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Jonathan Loeb Wins Motion to Dismiss for Defendant Insurer, Reinforcing the Limitations of the Scope of Title Insurance Coverage

By: Jonathan Loeb

Is a title insurer obligated to pay construction costs incurred as the result of a government regulation? That was the question before the Plymouth County Superior Court in a recent case where Rich May Associate, Jonathan Loeb, represented the insurer. Following extensive arguments on a Motion to Dismiss, Rich May secured a win for its client and a complete dismissal of all claims. This ruling follows the rule set forth in *Somerset Sav. Bank v. Chicago Title Ins. Co.*, 420 Mass. 422 (1995) and its discussions of the purpose of title insurance.

In the recent case, *Charles v. Title Resources Guaranty Company*, Civil Action No. 2583CV00761, when the Plaintiff bought a home, he purchased a title insurance policy from the Defendant. The policy outlined the covered risks as well as exclusions from coverage. In particular, the title insurance policy excluded from coverage damages that were the result of a law, ordinance, permit, or governmental regulation that restricts the use of the land if the restriction was not recorded at the relevant registry of deeds at the time the policy went into effect. Read another way, if the restriction was not recorded when the property was purchased, the title insurance did not cover costs resulting from the restriction.

After purchasing the home, the Plaintiff learned that there was a three-quarter-inch water line running under his property to a neighbor's property that was not in compliance with a recent EPA rule. The Town would not issue him a certificate of occupancy until he installed a new, compliant, water line, or installed a private well. The Plaintiff made a claim on the title insurance policy for the costs associated with building a private well which the Defendant denied because the restriction was not recorded at the registry of deeds.

Having been denied coverage, the Plaintiff brought suit against the Defendant on claims of declaratory judgment, breach of contract, breach of the implied covenant of good faith and fair dealing, unfair claim settlement practices under G.L. c. 176D, and unfair and deceptive conduct under G.L. c. 93A. The Defendant filed a motion to dismiss.

Following a lengthy oral argument, the Court issued its opinion in favor of the Defendant.



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As discussed by the Court, title insurance provides protection against defects in, or liens or encumbrances on, title. More simply, title insurance helps protect against others that may have ownership claims to real estate you believe you own. The claims at issue did not fall into this category.

The Court held that the damages asserted by the Plaintiff all stemmed from the unrecorded restriction, rather than the existence of an easement. Because any alleged harm stemmed from the restriction, the Court held that the title insurance policy did not cover the asserted damages. Basically, the Court held that even if the water line were properly recorded as an easement or the dominant-subservient estates swapped, there still would not be coverage because the "easement" is not causing the harm.

The Court cited *Somerset Sav. Bank* (the go-to case for title insurance coverage in the Commonwealth) in making its decision. As *Somerset Sav. Bank* explained:

"The insurance policy provided coverage for losses sustained as the result of a defect in or lien or encumbrance on the title to the property and for unmarketability of the title. Although they may have impaired the property's market value or caused a halt to construction on the property, the requirements of [the statute] have no effect on the marketability of the title nor did they create a defect, lien, or encumbrance on the title. The existence of the statutory restriction, therefore, does not give rise to coverage under the policy."

Somerset Sav. Bank, 420 Mass. at 429. Similarly, in *Charles*, the restriction had no effect on the Plaintiff's ability to market and sell the property and did not create a defect, lien, or encumbrance on the title.

This holding conforms with past precedent on the scope of title insurance coverage. Title insurance is there to make sure your property is in fact yours. In most situations, it does not cover expenses incurred as a result of government regulations affecting the use of the property.

The Defendant was represented in this case by Jonathan Loeb. If you have any questions about whether a problem you're having may be covered by title insurance, or if a claim is being made against your policy that you believe is outside the scope of coverage, please reach out to Jonathan Loeb, David Glod, or Jeffrey Loeb.

Disclaimer: This summary is provided for educational and informational purposes only and is not legal advice. Any specific questions about these topics should be directed to attorney(s) Jonathan Loeb, David Glod and Jeffrey Loeb.

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