

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CLARENCE G. ARCHAMBO III,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 9, 2001

v

No. 202289  
Cheboygan Circuit Court  
LC No. 95-005318 CK

LAWYERS TITLE INSURANCE  
CORPORATION and CHEBOYGAN TITLE  
COMPANY,

ON REMAND

Defendants-Appellants.

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Before: Griffin, P.J., and McDonald and White, JJ.

WHITE, J. (dissenting).

I would affirm.<sup>1</sup>

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<sup>1</sup> Plaintiff purchased a home from Victoria Bonus in 1992. The purchase was financed by First of America Bank. A mortgage assistant at the bank engaged defendant Cheboygan Title, an agency of Lawyers Title Insurance, to prepare a title commitment and a Lawyers Title Insurance title insurance policy on both the property and plaintiff. The purpose of the policy was to assure the bank that its mortgage would have priority over any other liens. The title commitment and policy ordered by the bank insured plaintiff's interest as owner.

While typically title searches are done on property, and not people, the bank wanted to insure that no liens would affect its rights as a first priority holder, so the title company undertook and intended to search under plaintiff's name as well as the property. In ordering the commitment and policy, the bank gave plaintiff's name as Clarence Archambo, rather than Clarence G. Archambo III. Defendant Cheboygan Title Company initially searched under the incorrect name. Had it searched under plaintiff's correct name, it would have discovered a federal tax lien dating from July 1987 in the amount of \$101,530.

Liens are filed by the county register of deeds in alphabetical order by surname. Cheboygan Title Company was provided with plaintiff's correct name before it issued the title insurance policy.

As stated in my earlier opinion, I do not believe that the issue of the policy being void as a consequence of the clause in the commitment was properly preserved.<sup>2</sup>

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Apparently, when the second check was done, it was done only for liens recorded after the date of the first check, and the lien was again not discovered.

Plaintiff received a copy of both the title commitment and the title policy that listed him as the insured. Plaintiff testified that he relied on the title policy to mean that the lien was no longer valid. Had plaintiff known of the continued existence of the lien, he claimed, he would not have purchased the Bonus property in his own name.

The trial court found that a title commitment was made on March 13, 1992; that the commitment did not show the existence of the federal tax lien against plaintiff; that plaintiff never engaged the title company to provide a title commitment or title policy; that the title company checked the wrong name; that the policy was issued in plaintiff's correct full name; that plaintiff knew about the lien and was not "exonerated" from his knowledge by the remarks of an IRS agent in 1987; and that plaintiff was an outside member of the defunct corporation. The court held that plaintiff was not in a relationship with the title company or insurer that would impose a duty to disclose since he did not ask defendants to issue the policy. The court ruled that plaintiff's knowledge of the lien did not disqualify him from recovering under the terms of the policy. The court ruled that the title company had made its own error in searching the wrong name and that the search was done at its own peril.

<sup>2</sup> At trial, defendant asserted that plaintiff breached a common-law duty to disclose the existence of the lien, and that the lien was excepted from coverage under a clause of the policy excluding coverage for liens "created, suffered, assumed or agreed to " by the insured. During trial, defense counsel alluded to the provision in the title commitment that states:

CONDITIONS APPLICABLE TO ALL COMMITMENTS:

This commitment is delivered and accepted upon the understanding that the party to be insured has no personal knowledge or intimation of any defect, objection, lien or encumbrance affecting subject land other than those set forth herein and in the title insurance application. Failure to disclose such information shall render this commitment, and any policy issued pursuant thereto, null and void as to such defect, objection, lien or encumbrance.

Plaintiff's counsel responded to this reference by stating that defendant had consistently defended only on the basis that the lien was created, suffered, assumed, or agreed to by plaintiff. Plaintiff's counsel further argued:

despite the wording in the commitment, that when the policy is issued that the commitment merges into the policy so that any language in the commitment that is limiting in terms of liability is merged into the policy and the type of coverage has to be determined with respect to the policy itself. Mr. Malloy [the major shareholder and president of defendant Cheboygan Title] has admitted that in his

I also continue to be of the view that the title commitment provision purporting to void the policy as to the particular lien is inconsistent with the provisions of the actual contract and did not survive the formation of the integrated contract agreement.

The instant policy contains an integration clause that provides:

This policy together with all endorsements, if any, attached hereto by the Company is the entire policy and contract between the insured and the company. In interpreting any provision of this policy, this policy shall be construed as a whole.

The policy enumerates the exclusions from coverage. The trial court correctly found that because the tax lien at issue was recorded in the public records under the exact name as appears in the title policy, coverage was not excluded under the policy's exclusion 3(b), which excludes coverage for liens

not known to the Company, *not recorded in the public records at Date of Policy*, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy [Emphasis added.]

The policy sets forth specific exclusions from coverage and in this provision purports to state when liens unknown to the company, but known to the insured and not disclosed, are excluded. The policy exclusion excludes such liens from coverage only when not recorded. The title commitment, which purports to void, as to any known and undisclosed lean, not only the commitment, but also any policy actually issued, is inconsistent with the policy because it applies to liens of record as well as to liens that are not of record.

I do not agree with the majority's conclusion that the integration clause, and therefore the condition of the exclusion that requires that the lien not be of record to be excluded, can be ignored because the policy is null and void based on a clause in the title commitment. The insurance company issued a policy that purported to contain the entire agreement of the parties, and which purported to insure for this lien; plaintiff was entitled to rely on the policy's representation that it embodied the entire agreement of the parties. The terms of the policy therefore control, and the inconsistent provision of the earlier title commitment cannot be relied on to void coverage because the policy itself grants coverage, and does not exclude it where the undisclosed lien is of record. *Lawyers Title Ins Co v First Federal Savings Bank*, 744 F Supp 778 (ED MI, 1990).

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cross-examination under my questioning of him and I believe that that is the appropriate statement of the law.

Counsel later presented the court with a citation to *Lawyers Title Ins Co v First Federal Savings Bank*, 744 F Supp 778 (ED MI, 1990), in support of his assertion that the commitment was merged in the policy. Defendants did not refute this argument below. On appeal, they refer to a single Wisconsin case, *Greenberg v Stewart Title Guaranty Co*, 492 NW2d 147, 151 (Wis App, 1992), which is not on point.

Further, the trial court found that plaintiff never asked defendant to issue the policy. The testimony established that the bank applied for the policy. Application of the title commitment's provision to plaintiff so as to void coverage is problematic under the circumstance that plaintiff did not provide the information in the application.

I would affirm.

/s/ Helene N. White