

NOTICE
Decision filed 01/27/15. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2015 IL App (5th) 120442-U

NO. 5-12-0442

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST CLOVER LEAF BANK, Successor to First Federal Savings and Loan of Edwardsville,)	Appeal from the
)	Circuit Court of
)	Madison County.
Plaintiff-Appellant,)	
)	
v.)	No. 09-L-1331
)	
NATIONAL LAND TITLE INSURANCE COMPANY,)	
)	Honorable
)	Stephen A. Stobbs,
Defendant-Appellee.)	Judge, presiding.

JUSTICE GOLDENHERSH delivered the judgment of the court.
Justices Schwarm and Moore¹ concurred in the judgment.

ORDER

¶ 1 *Held:* Insurer discharged its obligation to defend insured against direct attack as to validity of mortgage and, accordingly, the circuit court's entry of summary judgment in favor of insurer and against insured is affirmed.

¹Justices Spomer and Wexstten were originally assigned to this case. Justice Schwarm was assigned to this case upon Judge Wexsttens' retirement, and Justice Moore was assigned to this case upon Justice Spomer's retirement. Justices Schwarm and Moore have read the briefs and listened to the tapes of oral argument.

¶ 2 Plaintiff, First Clover Leaf Bank (Clover Leaf Bank), appeals the circuit court of Madison County's entry of summary judgment in favor of defendant, National Land Title Insurance Company (Title Company). The issue in this appeal is the extent of Title Company's coverage of Clover Leaf Bank concerning underlying litigation previously ruled on by this court in *First Clover Leaf Bank v. Bank of Edwardsville*, 2014 IL App (5th) 120440-U, and *First Clover Leaf Bank v. Bank of Edwardsville*, 2014 IL App (5th) 120441-U.

¶ 3 In its appeal, Clover Leaf Bank argues (1) that the circuit court erred in entering summary judgment in favor of Title Company, (2) that Title Company did not have the right to direct its insurance-provided counsel to enter a limited appearance on behalf of insured without insured's consent, (3) that Title Company was required to defend any claim or counterclaim implicating the validity of the mortgage insured by Title Company, (4) that Title Company had a conflict of interest with its insured and accordingly should have provided independent counsel for its insured, and (5) that Title Company improperly required Clover Leaf Bank to pay \$97,823.92 to preserve the mortgage lien involved in the other litigation referenced above and, accordingly, should reimburse Clover Leaf Bank.

¶ 4 Title Company, in response, argues (1) that the other litigation referenced above did not involve an interest which Title Company, as insurer, was obligated to defend, (2) that it discharged its obligation to its insured by defending a counterclaim by First Collinsville Bank in the above-referenced litigation, (3) that there was no conflict of interest between Clover Leaf Bank and Title Company, and (4) that the taxes redeemed

involved years not covered by Title Company's policy and that due to sale of the premises in question, Clover Leaf Bank was fully compensated, including attorney fees as determined by the circuit court. For the reasons stated below, we affirm the judgment of the circuit court.

¶ 5

FACTS

¶ 6 We incorporate by reference the factual recitations in *First Clover Leaf Bank v. Bank of Edwardsville*, 2014 IL App (5th) 12-0440-U, and *First Clover Leaf Bank v. Bank of Edwardsville*, IL App (5th) 12-0441-U. Accordingly, our recitation of the facts is supplemental in nature.

¶ 7 Title Company, through its local agent, issued a mortgage title insurance policy on the premises at 2020 Golf Course View Drive, Edwardsville, Illinois, for a \$470,000 mortgage. In the course of the litigation involving beneficiaries of the land trust owning the premises and various personal guaranties by Steve and Tammy Gardner (Gardners), Clover Leaf Bank filed suit and a *lis pendens* to declare a constructive trust and the Gardners' guaranty. In the course of the litigation, First Collinsville Bank filed a counterclaim against Clover Leaf Bank's foreclosure complaint, arguing that Clover Leaf Bank's mortgage was inferior to its own, factually based on the position that the mortgage was invalid because it was not signed by the land trustee that held title to the residence. Clover Leaf Bank subsequently notified Title Company of this challenge to the validity of the mortgage and asserted a claim based on its policy. In response, Title Company retained a law firm to enter a limited appearance on behalf of Clover Leaf Bank, with the sole purpose of defending against First Collinsville Bank's counterclaim. Clover Leaf

Bank alleges this was done improperly as there was no notice or consent for limited appearance from Clover Leaf Bank, the insured. Additional litigation in St. Clair County alleged invalidity of the mortgage in question, but that action was subsequently dismissed.

¶ 8 During the course of this litigation, a tax sale certificate holder filed a petition for tax deed. Clover Leaf Bank demanded Title Company redeem the tax sale certificate. Title Company refused and demanded Clover Leaf Bank pay the amount needed to redeem the certificate or face a noncooperation claim. Clover Leaf Bank subsequently paid \$97,823.92 in redemption.

¶ 9 Ultimately, the real estate in question was foreclosed upon, and the premises was sold yielding gross proceeds of \$657,000. Clover Leaf Bank received the following funds from this sale:

\$377,810.13	The principal balance of its mortgage
\$ 34,927.02	Interest to the date of sale
\$ 97,823.92	Reimbursement for redemption of 2005, 2006, and 2007 real estate taxes
\$ 4,297.35	Late fees
\$ 1,238.00	Forced placed insurance
\$ 57,100.30	Attorney fees as fixed by the court.

