

STATE OF MINNESOTA

COUNTY OF HENNEPIN

DISTRICT COURT

FOURTH JUDICIAL DISTRICT

Tamir Silvers, LLC, a Florida limited liability company,

Plaintiff,

v.

Goldsmith & Associates, PLC, Scott K. Goldsmith, an individual d/b/a Goldsmith & Associates, PLC, Lynn D. Schwie, an individual, Great Plains Title & Escrow, LLC, a Minnesota limited liability company, and TICOR Title Insurance Company, a California corporation,

Defendants,

and

Great Plains Title & Escrow, LLC,

Third-Party Plaintiff,

v.

Caberallo, LLC, a Minnesota limited liability company,

Third-Party Defendant.

Court File No. 27-CV-07-17245

**ORDER ON MOTIONS FOR
SUMMARY JUDGMENT**

The above-captioned matter came on for hearing before the Honorable Judge Kevin S. Burke of the Fourth Judicial District Court on February 28, 2008, on Defendants Great Plains Title and Escrow and TICOR Title Insurance Company's Motions for Summary Judgment.

William Sjoholm, Esq., appeared on behalf of Plaintiff Tamir Silvers, LLC.

Christopher Kalla, Esq., appeared on behalf of Defendant and Third-Party

Plaintiff Great Plains Title & Escrow, LLC.

Bradley N. Beisel, Esq., appeared on behalf of Defendant TICOR Title Insurance Company.

Defendant Scott Goldsmith did not appear nor did an attorney appear on his behalf.

Defendant Lynn Schwie did not appear nor did an attorney appear on her behalf.

No one appeared on behalf of Third Party Defendant Caberallo, LLC.

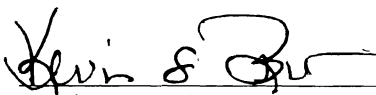
Based upon all files, records, and proceedings herein, together with the arguments of counsel,

IT IS HEREBY ORDERED that:

1. Defendant Great Plains Title and Escrow, LLC's Motion for Summary Judgment is **denied**.
2. Defendant TICOR Title Insurance Company's Motion for Summary Judgment is **granted**.
3. The following Memorandum is hereby incorporated.

BY THE COURT:

Dated: April 10, 2008



Kevin S. Burke
Judge of District Court

MEMORANDUM

In May 2006, Defendant Goldsmith & Associates, PLC (hereinafter "Goldsmith & Associates") borrowed \$100,000.00 from Plaintiff Tamir Silvers, LLC (hereinafter

“Tamir Silvers”). To secure the loan, Goldsmith & Associates granted a mortgage to Tamir Silvers encumbering property owned by Defendants Scott Goldsmith and Lynn Schwie. Defendant and Third-Party Plaintiff Great Plains Title & Escrow, LLC (hereinafter “Great Plains”) conducted the closing on the mortgage granted to Tamir Silvers by Goldsmith & Associates. The closing was held on April 5, 2006.

Tamir Silvers had requested a lender’s title insurance policy as a part of the transaction. Both Tamir Silvers and Great Plains agree that Great Plains provided a title insurance commitment to Tamir Silvers. At the closing, Mr. Goldsmith decided against purchasing a lender’s title insurance policy for Tamir Silvers.

Great Plains and Tamir Silvers agree that no party to the mortgage transaction paid the premium required to purchase title insurance for Tamir Silvers as the lender. Tamir Silvers alleges that it requested copies of the mortgage and lender’s title insurance policy from Great Plains. Tamir Silvers also alleges that Great Plains informed Tamir Silvers that those documents would be given to Tamir Silvers after the mortgage was recorded by the Hennepin County Recorder’s Office.

Great Plains argues that Tamir Silvers should have been aware that there was no lender’s title insurance despite Great Plains’s alleged assertions that there was such insurance. Great Plains points to the HUD-1 statement, which indicated that the title insurance premium was not paid. Tamir Silvers claims that it was not provided the HUD-1 closing statement.

Great Plains believes that there was no loan between Tamir Silvers and Goldsmith & Associates. Great Plains believes that loan occurred between Steven Silvers, principal of Tamir Silvers, and Mr. Goldsmith, in their individual capacity.

Defendant TICOR Title Insurance Company (hereinafter “TICOR”) provides title insurance. Great Plains is the Minnesota agent authorized to issue policies for TICOR. Great Plains provided the title commitment to Tamir Silvers for a TICOR insurance policy.

