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Some U.S. title insurers seek to avoid paying claims

Recent decision may be harbinger of coming trend for policy holders

A recent decision of the Ontario Superior Court of Justice may be the harbinger of a trend by some American-controlled title insurers to deny coverage to their insured policy owners in Ontario.

The story begins back in 2000, when Bogdan Nadvornianski and Andrej Lechowicj bought a house in Toronto for the purpose of renovation and resale. They took title in the name of Barbara Nadvornianski, who signed an agreement confirming that she had no financial interest in the property and was holding legal title solely as a trustee for her husband and his business partner.

The agreement also provided that the two men would pay all costs and expenses in connection with the property, and that they would reimburse Barbara for any claims or actions which might arise because the deed was in her name.

The two partners also signed a joint venture agreement, which said that they would equally share all the expenses and all the profits from the purchase and sale of the property.

In addition, all three parties signed a mortgage for $281,500 with their credit union. The loan agreement clearly disclosed to the lender that the property was really owned by both men, and that Barbara was only holding it in trust for them as a convenience.

At the time of closing, the lawyers who were acting for the purchasers and the credit union arranged a Stewart Title insurance policy.

The policy named only Barbara as the registered owner, and Stewart was not aware that the real owners were her husband and his business partner.

During the renovations, it was discovered that there was an easement for water and sewer pipes through the front yard, forcing the renovators to alter their original plans.

Eventually, a house they hoped to sell for almost $1 million sold for less than $800,000.

The Nadvornianskis believed that the existence and location of the easement caused them financial losses, and sued Stewart Title as well as their lawyers, hoping to recover either from the title insurer or their lawyers' insurance company.

Faced with the Nadvornianski claim, Stewart Title took the position that since Barbara had no financial interest in the property in her role as a trustee owner, she had no "insurable interest" in the house either, and had nothing to gain or lose as a result of her ownership of it.

Under Ontario insurance law, the owner of a property insurance policy cannot make a successful claim if he or she does not have an "insurable interest" in the subject matter of the policy, such as a car or a house.

To date, however, this rule has never been applied to a title insurance policy here.

Stewart's defence to the Nadvornianski litigation was that they didn't have to pay out under the title insurance policy since Barbara wasn't the owner and they had no notice of the interest of the two real owners when they issued the policy.

Stewart thought the claim had no merit and should not even go to trial.

Last April, the insurer asked an Ontario court to toss out the claim against it.

In June, Justice Douglas Shaw denied Stewart's application to dismiss the case against it without a trial. He ruled that the issue of whether Barbara could or could not claim compensation against the title insurer could only be settled at a trial, and not at a preliminary stage.

The court's decision has stimulated considerable discussion in the legal press partly because of the novel point of law it raises, partly because of the fact that the lawyers who arranged the insurance got sued by their clients, and most importantly because the litigation was commenced in the first place.

In an interview with The Lawyers Weekly, Morris Cooper, counsel for the Nadvornianskis, said, "What we're seeing for the first time is a title insurer acting just like any other insurer, making a technical argument in order to avoid paying a claim. In my view, now that title insurers have established a market for themselves, they're acting like other insurers. "

In last month's issue of Real Property Reports, Toronto lawyers Jeffrey W. Lem and Matthew Singerman published an exhaustive commentary on the case, noting "the fact that the Nadvornianski litigation exists at all is the most troubling aspect of this situation," since coverage denials have not yet become a significant feature of the title insurance landscape in Ontario.

The authors refer to the 2002 decision of the Supreme Court of Canada in Whiten v. Pilot Insurance.

In that case, Canada's highest court upheld a jury award of $1 million in punitive damages against a casualty insurer.

It had steadfastly refused to pay out a claim for the loss of a house due to fire, even though it had no evidence to support its position that the loss was due to arson.

Referring to the Pilot Insurance case, Lem and Singerman point out that the "truly obscene coverage denials" by some Canadian casualty insurers has not, to date, been seen from Canada's title insurers.

That, however, may well be changing. Litigation involving title insurers is quite common in the United States.

This week I conducted an online search in the Quicklaw database to see if three U.S.-based title insurers, currently doing business in Ontario, were parties (either as plaintiffs or defendants) in reported American court cases.

To my surprise, I counted a total of 2,913 reported decisions in federal and state courts in recent years. Many of them involve coverage denials.

There are few if any reported cases involving title insurers in Canada, although some may have gone to mediation or arbitration to save litigation costs and keep the results private.

