

KPFP FIDELITY CASE NOTE

Ohio Savings Bank v. Duncanson, 2006 WL 2583414 (D. Minn. Sept. 6, 2006)

This new federal district court decision addresses Insuring Agreement (E), the Fraudulent Mortgage Rider and a common law negligence claim against the fidelity carrier for allegedly failing to explain the coverage to the insured.

Key Holdings: (1) Lost or stolen documents under Insuring Agreement (E) must be lost or stolen when the insured allegedly relied on them. (2) The Fraudulent Mortgage Rider does not cover losses where the borrowers were not intentionally misled into signing the security instruments and where the borrowers understood the nature of the instruments they were signing. (3) A carrier owes no duty to an insured to explain the coverage to the insured unless the carrier affirmatively takes on that obligation.

The insured, Ohio Savings Bank, was in the business of purchasing loans originated by mortgage bankers. With one mortgage banker, Advantage Investors Mortgage Corp. (AIM), the insured would advance funds to the closing agent for a given loan and simultaneously purchase the loan from AIM.

AIM originated several mortgage loans with individual mortgagors that would be closed at First National Title (FNT). The insured disbursed \$1.3 million to FNT to fund the loans. FNT's president stole most of the advanced funds. The loans were not funded so the mortgagors made no payments on the loans. The insured sought coverage from Progressive under Insuring Agreement (E) and the Fraudulent Mortgage Rider.

Rejecting coverage under Insuring Agreement (E), the court held that the mortgages and assignments of mortgages were not “lost or stolen” when the insured advanced funds to FNT. “The subsequent loss or theft of the mortgages or assignment of mortgages does not afford [the insured] coverage under Insuring Agreement (E).”

The Court also found no coverage under the Fraudulent Mortgage Rider. The court found no evidence that AIM had made any misrepresentations with intent to mislead the mortgagors. The mortgagors understood they were signing mortgages on their houses. “Consequently, signatures obtained through trick, artifice, fraud or false pretenses did not cause the losses allegedly experienced by [the insured].” FNT’s president’s theft caused the fraud

Lastly, the court rejected the insured’s negligence claim because there was no evidence that Progressive had affirmatively undertaken an obligation to explain the bond to the insured. Accordingly, the court held that Progressive had no duty to support a negligence claim.

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