SUPREME COURT OF ILLINOIS

First Midwest Bank, N.A. v. Stewart Title Guaranty Co., 218 Ill. 2d 326

843 N.E.2d 327 (2006) · No. No. 100162 · Decided January 20, 2006

SUMMARY

The Supreme Court of Illinois held that a title insurer is not in the business of supplying information when issuing a title commitment or title insurance policy. Accordingly, the negligent misrepresentation exception to the Moorman economic loss doctrine did not apply, and First Midwest Bank could not recover purely economic losses in tort. The court affirmed dismissal with prejudice of the negligent misrepresentation claim.

CASE DETAILS

COURT	Supreme Court of Illinois
WRITING FOR THE COURT	Justice McMorrow; Chief Justice Thomas; Justice Freeman; Justice Fitzgerald; Justice Kilbride; Justice Garman; Justice Karmeier
JURISDICTION	Illinois
DECIDED	January 20, 2006
DOCKET	No. 100162
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the dismissal with prejudice under section 2-615 of the Illinois Code of Civil Procedure of a negligent-misrepresentation claim and from summary judgment on a title-insurance claim. The Illinois Supreme Court granted leave to appeal; First Midwest abandoned its challenge to summary judgment on the title-insurance claim and pursued only the negligent-misrepresentation count.
STANDARD OF REVIEW	Dismissal under section 2-615 is reviewed de novo. The court asks whether the complaint's allegations, construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action upon which relief may be granted.
PRECEDENTIAL VALUE	Published Illinois Supreme Court opinion; precedential
PARTIES	First Midwest Bank, N.A. v. Stewart Title Guaranty Company

TOPICS

negligent misrepresentation · insurance · real estate · motions to dismiss · civil procedure

PRACTICE AREAS

torts · insurance · real estate · civil procedure

QUESTIONS PRESENTED

1. Whether a title insurer issuing a title commitment and title insurance policy is in the business of supplying information for the guidance of others in their business transactions, thereby falling within the negligent-misrepresentation exception to Illinois's economic-loss doctrine.
2. Whether First Midwest adequately stated a negligent-misrepresentation claim against Stewart Title under section 2-615 of the Illinois Code of Civil Procedure.

HOLDINGS

1. A title insurer is not in the business of supplying information when it issues a title commitment or title insurance policy. A title commitment is a promise to insure a particular state of title and identifies limitations on the risk the insurer is willing to insure; it is not an abstract of title listing all defects, liens, and encumbrances.
2. First Midwest failed to state a cause of action for negligent misrepresentation because the alleged information was supplied through a title commitment and policy, which did not bring Stewart Title within the negligent-misrepresentation exception to the economic-loss doctrine.

KEY QUOTATIONS

> *"We conclude, therefore, that a title insurer is not in the business of supplying information when it issues a title commitment or a policy of title insurance and, accordingly, the negligent misrepresentation exception to the Moorman doctrine does not apply."* (336)

> *"The scope of a title insurer's liability is properly defined by contract."* (336)

> *"Thus, to the extent that Notaro relied on this incorrect premise in reaching its determinations, we overrule Notaro."* (336)

FACTUAL BACKGROUND

The Bergerons sought loans from First Midwest to purchase residential property and construct a garage and office for their architectural and interior design business. Stewart Title issued title commitments and policies that did not disclose a 1945 restrictive covenant barring business or commercial use of the property. The Bergerons defaulted after they could not use the property as intended, and First Midwest foreclosed but did not recover the full amount of its $752,000 wraparound loan. First Midwest alleged that it would not have made the loans had the restrictive covenant been disclosed.

PROCEDURAL HISTORY

First Midwest sued Stewart Title and others after a restrictive covenant was discovered on property securing loans that later went into default. The circuit court of Cook County dismissed the negligent-misrepresentation and fraudulent-misrepresentation counts with prejudice and later granted Stewart Title summary judgment on the declaratory title-insurance count. The appellate court affirmed. The Illinois Supreme Court affirmed the appellate judgment as to the negligent-misrepresentation claim.

DISPOSITION

affirmed

CASES CITED

- Vitro v. Mihelcic, 209 Ill. 2d 76, 282 Ill. Dec. 335, 806 N.E.2d 632 (2004)
- Jarvis v. South Oak Dodge, Inc., 201 Ill. 2d 81, 265 Ill. Dec. 877, 773 N.E.2d 641 (2002)
- Board of Education of the City of Chicago v. A, C & S, Inc., 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580 (1989)
- Fox Associates, Inc. v. Robert Half International, Inc., 334 Ill. App. 3d 90, 267 Ill. Dec. 800, 777 N.E.2d 603 (2002)
- Neptuno Treuhand-Und Verwaltungsgesellschaft Mbh v. Arbor, 295 Ill. App. 3d 567, 229 Ill. Dec. 823, 692 N.E.2d 812 (1998)
- Brogan v. Mitchell International, Inc., 181 Ill. 2d 178, 229 Ill. Dec. 503, 692 N.E.2d 276 (1998)
- Moorman Manufacturing Co. v. National Tank Co., 91 Ill. 2d 69, 61 Ill. Dec. 746, 435 N.E.2d 443 (1982)
- Duhl v. Nash Realty Inc., 102 Ill. App. 3d 483, 57 Ill. Dec. 904, 429 N.E.2d 1267 (1981)
- Rozny v. Marnul, 43 Ill. 2d 54, 250 N.E.2d 656 (1969)
- Perschall v. Raney, 137 Ill. App. 3d 978, 92 Ill. Dec. 431, 484 N.E.2d 1286 (1985)
- Notaro Homes, Inc. v. Chicago Title Insurance Co., 309 Ill. App. 3d 246, 242 Ill. Dec. 719, 722 N.E.2d 208 (1999)
- Grund v. Donegan, 298 Ill. App. 3d 1034, 233 Ill. Dec. 56, 700 N.E.2d 157 (1998)
- In re Chicago Flood Litigation, 176 Ill. 2d 179, 223 Ill. Dec. 532, 680 N.E.2d 265 (1997)
- Anderson Electric, Inc. v. Ledbetter Erection Corp., 115 Ill. 2d 146, 104 Ill. Dec. 689, 503 N.E.2d 246 (1986)
- 2314 Lincoln Park West Condominium Ass'n v. Mann, Gin, Ebel & Frazier, Ltd., 136 Ill. 2d 302, 144 Ill. Dec. 227, 555 N.E.2d 346 (1990)
- Fireman's Fund Insurance Co. v. SEC Donohue, Inc., 176 Ill. 2d 160, 223 Ill. Dec. 424, 679 N.E.2d 1197 (1997)
- Tolan & Son, Inc. v. KLLM Architects, Inc., 308 Ill. App. 3d 18, 241 Ill. Dec. 427, 719 N.E.2d 288 (1999)