SUPREME COURT OF ARIZONA

Fidelity National Title Insurance Co. v. Osborn III Partners LLC

No. CV-21-0086-PR (Ariz. Mar. 1, 2023) · No. CV-21-0086-PR · Decided March 1, 2023

SUMMARY

The Arizona Supreme Court interpreted Exclusion 3(a) in a title insurance policy, which excludes coverage for defects, liens, or adverse claims created or suffered by the insured. The court held that the exclusion applies under a fact-intensive causation inquiry based on whether the insured's actions actually caused the mechanics' liens, rejecting both a contractual-rights approach and a bright-line funding-withholding rule. The court vacated part of the court of appeals' opinion, reversed, and remanded for additional factfinding.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Justice Lopez; Chief Justice Brutinel; Vice Chief Justice Timmer; Justice Bolick; Justice Beene; Justice Montgomery; Justice King
JURISDICTION	Supreme Court of Arizona
DECIDED	March 1, 2023
DOCKET	CV-21-0086-PR
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Fidelity appealed the superior court's judgment awarding Osborn coverage under a title insurance policy for amounts paid to settle mechanics' lien claims. The court of appeals reversed, and the Arizona Supreme Court granted review.
STANDARD OF REVIEW	The meaning of insurance policies is reviewed de novo; factual findings are upheld unless clearly erroneous. The insurer bears the burden of proving that a policy exclusion applies.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Fidelity National Title Insurance Company v. Osborn III Partners LLC, et al.

TOPICS

insurance coverage · construction law · commercial litigation · standard of review · appellate procedure

PRACTICE AREAS

insurance | title insurance | real estate | construction law | commercial litigation | appellate procedure

QUESTIONS PRESENTED

1. What meaning and causation standard governs Exclusion 3(a) of the title insurance policy, which excludes defects, liens, encumbrances, and adverse claims created, suffered, assumed, or agreed to by the insured?
2. Does a construction lender create mechanics' liens as a matter of law by withholding committed construction funding, even when acting within its contractual rights?
3. Were the factual disputes concerning the timing and cause of the developer's nonpayment, the timing of Summit's work, notice of funding termination, and the amount of the liens sufficiently resolved to determine whether Exclusion 3(a) applies?

HOLDINGS

1. Exclusion 3(a) is unambiguous and applies according to its ordinary meaning.
2. Exclusion 3(a) applies to mechanics' liens only if the insured's actions actually caused the liens. The Action Acquisitions causation framework governs, and the insurer bears the burden of proving causation.
3. Whether the lender acted within its contractual rights is irrelevant to whether it created the mechanics' liens; contractual breach or misconduct is not a prerequisite to application of Exclusion 3(a).
4. A construction lender's withholding of funding does not necessarily cause all subsequently arising mechanics' liens as a matter of law.
5. The existing record did not permit determination of whether Exclusion 3(a) applies because material factual disputes remained unresolved.

KEY QUOTATIONS

> *"The Action Acquisitions framework is a causation inquiry to determine whose conduct actually caused the defect, encumbrance, or adverse claim."* (¶ 1)

> *"Thus, Exclusion 3(a) will only apply if ML's actions caused Summit's mechanics' liens."* (¶ 20)

> *"Action Acquisitions provides a truer path to ensuring that Exclusion 3(a) applies only if the insurer proves that a lender's withholding of funding actually caused the mechanics' liens."* (¶ 26)

FACTUAL BACKGROUND

Osborn's predecessor, Mortgages Ltd., financed construction of a condominium project and purchased title insurance protecting the priority of its deed of trust against mechanics' liens, subject to Exclusion 3(a). After financial difficulties, Mortgages Ltd. withheld approximately $1.1 million of its loan commitment, and the developer failed to pay general contractor Summit Builders for completed work. Summit filed mechanics' liens, and a successor to Mortgages Ltd. paid $1.75 million to settle the lien foreclosure litigation before seeking reimbursement from Fidelity.

PROCEDURAL HISTORY

The superior court ruled that the insured lender, Mortgages Ltd., did not create the mechanics' liens by withholding construction funding within its contractual rights and entered judgment for Osborn, including $1,750,000 paid to settle the lien claims. The court of appeals reversed, applying a rule that a construction lender's withholding of funding necessarily creates liens arising from the resulting funding shortfall. The Arizona Supreme Court vacated portions of the court of appeals' opinion and remanded for factual findings under a causation framework.

DISPOSITION

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reversed_and_remanded
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REMAND INSTRUCTIONS

The superior court must resolve the factual disputes concerning the timing and cause of the developer's nonpayment, the timing of Summit's lien-generating work, any notice that funding would cease, and the amount of the mechanics' liens, and then apply the Action Acquisitions causation framework to determine whether Exclusion 3(a) applies. Paragraphs 48–59 of the court of appeals' opinion were vacated.

CASES CITED

- First American Title Insurance Co. v. Action Acquisitions, LLC, 218 Ariz. 394 (2008)
- Home Federal Savings Bank v. Ticor Title Insurance Co., 695 F.3d 725 (7th Cir. 2012)
- BB Syndication Services, Inc. v. First American Title Insurance Co., 780 F.3d 825 (7th Cir. 2015)
- Teufel v. American Family Mutual Insurance Co., 244 Ariz. 383 (2018)
- Shooter v. Farmer, 235 Ariz. 199 (2014)
- Walker v. Auto-Owners Insurance Co., 254 Ariz. 17 (2022)
- Keggi v. Northbrook Property & Casualty Insurance Co., 199 Ariz. 43 (App. 2000)
- State Farm Mutual Automobile Insurance Co. v. Wilson, 162 Ariz. 251 (1989)
- Roberts v. State Farm Fire & Casualty Co., 146 Ariz. 284 (1985)
- Torres v. Jai Dining Services (Phx.) Inc., 252 Ariz. 28 (2021)
- Robertson v. Sixpence Inns of America, Inc., 163 Ariz. 539 (1990)
- State Farm Mutual Insurance Co. v. Wilson, 162 Ariz. 247 (App. 1989)