest in the Property. Fidelity National accepted the claim.

In November 2017, Top Drawer demanded that Fidelity National pay Wallace $200,000 to remove her interest in the Property; Fidelity National did not pay the demand. In March 2018, Fidelity National retained an attorney to sue Wallace for partition, equitable subrogation, and breach of warranty against Guy March.

Thereafter, Wallace and Top Drawer entered into an assignment of claims pursuant to which Wallace conveyed her interest in the Property to Top Drawer in exchange for Top Drawer's assignment of its claims, if any, against Fidelity National. The agreement between Top Drawer and Wallace transferred Wallace's 50 percent interest in the Property to Top Drawer, which then vested 100 percent fee simple interest in the Property to Top Drawer.

Wallace, as assignee of Top Drawer's claims against Fidelity National, filed an action asserting that Fidelity National breached its title insurance policy. In its answer, Fidelity National asserted that Wallace lacked standing and capacity to pursue her claim. Wallace thereafter amended her petition to add the insured, Top Drawer, as a contingent plaintiff "in the unlikely event the assignment of claims against [Fidelity National] are ruled to be invalid or void."

After a bench trial, the trial court determined that Wallace had standing pursuant to Top Drawer's assignment of claims. The trial court calculated the "Actual Loss," as defined in the title

insurance policy, as being the difference between the value of the land without the covered title risk ($350,000) and the value of the land with the covered title risk, or $175,000.

The trial court limited damages pursuant to a limitation of liability provision in the title insurance policy that provided, "If you do anything to affect any right of recovery or defense you may have, we can subtract from our liability the amount by which you reduced the value of that right or defense. But we must add back to our liability any amount by which our expenses are reduced as a result of your action."

Pursuant to this provision, the trial court:

(1) Valued Fidelity National's equitable subrogation defense at $172,153;

(2) Determined the value of the defense was reduced to zero because of Top Drawer's settlement with Wallace; and

(3) Subtracted the lost value of the equitable subrogation defense from the Actual Loss, resulting in a reduction of Fidelity National's liability under the limitation of liability provision to $2,847.

The trial court then determined that Fidelity National's valuation of the case at $20,000 for settlement purposes had to be re-added to this amount pursuant to the add back term in the limitation of liability provision. Accordingly, the trial court assessed Wallace's damages for breach of the title policy at $22,847. The trial court also determined that Wallace failed to present her claims and, therefore, could not recover attorneys' fees. The trial court entered a final judgment awarding $22,847 in damages for breach of contract, costs, and pre-and post-judgment interest.

Fidelity National appealed. It argued, among other things, that the trial court erred when it concluded that Fidelity National breached the title insurance policy because there was no legally or factually sufficient evidence that Fidelity National breached the title insurance policy.

The Appellate Court's Decision

The appellate court reversed the trial court's decision, agreeing with Fidelity National that there was no legally or factually sufficient evidence that it breached the title insurance policy.

The appellate court noted that the trial court concluded that Fidelity National breached the contract with Top Drawer but pointed out that the trial court did "not identify *how*" Fidelity National breached the contract with Top Drawer. Read liberally, the appellate court continued, the trial court's findings of fact established that Guy March breached his warranty in conveying only a 50 percent interest in the property to Top Drawer. That breach, the appellate court found, was "legally distinguishable" from Fidelity National's purported breach of the title insurance policy.

In other words, the appellate court said, Guy March's breach of warranty of title did not automatically result in Fidelity National's breach of the insurance policy. Instead, the appellate court explained, it had to look to the terms of the title insurance policy to assess whether it was breached.

In that regard, the appellate court noted that the parties stipulated that:

(1) Top Drawer filed a claim under the title policy for failure of 50 percent of the title due to Wallace's outstanding interest in the Property;

(2) Fidelity National accepted the claim;

(3) Fidelity National retained an attorney to file suit against Wallace;

(4) Fidelity National sent an engagement letter to Top Drawer;

(5) Top Drawer never returned the engagement letter;

(6) Fidelity National sought Top Drawer's authority to sue Wallace for partition, equitable subrogation, and breach of warranty against Guy March; and

(7) Wallace and Top Drawer entered into the assignment of claims.

The appellate court pointed out that, under the title insurance policy, Fidelity National had several options once a claim was made. One option was to pay the claim. The appellate court added, however that paying the claim was not Fidelity National's "only option." Rather, the policy expressly and unambiguously provided that Fidelity National could choose to "[p]rosecute or defend a court case related to the claim."