Summary judgment should be granted where “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no issue as to any material fact and that either party is entitled to judgment as a matter of law.” Minn. R. Civ. P. 56.03. A material issue of fact is one which would affect the outcome of the case. *Rathbun v. W.T. Grant Co.*, 219 N.W.2d 641, 646 (Minn. 1974); *Pischke v. Kellen*, 384 N.W.2d 201, 205 (Minn. App. 1986.)

“Summary judgment is not a substitute for trial and may be granted only if, based on the entire record, no issue of material fact exists, and the moving party is entitled to judgment as a matter of law.” *Bixler v. J.C. Penney Co., Inc.*, 376 N.W.2d 209, 215 (Minn. 1985.) Summary judgment is a “blunt instrument” that “should be employed only where it is perfectly clear that no issue of fact is involved” in the cause of action. *Donnay v. Boulware*, 144 N.W.2d 711, 716 (Minn. 1966.) The burden is on the moving party to show that there is no genuine issue of material fact. *Thiele v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988.) When determining whether the moving party has sustained this burden, a court must view the evidence in a manner most favorable to the nonmoving party. *Greaton v. Enich*, 185 N.W.2d 876, 878 (Minn. 1971); *Ritter v. M.A. Mortenson Co.*, 352 N.W.2d 110, 112 (Minn. App. 1984.) “All doubts and factual inferences must be resolved against the moving party” and in favor of the nonmoving party. *Nord v. Herreid*, 305 N.W.2d 337, 339 (Minn. 1981.) If the moving party has satisfied its burden

to show the absence of a genuine issue of material fact, the burden then shifts to the nonmoving party to show the existence of a genuine issue of material fact. *Bixler*, 376 N.W.2d at 215.

If the nonmoving party then fails to present specific facts indicating the existence of a genuine issue of material fact, summary judgment is proper. *Hunt v. IBM Mid America Employees Federal Credit Union*, 384 N.W.2d 853, 855 (Minn. 1986.) In order to successfully oppose a motion for summary judgment, the nonmoving party cannot rely upon mere averments or denials set forth in its pleadings, but must present specific facts showing that there is a genuine issue for trial. Minn. R. Civ. P. 56.05; see also *Hunt*, 384 N.W.2d at 855 (the nonmoving party cannot rely on mere general statements of fact.) “The court is not required to save the nonmoving party by drawing unreasonable inferences.” *City of Savage v. Varey*, 358 N.W.2d 102, 105 (Minn. App. 1984.)

*Defendant Great Plains Title and Escrow, LLC's Motion for Summary Judgment on
Tamir Silvers's claims*

The central issue is if Tamir Silvers knew or should have known that no title insurance was issued on Tamir Silvers's behalf. Both parties agree that Great Plains provided a title commitment to Tamir Silvers. Great Plains argues that Tamir Silvers never paid for a lender's title insurance policy. Tamir Silvers counters that Great Plains never informed Tamir Silvers no policy would issue despite Tamir Silvers's repeated inquiries.

The facts surrounding this issue remain in dispute and therefore summary judgment would be inappropriate. The common practice is for borrowers to purchase

their lender a title insurance policy. 1 Joyce Palomar, *Title Ins. Law* § 1:2 (West 2007). Tamir Silvers as the borrower never expected to pay for its lender's policy.

The next issue is whether Tamir Silvers should have known there was no title insurance despite Great Plains's alleged misrepresentations. Those facts also are in dispute. Great Plains argues that there was the HUD-1 statement clearly indicating no insurance, but Tamir Silvers claims it never received the statement. Again, summary judgment cannot be granted when disputed material facts remain.

Great Plains' contention that Tamir Silvers does not have standing to bring this claim because there is no loan between Tamir Silvers and Goldsmith & Associates also remains in dispute. Tamir Silvers vigorously opposes this argument, pointing to the documents in the loan transaction identifying the lender as Tamir Silvers, not either of its principals as individuals. Therefore, Defendant Great Plains Title and Escrow, LLC's Motion for Summary Judgment is **denied**.

Defendant TICOR Title Insurance Company's Motion for Summary Judgment on Tamir Silvers's claims

While Great Plains's representations about issuing a title insurance policy remain in dispute, both Tamir Silvers and TICOR agree that no such policy was ever issued because no one paid the insurance premium. Tamir Silvers is suing TICOR for the alleged misrepresentations of Great Plains as agent for TICOR. When Great Plains allegedly represented that a title insurance policy existed, Great Plains was not acting within the scope of its authority as TICOR's agent. Great Plains did not have the authority from TICOR to tell Tamir Silvers there was an insurance policy when no party

had paid the premium. Therefore, Defendant TICOR Title Insurance Company's Motion for Summary Judgment is **granted**.