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SC Court of Appeals

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	CIVIL ACTION NO. 2012-CP-07-02389
SHARON SUTTON,)	<p style="text-align: center;">ORDER</p> <p style="text-align: right;"> JENNIFER ROSEMEAU BEAUFORT COUNTY, S.C. CLERK OF COURT 13 OCT -4 PM 3:56 </p>
Plaintiff,)	
vs.)	
MELISSA HELMS ESTES; ESTES LAW FIRM, LLC; CARTERET TITLE, LLC AND CHICAGO TITLE INSURANCE COMPANY,)	
Defendants.)	

This matter came before the Court on September 30, 2013, for a hearing on eight (8) pending motions. Present at the hearing were J. Ashley Twombly for the Plaintiff, G. Hamlin O’Kelley, III, for Defendant Chicago Title Insurance Company, and David W. Overstreet for Defendants Melissa Helms Estes, Estes Law Firm, LLC and Carteret Title, LLC. After hearing from the parties, reviewing the file, reviewing the parties’ memoranda in support of their various positions, and carefully considering the arguments advanced both for and against each motion, the Court issues the following Order:

Sutton’s Motion for Partial Summary Judgment

The gravamen of Sutton’s Motion for Partial Summary Judgment is that after denying Sutton’s title insurance claim for almost two years, in April of 2013 Chicago Title sent Sutton a letter stating that Sutton’s claim “falls within the Policy’s insuring provisions” subject to various reservations of rights. Sutton argues that this concession by Chicago Title entitles her to

summary judgment in her favor in that a) the claim at issue is a covered claim, b) Chicago Title breached the insurance contract when it told Sutton the claim was not covered and denied the claim, and c) that Sutton is entitled to her attorney's fees pursuant to S.C. Code § 38-59-40.

It is undisputed that Chicago Title informed Sutton her claim was not covered and then wrote her in April 2013 and told her the claim was covered. It is also undisputed that Chicago Title did not respond to Sutton's March 22, 2012 request for reconsideration, or her April 23, 2012 follow up letter within 90 days. Chicago Title has not placed any evidence before the Court to show that it had "reasonable cause" for failing to respond to Sutton's March 22, 2012 request for reconsideration or her April 23, 2012 letter, or that the reservations of rights asserted in the April 2013 letter are applicable to the claim at bar. Accordingly, I find that Sutton is entitled to partial summary judgment in that her claim is covered, Chicago Title breached the insurance contract when it denied Sutton's claim, and that Sutton is entitled to her attorney's fees pursuant to S.C. Code § 38-59-40. The amount of attorney's fees shall be determined by the trial judge following trial in accordance with S.C. Code § 38-59-40.

Sutton's Motion to Commission Out of State Subpoena

Chicago Title consented to this motion prior to argument on the same. Therefore, Sutton shall submit a separate consent order to the Court regarding the same.

Chicago Title's Motion for Reconsideration Alter or Amend

Chicago Title's Motion for Reconsideration is denied. The Court finds that the respective burdens on the parties in making the documents at issue available for inspection, traveling to the locations where the documents are kept, and making copies of the documents are not unreasonable. The Court does clarify its Order to make clear that the cost of making the documents available for inspection shall be borne by Chicago Title. Plaintiff shall be allowed to

inspect the documents and make copies at Plaintiff's expense. The Court's August 5, 2013, Order stands.

Sutton's Motion for Protective Order

Defendants shall notify Sutton's Counsel by no later than October 11, 2013, whether or not they intend to require Plaintiff to proceed with this motion. Otherwise, the motion is granted. If Defendants wish for Plaintiff to proceed, the parties shall contact the undersigned to schedule a hearing on the same.

Chicago Title's Motion for Protective Order and Motion to Quash Deposition

This motion is denied; however, Chicago Title shall be allowed to designate more than one representative to testify as to the topics identified by Plaintiff.

Chicago Title's Motion for Abatement/Motion to Stay

Chicago Title requests that the within action be held in abatement/stayed while Chicago Title pursues a declaratory judgment action¹ it filed approximately three weeks ago. The other Defendants join in Chicago Title's motion. Sutton argues that Chicago Title's motion should be denied, arguing first that Chicago Title cannot meet the legal requirements necessary for abatement and arguing second that even if abatement/stay were proper, Defendants waited too long (almost two and a half years) to file the declaratory judgment action, waiving the right to file declaratory judgment action. After consideration, this Court denies the Motion for Abatement/Motion to Stay.

Chicago Title's Motion to Compel Plaintiff's Discovery

Sutton agrees to provide the requested responses within 10 days from the date of this

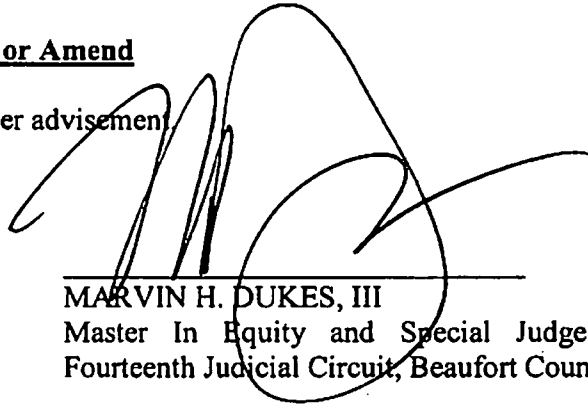
¹ Chicago Title has filed a declaratory judgment action entitled Chicago Title Insurance Company v. Fripp Island Property Owners Association, Fripp Island Resort, Sharon Sutton, Melissa Helms Estes, Estes Law Firm, LLC, and Carteret Title, LLC (2013-CP-07-2193).

order.

Sutton's Motion to Reconsider, Alter or Amend

The Court takes this motion under advisement.

IT IS SO ORDERED!



A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

MARVIN H. DUKES, III
Master In Equity and Special Judge for the
Fourteenth Judicial Circuit, Beaufort County

Beaufort, South Carolina

October 4, 2013