¶ 10 Clover Leaf Bank filed the instant case claiming breach by Title Company under the title insurance policy. Clover Leaf Bank alleged that Title Company failed to redeem the tax sales certificate to preserve the mortgage, failed to provide independent counsel

for Clover Leaf Bank on the basis that Title Company and Clover Leaf Bank had a conflict of interest, and that Clover Leaf Bank suffered damages as a result. Clover Leaf Bank alleged that Title Company's failure to pay amounts necessary to preserve the mortgage and the independent counsel issue were vexatious and without reasonable cause and, accordingly, Clover Leaf Bank was entitled to exemplary and punitive damages.

¶ 11 Title Company argued that it had discharged all of its obligation as the insurer and that the sale of the premises resolved every issue, including Clover Leaf Bank's attorney fees. Title Company argued that its duties were limited to the defense of Clover Leaf Bank against the counterclaim filed by First Collinsville Bank, that it was successful in doing so, and that the other litigation, the underlying claim, was essentially foreclosure in nature, so Title Company was not obligated to provide counsel. Title Company also argued there was no conflict of interest as both Clover Leaf Bank and Title Company were arguing that the underlying mortgage was valid and that the tax redemption payment in question involved years subsequent to the cut-off date in the insurance policy.

¶ 12 Title Company filed a motion for summary judgment essentially taking the position noted above and arguing that there was no genuine issue of material fact and, accordingly, Title Company was entitled to judgment as a matter of law. After submission of memoranda by both parties, the circuit court found there was no ambiguity in Title Company's policy and, based on the factual elements of the litigation, granted Title Company's motion for summary judgment.

¶ 13 Clover Leaf Bank timely appealed.

¶ 14

ANALYSIS

¶ 15 Clover Leaf Bank argues a number of issues which, in its opinion, required Title Company to provide counsel and defense, as well as reimbursement. Clover Leaf Bank further argues that a conflict of interest existed and under supreme court rule, independent counsel should have been appointed. *In re Marriage of Newton*, 2011 IL App (1st) 090683.

¶ 16 Title Company responds that it performed all of its contractual obligations, that Clover Leaf Bank suffered no covered damage, and that given the contract and the exclusion in the contract, it was required only to defend the counterclaim by First Collinsville Bank directly attacking the validity of the underlying mortgage and in that respect was successful. It generally characterizes further actions by Clover Leaf Bank as litigation with the aim of foreclosure and that according to its policy, Title Company was not obligated to prosecute that claim. We agree with Title Company.

¶ 17 Viewing all aspects of this litigation, the above-cited companion cases, and the instant litigation, Title Company is correct is arguing that the only direct challenge to the validity of the insured mortgage was by First Collinsville Bank. While the orders in the above-referenced litigation clearly indicated a finding of invalidity of the mortgage in the related cases, that issue was within different allegations and not subject to coverage or potential coverage by Title Company. The issues in the companion cases involved (1) violation of section 2 of the Mortgage Act (765 ILCS 905/2 (West 2010)), a failure to provide release of a mortgage, (2) tortious interference with a contractual relationship, (3) abuse of process, and (4) malicious prosecution. Viewing the entire scope of this

litigation in all three actions, the validity of the mortgage was not the direct focus, as the direct focus was efforts to foreclose on behalf of Clover Leaf Bank. Multiple issues were involved with the identity and legal responsibility of the entities involved in the mortgage and the Gardners' subsequent guaranties, including their individual interests and the interests of the property's title holder, the land trust trustee. The circuit court in the related cases ultimately found an equitable mortgage interest on behalf of Clover Leaf Bank. The property was foreclosed upon and the sale proceeds in effect made plaintiff whole. As to the reimbursement claim concerning the overdue taxes, the record reflects those taxes involved the years 2005, 2006, and 2007. The record further reflects that the cut-off date for any obligation on taxes by Title Company was 2003 and taxes after that date were excluded specifically by the policy. Furthermore, as noted above, Clover Leaf Bank was reimbursed from the sale proceeds for its redemption of the 2005, 2006, and 2007 real estate taxes. As for the issue of attorney fees, the circuit court in the related cases fixed attorney fees at \$57,100.30, an amount that was provided to Clover Leaf Bank from the sale proceeds.

¶ 18 While Clover Leaf Bank has cited relevant black letter law and authority concerning conflict of interest between a company and its insured, the record in this case reflects no such conflict. Both Clover Leaf Bank and Title Company shared an interest in maintaining the validity of the underlying mortgage and, accordingly, Title Company provided a successful defense to Clover Leaf Bank when that validity was challenged by First Collinsville Bank as noted above. A foreclosure action by Clover Leaf Bank did not

implicate the defense and indemnity obligations of Title Company as insurer of the mortgage.

¶ 19 In sum, we conclude that the circuit court of Madison County appropriately granted summary judgment in favor of Title Company. Title Company, as insurer, discharged its contractual obligations to Clover Leaf Bank and successfully defended Clover Leaf Bank against a counterclaim specifically attacking the validity of the underlying mortgage. While the validity of the mortgage became an issue in the related litigation noted above, the litigation essentially involved Clover Leaf Bank's attempt to foreclose on its interest under the mortgage and the guaranties. Title Company was not obligated to participate or provide counsel in that litigation by Clover Leaf Bank. We find no conflict of interest between Clover Leaf Bank and Title Company. Summary judgment is appropriate where there is no genuine issue of material fact and the movant is entitled to judgment as a matter of law (735 ILCS 5/2-1005(c) (West 2010)). In the instant case, summary judgment was appropriately entered in favor of Title Company and against Clover Leaf Bank.

¶ 20 Accordingly, we affirm the order of summary judgment of the circuit court of Madison County.

¶ 21 Affirmed.