In their commentary, Lem and Singerman warn that the Nadvornianski case may be the herald of a "coming of age" of the title insurance industry in Canada, with insurers increasingly resorting to technicalities to deny coverage.

They warn that it is now time for Ontario solicitors and presumably their clients to factor in the risk of coverage denial as a criterion in selecting among title insurers.

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A point of disclosure here: I am an elected director of the Law Society of Upper Canada, which owns the Lawyers Professional Indemnity Company, or LawPRO.

That company operates its own title insurer, TitlePLUS, which insures errors or omissions on the part of the lawyer handling the transaction whether or not the title policy covers the particular risk. I have no active role in the management of LawPRO or TitlePLUS.

Bob Aaron *is a Toronto real estate lawyer. www.aaron.ca*

COURT FILE NO.: CV-260922CM3

DATE: 2006-06-13

ONTARIO

B E T W E E N:	)	
	)	
BARBARA NADVORNIANSKI and BOGDAN NADVORNIANSKI,	)))	*Morris Cooper*, for the Plaintiffs
	)	
Plaintiffs	)	
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- and -	)	
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	)	
STEWART TITLE GUARANTY COMPANY and MITCHELL, BARDYN & ZALUCKY,	)))))	*Pino Cianfarani*, for the Defendant Stewart Title Guaranty Company *Gavin J. Tighe*, for the Defendant Mitchell, Bardyn & Zalucky
	)	
Defendants	))	
	)	
	))	**HEARD:** April 27, 2006, at Toronto, Ontario

Mr. Justice D. C. Shaw

[1] The defendant, Stewart Title Guaranty Company, brings this motion for summary judgment on the basis that the plaintiff, Barbara Nadvornianski, who is the insured named in its policy of title insurance, has no insurable interest in the property in question.

[2] Ms. Nadvornianski is the sole registered owner of a home purchased in 2000 for the purposes of renovation, reconstruction and resale. Stewart Title issued a policy of title insurance to Ms. Nadvornianski with respect to the purchase of the home. In 2003, after renovations were completed, the home was sold. The plaintiffs allege that during the renovations they discovered the exact location of a water line and sewer line which were the subject of a registered easement on the property. The plaintiffs allege that the location of the pipes caused them to alter the original design of the renovations and reconstruction. They claim this diminished the value and marketability of the home, causing financial losses. The plaintiffs claim they are entitled to coverage under the title insurance policy and therefore are entitled to compensation from Stewart Title for their financial

losses. The plaintiffs also claim that the defendant solicitors, who acted on the purchase of the home, were negligent in failing to determine the nature and extent of the easement.

[3] At the crux of this motion for summary judgment is the nature of the ownership of the property. Title to the home was taken in the name of Ms. Nadvornianski, alone. However, she acknowledges that her husband and his business partner, Mr. Andrej Lechowicj, are the beneficial owners of the property. Mr. Nadvornianski has recently been added as a plaintiff in the action. Mr. Lechowicj is not a plaintiff.

[4] Before the purchase of the property was completed, Ms. Nadvornianski, Mr. Nadvornianski and Mr. Lechowicj entered into an agreement (the Nominee Agreement) in which Ms. Nadvornianski agreed that she would hold registered title to the property solely as nominal title holder for the beneficial owners, Mr. Nadvornianski and Mr. Lechowicj. She would have no right, ownership or interest in the property herself. The Nominee Agreement provided that all costs and expenses incurred by Ms. Nadvornianski in connection with holding title to the property were to be borne by Mr. Nadvornianski and Mr. Lechowicj. Further, Mr. Nadvornianski and Mr. Lechowicj agreed to indemnify Ms. Nadvornianski for any claims or actions which might arise from the fact that she held title to the property.

[5] The purchase of the property was financed by a first mortgage, in favour of Buduchnist Credit Union, in the amount of $281,250. Ms. Nadvornianski executed that mortgage, as mortgagor. Ms. Nadvornianski, as nominee , Mr. Nadvornianski and Mr. Lechowicj, as beneficial owners , and Buduchnist Credit Union, as lender , entered into an agreement (the Security Agreement). The Security Agreement recorded that Ms. Nadvornianski held title to the property as nominee for the beneficial owners, that she had no beneficial interest in the property and that she acted in relation to the property only upon the express written authorization of the beneficial owners. Mr. Nadvornianski and Mr. Lechowicj agreed that the mortgage was a good and valid charge on the legal estate of the nominee and the beneficial estate of the beneficial owners.

