
The Monday Claims Report

The Standard or Union Mortgage Clause

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First party property insurance policies usually insure the named insured and a mortgagee. Under a Standard or Union Mortgage Clause the insurer agrees to a separate contract with the mortgagee and that acts by the named insure/mortgagor do not effect coverage to the mortgagee. In *SWE Homes, LP v. Wellington Insurance Company*, 436 S.W.3d 86 (Tex. App.—Houston [14th Dist.] 2014), the court of appeal was presented with the question of whether a standard mortgage clause in a residential insurance policy provides coverage to a mortgagee for a loss by fire when the policy also contained a vacancy clause and the mortgagor had left the property vacant.

SWE Homes, LP v. Wellington Insurance Company

436 S.W.3d 86

(Tex. App.—Houston [14th Dist.] 2014)

Mortgagee SWE Homes, LP appeals from the trial court's grant of summary judgment favoring insurer Wellington Insurance Company, by which the court held that SWE's loss was not covered.

Edgar Sadberry purchased a residential property with a mortgage from SWE. He bought a Texas Dwelling Policy from Wellington covering the property and naming SWE as the mortgagee. The effective dates of the policy ran from August 11, 2010 until August 11, 2011. The policy covered losses from various hazards including fire. It further contained a Mortgage Clause, which reads in pertinent part as follows: "19. Mortgage Clauseb. We will pay for any covered loss of or damage to buildings or structures to the mortgagee shown on the declarations page as interests appear. . . .d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the mortgagee has the right to receive loss payment if the mortgagee..."

The policy also included as a condition a Vacancy Clause, which stated: "16. Vacancy. During the policy term, if an insured building is vacant for 60 consecutive days immediately before a loss, we will not be liable for a loss by the perils of fire and lightning or vandalism or malicious mischief. Coverage may be provided by endorsement to this policy."

Sadberry's property was damaged in a fire apparently set by an unknown arsonist on December 23, 2010. Sadberry made a claim on his insurance policy, but after he admitted the property had been left vacant for over a year prior to

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the fire, Wellington denied the claim under the policy's Vacancy Clause. SWE then filed a claim pursuant to the Mortgage Clause. When Wellington failed to respond, SWE filed suit. In its motion for summary judgment, Wellington argued that there was no "covered loss" – as required for a claim under the Mortgage Clause – because the property had been left vacant for over 60 consecutive days immediately before the loss occurred. In response, SWE argued that under the policy, coverage for the mortgagee could not be defeated by the mortgagor's actions triggering the Vacancy Clause when SWE had no knowledge of those actions. The trial court granted Wellington's motion.

Texas courts generally interpret insurance policies according to the general rules of contract interpretation. A court's primary goal is to determine the contracting parties' intent as expressed by the policy's written language interpreted through the application of established rules of construction. Contracts should be construed as a whole, harmonizing and giving effect to all of the provisions so that none are rendered meaningless, no single provision taken alone will be given controlling effect, and all the provisions will be considered with reference to the whole instrument.

In its sole issue, SWE contends that the trial court erred in granting summary judgment favoring Wellington. The parties' only real dispute on appeal revolves around whether SWE's claim under the Mortgage Clause is defeated by operation of the policy's Vacancy Clause.

There are two common types of loss payable clauses in insurance policies relevant to our discussion. One is the "open" clause, which states simply that any loss is payable to the mortgagee "as its interest may appear." Under the open clause, the mortgagee stands in the shoes of the insured. The other common type of loss payable clause, the "standard" mortgage clause, provides that "this insurance . . . shall not be invalidated by any act or neglect of the mortgagor." Under the standard clause, the mortgagee has rights to recover even when the insured does not. The standard mortgage clause creates a separate contract between the insurer and the mortgagee, in this case Wellington and SWE.

Unquestionably, the policy covers damage from fire. It is Wellington's burden to prove an exclusion applicable to SWE. While under the Vacancy Clause, there is no coverage for Sadberry for fire damage when the property has remained vacant for the specified period, the clear import of the standard loss payable language in the policy means that the Vacancy Clause does not operate to defeat coverage for SWE as mortgagee, so long as SWE meets the required conditions, such as informing Wellington of any change in occupancy or substantial change in risk that was known to SWE. This is true because it was Sadberry's actions as property owner that left the property vacant for the relevant time period and SWE had no knowledge of the vacancy.

Moreover, even if the interpretation proffered by Wellington and favored by the trial court were correct, the provisions barring coverage would be rendered void

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by operation of Texas Insurance Code section 862.055, which states: “(a) The interest of a mortgagee or trustee under a fire insurance contract covering property located in this state may not be invalidated by:(b) A provision of a contract that conflicts with Subsection (a) is void.”

Again, the Wellington policy clearly covered fire as a hazard. If, as Wellington contends, certain language in the Mortgage and Vacancy clauses operates together to deny fire coverage to SWE as mortgagee based on Sadberry’s action in leaving the property vacant, such provisions would be rendered void by operation of section 862.055.

The court of appeal found that the trial court erred in granting summary judgment favoring Wellington based on application of the Vacancy Clause.

Zalma Opinion

This case should never have gone to trial. The policy wording was clear and unambiguous. The named insured had no coverage because he allowed the dwelling to be vacant for more than a year. The mortgagee, SWE, had no knowledge of the vacancy and properly made a claim under the Standard Mortgage Clause because, by its terms, it could not be responsible for acts of the mortgagor that defeated coverage.

The insurer is not without a remedy, however, and may suffer no loss when it pays SWE because the Standard mortgage clause also allows the insurer, when it pays, to take an assignment of the mortgage and collect from the owner or foreclose and sell the property to obtain reimbursement of the amounts paid.

The simple solution to avoid this litigation would have been a prompt adjustment of the claim filed by SWE, take title to the property by assignment, and collect the mortgage or foreclose and sell the land.