

COURT OF CIVIL APPEALS OF TEXAS, GALVESTON

Darby Suiter v. Kegham S. Gregory et al.

279 S.W.2d 909 (Tex. Civ. App.—Galveston 1955) · No. No. 12852 · Decided May 26, 1955

SUMMARY

The court addressed whether a purchaser was entitled to the return of \$500 in earnest money after rejecting a title insurer's commitment containing multiple exceptions and qualifications. It held that the commitment did not satisfy the sale contract's unqualified title-guaranty condition, affirmed judgment for the purchaser, and upheld an attorney-fee award to the stakeholder title company.

CASE DETAILS

COURT	Court of Civil Appeals of Texas, Galveston
WRITING FOR THE COURT	Chief Justice Hamblen
JURISDICTION	Texas
DECIDED	May 26, 1955
DOCKET	No. 12852
DISPOSITION	affirmed
PROCEDURAL POSTURE	Seller appealed from a summary judgment awarding the purchaser the \$500 earnest-money deposit and awarding the stakeholder \$50 in attorney's fees.
STANDARD OF REVIEW	Summary judgment is reviewed based on whether the undisputed facts establish entitlement to judgment as a matter of law.
PRECEDENTIAL VALUE	Published intermediate appellate opinion
PARTIES	Darby Suiter v. Kegham S. Gregory, Stewart Title Guaranty Company

TOPICS

- breach of contract
- contract interpretation
- conditions precedent
- real estate
- summary judgment

PRACTICE AREAS

- Contracts
- Real estate
- Title insurance
- Civil procedure

QUESTIONS PRESENTED

1. Whether Stewart Title Guaranty Company's qualified owner's title policy commitment satisfied the sales contract's requirement that title be guaranteed to the purchaser.
2. Whether Gregory was entitled to return of the \$500 earnest-money deposit after rejecting the qualified title commitment.
3. Whether Stewart Title Guaranty Company was entitled to attorney's fees despite being the stakeholder in the transaction.

HOLDINGS

1. The owner's title policy commitment did not satisfy the contract because it contained substantial qualifications and exclusions that were not authorized by the sales agreement.
2. Gregory was entitled to recover the \$500 earnest-money deposit because the title-guaranty condition had not been satisfied.
3. The stakeholder was properly awarded attorney's fees; payment of the title-guaranty expense by Gregory did not make Stewart Title his agent.

KEY QUOTATIONS

“If said Stewart Title Guaranty Company refuses or is unable to guarantee said title to purchaser for whatsoever reason, the seller shall have thirty days from date Stewart Title Guaranty Company notifies seller of its refusal, to cure said title to the satisfaction of the Stewart Title Guaranty Company, and, if at the end of said time, the said Stewart Title Guaranty Company still refuses to guarantee said title for whatsoever reason, then, and in that event, the earnest money herein receipted for, shall be returned to purchaser upon the cancellation and return of this contract, or purchaser may enforce specific performance of same.” (at 911)

“With reference to the stated exclusions from the guarantee, the contract contained no qualification or agreement whatsoever.” (at 912)

FACTUAL BACKGROUND

Suiter, as seller, and Gregory, as purchaser, entered into a written contract for the sale of Harris County real property. Gregory deposited \$500 as earnest money, subject to a provision requiring return of the deposit if Stewart Title Guaranty Company refused or was unable to guarantee title under the contract's terms. Stewart Title issued an owner's title policy commitment containing numerous exclusions and qualifications, including exclusions for boundary and possession matters, unpaid work and material claims, and matters arising after a date preceding the sales contract. Gregory rejected the commitment and declined to consummate the purchase.

PROCEDURAL HISTORY

Suiter sued Gregory and Stewart Title Guaranty Company for the \$500 earnest-money deposit. Gregory filed a cross-action against Stewart Title, which interpleaded the fund and sought attorney's fees. The County Court at Law of Harris County granted Gregory's motion for summary judgment, awarded him \$500, and awarded Stewart Title \$50 in attorney's fees. The Court of Civil Appeals affirmed.

DISPOSITION

affirmed

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