The appellate court then pointed out that the parties' stipulations and evidence at trial established that Fidelity National sought to do just that after Fidelity National accepted Top Drawer's claim. However, the appellate court added, Fidelity National was prevented from fully prosecuting and defending the claim because Wallace and Top Drawer settled their claims shortly after Top Drawer received an engagement letter seeking to prosecute Top Drawer's claims. In other words, the appellate court found, the stipulations of fact and evidence adduced at trial "conclusively" established "the opposite of a breach" by Fidelity National.

Accordingly, the appellate court concluded, there was no legally sufficient evidence that Fidelity National breached the title insurance policy.

The case is *Wallace v. Fidelity National Title Ins. Co.*, No. 04-21-00164-CV (Tex. Ct. App. Aug. 24, 2022).

Federal District Court Grants Title Insurer's Motion for Summary Judgment on Insured's Negligence and Breach of Contract Claims

The U.S. District Court for the Northern District of Washington granted a title insurer's summary judgment motion in a case alleging that the title insurer had been negligent and had breached the title insurance policy.

The Case

Mansur Properties LLC purchased property in Vancouver, WA, in 2020 for the purpose of turning it into a used car lot.

In connection with that purchase, First American Title Insurance Company ("First American") issued Mansur an "ALTA Commitment for Title Insurance" (the "Commitment"), offering to issue a title insurance policy for the real property Mansur purchased. First American offered to issue the policy subject to a notice that provided that the Commitment was "not an abstract of title, report of the condition of title, legal opinion, opinion of title, or other representation of the status of title." Pursuant to the Commitment, First American issued Mansur an "Owner's Policy of Title Insurance."

Pursuant to the title insurance policy, First American agreed, subject to certain exclusions and exceptions, to insure Mansur against loss or damage up to $490,000 incurred due to, among other things, (1) "[t]itle being vested other than as stated in Schedule A," or (2) "[a]ny defect in or lien or encumbrance on the Title." Schedule A included a legal description of the property's boundaries.

In January 2021, Mansur provided notice to First American that it was making a claim under the policy, alleging that the insurer had conducted a "flawed search in its review of the chain of title" for the property. Mansur asserted that it had discovered a 1965 statutory warranty deed transferring a rectangular portion of the property to a third party, creating an overlap in the legal descriptions for their respective deeds. Mansur offered to accept $105,000 in settlement and cited an attached opinion letter from a commercial real estate broker estimating the resulting loss in value to the property at $89,840 – calculated as $27,140 in appraised value of the overlap and $62,700 in "loss of value" due to "a reduction in the functionality" of the property.

First American responded to the notice of claim on March 18, 2021, accepting coverage under the policy's "Covered Risk 1," which "provides coverage against loss or damage, sustained, or incurred by

the Insured by reason of Title being vested other than as stated in Schedule A." As to Mansur's offer to settle the claim for $105,000, First American explained Mansur's rights under the policy:

> When the Company learns of a claim that is covered, Conditions 5 and 7 of the Policy provide that the Company has various choices under the Policy and may choose one or more of those options. The Company has elected to exercise its option to retain counsel to represent you in negotiating with the neighbor to resolve the potential overlap created by the various deeds.

First American provided contact information for the attorney it had retained to represent Mansur. The attorney met with Mansur's manager, Fatima Magomadova, about the claim in April 2021. Over the following months, the attorney attempted to negotiate with the current and prior owners of the neighboring property without success.

When the negotiations broke down, First American elected to exercise its option under Condition 7(b)(ii) of the policy to pay the loss attributable to the property overlap:

> [P]ursuant to Condition 7(b)(ii) and in accordance with Condition 8(a)(ii), the Company will engage the services of a professional appraiser to conduct a diminution of value appraisal accounting for the difference between value of a fee simple ownership interest in the Land as insured, versus the value of the Land less the Rectangular Area. [First American's corporate claims analyst] will provide the contact information for the appraiser once [she has] confirmed their commission. After payment of the actual loss, Condition 7 provides that the Company's obligations to the Insured with respect to the claim end, including any liability or obligation to defend, prosecute, or continue any litigation.

First American then engaged Richard P. Herman to conduct the diminution of value ("DIV") appraisal. On January 24, 2022, First American informed Mansur of the engagement and provided Herman's contact information.

