

BAD FAITH BLOG

Curing the Title Defect Through Litigation Defeated Bad Faith Claims

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Summary: DAFCO, LLC, the insured, filed suit against Stewart alleging bad faith. The Supreme Court of Idaho affirmed the Idaho District Court's granting of Stewart's Motion for Summary Judgment for fulfilling its contractual duties in good faith while also denying DAFCO's motion to file an amended complaint to add multiple claims, including an amended breach of the duty of good faith claim.

Dafco v. Stewart Title Guaranty Company

Joshua Jarvis acquired property while married which was deemed community property. Jarvis obtained a loan from Snake River and Stewart Title Guaranty Co. issued a title insurance policy to Snake River under the deed of trust which was then assigned to DAFCO. Due to an alleged title infirmity that resulted in Jarvis' wife failing to sign the trust deed, Snake River sent a "Notice of Claim" to Stewart seeking payment under the title policy which Stewart refused to pay. In the original suit, DAFCO and Snake River filed a claim against Stewart alleging breach of agreement in failing to pay DAFCO and Snake River per the title insurance policy and failing to diligently pursue reasonable actions to quiet title. Additionally, DAFCO and Snake River claimed Stewart breached the contract by failing to obtain the signature of Jarvis' wife on the required documents, and further, Stewart was estopped from claiming the deed of trust was not defective.

In a separate action, New Phase, which loaned money to Jarvis, filed a complaint alleging its interests were superior to DAFCO's interest in the property because Jarvis' wife's signature was not on the deed of trust. Stewart defended that action and filed a counterclaim on behalf of DAFCO claiming DAFCO's deed of trust was recorded first and, thus, was superior to New Phase's interests. The court concluded that because Jarvis' wife did not challenge the deed, it was valid, and was superior to that of New Phase. The Supreme Court of Idaho so ruled in the separate, earlier action.

Snake River's new counsel dismissed its claims against Stewart and was dismissed as a plaintiff. Once Snake River was no longer a plaintiff, Stewart filed a motion for summary judgment against DAFCO which was granted after finding Stewart had fulfilled its contractual duties to DAFCO. When filing its response to Stewart's motion for summary judgment, DAFCO filed a motion to file a third amended complaint, which the district court denied. DAFCO appealed both adverse rulings.

In both the appeal and the proposed third amended complaint, DAFCO contended there was a genuine issue of material fact as to whether Stewart fulfilled its duty of good faith and fair dealing. DAFCO's argument was that it was deprived of the benefit of the payment of the title defect provision in the policy. DAFCO contended Stewart should have paid the face amount of the policy at the time the defect (the absence of Jarvis' wife's signature on the deed of trust), was discovered. However, the district court noted, and the Supreme Court agreed, that Stewart complied with alternative means of remediation. Stewart satisfied its contractual alternative by stepping in and getting the desired results for DAFCO in the claim New Phase filed against DAFCO. By exercising this contractual alternative, Stewart met its obligation of good faith and fair dealing. DAFCO admitted Stewart had the right to exercise that alternative and the Supreme Court affirmed there was no bad faith breach by Stewart.

The parties argued they were entitled to attorney fees under the Idaho statutes which allow the prevailing party reasonable attorney fees set by the court. DAFCO's claim for attorney fees bordered on being a frivolous claim. Due to DAFCO's failed claims, the court allowed the prevailing party, Stewart, to be awarded attorney fees pursuant to *Garner v. Povey*, 151 Idaho 462, 470, 259 P.3d 608, 616 (2011).

Here, DAFCO had been properly protected by Stewart. For that reason, the Supreme Court of Idaho was not going to countenance a bad faith claim against Stewart or award attorney fees against it for doing the right thing. Instead, the Court awarded attorney fees against DAFCO for asserting a frivolous claim.

By Anthony L. Martin & Lauren Rodriguez

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