

received
2/6/17

COMMONWEALTH OF KENTUCKY
MUHLENBERG CIRCUIT COURT
CIVIL ACTION NO. 15-CI-00364

JUAN ORTIZ and MARIA ORTIZ

PLAINTIFFS

v.

KENTUCKY GROWERS INSURANCE COMPANY,
C. A. LAWTON & SON, INC.; SOLUTIONS FIRST LLC
d/b/a LAWTON INSURANCE and LISA PAYTON

DEFENDANTS

**OPINION AND ORDER GRANTING KENTUCKY GROWERS
INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

The plaintiffs (Ortiz) in this case purchased a homeowners insurance policy from Kentucky Growers Insurance Company (Growers) through C. A. Lawton Insurance (herein after Lawton); and Lisa Payton (Payton). Lawton is an insurance agency in Central City, Kentucky, which assisted Ortiz in preparation and submission of an application to purchase homeowners insurance from the defendant, Growers, in October, 2011. The policy was issued in November, 2011, and the plaintiffs' home was destroyed by fire approximately three years later.

The plaintiffs sought payment of benefits and Growers has refused payment and now move the Court to grant summary judgment voiding the policy and denying the coverage benefits.

Growers cites multiple grounds to the Court in support of their motion. First, they argue that the application submitted by the plaintiffs in bold letters states:

"I certify that the property for which Insurance is requested is Solely Owned

Diavied

By and Deeded in the Name(s) of Juan and Maria Ortiz.”

“We do not insure property that is under contract for deed, land contract, or any other conditional ownership or transfer.”

The plaintiffs admit that they were purchasing their home pursuant to a contract and bond for deed, however they contend that a copy of the contract was delivered to Lawton (Grower’s agent), and Growers, at least constructively, had notice of the method of purchase before they issued the policy. Therefore, Growers is estopped from denying coverage on that basis. There does appear to be an issue of fact as to whether Lawton was provided a copy of the contract, and thereby placed on notice that the property was being purchased by that method. If so, Growers was, at least constructively, placed on notice through Lawton, their agent. The Court is of the opinion that the issue of constructive notice of the method in which the property was being purchased by Ortiz precludes summary judgment on that issue.

Growers also argues that Ortiz made misrepresentations of material facts in the application for insurance, and summary judgment is appropriate, Specifically, Growers maintain that Ortiz made material misrepresentations on two material issues.

First, they state that the application for insurance contained the following question. “Has any company canceled or refused to renew your insurance?” Mr. Ortiz answered, “No”. Growers obtained documentation from Kentucky Farm Bureau Insurance Company indicating that they previously insured Ortiz and had notified him by letter that his coverage would be discontinued due to an excessive claims history. In his application for coverage with Growers, Ortiz indicated that he had previously been issued through Farm Bureau but

was applying for coverage with Growers because of price. Ortiz says he did not remember receiving the notice from Farm Bureau.

The other area of alleged misrepresentation the Court finds a bit more compelling. The application asked if Mr. Ortiz had been in "...foreclosure, repossession, or bankruptcy proceedings during the last ten years." Ortiz answered "no". When asked about this during deposition Ortiz answered that he had a previous foreclosure in Florida in 2010. Then, however, when he responded to Growers' Motion for Partial Summary Judgement, Ortiz signed a sworn affidavit stating that he had never been in a foreclosure proceeding, but had only been threatened with foreclosure in Florida in 2007. However, Growers, in response to Ortiz Memorandum and Affidavit attached a Foreclosure Complaint from Florida dated 2010 listing both Mr. and Mrs. Ortiz as defendants. This Court finds that document very compelling.

More compelling is the fact that the Ortiz were named defendants in a foreclosure proceeding in Florida and misrepresented that fact both to Growers and to this Court.

The law in Kentucky has long held that a material misrepresentation contained in an application for insurance avoids the policy. *North British Merchantile Ins. Co. v. London and Edinburgh v. Union Stockyards Co.*, 87 S.W.285 (Ky. 1905); *Niagara Fire & Ins. Co. v. Layne*, 172 S.W. 1090 (Ky. 1915); *Nationwide Mutual Fire Ins. Co. v. Nelson*, 912 F. Supp. 2d 452 (E.D. Ky. 2012). Whether Ortiz was aware of the misrepresentation is immaterial, however, regardless of whether he was aware of the cancelation notice may be arguable, but there is no question that he knew he was a part to the foreclosure in Florida.

Based on the foregoing, the Motion for Summary Judgment filed by Kentucky Growers Insurance Co. is GRANTED. Judgment is hereby entered voiding the policy at issue in this case.

This is a final and appealable Judgment as to Kentucky Growers Insurance Company and there is no just cause for delay.

This the 31 day of January, 2017.



JAMES C. BRANTLEY, SPECIAL JUDGE

ENTERED

2-2-17

CAMRON LAYCOCK

BY:  D.C.