

IN THE SUPREME COURT OF THE STATE OF NEVADA

PENNYMAC CORPORATION,
Appellant,
vs.
WESTCOR LAND TITLE INSURANCE
COMPANY,
Respondent.

No. 83737

FILED

OCT 12 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *E. Brown*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting a motion for summary judgment in an insurance coverage and bad faith dispute arising out of an HOA foreclosure. Eighth Judicial District Court, Clark County; Adriana Escobar, Judge.

In 2006 Loretto Bay-Bella Lago Homeowners Association (the HOA) duly recorded a Declaration of Covenants, Conditions, and Restrictions (CC&Rs) in Clark County that required owners of lots within the HOA to pay HOA assessment fees. Thereafter, nonparties purchased a home with a loan secured by a first deed of trust. The home was within the HOA and was subject to the CC&Rs. On January 26, 2007 (the date of policy), respondent Westcor issued a Loan Policy of Title Insurance (title policy) that insured the full amount of the mortgage loan secured by the first deed of trust. After the nonparty homeowners failed to pay their HOA assessments beginning in 2010, the HOA recorded a notice of delinquent assessment lien, and subsequently sold the property pursuant to NRS Chapter 116. Because the HOA assessment lien was a priority lien, this sale extinguished the first deed of trust. Two years after the HOA sale, PennyMac's predecessor in interest assigned its beneficial interest in the deed of trust to appellant PennyMac.

Thereafter, PennyMac submitted a written claim to Westcor, requesting reimbursement under the title policy. PennyMac argued that the title policy's standard endorsements and three endorsements developed by the California Land Title Association (CLTA), which include CLTA 115.2, CLTA 100(1)(a), and CLTA 100(2)(a), insured its loss. Westcor denied PennyMac's claim.

Following the denial of its claim, PennyMac filed a complaint seeking declaratory judgment as to coverage under the Title Policy and alleging, as relevant to this appeal, that Westcor breached the insurance contract in bad faith. Westcor moved for summary judgment on the basis that the policy did not cover PennyMac's loss because the HOA superpriority lien arose after the date of policy. The district court granted Westcor's motion for summary judgment on all claims and thereafter issued discovery sanctions, in the form of attorney fees against PennyMac for failing to comply with Westcor's discovery requests.

PennyMac appeals, arguing, among other things, that the district court erred in finding no coverage under CLTA 115.2, CLTA 100(1)(a), and CLTA 100(2)(a) as a matter of law; that the district court should have sent the bad faith claims to the jury; and that the district court abused its discretion in sanctioning PennyMac where PennyMac reasonably refused to comply with Westcor's requests for production.

We review a district court's grant of summary judgment *de novo*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). After making all reasonable inferences in favor of the nonmoving party, the moving party is entitled to judgment as a matter of law only where the evidence before the court demonstrates that "no genuine issue as to any material fact remains." *Id.*

Title insurance indemnifies the insured against losses caused by encumbrances on, or defects to, the title at the time that ownership or interest is transferred. *Deutsche Bank Nat'l Trust Co. v. Fid. Nat'l Title Ins. Co.*, 139 Adv. Op. ___, ___ P.3d. ___ (2023). Thus, title insurance does not indemnify the insured against future events. *Id. at* ___. Although PennyMac argues that CLTA 115.2, CLTA 100(1)(a), and CLTA 100(2)(a) cover its loss, under *Deutsche Bank*, there is no set of facts that would provide coverage under the argued insurance provisions, since the HOA's superpriority lien arose when the assessments became due, after the date of policy, and the HOA foreclosure sale, terminating the first deed of trust, also occurred after the date of policy. *Id. at* ___. Accordingly, the district court was correct in concluding on summary judgment that Exclusion 3(d) of the title policy (exempting losses resulting from liens "attaching or created subsequent to Date of Policy,") precludes PennyMac's arguments for coverage.

Since we have concluded that, as a matter of law, the title policy does not cover PennyMac's loss, we also conclude that the district court did not err in granting summary judgment against Penny Mac on its insurance bad faith claim. Additionally, we conclude that the district court did not abuse its discretion in awarding attorney fees to Westcor as a discovery sanction. Therefore, we

ORDER the judgment of the district court AFFIRMED.

Stiglich *Stiglich*, C.J.

Cadish *Cadish*, J.

Pickering *Pickering*, J.

Herndon *Herndon*, J.

Lee *Lee*, J.

Parraguirre *Parraguirre*, J.

Bell *Bell*, J.

cc: Hon. Adriana Escobar, District Judge
Paul M. Haire, Settlement Judge
Akerman LLP/Las Vegas
Gerrard Cox Larsen
Eighth District Court Clerk