



THE DORF LAW FIRM, LLP

**THE DORF LAW FIRM, LLP WINS SUMMARY JUDGEMENT
IN SIGNIFICANT TITLE INSURANCE MATTER**



News Room Archive: N.Y. Supreme Court Sides With Title Company

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Washington Title Insurance Co. recently won a motion for summary judgment as the Supreme Court of York, Westchester County, dismissed a complaint against the company reliving it of any further obligation under a title policy it issued to Emigrant Mortgage Co. According to court documents, Emigrant provided financing of \$472,500 that allowed Levi Drimmer to purchase a property in Brooklyn, N.Y.

The transaction closed on or about Aug. 6, 1999 and Drimmer executed a note and mortgage in the principal amount of \$472,500. The Emigrant mortgage, however, was not recorded until on or about Feb. 13, 2006, according to court documents.

In the interim, Drimmer conveyed the property to Yoseph Sternberg without Emigrant's knowledge or consent. Sternberg mortgaged the property with two other lenders who recorded mortgages totaling \$1.16 million. Drimmer continued to pay the Emigrant mortgage and the property taxes on the property. However, upon learning of the conveyance in July 2007, Emigrant accelerated its loan and presented a claim to Washington Title demanding it pay on the title policy.

In response, believing Sternberg had taken title with knowledge of and therefore subject to Emigrant's mortgage, and that the value of the property, as indicated by an appraisal, exceeded the three mortgages, Washington Title retained counsel to initiate an action to foreclose on the Emigrant mortgage.

When counsel forwarded the complaint, Emigrant then proceeded with its action. Emigrant's complaint sought a declaratory judgment that Washington Title breached the title policy; that Washington Title breached its duty of good faith; and that it breached general business law by not paying on the title policy.

Paragraph 8(a) of the title policy provides:

If the Company establishes the title or removes the alleged defect lien or encumbrance or cures the lack of a right of access to or from the land or cures the claim of unmarketability of title or otherwise establishes the lien of the insured mortgage in a reasonably diligent manner by any method including litigation and the completion of any appeals therefrom it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused thereby.

Rather than breaching its duty of good faith or engaging in deceptive business practices, the court ruled that Washington Title "did exactly what it was authorized to do by the title policy."

"If it were not for the plaintiff's failure to cooperate, Washington would have either established and/or recovered on Emigrant's mortgage in full or proved Plaintiff's damages," wrote Judge Gerald Loehr. "Due to the plaintiff's failure to cooperate, it was able to do neither. In the interim, the value of the premises declined so that it is less than the value of the three mortgages, prejudicing Washington."

Paragraph 4(d) of the title policy provides the pertinent part:

"If the company is prejudiced by the failure of the insured to furnish the required cooperation, the company's obligation to the insured under the policy shall terminate, including any liability or obligation to defend, prosecute or continue any litigation with regard to the matter or matters requiring such cooperation."