[6] Mr. Nadvornianski and Mr. Lechowicj also entered into an agreement between themselves (the Co-tenancy Agreement), which recited that the two of them owned the property as tenants in common. The Co-tenancy Agreement provided that each of them would bear one half the carrying costs and expenses of the property and that each of them would share in the profit from the sale of the property.

[7] The defendant solicitors prepared the Nominee Agreement, the Security Agreement and the Co-tenancy Agreement. The defendant solicitors also arranged for title insurance with Stewart Title. The defendant solicitors paid Stewart Title the premium for the policy and charged the client for that premium. They did not charge the client a fee for arranging the title insurance. They did not charge a fee to Stewart Title.

[8] The title insurance policy named Ms. Nadvornianski and Buduchnist Credit Union Limited as insureds. Mr. Nadvornianski and Mr. Lechowicj were not named in the policy. The title insurance policy recorded that title to the estate or interest in the land was vested in Ms. Nadvornianski.

[9] The policy excluded from coverage, any matter resulting in no loss or damage to the Insurance Claimant.

[10] On her examination for discovery, Ms. Nadvornianski testified that any profit obtained on the sale of the property would not go to her and any loss incurred with respect to the property would not be her responsibility. She did not put any money into the property, nor did she take any out.

[11] At no time did Mr. and Ms. Nadvornianski occupy the home as a matrimonial home.

[12] The defendant solicitors did not advise Stewart Title of the nature of the ownership of the property.

The Law:

A. Summary Judgment:

[13] Rule 20.04(2) of the Rules of Civil Procedure provides that a court shall grant summary judgment if it is satisfied that there is no genuine issue for trial with respect to a claim or a defence.

[14] Where, as in this case, the motion is brought by a defendant, it must be clear to a motions judge that it is proper to deprive the plaintiffs of their right to a trial. The purpose of the summary judgment rules is to avoid the expense of unnecessary litigation where it is possible to safely predict the result without a trial, where it is clear that a trial is unnecessary. The burden is on the moving party to satisfy the court that there is no genuine issue to be tried. (See Aguonie v. Galion Solid Waste Material Inc. , (1998), 38 O.R. (3d) 161 (C.A.) at 172 174, and Irving Ungerman Limited v. Galanis (1991), 4 O.R. (3d) (C.A.) 545 at 550-551.)

[15] In Dawson v. Rexcraft Storage and Warehouse Inc. , (1998), 164 D.L.R. (4th) 257 (Ont. C.A.), at 269-272, Borins J.A. discussed the role of a judge hearing a summary judgment motion:

> Underlying Rule 20 is the premise that little purpose is achieved by having an unnecessary trial. Rule 20 is the mechanism adopted by the Rules of Civil Procedure for deciding cases where it has been demonstrated clearly that a trial is unnecessary and would serve no purpose. I recognize, however, that deciding when a trial is unnecessary and would serve no purpose is no mean task. However, in my respectful view, in determining this issue it is necessary that motions judges not lose sight of their narrow role, not assume the role of a trial judge and, before granting summary judgment, be satisfied that it is clear that a trial is unnecessary. This is not to say that the court is not to consider the evidence which constitutes the record. Indeed, to do so is central to determining the existence of a genuine issue in respect to material facts .
>
> However, at the end of the day, it is clear that the courts accord significant deference to the trial process as the final arbiter of the dispute which has brought the parties to litigation. If there is a genuine issue with respect to material facts then, no matter how weak, or how strong, may appear the claim or the defence, which has been attacked by the moving party, the case must be sent to trial. It is not for the motions judge to resolve the issue.

[16] Recently, the Court of Appeal, in Romano v. D Onofrio, [2005] O. J. 4969 (C.A.) para. 7, stated that it is inappropriate for a motions judge hearing a summary judgment motion to decide a significant question of law where the law is not settled:

> In our view, the motions judge erred by deciding a significant question of law involving the definitive interpretation of a section of the Libel and Slander Act in the context of a Rule 20 motion. This was not a case where the law was settled and could be applied to admitted facts. The scope of the term broadcast in the Libel and Slander Act has not been conclusively determined in the case law. As this court stated in R. D. Belanger & Associates Ltd. v. Stadium Corp. of Ontario Ltd. , (1991), 5 O.R. (3d) 778 at 782: Matters of law which have not been settled fully in our jurisprudence should not be disposed of at this [interlocutory] stage of the proceedings.

