
The Monday Claims Report

Mortgagee's Interest Limited to Security for Debt

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When an insurance company is faced with competing claims to the proceeds of an insurance claim and cannot obtain the agreement of the competing parties, it has no choice but to interplead the funds into court and let the parties demanding the funds litigate their rights. In *Mercury Insurance Company of Georgia, V. Edward Jones, Joeann Jones, and Pamela Hoveland*, CASE NO.: 1:13-CV-179(WLS), 2015 WL 5684093 (M.D. Ga. Sept. 28, 2015), the court was asked to decide who had a right to the proceeds. Because one of the competing parties failed to respond to a motion for summary judgment, the court erred and gave funds to a mortgagee who had no interest in the proceeds.

Mercury Insurance Company of Georgia, V. Edward Jones, Joeann Jones, and Pamela Hoveland

CASE NO.: 1:13-CV-179(WLS), 2015 WL 5684093 (M.D. Ga. Sept. 28, 2015)

On November 14, 2013, Mercury Insurance Company of Georgia filed a complaint interpleading Edward and Joeann Jones and Pamela Hoveland. Mercury moved the court to resolve the "respective rights of defendants to certain monies now held by Mercury and which Mercury asked the Court to allow it to pay into the registry of" the court.

On February 7, 2014, the court granted Mercury's complaint for interpleader, allowed for the \$102,141.79 in insurance proceeds to be deposited in an interest-bearing account by the Clerk of Court, and discharged Mercury from any liability.

Hoveland moved for summary judgment asserting that as first lienholder to the property at issue, she was due the \$102,141.79 in proceeds deposited with the court. Hoveland filed a summary judgment motion with a statement of undisputed facts, as required by the Federal Rules of Civil Procedure and the Local Rules of the court. The Joneses did not respond to the Hoveland's summary judgment motion or statement of facts as required. As a result, Hoveland's Statement of Material Facts were admitted as a result of the Joneses' failure to dispute those facts.

The Joneses first obtained a fee-simple interest as joint tenants with a right of survivorship at the property on November 23, 2009. To secure payment for the property the Joneses received a loan from Hoveland. In exchange for providing the Joneses with a loan, Hoveland received a note and security deed giving her a

The Monday Claims Report

security interest in the Joneses' property. The Joneses purchased homeowners insurance from Mercury soon after buying their residence. The homeowners insurance agreement named Hoveland as a mortgagee. The homeowners insurance agreement also stated that any loss payable under Mercury's insurance coverage for property dwellings or other structures would "be paid to the mortgagee and [the Joneses]".

On October 18, 2012, when a fire occurred at the property, the Joneses were delinquent several monthly installment payments to Hoveland. On October 22, 2012, after the fire, Hoveland's counsel sent the Joneses a notice of delinquency and informed them that Hoveland had instructed her counsel to proceed with foreclosure proceedings if payment in full on the debt remaining, in the amount of \$195,485.00, was not made.

After providing adequate advertisement, Hoveland proceeded with the nonjudicial foreclosure sale of the property, consistent with her prior notice to the Joneses. On May 7, 2013, Hoveland purchased the property by foreclosure sale for \$215,500.

As a result of the fire damage at the property, Mercury issued a check to both Hoveland and Edward Jones in the amount of \$102,141.79. Mercury's check was sent back by Hoveland's counsel, who also notified Mercury of a dispute between Hoveland and the Joneses regarding who should receive Mercury's check settling the claim for fire damages initially filed by Edward Jones.

Hoveland's motion raised a narrow issue: whether she is entitled to the insurance proceeds provided by Mercury as a result of the October 18, 2012 fire. Hoveland argued that as a secured mortgagee, designated in Mercury's insurance policy, she was entitled to all of the insurance proceeds since the Joneses were in default an amount more than those proceeds. Hoveland also asserted that her purchase of the property, after her motion for relief was granted and prior to any repairs being made, required her to make considerable repairs she would otherwise be uncompensated for without the insurance proceeds. Although Hoveland provided limited legal authority to support her assertions, the District Court concluded that she was correct that there was no issue of material fact as to whether she was entitled to the insurance proceeds resulting from the October 18, 2012, fire.

Since the unpaid debt owed to Hoveland by the Joneses was substantially more than the insurance proceeds, those proceeds in their entirety served as an alternative source of payment for the Joneses' mortgage debt. As a consequence, the court found that there was no genuine issue of material fact barring this court from deciding that Hoveland was entitled to the \$102,141.79 in insurance proceeds as a matter of law.

Although the Joneses did not respond to Hoveland's motion, after construing the record in a light most favorable to the Joneses, the court found no support to make a contrary finding. The insurance agreement and the mortgage clause

The Monday Claims Report

showed Mercury's manifest intent to include Hoveland as a loss payee with interest in the insurance proceeds.

Zalma Opinion

The court erred because the only interest Hoveland had in the property was as security for the mortgage debt. When that debt was paid in full at the foreclosure sale, Hoveland no longer had an insurable interest. When the court delivered the interpleaded funds to Hoveland, she profited from the fire by recovering \$102,141.79 more than the debt since she already received the full amount of the debt at the foreclosure sale.

Since the security was paid at the foreclosure sale, Hoveland's right to the proceeds of the insurance was eliminated. In *Rosenbaum v. Funcannon*, 308 F.2d 680 (9th Cir.1992), the court concluded when a mortgagee has purchased the property at a foreclosure sale, the mortgagee is no longer entitled to the benefits of an insurance policy taken out by the mortgagor. The court said that a "mortgagee's insurable interest under an insurance policy is limited to the amount of the debt; once the debt has been fully extinguished by a full credit bid, so has the insurable interest."