
Morgan v. Commonwealth Land Title Insurance Company

“Heard before Justice D. Saxe, Plaintiff”

Supreme Court, N.Y. County
NYLJ, Jan 22, 1992, P25 Col 1

Patrick Morgan entered into a contract to purchase from Barbara Blee Dubitsky and Les Dubitsky cooperative apartment 1C at 23 Park Avenue in Manhattan. As part of the process in completing the transaction Morgan's attorney ordered the following search from the defendant company Commonwealth Land. A search in New York County for judgments, federal tax liens and UCC filing statements affecting the apartment and the Dubitskys. The company was further requested to run a search on all the names of the buyers and the sellers. Morgan did not purchase title insurance although same was offered to him.

On November 4, 1985 the defendant Commonwealth issued a written report indicating the existence of various mortgages and financial filing statements. On November 26, 1985 Morgan closed his purchase of the apartment from the Dubitskys. Thereafter on January 27, 1986 the defendant Commonwealth sent Morgan's attorney a written addendum to the search of November 4, 1985 revealing the existence of a UCC-1 statement filed on December 15, 1981 in which Bank Leumi Trust Company was named the secured party claiming as security all personal property of Les Dubitsky attached to or to be used in connection with the apartment as well as the stock certificate and the proprietary lease for the apartment. (The reason the physical stock certificate had not been given to Bank Leumi Trust Company is that it had already been given to the holder of the first secured loan.)

On October 28, 1988 Morgan received notice of foreclosure of his apartment based upon a default on a security agreement entered into by Leslie Dubitsky granting to Citiwide Securities and several other securities companies a security interest in the apartment shares and the proprietary lease. The UCC-1 filing statement had been filed on October 28, 1983 but also had not been included in the defendant Commonwealth's search. (This constitutes a second security interest that was not revealed to the purchaser at the time of closing and again the stock certificate had been given to the holder of the first secured loan.)

Based upon the defendant's failure to report this UCC-1 filing, Morgan and his attorney have sued

Commonwealth for negligence and breach of contract. The defendant Commonwealth now moves for summary judgment dismissing the action while not conceding negligence or breach of contract, it argues that plaintiff's merely purchased from it a UCC lien search rather than title insurance and that insurance was never obtained by either plaintiff. The defendant also relies on a provision of the November title search report which contained a \$1,000 limit of liability.

The plaintiff's cross-move for summary judgment arguing that although no insurance was purchased the fact that the defendant certified the search constituted an agreement to insure pursuant to New York insurance law. As a result of the certification, they contend, they are not bound by the limitation of liability of \$1,000.

In the report the defendant title company certified to the applicant that it conducted a search and obtained the noted information and concluded as follows: liability hereunder is limited to \$1,000. This is not a policy of title insurance. It is settled that the liability of an abstractor can be limited and controlled by the contract regardless of whether the action is on the contract or in negligence. There is nothing in the submissions which suggests that this limitation of liability lacks validity and it is therefore valid. Morgan's cross-motion is denied. The title search report merely certified that defendant has searched in the public records of the county in which the premises is situated for items and judgments which would affect the premises. There is no guarantee for loses resulting from error. Indeed the general provision limiting liability to \$1,000 was included and it was noted that the report concerned a title search and did not provide title insurance.

Accordingly, the defendant title company's motion is granted to the extent that the defendant's liability is limited to \$1,000. The cross-motion is denied. The following constitutes the order and decision of the court.

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CO-OPS ... YOU NEED OWNER'S TITLE INSURANCE

You are representing a buyer of a \$2,000,000 cooperative apartment and you spend \$395.00 on a UCC judgment and lien search. Are you representing your client properly? Does the Errors & Omissions insurance cover the searcher's errors or the filer's errors or just the lender's interest?

UCC's, which indicate indebtedness in a co-op transaction, are filed in the County Clerk's office in alphabetical order....just like the phone book!!!!

If you tried to find a phone number, you would use the phone book. In the phone book, THE REPUBLICAN CLUB is in the "T" section. THE REPUBLICAN COUNTY COMMISSION is in the "R" section. THE DELI (which incidentally is out of business) is in the "T" section. DELI DELICIOUS (still going strong) is in the "D" section. THE JUDICIAL TITLE INSURANCE AGENCY was actually listed in the "T" section.

\$25,000 in Errors & Omissions insurance is hardly enough to protect your client against a fraud or misfiling. Investors in co-op apartments need more than alphabet soup.

The case of Morgan vs. Commonwealth Land held that co-op purchaser cannot recover more than \$1,000 from a title insurer – the stated limit of liability in a co-op search – even when that insurer failed to disclose a filed UCC1 against the stock and lease. This occurred because the UCC1 was improperly filed. We have found UCC's that were filed in the wrong county.

Below are typical co-op rates:

<u>Co-op Owners Policy</u>	<u>Rate</u>
100,000	500.00
125,000	571.00
150,000	641.00
175,000	712.00
200,000	782.00
300,000	1,065.00
400,000	1,346.00
2,000,000	5,282.00

For your convenience, Morgan v. Commonwealth is reprinted on the next page.

Eliminate the jeopardy....purchase title insurance.