B. Insurable Interest:

[17] The Supreme Court of Canada has defined insurable interest in Kosmopoulos v. Constitution Insurance Co. of Canada, , [1987] 1 S.C.R. 2, in the context of a factual expectancy test. If an insured can demonstrate some relation to, or concern in the subject of the insurance, which relation or concern by the happening of the perils insured against may be so affected as to produce a damage, detriment or prejudice to the person insuring, that insured should be held to have a sufficient interest.

[18] Professor Denis Boivin, in his text Insurance Law, 1st ed., (Toronto: Irwin Law, 2004) at p. 72-73, describes insurable interest as a special relationship between the insured and the object of the insurance contract a connection that gives the insured something to gain from the preservation of the status quo and something to lose from its disruption. The purpose of insurance is compensation. When there is a disruption of the status quo, the objective of insurance is to return the insured to his or her starting position, insofar as this is possible, with a payment of money.

[19] In this case, the subject of the insurance is good and marketable title to the property. Having regard to the definition of insurable interest in Kosmoupolos, the issue is as follows: would Ms. Nadvornianski, in her capacity as nominee and mortgager, be prejudiced if she did not hold good and marketable title, as insured by the title insurance policy?

[20] Counsel for Stewart Title directed me to three cases where a purely nominal owner, with no beneficial interest in the property, was held to have no insurable interest.

[21] In Marks v. Commonwealth (1974), 2 O.R. (2d) 237 (C.A.), the plaintiff was the registered owner of a home. At trial, Galligan J. was satisfied that the deed placed the property in the name of the plaintiff, but that it was for the benefit of her husband and his brother. Justice Galligan found that the plaintiff was a nominal owner only and that

her husband and his brother were the beneficial owners. By reason of the fact that the plaintiff had no beneficial interest of any kind in the property, Galligan J. held that she had no insurable interest as owner of the property. Because she had no insurable interest, the plaintiff was not entitled to claim the proceeds of fire insurance. Legal title was not sufficient to give her an insurable interest. The Court of Appeal upheld the trial decision.

[22] A similar result was reached in Rider v. North Waterloo Farmers Mutual Insurance Co.,[1991] O.J. No. 283 (Gen. Div.). In that case, the plaintiff was insured as the registered owner of property damaged by fire. The plaintiff, however, held title as nominee for the benefit of her brother, who was responsible for paying all expenses associated with the property. The plaintiff, as registered owner and insured, made a claim on the policy after a fire. Justice Costello held that the plaintiff had not demonstrated an insurable interest nor shown that she had suffered a loss. Justice Costello, at p. 2, stated:

> I tried to find in the judgment of Madam Justice Wilson in Constitution Insurance Co. of Canada v. Kosmopoulos, [1987] I.L.R. 8297 some justification for not following Marks v. Commonwealth Insurance Co. (1974), 2 O.R. (2d) 237 but I could not. All the cases in which an insured had been held to have an insurable interest are cases where, as in the Kosmopoulous case, the sole shareholder had in fact an interest and had in fact suffered a loss. There were cases where the lien holder or a lessee was held to have an insurable interest or a corporation in its corporate subsidiary see Kosmopoulos at page 8299. Even a lawyer who lost a vault full of clients wills was held to have an insurable interest and collected for the time and material spent drafting and having the wills re-executed. (Dudelzak & Landry v. Madill 13 C.C.L.I. 94.) Always the theme throughout is that the claimant had a financial interest in the thing insured and suffered a financial loss in the thing s destruction.
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> Marks v. Commonwealth Insurance Co. (1974), 2 O.R. (2d) 37 is binding on me as an Ontario Court of Appeal judgment unless it has been overruled, which it has not been, or can be distinguished on its facts which I am unable to do.

[23] The third case referred to by Stewart Title, is Prowse v. Sullivan, [1997] O.J. No. 113 (Gen. Div.), where again no insurable interest was found. The plaintiff transferred her car to her father, on the understanding that her father would arrange to have the vehicle registered in her name. He failed to do so and the plaintiff continued to be the registered owner. Justice Cunningham reviewed the issue of whether the plaintiff had an insurable interest consistent with the definition in Kosmoupolos. Justice Cunningham held that it could not be said that the plaintiff had any reasonable expectation of benefit or of any prejudice as a result of a loss, and therefore she had no insurable interest.

[24] Stewart Title submits that as a nominee, Ms. Nadvornianski has no insurable interest. It is submitted that title insurance, like fire, auto and marine insurance, is indemnity insurance. The indemnity principle means no more than payment of the loss incurred by the insured. Counsel submits that Ms. Nadvornianski had no risk and suffered no loss. She put no money into the purchase or renovation of the property, she paid no expenses, she had no expectation of sharing in any profit on the resale. The Nominee Agreement stated unequivocally that Ms. Nadvornianski had no beneficial interest in the property. She held title only for the convenience of Mr. Nadvornianski and Mr. Lechowicj.

