

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

Index No.: 61938/2015

AUDREY G PIEROT and MARK H GORDON ,

Plaintiffs,

-against-

CHICAGO TITLE INSURANCE COMPANY,

Defendant.

NOTICE OF ENTRY

SIRS/MESDAMES:

PLEASE TAKE NOTICE that annexed hereto is a true copy of the **DECISION AND ORDER** of the Honorable Joan B. Lefkowitz, J.S.C. dated October 9, 2018 and entered in the Office of the County Clerk, Westchester County on October 9, 2018.

Dated: New York, NY
October 9, 2018

ADAM LEITMAN BAILEY, P.C.
Counsel for Defendant Chicago Title Ins. Co.

Jackie Halpern Weinstein

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SUPREME COURT ; STATE OF NEW YORK
IAS PART WESTCHESTER COUNTY
PRESENT: HON. JOAN B. LEFKOWITZ, J.S.C.

To commence the statutory time period for appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.

-----X
AUDREY G. PIEROT and MARK GORDON,

Plaintiffs,

-against-

DECISION & ORDER

CHICAGO TITLE INSURANCE COMPANY,

Index No: 61938/2015

Defendant.

-----X
CHICAGO TITLE INSURANCE COMPANY,

Third-Party Plaintiff,

-against-

ACCURATE LAND ABSTRACT CO., LTD., a/k/a
ACCURATE ABSTRACT, LTD., JENNIE NO and
MICHAEL LEOPOLD,

Motion Return Date:
March 30, 2018
Motion Seq. #4

Third-Party Defendants.
-----X

The following papers (e-filed documents 125-228) were read on the motion by defendant for an order granting summary judgment dismissing the complaint.

- Notice of Motion, Affirmation (Exhibits)
- Affirmation in Opposition (Exhibits A-AN)
- Affidavit in Support (Exhibits A-H)
- Affidavit in Support (Exhibits A)
- Affidavit in Support (Exhibits A-C)
- Affidavit in Support (Exhibits A-M)
- Memorandum of Law in Support
- Affirmation in Opposition
- Affidavit in Opposition (Exhibits 1-15)
- Memorandum of Law in Opposition
- Affirmation in Reply Exhibits (AM-AR)

Upon reading the foregoing papers it is

ORDERED the motion is granted, and the complaint is dismissed.

Plaintiffs sue their title company, Chicago Title, claiming they are entitled to title insurance benefits pursuant to the policy issued on July 20, 2001. Plaintiffs claim that the title policy insured that plaintiffs' premises had the right of access to and from a public street, and that, in fact, their premises was landlocked and lacked such access. Plaintiffs seek judgment declaring that Chicago Title had an obligation to defend them in underlying lawsuits and that Chicago Title should indemnify them for the value of their house which they claim is unmarketable and for legal fees and damages plaintiffs incurred in litigating several actions with their neighbors involving disputes over plaintiffs' right to use a driveway.

The plaintiffs purchased their home in the Town of Greenburgh in 2001. The home is located on a parcel designated as Lot 44 on a subdivision map filed in Westchester County in 1947 as map No. 6352. As shown on the map, Lot 44 is a triangular parcel located at the intersection of Elizabeth Street and Healy Avenue. Plaintiffs' predecessor in title subdivided Lot 44 into two lots as depicted in Map No. 13883, filed in the Westchester County Clerk's Office on February 18, 1964. After this subdivision, one lot, a vacant triangular parcel, was located at the intersection of Elizabeth Street and Healy Avenue, and the second lot, a trapezoid-shaped parcel improved with a house which plaintiffs eventually purchased, was located south of the vacant lot, between Elizabeth Street to the east and Healy Avenue to the west. The improved lot was connected to Elizabeth Street by a driveway.

When plaintiffs purchased their house in 2001 the triangular lot to the north was still vacant. However, in 2009 Michael and Naomi Marom purchased the vacant lot and began building a house. Soon disputes arose over whether plaintiffs' driveway was located on property owned by the Maroms and whether plaintiffs had an easement over the driveway. The disputes burst into multiple lawsuits over asserted property rights, claimed trespasses and alleged assaults. In the course of those disputes the Maroms claimed ownership of the portion of Elizabeth Street over which plaintiffs driveway crossed. In 2014 plaintiffs and the Maroms settled seven lawsuits pending in state and federal court. As part of the settlement plaintiffs purchased, and the Maroms granted, an easement for the existing driveway.

In 2015 plaintiffs commenced this action against Chicago Title seeking indemnity for legal expenses and damages allegedly incurred in the some of the lawsuits settled in 2015. Plaintiffs argue that, since the Maroms claimed ownership of the portion of Elizabeth Street, a private road, which includes plaintiffs' driveway, plaintiffs' property is landlocked, and as a result Chicago Title must pay damages because it insured plaintiffs had a right of access. In addition, plaintiffs claimed that Chicago Title had insured plaintiffs' right to use the driveway to access Elizabeth Street.