Herman concluded that the DIV attributable to the legal description overlap was $23,700, due to a "reduction in land area" and consequential damages "in the form of the need for parking space reorientation."

On March 10, 2022, First American issued a check to Mansur for that amount and sent Mansur's counsel a letter stating that "as previously outlined[,] after the payment of the actual loss reflected in the DIV appraisal, Condition 7 [of the Policy] provides that the Company's obligations to the Insured with respect to the claim end."

Mansur subsequently sued First American, alleging that it was "negligent in [its] review of the chain of title for the Property," and that it "breached a duty to Plaintiff[] in providing an accurate legal description of the Property before it was purchased and when the statutory warranty deed was filed on September 23, 2020."

Mansur also asserted a breach of contract claim, alleging that the title insurer was contractually "obligated to ensure that the Insured's rights are not violated and that a timely resolution is pursued." According to Mansur, First American breached this duty by "unreasonably delaying and failing to otherwise settle the matter" and by "failing to provide a reasonably accurate title assessment."

First American moved for summary judgment on both claims. It argued that it owed no duty to Mansur to search for or disclose potential title defects, and instead that it fully performed under the policy by paying Mansur the diminution in value caused by the title defect. With respect to Mansur's allegation that it breached the contract by unreasonably delaying and failing to settle, First American argued that it complied with all contractual requirements, accepted the claim, and paid it.

The Court's Decision

The court granted the title insurer's motion for summary judgment.

In its decision, the court first rejected Mansur's negligence claim, finding that Mansur had "not shown that First American had a duty to search for and disclose potential title defects." As the court noted, First American argued – and Mansur did not dispute – that the Washington State law governing the duties of title insurers did "not impose a duty to perform those functions."

The court explained that what was critical was the nature of what First American provided to Mansur and that Mansur misapprehended "the distinctions between a title policy, an abstract of title, and a preliminary report, binder or commitment."

As the court noted, a preliminary report or "commitment" furnished in an application for title insurance, like the one First American issued to Mansur, is an offer to "issue a title policy." Such reports or commitments "are not abstracts of title, nor are any of the rights, duties, or responsibilities applicable to the preparation and issuance of an abstract of title applicable to the issuance of any report."

Moreover, the court continued, they are "not a representation as to the condition of the title to real property, but [rather] a statement of terms and conditions upon which the issuer is willing to issue its title policy, if the offer is accepted."

By contrast, the court said, an "abstract of title" – which was not provided by First American to Mansur – is a representation "intended to be relied upon by the person who has contracted for the receipt of th[e] representation," as it "list[s] all recorded conveyances, instruments, or documents that, under the laws of the state of Washington, impart constructive notice with respect to the chain of title to the real property described." An abstract of title, the court emphasized, is expressly "not a title policy" under the Washington statute.

The court then stated that, consistent with these definitions, Washington law is clear that title insurance companies "have no general duty to disclose potential or known title defects when they are

not preparing an abstract of title because these services are not prepared for or intended to be relied on by a person other than the insurer." The court also noted that, consistent with the statutory definitions, the Notice in the Commitment that First American issued to Mansur explicitly stated that it was not an abstract of title "or other representation of the status of title."

The court found that Mansur cited nothing to contradict that authority or to support a duty to search for and disclose title defects. In the absence of such a duty, the court concluded, Mansur failed to establish its negligence claim.

The court reached the same result with respect to Mansur's breach of contract claim.

The court rejected Mansur's contention that First American breached the title insurance policy by failing to provide an accurate title assessment, agreeing with First American that its contractual obligation was to indemnify Mansur against defects in the title, not to guarantee a clear title. Moreover, the court added, there was no provision in the policy guaranteeing a clear title and, as the court explained, "insurance companies have no general duty to disclose potential or known title defects when they are not preparing an abstract of title." Accordingly, the court found that First American was entitled to summary judgment on Mansur's claim that it breached the contract by failing to provide an accurate title assessment.

Similarly, the court rejected Mansur's argument that First American breached the policy's requirement to provide a defense "without unreasonable delay." The court ruled that First American "could not be liable for failing to provide a defense in the absence of such a claim to defend."

Next, the court also rejected Mansur's contention that First American breached the policy by "failing to otherwise settle the matter." The court pointed out that the policy did not require First American to settle the disputed boundary issue with the other property owner. Instead, the court said, according to the language of the policy, First American had the option to settle the matter with the other property owner or to pay Mansur's claim. "Although Mansur might have preferred to settle with the

other property owner, First American was not obligated to do so," the court ruled. Therefore, the court held, First American did not breach the policy by failing to settle with the other property owner.