[25] Stewart Title also contends that not only would Ms. Nadvornianski not share in any profit, she would also not be exposed to any losses in connection with the property. Stewart Title points to the Security Agreement to support its submission that Ms. Nadvornianski is immunized from any losses vis--vis the credit union. The Security Agreement recited that Ms. Nadvornianski was a nominee only, with no beneficial interest in the property, acting only upon the express written instructions of the beneficial owners. The Security Agreement authorized Ms. Nadvornianski, as nominee, to execute and deliver the mortgage registered against title. Mr. Nadvornianski and Mr. Lechowicj pledged all their beneficial interest in the property in favour of the credit union as security for their indebtedness to the credit union. They also agreed with the credit union that the security on the property was a good and valid charge of the legal estate of the nominee and the beneficial estate of the beneficial owners of the property.

[26] Stewart Title also directs me to the provisions of the Nominee Agreement, which expressly provided that all costs and expenses incurred by Ms. Nadvornianski, as nominee, in connection with her holding title were to be borne by Mr. Nadvornianski and Mr. Lechowicj. The Nominee Agreement further provided that Mr. Nadvornianski and Mr. Lechowicj would indemnify Ms. Nadvornianski from any claims arising out of her holding title to the property.

Analysis:

[27] I am of the opinion that Stewart Title has not discharged the onus falling on it under Rule 20 to satisfy me that there is no genuine issue for trial with respect to the claim against it.

[28] Although Ms. Nadvornianski put no money into the property, and had no expectation of financial gain from the resale of the property, I am of the opinion that there is a genuine issue of whether she was exposed to a risk of pecuniary loss if the status quo of the title was disrupted. Ms. Nadvornianski may have had something to lose if she did not in fact obtain good and marketable title to the property, as she expected to have obtained.

[29] While there is evidence before me that the credit union, as mortgagee, was aware that Ms. Nadvornianski held the property as nominee, with no beneficial interest, and while there is evidence that Mr. Nadvornianski and Mr. Lechowicj agreed to save Ms. Nadvornianski harmless from any losses or expenses, there is nothing in the evidence before me to show that the credit union had released Ms. Nadvornianski from her covenant under the mortgage. As mortgagor, Ms. Nadvornianski was prima facie indebted to the credit union, the mortgagee.

[30] If, by way of example, title to the property had been vitiated by fraud on the part of the vendors, and there was therefore no security for the mortgagee, the credit union, as mortgagee, may have been able to look to Ms. Nadvornianski, as mortgagor, to pay under the covenant. Any amount paid by Stewart Title to the mortgagee would have reduced the indebtedness of Ms. Nadvornianski to the mortgagee. Ms. Nadvornianski could have something to lose by reason of the fact that she did not have good and marketable title. The failure to receive good and marketable title is a risk against which one insures under a policy of title insurance. Ms. Nadvornianski paid the premium to cover this risk. Stewart Title accepted, and apparently continues to retain, the premium.

[31] It is not the mortgage which is insured. Rather, what is insured is the loss resulting from a defect in the security. The loss here was arguably that the security of good and marketable title was impaired by the easement.

[32] While Stewart Title submits that Ms. Nadvornianski has the contractual right to be indemnified by Mr. Nadvornianski and Mr. Lechowicj under the Nominee Agreement, that indemnity would only be of comfort if Mr. Nadvornianski and Mr. Lechowicj made good on their promise. The Nominee Agreement is not a release of Ms. Nadvornianski vis--vis the credit union.

[33] Stewart Title relies on Marks v. Commonwealth Insurance, Rider v. North Waterloo Farmers Mutual Insurance Co. and Prowse v. Sullivan, in support of its position that Ms. Nadvornianski has no insurable interest. However, the issue of exposure of the nominee as a mortgagor was not expressly considered in those cases.

[34] I note that Marks and Rider deal with fire insurance policies, while Prowse deals with a motor vehicle policy. This leads me to a second concern with respect to granting summary judgment on this motion.

[35] As pointed out by the defendant solicitors, the trend in Canadian insurance law is toward a less restrictive and technical application of its doctrines, particularly those dealing with the requirements of an insurable interest. (Cie d assurance Guardian du Canada v. Robinson (1992), 6 C.C.L.I. (2d) 190 (Que. C.A.), and Kosmoupolos).