Chicago Title previously denied most of plaintiffs' claims by a series of letters beginning in 2011. In this action, Chicago Title denies it is obligated to provide coverage for two reasons. First, it points out that the premises borders two streets, Healy Avenue and Elizabeth Street, so

that no matter the status of ownership of the driveway to Elizabeth Street the plaintiffs still have the legal right of access to and from their premises by way of Healy Avenue. Second, Chicago Title cites the exceptions to coverage set forth in Schedule B of the title policy. Exception 2, which recites a survey prepared by Kulhanck & Plan, P.C., dated July 13, 2001, states that the driveway encroaches on Elizabeth Street and that a small triangular portion of the driveway encroaches 6'6" onto the Maroms' property. Exception 4 in the policy states, "[n]o title is insured in and to so much of the driveway that encroaches the north as shown on the survey (the survey depicts the driveway encroachment on Elizabeth Street as north of plaintiffs' premises).

Plaintiffs claim the terms of the policy are uncertain. At the 2001 closing plaintiffs were represented by attorney Michael Leopold, a long time friend of plaintiff Mark Gordon. Plaintiffs claim Mr. Leopold never provided them with the title insurance policy. However, in support of its motion Chicago Title submitted title policy No. 33-0179-106-00000235 issued on July 20, 2001. Plaintiffs dispute the reliability of the policy produced, and as a result they claim there is an issue of fact as to the terms of the policy. They claim that Mr. Leopold never provided them with the policy and they have since learned the terms of the policy piecemeal. They claim that Chicago Title has only produced parts of the policy as plaintiffs' claims and appeals have been addressed by Chicago Title since plaintiffs' first claim was made in 2011. Thus, plaintiffs ask the court to consider the title commitment which was "marked up" at the closing as evidence of the terms of the policy. Particularly, they argue that the notation next to the survey description set forth in paragraph 7 of the title commitment which states "insure" is evidence that Chicago Title intended to insure driveway access over Elizabeth Street.

Following completion of discovery Chicago Title moves for an order granting summary judgment dismissing the complaint. Chicago Title established its entitlement to judgment as a matter of law by demonstrating that the plaintiffs had access to and from their property by way of Healy Avenue and that the driveway encroachment on Elizabeth Street was excepted from coverage.

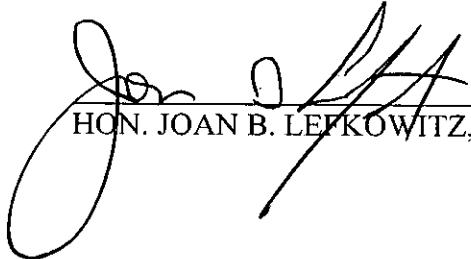
In opposition, plaintiffs failed to raise a triable issue of fact. While plaintiffs complain that access to their property by way of the driveway was made more difficult due to the various lawsuits with their neighbors, they failed to raise a triable issue of fact that they had no right of access by way of Healy Avenue. Moreover, their claim that Chicago Title insured their access by way of the driveway and Elizabeth Street is without merit. The policy clearly states in Exception 2, that the survey shows "driveway encroaching 6'6" onto adjacent parcel north of northerly record line *and onto Elizabeth Street* (emphasis added)," and exception 4 states, "[n]o title is insured in and to so much of the driveway that encroaches the north as shown on the survey recited herein." Both driveway encroachments are north of plaintiffs' property. Thus, the policy excepted coverage to that portion of the driveway which the survey shows as encroaching on Elizabeth Street.

Plaintiff's argument that the marked up commitment demonstrates Chicago Title intended to insure the right to use the driveway to access Elizabeth Street is without merit for two reasons.

First, paragraph 15 of the conditions set forth in policy provides that the policy is the only contract between the parties (thus nothing set forth in the title commitment is part of the contract), and paragraph 4 of the exceptions to coverage in the policy excepts coverage of that portion of the driveway which encroaches on Elizabeth Street. Second, paragraph 13 of the title commitment states “[n]o title is insured in and to so much of the driveway that encroaches premises to the north as shown on the survey recited herein.” Thus, both the commitment and the policy excepted the driveway encroachment onto Elizabeth Street from coverage.

ENTER,

Dated: White Plains, New York
October 9, 2018



HON. JOAN B. LEFKOWITZ, J.S.C.



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This is an automated response for Supreme Court cases. The NYSCEF site has received your electronically filed documents for the following case.

61938/2015

Audrey G Pierot et al - v. - Chicago Title Insurance Company

Assigned Judge: Joan B Lefkowitz

Documents Received on 10/09/2018 07:34 PM

Doc #	Document Type	Motion #
231	NOTICE OF ENTRY Does not contain an SSN or CPI as defined in 202.5(e) or 206.5(e)	4

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