Finally, the court dismissed Mansur's contention that First American breached the insurance contract by failing to pursue a timely settlement and otherwise "unreasonably delaying" resolution of its claim. The court noted that the policy did not require First American to resolve Mansur's claim within a specified time period. It then reasoned that:

- First American accepted Mansur's claim within two months of receiving it;
- By that date, First American had retained an attorney at its own expense to represent Mansur to negotiate with the other property owner to resolve the potential property overlap;
- That attorney met with Mansur approximately three weeks later and spent the next several months sending letters and calling the current and former property owners to try to negotiate a settlement;
- The owner initially expressed interest in resolving the matter, but then changed his mind, and less than a week after First American learned of that change, it sent Mansur a letter explaining that it had elected to pay the claim; and
- First American promptly engaged Herman to conduct a diminution in value appraisal, informed Mansur of that development, and then paid Mansur's claim.

Those actions, the court concluded, "do not represent an unreasonable delay."

After rejecting Mansur's contention that First American failed to pay for the full diminution in the property's value caused by the title defect, the court granted First American's motion for summary judgment.

The case is *Mansur Properties LLC v. First American Title Ins. Co.*, No. C21-05491-LK (W.D. Wash. Oct. 18, 2022).

North Carolina District Court Grants Title Insurer's TRO Motion in Case Alleging Fraud

The U.S. District Court for the Northern District of North Carolina granted a title insurance company's motion for a temporary restraining order in a case in which the title insurer alleged that funds it wired as part of a real estate refinancing transaction had been "fraudulently diverted" by the defendant posing as a company involved in the refinancing.

The Case

Chicago Title Co., LLC, filed a lawsuit against Wilson Re Services, Inc.-Aegon ("Aegon"), alleging that Aegon infiltrated Chicago Title's emails, posed as a company involved in the refinancing of a commercial property, and through a spoofed email account, instructed Chicago Title to wire more than $3 million in funds to a fraudulent bank account. The funds were wired to a bank account registered with JPMorgan Chase Bank, N.A. ("JP Morgan Chase").

Chicago Title also moved for a temporary restraining order ("TRO").

The Court's Decision

The court granted the TRO.

In its decision, the court found that Chicago Title demonstrated through its verified complaint that:

- Chicago Title had a likelihood of success in proving that funds it wired as part of a real estate refinancing transaction "were fraudulently diverted by agents, representatives, or associates" of Aegon to a bank account at JPMorgan Chase in the name of Aegon ending in 1283 (the "Account");
- Chicago Title would suffer immediate and irreparable harm if Aegon and its agents, representatives, and associates were not enjoined from dissipating assets from the Account

obtained through the alleged fraud, and if JPMorgan Chase was not directed to freeze any accounts into which proceeds from the fraudulent diversion were placed;

- The balance of harms favored Chicago Title, as it had an interest in the funds and the Account would be preserved during the pendency of its lawsuit;
- It was in the public interest to enjoin activity in the Account to prevent Aegon from gaining fraudulently diverted funds; and
- Because notice of the TRO motion provided to Aegon prior to the issuance of a TRO would make it likely that monies might be transferred, hidden, or disposed of by Aegon, its agents, representatives, or associates, granting the TRO without notice was appropriate.

The court then granted the TRO, enjoining JPMorgan Chase and its agents, employees, and representatives from facilitating or allowing any withdrawal, transfer, or disposition of its wired funds held in the JPMorgan Chase account ending in 1283 in the name of Aegon, and requiring JPMorgan Chase to maintain the funds in the Account, and any other accounts at JPMorgan Chase into which monies from the Account may have been transferred, until further order of the court, unless and until JPMorgan Chase transferred and returned the funds directly to Chicago Title (from whom the funds were received).

The court further ordered that, given the allegations by Chicago Title that Aegon has committed theft and computer fraud, Chicago Title was not required to pay security to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

The case is *Chicago Title Co., LLC v. Wilson Re Services, Inc.-Aegon*, No. 3:22-cv-566-MOC-DSC (W.D.N.C. Oct. 21, 2022).

Holder of Judgment Lien on Property May Not Foreclose After Death of One Joint Tenant, Illinois Appellate Court Decides

An appellate court in Illinois, affirming a trial court's decision, ruled that a judgment lien on property was extinguished on the death of one of the two joint tenants where the judgment underlying the lien was against the deceased joint tenant.

The Case

On July 5, 2000, Victor N. Barcroft conveyed property in Barrington, IL, by quitclaim deed to himself and to his daughter, Susan Barcroft, as joint tenants. The quitclaim deed was recorded with the Lake County Recorder. A title insurance commitment for the Barrington property (with a July 18, 2019, commitment date) stated that title was vested in Victor Barcroft and Susan Barcroft as joint tenants.

Approximately 16 years after the execution of the quitclaim deed, on June 14, 2016, Barbara Bergstrom obtained a judgment of $388,394.92 against Victor Barcroft in a Florida state court on a breach-of-contract claim. Bergstrom assigned her interest in the judgment to Darlene Westberg.

Three years later, on March 15, 2019, Westberg filed with the Lake County Recorder a memorandum of judgment lien against the Barrington property, creating a valid judgment lien against the Barrington property.

The following month, Westberg filed a lawsuit against Victor and Susan Barcroft, among others, seeking a judgment of foreclosure and sale, a personal deficiency judgment against Victor Barcroft, possession of the Barrington property, and termination of any possession rights.

Approximately one month later, Victor Barcroft died, and the trial court dismissed him from the lawsuit with prejudice.

Susan Barcroft then moved for summary judgment on the basis that her father's death precluded foreclosure of the judgment lien. She asserted that neither she nor her father ever conveyed their interest in the Barrington property to another individual or entity. She argued that, as the surviving joint

tenant of the Barrington property, she became the sole owner of 100 percent of the property upon her father's death. Because the Florida judgment was solely against her father, Susan Barcroft argued that there was no basis upon which to foreclose on the judgment lien against the Barrington property.

Westberg moved for summary judgment on the basis that the validity of the Florida judgment was undisputed and that Susan Barcroft failed to assert any affirmative defense to excuse her father's failure to satisfy the judgment. Westberg added that she was no longer seeking a deficiency judgment and that she sought only to foreclose on Victor Barcroft's 50 percent interest in the Barrington property. She argued that his death did not preclude this relief.

The trial court granted Susan Barcroft's motion for summary judgment and denied Westberg's motion for summary judgment. The trial court found that the property automatically passed to Susan Barcroft upon the death of her father because she was a joint tenant with him. The trial court also ruled that Victor Barcroft's property rights in the joint tenancy extinguished when he died. Thus, according to the trial court, he "no longer had a property interest upon which the lien could attach."

Westberg appealed.

The Appellate Court's Decision

The appellate court affirmed, holding that Victor Barcroft's interest in the Barrington property extinguished upon his death such that Westberg's judgment lien could no longer attach to the Barrington property.

In its decision, the appellate court explained that a joint tenancy is a "present estate in all the joint tenants, each being seized of the whole." It added that an inherent feature of a joint tenancy is the right of survivorship, which entitles the last surviving joint tenant to take the entire estate. In other words, the appellate court said, "title vests automatically upon the death of the deceased joint tenant."

The existence and validity of the joint tenancy in this case were not disputed, the appellate court found. It reiterated that Victor Barcroft conveyed the property by quitclaim deed to himself and his

daughter as joint tenants 16 years before the entry of the Florida judgment against him; that the quitclaim deed was recorded with the Lake County Recorder; that the title insurance commitment for the Barrington property reflected that Victor Barcroft and his daughter held title to the property as joint tenants; and that neither of them severed the joint tenancy through a conveyance of his or her interest.

The appellate court also found that the filing of the memorandum of judgment lien against the Barrington property did not sever the joint tenancy. The lien was "just another step in the process directed toward a final sale," not a divestiture of title, according to the appellate court.

Accordingly, the appellate court ruled, Victor Barcroft's property rights in the joint tenancy extinguished upon his death "and, thus, so did the lien."

In sum, the appellate court ruled that Susan Barcroft was not a judgment debtor; the Florida judgment was solely against her father; Susan Barcroft, as the last surviving joint tenant, automatically became the 100 percent owner of the Barrington property when her father died; and he no longer had an interest in the Barrington property upon which Westberg's judgment lien could attach. The trial court properly entered summary judgment in Susan Barcroft's favor, the appellate court concluded.

The case is *Westberg v. Barcroft*, No. 2-21-0543 (Ill. Ct. App. Aug. 31, 2022).