[36] Stewart Title submits that because title insurance is an indemnity policy, the principles which govern the determination of insurable interest in other indemnity policies, such as fire, auto and marine, are equally applicable to title insurance.

[37] However, the plaintiffs and the defendant solicitors submit that because the risk in title insurance matters is qualitatively different from the risk in fire, auto and marine policies, the determination of insurable interest in title insurance claims requires a different approach. With respect to fire, auto and marine policies, the identity of the beneficial owner of the property insured has a bearing on the risk and disclosure of beneficial ownership is significant in the insurer s decision as to whether to issue a policy and at what premium. The responding parties contend, with respect to title insurance, that the identity of the owner, relative to the risk, is of no consequence. The title insurer is insuring against title fraud, undisclosed easements and other title matters, which are not affected by the identity and past conduct of the insured. The plaintiffs point out that Stewart Title is not alleging that it would not have issued the policy if it had known that Ms. Nadvornianski was in fact only the holder of legal title and that Mr. Nadvornianski and Mr. Lechowicj were the beneficial owners. The plaintiffs contend that this is because this information is irrelevant to the underwriting considerations of Stewart Title, it did not increase the risk. The plaintiffs and the defendant lawyers submit that if Stewart Title wished to exclude coverage for registered owners who are not beneficial owners, it should have used explicit language in the policy to do so. In short, it is submitted that where the nature of the interest of the insured has no bearing on the risk which the insurer is considering insuring, lack of notice as to the nature of that interest should not preclude a finding of an insurable interest regarding title.

[38] I note in passing that the policy of title insurance does not refer to Ms. Nadvornianski as owner . It states Title to the estate or interest the land (sic) is vested in Barbara

Nadvornianski. Title was in fact vested in Ms. Nadvornianski.

[39] Further, as pointed out by the plaintiffs, the defendant solicitors acted for both Ms. Nadvornianski and the beneficial owners. They drafted the Nominee Agreement, the Security Agreement and the Co-tenancy Agreement. They knew the relationship between the parties. The defendant solicitors also made the arrangements for title insurance with Stewart Title, they chose the insurer, they collected the premium, they completed the paperwork for the policy. The plaintiffs submit that the defendant solicitors acted in this regard as agents for Stewart Title as well as for the purchasers, and that their knowledge of the legal and beneficial ownership must be imputed to the insurer. Stewart Title denies that there is any principal-agent relationship between itself and the defendant solicitors. Stewart Title points out that there was no fee for service from the solicitor to the insurer.

[40] I am advised by all parties that the issue of insurable interest in the context of a title insurance matter has not been decided by a Canadian court. While the law with respect to insurable interest and indemnity policies related to fire, auto and marine may be well settled, the law regarding insurable interest related to title insurance polices is not well settled. It is a novel area, unless I accept the submissions of Stewart Title that there should be no distinction among any indemnity policies as regards insurable interest.

[41] The responding parties raise these issues:

Should title insurance be treated like any other indemnity policy?

Is a solicitor who acts on a real estate purchase but who also arranges title insurance, completes the paperwork and collects the premium, acting as an agent for the title insurer, at least to the extent that the solicitor s knowledge of the nature of the purchaser s interest is to be imputed to the insurer, precluding the insurer from denying coverage to a nominee owner?

Is an unnamed beneficial owner entitled to claim under the title insurance policy, where the identity of the beneficial owner is of no consequence to the risk?

[42] I am of the opinion that these issues would be caught by the statement of the Court of Appeal in Romano v. D Onofrio, namely Matters of law which have not been settled fully in our jurisprudence should not be disposed of at this [interlocutory] stage of the proceedings. In my opinion the issues here are both novel and significant and involve an interpretive analysis, including perhaps policy considerations which are properly beyond a summary judgment motion.

Conclusion:

[43] For the reasons given, I am not satisfied that this summary judgment motion should be granted. The motion is therefore dismissed.

[44] If the parties are unable to agree upon costs, written submissions, are to be forwarded to the judge s secretary in Thunder Bay, within 60 days of the release of this Decision.

The Hon. Mr. Justice D. C. Shaw

Released: June 13, 2006

COURT FILE NO.: *CV-260922CM3*

DATE: *2006-06-13*

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

BARBARA NADVORNIANSKI,

Plaintiff

- and

STEWART TITLE GUARANTY COMPANY and MITCHELL, BARDYN & ZALUCKY,

Defendants

DECISION ON MOTION

Shaw J.

Released: *June 13, 2006*

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