

**SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY**

**PRESENT: HON. LOUIS L. NOCK PART 38M**

*Justice*

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WILMINGTON SAVINGS FUND SOCIETY, FSB, d/b/a  
CHRISTIANA TRUST, NOT IN ITS INDIVIDUAL  
CAPACITY, BUT SOLELY IN ITS CAPACITY AS  
CERTIFICATE TRUSTEE FOR NRP MORTGAGE TRUST  
1,

Plaintiff,

- v -

AMTRUST TITLE INSURANCE COMPANY,

Defendant.

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**INDEX NO.** 651053/2023

**MOTION DATE** 05/04/2023

**MOTION SEQ. NO.** 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document numbers (Motion 001) 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 22, 24, 25, 26, 27, and 28

were read on this motion to DISMISS.

LOUIS L. NOCK, J.S.C.

Upon the foregoing documents, the motion is granted for the reasons set forth in the moving and reply papers (NYSCEF Doc. Nos. 5, 18, 25) and the exhibits attached thereto, in which the court concurs, as summarized herein.

The sequence of events underlying this declaratory judgment action are not in dispute. Defendant issued a title insurance policy on a mortgage executed in favor of nonparty Rosa Funding LLC on October 23, 2019 (the “Rosa mortgage”). The policy provides, as relevant herein, that an “Insured” includes the owner of the mortgage and “each successor in ownership of the indebtedness” (policy, NYSCEF Doc. No. 6, Conditions, § 1[e][i][A]). The policy remained in effect for as long as “the Insured retains an estate or interest in the Land” (*id.*, § 2). The Rosa mortgage was assigned twice, and then consolidated into a single lien in favor of nonparty FM Home Loans with another mortgage issued to said entity. Nonparty The Security

Title Guarantee Corporation of Baltimore (“Security Title”) issued a policy of title insurance on the consolidated mortgage on February 27, 2020. The consolidated mortgage was then eventually assigned to plaintiff.

Plaintiff moved to foreclose the consolidated mortgage in the Supreme Court of the State of New York, Kings County on July 29, 2021. Subsequently, plaintiff made a claim to defendant under the policy issued for the Rosa mortgage. Defendant denied the claim, on the grounds that when the Rosa mortgage was assigned to FM Home Loans, it was satisfied under the terms of the policy (denial letter, NYSCEF Doc. No. 16). Plaintiff then commenced this action seeking defense and indemnity under the policy, and a declaration that the policy remains in effect. Defendant now moves to dismiss.

The duty to defend under an insurance policy is exceedingly broad and extends beyond the limits of the duty to indemnify, covering any situation where the allegations of the complaint “suggest a reasonable possibility of coverage” (*Automobile Ins. Co. of Hartford v Cook*, 7 NY3d 131, 137 [2006] [internal quotations and citation marks omitted]). “Thus, an insurer may be required to defend under the contract even though it may not be required to pay once the litigation has run its course” (*id.*). “If, liberally construed, the claim is within the embrace of the policy, the insurer must come forward to defend its insured no matter how groundless, false or baseless the suit may be” (*id.* [internal quotations and citation marks omitted]). The duty remains “even though facts outside the four corners of the pleadings indicate that the claim may be meritless or not covered” (*id.* [internal quotations and citation marks omitted]).

“The unambiguous provisions of an insurance policy, as with any written contract, must be afforded their plain and ordinary meaning” (*Broad St., LLC v Gulf Ins. Co.*, 37 A.D.3d 126, 130-31 [1st Dept 2006]). The policy should be read as a whole, and no particular words or

phrases should receive undue emphasis (*Bailey v Fish & Neave*, 8 N.Y.3d 523, 528 [2007]). Courts should give effect to every clause and word of an insurance contract (*Northville Indus. Corp. v National Union Fire Ins. Co. of Pittsburgh, Pa.*, 89 N.Y.2d 621, 633 [1997]). An interpretation is incorrect if "some provisions are rendered meaningless" (*County of Columbia v Continental Ins. Co.*, 83 N.Y.2d 618, 628 [1996]). It is the insured's burden to show that the provisions of a policy provide coverage (*BP A.C. Corp. v One Beacon Ins. Group*, 33 A.D.3d 116, 134 [1st Dept 2006]).

Defendant argues that the consolidated mortgage effectuated the purchase of "an estate or interest in the Land" because the two mortgages were consolidated into one. In this regard, the consolidated mortgage agreement provides that the consolidated mortgage "will constitute in law a single lien upon the Property" (consolidated mortgage agreement, NYSCEF Doc. No. 12, § IV). Further "all [FM Home Loans]' rights in the Property are combined so that under the law [FM Home Loans] has one mortgage" (*id.*, § II[A]). When the mortgages were consolidated, the Rosa mortgage therefore no longer secured an "estate or interest in the Land" as required to continue coverage (*E.C.I. Fin. Corp. v First Am. Tit. Ins. Co. of New York*, 121 AD3d 833, 834 [2d Dept 2014] ["The title insurer's liability to its insured is essentially based on contract law, and liability is governed and limited by the agreements, terms, conditions, and provisions contained in the title insurance policy"] [internal quotation marks and citations omitted]).

Plaintiff argues that it should be considered a successor in ownership under the policy because the first mortgage does not cease to exist once consolidated. However, the cases cited by plaintiff for this provision do not concern the issue of title insurance; specifically, as relevant herein, whether for purposes of the policy the first mortgage continues to secure a separate interest or estate in the mortgaged property (*Wells Fargo Bank, N.A. v Douglas*, 186 AD3d 532,

534 [2d Dept 2020] [summary judgment reversing erroneous discharge of first mortgage];  
*Benson v Deutsche Bank Nat. Tr., Inc.*, 109 AD3d 495, 498 [2d Dept 2013] [dismissing  
declaratory judgment action and holding first mortgage remains in effect]).

Accordingly, it is hereby

ORDERED that the motion is granted; and it is further

ORDERED that the Clerk of the Court is directed to enter judgment in favor of defendant  
dismissing the action against it.

This constitutes the decision and order of the court.

ENTER:

<u>3/22/2024</u> DATE					<u>LOUIS L. NOCK, J.S.C.</u>		
CHECK ONE:	<input checked="" type="checkbox"/>	CASE DISPOSED		<input type="checkbox"/>	NON-FINAL DISPOSITION		
	<input checked="" type="checkbox"/>	GRANTED	<input type="checkbox"/>	DENIED	<input type="checkbox"/>	OTHER	
APPLICATION:	<input type="checkbox"/>	SETTLE ORDER		<input type="checkbox"/>	SUBMIT ORDER		
CHECK IF APPROPRIATE:	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE